



Local governance in South Sudan: overview

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Question

What is local governance in the South Sudan context – what does it look like, what are the traditional mechanisms and state structures involved, what is most effective, which have greatest legitimacy?

Contents

1. Overview
2. Evolution of local governance in South Sudan area
3. Current formal local governance structures
4. Creation of new states
5. Traditional authorities
6. References

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1. Overview

The system of local governance in South Sudan (independent since 2011) comprises of both formal state structures and traditional authorities. The three tier local government structure faces significant capacity and resource constraints – manifested in weak effectiveness - which are being exacerbated by the government’s decision to increase the number of states in South Sudan from 10 to 32. Chiefs and similar traditional authorities were involved in local administration from colonial times, predominantly in tax collection and conflict resolution. But traditional authorities have been considerably undermined by the previous civil war (1983-2005), and there is lack of precise definition about the role of chiefs in the local government system. The literature does not talk about the impact of the current civil war (since 2013, ongoing) on local governance. Overall, South Sudan presents a mixed and very diverse picture of local governance – one which is failing to meet people’s needs.

Key findings are as follows:

- **Diversity of local governance:** ‘The quality of local governance in South Sudan is highly heterogeneous as a result of diverse historical, cultural and ethnic characteristics, additionally complicated by decades of conflict and social dislocation. Moreover, the nature of ethnic and clan based social organisation and the role of traditional authorities varies widely across South Sudan’s regions’ (World Bank, 2013: 2-3).
- **Formal local government structure:** the 2005 Comprehensive Peace Agreement and the Interim Constitution of South Sudan (ICSS) laid out a ‘democratic decentralised system of government’. This was detailed in the 2009 Local Government Act (LGA), and retained after independence in the 2011 Transitional Constitution. The system comprises national, state and local governments – the latter subdivided into counties, *payams* and *bomas*. Provisions for public participation in local governance include election of county commissioners and of county legislative councils, and formation of citizens’ development committees.
- **Challenges facing local governments:** Since 2011 the government has been engaged in a process of ‘recentralisation’ to create a strong executive model of government. This has seen many powers moved from states to the centre. In addition, states exercise considerable control over local governments, notably through appointment of state governors and control of resources. Public participation and accountability provisions in the LGA have generally not been realised in practice. Local governments also face significant capacity and resource constraints. Public perceptions of local governance effectiveness are weak.
- **Creation of new states:** In December 2015 the government announced it was increasing the number of states from 10 to 28, with a further 4 added in January 2017. The move was seen as aimed at securing a balance of power in favour of the President’s Dinka tribe and his supporters, strengthening patronage networks and undermining the opposition. There are fears it will lead to increased localised conflicts, and exacerbate the capacity and resource challenges already facing local governments.
- **Role of traditional authorities:** Chiefly institutions vary in structure and selection procedure in different areas of South Sudan. During colonial rule, the British adopted a system of native administration which entailed decentralisation and use of traditional

chiefs, notably for tax collection and conflict resolution. Traditional authorities continued to play that role after independence, including during the north-south civil war. They act as intermediaries between communities and local governments. They are included in the system laid out in the 2009 LGA, though their role is not precisely defined. There are contradictions between modern values and traditional governance.

- **Factors undermining chiefly authority:** A number of factors, mostly related to the civil war, have undermined traditional authorities in South Sudan. Displacement led to new chiefs emerging; government and armed forces also appointed new chiefs in areas under their control. Where traditional chiefs were retained, they were forced to do the bidding of armed groups/the government, and faced severe punishments if they failed to do so. The appointment of new chiefs, the proliferation of appointments and the 'humiliation' of traditional chiefs by armed forces combined to weaken chiefly authority.
- **Effectiveness and legitimacy: state structures vs. traditional authorities:** While state local government structures enjoy legitimacy in law – provisions for these are laid down in the constitution and relevant legislation – their effectiveness is limited, and it is unclear how much public legitimacy they enjoy. This is particularly given the lack of public participation in local governments. By contrast traditional authorities have in the past enjoyed both public legitimacy and been seen as effective, particularly in conflict resolution. But their legitimacy has been undermined by the effects of the north-south civil war.

