

Traditional Authorities and Local Government in Southern Sudan

By Markus V. Hoehne

PhD Candidate, Max Planck Institute for Social Anthropology,
Halle/Saale, Germany

November 2008

This study was supported by the World Bank as part of the ESW ‘Southern Sudan: Strengthening Good Governance for Development Outcomes in a Post-Conflict Setting’. The Task Team Leader was Vivek Srivastava. The work was also supported by Motoky Hayakawa. The analysis, views, and recommendations in this report are solely those of the author, and do not necessarily reflect those of the World Bank Groups. The author wishes to thank Vivek Srivastava, Motoky Hayakawa, Jesse Ribot, Enrico Ille, Dereje Feyissa, Guma Kunda Komey and Martina Santschi for discussions on the topic. All remaining errors are mine.

Table of Contents

	page
0 EXECUTIVE SUMMARY	2
1 OBJECTIVES AND ISSUES	4
2 TRADITIONAL AUTHORITIES, LOCAL GOVERNMENT, AND (DEMOCRATIC) DECENTRALIZATION IN AFRICA	5
2.1 Political/democratic Decentralization	
2.2 Traditional authorities and local governance in sub-Saharan Africa	
3 LEGAL ASPECTS OF THE INTEGRATION OF TRADITIONAL AUTHORITIES INTO LOCAL GOVERNMENT IN SOUTHERN SUDAN	9
3.1 Interim Constitution of Southern Sudan (ICSS) (adopted 2005)	
3.2 Local Government Bill (LGB) (currently under discussion)	
3.3 Summary	
4 HISTORY OF TRADITIONAL AUTHORITIES IN (SOUTHERN) SUDAN	14
4.1 Colonial and post-colonial developments	
4.2 The impact of the SPLA/M war on traditional authorities in southern Sudan	
4.3 Summary	
5 OTHER AFRICAN CASES IN COMPARATIVE PERSPECTIVE	19
5.1 What role do traditional authorities play in contemporary African politics?	
5.2 Can (democratic) decentralization be achieved through recurrence to traditional authorities?	
5.3 What is the track-record of conflict/cooperation with local government?	
5.4 Should traditional authorities be paid with public resources and in how far can accountability mechanisms be introduced?	
5.5 What are the sources of legitimacy of traditional authorities and how would the incorporation in formal state structures impact on their legitimacy?	
5.6 Summary	
6 CONCLUSIONS	33
BLIOGRAPHY	36
ANNEX	40

The increasing focus on traditional authorities is linked to an increasing interest in and support for decentralization. Modern institutions and the modern urban elite at the national level often co-exist with traditional structures at the local level. Traditional structures in many cases survived the colonial period and continued to be an important part, or even the main reference point for large parts of the population after independence. Recent efforts of decentralization have shifted the focus to existing social and political structures at the local level. Without taking traditional structures into account, social and political engineering are likely to fail at the local level (Lutz and Linder 2004: 27).

The tag, “traditional”, simultaneously legitimates and renders anachronistic the institutions and individuals to whose authority it is applied, distracting attention from a complex history in which the titles, geographical dimensions, functions and individual identities of kin-based authority figures have been continuously transformed in the midst of a tremendous variety of local scenarios (West and Kloeck-Jensen 1999: 457).

The allocation of different sets of powers of decision making and rule making to lower-level actors creates decentralization. The effectiveness of decentralization hinges on a third dimension: accountability (Agrawal and Ribot 1999: 477).

0 EXECUTIVE SUMMARY

● **The integration of existing traditional authorities into government structures is a way of dealing with the reality of weak state performance in many areas, particularly the rural peripheries, of the postcolonial African states. Yet, this integration is not unproblematic.** Experience from various other countries shows that remaining problems include first, the lack of accountability and transparency involved with the rule of traditional authorities; second, the fact that traditional authorities rule on an ethnic base that may (re-)introduce social and political separation along ethnic lines; third, the difficulties of power sharing between state administration, e.g. local governments, and traditional authorities. Particularly when it comes to the control of viable natural resources and the registration of residents/citizens/voters/tax payers, state institutions usually take the lead, only aided, if necessarily, by traditional authorities. The latter – and here the limitations become obvious – can only take responsibility within the local sphere. National issues have to be decided by the state authorities.

● **The legislation on traditional authorities as part of local government in Southern Sudan comprises a number of contradictions and gaps.** An important contradiction derives from the emphasis of the democratic principle in the Local Government Bill, on the one hand, and the granting of various administrative powers, including legislative, executive and judicative powers to traditional authorities (at least on the Boma level), on the other. This begs the question how the democratic principle shall be implemented, since it is well known that the *de facto* working of traditional authority is frequently not democratic in the modern sense. Further, inconclusive or contradictory statements in the Bill regarding the relationship between traditional and other local government authorities, and even the status of traditional authorities within the government framework, could lead to conflicts over competences and power sharing.

● **Traditional authorities in Southern Sudan have been influenced by the changes introduced by the subsequent colonial and post-colonial governments, and the civil wars ravaging Sudan for more than four decades.** Particularly in the war of the SPLA/M against the government in Khartoum (1983-2004) traditional structures were often undermined by the SPLA guerillas and also by SAF soldiers. Simultaneously, the surviving institutions took on new areas of responsibility. They acted as intermediaries between the SPLA/M and local populations, as protectors against armed forces. Today they are the only effective and legitimate remaining authority providing basic law and order in some areas. Although the SPLA was initially against the institution of traditional authorities it changed its position in this regard in the mid 1990s. This paved the way for the current legal arrangements in Southern Sudan under SPLA/M government.

● **Traditional authorities are contingent structures. They exist in complex relations to their local constituencies and external powers, e.g. the state. This complicates their integration into decentralized and democratic modern government structures.** On the one hand, traditional authorities are frequently close to their people and thus can help with the provision of basic services and the improvement of the social and economic conditions at the local level. On the other, they always have been ‘betwixt and between’ – being accountable to their local constituencies and simultaneously to superior (state) powers. The complexities of the ‘dual mandate’ (to benefit the state by conducting part of its functions at the local level and at the same time to satisfy the needs of their local constituencies) can not easily be resolved in legislation

● **Any separation between traditional authorities as apolitical, non-state entities whose legitimacy derives exclusively from ‘the local community’, and the modern state, on the other hand, is misleading.** Both, in fact, have historically been intertwined, and part of the legitimacy of traditional authorities derives from state recognition.

● **The value of traditional authorities, at least for democratic decentralization, remains unclear.** They have important roles to play as effective powers on the ground. Yet, the democratic credentials of traditional authorities are questionable. Usually, institutions of traditional authority exclude women, youth, and sometimes the poor. Their election/selection is not subject to universal adult suffrage and their terms of office are not limited. This poses serious challenges to the establishment of a modern democratic system. It also infringes with the equal rights of all citizens, since those who are predominantly subject to traditional authorities and customary law in fact enjoy only conditional citizenship (with rights granted on paper, without much chances to use them), compared with the people who (for example in the towns), are entitled to regularly elect their representatives, can hold them accountable through the limitation of the terms of offices, and have the means, through independent media, for instance, to demand transparency of administration.

1 OBJECTIVES AND ISSUES

In the Comprehensive Peace Agreement (2005) Southern Sudan has gained autonomy with the option to secession in 2011. Currently endeavors are under way to build a stable polity in Southern Sudan after decades of civil war. In this context decentralization and the integration of traditional authorities in the framework of local government have become an important issue.

The objectives of this study are to sketch the social and political situation of traditional authorities in Southern Sudan, and to evaluate the role envisaged for them within the Interim Constitution of Southern Sudan and the recently drafted Local Government Bill. The general questions underlying this paper are: Are traditional authorities necessary in order to provide a minimum of stability and order? Do they undermine the emergence of modern state structures? Can the integration of traditional authorities into modern government structures pave the way to a country-specific form of democracy, and if yes, is there a way of doing this well?

In order to approach these objectives and general issues the study concentrates on the legislation concerning traditional authorities (section 3) and the history of traditional authorities in Southern Sudan (section 4). Particularly interesting is the question which impact the most recent civil war had on traditional authority and the relationship with their constituencies, on the one hand, and the guerillas and government forces, on the other. These Southern Sudan-specific sections are embedded into the broader discussion of the roles and powers of traditional authorities within the framework of decentralization and local government in contemporary Africa (section 2), and concrete examples from other African countries (section 5). These examples are organized around the following five key-questions:

- What role do traditional authorities play in contemporary African politics?
- Can (democratic) decentralization be achieved through recurrence to traditional authorities?
- What are the prospects for conflict/cooperation with local government?
- Should traditional authorities be paid with public resources and in how far can accountability mechanisms be introduced?
- What are the sources of legitimacy of traditional authorities and how would the integration of traditional authorities in formal state structures impact on their legitimacy?

The discussion of these questions provides a framework for evaluating what is being attempted in Southern Sudan. The paper concludes in section 6. Its content is based exclusively on literature review, apart from the brief insertions in section 5 on powers and positions of traditional authorities in Somaliland, where I did field research in 2003/04.

2 TRADITIONAL AUTHORITIES, LOCAL GOVERNMENT, AND (DEMOCRATIC) DECENTRALIZATION IN AFRICA

Non-state actors such as traditional authorities enjoy considerable legitimacy and hold power in many African countries. In some contexts they never ceased to be important; in others they gained renewed influence in the light of state-weakness, state-collapse and/or state-reconstruction after crisis. In general, traditional authorities replace state actors, cooperate with them, or are co-opted (Bellagamba and Klute 2008; Buur and Kyed 2007; Bierschenk and de Sardan 2003; Nyamjoh 2003; Englebert 2002; Englebert 2005; van Rouveroy van Nieuwaal and van Dijk 1999; Lentz 1998).

Simultaneously, (democratic) decentralization had increasingly been perceived as a way to improve overall local governance – in southern Sudan as well as elsewhere in Africa. It aims at enhancing the participation of the local population in decision making processes. Thereby, it fosters transparency, accountability and responsiveness, and aids efficient and effective policy-implementation (Lutz and Linder 2004: 2). Particularly in post-civil war contexts decentralization may contribute to regaining the trust of previously marginalized local populations in the government and to establishing political and economic participation in a multi-ethnic environment (Draft Strategic Options Paper No 1: 2; Branch and Mampilly 2005: 6). Since traditional authorities in Africa continue to be important, it is obvious that contemporary programs of decentralization and strengthening local governance do not take place in a vacuum. As will be outlined in section 5 below, the motivations for integrating traditional authorities into local government are manifold, and range from willy-nilly accepting their factual power to using them as (state-)agents or even as ‘fig leaves’ for governments that are under pressure from donors to decentralize.

2.1 Political/democratic Decentralization

Political/democratic decentralization involves high standards of legitimacy and accountability of rule/administration at the local level. ‘It is only when constituencies come to exercise accountability as a countervailing power that decentralization is likely to be effective’ (Agrawal and Ribot 1999: 477). Downward accountability can be established in electoral processes, through procedures of recall, legal recourse through courts, third party monitoring, the media, education, embeddedness of leaders in their local communities, belief systems, threats of social unrest, and so forth (ibid.: 478).

Yet, the experiences with the implementation of decentralization in many African and other countries have been mixed, at best. Ribot (2002: 3) found in his comprehensive review on ‘African decentralization’ that sometimes decentralization led to the stabilization of central control and/or undermined the existing democratic culture at the local level. Additionally, since decentralization comprises of handing over power to local traditional authorities, it runs the risks of fostering social divisions along ethnic lines and of re-introducing the colonial divide between subjects and citizens. For Southern Sudan, Branch and Mampilly (2005: 12) pointed out that the ascription of power to traditional authorities ‘raises questions both of the internal democratic credentials of chiefs and of the possibility that seeds are being planted for intensified ethnic conflict in the future.’¹

¹ Both of these issues will be taken up in more detail below, in sections 2.2 and 5.

Regarding the (ideal-typical) distinction between citizen and subject Mamdani (1996) argued that the bifurcated state in post-colonial Africa is a colonial legacy. It is based on the enforced division along ethnic/tribal lines and the differentiation between rural and urban, as well as indigenous and other inhabitants of the colony. City dwellers and non-indigenous migrants were citizens under colonial administration, while in the vast periphery/country side each tribe had its traditional authorities that were responsible for the indigenous subjects. This ‘dual policy of “ethnic pluralism” and urban-rural division’ were continued in the post-colony (Ntsebetza 2005: 73, referring to Mamdani 1996: 34).

The citizens-subjects divide was not only a problem of the first post-colonial governments. It is currently debated by scholars researching the resurgence of institutions of traditional authority in Africa. Ntsebetza, referring to Mamdani, argues that in post-Apartheid South Africa it is not yet clear if and in how far the new political and administrative arrangements move away from ‘decentralized despotism’ (based on the citizens-subject division) and towards a more democratic form of rural governance. ‘The constitutional recognition of the hereditary “institution of traditional leadership” without any clarity as to its roles, functions and powers makes these questions about democratising rural governance even more urgent’ (Ntsebtza 2005: 74). In his conclusion the author emphasises the lack of support for the newly established democratic structures on the side of the current South African government and maintains that democratic decentralization in the rural areas of the country is at best incomplete (Ntsebetza 2005: 87-88). Thus, the danger to continue the citizens-subjects divide looms large.

