# State-building South Sudan : discourses, practices and actors of a negotiated project ( 1999-2013)

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# State-building South Sudan.

## Discourses, Practices and Actors of a Negotiated Project (1999-2013)

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## Abstract

State-building programs supported by the international donor community since the end of the 1990s in 'post-conflict' contexts have often been considered ineffective. Analyzing the state-building enterprise in South Sudan in a historical perspective, this thesis shows how these programs, portrayed as technical and apolitical, intertwine with the longer term process of state formation with its cumulative and negotiated character. This negotiation occurs in an arena created by the encounter between international programs and local actors.

The thesis will focus on three sectors in which the 'local communities' have been given an important role as right-bearing subjects: the local government reform, the delivery of basic services and the land reform. As collective rights to land, services and self-rule are managed by traditional authorities, the customary sphere overlaps with the bureaucratic sphere of the modern state, encouraging the ethnicization of South Sudanese politics. The formulation of laws and policies in these three sectors provides the 'rules of the games' influencing local actors' interaction with the state, as they understand them to be necessary to gain access to state resources. Two kinds of dynamics emerge from these interactions: horizontal ethnic fragmentation and vertical patronage relationships. Discourses on administrative effectiveness and efficiency create a communal subject which contributes to re-politicize (and ethnicize) the state-building process through the appropriation of these discourses by local population and their traditional authorities.

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## Acknowledgments

Writing this thesis has been, overall, an exercise in trying to making sense of an overwhelming amount of information, data and experiences. At the beginning of my PhD, I had an idea, like a melody in my mind, which I knew I wanted to do research on. But the more I moved forward, the more the number of melodies overlapping with mine increased, fed by readings, fieldwork, discussions with professors, peers and friends. Like an orchestra with no director, in which everyone plays his/her own instrument with no regard to what the others are doing, my head was full of what seemed to be senseless noise for quite a long time, before I could finally find my way through it and put it back it into what sounded as a new, richer music. This would never have been possible without the help of the many people who contributed to the re-establishment of an acceptable – though still incomplete - degree of order in what I wanted to say.

First of all, I would like to thank my two supervisors, Cristina Ercolessi and Johanna Siméant, who have, in different ways, supported and encouraged my work all along these four years.

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## Acronyms

BDC: Boma Development Committee
BSF: Basic Services Fund
CANS: Civil Authority of the New Sudan
CBO: Community Based Organization
CDC: County Development Committee
CDF: Constituency Development Fund
CETC: Central Equatoria Teak Company
CLSA: Civil Society Land Alliance
COTAL: Council of Traditional Authority Leaders
CPA: Comprehensive Peace Agreement
CRS: Catholic Relief Services
CSO: Civil Society Organization
DATT: Development Assistance Technical Team
DFID: Department for International Development
EC: European Commission
FAO: Food and Agriculture Organization
GIZ: German International Cooperation
GOSS: Government of Southern Sudan
GRSS: Government of the Republic of South Sudan
GTZ: German Technical Cooperation
ICSS: Interim Constitution of Southern Sudan
IDP: Internally Displaced Person
JAM: Joint Assessment Mission
JIU: Joint Integrated Units
LGA: Local Government Act
LGB: Local Government Board
LGF: Local Government Framework
LGRP: Local Government Recovery Program
LGSD: Local Governance and Service Delivery
MAF: Ministry of Agriculture and Forestry
MDTF: Multi-Donor Trust Fund
MoFEP: Ministry of Finance and Economic Planning
NCP: National Congress Party
NIF: National Islamic Front
NPA: Norwegian People's Aid
NPM: New Public Management
NRC: Norwegian Refugee Council

OECD/DAC: Organization of Economic Cooperation and Development/ Development Assistance Committee

OLS: Operation Lifeline Sudan

PDC: Payam Development Committee

PMU: Project Management Unit

RASS: Relief Association of South Sudan

SAF: Sudan Armed Forces

SANU: Sudan African National Union

SAPs: Structural Adjustment Programs

SINGO: Sudan Indigenous Non-Governmental Organization

SPLM/A: Sudan People's Liberation Movement/Army

SPLM-IO: SPLM in Opposition

SRRA: Sudan Relief and Rehabilitation Association

SRRC: Sudan Relief and Rehabilitation Commission

SSLC: South Sudan Land Commission

STAR: Sudan Transitional Assistance for Rehabilitation

TCRSS: Transitional Constitution of the Republic of South Sudan

UNDP: United Nations Development Program

UNICEF: United Nation Children Fund

USAID: United States Agency for International Development

WFP: World Food Program

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## Introduction

### 1. South Sudan: outlining the context between conflict and post-conflict

South Sudan has a somewhat peculiar history, being the second country of the African continent, after Eritrea, having obtained independence through secession. Its conceptual existence as a region can only be dated to the latest phases of the Anglo-Egyptian colonialism, and was always determined by external pressures (Islam from the North, the need of defining the borders with the neighbouring colonies) rather than by any internal uniformity in the exercise of power. Unsurprisingly for a region defined in opposition to another region but entrusted to that very region with the consequent exclusion from power and wealth of the local populations, Southern Sudan's post-colonial history is marked by conflict.

As will be shown in more detail in chapter 2, since the establishment of the Anglo-Egyptian Condominium in 1899 and throughout the post-independence period, the region was absorbed in a peripheral position into broader state systems based in Khartoum. Its peoples resisted marginalization through two successive wars, the first fought by the rebels of the Anyanya I between 1955 and 1972, and the second fought by the SPLM/A between 1983 and 2005. Neither of them was characterized by a clear-cut north-south front: both saw in fact the emergence of a multitude of southern armed militias fighting against each other and opportunistically allying with one side or the other to the conflict. During the years of the second civil war, this phenomenon reached such dimensions that it is estimated that southern internecine wars caused more casualties than actual clashes between the Sudan Armed Forces (SAF) and the SPLA, also due to Khartoum's policy of 'divide and rule' – supporting armed militias against the SPLA to lower the costs of the war both in terms of northern casualties and in term of actual economic expenditures. Some of these militias were founded as self-defense forces against what was perceived as an abusive occupation of non-Dinka areas by the allegedly Dinka-dominated SPLA (for example in the Equatoria region); others were simply created out of army generals' greed who sold their services to the government in exchange of promises of power and money (for example the Bul Nuer militia led by Paulino Matiep in Western Upper Nile). While political tensions on ethnic basis were

common since the very end of colonialism in the southern region of Sudan, and to some extent contributed to the failure of the Addis Ababa Agreement which ended the first civil war in 1972 (see chapter 2), the year 1991 represented a turning point in the history of political ethnicity in southern Sudan. In 1991, Riek Machar Teny and Lam Akol, respectively a Nuer and a Shilluk from Upper Nile, broke away from the SPLM/A led by John Garang, a Dinka from Bor, accusing him of authoritarian rule and blaming the SPLM/A for being dominated by Dinka. In the years that followed (which saw a very short alliance between Riek Machar and Lam Akol, and many more micro-splits in southern rebel movements)[1] the Dinka-Nuer fault line became the most serious internal front. Accounts for mass atrocities committed by all the parties to the conflict are numerous and detailed[2]; yet, when the end of the war with Khartoum was approaching, the SPLM/A managed to reabsorb a large part of the militias either right before or soon after the signing of the peace agreement, incorporating their leaders into the newly obtained state apparatus in government or high ranking military positions. Garang's goal was a united New Sudan, but his was a minority position. When he died in a helicopter crush, six months after the signing of the CPA (July 2005), all the attention was focused on the process that would have brought South Sudan to secession through the referendum in 2011, and the new Government of Southern Sudan concentrated its efforts on keeping centrifugal forces under control in order not to undermine the peace process. In spite of being considered as a 'post-conflict' context, between 2005 and 2011 inter- and intra-ethnic violence continued to be a feature of people's everyday lives. Besides a few failed disarmament attempts targeting civilian population, the phenomenon was largely ignored for the sake of the smooth transition through the phases foreseen by the CPA: election in 2010 and referendum in 2011. In 2010, highly contested elections at state level caused several politically-motivated rebellions against the SPLM/A, which were addressed largely through amnesty for their leaders and cooptation into the government-military apparatuses. This cooptation strategy, already employed in 2006 to absorb local militias, continued also after independence was reached, but by then there was no longer a common enemy to invoke to foster internal cohesion, nor a process to be safeguarded from external 'threats'. Fault-lines within the

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[1] Douglas H Johnson, *The Root Causes of Sudan's Civil Wars* (Bloomington; Kampala: Indiana University Press ; Fountain Publishers, 2003); John Young, *The South Sudan Defence Forces in the Wake of the Juba Declaration* (Geneva: Small Arms Survey, 2006); Human Rights Watch, *Sudan, Oil, and Human Rights* (New York: Human Rights Watch, 2003).

[2] See for example: Human Rights Watch, *Sudan, Oil, and Human Rights*; African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*, 1997, http://beta.justiceafrica.com/publications/online-books/food-and-power-in-sudan-a-critique-of-humanitarianism/.

political leadership of the SPLM, which had been kept at bay during the interim period, started re-emerging when calls for internal political reforms were ignored by the President Salva Kiir Mayardiit. In 2013, after a year of austerity measures[3] which had caused huge cuts to state expenditures particularly affecting the salaries of lower ranking government and military officers (both in the amount and in the regularity of payment), political tension started increasing. Riek Machar declared his intention of running in the election for SPLM leadership in 2015. After a couple of months, Taban Deng Gai, Unity State governor and Machar's close ally, was removed and, by August, a huge reshuffle in the national government brought to the dismissal of Machar himself from his position of Vice President. The mounting political tension culminated in December 2013 when a group of senior SPLM members held a press conference accusing the government of 'dictatorial tendencies' and, less than a week later, walked out of the National Liberation Council (the party legislative organ) meeting. One day later, clashes broke out in Juba between factions of the presidential guard and rapidly extended to several areas of the country relying on locally formed militias unhappy with government policies. Riek Machar put himself at the head of the rebels, named SPLM/A-In-Opposition. While accusing each other of tribalism and of targeted ethnic killings, neither of the parties explicitly used ethnicity to mobilize support; yet, through the construction of an alien ethnic threat, the Dinka-Nuer fault-line was revitalized in a more subtle way[4]. What was impressive, was the extreme rapidity with which a purely political conflict was framed as an ethnic one, based on an idea of ethnicity as natural and immutable attribute of human beings. This was possible thanks to the legacies of the past wars, but also, as we shall see, thanks to the system of 'incentives' that successive 'post-conflict' reforms created making ethnic belonging a vital vehicle of local citizenship rights.

After the outbreak of the war in December 2013, some have started questioning the technical approach to state-building that had been undertaken in South Sudan[5]. Maxwell and Santschi maintain that there was a change in

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[3] Austerity measures were adopted after the decision of suspending oil extraction as a form of retaliation against Khartoum, accused of diverting oil from southern wells through its pipelines.

[4] Andreas Hirblinger and Sara de Simone, "What Is 'Tribalism' and Why Does It Matter in South Sudan?" *African Arguments*, December 24, 2013, http://africanarguments.org/2013/12/24/what-is-tribalism-and-why-does-is-matter-in-south-sudan-by-andreas-hirblinger-and-sara-de-simone/.

[5] Sara Pantuliano, "Donor-Driven Technical Fixes Failed South Sudan: It's Time to Get Political," *Think Africa Press*, January 9, 2014, http://thinkafricapress.com/south-sudan/donor-driven-technical-fixes-failed-time-put-politics-heart-nation-building-project-kiir-machar-garang; Daniel Maxwell and Martina Santschi, "From Post-Conflict Recovery and State Building to a Renewed Humanitarian Emergency: A Brief Reflection on South Sudan," Discussion Paper,

attitude in the relations between the Government of the Republic of South Sudan (GRSS) and the donors, because the latter are no longer ready to blindly support the SPLM government as they had been doing since 2005. This caused Government's complaints of a return to state-avoiding NGOs and has resulted in the worsening of relations between the government and the international donor community[6].

As this brief account of Southern Sudan's political whereabouts shows, in spite of having been defined as a 'post-conflict' context after the signing of the CPA, the region has been characterized by a situation similar to what Marielle Debos calls "*l'entre-guerre*" with regard to the attitude of people always waiting for the next war-like episode[7]. Indeed, while the CPA represented an important step towards a normalization of the security situation in the South, it did not at all represent a neat break with the pre-existing situation. Violence has remained a constant feature of people's everyday lives: in spite of the ceasefire between the SPLA and the SAF, there were numberless local armed militias controlling micro-portions of the southern territory, and they continued posing threats to civilian security at least until the Juba Declaration in 2006, which absorbed the majority of them into the SPLA. In 2006, there was fighting between factions of the Joint Integrated Unit (JIUs), one of the military institutions created as an outcome of the peace process and composed of members from SPLA and SAF. Although Rolandsen urges not to underestimate the  impact of the CPA on southern Sudanese general perceptions of security[8], a situation of continued clashes between local armed groups against the government continued to such an extent that in 2009 the number of casualties of intra-south violence (in a 'post-conflict' situation) was higher than that of Darfur (a conflict situation)[9].

Clearly, the neat division between conflict and post-conflict times is a discursive artifact. It plays a foundational role in state-building projects in conflict-affected societies, justifying the deployment of international apparatuses of intervention. Interventions often rely on the idea that a state after war is a 'blank state': this assumption was quite visible for example in the case of Afghanistan, often defined as 'ground zero' after the Talibans were

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Researching Libelihoods and Services Affected by Conflict (Secure Livelihoods Research Consortium, Feinstain International Center, August 2014).

[6] Maxwell and Santschi, "From Post-Conflict Recovery and State Building to a Renewed Humanitarian Emergency: A Brief Reflection on South Sudan."

[7] Marielle Debos, *Le Métier Des Armes Au Tchad: Le Gouvernement de L'entre-Guerres*, Les Afriques (Paris: Éditions Karthala, 2013).

[8] Øystein H. Rolandsen, *Land, Security and Peace Building in Southern Sudan*, PRIO Paper (Oslo: PRIO, 2009).

[9] International Crisis Group, *Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan*, Africa Report 154, 2009.

defeated[10]. Besides Marielle Debos, other authors have questioned the analysis of war and peace as two clearly distinct entities, preferring the image of a continuum between them along which statehood is negotiated[11]. Didier Péclard and Delphine Mechoulan, for example, draw attention on the literature of rebel governance for better understanding the continuities in the modes of governance in the process of state formation[12]. Similarly, Roland Marchal invites to look at the continuities of economic practices of rebel leaders and at their strategies of control of the population characterizing war- and peace-time. The case of the Eritrean People Liberation Front (EPLF), illustrated by Marchal as one example of great continuity in the war and post-war strategy of control of the population, is particularly instructing also for the case of South Sudan. Once it obtained independence and it became the Eritrean ruling party, the EPLF kept the same modalities of forced recruitment into the national army (calling it national service) and of strict control of all the aspects of life of civilian population (particularly education) with the same kind of rhetoric of the guerrilla years[13].

As we shall see, this kind of continuities is also evident in South Sudan. Firstly, the civil administrative structure created by the SPLM during the war, the Civil Authority of the New Sudan (CANS), was institutionalized into the new Local Government system under the Southern Sudan regional government in 2005. Secondly - and more importantly, as in the case of the EPLF illustrated by Marchal - the SPLM retained the same strategies it used during the war for keeping control of the population. Faced with a huge territory characterized by great ethnic fragmentation and local animosity, it adopted a strategy based on individual co-optation not only of traditional authorities, but also of military leaders and their followers, through a system of rewards relying upon participation to the state apparatus[14]. While certainly providing the necessary conceptual background to state-building interventions, a neat distinction

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[10] Christopher Cramer, *Civil War Is Not a Stupid Thing: Accounting for Violence in Developing Countries* (London: C Hurst & Co Publishers Ltd, 2006).

[11] Martin Doornbos, "Researching African Statehood Dynamics: Negotiability and Its Limits," *Development & Change* 41, no. 4 (July 2010): 747–69; Didier Péclard and Delphine Mechoulan, "Rebel Governance and the Politics of Civil War," Working Paper (Swiss Peace, 2015); Debos, *Le Métier Des Armes Au Tchad*; Roland Marchal, "Les Frontières de La Paix et de La Guerre," *Politix* 15, no. 58 (2002): 39–59; Cramer, *Civil War Is Not a Stupid Thing*.

[12] Péclard and Mechoulan, "Rebel Governance and the Politics of Civil War."

[13] Marchal, "Les Frontières de La Paix et de La Guerre."

[14] Wolfram Lacher, "South Sudan: International State-Building and Its Limits," *German Institute for International and Security Affairs*, Research Paper, 4 (February 2012), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP04_lac.pdf.

between conflict and post-conflict time would thus hinder the analysis of these continuities and of their implications in the state formation process.

## 2. Origins and subject of the research

When I first travelled to Southern Sudan, it was October 2010. The region was still under the jurisdiction of the Government of National Unity based in Khartoum, yet the Government of Southern Sudan acted - and was treated by its 'international partners' - as the *de facto* ruler of a sovereign state. I entered Southern Sudan with a travel permit valid in the southern region released by the SPLM office in Nairobi: at that time, it was a much easier way to access Southern Sudan than applying for a visa in Khartoum, especially if travelling, as I was, with NGOs[15].

By then, I was doing a Master in Development Studies and wanted to conduct field research for my dissertation on grassroots peace initiatives. The easiest access to the field was applying for an internship with the Italian NGO Mani Tese, with which I had been working in Italy. In 2010, Mani Tese had started supporting a pilot project on the border between Unity and Warrap States aimed at organizing reconciliation meetings and conferences between the Nuer and Dinka communities of the area, which had been divided by ten years of inter-communal fighting along the fault line created by Riek Machar's defection from the SPLM/A in 1991. That looked like a perfect case study for my dissertation.

When I started working on the project, I was soon involved in other 'grassroots peace initiatives' organized by various international NGOs and I was struck by the amazing number of conferences and workshops which were being organized and held by international NGOs with the participation of local traditional authorities and sometimes a faint presence of local government officials. These conferences and workshops typically involved transporting people from one place to another, providing them with food and over-night accommodation (and, sometimes, sitting allowances), allowing local authorities to give their ceremonious speeches, facilitating the audience (usually made of representatives of artificially distinct social groups) in the advancement of claims directed to the government, writing down resolutions and getting

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[15] For my NGO, it was particularly problematic: just one year before, after the warrant of arrest released by the International Criminal Court for Omar el Bashir, Sudan's President since the coup in 1989, it was silently kicked out of the country due to its partnerships with Sudanese NGOs working on the protection of human rights in Darfur. Its representative was only able to obtain a visa to go back to Khartoum and close the office in 2012.

somebody (traditional authority, local government officials or both) to sign them. Moreover, they created joint committees, courts and various other hybrid structures with ambiguous statuses which in fact very rarely lasted more than one season, as they were usually tasked with the regulation of movement of people and cattle. I then started asking to myself how much of all this was really about peace-building - a distant concept in a country still flooded with weapons and ravaged by cattle-raids and memories of inter- and intra-ethnic massacres - and how much it was instead about different sources of authority displaying their respective role and position, their respective capacity of showing their worthiness to their local constituencies through being involved in events organized by external resource-providers, and their ability to harvest what sometimes came after words had been spoken[16]. More importantly, how much of it was in fact contributing to the creation of communal constituencies, while the effort at state-building South Sudan was blooming. People seemed to use these arenas to advance broader and diverse claims upon the state and better access to resources. My research subject emerged out of this experience.

This thesis will try to explore the encounters between contemporary international state-building programs, and state formation, understood, following Berman and Lonsdale, as the "historical process whose outcome is a largely unconscious and contradictory process of conflicts, negotiations and compromise between diverse groups whose self-serving actions and trade-offs constitute the 'vulgarization' of power"[17]. More specifically, it will try to look at how the material and symbolic resources provided by the international state-building enterprise are turned into different forms of capital[18] that could be accumulated by different actors in the process of state formation. The state-building enterprise in what was labelled as 'post-conflict' South Sudan after the Comprehensive Peace Agreement (CPA) was signed in 2005, represented an arena of negotiation on the region's statehood among these various actors. This negotiation, however, did not involve uniquely actors who directly dealt with donors (such as representatives of the SPLM and of the Government of Southern Sudan), nor those who occupied positions that bore access to institutional power. Rather, plenty of ordinary South Sudanese, faced with a rapidly changing institutional environment and with new opportunities of access to resources

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[16] Especially in the early 2000, peace conferences were often followed-up through the provision of material improvements such as boreholes or roads to be jointly maintained by conflicting communities as an incentive for peace.

[17] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* (Athens: Ohio University Press, 1992) p.5.

[18] Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field," *Sociological Theory* 12, no. 1 (1994): 1–18.

previously thought out of reach, engage in this negotiation in their everyday lives, contributing to the broader process of state formation.

# 3. Defining the subject: how not to be overwhelmed by complexity

The research subject defined in these terms was extremely broad, and boundaries needed to be set in order to get to a manageable research object.

## 3.1 What? Defining object(s) of research: state formation through decentralization, service delivery and land tenure reform

Even limiting oneself to programs implemented as part of state-building interventions, there were numberless aspects that could be analyzed. I chose to focus on three specific aspects which can be considered as important elements of the internationally-sponsored state-building project and which constitute the subject of chapter 4, 5 and 6 respectively. They are the decentralization policy framework, the establishment of structures and procedures for service delivery and the land tenure reform. Although not being always directly linked with discourses on strengthening the state control apparatus and stabilizing the security situation (which constitute the core of state-building interventions[19]), all the three of them have seen an important international engagement through programs aimed to support local state structures' capacity, reflecting the recent conceptualization of state-building provided by the OECD-DAC as an exercise involving not only institution-building, but also the creation of legitimacy through effective delivery[20]. Besides being supported by the international donor community, the three aspects are also endorsed by the SPLM/Government of Southern Sudan and by other south Sudanese actors, with different and sometimes competing purposes. These three areas of intervention, therefore, provide 'negotiating arenas'[21] where different actors confront each other and foster their own idea of the state albeit using the same discourses borrowed from the donor community. Not only do these three areas of intervention provide negotiating arenas: in the process of their institutionalization they also contribute setting certain 'rules of the game' encouraging people to act in one

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[19] Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge, U.K. ; New York, NY: Cambridge University Press, 2004).
[20] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).
[21] Tobias Hagmann and Didier Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa," *Development and Change* 41, no. 4 (2010): 539–62.

way or another in their everyday interactions with the state and its structures, therefore influencing the historical process of state formation.

### 3.2 When? Setting temporal boundaries: 1999-2013

The international state-building project was officially launched in 2005, when the Government of Southern Sudan was created out of the CPA and when the international donor community could officially start engaging with a southern institutional subject in a virtually totally independent way from the Government in Khartoum. This order of things was the one described in Critical Peace Studies literature, the body of works I initially approached to make sense of the peace-cum-statebuilding enterprise: peace agreement, declaration of 'post-conflict' character of an area, warnings about its fragility, deployment of peace/state-builders. In fact, at a closer look, the state-building enterprise in the southern region of Sudan did not start in 2005, but well before. While processes of state formation (and vague attempts at state-building) where on-going since colonialism, drawing precise patterns of power and wealth accumulation linked with the existence of a state apparatus, contemporary engagement of the international 'army of capacity-builders'[22] with the local major power-holders started well before. I identified 1999 as the year of its inception: in that year, the Sudan Transitional Assistance and Rehabilitation (STAR) project was implemented with funds from USAID and the participation of UNICEF as one of its implementing partners. The STAR project, the first of this kind, was explicitly aimed at increasing the SPLM/A's government capacity and thus, though not explicitly, at creating of a state-like structure capable of controlling southern 'liberated' areas through a bureaucratic system. Although part of the thesis is concerned with outlying the dynamics of state formation before this date, starting from 1820 (when centralized bureaucratic states started trying to absorb Southern Sudan firstly in their political economy and later on as part of their territory), 1999 represents the 'opening date' of my thesis.

For quite obvious reasons, 2013 represents the 'closing date'. In 2013, when what was for long time called 'crisis' - before turning to the longer-term 'war' terminology – broke out, I was in Juba. Everybody knew something was going to happen, as political tensions had been growing in the previous months. Few people were expecting such large scale havoc.  When the 'crisis' broke out, I initially saw my state-building research fading away, but I later realized that what was happening was just consistent with South Sudan's pattern of state

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[22] Greg Larson, Peter Bier Ajak, and Lant Pritchett, *South Sudan's Capability Trap: Building a State with Disruptive Innovation*, Working Paper 268 (Center for International Development at Harvard University, 2013).

formation, made of constant struggles to control the state apparatus shaped by 'incentives' of producing certain kinds of narratives based on ethnicity provided by the general context. These incentives had been reproduced throughout the interim period, between the signing of the Comprehensive Peace Agreement and the referendum for independence (2005-2011) and also after secession from Sudan. However, I left the country in December 2013, and since then the institutional as well as 'real governance' systems have been increasingly complicating, as new opportunities of claiming access to power and resources through violence - instead of negotiation – produced the emergence of a number of new actors. The end of 2013 became then the closing date of my research.

### 3.3 Where? Approaching the field:  encounters with South Sudan in Unity, Central Equatoria and Lakes states

South Sudan covers an area as big as France, but with its small, scattered population – 8.26 million according to the disputed census results, around 12 million according to more recent estimates by the World Bank[23] – and its poor road and connection networks, it seems even larger. All researchers having approached South Sudan as a case study have acknowledged its extreme diversity, not only in terms of ethno-linguistic groups but also in terms of local modes of governance and in the implementation of central authority's directives[24].

In my initial choice of studying South Sudan, I was very aware of the challenges of moving in such a difficult context where the typical complexities of accessing the field were worsened by continuous security threats and almost non-existent infrastructures. I had in mind to pick three localities from the three greater regions of Upper Nile, Bahr el Ghazal and Equatoria, which I did, but I have to admit that the final destinations were picked largely by chance, according to access opportunities I managed to find, and often limited by insecurity and by amazingly high costs of stay[25]

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[23] See the World Bank website: http://www.worldbank.org/en/country/southsudan, accessed on 13 March 2016.

[24] Sharon Elaine Hutchinson, *Nuer Dilemmas: Coping with Money, War, and the State* (University of California Press, 1996); Johnson, *The Root Causes of Sudan's Civil Wars*; Øystein H. Rolandsen, *Guerrilla Government: Political Changes in the Southern Sudan During the 1990s* (Nordic Africa Institute, 2005); Zachariah Cherian Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life during War* (Ithaca, N.Y: Cornell University Press, 2011); Cherry Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community & State*, Eastern Africa Series (Woodbridge, Suffolk: James Currey, 2013).

[25] Between 2013 and 2015, Juba kept the second and first positions among the most expensive cities in the World according to ECA international (see: Oliver Graham, "Cost of Living around the Globe," *ECA International*, February 18, 2013, https://www.eca-international.com/insights/articles/february-2013/cost-of-living-around-the-globe;        ECA

After the first visit to South Sudan, which had brought me to Bentiu (Unity State, in the western part of the Greater Upper Nile region) between October and December 2010, my research benefited from three more fieldwork periods: February-April 2012, January-March 2013 and, lastly, October-December 2013[26]. Mani Tese, the Italian NGO which had facilitated my first trip to Bentiu, played a decisive role in the organization of the first two of my fieldwork visits. In 2012, I was contracted to conduct a research for the NGO in the framework of the EU funded project "Grabbing Development – towards new models of north/south relations for a fair exploitation of natural resources". The research was about large scale land investments by European companies in developing countries, and South Sudan was one of its case studies. This project brought me to Central Equatoria: Juba, Terekeka, Lainya and Yei counties. I found myself in a position frequently shared by researchers with difficult fields[27]: I was conducting two researches in parallel. Although the subjects of the researches were different, still I was reaching the field with an NGO car and people knew I was somehow linked to the NGO world even when I conducted interviews which were not related to the research for the NGO. This obviously put me in the position of receiving incessant requests for development projects, but it also produced encounters which I would probably not have sought for (for example, those with foreign companies, see chapter 6).

During the second fieldwork period, I went back to Bentiu. This time, the NGO asked me to do some couching to the local partner. They were implementing two projects: one agricultural project in Pariang County, and one advocacy project in Bentiu town aimed at strengthening civil society networks advocating for a safe environment in areas badly polluted by oil extraction. This gave me the opportunity of a very close insight on Unity state dynamics in terms of power relations between 'civil society' and the local government. Again, however, I found myself in the difficult position in-between development

International, "Juba Tops the List of Most Expensive Cities for Expatriates," June 11, 2015, https://www.eca-international.com/news/june-2015/juba-tops-the-list-of-most-expensive-cities-for-ex.) Just to give an idea of housing prices outside the capital city, in Bentiu in early 2013 I was paying $30 per night for staying in an iron-sheet hotel with no water and only 4 hours electricity in the evening. Prices of rooms in NGO or international organizations compounds ranged from $50 to $100 per night. In Juba, it is impossible to find accommodation cheaper than 70$ per night, with the exception of the Comboni compound (50$) which however, by the end of 2013, was not renting rooms to strangers anymore.

[26] The last period was abruptly interrupted by what for a very long time observers have referred to as "the crisis", which in fact started the 'new' South Sudanese civil war on the 15th December 2013.

[27] Justine Brabant, "Peut-on faire de la recherche au sein d'une ONG ?," *Genèses*, no. 90 (June 1, 2013): 42–61; Johanna Siméant, Victoria Lickert, and Florent Pouponneau, "Échelles, Récifs, Bureau - Terrains Du Politique à L'international," in *Guide de L'Enquête Globale En Sciences Sociales,* by Johanna Siméant (ed.) (Paris: CNRS Editions, 2015).

worker and researcher, participating to NGOs coordination meetings and to meetings with local authorities on behalf of the NGO, struggling not to be swallowed up by the 'aid-workers' world and life-styles. While this was relatively easy in small contexts such as Bentiu, Pariang, Yei, Lainya and later on Rumbek, where I managed to move around by myself on foot without necessarily bearing any NGO recognizable mark, it proved to be much more difficult in Juba, where distances, the cost of life and the presence of the state security apparatus were amazingly higher and difficult to deal with on a solitary basis.

Yet, for my last fieldwork period, I decided to emancipate myself from NGO constant presence and to plan my trip asking for an invitation from the Department of Social and Economic Affairs at the University of Juba. Although this invitation proved to be nothing more than a pro-forma piece of paper (I did not manage to cooperate with the University in any way during my stay), it allowed me to enter the country without the usual NGO invitation letter. As I had already visited locations in Central Equatoria and Unity States, I decided to go to Bahr el Ghazal and I found contacts with the Comboni missionaries in Lakes State through a friend who had been working in Rumbek. I found out that being Italian was quite an asset in South Sudan, and with no difficulties I rapidly managed to create a network of Italian Comboni contacts that helped me organize my stay in Rumbek and Mapuordit. The last field period was revealing about the NGO-bias of my research: even though I was now not going around with NGO vehicles, frequenting NGO compounds (except for interviews with local staff and for a few days in Yirol, where I was hosted by an Italian NGO working in the area), still I was identified with the aid industry. Requests for schools, health, water and sanitation facilities, consultative workshops to assess the 'community's' needs were routinely advanced every time I approached a group of people, a local customary court and sometimes even government officials. These requests were the same if I arrived with a white NGO-car, or if I jumped up and down tuc-tucs, matatus, or boda-boda[28] –though in this second case, providing a much more hilarious show for my interlocutors, who were clearly not accustomed to seeing a *khawaja[29]* wandering around with no car. I thus made my mind that the most challenging thing was not really to move around with NGOs, but to be a white person in a place which has been flooded with aid for decades, where white persons are popularly associated with aid providers and have therefore to be convinced of the condition of victims of their interlocutors.

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[28] Local public transport names: open taxi on three wheels, mini-bus and moto-taxi.
[29] Local expression for 'white person'.

Being a white person was not the only identity I had to become aware of during my fieldwork. Also, I was a young woman, I was a student, and I was Italian. The combination of these identities played out in sometimes weird ways, especially when my interlocutors were elderly men or people occupying positions of power. Firstly, being a young woman could have been disadvantaging if it was not for my student status. Although I was white, and because of the association of whites to resource provision I was always recognized some potential power, my being young was also tempered by my status of being a student. All South Sudanese I have met placed great value on education, and questions on how to get a scholarship to study in Europe were just as frequent as those for building schools and wells. Yet, my being young (and so not totally credible as a serious interlocutor for businesses which are not usually of interest of *khawaja* young women) was an asset. Between one joke about my age and another one about my weird status of not being married ("Ok, I can understand no children because you are studying, but how comes you are not married?", asked me once a local politician in Unity State) I sometimes had the feeling that some of my male, older, government interviewees were telling me things that they would have probably been more cautious to tell to a man in my same position, just because they did not take me very seriously. Finally, my being Italian was also a very nice way of creating a relationship of trust in a context where Italian Comboni fathers have been the only education-providers for many years and are considered to be the best friends of the South Sudanese people (as it is testified by the many Italian – or Italian-like- names circulating in South Sudan: Paolino, Santino, Teresa, Maria, Kerubino, Rebecca, etc.).

### *3.4 How? The sources*

As I already mentioned, I initially approached state-building through Critical Peace Studies literature, to turn to African Studies literature to better account for state formation and practices of state making. However, since I was studying the field of international reforms and how they were presented to South Sudan in the form of discourses and practices, I also had to face an enormous amount of grey literature produced by international organizations and think tanks on state-building in general, and on state building in South Sudan. Even when they did not use the word state-building and rather referred to local governance, empowering local government for service delivery, decentralization, etc., still they were addressing issues that did fall into the hodgepodge of state-building activities. Part of this literature can be found in

the bibliography of this thesis, and it was used not so much as a source of raw data (which are sometimes provided in specific reports), but rather to provide definitions of concepts and of their discursive power in the context of intervention, particularly to show how they are played out also by actors different from their original inventors.

The second source of my research was secondary literature on Sudan and South Sudan, both produced by academic institutions and by donor agencies. Particularly, a growing body of literature has tried to account for mechanisms of local governance in Southern Sudan[30], and some effort has been also put in the evaluation of external (humanitarian) intervention in SPLM-controlled territories[31]. These works constitute an important point of departure for my own research.

A third extremely important source upon which this thesis relies is the body of documents stored in 'archives' I had the possibility of accessing during my fieldwork. I put the word archive in inverted commas as none of them can be properly defined as an archive, but they are rather storages of various kinds of non-catalogued documents. The first and richest one is the Local Government Board Archive: a dusty room full of cartons containing documents covering a time-period going from 1999 to 2012 approximately (with a few older documents) concerning the SPLM/Government of Southern Sudan's relations with donor agencies. The documents were of various kinds, ranging from project timetables, working plans and reports, to correspondence between representatives of donor agencies or NGOs and Local Government officials, from agenda and minutes of meetings to drafts of laws and policy frameworks, from budgets of projects to budgets of local governments. There was also an entire shelf filled with the results of the civil service screening examinations held in 2007, which I was not allowed to look at for privacy reasons. These documents were progressively brought to that room starting from 2011-2012 from Rumbek and SPLM/A big men's houses in Juba. As far as I know, the SPLM does not have a proper archive, but this can certainly be considered as the closest attempt to the creation of a contemporary archive that has been willingly undertaken by the Government. A big part of my work draws upon this material,

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[30] Rolandsen, *Guerrilla Government*; Mampilly, *Rebel Rulers*; Leonardi, *Dealing with Government in South Sudan*.

[31] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*; Mark Duffield et al., "Sudan: Unintended Consequences of Humanitarian Assistance. Field Evaluation Study" (University of Dublin, Trinity College: European Community Humanitarian Office, April 2000), http://sudanarchive.net/cgi-bin/pagessoa?a=pdf&d=Dl1d19&dl=1&sim=Screen2Image; Daniel Maxwell, Martina Santschi, and Rachel Gordon, "Look back to Look Ahead? Reviewing Key Lessons from Operation Lifeline Sudan and Past Humanitarian Operations in South Sudan," Working Paper, (October 2014).

although when I came back to Juba after fieldwork in Lakes State in December 2013, the room had been evacuated due to improvement works on the building funded by the World Bank. I was told that the files had been transferred to another storage site not accessible to the public. The second 'archive' is the Land Commission's, which is even more informal than the LGB's: it is basically constituted of the two shelves in the office of the Chairman, who kindly allowed me to look at them as I was searching for information on border disputes. The third one is the Juba Archive, the only one in the process of being established as a real archive thanks to the South Sudan National Archive Project, funded successively by the United States, the British Institute in East Africa and the Rift Valley Institute, and finally by the Government of Norway. When I visited the archive, which stores government's documents from the colonial time to the early 1990s, work was in progress but it was nearly impossible to actually consult its material. Yet, in the few days I spent in the Archive, I did find a few things that proved to be interesting for my research and which I incorporated in the thesis. Finally, the Juba University Library also proved to be rich in papers about local government in the early 1980s.

The ethnographic part of my work was made of four kinds of research tools: interviews with 'key informants'; group interviews; casual encounters with ordinary people I met a the market, on Sunday morning walks, while waiting for some big wig to show up; and direct observation of a number of situations. While most of the government officers spoke English and insisted for the interviews to be conducted in English even if their knowledge of the language was weak and there was an interpreter available, all the interviews with traditional authorities or rural communities were translated from Dinka, Nuer or Arabic.

"Key informants" were of different kinds. They included representatives of the Local Government Board, officials in national ministries, local government officials, officers, administrators; they also included field staff and national representatives of donor agencies directly involved in supporting projects and programs targeting the local government or land governance, as well as NGO staff. I also interviewed several representatives of southern Sudan 'civil society' (local NGOs, community based organizations, activists on special causes, etc.) and Members of State Legislative Assemblies, who proved to be a good link between people's grievances and state administration, and were often used as 'peace mediators' if problems with a particular community arose[32]. In the case

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[32] On this kind of role of local Members of Parliament, see also Øystein H. Rolandsen, "To Mend the Broken Contract: Legitimacy and Local Government in South Sudan during the CPA-Period" (ECAS4 Conference, Uppsala, 2011).

of interviews conducted on specific projects, I always crosschecked information with available written documents which I could access either because they were public (on the internet), or through fieldwork (in an archive or in development agencies' field offices). In these cases, such as for the World Bank Local Governance and Service Delivery Project (see chapter 5) I chose to rely on oral sources in order to account for people's understanding of projects and their underlying dynamics. People interviews were often able to give more precise details on the process of implementation, once what was written on paper had to face realities on the ground.

Group interviews were many and not always planned, especially at the beginning of my fieldwork. Though I would like to call them focus group discussions, as many do, in fact when the discussion took off it was often quite out of focus from what I was actually asking at the beginning, yet it always proved extremely interesting and productive. I used group interviews to meet the local chiefs running customary courts, both because it was interesting to watch them doing their job (and having the interview when they had time), and because it was impossible anyways to have individual meetings with the chiefs: rather, many other people who were not court members attended to these group interviews (though with a lower profile than the chiefs), and it was not always possible to precisely identify who they were. For similar reason, group interviews were also helpful to meet rural communities.

Besides few examples of situations which I knew in advance and which I actively sought to attend (for example the Commissioner's Forum in Rumbek, November 2013; the launch of the New Deal Compact for Southern Sudan in Juba, November 2013; the presentation of the COTAL project in Juba, October 2013), most of the direct observation happened by chance, either because I arrived too early at an appointment (which happened quite often at courts' gatherings or outside local government offices) or just because I found myself on the spot while something was going on. Particularly, working with NGOs provided me with access to a good number of 'invited' spaces of participation and negotiation (such as community meetings and workshops). Many of the situations I happened to observe were also translated by either one of the research assistants, or by random English speaking people who were participating in it and who thought that I should have been informed of what was going on. A list of situations to which I participated is provided at the end of the thesis.

## 4. Mediated encounters

Four research assistants (one in Bentiu, one in Rumbek, one in Yirol and one in Juba who came with me to Yei, Lainya and Terekeka) played a very important role in conducting all the interviews with non-English speaking people. I met them in several different ways, and their belonging widely reflected the milieu in which I moved while doing my field research. My work with them always started from a long conversation about the topic of my research in order to gather their point of view and useful insights and suggestions as to what people they considered important for me to meet.

In Central Equatoria (2012), when I first decided I needed a research assistant, my fieldwork was mostly conducted in parallel to the research for the Italian NGO hosting me. My research assistant was S., an Azande young man from Yambio who was working for another international NGO with which we shared the compound in Juba. We did not develop a very close relationship: he mostly drove me around with the NGO car and translated my interviewees' speeches from Arabic, but was not really interested in the research I was conducting, and only occasionally shared what he thought about the topic, about situations we encountered, or about things emerged during the interviews. He was not a local in the areas we visited together (Yei, Lainya and Terekeka): if on one side this gave him some degree of neutrality with respect to local issues, making him a clear and accurate translator with no desire of interfering with the interviews, on the other this also meant that he did not necessarily know how to navigate local power relations.

In Bentiu (2013), things went differently. As the ethnic homogeneity was much higher and it was easier than in Juba to meet people from the area, I did not really have the option of choosing a research assistant who was not a Nuer. I met G. through one of the workers of the local NGO I was couching. They were both Nyong Nuer from Panyijiar County and went to school in Uganda, where they were living during the war. G. came back to South Sudan for the Referendum. He was employed as a teacher in Bentiu town, and also run a local Civil Society Organization. His deep knowledge of ethno-political dynamics in Unity State was at times very useful to adjust my interviews in order to collect the information I was looking for. His being a teacher from a Nuer section relatively neutral in the political conflicts in Bentiu Town had the interesting effect of making him a welcomed presence in several areas of the town, even in places which where famous for their population's suspicious attitude against any 'outsider' (like for example Garkuothkham area, see chapter 6). All in all, I found positive aspects of having a local, an 'insider' research assistant (well-connectedness, deep understanding of local dynamics, stronger interest in a

research conducted on issues perceived of direct concern) winning over the negative aspects (lack of neutrality, tendency to 'interfere' in interviews).

In Lakes State I had two research assistants. I was introduced to the first one, in Rumbek, by the local Town Court clerk, with whom I was put in touch by researcher Cherry Leonardi (he worked has her research assistant some years back). Since by the time we met he was employed full time at the Town Court, he introduced me to a relative of his, B. B. was a Dinka Agar, who belonged to the Amothnom sub-section of the Kuei section. He came from a quite prominent family and, in spite of his status as youth - about which he often complained -, was very quick and effective in arranging meetings with local traditional authorities and government officers. He shared with me his view about the local government in Lakes State and stories about how the longstanding feud between the Kuei and Rup section in Rumbek town started. He spoke from a partisan perspective, and actively engaged in avoiding my excursions to the Rup controlled peripheral area upon justification that they were insecure. Though feeling a bit pressured, and aware that I could have met some traditional authorities also on that side, after a couple of attempts at convincing my *boda-boda* driver to take me to Rup's controlled peripheral areas of the town, I gave up and focused on the town centre. In this case, my research assistant definitely influenced the people I managed to meet, and also had the tendency to sometimes start autonomous interactions with my interviewees, but thanks to his good local connections he also gave me the opportunity of encounters (for example with the Spear Master[33]), which would have not been possible in a relatively short period of fieldwork.

My last research assistant was A., who facilitated my meetings in Yirol West. I was put in touch with A. by the International Rescue Committee in Rumbek: he had been working for some months as a community mobilizer in the project funded by the World Bank to which I was interested (see chapter 5). Among my research assistants, he was the most effective. In a few days, I was able to meet an impressive number of traditional courts. He was very knowledgeable about issues concerning local government and traditional authorities, and often helped me to formulate my questions in a way that actually activated debates in the group interviews. He too had the tendency to sometimes 'interfere' with interviews questioning what the chiefs said, but he also provided me with the necessary background each time the chiefs mentioned events or people of which I was not aware of.

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[33] The Spear Master is a spiritual leader among the Dinka.

The contribution of these people, with all its limits and shortcomings, is invaluable.

## 5. Plan of the thesis

The first chapter of this thesis provides the theoretical framework of the study. It departs from the definition of state-building and state formation provided by Berman and Lonsdale[34] and it addresses both concepts and their operationalization in contemporary state-building interventions orchestrated by the international donor community. These interventions rely on a theoretical background associating development and security, and state fragility and global insecurity. Through a revision of academic and policy-oriented literature, it shows that state-building interventions have, in recent years, taken over an increasingly local turn, focusing on the creation of decentralized political orders and on construction of service delivery mechanisms associated with the strengthening of states' legitimacy. After discussing the elements characterizing the 'local turn' of international interventionism, the chapter will argue that the reforms pursued in a de-politicized state-building framework influence the broader, longer-term process of state formation, which is best understood as the outcome of a process of negotiation between diverse actors in a number of 'negotiating arenas'. The arenas identified in the case of South Sudan are the formulation of the decentralization policy framework, the establishment of structures and procedures for service delivery and the land tenure reform. These arenas of negotiation see the interaction of three sets of actors: those belonging to the 'international level', those belonging to the 'national' level (the rebel movement(s) and the government), and those belonging to the 'local level'.

Chapter 2 addresses the intertwining of state-building efforts and of the state formation process in a historical perspective starting from 1820, the year of Mohammed Ali's invasion of Sudan, which can be considered as the inception of a stronger influence of the international system in the political organization of local peoples. It examines the contribution of colonial rule to establish certain patterns of state formation and the efforts to build a centralized state made by the late British government, and how the post-colonial state was then challenged by the emergence of alternative forms of local governance with the outbreak of the civil wars. Patterns of violence, bureaucratization and legitimation of rule were reproduced in the colonial and post-colonial southern Sudan. Historical state formation in the southern region adjusted to cope with

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[34] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa*.

the interference of 'external' colonial state-building, was faced with the need to cope with new attempts at state-building coming from new internal and, especially in the latest phase of SPLM administrators, external actors.

Chapter 3 focuses on contemporary state-building started during the second civil war (1983-2005) and fed by the huge humanitarian industry that got involved in the Southern Sudan. It argues that there were two state-building projects at play: on one side, the internationally-sponsored one, presented as a set of technical reforms aimed at improving local governance; on the other, the SPLM's one, aiming to establish a state-like form of control of the territory through mechanisms of limitation of the use of violence, administrative practices, and some degree of legitimacy-creation through the delivery of goods and services to the local population. More or less consciously, the international community engaged in "state-building the SPLM", feeding the extraverted character of modern state formation in Southern Sudan initially through humanitarian aid, and later with programs aimed at building the capacity of the nascent government.

Chapter 4, 5 and 6 are empirical chapters and rely on my own field research.

Chapter 4 analyzes the decentralization reform implemented when the Government of Southern Sudan was created, with the support of several international organizations. Besides its ideal benefits in terms of democracy and development, one of the main reasons why decentralization was adopted as a system of government in South Sudan was indeed its function of de-activating conflicts for power at the centre, and of widening the political arena allowing more space in order to co-opt opponents. Looking at both the system of local government and of land governance, it shows how they are both based on the emergence of the concept of "community" as the basic unit of South Sudanese society.

Chapter 5 focuses on one of the aspects of the decentralization reform, namely the emphasis put on service delivery. It provides a brief overview of the provision of public services in South Sudan in the era of international state-building projects, where service delivery is considered as one of the strategies of reducing state fragility strengthening its legitimacy. Instead of describing the actual process of delivery of basic services, the chapter focuses on "the kaleidoscope of popular expectations"[35], on how service delivery is perceived to

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[35] Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds., *States at Work: Dynamics of African Bureaucracies*, Africa-Europe Group for Interdisciplinary Studies, volume 12 (Boston: Brill, 2014). p. 402

work, and in which ways these perceptions, matched with service delivery donor-sponsored projects, contribute to the process of state formation.

Finally, chapter 6 addresses the emergence of the 'community' concept in the land tenure domain, emphasizing again the convergence in the rhetoric used by the SPLM and by the 'neocustomary' trend supported by international actors. While being rooted in poverty reduction concerns and strategies based on (formal) grassroots participation in development and decision-making over resources, this approach recalls what Chauveau called 'bureaucratic populism'[36], relying on an idealistic attitude towards the 'local'. Legitimizing the community as a right-bearing subject, the land reform is often 'used' in discourses to claim rights to land both in rural and urban areas. The reform is in fact only applied selectively, giving place to a 'real governance' of land in which customary claims are advanced through discourses of belonging, leaving the definition of 'local community' to the legacy of a history of ethnic categorization of the rural population. Drawing on case studies from Unity, Lakes and Central Equatoria States, the chapter identifies two kinds of dynamics emerging from this framework: vertical dynamics (involving power relations within the 'community', questioning its homogeneous character) and horizontal dynamics (involving relations between 'communities', showing the outstanding importance of the overlapping between the local government and the land reforms).

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[36] Jean-Pierre Chauveau, "Du Populisme Bureaucratique Dans L'histoire Institutionnelle Du Développement Rural En Afrique de L'ouest," *Bulletin de l'APAD* 4 (1992).

# Chapter 1. Studying the state in the era of state-building

## 1. Introduction

This work departs from the observation that, in spite of the idea that states are progressively becoming irrelevant due to processes of 'globalization', and a mainstream conception of many states of the global South as 'fragile' or 'weak', the state still keeps a substantial importance both symbolically and in the practical implementation of public policies. Particularly, states in conflict-affected contexts find themselves at the crossroads between international state-building projects (which have increasingly characterized the strategy of intervention of the international donor community in such contexts) and ongoing processes of state formation, in which continuities and relational definitions of actors and concepts prevail. This chapter, as well as the rest of the thesis, will draw upon Berman and Lonsdale definition of:

> "*state-building,* as a conscious effort at creating an apparatus of control, and *state-formation,* as an historical process whose outcome is a largely unconscious and contradictory process of conflicts, negotiations and compromises between diverse groups whose self-serving actions and trade-offs constitute the 'vulgarization' of power."[37]

This chapter will be divided into two sections. The first one will address the concept of state-building and its operationalization in the contemporary world in the form of interventions orchestrated by the international donor community aimed at creating stable state structures in conflict-affected countries. These interventions rely on a theoretical background associating development and security, and state fragility and global insecurity. State-building interventions have, in recent years, taken over an increasingly local turn, focusing on the creation of decentralized political orders and on construction of service delivery mechanisms associated with the strengthening of states' legitimacy. Though not explicitly belonging to the range of interventions associated with state-building, I also include land governance among the reforms supported by the donor community influenced by the local turn characterizing contemporary international interventions and having direct repercussions on the creation and exercise of authority. In South Sudan, particularly, the land reform intertwines with the local government reform and the broader state-building project in ways that make it difficult to analyze them separately.

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[37] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa.* p. 5.

The second part turns to state formation, as partly influenced by state-building project(s) and by strategies of appropriation and adaptation of its elements by local actors. The process of state formation needs to be considered in a historical perspective, and it is best understood as the cumulative outcome of a process of negotiation happening in the various arenas created by state-building-related interventions addressed by the following chapters, namely the formulation of the decentralization policy framework, the establishment of structures and procedures for service delivery and the land tenure reform. These arenas of negotiation in contemporary South Sudan see the interaction of three sets of actors: those belonging to the 'international level' (the donor community), those belonging to the 'national level' (rebel movement(s) and the government), and those belonging to the 'local level' (sub-national authorities, ordinary citizens). These sets of actors are diverse, and in their interaction they build trans-scalar relations: as Siméant, Lickert and Pouponneau put it, "all politics is local politics", meaning that even the highest politics happens somewhere and needs to be localized. At the same time, what happens at a 'local level' (be it national, sub-national or even the micro-local level of a village) does not necessarily respond to micro-local logics[38]. Rather, the actors operating at different levels actively blur the respective boundaries of these levels, while at the same time reproducing their discursive distinctness.


## 2. Contextualizing state-building from a theoretical perspective


### 2.1 The State in times of global insecurity

In the last twenty years, the notion of state-building has become the convergence point of international development and security interventionism. After two decades marked by the reduction of the role of the state in developing countries with Structural Adjustment Programs (SAPs), the 1990s saw a progressive rehabilitation of the idea that state is after all important, and that the globalized world could not really do without. In 1997, the World Bank published a World Development Report entitled *The state in a changing world,* arguing against the previous reductionist stances on the role of the state and supporting the idea that an effective state with regulatory functions is

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[38] Johanna Siméant, Victoria Lickert, and Florent Pouponneau, "Échelles, Récifs, Bureau - Terrains Du Politique à L'international".

ultimately necessary to create a conducive environment for private business and individuals' initiatives producing development[39]. The state had to be reformed in order to achieve 'good governance', an extremely broad concept which never found a unique definition, but which was widely understood as a mixture of market economy and procedural democratic features such as multiparty election, anti-corruption institutions, policies to increase the level of transparency in government work. It was the so-called post-Washington Consensus. This change was less radical than what was proclaimed, confirming macroeconomic reforms, but also introducing conditionality related to the internal policy-making process and the very organization of the state[40].

The re-emergence of the state in a developmental context was not, however, directly linked to discourses on state-building. In fact, this kind of discourses emerged more specifically in the context of the rising threat of international terrorism. The role of strong and stable states came to be more directly associated to international security. Waves of democratization and the emergence of the so-called 'new wars'[41] in the 1990s characterized an increasingly globalized world where, after a few years of optimism for the victory of liberalism and the consequent 'end of history'[42], the threat of terrorism and of instability became increasingly worry-some. Nsamba Morris, research fellow at the African Research and Resource Forum in Nairobi, argues that 'state failure' in Africa was indeed seen as "an African problem in need of an African solution" by "the West" until the bombing of the US embassies in Kenya and Tanzania in 1998[43]. By the early 2000s, thus, the convergence between security and development paradigms brought to a renewed interest in the

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[39] Weltbank, ed., *The State in a Changing World*, 1. print, World Development Report [20.]1997 (Oxford: Oxford Univ. Press, 1997).

[40] Graham Harrison, *Neoliberal Africa: The Impact of Global Social Engineering* (London ; New York: Zed Books, 2010); Isaline Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali," in *States at Work. Dynamics of African Bureaucracies,* by J.P. Olivier de Sardan & T. Bierschenk (eds.), Africa-Europe Group for Interdisciplinary Studies 12 (Leiden: Brill, 2014), 271–99; Anna Maria Gentili, "Le Problematiche Dell'institution Building," in *Verso Una Nuova Visione Dell'aiuto,* by Vanna Ianni (ed.) (Pomezia: Società Tipografica Romana, 2004); Phillippe Lavigne Lavigne Delville, "La Réforme Foncière Rurale Au Bénin. Emergence et Mise En Question D'une Politique Instituante Dans Un Peys Sous Régime D'aide," *Revue Française de Science Politique* 60, no. 3 (June 2010): 467–91.

[41] Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 1 edition (Stanford, Calif.: Stanford University Press, 1999).

[42] Francis Fukuyama, *The End of History and the Last Man*, Reissue edition (New York: Free Press, 2006).

[43] Nsamba A. Morris, "When Fragility Meets State-Building: State-Building in Post-Conflict South Sudan," in *State Building in South Sudan: Priorities for Development Policy Research* (Nairobi: African Research and Resource Forum, 2013).

establishment of functioning institutions as a means of contrasting global threats such as terrorism and organized crime[44].

Following Foucault, who describes discourse as a practice with conditions, rules and historical transformation producing material consequences[45], state-building operations can be said to rely upon a set of discursive practices defining many non-western States as weak, fragile, collapsed or failed[46]. State-building programs were part of a new wave of broader interventionism in developing countries made possible by the end of the 'veto season' of the Cold War, which saw the United Nations assuming a leading role in the attempt at keeping the world at peace. In 1992, the then Secretary General of the UN Boutros-Boutros Ghali released *An Agenda for peace*, a document that can be considered as the starting point for international interventionism in the name of peace. The term "peace-building" was here introduced for the first time and described as "an action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict"[47]. Twelve years later, in 2004, the UN report *A more secure world* made the integration between peace-building and state-building more explicit:

> "(T)oday we are in an era where dozens of states are under stress or recovering from conflict, there is a clear international obligation to assist states in developing their capacity to perform their sovereign functions effectively and responsibly."[48]

State-building in this context has emerged as one of the key steps towards building peaceful and stable polities: if, on one hand, peace-building focuses on dealing with issues of conflict at all levels, state-building is

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[44] Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London; New York: Zed Books, 2001); OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).

[45] Michel Foucault, *L'ordre Du Discours* (Paris: Gallimard, 1971); Michel Foucault, *The Archaeology of Knowledge* (New York, NY: Pantheon Books, 1982).

[46] Gerald B. Helman and Steven R. Ratner, "Saving Failed States," *Foreign Policy*, no. 89 (December 1, 1992): 3–20; Robert I. Rotberg, "Failed States, Collapsed States, Weak States. Causes and Indicators," in *State Failure and State Weakness in a Time of Terror* (Cambridge, Mass. : Washington, D.C: World Peace Foundation ; Brookings Institution Press, 2003), 1–25; Stuart Eizenstat, John Edward Porter, and Jeremy Weinstein, "Rebuilding Weak States," *Foreign Affairs*, January 1, 2005; I. William Zartman (ed.), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, SAIS African Studies Library (Boulder: L. Rienner Publishers, 1995).

[47] Boutros Ghali Boutros, "An Agenda for Peace. Preventive Diplomacy, Peace Making and Peace-Keeping," in *Council on Foreign Relations*, 1992, par. 21, p. 5. http://www.unrol.org/files/A_47_277.pdf.

[48] United Nations, *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, 2004, http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf.

understood as an instrumental task for achieving peace, security and development. The set of standardized practices implemented by the international donor community[49] in 'fragile' or 'weak' states constitutes what has been identified as 'liberal peace-building'. Liberal peace-building relies on a broad understanding of Kant's theory of democratic peace, which maintains that democracies are less likely to fight each other than other regimes. Liberal peace-building also adds, with a quite ideological stance, that democracies are less likely to experience internecine conflicts, and that economic liberalization also helps sustaining peace[50].