The review found no literature looking at local governance in South Sudan specifically from the gender perspective or from that of people with disabilities.

2. Evolution of local governance in South Sudan area

Native administration

Prior to independence in 1956, Sudan was under Anglo-Egyptian rule since 1899. Initially the British tried to take over and co-opt traditional authorities and customary law, but this proved ineffective (Hoehne, 2008: 14). In the 1930s, under the 'Southern Policy', they introduced a system of Native Administration with administrative chieftaincies (Hoehne, 2008: 14; Santschi, 2014: 44). This entailed indirect rule and devolution. '[I]ts basic principle was that the local administration of colonial peoples should be conducted through indigenous structures of authority, employing indigenous law or custom, as far as this was consistent with British ideas of good government and justice' (Johnson, 2003, cited in Hoehne, 2008: 14). The explicit aims of indirect rule were to keep costs low and administration simple, and to 'develop' native institutions by eradicating the 'negative' aspects of it and fostering the 'positive' ones (Johnson, 1986, cited in Hoehne, 2008: 14). Within native administration, 'the government's chief interest was the creation of native courts whose main function was to administer customary law and organise work parties and the collection of taxes' (Schomerus & Aalen, 2016: 10).

Santschi (2014) stresses that chiefs were involved in local conflict resolution long before the colonial era. However, because of the strong colonial roots of administrative chieftaincies, they have always been closely linked with local government institutions. Their role in modern day South Sudan is discussed in Section 4.

Second Sudanese North-South Civil War (1983-2005)

During this period two parallel sets of governance structures existed in the area of Southern Sudan which later became the independent country of South Sudan (World Bank, 2015b: 21):

- a) Coordinating Council of Southern States (CCSS) – established in 1997 as a result of the peace agreement between a rebel faction and the government of Sudan. The agreement set out a federal structure for Sudan made up of states (a total of 25 states, 10 in the south) and local councils. The CCSS was primarily used by Khartoum to transfer resources to the territory it controlled in the south, and was not an effective service provider;
- b) Civilian Authority of New Sudan (CANS) – established in 1994 by the Sudan People's Liberation Movement (SPLM) to manage the areas it controlled. These were divided into three regions and 78 local councils (now called counties). CANS relied heavily on donor-funded NGOs and acted as a coordinator of aid rather than directly providing services itself. Centralised control under CANS was limited, creating space for Sudan People's Liberation Army (SPLA) commanders to 'carve out fiefdoms'. Chieftaincies played a key role, with chiefs engaged in hearing court cases, organising public projects and diffusing intercommunity tension.

Comprehensive Peace Agreement (2005-2011)

Greater autonomy for the south was a key element of the negotiated settlement that ended the Second Sudanese Civil War in 2005 (World Bank, 2015b). The Comprehensive Peace Agreement (CPA) set up the Republic of Sudan in the north, and Southern Sudan, which together 'made up an asymmetric federal system, similar to Canada and Quebec or Tanzania and Zanzibar' (World Bank, 2015b: 22). The Interim Constitution of Southern Sudan (ICSS),

adopted in 2005, outlined a presidential system of government, with an executive, a legislative and a judiciary. This system was defined as a 'democratic decentralised system of government' giving 'power to the people through the appropriate levels of government where they can best manage and direct their affairs' (World Bank, 2015b: 22). The 10 states under the CCSS were retained, along with the county structure created under the CANS: the 10 states comprised 86 counties.¹ Three tiers of local government were specified: county, *payam* and *boma* (World Bank, 2015b: 22).