Leonardi (2007: 537), on the other hand, argues against ‘such sweeping generalizations as Mamdani’s.’ She admits that some scholars return to the citizens-subjects distinction and ask ‘whether, as brokers, chiefs are also implicated in narrow state patrimonialism, and whether therefore their resurgence may entrench a (colonial-style) system whereby access to rights and resources is confined to recognized members of a “community”, defined by its chief’ (ibid. 538). Yet, Leonardi points out that most of the recent literature on the current roles and positions of traditional authorities in Africa highlights the complexity of the issue, including the numerous links between rural and urban constituencies and elites, and the continued legitimacy of traditional authorities. The latter have not only been willing agents of colonial and post-colonial states but also have defended their communities against state intrusions. Thus, contrary to Ntsebetza, Leonardi opposes Mamdani’s clear-cut divide between citizens and subjects.²

2.2 Traditional authorities and local governance in sub-Saharan Africa

Traditional and modern state structures coexist within many countries and societies. Lutz and Linder (2004: 12) emphasize that ‘people have different frames of reference for different parts of their daily lives. On the one hand, there are modern states with elected representatives, bureaucracies, services, and legal systems. On the other hand there are

² Leonardi’s position is also supported by van Kessel and Oomen (1997: 563) who argue that by the 1951 Bantu Authorities Act many South African chiefs were made into clients of the Apartheid state. However, not all chiefs agreed to being co-opted and in the 1950s and 1960s South Africa experienced a series of revolts headed by traditional authorities.

traditional structures with long-standing historic norms, often linked to spiritual and religious, political, judicial, and economic functions and traditions.’

Box I: Legitimacy – traditional and modern

Legitimacy in traditional contexts is ‘rooted in history and culture, often combined with religious/divine or sacred references.’ In contrast, legitimacy in modern contexts ‘is based on elections and embedded in constitutional and legal procedures and rules’ (Lutz and Linder 2004: 13). More generally Oomen (2005b: 82) emphasizes that legitimacy involves a moment of voluntary compliance, as it implies the acceptance of the right to rule of the authority concerned. This comes very close to Weber’s (1964: 70) notion of traditional authority based on the ‘*Gehorchenwollen der Genossen*’ – the *will* of the followers to obey [the traditional leader]. The legitimacy of traditional authority is therefore flexible and somewhat instable. This is in accordance with Kurtz’s observation that particularly in societies with no or weakly institutionalized positions of authority, leaders ‘must continually earn the support of their followers. If they fail, they are easily replaced’ (Kurtz 2001: 49). Here we can see another aspect differentiating legitimacy in traditional and in modern state contexts. In the latter, legitimacy is to a much greater extent fixed in legislation providing the legal limits within which authorities and followers have to establish legitimate relationships. Oomen highlights that ‘support for traditional leadership is influenced by community, chiefly and personal characteristics. All these can change. Communities can grow in size and other institutions can take chiefly functions’ (Oomen 2005b: 92). Again, within modern states legislation aims at standardizing relations of authority and procedures of rule/administration irrespective of factors that are specific for a certain locale, community or person.

It has to be noted that tradition/traditional does not imply ‘unchanged’ or ‘static’. Hoehne (2007: 156) stresses that etymologically, the word tradition comes from the Latin word *tradere*, which can be translated as “pass something [over]” or “hand something [over]”. Tradition, therefore, is process-oriented and comprises of actions that connect the present with the past. The dynamic of traditional institutions is also highlighted by van Dijk and van Rouveroy van Nieuwaal (1999: 4), who argue that chiefs ‘mediate the link between past present and future.’ In a similar vein, Lutz and Linder (2004: 15) acknowledge the changes of rules and habits during colonial and post-colonial times, and argue that ‘there should be room for a broader understanding of traditional leadership as legitimate leadership.’

Lutz and Linder assess the potential of traditional authorities to be part of local (good) governance systems by tackling issues of legitimacy, social inclusion, human rights, accountability, and conflict resolution and state building. Regarding legitimacy, they maintain that different types of authority, such as civil administrations and traditional authorities, can coexist without conflict, as long as both of them accept the legitimacy of the other. Traditional authorities dispose of a great mobilization capacity at the local level. They reach where the state doesn’t reach. Yet, the recognition of traditional authorities

through the state can also have negative effects. Traditional authorities may lose their independence and become associated with state failures (Lutz and Linder 2004: 19).

Social inclusion is hampered by traditional authorities who often are, and work for older males. Young people and women rarely have a substantial stake in traditional institutions. Moreover, newcomers to a territory/society are usually excluded from representation and/or power sharing under traditional authority. Finally, traditional authority accentuates the forces of ethnicity. Yet, even modern state structures are – at least behind the façade – not gender or age inclusive; and frequently, certain classes or (ethnic) groups dominate within the state apparatus (ibid.: 19-21).

International human rights are usually not part of the systems of traditional authority. Certain groups, such as women, youth, and minorities are underprivileged in traditional systems. Since traditional authorities simultaneously take on religious and political functions, and act in executive and judicative functions, their decisions can hardly be appealed or evaded, at least within the community. In many societies, traditional/customary law and state law including human rights exist side by side and are frequently in contradiction/conflict (ibid.: 22-23).

Accountability is limited regarding the exercise of traditional authority. Traditional leaders mostly hold their position for life time. Even if they perform poorly, they rarely can be effectively sanctioned. In theory, at least, they also can hold their position without being responsive to many of their subjects, since they do not have to face periodical democratic elections. However, in reality, most traditional leaders are well acquainted with the needs of the local people among whom they live. Also, if compared with the weakness or absence of government structures in many rural areas, traditional authorities still perform better than state institutions (ibid.: 24-25).

At the local level, traditional authorities contribute to conflict settlement, and customary law provides a basis of social order. Yet, there is a potential for conflict between state interests in conflict resolution and state building, and the orientations of traditional authorities. The latter may follow procedures that are not in accordance with state law. In cases where local communities straddle state boundaries, their traditional representatives might also not feel obliged to be loyal to one state only (ibid.: 25).

Having assessed the potentials of traditional authorities in relation to the realities of state administration in various countries, Lutz and Linder conclude that ‘when traditional authorities are more legitimate than the government, it is an illusion to think that it is possible to build a functioning state without close cooperation of the traditional leaders.’ In such cases, traditional authorities are ‘a decisive factor for successful local governance and development’ (Lutz and Linder 2004: 26). Yet, some problems remain regarding accountability, transparency, as well as power sharing between state administration and traditional authorities. Particularly when it comes to the control of viable natural resources and the registration of residents/citizens, voters, and tax payers, for instance, state institutions usually take the lead. In the perspective of Lutz and Linder (2004: 38-41) the latter should only be aided, if necessarily, by traditional authorities. In fact,

usually traditional authorities take responsibility within the local sphere. National issues are decided by the state authorities.

With regard to Southern Sudan, it can be assumed that the control of local resources that are of national interest, such as oil, will most probably be excluded from decentralization. Moreover, Young (2008: 31) recently highlighted further political problems with decentralization in Southern Sudan. He stressed that ‘genuine devolution of power to southern states is undermined by [...], the unwillingness of a militarily led GoSS [Government of Southern Sudan] to share power, particularly with the locally significant Traditional Authorities.’ Also, the primacy of security issues in the light of continuing political tensions within the south, as well as between Southern and Northern Sudan, hinders the accomplishment of other administrative tasks. Finally, the political and economical weakness of the Southern Sudanese administration that has limited funds to pay administrators and lacks trained personnel challenge effective decentralization (Young 2008: 31-36; Harragin 2007: 20).

3 LEGAL ASPECTS OF THE INTEGRATION OF TRADITIONAL AUTHORITIES INTO LOCAL GOVERNMENT IN SOUTHERN SUDAN

Since ‘decentralized government operates best where it has a firm legal basis’ (Draft Strategic Options Paper No 1 2008: 5) this section outlines the currently existing legal basis for decentralized local government in Southern Sudan.

3.1 Interim Constitution of Southern Sudan (ICSS) (adopted 2005)

The ICSS provides the basis for the integration of traditional authorities into local government. Article 50 ICSS provides three levels of government: (a) the central government, (b) the state level government; and (c) the local government within the state. Pursuant of this article, the articles 173, 174 and 175 outline the particularities of local government in Southern Sudan. Article 173 (5) establishes that the local government tiers shall consist of County, Payam and Boma in the rural areas, and of city, municipal and town councils in the urban areas. Paragraph 6 (i) of the same article comprises the obligation to ‘acknowledge and incorporate the role of traditional authorities and customary law in the local government system.’ Article 174 ICSS deals with various aspects of traditional authority and prescribes, for instance, that ‘the courts shall apply customary law subject to this Constitution and the law.’ Since the ICSS was adopted before a local government bill was elaborated, further legislation had to concretize the roles of traditional authorities within the local government structure.

3.2 Local Government Bill (LGB) (currently under discussion)

The following paragraphs briefly outline important aspects of the draft LGB that is currently under discussion in Southern Sudan. First, key articles of the bill are briefly introduced. Subsequently, some problems and contradictions within certain provisions are highlighted. This shows the need for continued reflection on the LGB.

Basic Provisions

The basis for the incorporation of traditional authorities into local government is provided by the articles 9, 15 and 16 of the LGB. Article 9 (c) states that ‘customs and traditions of the people of the respective Local Government territory within the States of Southern Sudan’ shall be among the sources of legislation in the Local Government Councils. Furthermore, the devolution of authority and the exercise of local government power shall acknowledge the role of the traditional authorities in local government. This ‘demands the incorporation of traditional systems and institutions of government into Local Government Authorities in Southern Sudan to make them relevant bodies of Community Governments’ (Article 15 (2) (b)). Article 16 deals with the incorporation of traditional authorities into a new local government system. It states that ‘the traditional leaders of the respective Counties shall represent their people in the County Legislative Council either by virtue of office as ex-officio members or on ad-hoc basis as determined by law’ (article 16 (2)).

The further paragraphs of article 16 prescribe the different positions of traditional authorities at County, Payam and Boma level. At County and Payam level the traditional leaders shall perform ‘ceremonial traditional leadership functions’ in addition to customary judiciary functions. Article 16 (6) confirms that ‘the Boma shall be a full domain of the traditional authority where the traditional leaders perform legislative, executive and customary judiciary functions according to customary practices and the law.’ Article 23 deals with types of traditional authorities. It distinguishes kingdoms and chiefdoms. It provides that ‘whereas kingdoms are recognized self-existing traditional organizations in Southern Sudan, chiefdoms shall be created and established by this Bill and the law’ (article 23 (2)).

Reflecting on the provisions of article 16 (2) it can be criticized that the LGB does not definitively clarify the nature of representation of traditional authorities in County Legislative Councils. Moreover, article 16 (6) raises the question how much power traditional authorities shall have in a democratic Southern Sudan.³ Also the implications of article 23 are somewhat unclear. Why shall chiefdoms be created and established by this bill and by law? Most probably, they exist already and just have to be incorporated into local government. This issue is obviously related to general questions regarding the legitimacy of traditional authorities, and if they derive it from recognition by external (colonial or post-colonial) state forces, or if they have to be legitimate first and foremost in the eyes of their local constituency.

The Unit of Community Government

The basic administrative unit of community government through traditional authorities is, according to article 18: clan or neighborhood. At this level, the headman or Gol-leader shall perform administrative functions, be responsible for resolving family disputes, and protect family rights. It has to be noted here that the reference to clan and neighborhood may have severe repercussions for migrants coming into an area and not belonging to the local descent group/the local clan. It remains unclear if this potentially exclusionary reference to clan can be countered by the reference to neighborhood. Is the term

³ This issue is discussed in more detail in section 6 below.

neighborhood understood as a spatial term providing room for incorporation of newcomers to a certain locale? Or do clan and neighborhood form an exclusive unit? In any case, the close linkage of clan and neighborhood as basic administrative units headed by traditional authorities seems to introduce a very static and exclusive element into local government that does not or only with difficulties allow for demographic changes through migration. This also concerns rural-to-urban migrants. Who represents and administers villagers belonging to a certain clan after they migrated to a town in search for employment? Can they register as town dwellers in a municipality? Or will they always be treated as members of clan x in village y under headman z, even if they do not feel related to these 'roots' anymore? These kinds of questions have not yet been addressed in the LGB.

The Relationship between Customary and Statutory Law

Article 22 (1) of the LGB defines the semi-autonomous status of traditional authorities ruling their own people at the State and Local Government levels. It grants them specific jurisdictions of authority in the administration of customary law courts and the administration of justice among their people. It also states that customary laws shall be applicable in the administrations of their people within their kingdoms and chiefdoms. Paragraph (2) of the same article continues:

Without prejudice against the generality of sub-section [paragraph] (1) above, the traditional authorities shall apply statutory laws in exercise of the delegated and, or deconcentrated powers conferred upon them by this Bill and shall observe respect and adhere to all provisions of this Bill, the Interim Constitutions of the States and the Interim Constitution of Southern Sudan.