The form of state adopted by peace- and state-builders was conventionally the one drawn from mainstream narratives of European history, based on Weberian legal-rational ideal-type characterized by liberal democracy and complemented by market economy[51], although focusing, in its practices, more on the creation of effective and efficient administrative apparatuses, not necessarily compatible with the first part of the binomial[52].

## 2.2 Studying state-building between Politics and policies

State-building, understood as the set of international interventions in conflict-affected countries aimed at re-establishing structures of control and regulation over a society, has been studied (and criticized) predominantly by an International Relations Theory perspective. Roland Paris in 2002 compared it to the colonial *mission civilisatrice*[53], and several other authors have described it as an imperialist enterprise[54]. In analyzing its visible failures and shortcomings, some have adopted a problem-solving approach, while others have criticized more radically its very premises. In the first group, state-building is reduced to

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[49] As it will be specified in the following pages, 'international community' is here used with specific reference to South Sudan, to refer to bilateral agencies from OECD-DAC members plus the UN system and the World Bank. While acknowledging the multiplicity of actors left aside from this definition and the differences among the actors taken into account, they all act within the framework of the liberal state-building project and contribute to the definition of its policy framework.

[50] Edward Newman, Roland Paris, and Oliver P. Richmond, *New Perspectives on Liberal Peacebuilding* (Tokyo ; New York: United Nations University Press, 2009).

[51] Roland Paris, "International Peacebuilding and the 'Mission Civilisatrice,'" *Review of International Studies* 28 (2002): 637–56; Zoe Scott, "Literature Review on State-Building" (Governance and Social Development Resource Centre, May 2007).

[52] Ricardo Soares de Oliveira, "Illiberal Peacebuilding in Angola," *The Journal of Modern African Studies* 49, no. 02 (June 2011): 287–314.

[53] Paris, "International Peacebuilding and the 'Mission Civilisatrice.'"

[54] David Chandler, *Empire in Denial the Politics of State-Building* (London; Ann Arbor, MI: Pluto, 2006); Oliver P. Richmond, *A Post-Liberal Peace* (London and New York; Routledge, 2011).

technical institution-building, and the debate focuses on finding the right devices and timing in order to achieve democracy, accountability, efficiency, etc.[55]. The second approach advances radical critiques on the alien and depoliticized nature of the reforms supported in non-Western countries, blaming their 'failure' on the continuous re-emergence of politics. These critiques also support a more nuanced understanding of local realities 'receiving' state-building programs, recognizing the diversity of actors involved and the hybrid nature of orders emerging from the encounter between the 'local' and the 'international'[56]. The main argument advanced by these authors is that state-building, in its depoliticized institution-building form, takes politics out of the broader picture, reducing it to top-down policies[57].

African Studies literature has, to some extent, addressed similar problems with regard to development. Developmental discourses and institutions have been described as vehicles of depoliticization of reforms in the era of conditionality[58]. The State was studied as the domain of Politics (with capital P), and studies focusing on the way it worked have oscillated between its role vis-à-vis globalization[59] and its embeddedness in local power relations and dynamics of domination[60]. Particularly, in the 1980s a rich debate on the place of Politics in Africa developed around the French review *Politique Africaine*, departing from the study of the post-colonial State in order to account for the "*modes populaire d'action politique*"[61]. These studies sought to rehabilitate "*les dynamiques du dedans*" vis-à-vis "*les dynamiques du dehor*", which had prevailed in the study of the African continent from developmentalist and dependentist perspectives. These studies enriched the understanding of African Politics going

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[55] Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge, U.K. ; New York, NY: Cambridge University Press, 2004).

[56] Chandler, *Empire in Denial the Politics of State-Building*; John Heathershaw and Daniel Lambach, "Introduction: Post-Conflict Spaces and Approaches to Statebuilding," *Journal of Intervention & Statebuilding* 2, no. 3 (November 2008): 269–89; Richmond, *A Post-Liberal Peace*; Roberto Belloni, "Hybrid Peace Governance: Its Emergence and Significance," *Global Governance: A Review of Multilateralism and International Organizations* 18, no. 1 (January 1, 2012): 21–38.

[57] Heathershaw and Lambach, "Introduction"; Berit Bliesemann de Guevara, "Introduction: The Limits of Statebuilding and the Analysis of State-Formation," *Journal of Intervention and Statebuilding* 4, no. 2 (June 2010): 111–28.

[58] James Ferguson, *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994); Gentili, "Le Problematiche Dell'institution Building"; Graham Harrison, *Neoliberal Africa: The Impact of Global Social Engineering* (London ; New York: Zed Books, 2010).

[59] Béatrice Hibou, *Privatizing the State* (Columbia University Press, 2004).

[60] Jean-François Bayart, *L'État en Afrique: la politique du ventre* (Paris: Fayard, 2006); Jean-François Bayart, "L'Afrique Dans Le Monde : Une Histoire D'extraversion," *Critique Internationale* 5, no. 1 (1999): 97–120.

[61] Jean-François Bayart, Joseph-Achille Mbembe, and Comi M Toulabor, *Le politique par le bas en Afrique noire* (Paris: Éd. Karthala, 1992).

beyond its simplistic conceptualization as an emanation of the state as an apparatus of control, criticizing the idea of the state as a set of Western institutions alien to the African context portrayed by Badie[62], rather describing the African state as a field of relations between different actors made of the interplay between different histories (cultural, political, etc.)[63]. These studies were dominated by a vision that Dominique Darbon synthetized as "politics makes policies"[64]. The state was seen as wrapped up in social relations producing political modes of interaction, risking at times underplaying external constraints to the agency of African societies[65]. Policies and actual practices and actors of the state did not really emerge from these studies, leading Copans to talk of "État sans fonctionnaires" in Sub-Saharan Africa[66]. Neither did these elements emerge from the IR and Peace Studies literature, criticizing state-building without however providing any convincing attempt at redefining the relationship between an externally imposed model and local modes of political expression, and ending up, therefore, being somewhat normative rather than grounded in empirical evidence.

In the last twenty years, however, a rich African Studies literature, grounded in ethnographic studies of the state in Africa, has redirected the focus from Politics to policies, taking the production and implementation of public policies as a privileged point of observation of the practical manifestations of the State even in areas where states may appear 'weak' or 'failed' by an institutionalist perspective. These studies focus on the everyday practices of the state and its routinized encounters with its citizens[67]. They bring back the attention on the double relation between politics and policies: if it is true to some extent that "politics makes policies", it is also true that "policies make

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[62] Bertrand Badie, *L'État importé : Essai sur l'occidentalisation de l'ordre politique* (Paris: Fayard, 1992).

[63] Jean-François Bayart, "L'historicité de l'Etat importé," *Les Cahiers du CERI*, no. 15 (1996), http://www.sciencespo.fr/ceri/sites/sciencespo.fr.ceri/files/cahier15.pdf.

[64] Dominique Darbon, "Peut-on Relire Le Politique En Afriques via Les Politiques Publiques?," in *State, Power, and New Political Actors in Postcolonial Africa,* by Alessandro Triulzi and M. Cristina Ercolessi (eds.), Annali 38 (Milano: Feltrinelli, 2002).

[65] Jean-François Médard, "Postface. L'Afrique et La Science Politique," in *Les Afriques Politiques, by Christian Coulon and Denis-Constant Martin*, Histoire Contemporaine (Paris: La Découverte, 1991).

[66] Jean Copans, "Afrique Noire: Un Etat sans Fonctionnaires?," *Autrepart* 20, no. 4 (2001): 11–26.

[67] Jean-Pierre Olivier d Olivier de Sardan, *Researching the Practical Norms of Real Governance in Africa* (Overseas development institute (ODI), 2008); Giorgio Blundo and Pierre-Yves Le Meur (eds.), *The Governance of Daily Life in Africa: Ethnographic Explorations of Public and Collective Services*, African Social Studies Series 19 (Leiden: Brill, 2009); Thomas Bierschenk and Jean-Pierre Olivier de Sardan (eds), *States at Work: Dynamics of African Bureaucracies*, Africa-Europe Group for Interdisciplinary Studies, volume 12 (Boston: Brill, 2014).

politics"[68]. This literature proves particularly useful in analyzing the process of state-building and that of state formation in contexts characterized by heavy international interventionism in the production of public policies and in the very structuring of the state. Without denying neither the outstanding place of Politics in the process of state formation, nor the "discursive power of the state"[69], the challenge is to look at how the application of blueprint international reforms is negotiated locally, at different scales of the state in the process of being built, and how it contributes to shaping Politics[70]. Goran Hydén argued that "policy may stand in the way of changing the rules of the game"[71]: this may be so especially because they are 'appropriated' by local actors in a number of ways producing novel and sometimes unforeseen outcomes, which are best analyzed from the bottom up[72].

In contemporary Africa, policies are largely agreed upon by governments and international donor agencies[73]. This coordination happens to such an extent that in some cases it produces awkward narratives as to who does what in specific contexts, as accounted for by Esser with regard to Sierra Leone where donors are the ones launching "the government's agenda"[74]. Many similar situations in which policies -and laws- are designed and written by development experts and consultants, and then signed by government officials, characterize the everyday exercise of state functions in South Sudan as well as in many other African countries. If they theoretically constitute separate institutions which have for long time been described in opposition, with donors imposing conditionality and governments of poor countries obliged to accept them not to be cut off from global financial flows,  this opposition has almost

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[68] Darbon, "Peut-on Relire Le Politique En Afriques via Les Politiques Publiques?"

[69] Heathershaw and Lambach, "Introduction.". See also: Kristof Titeca and Tom de Herdt, "Real Governance beyond the 'failed State': Negotiating Education in the Democratic Republic of the Congo," *African Affairs* 110, no. 439 (April 1, 2011): 213–31; Bierschenk and Olivier de Sardan, *States at Work*.

[70] In a way, Catherine Boone's stance that land tenure systems (defined by policies) are determined by the structure of politics can be turned upside down to state that the structure of politics is also influenced by policies. Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics* (New York: Cambridge University Press, 2014).

[71] Göran Hyden, Dele Olowu, and Hastings W.O. Okoth-Ogendo, *African Perspectives on Governance* (Trenton, NJ: Africa World Press, 2000). p. 11.

[72] Dominique Darbon, ed., *La Politique Des Modèles En Afrique: Simulation, Dépolitisation et Appropriation*, Hommes et Sociétés (Paris : Pessac: Karthala ; MSHA, 2009); Isaline Bergamaschi, "« Appropriation » et « lutte contre la pauvreté » au Mali: Interprétations, pratiques et discours concurrents," *Revue Tiers Monde* 205, no. 1 (2011): 135.

[73] Lavigne Delville, "La Réforme Foncière Rurale Au Bénin. Emergence et Mise En Question D'une Politique Instituante Dans Un Peys Sous Régime D'aide."

[74] Daniel E. Esser, "'When We Launched the Government's Agenda…': Aid Agencies and Local Politics in Urban Africa," *The Journal of Modern African Studies* 50, no. 03 (September 2012): 397–420.

completely eroded in the era of 'post-conditionality'[75]. The era of post-conditionality is, according to Harrison, characterized by a much lower level of coercion compared to the era of conditionality: "[International Financial Institutions] employ the disbursement of funds to promote further changes – mainly to the state institutions through administrative reform programmes. Post-conditionality politics requires more carrots than sticks"[76]. If International Financial Institutions used to advance their principles in the form of *doctrine* (colonizing the state on the basis of 'scientific' principles), in the 1990s they started presenting them rather in the form of *ideology* (far less contested, integrated to the everyday language of policy-making)[77]. To say it with Harrison: "Donors do not just impose conditionalities; they also work in routinized fashion at the centre of policy-making"[78]. The relation between donors and government is described as a partnership: a rhetoric trying to maintain that there is a new kind of relationship between poor countries and multilateral and bilateral donor organizations, no longer based on top down development strategies but on partnerships among equals[79]. Yet, post-conditionality politics is not the end of interventionism: "rather it is that intervention is not exercised solely through conditionality, but also to a significant degree through a closer involvement in state institutions and the employment of incentive finance"[80]. In fact, however, as Abrahamsen aptly notes, it is difficult to believe in equality "in a context where one party is in possession of the purse and the other the begging bowl"[81]. What actually happens is rather the engagement with local governments in the framework of decentralization reforms and the restructuring of aid and financial flows architecture through the use of a number of standardized technical practices going from paper-production to reporting works towards the embedding of donors' practices - neoliberal practices, as Harrison describes them[82]- into the daily routines of the state.

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[75] Graham Harrison, "Post-Conditionality Politics and Administrative Reform: Reflections on the Cases of Uganda and Tanzania," *Development and Change* 32, no. 4 (September 2001): 657–79.

[76] Ibid. P. 659.

[77] Ibid.

[78] Ibid.p.671.

[79] Rita Abrahamsen, "The Power of Partnerships in Global Governance," *Third World Quarterly* 25, no. 8 (January 1, 2004): 1453–67.

[80] Harrison, "Post-Conditionality Politics and Administrative Reform." p. 660.

[81] Abrahamsen, "The Power of Partnerships in Global Governance." p. 1454.

[82] Harrison, *Neoliberal Africa*.

## 3. Building state-society relations: local governance, decentralization and the 'traditional' temptation

Overcoming an initial purely institutionalist approach to state-building aimed at assisting "states in developing their capacity to perform their sovereign functions effectively and responsibly"[83], in 2008, the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), the leading organization in terms of formulation of guiding concepts in the policy domain, introduced 'legitimacy' in the conceptual framework defining the characteristics of an effective state. It defined state-building as the "purposeful action to develop the capacity, institutions *and legitimacy* of the state in relation to an effective political process for negotiating the mutual demands between state and societal groups" (emphasis added)[84]. In the model proposed by OECD, states do need effectiveness, but this cannot transcend state-society relations of which legitimacy is a constitutive part. In a similar vein, the New Deal for Engagement in Fragile States[85] presented at the 4th High Level Forum on Aid Effectiveness in Busan (2011) as an initiative of the G7+ group of conflict-affected states[86] proposes peace-building and state-building goals with a particular focus on building the relationship between governments and citizens.

This slight shift has produced two consequences in terms of state-building policy production. The first has to do with a renewed importance attributed to the delivery capacities of states, and the consequent production of a rich literature (both academic and donor-driven) questioning appropriate modes of providing services for state-building purposes[87]. The second concerns an increasing focus on the 'local', translated into the support of decentralization reforms and the inclusion of the 'community' into the governance system through an emphasis on participation and the rediscovery of 'tradition', with the latter being often considered as an effective means to achieve the former.

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[83] United Nations. *A More Secure World*, 2004 (p. 83).

[84] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience.", p. 14.

[85] See the New Deal's website: http://www.newdeal4peace.org/about-the-new-deal/

[86] See the G7+ website: http://www.g7plus.org/

[87] Richard Batley and Claire Mcloughlin, "Engagement with Non-State Service Providers in Fragile States: Reconciling State-Building and Service Delivery," *Development Policy Review* 28, no. 2 (March 1, 2010): 131–54; Rachel Slater, "What Does It Mean to Be Post-Crisis? Reflections from Research in Eight Conflict-Affected Countries," (Presentation, European Conference of African Studies, July 8, 2015); Claire Mcloughlin, "When Does Service Delivery Improve the Legitimacy of a Fragile or Conflict-Affected State?," *Governance*, April 1, 2014; Lisa Denney, Richard Mallet, and Dyan Mazurana, *Peacebuilding and Service Delivery*, Center for Policy Research, Secure Livelihoods Research Consortium (United States University, 2015), http://i.unu.edu/media/cpr.unu.edu/attachment/1000/Peacebuilding-and-Service-Delivery.pdf.

Besides being driven by concerns for efficiency and effectiveness of the government function, decentralization and the 'localization' of governance can be ascribed to the domain of those policies implemented in partnership by the donor community and national governments with the specific purpose of strengthening relations between state and society as part of the state legitimation process. The neat distinction between state and society is "routinely adopted by policy-makers"[88] as part of the liberal state-building project, reflecting the Weberian assumption that state and society are two distinct entities, with the former governing on the latter through a mixture of coercion and legitimacy[89].

This perspective has been criticized by much scholarship focusing, on the one hand, on the deep ties between the state and its social context[90]; on the other hand, by studies emphasizing 'hybrid' forms of governance emerging in non-Western contexts, challenging the neat separation of state and society (and of the public and private realms) as distinct entities[91]. In fact, however, instead of questioning the actual existence of two neatly separate spheres – which has abundantly and effectively been done elsewhere, as shown -, it is rather to the processes producing such boundaries that we should look in order to understand their emergence and their function in the political process[92].

## 3.1 Service delivery

### 3.1.1   The provision of public goods and services in a historical perspective

Drawing on Western European history of state formation, the provision of public or collective goods and services is considered as one of the most crucial characteristics that a modern state needs to comply with, to such an extent that failure in delivery is seen as one of the features of state fragility and

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88 Heathershaw and Lambach, "Introduction." p. 271.

89 Anna Leander, "Wars and Un-Making of States: Taking Tilly Seriously in the Contemporary World," in *Contemporary Security Analysis and Copenaghen Peace Research (New International Relations),* by Stefano Guzzini and Dietrich Jung (eds.) (London: Routledge, 2003); Nicolas Lemay-Hebert, "Trying to Make Sense of the Contemporary Debate on State-Building: The Legitimacy and the Institutional Approaches on State, State Collapse and State-Building" (PSA Annual Conference (Political Studies Association), Edinburgh: University of Birmingham, 2010), http://www.psa.ac.uk/journals/pdf/5/2010/1790_1539.pdf.

90 Bayart, Mbembe, and Toulabor, *Le politique par le bas en Afrique noire*.

91 Christian Lund, "Twilight Institutions: Public Authority and Local Politics in Africa," *Development & Change* 37, no. 4 (July 2006): 685–705; Alice Bellagamba and George Klute (eds.), *Beside the State. Emergent Powers in Contemporary Africa*, Topics in African Studies 10 (Köln: Rüdiger Köppe Verlag, 2008); Hibou, *Privatizing the State*.

92 Christian Lund, *Local Politics and the Dynamics of Property in Africa* (New York: Cambridge University Press, 2008).

collapse[93]. In Western European history, the provision of public goods and services represented a means of state penetration and consolidation between 17th and 19th centuries, as shown in *The formation of National States in Western Europe* edited by Charles Tilly[94]. Through increasing their physical presence in the peripheries with the construction of infrastructures, security apparatuses, and bureaucracies, European states increased their visibility and legitimacy thanks to the provision of public goods such as security and protection from abuses, as well as the creation of job opportunities in the public sector and education systems which contributed to the creation of a sense of belonging to the state[95]. This perspective, strongly rooted in Weberian political theory, looked at state-building as the outcome of both the expansion of the monopoly of violence and of the creation of modern rational bureaucracies in charge of carrying out state functions in the peripheries. If, on one hand, state building is understood in material terms as the product of economic exploitation and physical violence, even from a Weberian perspective the monopoly of violence is not enough to ensure control of a territory and needs to be matched with practices of legitimacy-creation, contributing to a non-material dimension of state-building[96]. In a narrow interpretation of Weberian perspective - the one supported by Tilly – legitimacy is produced by the effective performance of state institutions[97], which reduces the probability that other authorities would challenge their legitimacy[98]. Since this definition conflates with Weber's definition of power ("the probability that one actor within a social relationship will be in a position to carry out his own will despite

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[93] Rotberg, "Failed States, Collapsed States, Weak States. Causes and Indicators."

[94] Charles Tilly's book actually speaks of 'state formation', referring to the broader historical process of emergence of Western European states, in which the provision of services was only one of the elements. Instead, I look at it from the perspective of the sovereign, for whom the provision of services was an actual strategy of state-building in that it contributed to keep control over the population through non-violent (and less costly) means.

[95] Charles Tilly, Gabriel Ardant *The Formation of National States in Western Europe* (Princeton University Press, 1975).

[96] Philipp Lottholz and Nicolas Lemay-Hébert, "Re-Reading Weber, Re-Conceptualising Statebuilding: From Neo-Weberian to Post-Weberian Approaches to State and Legitimacy," *Unpublished*, 2014.

[97] Lottholz and Lemay-Hébert challenge this perspective, arguing that neo-Weberian scholarship has been strongly influenced by a selective interpretation of Weber based on Parsons' own interpretations, often accepting excessively straightforward ideas as coming directly from Weber's work. In fact, Weber writings are much fuller of contradictions and ambiguities. With regard to the issue of legitimacy, for instance, the authors argue that the role of charismatic and traditional legitimacy should also be considered in analyzing how legitimacy is produced, as well as its 'irrational character'. Ibid.

[98] Charles Tilly, "War Making and State Making as Organized Crime," in *Bringing the State Back In,* by Peter Evans, Dietrich Rueschemeyer and Theda Skocpol (Cambridge: Cambridge University Press, 1985).

resistance"[99]) one would say that power and legitimacy always go together. To put it as Lottholz and Lemay-Hébert: "If the state has the capacity to execute authority over its people, the willingness of the ruled to obey the state becomes obsolete"[100].

Though I would rather turn to other, broader understandings of legitimacy, sharing Carola Lentz's view of legitimacy as "a conflict-ridden process"[101] and Didier Péclard's analysis of legitimacy as a "historical product" resulting from "protracted social struggle"[102], the materialist dimension of legitimacy influenced many scholars studying the state. Rotberg, for example, argues that public goods "give content to the social contract between ruler and ruled", considering the 'delivery capacity' as one of the major criteria upon which a state's success can be evaluated[103]. This idea draws from an institutionalist approach, in which a state is only considered to exist if it has functioning bureaucratic institutions and the capability of delivering, suggesting a strong functionalist perspective[104].

In fact, the process of state penetration through the monopolization of force and the provision of public goods and services experienced by Western European countries was neither peaceful nor straightforward, and met with continuous resistance and contestation. The imposition of bureaucratic routines through documents, forms, curricula in schools was part of the very process of establishing a unique source of services, one that could obtain the monopoly of people's allegiance. Alternative channels of service delivery such as big men patronage networks had to be suppressed or, at the very least, limited. The state and its agents took their place, but this did not mean the realization of what Weber described with his modern bureaucracy ideal-type. Rather, not only was the provision of public goods and services used as an instrument for disputes

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[99] Max Weber. *Economy and society. An outline of interpretive sociology*. (Berkeley: Univ. of California Press), 1968, p. 53

[100] Lottholz and Lemay-Hébert, "Re-Reading Weber, Re-Conceptualising Statebuilding: From Neo-Weberian to Post-Weberian Approaches to State and Legitimacy." p. 28.

[101] Carola Lentz, "The Chief, the Mine Captain and the Politician: Legitimating Power in Northern Ghana," *Africa: Journal of the International African Institute* 68, no. 1 (January 1, 1998): 46–67, p. 47.

[102] Didier Péclard, "State-Building, Legitimacy, and Development in Fragile Context" (National Centre of Competence in Research (NCCR) North-South, University of Bern, August 2012), http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/NCCR_Global_Policy_Brief_8_State-building_1_.pdf. p. 4.

[103] Rotberg, "Failed States, Collapsed States, Weak States. Causes and Indicators." p. 3.

[104] Chandler, *Empire in Denial the Politics of State-Building*; Berit Bliesemann de Guevara, "The State in Times of Statebuilding," *Civil Wars* 10, no. 4 (December 2008): 348–68; Lottholz and Lemay-Hébert, "Re-Reading Weber, Re-Conceptualising Statebuilding: From Neo-Weberian to Post-Weberian Approaches to State and Legitimacy."

settlement; also, it kept at least some degree of arbitrariness, being used as an instrument "to buy loyalty and to make disloyalty expensive"[105].

While, as will be shown, the material aspect of legitimacy stemming from the 'delivery function' of the state plays a key role in current approaches to state-building through service delivery, it is also undeniable that the advent of neoliberalism in the last three decades of the 20th century radically changed the way in which public goods and services are produced and delivered. A general trend towards privatization caused an increase in the number of service providers (and of actors engaging in state functions) virtually everywhere in the world[106]. The consequences of privatization were particularly visible in African countries, where Structural Adjustment Programs (SAPs) imposed by International Financial Institutions crushed centralized state structures built after independence. In the 1980s, African states started being seen as too corrupt and inefficient for being reformed[107], or, at the very least, too different in their way of functioning due to cultural reasons[108]. Failures in the delivery of public goods and services were used, to some extent, to justify the reduction of the role of the state in the regulation of social and economic life, in order to leave room to more efficient and effective private actors. The legacy of colonialism had left African post-independence states with bureaucratic apparatuses that delivered public goods and services as a form of exchange to strengthen the ruling elites' power base. In defining public goods and services as "goods and services that are perceived by the vast majority of users as a social necessity, and, either directly or indirectly, as coming under the state's duties towards these users"[109], Bierschenk and Olivier de Sardan also note that their delivery is "wrapped, so to speak, in practices of patronage, privilegism, corruption, contempt of anonymous customers"[110] and reproduces colonial "lifestyle routines of officials that remained virulent to the present day"[111]. The thick web of personalized social relationships around the provision of public

[105] Steven Van de Walle and Zoe Scott, *The Role of Public Services in State- and Nation-Building: Exploring Lessons from European History for Fragile States*, University of Birmingham, Governance and Social Development Resource Center, 2009, http://www.gsdrc.org/docs/open/CON68.pdf. p. 12.

[106] Hibou, *Privatizing the State*.

[107] Robert H. Bates, *Markets and States in Tropical Africa: The Political Basis of Agricultural Policies*, Updated and expanded, with a new preface, California Series on Social Choice and Political Economy (Berkeley, Calif.: Univ. of California Press, 2014).

[108] Hydén Goran, *No Shortcuts to Progress: Administration & Development in Africa.* (Berkeley and Los Angeles: University of California Press, 1983).

[109] Bierschenk and Olivier de Sardan, *States at Work*. p.44. For example, they are access to drinking water, education and health, the fight against crime, an equitable legal system or an effective transport system.

[110] Ibid. p. 40.

[111] Ibid. p. 40.

services to citizens was not compatible with Weberian legal-rational ideal-type of state, and thus the 'delivery function', closely connected to the creation of legitimacy for reformed state institutions, needed to be reorganized. State delivery apparatuses were forced to step back in favor of private companies and other non-state actors such as NGOs or local Community Based Organization, in response to the spread of a "community-based ideology"[112] within development organizations (see below).

Despite the marginalization of what was largely considered a dysfunctional state, neither service delivery nor the very functioning of the state apparatus improved. In the early 2000s, when the international community realized that most of the world was lagging behind in terms of human development and the Millennium Development Goals (MDGs) were formulated, the state was 'rehabilitated'. The usefulness of its institutions in regulating the economic sphere and keeping social order was reaffirmed. This time, the improvement of service delivery systems was one of the main official focuses of decentralized governance reforms supported by international donor agencies, in spite of the very little evidence confirming the actual link between the two[113].

### 3.1.2 Service delivery, donors and decentralization

Drawing upon Western European experiences and a material conception of legitimacy deriving from well-functioning institutions, service delivery has become to some extent the new frontier of state-building programs. 'Traditional' development projects (education, health care, water, provision of infrastructure) are matched with capacity building for local institutions, which are increasingly called to take a leading role, at least on paper, in the coordination of these programs. After a couple of decades characterized by the privatization of the provision of public services through NGOs and various forms of civil society organizations, there was increasing effort to 're-align' donor's engagement to local governments' development priorities. This effort culminated in the Paris Declaration on Aid Effectiveness (2005) and Accra Agenda for Action (2008), which provided for aid flows to be channeled through state apparatuses at national and sub-national levels in order to strengthen the

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[112] Ibid. p. 401.

[113] Diana Conyers, "Decentralisation and Service Delivery: Lessons from Sub-Saharan Africa," *IDS Bulletin* 38, no. 1 (January 1, 2007): 18–32; Jesse C. Ribot, "Democratic Decentralisation of Natural Resources: Institutional Choice and Discretionary Power Transfers in Sub-Saharan Africa," *Public Administration and Development* 23, no. 1 (February 2003): 53–65; Mark Robinson, "Introduction: Decentralising Service Delivery? Evidence and Policy Implications," *IDS Bulletin* 38, no. 1 (January 2007), http://www.ircwash.org/sites/default/files/Robinson-2007-IDSBulletinvol38no1.pdf.

capacity of states to effectively coordinate the delivery, without necessarily taking an active part in it (in accordance with New Public Management reforms). The effective accomplishment of the delivery function would result in an increase of the legitimacy of ruling institutions.

As pointed out before, non-state actors did not disappear from the scene, and still play a crucial role in the provision of public goods and services. However, while their work was previously carried out in the form of more or less isolated development projects, the approach based on the idea of 'service delivery' shifted the focus to broader, (theoretically) better coordinated programs involving major donor agencies and, more importantly, the government. Education, health, infrastructures, water, extension services are now included in the hodgepodge of 'services' to be delivered to citizens together with more traditional state-building domains of action such as the rule of law, the reform of military and police services, strengthening democratic institutions, etc. Every single aspect of what have been historically considered 'state deliveries' (including public order and justice, for example) is included among services that can be provided through hybrid arrangements involving both state and non-state actors. This shift from externally-led 'development' to partnerships for service delivery signals the rehabilitation of the state in the provision of public goods and services[114], opening up a number of questions about the relation between service delivery, state building and state legitimacy.

At the same time, however, the 'public' character of public goods and services seems to have been marginalized in favor of more neutral expressions that do not necessarily require the state to be the major provider in the current neoliberal framework. According to a background paper commissioned by the World Bank during the preparation of the World Development Report (WDR) 2004 – whose eloquent title was *Making services work for poor people* –, the WB should try to avoid the term 'public services' as much as possible because of its ambiguity, and because it is not state institutions providing the bulk of services.

> "Rather, (...) the essential characteristic in common of the services with which the report is concerned – health care, education, water and sanitation, and electricity – is that governments have 'public responsibility' for them. Direct state provision is not the only way to exercise that responsibility, which can also be expressed through public regulation or financing (...). Public

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[114] On the unequal character of partnerships, and on their subtle role as tools of global governance through mechanisms of regulated inclusion, see Abrahamsen, "The Power of Partnerships in Global Governance."

responsibility can be exercised better through alternatives to direct state provision in many of the circumstances which actually confront poor people"[115].

Indeed, the WDR 2004 talks about 'public services' but it uses the expression interchangeably with 'basic services', which include health, education and water and sanitation[116]. Public is by no means synonym with state: these services are 'public' not because they are provided *by* neutral bureaucratic institutions, but rather because they are provided *to* the wider public. In this sense, other institutions use the expressions 'collective services' or 'social services', characterized by the fact that they benefit a community as a whole and including a broader range of sectors such as public order, economic affairs, environment protection, housing, education and health among others[117]. The centrality of the state as a regulating institution in charge of coordination and supervision, based upon a policy-making process influenced by global neoliberal policy-making trends, is particularly important when it comes to local state institutions.

In post-conflict contexts the provision of public services is particularly challenging. "These so-called fragile states", reads a background paper to the World Development Report 2010, "lack either the political will or capacity to deliver public safety and basic services to all their citizens"[118]. Since failure to deliver in the presence of high expectations is considered as a possible trigger of conflict, the provision of public services is treated with special urgency as part of the strategy to improve internal stability and strengthen the legitimacy of state institutions. To fill the gaps in capacity and resources of local state structures and governments, international aid agencies have developed different methods of supporting service delivery ranging from using parallel systems run by non-state actors such as NGOs, to engaging with existing state structures[119]. However, there is a growing trend to depart from urgency-driven approaches which risk bypassing local governments and civil societies[120], instead drawing links between development (the provision of services) and

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[115] Brendan Martin, "What Is Public about Public Services?," Background Paper for World Development Report 2004 (The World Bank, 2004), http://www.publicworld.org/files/WhatIsPublic.pdf. p.2.

[116] World Bank, ed., *Making Services Work for Poor People*, World Development Report [26.]2004 (Oxford: Oxford Univ. Press, 2003).

[117] For more precise definitions of collective and social services, see OECD online glossary: https://stats.oecd.org/glossary/index.htm . All these definitions rely on a neoliberal perspective which separated the coordinating role from the implementing function

[118] Mark Baird, "Service Delivery in Fragile and Conflict Affected States," World Development Report Background Paper (The World Bank, 2010), http://web.worldbank.org/archive/website01306/web/pdf/wdr_service_delivery_baird.pdf. p. 3.

[119] Denney, Mallet, and Mazurana, *Peacebuilding and Service Delivery*.

[120] Baird, "Service Delivery in Fragile and Conflict Affected States."

state-building, and between state-building and peace-building. If the provision of public services is done building the capacity of local government institutions, this will contribute to build a strong state, which will in turn contribute to internal peace and stability[121].

Service delivery is thus framed as a form of 'peace dividend' and it is included among the wide range of aspects on which local civil servants and government officers need to receive training and couching in order to turn into effective modern state agents. This approach owes much to New Public Management (NPM), which applies technical, predetermined, "result-oriented" reforms to administrative systems, stressing the effectiveness and efficiency of separating coordination roles from implementation functions. In fact, applied to the service delivery domain, NPM not only overlooks context-specific political and legal traditions -and their often conflictive character- which make it difficult to apply predetermined public management recipes and best practices[122]; also, it completely overlooks the history of service delivery as a means of state-building, retaining a romanticized idea based on the Weberian ideal-type of modern bureaucracy, carrying out its tasks according to universal principles of equity and equality[123]. Borrowing from Dominique Darbon's reflection on the character of policy reforms in Africa:

> « En Afriques, la réforme s'apparente dans la quasi-totalité des cas à une tentative de refonder un appareil étatico-administratif sur des bases nouvelles lui permettant d'être effectif, tout en prétendant qu'il ne s'agit que de questions de gestion. La réforme est victime à la fois du phénomène de la « anti-politics machine », fondé sur les jeux stratégiques des décideurs du nord comme du sud, qui tendent à faire passer des réformes avant tout politiques pour des questions de gestion, à dépolitiser le changement pour le réduire dans les Afriques à une anecdote technique et ainsi en réduire les coûts politiques quitte à en vider l'impact technique »[124].

Blundo and Le Meur make a similar point contextualizing the provision of public services in the framework of donor-oriented good governance policies

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[121] Denney, Mallet, and Mazurana, *Peacebuilding and Service Delivery*.

[122] Laurence E. Lynn Jr., "A Critical Analysis of the New Public Management," *International Public Management Journal* 1, no. 1 (1998): 107–23,.

[123] Van de Walle and Scott, *The Role of Public Services in State- and Nation-Building: Exploring Lessons from European History for Fragile States*; On horizontal inequalities see Frances Stewart, "Horizontal Inequalities as a Cause of Conflict," Bradford Development Lecture, (November 2009).

[124] Dominique Darbon, "Réformer ou reformer les administrations projetées des Afriques ?," *Revue française d'administration publique* nº105–6, no. 1 (March 1, 2003): 135–52. p. 137

focusing on technical arrangements, claiming political neutrality[125], just as much as other development devices[126].

## 3.2 Decentralized state-building

The renewed focus on service delivery leads to another tenet of contemporary state-building programs, deriving from the quite prosaic consideration that most service delivery, in order to be effective, needs to happen at the local level. This assumption was in fact at the basis of decentralization reforms long before they started being associated to structural interventions in 'fragile' states. In the 1980s, the principal drive towards decentralization –which was in fact privatization - was indeed the will to reduce the distance between service producers and consumers.

### 3.2.1 A panacea for African governance? Evolution and depoliticization of decentralization

Africa has been involved in discourses on decentralization in the 1970s, when the failures associated to centralistic post-independence states started appearing. Their focus was thus inextricably linked to concerns of addressing inequality, particularly urban-rural inequality, and fostering development, drawing upon the idea that excessive concentration of administrative activities leads to corruption and waste, delays, irrational and inefficient management practices. Decentralization discourses in the 1970s thus focused on the need of reducing the role of the state in public affairs to leave room for societal creativity. This tendency was reinforced in the 1980s, when Structural Adjustment Programs (SAPs) were undertaken by most African countries under pressure from International Financial Institutions. SAPs pushed African rulers to dramatically cut expenditures for the maintenance of central government structures, delegating any functions they could to the local level. The idea was that, were the provision of services decentralized to resource-less local levels of government, the emergence of private service producers would have been stimulated in each locality, ultimately producing better service delivery and economic growth[127]. The market and the private sector were considered of vital importance in the provision of public goods by a growing number of

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[125] Blundo and Le Meur, *The Governance of Daily Life in Africa*.

[126] Ferguson, *The Anti-Politics Machine*; Lemay-Hebert, "Trying to Make Sense of the Contemporary Debate on State-Building."

[127] Dele Olowu and James Stevenson Wunsch, *Local Governance in Africa: The Challenges of Democratic Decentralization* (Boulder: Lynne Rienner Publishers, 2004).

development experts who had lost confidence in the capacity of central states and became attracted by strategies that increased the involvement of local communities and private organizations in the performance of government functions at local level[128]. Decentralization in the form of privatization has prevailed in the last two decades before the end of the Cold War, matched with a strong emphasis on "people-centered development"[129]. People-centered development, the idea that 'self-governance' could be enough to invert the negative performance of African states in terms of democracy, development and equality virtually alone[130] was a naïve –or populist, as Montgomery defines it[131]- perspective on decentralization, and it was soon criticized by many, including SAPs critics who condemned its reductionism and privatization ideology[132]. According to Olowu's and Wunsch's analysis:

> "The fundamental weakness of the decentralization reforms of the 1980s associated with SAPs was thus their lack of attention to the nature and type of decentralized structures they were promoting. No clear distinction was made between deconcentration and devolution, and in fact everywhere deconcentration was emphasized"[133].

In the 1990s, an idea of 'democratic decentralization', close to what Rondinelli, Cheema, and Nellis called devolution[134], came to the fore, accompanied by great expectations about its positive effects on political, economic and social systems, and by unprecedented support by international development agencies. This shift was both the result in internal dynamics developing in several African countries leading to a wave of democratization,

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[128] John D. Montgomery, "The Populist Front in Rural Development: Or Shall We Eliminate the Bureaucrats and Get on with the Job?," *Public Administration Review* 39, no. 1 (1979): 58–65; Peter Geschiere, *The Perils of Belonging: Autochthony, Citizenship, and Exclusion in Africa and Europe* (Chicago: University of Chicago Press, 2009).

[129] John M. Cohen, Stephen B. Peterson, and Harvard Institute for International Development, *Methodological Issues in the Analysis of Decentralization* (Harvard Institute for International Development, Harvard University, 1996), http://www.cid.harvard.edu/hiid/555.pdf.

[130] James Wunsch and Dele Olowu, *The Failure Of The Centralized State: Institutions And Self-Governance In Africa* (Boulder: Westview Press, 1990); Cohen, Peterson, and Development, *Methodological Issues in the Analysis of Decentralization*.

[131] Montgomery, "The Populist Front in Rural Development: Or Shall We Eliminate the Bureaucrats and Get on with the Job?"

[132] Joel Samoff, "Decentralization: The Politics of Interventionism," *Development and Change* 21, no. 3 (1990): 513–30; Gentili, "Le Problematiche Dell'institution Building."

[133] Olowu and Wunsch, *Local Governance in Africa*. p. 38.

[134] Dennis A. Rondinelli, John R. Nellis, and G. Shabbir Cheema, *Decentralization in Developing Countries. A Review of Recent Experience*, World Bank Staff Working Papers, vol. 581, Management and Development Series 8 (The World Bank, 1983), http://213.154.74.164/invenio/record/16024/files/rondinelli.pdf. Devolution is defined as the transfer of decision-making authority by central governments to local-level governmental units with corporate status recognized by law.

and to the dramatic change of the international environment following the end of the Cold War and the withdrawal of Western strategic support to centralized authoritarian regimes[135]. However, the decentralizing trend was neither a prerogative of African countries, nor of developing countries: in fact, it was a general trend that also invested European countries and the ex-Soviet Union area. If decentralization had so far been linked to development, in the 1990s it was also associated to democratization and therefore supported in those countries which had not yet transitioned to liberal democracy. Following criticism on the excessive reduction of the role of the state vis-à-vis the continued lack of results deriving from the implementation of previous policies, decentralization became a way to bring the state 'back in'[136], but at sub-national level, with many promises in terms of development and democratization. 'Good governance' was first turned into conditionality for aid, and later embedded into 'partnerships' between donors and recipient countries[137].

Gray literature produced by international organizations involved in the support of governance programs emphasizes the potential positive impact of the implementation of decentralization reforms, producing a long list of their expected outcomes. Firstly, decentralization is expected to increase equity and efficiency and decrease corruption, thanks to an informational advantage that would entail a more equitable distribution of resources. Secondly, bringing the government close to the people, it would increase its downward accountability and transparency. Thirdly, it would contribute to regime consolidation and increase the quality of democracy guaranteeing accountability and strengthening civil society. Finally, though less explicitly, decentralization would also mitigate social and political conflicts integrating secessionist groups within the state, granting them autonomy and control over public programs[138]. To provide just one example, a UNDP Discussion Paper published in 2010 states that the agency:

> "(E)mphasizes local governance for improved service delivery in order to improve the ability and capacity of local governments to become better administrators, raise revenue and deliver high-quality services. It works also to help strengthen and deepen democratic representation by engaging with

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[135] Olowu and Wunsch, *Local Governance in Africa*.

[136] UNDP, *Decentralised Governance for Development: A Combined Practice Note on Decentralisation, Local Governance and Urban/Rural Development*, UNDP Practice Note, (April 2004); EuropAid, *Supporting Decentralisation and Local Governance in Third Countries*, Tools and Methods Series (European Commission, January 2007),

[137] Gordon Crawford and Christof Hartmann, *Decentralisation in Africa: A Pathway Out of Poverty and Conflict?* (Amsterdam University Press, 2008); Harrison, "Post-Conditionality Politics and Administrative Reform"; Abrahamsen, "The Power of Partnerships in Global Governance."

[138] Crawford and Hartmann, *Decentralisation in Africa*.

marginalized groups and local leaders to promote accountability, inclusion and participation, and the representation of citizens"[139].

Between the early 1990s and the first half of the 2000s, UNDP supported decentralization programs in one-hundred countries[140], many of which were in Sub-Saharan Africa[141] leading Carola Lentz to talk of a 'decentralization mania'[142]. UNDP was not the only international agency to start programs supporting decentralization reforms, which in Africa were often willingly undertaken by central governments as the least of evils in order to keep donor's purses open[143].

Joel Samoff talks about these reforms as 'administrative decentralization', referring to an organizational arrangement, focused on overcoming barriers to change and searching ideal conditions for effective implementation. This approach to decentralization is based on a positivist approach to social sciences in which known variables are manipulated to obtain desired outcomes, not differently from the idea that in order to obtain peace it is enough to implement a number of well-timed reforms[144]. Decentralization reforms pursued with the support of international organizations are thus much more driven by the search for efficiency and effectiveness than by any commitment to real political decentralization, understood as the actual transfer of decision-making power to marginal groups, enhancing their capacity of participating to public life[145]. Indeed, besides formal definitions, a report on decentralization in Africa prepared by Associates in Rural Development (ARD) Inc.[146] on behalf of the United States Agency for International Development (USAID) confirms this, referring mostly to procedural measures rather than to *de facto* devolution of power. While acknowledging that local autonomy remained limited in most of case studies, the report takes the holding of sub-

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[139] UNDP, "Local Governance, Peace Building and State Building in Post-Conflict Settings," Discussion Paper, (2010). p. 25.

[140] UNDP, "Decentralised Governance for Development: A Combined Practice Note on Decentralisation, Local Governance and Urban/Rural Development."

[141] Olowu and Wunsch, *Local Governance in Africa*; Crawford and Hartmann, *Decentralisation in Africa*.

[142] Carola Lentz, "Decentralization, the Sate and Conflicts over Local Boundaries in Northern Ghana," *Development and Change* 37, no. 4 (2006): 901–19.

[143] Esser, "'When We Launched the Government's Agenda…'"; Inge Wagemakers, "Les défis de l'intervention," *Politique africaine*, no. 129 (March 1, 2013): 113–33; Darbon, *La Politique Des Modèles En Afrique*.

[144] Samoff, "Decentralization: The Politics of Interventionism."

[145] Ibid.

[146] Associates in Rural Development (ARD) Inc. has been deeply involved in governance reforms in South Sudan as a subcontractor of USAID. Apparently, the company has been absorbed by the corporation Tetra Tech and has started working under the name of ARD Tetra Tech) in the land sector since 2011. See the company's website: http://www.tetratech.com/en/international-development.

national elections and the formal transfer of spending responsibility as a signal that political and fiscal decentralization has occurred[147].

The technical character attributed to decentralization reforms is confirmed by the fact that most of international organizations involved in programs supporting local governments place it under 'governance' departments, often referring to it only as 'local governance', as the UN does[148]. Despite it often being defined as 'democratic' local governance, the latter is, again, thought to be improved through precise steps that Wunsch organizes into four areas of intervention: planning and capital investment, budgeting and fiscal management, personnel systems and management, and finance and revenues[149]. Indeed, 'local governance' is conceptually even vaguer than 'decentralization' and it does not mention power balances between central government and local governments or other political and social actors: improving local governance should indeed be a win-win game, where nobody is disempowered and everybody benefits from increased efficiency and effectiveness in policy implementation. Depoliticization thus characterizes local governance and decentralization[150] just as much as the broader state-building enterprise.

As in many other cases, while the academic world had always debated about the shortcomings in the implementation of decentralization reforms[151], the practitioners' world only started acknowledging them more recently, focusing on several critical aspects including matters of political will and hidden

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[147] ARD Inc., *Comparative Assessment of Decentralization in Africa: Final Report and Summary of Findings* (USAID, 2010).

[148] GTZ, *Decentralization and Conflicts. A Guideline* (Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), 2006); Phyllis Dinnio, *USAID's Experience in Decentralization and Democratic Local Governance* (USAID, 2000), http://pdf.usaid.gov/pdf_docs/pnach302.pdf. See also the World Bank website: http://www1.worldbank.org/publicsector/decentralization/what.htm; UNDP website: http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_local_governance.html. For a more comprehensive analysis of the definition of decentralization by different international development agencies, see Annina Aeberli, *Decentralisation Hybridized*, The Graduate Institute, Graduate Institute ePapers 14 (Geneva, 2012), http://librairie.immateriel.fr/fr/ebook/9782940503025/decentralisation-hybridized.

[149] James S. Wunsch, "Decentralization, Local Governance and 'Recentralization' in Africa," *Public Administration and Development* 21 (2001): 277–88.

[150] Esser, "'When We Launched the Government's Agenda...'."

[151] See for example the debate between Dennis A. Rondinelli and David Slater published by Development and Change between 1989 and 1990: Dennis A. Rondinelli, James S. McCullough, and Ronald W. Johnson, "Analysing Decentralization Policies in Developing Countries: A Political-Economy Framework," *Development and Change* 20, no. 1 (1989): 57–87; David Slater, "Debating Decentralization - A Reply to Rondinelli," *Development and Change* 21, no. 3 (1990): 501–12; Dennis A. Rondinelli, "Decentralization, Territorial Power and the State: A Critical Response," *Development and Change* 21, no. 3 (1990): 491–500. See also: Dennis A. Rondinelli, "Administrative Decentralisation and Economic Development: The Sudan's Experiment with Devolution," *The Journal of Modern African Studies* 19, no. 4 (December 1, 1981): 595–624; Samoff, "Decentralization: The Politics of Interventionism."

agendas of central governments[152]. This criticism is divided between 'reformist' critics, who look at deviations from expected outcomes as caused by poor planning and timing of reform[153], and radical critics, who question the appropriateness of implementing administrative decentralization reforms in contexts characterized by structural centralization and often weak formalization of power[154]. Radical critique is usually found in studies of decentralization in conflict affected contexts.

### 3.2.4 Decentralizing conflict?

In the early 2000s, decentralization started to be related to effective peace-building and conflict prevention strategies, despite a general lack of literature on its effects on the causes of conflicts and on the role of local governments in presence of weak central state institutions. While in the 1990s donors' main focus in post-conflict countries was on building viable central government institutions, this trend started changing by the end of the decade[155]. Positive outcomes expected from the strengthening of local government do not differ substantially from those expected in more peaceful settings, but in conflict affected societies the failure in governance reform is considered to directly affect stability and peace:

> "Local governments are now increasingly considered to have a key role in responding to the socio-economic needs of affected populations in both the immediate post-conflict humanitarian/early recovery phase and in the long term, as part of the consolidation of peace and State-building. Local Government authorities are viewed as pivotal in bringing formal state institutions into direct contact with their citizens and thus play a crucial role in establishing inclusive patterns of post-conflict governance, responsively providing services to divided populations and consolidating resilient law and order. Furthermore, attention to local governance can give voice to the local population, and enhance their participation in the reconstruction and peace building efforts and thus alleviate

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[152] Paul Jackson and Zoe Scott, *Local Government in Post-Conflict Environments*, Workshop on Local Government in Post-Conflict Situations: Challenges for Improving Local Decision Making and Service Delivery Capacities, Oslo 28-29 November 2007 (Oslo: UNDP, 2008), http://www.eldis.org/vfile/upload/1/document/1201/Local%20Government%20in%20Post%20Conflict%20Situations.pdf.

[153] Rondinelli, "Decentralization, Territorial Power and the State: A Critical Response"; Wunsch and Olowu, *The Failure Of The Centralized State*; Wunsch, "Decentralization, Local Governance and 'Recentralization' in Africa"; Richard C. Crook, "Decentralisation and Poverty Reduction in Africa: The Politics of Local-Central Relations," *Public Administration and Development* 23, no. 1 (February 2003): 77–88.

[154] Samoff, "Decentralization: The Politics of Interventionism"; Sébastien Melmoth, "République démocratique du Congo : décentralisation et sortie de conflit," *Afrique contemporaine* n° 221, no. 1 (June 15, 2007): 75–85; Slater, "Debating Decentralization - A Reply to Rondinelli."

[155] Jackson and Scott, *Local Government in Post-Conflict Environments*.

tensions based on social exclusion, polarization and regional disparities that are often at the origin of conflicts. It is also an essential means for increasing national capacities and ownership to lead recovery efforts across all the key phases, from the identification of needs, to planning, programming, implementation and monitoring".[156]

The UNDP paper quoted above provides a number of examples in which decentralization reforms extended state authority to contested areas (Macedonia and Aceh/Indonesia), areas of weak state penetration (South Sudan) or areas in the hands of local warlords (Afghanistan), helping, in the author's view, to increase state presence, visibility, credibility and legitimacy[157].

UNDP is not the only international organization to have published working, research and policy papers on decentralization and local governance. Many of these papers and reports have a similar structure, roughly divided into two parts: one which proclaims the amazing potential of decentralization reforms – including bolstering legitimacy of the political system, improving effectiveness and efficiency, increase participation and minority representation, satisfying local needs, etc.-; and one acknowledging the many shortcomings and negative effects that poorly implemented reforms are likely to have[158]. Some of these studies warn the donor community against an excessively technocratic approach to decentralization and local governance, pointing at the political nature of these processes. The lack of attention to the political dimension of decentralization is likely to hinder its conflict-sensitivity[159], and to strengthen elite capture instead of strengthening the state[160]. In other words, though donors are capable of driving and supporting decentralization reforms, positive results expected are all but guaranteed[161].

Recent empirical academic research seems to confirm that there is no direct link between decentralization – particularly administrative decentralization, the most common form of decentralization found in African countries - and peace. These conclusions reflect those from more numerous

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[156] UNDP, "Local Governance, Peace Building and State Building in Post-Conflict Settings." p. 3.

[157] See also Jackson and Scott *Local Government in Post-Conflict Environments*, for example.

[158] GTZ, *Decentralization and Conflicts. A Guideline*; ARD Inc., *Comparative Assessment of Decentralization in Africa: Final Report and Summary of Findings*; UNDP, "Local Governance, Peace Building and State Building in Post-Conflict Settings"; Jackson and Scott, *Local Government in Post-Conflict Environments*.

[159] GTZ, *Decentralization and Conflicts. A Guideline*.

[160] Ibid.; Jackson and Scott, *Local Government in Post-Conflict Environments*.

[161] GTZ, *Decentralization and Conflicts. A Guideline*; Jackson and Scott, *Local Government in Post-Conflict Environments*; ARD Inc., *Comparative Assessment of Decentralization in Africa: Final Report and Summary of Findings*; James Manor, "Perspectives on Decentralization," Working Paper (ICLD - Swedish International Center for Local Democracy, 2011).

studies on the relation between decentralization and poverty[162], and between federalism and conflict[163], which have been explored much more broadly. Notwithstanding the indirect potential influence of decentralization reforms on peace and stability related to the enhancement of socio-economic development and democracy, there is little empirical evidence of a direct, predetermined relation between the structure of the State and positive outcomes in terms of democratization and of reduced poverty and conflict[164].

More radical critics of decentralization reforms (or at least, of the kind of decentralization reforms supported on the ground by donors and national governments) are found in this field. Some have shown that the former can even have a divisive outcome, both because of elite capture and because of the strengthening of locally defined citizenship to the detriment of a national one[165]. In fact, decentralization does not necessarily bring to the deconstruction of the state from below indulging centrifugal thrusts: as shown by René Otayek, it can also represent an instrument of reconstruction of the central state, bringing to a re-articulation of the relations between center and periphery and ultimately

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[162] Jackson and Scott, *Local Government in Post-Conflict Environments*; Manor, "Perspectives on Decentralization"; Crawford and Hartmann, *Decentralisation in Africa*; Angelo Maliki Bonfiglioli, *Empowering the Poor: Local Governance for Poverty Reduction* (New York: United Nations Capital Development Fund, 2003), http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010168.pdf; Jesse C. Ribot, *African Decentralization. Local Actors, Powers and Accountability*, Democracy, Governance and Human Rights 8 (UNRISD, 2002); Conyers, "Decentralisation and Service Delivery."

[163] Enric Martinez-Herrera, "Federalism and Ethnic Conflict Management: Rival Hypotheses, the Attitudinal Missing Link and Comparative Evidence" (Background Paper para la Sessión "La respuesta federalista al separatismo y sus resultados en perspectiva comparada" (30 del X de 2008), 2008), http://campus.usal.es/~dpublico/areacp/seminarioenricmartinez.pdf; Jan Erk and Lawrence M. Anderson, *The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?* (Routledge, 2010); A.K. Adeghe, "Federalism, Federations and Ethnic Conflict: Concepts and Theories," in *Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions*, Doctoral Thesis (Leiden University, 2009), https://openaccess.leidenuniv.nl/handle/1887/13839; Jon Abbink, "Ethnic-Based Federalism and Ethnicity in Ethiopia: Reassessing the Experiment after 20 Years," *Journal of Eastern African Studies* 5, no. 4 (November 2011): 596–618.

[164] Crawford and Hartmann, *Decentralisation in Africa*; René Otayek, "La Décentralisation Comme Mode de Redéfinition de La Domination Autoritaire? Quelques Réflexions à Partir de Situations Africaines," *Revista Critica de Ciencias Sociais* 77 (2007): 131–50.

[165] Anna Katharina Schelnberger, "Decentralization and Conflict in Kibale, Uganda," in *Decentralization in Africa: A Pathway out of Poverty and Conflict?* by Crawford and Hartman (eds.), Amsterdam University Press (Amsterdam, 2008); Lentz, "Decentralization, the Sate and Conflicts over Local Boundaries in Northern Ghana"; C. Boone, "Decentralization As Political Strategy In West Africa:," *Comparative Political Studies* 36, no. 4 (May 1, 2003): 355–80,; Sara de Simone, "Post-Conflict Decentralization: Dynamics of Land and Power in Unity State – South Sudan," *Special Issue On Sudan And South Sudan*, UNISCI discussion papers, 33 (October 2013).

allowing the former to confirm its rule on the latter[166]. In both cases, the outcome of decentralization reforms, which are usually top down in spite of the rhetoric on participation surrounding them, is rather different from it idealistic links with democracy. This difference is not due to poorly planned reforms, but rather to a mixture of legacies in the exercise of power and of hidden agendas that, while using the same language contained in 'democratic decentralization' policy papers, pursue different goals from those officially stated. For example, in Uganda, the transformation of Resistance Councils into local government structures had the double purpose of strengthening Museveni's control of the rural areas[167] while also dividing his political opposition through splitting its territorial base into relatively autonomous units[168]. If on one hand this brought to a demilitarization of politics –because the ruling elite found other means to assert its supremacy[169], it also fuelled new local conflicts linked to local access to resources[170]. Indeed, elite capture of decentralization influences people's perceptions of how to effectively access resources, resulting in the strengthening of center-periphery patronage networks[171] and reproducing dynamics similar to what Mamdani called 'decentralized despotism' though not necessarily involving 'traditional authorities'[172].

## 3.3 Going local: the traditional temptation

"Local", Sara Berry argues, "has become something of a catchall term, used to denote people, place, institutions, or cultural practices – or all of these at once, implying that they coincide or are interchangeable, which is often not the

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[166] Otayek, "La Décentralisation Comme Mode de Redéfinition de La Domination Autoritaire? Quelques Réflexions à Partir de Situations Africaines."

[167] Vibeke Wang et al., *Governance Interventions in Post-War Situations: Lessons Learned* (Bergen, Norway: Chr. Michelsen Institute, Development Studies and Human Rights, 2005), http://www.cmi.no/publications/file/1955-governance-interventions-in-post-war-situations.pdf; Giovanni M. Carbone, *No-Party Democracy? Ugandan Politics in Comparative Perspective* (Boulder: Lynne Rienner Publishers, 2008).