During the early CPA period, responsibility for state functions was delegated between levels of government in an ad hoc manner. This led to passage of the Local Government Act (LGA) in 2009, aimed at providing clearer and more detailed rules. The LGA lays out legal provisions governing the status of local governments and traditional authorities vis-à-vis subnational institutions. Still the main legislation with regard to decentralisation, the LGA's provisions are described below.

3. Current formal local governance structures

Post-2011

Transitional Constitution 2011

Southern Sudan became South Sudan and gained independence in July 2011. A Transitional Constitution was immediately adopted by the South Sudan Legislative Council. The Transitional Constitution closely follows the system of government laid out in the Interim Constitution, outlining the principle of 'decentralised democracy' and defining three layers of government – national, state and local (USAID, nd: 39). The central government is responsible for delivery of national functions (defence, tertiary education), the states for delivery of secondary services, as well as supporting and supervising counties; while basic services have been assigned to local governments (World Bank, 2015b: 25). Despite the apparent retention of a decentralised form of government, critics argue that the Transitional Constitution actually represents a rollback of this process, and a more centralised government (see below).

Local governance structures in urban and rural areas

The LGA stipulates three tiers of local government: county, *payam* and *boma* in rural areas, and city/town, block and quarter in urban areas (USAID, nd: 39). *Payams* are described in the LGA as 'the coordinating unit of a County which exercises delegated powers from the County', and *bomas* as the basic administrative unit 'which shall exercise de-concentrated powers within a county' (USAID, nd: 41; World Bank, 2015b: 44). The LGA specifies that each county is to be headed by a commissioner, and each city/town by a mayor; and counties and cities are to have legislative councils with up to 35 members directly elected through universal suffrage from *bomas*/quarters (World Bank, 2015b: 44; USAID, nd). Commissioners lead an executive council made up of chief administrators and heads of department.

A World Bank analysis (2015b: 24) identifies a number of shortcomings in the LGA: it doesn't fill all the regulatory gaps regarding the intergovernmental system; it doesn't specify a role for

¹ https://en.wikipedia.org/wiki/Counties_of_South_Sudan

states; and it doesn't fully define the specific service delivery functions assigned to local governments or how sub-county institutions can be formed.

Apart from terminology, on paper there are no significant differences between the local government structure in urban areas and that in rural areas. In practice, however, the former tend to deliver a larger range of services and have higher levels of revenue at their disposal (World Bank, 2015b: 43). A further distinction is that many cities were previously administered by the CCSS, while rural areas were typically controlled by the CANS administration (World Bank, 2015b: 44).

Local Government Board

The local government system is overseen by the Local Government Board. Its mandate is to transform local governments (counties, *payams*, *bomas*) into a modern, integrated, citizen-centred intergovernmental system (World Bank, 2015b: 53). Functions of the Local Government Board are to: develop relevant concepts of local government systems that promote self-rule at the local level; design capacity development programmes for local government authorities; coordinate local authorities' administration and service delivery; and prepare local government bills (Hunger Project: nd). However, a 2010 assessment found that the LGB did not have a functioning monitoring and evaluation system, and also had very little resources to carry out its mission (World Bank, 2015b: 53).

Effectiveness and legitimacy

2011 rollback of decentralisation

As noted above, the Transitional Constitution has been criticised for effectively rolling back the decentralisation process to foster centralised government. Cope (2014) argues that in the 2005 CPA and the Interim Constitution, the South Sudan political elite had no choice but to accept devolved government – notably devolution to states and local governments – because this strengthened its claim for greater autonomy for Southern Sudan from Khartoum. 'Effectively, that meant that the South had to give its states and localities the same rights it was demanding from the government of Sudan' (Cope, 2014).

However, once independence was achieved in 2011, that imperative no longer applied and the government returned to – what he claims was its preference all along – a centralised, strong executive model of government (Cope, 2014). This was manifested in measures such as: erosion of legislative and judicial checks on the executive; giving the president the power to dissolve the national legislature through a 'state of emergency' provision which can be invoked upon finding an economic threat to any part of the country; movement of powers from states to the national government; giving the president the power to dissolve state councils and dismiss state governors; and elimination of state-level courts (Cope, 2014).