The highest customary judicial authority in the County is the Customary Judicial Council headed by the Paramount chief (articles 94 and 95). This council is competent to adjudicate civil cases, and only exceptionally, criminal cases (article 98). Thus, it seems that the Customary Judicial Council is firmly established within the realm of customary law. Yet, article 98 (6) (a) holds that it shall apply the principle that 'justice shall be done to all, irrespective of their social, economic and political status, race, gender, age, religion, creed or beliefs'. Finally, Chapter XII LGB regulates the establishment of customary courts at the County, Payam and Boma levels, as well as in towns. Paramount chiefs, Head chiefs, Executive chiefs and Town chiefs are the judges of these respective courts.⁴ They are appointed by a Customary Judicial Service Committee constituted by the County Commissioner or Mayor and have to be approved by the Chairman of the County or Town Legislative Council.

Some of these provisions seem to sit uneasily with each other. Basically, they outline the respect for customary law and the authority of traditional authorities, while they at the same time introduce measures to control the application of customary law and the coming to power of customary judges. Article 22 (1), for instance, provides that traditional authorities are responsibly for the application of *customary law*. On the other, the article maintains in paragraph (2) that traditional authorities should apply *statutory law* in

⁴ For more details about the types of and the hierarchy of traditional authorities see below, section 4.

exercise of delegated/deconcentrated powers. Furthermore, it is the question in how far justice can be done ‘to all’, as stated in article 98 (6) (a), within the framework of customary law. Usually, the latter discriminates against youths, women, minority groups and migrants/immigrants. Some of these issues will be taken up in the comparative discussions in section 5 below. Finally, the provisions of Chapter XII seem to hinder the integration of traditional authorities into local government. The questions in this regard are if traditional authorities shall be integrated as judges in customary courts as authorities *sui generis*, or if they have to be approved first by representatives of the state. The lack of clarity in this regard entails a potential for conflict between traditional and civil authorities.⁵

Election/Selection of Traditional Authorities

Article 27 (1) maintains that ‘traditional chiefs shall be elected according to conventional electoral systems or selected according to traditional practices as the case may be.’ The subsequent paragraphs of article 27 concretize similar procedures for the different positions of Paramount chief, Head chief, and Executive chief. The Paramount chief, for instance, shall be nominated by the Council of Elders of the County, and he shall be elected by the people of the County ‘as determined by law’. Election and selection, thus, are mixed. The same provisions can be found regarding the other offices of traditional authority. It is not fully clear how selection by some members of the local elite (represented in the Council of Elders), on the one hand, and election through all locals according to the law, on the other, can be harmonized. Furthermore, it is unclear if the election/selection is for a fixed term of office, or for life time.

Powers and Functions of Traditional Authorities

The Executive chief is active on the Boma level. Among his duties and functions are the resolution of conflicts among citizens of the Boma through mediation, conciliation and arbitration; the maintenance of law and order within the chieftaincy; the supervision of tax collection; the allocation of land and distribution of food to returnees; the making of rules and regulations in relation to social, customary and traditional issues; and the mobilization of members of the community for communal work (article 29). Article 110 provides that ‘local revenues shall be generated through the imposition of levies on local taxes and local rates.’ Taxes include, among others, land tax, animal tax, and hut tax (article 110 (1)). Thus, traditional authorities in principle have the legal authority to collect taxes.

Obviously, the Executive chief combines legislative, executive and judicative powers in one person.⁶ Yet, this is against the principle of the division of powers within modern state systems. Moreover, traditional authorities shall generate local revenue in order to finance themselves through taxes, and so forth. This raises the questions: how can one (technically) collect taxes in an economically exhausted society after decades of civil war

⁵ A closer look into the Judiciary Bill that was passed in December 2007 may help to clarify these seeming contradictions and ease the tensions between customary and statutory law that are related to the above mentioned provisions of the LGB.

⁶ The same goes with the traditional leader at the Boma level, see above, article 16 (6).

and droughts?⁷ Also, as outlined in section 4.2, in the past, traditional authorities have sometimes been forced by external powers to collect ‘taxes’ (in the form of sorghum, animals, etc.). This raises the question if the responsibility to finance themselves through taxes, among other things, as foreseen in the chapter XIV of the LGBW will not evoke ‘bad memories’ among the local populations. Finally, two more technical questions that have not yet been addressed in the LGB are: who helps traditional authorities to collect these taxes? And: what sanctions are at hand in case somebody refuses to pay them?

The Question of Democracy

Article 8 (5) provides that ‘the local government authority shall be democratic and representative of the people in the respective local areas.’ This is in accordance with the aims of decentralization discussed in section 2 above. Yet, as also outlined in Box I (above) and as will be discussed further in the sections 5 and 6, traditional legitimacy and authority is not necessarily democratic in the ‘Western’ or modern sense. Some of the articles within the LGB, particularly those stressing democratic rights ‘for all’ are in contradiction to the everyday practice of traditional authority and customary law in many local contexts. In this context, the effective enactment of provisions of the LGB concerning women (e.g. articles 18 and 19) seems to be highly doubtful under the rule of traditional authorities.⁸

3.3 Summary

The LGB provides detailed legislation regarding the integration of traditional authorities into the local government system of Southern Sudan. However, the Bill comprises contradictions, some of which could lead to conflict over competences and power sharing between the different actors of local governance. The first and possibly most far reaching contradiction or area of conflict concerns the establishment of the democratic principle in article 8 LGB. The *de facto* working of traditional authority is frequently not democratic in the Western or modern sense, as can be seen in Southern Sudan as well as elsewhere in Africa (see below, section 5). The question is: what kind of ‘democracy’ and ‘representation’ did the legislator have in mind when referring to ‘democratic’ and ‘representative’ in the LGB? Furthermore, the LGB does not clarify definitively if traditional authorities are part of the local government as authorities *sui generis*, or if they have to be created, recommended and/or accepted by civil state authorities first. Also their terms of office are not clear. Thus, the usual democratic checks and balances of rule are not in placed regarding traditional authorities.

Furthermore, inconclusive and/or contradictory statements about the relationship between traditional and other state authorities could lead to conflicts over competences and power sharing. This became particularly clear with regard to the applicability of customary or statutory law at various levels of local government, and regarding the issue of naming judges of the customary courts.

⁷ This question, of course, does not only concern traditional authorities in particular, but all state actors in war-torn Southern Sudan in general.

⁸ Article 18 (5) maintains that ‘no marriage shall be entered into without the free will and consent of the man and woman intending to marry’; article 19 (5) provides that ‘all local councils and communities shall ensure that women are given the right access to justice in their families, community and the courts of law.’

4 HISTORY OF TRADITIONAL AUTHORITIES IN (SOUTHERN) SUDAN

Traditional authority in South Sudan is indicated, in general, by terms such as ‘paramount chief’, ‘chief’, ‘sub-chief’, ‘headmen’, ‘elder’, ‘prophet’, and so forth (Badal 2006: 73).⁹ While this terminology is familiar to all groups in the south, the relations and institutions of traditional authority differ markedly among them and in different locales (see annex I). Generally, traditional authorities work as mediators, arbitrators, religious specialists, but also as ‘politicians’ and – e.g. the famous Nuer prophets – occasionally as leaders in conflicts/wars (Johnson 1994; Hutchinson 1996). They can be found sitting under a tree as well as in court. Their installment basically follows three different methods: first, the ‘hereditary principle’; second, the ‘democratic principle’ (through local election and confirmation by higher state/military authorities); third, the ‘authoritarian principle’ (appointment of chief from above, without respect for the wishes of the local population).

It is important to note that among some people, traditional authorities had only very weak and instable positions in pre-colonial time. Among Nuer and Dinka, for instance, various kinds of traditional authorities are active (see annex I). Yet, since both groups are so called acephalous societies, the power of traditional authorities among them was limited and depended on the individual skills of the persons holding it (Evans-Pritchard 1940). In contrast, institutions of authority were more stable and permanent among e.g. the Azande and Shilluk who had pre-colonial kingdoms.¹⁰ In colonial time the hereditary principle was introduced in contexts where previously it did not exist. In the post-colonial years and particularly during the civil wars, many chiefs were just appointed by the state agents and/or guerillas (Badal 2006: 77).

4.1 Traditional authorities in colonial and post-colonial time

In the late 19th century, first the Turco-Egyptian and then the Anglo-Egyptian administrations set out to establish control over the southern Sudanese territories. Initially the British tried to simply take over and co-opt traditional authorities and customary law. Soon, however, they realized that effective administration was impossible in this way. When they used force to extract tributes and establish control, the colonizers faced rebellion – e.g. from the side of the Nuer (Johnson 1986: 63-67). Their coercive or punitive measures frequently targeted the local leaders, where they could be caught. Thus, in some contexts at least, prophets or sheikhs were seized and beaten (Leonardi 2007: 544).

It took until the 1930s until the British arrived at a more orderly form of administration under the concept of ‘Southern Policy’. This policy declared that the administration of the south was to be developed along ‘African’ rather than along ‘Arab’ lines. Further, it was introduced what was already practiced in other parts of British colonial Africa as indirect

⁹ Besides these English terms, which in fact are generally used by Southern Sudanese, there exists a host of indigenous or at least older terms (partly introduced under Turco-Egyptian rule), such as *Mek* (king), *Sultan*, *Reth*, *Omda*, *Alam Thith*, *Nyeya*, and so forth, among the different groups inhabiting the different regions of Southern Sudan (see UNDP 2005: 8-9).

¹⁰ In pre-colonial time the Azande were organized in provinces, with a political center under the direct administration of the king. The king and the princes, who belonged to the royal Avungara clan, ruled the provinces and possessed a standing army.

rule, also known as ‘devolution’ or ‘native administration’ in Sudan.¹¹ ‘[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: 11). Customary laws were of course different at the local level. Uniformity regarding administration could not be achieved (ibid.: 12). The explicit aims of indirect rule were, first, to keep the costs low and administration simple, and second, to ‘develop’ native institutions by eradicating the ‘negative’ aspects of it and fostering the ‘positive’ ones (Johnson 1986: 68).

In the predominantly Muslim north, the colonizers relied on religiously and politically well established families. The powers of northern traditional leaders such as *sheikhs*, *omdas*, *maliks*, *nazirs*, *shartais* and *sultans*, among others, were concentrated on local jurisdiction and administration. ‘Their judicial authority was confined to certain aspects of customary law and *shari’a*, and their administrative work was supervised by British District Commissioners’ (Johnson 2003: 12). Native administration proceeded relatively quickly in the north. In the south, on the other hand, it took much longer. Only a few groups there, such as Shilluk and Azande, knew centralized and stable structures of authority. Among them, the colonizers sought to bring the kings under control and to diminish their power. In the so called ‘acephalous’ societies, such as the Dinka, Nuer, and Murle, that constitute the majority of the southern Sudanese population, few such hereditary authorities existed (Leonardi et al. 2005: 7; Johnson 2003: 12). In the absence of reliable traditional institutions the British set out to create them. They established chiefs and sub-chiefs representing relatively small sections of the population. The anthropologist Evans-Pritchard helped the administration to find its way through the social and political complexities on the ground. Over the years, autocratic chiefs were removed in various reforms (Johnson 1986: 70-72), and the loyal chiefs were given special positions and privileges.¹² Badal (2006) outlines that the British developed two different patterns of administration: one for the pastoralists, and one for the sedentary communities. The former were accessible only during the dry season; administration had to be mobile and flexible here. Among the sedentary communities, more stable administration was possible. Most southern Sudanese who were recruited in lower levels of civil service stemmed out of the latter context.

Post-colonial Sudan was characterized by huge infrastructural differences, severe political tensions, and decades of civil war between ‘north’ and ‘south’ (Badal 2006; Rolandsen 2005; Johnsons 2003).¹³ Warfare introduced more hatred and distrust between

¹¹ The term native administration – the colonial term for local political institutions based on traditional authority – was used throughout the territory of colonial Sudan, from north to south.

¹² Personal communication with Guma Kunda Komey, 20.09.2008.

¹³ The first war was between the so called Anyanya rebels based in the south and the government in the north. It ravaged the country between 1955 and 1972. A peace agreement reached in Addis Ababa in 1972 ended the fighting, assuring some autonomy to the south. The government in the north, however, continuously undermined the agreement. Fighting resumed in 1983. This time the leading guerilla group was the SPLA. The civil war ended only in 2004. Peace was achieved through massive external pressure and support. In his careful historical analysis Johnson cautions against too clear and simple readings of the ‘causes’ of the civil wars. He (2003: 1-2) argues that ‘religion, local perceptions of race and social status,

the Sudanese government in the north and local people in the south. More importantly with regard to its impact on the situation of traditional authorities was that even within the south, clans and tribes fought each other. (Badal 2006: 13-14). In 1991 the SPLA lost the support of the Ethiopian Derge regime, after the fall of Mengistu Haile Mariam. Simultaneously, the Sudanese national army launched intensive attacks. This together with John Garang's autocratic leadership style accelerated intra-SPLA tensions. Finally, the SPLA split in mid 1991 and the faction under the Nuer Riek Machar started to fight with the faction under the Dinka John Garang. Temporarily Machar even allied with the government in Khartoum (Rolandsen 2005: Chapt. 2; Young 2008). Traditionally, spiritual leaders of both groups would have been able to travel cross country in order to conduct rituals, establish bonds of friendship and settle conflicts between different groups. Yet, the 'ethnization' of the warfare in the south – between Nuer and Dinka – and the increasing brutality employed by the parties to this conflict prevented them to become active.¹⁴ In some cases, traditional leaders were even killed or arrested. Only in early 1999, after their intertribal war had costs more lives than were lost in the common struggle against the northern government, Nuer and Dinka chiefs could for the first time come together again and start peace negotiations between their groups (Jok and Hutchinson 1999).