[168] Leonardo Romeo, "Local Governance Approach to Social Reintegration and Economic Recovery in Post-Conflict Countries. Towards a Definition and a Rationale" (Discussion Paper, A Local Governance Approach to Post-Conflict Recovery, Organized by the Institute of Public Administration (IPA), jointly hosted by the UNDP/United Nations Capital Development Fund and UNDO/Bureau for Crisis Prevention and Recovery, New York, October 8, 2002), http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044076.pdf.

[169] Ibid.

[170] Schelnberger, "Decentralization and Conflict in Kibale, Uganda."

[171] Crook, "Decentralisation and Poverty Reduction in Africa."

[172] Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton Studies in Culture/power/history (Princeton, N.J: Princeton University Press, 1996).

case"[173]. This local turn is clearly expressed in the decentralization of government and administrative functions in the attempt at making governance more effective through the penetration of standardized modes of government to the local level. But what is the local level? The local level has been described as the space where politics 'takes place' following different kinds of logics which build trans-scalar relations with the international space[174]. This kind of fluid definition is not very popular neither among policy-makers nor Peace Studies scholars. In his work on the local appropriation of the liberal peace paradigm, Oliver Richmond attempts at a definition of the "local" as describing the domestic sphere opposed to the "international" liberal peace apparatus, just to find himself in need of yet another category to explain why the "local" is so diverse. He then formulates the unconvincing concept of the "local-local", which would identify the broader population living more "traditional life-styles" deeply rooted in "cultural traditions and heritage". The local-local is found below the "local", with the latter referring to domestic policy-makers and societal groups keener to join coalitions with international interveners[175]. This does not however solve the problem: does an undifferentiated, conflict-free 'local-local', sharing permanent common interests and desires, exist? Certainly not: instead, it reminds of what Harrison described as the populist tendency of the World Bank of identifying "the poor" within its neoliberal framework of intervention, "suturing" any other social difference[176]. This populist attitude is translated into practice through the temptation of relying on supposedly pre-existing local structures variously defined as traditional or customary in the effort of grasping the dynamics of complex societies in identifiable localities. In Africa, this temptation has led to take for granted the homogeneity of localities as territory-bound communities with clear interests and capacity of self-regulation, relying on popular accounts of "customary", often overlooking the history of customs being co-opted or remade by states[177]. In this narrative, local communities described as homogeneous entities coincide with geographical localities, completely overlooking the dynamics through which both the external

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[173] Sara Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa," *African Study Monographs* 25, no. 2 (July 2004): 79–101. P. 82

[174] Siméant, Lickert, and Pouponneau, "Échelles, Récifs, Bureau - Terrains Du Politique à L'international."

[175] Richmond, *A Post-Liberal Peace*. p. 116.

[176] Graham Harrison, *The World Bank and Africa: The Construction of Governance States* (London ; New York: Routledge, 2004). Pp. 101-102

[177] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

and internal boundaries of the 'local' and of the 'community' are constructed and reproduced.

### 3.3.1 The "traditional resurgence"

Traditional authorities are, indeed, another important element sneaking into local governance programs targeting 'fragile' states and aiming to build solid and participatory government and administrative capacity. Once considered as relics of a pre-modern past, destined to disappear with the advancement of modernity and the strengthening of the Weberian state[178], they were ignored and at times repressed, especially in socialist regimes, by post-colonial states[179]. In the 1990s, however, across the African continent a "traditional resurgence"[180] led numerous states to incorporate local chiefs into more or less formalized government structures through constitutional changes. South Africa, Ghana, Uganda, Botswana are just a few of the countries in which the role of traditional authorities was given centrality in local governance. Drawing upon Mamdani's concept of state bifurcation, Catherine Boone talks about a "neocustomary trend", suggesting that this kind of governance arrangements reproduces a system which is exclusive in nature and paternalistic in its practices[181].

In the early 2000s, the thrust towards localization by international donor agencies has also started involving the incorporation of traditional authorities in systems of local governance, often in the framework of decentralization reforms. This led to the formalization of traditional authority even in those countries which had previously contrasted them such as Mozambique[182]. In 2004, a report commissioned by the World Bank to two experts of the University of Bern argued that:

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[178] Dominique Darbon, "Crise Du Territoire étatique et Communautarisme: Les Nouveaux Enjeux Idéologiques de L'intégration En Afrique Noire," in *Bach Daniel C. Regionalisation, Mondialisation et Fragmentation En Afrique Subsaharienne*, Karthala, Hommes et Sociétés (Paris, 1998).

[179] Pierre Englebert, "Patterns and Theories of Traditional Resurgence in Tropical Africa," *Mondes en développement* no 118, no. 2 (June 1, 2002): 51–64.

[180] Ibid. He signals that in 1999 there even was a World Conference of Kings, Queens, Traditional Chiefs and Religious leaders organized in Benin by a local NGO engaging in the "promotion of traditional systems".

[181] Boone, *Property and Political Order in Africa*; Jesse C. Ribot, "Decentralisation, Participation and Accountability in Sahelian Forestry: Legal Instruments of Political-Adminstrative Control," *Africa* 69, no. 1 (1999): 23–65.

[182] Helene Maria Kyed, "'Traditional' Leaders Formalization in Post-War Mozambique. Exploring the Ambiguous Space between State and Non-State Domains," in *Besides the State. Emergent Powers in Contemporary Africa, by Alice Bellagamba and Georg Klute (eds).* (Cologne: Rudiger Koppe Verlag, 2008).

"It is clear that successful decentralisation is not just about building good political institutions, it is also essential to improve overall governance at the local level. This includes meaningful participation of the local population and their inclusion into decision making processes to foster transparency, accountability and responsiveness (…)"[183].

"Informal and formal traditional structures" were to be seriously considered as meaningful partners in the "absence of the state": indeed, they "survived the colonial as well as the post-colonial period", allowing people to "maintain their traditional forms of social organization". Traditional authorities are thus considered a vital channel of popular participation. In 'fragile' contexts they are considered as good people's representatives for their resilience in situations of formal institutional collapse and of their legitimacy vis-à-vis the local population[184]. As Kyed shows in the case of Mozambique, traditional authorities are portrayed in extremely reified terms, as if they existed independently from any other form of political and social authority as the natural expression of a primordial community[185]. While at times looking at traditional authorities as actual intermediaries between state and society[186], scholarly literature has been more careful to question the idea of 'tradition' as a given and immutable fact, pointing instead at its continuous production, reproduction and negotiation in contemporary Africa[187]. This notwithstanding, the very fact that local customary authorities have continued to be referred to as 'traditional' in much of the gray literature produced by international organizations and in international programs[188] suggests the continued

[183] Georg Lutz and Wolf Linder, *Traditional Structures in Local Governance for Local Development*, Community Empowerment and Social Inclusion Learning Program (Berne: University of Berne, World Bank, 2004), http://www.georglutz.ch/docs/trad_struct_engl.pdf. p.2.

[184] Ibid. p. 2

[185] Kyed, "'Traditional' Leaders Formalization in Post-War Mozambique. Exploring the Ambiguous Space between State and Non-State Domains."

[186] Englebert, "Patterns and Theories of Traditional Resurgence in Tropical Africa"; Bellagamba and Klute, *Beside the State. Emergent Powers in Contemporary Africa*; Sara Berry, *Chiefs Know Their Boundaries: Essays on Property, Power, and the Past in Asante, 1896-1996*, Social History of Africa (Portsmouth, NH : Oxford : Cape Town: Heinemann ; J. Currey ; D. Philip, 2000).

[187] Bellagamba and Klute, *Beside the State. Emergent Powers in Contemporary Africa*. On the invention of tradition in Africa see: Terence Ranger, "The Invention of Tradition in Colonial Africa," in *The Invention of Tradition* (Cambridge: Cambridge University Press, 1992), 211–62; Mamdani, *Citizen and Subject*; Terence Ranger, "The Invention of Tradition Revisited: The Case of Colonial Africa," *Occasional Paper* 0, no. 11 (January 1, 2014): 5–50; Jean-Pierre Olivier de Sardan, "Le culturalisme traditionaliste africaniste," *Cahiers d'études africaines* N° 198–99–200, no. 2 (December 1, 2010): 419–53.

[188] Lutz and Linder, *Traditional Structures in Local Governance for Local Development*; Kwesi Kwaa Prah, *Unity in Diversity: South Sudan COTALs Study and Familiarization Tour Report (South Africa, Botswana and Ghana), January 2013* (Cape Town: Centre for Advanced Studies of African Society (CASAS), 2013). See also the World Bank website of the « Promoting Partnership

relevance of the idea of tradition in the understanding of the relationship between the local chiefs and their subjects, as well as the idea that the incorporation of traditional authorities in local systems of governance can ease the task of creating stable polities through 'working with the grain'. In fact, the incorporation of 'traditional' authorities in local government systems poses questions not only around their legitimacy and the scope of their power (variously defined in each country), but also about the jurisdiction of their authority. In other words, it makes it necessary to identify the 'local community', sometimes referred to as 'traditional community'[189] which, through its traditional authority, can participate in local governance and development initiatives.

With reference to the localistic tendency of the international donor community in the identification of 'local communities' as right-bearing subjects, Dominique Darbon speaks of a 'communitarian' trend[190]. This communitarian trend draws on ideas of groups as right-bearing subjects emerged in the 1970s in North America as a critique of liberal individualism, which started to be regarded as inadequate for the protection of diversity. According to Darbon :

> « L'égalité fondée sur une obligation de moyens est remplacée par une égalité fondée sur une obligation de résultat, au besoin par le recours à une différenciation du traitement juridique des citoyens en fonction de leur appartenance communautaire »[191].

This form of communitarianism sees society as the association of diverse groups whose members are granted individual rights through their belonging to a specific group. Cultural, religious, sexual, linguistic minorities thus claim specific social and legal protection against alleged discrimination. In Western countries, the role of the state above these different communities is well-established and transversal allegiances also develop. In contexts where power is less institutionalized, transversal forms of mobilization are weaker and patron-client relationships emerge around identity-communities, hindering the formation of horizontal groups and organizing society on vertical lines. Political entrepreneurs have an easy hand at making an instrumental use of communal identity to mobilize support. In Africa, following colonial legacies, this identity is expressed in ethnic terms : "*La reconnaissance des group conduit à reconnaître*

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with Traditional Authority" Project in Ghana, available at http://www.worldbank.org/projects/P071399/promoting-partnerships-traditional-authorities-project?lang=en (accessed on the 19th of February 2016).
  [189] Prah, *Unity in Diversity*.
  [190] Darbon, "Crise Du Territoire étatique et Communautarisme: Les Nouveaux Enjeux Idéologiques de L'intégration En Afrique Noire."
  [191] Ibid. p. 64.

*une vie autonome aux minorité et aux ethnies*"[192]. While Darbon suggests that this communitarian trend in claiming rights and in the strategies of political mobilization leads to the marginalization of the state as the arbiter among different groups, it can also be argued that in many instances political mobilization, even though on ethnic lines, aims to the appropriation of the state.

The mobilization of communal ethnic identities for political purposes passes through their fixation and their description as idealized entities characterized by "*immutabilité culturelle*" et "*unanimisme politique*". Drawing upon a background characterized by an increasing sensitivity towards the protection of diversity and the inclusion of groups - rather than individuals - into development processes, this 'communitarian' discourse is also appropriated by the development community and systematized under the label of "community" or "participative" development[193].

Emerging predominantly in rural contexts[194], this form of 'communitarianism' can be retraced also in constitutional power-sharing arrangements as well as in decentralization and land governance reforms integrating local customary authorities into the state apparatus[195]. These arrangements all contribute to the creation of rather local and particularistic constituencies to the detriment of a broader one. Geschiere maintains that the concepts of "community" and "traditional" institutions are co-opted into neoliberal development projects as alternatives to the state, increasing the centrality of discourses on autochthony and belonging all over the continent. In doing this, he regrets a more levelling idea of a unique centralized polity:

> "The earlier emphasis on national citizenship may have had its disadvantages as well, but at least that identification had a clear formal basis – which is utterly lacking for the kinds of regional or even local identities favored by decentralization."[196]

Indeed, the 'communitarian' trend in state-building seems to favour communal belonging and local citizenship rights rather than an individualistic relation to the state, typical of liberal stances, encouraging the development of local allegiances rather than a national one. If debates on political ethnicity and

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[192] Ibid. p. 72.

[193] Otayek, "La Décentralisation Comme Mode de Redéfinition de La Domination Autoritaire? Quelques Réflexions à Partir de Situations Africaines."

[194] The World Bank, *Land Policies for Growth and Poverty Reduction.*, World Bank Policy Research Report (The World Bank, Oxford University Press, 2003).

[195] Darbon, "Crise Du Territoire étatique et Communautarisme: Les Nouveaux Enjeux Idéologiques de L'intégration En Afrique Noire"; Boone, *Property and Political Order in Africa*; Lentz, "Decentralization, the Sate and Conflicts over Local Boundaries in Northern Ghana."

[196] Geschiere, *The Perils of Belonging*. p. 95.

autochthony have a well-established history in African Studies[197], the adoption of international policies supporting the institutionalization of governance structures based on customs without changes to the overall neoliberal context seems to be scarcely receptive on this point even in conflict-affected societies, where structural weaknesses of formal state institutions, their frequent lack of legitimacy and legacies of ethnic militarization encourage localism and fragmentation.

### 3.3.2 The "community" as a right-bearing subject

The 'return of the local'[198] and the renewed attention to democratic transformation and inclusivity of governance structures in international organizations' discourses and practices in support to policy-making in Africa is particularly visible in land tenure reforms, where the increasing legalization of customary rights to land has brought the "community" to be framed as a collective right-bearing subject.

Land governance reforms are not usually considered to belong to the domain of state-building projects, responding rather to development and productivity than to institution-building concerns. In fact, however, not only does the reform of the land sector decisively contribute to the economic side of the state-building project, usually encouraging the creation of land markets and laws improving tenure security; also, it has been repeatedly linked to processes of state formation by a very rich scholarly literature. "Land issues are often not about land only. Rather, they invoke issues of property more broadly, implicating social and political relationships in the widest sense"[199], Lund and Boone state in the introduction of a Special Issue on *Africa* dedicated to the politics of land tenure. Indeed, land access and control speak both to issues of property, and to issues of power and authority, as claims over land property usually contribute to the structuring of forms of authority that often have an institutional character[200].

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[197] Jean-François Bayart, Peter Geschiere, and Francis Nyamnjoh, "Autochtonie, démocratie et citoyenneté en Afrique," *Critique internationale* 10, no. 1 (February 1, 2001): 177–94; Geschiere, *The Perils of Belonging*; Laurent Fourchard and Aurelia Segatti, "Introduction of Xenophobia and Citizenship: The Everyday Politics of Exclusion and Inclusion in Africa," *Africa* 85, no. 01 (February 2015).

[198] Geschiere, *The Perils of Belonging*.

[199] Christian Lund and Catherine Boone, "Introduction: Land Politics in Africa - Constituting Authority over Territory, Property and Persons," *Africa* 83, no. Special Issue 01 (2013): 1–13. p. 1.

[200] Christian Lund and Thomas Sikor, "Access and Property," *Development and Change* 40, no. 1 (2009): 1–22.

Recent years have seen a growing international support to the legalization of "local rights". These local rights are complex in nature, as they originate from multiple sources of authority deriving from networks of relations as well as by the recognition of different livelihood needs, and are thus better understood as "bundles of rights". Their inclusion in policy-making agendas originated in the problematization of the concept of tenure security, which had for long time been associated to individualization and formalization of land rights in a somewhat modernist perspective[201]. After some twenty years of considering most of sub-Saharan Africa as "a problem-free continent"[202] with regard to land issues, thanks to its abundant land and the flexibility of local customary tenure regimes with post-colonial government and international institutions focusing on large scale agricultural development schemes, strategies to increase the persistent low productivity of the continent became issues of international concern[203]. Mainstream approach to economic growth saw a direct link between the formalization and individualization of land rights and tenure security in the context of free market and of increasing pressure on productive land. Not only would the individual and transferable title encourage investments on land once it was secured; also, it could be used as collateral in access to credit to finance such investments[204].

In fact, the privatization of land did not bear the expected results, and what was initially presented as the only way to ensure equitable opportunities of accessing such an important resource very quickly turned out to favor land accumulation in the hands of the wealthiest families, increasing corruption, inequalities and reducing food security for the rural folks[205].

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[201] Philippe Lavigne Delville, "Sécurisation Foncière, Formalisation Des Droits, Institutions de Régulation Foncière et Investissements. Pour Un Cadre Conceptuel élargi," *Revue Des Questions Foncières* 1 (2010): 5–34.

[202] J. P. Platteau, *Land Reform and Structural Adjustment in Sub-Saharan Africa: Controversies and Guidelines*, FAO Economic and Social Development Paper 107 (Rome: Food and Agriculture Organization of the United Nations, 1992). p. 6.

[203] World Bank. *The assault on world poverty*. Baltimore and London: John Hopkins University Press, 1975, quoted in Ibid.

[204] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

[205] Bruce J. Berman, "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism," *African Affairs* 97, no. 388 (July 1, 1998): 305–41; Anna Maria Gentili, "Comunità Rurali, Sistemi Di Autorità E Risorse Naturali. Dalle Riforme Coloniali Ai Processi Di Decentralizzazione nell'Africa Australe Contemporanea," *Afriche E Orienti*, no. Special Issue I (2008): 7–23; Mario Zamponi, "Fra Tradizione E Modernità. Autorità Tradizionali E Potere Nei Processi Di Sviluppo Rurale E Di Decentralizzazione in Africa Australe," *L'Uomo* 1–2 (2011): 157–74.

The progressive emergence of the concept of 'local rights'[206] can be considered as a sometimes genuine attempt to draw back the attention to the rural people and to their livelihoods, as seems to be confirmed by the fact that it is often the people directly involved to employ the language of the 'local' and of the 'customs'[207]. This, however, compels the identification of "who is local"[208], and of who has the authority to identify and to decide who is local, contributing to extend the 'communitarian trend'[209] also to the land governance domain.

In international organizations' papers, this shift towards the locality has predominantly been expressed in customary terms, associating the 'local' with institutions and cultural practices pertaining to the domain of customs. In 2003, the World Bank acknowledged that, 90% of the land in Africa was *de facto* administered under 'customary systems'[210]. In 2013 the number of African countries having recognized customary land tenure in their legal systems had nearly doubled since 2002[211]. A few years later, a study conducted by an international land expert on behalf of FAO confirmed this stance towards customary land rights legalization in the rural areas[212]. Customary systems would provide the strongest guarantees of efficacy and equity in land allocation in terms of poverty reduction potential: not only would they strengthen rural people livelihoods, but they would also give a direct collective stake in any investment on the land to the local community. Though not solving *per se* the burning problem of tenure security, which is still presented as the precondition to poverty reduction and economic growth, these systems move the decision-making power over the allocation of land from undemocratic state bureaucracies to local communities' more legitimate authorities. Once their rights are legally protected, boundaries demarcated and membership defined,

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[206] Lavigne Delville, "Sécurisation Foncière, Formalisation Des Droits, Institutions de Régulation Foncière et Investissements. Pour Un Cadre Conceptuel élargi."

[207] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

[208] Paulina Peters. "Who's local here? The politics of participation in development. *Cultural Survival Quarterly*, Fall, 1996. Pp. 22-25, quoted in Sara Berry. "Reinventing the local? Privatization, decentralization and the politics of resource management: examples from Africa".

[209] Darbon, "Crise Du Territoire étatique et Communautarisme: Les Nouveaux Enjeux Idéologiques de L'intégration En Afrique Noire."

[210] The World Bank, *Land Policies for Growth and Poverty Reduction.*

[211] The World Bank website, last access on 25 October 2014. http://www.worldbank.org/en/news/press-release/2013/07/22/how-africa-can-transform-land-tenure-revolutionize-agriculture-end-poverty

[212] Michael Ochieng Odhiambo, "Improving Tenure Security for the Rural Poor. Kenya, Tanzania and Uganda - Case Study," Support to the Legal Empowerment of the Poor (LEP) (FAO, 2006); USAID, "The Future of Customary Tenure. Options for Policymakers," Property rights and resource governance briefing paper, USAID Issue Brief, (2012), http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_2012_Liberia_Course_Module_1_Future_of_Customary_Tenure.pdf.

nothing would threaten the rural poor conflict-less enjoyment of their customary rights to land[213] – as if all these steps were easy and straightforward. Such systems are usually deemed to be embedded in social relations of a group of people, mediating between collective ownership and individual access to land. They rely on images of homogeneous and conflict-free communities with shared interests and uncontroversial regulatory institutions[214]. In fact, however, customs, as well as tradition, are an "ideological construct"[215] deployed by colonial governments in search of handholds for their system of rule. They have been reproduced and reinvented by successive governments to the present day, relying upon the idea of a group of people sharing a common, uncontroversial and pre-modern system of social regulation which has survived, though with some obvious modifications, since a vaguely defined 'immemorial' past[216].

Faced with the overwhelming complexity of the world of customary rights, policy experts and scholars have suggested a number of strategies to rationalize it, operationalize it and make it 'legible'. Among these, there are processes of selective ascertainment in order to keep "good" aspects and drop "bad aspects" - meaning those not complying with a human-right based approach to justice -[217], and the delivery of training and modules to sensitize local communities and their authorities on the need to secure rights also to vulnerable groups such as women or minorities[218]. One international expert on land tenure, while emphasizing all the strengths of customary land tenure, also points to one other challenge, more political in nature, recalling the contentious issue of determining "who is local" highlighted by Berry[219]:

> "These positive attributes of customary land tenure (the fact that it is allocated on the basis of needs, for example) should not blind us to its shortcomings or even the challenges it faces in light of changes taking place in communities subject to it. One major limitation of customary tenure is that its substance and institutional framework are defined in community-specific terms. The essence

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[213] The World Bank, *Land Policies for Growth and Poverty Reduction.*

[214] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

[215] Mamdani, *Citizen and Subject.* p. 22.

[216] Zamponi, "Fra Tradizione E Modernità. Autorità Tradizionali E Potere Nei Processi Di Sviluppo Rurale E Di Decentralizzazione in Africa Australe"; Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

[217] On the need for customary law ascertainment see also: Paul De Wit, Christopher Tanner, and Simon Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences", Land Tenure Working Paper (FAO, October 2009).

[218] Francesca Marzatico, "Challenges of Land Governance in the Making of a New Nation: Experiences from South Sudan" (2014 World Bank Conference on Land and Poverty, Washington D.C., March 24, 2014).

[219] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa."

of membership in a community as the basis of rights and obligations means that the system excludes outsiders, thereby limiting the scope of its benefits"[220].

Vague acknowledgments of this kind of shortcomings are mentioned also in other gray literature examples[221]; nevertheless, these concerns have not been enough in the world of policy-makers to deflect policies from systems considered to merge an environment conducive to investments and local communities' social concerns.

As acknowledged by a recent report by the World Bank, the legal recognition of customary rights to land entails the demarcation of communal land boundaries, "organizing and formalizing communal groups"[222], in order to prevent –or at least regulate- 'outsiders' encroachment on communal land[223], and to allow 'local communities' to benefit from productive investments on their land and from the increasing commodification of eco-system services. Once communal ownership is ensured, the poor will be less vulnerable to illegitimate expropriation with no compensation, and it will become less pressing to register individual land titles. According to Paul De Wit, the legal recognition of communal rights to land will challenge the flawed idea of the existence of "free land" (land were no signs of settlement or farming activities are available, but that may constitute an integral part of livelihood strategies such as pastures, forests or fallow fields), and contribute to prevent environment degradation caused by large scale agriculture investments[224].

Policies based on the legalization of customary land rights relying on the idea that it is possible to draw clear-cut distinctions between insiders and

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[220] Odhiambo, "Improving Tenure Security for the Rural Poor. Kenya, Tanzania and Uganda - Case Study." p. 11

[221] Cotula, Toulmin, and Hesse, *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*; Rachael S. Knight, *Statutory Recognition of Customary Land Rights in Africa: An Investigation into Best Practices for Lawmaking and Implementation*, FAO Legislative Study, no. 105 (Rome: Food and Agriculture Organization of the United Nations, 2010); USAID, *The Future of Customary Tenure. Options for Policymakers*, Property rights and resource governance briefing paper, USAID Issue Brief, (2012); Patrick McAuslan, *Improving Tenure Security for the Rural Poor in Africa. Synthesis Paper: Deliberations of the Legal Empowerment Workshop - Sub-Saharan Africa*, Support to the Legal Empowerment of the Poor (LEP) (FAO, 2007).

[222] Frank Byamugisha, *Securing Africa's Land for Shared Prosperity: A Program to Scale up Reforms and Investments* (Washington, D.C: World Bank, 2013) p. 7.

[223] This strategy looks incredibly similar to the colonial practice of cataloguing African ethnic groups, crystallizing their identities. This process is illustrated in Chapter 2 with reference to South Sudan and British Southern Policy.

[224] Paul De Wit, Christopher Tanner, and Simon Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences". There is a rich literature on community engagement and on the recognition of customary rights to land for the sake of environmental conservation, with particular regard to the preservation of forests. Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa"; Ribot, "Decentralisation, Participation and Accountability in Sahelian Forestry: Legal Instruments of Political-Adminstrative Control."

outsiders are obviously met with various kinds of resistance and appropriation not only by governments – who may be no be prepared to leave the leadership of such a sensitive sector to foreign actors and may actively try to manage formal processes in ways that are convenient to local interests[225]. Also, resistance and appropriation can come from ordinary people inventing tradition and playing their belonging "to take advantage of changing circumstances"[226]. In any case, in African societies – and, arguably, in any society – it is virtually impossible to define homogeneous communities based on such fluctuating concepts as 'tradition' and 'customs'. Moreover, drawing upon colonial definitions of customs and 'imagined communities'[227] that have been shaped by continuous interaction with a state that reads them through ethnic lens, ethnic belonging becomes an important element in the definition of "who is local" in a particular place. If ethnically homogeneous territorial units do not exist, the process of attributing land rights to ethnic communities within a circumscribed territory can't be but controversial – to use a euphemism. Since in South Sudan , as we shall see, the recognition of 'local communities' as rights-bearing subjects in the land governance reform is also matched with their identification with the local government and administrative units' jurisdiction in the framework of the Local Government reform, rights to land and broader local citizenship rights overlap. For this reason, land policies (and land politics) assume a particular importance in the context of state-building, as they contribute to defining the nature and the scope of state structures; and in that of state formation, as they contribute to sketching the path for a productive interaction with sources of authority.

# 4. Avoiding state-centrism in the study of the state: the state formation perspective

## 4.1 State formation as negotiation

South Sudan is a country where international state-building has been ongoing since mid-2000s. Defined as a "post-conflict" situation when the Comprehensive Peace Agreement (CPA) between the Sudan People's Liberation

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[225] Lavigne Delville, "La Réforme Foncière Rurale Au Bénin. Emergence et Mise En Question D'une Politique Instituante Dans Un Peys Sous Régime D'aide."

[226] Berry, "Reinventing the Local? Privatization, Decentralization and the Politics of Resource Management: Examples from Africa." p. 82.

[227] Ranger, "The Invention of Tradition Revisited."

Movement/Army (SPLM/A, now South Sudan's ruling party) and the government of Sudan was signed, it was considered as a success-story of post-conflict state building until the end of 2013, when the extremely precarious balance that had characterized the eight "post-conflict" years dramatically broke down into a new southern civil war. This work does not look to the governance arrangements emerging from the new war situation, yet the latter speaks to the way in which it is appropriate to look at the South Sudanese state.

Looked at from an orthodox institutionalist perspective, South Sudan is yet another case of failed state. In 2014, it figured in the first position of the Fragile States Index[228]. Even for critics of the "failed states" paradigm, it could be argued that the state-building project - if not the state itself - has failed[229]. In fact, however, considering the state only as a set of institutions tasked with keeping the monopoly of violence and control over the territory is a somewhat reductive perspective, one that leaves the spectator puzzled by such flagrant falling apart of South Sudan's statehood.

Many have drawn attention to the continuous appropriation, manipulation, reinterpretation of 'alien' ideas and policies structuring the modern state by local societies from a number of theoretical perspectives[230]. In these studies, there is an attempt at departing from a structuralist perspective, according to which local dynamics and institutions would be determined by externally-imposed 'rules of the game', and to re-focus the analysis on the agency of local actors, at different scales. In particular, Bruce Berman's analysis of the Marxist concept of 'articulation', and his critique to a structuralist version of it, directly addresses the relation between structure and agency in the field of economic relations in capitalist development. He argues in favour of a conception of articulation as "a process of struggle and uncertainty, the particular historical field in which European capital and the colonial state

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[228] The Fragile States Index, formerly Failed States Index, is an annual report published by the United States think tank Fund for Peace and the magazine *Foreign Policy* since 2005 http://foreignpolicy.com/fragile-states-2014/ , accessed on 06/03/2016.

[229] Roberto Belloni, "Statebuilding Failure in South Sudan," *E-International Relations*, April 17, 2014, http://www.e-ir.info/2014/04/17/statebuilding-failure-in-south-sudan/.

[230] Newman, Paris, and Richmond, *New Perspectives on Liberal Peacebuilding*; Bliesemann de Guevara, "Introduction"; Belloni, "Hybrid Peace Governance"; Jean-Pierre Olivier de Sardan, *Anthropology and Development: Understanding Comtemporary Social Change* (Zed Books, 2005); Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*; Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali"; Bayart, "L'historicité de l'Etat importé"; Tobias Hagmann and Didier Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa"; Joel S. Migdal and K. Schlichte, "Rethinking the State," in *The Dynamics of States: The Formation and Crises of State Domination,* by K. Schlichte (ed.) (Aldershot: Ashgate Publishing, 2005), 1–40.

attempted to control the labour power and production of African societies"[231]. They "attempted", but were faced with constant resistance, leading to "a process of uneven capitalist development"[232], which was yet only possible thanks to the development of internal capitalist forces.

The state-building project can be looked at in similar terms: as a field of power in which externally produced ideas (democracy, decentralization, neutral administration, good governance etc.) are brought from 'outside' but are negotiated, appropriated, reinterpreted and occasionally resisted by local social actors. Just as capitalism did penetrate the African continent, and did co-opt local pre-capitalist modes of production connecting them to the broader capitalist system, the state-building project is 'captured' and manipulated, and states are formed at least partly out of this process of articulation between the original project and its manipulation. The historical process of state(s) formation in pre-colonial Africa was deeply upset by the advent of colonialism and the imposition of a pre-determined, often alien, form of centralized state. As has been demonstrated by many authors (and as will be illustrated more in details in chapter 2), the penetration of colonial rule was only possible thanks to the cooperation of local actors, who willingly came into relations with the colonial state and contributed expanding its scope. Similarly, as will be seen in the following chapters, contemporary international state-building relies at least partially on the endorsement of its precepts by local elites, if only to keep access to extraverted resources[233]. To put it as Didier Péclard:

> "(S)tates cannot be engineered or crafted, even less so through outside interventions alone. They are constantly formed and re-formed by primarily "endogenous" (OECD/DAC 2010) historical and social dynamics, which shape outside interventions at least as much as they are shaped by them"[234]

Indeed, a more fruitful perspective on the state in South Sudan, and in Africa more broadly, is to look at it as a historical process drawing upon incremental legacies of the past and external interventions, but also contemplating their active appropriation and reinterpretation by local societies and elites[235]. As Berman and Lonsdale argue about colonial time, states are built through voluntarist actions to create "an apparatus of control" (p. 5); but they

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[231] Bruce Berman. "The Concept of 'Articulation' and the Political Economy of Colonialism", in *Unhappy Valley. Conflict in Kenya and AfricaI,* by Bruce Berman and John Lonsdale. p. 133.
[232] Ibid. p. 133.
[233] Bayart, "L'Afrique Dans Le Monde."
[234] Péclard, "State-Building, Legitimacy, and Development in Fragile Context." p. 4.
[235] Bayart, "L'Afrique Dans Le Monde"; Hagmann and Péclard, "Negotiating Statehood"; Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

are also formed by the "anonymous action of many" (p. 15)[236] in an arena of negotiation which is conflictive, non-linear and non-teleological[237], leading to the emergence of different kinds of statehood. Berman and Lonsdale define state formation as "a historical process whose outcome is a largely unconscious and contradictory process of conflicts, negotiations and compromises between diverse groups"[238]. Their definition can be complemented with the "negotiating framework" for the analysis of statehood formulated by Hagmann and Péclard, which looks at the process of establishing statehood in its historicity, acknowledging its conflictive nature as the outcome of the unequal competition among multiple actors over the institutionalization of power into distinct forms of statehood[239]. These efforts to rule "may not be undertaken with grand state-building ambition"[240]: the focus on state formation and the approach to its analysis as a process of negotiation allow us to depart from the normative character of state-building and of its practices, relying on the idea of the state as an homogeneous given, a monolith that can be constructed through a number of well-timed steps in a somewhat modernizing perspective. Instead, following Schlichte and Migdal, Hagmann and Péclard define statehood as: "a field of power whose confines are decided upon with means of violence and whose dynamics are marked by the ideal of a coherent, coercive territorial organization as well as the practices of social actors"[241]. Following Bourdieu, ideas and practices of the state thus feed a field of power where holders of different kinds of capital (physical force, economic, cultural and symbolic) confront and compete with each other[242]. The historical dimension in which these negotiations happen retains an outstanding importance. Drawing upon Balandier, Jean-François Bayart maintains that the African state is shaped by the legacies of a "triple history" (pre-colonial, colonial and post-colonial), which "cumulate their contributions" in the production of contemporary forms of statehood[243]. Indeed, the process of state formation can be seen as an incremental process, in which the output of single situations of negotiation contribute in drawing its path.

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[236] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

[237] Hagmann and Péclard, "Negotiating Statehood."

[238] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* p. 5.

[239] Hagmann and Péclard, "Negotiating Statehood."

[240] Lund, *Local Politics and the Dynamics of Property in Africa*.

[241] Hagmann and Péclard, "Negotiating Statehood." p. 546; Migdal and Schlichte, "Rethinking the State." p. 15.

[242] Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field".

[243] Bayart, "L'historicité de l'Etat importé."

## 4.2 Actors and arenas of state formation

### *4.2.1 A crowded arena: multiple actors engaging in state-making*

The concept of state formation is deeply related to Tilly's work on the formation of Western European states, and conveys an understanding of such a process as a historical and extremely violent one. War making has represented the means of accumulation of power and wealth, it has provided a justification for the extraction of taxes and food and has legitimized increasing state interventions in the regulation of social and economic relations in return for protection[244]. The argument of 'war-makes-states', has been argued, does not apply to a world in which inter-state war has been virtually banned from international relations, and in which states are rather built through diplomatic relations and external interventions from bilateral and multilateral organizations[245]. More specifically, post-colonial and post-socialist states did not have to recur to wars against competitors in order for their rulers to accumulate power and to conquer territory, and have been absolved from taxation thanks to the possibility to finance their rule through rents, credits and aid[246]. In fact, as Clapham argues, there is at least one area of the post-colonial world where state formation dynamics recall those described for Western Europe: the Horn of Africa. In this region, says Clapham, we have Ethiopia, whose wars against Muslim and European invaders played an important role in the emergence of nationalism; and Eritrea, where the liberation war not only brought to the material creation of a new state, but also strengthened Eritrean nationalism in opposition to Ethiopian domination and the people's support of and allegiance to the Eritrean People Liberation Front (EPLF) thanks to its local system of service delivery[247]. Even if not marked by the same features of *longue-durée* (as in the case of Ethiopia) and of actual establishment of a new state entity (as in the case of Eritrea), post-Cold War insurgencies in East and Central Africa could also arguably be seen in this perspective. Although they used, in most of cases, the colonial boundaries without challenging them, they may well have been the continuation of pre-existing trends of power accumulation and of

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[244] Tilly, "War Making and State Making as Organized Crime."

[245] Leander, "Wars and Un-Making of States: Taking Tilly Seriously in the Contemporary World."

[246] Bliesemann de Guevara, "The State in Times of Statebuilding."

[247] Christopher Clapham, "Guerre et construction de l'État dans la Corne de l'Afrique," *Critique internationale* 9, no. 1 (2000): 93–111.

particular features of societies[248], to some extent contributing to shape the content of the inherited state[249].

South Sudan can be considered as a similar case to Eritrea (at least until its independence): gone through a long liberation war, it started assuming features of statehood during and thanks to the war effort, including both local governance structures with a central – though loose – control and extractive capacity, and a nationalistic narrative in opposition to the Arab and Islamic identity of northern Sudan. In fact, however, state formation is not done once and for all. It is a process that can never be considered to be finished, and the accumulation of Bourdieu's capitals needs to be strengthened and reproduced over time for the sake of stability and social cohesion. In South Sudan, something apparently went wrong with this process, but it would be all too easy to describe what happened in terms of failure or of deviance from a predetermined model of state.

Firstly, we need to study the formation of the state avoiding state-centrism. The re-emergence of the state in political discourses and in global governance practices, indeed, has not reduced the number of actors involved in the performance of state functions: rather, their number increased with the inclusion of many non-state actors and, more recently, the creation of local government institutions often lacking skills and resources to effectively meet expectations on their performances, and not necessarily acting consistently with central governments' directives. In spite of discourses of state-building characterized by the principles of Weberian modern statehood, the nature of state practices actually shaping state formation becomes increasingly plural and contradictory. As Lund puts it:

> "It is difficult to ascribe exercised authority to the 'state' as a coherent institution; rather, public authority becomes the amalgamated result of the exercise of power by a variety of local institutions and the imposition of external institutions, conjugated with the image of a state"[250].

This 'image of the state' is omnipresent in the practices of the state, even when they are not performed by state agents. While the 'idea of the state'[251] is constantly playing in the background as an organizing principle of the multiplicity of practices of the state, and it is fed by international state-building

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[248] Christopher S. Clapham (ed.), *African Guerrillas* (Oxford : Kampala : Bloomington: James Currey ; Fountain Publishers ; Indiana University Press, 1998).

[249] A similar idea is advanced by David Holloway and Stephen John Stedman, "Civil Wars and State-Builsing in Africa and Eurasia," in *Beyond State Crisis? Post-Colonial Africa and Post-Soviet Eurasia in Comparative Perspective,* by Mark R. Beissinger and Crawford Young (Washington D.C.: Woodrow Wilson Center Press, 2002), 161–88.

[250] Lund, "Twilight Institutions." p. 686.

[251] Migdal and Schlichte, "Rethinking the State."

discourses and interventions, political anthropologists and political scientists specialized on African studies have increasingly advanced perspectives on the study of state formation based on ethnographic observation of state practices[252]. State formation is thus described as the complex interplay between different and often contradictory practices of state-making: "State making is (...) conceived as the unpredictable (and often rather unstable) outcome of organizing practices taking place inside and outside state and non-state organizations and arenas"[253].

The involvement of donors and international agencies in the practices of state-making has been discussed by several authors and there is general agreement around the idea that the understanding of contemporary processes of state formation in Africa cannot disregard the role played by external actors. As Doornbos argues:

> "(E)xternal involvements raise fundamental questions about the nature and content of state formation in the present era, much in contrast to historical precedents of state building 'from below'. (...) It becomes difficult to conceive African forms of statehood without a whole range of external (NGOs and other) actors and factors virtually figuring as part of it"[254].

NGOs and donors contribute to state formation both in terms of material assets and resources (economic capital) and of legitimacy (symbolic capital) vis-à-vis the international system and also, to some extent, local society. To say it with Didier Péclard: "(T)he delegation of state attributes and functions to non-state actors has been a crucial part of the formation of these states"[255].

### 4.2.2 Actors in South Sudan state formation

The process of state formation in the southern region of Sudan since its independence from the British colonial empire has been characterized by three sets, or levels, of actors. Although their boundaries tend to blur in the actual practices of state-making, it is useful to present them here separately in order to clarify some points on the dynamics that will be analyzed in the next chapters.

Firstly, we have the international level, the composite set of actors which I will often refer to as the "international community" in the following pages. The international level interfering with socio-political systems developing in Sudan's

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[252] Bierschenk and Olivier de Sardan, *States at Work*; Blundo and Le Meur, *The Governance of Daily Life in Africa*; Pierre-Yves Le Meur, "State Making and the Politics of the Frontier in Central Benin," *Development and Change* 37, no. 4 (July 1, 2006): 871–900.

[253] Le Meur, "State Making and the Politics of the Frontier in Central Benin." p. 873.

[254] Martin Doornbos, "Researching African Statehood Dynamics: Negotiability and Its Limits".

[255] Péclard, "State-Building, Legitimacy, and Development in Fragile Context." p. 3-4.

southern region was represented, at the beginning of southern Sudan history of modern state formation, by the Anglo-Egyptian condominium running the colonial state. It was a state that never effectively managed to rule the South respecting Weberian prescriptions of modern statehood, but it nevertheless left enduring legacies in terms of geographical and administrative definition of the contemporary state of South Sudan and in terms of categorization of local peoples through "customary" arrangements. Colonial power (whose external character remains highly questionable, as its reproduction was only possible through local support) was replaced by the post-World War II international community lined up on the two opposite sides of the Cold War. Its interference with southern Sudan process of state formation was limited, and mostly happened at the very end of the 1960s through humanitarian aid and support to the Anyanya I rebel movement fighting the first Sudanese civil war (1955-1972) against the regime in Khartoum. External interferences in southern Sudan's civil war dramatically increased in the 1990s with stronger involvement of neighbouring countries (Ethiopia, Eritrea, Uganda), regional organizations (IGAD) and a huge humanitarian apparatus. How to define, then, the contemporary international community? There is an extremely variegated set of actors that could potentially be listed as - or claim to be - part of it, ranging from multilateral organizations to bilateral development agencies, from International Financial Institutions (IFIs) to International NGOs, from emerging economies to regional organizations and new donor countries. Buzan and Gonzales-Pelaez try to outline its characteristics analyzing the extremely diverse ideas expressed in the online forum of the review *Foreign Policy* "What is the international community?". They identify two broad categories of answers to this question: one that sees the international community as a moral community, sharing values and being an informal universal ethical point of reference; and the other one that sees it as an agent possessing the capacity of action. Both positions include nuances related to the predominance of Western countries (namely the United States and Europe)[256]. Without attempting at such a broad and general definition, I suggest to look at the international community from a relational perspective with the specific situation analysed here. In the case of South Sudan's state-building, the international community is best understood in terms of the 'donor community', particularly those 'traditional' donors that respond to OECD-DAC policy formulations, plus the World Bank and the UN system. This choice is due to the importance in the discursive production of donor agencies in shaping the encounter and the negotiating arena with South Sudanese actors.

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[256] Barry Buzan and Ana Gonzalez-Pelaez, "'International Community' after Iraq," *International Affairs* 81, no. 1 (January 2005): 31–52, doi:10.1111/j.1468-2346.2005.00437.x.

Though keeping in mind the many differences in philosophy and action existing even within the donor community defined in these terms, as clearly shown by Isaline Bergamaschi with regard to Mali[257], in South Sudan the donors' agenda shares a very similar state-building framework with only limited differences with regard to the provision of symbolic or material resources.

This leads us to the 'national level' of actors, concerning primarily the rebel movements and later the Government of Southern Sudan. South Sudan has seen an incredible number of rebel movements and armed militias arising within its colonial-established borders. Anyanya I was the first rebel movement that was actually able to establish some degree of internal coherence, of control of the territory beyond small villages, and of administrative-like organization. Nonetheless, its experience was short (it lasted less than ten years, 1963-1972), and its achievements in terms of lasting accumulation of power and creation of state structures was meager. This leaves the SPLM/A as the most important player in the process of South Sudan contemporary state formation process. It can be argued that the SPLM/A, later turned into the Government of Southern Sudan, orchestrated, to some extent, the process, successfully drawing on external material and symbolic resources to build a statehood façade in which, as we shall see, the claims of the lack-of-capacity and the lack-of-resources became outstanding elements in a strategy of extraversion of the South Sudanese state. They put the blame for ineffectiveness of the state-building enterprise on contingent constraints (that have quick-fix solutions) rather than on structural elements of the state-building project. Already in the 1990s it understood the important pay-backs it could obtain through mastering donors' language of development, democracy and state-building. Thus, international donors' projects and programs, designed to support nascent governmental, judicial and bureaucratic institutions were planned, and in many instances called for, by the SPLM leadership, but with a fundamentally different understanding of what it meant to build a state. The SPLM/A had its own project of state-building: it used the technical language of donor agencies but was consciously deeply political in nature, aiming at consolidating power and consensus (typical state-building goal) through the cooptation of big men rather than through violence only. This project feeds into the broader state formation process to which other actors also participated together with donors' state-building project.

The third level of actors is the 'local' one, the one identified as 'local communities', with their traditional authorities. This level is extremely complex

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[257] Bergamaschi, "« Appropriation » et « lutte contre la pauvreté » au Mali."

in nature, just as much as it is its relation with the other two levels. It is typically the level described as 'non-state', or 'society', although more nuanced definitions to analyze the forms of authority pertaining to this domain have been attempted by several authors[258]. This domain has gained relevance as such due to the colonial effort to 'catalogue' and 'organize' local societies into legible units with clear authority structures. These externally created structures kept their relevance also after independence from colonialism thanks to the tendency to favour their reproduction as an easy mode of government even in those places where 'traditional' structures were formally repressed. In South Sudan, as we shall see, the reproduction of societal boundaries and of 'traditional authorities' based on ethnic identity was not only a legacy of colonialism, but also - and arguably even more importantly - of the war and of Khartoum mode of governing the South. Nonetheless, the SPLM/A and its international partners reproduced them as well in war and post-war governance arrangements, producing what Jean-Pierre Chauveau calls 'bureaucratic populism' with reference to development interventions: the coexistence of the bureaucratic legal-rational ideal-type, which sets the framework for the developmental enterprise (and of statehood in this case), and a form of populism characterized by an idealistic attitude towards local values and capacities[259]. This is the domain in which a variegated set of informal practices is deployed to participate to decision-making processes and, more importantly, to influence processes that could at first sight seem to be top-down. It is a domain that typically has two ways of expressing itself: to say it with Hirschman, people can either exit or voice their discontent[260]. While exit used to be a valid option during pre-colonial and, to a lesser extent, colonial time (see chapter 2), it is less easy to exit from a state-in-formation when it is progressively extending its paraphernalia of control over the population (through censuses, creation of local administrative offices, etc.) - and, arguably, even less desirable to do so, when the state is seen as the major source of wealth and power. Voice is thus preferred in contemporary South Sudan.

Voice strategies can be creative and do not necessarily imply open resistance, rather sometimes they are expressed through adaptation[261]. Open resistance and violent uprisings are forms of 'voice' that have been common in

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[258] Bellagamba and Klute, *Beside the State. Emergent Powers in Contemporary Africa*; Cherry Leonardi, *Dealing with Government in South Sudan*.

[259] Jean-Pierre Chauveau, "Du Populisme Bureaucratique Dans L'histoire Institutionnelle Du Développement Rural En Afrique de L'ouest".

[260] Albert O. Hirschman, "Exit, Voice and the State," *World Politics* 31, no. 1 (October 1978): 90–107.

[261] Doornbos, "Researching African Statehood Dynamics."

southern Sudan history of statehood especially during colonialism and Khartoum regime domination. In fact, they have also been common against local rulers both during the war and in times of peace[262]. The SPLM/A itself was met with considerable local resistance during the liberation struggle, both from communities which did not want to be controlled by the rebel movement and decided to form independent self-defence militias, and from chiefs who mediated the demands of the rebels vis-à-vis the local population. Even when it turned into the ruling party and the Government of Southern Sudan was formed, this kind of resistance did not cease to exist and constituted one of the GoSS's major headaches throughout the interim period and the immediate post-independence years. However, the following chapters will mainly focus on strategies of voice that do not employ violence, but rather creative adaptation to existing structures and local reinterpretation of discourses and policies.

### 4.2.3 Arenas of negotiation in South Sudan's state formation process

These three levels of actors interplay and, each with its own practices of state-making, contribute to the overall process of state formation. This is not, however, to say that their position is equal in the negotiation process. Without prejudice to the actual unpredictability of the latter, state-building projects supported by the international donor community and the SPLM, together with the huge process of law- and policy-making associated to the governance reform, set the framework within which actors can move. Isaline Bergamaschi, talking about externally supported reform in Mali, argues that:

> "Extraverted reform remains fundamentally superficial and ambivalent: if, at first glance, recipients display openness and willingness towards donors' logics, at a deeper level, they are reluctant and partially reject the content of the reform through informal, creative practices, "weapons of the weak" intended to bypass donor control or elude hegemonic regulation."[263]

If this proves to be certainly true in many instances in South Sudan and elsewhere, it is also to be said that reforms, no matter how technical they are and how much they can be reinterpreted and filled with different content from the one foreseen by its initial designers, do provide incentives to the people to act in one way or another. As Lund puts it:

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[262] See for example the continued internal challenges posed by various southern groups to the Southern Sudan Regional Government in the 1970s, during the era of the Addis Abeba Agreement, and the numberless splits in rebel movements (both the Anyanya I and SPLM/A) perceived as abusive and authoritarian. See chapter 2 and 3 for more detailed accounts.

[263] Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali." p. 291.

"National laws and government policies constitute a structure of opportunities for the negotiation of rights and the distribution of resources and the result is neither coherent policy implementation nor complete disregard of law and policy"[264]

In other words, the process of implementation of state-building reforms can be seen as an arena of negotiation in itself, where state formation is the product of the multiple interactions between different actors around specific elements of the state-building project. Lund continues supporting the analysis of the reception, negotiation and implementation of national policies as a fruitful point of view for the analysis of local politics[265]. Following this exhortation, the next chapters will look at three particular domains of reform that can be connected to the broader state-building enterprise both materially, through the injection of external resources for their implementation, and symbolically, as they concern issues deeply affecting the definition of citizenship. They are the decentralization policy framework, the establishment of structures and procedures for service delivery and the land tenure reform. Tackling important issues of access to resources, self-governance and political representation in a context where the three of these entitlements have been historically neglected by a perceived 'alien' domination, they constitute points of interaction and spaces for dialogue between donors, the government in its various levels, the traditional authorities and the local people. They also constitute the framework within which relations transcending the three levels outlined above are built, and through which the very concept of "locality" and of "community" are produced[266]. Institutional 'mimetism' (the adaptation of 'imported' institutional technologies creating a façade complying with donors' demands for the sake of access to resources) plays an important role in the process of negotiation, to some extent concealing it behind an appearance of acceptance and creating new opportunities of appropriation of policies[267].

The process of state formation deriving from these complex interactions is thus enriched by state-making practices that, in their everyday occurrence, give place to a "real governance" of land, of service delivery and of the distribution of power, made of plural, sometimes contradictory, and usually deviant practices from the modes of governance foreseen by official norms of

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[264] Lund, *Local Politics and the Dynamics of Property in Africa*. p. 4.

[265] Ibid.

[266] Arjun Appadurai, "The Production of the Locality," in *Modernity at Large: Cultural Dimensions of Globalization* by Arjun Appadurai, vol. 1, Public Works (Minneapolis: University of Minnesota Press, 1996).

[267] Darbon, *La Politique Des Modèles En Afrique*; Esser, "'When We Launched the Government's Agenda…'"; Bergamaschi, "« Appropriation » et « lutte contre la pauvreté » au Mali."

behavior and administrative regulations coming from the state-building enterprise[268]. Even though these practices are plural, contradictory, with great variance within and between localities, often giving the impression of fragmentation and of continuous centrifugal thrusts - as suggested also by the latest southern civil war started in 2013 -, the state keeps its salience thanks to its powerful normative connotation. After all, having their own state is all that South Sudanese have fought for, and the idea of the state, together with its image conveyed by the media or public campaigns supported by international donors feed into great bottom up expectations from the state. Even in times of trouble, in the numerous instances in which armed militias against the Government of Southern Sudan emerged during the interim period before independence (2005-2011), it never was to fight the state, but only some individuals within the state apparatus and usually to take control of (at least some parts) of the latter. Even when discontent prevails and grievances needs to be advanced, people's voice strategy in the negotiation process thus tend to aim to appropriate the state, as the state is understood as the major channel of resources and the major field through which different forms of capital can be accumulated.

## 5. Conclusion

This chapter has attempted to provide a general overview of the concepts that will be used in the following ones, and on the way in which these concepts will be combined and articulated in the analysis of South Sudan state formation process.

It has departed from the description of contemporary state-building projects and of their theoretical background to move to more specific domains of international intervention directly affecting not only the crafting of formal institutions, but also the strategies and opportunities made available for the 'appropriation' and adaptation of blueprint reforms to specific contexts. Through using the negotiating statehood framework, it has shifted from state-building to state formation following Berman and Lonsdale conceptualization of the two, and it tried to identify the major actors contributing to South Sudan state formation process, considering state-building interventions in the domain of decentralization, service delivery and land governance as many arenas of interplay between these actors.

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[268] The concept of real governance was formulated by Jean-Pierre Olivier de Sardan and refers to "the everyday operation of the African state". Olivier de Sardan, *Researching the Practical Norms of Real Governance in Africa*.

The following chapters will try to explore the interplay between the state-building project and the state formation process in Southern Sudan recent history from the Anglo-Egyptian rule onwards, with a particular focus in the years comprised between 1999 and 2013.

# Chapter 2 – Patterns of state-building in Southern Sudan in a historical perspective

## 1. Introduction

At the dawn of independence, the Council of Ministers of the Government of Southern Sudan passed a resolution recognizing the Egyptian invasion of the Sudan in 1820 as the official starting point of the southern struggle for freedom against the penetration of predatory forces[269]. This can be considered as an attempt by the southern government to 'use' the colonial past of the southern region in its nation-building effort, constructing a narrative on South Sudan's formation based on the common struggle for liberation against the Arab oppressor[270].

In fact, state formation had been ongoing for centuries well before colonialism, and may be declined in plural terms due to the great variety of pre-colonial political formations in the region. At the same time, though, 1820 can be considered as the moment in which the influences of the international system into southern Sudan political landscape started becoming more intrusive. Long before external invasion, the southern region of Sudan was incorporated into a slave-based regional economy fulfilling the manpower needs of the Sudanic kingdoms developing along the river Nile. Slaves were not only acquired through raiding, but also though trading with southern merchants[271]. This complex web of economic relations contributes to mitigate the idea of a totally isolated region, ignorant of the facts of the world and 'ill prepared' to the contact with foreign forces.

The invasion of the Sudan by Muhammad Ali in 1820, in retrospect, can be taken as symbolizing the moment in which the relations existing among the diverse political units of the region changed. Of course, it did not happen overnight, nor was the first invasion successful in establishing any control. However, if until the early 19th century the region had been characterized by economic relations and ephemeral rise-and-fall, expansion-and-retreat of relatively small political units, the arrival, although disorganized, of the

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[269] Sudan Tribune, "South Sudan Officially Recognises 191 Years of Struggle for Freedom," April 30, 2011, http://www.sudantribune.com/spip.php?article38743.

[270] Jean-François Bayart, "L'Afrique Dans Le Monde : Une Histoire D'extraversion".

[271] Stephanie F. Beswick, "Non-Acceptance of Islam in the Southern Sudan: The Case of the Dinka from the Pre-Colonial Period to Independence (1956)," *Northeast African Studies*, Conference Proceedings of the 12th Annual Sudan Studies Association Conference, 1, no. 2–3 (1994): 19–47; R. S. O'Fahey and Jay Spaulding, *Kingdoms of the Sudan*, Studies in African History ; No. 9 (London : [New York]: Methuen, 1974).

emissaries of a big centralized bureaucratic state altered economic and political balances in an enduring way. Moreover, though being very far from establishing real control over the majority of the areas it claimed to have annexed, foreign rule brought an unprecedented level of violence, influencing local patterns of accumulation of power and the way people dealt with it[272].

Talking about Sub-Saharan Africa, Herbst asserts that "Pre-colonial leaders received no help from the international system" with its modern features of statehood[273]; if we accept this idea, 1820 can indeed be considered the inception of a stronger influence of the international system in the political organization of local peoples. Foreign forces were no longer far away, at the end of some economic network, but started coming closer, building up commercial stations and imposing their military superiority through their armies. Many studies conducted in the last twenty years have demonstrated that the penetration of external powers was not entirely dependent on the capacity of the foreigners to reach remote areas and people[274]. Putting African agency at the center of the analysis, these studies argue that it was rather a product of endogenous strategies of relation with foreigners than of passive submission. Thus, 1820 can also be taken as the historical moment in which the extraversion of Southern Sudan, understood as the capacity of capitalizing on its own subject position[275], started.

Cherry Leonardi positions herself in this academic tradition with her book *Dealing with Government in South Sudan,* and describes the pattern of South Sudan's state formation using Kopytoff's frontier concept: "The new frontiers of the colonial state were formed as much more by people coming towards the government as by any centrifugal state advance"[276]. After all, not only were exit strategies from the domination of unwanted powers quite common, but also they constituted the most classical pattern for the production of new chieftainships. Thus, it was through well-aware decisions that individuals and groups chose to settle in the vicinity of governmental stations after the

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[272] Douglas H. Johnson, "The Structure of a Legacy: Military Slavery in Northeast Africa," *Ethnohistory* 36, no. 1 (January 1, 1989): 72–88, doi:10.2307/482742.

[273] Herbst refers particularly to the control of territory, which in pre-colonial societies was much more flexible: the existence of multiple states tolerated the existence of vacuums of power and the breakaway of peripheral areas, which were made more difficult, if not impossible, during colonialism and in the post-colonial era. Jeffrey Ira Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 2000). p. 56

[274] Cherry Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community & State*; Bruce J. Berman, "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism"; Tobias Hagmann and Didier Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa"; Jean-François Bayart, "L'historicité de l'Etat importé".

[275] Bayart, "L'Afrique Dans Le Monde."

[276] Leonardi, *Dealing with Government in South Sudan*. p. 45

penetration of Sudan by foreigners, dissipating the image of colonized people as passive victims of a superior power.