Weak public participation and accountability

There are provisions in the LGA for public participation. Commissioners and legislative councils are supposed to be directly elected – a process that promotes state legitimacy. '(L)egislatures have an important role to play in ensuring that citizens from across localities feel represented at relevant higher levels of government – from *payam* to county councils and state legislatures, and

to the two houses of the national parliament. This can play a very important role in ensuring that citizens of different ethnic groups feel that they have a stake in the overall governance of the country, and to give the state legitimacy' (World Bank, 2015b: 48).

However, as of the end of 2014 the Commissioners had been appointed by state governors rather than elected (World Bank, 2015b). Consultations about appointments were held in some states to ensure adequate representation and balance ethnic consideration, as well as to enable communities to more easily accept a commissioner they might otherwise have opposed (World Bank, 2015b: 44). Nonetheless, the fact that they are directly appointed means 'they are close allies and "political agents" for state governors'; moreover, 'with the governor's backing, they are quite powerful and therefore influence the behaviour of the county executive director and staff' (World Bank; 2015b: 44). As of end 2014 not all counties had legislative councils; but in those that did, again, members were appointed by state governors rather than elected (World Bank, 2015b: 44). The lack of legislative councils undermines citizens' ability to hold county authorities accountable (World Bank, 2013).

Citizens at *boma* and *payam* levels are also entitled, under the LGA, to organise themselves into development committees to conduct self-help projects. The Local Government Board had asked *payams* since 2009 to form *payam* development committees (PDCs), so as to give local people a role in county budgeting and planning processes. However, concerns that there were no mechanisms to support the formation and training of these committees prompted state and county governments to scale back the initiative (World Bank, 2015b: 45). Where development committees have been formed, this has been through donor-funded projects. One example is Oxfam's With and Without the State (WWS) Project, which is helping set up PDCs, and working alongside local communities and government officials to raise awareness of PDCs and define their scope and responsibilities (Morrissey, 2015).

Given the very limited role given to communities in local government entities, the World Bank report concludes: 'The institutions for horizontal power distribution and for "bottom-up" accountability – including representation of citizens at different levels of government, and from lower to higher levels of government through legislatures – have thus far remained incomplete' (2015b: 47).

State control of local governments

States exercise extensive control over local governments. As noted, county commissioners are appointed by state governors and, where county legislative councils are in place, these too were appointed by state governors. Senior county administrative officials are assigned to counties by State Ministries of Local Government and State Ministries of Finance (World Bank, 2013: 4). Fiscal decentralisation is undermined in a number of ways (World Bank, 2013: 4):

- Fiscal resources and budgetary discretion are concentrated at the state level; in many cases even the County Development Grants (CDGs) allocated in the national budget are managed by states on behalf of county authorities;
- While the LGA gives revenue raising powers to local governments, there are no supporting regulations on local government and revenue instruments, and at county level there is weak capacity for revenue mobilisation and administration;
- Parallel financing instruments exist, weakening the planning and coordination of local public expenditure by counties. These include the Constituency Development Fund that is controlled by members of parliament, and external assistance from donors and NGOs.

The conclusion is stark: 'to a significant degree, county governments function as deconcentrated bodies under state authority' (World Bank, 2013: 4).

Lack of capacity and resources

Implementation of decentralised government in South Sudan faces a number of challenges (Hunger Project, nd):

- Lack of administrative capacity at the national, state and local levels;
- Lack of trained personnel to manage the public sector and to work in local capacity development.
- Lack of equitable sharing of natural resource (oil) revenues among entities for essential services and for strengthening decentralised local government;
- Very few institutions of local government outside the capital, Juba and a few of the oil producing areas;

Lack of capacity is an issue that comes up repeatedly in the literature. 'County capacity is highly variable and generally weak' (World Bank, 2013: 4).