4.2 The impact of the SPLA/M war on traditional authorities in southern Sudan

The most recent civil war (1983-2004) impacted differently on different groups. Nuer and Dinka dominated in the SPLA/M.¹⁵ This made them, on the one hand, more powerful in southern Sudan; on the other hand, these two groups had also great losses in the civil war and in their internal fight for power, as outlined below. The Azande and other groups remained distanced to the guerilla struggle.¹⁶ When the SPLA/M captured their territory many Azande fled into exile across the border into Zaire/Congo or Central African Republic (Badal 2006: 74). Up until today, the relationship between Azande, on the one hand, and Dinka, on the other, is very tense.

In general, civilians and traditional authorities alike suffered from war and violence inflicted upon them by warlords, guerillas and government soldiers persistently.¹⁷ Refusal to assist guerillas or to provide them with food, recruits or other demanded resources was

economic exploitation, and colonial and post-colonial interventions are all elements in the Sudan's current [sic] civil war, but none, by itself, fully explains it.'

¹⁴ Regarding 'ethnic' conflict it has to be borne in mind that it is a 'modern' phenomenon. Milton J. Esman argued almost two decades ago that 'during the twentieth century, the modern state has become the principal arena of competition for access to and control of the scarce resources for which members of society compete; and they tend to compete less as atomized individuals or as members of social classes or ideological associations and more as adherents of ethnic communities. Traditional ethnic solidarities have not been supplanted; they have, instead, become modernized' (Esman 1990: 57-58); on the use of ethnic, religious, and other socially constructed differences for or during conflict escalation, see Schlee (2008).

¹⁵ John Garang, who died in 2005, was Dinka; Riek Machar belongs to the Nuer.

¹⁶ The colonial administration systematically undermined the authority of the Azande king and princes in order to establish its control. This experience possibly made the Azande suspicious of external interferences and contributed to their distance to the SPLA/M.

¹⁷ The complexity of warfare and violence in the south, including faction leaders changing sides several times during the fighting and the emergence of independent warlords perusing narrow personal interests is insightfully described by Jok and Hutchinson (1999) and Hutchinson (1996).

often the reason for attacks. 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, some times on order of a foot soldier, reduced a traditional leader to the status of a commoner. (Badal 2006: 79-81; Leonardi et al. 2005: 13).

Other factors undermining chiefly authority were, first, war-induced displacement. The communities of chiefs were dispersed. This reduced the contact between chiefs and followers, and led to the waning of chiefly influence and popularity. Frequently, new chiefs were installed by the people in IDP camps. The government as well as the guerillas installed new chiefs in the respective territories controlled by them.¹⁸ These interferences and developments led to conflict of loyalty after the return of the people and their chiefs to their old clan territory. Second, and related to that, the proliferation of chiefs and their courts, in particular, undermined their authority. The ease with which chiefs were appointed and dismissed by soldiers or guerillas made a mockery of their office (Badal 2006: 83). Some chiefs became ‘SPLA chiefs’. After the war, the question is in many locales: who is the ‘real’ chief – the one who was deposed or fled, or the one who had cooperated with the SPLA (Leonardi 2007: 541-43)? Third, the increase in criminality and insecurity, combined with the destruction of local subsistence economies during the civil war undermined chiefly authority. The loss of authority equally engulfed traditional religious leaders. Their spiritual powers were questioned e.g. by rebels who demanded immediate ‘rain making’ in dry seasons, and, when the rain-makers failed, punished the religious authorities (Badal 2006: 80, 84).¹⁹

In Badal’s (2006: 85) perspective this erosion of chiefly authority was a ‘deliberate outcome of SPLA desires and government designs.’ Initially, the SPLA was influenced by the socialist ideology of the Derg. Traditional authorities were officially perceived as retrograde (similar to President Nimeiri in the 1970s).²⁰ Yet, this does not mean that guerillas and traditional authorities did not ‘co-operate’ (Rolandsen 2005: 64-71), even if this usually included the coercion of chiefs through guerillas. In the absence of any other effective local authorities, the external forces used traditional authorities for their purposes (ibid.: 32). Very important in this regard was tax collection. Chiefs collected tax in kind (e.g. sorghum or cattle) and mobilized human resources. However, failures to collect taxes or to provide young men as recruits for the army or guerilla forces could result in severe punishment. The chiefs ‘had to develop good working relationships with the powers in their respective locality, perfect their diplomatic skills and pledge complete support as well as commitment to the armed factions’ (Badal 2006: 82). Simultaneously, chiefs tried to defend their people against interferences from the side of the government or the guerillas (ibid.: 86). The local people also made chiefs responsible for the ‘sons’ they lost to the armed forces and the guerillas. Chiefs, therefore, ended up in the ‘cross-

¹⁸ Personal communication with Martina Santschi, October 2008.

¹⁹ Also the influence of Christianity undermines chiefly authority.

²⁰ President Nimeiri followed a socialist ideology in the 1970s. He abolished traditional authorities by decree, without providing alternative institutions providing law and order at the local level (personal communication with Guma Kunda Komey, 20.09.2008). Regarding the revolutionary ideology of the SPLA/M cadres Young (2008: 3, 13, 21-22, 37) confirms that Garang and others were more interested in ending northern domination, toppling the ‘Arab’ rulers in Khartoum and establishing their power in Sudan, than in socialism.

fire' between the external powers and their own people in the process of mediating the needs of both. Bargaining became the role of the chiefs (Leonardi 2007: 540). Leonardi (ibid.: 544) sees here a parallel to the roles and situation of chiefs in early colonial time.²¹

Until the early 1990s the SPLA/M had been predominantly occupied with the military struggle. Yet, after the support of Ethiopia under the Derg was lost and the SPLA/M had split in 1991, the guerilla leaders began to develop new strategies to gain the support of external partners as well as the local population. The self-determination of southern Sudan as well as the reform of the local administration in the guerilla-controlled areas became important aims (Rolandsen 2005: 38-40). In April 1994 a 'National Convention' of the SPLA/M was held in Chukudum. Chiefs were part of the civilian delegates to the conference. One result of the conference was that the position of chiefs as local authorities was strengthened, particularly as judges in local courts. However, they still remained clearly subordinate to the guerilla leadership (ibid.: Chapt. 4 and 159-60). In 1996, finally, a conference on civil society and civil authority was held by the SPLA at which the Civil Authority of New Sudan (CANS) was initiated. The aim was to arrive at democratic and representative local government and to devolve some power from the SPLA to the CANS. In this context, traditional authorities were further integrated into the new local government framework of the SPLA/M. At the Boma level, administrative control was split between traditional chiefs and Boma administrators. The chief should be chosen by the local population and, advised by a council of elders, engage in conflict settlement among the members of the local community. The Boma administrator was appointed by the SPLA/M and was supposed to serve as the SPLA/M's liaison to the village. At the Payam level, the SPLA/M did not foresee a traditional authority next to its civil administrator. Yet, the judiciary from the Boma up to the Payam and the County levels was split with criminal courts operated by the SPLA/M and customary courts headed by traditional authorities enacting customary law. Most importantly, land tenure came under customary law interpreted by traditional authorities (Branch and Mampilly 2005: 6-8, 11). At the County level, the SPLA also set out to collect a poll-tax from every able-bodied man in the County, under the supervision of the county commissioner (ibid.: 9).

Having assessed these first steps of devolution under SPLA/M rule in the second half of the 1990s, Branch and Mampilly (2005: 16) concluded – before the CPA, the ICSS and the LGB (all mentioned above) were reached – that 'local government is the key level for understanding the potential success or failure of post-conflict SPLA political consolidation, and, ultimately peace.' They highlighted local government as the level at which past marginalization and conflicts within the South (e.g. between Dinka/SPLA and other local groups that have not participated in the SPLA struggle) will be negotiated in the future. Thus, the quality of local government is decisive for the establishment of durable peace in Southern Sudan. In my view, This is an important reminder that what is at stake even today is not only the effectiveness of local state administration, but also

²¹ Most interestingly with regard to the discussions about traditional legitimacy in section 5, Leonardi (2007: 551) suggests that 'authority derives from the capacity to communicate with a source of power, not from possession of power in itself.' However, if a chief becomes too close to the government/external power he loses legitimacy among his own people (ibid.: 552).

coming to terms with the complex history and heritage of civil war. This is in accordance with the recent finding by Young (2008) that tensions within the south are raising due to unresolved conflicts between Dinka and other groups, particularly in Equatoria, that originate from the time of the struggle.

4.3 Summary

It became clear that particularly among the acephalous people residing in southern Sudan (Nuer and Dinka, among some others) ‘chiefs’ were created by the British in their endeavor to gain control over the local population. Thus, the hierarchy of paramount chiefs, chiefs, sub-chiefs, headmen and elders, besides some religious authorities, is somewhat artificial and an expression of the contact between local groups and external (state) powers. There are no institutions of traditional authority that have not been influenced strongly by the political changes and developments since the beginning of the 20th century. Consequently, in southern Sudan, as elsewhere, tradition is a *claim* to the past that not always matches with the exact historical reality. This does not mean that the term ‘traditional’ would be inconsequential.²²

Particularly, the recent civil war ravaging Sudan between 1983 and 2004 has had a tremendous impact on traditional authorities. On the one hand, traditional authorities were humiliated, abused and oppressed by guerillas and the state. On the other, the surviving institutions became modernized and, in the absence of regular or formal governmental structures, have taken on new areas of responsibility. Traditional authorities acted as intermediaries and translators between external powers and local populations. From the mid 1990s onward they were also increasingly incorporated into a local SPLA/M-administration of southern Sudan. Whether they were forcefully co-opted or integrated through ‘democratic’ reforms, traditional authorities retained a position in-between the local population and the SPLA/M central government. This is the usual position of traditional authorities in Africa, as the following section will show.

5 OTHER AFRICAN CASES IN COMPARATIVE PERSPECTIVE

Clearly, there is no single model for the inclusion of traditional authorities into modern state structures. The particular circumstances of local governance, the local conditions and traditions have to be investigated in a case-by-case manner (Lutz and Linder 2004: 42). Against this background, this study proceeds with outlining the concrete workings of traditional authorities and local governance in Sierra Leone, Mozambique, South Africa, Ghana and Somaliland.²³ They are grouped around the following five questions: first, what role do traditional authorities play in contemporary African politics; second, can (democratic) decentralization be achieved through recourse to traditional authorities; third, what is the track record of conflict/cooperation with local government; fourth, what are the experiences about traditional authorities being paid with public resources and in

²² Thus, I continue to use it throughout this paper.

²³ There is a huge body of literature on each of the cases in this section, which could not be reviewed due to time and space constraints. Nonetheless, the literature referred to here provides a first insight into the important issues related to traditional authorities and local government systems in the different settings.

how far can accountability mechanisms be introduced; finally, what are the sources of legitimacy of traditional authorities and how would the incorporation of traditional authorities in formal state structures impact on their legitimacy?

5.1 What role do traditional authorities play in contemporary African politics?

Sierra Leone

Chieftaincy plays a contested role in post-civil war Sierra Leone. The present government remains supportive of chieftaincy, while international donors and some observers perceive it an 'irredeemably illiberal institution and, in retrospect, a major causal factor in the recent civil war' (Fanthrope 2005: 28). After cessation of hostilities in 2002 the post-war Sierra Leonean government welcomed donor interventions, including a program for decentralization (ibid.: 30). This was in line with some recent assessments of the causes and drivers of conflict in the country that pointed to the fact that the previously existing institutions of state but also traditional authority had been involved in alienating the youths and pushing them into rebellion. Particularly chiefs were accused of imposing heavy fees on people in local courts and making subjects work for them without payment (Fanthrope 2005: 30; Robinson 2008: 21). In the perspective of some youths' the chiefs, who do not receive a government salary, 'find their living from conflict and the fines that it produces' (Fanthrope 2005: 31). External analyses concluded that 'custom' had become 'an instrument of repression in rural Sierra Leone and that grievances against chiefs represent the voice, hitherto unrecognized, of apparently nihilistic wartime violence' (ibid.: 32).²⁴ Nonetheless, it is also clear that in the recent past, all parties to the conflict employed chiefs as local administrators. Shortly before the cessation of hostilities was reached, civil society representatives agreed that chiefs had a vital role to play in restoring stability in the country (ibid.). This is in accordance with Manning's (2008: 8) findings that, despite the tumult of war and colonial and post-colonial interferences, 'chieftaincy remains the most important system of authority across Sierra Leone.'²⁵

In contrast, Robinson (2008) is much more critical about the present day potential of chieftaincy in Sierra Leone. He follows Fanthrope in emphasizing that in the past, chiefs were manipulated by the ruling elite and abused their power. Consequently, Robinson (2008: 21) perceived the post-war setting as 'window of opportunity' to reform this 'somewhat anachronistic institution [of traditional authority].' Yet, this was not done. Rather, chieftaincy was reconstructed as it existed prior to 1991, 'with all the potential for the types of abuse which occurred before', including the hereditary principle and undemocratic election processes, compared with universal adult suffrage (ibid.: 21-22). Robinson admits, however, that in some situations chiefs offered protection to their subjects against a predatory state and can be perceived as the lesser evil.

