

# research evidence for policy



This litigant is elaborating his view of a conflict over cows in a customary law court in Wanyjok. The sticks on the ground in front of the litigant symbolise cattle. Aweil East County, South Sudan. Photo: Martina Santschi (2009)

## Chiefs, state-building, and development in independent South Sudan

north  
south  
NCCR  
upnos



Case studies featured here were conducted in South Sudan

### Policy message

Chiefs play a key role in local government in South Sudan. They provide vital services and enjoy considerable local legitimacy. They act as a bridge between communities and government institutions. Nevertheless, their functions vary from place to place, and their roles are sometimes contested by local government bodies, the formal judiciary, and community members. They are important partners for development agencies, but not the only ones. Initiatives to foster sustainable, inclusive, and participative state-building and development at the local level need to cooperate with chiefs as well as other local actors.

- Chiefs play an important role in community life in the young nation of South Sudan. They provide an array of vital services, from mobilising people for community projects to adjudicating disputes and administering customary law. Sometimes criticised as being an unelected group of old men, they will nevertheless play a vital role in South Sudan's steps to building viable, effective, local government institutions. This issue of *evidence for policy* looks at chiefs and how development agencies should interact with them.

### Independent South Sudan

- In 2005 after more than two decades of war, the northern-based government of Sudan and the southern-based Sudan People's Liberation Movement/Army (SPLM/A) signed a comprehensive peace agreement. This paved the way for a referendum in January 2011, in which the vast majority of South Sudanese voted for independence. On 9 July 2011, South Sudan finally became independent.
- The process of establishing executive, legislative, and judicial institutions and administrative structures is now under way in South Sudan. But these new institutions are not being installed in empty space. Rather,

diverse actors and groups are jockeying for authority and control over posts and resources. These stakeholders include chiefs, youth groups, political parties, soldiers, and returnees.

### Providing public services

Chiefs are significant stakeholders at the local level. They wield considerable socio-political influence, and many are seen as legitimate representatives of their communities. They provide important public services, and are vital for local governance.

Since the colonial era, these chiefs have performed various administrative and judicial tasks.

## Featured case study

### Chiefs' courts in Aweil East County, Northern Bahr el-Ghazal State

In South Sudan, a high percentage of court cases are solved in chiefs' courts according to customary law. Some (mostly external) actors criticise customary law practices – for instance for their partial non-compliance with human-rights standards. But the large majority of people interviewed in Aweil East County look on customary law practices as positive. They described the chiefs' courts as efficient, transparent, and affordable compared to higher-level statutory law courts. In addition, their practice of considering the context and circumstances of the parties in conflict and the fact that verdicts are partly negotiated between the courts' members and the conflicting parties, seem to correspond to the litigants' expectations (Santschi 2010).

The chiefs' courts presumably will continue to be one of the major justice providers in South Sudan during the next decade. Due to the customary law's flexibility and mutability, these courts are able to adapt to social change (Leonardi et al. 2011).

- Although their influence diminished during the war, they still bear significant responsibilities at the local level:

- - Arbitrating disputes and handling justice according to customary law.
  - Collecting taxes on behalf of the local government.
  - Intermediating between communities, local government institutions, and international agencies, and acting as community representatives.
  - Mobilising communal participation in projects and campaigns.
  - Distributing food aid from international agencies and organising intra-communal social protection. Headmen, the lowest-level chiefs, allocate resources of wealthier community members to poor and vulnerable persons.

- Local government institutions lack funds to provide extensive services. Much of the education services, health services, and access to clean water are provided with the assistance of international NGOs and churches. Given the current limited capacity of the new government, chiefs' activities remain vital. They can help prevent and resolve the violent conflicts that still plague South Sudan. The OECD (2008) has identified public service delivery and social protection as fundamental not only for the livelihood of community members, but also for state legitimacy and accountability.

### Straddling state and society

- Community members see chiefs as community representatives who can be dismissed by their people. But at the same time, both people in Aweil East County and legislation consider them as part of the local government (see "Featured case study"). That positions them in both spheres: state and society. The Interim Constitution of Southern Sudan (2005) and the Local Government Act (2009) refer to them as the lowest levels of local government. Although these laws determine the structures of chieftaincies, they do not define their duties in detail. Such decisions are delegated to lower levels of government: the State and County levels. These have not yet passed

legislation on the detailed functions of chiefs.

That means that in practice, the competencies and responsibilities of chiefs are either based on established practices or are negotiated locally. As a result, their competencies and functions differ. In Northern Bahr el-Ghazal State, for instance, a high percentage of trials are judged in customary law courts, while in Bor County in Jonglei State, the judiciary apparently has taken over all cases from the customary law courts.