I take the Turko-Egyptian and Anglo-Egyptian rule as a watershed century in which a voluntary effort of building some form of centralized state, no matter how limited in scope, no matter how successful, physically started to overlap with pre-existent trends of state(s) formation in the southern region of Sudan, determining an increasing extraversion of southern political authority that, to some extent, can still be observed today.

The idea of the state as a centralized power above local polities penetrated the southern region through three main patterns merging into one another for the full length of colonial rule. The imposition of physical force was the main pattern in the early phases of the Egyptian and British penetration into the Southern region, but was never completely supplanted by other more routinized - and less expensive - forms of domination. The second pattern was bureaucratization, understood as the routinization of certain practices of government in government outposts and wherever government officials managed to reach through local power brokers. Though government action was not uniform across the whole region, this gave a certain 'degree of predictability'[277] to government-people's relations at least at the level of each locality, which contributed to increasing the government's legitimacy as a neutral authority in solving disputes or, when not neutral, at least benevolent towards its 'friendlies'. The third pattern was the establishment of new sources of legitimacy for local aspiring leaders. Introducing new ways of power accumulation and new forms of authority, the colonial state flanked pre-colonial societies' sources of legitimacy such as seniority, kinship and mutual relations, centralizing them and providing alternatives to those to whom they were not available[278].

The system of local authorities emerged out of the interaction with the intruders and later formalized in fifteen years of Southern Policy under British rule, survived to colonialism as in most of colonial Africa and, in spite of post-colonial state-building efforts shaped by successive regimes' ideological convictions, it remained central in the exercise of rule and administration in the rural areas. The second part of the chapter goes through successive attempts at

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[277] This expression is borrowed from Cherry Leonardy's work on local government in South Sudan. She talks of 'predictability' with reference to the degree of standardization in the interaction between the people and the colonial government: in other words, the government action became 'predictable' when an agreement was reached on the relation of exchange. See Leonardi, *Dealing with Government in South Sudan.*

[278] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

establishing both formal (governmental) and informal (rebel) systems of administration in the Southern Sudan, showing that, despite matters of principle, neither could do without relying on the chiefs to broadcast their power over the territory they claimed to control. Historical state formation in the southern region, adjusted to cope with the interference of 'external' colonial state-building, was thus again faced with the need to cope with new attempts at state-building coming from new internal and, especially in the latest phase of SPLM administrators, external actors, and had to adapt again.

## 2. The pattern of physical force: violent encounters

### 2.1 From commerce to rehearsal of government

Southern Sudan earliest contacts with a centralized bureaucratic state have been largely driven by the search for slaves and ivory of an extremely cosmopolitan set of explorers and adventurers gravitating around the Egyptian province of the Ottoman Empire. Despite the invasion of the Sudan in 1820 and the annexation of a number of Sudanic kingdoms along the river Nile, it was not until 1839-40 that emissaries of the Egyptian government managed to sail southwards through the White Nile to explore its commercial and strategic potential. The expedition, the first of a great number, managed to overcome the barrier represented by the Shilluk kingdom, the Dinka groups living along the Kiir (Bahr el Ghazal) river and, last but not least, the extremely challenging environmental conditions characterizing the White Nile (see map 2 and 3 in Annex I).

The area was found to be very rich in ivory, increasingly requested on European luxury markets, but also inhabited by a number of peoples with different modes of livelihoods often at war with each other. Adventurers, explorers and traders needed local cooperation for food supplies, interpreters and porters, but the local people were not always willing to comply with foreigners' demands. In many instances, these needs were satisfied through the use of coercion: raiding or *razzias* became a routine practice to extract slaves and cattle, often the only thing accepted as a means of exchange for ivory by friendly populations.

> "Once the restricted demand for beads has slackened, these people (Nuer and Dinka) with a proud repugnance for clothing had no wants which could easily be supplied by the traders in return for further ivory or, what for the traders was equally important, their services as porters. (...) It was far easier and

cheaper to accept the suggestion of a friendly chief that a portion of a neighboring herd of cattle would be an acceptable reward for ivory and services."[279]

Southern Sudan was only reached after the northern region was already under formal control. Huge numbers of enslaved individuals from the Nuba Mountains were conscripted into the armies accompanying explorers and government emissaries. There was no need for southern men captured in raids to be employed in the station's armies: they were rather taught Arabic and used as porters for ivory, 'commercial agents' and interpreters[280]. These figures were inadvertently covered with the outstanding power of mediating the contact between the 'intruders' and local realities. They played a great role in making the discovery of the White Nile and of the southern regions of Sudan possible to European and Arab traders and governmental explorers, and greatly influenced their understanding of tropical Africa. At the same time, very often they sought to exploit their intermediary position, using external military power against rival groups to pull the balance of local disputes towards their side. In some cases, local communities claimed this kind of support with threats: for example, Richard Gray reports that Angelo Vinco, a missionary who arrived in 1851 with a commercial expedition among the Bari, had to go back to Khartoum in 1852 because the Bari threatened him with death if he did not help them in a war against the Lokoya[281]. Accounts of the 19th century contacts between commercial and exploration expeditions and local southern population are full of such examples; complying with such requests gave a formidable means of ensuring at least temporary support from a group and increased foreigners' knowledge of local feuds that could be exploited in order to achieve deeper penetration and control[282]. With reference to the British conquest of Kenya, Berman and Lonsdale state that: "It was largely an African rather than an imperial conquest"[283].

Thus, while violence was one of the main forces of penetration in the southern region of Sudan long before any attempt of conscious 'state-building', it was never indiscriminate. Raids on 'hostile' tribes became an integral part of

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[279] Richard Gray, *A History of the Southern Sudan 1839-1889* (London: Oxford University Press, 1961). pp. 48-49

[280] Women were instead given to Arab settlers of the stations. Slavery was abolished in 1877, but *razzias* had become a routine practice and remained a way to extract labor, goods and services from the local populations.

[281] Gray, *A History of the Southern Sudan 1839-1889*.

[282] Ibid. Gray gives De Malzac's example: a French trader who traveled to Bari land in the 1850s and managed to use targeted violence against the enemies of his allies, turning existing tribal rivalries into a means of commercial penetration into a vast region. (pp. 47-48)

[283] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* p.16

the slave and ivory trade, and persisted even after slave-trading was forbidden and gold took its place. Commerce and military power where linked to each other since the very beginning of Sudan's southern region explorations, though more because of individual initiative than of plans to actually control the territory well into the Turkiyya (the Turko-Egyptian) period. In spite of the financial support from the Egyptian government granted to a number of explorers, the Governor-General of Sudan "made no pretense at administration"[284] of the territories where the Egyptian government extended its nominal authority, including the area immediately south of Khartoum in the first half of 1800s. According to Douglas Johnson:

> "Both government and the commercial companies had their own armies drawn from a mixture of free men and slaves. Both made use of overlapping networks of fortified trade centers and caravan routes. Traders and government officials each carved out their own personal fiefdoms, as did some indigenous leaders allied to them, and the maintenance of these fiefdoms through raiding and trading became their own justification"[285].

At the same time, this contributed to the cooptation of Southern Sudan into the Turko-Egyptian political economy based on slavery and the commerce of ivory[286].

In the second half of the 1800s, the Egyptian government's monopoly on ivory was lifted and the number of commercial stations, known as *zariba* (pl. *zara'ib)*, hiked, with an increase in the presence of European and Middle Eastern merchants with their private armies and commercial stations. By 1868, there were more than eighty *zara'ib* in Bahr el Ghazal, with hundreds of people living inside the fenced territory and entire villages in the surroundings providing for the station's needs[287]. Gray talks about the area between Dinka and Azande land as the "*zeriba* country" (see map 4 in Annex I)[288]. Only trading agents, holy men, soldiers and their slaves, servants and their families were allowed to live inside the *zariba*. In the surroundings, however, concentric circles of settlements where inhabited by a subject population cultivating the land, feeding the *zariba* occupants and providing workforce when needed. Although the *zara'ib* governors tried to coerce these people to comply with their demands, they could not really prevent them from escaping to remote areas if they so wished. Therefore, those who settled around the commercial stations were generally

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[284] Robert O. Collins, *A History of Modern Sudan* (Cambridge University Press, 2008). p.14

[285] Douglas H Johnson, *The Root Causes of Sudan's Civil Wars*. p. 5

[286] Ibid. At that time, there was no attempt at defining the area in administrative terms as the external pressure from colonial empires in the making was not yet threatening.

[287] Gray, *A History of the Southern Sudan 1839-1889*; Collins, *A History of Modern Sudan*.

[288] Gray, *A History of the Southern Sudan 1839-1889*.

people willing to enter into some kind of relationship with the station, and this relationship was very often mediated by brokers who were identified as 'chiefs' and who themselves benefited from trade exchanges. Many people were attracted to the *zara'ib* in search for alliances with merchants and their firepower to pursue local warfare or seeking to ransom women who were captured in raids by the Arab soldiers deemed to look after the traders' security[289]. In this way, the *zariba* became a new kind of frontier where coercion and violence were routinized in the relations between the 'intruders' and the local people, between competing local groups, and even between the 'chiefs' and their followers as a consequence of their role as brokers.

It was only in the 1860s that the Egyptian government started having more explicit imperialistic aspirations and increased efforts to establish a stricter control over the southern region[290]. The Egyptian government thus took over some of the *zara'ib*, turning them into government outposts. In 1866, the government created the White Nile. Attempts at reaching areas further south the vast swamp of the *sudd,* along the river Bahr el Ghazal, were renewed. In 1869, with the aim of bringing 'commerce and civilization', Samuel Baker managed to reach Gondokoro (about twenty kilometers north of Juba) sailing through the White Nile (see map 3 in Annex II). In 1873, the Egyptian government also created the Equatoria Province appointing Gordon as its first Governor General, but in fact there was no substantial change in the government's capacity of controlling the territory. New government stations were forced to rely on intermediaries as much as the previous commercial stations[291]. When European officers Gessi, Casati and Emin Pasha visited Rumbek in the late 1870s and early 1880s, they described it as a densely populated headquarter for slave-raiding to the south[292], and Gordon's frustration for the impossibility of exercising effective rule on his province clearly emerges in an extract of a letter quoted by Richard Gray:

> "As far as Dufile and I may say Magungo the roads are safe, and I can do nothing more, for I cannot govern not knowing the language, and even if I did, I could not expect to change the habits of the officers etc. or of the natives. I feel it would be better for them to work out the problem of how to live together by themselves. I look upon any improvement in either as being quite hopeless, and

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[289] Leonardi, *Dealing with Government in South Sudan*.
[290] By mid-1850s, the Egyptian government was also trying to bring slave-trading and slave-raiding to a halt, as the phenomenon was becoming increasingly unpopular in Europe and in Cairo diplomatic milieu.
[291] Gray, *A History of the Southern Sudan 1839-1889*.
[292] Leonardi, *Dealing with Government in South Sudan*.

at any rate, I do not see how in any way, I can better either parties by a longer stay"[293].

This pessimism did not however prevent him from continuous effort at subjugating peoples and punishing non-cooperative groups through raids. This pattern of violence and the threat of coercion remained the only means of asserting the government presence on the territory throughout the end of the 19th century and the first two decades of the 20th but, as Herbst suggests, violence of the colonizers could by no means be equated to control[294].

The Mahdiyya[295] and early Anglo-Egyptian administration did not substantially change the spatial organization of former commercial stations and the way they interacted with local populations, also because ex-slaves from Sudan brought as army members still inhabited the stations. The control of the Mahdi did not reach areas beyond Fashoda, Rejaf and Bor, which were used as bases for slave and ivory raiding[296], while the inclusion of a few British officers in the returning of the Egyptian-Sudanese army in 1898 was "a scarcely visible alteration to the fabric of authority"[297].

## 2.2 The Anglo-Egyptian Condominium

The Anglo-Egyptian condominium was in fact a peculiar form of colonialism. It formally restored Egyptian rule in Sudan, but in the framework of joint authority with Britain. Rule was practically exercised by a British Governor General, who was a military office appointed by the Khedive upon recommendation of the British government, and reported to the Foreign Office through its resident agent in Cairo. British government officers (the highest ranking positions in the colonial administration) were attached to the Egyptian army, which later started incorporating also Sudanese elements from the northern region until it was completely replaced by the latter in the mid-1920s[298]. The first phase of British colonialism was indeed even more violent. In the early 1900s and 1910s, resistance from local population, now more easily

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[293] G. MSS. Gordon to Augusta, 29/VIII/75 and G.B. Hill (ed.) *Colonel Gordon in Central Africa (1881)* quoted in: Gray, *A History of the Southern Sudan 1839-1889*. p. 112*.*

[294] Herbst, *States and Power in Africa*.

[295] The Mahdiyya is a word identifying both the religious movement headed by the 'Mahdi' Muhammad Ahmad bin Abd Allah, and the period of the latter's rule over Sudan. After proclaiming himself the 'Mahdi', he successfully defeated the Turco-Egyptian government establishing his own rule over Sudan between 1885 and 1899.

[296] Collins, *A History of Modern Sudan*.

[297] Johnson, *The Root Causes of Sudan's Civil Wars*. p. 10.

[298] Helen Chapin Metz, ed., *Sudan: A Country Study.* (Washington: GPO for the Library of Congress, 1991), http://countrystudies.us/sudan/15.htm.

reachable thanks to the clearing of waterways and the construction of some roads, was repressed through 'pacification' campaigns[299]. Pacification campaigns were particularly tough in targeting the Nuer people, who was often portrayed as a 'recalcitrant' group, in need of being 'disciplined'. As it had been during the Turkiyya and the Mahdiyya, "whoever gained earliest relations with the new government was likely to influence the subsequent patterns of government relations with the population"[300]. Many of the guides and porters of the initial British administrators were Dinka from Bahr el Ghazal or the area around Bor, who had been enslaved by Arab traders and employed as porters and guides during the Turko-Egyptian period. Given their historical competition with the Nuer people for access to natural resources, they contributed to shaping government's negative attitude towards them. Government officials were led to look at the Nuer and their leaders with particular suspicion, and often targeted them with punitive campaigns upon Dinka's allegations of conspiracies. For example, Johnson reports that: "Blewitt [the governor of Upper Nile Province between 1900 and 1902, who had an overwhelming military approach to government] decided to attack Ngundeng [Nuer prophet] and burn Lou villages on the advice of the Dinka accompanying him"[301]. This attitude persisted also in the following decades and it represented one of the typical features of colonialism: as shown by Blundo, one of the consequences of the cooptation of local intermediaries in the system of control was the emergence of a zero-sum politics in which chiefs (or whoever could claim to be an intermediary with local populations) only protected their clients from colonial extraction, dumping its weight on all the others[302].

Despite wide areas still untouched by their presence[303], the British were there to administer rather than to only coerce, not least because of excessive military expenses and failure in securing local cooperation for productive and commercial purposes. This is where a more systematic effort at creating a

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[299] Lilian Passmore Sanderson, *Education, Religion & Politics in Southern Sudan, 1899-1964*, Sudan Studies, no. 4 (London : Khartoum, Sudan: Ithaca Press ; Khartoum University Press, 1981).

[300] Leonardi, *Dealing with Government in South Sudan*. p.45

[301] Douglas H Johnson, *Nuer Prophets: A History of Prophecy from the Upper Nile in the Nineteenth and Twentieth Centuries* (Oxford; New York: Clarendon Press ; Oxford University Press, 1994). p. 13.

[302] Giorgio Blundo, Jean-Pierre Olivier de Sardan (eds.), *Etat et corruption en Afrique : Une anthropologie comparative des relations entre fonctionnaires et usagers* (Marseille : Paris: Karthala, 2007).

[303] Gérard Prunier, ed., "Le Sud-Soudan Depuis L'indépendance," in *Le Soudan Contemporain: De L'invasion Turco-égyptienne à La Rébellion Africaine (1821-1989), Marc Lavergne*, Collection "Hommes et Sociétés" (Paris : Amman: Karthala ; CERMOC, 1989), 381–433.

system of control and government, as Berman and Lonsdale define state-building, begins to overlap with historical processes of local state(s) formation.


# 3. Building predictability: localized bureaucratization of government practices

## 3.1 Government's first steps: monetization and taxation

The process of grouping previously scattered populations around the stations in search for the 'intruders' protection, the emergence of leaders, brokers, 'chiefs' whose power was determined by their gate-keepers position between the stations and the people, the extraction of tax and labor from the subject population, favored the constitution of embryonic units where authority started developing standardized practices and rudimentary bureaucratic procedures. It was through the introduction of an increasing degree of standardization in government practices, though geographically limited, at the local level that military force was turned into power and recognized as something that sometimes was worth to take advantage of. In fact, the use of force was a constant characteristic of foreign rule over the southern Sudan, but since it was too expensive and ineffective to use it as a permanent means of control over an immense and scarcely populated region, it was rather aimed at creating obedience and stability.

The initial years of the Anglo-Egyptian Condominium were characterized by the major concern of securing external borders of the Sudan in a highly competitive colonial environment[304]. According to Robert Collins, until the late 1920s "the British did not know what to do with southern Sudan"[305]. Local administration was left to isolated individual initiative and ad hoc decisions. A formal administrative structure was established with the Civil Administration Ordinance as early as 1902, but local government officers were backed by no consistent policy. British presence was very discontinuous in space and time: many areas were only reached in the last twenty years of colonial administration and its seasonality was only overcome in the thirties. The central

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[304] Ibid.

[305] Collins, *A History of Modern Sudan*. p. 36. In the initial phase of British colonialism, the southern region was delimited in its territorial extension through negotiations with France and Belgium. See also Robert Collins and Richard Herzog, "Early British Administration in the Southern Sudan," *Journal of African History* 2, no. 1 (1961): 119–35. In fact, however, Southern Sudan was identified as an administrative unit only with the formulation of the Southern Policy.

government, based in Khartoum, was headed by the Governor-General, who reported to the British Consul General in Cairo and the Foreign office in London, but actual control of what happened on the ground was very loose. Each province was governed by a *mudir*, who supervised in turn British inspectors, later called District Commissioners. Policies on how to govern local population varied greatly from province to province, and sometimes from district to district, according to the peoples encountered but also, and sometimes prominently, according to the attitude of the governor or district commissioner. In retracing the history of colonial rule in Upper Nile, Douglas H. Johnson shows how the local government kept on alternating military and civil approaches quite randomly, depending mainly on what was the personal approach of the governor in office[306].

The first two decades of British rule were years of 'pacification' of 'recalcitrant' peoples. Despite Prunier's claim that British presence never went – nor wanted to go - beyond a limited military occupation[307], British reliance on local elements for food and labor forced the government to put some effort into normalizing relations with friendly populations. This required to go beyond isolated decisions and personal relationships between individual administrators and local intermediaries, and to establish more 'neutral' relations with the locals, increasingly co-opting them into the civil service and the military. Agriculturalist communities in the Equatoria region were more accessible, and more rapidly reached by the government. They were keener than Nilotic populations to enter into relations with the British and, being sedentary, in many cases they were soon devolved important tasks in the daily life of the stations. The police was increasingly recruited locally and at least partly paid in cash. This was one of the forms in which power was bureaucratized. The direct recruitment of locals as individuals under direct British command meant that it was transferred from private hands to official hands. It was turned into 'public' power, above society, directly depending from the government and not any more from African "military contractors"[308]. The Equatorial Corps, a locally recruited army, replaced the Sudanese battalion inherited from the Turko-Egyptian government in 1910 and gave an essential contribution to pacification campaigns against Nilotes[309]. Pastoralist people were not as easy to co-opt in the colonial state, nor to keep under control, not least because they were much more mobile and elusive than agriculturalists. For this very reason, they were

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[306] Johnson, *Nuer Prophets.*

[307] Prunier, "Le Sud-Soudan Depuis L'indépendance."

[308] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

[309] Johnson, *The Root Causes of Sudan's Civil Wars.*

also looked at with stronger suspicion, and targeted by more violent campaigns. Though both the Dinka and Nuer, the two major pastoral groups in the southern region, were co-opted into administrative structures to a lesser extent than the peoples from Equatoria and other peoples from Bahr el Ghazal, they were nevertheless reached by the colonial state through another form of bureaucratization of power: taxation. The hut tax, paid in cash, cattle or grain, was considered more as a symbolic recognition of government power than as a source of revenues. Thanks to Douglas Johnson's studies, we know that resistance to the payment of tribute was especially frequent among pastoralist populations, but usually related to dissatisfaction with what the government was able to provide in return[310]. Taxation was introduced as a means of extending control over the chiefs, and of the latter over their population. After an initial period of taxation in kind, cotton cultivation was introduced as a money-earning means in order for the people to be able to pay in cash. Particularly in Upper Nile region among the Nuer, this was to prevent the bitterness caused by the early tribute-raiding campaigns targeting cattle among the eastern Nuer[311]. Although the compulsory cotton scheme was largely a failure, the trend towards monetization continued through the development of local cattle markets through auctions of cattle collected as fee by local courts, labour migrations towards Uganda (from the Equatoria region) or just the cultivation other cash crops[312].

### 3.2 The development of administrative theory

In the 1920s, the British colonial government started formulating a policy of administration for the Southern Sudan. Following the revolution in Egypt in 1919, government's concerns on Sudanese rudimentary nationalistic aspirations led to efforts to transfer governance functions not so much to the educated Sudanese elites, but rather to 'traditional tribal authorities', limiting to the minimum government officers' interference in tribal affairs[313].

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[310] Johnson, *Nuer Prophets*. One example is the resistance of Lou and Jikany Nuer, unsatisfied for the government lack of protection against the Anuak.

[311] Sharon Elaine Hutchinson, *Nuer Dilemmas: Coping with Money, War, and the State* (University of California Press, 1996).

[312] Leonardi, *Dealing with Government in South Sudan*; Hutchinson, *Nuer Dilemmas*.

[313] Johnson, *The Root Causes of Sudan's Civil Wars*. For more general reflections on British indirect rule, see also Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton Studies in Culture/power/history (Princeton, N.J: Princeton University Press, 1996); Alice L. Conklin, *A Mission to Civilize: The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford University Press, 1997).

While Lord Lugard was formulating the administrative theory of 'indirect rule' in his book *The Dual Mandate in British Tropical Africa* (1922), the Milner Commission (1919-1920) advocated decentralization in the Sudan and "the employment, wherever possible, of native agencies for simple administrative needs of the country"[314]. In the Sudan, this policy was never called 'indirect rule', but rather referred to as "Native Administration" policy or "devolution". The report was turned into a policy in 1921. Administrators started searching for structures of 'tribal organization' compatible with the devolutionary principle of native administration throughout rural Sudan. Rural leaders and courts were given legal status and their work was supervised by District Commissioners. Despite its high variability from one district to another, customary law gradually replaced violence as a form of control[315]. As Lonsdale puts it talking about the British conquest of Kenya,

> "Coercive power had to be transformed into authority that commanded obedience to orders with the force of 'law' and applied force in the controlled and predictable form of the 'punishment' of individual offenders rather than in armed assaults against collective resistance"[316].

Especially in some areas, the supervision of the court system was a means to ensure administrative control. In the 1930s, the number of chiefs had enormously increased to ensure control also on smaller sections[317], and in many cases chiefs were created out of existing much less hierarchical forms of authority. In spite of the idea of rural tradition upon which administrative theory was increasingly based, "the Government was educating and selecting chiefs to implement an increasingly bureaucratic system of local government"[318]. In spite of concerns about the creation of a 'petty bureaucracy', the government also encouraged the education of chiefs' sons, especially in the Equatoria region, and local courts were encouraged to work in an increasingly bureaucratized manner with clerks and police[319]. British influence on the

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[314] Johnson, *Nuer Prophets*. p. 15

[315] Ibid.

[316] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* p. 158

[317] The term 'section' was employed by Evans-Pritchard to refer to sub-units of the 'tribe', which he described as the largest political unit within the Nuer people willing to solve disputes without recurring to warfare. Sections can usually be associated to a territory, and can be primary, secondary and tertiary, with the latter sometimes corresponding to a clan or lineage. See: Edward Evan Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (Oxford: Clarendon Press, 1940); Paul Philip Howell, *A Manual of Nuer Law: Being an Account of Customary Law, Its Evolution and Development in the Courts Established by the Sudan Government* (Published for the International African Institute by the Oxford University Press, 1954).

[318] Leonardi, *Dealing with Government in South Sudan*. p. 68.

[319] Ibid.

functioning of courts was also evident in the fact that not all customary practices were accepted. A selection was made, based on British ideas of justice, humanity, reasonableness and governability, resulting in wide restructuring of both the law and chiefly authorities and courts[320]. Prophets, particularly active among the Nuer and whose influence often transcended kinship ties and territorial groupings, were repressed as examples of 'untraditional' leaders.

> "There was a progressive secularization of Nuer leadership and justice, which may have been administratively necessary but was very much against the trend of tradition. It left the government with a court system composed of leaders representing small political units, and a legal system very much dependent on government force as its main support."[321]

The resulting system, according to Johnson, "owed as much to British innovation as to indigenous custom"[322].

The dependence on the application of customs to enforce effective administration not only needed reliable chiefs capable of enforcing orders, but also some degree of 'tribal discipline'[323]: people needed to stick to their government chief instead of moving through the flexible boundaries of their ethnic identity, continuing historical processes of fission and fusion. Administrative theory became increasingly based on ethnic segregation. The Closed District Ordinance, enforced since the mid-1920s, aimed to regulate the movement of non-native persons into the South for the sake of 'cultural integrity'. It also aimed at economic control, regulating movements of Arab petty merchants and preventing the spread of Islam to the south. Control of movements was enforced through the creation of tax registers, lists of taxpayers to be submitted to the district administrative headquarter every year giving reasons for variations in numbers. If ideally chiefly jurisdiction was territorialized, with chiefs collecting taxes from people residing in a certain area, in fact the government's ability to enforce these rules was, at least in some areas, questionable. Particularly in pastoralist areas, chiefs kept into their registers also people who moved temporarily to other areas perpetuating the elasticity of the social/lineage-tie linkage[324]. Nevertheless, in some areas such as the Southern part of Bahr el Ghazal and Greater Equatoria, collective

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[320] Douglas H. Johnson, "Judicial Regulation and Administrative Control: Customary Law and the Nuer, 1898-1954," *Journal of African History* 27 (1986): 59–78; Johnson, *Nuer Prophets*; John Wuol Makec, *The Customary Law of the Dinka People of Sudan: In Comparison with Aspects of Western and Islamic Laws* (Afroworld Pub. Co., 1988).

[321] Johnson, "Judicial Regulation and Administrative Control: Customary Law and the Nuer, 1898-1954." p. 68

[322] Johnson, *Nuer Prophets*. p. 12

[323] Ibid.

[324] Personal communication with Sharon Hutchinson, 2015

movements did become more difficult. In any case, the 'exit strategy' to delegitimize an unwanted leader was now limited by the fact that chiefs continued to exercise their 'legal' command over their subjects: the tendency to fission that had characterized the process of chiefship creation was hindered[325].

Tribal discipline was justified through the creation of irreconcilable oppositions between different tribes, for example portraying the Dinka as a people threatened by Arabs and Nuer, affirming the need to protect their customs and traditions[326]. In fact, World War I increased British fear of subversive tendencies from the Sudanese population: tribal segregation, together with the deliberate suppression of some forms of subversive local authorities (such as Nuer prophets) who were not keen to submit to the government, was part of a strategy of control[327].

## 3.3 The Southern Policy: territorializing communities

In 1930, the policy of devolution was institutionalized through the Southern Policy Memorandum, providing for administration to be conducted through indigenous structures of authority, employing a selected bundle of customary laws and practices[328]. One year later, judicial powers of the native administration were recognized and put under British supervision with the Chiefs Courts Ordinance[329]. In pre-colonial times, chiefs' power depended on the number of people who followed them; to make it more explicit, in 1930 the government started to pay salaries to chiefs computing them on the number of taxpayers they had under their jurisdiction, based on the tax registers.

The administration of land was also affected, to some extent, by the Southern Policy, in the sense that it recognized the power of local chiefs to distribute land to their subjects in the areas under their jurisdiction.

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[325] Leonardi, *Dealing with Government in South Sudan*.

[326] C.A. Willis, "The Cult of Deng," *Sudan Notes and Records* XI (1928): 195–208.

[327] The prophets' subversive potential relied on their appeals to a "moral community" which often went beyond the boundaries of the 'tribe' as the colonial government recognized it. Many Nuer prophets had Dinka origins, and they attracted followers from many different sections as well as from other tribes, also sometimes causing movements of people who went to pay visit to them. They claimed their power on the basis of a direct link with divinity, manifested through abnormal behavior or illness, and had to keep their legitimacy alive through constant expressions of their power, which could be protective, healing, or strengthening with respect to their followers. Johnson, *Nuer Prophets*; Hutchinson, *Nuer Dilemmas*. For an account of the role of prophets in contemporary South Sudan, see: Sharon E. Hutchinson and Naomi R. Pendle, "Violence, Legitimacy, and Prophecy: Nuer Struggles with Uncertainty in South Sudan," *American Ethnologist* 42, no. 3 (August 1, 2015): 415–30, doi:10.1111/amet.12138.

[328] "Memorandum on Southern Policy, 1930," in *Mohamed Omer Bashir, The Southern Sudan: Background to Conflict* (New York: Praeger, 1968).

[329] Makec, *The Customary Law of the Dinka People of Sudan*.

Particularly, in agriculturalists' areas, people residing outside of the territory of their own chief were considered as 'squatters'[330], immediately identified and brought back to their area if they moved without the District Commissioner's consent[331].

As in many African predominantly pastoral societies, in Southern Sudan land was administered by a flexible system of seasonal agreements for access to pastures and water points. Especially among Nilotic pastoralist societies, authority was not on territory but on people, and affiliation to ethnic communities, sections, sub-sections and clans was easy to change through marriage, or simple "adoption" of customs and allegiance to a spiritual leader. Francis Mading Deng argues that the concept of "property" in the customary right of Southern Sudanese Nilotic populations could only be applied to cattle, but not to land[332]. In fact, land was neither considered as a scarce resource nor as an individual commodity. Therefore, customary right did not develop around land tenure issues, but rather around issues affecting more directly individuals and families such as property of cattle and marriage. In an attempt to ascertain Dinka customary right in 1984, land was not even included among the list of what was considered as 'property'[333]. In non-cattle keeping societies, where the use of land for farming was on smaller family basis, local leaders' control of the land was more on territorial terms: for example, among the Azande, the chiefs extracted labour from whomever farmed in the area under their jurisdiction not as a form of payment for the land, but rather as a form of allegiance towards their authority to be absorbed into their community[334]. Both in pastoral and in agriculturalist societies, land disputes potential of escalating from individual to inter-communal conflict, stemming from the need to belong to a group in order to access land[335], was thus mitigated by an extreme flexibility of both customary arrangements and the very membership into groups, both of which were partly lost during colonialism. Officially, British colonialism in the Sudan asserted the government's ownership of all "unutilized" lands. Since 1899, all the laws and ordinances produced by the British Colonial government demonstrated the increasing effort to centralize control over rural land[336]. Despite theoretically

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[330] Leonardi, *Dealing with Government in South Sudan*.

[331] Interview with Adam Mousa, civil servant, Rumbek, 21 November 2013.

[332] Francis Mading Deng, *The Dinka of the Sudan* (Holt, Rinehart and Winston, 1972); Makec, *The Customary Law of the Dinka People of Sudan*.

[333] Makec, *The Customary Law of the Dinka People of Sudan*.

[334] E. Guttmann, "Land Tenure among the Azande People," *Sudan Notes and Records* XXXVII (1956): 48–55.

[335] Deng, *The Dinka of the Sudan*.

[336] These laws and ordinances are: Titles of Land Ordinance, 1899; Land Acquisition Ordinance, 1903; Land Settlement Ordinance, 1905; Land Resettlement and Registration Act,

recognizing settlement and use rights to rural population, they aimed primarily at safeguarding the government capacity to take the land it needed for "development projects" such as building infrastructures, expanding the towns and implementing large-scale agriculture projects. In 1925, the Land Resettlement and Registration Act introduced the possibility of registering land titles for local communities, though stating that: "all waste, forest and unoccupied land" belonged to the government unless differently demonstrated through the presence of settlement or farming activities[337].

Nevertheless, these laws were only implemented in part of the northern Sudan, where the colonial government presence was stronger. The Southern region remained largely out of governmental control and *de facto* administered by local chiefs even before their role was officially recognized with the Southern Policy. Emerged as a product of the encounter between the local peoples and the colonizers, these chiefs represented a 'modern' evolution of pre-existing spiritual leaders and ended up being entitled with the administrative authority to distribute land rights within 'their' community and negotiate access to land with neighboring ones even when their pre-colonial predecessors had never had such power[338].

As shown, the Southern Policy (1930) bounded government-sanctioned ethnic communities to specific 'homelands', theoretically for the sake of 'cultural purity', in practice for that of movement control. By the early 1940s, when the fortune of the Southern Policy was already declining, the policy of limiting people's movements was confirmed together with chiefly taxation. Since chiefs were encouraged to control wide territories comprising of different clans and kinship groups, they increasingly became important in administering land rights among these groups. Blame for favoring their own group in the allocation of land, matched with the impossibility of moving away to another chief for discontented people, caused thrusts towards the fragmentation of chiefdoms[339].

In some circumstances, British policy on the territorialization of 'tribal' communities also made possible a coincidence between the borders of chiefdoms and provinces. Douglas Johnson retraces one such situation on the

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1925; Land Acquisition Act, 1930. See Paul De Wit, "Land and Property Study in Sudan," Interim report, Project OSRO/SUD/409/HCR (Norwegian Refugee Council, UNHCR, FAO, August 2004); Sara Pantuliano, "The Land Question: Sudan's Peace Nemesis," Working Paper (Humanitarian Policy Group - Overseas Development Institute, March 2007).

[337] Paul De Wit, "Legality and Legitimacy: A Study of the Access to Land, Pasture and Water. Sudan" (FAO, June 2001).

[338] Leonardi, *Dealing with Government in South Sudan*; Carola Lentz, *Ethnicity and the Making of History in Northern Ghana* (Edinburgh: Edinburgh University Press for the International African Institute, 2006), http://site.ebrary.com/id/10188984.

[339] Leonardi, *Dealing with Government in South Sudan*.

Nuer-Dinka border between Upper Nile and Mongalla provinces, characterized by the involvement of both colonial governments in the feud between the groups, each in support of its own people[340].


### 3.4 The creation of intra-south inequalities

Although the Southern Policy provided for a homogeneous administrative approach in the southern region, administration in practice continued to vary greatly in relation to different ecological zones and peoples, and different degrees of inclusion into government offices persisted. Access to education, which entirely relied on missionary schools, became vital for accessing the limited government positions opened to 'locals' which were not already occupied by Arabs. Indeed, one of the legacies of the Anglo-Egyptian condominium colonial system was that Arabs (both from Egypt and the northern part of Sudan) could easily be employed in the administration thanks to their literacy in Arabic and to their familiarity with bureaucratic modes of government, making it less necessary than elsewhere in Africa to raise a local civil service. Indeed, the fact that missionary schools were virtually the only education system available in Southern Sudan at least until the last fifteen years of British rule testifies about the scarce interest of the Government in directly engaging in educating the Southerners.

As elsewhere in Africa, missionaries were among the first to penetrate southern Sudan. They established their missionary schools teaching mostly practical skills in local vernacular languages, but literacy remained extremely limited throughout the first two decades of British rule. According to Sanderson, by 1920 there were only a dozen schools offering more than practical skills training and religious instruction, and they only enrolled about 400 pupils[341]. In 1923, the Advisory Committee on Native Education in Tropical Africa encouraged the government to subsidize missionary schools, and suggested that education should reflect the abilities and the needs of the local people and environments[342]. If in other parts of their colonial empire the British were keener to invest more directly in education, as shows Bonini in a paper on education in Tanganyika where the government was directly running at least

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[340] Johnson, *Nuer Prophets*.
[341] Lilian Passmore Sanderson, "Education in the Southern Sudan: The Impact of Government-Missionary-Southern Sudanese Relationships upon the Development of Education during the Condominium Period, 1898-1956," *African Affairs* 79, no. 315 (1980): 157–69.
[342] Ibid.

part of the schools available to the locals[343], in Sudan the Government only limited itself to fund missionary schools claiming to have a say in what they taught as soon as it realized it needed a class of local junior administrators, in the early 1920s[344]. According to Douglas Johnson, the distribution of schools between the 1920s and 1940s reveals which peoples were more strongly co-opted into the new system thanks to their proximity to education opportunities. In Bahr el Ghazal, for example, the Jur and Fartit could access missionary education in Wau and Raga, leaving the Dinka majority heavily under-represented in the local administrative apparatus. The only Dinka who could access schooling were those around Bor, thanks to a school run by Christian Missionary Society in Malek. However, the bulk of local civil servants hailed from the Equatoria region, as it had already been with military recruits, while the Nuer were the most excluded[345]. Between the 1920s and 1930s, however, local demand for schooling was still quite low especially in the Upper Nile Region[346].

The number of locals in the southern colonial administration increased in the late years of the Anglo-Egyptian condominium when the policy of protecting 'cultural integrity' also involved a progressive removal of Egyptian and northern Sudanese civil servants and policemen serving in the south, making it necessary to open new schools. At the same time, however, the spread of missionary education subsidized by the government was thought to be producing too many educated southerners compared to the demand of local administrative officers, while heavily interfering with customary systems. Secondary education was therefore seriously obstructed (at the time of independence there was only one secondary school in the whole of the southern region)[347] and primary education was kept under strict control of the government in order to prevent the spread of cultural practices (like baptismal names, western-like clothing and Christian marriages) which could hinder the 'purity' of local customs[348]. If these precautions were more successful among Nilotic populations, who had had less routinized contacts with government institutions, had a more feeble presence of missionary schools in their territory, were considered as more 'recalcitrant' than agriculturalist peoples and, as such, never encouraged to enroll in

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[343] Nathalie Bonini, "Un siècle d'éducation scolaire en Tanzanie," *Cahiers d'études africaines*, no. 169–70 (June 1, 2003): 40–62.

[344] Ibid.

[345] Johnson, *The Root Causes of Sudan's Civil Wars*; Johnson, *Nuer Prophets*.

[346] Sanderson, "Education in the Southern Sudan."

[347] Hutchinson, *Nuer Dilemmas*.

[348] Sanderson, "Education in the Southern Sudan."

school[349], sedentary communities in the Equatoria region were more permanently exposed to education and, according to Leonardi, chiefs started to take advantage of education opportunities sending their sons and dependents to school[350]. This educational primacy made Equatorians particularly influential in administration and politics also in the post-independence period[351].

Less than ten years after the Memorandum on the Southern Policy, British administration had to acknowledge that the idea of creating discrete tribes proved to be a total failure[352]: administrative practice thus moved towards a territorial form of local government, based on counties and parishes, abandoning the idea of having ethnically homogeneous chiefdoms[353].

In the 1940s, when the British started considering their exit strategy from Sudan, the Native Authority was no longer considered positively as a legitimate means to broadcast government's power. Instead, latest colonial officers considered it as a source of tribalism, hindering the formation of a genuine national sentiment. In 1947, a private conference was organized by the Fabian Colonial Bureau, a pressure group founded in 1940 by the Fabian Society to influence colonial policy through research and advocacy, to discuss how power could be transferred to local governments. The final document advanced an idea of nation-building as a criterion for self-government, stressing the importance of nationalist movements, self-determination, economic viability and territorial cohesion, confirming the negative idea of Native Authority as an expression of tribal factionalism. At the same time, however, it vaguely admitted that the transfer of power in a non-homogeneous society needed to be smoothened with the creation of homogeneous political units[354].

In any case, the British were not keen to encourage the development of a southern nationalist political elite independent from the chiefs, nor were the latter keen to be excluded. Moreover, the British administration system in the southern region only covered a small portion of the actual territory, and the limited perspectives of expanding it or improving communication facilities made it nearly impossible to avoid dealing with the chiefs. In 1951, after the dissolution of the Anglo-Egyptian agreement, the Local Governance Ordinance

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[349] 100 Nuer boys were rounded up by the Government in 1946 after the suspension of the Southern Policy on a quota-based system to join school in a last-minute attempt at creating a southern administrative class before leaving. Hutchinson, *Nuer Dilemmas*.

[350] Leonardi, *Dealing with Government in South Sudan*.

[351] Johnson, *Nuer Prophets*.

[352] Douglas H. Johnson, "The Future of the Southern Sudan's Past," *Africa Today* 28, no. 2 (June 1, 1981): 33–41.

[353] Leonardi, *Dealing with Government in South Sudan*.

[354] Fabian Colonial Bureau, "Problems of the Transfer of Power from Britain to the Colonies," in *Preliminary Questions* (Private Conference, Non classified document accessed at the Juba Archive in March 2013, 1947).

outlined the new local government structure under the Government of Sudan relying on advices contained in the Marshall Report (1949). The new local government was based on province and district councils made of local chiefs and elders, confirming their persistent centrality in local governance in the rural areas. In the towns, where the number of educated and politically active southerners had increased in spite of colonial policies and where the government could assert a stronger control, councils included educated members, but they were only set up in Torit, Yei, Juba and Wau[355]. According to Tvedt, however, this attempt at establishing a proper local government structure started too late and brought little change in the way the southern region continued to be actually governed, with local councils functioning only as advisory bodies to District Commissioners. The latter had great autonomy in the areas under their jurisdiction, hindering the consolidation of a proper bureaucratic centralized system with universalistic orientations[356].

The war that broke out a few years later also contributed jeopardizing the formation of a bureaucratic institutional culture: with the Torit munity and the following creation of Anyanya I[357], any formal state structure created in the early 1950s again retreated in the towns, from where many southerners fled, and its presence was again mostly visible in the form of violence.

## 4. Rise and fall of the modern state legitimacy

The issue of legitimacy of the State in a context of overlapping processes of state formation and state-building, like the one that started taking shape between the late 19th and early 20th centuries, is a thorny one. Borrowing from Carola Lentz, I suggest that it is more useful to look at legitimacy as an arena in which many different actors intervene, configuring it more in terms of a process of legitimation than as a given fact[358]. For this reason, the emergence of legitimate leaders and institutions in southern Sudan is better understood as a complex web of relations, in which each actor looked upon other actors in its personal effort for legitimation in its accumulation of power.

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[355] Arop Madut-Arop, *The Genesis of Political Consciousness in South Sudan* ([S.l.]: A. Madut-Arop, 2012).

[356] Terje Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement.," in *Short-Cut to Decay. The Case of the Sudan* by Sharif Harir and Terje Tvedt (Uppsala: Nordic Africa Institute, 1994).

[357] The Torit munity in 1955 is conventionally considered the start of the first civil war, which was fought by the rebel movement Anyanya I. See below.

[358] Lentz, "The Chief, the Mine Captain and the Politician: Legitimating Power in Northern Ghana".

The problem of the legitimation of accumulation of power was an ancient one, existing since long before colonialism, though much undervalued due to lack of written sources that have led many studies on the history of power in southern Sudan to analyze the history of colonial administration only[359]. This gap in knowledge about southern Sudanese local societies in a historical perspective is slowly being filled, and the issue of how local authorities managed to accumulate legitimacy has been extensively addressed by the above-mentioned book by Cherry Leonardi's *Dealing with Government in Southern Sudan*[360].

In pre-colonial times, she argues, the legitimacy of local leaders was derived from their mastering of some kind of specific knowledge. The mastery of specialist valuable knowledge such as rain-making, peace-making, hunting, iron-working, etc. attracted non-agnatic followers, transcending kinship ties and producing mobile and flexible political units gathered around one or more leaders. Their followers abided to their authority and agreed to recognize them as chiefs. This 'wealth in knowledge', as she calls it, mattered even more than 'wealth in people', upon which African power was usually based, but was also a prerequisite to increase the number of followers[361]. In fact, most of southern peoples had numerous leaders with different kinds of specialized knowledge that competed for authority among themselves, and the choices of whom to rely upon could easily depend on contingent necessities of a family or individual.

The early 'intruders' did not look for alternative sources of legitimacy as they had no pretense at governing the region. They simply relied on whoever introduced itself as a leader and was able to comply with the stations' demands for food, porters and ivory. In this way, since the very beginning, Egyptian officers provided new sources of legitimacy for local political entrepreneurs, whose valuable knowledge was increasingly that of government. A class of brokers with some degree of political power, often overlapping with traditional lines of chieftainship but not necessarily hailing from the same families, emerged in this early phase of commerce and exploitation.

Despite their difficult position in between government's demands and the people's resistance, brokers were able to guarantee the protection of their followers from government coercion, directing it against their local enemies. The capacity of brokering relations with what later became the colonial government also offered an opportunity of wealth accumulation thanks to the

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[359] Johnson, "The Future of the Southern Sudan's Past."
[360] For more circumscribed studies, see also: Johnson, Nuer Prophets; Hutchinson, Nuer Dilemmas; Deng, The Dinka of the Sudan.

[361] Leonardi, *Dealing with Government in South Sudan*.

early practice of 'buying' loyalty in exchange for goods. In many areas of southern Sudan, the only good which did not rapidly lose its value was cattle, thanks to its outstanding role in making and unmaking social relations[362]; therefore cattle raids were encouraged and looted cattle was redistributed to 'friendlies'[363].

Towards the end of the century the needs of control of the government increased and its officers soon realized that is was not possible to rule with force only. Something more than reward for *razzias* and military assistance for internal warfare needed to be provided to the locals. In the 1880s, Emin Pasha, Governor General of Equatoria at that time, founded a mosque, a koranic school and a hospital in Lado and, for the first time, tried to promote the image of a neutral government, standing above, judging and repressing internecine feuds among local peoples within and around the station[364]. For the first time, coercion was consciously directed towards the establishment of a form of legitimacy of government presence, instead of using it only to extract resources. Richard Gray reports that the number of communities seeking government protection during Emin Pasha period in office increased. Many people voluntarily decided to attach themselves to the government supplying porters and agreeing to pay tax in grain. Emin Pasha was even occasionally visited by neighboring independent headmen asking for the construction of a station in their territory[365].

The degree of predictability given by Emin Pasha to the relations with the government was nevertheless very short-lived: Egyptian financial disarray forced the government in Cairo to down-scale its presence in the farthest provinces, often leaving the stations to the mercy of Arab ex-slave soldiers whose only contact with surrounding populations was through raids[366]. Rumbek, one of the oldest stations which entertained amicable relations with the Agar Dinka, was attacked and destroyed as a consequence of the increased coercive demands for food with no protection provided in exchange.

It was only under the British colonial administration, especially in its latest phase, that a willing effort to state-building was pursued and strategies to ensure its legitimacy were implemented. As elsewhere in East Africa, the British needed to change society according to colonial needs, while showing continuity

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[362] Hutchinson, *Nuer Dilemmas*.

[363] Gray, *A History of the Southern Sudan 1839-1889*; Leonardi, *Dealing with Government in South Sudan*.

[364] Gray, *A History of the Southern Sudan 1839-1889*. Obviously, the repression of internecine feuds also had an extractive function which benefited the government coffers.

[365] Ibid.

[366] Leonardi, *Dealing with Government in South Sudan*.

with local structures of power to prevent excessive resistance[367]. The creation of some degree of legitimacy of the colonial state was thus essential: the limited availability of European personnel, money and coercive force created the need for a local institutionalized class of loyal collaborators.

According to Cherry Leonardi, the British sought to build the institution of chiefship as the basis for local government since the very beginning of colonial administration. She quotes an extract of a report written in 1906, well before the Native Administration system was formalized:

> "The average Bari or Dinka Sheikh (chief) is not a person possessed of any authority, being as a rule merely the headman of a village, whose population obey him or not as suits their individual fancy. There are a few who seem to be strong men, and the policy adopted has been to raise the status of the Sheikh as far as possible in the eyes of his people by trying to impress on them (and on him) that he is the representative in his own village of Government, and must act and be treated as such"[368].

The search of "native chains of command through which to govern"[369] has been a constant characteristic of British rule, but only with Evans-Pritchard's ethnography a structured and scientific effort to understand local political and social systems was made to identify secular forms of authority that could channel a sufficient amount of power. Unlike northern Sudan, were hierarchical socio-political structures prevailed, in the southern region the only two people who had centralized lines of authority were the Shilluk and Azande kingdoms. Most of the other southern peoples were rather identified as 'acephalous' societies: social order was maintained through a complex system of ritual practices and beliefs, administered by one or more ritual experts who did not have administrative powers[370]. Semi-nomadic populations were often guided by individuals descending from families whose forefather was the leader of a migratory movement[371]. In these cases:

> "(T)he questions of 'legitimacy' and 'loyalty' became confused, for loyalty to the government did not always carry legitimacy with it, and 'disloyal' leaders were not always illegitimate in the eyes of their people. The government ultimately claimed to be the defender of tradition and custom, but not all of its allies were so traditional"[372].

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[367] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

[368] Leonardi, *Dealing with Government in South Sudan*. p. 41

[369] Johnson, *Nuer Prophets*. p. 9

[370] Gray, *A History of the Southern Sudan 1839-1889.*

[371] Johnson, *Nuer Prophets*.

[372] Ibid. p. 23

The pattern of emergence of local leaders as mediators between government and communities continued under the Anglo-Egyptian condominium. To some extent, though often not 'traditional' and, later, in many cases appointed as chiefs by government officials, these figures managed to accumulate power within the pre-existing framework of what Leonardi calls the "political economy of knowledge": they knew how to deal with the government. Voluntary settlement near to government centers, volunteer enrollment in the government army and more generally volunteer contacts made in order to get into relation with the government were the real engine of state expansion rather than government's coercive action of submission, and this voluntary contact was usually sought for protection and alliance.

The accumulation of wealth of these new 'government chiefs' turned them into influential patrons, despite their sometimes marginal origins. Chiefs are often described as rich and generous people, who 'take care' of their community and of its needs. Through their relation with colonial government, they provided protection to their people in exchange of some sort of bribery, and 'tributes' to the government, often collected through the use of guns. "Knowledge of and communication with government was becoming vital to ensuring protection from it at the very least, if not to establish a more preferential claim upon it"[373].

The legitimacy of both the colonial state and its local emissaries, built through a dialectic relation of exchange in which new spaces for local political entrepreneurs were inadvertently opened, started to be challenged towards the end of the colonial period when a scant class of educated leaders with nationalist claims emerged. The latter started to mobilize politically to participate in national politics and partly took upon themselves the chiefs' 'knowledge of the government'. At the same time, however, both British and Sudanese administrators were keener in continuing to deal with the chiefs as representatives of the communities, perpetuating the idea of traditional, rural southern folks, instead of politically active intellectuals[374].

This uncertainty over the most legitimate local political figures survived to present days, but it was only possible thanks to the 'vulgarization of power' that the colonial state, though weak and with limited influence over the territory, had introduced intertwining with local patterns of power accumulation. This opened up spaces of power beyond the formal state influence, though always in relation with it. Increasingly, anyone who pretended power needed to abide to the politics of the state if he wanted to enhance his social patronage, and the relation to the state became an outstanding source of power. The emergence of

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[373] Leonardi, *Dealing with Government in South Sudan*. p. 48
[374] Ibid.

an educated southern elite in spite of British policy of keeping the south 'traditional' was one of the outcomes of this process of opening up new opportunities for new actors. In the early 1950s, the dawn of independence, they claimed a role in the political scene which they were systematically denied.

The Sudanization Committee, in charge of replacing British and Egyptian personnel in the civil service, excluded southerners, assigning them only 6 positions out of 800 available. Only one southerner before independence and only three after independence were included in the Constitution committee, with the result of the southern-sponsored federal system being rapidly left behind[375]. The exclusion of Southerners was motivated with an undeniable education gap, but it also responded to a precise political vision of the northern elite who firmly believed that united Sudan's future had to be built through Arabization and Islamization. This "bitter pill" was not even sweetened with economic development: economic development projects were also sudanized, and later relocated to northern areas or just abandoned[376]. The British managers of the Western Equatoria agriculture scheme, started in 1943 in Nzara and providing the only alternative source of wage employment besides the civil service, were replaced by northern Sudanese. Fearing the increasing politicization of southern workers protesting against the exclusion of southerners from managerial positions, the Sudanese managers started firing activist employees. The strikes and demonstrations that followed in Nzara and Yambio were repressed with violence, though the government only blamed the local commander in Yambio for 'mishadling' the situation[377].

The military sector, one of the most sensitive both in symbolic and material terms – for it provided employment and the control over physical force – was also subjected to the process of Sudanization. The command of the Equatorial Corps was assigned to northern commanders. Southern troops were ordered to relocate to Khartoum, while a Southern company of the Sudan Defense Forces was sent to Juba for an indefinite period of time[378].

According to Arop Madut Arop, it was particularly these last two elements that swept away any residual legitimacy of the central state and the newly established administration: "If there had been some confidence left in the administration, it had then disappeared completely"[379].

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[375] Storrs McCall, "The Rise of a Provisional Government in Southern Sudan" (University Social Sciences Council Conference, University College, Nairobi, 1969).
[376] Collins, *A History of Modern Sudan*. p. 78
[377] Madut-Arop, *The Genesis of Political Consciousness in South Sudan*.
[378] Ibid.
[379] Ibid. p.39

# 5. War and the post-colonial state

## 5.1 The Anyanya I and its civil administration

Sharif Harir and Terje Tvedt have argued that the Sudan as a whole, and particularly its southern region, underwent a process of "state decay" due the continued state of war since its very independence[380].

Indeed, the state control over southern territory, if it ever existed, was constantly challenged by the armed uprisings of the 1950s, starting with the Torit mutiny in 1955. These uprisings expressed widespread southern discontent with the Sudanization process, and a firm desire for political inclusion in the post-colonial state. The mutiny was carried out by the soldiers of the Equatorial Corps against their Sudanese command who wanted them to redeploy from Torit to Khartoum, and provoked reactions which spread to several other southern military outposts[381]. The two services that the state had been providing during the colonial time, policing and dispute-resolution, were increasingly left to newly localized forms of governance[382]. If the British never wanted to establish a centralized bureaucratic system and left great autonomy to District Commissioners as local representatives of the state[383], the capacity of local administrators to control anything beyond a few garrison towns was weakened by the massive flee towards the rural areas, far away from state control. In the towns, state presence became more violent and oppressive.

The Torit mutiny, commonly considered the starting point of the first Sudan civil war[384], was a failure in terms of undermining government positions in the southern region. Even in areas such as Torit and Wau, where northern government officers took flight, the central state control was re-established within weeks[385]. The episode had however the effect of strengthening the division between the urban government-controlled areas, where the central power was able to enforce its rule, and the rural areas, where a myriad of

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[380] Sharīf 'Abd Allāh Ḥarīr, Terje Tvedt, and Raphael K Badal, *Short-Cut to Decay: The Case of the Sudan* (Uppsala: Nordiska Afrikainstitutet ; Stockholm, Sweden : Distributed by Almqvist & Wiksell International, 1994).

[381] Madut-Arop, *The Genesis of Political Consciousness in South Sudan*.

[382] Rolandsen, "To Mend the Broken Contract".

[383] Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement."

[384] In fact, Douglas Johnson dates the real beginning of the civil war in 1960-2, when many educated southerners joined the armed militias or moved to neighboring countries. Johnson, *The Root Causes of Sudan's Civil Wars*.

[385] Madut-Arop, *The Genesis of Political Consciousness in South Sudan*. According to Douglas Johnson's brief account of the mutinies following the Torit one, Wau was not touched by the turbulence. Johnson, *The Root Causes of Sudan's Civil Wars*.

scarcely coordinated armed uprisings continued between 1955 and 1963. In the same years, other important events happened. In 1956, Sudan became independent, but the idea of a federal system supported by the small southern educated elite to preserve Southern Provinces from northern overrule was rejected. This caused great discontent not only in the southern region, but also in other peripheral areas of northern Sudan in the west and in the east, and ultimately caused the military coup of General Abboud. The latter stopped any public debate about Sudan identity, imposing policies of Arabization and Islamization. In the early 1960s, the bulk of Southern Sudan educated elite left either to neighbouring countries, where they founded the Sudan African National Union (SANU), or to the bush, where they started a guerrilla movement.

So far, several different uprisings in the three provinces of Equatoria, Bahr el Ghazal and Upper Nile had remained independent from one another and also deeply divided, showing that until 1963 there was no organized military movement[386]. In 1963, when the rebel movement of Anyanya (a Madi word for a type of snake poison) was launched, an attempt at establishing a unique Military High Command with five decentralized commands (Eastern, Central, Western Equatoria, Bahr el Ghazal and Upper Nile Commands) was made, with scarce results. According to Douglas Johnson, in the late 1960s there were nine competing rebel groups in the south, more busy fighting each other than against the government in Khartoum. These splits were caused by changing political conditions in Khartoum, where in 1964 the military government led by General Abboud stepped down and left power to a caretaker civilian government that legalized political parties. The exiled political movement, the SANU, was divided between those who still claimed self-determination, and those who accepted a federal solution[387]. A number of southern provisional governments, often relying on ethnic constituencies, mushroomed in the late 1960s, but their function was more symbolic, to claim southern independence, rather than to establish any kind of functioning administrative system at the local level[388].

It was only in 1970 that Joseph Lagu managed to establish a certain degree of control over the myriad of militias, provisional governments and rebel movements active in the south. Lagu intercepted Israeli Government's concerns for Nimeiri's socialist coup (1969), which brought Sudan closer to the Soviet Union and to Nasser's government in Egypt. Israel provided military assistance

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[386] Madut-Arop, *The Genesis of Political Consciousness in South Sudan*.

[387] Douglas H. Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism," in *African Guerrillas*, by Christopher Clapham (Oxford: James Currey, 1998).