²⁴ Analysts emphasize for instance how polygamy on the side of chiefs increases their potential for oppression of young men and poor family. Deprived of chances to marry, upgrade their lives and to acquire own wealth the rural youths and the poor became vulnerable to the manipulations of entrepreneurs of war. The post-war conclusion is: democratic and accountable governance is unlikely to emerge in rural Sierra Leone as long as the rule of chiefs is perpetuated (Fanthrope 2005: 33).

²⁵ Manning (2008) outlines that in contemporary Sierra Leone various forms of traditional authorities exist. The most influential traditional authorities are the paramount chiefs. They 'uphold tradition', 'guard the land', 'settle disputes' and represent the local community toward the outside, also toward NGOs (Manning 2008: 4).

Mozambique

Also in Mozambique traditional authorities still have a role to play. During the years of civil war between the *Frente de Libertacao de Mozambique* (FRELIMO) and the *Resistencia Nacional Mocambicana* (RENAMO) kinship networks and traditional authorities remained important regarding religion and rituals, family affairs, local level conflicts, matters of inheritance, land tenure, and so forth. Thus, behind the revolutionary façade of the socialist and modernist oriented FRELIMO, particularly rural people kept contacts with traditional authorities.²⁶ Moreover, in their struggle against FRELIMO the RENAMO leaders discovered ‘the strategic value of establishing links, where possible, with *ex-autoridades gentilicas* [traditional authorities] who, having been marginalized, embarrassed and abused by the FRELIMO state, were frequently disposed to collaborate with an anti-state insurgency’ (West and Kloeck-Jenson 1999: 459-60). Some traditional authorities voluntarily cooperated with the RENAMO, others had to be forced.

After a peace accord had been reached between FRELIMO and RENAMO in 1992, many international donors hoped that democracy could be installed by taking recourse to the existing structures of local governance, including traditional authorities. Also FRELIMO itself had realized that traditional authorities wielding authority over kin based institutions could powerfully influence voter behavior. Shortly before the first post-war elections in 1994 the FRELIMO government passed legislation providing for the devolution of responsibility over a variety of governmental functions to municipalities. This law stated that the municipality governments would listen to traditional authorities, as long as they were accepted by the communities. This was supported by the international community (West and Kloeck-Jenson 1999: 461-63).

Yet, the fact that traditional authorities were recognized by the Mozambican government as relevant actors in the rural areas did not mean that they were effectively empowered. At workshops traditional authorities regularly demanded the restoration of their ‘colonial’ privileges of tax collection, mobilization of the local population for work and support granted by the government (West and Kloeck-Jenson 1999: 465). Simultaneously, some political actors emphasized the difficulties involved with integrating traditional authorities into the new government framework. It was realized that the question of who was a ‘true’ traditional authority, is not easy to answer (ibid. 468).²⁷

The state in Mozambique recently reacted to the lack of transparency characterizing traditional authority. The municipalities’ law of 1994 was revoked. A new framework for local governance was established, based on democratically elected institutions. But this legislative reform concerned only urban settlements and not the rural peripheries. In the latter realm, traditional authorities are supposed to continue working, taking over local

²⁶ The FRELIMO fought against the Portuguese colonial administration between 1964 and 1975. FRELIMO leaders usually perceived traditional authorities as collaborators with the colonialists (West and Kloeck-Jenson 1999: 456). Soon after FRELIMO came to power in 1975 it set out to transform Mozambican society. Those individuals, who had previously been involved with the colonial state, including most traditional authorities, were excluded from power.

²⁷ This touches upon the issue of legitimacy discussed below, in 5.3.

administration and representation, also toward the outside, e.g. toward international NGOs (ibid. 482-83).²⁸

Somaliland

In Somaliland (northwestern Somalia), traditional authorities ‘matured’ during the civil war. Between 1981 and 1991 the Somali National Movement (SNM) fought against the government of Siyad Barre. In this time financial and military resources of the guerillas were mostly raised within close-knit descent networks, and channeled through the hands of traditional authorities. Consequently, the latter gained influence within the SNM. In 1988 the so called SNM *guurti* was established. This was an advisory council of elders assisting the guerillas with recruitment of fighters, keeping law and order in liberated zones, and settling conflict between different local groups as well as within the SNM.

In post-conflict Somaliland, traditional authorities were institutionalized as one chamber of the bicameral parliament consisting of a House of Elders (*golaha guurtida*) and a House of Representatives (*golaha wakiiladda*). The most important powers and duties of the House of Elders, as regulated in Article 61 of the constitution are the enactment of laws concerning religion (*diinta*), culture/tradition (*dhaqanka*) and peace (*nabadgelyada*), reviewing laws already passed by the House of Representatives, with the exception of the budget, advising and assisting the government and enquiring into the performance of its duties (Hoehne 2007). Particularly the right to review laws passed by the lower house of parliament vests a lot of power in the hands of traditional authorities who thereby can actively prevent certain laws. Besides the House of Elders, however, traditional authorities have no formal position at the regional and local level. Informally they nonetheless contribute greatly to the maintenance of law and order on the ground (Gundel 2006; Hoehne 2007).

South Africa

For South Africa, Oomen (2005b: 88) and Ntsebetza (2005: 72) found that traditional authorities in the post-Apartheid era were strongly criticized for having been involved in previous state-repression. On the other hand, Oomen, who did her research in the late 1990s, emphasizes that people respected their chiefs as guarantors of social cohesion at the local level and as symbols of group identity. In this regard it is important to note that in the eyes of many locals, chiefs hold and represent their relationship with the ancestors (Oomen 2005b: 112). Moreover, most people saw traditional authorities as not very competent to organize large scale development projects, for instance aiming at road construction, or the establishment of health care centers and schools. However, they agreed that chiefs are qualified well for dealing with land allocation and building regulation, local democratic government and the settlement of local conflicts beneath the threshold of serious criminal offences (ibid. 88-91). Finally, particularly the inhabitants of remote areas perceived chiefs as the only connection to the state (ibid. 96). On a much more critical note, Ntsebetza (2005: 76) adds that chiefs still control most of the land, and that people are unhappy with their dependence on chiefs if they need land – which in fact is a continuation of the Apartheid laws.

²⁸ Further legal issues concerning decentralization in Mozambique are outlined in section 5.2.

Ghana

In Ghana, chiefs enjoy legal recognition since colonial time. Throughout the post-colony they have been part of the political fabric of the country, in different functions and with different prerogatives. Immediately after independence, President Kwame Nkrumah sought to control chiefs as much as possible and in fact succeeded to a large extent in making them a compliant instrument in his hands. After Nkrumah's death in 1966, however, chiefs regained ground on the national political stage, besides their participation in local government. The central government still retained the rights to interfere with chieftaincy affairs and recognize chiefs. In the 1979 Constitution chiefs were established in Houses of Chiefs at the national and regional levels. Chiefs backed the one-party regime of president Rawling in the 1980s. In the early 1990s, when Ghana returned to multi-party democracy – still under President Rawling – their earlier loyalty paid back. According to the 1992 Constitution that currently is in force, chiefs enjoy autonomy from state intrusions in its specific domains; the abolition of chieftaincy is forbidden. While chiefs are not allowed in party politics, many individuals who are chiefs also hold offices in the government and the administration (Valsecchi 2008: 140-43).

Chiefs in Ghana currently are under the Ministry of Chieftaincy and Culture. This indicates that chiefs and traditional rule in general are perceived as part of culture. Ideally, at least, they are not 'contaminated' by politics. Additionally, chiefs in Ghana are carriers and/or symbols for place-based identities. They represent their local constituency in their distinctness. This role of 'spokesman of identity' involves also the power to set boundaries between indigenous and non-indigenous people in a given locale (ibid. 149-50). An area where chiefs exert considerable material control is land allocation. This comprises farming as well as house and road construction, and thus vests considerable power in the hands of chiefs (ibid. 144). Yet, as Valsecchi emphasized, 'it is quite difficult to assess the relevance of chieftaincy and its specific ways of operating ("ruling") to the life of individual Ghanaian citizens. Many Ghanaians deal with chieftaincy on a daily basis, many only on an occasional basis' (ibid.). Depending on area of residence and religious orientation, for instance, people might consider other authorities more relevant for their individual lives.²⁹

To sum up: The above examples show that there is no uniformity regarding the current roles of traditional authorities in Africa. In Ghana and Somaliland traditional institutions are integrated into formal state structures at the national level. In other contexts, their realm is the local government, as in Mozambique and Sierra Leone. The various roles that chiefs play can be located within a continuum from cultural and identity-related issues to administration, legislation and dispute settlement at various levels – from the local to the national sphere. While traditional authorities are not active in party-politics³⁰

²⁹ This goes together well with Oomen's observation that in South Africa, people exercise a kind of 'forum shopping' between different kinds of authorities, one of which is chieftaincy. Moreover, Oomen also observed that the relevance of chiefs for people is issue-related. In the South African case, local dispute settlement, land allocation and presiding over initiation schools (as a part of culture) were the issues primarily concerning chiefs (Oomen 2005b: 88).

³⁰ The exception is South Africa in the mid 1990s where traditional authorities joined political parties as part of the election campaigns. Soon, however, the simultaneous membership in the Council of Elders and in the Parliament as MPs was forbidden (Oomen 2005a: 57-58).

they were and are not excluded from political conflicts. As locally most effective powers, they participated frequently in state/party/guerilla politics. They are therefore not 'benign' local administrators.

5.2 Can decentralization be achieved through recourse to traditional authorities?

Sierra Leone

Some endeavors to decentralize are presently under way in Sierra Leone, and traditional authorities are included in the new governance framework. The relation between central and local government and traditional authorities is regulated in the Local Government Act (2004). It identifies the chieftdom as basic institutional tier of local governance. Yet, only a small number of civil administrations have been established, so far. Around hundred-fifty chieftdoms 'are still needed to perform essential functions, notably the administration of customary land rights, revenue collection, and the maintenance of law and order' (Fanthrope 2005: 35).

This political revival of traditional authorities is contested. In the light of the above mentioned negative role of traditional authorities in the Sierra Leonean civil war, donors become increasingly suspicious of chiefs and their present-day capacity to contribute to stabilization and development in the country. Fanthrope (2005: 36-39), however, maintains that some of the works usually demanded by chiefs benefitted the community, e.g. clearing the ways around the village. Moreover, there are now more avenues open for young people to circumvent chiefly oppression, such as moving to the city, relying on friends, and so forth. Sometimes it is also clear that the complaints voiced against chiefs served as a way of 'scapegoating' that latter and to distract attention from the failures of other social institutions or groups. Fanthrope emphasizes that the perspective on and the potential of chiefs in the local context have to be analyzed more broadly.

In Manning's view, the various governance systems have to cooperate if one wishes to stabilize peace and foster development on the local level in rural Sierra Leone. Chieftaincy as institution can, in the best case, engage constructively with 'modern' ideas of governance (Manning 2008: 17). Still, some questions remain, such as: 1) Can chiefs be made accountable in the sense government employees can legally be held accountable regarding their yearly budget, for instance? 2) Can chieftaincy become more inclusive and representative, also taking into account the views and demands of the youth and women? 3) Can government employees and chiefs harmonize in the long run? In general, Manning maintains that effective work can be done *with* rather than against the existing authority structures.

Robinson (2008: 38) confirms that chiefs obviously enjoy respect and local legitimacy. However, it impedes democracy if at the national level elected representatives are endorsed, while at the local level hereditary rulers wield much authority and represent the communities. Currently, chiefs in Sierra Leone are elected for lifetime by an electoral college consisting of representatives of tax paying community members. This excludes the poor and in fact the majority of the chiefs' subjects. Also the relationship between local councils and chiefs has to be clarified.

Mozambique

Buur and Kyed (2006) continue the discussion of decentralization, local governance and traditional authorities in Mozambique. They confirm – as already has been mentioned with reference to West and Kloeck-Jenson above – that the second Municipal Law (1997) only made provision for the urban contexts. The rural areas were left out. In decree 15/2000, however, traditional authorities were recognized, as long as they are legitimate in the eyes of their respective local community. Thereby, rural areas were included in local government. Traditional authorities had to act as link between the local level and the state. Their tasks, according to this decree, are, *inter alia*, policing, taxation, population registration, justice enforcement, land allocation and rural development. They are also supposed to engage in civic and national education, and support e.g. anti-HIV/AIDS campaigns. The recognized traditional authorities had to sign a contract with state authorities and received emblems of the republic, such as a national flag, to place at their homestead (Buur and Kyed 2006: 169-70).