Effectiveness

The limited effectiveness of local governments in South Sudan emerges clearly from the findings of the Local Governance Barometer (LGB). The LGB is a tool for measuring the status of governance by looking at key criteria: effectiveness and efficiency, transparency and rule of law, accountability, participation and equity. Locally relevant and easy to understand indicators are developed for each of these through a participatory process. The LGB collects and analyses perception data from citizens, institutions and local authorities. Scores are given out of 100 for each governance criterion: a score of 100 signifies perfect governance, while 0 indicates a complete lack of good governance (DANIDA SIDA, 2013: 6).

The LGB was implemented in two separate localities in South Sudan in August 2013: Rubkona County in Unity State, and Rumbek Central County in Lakes State. Although the assessments conducted in Rubkona County and Rumbek Central County involved different questions and participants, and hence should be interpreted separately, their overall consolidated scores were the same at 38/100, which represents a fairly poor level of governance (DANIDA SIDA, 2013: 6). In Rubkona County the score obtained for effectiveness was 35/100: 'there is a lack of sound financial management in the county and there is the perception that local government lacks the means and training to effectively manage finances' (DANIDA SIDA, 2013: 7). Citizens mentioned a lack of health and agricultural services, clean markets and streets and operational water points. The score for the Rumbek Central County in the criteria effectiveness was 49/100 (DANIDA SIDA, 2013: 7). The slightly better score was explained by the existence of policies and county strategic plans, financial management systems, and a fair amount of capacity amongst local government staff and officials. However, there was a lack of checks and balances in terms of monitoring county budgeting, spending, and service delivery.

4. Creation of new states

Driving factors

At independence in 2011 South Sudan retained the 10 states that were in place under the CPA in Southern Sudan. But there were pressures for the creation of new states, and particularly new counties. 'Counties are viewed as highly valuable – both for promoting individual political careers and for the communities who see them as a mechanism to access resources... Given the high degree of ethnic fragmentation in South Sudan... counties are potentially very important for ensuring representation of many groups' (World Bank, 2015b: 47).

The LGA does have provision for the creation of new local governments (as well as for changing their names, capitals and boundaries), but lays down criteria for this, e.g. region's population, effectiveness, economic viability, common interest of its communities and number of lower-tier administrative units the region contains (World Bank, 2015b: 45). Given the appeal of having one's own local government, 'in practice, there have been increasing demands from specific ethnic groups and subgroups ... Having one's own county, *payam*, *boma* or even county capital has become synonymous with controlling fiscal or natural resources, as well as signalling political inclusion' (World Bank, 2015b: 45).

In October 2015 President Salva Kiir announced a plan to replace the existing 10 states with 28 new ones (Stimson, 2016). After failing to secure the required votes in the lower house of parliament for a constitutional amendment to create 28 states², Kiir went ahead with implementation of the plan on 24 December 2015 (Stimson, 2016). At the same time he announced that he had appointed state governors for the 28 states: all loyal to him, they were sworn in five days later (Sperber, 2016).

According to Sperber (2016), 'The subdivision of South Sudan's states was a blatant power play by Kiir, whose newly designed borders ensure powerful majorities for his Dinka tribe in strategic locations'. Moreover, it 'puts the coherence of the rebel movement under strain. Contrary to how it is often portrayed internationally, the Sudan People's Liberation Movement-in-Opposition (SPLA-IO) is a disparate force with an array of localised agendas, some competing against one another. Subdividing the country's state-level boundaries will exacerbate these tensions by raising the stakes of local power disputes' (Sperber, 2016). These explanations are echoed by an analysis by the Stimson Centre (2016). They actually identify three main explanations for Kiir's creation of 28 new states (Stimson, 2016: 2):