[388] Tim Niblock, *Class and Power in Sudan: The Dynamics of Sudanese Politics, 1898-1985* (Houndmills, Basingstoke, Hampshire: Macmillan Press, 1987).

to Lagu, putting him in the position of delivering goods in the form of military hardware and training to his allies. He thus managed to centralize Anyanya leadership and brought the movement to sign the Addis Ababa Agreement in 1972[389].

Because of this decentralized and deeply divided character of the Anyanya, the movement never managed to establish actual control over significant portions of the territory. For this reasons, Douglas Johnson in 1998 argued that the first civil war did not substantially change local administrative structures, with the rural areas largely ruled by local chiefs and no alternative parallel rebel administration[390]. Others, however, suggested that at least in the latest phases of the civil war, when Joseph Lagu's leadership was enforced, Anyanya-controlled areas did have some kind of civilian administration, while the government acknowledged that it lacked control over much of the region[391]. Despite not controlling any town, the Anyanya must have had a sufficient degree of control of the territory at least in some areas, if it managed to release licenses to and collect taxes from Dinka cattle traders and keep courts and schools operating[392].

In 1967, a National Convention of political and military leaders in Angudri, Western Equatoria, made a first attempt at improving Anyanya coordination and created a formal administrative structure based on provinces and districts under commissioners' authority, and counties under the chiefs. In the early 1970s, Anyanya civil administrators were trained near the Ugandan border but, according to Howell, in 1972 they remained sparse[393].

The chiefs were caught in the cross-fire between the government and the rebels and extensively targeted by both parties for allegedly cooperating with the enemy. Nevertheless, a report written by a European who travelled to Southern Sudan in 1971 quoted by Cherry Leonardi suggests that, at least in the latest phases of the civil war, local chiefs and people had a positive attitude towards Anyanya fighters and contributed feeding and hosting them every time they came 'out of the bush'. Some claimed that Anyanya commanders used to appoint their own chiefs, but in any case they constituted the basis for the construction of a local parallel administration in the rural areas[394]. Some chiefs

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[389] Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement."

[390] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism."

[391] Niblock, *Class and Power in Sudan*.

[392] Leonardi, *Dealing with Government in South Sudan*.

[393] Howell, John. 'Political leadership and Organization in the Southern Sudan'. Ph.D, University of Reading, 1978, quoted in Leonardi, *Dealing with Government in South Sudan*.

[394] Dr. Halvor Norskog, "Report from a safari in the Southern Sudan" 1971, quoted in Leonardi, *Dealing with Government in South Sudan*.

acted as judges or arbitrators for the Anyanya and were empowered to take action also against members of the movement, for example if they abducted women without paying bride-wealth. According to the European traveller, the Anyanya was also able to establish border custom posts and to run court houses enforcing the Laws of Sudan. Cherry Leonardi argues that "(…) while both government and Anyanya might blame and punish individual chiefs, it is significant that both sides continued to recognize the *institution* of chiefship itself, and sought to utilize and control it"[395]. This pattern of local governance, strongly relying on chiefs, was resumed and strengthened by the SPLM/A in later years, particularly since the mid-1990s.

## 5.2 The local state in times of peace: the People's Local Government

The Addis Ababa Agreement came just one year after the most comprehensive effort to reform the local government made by Jafaar Nimeiri's regime. Nimeiri took power with a coup d'état in 1969 and established a socialist regime committed to creating a bureaucratic decentralized state undermining ethnic divisions and their symbol: the native authority. In 1970, the Native Administration Act abolished customary authorities which had remained pretty much untouched since the end of colonial rule. One year later, the People's Local Government Act established a three-layer administrative system: the central government, provincial councils – six in the southern region - with appointed chairmen and local elected councils (district, towns, rural areas, villages and nomadic people). The number of local administrative units hiked from 86 to 5000, but it was not until 1978 that most civil servants – including teachers, nurses and doctors- from the central government ministries were deployed to provincial level. One senior local government officer appointed in 1972 described the situation he found in these terms:

> "Those political commissioners were so powerful, the councils had no elected members, councilors were not there (…), the commissioner was appointed and he used the council to approve whatever he wanted. (…)We as local government officers, we used to make our budgets, with revenues and expenditures, including grants that might be coming from the government. The revenues that were collected and the grants from the government were misused during that period. There was a lot of mismanagement of funds"[396].

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[395] Leonardi, *Dealing with Government in South Sudan*. p. 171
[396] Interview to Eli Achol Deng, senior member of the Local Government Board, Local Government Officer since 1972, Juba, 13/12/2013.

In fact, according to studies of the Nimeiri's local government reform, no real devolution of power took place due to the weak political will of the ruling elite and the financial weakness of the Sudan, whose arrears on foreign debt services reached $1 billion by the end of the decade hindering the allocation of resources to the local level of government[397]. The latter's revenue raising capacity was extremely limited, and it seems that the financial viability of local government remained a constant issue throughout the 1970s[398]. Of the 7 million Sudanese Pounds earmarked for 1973-74, only 400.000 were actually transferred. International aid agencies budgets for programs destined to the southern region continued to be amazingly higher than those prepared in Khartoum[399].

Regime-nominated Provincial Commissioners remained in control of local councils[400]. The senior local government officer I interviewed maintained that "their main purpose was to propagate the policies and ideology of the Sudan Socialist Union (Sudan's ruling party)"[401]. Adding to this, an elderly man from Rumbek interviewed by Leonardi also maintained that the only function of the councils was to collect information on local population, "like a telephone or radio"[402].

In early 1974, a study mission by Birmingham University on behalf of the UK government visited Southern Sudan to study "problems of administration in the three Southern provinces", survey development facilities and formulate recommendations to provide support and training to local officers concerned with rural development at district level. The mission was quite comprehensive, as it covered 23 out of 25 council areas, documenting the lack of financial means destined to the Southern region:

> "Even if the financial subsidy from Khartoum continues at its present rate and the promised aid from the World Bank and other agencies materializes, and

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[397] Dennis A. Rondinelli, "Administrative Decentralisation and Economic Development: The Sudan's Experiment with Devolution," *The Journal of Modern African Studies* 19, no. 4 (December 1, 1981): 595–624.

[398] "Commissioners Hold Conference," *Southern Sudan: A Monthly Review of Events in the Southern Region*, October 1977, Local Government Board library; University of Birmingham, "Development Administration and Training in the Sudan. Report of a Mission to the Sudan, March to June 1974" (Ministry of Overseas Development, UK, 1974), Juba University Library; Rondinelli, "Administrative Decentralisation and Economic Development."

[399] In 1974, the Sudan Council of Churches devolved $2 million for the education sector, World Food Program $1.8 million for an agriculture project in Aweil, the World Bank $10.7 million in reforestation and rural development projects. Prunier, "Le Sud-Soudan Depuis L'indépendance."

[400] Rondinelli, "Administrative Decentralisation and Economic Development."

[401] Interview to Eli Achol Deng, senior member of the Local Government Board, Local Government Officer since 1972, Juba, 13/12/2013.

[402] Leonardi, *Dealing with Government in South Sudan*. p.150

allowing optimum realization of development plans in the South, resources will fall short of requirements for several years"[403].

While many local councils only existed on paper, the report documented the creation of a number of new governance agencies supposed to challenge the undisputed authority of the native administration. Sudan Socialist Union Basic Units, Village Development Committees, Village Councils, individual members of the People's Executive Committee, the Regional Assembly and the National Assembly, all sought to obtain popular support and to influence village policy-making. However, the report argues, this did not mean that the reform was effective, nor that its implementation was uniform or monolithic. In most of the southern region, chiefs and Court Presidents from the Native Administration were the basis of the hierarchy of power. In the words of one senior civil servant at the Ministry of Local Government in Lakes State:

> "In the local government, the traditional authority was the most effective means through which the Local Government could be implemented in the Sudan. Traditional Authorities were the link between the rulers and the communities, and everything had to be done through these local chiefs, whether it be a policy or service delivery, or developmental aspects. So, it was passed to the communities through the chiefs and they became more strong and influential to the communities. They were highly respected by the communities and they were exercising both judiciary powers and administrative functions. When Nimeiri came in, he would change the image of the local government: the traditional chiefs were a bit reduced or abolished in northern Sudan, but not in southern Sudan"[404].

The People's Local Government Act assumed that the native administration would have gradually disappeared and be replaced by statutory institutions, but the report acknowledged that: "In a number of areas there [was] as yet no practicable alternative to the chief as an agent of tax collection and as the chief link with government's extension services, or to the court president as the legal authority in the locality"[405].

Nimeiri's effort at disempowering local customary authority was pretty much in line with what other African leaders were doing in the same period across the continent[406]. Similarly, the success of this initiative was limited when it comes to the actual capacity of the central state of enforcing its laws, of creating structures in the rural areas and of exercising control over a dispersed

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[403] University of Birmingham, "Development Administration and Training in the Sudan. Report of a Mission to the Sudan, March to June 1974." p. iv

[404] Interview with Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013

[405] University of Birmingham, "Development Administration and Training in the Sudan. Report of a Mission to the Sudan, March to June 1974."

[406] Herbst, *States and Power in Africa*.

population which was, by then, highly suspicious towards the government. Consistently with the report by the University of Birmingham, Howell argues that in most cases traditional authorities were co-opted into the new institutional framework without necessarily having adequate administrative capacity[407]. Others maintain that the reform was simply not implemented in the southern Sudan and, besides a few government outposts in the towns, everything went on unchanged in the rural areas[408].

The divide in the implementation of the local government reform in the north and in the south was accentuated by the creation of the Southern Regional Government as a product of the Addis Ababa Agreement, granting some degree of formal autonomy to the southern region. This event marked a major turning point for southern citizens: for the first time, local government positions were filled with southern -and not northern- Sudanese officers, increasing the perception of participation into the state. Besides new employment and trade opportunities, education became extremely valued in order to access the government world. Quoting Mawson's PhD thesis, Leonardi says that, in Rumbek area:

> "the Agar Dinka people believed that they had finally 'captured government' (...). (...) careers in the army, police or prisons, justice system, politics and administration were particularly sought after as the principal 'channels through which the state exercised power'"[409].

This represented a new opportunity of brokering relations with power, thus protecting the interests of one's own community.

## 5.3 Strengthening centralization: the management of land

Opposite to the proclaimed decentralization reform of the 1970s, Nimeiri's government also supported a policy of firm centralization of land, at the time one of Sudan's most promising natural resources. Here too, however, the implementation of central directives proved to be very unequal between northern and southern Sudan.

As in many other African post-colonial situations, the Government of Sudan inherited the colonial approach to land administration: officially

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[407] John Howell, 'Introduction: local government and politics', in Howell (ed.), *Local Government and Politics in the Sudan* (Khartoum, I974), quoted in Rondinelli, "Administrative Decentralisation and Economic Development." p.8.

[408] Johnson, *The Root Causes of Sudan's Civil Wars*.

[409] Mawson, Andrew. 'The triumph of life: political dispute and religious ceremonial among the Agar Dinka of the Southern Sudan'. Ph.D. Cambridge, 1989, quoted in Leonardi, *Dealing with Government in South Sudan*. p. 150

centralized control over natural resources, actual delegation to local customary authorities of land management functions wherever it was unable - or unwilling - to reach[410]. Central control was effective in the areas where the elite had interests, such as towns and agriculture/forestry project sites, while most of the rural areas remained under the authority of the colonial chiefs in the approximate ethnic homelands identified by the British government. In 1970, with oil explorations on the way, Nimeiri regime abolished traditional authority centralizing land administration. The Unregistered Land Act (1970) introduced compulsory registration in accordance with the provisions of the Land Resettlement and Registration Act (1925). The registration was to be done before the implementation of the new act: all unregistered land would otherwise be considered government property. Customary ownership was not recognized, neither was it any right to compensation for government acquisition, sale or lease of land. In Southern Sudan, most of the land was not registered, and no transition period was foreseen before the implementation of the new act. Besides oil exploration, the formulation of this law coincided with Nimeiri's policy aimed at turning Sudan into the "African breadbasket" through large mechanized agricultural schemes in Southern Kordofan, which caused mass displacement towards the southern region and increased the demographic pressure on southern resources[411]. Other examples in which the law was actually applied were the Gezira scheme, the Jonglei Canal project and oil exploration in Greater Upper Nile, leading Paul De Wit to argue that they were enforced when the Khartoum-based elite had a direct economic interest[412]. Again, however, the implementation of laws promulgated in Khartoum did not reach wide areas of the South, and customary regimes continued to regulate ordinary people's land access and use. The land was given by chiefs or land priests, and was kept until abandoned. If trees or other more permanent improvements were made on the land, hereditary claims could be advanced on that land and usually caused disputes that were solved through customary compensative justice systems.

Land and natural resources administered in this way were however constantly under threat of expropriation and exploitation by the central government in Khartoum, whose interests were widely perceived as alien to the

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[410] Mamdani, *Citizen and Subject*.

[411] Mona Ayub, "Land and Conflict in Sudan," in *Peace by Piece: Addressing Sudan's Conflicts,* by Mark Simmons and Peter Dixon (Conciliation Resources, 2006).

[412] De Wit, "Legality and Legitimacy: A Study of the Access to Land, Pasture and Water. Sudan"; De Wit, "Land and Property Study in Sudan"; N. Shanmugaratnam, "Post-War Development and the Land Question in South Sudan" (Paper presented at the International Symposium on Resources Under Stress organized by the Afrasian Center for Peace and Development, Ryukoku University, Kyoto, Japan, February 23, 2008).

Southern region, taking all the revenues and development opportunities away from their legitimate southern beneficiaries. This was in fact one of the reasons for the new uprising in 1983.

## 5.4 The crumbling away of the Addis Ababa Agreement

Once the local state could manifest itself again limiting its coercion, putting some effort into the creation of new bureaucratic institutions operated by southerners and creating new ties with the local chiefs to implement its minimum functions of administering law and order, its legitimacy in the eyes of the local population could have been restored. But expectations were deceived through a number of broken promises by the government, which took into account neither the limited capacities of government offices and weakness of financial resources, nor the deep divisions of southern political elite. These extremely high expectations for the provision of social services are described by the Birmingham University report: for instance, teachers and students expected the government not only to build schools, but also to provide transport from the rural areas. In some areas people thought that if they constructed a building for social service facilities, such as a school or a health clinic, it would have been 'automatically' staffed and equipped by the government. In fact, these expectations were created by the new Regional Government with the backing of the Khartoum government. According to Sharon Hutchinson:

> "In Nuer areas people were told that if they built the schools and veterinary clinics and the like with local resources, the government WOULD man and supply them. Government spokespersons traveled through the war-battered south enlisting chiefs to collect local resources, pay for these structures with the EXPLICIT promise that, if these facilities were build, the government would finance them thereafter. It was so sad to see how these explicit government promises be abandoned after chiefs and local people were forced to contribute to the construction of all these small buildings (most of which were cement and zinc constructions, which was extraordinarily expensive for local war-battered populations during the latter 1970s and early 1980s)"[413].

The unfulfillment of these expectations fostered rumors and discontent. People, especially returnees that needed to be resettled, refused to pay taxes because they were not getting any access to public services. Ex-Anyanya fighters not only refused to pay taxes, but they sometimes even claimed jobs or pensions

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[413] Personal communication with Sharon Hutchinson, November 2015.

and free services as compensation for their role in securing regional independence[414].

Southern internal political divisions also contributed to the failure of the regional autonomy experience. After the signing of the Addis Ababa Agreement, Abel Alier, a Dinka lawyer who remained in Khartoum advocating for peace negotiation for the whole length of the war, was appointed as Vice President of the Sudan and President of the Southern Regional Government. This appointment provoked former Anyanya fighter's discontent, especially Joseph Lagu's: not only was Abel Alier an 'insider', who never joined the armed rebellion, but also he was a Dinka, believed to protect the interests of Dinka only, especially in terms of job provision to his own constituency. In 1972, the state was the only source of salaried jobs in the south. "After all, a high political or administrative position was a very important foundation of wealth and also a basis for conversion of value into political support and clientelism"[415]. The number of Dinka in government positions hiked, and even though according to Johnson this had to do with proportional representation of the population in government institutions[416], Sharon Hutchinson reminds that there was only one Nuer minister in the Southern Government cabinet despite Nuer being the second largest group in Southern Sudan[417].

In the 1978 election, however, Alier was not re-elected. One of the reasons that may have contributed to his defeat was the decision taken by Nimeiri's government to seek a political alliance with Islamist parties after the 1971 communist attempted coup[418]. According to Gérard Prunier, Alier was considered responsible for this policy of "National Reconciliation", and Joseph Lagu was elected in his place also with the majority of Dinka votes[419]. Lagu's stay in office was extremely short: besides accusations of corruption, he was also criticized for his failure in bringing any kind of development especially in those regions that the Birmingham University mission had identified as lagging behind in terms of development facilities compared to Equatoria[420].

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[414] University of Birmingham, "Development Administration and Training in the Sudan. Report of a Mission to the Sudan, March to June 1974."

[415] Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement." p. 73

[416] Johnson, *The Root Causes of Sudan's Civil Wars*.

[417] Personal communication with Sharon Hutchinson, November 2015. This argument remained a burning one and was later used by Riek Machar to justify the split from SPLM/A in 1991.

[418] From this time on, Nimeiri started being heavily subsidized by US foreign aid. African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*.

[419] Prunier, "Le Sud-Soudan Depuis L'indépendance."

[420] Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement."

In 1980, Nimeiri replaced Lagu with the moderate Abel Alier, causing the rage of Equatorian politicians. This provided a timely encouragement to the latter to align with a design of further decentralization, which Nimeiri had been thinking of since the discovery of oil in Upper Nile in the late 1970s in an attempt to recentralize taxation. The Addis Ababa Agreement gave the Southern Government the right to tax resources exported from its region, which would have prevented the central government to benefit from oil revenues[421]. The discontent of the Equatorian political elite[422] provided him with political support to re-divide the south, putting the blame on internal animosity. The re-division was against the peace agreement, while it represented a full application of the Regional Government Act, (1980) creating five decentralized regions in northern Sudan. One year later, a new Local Government Act was passed turning District Councils into Area Councils and increasing their number from 24 to 48[423]. Area Councils had elected councils with a chair and a chief executive officer working as a secretary. They were in charge of service delivery and of formulating recommendations for Provincial Commissioners. In the words of a senior local government officer of that time: "the Area Councils were designed to have powers, but the government did not fund them"[424]. The government was under strain because of financial problems and the increasing pressure of its Islamist allies, and neither could it afford the financial demands of a working local government system with a weak local revenue base, nor the risk of missing out oil revenues.

When the re-division of the South promoted by the government and supported by Joseph Lagu and the Equatorian political elite was finally approved, the Addis Ababa Agreement collapsed, the Southern Regional Government was dissolved and the southern Sudan divided into three regions in a process that became known as *kokora*[425]. *Kokora* was not successful, not even for Lagu: the new provinces had very limited autonomy as Nimeiri managed to

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[421] Hutchinson, *Nuer Dilemmas*.

[422] Differently from other political identifiers using ethnic categories, such as Dinka and Nuer, "Equatorians" rather refers to the geographical area of residence of the various, mostly sedentary agriculturalist, groups inhabiting the Greater Equatoria region. The term started to gain political connotation precisely between the 1970s and 1980s, in opposition to the threat of 'Dinka domination'.

[423] Naoko Anzai, "Notes on the Backgrounds of Local Governance Systems in South Sudan" (Unpublished, April 2012).

[424] Interview with Eli Achol Deng, member of the Local Government Board, Juba, 13/12/2013

[425] *Kokora* is the Bari word for 'division', which today retains a strongly negative sense for most of non-Equatorian peoples. Annina Aeberli, *Decentralisation Hybridized*; Jacob K. Lupai, "A Federal System and Kokora Are Two Different Things," *Gurtong Project*, March 17, 2013, http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/10153/A-Federal-System-and-Kokora-are-Two-Different-Things.aspx.

effectively re-centralize taxation. At the local level, the most visible and immediate consequence was an unprecedented level of ethnic separation, with the expulsion and repatriation of civil servants deployed in areas different from their home[426]. Many southern local government officers joined the following insurgency in 1983, as did Eli Achol Deng:

> [Even before the war] only [local government officers'] salaries were sent [from the central government], so the services could not be granted. When the war broke out, even the scarce sources of local revenues disappeared. Councilors were still paid salaries, but had no power at all especially in the South. So, when the war broke out in 1983, the functions of the Area Councils stopped and I left for the bush. I turned into a fighter in the bush[427].

Discourses on decentralization thus came to Southern Sudan for the first time with a very strong divisive character, under the double impulse of the central government of 'divide and rule' strategy and of fears from a part of the southern political leadership of being marginalized. The consequences of this move, soon confirmed by the dissolution of the Addis Ababa Agreement, were among the major causes leading to the breakout of the second civil war.

## 6. The SPLM: local guerrilla government

### 6.1 A unifying narrative (and contradictory practices)

The SPLM/A was created in 1983 with the Bor mutiny, which is also generally considered the start of the second civil war. The movement managed to unify the majority of the armed militias that, since the early 1980s, had started conducting occasional attacks against police stations and markets especially in the Upper Nile region[428].

The SPLM/A offered a more complex analysis of the Sudan political system based on center-periphery dynamics. Its leader, John Garang de Mabior, was a PhD graduate from Iowa University who had the capacity of gathering consensus both internally, involving other regions in the struggle besides his home Dinka area around Bor, and externally, finding support in neighboring

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[426] Prunier, "Le Sud-Soudan Depuis L'indépendance"; Johnson, *The Root Causes of Sudan's Civil Wars*.

[427] Interview with Eli Achol Deng, member of Local Government Board, Juba, 13/12/2013

[428] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism."

countries. Differently from Anyanya I[429] and any other rebel movement before, during the twenty-two years civil war, the SPLM/A came to control vast portions of the territory, including important towns such as Rumbek and Yei. In the 1980s, the movement considerably expanded the areas under its control: by the end of the decade it almost entirely controlled the border areas with Kenya and Ethiopia, it had extensive presence in southern rural areas, on the Nuba Mountains, in Blue Nile and it was able to put Juba under siege[430].

This capacity of territorial conquest was one of the factors that compelled the SPLM/A to develop a system of administration for the 'liberated' areas since, as Kasfir shows with regard to the Ugandan National Resistance Army, an overreliance on coercion and military force would have been too costly, both in terms of popular support and in terms of actual resources needed to contrast local resistance[431]. Indeed, many senior SPLM members who played an active role during the war still quote Mao and his metaphor of guerrilla fighters having to "swim in the people like a fish in the water"[432].

Initially, the SPLM/A invested in the creation of unitary identity of southerners through its leader's public discourses: this was vital to ensure the cohesion and loyalty of the rank-and-files of the movement when they found themselves fighting against their kith and kin enlisted in the Sudanese army. Indeed, in trying to mobilize his Equatorian comrades who did not initially engage with the SPLM due to enduring suspicion about its Dinka bias, Joseph Oduho, a movement's prominent member from Equatoria, greatly emphasized the element of unity and of an identity based on a shared condition of marginalization:

> "(...)My dear brothers and sisters, the SPLA is not your enemy. The SPLA will not disarm you. The SPLA will only train you, educate you politically so that you can understand your rights... fight for your rights. My dear Equatorians you are the most advanced people of the Southern region. You have the most highly educated people. These educated people could be the ones to guide you and guide you correctly. Some of them guided you to division, in order that they could get big jobs, which they would never have dreamt of getting in a united country. Today these people we understand are scheming, deceiving you in the countryside, throughout all the districts trying to tell you that we must fight for our home, Equatoria. I can assure you of one thing, that the problems of division have gone, as I have said... And this is happening before you and you can see that this is the real enemy. It is not the Dinka who is your enemy. It is not the

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[429] Anyanya is now referred to as Anyanya I to distinguish it from Anyanya II, a predominantly Nuer militia which was active in the 1980s in Upper Nile and was absorbed into the SPLM/A by the end of the decade.

[430] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism".

[431] Nelson Kasfir, "Guerrillas and Civilian Participation: The National Resistance Army in Uganda, 1981-86," *The Journal of Modern African Studies* 43, no. 2 (June 1, 2005): 271–96.

[432] Interviews in Rumbek, Yirol, Juba, November-December 2013.

Nuer who is your enemy. It is not the Nilotic who is your enemy. It is the system that has been exploiting you for centuries which is your enemy, not your brother, the Dinkas or the Nuers. Rise up therefore and join the SPLA... And remember, united we stand, divided we fall."[433]

The unitary identity of the South was also promoted by the movement through a policy of 'reshuffle', as it is often termed by former combatants, characterized by the deployment of troops and commanders far away from their area of origin[434].

The centralized command and the unifying narrative of the struggle were matched with a strong stance on the people's rights to self-rule and to access to resources (which later became a call for decentralized governance). Particularly, the SPLM refused centralized control over land and claimed that southerners had the right to enjoy the benefits deriving from their natural resources, declaring that "The land belongs to the community"[435]. Because of its economic and symbolic value, land was a central element in the movement's opposition to the southern domination and exploitation by the northern elite, and resulted into targeted attacks to investment infrastructures such as the Jonglei Canal and Chevron oil facilities[436]. As we shall see, in creating an administrative system for the liberated areas, the SPLM/A tended to subdivide its territory according to supposed territorial ethnic divisions drawn by the British. Nevertheless, the absence of reliable maps and the focus on the war effort left official demarcation pending and very much relying on local memories and oral disputed histories, which were easily manipulated in response to strategic needs[437]. These areas were administered by customary authorities, progressively co-opted by the SPLM/A ruling system, and individual access to land became increasingly bound to belonging to a particular ethnic community, in a context of a widespread

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[433] Summary of World Broadcasts, 5 January 1985, quoted in Philippa Scott, "The Sudan Peoples' Liberation Movement (SPLM) and Liberation Army (SPLA)," *Review of African Political Economy*, no. 33 (August 1, 1985): 69–82. p. 74

[434] This was a substantial difference from the policy of Anyanya I, which allowed its members to stay in their home areas. At the same time, according to Sharon Hutchinson, this can also be considered the cause of the massive atrocities to civilians that characterized the second civil war in Sudan. Sharon Elaine Hutchinson, "Nuer Ethnicity Militarized," *Anthropology Today* 16, no. 3 (June 1, 2000): 6–13; Personal communication with Sharon Hutchinson, November 2015

[435] Pantuliano, "The Land Question: Sudan's Peace Nemesis"; De Wit, Tanner, and Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences".

[436] N. Shanmugaratnam, *Between War & Peace in Sudan & Sri Lanka: Deprivation & Livelihood Revival* (James Currey, 2008); Johnson, *The Root Causes of Sudan's Civil Wars*.

[437] For example, all the lands southern of the Sobat river were annexed to Bor administration instead of Nasir administration to prevent Lou and Jikany Nuer (who were believed to support Riek Machar Nasir faction who had split from SPLM/A in 1991) to move south, despite these lands were jointly used for pastures by sections from Nuer and Dinka. De Wit, "Legality and Legitimacy: A Study of the Access to Land, Pasture and Water. Sudan."

militarization of ethnic identity. In spite of the system of military courts created by the movement besides customary ones[438], land was kept in the customary sphere only, with no possibility to appeal to the statutory system courts but only to a council of elders[439]. Practically, this counterbalanced the efforts at de-ethnicizing command, as ethnicity remained the main channel through which land could be accessed both on communal and individual basis [440].

## 6.2 The embryo administration

SPLM local governance structure has been studied by several authors, and there is general agreement that the years between 1991 and 1994 constitute a watershed in the movement's attitude towards civil administration, at least in its official stances[441]. Øystein H. Rolandsen, in his book *Guerrilla Government*, traces the history of the rebel movement's local administration, highlighting two major interpretations of the first phase of SPLM/A local administration, since its inception to the early 1990s[442]. On one hand, a report issued in 1997 by the British advocacy group African Rights analyzing the living conditions of the local population and the impact of humanitarian aid suggested that no local administration existed in the SPLM-controlled areas before the beginning of Operation Lifeline Sudan (OLS) in 1989[443], and even then local governance institutions remained a mere façade. According to the report, the possibility of accessing external resources made it less urgent for the rebels to pursue local support. The local administration on the Nuba Mountains, which were not reached by humanitarian aid, is therefore considered as an exception, mostly due to the personal attitude of the local commander, Yusif Kuwa, and to the fact

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[438] Cherry Leonardi et al., "Local Justice in Southern Sudan," *United States Institute of Peace*, 2010, http://www.usip.org/publications/local-justice-in-southern-sudan.

[439] Zachariah C. Mampilly, "Stationary Bandits: Understanding Rebel Governance" (Dissertation submitted in partial satisfaction of the requirements for the degree Doctor of Philosophy in Political Science, University of California, 2007).

[440] Adam Branch and Zachariahariah Cherian Mampilly, "Winning the War, but Losing the Peace? The Dilemma of SPLM/A Civil Administration and the Tasks Ahead," *The Journal of Modern African Studies* 43, no. 01 (2005): 1–20.

[441] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*; Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism"; Johnson, *The Root Causes of Sudan's Civil Wars*; Rolandsen, *Guerrilla Government*.

[442] Rolandsen, *Guerrilla Government*.

[443] Operation Lifeline Sudan was the first and arguably the biggest humanitarian umbrella operation coordinated by UNICEF, involving international NGOs and UN agencies. It started in 1989 and continued throughout the '1990 and early 2000s, despite huge criticism against its incapability of avoiding the diversion of humanitarian aid in the extremely politicized local context. For a comprehensive analysis of OLS and its shortcomings, see African Rights, *Food and Power in Sudan.* For repercussions of OLS on Southern Sudan political scenario, see chapter 3.

that the support of the population was most needed to continue the struggle[444]. On the other hand, Douglas H. Johnson argues that the SPLM already had a local governance structure relying on chiefs and courts under the supervision of the Civil/Military Administration (CMA) of the rebel movement. Arguing about the lack of evidence for the exceptionality of the Nuba Mountains administrative structure, Johnson focuses on the relationships between local military commanders and the chiefs, who were also granted some paramilitary powers such as the recruitment of rank and files, and were able to keep inter-communal cattle-raiding under control[445]. Indeed, Sharon Hutchinson documents in details a quite complex administrative system set up in the Western Upper Nile region under the supervision of the local zonal commander Riek Machar. This system allowed the SPLM/A to extract regular taxes on cattle auction and trade, impose fines in kind for violent crimes, establish courts and appeal courts, collect an annual tax in grain from male adults and even conduct a population survey to better organize the administration system[446].

The CMA, characterized by a high turnover of its personnel as a form of reward or punishment, was appointed by the Zonal Commander and was in charge of tax collection. Were it not for this governance structure at the grassroots, Johnson argues, the SPLM/A would not have been able to survive to the major split it experienced in 1991, when the Nasir faction led by Riek Machar and Lam Akol turned its weapons against Garang's men[447]. At the same time, it was for the same reason that Machar managed to mobilize supporters, as he was known in Upper Nile for being a just and effective administrator[448].

Despite some argue that SPLM initial position was reluctant to rely on the chiefs, considering them as backward and anachronistic in line with the movement's initial socialist sympathies[449], it is generally acknowledged that the

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[444] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*.

[445] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism." Cattle-raiding increased after the 1991 split as it became the expression of the feud between Garang's and Machar's supporters, especially on the border between Western Upper Nile and Bahr el Ghazal.

[446] Hutchinson, *Nuer Dilemmas*.

[447] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism."

[448] Ibid.; Hutchinson, *Nuer Dilemmas*. This also emerged in a Focus Group Discussion with elders in Mayom County during the implementation of a grassroots peace initiative led by a local NGO in 2010. The participants to the FDG argued that Machar, together with his local commander Peter Gadet, were very dear to the people of the area because of their great capacity of handling local disputes peacefully, particularly those emerging with the Missiriya coming from the north.

[449] Markus V. Hoehne, "Traditional Authorities and Local Government in Southern Sudan" (WB study "Southern Sudan: Strengthening Good Governance for Development Outcomes in Post-Conflict Setting, November 2008), http://www.eth.mpg.de/cms/en/people/d/mhoehne/pdf/consultancyReport.pdf; World Bank, *Sudan. Strengthening Good Governance for Development Outcomes in Southern Sudan. Issues and*

SPLM started co-opting chiefs in its local governance structure long before announcing it officially. This first phase was nevertheless characterized by a strictly military logic, linked as it was to the military conquest of territory. The administration was primarily focused on the extraction of resources from the local population and limiting inter-communal cattle-raiding, which was kept under control by local customary courts. The effectiveness – and the very existence – of this system varied greatly from one place to another, and it was influenced by a number of factors including people's movements, the distance from the frontline and also personal attitude of the local zonal commander. Indeed, no standardized system of local administration existed before the early 1990s.

## 6.3 The Civil Administration of the New Sudan

The first civil institution created by the SPLM at the central level was the Sudan Relief and Rehabilitation Association (SRRA), operating since the late 1980s in Itang refugee camp in Ethiopia. Despite its institution before the beginning of Operation Lifeline Sudan (OLS), its role was only defined after it started acting as the rebel movement's humanitarian branch, though it never managed to achieve independence from the military command.

The early 1990s gave a hard time to the SPLM. Its major ally, Mengistu, had fallen, pushing its military bases and southern refugees out of Ethiopia. John Garang's authority, based on his distributive capacity of military supplies, was weakened by the loss of Ethiopian support. Within months, the rebel movement was split by an attempted coup led by Riek Machar and Lam Akol aimed at replacing John Garang at the leadership of the movement accusing him of dictatorial attitude and sponsoring southern secession rather than political change in the whole of Sudan. The Nasir splinter faction soon took control of vast regions of the Upper Nile province and shortly after accepted an alliance with the Government of Sudan to fight against the SPLM[450]. Local militias, often

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*Options*, vol. Report No. 48997-SD, Public Sector Reform and Capacity Building Unit, Africa Region (WB, 2010).

[450] After successive splits within the SPLM/A Nasir faction, Riek Machar accepted to sign the Khartoum Peace Agreement, part of the strategy of divide and rule of the Khartoum Government known as 'peace from within'. For detailed accounts on internecine wars in Southern Sudan during the 1990s, see Jok Madut Jok and Sharon Elaine Hutchinson, "Sudan's Prolonged Second Civil War and the Militarization of Nuer and Dinka Ethnic Identities," *African Studies Review* 42, no. 2 (September 1, 1999): 125–45; Johnson, *The Root Causes of Sudan's Civil Wars*; John Young, "Sudan: Liberation Movements, Regional Armies, Ethnic Militias & Peace," *Review of African Political Economy*, The horn of Conflict, 30, no. 97 (2003): 423–34; John Young, *The South Sudan Defence Forces in the Wake of the Juba Declaration* (Geneva: Small Arms Survey, 2006).

defined in ethnic terms, mushroomed and contributed to weaken the rebels and strengthen government positions relying upon the widespread discontent with what, in several areas, was perceived as an occupation of hostile troops, rather than a liberation. SPLM/A's early attempts at trying to foster a unique allegiance to the movement, stronger than kinship ties, failed. Between 1992 and 1994, the SPLM lost control of all the towns but Yambio.

Rolandsen explains the internal governance reform pursued by the SPLM in the same years as the result of both internal and external events which increased the pressure on the rebel movement to better position itself in an increasing competitive environment to secure access to resources. After the interruption in supply flows from Ethiopia, support from the local population became crucial. Moreover, a change in the movement rhetoric was also needed to 'democratize' its external image in order to convince the donor community that it was the most worthy of aid-recipients. The SRRA played a crucial role in the diversion of humanitarian aid to the rebels[451], but the creation of the New Sudan Council of Churches and local NGOs also provided more independent interlocutors to international counterparts as will be explained in the next chapter.

Between 1991 and 1994, the Political Military High Command, supreme decision-making organ of the rebel movement composed of the Zonal Commanders, held three meetings in which it started designing a new civil administrative structure. In 1994, the SPLM first National Convention was held in Chukudum, Eastern Equatoria, with the participation of hundreds of delegates coming from the 'liberated areas'. Again, Rolandsen reports different positions on the convention. According to some, it was an actual watershed, leading to an agreement with international organizations engaged in OLS and to the official recognition of the role of local chiefs. A more critical position maintained by Gérard Prunier in an unpublished paper considered the convention as a mere façade put in place to respond to the international community desires[452].

Whatever the original reasons for its gathering, the Chukudum convention is still considered a landmark by the bulk of SPLM members and it laid the basis for the local government structure that was to be institutionalized after the signing of the Comprehensive Peace Agreement (CPA). At central level, a National Liberation Council and a National Executive Council with legislative and executive powers respectively were created, and they were at least formally

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[451] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*; Rolandsen, *Guerrilla Government*.

[452] Rolandsen, *Guerrilla Government*.

independent from the Military High Command. A National Convention was to be convened every five years. A judiciary system was also instituted with two parallel systems of courts, customary and statutory courts, each hierarchically organized into three levels. SPLM-led courts had an appeal function. "Thus, the price the chiefs had to pay for recognition and integration was subordination, which was a return to their pre-civil war status"[453], and indeed, to their pre-independence status, revitalizing the colonial strategy of traditional authorities cooptation. New civil administrators were appointed for the three new levels of administration, County, *payam* and *boma*[454]; some of them had already served as local government offices in the 1970s, while others were just transferred from the armed forces to the civil service[455]. At the lowest level of administration, the *boma*, authority was split between the chief, selected by the local community, and a *boma* administrator, appointed by the movement and serving as a liaison with the people. The *payam* was composed of four to six *bomas* and headed by an appointed *payam* administrator overseeing legislative, executive and judicial bodies at *payam* level. *Payam* legislative councils were formed of a mixture of elected and selected members and, according Mampilly, they met in an unstructured manner, with no fully articulated purpose and fairly limited impact on the lives of civilians. The *payam* executive branch was led by an appointed executive administrator, often a native from the area, who had the responsibility of daily administration. Counties were the highest level where civil administration mattered. They covered large, often discontinuous areas, and were governed by a County Commissioner appointed "from among personnel within insurgent ranks"[456]. Taxes were collected at County level, though Mampilly quotes the commissioner of Yei County revealing in an interview that "taxation was primarily a token action"[457], as it had been during colonial time. Mampilly also suggests that it is likely that, despite the poverty level of the local population, the SPLM/A did manage to collect significant amounts of taxes in the form of relief goods.

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[453] Ibid. p. 116

[454] The terminology of the new administrative structure has various origins: County seems to come from the British administrative system, which is divided into counties and which also inspired the naming of local government structures elsewhere in Africa (in Uganda, for example); *payam* seems to be an ancient word derived from the kingdom of Kush; *boma* is the name of the first village capture by the SPLM/A. Interviews with Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013; Daniel Awet Akot, Member of the National Legislative Assembly, former Chairperson of SPLM Local Government Secretariat. Juba, 12/12/2013.

[455] Interview with Eli Achol Deng, Juba, 13/12/2013.

[456] Mampilly, *Rebel Rulers,* p. 150.

[457] Ibid. p. 150.

**Table 2.1 Structure of the Civil Administration of the New Sudan**
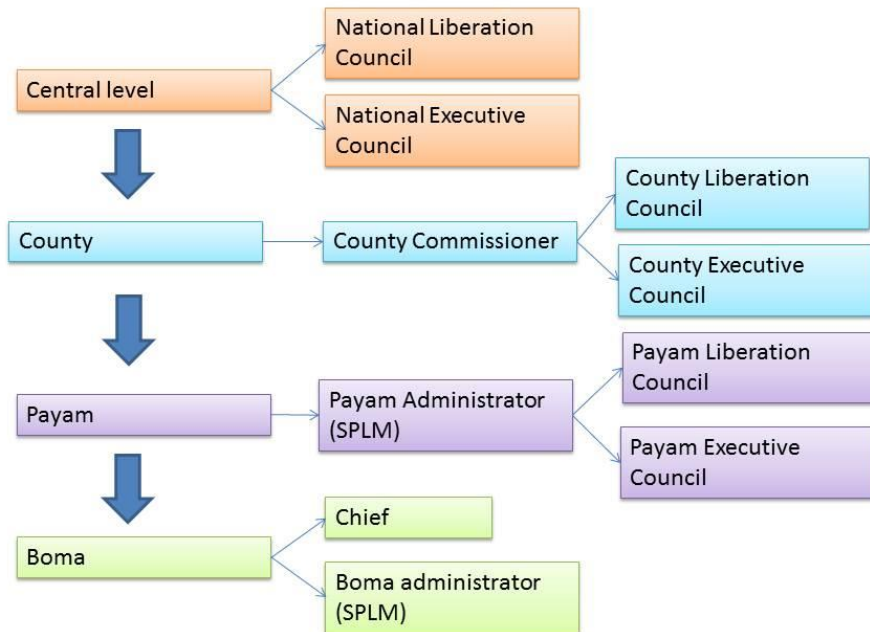


The first National Convention, which started the process of 'civilization' and formal democratization of the SPLM, was followed by a number of other conferences and conventions. In 1996, the Civil Authority of the New Sudan (CANS) was officially instituted. Between 1998 and 2000, conferences about the role of women, law enforcement, rights, livelihoods and good governance were held, suggesting that not only was the SPLM attempting at creating a comprehensive policy framework for the liberated areas, but it also knew very well the language spoken by international donors, focused on good governance and peace-building. In February 2000, the booklet *Peace through development: Perspectives and prospects in the Sudan* outlined SPLM strategy of achieving peace through good governance and economic development, a very popular idea in the humanitarian and development communities at that time.

The actual creation of local administrative structures designed in the Convention, including local liberation councils, executive branches and departments in charge of different sectors (education, agriculture, etc.), varied greatly from one place to another.

In fact, several observers report that actual change was very limited. Rolandsen suggests that the lack of visible forms of resistance to the reforms may mean that they were unanimously considered as only theoretical, with no actual effects on internal power balances[458]. The SPLM power structure

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[458] Rolandsen, *Guerrilla Government*.

remained extremely top-down and dominated by military personnel. Most of the civil servants appointed to new local government position in the CANS were soldiers, and were not really independent from Zonal Commanders, who were often considered as uncontested leaders in their areas. The military courts, more than customary ones recognized in the New Sudan judicial system, continued to be addressed for dispute-resolution purposes in many areas[459]. John Garang kept the power of making ultimate decisions both in the military and civil sphere and, especially in some areas, physical force remained a constant characteristic of the SPLM/A presence. According to Branch and Mampilly, for example, Greater Equatoria was in many instances treated more as an occupied territory than as a liberated area, with the local population harassed by the predominantly Dinka and Nuer rank-and-files[460].

Nevertheless, SPLM administrative experience proved to be extremely important in the later state-building effort. The double judicial system of statutory and customary courts, as well as CANS government structure in three layers - owing pretty much to the colonial Marshal report[461] -, were later institutionalized as Local Government and judicial structure of the Government of Southern Sudan. Most of SPLM/A administrators were absorbed into southern civil service after the signing of the peace agreement; some of them had already been trained as administrators in the 1970s under the Addis Ababa Agreement, but most of them received training by international aid agencies in the late 1990s and early 2000s because of their role in the SPLM[462]. At the same time, the SPLM/A experience also contributed to the process of local state formation, again on a very localized basis. The restoration of some limited degree of predictability in terms of input and output in the relations between what increasingly came to be seen as a "government" force, the people and their chief, was indeed the result of the capacity of the central level to keep relations with local commanders through a transfer of various kinds of resources (both military hardware and symbolic resources linked to the liberation ideology). If in many instances local commanders were closer to warlords than to governors, in others they did reproduce structures and modes of governance (loosely) based on central directives.

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[459] Mampilly, *Rebel Rulers*.

[460] Branch and Mampilly, "Winning the War, but Losing the Peace?"

[461] Interview with Aggrey Akec, senior officer in the Ministry of Local Government, Lakes State. Rumbek, November 2013.

[462] See for example the Civil Administration Training Component in support of SPLM civil administrators, funded by USAID in the framework of OLS in 1998-99. This will be analyzed in Chapter 3.

## 7. Conclusion

Through the analysis of secondary sources, this chapter has addressed the intertwining of voluntary state-building efforts pursued during the colonial time with ongoing processes of state(s) formation. Though never actually establishing a centralized control over the territory, for the first time colonialism brought to the southern region of Sudan the idea of a centralized power above local polities. It initially penetrated through physical force but it was later reinforced through the routinization of government practices, giving some degree of predictability to the relations with the administration - though this predictability always remained limited in its geographical scope and varied from district to district. Local political entrepreneurs who managed to master this predictability found in the colonial state a new source of legitimacy, implementing a strategy of extraverted accumulation of power. If, on one hand, they remained within the framework of what Leonardi calls "the local political economy knowledge", on the other they started using a new source of power and legitimacy coming from 'outside'.

Post-colonial governments continued the centralized state-building effort mostly through coercion and administrative reforms, disregarding however the legitimacy-creation aspect. The only legitimate authorities recognized in the rural areas, as long as they were able to mediate external influences and demands, remained the local chiefs and, to some extent and in some particular areas, local prophets[463], though the latter did not benefit from formal government recognition and were instead often repressed. Attempts at establishing both formal (governmental) and informal (rebel) systems of administration needed to cope with this local reality and in one way or another to co-opt it into their own government designs.

Because of the resilience of local forms of governance and their capacity to adapt to changes of the historical context, the fact that the southern region remained in a state of war for almost its whole post-colonial history did not determine a complete power vacuum, notwithstanding the weakening of the – already limited - central capacity of controlling the southern region. Rather, new actors emerged, with new claims of legitimacy. They imposed themselves on the scene through violence, but could not rely on coercion only: using powerful discourses of liberation and resources mostly coming from foreign allies, they positioned themselves as an alternative *hakuma*[464], a new centralized source of

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[463] Hutchinson and Pendle, "Violence, Legitimacy, and Prophecy."

[464] *Hakuma* is the Arabic word for 'government' and it has been incorporated into vernacular languages since the inception of the Arab domination to identify the domain of the men in uniform, therefore including not only actual government officials, but also rebel

power competing with the government in Khartoum, while at the same time relying on chiefs for local administration, ultimately reinforcing the institution of chiefship.

The history of state-building in Southern Sudan is characterized by attempts, either made by government or by rebels –SPLM particularly-, which succeeded in creating geographically limited areas of bureaucratized administration heavily relying on local chiefs' mediation. Moreover, legitimacy at the local level was always obtained through the delivery of some kind of benefits to the local population –be it just the absence of physical violence, military supplies or development facilities. This was true for the chiefs during colonialism, for the Anyanya under Joseph Lagu's leadership and for the SPLM in its liberated areas, as will be shown in further details in the next chapter[465]. The legacies of fragmentation and extraversion deeply influenced post-CPA state-building discourses and practices.

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movements and, to some extent, international aid agencies. Cherry Leonardi, "'Liberation' or Capture: Youth in between 'hakuma', and 'home' during Civil War and Its Aftermath in Southern Sudan," *African Affairs* 106, no. 424 (July 1, 2007): 391–412.

[465] The peace-time Southern Regional Government was never perceived as really legitimate by the whole southern population: its support varied according to whom was leading the government, and its failure, as seen, also depended on southern internal divisions.

# Chapter 3: "State-building" the New Sudan: SPLM and decentralized institution-building

*"One good thing of South Sudan is that they don't have a baggage*
*of bad stuff that was done for decades before,*
*so you don't have to try to destroy something to build something else in its place,*
*'cause there is nothing there!"[466]*

## 1 Introduction

This statement comes from an interview with Mark Dawson, chief of staff of ARD Tetra Tech, a US firm involved in USAID-funded programs aimed at strengthening decentralized governance with particular regard to land tenure. Sitting in his refrigerated office in Juba, Mr. Dawson told me about how hard it was to work in South Sudan, how low the capacity and technical preparation of government officials and civil servants was both at national and sub-national level, and how tiring the process of formulation and approval of the Land Policy had revealed so far. With a stereotypical American attitude towards 'getting things done', he complained about the many bottle-necks and shortcomings caused by the lack of laws and policies. In his view, the lengthiness of the process of law- and policy-formulation was primarily due to the lack of capacity of local policy- and law-makers, and constituted the major obstacle to get things done. Once the laws would have been in place and their implementation initiated, things would follow smoothly[467]. In the one-hour interview we had, he never appeared to consider the idea that political dynamics entrenched in local contexts where ARD had started running pilot County Land Authorities could have a play in why things were not getting done.

Though many international practitioners are far less naïve about the political reality in Southern Sudan and perfectly aware that the history of (limited) institutionalized statehood of the region does not mean that it is a virgin space clear of processes of accumulation of power, it is true that the technicality with which the 'state-building enterprise' was started has completely obscured its political nature, often reducing it to a matter of teaching good-government manners to the SPLM. The SPLM, from its part, had its own state-building project, which it started implemented when the war was still ongoing. Irrespective of the actual final goal of the movement – unity or

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[466] Interview with Mark Dawson, Chief of Party, ARD Tetra Tech, Juba, 1 November 2013.

[467] Interview, Juba 2013.

secession - the SPLM did aim to establish a state-like form of control of the territory through mechanisms of limitation of the use of violence, administrative practices, and some degree of legitimacy-creation through the delivery of goods and services to the local population. As it will be argued in this chapter, the SPLM effectively established a state-within-a-state[468] thanks to the support of the international community in the form of relief aid in the first place, and secondly through direct support to the movement's structures towards the very end of the war.

One could argue that the SPLM/A was no better than many other insurgent groups emerged out of the numerous splits that so often complicated the war scenario, that it was not the only force who controlled some territory, and that its leaders were no more democratic than all the others. After all, as a senior SPLM local government officer said in an interview recalling his days "in the bush", there was not much room for administrators: "We were all trained as soldiers"[469]. What made the SPLM to emerge among the others, besides its endurance notwithstanding the continuous defections, was the capacity of its leadership to keep coherence in its public discourses about what were the movement's positions on issues of governance and human rights, even though their implementation was far from being uniform and sometimes even real. In other words, besides representing one of the forces struggling to gain the monopoly of violence and to establish routinized patterns of resource extraction from the local populations[470], the SPLM also had a state-building project which gave it a comparative advantage both in internal propaganda, and externally, given the extraverted character of the process of modern state formation in the southern region of Sudan.

In 2003, Ken Crossley called for the international community "not to state-build the New Sudan" for a number of reasons predominantly related to the authoritarian and hopelessly self-interested and opportunistic nature of the SPLM and its leadership[471]. Perhaps for lack of alternatives, this call was ignored and the New Sudan[472], understood as the portion of southern territory under

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[468] Paul W. T. Kingston and Ian Spears (eds.), *States-within-States: Incipient Political Entities in the Post-Cold War Era*, (New York: Palgrave Macmillan, 2004).

[469] Interview with Eli Achol Deng, Local Government Board member, Juba, 10/12/2013

[470] Charles Tilly, "War Making and State Making as Organized Crime".

[471] Kenn Crossley, "Why Not to State-Build New Sudan," in *States-Within-States. Incepient Political Entities in the Post-Cold War Era.* by Paul Kingston and Ian S. Spears (eds.), Palgrave (New York, 2004).

[472] If at the beginning of the insurgency the expression New Sudan was used to indicate a democratic, reformed, united Sudan, since the mid-1990s the term started being increasingly referred to the southern region and the three areas (Abyei, Southern Kordofan and Southern Blue Nile) only. The shift is clearly visible in a number of SPLM documents from the early 2000, as well as reported by Crossley when he recalls: "In workshops conducted by international

rebels' control and later sanctioned by the CPA as the territory under the jurisdiction of the Government of Southern Sudan, was 'state-built' through an impressive effort directed to institution-building, policy-making, capacity-building and training projects targeting SPLM administrators for the sake of administrative effectiveness and efficiency. The international state-building project looked impressively similar to SPLM's one: both shared the language of the modern democratic state, with its charge of universalism and legitimacy and its emphasis on development and service delivery. The state, the would-be South Sudanese state or the Sudanese state in the southern region, was to act for the common good of the people.

Unfortunately, the state idea, even more than the actual state structure, concealed a fundamental bias: it was in fact the SPLM and its leadership, rather than an abstract State object, to act behind the legitimate mask of statehood in the process of being established[473]. The SPLM, fragmented as it was, extensively drew on external material and symbolic resources to build a statehood façade in which the claims of the lack-of-capacity and the lack-of-resources became outstanding elements in a strategy of extraversion of the South Sudanese state. International donors' projects and programs, designed to support nascent governmental, judicial and bureaucratic institutions, were not at all top-down from their funding and implementing agencies, a charge often moved by critics of international state-building/peace-building enterprises. Rather, they were planned and in many instances called for by the SPLM leadership using an extremely donor-friendly language, but with a fundamentally different understanding of how to manage the political dimension of state-building. While the latter was completely overlooked by the technicist approach based on New Public Management theories, it was in fact held in high consideration by local actors involved in the process of institutional design and reform implementation, whose shortcomings and inefficiencies were rather the product of voluntary omissions and actions rather unexpected outcomes.

Evaluating the effectiveness of these programs constitutes by no means the purpose of this chapter. Independently from how effectively they were implemented, I suggest looking at them as a new thrust of externally-led state-building efforts in Southern Sudan, meaning the establishment of a central, unique source of authority capable of controlling its territory and of doing it without needing to resort to excessive violence thanks to its administrative-

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humanitarian agencies [in SPLM-held areas], regardless of the subject matter, always at least one participant will rise and request that the facilitator use the terminology of New Sudan." Ibid. p.137. See Rolandsen, *Guerrilla Government* for further discussion on the topic.

[473] Philip Abrams, "Notes on the Difficulty of Studying the State (1977)," *Journal of Historical Sociology* 1, no. 1 (March 1, 1988): 58–89.

bureaucratic capacity. Indeed, they contributed strengthening the civil character of the SPLM with the creation of several new institutions, committees and commissions addressing specific development and policy sectors (natural resource management and utilization, public service, taxation, banking and currency, etc.) [474], which increasingly came to configure what, by the end of the 2010s, already looked like an independent state.

## 2 The role of relief in establishing SPLM/A 'state-within-state'

As was described in the previous chapter, the 1990s were a difficult time for the SPLM/A. The movement had lost its most precious ally, Mengistu Haile Mariam, and its major source of supply. Centrifugal thrusts had led to significant losses in terms of manpower and territory, now controlled by the splinter SPLA-Nasir faction headed by Riek Machar and Lam Akol, which itself underwent several splits causing a hike in the number of ethnic militias fighting against each other. As shown in the previous chapter, the need to improve the control of the territory and the population in the liberated areas led the SPLM/A to invest in its political wing and to establish a civil structure in charge of administration and public order. This structure, known as Civil Administration of the New Sudan (CANS), increasingly took the shape of a 'state-within-a-state', reaching areas beyond the control of the Sudanese state. The notion of states-within-states is borrowed from Spear's work, in which he defines them as entities that "have imposed effective control over a territory within a larger state and may have an impressive array of institutional structures that, among other things, allow taxes to be collected, services to be provided, and business with other international actors to be conducted"[475]. In spite of the extreme variation in the establishment and functioning of local governance structures, the SPLM indeed managed to collect taxes, provide limited services to the civil population – including security and, to some extent, education and primary healthcare through the exploitation of international aid agencies' programs- and to conduct 'business' with other international actors –primarily in the form of negotiations

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[474] These are in Annex D, SPLM DATT comments on the report. D. E. Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program," Final Report (USAID, September 20, 2002).

[475] Ian S. Spears, "States-Within-States: An Introduction to Their Empirical Attributes," in *States-Within-States. Incepient Political Entities in the Post-Cold War Era.* By Paul Kingston and Ian S. Spears (eds.), Palgrave (New York, 2004). p. 16.

with the donors[476]. However, while in Spears' definition one of the features of states-within-states is the non-recognition by the international community, SPLM/A slightly distances itself from this definition thanks to the support it gained from several East African governments (Ethiopia and Uganda above all), as well as for its increasing relations with Western donors and international organization, especially in the second half of the 1990s.

Though not officially recognized as a government force in the right of ruling the southern territory it claimed to control, international donors relief programs undoubtedly contributed - both willingly and unconsciously to the creation of "proto-government" structures, as the SPLM Governance Cluster defines them in its final report[477], within the rebel movement's controlled areas. This was true to such an extent that, according to African Rights 1997 report, "some aid workers consider themselves to be helping to create an SPLA government in the South"[478]. This contradicts the popular idea of a "stateless situation"[479] in Southern Sudan: even though the Sudanese state had extremely limited capacity of controlling the southern region, the process of southern state formation was following another path, drawing on external contributions and benefiting from diverging, sometimes undeclared, state-building objectives pursued by different actors. This leads the SPLM/A closer to what Pegg calls a 'de facto state', differing from Spears' 'state-within-a-state' for the secessionist goal of the insurgent group, and for its international legitimacy or "likelihood of acceptance by the international society"[480]. In any case, upon admission of Pegg himself, the two definitions tend to merge as "States-within-states now arguably have a serious incentive not to proclaim secessionist goals even if they actually harbor them"[481]. Either because of an enlightened leader who really believed in reforming the whole of Sudan, either because of strategic considerations related to attracting external support, this was definitely the case for the SPLM/A,

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[476] Mampilly, *Rebel Rulers.* The 'negotiation' of aid and relief programs was not the only form of business the SPLM conducted during the war. In her unpublished paper "Post-Conflict Forest Governance in Southern Sudan", researcher Elizabeth Ashamu describes how the SPLM, both individually and as source for waging the war, actively engaged in teak smuggling from the Greater Equatoria region to southern neighboring countries. Elizabeth Ashamu. "Post-Conflict Forest Governance in Southern Sudan", unpublished, August 2010.

[477] SPLM Governance Cluster, "Report of the SPLM Governance Cluster," Presented at the Workshop on Governance Clusters held in Rumbek, (February 28, 2005), Local Government Board Archive.

[478] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*.