The language of the decree, however, is rather imprecise. It states that the authorities have to be chosen according to the traditional rules of the respective communities. Yet, the rules were not further specified. Also the term ‘local communities’ as decisive units for choosing and engaging with traditional authorities was not qualified. Moreover, the decree is ambiguous regarding the relationship of community authority and state. On the one hand the local communities are understood as separate and removed from state intervention. On the other, the community authorities have to fulfill a long list of state administrative functions in accordance with state interests and legislation (Buur and Kyed 2006: 174-75). Buur and Kyed conclude that the endeavor to integrate and homogenize traditional authorities by law runs into difficulties since different actors and brokers – at the level of the state as well as at the local level – translate laws differently. They argue that ‘we cannot assume that legislation *per se* assures the kind of public authority envisaged in the Decree’ (ibid.: 186).

South Africa

In South Africa, traditional leaders were recognized in the constitution of 1996. Simultaneously, legislation with regard to decentralization was planned. According to Ntsebetza (2005: 82), initially traditional authorities vehemently opposed to the moves of the ANC-led government to introduce decentralization and democratization in rural areas. Yet, the South African government made quite favorable advances toward traditional leaders as ‘closest to the people’. At the provincial level Houses of traditional leaders were established whose members were entitled to send representatives to the National Council/House of Traditional Leaders (Oomen 2005a: 56-57). The members of these houses receive government payment. These houses are empowered to advise provincial and national administrators on matters regarding indigenous law, tradition and custom (van Kessel and Oomen 1997: 573).

At the local level, traditional authorities perceived the introduction of a civil government as threat to their rule and as a system of ‘two bulls in one kraal’ (Oomen 2005a: 60). They realized that the local councils that were established in legal reforms in the early 1990s were going to take over some of their previous responsibilities. The role of

traditional authorities was to participate in these councils partly as *ex officio* members, partly as stakeholders holding up to 10 per cent of the seats. However, much confusion remained, for instance regarding the number and powers of the *ex officio* members (ibid.: 61-62). Most of the local councils did not become effective, and when some of them set out to implement the ambitious development plans of the new South African government this frequently lead to tensions with traditional authorities. The constitution of 1996 introduced a notion of co-operative government with three independent spheres: the national, the provincial, and the local government. Also, three types of municipalities were established. Traditional authorities were vaguely assigned responsibility for the observation of customary law and participation in the local government meetings. They also remained in control, to some extent, over land tenure and allocation. Ntsebetza confirms the vagueness of South African legislation on the responsibilities of traditional authorities. He highlights the potential for tensions between the Apartheid-oriented traditional authorities and reform-oriented people and politicians (Ntsebetza 2005: 78-81).

To sum up: In all cases discussed above traditional authorities initially did not fit into newly established democratic and decentralized local government structures. From Sierra Leone to South Africa, traditional authorities were criticized as associated with past oppressive regimes. Their potential for democratic decentralization was thus highly questionable. On the other hand, it soon turned out that traditional authorities were too strong in most settings to be simply sidelined – they were ‘closest to the people’, an expression used also frequently in the context of Southern Sudan. Moreover, the envisioned democratically elected local government structures proved ineffective in some cases, at least initially. Consequently, traditional authorities were accepted in new or amended laws of local government. However, despite their current integration by law, their responsibilities and powers are not yet clearly defined. The experiments in this regard are still ongoing with clear results pending. In the Sierra Leonean and the South African cases, some researchers voiced strong skepticism against the integration of traditional authorities in local government due to their lack of democratic credentials.

5.3 What is the track-record of conflict/cooperation with local government?

Sierra Leone

The relationship between traditional authorities and local councils in Sierra Leone is quite interesting. Officially, according to the Local Government Act 2004, local councils are the highest political authority in their respective localities. Their responsibility is to promote development and welfare of the local people. Thus, local councils are supposed to be ‘above’ chiefs. In reality, however, ‘it seems that local councilors have generally been accepted by communities as legitimate actors, particularly in terms of “bringing development,” but are not perceived as equal authorities to chiefs and others’ (Manning 2008: 11). People trust chiefs more and rank local councils, despite the government legislation, lower than the chiefdom. Yet, when it comes to certain infrastructural projects such as road building, which fall in the responsibility of the government, the councilor is addressed preferentially for assistance by locals and their chiefs (ibid.: 12). In general, local councilors are judged according to their deliverables. Individual councilors who ‘bring development’ are praised, others who don’t are criticized.

According to Fanthrope (2005: 35) new councils staffed by civil administrators officially delegate functions to the chiefs. The payment of the latter, however, is not acquired from the government but through development grants and party taxing the local population (ibid.). The capacity of the chiefs to perform the delegated functions is not formally reviewed, so far (ibid.). These shortcomings mentioned by Fanthrope are in accordance with the findings of the 'Institutional reform and capacity building project' for Sierra Leone, coordinated by the World Bank. There it is confirmed that at present, nobody knows the exact nature of the functional relationship that would eventually evolve between the two institutions (chieftaincy and local councils). This lack of clarity provides amply potential for conflict between traditional authorities and other local government institutions – over power and revenue sharing (Manning 2008: 14).

On the other hand, Manning maintains that in many instances, chiefs and councilors in Sierra Leone are working closely together – even without any clear guidance from the central government. The reason is that both usually come from the same social system. Locally, the paramount chief demands respect, and many councilors have understood that they can achieve more by cooperating with the chief. Councilors are dependent on chiefs in so far as the latter collect the local tax revenue and also have a much greater ability to mobilize labor and enforce cooperation with community projects (Manning 2008: 15). In conclusion, Manning argues that local councils have gained in significance since the Local Government Act came into force in 2004, yet, in order to get things done, they have to engage with the existing governance structures, particularly with the chieftaincy system (Manning 2008: 16).

Mozambique

In Mozambique, already the process of implementing the Decree (2000) that lay the basis for decentralization and the integration of traditional authorities was conflict-ridden. State authorities had to visit rural areas and register the traditional authorities. They sometimes encountered unclear situations or contested claims regarding traditional authority. The colonial register was taken as the basis for the new register. Yet, the local populations understood well that by registering a person with the state as traditional authority, this person's political status would change significantly. Thus, some actors tried to manipulate the register. For state authorities, creating the register formed part of re-establishing the state in the rural areas that formerly often had been anti-FRELIMO territories (Buur and Kyed 2006: 176).

Moreover, in some places traditional authority was disputed. In order to present a 'stable' traditional institution to the state officials for registration, local communities had sometimes to find a compromise between candidates who were legitimate according to the principle of family inheritance, but were not acceptable as individuals, and those who possessed individual skills required for dealing with state and NGOs, but lacked necessarily family connections. Compromise-candidates were frequently 'weak' regarding the qualities of chiefs, but at least contributed to easing local conflicts (ibid. 180-82). Second, individuals struggled for power and referred to different registers of legitimacy (colonial and state registers, descent, personal skills, and so forth) in order to

substantiate their claims. At one point, a decision had to be taken, negating some claims to legitimacy and endorsing others (ibid.: 184-86).

Another problem related to the integration of traditional authorities into the post-conflict Mozambican government was that some individuals who undisputedly were legitimate traditional authorities in the eyes of their communities were not interested in engaging with the state. They just refused to collect taxes, mobilize labor force for community works and thereby effectively blocked state administration and development, since local people respected them even in their disengagement (Buur and Kyed 2006: 177).³¹

Also, the endeavors of the Mozambique to restrict the scope of operation of traditional authorities through legislation lead to conflicts. This delimitation of the chief's scope of action is an expression of the (envisioned) expansion of the Mozambican state in recent years. Yet, it ignores the roles and responsibilities that traditional authorities took on during the war years (in the RENAMO controlled areas) and in the first years after the war (Kyed 2008: 174-75). In practice, this attempt to incorporate non-state actors and simultaneously to control and eventually sanction them 'has placed "community [traditional] authorities" in an anomalous role as state but not really state: physically outside of the offices in which the state officials operate, they are obliged to act 'as if' state, yet without adequately sanctioned authority' (Kyed 2008: 176). Traditional authorities acquire thus a dual position – they are betwixt and between, as West and Kloeck-Jenson argued; this leads some traditional authorities to seek a way out of their uncomfortable position and to circumvent state law. Thereby they of course risk being sanctioned by the state (Kyed 2008: 177).

South Africa

In South Africa, as mentioned already in the previous section, traditional authorities perceived elected local government structures as adverse to their local powers that they inherited from the time of Apartheid. Any attempt to reform land and other rights was met with resistance by the traditional authorities. In case they could not prevent reforms, they at least did their best to delay them. Thus, the potential for tensions between traditional authorities and elected local governments is quite high (Ntesbetza 2005: 87; Oomen 2005a: 70-84).

To sum up: Questions of hierarchy and resource allocation at the local level include the highest potential of conflict between traditional authorities and civil administrators. In the settings discussed above, traditional authorities had acquired considerably power in the time of civil war and conflict (including Apartheid) at the local level. Political reforms aiming at the expansion of the central state in the 1990s were confronted with chiefs that were reluctant to give up their powers acquired in previous decades. Despite a considerable track-record of conflicts in South Africa, Mozambique and Sierra Leone, there are also examples for cooperation between chiefs and local councilors. Particularly

³¹ This hesitation on the side of some traditional authorities frequently derived from their experiences with the FRELIMO during civil war time. Many chiefs, as outlined above, had rather been close to RENAMO or had even left their homes in order to escape the violence inflicted on the local population by both parties to the conflict (Kyed 2008: 169).

where both come from the same local setting, mutual respect and understanding can bridge institutional divides. In general, however, the cases in this section show that most governments still have to develop their legislation and political programs further in order to clarify the competences of the different actors at the local level.

5.4 What are the experiences with traditional authorities being paid with public resources and in how far can accountability mechanisms be introduced?

Sierra Leone

The literature referred to here is less explicit on the issue of payment and the introduction of accountability mechanisms. For Sierra Leone Fanthrope (2005: 31) reports that the youths are concerned that the chiefs who do not receive a government salary 'find their living from conflict and the fines that it produces.' In a recent draft Report on Chiefdom Finance in Sierra Leone it was outlined that traditional authorities and their clerks finance themselves out of the revenue they generate through taxation. Yet, bookkeeping practices and cash management were very poor in most chiefdoms. Additionally, the chiefs and their staff themselves argued that it would be better that the government finances the chiefdoms directly (Report on Chiefdom Finance Study held between the 3rd and 18th March 2008).

Somaliland

In Somaliland, the members of the House of Elders (*guurti*) in Hargeysa receive salaries and allowances. According to article 66 of the constitution they also enjoy immunity. During field research, ordinary people sometimes complained about the members of the *guurti* who, in their view, just sat in the capital city and enjoyed life, without caring about the problems of the people in the rural areas. Some other traditional authorities in Somaliland, such as *Aqils*, who are probably the pendant to headmen in other African contexts, also receive some payments (around 15-20 US\$ per month) from the government. This, according to some statements of elders in different villages, neither impedes their independence, nor diminishes their legitimacy in the eyes of the local population. Usually *Aqils* spend most of their time in villages and the country side and actively work for their own constituencies.

Mozambique

For Mozambique, Kyed (2008) makes it clear that in the face of state sanctions and potential financial benefits active chiefs try to obey state instructions and fulfill the tasks allocated to them by the state. Yet, this might well bring them into conflict with their own communities who do not consent to being taxed and so forth. Thus, they may lose the support of the local communities, which are, however, an important source of the legitimacy of traditional authorities.

To sum up: While not much has been said on the issue of how payment influenced the positions and performance of traditional authorities it is clear that, generally, payment from the side of the government will strengthen upward accountability. It is rather likely that this impedes the effective representation of the interests of the local constituencies through traditional authorities toward the government. Furthermore, integrating traditional authorities into the government framework through financial and other

allowances involves the risk of politicization and manipulation of the positions of authority. The position may become contested among locals who hope to gain from state salaries and so forth. This can lead to local conflict and fission.³²

5.5 What are the sources of legitimacy of traditional authorities and how would the incorporation in formal state structures impact on their legitimacy?

Sierra Leone

Upon closer analysis it becomes clear that chieftaincy in Sierra Leone had been a contested institution since long. Before the most recent war external powers such as governments, aid organizations and so forth, had intervened in chieftaincies. There had been continued conflicts over legitimacy and accountability at the local level (Fanthrope 2005: 41-42). Nonetheless, in Fanthrope's (2005: 44) view 'chiefs still have a vital role to play because they (and by implication not the state) "know a person's right", i.e. the customary rights and properties that establish *de facto* local citizenship.' He adds that people see the need to establish some checks and balances regarding chiefs and thus to 're-bureaucratize' chieftaincy (ibid.).

Manning (2008: 8) stresses that 'even when alternatives are available, most people still accept the authority of chiefs and look to them to make decisions, resolve disputes, and engage with outside actors such as government representatives or development agencies. [...] chiefs are more trusted across the board, even in how they would administer development funds.' Authority, particularly of paramount chiefs, is constructed in relation to kinship and land. To belong to a certain chiefly family and to be 'first comer' is used in order to legitimate the claim to rule (ibid.). Manning continues that the relationship between chiefs, on the one hand, and youths and women, on the other, seems to have changed in Sierra Leone over time. This is particularly also a result of the most recent war and possibly some external interventions. Chiefs now more often include youth leaders in local decision making processes. In some places it was proposed that young people and women should have seats in the courts of paramount chiefs (ibid.: 10). Further changes include that more locals now demand their chiefs to be 'democratically' elected and educated.