- First, he may have wanted to secure a balance of power that favoured his supporters and/or members of the Dinka ethnic group.
- Second, he may have wanted to reinforce his patronage network by creating new positions of power that he could award to key figures in order to buy or maintain their loyalty.
- Third, he may have felt pressure to respond to long-standing demands for federalism and greater decentralisation of power. The SPLM-IO's original proposal of 21 states may

² 'Constitutional amendments require approval by two-thirds majorities in both houses of Parliament, and the bill failed to secure the required votes in the lower house. Nevertheless, Kiir's supporters combined the 189 lower house votes with 39 upper house votes and claimed that the bill had passed.' (Stimson, 2016: 2).

have increased the opposition's legitimacy among constituencies interested in federalism, and Kiir's counter-proposal of 28 states may have been intended to undermine that support.

In January 2017, President Kiir issued a presidential decree further increasing the number of states from 28 to 32.³ No reasons were cited for the decision.⁴

Impact of the creation of new states

Conflict

Whatever the precise explanation for the creation of 28/32 states, there is consensus in the literature on its potential impact. Sperber cites several analysts to back her claim that the move will fuel conflict in South Sudan. Joshua Craze, a researcher on South Sudan at Small Arms Survey, says, 'Kiir's order to create 28 states will aggravate already existing fractures within South Sudan, and threatens to intensify a whole series of local competitions over land and institutions throughout the country' (Sperber, 2016). This is echoed by the Stimson Centre (2016: 5): 'There are abundant and diverse local conflicts across South Sudan that have been altered, and in many cases worsened, by the introduction of the 28 states system.' Schomerus and Aalen (2016: 13) note that the division into 28 states will reconfigure local conflicts: 'There will be new majorities and new minorities within the new states and differences between them may be sharpened'.

One immediate effect of the 24 December 2015 announcement was to scupper a peace agreement that would have set up a power-sharing unity cabinet, with ministries divided between the President's party (16 ministries) and that of opposition leader Riek Machar (10 ministries) – Machar ordered his negotiation team back from Juba and said he wouldn't return until the 28 states scheme was rescinded (Sperber, 2016).

In some areas, however, the creation of new states has been welcomed. This has implications for any attempts to return to 10 states: 'the 28 states system purports to respond to a popular demand for greater decentralisation and so has been received positively in some quarters. If the system were to be reversed or altered, it would require considerable care.....any attempt to change the 28 states could cause challenges by politicians appointed under the new system and revolts by communities that favour decentralisation, leading to an "even worse crisis"' (Stimson, 2016: 4).

Costs

The World Bank (2015b: 47) warned long before December 2015 that 'the creation of new states or counties could involve trade-offs in terms of service delivery quality, accountability and legitimacy, and overall cost'. With regard to cost, the Bank warned that new states would significantly increase costs of public administration through, for example, 'start-up' costs, new administrative buildings, salaries associated with a county's core administrative functions as well as salaries of the county council, commissioner and chief executive officer. It calculated that the salary costs associated with a county's core administrative functions were between USD 114,000

³ <https://paanluelwel.com/2017/01/22/the-32-federal-states-of-the-republic-of-south-sudan/>

⁴ <http://www.sudantribune.com/spip.php?article61403>

and USD 161,000 a year; it used these figures to estimate that the annual cost of setting up six new counties in Jonglei would be USD 683,000 (World Bank, 2015b: 47).

The Stimson Centre's analysis – carried out once the 28 states had been created - questions whether the government would 'be able to fund an expanded bureaucracy when it was already unable to support 10 state administrations' (2016: 4). It is relevant to note here that South Sudan's oil revenues have decreased in recent years and the country's debt burden has increased (World Bank, 2015b). There are general concerns that 'if the state cannot afford the increased costs associated with the 28 states system, state administrators could extort the population to generate revenue' (Stimson, 2016: 5).