[479] Volker Riehl, *Who Is Ruling in South Sudan?: The Role of NGOs in Rebuilding the Socio-Political Order* (Nordic Africa Institute, 2001), http://www.diva-portal.org/smash/get/diva2:242179/FULLTEXT01.pdf.

[480] Scott Pegg, "From De Facto States to States-Within-States: Progress, Problems, and Prospects," in *States-Within-States. Incepient Political Entities in the Post-Cold War Era.* By Paul Kingston and Ian S. Spears (eds.), Palgrave (New York, 2004). p. 37.

[481] Ibid. p. 38.

whose majority overwhelmingly favored the secessionist option despite Garang's rhetoric about a united Sudan[482]. As a senior SPLM local government officer admitted talking about the mid-1990s: "We were hoping to get independence, because we were so powerful. SPLA became so powerful [during that time]!"[483].

This paragraph will address two particular relief enterprises conducted by the donor community during the war which have targeted the SPLM/A and its increasingly developed internal structures, arguing that both had long-lasting legitimizing and strengthening effects on the movement. Even leaving aside OLS "unintended" political outcomes (see paragraph 3.1)[484], the donor community – particularly the US, but also Norway, Germany and several international organizations including UNDP and the World Bank - did target the SPLM for state-building well beyond the humanitarian purpose of "deliver[ing] the loot without the good guys getting shot"[485].

## 2.1 Operation Lifeline Sudan

Operation Lifeline Sudan (OLS), the biggest UN-coordinated humanitarian operation ever, was negotiated between the UN, donor governments and the government in Khartoum between 1988 and 1989, following the devastating famine in Bahr el Ghazal. The SPLA, initially excluded, joined the partnership shortly after Garang's letter expressing the movement's readiness to cooperate with relief operations[486]. Signed as a tripartite agreement and involving over forty international NGOs, OLS was divided into a Northern Sector, in charge of northern Sudan and of government garrisons in the South, coordinated by UNDP in Khartoum, and a Southern Sector, in charge of SPLA-controlled areas and coordinated by UNICEF in Nairobi. Despite the effort of UNICEF's executive director James P. Grant in making clear that the UN did not intend to give any official recognition to SPLA while dealing with it only for humanitarian purposes, it was the first time that a UN-coordinated operation openly engaged with a rebel movement to access areas under its control. This was extremely innovative at the time and has been described as a

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[482] Indeed, the unity project was abandoned just days Garang had died in a helicopter crush in August 2005.

[483] Interview with Eli Achol Deng, Local Government Board member, Juba, 10/12/2013

[484] Interview with Carlo Scaramella, (ex-)Humanitarian advisor for WFP in Khartoum between 1991-1992. Skype interview, 21/05/2015

[485] Crossley, "Why Not to State-Build New Sudan." p. 141.

[486] Lam Akol, "Operation Lifeline Sudan," in *Choosing to Engage: Armed Groups and Peace Processes*, Accord Issue 16 (Conciliation Resources, 2005), http://www.c-r.org/accord-article/operation-lifeline-sudan.

"pragmatic victory"[487] of the International Community, preventing -or at least reducing - mass starvation and gaining access to many areas that would have remained totally off-limits for any humanitarian operation, were the SPLM not involved[488]. There is no doubt about the innovative character of negotiated access, and very little evidence of how much worse things could have gone without OLS being in place. It is reasonable to think that without the humanitarian operation, the southern population would have experienced even more dire suffering and collapse in the provision of basic services. Instead, some evidence suggests that, at least in some areas, provision of basic services increased during the war years[489].

Nevertheless, OLS has also been strongly criticized for several reasons, ranging from the influence in local power balances providing resources for patronage[490], to its lack of neutrality when supporting capacity-building and institution-building projects for the SPLM, providing a non-state armed rebel movement with diplomatic recognition[491]. Indeed, since the very beginning of the operation, "humanitarian recognition" resulted in a *de facto* political recognition of the movement, enabling it to negotiate with international actors for the sake of civilians' protection. This benefited the SPLM/A in terms of an increased visibility and legitimacy both internally (as will be shown) and externally. In the words of Lam Akol, who in 1989 was the Director of the SPLM/A Office of Co-ordination and External Relations: "The advent of OLS provided an opportunity for the SPLA High Command to have a presence

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[487] Pegg, "From De Facto States to States-Within-States: Progress, Problems, and Prospects". He says: "There is little doubt that humanitarians have won, pragmatically, by engaging the movements", p. 141.

[488] Interview with Carlo Scaramella, Humanitarian advisor for WFP in Khartoum between 1991-93. Skype interview, 21/05/2015.

[489] Luka Biong Deng, 'Education in Southern Sudan: War, status and challenges of achieving Education for All goals'. Background paper for UNESCO EFA Global Monitoring Report 2003/4, *Gender and Education for All: The Leap to Equalityi*, quoted in Daniel Maxwell, Martina Santschi, Rachel Gordon, *Looking back to look ahead? Reviewing key lessons from Operation Lifeline Sudan and past humanitarian operations in South Sudan*. Working Paper 24, Secure Livelihood Research Consortium, October 2004.

[490] Mark Duffield. 'Aid and complicity: the case of war-displaced Southerners in the Northern Sudan', *The Journal of Modern African Studies* 40(1), 2002: 83-104, quoted in Maxwell, Santschi, Gordon, *Looking back to look ahead?*

[491] Mark Bradbury, Nicholas Laeder, and Kate Mackintosh, *The "Agreement on Ground Rules in South Sudan"*, Humanitarian Policy Group, vol. Report 4, Study 3 in: The Politics of Principle: The Principles of Humanitarian Action in Practice. (London: Overseas Development Institute, 2000), http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/307.pdf; Sarah Lykes Washburne, "Legitimacy, Identity and Conflict: The Struggle for Political Authority in Southern Sudan, 2005-2010" (Ph.D Thesis, University of Exeter (UK), 2010), https://ore.exeter.ac.uk/repository/handle/10036/106777; Daniel Maxwell, Martina Santschi, and Rachel Gordon, "Looking back to Look Ahead? Reviewing Key Lessons from Operation Lifeline Sudan and Past Humanitarian Operations in South Sudan," Working Paper 24, Secure Livelihood Research Consortium (October 2014).

outside Addis Ababa, facilitating sustained direct access to the SPLM/A leadership for the international community and the press"[492].

The humanitarian principles animating OLS left little option than negotiating with all parties who could claim control of portions of the territory, which later came to include also SPLM/A splinter factions and their respective relief agencies[493]. The government in Khartoum always kept the power of preventing access to areas of the country outside its control and, indeed, used it especially when the regime of Omar el Bashir came to power with a coup in 1989 replacing the elected government of Sadiq al Mahdi. Bashir had an extremely uncooperative attitude, which brought to a halt the peace negotiations between the government and the rebels started in 1986 and to the continuous use of food and famine as weapons of war. Moreover, Bashir's Islamist positions increasingly alienated the sympathies of the international community, whose concerns for international terrorism grew stronger in the 1990s. In search for a new strategy to weaken the government in Khartoum, the US ambassador Donald Petterson visited John Garang in Kampala in 1993 - after it became clear that the SPLM-Nasir faction did not provide any real alternative to the SPLA-mainstream. This provided the movement with another encouragement to move towards liberalization within its structure. The SPLA rhetoric had always relied on liberal principles when talking about ending socio-economic and political marginalization of Sudan peripheries and, indeed, African Rights argues that discussions on internal reform were already underway before the split in 1991, responding to internal pre-existing demands.

The civil reform and the international opening towards the movement coincide with the strengthening of SPLM/A's claims of controlling the relief effort in the liberated areas through its relief wing, the Sudan Relief and Rehabilitation Association (SRRA). The SRRA, established in the 1980s (as seen in chapter 1), acted as an administration in its own right in refugee camps in Ethiopia with the blessing of the host government. To face the virtually complete lack of relief aid to the rebel-controlled areas in the early years of the war, when the UN and many donors accepted the government's claim that only 3% of the southern civilian population lived in rebel-held areas, the SPLA encouraged and organized the movement of refugees to its friendly neighbor, where food and health supplies were available, and where the movement had its

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[492] Akol, "Operation Lifeline Sudan." p. 54

[493] In fact, after the split of the Nasir faction into SSIM/A and SPLA-United, the latter's relief agency, the Fashoda Relief and Rehabilitation Association (FRRA), was excluded from the range of partners for fear that continued recognition of splinter factions would have encouraged factionalism among the rebels. The SPLA-United and the FRRA were however included in the Ground Rules Agreement (1995), which they signed in 1996.

training and schooling camps[494]. When OLS begun, SRRA became its major southern counterpart in the field, although it always remained under the control of the military: due to lack of expatriates and staff in many areas, data collection and food distribution could only rely on SRRA, and were therefore often biased with military concerns. In the words of the chairperson of the SPLM-SRRA for UK and former SPLA commander: "OLS filled the vacuum left by the dissolving USSR and Mengistu regime in Ethiopia. The comrades then left us alone 'in the fire'. We needed continuous support. Now America and the United Nations started to help us"[495]. While diversion of relief aid was a constant characteristic of warfare from all parties to the war, it became particularly important for sustaining the rebel movement. Indeed, the SPLM/A extracted food in the form of taxation from the local population to sustain its war effort, and it was able, to some extent, to control its distribution.

The creation of the civil administration of the SPLM/A, the formal separation between the political and military wings, the adoption of a human rights, democracy and development-friendly rhetoric, all contributed to attract increasing support to the SPLM not only in terms of relief, but also in terms of direct aid to the movement, turning a blind eye on its poor human rights records, on diversion of relief aid, and on its scarce commitment to ensuring protection to humanitarian workers on the ground. In 1994, the killing of four humanitarian workers led OLS to negotiate the Agreement on the Ground Rules with the SPLM/A and SSIM/A and their respective relief agencies, the SRRA and the Relief Association for South Sudan (RASS). The agreement marked another step forward in the international credibility (and locally usable legitimacy) of the SPLA: although the movement was a partner to OLS –but not on equal basis with the GoS, since the latter had the power to prevent access to rebel controlled-areas – this time the rebel factions (SPLA, SSIM and later Lam Akol's SPLA-United) were treated as equal partners, receiving great legitimacy as political actors by OLS Southern Sector[496].

The Ground Rules have been described as a form of "humanitarian governance", an expression used to indicate the use of humanitarian principles to influence the behavior of state and non-state actors[497].Their seven sections determined reciprocal property rights, responsibilities, and obligations of the INGOs working within OLS as well as the rebel movements and their

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[494] Johnson, *The Root Causes of Sudan's Civil Wars*; Personal communications with three SPLA ex-child soldiers in Bentiu, 2010, about English schooling camps in Ethiopia.

[495] Riehl, *Who Is Ruling in South Sudan?* p. 6.

[496] Bradbury, Laeder, and Mackintosh, *The "Agreement on Ground Rules in South Sudan".*

[497] Maxwell, Santschi, and Gordon, "Looking back to Look Ahead? Reviewing Key Lessons from Operation Lifeline Sudan and Past Humanitarian Operations in South Sudan."

humanitarian wings. While Autesserre maintains the ineffectiveness of the Ground Rules Agreement in preventing the diversion of relief and unduly appropriation of NGO assets by all the rebel factions[498], Human Rights Watch records that after the signing and the dissemination of the Ground Rules principles through workshops targeting the military and local leaders, SPLA attitude towards civilians improved[499]. Perhaps, this could have been also a consequence of the changing atmosphere in the movement itself, and of the growing number of opportunities of establishing different forms of control of the territory that went beyond the mere use of force. These included the creation of local NGOs as a channel of service provision to the population and the strengthening of bureaucratic procedures of administration within the Civil Administration of the New Sudan.

In the early 1990s, the 'civil society-building' approach encouraged John Garang to form the first secular indigenous NGO in SPLA-held areas, the Cush Relief and Rehabilitation Society (CRRS). It was the first of a number of local NGOs created around the mid-1990s, providing new, theoretically more independent, channels for relief aid and international funds compared to the SRRA. Despite creating some kind of animosity between these newly established SINGOs (Sudan Indigenous NGOs) and the SRRA because of the former higher capacity of providing services to the local population[500], they were hardly ever really independent. Most of them were 'briefcase NGOs', run by former SPLA members based in Nairobi or Kampala. Capacity building workshops for SINGO members were organized within OLS and by USAID, giving SRRA the authority of selecting the members who had to attend and, consequently, who were then eligible for foreign funding[501].

SINGOs were not only supported in the framework of the humanitarian operation for relief supplies distribution. Since the mid-1990s, USAID, one of the most generous donors behind OLS[502], started supporting development projects such as seed production, roads rehabilitation and markets establishment,

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[498] Séverine Autesserre, "Unites States 'Humanitarian Diplomacy' in South Sudan," *The Journal of Humanitarian Assistance*, March 2002.

[499] Jemera Rone, *Famine in Sudan, 1998: The Human Rights Causes* (New York, N.Y: Human Rights Watch, 1999).

[500] African Rights provides detailed account of situations in which this competition was evident in the words of SINGO officers. African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*.

[501] William Reno, "Complex Operations in Weak and Failing States. The Sudan Rebel Perspective," *PRISM - Institute for National Strategic Studies, Washington DC* 1, no. 2 (March 2010): 111–22.

[502] Séverine Autesserre reports that between 1989 and 2001, the US contributed $1.2 billion to OLS. Which, between 1989 and 1998, represented 68% of its $180 million annual budget. Autesserre, "Unites States 'Humanitarian Diplomacy' in South Sudan."

claiming that it was time to start "doing relief developmentally"[503]. This shift came at the same time with the worsening of diplomatic relations with Sudan, which was listed as a 'rogue state' in 1993, subjected to international sanctions in 1996 and to bilateral US sanctions in 1997 because of its links to international terrorism webs. While according to Séverine Autesserre these sanctions were symbolic rather than substantial[504], in the late 1990s the relations between the US and Sudan were so tense that, following the terrorist attacks on US Embassies in Kenya and Tanzania, the US bombed a pharmaceutical factory in Khartoum suspected of producing chemical weapons on behalf of Osama Bin Laden. Together with continued advocacy campaigns of American Christian and human rights groups for supporting the southern cause, this may explain why in the course of the 1990s, US direct support to the SPLM increased not only through OLS, but also through support to more flexible non-OLS International NGOs such as Norwegian People's Aid (NPA)[505]. In 1999, following a meeting between the Secretary of State Madeleine Albright and John Garang in Kampala in which she expressed solidarity with the movement's objectives and the will to provide it with direct support, USAID destined $28.6 million to non-OLS NGOs of its total $159 million spent in aid assistance to Sudan[506].

The continued flow of aid funds and relief items to the rebel-held areas through the SRRA and the web of local SINGOs allowed the rebels to access easy supplies without distraction from fighting. At the same time, it had the effect of fulfilling one of the basic functions in the Civil Administration of the New Sudan (CANS) ambition to statehood: the provision of social services, which confirmed once again its extraverted and privatized nature emerged in the 1970s, when the Southern Regional Government did not have the resources, nor the capacity, to provide for its citizens[507]. While in that case the legitimacy of the state rapidly faded, in the 1990s the SPLM benefited from 'only' being a rebel movement –

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[503] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program." p. 3.

[504] Autesserre, "Unites States 'Humanitarian Diplomacy' in South Sudan."

[505] NPA was never part of OLS. It was supportive of the rebel movement to such an extent that it was accused of repeatedly smuggling weapons to rebel held-areas through its humanitarian flights (see European-Sudanese Public Affairs Council, "Perpetuating Conflict and Sustaining Repression: Norwegian People's Aid and the Militarisation of Aid in Sudan," London, December 1999, 2. See also Royal Ministry of Foreign Affairs, *Evaluation of Norwegian Humanitarian Assistance to the Sudan* (Oslo: Norwegian Agency for Development Cooperation, 1997) – quoted in William Reno, "Complex Operations in Weak and Fragile States.". The channeling of aid through NGOs was also part of a more general trend in the 1990s in line with the effort to reduce the role of the state in development.

[506] Autesserre, "Unites States 'Humanitarian Diplomacy' in South Sudan."

[507] Terje Tvedt, "The Collapse of the State in Southern Sudan after the Addis Abeba Agreement".

not the government -, using aid flows in its controlled-areas as a proof of its better ability than the government to provide for the citizens attracting external resources, and thus, demonstrate that it could be a government itself[508]. Moreover, continued interaction with INGOs brought to a decrease in the level of violence for extractive purposes towards the local population, and an increasing bureaucratization of the civil administration established in 1994. For example, taxation practices became less violent towards the end of the 1990s. Reports from WFP quoted in *Food and Power in Sudan* suggest that households included in follow-up visits after food deliveries often reported about SPLA taxation of the food delivered[509], rather than violent appropriation from the military.

At the same time, however, the relationships between relief organizations and the SPLA were contentious, and always characterized by suspicion from the rebels, who saw international agencies as too complacent with government conditions and too independent from the movement's directives. On OLS-INGOs' side, the claims of neutrality had to constantly face the fact that they had to deal with a rebel movement with increasing governmental presumptions. By the end of the 1990s, discontent towards the humanitarian world increased. Riehl describes it as a 'love-hate relationship':

> "On one hand the movement was hesitantly acknowledging the fact that agencies' humanitarian presence is alleviating the most dramatic humanitarian shortcomings, especially in the health, nutrition, and education sectors. On the other hand, the SPLM/A-SRRA was reacting to their political presence as if competing with a rival power or even hostile enemy"[510].

A working paper on service delivery written by one of the SPLM senior Local Government officers in 2004 summarizes this annoyed sentiment:

> "Since the beginning of the war to-date, the donor policy towards the SPLM administration remained the same. The former does not fund the latter for a range of reasons which includes avoiding having its credibility undermined. It is for this reason among others that INGOs are given the priority for funding. INGOs become governments by proxy in a bid to bridge the ever growing service gap, especially in the war setting"[511].

In fact, this was not completely true, as will be shown. However, the increasing demands of coordinating and controlling the relief aid and the activities of aid agencies, led the movement to adopt sometimes extreme

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[508] Reno, "Complex Operations in Weak and Failing States. The Sudan Rebel Perspective."
[509] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*.
[510] Riehl, *Who Is Ruling in South Sudan?* p. 6.
[511] Nikodemo Arou Man et al., *Service Delivery Output* (Rumbek, South Sudan: Ministry for Local Government, May 23, 2004): p. 8.

measures such as the expulsion of the French NGO *Action Contre la Faim* in 1997 upon vague allegations that it was threatening security in rebel-held areas[512]. In 2000, the SPLA forced OLS-INGOs to sign a Memorandum of Understanding, declaring it could no longer guarantee for the security of those deciding not to sign it. The MOU was considered as an unacceptable and illegitimate imposition, and many organizations (mostly European, including ECHO) left the country[513]. Despite not officially claiming to be a separate government – though it was *de facto* referred as such by many local chiefs and the general population[514] -, the MOU contained typical 'state' demands: payment of fees to the SRRA for issuing work permits, payment of taxes on NGOs assets, permission to enter to SPLM-held areas. In William Reno's words: "Travelling to rebel-held parts of Sudan at that time was like traveling to a new country, with SPLA travel permits, registries, and other administrative paraphernalia typical of a sovereign state"[515]. The MOU thus symbolizes an attempt at enforcing the movement decision-making capacity over INGOs, vis-à-vis the GOS who was no longer the legitimate partner to deal with when speaking about development and humanitarian matters for the New Sudan[516].

In fact, as for most of SPLM/A reforms, the MoU effectiveness is controversial: Riehl, for example, claims that it brought no fundamental change due to "the underdeveloped administrative capacity of the SRRA to oversee, coordinate, re-direct, and sanction project implementations of INGOs"[517]. An alternative view is provided by Zachariah Mampilly, who stresses the role of the MoU in consolidating the SPLM political project in South Sudan. According to Mampilly, the SPLM "ensured that the distribution of foreign funds, resources, and services went through their own structures so that the population looked to the rebel government for resources instead of going directly to foreign aid groups and bypassing the rebel civil administration". This also allowed the movement to empower the local administration, particularly the lowest levels, with the authority of allocating relief and development funds, distancing

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[512] Mampilly, *Rebel Rulers*.

[513] Ibid. The SPLM could only afford such hasty moves because it could count on continued and sustained US support. Mampilly cites an interview with a former SPLM/A pilot working for Norwegian People's Aid making it very clear that USAID asked to all US-funded NGOs to pass through SRRA structures for all their operations.

[514] Ibid. Mampilly also reports that in schools in SPLM held-areas pupils were taught to think of the SPLM in terms of their government, and a general ethos of government was developed in public discourses. For example, Crossley says that Garang's wife was referred to as 'the first lady' (Crossley, "Why Not to State-Build New Sudan.").

[515] Reno, "Complex Operations in Weak and Failing States. The Sudan Rebel Perspective." p. 117.

[516] Riehl, *Who Is Ruling in South Sudan?*

[517] Ibid. p. 9.

tensions over the allocation of resources from the central command[518]. The channeling of at least a part of aid funds through its own structures also allowed the movement to nurture its political project of winning hearts and minds in non-dinka areas, where its presence was often contested despite the common goal of defeating the "Arabs". In a way, public services can be said to have been used as a form of penetration into the 'liberated areas' after they were taken by force, contributing, to some extent, to the creation of some degree of legitimacy of the SPLM/A presence. This legitimacy was strengthened also through the cooptation of local natives into the administrative structure especially at *boma* and *payam* level[519].

In spite of the incredible administrative development, there is little doubt that many of the new local institutions remained only on paper. According to Mampilly, though civilians did appreciate the effort of demilitarizing governance and noted the difference especially after the 2002 ceasefire, "the command was ultimately more concerned with constructing the facade of democratic institutions to impress international donors than with actually gathering feedback on the provision of services to local communities"[520]. Notwithstanding –or maybe thanks to- this strategy, in the late 1990s the SPLM was not only an active partner in relief distribution, but also became the major target of donor-funded capacity-building and institution-building efforts.

### 2.2 The STAR project

The Sudan Transitional Assistance and Rehabilitation (STAR) project was the first capacity building project openly directed to the SPLM civil administration for purposes that went beyond the effectiveness of humanitarian assistance. It was a three-year USAID-funded project which, according to Bradbury et al., quite explicitly linked development and humanitarian objectives with US foreign policy strategy[521].

Between 1995 and 1999, most of relief aid was destined to health assistance projects and food aid distribution through international NGOs[522]. However, it was not the first time that the SPLM/A was directly supported and involved in capacity building: in the second half of the 1990s, UNICEF funded organizational development workshops, office equipment and even the

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[518] Mampilly, *Rebel Rulers.* p. 154
[519] Ibid.
[520] Ibid. p. 15.
[521] Bradbury, Laeder, and Mackintosh, *The "Agreement on Ground Rules in South Sudan".*
[522] Rolandsen, *Guerrilla Government.*

construction of office facilities for the SRRA and RASS[523]. These activities were always justified as part of the work needed for the sake of humanitarian effectiveness: it was in the interest of the humanitarian operation to increase the organizational and coordination capacity of the SRRA and RASS, because, after all, they were *de facto* controlling territory and it was them who were in charge of managing the actual delivery. The same argument was used to explain why UNICEF/OLS accepted to be granted $1 million for the realization of one of the STAR project components, the Civil Administration Training[524]. UNICEF repeatedly made it clear that it's role could not go beyond the "empowerment of grassroots level communities and (…) the promotion of efficient administration in local governance" through the strengthening of universal good governance principles such as the recognition of "grassroots communities [as] the legitimate holders of political rights and entitlements and (…) local government administrators [as their] representatives", who should thus "implement the decisions of the grassroots communities and should be accountable to the grassroots civil population"[525].

In fact, the STAR project was conceived right after the first visit of the US Secretary of State Madeleine Albright to John Garang in Kampala in 1997, when UN-Sudan relations were deteriorating, and represented exactly the kind of 'non-lethal support' that Washington was willing to offer to the SPLM/A besides relief food[526]. The democratic and developmentalist ideals to which the rebel movement was increasingly paying lip service in the second half of the decade no doubt looked like steps in the right direction to improve the movement's extremely poor human rights records. Indeed, a report commissioned by USAID on its activities in Southern Sudan between 1993 and 1999 emphasized the novel character of the STAR project as a response to changing conditions on the

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[523] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*; Riehl, *Who Is Ruling in South Sudan?*

[524] Christine E. Lyons, "Award No. 623-G-00-98-00070-00," Letter from USAID Grant Officer to Carl Tinstman, OLS Coordinator, United Nations Children's Fund., (September 24, 1998), Local Government Board Archive.

[525] UNICEF, "UNICEF/OLS - Sudan Transition and Rehabilitation Project. First Annual Report: October 1998-September 1999," Annual Report, Operation Lifeline Sudan - Southern Sector, (1999), Local Government Board library. p. 8.

[526] Autesserre, "Unites States 'Humanitarian Diplomacy' in South Sudan"; Human Rights Watch, *Sudan, Oil, and Human Rights*. By then, it was clear that Riek Machar's faction, the SSIM/A, was no longer an option: after having been receiving arms and ammunitions by the government in Khartoum to fight the SPLA Mainstream for more than five years, it signed the Khartoum Peace Agreement with the Government in 1997, accepting the regime divide and rule strategy of 'peace from within', getting in turn vague promises about the right to self-determination for the South. The 'peace from within strategy' also involved other rebel militia active in the Upper Nile region: its main purpose was to allow the oil to start flowing, as it happened in 1999. As soon as oil revenues started reaching the government's coffers, the defense budget doubled.

ground, with particular regard to the establishment of the SPLM/A civil administration and the need to acknowledge its control of wide regions where strengthening local capacity of protecting human rights and improving democracy was therefore an issue of deep concern for the US Congress. The latter earmarked $7 million for the three-year program, with the overall goal of increasing "participatory democracy and good governance practices in opposition-held areas of Sudan while reducing heavy reliance on relief"[527]. More specifically, it aimed at expanding participation in "community-level administration", rehabilitating dwellings and infrastructures, promoting local economic development and increasing the levels of accountability, transparency, and respect for human rights among civilian authorities.

The STAR project had three components: a national level component providing training to the National Democratic Alliance (NDA), the umbrella organization of political opposition parties to el Bashir's regime in Khartoum – including the SPLM; a County/regional level component providing training to local administrators, delegated to UNICEF-OLS; and a local /community level component to promote economic recovery and development, delegated to Catholic Relief Services (CRS) and targeting Sudanese civil society organizations emerged during the 1990s. Two other components, the Strategic Analysis/Capacity Building Component and the Social Organization and Administrative Rehabilitation Component were added in 2000 and 2001 respectively, with the first aimed at producing Sudanese-led studies and assessments in the agriculture and natural resource sectors, and the second at strengthening the health sector at County level through training and provision of better facilities[528]. While the first component failed to be implemented[529] and the fourth and fifth were implemented only partially and targeted very specific sectors, the second and third components can be considered as part of an initial, new, state-building effort, in that they targeted two fundamental aspects of state functioning: the creation and strengthening of a non-violent institutional apparatus working through bureaucratized procedures and practices; and the delivery of basic services, in a more or less privatized form, to a population under strain for the war.

The Civil Administration Training (CAT) Component only absorbed a small percentage of the total STAR funds ($1 out of $7 million), but it was

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[527] Anne O'Toole Salinas and Brian C. D'Silva, "Evolution of a Trasition Strategy and Lessons Learned: USAID Funded Activities in the West Bank of Southern Sudan, 1993-1999" (USAID, September 1999), http://pdf.usaid.gov/pdf_docs/Pnacf763.pdf.

[528] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program."

[529] The first component is not even considered in the STAR evaluation report.

however remarkable at least from a symbolic point of view, since it provided direct support to SPLM members helping them to develop local administrative capacities and structures. This component was delegated to UNICEF and implemented in the framework of OLS until 2001, despite UNICEF's skepticism on the opportunity of including the training of rebel civil administrators into a humanitarian operation still trying to claim its neutrality in the conflict[530]. UNICEF's work under the STAR project consisted in the organization of workshops and conferences with different purposes. Besides several workshops for the dissemination of the humanitarian principles contained in the Ground Rules, between May and June 1999 a civil society conference in Mapel was also held mainly to discuss the root causes of the famine which had hit Bahr el Ghazal the previous year. A preliminary document prepared by Mario Muor Muor, a senior SPLA official, identified the causes of famine with "chronic insecurity" and "lack of basic services"[531]. The unreliability of food supplies, he argued on behalf of the SPLA, was due both to Khartoum war strategy of starving the 'New Sudan'[532], and – partly - to food diversion by SPLA individuals out of the control of the central commands. The individualization and the criminalization of what was, in fact, a tactic of the rebel movement as a whole[533] allowed him to make a further point: looting of food and other relief supplies happened because of weaknesses in local governance.

> "What happened in Ajiep during 1998 is a case in point. Due to lack of viable presence of SPLA and civil administration, food was stolen and looted at will without anybody questioning the culprits. There was also widespread diversion of food by the chiefs who were given a free hand to distribute food, as they liked"[534].

To establish law and order was thus 'imperative' for SPLM/A:

> "After all, those who loot and steal food are unruly soldiers of the SPLA and armed militias. SPLM/SPLA is legally *(sic)* and morally obliged to protect the

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[530] UNICEF, "UNICEF/OLS - Sudan Transition and Rehabilitation Project. First Annual Report: October 1998-September 1999."

[531] Mario Muor Muor, "Background to Vulnerability in Bahr El Ghazal (BEG) Region. Learning from the Past Mistakes to Find Remedies," Conference on Beneficiary Rights and Re-Establishing Resilience and Sustainable Livelihoods in Bahr El Ghazal (BEG) Region (Mapel, Wau County: UNICEF/OLS - SRRA/SPLM, June 29, 1999), Local Government Board Archive.

[532] Muor confirms the shift in the utilization of the New Sudan terminology highlighted by Rolandsen in his book *Guerrilla Government* as indicating only Southern Sudan and not the whole of the country.

[533] African Rights, *Food and Power in Sudan: A Critique of Humanitarianism*; Riehl, *Who Is Ruling in South Sudan?*; Johnson, *The Root Causes of Sudan's Civil Wars*; Rolandsen, *Guerrilla Government*; Wendy James, *War and Survival in Sudan's Frontierlands: Voices from the Blue Nile* (Oxford; New York: Oxford University Press, 2009).

[534] Muor, "Background to Vulnerability in Bahr El Ghazal (BEG) Region. Learning from the Past Mistakes to Find Remedies." p. 7.

civil populations from these criminals. It is not a policy of the movement to divert, loot and steal food and other relief items, but for SPLM/SPLA to allow these elements to continue to divert, loot and steal food and other relief items with impunity can be construed otherwise by other people"[535].

With this apparent *mea culpa,* the SPLM/A was thus asking for its government and judicial structures to be reinforced, perfectly in line with the purpose of the STAR project. Muor further suggests that it was time for southern people's friends to shift from an insufficient relief provision to development work, were they to tackle "the root causes of famine" and not only to cure its symptoms. This point is also reaffirmed in another conference document written by another SPLA official, complaining about the lack of sustainability of relief operations, the risk of "emergency-dependency syndrome" and the fact that the systematic bypassing of "local structures, institutions, staff" neglected local ownership and participation into processes controlled by NGO expatriates and the government in Khartoum[536].

Consistently with the STAR plan of activities and with the SPLM-expressed needs, in July-September 1999 UNICEF and SRRA organized the first Civil Administration Training Course in Akot, Lakes State. While initially planned for twenty-five *payam* and County administrators, the number of participants was doubled following the high demand to attend it that it generated. Participants were selected by County Commissioners under the supervision of the Secretariat for Interior and Public Administration – later renamed Secretariat of Local Government - chaired by Daniel Awet Akot, senior commander from Cueibet in Bahr el Ghazal-, on the basis of broad guidelines provided by the UNICEF project implementation team. The workshop, as other similar ones that followed suit, aimed to improve democratic governance in the administration, increase civilian participation, accountability, transparency and respect of human rights by civil authorities with particular regard to property rights and rights of children and women. Besides general rules of behavior of a 'good administrator', the training also tackled technical aspects aimed at developing the civil administrators' capacity to deliver services effectively: keeping financial accounts, conducting general meetings, organizing public elections of various popular organs, maintaining law and order in civil society

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[535] Ibid. p. 8.

[536] Philip Thon Leek, "Community Participation and the Role of Traditional Coping Mechanisms in Combating Catastrophies, among the Dinka with Special Reference to 1998 Crisis in Bahr El Ghazal" (A paper presented to the UNICEF/OLS - SRRA/SPLM Conference on Beneficiary Rights and Re-establishming Resilience and Sustainable Livelihoods in Bahr el Ghazal, Mapel, Wau County, June 29, 1999).

were some of the topics addressed[537]. In a training course held shortly after in Rumbek, administrators were even divided into categories in order to cover the different fields of social life they had to deal with[538]. By 2001, between 150 and 290 *payam* administrators and deputy administrators in Western Equatoria, Lakes and Bahr el Ghazal regions were trained, covering approximately half of the *payams* in the three regions[539].

The third component was designed to target the 'community level' through the Grant Making/Capacity Building scheme (GB/CM), managed by Catholic Relief Services (CRS). Besides improving the people's living conditions through the provision of small grants for the start-up of income generation activities and loans for the purchase of capital equipment and supplies, the GM/CB component assigned a central role to County Development Committees (CDC). The CDC came into existence in 1999 as a liaison between INGOs, the SRRC and the population, a core idea of US development cooperation, considered as an outstanding means of achieving good governance and peace[540]. They were tasked with formulating development strategies and with implementing development programs in their respective Counties[541]. CDCs were established in seventeen Counties and draw 30% of their membership from the civil authorities and 70% from civil society institutions such as women's organizations, cooperatives, farmers, traders, and disabled persons associations, though one could question how genuine were all these forms of community organizations in the wake of the 'briefcase NGO' boom which had characterized the 1990s. CDCs should have managed revolving funds when loans to selected beneficiaries for capital supply were repaid, but according to the STAR program evaluation conducted in 2002 almost none of the loans were repaid. According to the evaluation team: "Only one interviewed CDC had a resemblance of a medium term county development plan, which is in effect a wish list of additional funds needed from GM/CB"[542]. CDCs thus functioned as a channel to distribute external resources to local organizations and the local people increasing the decision-making power of the civil administrators involved, who were also in charge of identifying the beneficiaries. In fact, the

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[537] UNICEF/OLS, "Local Civil Authority Administration Course," in *Workshop Proceeding Second Draft* (Nairobi, 1999).

[538] Ibid. They were: Law and Order, Social Services, Resources, Relief and Emergency, Cultural Development, Representation and Policy.

[539] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program."

[540] USAID, "U.S. Government Integrated Strategic Plan - Assistance to Sudan 2000-2002," n.d.

[541] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program."

[542] Ibid. p. 15.

evaluation team noticed that the relationship between CDCs and the County administrators remained fairly ambiguous, being described as ranging from independent to consultative to a direct reporting responsibility[543]. Despite being presented as a 'major achievement' of the STAR project for bringing together representatives from the private and public sectors with local residents and thus being worth donors' technical assistance, CDCs proved not to be sustainable and disappeared shortly after[544]. However, they did leave a legacy of considering the County as the most "appropriate level for making investments in new economic capacity in the Sudan", as acknowledged by the STAR program evaluation.

If we consider the objectives of the program, STAR was not a success. Besides the lack of sustainability of CDCs, the extremely low rate of loans repayment, the short life of many of its initial achievements - such as peace conferences resolutions -, many of the expected results of the CAT component – such as the creation of legislative bodies in Counties and *payams*, preparation and approval of budgets, record-keeping of local administrators' activities- were not achieved. Accountability and transparency were not improved: planning, budgeting, revenue collection and expenditures records continued to be poorly managed and kept secret when existing.  The judiciary remained under strong control of the military, and it was unlikely to act independently when events such as rapes or requisition of property occurred. SPLM expressed support for women's participation in the public sphere, but the 25% of seats for women in Liberation Councils at every level of the administration was not fulfilled and some women interviewed by the evaluation team claimed being invited to public meetings only to do the cooking. Despite specific training and the provision of some infrastructures, no service delivery from local authorities was in place after STAR had ended. The evaluators suggested that the UNICEF skepticism, and consequent mild support, to the program might have negatively affected the impact of workshops and trainings. In any case it was clear that SPLM/A was still predominantly paying lip service to good governance and democratic principles with very limited actual change in local governance[545] but an increasing coordinating and controlling capacity over goods and services from external providers.

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[543] Ibid.

[544] Interview with Naoko Anzai, Juba, 01/11/2013.

[545] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program."

## 3. Taking state-building 'out of the bush'

Despite the superficiality of the governance reforms, there is wide agreement that since the end of the 1990s the Movement side of the SPLM/A grew in importance, signaling the increasing effort at trying to position itself as a credible political interlocutor both for the internationally-sponsored peace process and internally as the only force with governing capacity. Several observers provided some evidence that, since 1998-99, living conditions in SPLM controlled territory improved, with tax collection becoming less violent and NGO presence turning increasingly developmental[546]. The newly established SPLM Development Assistance Technical Team (DATT) was tasked with facilitating community participation in the formulation and implementation of development programs. Several technical committees were charged with addressing specific development and policy sectors such as natural resource management and utilization, public service, taxation, banking and currency[547].

Mampilly has warned against excessively state-centric analyses leading to look at rebels as state-builders, suggesting that "What is really an issue with rebel governance is not state formation but rather the formation of a political order outside and against the state"[548]. However, if in its initial phases the SPLM/A did resist the Sudanese state in several areas of the Sudan, since the mid-1990s its efforts where rather focused on the establishment of an alternative structure, projecting its own authority with the ambition of taking on state-like structures and functions in the territories it controlled. In a way, the SPLM/A found itself actively engaged in a kind of war-making which closely resembled the kind described by Tilly as producing state-making[549]. Efforts at creating proper structures, laws and bylaws increased in the early 2000s and they were functional to strengthen its control over the territory and the population at the same time when the movement's most merciless competitor (Riek Machar-led South Sudan Defense Force backed by Khartoum[550]) was

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[546] Ibid.; Johnson, *The Root Causes of Sudan's Civil Wars*; Rolandsen, *Guerrilla Government*.

[547] Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program." These are in Annex D, SPLM DATT comments on the report.

[548] Mampilly, *Rebel Rulers*. p. 36.

[549] Tilly, "War Making and State Making as Organized Crime."

[550] The SSDF were the latest evolution of Riek Machar splinter faction after its separation from Lam Akol's SPLM/A-United and the signing of the Khartoum Peace Agreement with the government in 1997. Born on flawed basis as an element of Khartoum's divide and rule tactic, the agreement was never implemented by the government who instead kept on fostering divisions within the ethnically diverse SSDF, providing weapons to individual military commanders. The agreement finally collapsed in 2002 and the SSDF were dissolved when Riek Machar rejoined the SPLM/A. For a precise account on the developments of SSDF and so-called

crumbling. In this production of state features, the SPLM/A received great encouragement by the international donor community. The latter, and particularly the US, feared that the fragility of state institutions in the southern region could threaten the nascent peace process inaugurated with the signing of the Machakos Protocol in 2002.

Just a few years before, in their popular book *Africa Works*, Chabal and Daloz noted that: "in most African countries, the state is no more than a décor, a pseudo-Western façade masking the realities of deeply personalized political relations. There may well appear to be a relative institutionalization of the main state structures but such bodies are largely devoid of authority"[551]. Donors did not want Southern Sudan to end up like this. Well aware of the dangers of "paper institutions", the "peace brigade" – as John Young called it ten years later in a commentary published on Sudan Tribune[552] - engaged in the organization of countless workshops and trainings for civil servants and would-be government officials. Large part of this engagement was – and still is, as suggested by the initial quotation from Mr. Dawson - based on the assumption that the main reason for formally existing institutions to remain on paper is lack of funding and capacity. While it is certainly true that the great majority of people involved in the administration and government in Southern Sudan did (and still do) have extremely weak educational background, let alone technical skills, the 'lack-of-capacity' and the 'lack-of-resources' have become mantras which have been used, on one hand, to justify continued support from the donor community to SPLM/A structures. The latter tended to at least partly conflate with state and government structures in the post-2005 period. On the other hand, they became an easy *leit motiv* among SPLM elite to continue the co-optation of external resources to strengthen the movement's presence on the ground, while also providing explanation for not "getting (certain) things done" despite public discourses.

### 3.1 State-building the SPLM

As has been repeatedly argued, since the 1990s the SPLM leadership put great efforts into the adoption of a donor-friendly lexicon. *Peace through Development*, a pamphlet published by the SPLM in 2000, represents the most

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Other Armed Groups during Sudan civil war, see Young, *The South Sudan Defence Force in the wake of the Juba Declaration*.

[551] Patrick Chabal and Jean-Pascal Daloz, *Africa Works: Disorder As Political Instrument* (James Currey Publishers, 1999). p. 16.

[552] John Young, "Cat Fight among the S. Sudan Experts and the Failure of Peace-Making," *Sudan Tribune*, June 11, 2015, http://www.sudantribune.com/spip.php?article55298.

comprehensive endorsement of this kind of discourses, not only through the support to democratic institutions, but also linking democratic governance with development and peace. At the same time, the document testified the movement's increasing pretense of acting as the proper government of a nascent state, the New Sudan, which was to comprise the three southern regions (Equatoria, Upper Nile and Bahr el Ghazal, including Abyei), Southern Kordofan and Southern Blue Nile. *Peace through Development* also contained a clear request for support to the movement's political and administrative structures necessary to improve governance and the provision of "social development" and services to the population. Both were considered as outstanding necessities to allow southerners' emancipation from relief and foster local self-reliance and economic development, ultimately leading Sudan out of the civil war[553]. Besides reaffirming the three pillars (or "tracks", as they are called in the document)[554] upon which the SPLM peace-building strategy was founded, *Peace through Development* also summarized the outcome of some of the workshops and conferences the SPLM leadership convened in the second half of the 1990s as part of the process of establishing the CANS. Among these, there were the conference on "Rehabilitation and Restructuring of Legal Institutions and Law Enforcement Agencies" (April 1999) and the Workshop on economic governance (October-November 1999), which designed the New Sudan fiscal system and foresaw the creation of a new independent banking system under the coordination of the Secretariat of Finance and Economic Planning.

Giving such a complete account of SPLM strategies of peace-building and development, so similar to international mainstream approaches to conflict resolution and post-conflict reconstruction, *Peace through Development* confirmed once again the extreme ability of the SPLM to absorb and 'digest' external input into its own political project, and its capacity of developing an astonishingly complex state-like structure, governing - or at least claiming to govern - every aspect of social life.

The signing of the ceasefire in January 2002 marked a turning point for Southern Sudan: the decrease in actual fighting left room for strengthening the structures of local civil administration. Mampilly evidenced an actual change in local governance in SPLM controlled areas, showing genuine effort to

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[553] SPLM, "Peace through Development in the Sudan," 2000, http://www.sudansupport.no/filestore/PeacethroughdevelopmentbySPLA1999.pdf.

[554] These were: the negotiation of a political settlement with the Government in Khartoum (Track I); Strengthening the National Democratic Alliance –umbrella organization of political opposition to the NIF regime- to provide a viable alternative to govern the New Sudan (Track II); "Peace through development", meant to bring socio-economic development and provision of services to the New Sudan. SPLM, *Peace through Development*.

demilitarize the administration[555]. On 20th June 2002, the Machakos Protocol made prospects for peace between the SPLA and the GoS become more and more tangible, attracting back to the mainstream rebel movement a number of splinter militias, including the Riek Machar-headed SSDF[556], increasing the SPLM/A's control of the southern territory through the cooptation of isolated military commanders[557].

The beginning of the peace process was accompanied by the normalization of the international community's relation with the Government of Sudan, who in 2001 accepted to sign key anti-terrorist regulations. In the same year, multilateral sanctions were lifted. The EU prepared a Country Strategy Paper for 2002-2007 focused on supporting the peace process and delivering basic services to the local levels in the form of food supplies and education. The UN established the Sudan Assistance Framework, aimed to support the peace process, recovery and development needs of the country, while UNDP Country Cooperation Framework 2002-2006 gave prominence to interventions at state level complemented by support to policy making at national level in the areas of peace-building, social inclusion, governance, environment and participatory rural development. Donors' coordination meetings were also held in Norway, the Netherlands and the UK to discuss and plan initiatives in support of the peace process to start recovery and reconstruction programs[558].

The years between 2002 and 2004 were characterized by intense institutional-design and policy-making activities, carried out on two parallel levels: a "diplomatic" level, resulting from the ongoing peace negotiation, which occasionally provided inputs derived from compromises with the northern counterparts, slightly changing internal preferences on institutional arrangements; and an internal one, led by the SPLM Secretariat of Local Government, Judiciary, Legal Affairs and Law Enforcement under the leadership of Daniel Awet Akot.

Quite obviously, IGAD-mediated peace negotiation mainly focused on institutional arrangements at national and regional level and on power-sharing within the newly established institutions. In spite of the huge emphasis placed on decentralized governance in SPLM discourse, the official documents

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[555] Mampilly, *Rebel Rulers*.

[556] Though fragmented as an armed group, the SSDF nevertheless managed to pose serious challenges to the SPLM/A's control of the territory in several areas, particularly in the oil rich Upper Nile.

[557] Young, *The South Sudan Defence Forces in the Wake of the Juba Declaration*.

[558] African Development Bank, "Sudan. Country Dialogue Paper 2003-2004" (Country Operations Department -ADF. North, East and South Region, November 2003), http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ADB-BD-WP-2003-141-EN-SUDAN-2003-2004-COUNTRY-DIALOGUE-PAPER.PDF.

produced as outcome of the peace process barely mentioned the local government level, with just a general reference to the decentralized nature of the government in the southern region. Both the CPA and the Interim Constitution of Southern Sudan (ICSS) rather focused on the National and State levels, as a consequence of the political nature of the negotiations led by John Garang whose major concern was to ensure the highest possible degree of autonomy of local communities vis-à-vis the Government of National Unity in Khartoum[559].

While politics was addressed in the peace negotiation arena, the establishment of the Local Government and of other local state institutions was mainly addressed from a technical perspective, with a very strong focus on organizational structures (number of seats/positions in the civil service, number and kind of ministries, departments, commissions, committees, organizational charts, etc.), infrastructural and equipment needs for newly established institution and financial aspects (both resource-raising and expenditures). The commitment to decentralization was constantly reaffirmed by the SPLM, resulting in each institution being replicated at all levels of the Local Government through decentralized or deconcentrated branches. What had been SPLM local administrative structures –as we have seen, never totally independent from the military command – were turning into local state structures, with politics being taken out of the picture. A division between what was allowed to be considered "political" and what was considered as a matter of technical administrative arrangements thus started consolidating also in SPLM internal discourses. This division clearly emerged in the establishment of the SPLM Clusters at the end of 2004, three working groups in charge of formulating recommendations on political, governance and military issues for the movement leadership. Politics and governance were treated separately, with the Political Cluster in charge of the SPLM transition from a guerilla movement to a "robust political organization" transforming the "theocratic Sudanese state" into a democratic "people-based state", and the Governance Cluster concerned with the transformation of the CANS into the local state structure, comprising of government institutions, legislative institutions and the judiciary all addressed from an organizational and functional perspective[560].

References to the state as a whole are very rare in SPLM documents of the early and mid-2000s, while those to local government and local

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[559] Despite delicate power-balance calculations contained in the Power-sharing agreement, the GONU was still controlled by NCP and Bashir remained in charge as President after the signing of the CPA.

[560] SPLM Governance Cluster, "Report of the SPLM Governance Cluster."

administration abound[561]. While in line with this trend, only referring to 'local government/governance structures' in its reports[562], the Governance Cluster was in fact one of the ad hoc institutions created by the movement in charge of contributing to the establishment of southern state structures. Besides the quite obvious conflation with post-conflict government structures, this also produced a conflation between SPLM and would-be state structures as a whole, many of which were developed out the movement guidelines or pre-existing administrative structures. In the words of the Acting SPLM Chairman for Unity State:

> "Historically, SPLM imposed itself as the leading and majority party. Everyone joined the armed struggle with us. Therefore, currently all the commissioners are from SPLM. The National and State constitution are shaped by SPLM constitution. It is the party that decides: for example on decentralization, on women quotas, etc. Most individuals in the government belong to SPLM. Our Governor is part of SPLM political bureau. So, there is an overlapping between the government and the party. Some people say this is not true, and that the government is not doing what SPLM wants, but this is not true. SPLM decides on everything, through its members."[563]

This exclusive character of the SPLM state-building project recalls the exclusivity of the CPA, which critics have identified as one of its major weaknesses[564]. In the CPA, this weakness was clearer, because politics had always been a crucial part of it and its influence of the outcome of the negotiation was so evident. The creation of southern state structures, instead, was treated as a matter of finding the right institutional formula, and providing resources and capacity to those who had proven to be capable of exercising local control and of keeping relations with the international community.

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[561] Although a proper archive of SPLM documents is yet to be created, part of the documents concerning the local government is stored in the Local Government Board Archive in Juba.

[562] Ibid.

[563] Interview with Samuel Lony, Acting Chair of SPLM in Unity State/Minister of Agriculture and Forestry, Unity State. Bentiu, 01/02/2013. When asked what happened if major government position such as the governorship of a state or commissionerships of Counties were occupied by non-SPLM members, he candidly replied: "Well, we haven't thought of this possibility".

[564] International Crisis Group, *A Strategy for Comprehensive Peace in Sudan*, Africa Report 130, 2007, http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/sudan/A%20Strategy%20for%20Comprehensive%20Peace%20in%20Sudan.pdf; Johan Brosché, *Sharing Power - Enabling Peace?: Evaluating Sudan's Comprehensive Peace Agreement 2005* (Uppsala: Department of Peace and Conflict Research, Uppsala University, 2009); John Young, *The Fate of Sudan: The Origins and Consequences of a Flawed Peace Process* (London ; New York: Zed Books, 2012).

## 3.2 Workshops as a 'negotiation arena'

'Workshop' is a word that has become very common in Southern Sudan vernacular languages to refer to public meetings in which issues of public interest are discussed. Repeatedly, during my fieldwork, I was asked – as a white person – to organize a workshop in order for the local people to be involved in expressing their grievances and needs. Workshops also entail that some sort of decision is taken, at least in the form of the distribution of tasks or the creation of an ad hoc committee to address the issues discussed. This frequent use of the word "workshop" no doubt comes from the extensive organization of 'consultative' workshops by development agencies during the war time and right after, not only for assessing local needs but also to engage local administrative and traditional authorities in the creation of government institutions.

SPLM ad hoc institutions for the creation of Local Government structures were indeed involved into a wide range of workshops organized with the support of several international actors. UNDP particularly, played a major role in the process of consolidation and development of SPLM local state-like institutions in the period between the signing of the Machakos Protocol (2002) and the CPA (2005). This process received a major thrust in 2003, when the Secretariat of Local Government, Judiciary, Legal Affairs and Law Enforcement produced a number of "Laws of the New Sudan" addressing virtually every aspect of social, economic and political life, ranging from judicial system to the organized forces and from natural resource management to immigration policy and financial issues[565]. This law-making impetus gave an even stronger image of the SPLM's commitment to building a democratic state apparatus, a commitment constantly emphasized in every single internal policy document drafted during that period and strengthened through calls for international support to training and capacity-building for local administrators and would-be civil servants. In 2003, Daniel Awet Akot appointed a 17-member Nairobi-based Focal Point on Local Government and Civil Administration, chaired by lawyer Richard Mulla, with the specific purpose of coordinating with donor agencies. UNDP promptly engaged with the Focal Point, not only providing it with office space in Nairobi[566], but also discussing the way forward and the formulation of

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[565] Copies of the 'Laws of the New Sudan' are stored in the Local Government Board Archive, Juba.

[566] Focal Point on Local Government and Public Administration, *The Framework for the Development of the Capacity of the Secretariat of Local Government and Public Administration in South Sudan* Draft, To Be Presented to a Stakeholders Consultative Meeting on Local Government and Public Administration in Rumbek (Nairobi, Kenya, November 2003), Local Government Board Archive.

a Local Government Framework and Act to provide the forthcoming Government of Southern Sudan with strong local roots. By the end of 2003, the Focal Point had produced a draft "Framework for the Development of the Capacity of the Secretariat of Local Government and Public Administration in South Sudan", containing the core ideas upon which the SPLM wanted to develop its government structures, as well as detailed requests for the donor community, particularly addressing them to UNDP. The first two drafts of the Framework drew from the 1981 Local Government system which introduced Area Councils, but kept the terminology adopted by CANS during the war, with County, *payam* and *boma* being identified as the three tiers of Local Government. In the initial drafts, the colonial administrative division between Bahr el Ghazal, Upper Nile and Equatoria was retained. The third draft, renamed Local Government Framework of Southern Sudan, was completed in September 2004, right after the signing of the Power-sharing agreement (May 2004), and replaced the three regions with ten states as an intermediate level between the Regional Government of Southern Sudan and the Local Government. This resulted from a compromise with the northern system, where states had been introduced in 2003. In an unpublished Note on the Background to Local Government, Naoko Anzai, senior Project Manager for UNDP and the World Bank, asserts that the idea of states as an intermediate level of government was well-received by John Garang as a measure for counterbalancing the "risk of ethnic tensions" at Local Government level[567] –something that had indeed emerged already after the establishment of CANS and the proliferation of administrative units.

Successive drafts were submitted for scrutiny to a number of international experts on governance and public sector[568] and discussed in workshops on local governance organized by international donor agencies. The Local Government Technical Team, established in early 2004, was delegated further revisions, while other members of the Secretariat of Local Government were charged with conducting assessments of the current situation of local administration in SPLM controlled areas and the production of thematic papers on service delivery, democracy and participation, natural resource management, traditional authorities, fiscal decentralization, food and

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[567] Naoko Anzai, "Notes on the Backgrounds of Local Governance Systems in South Sudan".

[568] Focal Point on Local Government and Public Administration, *The Framework for the Development of the Capacity of the Secretariat of Local Government and Public Administration in South Sudan* (2003); Focal Point on Local Government and Civil Administration, *The Framework for the Development of the Local Government and Civil Administration in New Sudan*, Draft, To Be Presented to a Stakeholders Consultative Meeting on Local Government and Public Administration in Rumbek (Nairobi, Kenya, January 2004), Local Government Board Archive.

agriculture, etc.[569]. These topics were far beyond the scope of establishing the structure of the local government and, together with the process of constitutional formulation, contributed to actually set the scope and limits of would-be state policies.

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[569] Some of these papers were stored in the Local Government Board Archive, Juba, as per December 2013.

**Table 3.1: Non exhaustive table of workshop on the local government held in 2003-2005**

| What | Where | When | Who | Organizing Institution | Main points raised |
|---|---|---|---|---|---|
| Local Government and Civil Administration Consultative Workshop | Rumbek | 26-29/01/2004 | CANS, Local Government (Administrators and commissioners), SPLM, Focal Point, Legal Affairs, Wildlife, Prison, SPLA, SRRC, Religious Affairs, local NGOS, Donors representatives (UNDP, PPACT, DFID, British Council, UNICEF, PKF, Max Plank Institute, USAID | Skills for Southern Sudan, funds from UNDP | • Framework for the Establishment of the Civil Administration is presented.<br>• The Technical Committee is established within the Secretariat of Local Government and Civil Administration |
| Follow-up meeting of the Technical Team | New Site | 12-13/02/2004 | (Secretariat?) Local Government, LG Technical Team, Focal Point, Legal Affairs, Economic Commission, Police, Prisons, Wildlife, SPLM | Skills for Southern Sudan / UNDP | • The Local Government Framework (2$^{rd}$ draft) is drafted. |
| Workshop on Constitutional Issues and Local Government | Naivasha (Kenya) | April 2004 | | Max Planck institute | • Brainstorming session on constitutional arrangements |
| Workshop on governance principles | Yei | 10/06/2004 | ? | | • 2$^{nd}$ Draft LGF was presented<br>• LG Technical Team document on Inter-governmental relations was presented |
| Decentralization and Government Structures for South Sudan workshop | Nairobi | 1-9/11/2004 | SPLM Deputy Chairman Riek Machar, SPLM Leadership Council, Four Governors, Commissioners, SPLM officials and advisors. | JAM Cluster 1 "Institutional Development and Capacity Building". Resources from CIDA, UNDP, USAID and WB | • Provide other JAM clusters with a basis to plan for service delivery, structures, etc.<br>• clarify details on the decentralized structure of Southern Government |
| Workshop on design of Local Government Recovery and Development Programme | Rumbek | 22-25/11/2004 | County Governments, key sector, aid and support agencies and senior politicians. | UNDP, PACT, CRS, British Council | • It produced recommendations which were incorporated into a Program proposal in December 2004.<br>• Develop a local government planning system |
| Workshop on the Role of Traditional Authority in Local Government | Rumbek | 2-8/12/2004 | (Secretariat?) Local Government, UNDP, USAID, International scholar, representatives from South Africa and Uganda | UNDP | |
| First Customary Law Work Plan Workshop | Nairobi | 14-16/12/2004 | SPLM Secretariat for Legal affairs and Constitutional Development(SOLA), Customary Law Steering Committee (CLSC), Norwegian Peoples Aid, Marx Planck | | • Sharing knowledge on Customary Law<br>• Find institutional support for CLSC |

| | | | Institute for International Law, World Vision International, Christian Aid, Sudanese Women Association in Nairobi (SWAN), South Sudan Law Society, FAO. | | |
|---|---|---|---|---|---|
| Workshop on Governance Clusters | Rumbek | 28/01-23/02/2005 | | SPLM/ Southern Sudan Law Society | • Presentation of the report of the Governance Cluster and its Sub-Clusters (GONU, GOSS, States and Local Government). |
| SPLM Local Government Planning Workshop | Yei | 1-7/03/2005 | Equatoria Political Leadership, the Local Government Secretariat, County Executive Directors, County planning officers and planning consultants and external partner representatives | UNDP, PACT and CRS | • Discussion on the Local Government Framework<br>• Discussion on the Local Government Recovery Programme (UNDP) |
| Eastern Equatoria State Strategic Planning Framework Document | Nimule | 23-27/02/2005 | SPLM Leadership council members, Equatoria Regional Deputy Governor, SPLM counties secretariats, civil society organizations and donor's representatives | | • Development of a management model |
| Southern Sudan Public Service Workshop | Rumbek | 27/06-3/07/2005 | CANS and GOS/Coordinating Council of Southern Sudan (CCSS) employees | | • Integration of CANS with existing civil service in an inclusive manner |
| Workshop on Traditional Authority | Rumbek | 07/2005 | Local Government Secretariat | UNDP | • Traditional Authority Framework is presented |
| Report on: Traditional Authority Framework Ratification | Yei, Poptap and Rumbek | 12/2005 | | UNDP (LGS and GOSS) Report by Kwesi Kwaa Prah | • Disseminate the Draft Local Authorities Framework<br>• Ratify the Draft Traditional Authorities Framework<br>• Promote consultations with GOSS and TA on TA key issues<br>• Develop a vision statement for traditional authorities |
| Workshop for SPLM Secretariats | Rumbek | 19-20/05/2005 | Secretariat of Public Services/Public Service Commission Secretariat of Finance and Economic Planning Attorney General | | • Salary of civil service to formulate to the provisional Budget 2005<br>• Medium Term Employment and Pay Policies<br>• Formulation of Interim Salary Scale and Interim Grade Structure |

Source: the Local Government Board Archive, November 2013.