Mozambique

For Mozambique, West and Kloeck-Jenson (1999: 469) propose to distinguish different 'layers of history and levels of authority regarding traditional authority.' They argue that neither the Portuguese have been the first to introduce extractive and coercive rule in Mozambique, nor have all *autoridades gentílicas* been willing to collaborate with the colonizers, even though they had received privileges from the latter (ibid.: 472). It is clear that the existing structures of traditional authority changed over time. The process of including them into systems of rule – African and European – came along with an increase in demands and a decrease of autonomy. 'In most cases, they [traditional authorities] were called upon to extract more and more from their populations in the form of tribute, labor and, eventually, taxes, and were permitted less autonomy in their

³² In order to avoid partiality it is a time honored tradition in the Somali society as well as in the Nuba Mountains in Sudan, that the richest man is selected as chief (field research, M. Hoehne; and personal communication with Guma Kunda Komey, 20.09.2008)

decision-making' (West and Kloeck-Jenson 1999: 475). The authority of chiefs, historically, derived thus partly from violence and exploitative rule. This confirms that since long, 'chiefs at all levels have occupied positions betwixt and between their populations and higher authorities' (ibid.). The recognition and legitimacy of traditional authorities, in this case, had a double nature: it depended on the local community *and* on external powers. Consequently, figures of traditional authority were 'Janus faced'; they were simultaneously respected and suspected by their own constituencies and the (colonial and post-colonial) states (ibid.: 476).

West and Kloeck-Jenson add that in some cases, particularly during the recent Mozambican civil war, figures of authority have been exchanged so frequently, depending on FRELIMO and RENAMO attacks and counter-attacks, that the local people today are unable to outline what exactly constitutes traditional authority. In this context, and quite pragmatically, authority is an attribute of someone who 'is in charge'; and particularly in the rural areas legitimacy derives from the success in delivering state or other external resources and services to the local community (ibid.: 479). West and Kloeck-Jenson show that traditional authority cannot be easily and definitively identified. It is 'invented, created, produced and reproduced in the midst of an ever changing historical context' (ibid.: 1999: 484). The question is therefore not, whether or not a traditional authority is legitimate, but what kind of legitimacy is evoked by whom, in which context, how, and who is concerned (ibid.).

Buur and Kyed agree with West and Kloeck-Jenson in so far as they also emphasize the contested nature of traditional authority. They maintain that the practical manifestations of traditional authority and procedures of installment were 'the outcome of both redefinition and reproduction' (Buur and Kyed 2006: 171). Legitimacy could derive from different sources, such as the colonial register, state legislation, fragmented recollections of history, abilities to perform and engage with the state, and so forth (ibid.). The setting is so dynamic that even the granting of certain rights and symbols by the state does not vest the beneficiaries with *de facto* broad-based legitimacy in the eyes of the local populations (ibid.: 187). Generally, Buur and Kyed show that notions of 'tradition' are not unequivocal. '[T]he question of what comprises the truly or most significantly traditional rules of appointment and basis of authority were negotiable and situation-specific.' Tradition clearly is not the opposite to modern, but, at any given moment in time, is subject to invention, redefinition and reproduction (ibid.).

Somaliland

In the context of Somaliland, authority is traditionally flexible and non-centralized (Hoehne 2007).³³ Throughout the 20th century colonial and post-colonial states sought to control the predominantly pastoral-nomadic Somali people by co-opting their traditional authorities. This had an impact on the latter's legitimacy. Previously, traditional authorities were predominantly accountable to their local constituencies who could easily

³³ The Somali society is characterized by a segmentary lineage system, similar to the Nuer society.

dismantle them in case of discontent.³⁴ State recognition introduced new resources as well as a notion of permanence of the position. The hereditary principle of traditional authority was established under the British in the early 19th century. Moreover, the more they received support from state institutions, e.g. in the form of payment, weapons or access to economic infrastructure, the more the traditional leaders became upwardly accountable and ran the risk of being deposed by state-authorities. In the 1990s, finally, traditional authorities were installed as members of the House of Elders (*guurti*) in Somaliland. As such, they are supposed to be elected (according to article 58 of the Constitution of Somaliland). So far, no election has taken place. It is not clear how traditional legitimacy deriving at least partly from the support of their local constituencies in a predominantly pastoral-nomadic context can be translated into electoral laws and obligations within a modern state apparatus (Hoehne 2007: 166-67).

To sum up: The legitimacy of traditional authorities does not originate from one source alone. It is not only the local people who, through their will to follow, vest legitimate authority in the hands of their leader. Legitimacy also derives from the recognition through external powers. It is an inherently relational phenomenon. External powers, be it other leaders/kings or state actors, recognize a person as communication partner in economic, political, juridical, religious, or other matters. This person then becomes able to transfer external messages to his/her own people. Simultaneously, he/she also acts as spokesperson for the local population toward neighboring or external powers. Moreover, in many societies legitimacy is related to the personal skills of the incumbent of a position of traditional authority. He/she has to be able to perform and talk in front of his/her own people and to connect with external powers (e.g. states and NGOs).

5.6 Summary

Lutz and Linder (2004: 37) argue that traditional authorities ‘are often more legitimate to govern in the eyes of the people than local state administrations.’ They continue that ‘one of the main reasons to incorporate traditional structures is to improve local governance, especially in countries where attempts of decentralization in building strong structures have failed at the local level. Another strong reason is that many policies have not been implemented because traditional structures were excluded, or because they resisted certain policies’ (Lutz and Linder 2004: 16). Other authors, however, do not seem to share this positive assessment and rather emphasize the uncomfortable position of traditional authorities betwixt and between external powers and local constituencies.

In historical perspective, it becomes clear that traditional authorities became increasingly dependent upon external ‘recognition’ through colonial and post-colonial administrations. Therefore, any separation between traditional authorities – as apolitical, non-state entities whose legitimacy derives exclusively from ‘the local community’ – and the modern state is misleading. Both, in fact, have historically been intertwined. This is confirmed by Englebert (2002: 16) who found that ‘traditional institutions have become contingent

³⁴ The usual strategy to dismantle or undermine traditional authority was to split and elect a new leader for the splinter group. Sometimes traditional authorities – who had a position of *primus inter pares* – were also directly physically attacked by discontent followers.

structures' with part of their salience depending on the strategies of local constituencies and local elites vis-à-vis exogenous factors.

Moreover, the current situation of traditional authorities in many African countries is characterized by legal confusion and political tensions regarding the division of powers and competences. It is unclear how after decades of co-optation and civil war in many settings traditional authorities, who frequently had to take a political stance in the face of superior powers, can be 'purified' in order to take up positions in newly democratic government structures. Civil war and state repression frequently undermined the downward accountability of traditional authorities and damaged their positions in the eyes of their people. On the other hand, if some traditional authorities had sought to defend their people by fencing off external interferences, such as in Sudan in the 1980s and '90s, this enhanced their legitimacy in the eyes of their people; but it made them suspicious to state actors who constantly strive to expand their control.

6 CONCLUSIONS

The study discussed the powers and positions of traditional authorities in Southern Sudan. The aim was to explore the role of traditional authorities in the decentralized political framework for Southern Sudan, as set out in the Local Government Bill (LGB). Section 3 outlined important provisions of the LGB. Under this bill, traditional authorities are in general responsible for customary law at the Boma, Payam, and County levels. On the Boma level (the lowest level of local government), they combine executive, legislative, and judicial powers. Yet, while the LGB is quite explicit in its individual provisions, some contradictions inherent to the bill as a whole could be identified. The most severe of these are: first, it is not clear whether customary law operates independently of statutory law or has to conform to state law. This question also involves the position of traditional authorities as judges, and the issue whether they have to be approved by state institutions first or can act as institutions *sui generis*. The second severe contradiction of the LGB is that on the one hand, human rights and democracy are advocated; on the other, however, traditional authorities and customary law are granted powers that most probably infringe upon equal justice for all as well as upon transparency and accountability of rule. More specifically, it is not clear how traditional authorities and customary law shall provide justice to women who usually have no or only a very weak standing before customary courts. Also, the questions if traditional authorities are elected democratically through universal suffrage and if their terms of office are limited or for life have not been clarified in the LGB. Thus, there is a risk that under this bill undemocratic practices stemming from the past are perpetuated.

In addition to these legal problems, the incorporation of traditional authorities into the local government of Southern Sudan also has to be assessed with regard to its historical legacy. Section 4 showed that traditional authorities in Southern Sudan have frequently been co-opted through external forces – states and guerrillas. Furthermore, particularly in the context of the recent civil war, the SPLA/M and the Sudanese state heavily interfered with traditional authorities. They forced established authorities into cooperation, often

against the interests of the local populations, or simply installed new and obedient authorities serving their purposes. This damaged the legitimacy of the traditional authorities, which, aside from external recognition, derives from acceptance by the local community. The other African examples (section 5) showed that a history of co-optation and manipulation is the rule rather than the exception with regard to traditional institutions in Africa. Hence, the present day relation of the Southern Sudanese government to traditional authorities is neither neutral nor necessarily benevolent. Individual traditional authorities may perceive the current SPLA/M government as a former enemy/perpetrator. Others may feel that they have to succumb to state power, 'as always'. These aspects of the historical legacy involve the risk of conflicts between traditional and state institutions. Moreover, it raises the question if traditional authorities, who feel inferior to the state power, are able to adequately represent their people towards the state.

The findings from the other African examples outlined in section 5 have important implications regarding the current role of traditional authorities in Southern Sudan. On the one hand, it is clear that traditional authorities in Africa still matter. On the other hand, the historical burden and the complexities of the current legal and political situations in many African contexts complicate the positions of traditional authorities further. In the face of state-weakness or even state-collapse, traditional authorities are often the only effective powers at the local level. In Somaliland, but also in Mozambique and rural Southern Sudan, they guarantee a minimum of social and political order. They settle conflicts, employ customary law, and provide some orientation for group identification in contexts of rapid political and social change. This also holds true for traditional institutions in Southern Sudan, as was outlined in section 3 and 4. However, traditional authorities in all African contexts discussed here had difficulties with integrating into the framework of modern government, which involved giving up some of their old privileges, on the one hand, and taking over new responsibilities and acting self-confidently toward state institutions, on the other. Despite these challenges, a clear conclusion of section 5 is that the first of the initial questions (section 1) – if traditional authorities are necessary in order to provide a minimum of stability and order – can be answered affirmatively.

This study also showed that while traditional authorities can exist side by side with modern state structures, legitimate authority is constructed differently in traditional and in modern contexts. The well-established checks and balances of modern democracy based on universal adult suffrage and limited terms of office do not apply to traditional authorities. The customary law they administer frequently does not provide 'justice for all' but discriminates against women and young people. Thus, and also in reference to the second initial question, it has to be concluded that the rule of traditional authorities undermines the emergence of modern state structures at the local level. This is at least the case if one accepts the high standards of modern democracy in general and democratic decentralization in particular (as outlined in section 2). The rule of traditional authorities and equal rights for women can hardly be combined. Nor do the hereditary principle and the modes of selection through some privileged men dominating traditional institutions

harmonize with the democratic principle of universal adult suffrage and periodical elections.

Finally, can the integration of traditional authorities into modern government structures pave the way to a country-specific form of democracy, and if yes, is there a way of doing this well? The answer to this third initial question of the study has to take into account issues of legitimacy and accountability. Similar as in colonial time, traditional authorities today are betwixt and between – they have to mediate between and satisfy both the local constituencies and the state powers. In this sense, they have to fulfill a kind of ‘dual mandate’.³⁵ These complexities can not easily be resolved by legislation, as Buur and Kyed and others have shown. Yet, the integration of traditional authorities in local government at least helps to reach out to previously ‘oppressed’, ‘oppositional’, or ‘uncaptured’ constituencies of the state. Thereby, a kind of country-specific form of representation of previously marginalized or distanced populations can indeed be achieved.

The role of traditional authorities at this moment in Southern Sudan may be to serve as a ‘transitory gate’ from a violence ridden and undemocratic era of state oppression and civil war into a new era of more rights for all citizens. Whether this already equals democratization, however, is doubtful. In order to advance democratization, the state would have to engage traditional authorities for the moment and simultaneously prepare for their ‘fading out’ in the longer run. As we found above, the traditional authorities usually cling to ‘old’ privileges and powers and resist democratic checks and balances. And it is precisely this tendency that ultimately undermines the emergence of modern democratic state structures at the local level.

³⁵ Originally, the term ‘dual mandate’ was introduced by the British at the beginning of the 20th century. It concerned the colonial administrations that had the dual mandate to benefit the African peoples, on the one hand, and the ‘motherland’ or even world economy, on the other. Under this policy, African governments were prescribed to serve external economic agendas. This continued after independence. Dual obligations, however, raise serious governance tensions and have the potential to undermine the local legitimacy of governments (Ribot 2002: 4).