Service delivery

With regard to impact on service delivery the World Bank cited comparative analysis of the territorial organisation of states which found that 'initially, moderately increasing the number of primary administrative units has a positive effect on service delivery – however, as the number of districts increases, the analysis sees a reduction in the quality of services (Grossman & Pierskalla, 2014, in World Bank, 2015b: 47).

Schomerus and Aalen's analysis of how violent conflict links to the expansion of administrative structures in South Sudan draws the following conclusions: 'It is clear that the establishment of structures does not guarantee their function...the establishment of a state government over smaller territory does not necessarily mean that it is more accessible to citizens if there are no local structures to hold state governments to account' (Schomerus & Aalen, 2016: 13). Given the significant capacity and resource constraints already facing local governments, and their limited effectiveness, creation of new states looks set to exacerbate these issues.

5. Traditional authorities

Role of traditional authorities

Diversity

The literature stresses the diversity of traditional structures in South Sudan. These 'range from the institutions of chiefs, conflict resolution mechanisms, customary law, practices and beliefs' (Mbugua, 2012: 17). 'Traditional authority vested in native administration consists of diverse hierarchies of tribal chiefs and their assistants, elders and opinion leaders in communities' (Wassera, 2007: 6). Santschi (2014) describes the different chiefly institutions in South Sudan (varying from area to area) as well as the dissimilar rules followed in different areas for succession of chiefs: in some areas chiefs are elected while in others they are selected from chiefly families.

Functions

In terms of role, 'Chiefs engage in a number of different activities at the local level in South Sudan. They settle disputes in chiefs' courts, they engage in peace processes, collect taxes, allocate food aid, act as intermediaries between the government and the community and they mobilise community members for projects' (Santschi, 2014: 46). However, their main role, both

historically and in South Sudan today, is probably conflict resolution. Customary law⁵ is considered to be the predominant source of law in South Sudan – almost 90% of everyday criminal and civil cases are dealt with and executed under customary law and by traditional chiefs and leaders (UNDP, nd: 21). Chiefs and other forms of traditional authorities engage in different arenas of local justice and play an active role in various conflict resolution mechanisms in South Sudan; these arenas of justice range from informal gatherings to formal hearings in chief courts (Santschi, 2014). ‘Traditional leaders and particularly chiefs continue to be the main actors in the mitigation and resolution of local conflicts, partly because of the limited capacity of the Ministry of Justice to reach the whole country’ (Schomerus & Aalen, 2016: 14).

Link between communities and local government

The literature highlights the special position of chiefs straddling communities and local governments. On the one hand they have roots in pre-colonial socio-political and spiritual institutions, practices and norms, and they are (s)elected as well as potentially dismissed by community members - which means that they are accountable to their communities. On the other hand, as noted above, the strong colonial roots of administrative chieftaincies mean they have always been closely linked with local government institutions. Under the LGA chiefs are given a semiautonomous status and are mandated to engage in a number of activities including the provision of customary law and justice in the customary law courts (Santschi, 2014: 45). Schomerus and Aalen (2016) note that both the LGA and the Land Act mandate chiefs to be the primary focal points for conflict mitigation, particularly conflicts associated with land. ‘Accordingly, chiefs are associated both with the sphere of the state as well as with the sphere of society’ (Santschi, 2014: 45). ‘They exercise influence on local communities and act as intermediaries between communities and local governments’ (Wassera, 2007: 6).

Challenges for traditional authorities

Effects of war: chiefly authority undermined

The long-standing position and role of traditional authorities in local governance in South Sudan has been undermined by a number of factors related to the country’s long north-south civil war (1983-2005). The war resulted in large-scale displacement with fragmented communities, some becoming IDPs and some refugees. ‘This reduced the contact between chiefs and followers, and led to the waning of chiefly influence and popularity’ (Hoehne, 2008: 17). In their areas of displacement, these communities set up their own traditional forms of governance, with chiefs and their assistants in IDP camps inside Sudan and refugee camps in exile (Wassera, 2007: 6). Often these were new chiefs (Hoehne, 2008: 17). The return process since 2005 has led to tension between IDP/refugee chiefs and those who held these positions prior to the second civil war.