UNDP also contributed to the assessment effort commissioning a study on the state of local government in three southern garrison towns, Juba, Wau and Renk. The report highlighted the hike in nepotistic and clientelistic practices in the appointment of civil servants after the regionalization in 1983 and the high variability of patterns of relations between the local government and traditional authorities. Poor infrastructural conditions of social service facilities such as schools and health centers, extremely limited financial resources raised locally or granted by the national government, as well as the lack of qualified personnel, caused systematic shortages in the provision of public services to the southern population even in government controlled areas. Lack of capacity among the civil servants was another finding, which often resulted in lack of transparency in public expenditures and an overall lack of accountability towards the local population. Though these findings were limited to the (very few) government controlled areas in the southern region, they reflected the claims that SPLM's documents had been advancing since the end of the 1990s[570] and strengthened the demands for training and capacity building by the movement.

These demands were met, again, thanks to the donors' financial support in the organization of technical and leadership trainings for SPLM local government officers. These were of two kinds: the newly recruited military-trained officers who had never received any administrative training, and older experienced civil servants who had served in the local government system in the 1970s and were redeployed as civil administrators as soon as the CANS was established after having joined the SPLM in the 1980s and 1990s[571].Realizing a comprehensive map of all the workshops, meetings and training courses realized in the period 2002-2005 and right after, as well as studying in detail the type of discourses they promoted, would be extremely interesting to trace the influences of international approaches to post-conflict governance on SPLM internal discourses and institutional development. Indeed, others have looked at capacity building initiatives as £points of interaction and spaces for dialogue between donors and recipient governments"[572]. The fragmentary nature of available documentation, however, makes it very challenging to produce a

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[570] Abraham Kot Riak, "Municipal Governance in Government of Sudan Controlled Towns (Renk, Juba and Wau)" (Institute of Public Administration and Federal Studies, University of Khartoum & UNDP, June 2004).

[571] Skills for Southern Sudan, "Administrators' Training Workshop," in *Workshop Proceeding* (Administrators' training workshop, Rumbek, 2004); Anzai, "Notes on the Backgrounds of Local Governance Systems in South Sudan."

[572] Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali", p. 274.

comprehensive picture of all the 'negotiating tables'[573] that have been initiated in those years. With no pretense of providing a definitive and complete analysis, some aspects do emerge allowing the development of some general reflections on the process through which the SPLM established local state and government structures in southern Sudan.

First of all, from the analysis of the lists of participants to both institutional and policy-design workshops and administrative trainings, an astonishingly complex pre-existing state-like structure emerges at the level of local branches of the SPLM. In signing up as participants in a certain workshop, people introduced themselves with very specific titles and positions following the institutional structure of a state in all its aspects: agriculture extension officers, child protection officers, finance officers, syndicated organizations representatives, economic commission, legal affairs and constitutional development secretariats, let alone the numerous ad hoc structures created to work on the Local Government system development and on constitutional matters. These are only a few of the locally existing variety of SPLM-related offices and departments, with the clear ambition of regulating every aspect of life not only on paper at the central level, but also in more peripheral areas, where nucleuses of statehood were reproduced loosely based on directives from the Headquarters. Of course, one could argue that there is very limited evidence that these distinctions in the roles of civil servants and public security forces were not only stated on paper and that they were not merely local initiatives. The variance in titles and groupings that people used to register themselves in the workshops may in fact be linked to the difficulties in circulating ideas and reforms and to a lack of actual coordination from the center. Nevertheless, the idea of how a civil service should be structured and of the division of organized forces between the army and other 'civil' security forces (such as police, wildlife, prison forces) clearly penetrated in all areas under the movement's control.

This leads to the second point: these trainings and workshops provided a precious meeting occasion for SPLM people living in faraway areas, and thus a tool for spreading SPLM vision and modes of governance. This would have been difficult otherwise, in a context where communication – both air and physical - remains one of the most outstanding challenges even ten years after the CPA. Provision of transports in the form of flight tickets, fuel, roads rehabilitation was

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[573] Hagmann and Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa".

always one of the main concerns emerging from planning documents in preparation of these workshops.

Thirdly, the involvement of SPLM civil administrators in the process of establishing the local government and other state institutions, as well as in the trainings, meant the legitimation of people appointed to public functions often with no other merit than being a loyal ex-combatant in the movement. These people were trained in successive workshops organized by several development agencies on the basis that they lacked capacity to implement good governance. If the lack-of-capacity claim thus justified massive engagement in curricula development, training sessions and international experts consultancies, giving a semblance of serious commitment to good governance, in fact the holding of screening examinations in 2007-2008 to check the qualification of local government officers did not compel the SPLM to change its recruitment policy: claims of lack-of-capacity and lack-of-(human)resources were still used to keep in place or appoint people who did not undergo any –or very little- administrative training[574].

If considered singularly, workshops constituted negotiation tables in which every move of the SPLM leadership regarding local government establishment was shared and discussed with donors, organizers of the workshop, NGOs and any other concerned 'stakeholder' – a word very much en vogue in the framework of participatory approaches to development. However, the outcome produced by this process of discussion and negotiation taken as a whole goes beyond that of each workshop and meeting and suggests that they can also constitute a 'negotiation arena', in the sense that Hagmann and Péclard attribute to the term. The outcome of that particular negotiation arena made of the set of negotiations on the establishment of the South Sudanese state over the years around the signing of the peace agreement involved on one hand, the strengthening of SPLM international legitimacy as a source of state-like power, and on the other the consolidation of modes of governance based on appearances and external resource-raising. As Daniel Awet Akot eloquently put it during an interview in 2013 – more than eight years after the CPA and the establishment of the Government of Southern Sudan - : "We are trying to understand what system is better for South Sudan. (…) [The one we have], it's

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[574] Interview with Gengeng Payam Administrator, Yirol, 05/12/2013; Personal communication with local officer at Local Government Board, Juba, November 2013; Naoko Anzai, "Note on the Background of Local Government".

because the donors said: please, East Timor is doing this, you should also do this! (...). Now, we have all these chairs and no people sitting on it!"[575]

## 4. Conclusion

This chapter has taken the description and analysis of the process of state formation in Southern Sudan a step further, showing the double contribution of the SPLM/A's state-building project and of the support of the international community. Initially driven by concerns about global security in its humanitarian action, the latter started engaging more actively and consciously in 'state-building' the New Sudan, providing the SPLM/A with vital material and symbolic resources to emerge as a viable and legitimate ruler over its local competitors.

This leads to two important considerations that reveal enduring trends in the process of state-building South Sudan, and of its process of state formation. Firstly, the convergence between the two state-building projects of the SPLM and of the international community, understood as the deliberate effort of concentrating power into the hands of an identifiable and structured ruler within a circumscribed territory, was made possible by the de-politicized character of the discourses dominating the international arena of intervention in the name of peace, good governance and development[576]. The SPLM could focus its political propaganda to the broader national level, negotiating with the Government in Khartoum, while the 'local' was treated as an arena in need of funds and technical capacity. This leads to the second point: the SPLM confirmed the extraversion of modes of accumulation of power of political actors as a defining characteristic of the southern region of Sudan. If it's history of rebel movement, to some extent successful at establishing a state-within-state, did recall Tillyean state-making through war-making[577], enlisting South Sudan among the very few African cases that can effectively be analyzed through those lens[578], at the same time the SPLM/A success cannot be separated by the support it received from external forces. Its accumulation of the different forms of capital (physical force, economic, cultural and symbolic) which Bourdieu places at the core of the state formation process[579] was definitely facilitated - when not allowed - by the interaction with powerful external

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[575] Interview with Daniel Awet Akot, Juba, 13/12/2013
[576] Mark R. Duffield, *Global Governance and the New Wars"*.
[577] Tilly, "War Making and State Making as Organized Crime."
[578] Christopher Clapham, "Guerre et construction de l'État dans la Corne de l'Afrique,".
[579] Bourdieu "Rethinking the State: Genesis and Structure of the Bureaucratic Field".

resource providers which proved to be decisive for its survival to the many crises it underwent. This symbiotic relationship with aid, and particularly with aid directed to the 'governance' sphere, has survived to the creation of the Government of Southern Sudan and the country's independence, and continues influencing political discourses and providing crucial material and symbolic resources feeding into internal political dynamics.

# Chapter 4: Decentralizing South Sudan: Training, reform and enduring trends

*"When the CPA came, we took the same structure of government inherited from Khartoum.*
*We could not refuse it. (...) This is what the CPA said. We only did it to come out. (...)*
*Decentralization is a fake! It is a fake thing!*
*Nothing is decentralized, everything is decided here!"*[580]

## 1. Introduction

When Southern Sudan saw the light as an autonomous region, a state-building -and state formation- process had been ongoing for several years. In 2005, with the signing of the CPA, the need to counter 'state fragility', a category widely used to describe the region, became the first priority. The situation was conducive: the SPLM led by John Garang managed to absorb many of the splinter groups which had ravaged the south with internecine wars in the 1990s and early 2000s. Although he remained a firm supporter of a united Sudan and, even more, of the unity of southerners, since the mid-1990s he had been advocating for a decentralized system for ideological and pragmatic reasons. On one hand, a decentralized system allowing self-rule to the diverse ethnic communities was in direct contrast with the centralized authoritarian government in Khartoum and its project of Arabization/Islamization of all the Sudanese peoples. At the same time, however, Garang was also aware that a decentralized system was perhaps the only alternative to try to govern the fragmentation of South Sudanese society[581]. In a speech delivered during the ceremony for the signing of the Nairobi Declaration, which opened the final phase of the peace process in 2004, he explained SPLM's position towards decentralization:

> We have not wrested power from a hegemonizing national centre to allocate it to another centre that is based on the political elites of the South. Power shall be exercised by the states and indeed by local governments within the states. Armed with the necessary powers and equipped with the needed resources, this style of governance shall ensure a more efficient delivery system of development and services. The principle of decentralization of power is a time-honored principle since it responds to local social and economic situations, not least amongst which is the neutralization of the centrifugal forces (...) which are generally the consequence of failure by Central Authority to address local

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[580] Interview with Daniel Awet Akot, former chair of the Local Government Secretariat, Juba, 13/12/2013.

[581] Naseem Badiey, *The State of Post-Conflict Reconstruction: Land, Urban Development and State-Building in Juba, Southern Sudan* (Boydell & Brewer Ltd, 2014).

problems and concerns. Such local problems and concerns cannot be effectively addressed from the Centre since such Authorities are far away from the people; they can only be effectively addressed by empowered local authorities that have both the necessary power of decision making and the necessary resources to implement such decisions.[582]

This speech contained many elements which were discussed with and shared by the international donor community, providing support to the creation of the local governance system since the late 1990s. It tackled the effectiveness of service delivery, the responsiveness to local needs and, last but not least, the existence of centrifugal forces which had to be contrasted through 'empowered local authorities' that could guarantee self-rule. Besides its ideal benefits in terms of democracy and development, one of the main reasons why decentralization was adopted as a system of government in South Sudan was indeed its function of de-activating conflicts for power at the centre, and of widening the political arena allowing more space in order to co-opt opponents[583].

The decentralized system of government was designed in partnership with the international donor community, following the pattern of cooperation started before the official creation of the Government of Southern Sudan: a pattern made of consultative workshops, trainings, and consultancies for the formulation of a complex legal framework disciplining the Local Government. The language spoken was, again, often used as an empty box, revolving around key words such as "capacity building", "stakeholders' engagement" and "community", and focusing on effectiveness and efficiency through the application of blueprints. This fed the apparent convergence between the SPLM and its international partners on the form of local governance, leaving aside the actual reasons for certain kinds of institutional choices by the local elite. This chapter will try to explore them with particular regard to the system of local government and the system of land tenure, both based on the emergence of the concept of "community" as the basic unit of South Sudanese society (especially in the rural areas). This was encouraged by the incorporation of Traditional Authority into local governance systems, as elsewhere in Africa, based on the idea of their intrinsic legitimacy, of the continuity of their function in local governance, of their *de facto* existence in many areas and of their better

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[582] John Garang de Mabior, "Speech by Dr. Jong Garang de Mabior: Nairobi Declaration," June 5, 2004, http://paanluelwel.com/2011/07/21/speech-by-dr-john-garang-de-mabior-nairobi-declaration-2004/.

[583] Wolfram Lacher, "South Sudan: International State-Building and Its Limits"; Alex de Waal, "When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan," *African Affairs* 113, no. 452 (July 1, 2014): 347–69, doi:10.1093/afraf/adu028.

knowledge of local conditions and needs[584]. In spite of much effort from several international organizations in trying to study customary systems of governance and in trying to define and direct the chiefs' role and functions, I argue that this encouraged a structuring of society reminiscent of colonial time and of the time when South Sudan was ruled by the Khartoum regime. This is not so much because of the 'decentralized despotism' represented by the chiefs[585], whose position vis-à-vis the government is more nuanced and can in many instances be seen more as mediators and protectors of their constituents than as exploitative oppressors[586]. Rather, I here refer to the very idea of community defined in ethnic terms, which follows suit from the incorporation of traditional authorities in the government structure and the consequent physical overlapping between the 'traditional' domain of communal customs and the bureaucratic domain of the state. This, as will be further explained in the following chapters, encourages a horizontal fragmentation of society, not imposed but claimed from the bottom up, which is functional to the mode of government of the SPLM and to the very functioning of the state in the process of being built.

## 2. The contours of post-CPA Southern Sudan statehood: legal frameworks

### 2.1 The Local Government

With the signing of the CPA on the 9th January 2005, the Government of Southern Sudan came into being. Shortly after, on 16th July 2005, John Garang issued a decree dissolving all the SPLM existing structures which had functioned as a "proto-government" in the last years before the CPA[587], sanctioning the official start of Southern Sudan statehood –though still within the Sudanese state. The CPA focused on the general principle of decentralization of government in the Power-Sharing Protocol: "There shall be a decentralized system of government with significant devolution of powers, having regard to

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[584] Olowu and Wunsch, *Local Governance in Africa*.
[585] Mahmood Mamdani, *Citizen and Subject*.
[586] Cherry Leonardi, *Dealing with Government in South Sudan*.
[587] John Garang de Mabior, *Dissolution of SPLM/LC, SPLM NLC, SPLM NEC and SPLM Regional and County Administrations.*, 2005.

National, Southern Sudan, State and Local levels of government"[588]. Responsibility over the Local Government was attributed to the states[589]. Indeed, the role of the local government in the form of Counties had been central to the SPLM thinking on good governance, but not enough elaborated to be detailed in the Interim Constitution of Southern Sudan (ICSS)[590]. Despite recommendations from the Local Government Secretariat on specific provisions about local government status and relations with other levels of government to be included in the ICSS, the latter remained quite vague on the matter and mostly focused on the structure of the States. Lower levels of government were only mentioned in the form of County, *payam* and *boma* for the rural areas, and municipal/town councils, blocks and quarters in urban areas. Their structures were not specified, nor were their relations with other governmental institutions, including Traditional Authority, but their names and their statuses announced continuity with the SPLM civil administration system. In line with recommendations from the Local Government Secretariat, the Government of Southern Sudan was given a coordinating role of setting standards and criteria and the responsibility of devolving grants-in-aid to local government units, while the states were delegated the power to enact laws on structures, composition, finance and functions of the local government, keeping the role of interface between the central and local levels[591]. The ICSS also provided for the institution of the Local Government Board (LGB) to formulate "policy guidelines and actions in accordance with the decentralization policy" (art. 173(3)). The LGB replaced the Local Government Secretariat and was established in May 2006 as the central coordinating agencies for the Local Government[592]. The five senior civil administrators who were appointed as its members were very disappointed by the limited autonomy that the LGB was granted due to its collocation under the Office of the President - instead of being conceived as a proper Ministry of Local Government -, to the point that some of them claimed that the central Government and the President Salva Kiir Mayardit, who had replaced John Garang after his death, had no real interest in empowering the

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[588] Government of Sudan and SPLM, *The Comprehensive Peace Agreement*, 2005. Section 1.5.1.1

[589] Ibid. Section 4.3

[590] Interview with Daniel Awet Akot, former chair of the Local Government Secretariat, Juba, 13/12/2013.

[591] Government of Southern Sudan, *Interim Constitution of Southern Sudan*, 2005.

[592] Government of Southern Sudan, "Presidential Decree No. 39/2006: Formation of the Local Government Board," May 17, 2006, Local Government Board Archive.

local government[593]. Despite these complaints, the LGB did become the major counterpart in the negotiation of donor-supported programs aimed at building the local government structure, with a coordinating role also over issues concerning traditional authorities through an ad hoc directorate.

In 2006, the Local Government Framework confirmed the SPLM's commitment to decentralization and laid the bases for the Local Government Act, which in 2009 provided more details with regard to the structure and functions of the local government system, focusing on sub-state tiers of government.

According to the existing legal framework, the Republic of South Sudan is formed of ten states, each provided of a legislative assembly, a High Court and an executive branch led by an elected governor and its appointed ministries. As an intermediate level of government with considerable exclusive competences as well as concurrent powers with the National Government and a Council of State as a representative organ at the national level, the States could be seen as part of a federal system which is however never mentioned in the ICSS nor in the Transitional Constitution of the Republic of South Sudan (TCRSS) (2011)[594]. Instead, States are located in Part Eleven of the TRCSS together with Local Government and Traditional Authority, under the principle of decentralization (Section 161(1)). Each state oversees three tiers of Local Government. The highest level of the Local Government is the Local Government Council, which can be of three types: Rural Council (known as County), Urban Council and Industrial Council. Rural councils constitute the great majority: at the time of fieldwork, there were no industrial councils, and only a few urban councils were in the process of being established, namely Juba, Malakal and Wau – the same considered as Municipal Councils in the Marshall Report of 1949[595]. Counties

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[593] Interviews with Eli Achol Deng and Nikodemo Arou Man, Local Government Board Members, Juba, November 2013

[594] This has to do with the overwhelmingly negative meaning attributed to the concept of federalism by many South Sudanese, who link it with the divisive character of *kokora* (the re-division of the south into three provinces which lead to the breakdown of the Addis Ababa Agreement) and with the beginning of the war. In 2015, in the framework of an on-going discussion on the reorganization of South Sudan's sub-national government, with the rebels of SPLM-IO and other groups advocating for a federal system, the historian of Sudan Douglas H. Johnson even held a conference at the University of Juba to explain the difference between the two concepts. See: Radio Tamazuj, "Federalism 'Not the Same as Kokora', Says Scholar," July 7, 2015.

[595] According to Aeberli's observation in Central Equatoria (2012), despite being theoretically at the same hierarchical level as counties, Town (urban) Councils are being considered subjected to the latter's authority. Annina Aeberli, *Decentralisation Hybridized*. Naoko Anzai, senior Project Manager working on local government in Southern Sudan since 2009, referred that only two Urban Councils were established, in Juba and Malakal respectively, by the Central Equatoria State governor and the Upper Nile State governor, but they were not

are therefore considered as the most important unit of Local Government, with other types of Local Government Councils to be established afterwards.

**Table 4.1: The Local Government Structure**
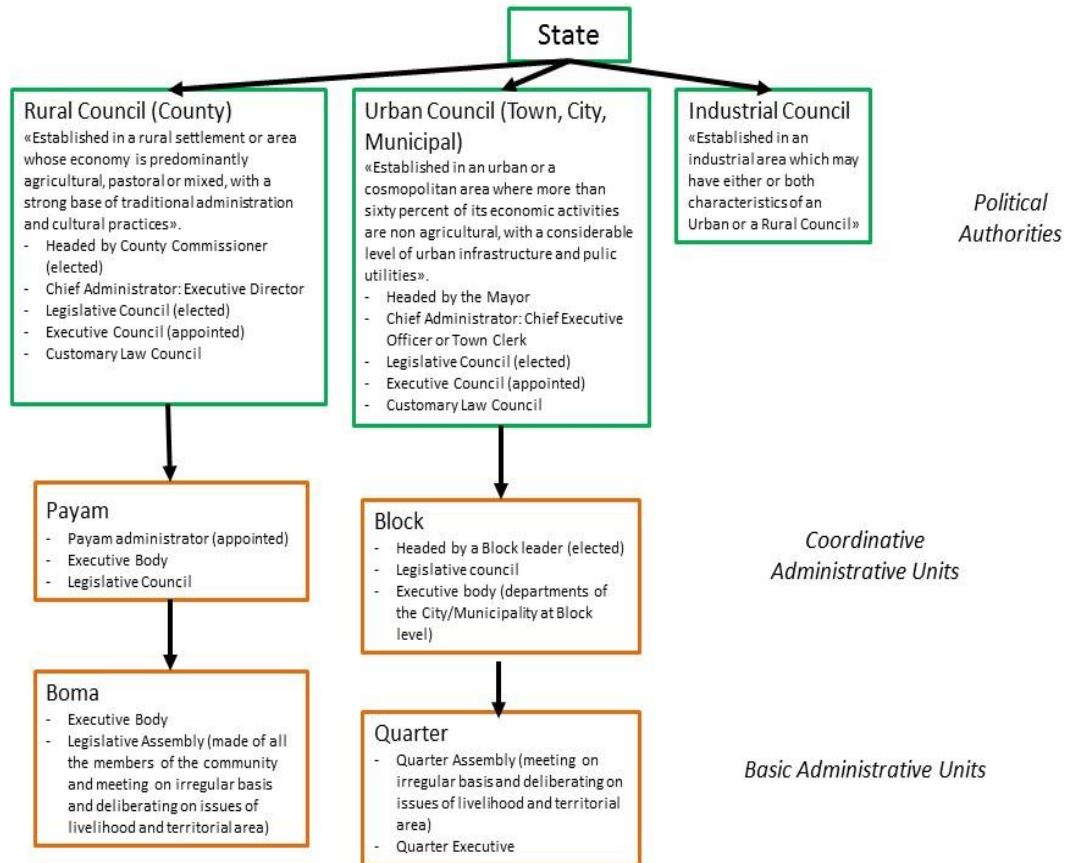


Source: Local Government Framework 2006; Local Government Act 2009; interviews.

Counties shall be governed through an elected Commissioner and an elected Council, with the executive branch headed by an Executive Director, who is a senior Local Government Officer. The Local Government Council is conceived as a political unit, with significant responsibility both for local representation and for public service delivery. After oscillation between sixty and one hundred Counties in successive Local Government Framework drafts and other relevant documents by the Local Government Secretariat, the number

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ratified by the central government. This led to an awkward situation in which councils with a theoretically equal status (the urban and the rural) are actually in a hierarchical relationship, with the County exercising *de facto* authority over the Urban Council. This happens because, in the absence of central recognition, no financial transfers are earmarked for Urban Councils, which continue therefore to depend on the County even for paying salaries of their employees, or on small grants from State level arbitrarily determined by the State Ministry of Finance. Interview with Naoko Anzai, Juba, 02/11/2013.

of officially recognized Counties was set at seventy-eight in the final version of the Local Government Framework (section 1.2). This reduced the number of existing counties recognized by the SPLM at the end of the war, which was ninety-eight[596]. According to Douglas Johnson, both the number of Counties and that of local chiefs (and chiefdoms) increased during the war due to the leadership's recognition of new 'tribal' sections, sub-sections and administrative units for patronage purposes[597], often also in response to demands from local populations. A number of criteria for the establishment of new Local Government Councils were also introduced in the Local Government Act, such as the size of the territory and the population number, and the need to be sanctioned by a Presidential decree. These criteria had already been discussed in late 2004, during the Refresher workshop for administrators held in Rumbek, in an attempt to replace the idea that the establishment of local government units was to be based on the number of sub-units within their jurisdiction. It was an attempt to encourage the spontaneous merging of small communities for administrative purposes, separating the domain of statutory institutions from the chiefdom. The LGA sets a population of 70,000-100,000 for a county, but it also reintroduces the criterion based on sub-units, stating that a county can be formed of 3-4 *payams*, while a *payam* can be formed of 3-4 *bomas. Bomas* shall have a population of 5,000-10,000 each[598]. The same section of the act, however, also adds other criteria, namely that of economic viability (to be able to cover 35-45% of its total budget expenditures), effectiveness (to be effectively able to control the territory), and "common interest of the communities (consideration of minority or majority ethnic group cases as may be decided by the Southern Sudan Legislative Assembly)"[599]. The latter seems to suggest that, though not being necessarily the case for all Local Government Councils, some of them can indeed be established on ethnic basis. Moreover, the rigidity of the objective criteria introduced is softened because each of them "shall be variably applied for the creation of each council"[600], which gives back a good degree of arbitrariness to local authorities. According to senior local government officers, the number of subunits continued to be considered as the major point of reference to claim for new units even after the National Census held in 2008,

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[596] Government of Southern Sudan, *Local Government Framework*, 2006. (Section 1.4.4)

[597] Douglas H. Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism".

[598] Government of Southern Sudan, *Local Government Act*, 2009. Appendix I.

[599] Ibid.

[600] Nikodemo Arou Man, "Decentralization and Good Governance for Effective Service Delivery" (Presentation of the Local Government Board, 7th Governors Forum, Juba, August 10, 2009).

due to its extremely contested results and the consequent lack of reliable population figures[601].

Being the highest level of the local government, counties are often defined as the "government of the people", representing the interests and views of the local population. They are given considerable power in terms of what concerns service delivery, public order and development in their respective areas, together with a good degree of financial autonomy. The latter has been recently increased with the authorization to receive direct grants and funding not only from international donors[602], but also from the national government – in addition to those coming from the state government[603].

*Payam* and *boma* are administrative units, with a quite unclear division of roles. The *boma* is defined as the "basic Administrative Unit of the County", as well as the most important domain of traditional authority[604]. Both are supposed to be headed by an appointed Administrator, which at *boma* level is often absent and replaced by the Executive Chief.

## 2.2 The Traditional Authority

The Traditional Authority is also incorporated in the Local Government system especially at the lower levels of government, where hierarchically organized chieftainships are also in charge of the administration of justice through local customary courts. If traditional authority had already been recognized as part of the local government by the ICSS[605], the LGA reiterated the need to establish Councils of Traditional Authority Leaders at state level, as "the custodian of the customs and traditions of the people of Southern Sudan as a source of legislation"[606].

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[601] Interview with Eli Achol Deng, LGB member, Juba, December 2013. The Government of Southern Sudan rejected the results of the census for being 'politically biased', claiming that the process underestimated the southern population for reasons related to the National Election held in 2010 and the referendum in 2011. Yet, since there are no other reliable population figures, those provided by the census are still frequently used as a basis for estimates.

[602] See for example the World Bank Local Governance and Service Delivery Project, and USAID-BRIDGE Local Government Fund

[603] Gurtong Project, "Citizens Welcome Decision to Directly Budget for Counties," July 8, 2013, http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/11940 /Citizens-Welcome-Decision-To-Directly-Budget-For-Counties.aspx.

[604] Government of Southern Sudan, *Local Government Act.* (Section 19(3))

[605] Government of Southern Sudan, *Interim Constitution of Southern Sudan.* (section 173(6)(i))

[606] Government of Southern Sudan, *Local Government Act.* (section 119(2))

The Local Government Act addresses the role of traditional authority in two separate sections, one focused on the customary law system, and a more general one entitled "The Traditional Authorities of Southern Sudan". Interestingly, between the two, there is another chapter entitled "Community and Local Government", in which a vague –and clumsy- attempt at defining the 'Community' –with capital C- is made, with reference to the territory occupied (corresponding with the Local Government Council territory), to clan, family trees, tradition and customs. As already provided for in the Local Government Framework, and as maintained by many of my informants in South Sudan[607], the chiefs are indeed considered as representatives of the state at the local level with judicial, executive and administrative powers. The judicial function is certainly the most elaborated, and also the most studied at least since the 1980s, when the first post-colonial attempts to ascertain customary law were made[608]. While it is not my purpose here to analyze South Sudan post-war judicial system as a whole, which, according to a study commissioned by the United States Institute of Peace in 2010, contains "contradictions and uncertainties regarding the jurisdiction and supervision of local courts" (p.12)[609], I will briefly describe the structure of the customary courts system for two main reasons. Firstly, their role as justice-providers can be considered one of the most visible manifestations of the local state - sometimes the only one. Secondly, the way these courts and customary laws are defined adds to the conceptualization of 'community' in ways that also have repercussions on the definition of chieftaincies and of administrative units. Interestingly, the role of the chiefs in the judiciary is not addressed by the Judiciary Act (2008), and only marginally addressed in the Code of Criminal Procedure (2008) which attributes specific functions to the chiefs in the exercise of their duty. Despite some arguing in favor of opportunistic explanation for the collocation of the customary courts system under the local government instead of the Judiciary[610],

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[607] Deng Biong Mijak, "Present Role of Traditional Authority in South Sudan: The Judicial Functions.," Presentation at the Workshop "Role of Traditional Authority in Local Government" (Rumbek, December 2, 2004), Local Government Board Archive; Eli Achol Deng, "Traditional Authority in the Sudan. An Insider's Perspective" (Rumbek: Local Government Secretariat, May 18, 2004), Local Government Board.

[608] John Wuol Makec, *The Customary Law of the Dinka People of Sudan: In Comparison with Aspects of Western and Islamic Laws* (Afroworld Pub. Co., 1988).

[609] Leonardi et al., "Local Justice in Southern Sudan". p. 12

[610] According to a County judge quoted in the USIP report, "We requested the executive [i.e., GoSS] that all the chiefs' courts should be under the judiciary so that we control [them] because their cases appeal for [i.e., are appealed to] the judiciary courts not [to] local government. But the local government wants these courts because of revenues. Revenues only. But for us we needed it because the cases which are finalized by the town courts and chiefs'

it can also be considered as evidence of the importance attributed to these institutions in the very exercise of government functions at the local level. This clearly represents a continuation of the colonial tradition of concentrating multiple roles and powers on the chiefs.

The Local Government Act envisions a system of customary courts run by the traditional authorities which corresponds to the local government units of county, *payam* and *boma*. This system very closely resembles the one enforced during the colonial period with a hierarchy going from A courts, headed by one chief, B courts, made of a panel of chiefs, and C courts, made of B court presidents. While chiefs were recognized administrative and judicial powers, in some areas of Southern Sudan there were attempts to separate the two functions which resulted in the separation of the roles of executive chief and court president. Although this separation failed, in some areas (particularly in Bahr el Ghazal), a different terminology was retained and A and B courts are respectively referred to as executive chief's and regional courts[611]. Post-1994 SPLM administration endorsed this judicial hierarchy and, while also creating a parallel system of statutory courts led by the military, incorporated the chief's courts in the local administrative system. The system institutionalized by the Local Government Act substantially confirmed the pre-existing hierarchy of customary courts.

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courts come to [i.e., are appealed to] the county court.... We want these local courts under judiciary." Leonardi et al. "Local Justice in Southern Sudan", p.21.

[611] This terminology endured up to the present, as will be shown in the next chapter.

**Table 4.2: The structure of judiciary system**

| Local government unit | Local Government Act: customary courts | Judiciary Act: judiciary courts |
|---|---|---|
| **County** | **C court: county paramount chief**<br>Head chiefs as members<br>Appeals **from** B courts and **to** county judge<br>Criminal cases referred by statutory courts; cross-cultural civil suits<br>Supervised by county commissioner (not judiciary) | **County judges** (first and second grade) |
| **Payam**<br>(Note: it is not clear whether the courts at this level provided for by both acts are to be combined as a single court or exist in parallel.) | **B (regional) court: head chief**<br>Chiefs as members<br>Appeals **from** A courts and **to** C court<br>Major customary disputes (including land); minor public order cases<br>Supervised by paramount chief | **Payam judge**<br>(legally trained) |
| **Boma** | **A (chief) court: executive chief**<br>Subchiefs as members<br>Appeals **to** the B court<br>Family/marriage cases, traditional feuds, local administrative cases<br>Supervised by head chief | |

Note: Arrows denote direction of appeal.

*Source: Cherry Leonardi, Leben Nelson Moro, Martina Santschi, Deborah H. Isser. Local Justice in Southern Sudan. United States Institute of Peace/Rift Valley Institute, 2010.*

Traditional authorities were also granted administrative and executive powers by the Local Government Act. They "shall be institutions of traditional system of governance at the State and Local Government level which shall" among other things "exercise deconcentrated powers in the performance of executive functions at the local government levels within their respective jurisdictions" (section 112(1)c). In the wake of SPLM publications on traditional authorities, some attention is given to the different typologies of traditional authority found in Southern Sudan, namely Kings, who can extend their authority beyond the borders of one county; and Chiefs, who "shall perform traditional and local government functions covering the territorial area of counties where the traditional authorities are organized on the basis of lineages and clans" (section 113(1.b)). Moreover, if kingdoms exist independently from

any legal or administrative concern, "chiefdoms shall be established in accordance with the provision of this Act" (section 113(2)). Chiefdoms shall thus be established in County and Town councils, so that the people can 'rule themselves', and be decentralized into chieftainships ruled by sub-chiefs and headmen. The same subdivision is to be found also in Kingdoms, which are divided into chiefdoms, sub-chieftaincies and headman-ships. Chiefdoms have to be decentralized: a Paramount chief residing in the County head-quarter presides over a Head Chief residing at the *payam* head-quarter, who supervises Executive chiefs at boma level. If at boma level there is more than one chief, only "the most senior chief shall be the head of the Chieftainship" (Section 115). The LGA also addresses criteria for the establishment of chieftainships which, as in the case of local government units, refer to both the number of people and the number of smaller units under their jurisdiction. Chiefs are "elected according to conventional electoral system or selected according to traditional practices as the case may be" (section 117(1)). This election/selection process involves the population as a whole only at *boma* level, while for higher levels it is chiefs who chose their 'superiors'. Indeed, "The Boma shall be the main domain of the traditional authority where traditional leaders perform their administrative and customary functions" (section 19). This function of 'government' is often expressed in terms of 'control' of 'their' people on behalf of the government, especially at *boma* level. The convergence of these two functions, as well as of the control over the people and over a defined territory, emerges from a long discussion I had with the members of Bany Loum *boma* court in Yirol West County about the jurisdiction of their court:

> Chief 1: "Cases are judged according to the sub clan. Each Executive Chief is responsible for a sub-clan. If that sub-clan has a problem, they go to their Executive Chief. If the case is bigger, between two sub-clans, they go to the Regional Court[612]. Major cases, like killings, are referred to the educated judge.

> Chief 2: "Executive chiefs are responsible for the cases of a clan. If someone of your clan will do something, you will be contacted because he is under your government. That is why the chiefs are scattered. One can handle the problems here, not too far. This is why they are scattered."

> Researcher: *So you mean your clan has also other executive chiefs residing elsewhere?*

> Chief 3: "Those of Abang [payam], they were one originally, but they have split into six [Executive chieftaincies, i.e. three payams] because one [chief] could not control all of them. Chiefs are six to manage the handling of the cases. What brings problem here is this discrimination. People are managed according to the

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[612] At payam level.

section, clans. The government says the people must be handled by a certain person from them, from that particular clan, from their clan. That person will take control of their problems. I don't know if it could be better if the management came just neutrally from whomever, one from a different section managing other people.

R: *So is it the government asking the people to be managed according to their clan?*

Chief 1: "Yes that was the request from the government, to bring your people to settle cases."

R: *Was it SPLM government?*

Chief 1: "It was the time of British, in 1905."

R: *What does the government of South Sudan say now about this system?*

Chief 3: "The GOSS accepted that statement. It is important because the executive chief knows his own people starting from sub-chiefs and *gol* leaders[613]. They know their own people and that is why they can manage the cases under their jurisdiction. If another person comes from outside, he or she cannot be responsible for the people residing in the place. He or she would not know them".

Chief 2: "And what about you? What is your sub-clan and clan, you are handled by whom?"[614]

The continuous reference to the kin relationship between the people and their chief, and to the latter's need to be able to 'control' the people who were 'under his government' are linked with the need to supervise bigger populations, occupying too-wide territories to be overseen by just one chief. As Leonardi writes: "the fragmenting of old chiefdoms and administrative units was presented as simply the result of perennial indigenous processes of segmentation"[615], emphasizing the coincidence between chieftaincy and administrative unit.

## 2.3 The Land

The local government structure also intertwines with the administration of land, particularly when it comes to the role of traditional authorities. This intertwining was not only the product of the rebel movement political strategy,

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[613] In Dinka areas, headmen are identified as *gol* leaders, the leader of an extended family living together.

[614] Group interview, Bany Loum Boma Court members. Bany Loum, Abang Payam, Yirol West County. 04/12/2013.

[615] Leonardi, *Dealing with Government in South Sudan*. p. 190

but to some extent it was also supported by some international agencies as an easy 'going with the grain' strategy.

The Land Act envisages three types of land ownership: public, private (freehold or leasehold) and communal. Public land is "owned collectively by all people of Southern Sudan and held in trust by the appropriate level of government"[616]. The Local Government Act (2009) also touches upon public land administration, recognizing Local Government Councils as the regulating authority for land and natural resources within their territorial jurisdiction. Specifically, they have the power to acquire land for public development projects and service delivery initiatives, and are in charge of management and leasing of public lands within their area as well as supervising seasonal agreements for access to pastures concluded through customary practices[617]. The Land Act delegates these functions to the County Land Authority and the Payam Land Council, both appointed by the state government, composed of representatives from the statutory administration, traditional authorities and civil society[618].

Private property is owned by individuals in the form of leasehold (the only form available for foreigners) or freehold. The Draft Land Policy (2013) confirms that freehold and leasehold are likely to be the most common form of tenure in urban areas, but it does not shed light on administrative procedures to obtain it, besides stating the intention of the government "to offer freehold title to the original holders of customary rights to community land that has been converted to state land for purposes of urban expansion"[619].

Finally, communal land tenure is given considerable attention in the Act, in spite of the vagueness with which most of the key terms implied are defined. 'Local community' is described as: "a group of families or individuals, living in a circumscribed territorial area at the level of a locality, which aims at safeguarding their common interest through the protection of areas of habitation, agriculture, whether cultivated or fallow, forests, sites of cultural importance, pastures and area of expansion". If this definition does not necessarily entail ethnic affiliation or kinship, 'customary tenure' systems are described as comprising of "unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader". Being the Traditional Authority the institutional

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[616] Government of Southern Sudan, *The Land Act*, 2009. (section 7(1))
[617] Government of Southern Sudan, *Local Government Act*. (Section 88)
[618] Government of Southern Sudan, *The Land Act*.
[619] South Sudan Land Commission, *Draft Land Policy*, 2013.

expression of 'community leaders'[620], this definition conflates with the roles and functions attributed to the Traditional Authority by the LGA, tracing the contours of an overlapping between the territorial jurisdiction of chiefs and their role as managers of a communal resource with economic and productive value. Traditional authorities thus have both the power of allocating land and of exercising governmental and judicial functions on the territory under their jurisdiction. The Land Act defines the Traditional Authority as "a body of traditional community with administrative jurisdiction within which customary powers are exercised by traditional leaders on behalf of the Community as stipulated in Article 174 of the Interim Constitution of Southern Sudan"[621]. This definition somehow repositions the traditional authority from the sphere of government to that of 'community'. Relying on the idea of tradition and customs, the community is here implicitly defined as much more than a 'group of families and individuals' sharing interests and living in one locality, but as a group who also shares a common history and identity, and who recognizes the "traditional" authority of one leader. According to the Land Act, communal land is supposed to be registered in the name of a community, a clan or family, a communal association, or a traditional leader who holds the community land in trust[622], but no reference is made in the Act to the corporate nature of the 'community' holding rights to land. Due to a number of uncertainties around how to distinguish legitimate from illegitimate claims to land, and especially on how to identify a community, the registration was postponed. While all lands not registered under other terms should be considered as public according to the Land Act and, later, the Transitional Constitution of the Republic of South Sudan (TCRSS - 2011), community land registration postponement turned communal land into the residual category, including all the land which is neither private (with individual title deed or lease contract), nor public (urban demarcated areas or forestry reserves and natural parks gazetted by the British administration). The basic difference between communal and non-communal land is therefore the existence of written documents, at least until a Community Land Act with more detailed provisions for communal rights protection is formulated[623].

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[620] Government of Southern Sudan, *Local Government Act*. (Section 19)
[621] Government of Southern Sudan, *The Land Act*, 2009. (Section 5)
[622] Ibid.
[623] The Community Land Act is envisioned in the Draft Land Policy 2013.

The importance of the concept of 'community' is thus confirmed in South Sudanese political discourse through its recognition as the subject entitled to self-rule, on one hand, and to property rights in land on the other.

The legal framework described above was the outcome of a long process of negotiation and partnership between SPLM's leadership, with its ad hoc structures, and its 'international partners', who continued engaging with the rebel movement during its transition to ruling party. Though not having "legislated itself into a state party"[624], as other post-independence African parties used to do in the 1960s and 1970s, still the SPLM continued engaging in the great effort of "building a state from scratch"[625] using its own structures and personnel, and well aware of the need to work on two separate but converging grounds: the establishment of a modern bureaucratized state structure, on the one hand, and the modeling of the customary system in a way that it could be co-opted into the local government. The challenge was to impose SPLM rule on the whole structure of the state reaching down to the lowest levels of government, while leaving an appearance of autonomy and self-determination through traditional authorities[626]. To pursue these two objectives, the SPLM could continue to count on the donors as it had during the final phases of the war.

## 3 Building the local government

In response to the SPLM's demands of support to its local administrative structures, several donor agencies engaged in programs aimed at establishing, training and equipping local governments and national coordination bodies. Among them, DFID and GTZ played important roles in capacity building, USAID focused on infrastructural support, several NGOs contributed to the facilitation of workshops, forums and trainings[627]: the Local Government Board archive is

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[624] Nsamba A. Morris, "When Fragility Meets State-Building".

[625] UN News Centre, "South Sudan Building a Nation from Scratch after Independence, UN Told," September 26, 2013.

[626] Personal communication with a civil society activist very close to the local government system, Juba, October 2013.

[627] Other programs targeting the Local Government, such as the one implemented by GIZ starting from the end of 2006 (see GTZ, "German-South Sudan Governance Programme, 2nd Appraisal Mission, Final Draft Outline," August 2006, Local Government Board Archive.) or BRIDGE program funded by USAID and implemented by Winrock focused on more limited aspects, for example the provision of material support to local government (construction of government buildings or provision of means of transport and communication) or on capacity building in specific areas.

rich in project documents, reports and correspondence between representatives of international agencies and South Sudanese government officials. However, especially in the early years of the Government of Southern Sudan, UNDP played a pivotal role in the establishment of local government structures and in the attempt at standardizing local government practices. In spite of the minor role it played in Southern Sudan during the war, UNDP promoted what was perhaps the broadest program – both in scope and in terms of budget[628] - targeting the local government in South Sudan: the Local Government Recovery Programme (LGRP)[629]. Its scope was so broad that the definition of the very legal framework disciplining the local government was enlisted among its objectives. The dissemination of the Local Government Framework (LGF) and the formulation of the Local Government Act (LGA - 2009) indeed constituted some of the major achievements of the project, even though the consultation process was described as: "a combination of presentations by the drafters and acquiescence by workshop participants, instead of thorough discussion for clarifying the fundamental constitutional structure at the sub-national level"[630] by the Program Manager of the LGRP. This suggests that these consultations did not really go beyond their façade character and that the final version was mostly a product of the views of the drafters and of their international consultants. If the latter did indeed play an important role,[631] the degree to which the ruling elite of the SPLM influenced the final outcome of both the LGF and the LGA through its ideological stances and pragmatic considerations should not be underestimated.

Initially named Local Government County Recovery[632], the LGRP was the outcome of a process of consultation started in Rumbek in 2004, when a Local

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[628] UNDP, "LGRP Components and Budget," 2006, Local Government Board Archive; UNDP and Local Government Board/Government of Southern Sudan, "Local Government Recovery Programme Phase II," January 2009, Local Government Board Archive. The program was funded by the EC and DFID for a total of $46.9 million dollars in its first phase (2006-2008) and of $11,5 million

[629] From 2006 to 2011, UNDP ran three parallel projects: one in support to the States, one in support to the Office of the President and one in support of the Local Government (LGRP). In 2012, the three projects were merged due to lack of funds. According to Naoko Anzai, it was the World Bank to fill the vacuum left by UNDP in the field of local government support (Interview to Naoko Anzai, Juba, 2 November 2013)

[630] Naoko Anzai, "Notes on the Backgrounds of Local Governance Systems in South Sudan", p. 11

[631] UNDP and LGB, "Programme for the Briefing on the Local Government Bill 2009," April 28, 2009, Local Government Board Archive. For example, at a public briefing on the draft Local Government Bill held in Juba shortly before the enactment of the law, it was a representative of UNDP to give a "Technical presentation of the bill, chapter by chapter".

[632] CRS et al., "Local Government and County Recovery in South Sudan, Programme," 2005, Local Government Board Archive. The LGCR had among its objectives the creation and the

Government Recovery Planning Workshop was held with the participation of senior SPLM commissioners, SPLM Regional Representatives, members of the Secretariats (Finance, Local Government, Public Services, Health and Education) and representatives of seven donor and support agencies. In early 2004, UNDP had commissioned a study on the state of local government in the Southern region to a national consultant from the University of Khartoum with a particular focus on structures created by the Local Government Act 2003. The expert concluded that: "The assessment of out put (quantity and quality) of each [Local Government] against the accepted world-wide principles of local government, has revealed that the existing local bodies are neither local government nor field or decentralized administration"[633]. Indeed, he found that local governments only collected taxes, but were incapable of any sort of delivery to the local population. He continued suggesting that the lack of capacity and 'tribalism' might have been the causes for this: "These examples, are indicators of poor management which is a result of semi-literate and in experienced people occupying top political and executive positions simply because of their blood relationship or blind support to the government of the day"[634]. While he argued that in many areas local government existed only on paper, we have seen that there was an alternative system of government to the one controlled by Khartoum, which was indeed capable of channeling at least some of the directives coming from the center, and to provide some form of security to the people. In fact, what was lacking was a proper coordination system and a set of standardized procedures and rules of operation, and the formal recognition which came in 2005 with the creation of the Government of Southern Sudan.

The LGRP proposal was a joint initiative of SPLM institutions, the Local Government Secretariat and the Finance and Economic Planning commission, and UNDP, with funds from DFID, the Netherlands and the European Commission. The workshop was organized by UNDP and Catholic Relief Services (CRS) which was included among the partners in the program together with PACT. It identified three priority areas of intervention: the formulation of recovery and development plans for Counties and Municipal Councils; the creation of a Local Government Development Fund to finance the projects

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strengthening of a coordinating agency, encouraging the creation of a Ministry of Local Government or of a Department within the Ministry of Internal Affairs.

[633] Riak, "Municipal Governance in Government of Sudan Controlled Towns".

[634] Ibid.

included in the plan; and capacity building at all levels[635]. During the following workshop, held in Yei in early 2005, Counties and Municipal Councils (which at the time did not exist but on paper) were identified as central players in the planning process. Acknowledging the limited capacity of local governments, however, the workshop stressed the importance of dividing planning (a task of Counties) from implementation (to be carried out by international partners and non-state actors)[636]. In a way, it confirmed the New Public Management understanding of decentralization as a way of contracting out state functions such as the provision of services, considered to be too complex and too expensive for local governments, albeit keeping a planning function which was also necessary to gather relevant information for donors' pledging of funds.

Actively engaging in the project formulation since the beginning, the Local Government Secretariat created three technical teams in charge of the three regions, Greater Equatoria, Greater Bahr el Ghazal and Greater Upper Nile, in order to undertake 'state familiarization visits' to gather baseline data on the status of local government in South Sudan's SPLM liberated areas[637]. The teams found that Counties were characterized by heavy over–employment, used as a reward for allies, and by very low educational level of the employees. Instead of initiating a new recruitment process of skilled personnel, many illiterate employees had been redeployed from staff of the various SPLM secretariats ("ministerial staff"), where more educated people were needed to deal with development agencies and to comply with the nascent bureaucratic procedures, to local government staff. The chair of LGB complained about the local government being treated as a "dumping-bin for all the scums of other ministries"[638], announcing that the LGB would initiate a "sieving" process involving all counties administrative officers, through a written examination in English, to determine who could continue to serve as a local government officer and who was unqualified to keep its place. This "sieving" process became one of the pillars of the LGRP, in which training and screening were included among the core activities.

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[635] SPLM Local Government Secretariat et al., "Report on Design Workshop of Local Government Recovery and Development Programme" (Rumbek, November 22, 2004), Local Government Board Archive.

[636] See SPLM Local Government Secretariat et al., "SPLM Local Government Planning Workshop" (Yei, March 1, 2005), Local Government Board Archive.

[637] Local Government Board, "Letter to the Presidency, Government of Southern Sudan," August 22, 2006, Local Government Board Archive.

[638] Caesar Arkangelo Suleiman, "Speech of the Chairman of the Local Government Board on Commissioners Consultation on Local Government Framework in Yei" (Yei, December 11, 2006), Local Government Board Archive. p. 3

The needs emerging from this process of consultation constituted the basis for the design of other projects and programs in support to the local government and to its coordination body, the LGB. Without the presumption of analyzing them – or even mentioning them – all, I would like to point out that LGRP, as most of the projects supporting training, infrastructural interventions, or the accomplishment of specific tasks to establish local government institutions had what I describe as two major goals: building an 'aesthetics of the state' at the local level, and making local government functioning legible to an outsider's view. Both aspects can be linked to what Larson et al., in a working paper of the Center for International Development of Harvard University, call "isomorphic mimicry', defined as "the ability of organizations to sustain legitimacy through the imitation of the forms of modern institutions but without functionality"[639]. In other words, they refer to the process through which South Sudan progressively comes to look like a modern legal-rational state, without necessarily having its substance.

## 3.1 The 'aesthetics of the state'

In the morning of November 13, I call my usual boda-boda[640] driver and ask him to take me to the Hill View Hotel, one of the fanciest hotels in Rumbek which even has a swimming pool where the expat community usually goes during weekends. He looks impressed: "Are you going with the Commissioners?" he asks. He heard in town that all the commissioners are in Rumbek for the gathering and that the Governor is expected to deliver a speech. I tell him I am going just to look around, I know some people that will let me in. The gathering is organized by a local NGO, Community Empowerment Project Organization (CEPO), with funding provided by UNDP. I was invited by its Executive Director, whom I met in Juba. The hotel parking place is full of dark-coloured Land Cruisers (not the usual white-UN/NGO ones) adorned with bizarre plastic decorations, and men sitting in the shades - the drivers, I suppose. The hotel yard is already full of people, mostly men. Some of them are dressed in suit; a good number is just wearing casual clothes. A couple of them have shirts made of African cloth and are wearing flip-flops. I see a few other *khawajas* (white person) in the yard: a woman from UNMISS and two men from UNDP and USAID. There is also the head of UNMISS Civil Affairs department, who is Somali. Armed soldiers are everywhere, and their number seems to increase as soon as the Governor arrives, right after a woman asked everybody to take place in the meeting hall. The meeting is opened by a short welcome speech by CEPO Executive Director, followed by the Director General of the Ministry of Local Government and Law Enforcement of Lakes State. When the Governor

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[639] Larson, Ajak and Pritchett, *South Sudan's Capability Trap,* p. 10

[640] A boda-boda is a motor-taxi, the most common means of transport in several towns in South Sudan.

steps in the room, everybody stands up and sings SPLM Oyee, but the festive atmosphere is short-lived: the Governor is very angry because of the failure of most of the officials and administrators in the room to meet the local government dress-code, which requires uniforms for administrators, and tie and suit for Commissioners. He is very concerned by the image of respectability that the Local Government had to give to 'outsiders'[641]. The meeting, which already started two hours late, is delayed for another hour and a half because the participants are sent to change their clothes. (...)

[On the second day, towards the end of the gathering, after hours of group-work on several different issues of concern for the Local Government] the time is really limited and there are still two groups who have to present the outcome of their work. Their presentations are squeezed in less than ten minutes each - the others talked for about forty-five minutes each- and no final discussion of group-work is held. Then, the Governor steps in again, followed by the police band. They play something that could be the national anthem, and then the governor gives a very long speech in Arabic and Dinka, making jokes and provoking people's laughter. Executive Directors, all in uniform, also wear their hat while the governor is in the room. They did not during the whole day, the room was very hot. So, there was no time to discuss the outcome of group works, but there was time enough for one-hour speech of the governor[642].

 As it clearly emerges from this brief account, the local government has to comply with precise requisites in terms of its appearance. Obviously, in a militarized context such as South Sudan, this appearance has to do with the display of force (through the presence of the military), of authority (through the imposition of arbitrary time-management in the meeting) and of wealth (through the parade of cars). These elements can be somehow related to what Achille Mbembe called "aesthetics and stylistics of power", referring to body metaphors of greed and to ostentation of wealth and coercive power through ceremonialism and exhibitions of grandiosity characterizing power in post-colonial Africa[643]. In fact, what I am here referring to as the 'aesthetics of the state' has to do much more with the '*physique du role*' of the local government and with ordinary aspects of its everyday life which include the very physical appearance of local government officials and officers, such as clothing[644], and the way in which they show how they perform their role to 'outsiders' (be it donors or citizens). The existence of local government buildings, for example, can be considered an integral part of the support to the creation of the

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[641] The Governor of Lakes State was the only government official who gave his speeches in Arabic and Dinka instead of English. My research assistant translated his speech for me.

[642] Field notes. Rumbek, 13-14 November 2013.

[643] Achille Mbembe, "Provisional Notes on the Postcolony," *Africa* 62, no. 1 (1992): 3–37.

[644] In one instance, a *payam* administrator I had to meet on behalf of a NGO during a consultancy refused to talk to me because I had arrived too late and he was not wearing 'proper clothes' (local administrators' uniform) (meeting with *payam* administrator, Nyal *payam*, Panyinjar County, Unity State, 25/11/2013).

'aesthetics of the state' at the local level. Indeed, the lack of proper offices for *payam* administrators was often cited as one of the main reasons why local authorities were unable to work[645]. In some cases, *payam* administrators even refuse to stay in their own *payam* because of the lack of a permanent structure that could host their office[646]. This task was actively accomplished by USAID and by the LGRP component implemented by PACT, among others[647]. Indeed office-building absorbed consistent parts of local government support budgets[648].

The aesthetics of the local state, however, is not only limited to strictly physical features, but also includes the staging of meetings and forums showing – or, to those who are excluded from it, such as ordinary citizens like the *boda-boda* driver, just giving a hint of - how the government process works.  In this, LGRP played a remarkable role in the wake of UNDP's support in moving around SPLM officials right before the end of the war, so that they could meet each other and also be seen by the southern population doing their job of talking and making decisions. Since 2006, indeed, the LGRP started supporting Commissioners' meetings, which were initially occasional – the first one was a consultation on the Local Government Framework - and later institutionalized in the Commissioners' Forums in 2009. In the absence of a proper delivery capacity of any kind of most local governments in South Sudan, this work of meetings and talks is given particular importance even if it doesn't give immediate practical results: for example, members of a civil society network supported by an international NGO engaging on mismanagement of urban land allocation in Bentiu town (Unity State) argued that their role was to bring government officials and ordinary citizens to talk, because otherwise government officials "always talk away from here", while if they talk to the people "even if it takes time at least the people can know that their voices have been heard"[649].

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[645] Interview with chief of Mundari Bura *boma,* Tindilo Payam, 03/04/2012; Speech of Kueryiek *payam* administrator during a peace-building workshop organized by the local NGO UCOET, 24/11/2010.

[646] Collective interview with residents in Tindilo Payam, 03/04/2012. Conversely, the existence of a permanent office was a matter of great pride for *payam* administrators (meeting with *payam* administrator, Nyal *payam*, Panyinjar County, Unity State, 25/11/2013)

[647] Interview to Chris Wulliman, AECOM, Juba, 01/11/2013; PACT report on LGRP LGB349

[648] For example, the voice "Infrastructure support for LGB, States and Counties" received the biggest share of the LGRP $5,745,511 budget for 2006 (UNDP, "LGRP Components and Budget."). Moreover, during my last fieldwork period in November 2013, the World Bank was starting a new project supporting the local government and one of its first activities was the construction of a new building for the Local Government Board.

[649] Personal communication with members of the Land Coalition, Bentiu, February 2013.