The World Bank and other major development agencies now emphasise the need to empower local community groups, including local government. That means giving them direct control over planning decisions and investment, while ensuring participatory planning and accountability. Because public institutions in post-conflict environments are often weak, this approach is increasingly being used to build bridges between the state and its citizens. Due to their bridging role between society and the state, the chiefs have a crucial role to play in this.

### Contested and competing practices

The practices and competencies of chiefs are contested. Some examples:

- - Who has authority to dismiss chiefs: members of their communities, or county commissioners?
  - Which court gets to hear cases? The fees and fines collected by chiefs' courts are relatively high, so different customary courts compete for cases.
  - Who gets the court revenues? Chiefs are expected to deliver a percentage of the court revenues to the administration. But the payam (sub-county) and county administrations accused court members of embezzling revenues. Similar allegations have been made on tax revenues.
  - Who manages the chiefs' courts? Members of the judiciary and local governments disagree over the administration of chiefs' courts. In practice, the chiefs' courts are administratively linked to local government institutions. But



members of the judiciary dispute this practice of bringing the customary law courts under the jurisdiction of the judiciary.

### Revival of chiefs

Though chiefs are significant in numerous African countries, their relationship with governments has been ambiguous. In the 1960s and 1970s, various post-colonial governments denounced them as collaborators of colonial rulers and limited their power. Since the 1990s a process of “re-traditionalisation” empowering chiefs can be seen in Africa, including South Sudan. Buur and Kyed (2007) point to two aspects fostering the revitalisation of chiefs:

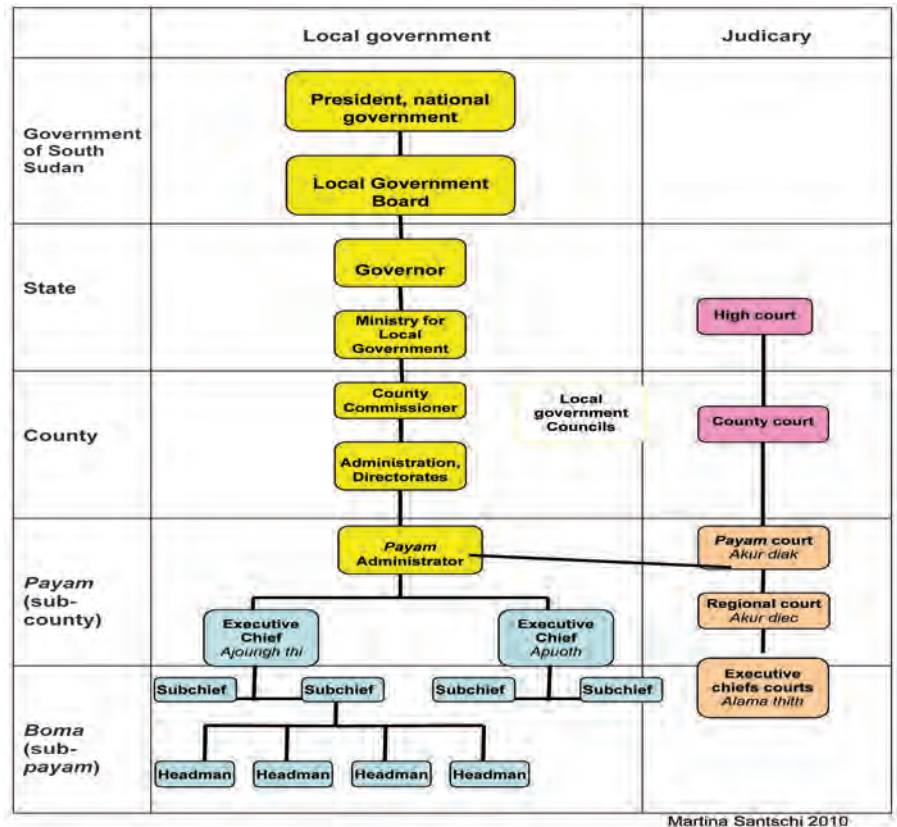
First, governments in numerous African countries, including South Sudan, are unable to provide extensive public services. Consequently, chiefs who offer such services have never lost their influence.

Second, chiefs get “revitalised” through externally initiated projects that promote bottom-up democratisation and decentralisation. These aim to include communities in decision-making and to improve transparency and accountability towards the communities. In South Sudan, various external actors and international interventions engage with chiefs; they focus on topics such as local governance, service delivery, justice, decentralisation, and development.