7 BIBLIOGRAPHY

A. Agrawal and J.C. Ribot, Accountability in decentralization: a framework with South Asian and African cases, *Journal of Developing Areas* **33** (1999) (summer), pp. 473–502.

Badal, Rafael 2005: *Local Traditional Structures in Sudan*, Life and Peace Institute, Uppsala.

Bellagamba, Alice and Klute, Georg (eds.) 2008: *Beside the state: Emergent powers in contemporary Africa*, Köln: Köppe.

Bierschenk, Thomas and de Sardan, Oliver 2003: Powers in the village: rural Benin between democratisation and decentralization, in: *Africa* 73/2, pp. 145-173.

Branch, Adam and Zachariah Chierian Mampilly 2005: Winning the war, but losing the peace? The dilemma of SPLM/A civil administration and the tasks ahead, in: *Journal of Modern African Studies* 43/1, pp. 1-20.

Buur, Lars; Kyed, Helene Maria (eds.) 2007: *State Recognition and Democratization in Sub-Saharan Africa. A New Dawn for Traditional Authorities?*, New York: Palgrave.

Buur, Lars; Kyed, Helene Maria 2006: Contested sources of authority: re-claiming state sovereignty by formalizing traditional authority in Mozambique, in: Christian Lund (ed.) *Twilight Institutions: Public authority and local politics in Africa*, Malden and Oxford: Blackwell Publishing.

Dijk, Rijk van and E. Adriaan B. van Rouveroy van Nieuwaal 1999: Introduction: The domestication of chieftaincy in Africa: from the imposed to the imagined, in *African Chieftaincy in a new Socio-Political Landscape*, E. Adriaan B. van Rouveroy van Nieuwaal and Rijk van Dijk (eds.), Hamburg: LIT-Verlag: 1-20.

Draft Strategic Options Paper No 1 (February 2008): Making Decentralization Work.

Englebert, Pierre. 2002: Patterns and theories of traditional resurgence in tropical Africa, *Mondes en Développement* 30:51-64.

Englebert, Pierre 2005: Back to the future? Resurgent indigenous structures and the reconfiguration of power in Africa, in: Olufemi Vaughan (ed.): *Tradition and politics: Indigenous political structures in Africa*, Africa World Press, Trenton and Asmara, pp. 33-60.

Esman, Milton J. 1990: Political and psychological factors in ethnic conflict. In: Joseph V. Montville (ed.): *Conflict and peacemaking in multiethnic societies*, Lexington, MA; Toronto, pp. 53-64.

Evans-Pritchard, Edward E. 1940: *The Nuer*, Oxford: Oxford University Press.

- Fanthrope, Richard 2005: On the limits of liberal peace: chiefs and democratic decentralization in post-war Sierra Leone, *African Affairs* 105/418: 27-49.
- Gundel, Joakim (2006): *The Predicament of the `Oday. The role of traditional structures in security, rights, law and development in Somalia*.
- Harragin, Simon 2007: *Waiting for pay-day: Anthropological research on local-level governance structures in South Sudan*, Report to Save the Children.
- Hoehne, Markus V. 2007: 'From pastoral to state politics: Traditional authorities in Northern Somalia', in: Buur, L. and Kyed H.M. (eds.). *State Recognition and Democratisation in Sub-Saharan Africa: A New Dawn for Traditional Authorities?* Palgrave: New York, pp. 155-182.
- Hutchinson, Sharon Elaine 1996: *Nuer Dilemmas. Coping with money, war, and the state*, Berkeley et al.: University of California Press.
- Johnson, Douglas Hamilton 2003: *The root causes of Sudan's civil wars*, Oxford : James Currey.
- Johnson, Douglas Hamilton 1994: *Nuer Prophets. A history of prophecy from the Upper Nile*, Oxford: Oxford University Press.
- Johnson, Douglas Hamilton 1986: Judicial regulation and administrative control: customary law and the Nuer 1898-1954, *Journal of African History* 27/1, 59-78.
- Jok Maduk Jok and Elaine Hutchinson 1999: Sudan's prolonged second civil war and the militarization of Nuer and Dinka ethnic identities, in: *African Studies Review* 42/2, pp. 125-145.
- Keller, Edmond J. 1996: Introduction: Toward a new African political order, in: E.J. Keller and D. Rotchild (eds.): *Africa in the new international order: Rethinking state sovereignty and regional security*, Boulder Col.: Lynne Rienner.
- Kurtz, Donald V. 2001. *Political anthropology: power and paradigms*. Boulder, Colorado [a.o.]: Westview.
- Kyed, Helene Maria 2008: 'Traditional' leaders formalization in post-war Mozambique: exploring the ambiguous space between state and non-state domain, in *Beside the state: Emergent powers in contemporary Africa*, Alice Bellagamba and Georg Klute (eds.), Köln: Köppe, 163-181.
- Lentz, Carola. 1998: The Chief, the Mine Captain and the Politician: Legitimizing Power in Northern Ghana, *Africa* 68: 46-67.

Leonardi, Cherry 2007: Violence, sacrifice and chiefship in Central Equatoria, Southern Sudan, in: *Africa* 77 (4): 535-558.

Leonardi, Cherry; Deng Biong Miajak; Eli Achol Deng Höt 2005: *Report on traditional authority in Western and Central Equatoria, South Sudan*.

Lutz, Georg and Linder, Wolf 2004: *Traditional structures in local governance for local development* (unpublished report).

Mamdani, Mahmood 1996: *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton NJ: Princeton University Press, 1996.

Manning, Ryann 2008: *Dynamics of change: How 'traditional' and 'modern' justice and governance systems interact in rural and peri-urban Sierra Leone*, unpublished draft paper.

Ntsebetza, Lungisile 2005: Democratic Decentralisation and Traditional Authority: Dilemmas of land administration in rural South Africa, in: Jesse C. Ribot and Anne M. Larson (eds.): *Democratic Decentralisation through a Natural Resource Lens*, Routledge: London and New York, pp71-89.

Nyamnjoh, Francis B. 2003. *Our Traditions are Modern, Our Modernities Traditional. Chieftaincy and democracy in contemporary Africa*.
www.nyamnjoh.com/files/chieftaincy_and_democracy_in_contemporary_africa.pdf
[10.02.2006]

Oomen, Barbara 2005a: *Chiefs in South Africa: Law, power and culture in the post-Apartheid era*, James Currey: Oxford.

Oomen, Barabara 2005b: Walking in the middle of the road: people's perspectives on the legitimacy of traditional leadership in Sekhukhune, South Africa, in: Olufemi Vaughan (ed.): *Tradition and politics: Indigenous political structures in Africa*, Africa World Press, Trenton and Asmara, pp. 79-119.

Report on Chieftom Finance Study held between 3rd and 18th March 2008 (Draft paper).

Ribot, Jesse C. 2002: *African Decentralization: Local actors, powers and accountability*, Democracy, governance and human rights – paper No 8.

Robinson, James 2008: *Governance and political economy constraints to World Bank CAS priorities in Sierra Leone*.

Rolandsen, Øystein H. 2005: *Guerilla Government. Political changes in the Southern Sudan during the 1990s*, Uppsala: Nordiska Afrikainstitutet.

Schlee, Guenther 2008: *How enemies are made. Towards a theory of ethnic and religious conflicts*, New York: Berghahn Books.

UNDP 2005: *Traditional Authority in South Sudan: Consolidated report of the five research teams, Draft 2*.

Valsecchi, Pierluigi 2008: 'He who sets the boundary': Chieftaincy as a 'necessary' institution in modern Ghana, in: Alice Bellagamba and Georg Klute (eds.): *Beside the state. Emergent powers in contemporary Africa*, Köln: Köppe, pp. 139-161.

van Kessel and Barbara Oomen 1997: 'One chief one vote': The revival of traditional authorities in post-Apartheid South Africa, in: *African Affairs* 96/385: pp. 561-585.

Weber, Max. 1964. *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie*. Köln [u.a.]: Kiepenheuer & Witsch.

West, Harry G. and Scott, Kloeck-Jenson 1999: Betwixt and between: 'traditional authority' and democratic decentralization in post-war Mozambique, in: *African Affairs* 98: 455-484.

Young, John 2008: *Security, governance and political economy constraints to World Bank strategic priorities in Southern Sudan*.

Zartman, William I. 1995: *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Boulder, Colo.: Lynne Rienner Publishers.

ANNEX

Nuer³⁶

In academic literature Nuer are described as classic case of the segmentary lineage society. Segmentary societies have an un-centralized fragmentary political organization (Badal 2006: 58). The village is the smallest political segment. Kinship terminology is used in political processes at village level. 'Kinship creates or demands reciprocal obligations to provide help to other members of the kin group' (Badal 2006: 58). Successful cattle herding, but also planting and harvesting depend on cooperation. Later on, food is shared within village community (Badal 2006: 59). Kinship terminology aids integration and cooperation. An individual selectively recognizes those ties which correspond to his/her current needs and correspond to surrounding environmental and social factors. Integration into kin groups functions 'through adoption, extra-legal marriages, or genealogical fiction' (Badal 2006: 59). Alliances among Nuer lineages are rather segmentary and pyramidal in nature.

Nuer traditional structure: While Nuer are said to have an egalitarian structure, some differences in power and status can be observed. The **elder** of the village is 'probably the most important individual at this level [village], someone all can turn to for advice and impartial judgment' (Badal 2006: 60). He is from a family belonging to the dominant clan/lineage; his family must be rich in cattle (*gät tuot* – bull of the heard). *Göt tuot* or *dil* refer to any member of a dominant or aristocratic lineage.³⁷ **Wut hok**, '[t]he "man of cattle" is charged with responsibility and welfare of the cattle' (Badal 2006: 60). He is consulted in cases of diseases/epidemics and is asked for his blessing for herds to flourish. **Kuär thoi** is the man of the water and river. The **Kuär bith** is '[t]he "fishing-spear chief" who is responsible for making war and training warriors' (Badal 2006: 61). The **Kuör muon** is the 'land chief'. He is associated with the land. Sometimes he is also called **Kuär kuac**, the 'Leopard skin chief'. **Ruic Naath** is the 'leader of the people'. This concept for a while remained vested in Nuer 'prophets'. They played important roles in opposition to foreign oppressors/aggressors, e.g. the colonial powers. The office was not institutionalized, but had a tendency to be hereditary. **Ruic Naath** had to be generous, wise and well experienced in settling disputes and maintaining or creating cohesion among the local people; finally, they had to be brave and powerful leaders (Badal 2006: 61). The authority of a **Ruic Naath** is strongly based on his powers of persuasion and his abilities to voice the will of his people. The idea of leadership among the Nuer is thus strongly related to the spoken word (Badal 2006: 62). Nuer prophets challenged colonial administrators regarding authority over the group.

Family and intra-tribal feuds are settled by elders belonging to the parties of the conflict, and sometimes 'third party' elders whose groups are not involved. Inter-tribal conflicts between different Nuer clans or between Nuer and others (e.g. Dinka) are settled by

³⁶ It has to be noted that the ethnic terminology employed here shall not suggest that Nuer, Dinka, and others, are clear-cut and stable 'units'. To the contrary, they consist of many different tribes, sections and clans. The boundaries between both groups much more flexible than the (colonial and earlier socio-anthropological) literature suggests.

³⁷ *Dil* can be understood as 'agnatic core' of Nuer lineages (Badal 2006: 68).

prophets (*ruic naath*). The 'Leopard Skin Chief (Kuär muon) is involved in the resolution of blood feuds. He is concerned with the spiritual well being of the killer who can hide in the chief's home. The group who seeks vengeance is not allowed to enter (Badal 2006: 64-65). 'Although the Leopard-Skin Chief has no mechanism by which to enforce his decisions upon disputants, he has sufficient moral and spiritual authority to compel obedience' (Badal 2006: 65). The Leopard-Skin Chief has also the power to curse (ibid.: 65-66).

Dinka

The Dinka socio-political system is another example for a segmentary system. However, compared with the Nuer system the Dinka differ in so much as lineages have definitive territorial bases and permanent settlements. Politically, Lienhardt suggested the term 'associate lineage structure' in order to point to the fact that 'leadership in a Dinka political segment necessarily entails the presence of people from two different categories of clans or classes: the warriors and the spear-masters' (Badal 2006: 67). Each Dinka sub-tribe comprises both descent groups – of warriors and spear-masters. Individual members of these groups can, at times and depending on their individual skills, acquire a pre-eminent position as leaders. Among Dinka there is no dominant lineage as among Nuer (called *dil*). Dinka 'possess several cores in rather fluid and ambiguous or rival associations' (Badal 2006: 68).

Dinka traditional structure: The spear-masters (**Bany Biith**) are superior in rank to the warriors. They act as religious specialists, arbitrators, initiators of age-sets, and so forth, and are 'the main focus of Dinka political unity.' They combine thus ritual and political leadership. (In contrast, among the Nuer political and ritual leadership is more dispersed.) Warrior clans provide community leaders with fighters and, at least in the areas where Dinka neighbor Nuer, with war-leaders. Recently, however, spear-masters, also under Arab influence (from the north) became more centralized and institutionalized (Badal 2006: 69).