During the second civil war chiefs and other traditional leaders also lost influence over their communities because of the establishment of parallel leadership structures with the support of

⁵ ‘Customary law is the manifestation of the customs, beliefs and practices of the people. It is broadly accepted that customary law refers to the body of traditions, morals, social conventions and rules that through long usage and widespread acceptance, directly govern traditional societies.’ *Training Manual for Traditional Authorities on Customary Law in South Sudan*, (UNDP: nd), p. 21.

parties to the war. The government as well as the guerrillas installed new chiefs in the respective territories controlled by them (Hoehne, 2008: 17). In the Upper Nile region, for example, the emergence of armed groups such as Jeish Mabor (White Army), led to traditional leaders being substituted by military commanders (Wassera, 2007: 10).

The proliferation of new chiefs and their courts was a further factor which undermined chiefly authority. 'The ease with which chiefs were appointed and dismissed by soldiers or guerrillas made a mockery of their office' (Hoehne, 2008: 17). One study describes a proliferation of authorities setting up their own courts during the war years: 'from individual military officers and military police to regular police, government officials, and committees of traders. By 2004, in the town of Rumbek, for example, it seemed that some kind of court was in process under almost every sizeable tree' (Feiden et al, 2010: 19-20).

Traditional chiefs who kept their positions were forced to ensure the execution of orders from the side of the war they belonged to. They were particularly used by external forces for tax collection: chiefs collected taxes in kind (e.g. sorghum) and mobilised human resources, but failure to collect taxes or provide young men as recruits could lead to severe punishment (Hoehne, 2008). 'Chiefs were also punished for "crimes" committed by their subjects. Frequently the punishment had the aim of humiliating the chiefs in front of their communities. Punishment, sometimes on order of a foot soldier, reduced a traditional leader to the status of a commoner' (Hoehne, 2008: 17). Mbugua (2012: 19) echoes this, noting that the authority of chiefs 'was undermined by the long war whereby emphasis was put on the SPLA military law and tribunal....the AK47 and green jungle jacket replaced the fly whisk and the walking stick as symbols of authority'.

Finally, the destruction of local subsistence economies during the second civil war, and the increase in criminality and insecurity, undermined chiefly authority (Hoehne, 2008).

The literature does not talk about the impact of the current civil war (2013-ongoing) on local governance in South Sudan.

Clash between traditional and modern values

There are contradictions between traditional and modern governance: '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' (Mbugua, 2012: 17). 'The majority of South Sudanese customary law systems show plainly a conflict between international human rights laws and rights granted to women and children in customary law' (UNDP, nd: 22). Those exposed to 'new' ideas during the war in camps/exile claim that strict observance of traditional authority is incompatible with social rights, notably of women as enshrined in the CPA and the ICSS (and later the Transitional Constitution). The contradictions lead to conflict and disruption of social order at the community level (Wassera, 2007: 6). Wassera (2007: 11) also points to other 'competitors' in the field of conflict resolution: the local government, NGOs and civil society organisation including faith-based groups such as the New Sudan Council of Churches, which combine traditional and modern values.

Lack of definition and clarity about roles

Under the Transitional Constitution and the LGA, the precise position and role of chiefs is not defined, potentially leading to conflict. The LGA refers to differing levels of chiefs such as paramount chiefs, head chiefs, executive chiefs, sub-chiefs and headmen (Santschi, 2014: 45).

'What has not yet been clarified, however, is the exact level of authority granted to different types of chief' (Schomerus and Aalen, 2016: 14). There are also disagreements about authority over land administration between chiefs appointed during the war by the SPLM/A, and those who claim legitimacy on the basis that their forebears were appointed by the colonial authority prior to independence (Schomerus & Aalen, 2016: 14).

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