### Idealistic views of chiefs

Some observers criticise the role of chiefs in relation to human-rights violations and male gerontocracy. Others aim at revitalising chiefs. At times they take an idealistic view of chiefs as authentic, apolitical, community representatives who act exclusively in the interest of their people. In practice, though, chiefs are closely linked to state institutions and derive part of their legitimacy from the state. Chiefs have been partly co-opted by colonial and post-colonial powers and at times act in their own interest, for instance by competing for access to government resources. In addition, many local chiefs are interlinked with the regional and national political elite. Their wealth and influence, and colonial schooling policies, have given chiefs’ families advantages in education and political influence. As a result, a considerable part of the South Sudanese political and economic elite originates from such families.

### Local government and judiciary in Mangartong payam, Aweil East County, 2008



### Definitions

**Chiefs.** “The specific title of chief was created as part of the British administrative system of indirect rule” (Leonardi et al. 2010). Aweil East County has three levels of chiefs: Executive chiefs (with Deputy chiefs), Subchiefs, and Headmen. Executive and Subchiefs relate to territorial entities (*wut*), and Headmen to hereditary entities (*dhien*). Chieftaincies in South Sudan are often hereditary. After a chief’s death or dismissal, community members or close relatives of the former chief either select or elect a new chief.



A group of chiefs, elders, and community members chatting between two court cases in Wanyjok (Aweil East County, South Sudan). Photo: Martina Santschi (2009)



**Martina Santschi**  
 PhD candidate, swisspeace,  
 Institute for Social Anthropology  
 University of Bern  
 martina.santschi@swisspeace.ch

## Policy implications of NCCR North-South research

- Chiefs have an important role to play in humanitarian, state-building, development, and peacebuilding endeavours in South Sudan. External actors must take them into account in policies and programme implementation, for instance in service delivery and social protection.
- Although they enjoy high legitimacy in the eyes of local people, the role of chiefs remains contested.
- Traditional authorities should not be idealised, and they should not be the exclusive local partners for development efforts. Local government institutions and groups such as youth, women, political parties, and community-based organisations should also be involved in such activities. Otherwise external actors may empower one stakeholder group at the cost of others, so causing tensions.
- Further research is needed to gain insights into the relations between chiefs, communities, and local government institutions.

### Further reading

- Buur L, Kyed HM.** 2007. *Traditional Authority and Democratization in Africa*. New York, USA: Palgrave Macmillan.
- Hagmann T, Péclard D, editors.** 2011. *Negotiating Statehood: Dynamics of Power and Domination in Africa*. Oxford, UK: Wiley-Blackwell.
- Leonardi C, Moro LN, Santschi M, Isser DH.** 2010. *Local justice in Southern Sudan*. Washington, DC: United States Institute of Peace and Rift Valley Institute.
- OECD/DAC.** 2008. Service delivery in fragile situations: key concepts, findings and lessons. *OECD Journal on Development* 9(3):1–54
- Santschi M.** 2012. *Negotiating authority and statehood in post-conflict South Sudan*. [Upcoming PhD thesis].

**Santschi M.** 2010. Between community and government: Traditional authorities in post-conflict Southern Sudan. *Tsantsa* 15:108–11.

**Santschi M.** 2008. Counting 'New Sudan'. *African Affairs* 107(429):631–40.

The NCCR North-South is a worldwide research network including six partner institutions in Switzerland and some 140 universities, research institutions and development organisations in Africa, Asia, Latin America and Europe. Approximately 350 researchers worldwide contribute to the activities of the NCCR North-South.

### Regional Coordination Office

Berhanu Debele  
 Haile Gebre Selassie Avenue  
 W 17 K 13 House No 510  
 Addis Abeba, Ethiopia  
 nccrhorn@ethionet.et

### This issue

Series editor: Berhanu Debele  
 Advisers: Didier Péclard, Hans-Rudolf Wicker  
 Editor: Paul Mundy  
 Design: Simone Kummer  
 Layout: Bersabel Alemayehu  
 Printed by: Master Printing Press

The NCCR North-South is co-financed by the Swiss National Science Foundation (SNSF), the Swiss Agency for Development and Cooperation (SDC) and the participating institutions. The views expressed in *evidence for policy* belong to the author(s) concerned and do not necessarily reflect the opinions of the funding agencies, the overall NCCR North-South network, or other institutions.



**Citation:** Santschi M. 2012. *Chiefs, state-building, and development in independent South Sudan*. Evidence for Policy Series, Regional edition Horn of Africa, No. 5, ed. Berhanu Debele. Addis Abeba, Ethiopia: NCCR North-South.

### evidence for policy

*evidence for policy* provides research highlights from the NCCR North-South on important development issues. The policy brief series offers information on topics such as governance, conflict, livelihoods, globalisation, sanitation, health, natural resources and sustainability in an accessible way. *evidence for policy* and further research information are available at: [www.north-south.unibe.ch](http://www.north-south.unibe.ch)