## 3.2 The 'legibility' of local government

The need to make legible and understandable what was previously accomplished through an extremely wide and varied set of practices mostly revolving around individual capacity and power can be considered an utmost goal of the many capacity-building programs undertaken in the framework of LGRP in the wake of trainings carried out by OLS and USAID in the early 2000s, but also of the several other capacity-building projects sponsored by other donors such as GTZ, DFID and the Japan International Cooperation Agency (JICA)[650]. Indeed, as has been shown, capacity building has been one of the most vocally expressed needs of the SPLM since the very beginning of its relations with development agencies, becoming one of the major strategies of mobilization of foreign aid directed to the 'governance' sector. According to the Secretariat of Local Government at the dawn of the Government of Southern Sudan, everybody needed capacity-building in the New Sudan governance system, ranging from administrators to store-keepers:

> "Capacity building is needed in the fields of administration, management, public policy, decision-making, leadership, planning, budgeting, human resources management, management controls, office administration, accounting, public finance, local government finance, financial management, local government administration, council management, rule of law, gender and development, decentralization, land administration and other related subjects as well as computer skills, monitoring and evaluation"[651]

In fact, Larson, Ajak and Pritchett maintain that capacity building in South Sudan remained an ill-defined claim, becoming, as elsewhere in Africa, "just another catchall expression of development jargon"[652] as soon as , in 2005, an "army of capacity-builders" arrived to South Sudan[653]. Capacity-builders were in South Sudan even before 2005, as we have seen, and they had started building SPLM's "government capacity" at least since 1999. Since then, a huge number of training manuals and curricula was prepared by different institutions. The process of recruitment and training of civil servants has been studied as part of the process of state formation in Western Europe, showing

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[650] Kenichi Shishido, "Letter to Cirino Hiteng Ofuho: Information on the Group Training Course in Japan 'Enhancement of Local Government Administration and Public Service,'" Japan International Cooperation Agency (JICA), (September 21, 2008), Local Government Board Archive; GTZ, *Orientation Course Curriculum for Local Government Administrative Officers, Part One of the Diploma in Local Governance*, n.d.

[651] Anai Mangong Anai, "Concept Paper on Capacity Building" (New Sudan Secretariat of Local Government, July 14, 2005), Local Government Board Archive.

[652] Larson, Ajak, and Pritchett, *South Sudan's Capability Trap: Building a State with Disruptive Innovation*. p. 7.

[653] Ibid.

that genuine logics of meritocracy and of the pursuit of a common good became prevalent only when state bureaucracies were already in place, replacing logics of integration and patronage[654]. The manual introduced thus addressed both specific topics concerning South Sudan, and general issues and values of the civil service. They usually comprised of a general overview of Southern Sudan legal framework for local government and public administration and a historical part on Sudan and its local government tradition - with, occasionally, an awkward paragraph on southern 'tribes' and customs[655] - before turning to more universalistic terms to illustrate the due values and functioning of local government, sometimes providing examples from other African countries. This part usually focused on management, intergovernmental relations, revenue raising, organizational charts, recruitment processes and so forth, but also included sections focusing on individuals in the public administration, on the ethos they should develop, on their leadership functions, on how they should reject corruption and be animated by higher goals concerning public good[656].

One of the fields that received particular attention in the capacity-building process was the function of planning and budgeting, which was also one of the focuses of the LGRP project since its initial phases. From UNDP point of view, building the capacity of the local government in planning and budgeting was of vital importance to ensure the ownership of projects funded by the international donor community and enhance a form of legitimacy of the local government which was primarily based on its delivery capacity: "In the absence of local government plans, big spending of external agencies are likely to marginalize local governments and undermine their credibility in the eyes of the people for years to come"[657]. This contributed to give a sense of urgency to a mechanism which was generally understood as a good entry point for building

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[654] Wolfram Fischer and Peter Lundgreen, "Il Reclutamento E L'addestramento Del Personale Tecnico E Amministrativo," in *La Formazione Degli Stati Nazionali nell'Europa Occidentale. by Charles Tilly (ed.) (1975)* (Bologna: Il Mulino, 1984).

[655] See for example Jayne Songole and Alice Mudiri, *A Manual of Traning Modules of County Administrators in Southern Sudan* (Nairobi, July1999).

[656] See for example GTZ, *Orientation Course Curriculum for Local Government Administrative Officers, Part One of the Diploma in Local Governance*; UNDP and Local Government Board, *Module Two: The Legal Framework of Southern Sudan Local Government*, Muzumbe University Capacity Building Program, 2007; UNISIS Nile Options and Skills for Southern Sudan, "New Sudan Local Government Secretariat Proposed Course for Training (Financial Framework)," August 2004, Local Government Board Archive.

[657] UNDP et al., "SPLM Local Government Planning Workshop," in *Final Report* (Rumbek, 2005). p.12.

state capacity[658], as well as a vital step towards increasing local government transparency and consolidating its relationship with citizens - which was also listed among the objectives of the LGRP.

In 2007, the "consolidated" process of planning and budgeting was started. It involved all the ten states of southern Sudan and one County in each state as a pilot. State Task Forces were formed to carry out assessments in the Counties and gather data on local needs in terms of development. Despite some initial resistance at state level for what was perceived as an interference from foreigners[659], in the following years planning and budgeting of development activities were routinely carried out on a yearly basis with the support of the program, and managed to involve, at least formally, also lower administrative levels. Local meetings gathering administrators, chiefs and representatives of Community Based Organizations were held at *boma* and *payam* level. Then at County level a meeting was held with the participation of the County Commissioner, the County executive director, *payam* administrators, representatives from County sectoral departments (education, health, etc.), *payam* chiefs, key traditional leaders, UN agencies and NGOs. Besides strengthening the hierarchical relationship from *boma* to County, needs and priorities identified in such meetings contributed to the County plan, which was to be submitted to the States for funding through government grants[660].

This huge production of paperwork, which included also agendas of meetings, minutes, reports and so forth can be considered, to some extent, as part of the aesthetics of the state that was in the process of being consolidated. It also helped the circulation of what was happening around the country in terms of local government establishment and organization. It made it 'legible', as I have argued earlier, organizing and standardizing at least the form through

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[658] Leonardo Romeo, "Local Governance Approach to Social Reintegration and Economic Recovery in Post-Conflict Countries. Towards a Definition and a Rationale"; Jackson and Scott, *Local Government in Post-Conflict Environments*,.

[659] James Sigin, "A Short Brief on the Programme Performance in Unity State from 2nd July 2006 to 2nd April 2008" (Bentiu: Local Government Recovery Programme, April 4, 2008), Local Government Board Archive. LGRP Project Officer based in Unity state reported that the State Governor was initially against the idea of starting the State Strategic Planning, as he claimed that the state had already formulated a thirty-year Master Plan and did not need any other planning. Upon the insistence of the LGPR team, who emphasized the role of the Government of Southern Sudan in the decision of starting the process, a State Task Force was appointed but the committee never met until June 2007, right before the plan had to be submitted, with obvious repercussion on the quality of the information contained in the final document produced.

[660] Such gatherings were (and still are) typically funded by UNDP for what concerns logistics, needed stationery and the printing and dissemination of documents. Local Government Board, "Local Government Planning and Budgeting in Southern Sudan: The Rolling out of County Planning Process 2007," 2007, Local Government Board Archive.

which different decisions were taken and circulated, through which local levels of government could be asked to report to the center and vice versa. But, most importantly, it made it legible to foreign donors, who then started having clearer and more institutionalized interlocutors for the negotiation of their programs, and written paper upon which to rely for the designing of further projects.

## 4 Building Communities

Part of the effort to render South Sudan political and social system legible also passed through what I have here identified as 'building communities' as the basic units of society. As the whole decentralization discourse, this was a policy that found widespread support both in SPLM/A circles and in the international donor community, whose interventions in the domain of local governance in the 2000s have been increasingly characterized by a "communitarian"[661] trend. This trend favours the adoption of international policies supporting the institutionalization of governance structures based on customs, and has resulted in the co-optation of local 'traditional authorities' in the local government apparatus in several African countries. In spite of its resemblance to British colonial indirect rule[662], it however finds several easy justifications which have to do, first and foremost, with the incredible resilience of the institution of chiefship in the African continent and the acknowledgment that it is more effective to "go with the grain"[663] in order to achieve local governance and development outcomes, rather than attempting to bring dramatic changes in the exercise of power over short periods of time. Despite its initial skepticism of recognizing too much power to traditional authorities for fear of further politicization of ethnicities, the SPLM found itself facing southern fragmentation, and the chiefs represented the most enduring and legitimate institution it could rely upon in the attempt to build a governable polity.

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[661] Dominique Darbon, "Crise Du Territoire étatique et Communautarisme: Les Nouveaux Enjeux Idéologiques de L'intégration En Afrique Noire".

[662] Jesse C. Ribot, "Democratic Decentralisation of Natural Resources".

[663] Tim Kelsall, "Going with the Grain in African Development?," *Development Policy Review* 26, no. 6 (November 2008): 627–55.

## 4.1 Converging on tradition as a core element of local governance

As shown in previous pages, the chiefs had played an outstanding role in local governance all along southern colonial and post-colonial history. Successive governments managed to establish only an extremely limited control over southern territory, and relied on local chiefs for resource-extraction as well as for the delivery of (few) basic services. Local chiefs remained, for a long time, the only authorities recognized by the people, enjoying widespread legitimacy in spite of their colonial origins[664]. During the war, both the government and the SPLM interfered with the local patterns of reproduction of chiefly powers inherited by the colonial period more intensely than what had been done by successive post-colonial governments during the first thirty years after independence. In the 1990s, the National Islamic Front (NIF) regime re-established the Native Administration (which had been abolished by Nimeiri in the 1970s) and appointed many new chiefs in Juba, which became part of a complex system of control from the centre over southern IDPs[665]. From its part, the SPLM relied heavily on chiefs' mediation with local populations to secure food and manpower to continue the war. Some observers suggested that, in different ways, the legitimacy of the chiefs was negatively affected by the cooptation from the superior powers of the government and of the rebel movement with their respective exploitative systems. Marcus Hoehne, for example, argues that the proliferation of chiefs and traditional courts created by the SPLA in its controlled areas contributed to the erosion of legitimacy of chiefs' authority. Chiefs were co-opted into the war governance systems, their decisions became liable of being ignored or nullified not only by military authorities but also by any random armed youth, who became accustomed to a different kind of chain of command, loosing discipline and respect for customary social control mechanisms based on chiefs' authority, mediation and restorative justice[666]. The social fabric which guaranteed the effectiveness of traditional

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[664] Johnson, "The Sudan People's Liberation Army and the Problem of Factionalism"; Douglas H Johnson, *The Root Causes of Sudan's Civil Wars*.

[665] For an account of the mechanisms of control and of transformation into cheap labour force of southern IDPs by the Khartoum government with the involvement of humanitarian aid, see: Mark Duffield, *Guerre postmoderne. L'aiuto umanitario come tecnica politica di controllo* (Casa editrice il Ponte, 2004).

[666] Markus V. Hoehne, "Traditional Authorities and Local Government in Southern Sudan"

conflict-resolution mechanisms was disrupted by the diffusion of small arms and the secularization of beliefs around the act of killing[667].

While acknowledging that the huge increase in the number of chiefs due to new war-related appointments beside pre-existing spiritual leaders and government-appointed administrative chiefs, Cherry Leonardi argues instead that the institution of chiefship managed to keep its role of mediating demands from the government with the local communities both in garrison towns controlled by the government and in SPLM/A liberated areas. In her interviews to chiefs appointed in Juba by the government of Sudan, as well as to those in SPLM/A controlled areas, their protective role vis-à-vis their communities emerges. For example, chiefs' houses became the places where food for the soldiers was gathered and prepared, in order to avoid them entering into villages, reducing the risk of looting and rapes. In the 1990s, in SPLM-controlled Rumbek and Yei, chiefs were granted military ranks and given military training, so that they could acquire knowledge of military laws and could use them against the soldiers. Some chiefs were appointed by the SPLM when local chiefs were not supportive of the movement: appointed chiefs engaged in the collection of food and recruits. A chief was considered a good chief if he was capable of equally distributing recruitment among the families under his jurisdiction, in order to protect his people as much as possible, and this mediation role of appointed chiefs allowed them to acquire legitimacy through non-conventional patterns of legitimation. More importantly, both the army and the SPLM engagement with the chiefs ultimately confirmed and even increased the importance of chiefship as an institution[668].

Despite these great changes in the exercise of chiefship and in its sources of legitimacy, towards the end of the war, the chiefs continued to be described as the "only surviving repository of traditional forms of authority"[669]. The SPLM

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[667] Sharon E. Hutchinson, "A Curse from God? Religious and Political Dimensions of the Post-1991 Rise of Ethnic Violence in South Sudan," *The Journal of Modern African Studies* 39, no. 2 (June 1, 2001): 307–31. In her works on Nuer society, Hutchinson shows how, with the diffusion of fire-arms and the enormous increase in the number of violent deaths during the war, it became impossible to trace a direct link between the slayer and the slain which represented one of the pillars of Nuer social system of keeping violence under control. In order to justify de-humanization of the act of killing, people started associating victims of fire-arms to victims of lightning, which entailed the creation of a direct link between the family of the victim and the divinity. In order to prevent a loss of importance of this special link, previously reserved to the extremely rare victims of natural events, Riek Machar convinced the Nuer that victims of the 'government war' were different from victims of local inter-ethnic fighting, and free from moral obligations.

[668] Leonardi, *Dealing with Government in South Sudan*.

[669] Mark Duffield et al., "Sudan: Unintended Consequences of Humanitarian Assistance. Field Evaluation Study", p. 44

leadership expressed its gratitude to the traditional authority in the 2004 Kamuto Declaration, when it started associating the claim to be fighting for rights and freedoms of culture and custom expressed in the popular motto of 'unity in diversity' with the protection and promotion of the institution of chiefship. Authoritative representatives of the SPLM were called to express their views on traditional authority and to trace the history of such an institution, in all its facets and its diversities, among the many populations of southern Sudan. The historicization of traditional authority allowed them to acknowledge the changing definition of chiefship and of its position between power and the people which occurred since pre-colonial time to present days, passing through British colonialism, Arab domination and the war. At the same time, however, it often ended up romanticizing not only the role of the chiefs, portraying them as agents of resistance against alien power, but also the character of the 'traditional communities', who were reified into objects living according to customs, untouched by modernity. In a speech delivered to a workshop on the role of traditional authority in local governance held in Rumbek at the end of 2004 with the support of UNDP, Deng Biong Mijak, the then Chief of Justice in SPLM administration, argued that:

> "Even after the introduction of modern central state in the Sudan, this traditional social organization continued in the rural communities in Southern Sudan and in the other marginalized areas, most of whose people remain up to date unexposed to modern ways of life and continue to lead their normal traditional life"[670]

Building upon the idea that the chiefs were the sole institution which had endured throughout decades of strife, the Local Government Framework also maintains that:

> "The traditional authorities, although having the recognition of the people, have been marginalised over the years. Any system of local government developed for Southern Sudan must recognise the traditional authorities and incorporate their mechanisms to be responsive and successful"[671].

This idea of the traditional authority as the "custodian of the people's customs and traditions"[672] was also matched with narratives portraying the chiefs as great contributors to the liberation struggle, notwithstanding the actual reality of resistance against the rebel movement just as much as against the government. As it could have happened in any proto-nation-building

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[670] Biong Mijak, "Present Role of Traditional Authority in South Sudan: The Judicial Functions." p. 1.
[671] Government of Southern Sudan, *Local Government Framework*. p. 7.
[672] Deng, "Traditional Authority in the Sudan. An Insider's Perspective."

attempt, in the history wrote by the winners there was very little mention of these stories of opposition to SPLM rule. This narrative constituted the basis for the integration of local chiefs in the decentralization policy that was being drafted in the immediate post-war years.

By 2004-5, there had been a proliferation of local authorities at *boma* level (chief, *boma* administrator, *boma* Liberation Council Chairman). According to Leonardi, this gave cause for complaints as, even though it was clear that Boma Liberation Councils were not really functioning, the division of roles was totally unclear[673]. Feeling marginalized also due to the actual continual interferences of the SPLM in their daily activities[674], "The chiefs successfully conveyed their resentments and criticisms of their new rivals to teams of SPLM administrators and judges and United Nations Development Programme (UNDP) consultants in 2005, feeding into local government policy with enduring effect"[675].

Indeed, the incorporation of the chiefs in the local government system was encouraged by several actors, with subtle differences between those who sponsored traditional authority as a judicial and executive body (UNDP, USAID, Swiss Government), and those mostly focusing on its administrative role with particular regard to land governance (World Bank, FAO, USAID). UNDP funded the first study on the perception of traditional authority among the population in early 2005, and shared its results in workshops in Yei, Poptap and Rumbek[676]. Besides UNDP, the Swiss Government was particularly active in the promotion of traditional authority in the governance system, particularly building upon the outcome of the Kamuto Declaration, which affirmed respect for 'cultures' and the "role and responsibilities of Traditional Leaders and Chiefs in all aspects, particularly as regards the tenure and ownership of land and other resources belonging to their respective communities"[677]. After the CPA, the Swiss Government facilitated a political economy analysis conducted by a number of southern Sudanese intellectuals. Their analysis pointed to the fact that violent conflict was likely to erupt in Southern Sudan because, following the peace agreement, there was no longer a "common enemy" to be used as the unifying

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[673] Leonardi, *Dealing with Government in South Sudan*.

[674] Hoehne, "Traditional Authorities and Local Government in Southern Sudan."

[675] Leonardi, *Dealing with Government in South Sudan*. p. 184.

[676] Kwesi Kwaa Prah, "Report on Traditional Authority Framework Ratification Workshop in Yei, Poptap and Rumbek" (Rumbek: UNDP, January 2006), Local Government Board Archive.

[677] SPLM, "Kamuto Declaration" (Chiefs and Traditional Leaders Conference, Kamuto, Kapoeta County, New Sudan, 2004), http://www.sudanarchive.net/cgi-bin/pagessoa?a=pdf&d=Dslpd184&dl=1&sim=Screen2Image. Section 12.1.

factor around which Southern Sudan's multiple identities and cultural diversities could be gathered. Moreover, after forty years of civil war, hardly any formal institution had remained and traditional structures assumed an important social and political role. The analysis concluded that the multiplicity of conflicting issues in South Sudan (access to water, grazing land, territory, changing alliances during the war etc.) could only be contained if traditional authorities were given a platform where these issues could be discussed. This is when the House of Nationality project was launched. The House of Nationality was the title of a booklet written in 2002 by Peter Adwok Nyaba, a senior SPLM member who had rejoined the movement in the mid-1990s after having fought for some years on Riek Machar's side. The booklet contained a series of reflections collected during a workshop on traditional authority in Southern Sudan organized in Nairobi by the Swiss Embassy in Kenya and represented one of the several documents that were written by southern Sudanese intellectuals in support of the idea of enhancing the multitude of ethnic and cultural identities of the southern region[678]. One of its supporters, Jacob Akol, went so far as to declare the goal of "placing ethnicity at 'the centre of governance'"[679]. This idea was particularly popular among non-Dinka SPLM members, such as Riek Machar and Adwok Nyaba himself, more or less explicitly for the fear of Dinka-dominance. The project was not successful: despite Riek Machar's support, John Garang was skeptical about the promotion of "smaller ethnic groups at the expensed of larger ones"[680] and feared that it would have become an obstacle to the establishment of a modern state.

The idea of enhancing ethnic and cultural rights survived to Garang's death and was received with more openness by his successor Salva Kiir. In 2006, the Swiss Government sponsored the first of a number of study tours to South Africa, Botswana and Ghana, to show to South Sudanese chiefs 'how [their] brothers and sisters govern traditionally in the modern world'[681]. In 2007 a conference was held in Rumbek to share this experience. During this conference, described by Cherry Leonardi, chiefs were addressed as the representatives of the government at the grassroots, and were even charged with the realization of MDGs[682]. This first experience of study tour expressed for the first time the interesting conviction that, while being the manifestation of

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[678] Some of these documents are available on the website of the House of Nationality: http://www.houseofnationalities.org/

[679] Leonardi, *Dealing with Government in South Sudan*. p. 187.

[680] Ibid. p. 187.

[681] Ibid. p. 188, quote from interview.

[682] Ibid.

specific customs and traditions of 'local communities', traditional authority's incorporation in the governance structure could also have a blueprint.

International support to the study of how traditional authorities could be incorporated into the local government system continued for reason similar to those advanced by the SPLM: traditional authority were considered to be the only form of effective and legitimate authority in most of the southern region. A similarly essentialized vision of their role and of the communities they ruled was given, with less historical depth:

> "A major defining feature of Southern Sudan lies in the tribal nature of its social organization, identity and the adherence to traditional culture and systems. The only constant throughout history in terms of governance practice has been the role of traditional authorities in the leadership of their communities"[683]

Indeed, the inclusion of traditional authorities in the local government structure was strongly encouraged by UNDP within the framework of the LGRP, which, in a report published in 2010, seems to consider their inclusion in the Local Government Act as the effect of a project funded through the Democratic Governance Thematic Trust Fund (DGTTF)[684].

After the enactment of the LGA, in 2009, a conference gathering Kings, Chiefs and Traditional Leaders was held in Bentiu, during which the government again publicly thanked the traditional authorities for their support during the war, and urged them to contribute to the implementation of the Local Government Act. The legal bases for the strengthening of traditional authority were more solid, and international support was shifted to the creation of Council of Traditional Authority Leaders (COTALs) in each of the ten states. In launching the new phase of the project, prof. Kwesi Prah from the Centre of Advanced Studies on African Societies in Cape Town, the project coordinator, addressed the audience saying that:

> "We need to remember that given the eminently rural and traditional character of African societies, it's hard to reach out to the communities without using institutions they have trust in, institutions they have known and which have sustained them from time immemorial. In effect we are saying that, any government from Juba or Khartoum would need to work with institutions which have won the hearts of the people. We are suggesting that partnership and integration of LG and TAs is under current historical and social

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[683] Susan Soux, "Southern Sudan: Local Government in Complex Environments. Project Assessment" (UNDP, 2010). p. 7.

[684] The DGTTF was created in 2001 as a support tool to UNDP to promote democratic governance, and in 2006-2008 it supported a project aimed to organize consultations with traditional authorities to evaluate the possibility of including them in the Local Government Act. Ibid.

circumstances ideal. Let us put the TAs to good use. There are no other effective ways presently of achieving local government in rural Africa"[685]

COTALs were foreseen by the LGA as "custodian(s) of the customs and traditions of the people of Southern Sudan as a source of legislation" at state level, with a representation at national level. Following arguments about local chiefs' function in filling the glaring 'institutional gap' at the local level[686], and about their outstanding role in local peace-building[687], The Swiss government committed itself to four more years of support to traditional governance mechanisms for the creation of COTALs. They were envisioned as institutionalized forums for the protection of cultural identities and for dispute resolution, as emphasis was always placed on 'traditional mechanisms' which had allowed southern Sudanese 'communities' to live in relative peace –or at least to be able to settle conflicts- before the civil war.

Towards the end of 2009, states started to formulate their COTAL bills. In June 2010, the Swiss Federal Department of Foreign Affairs (FDFA) organized a workshop in Juba in which a template for the preparation of the bill was presented, and the delegation of the ten states including those who had not started the process of formulation, were invited to draft a bill which was later discussed and improved under the supervision of Prof. Prah[688]. According to Cherry Leonardi, the process was influenced by the South African model (perhaps also because of the strong facilitative role played by Prof. Prah) and by international discourses of cultural rights, ethnic identity and compatibility of tradition and modernity. However, "the debates at state level tended to move away from the idea of representing each tribe, since this led to disputes as to what constituted a tribe, and recurred instead to having representatives from each county"[689]. Indeed, in the draft National Council of Traditional Authority

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[685] Local Government Board and Federal Department of Foreign Affairs of Switzerland (FDFA), "Council of Traditional Authority Leaders (COTAL) Workshop," Draft Report (Juba, December 2, 2009), Local Government Board Archive. p. 7.

[686] Kwesi Kwaa Prah, *Unity in Diversity: South Sudan COTALs Study and Familiarization Tour Report (South Africa, Botswana and Ghana), January 2013* (Cape Town: Centre for Advanced Studies of African Society (CASAS), 2013).

[687] William F. Fox, *Fiscal Decentralization in Post-Conflict Countries*, Best Practice Paper (USAID, 2007). This concern is also visible in the choice of a 'Peace Building Advisor' as the representative of FDFA in overseeing the actual establishment of COTALs. Elisabeth Ibscher, "Letter to the Undersecretary of Local Government Board: DSA for Election/selection Preparation Mission Concerning COTAL Upper Nile," June 20, 2011, Local Government Board Archive.

[688] Local Government Board and Federal Department of Foreign Affairs of Switzerland (FDFA), "Council of Traditional Authority Leaders (COTAL) Workshop."

[689] Leonardi, *Dealing with Government in South Sudan*. p. 189.

Leaders Bill (2012)[690], as well as in several other COTAL bill drafts[691] the "community" is defined exclusively in geographical terms in spite of frequent references to ethnicity, customs and tradition[692]. In fact, however, 'tribes' were indeed kept into account in the few cases in which COTAL members were elected: in Upper Nile, for example, the Koma community, a minority group inhabiting part of Longoshuk and Maiwut counties was granted special representation besides the three members each County had to express according to the Council of Traditional Authority Leaders Bill of Upper Nile state[693]. Indeed, the election/selection of chiefs remains a highly politicized event, associated to a community's claim of formal existence –as will be seen in the next chapter- as well as to its relation with government. According to section 117(1) of the LGA, chiefs can be elected or selected according to the local tradition, and should be removed upon demands of the community. Since the 1970s, the idea of election of the chief has taken root and it is widely practiced among most southern Sudan populations. However, as Leonardi et al. note, the interpretation of how the election has to be carried out varies from one place to another both in its form and in its constituency[694]. Both in Lakes and Unity state, election seem to take place, although on a quite irregular basis. People line up behind their preferred candidate at election held at *boma* and *payam* level[695], but sometimes the candidate is just one, coming from the dominant lineage and reproducing the hereditary character of chiefship disguising it behind formal election. If the strict blood relation between a chief and his successor could have been challenged by election, and by the fact that in several areas of South Sudan education is considered increasingly valuable for would-be chiefs, there is reason to believe that heredity is still prevalent in many places. For example, in Biu *payam* (Pariang County), in early 2013, election were held after the new Commissioner had removed all the Head Chiefs in the County. Only one candidate, coming from the dominant family, showed

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[690] Government og the Republic of South Sudan, "The National Council of Traditional Authority Leaders Bill," 2012, Local Government Board Archive.

[691] For example Upper Nile and Central Equatoria, see LGB

[692] By 2013, COTAL bills passed in Upper Nile, Jonglei, Central Equatoria and Eastern Equatoria. National COTAL bill under review. Prah, *Unity in Diversity*.

[693] Peter Mayom Pur, "COTAL Election/Selection Upper Nile State" (Malakal: Ministry of Local Government and Law Enforcement, Upper Nile State, July 15, 2011), Local Government Board Archive; James Ruac Kun, "Formation of Counties Elections/Selections Committees for COTAL Members" (Ministry of Local Government and Law Enforcement, Upper Nile State, June 10, 2011), Local Government Board Archive.

[694] Leonardi et al., "Local Justice in Southern Sudan."

[695] Interview with Rubkhona County Commissioner; Interview with civil society representdentative, Pariang County; group interview with Geng Geng Payam court members

up, as nobody had the courage to challenge him. Some youth of another family were unhappy with the situation and provoked clashes on the day of the election, causing their suspension[696]. Leonardi also reports about single-candidate election in Juba County, where the administrator was forced to accept that the community had already chosen and it was impossible to impose other candidates[697].

## 4.2 "The land belongs to the community"

This idea of cultural and ethnic rights as an outstanding component of the right to self-rule was enduring, and it was also transposed into economic rights giving a crucial contribution to 'building communities'.

Memories of eviction of land and exploitation of southern natural resources with no benefits to southern citizens have been accumulated throughout southern Sudan modern history and, as shown in the previous paragraph, strongly influenced the SPLM/A position as a rebel movement on land governance, as well as southern Sudanese public opinion. The idea that "the land belongs to the community" was very strong during the years of the war and it involved both the right to exercise authority over the land through traditional leaders, and the very ownership of the land, that should not be taken by the government or given away to foreigners without the local people's consent as it was done by the Government in Khartoum. According to David K. Deng, an American researcher with South Sudanese origins, the principle that "the land belongs to the community" was used by late John Garang to rally support during the war. The statement later became a key component of the SPLM/A negotiating position during the peace talks in Naivasha, with the movement claiming the recognition of customary rights on southern lands in opposition to northern state-centric policies to prevent the government to take direct control of southern natural resources[698]. In 1994, in Kamuto, land was indeed one of the resources upon which the chiefs were called to exercise their authority.

With the end of the war approaching, in September 2004, a consultative workshop on land policy was held in Nairobi with the participation of representatives from the SPLM Secretariat of Agriculture and Animal Resource

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[696] Personal communication with residents of Pariang county, Pariang, February 2013
[697] Leonardi, *Dealing with Government in South Sudan*.
[698] David K. Deng, "'Land Belongs to the Community". Demistifying the 'Global Land Grab' in Southern Sudan," April 6, 2011

and the Secretariat of Legal Affairs and Constitutional Development, FAO, USAID, PACT and Norwegian People's Aid (NPA) to discuss the formulation of a land policy recognizing customary land rights to the people in their 'areas of origins'. The workshop led to the creation of a very short-lived Land Policy Steering Committee, which ceased to exist as soon as the Government of Southern Sudan was created in 2005.

In the CPA, land was put among those natural resources whose ownership was not to be addressed directly in the agreement, but at the same time it recognized the existence of different levels of government competent for regulating land tenure. The Wealth-sharing agreement instituted a National Land Commission (NLC) and a Southern Sudan Land Commission (SSLC), with quite vague and similar mandates. Among other things, the commissions were established as arbitration bodies, with the additional task of conducting assessments to determine appropriate land compensation, advising different levels of government on policy coordination; promoting studies on land use practices in areas where natural resources exploitation can occur. The Wealth-sharing agreement recognized the existence of two different legal systems over land in Sudan, one based on *shari'a* for the northern region, and one based on customary law in the southern region. In South Sudan, the SSLC was mandated to make relevant recommendations about land policy reform, in application of the CPA provisions and the Interim Constitution of Southern Sudan (ICSS). The commission started operating in 2006, despite some reticence of the newly established Government of Southern Sudan. The latter did not even bother to enact a law or a decree for the legal establishment of the SSLC, but only appointed its members[699].

In 2007, the international community got more strongly engaged in the land governance reform and supported the creation of a Land Coordination Forum to bring together representatives of international agencies such as FAO, NPA, the Norwegian Refugee Council (NRC), the United States Department of Agriculture (USDA), the European Commission (EC), UNHCR, ARD Tetra Tech[700], and of the SSLC with the aim of sharing information and organizing

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[699] De Wit, Tanner, and Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences"; Office of the President, "Presidential Decree 52/2006 Appointing SSLC Members" (Government of South Sudan, June 27, 2006), Local Government Board Archive. The Government hesitation about creating proper institution in charge with dealing with land governance can be also noticed in the repeated opposition to the creation of a Ministry of Land.

[700] ARD Tetra Tech, a contractor of the US government, has been administering USAID's Sudan Property Rights Program since 2006. Previously it was involved in conducting studies and assessments on decentralization in Africa on behalf of the same agency.

stakeholders' consultations on land policy development[701]. Consultation workshops were held between 2007 and 2008, bringing up key issues such as land ownership, land administration system, compensation of individuals and communities for the loss of land due to public or private investments, women's land rights, resettlement of returnees and IDPs[702]. At the end of the consultation process, the Land Act was passed in 2009, the same year of the Local Government Act and the Investment Promotion Act.

The same round of consultations held for the Land Act should have also brought to the formulation of a Land Policy. The latter, however proceeded at a slower pace, allegedly due to internal tensions between the SSLC, in charge of policy formulation, and the Presidency over the establishment of a Ministry of Land. While the latter was reluctant to delegate powers on land to a body outside the Office of the President, the Land Commissioner advocated for the transformation of the Land Commission into an independent Ministry, with his position being upgraded into that of the Minister[703]. After Southern Sudan referendum, increased efforts have been devoted to push the process of approval of the Land Policy in order to clarify some of the controversial aspects of the Land Act, which is considered too vague, ambiguous and full of contradictions with other laws by the very organizations who participated in the process of its formulation[704]. Between 2011 and 2015, three Draft Land Policies were submitted to the Council of Ministers, but none of them made its way through the process of approval by the National Legislative Assembly[705].

While initially recommendations for the creation of a Ministry of Land were included in the Draft Land Policy 2011[706], in the later drafts the competence on land was attributed to the already existing Ministry of Housing and Physical Planning, as the creation of a new Ministry would have been too expensive for a government implementing austerity measures and already

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[701] Gabriella McMichael, "Landmines and Lang Rights in Southern Sudan" (Geneva International Centre for Humanitarian Demining, November 2010).

[702] De Wit, Tanner, and Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences."

[703] Personal communication with international expert, Juba, October 2013; Interview with Robert Ladu Luki, SSLC chairman, Juba, 05/11/2013.

[704] According to Mark Dawson, Chief of Party in ARD Tetra Tech interviewed in Juba in October 2013, there are forty-seven inconsistencies between the Land Act, Local Government Act, the Mining Act, the Investment Act, the Petroleum Act and other acts relevant to the foreign investment sector. Interviewed in Juba, November 2013.

[705] Interview with NPA senior staff, Juba 2012; personal communication with international expert, 2015.

[706] Southern Sudan Land Commission, *Draft Land Policy*, 2011.

under severe financial strain[707]. Even in the absence of a Land Policy, the government was pushed to delegate competence over land to the Ministry of Housing and Physical Planning, as advocated for in the draft document, because of international pressure. ARD Tetra Tech and the European Commission, particularly, identified the lack of an independent institutional interlocutor as one of the main challenges to bring the Land Policy to the attention of the Council of Ministers[708]. With the restructuring of the Ministries in the national government in July 2013, the Ministry of Lands, Housing and Physical Planning thus replaced the Ministry of Housing and Physical Planning. A Land Resources committee was also created in the National Legislative Assembly, leaving the SSLC with an even less clear mandate, besides its function as an arbitration body.

The stronger engagement of international partners was thus crucial in speeding up the process. Particularly, since 2009 the US reinforced its presence in the land process trying to overcome the lack of coordination among international partners through the revitalization of the Land Coordination Forum[709]. As it often happens in a situation in which "expert" knowledge is required to justify the technical nature of interventions, ARD Tetra Tech assumed a leading role not only in the policy-making process: in 2011 it started two pilot projects for land demarcation in spite of all the inconsistencies in the legal framework and of the fact that the Land Policy process had not been finalized yet[710]. The EC also decided to invest more on the policy formulation process appointing a consultant for the Ministry of Land, Housing and Physical Planning responding to the Rural Development and Food Security Department of the EU mission in Juba since July 2013[711].

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[707] Interview with Francesca Marzatico, EU Technical Advisor on Land Governance at the Ministry of Lands, Housing and Physical Planning, Juba, October 2013.

[708] Francesca Marzatico, "Challenges of Land Governance in the Making of a New Nation: Experiences from South Sudan".

[709] Sara Pantuliano, "Going Home: Land, Return and Reintegration in Southern Sudan and the Three Areas," in Sara Pantuliano (ed.) *Uncharted Territory. Land, Conflict and Humanitarian Action* (Practical Action Publishing, 2009), 153–70.

[710] ARD was conducting a pilot project to create County Land Authorities in Bor and Yambio, focusing however on different aspects in the two regions. In Bor, it was demarcating land and borders for town planning, while around Yambio it was focusing on demarcation in the rural areas. Interview with Mark Dawson, Chief of Party, ARD Tetra Tech, Juba, 1 November 2013

[711] Interview with the consultant, Juba, October 2013. In an earlier interview conducted in March 2012, Massimiliano Pedretti, EU Program Manager for Food Security in Juba, recognized the outstanding importance of working on land tenure to improve food security and peacefully settle land disputes, and the need for the EU to increase its efforts in this area.

ARD Tetra Tech and the EC bear the two constitutive elements of the international debate on land tenure, the former emphasizing the need to encourage private investments, the latter the need to improve livelihoods opportunities to increase food security. The approach of the two institutions to the development of the legal framework seems to be quite different: while the US contractor is very focused on the objective of 'getting the work done' – passing the land policy, demarcating areas, enforcing tenure security, promoting foreign investments-, the EC seems to be more focused on the very process of negotiation and on the role of governmental actors in it. ARD representative seems to believe that the whole of the customary tenure system had collapsed during the war and that no alternative administrative system for land issues was in place before the Land Act was passed. By contrast, the position of the EU seems to be more sensitive towards the complex system of relations – including local government and administration - involved in regulating the control, access and use of land[712]. Nevertheless, both institutions agree on the need to strengthen tenure security, and on the idea that the legal recognition of communal rights, together with the creation of an institutional framework that ensures their effective protection, is the best way of protecting ordinary people's interests.

With this strong support from prominent international partners, "the land belongs to the community" was modified into "the land belongs to the people" as soon as it had to be put into a written form in the Land Act. Robert Ladu Luki, chair of the South Sudan Land Commission since 2006, explains this change in a somewhat confusing way, pointing at the "divisive" character of the "community" concept and arguing that while communities remain central to the classification of land with reference to its "protection", the "people" need to be identified as the "sovereign authority" over the land[713]. This semantic change seems to aim at privileging a national political unit over particularistic political identities, leaving room for possible individualization of land property. Most government officials, including Robert Ladu Luki, seem however not to challenge the continued centrality of the 'community' in managing the land as an economic asset, which emerges from the recognition of customary rights to land administered by the traditional authority. The double positioning of the traditional authority in the local government system -organized in chiefdoms and chieftainships corresponding to local government and administrative units -

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[712] Interviews with senior staff from ARD and EU, Juba, October-November 2013.
[713] Robert Ladu Luki, "Land Issues under the New Land Regime" (Presentation, Acholi and Madi Peace Conference, Torit, April 17, 2012).

and in the land administration system means that the overlapping between the statutory unit of local government and the customary one of the chief is enriched by the latter's authority in the control and management of land as a political and economic resource. This was indeed something envisaged also by international land experts, if one considers that in 2004 a report commissioned by FAO suggested the support of policies using the *payam* territory as a "good proxy" for the customary land management territory, the so-called 'area of origin'[714].

The Draft Land Policy seems to introduce a new principle according to which community land rights are administered by County and *payam* level civic authorities[715], recalling institutional arrangements put in place in other contexts where communal customary rights to land are administered by plural institutions (councils or committees) established as corporate entities[716]. The Land Policy also highlights a number of challenges deriving from the complete delegation of the power of land allocation to traditional authorities. These challenges reflect those identified by international land experts, and include concerns about women's right to land, transparency, need to ensure post-war resettlement and provide services. However, in trying to cope with these challenging aspects, the Draft Land Policy confirms the correspondence between the "community" and the territory defined by the local government unit. As a senior official of the Ministry of Agriculture in Unity State puts it: "The land belongs to the community means that the nine counties belong to nine different clans of Nuer (...) [but] (t)he owners of the land are the county authorities"[717].

## 5. Decentralization: a Rashomon effect[718]?

The previous paragraphs have shown how the local state structure was designed by the joint effort of the SPLM and of its international partners. The framework was well thought: it built upon existing institution, it tried to

[714] Paul De Wit, "Land and Property Study in Sudan".

[715] South Sudan Land Commission, *Draft Land Policy*. p. 34.

[716] Roberta Pellizzoli, "Diritti Di Accesso Alla Terra E Autorità Nel Sudafrica Post-Apartheid: Il Communal Land Rights Act E La Retorica Dell'uguaglianza Di Genere," *Afriche E Orienti* Numero Speciale I (2008): 90–104.

[717] Interview to Director General of Agriculture, Unity State Ministry of Agriculture and Forestry, Bentiu, February 2013.

[718] The 'Rashomon effect' has a relatively well established history in ethnographic literature to explain why ethnographers disagree on the object of their observation. An overview of its usage can be found in Karl G. Heider, "The Rashomon Effect: When Ethnographers Disagree," *American Anthropologist* 90, no. 1 (March 1988): 73–81.

combine aspects of a 'modern' state with 'traditions and customs', it emphasized the peculiar character of southern Sudanese society of being extremely diverse and of needing protection and at the same time enhancement of this diversity in order for (vaguely defined) 'communities' to become active subjects of their new-born common state.

Obviously, reforms take time to be implemented. It is not my purpose here to point at all the many aspects which are still, so far, lagging behind in the implementation. Moreover, the very implementation of this reform has been brought to a halt by the sudden break out of the war in December 2013, and many of the provisions which were contained in existing laws are likely to be changed following negotiations between the Government of South Sudan and the rebels of the SPLM-In Opposition, who consider the management of the local government of utmost importance. However, I believe that some of the non-compliances with the reform visible in 2013 during my last fieldwork, have less to do with contingent problems than with a specific pattern of state-making which involves the SPLM leadership and various social and political actors at sub-national level, that uses just the formal structure of the decentralized liberal state, as will be discussed in following chapters. The apolitical nature of the reforms establishing the local government and incorporating the traditional authority allows for something that could be referred to as a 'Rashomon effect'. Taking inspiration from Akira Kurosawa's film Rashomon, in which witnesses of a crime describe it in substantially different ways, Naoko Anzai (LGRP project manager) uses this expression to refer to the many inconsistencies and overlapping between the Local Government's and State's jurisdiction, which allow different understanding from different actors of what their roles and competencies are[719]. I would rather talk of a Rashomon effect on the whole discourse of decentralization: though sharing project formulation and the implementation of activities, the SPLM and the international donor community seem to have quite different understanding of what kind of state should emerge from the process of decentralization and of co-optation of traditional authorities. If international understanding is focused on the delivery of services and on governability, the SPLM is mostly concerned with control and counter-insurgency through co-optation -something made easier through the encouragement of vertical allegiances between elite members and their ethnic constituencies. One could argue that it is not the same typology of decentralization that we are talking about; but in fact, it is the very superficial

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[719] Naoko Anzai, "Notes on the Backgrounds of Local Governance Systems in South Sudan" (Unpublished, April 2012).

and administrative nature of international programs supporting decentralization processes which allows talking about decentralization without caring too much of what is put into its empty box.

## 5.1 "Decentralization is a fake!"… at least in its financial aspects

UNDP considers fiscal decentralization as the most important form of decentralization. Local government needs to be empowered to collect their own local revenues, as financially dependent local governments would not be able to accomplish their tasks, disappointing citizens' expectation and even possibly turning into a threat for peace and stability[720]. Indeed, the economic viability of the Local Government system was something kept in high consideration in the LGRP, which dedicated a consistent part of its budget to activities of planning and budgeting in order to quantify local government expenses. Local expenditures are financed through transfers from the states, local revenues and off-budget support including Constituency Development Fund and contributions from donors and other private organizations, with which they "may enter into partnership"[721]. Top-down financial flows go from the national Ministry of Finance and Economic Planning (MoFEP) to the states in the form of block transfers, conditional transfers for key sector-specific service delivery functions, capital transfers and operating transfers for running costs[722]. Overall, these resources are shared equally between the ten states: just to give a few examples, in 2008, each state received 30,800,000 SDG[723] in the form of block grants, 29,000 SDG operating transfer for gender, 44,580 SDG for agriculture, 20,000 SDG for commerce[724]. States are supposed to channel part of these funds (namely, sector-specific transfers) to the counties in the form of block transfers

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[720] UNDP, "Local Governance, Peace Building and State Building in Post-Conflict Settings," Discussion Paper, (2010).

[721] Government of Southern Sudan, *Local Government Act*. (Section 132(2))

[722] These flows also include those deriving from internationally supported programs targeting the Local Government through the national MoFEP, such as the Local Service Support program funded by the UK.

[723] The exchange rate between US Dollar and Sudanese Pound used to be 1:3. In 2011, South Sudan adopted the South Sudanese Pound (SSP), which has had an extremely volatile exchange rate due to the country dependency on oil. However, between 2011 and 2013, the exchange rate with the dollar has oscillated between 3 and 6 SSP per 1$.

[724] Ministry of Finance and Economic Planning, "Approved Budget 2008" (Government of Southern Sudan, December 20, 2009), Local Government Board Archive. In fact, there are some differences in a few categories of transfers, namely the allocation for salaries in the education sector (the number of employees vary greatly among the states), in the operating transfers for the Culture sector and in the capital transfers for Cooperatives.

for paying salaries, County development grants, and part of the operating transfers. County development grants are divided equally among Counties within a state, but a scoping mission for a World Bank-funded project warned that in 2011 Block transfers were often insufficient and County Development Grants rarely reached the County level[725]. At the same time, local revenue-raising capacity is extremely weak. It is very difficult to access data on actual state transfers to the Counties. In Unity State, the terrain where I spent the longest period of my field research, evidence seems to confirm that actual disbursements are consistently lower than the approved budgets. In 2008, for example, the nine counties received only 23,409,502 SDG, less than half of what was originally approved in the budget for 2008 and not even enough to cover the wages of local government employees[726].  In any case, GOSS transfers to the States in 2012 still only amounted to 16% of the total national budget[727]: this may explain why County Development Grants and other disbursements to the local government were so limited[728], and also suggests a tendency of not investing too much in the local government in spite of the fact that since 2005 the country started receiving oil revenues. This same centralistic tendency is reproduced also at state level: Unity State, one of the oil producing states getting the 2% of the total oil revenues according to the wealth-sharing protocol of the CPA, still did not share the revenues with the counties[729].

Besides not having great control over their purse, local government officers also occasionally witness off-budget flows of funds which elude formal control of the local government: these are the Constituency Development Funds (CDF), established in 2008 as a redistributive strategy in the hands of Members of Parliament (MP) at national level. CDFs are earmarked for county level development activities which are implemented and overseen by MP-appointed constituency development committees usually including the county

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[725] Zara Sarzin and Tesfaye Bekalu, "Scoping Mission for Proposed Local Governance and Service Delivery Program," Draft Aide Memoire (The World Bank, September 24, 2011), Local Government Board Archive. See also LGB485-1

[726] "Unity State 2009 Integrated County Plans and Budget (with Counties and Payams)," 2009, Local Government Board Archive.

[727] Sudd Institute, *Mapping Social Accountability: An Appraisal of Policy Influence on Service Delivery in South Sudan, 2006-2011* (Augustino Ting Mayai, 2012), http://www.suddinstitute.org/assets/Publications/Service-Delivery112012AMayaiFormat.pdf.

[728] "Unity State 2009 Integrated County Plans and Budget (with Counties and Payams)." In Unity State, for example, pledged grants amounted to 24,263,240 SDG for the nine counties, but actual disbursements, unequally allocated, only reached half of this amount.

[729] This was indeed a matter of great complaint among local government officers both in 2010 and in early 2013.

Commissioner [730]. If on one hand Naoko Anzai praised the institutionalization of such funding mechanisms for local constituencies for the sake of transparency[731], the same mechanism was strongly criticized by a senior member of the LBG:

> When we were in the bush, we created [the] County Development Fund. It was meant to be sent to the councils to build the counties. Do you know what happened? The politicians came here and they claimed what they called Constituency Development Funds, so the money was given to the politicians to go and make development in their constituencies, which I see it was a conspiracy to undermine the local government system. So people were building political constituencies rather than local government councils"[732].

Indeed, MPs seem to spend the CDF money with very poor coordination with the local administration, which sometimes leads to tensions and episodes of the latter's passive resistance. For example, in Tindilo *payam*, located in Terekeka county of Central Equatoria State, in 2010 the local MP had used the CDF money to build a beautiful concrete building to host a school, but had done so without involving neither the *payam* administrator nor the County authorities in the decision-making process, which was allegedly carried out with very little local involvement. In 2012, the school building was finished but it laid closed with no teachers, as the local administration did not want to include it in the consolidated planning and budgeting to prevent the MP to get 'too much publicity'[733], in spite of the local inhabitants' complaints[734]. Despite the limited extent to which Constituency Development Funds actually reached constituencies, their institutionalization suggests the will of giving priority to the maintenance of direct patronage relations between politicians and their communities instead of reinforcing the bureaucratic apparatus of service delivery, though none of the international development-related papers I had the possibility to access appeared to notice this point. It also reveals tensions between the central government, dominated by the SPLM elite, and local government officers also at national level: in spite of their participation to the SPLM struggle, most of senior administrators see themselves as technical figures whose work is continuously undermined by politics, and are therefore very supportive of international programs working on technical aspects of the decentralization reform.

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[730] Sarzin and Bekalu, "Scoping Mission for Proposed Local Governance and Service Delivery Program."

[731] Interview to Naoko Anzai, Juba, 1 November 2013

[732] Interview to Eli Achol Deng, member of LGB, Juba, December 2013.

[733] Personal communication with senior county officer, Tindilo payam, 04/03/2012

[734] Group conversation with Tindilo payam inhabitants, 04/03/2012

## 5.2 The lack-of-capacity and lack-of-funds: old leitmotiv

As I have argued in the previous chapter, lack-of-capacity and lack-of-funds are often invoked to explain or justify why something is not being done in accordance to public discourses. These expressions are just as common in project reports by international agencies, and in speeches and documents formulated by government officers. Alternatively or together, they are employed to explain and justify shortcomings both in the design and implementation of activities and programs, covering extremely different domains.

First and foremost, states' and local governments' borders have not been demarcated, yet local administrations are expected to work within their supposed jurisdictions[735]. The reason for this was allegedly that all the resources available had to be concentrated on the demarcation of the international border with Sudan[736], which was more pressing, and that more research needed to be conducted in British archives to find maps illustrating internal borders between communities in the southern region as identified by the colonial administration[737]. In fact, however, the demarcation of borders is contentious to such an extent that one County commissioner told me that he was "not allowed" to talk about borders unless authorized by the President[738], and the reason why it is not being conducted might go well beyond the reasons advanced. Reliance on British borders instead reveals scarce interest in engaging in a real negotiation of the border with affected communities. One senior local government officer suggested that the continuous postponing of the demarcation of county and *payam* borders was one of the strategies adopted to claim not be able of conducting election in 2015 -which indeed were canceled due to the war-, since local administrative and government units would have constituted the basis for drawing electoral constituencies. Another of these tactics was not to hold the census: in 2013, when alarming rumors about the government not having any political will of conducting the national census in preparation of the 2015 national elections, the director of the National Bureau of Statistics claimed that although the census was "mandated in the

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[735] Interview with Chamangu Awow Adogjok, Undersecretary of Local Government Board. Juba, 16/01/2013

[736] Ibid.

[737] Interview with Mabil Gurkei, Paramount Chief, Amongpiny Payam. Rumbek, 20-21/11/2013

[738] Interview with Wulu County Commissioner. Rumbek, 14/11/2013.

constitution", the government needed "money" in order to be able to organize it[739].

The lack of resources was also used to justify the exclusion from election of the position of County Commissioners and of County councilors in 2010. This resulted in County Commissioners being still appointed and arbitrarily replaced by State Governors. In Mayom county, Unity State, the county Commissioner changed for four times between November 2010 and January 2013[740]. In the absence of proper implementation of the LGA and of a system of checks and balances limiting the power of the county Commissioner, the latter derives its authority from higher levels of government and is left with considerable arbitrary power over the allocation of expenditures. The County Commissioner projects his power on *payam* administrators and, more importantly, on the local chiefs, whom he has the power to dismiss. For example, in the first quarter of 2013, in Unity State, newly appointed commissioners for Rubkhona and Pariang counties removed all the Head Chiefs in *payams* under their jurisdictions and called for new elections. As one of the members of Bentiu Town Traditional Court put it to emphasize the role of the local government in the appointment of local traditional authorities: "[chiefs are] kept in office (...) as long as they [are] doing a good job. (...) It is the government that knows if a chief is good or not"[741]. The removal of County Commissioners by state governors is also very frequent, but it rather responds to logics of local power sharing between competing clans[742].

As shown, the lack of capacity was addressed by successive training programs targeting local government officers and administrators. In 2007-2008, the Local Government Board organized screening examinations with the support of UNDP and the LGRP. This screening aimed to implement the 'sieving process' threatened by the Chairman of LGB in his speech mentioned above: only those who met educational and professional qualifications were to be retained. What actually happened, however, was that many of those who did not pass the screening were retained anyways, upon the claim that skilled

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[739] Interview with David Chan Thiang, Director of the National Bureau of Statistics, Juba, 08/11/2013. This claim was also confirmed by a member of the LGB in Juba, 16/01/2013. In 2013/2014, the government of South Sudan was allocating about 60% of the national budget (of approximately $17 bn) to security. Republic of South Sudan and Ministry of Finance, Commerce, Investment & Economic Planning, *Draft National Budget PLan & Draft Budget 2013/2014*, n.d..

[740] Field notes, January 2013.

[741] Collective interview, Bentiu Town Traditional Court, Bentiu, 07/02/2013.

[742] In Pariang County, for example, the commissionership is supposed to rotate between two major families, and the governor is supposed to replace the commissioner after a certain amount of time to make sure that there is alternation. Personal communication with citizens from Pariang residing in Bentiu. February 2013.

personnel was not enough to cover all the positions[743]. This 'lack-of-capacity' could be used, on one hand, to justify why training courses on management, book-keeping and so on kept being barely ever applied in practice[744] and, on the other, to mobilize more funds[745]. I am not arguing, here, that all the local government officers that were involved in trainings refused to apply what they had learnt, nor that the LGB members were not truly motivated when they talked about the capacity-building needs of officers working under their supervision. Indeed, they were extremely passionate in their requests for support, linking them to broader developmental achievements[746], and in their condemnation of how local government work was hampered by State governments and the central government[747]. In fact, however, as shown in chapter 3, the relationship between the Government of South Sudan and international donors was largely built on the assumption that the major reason why things were not being done was that a vaguely defined 'capacity' was lacking. To use a senior local government officer's words:

> "There are more capacities [in South Sudan] now than ever. It is not a matter of lack of capacity. Yes, there is a lack of capacity because it is a modern world, a world of technology… but the basics do not require elaborated technology. (…)At this stage now, the government of Southern Sudan has a lot of procedures, framework and laws, but they are not respected. Here are new procedures to ensure the financial resources of the country. Some people are frustrated in using the financial forms, but not because they don't know! They don't want to. They want to take it like that without reporting"[748].

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[743] Interview with Daniel Mangar Ayod, Geng-Geng Payam Administration. Yirol Town. 05/12/2013

[744] See "Position Paper from Director Generals, Directors, Executive Directors and State Local Government Officials of the Government of South Sudan after the End of Capacity Building Training in South Africa on March 2008 Presented to the President of the Government of South Sudan," March 18, 2008, Local Government Board Archive., for example.

[745] See for example "Correspondence on Support to Training of Local Government Administrative Officers between Joint Donor Team and Local Government Board," November 2010, Local Government Board Archive; Gordon Soro, "Letter to the Undersecretary of Planning of the Ministry of Finance and Economic Planning (GOSS): Requesting Development Partners' Support and Cooperation for County Planning and Budgeting," January 28, 2011, Local Government Board Archive. Moreover, training for county officers organized in the framework of LGRP usually recognized a daily sitting allowance (DSA) to participants of $35 (Local Government Board, "Communication to State Governments/Ministries of Local Government on County Planning and Budgeting Process for 2008/9" (Local Government Recovery Project, April 7, 2008), Local Government Board Archive.).

[746]The Local Government Board chairperson stressed the importance of Local Government to achieve the MDGs, Suleiman, "Speech of the Chairman of the Local Government Board on Commissioners Consultation on Local Government Framework in Yei."

[747]Interviews with Nikodemo Arou Man and Eli Achol Deng, Juba, 2013.

[748]Interview with Aggrey Akech, Senior Administrator in the Ministry of Local Government Lakes State, Rumbek, 19/11/2013.

## 6. Conclusion

This chapter has tried to address the creation of a decentralized system of government, on the one hand, and of a land tenure system legally recognizing customary rights on a communal basis, on the other, in the framework of the joint state-building enterprise of the SPLM and of international donors. Both systems rely on Traditional Authority and, in the attempts at defining the scope of their authority and jurisdiction, contribute to the definition of "community" on ethnic (or sub-ethnic) basis. This ethnicization of the concept of community draws upon colonial and war legacies, but is exacerbated by the idea of linking membership into a community to self-rule and to access to land. Moreover, since these are both granted through traditional authorities, it is clear that to have a chief – an Executive chief or a Head chief - entails having one's own group recognized as a "community" by the state. This explains the proliferation of chiefs and relative administrative units (as we shall see), but also tells us something about the importance of 'belonging' to a chief for each individual[749]. Matched with a selective implementation of the reform by the central government, the creation of an apparent decentralized state structure in fact contributes to two enduring tendencies in southern Sudanese politics: centralization of power and fragmentation of society.

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[749] Other works have explored the importance of 'belonging' to a community and a chief in several aspects of life, particularly for the access to ID documents. Ferenc David Marko, "Negotiations and Morality: The Ethnicization of Citizenship in Post-Secession South Sudan," *Journal of Eastern African Studies* 9, no. 4 (October 2, 2015): 669–84; see also Leonardi, *Dealing with Government in South Sudan.*

# Chapter 5 – Service delivery between state building and state formation

> *"We started off several decades back in our development work with a focus on the State. The failures of the state progressively shifted our focus to markets and the private sector. In turn, market failures led us to communities and community-driven development. But **we now recognize that without the state, it will be hard to scale up or sustain service delivery**. Not surprisingly, we are again focusing on the state, but with a major difference – this time, the focus is on a decentralized state."*[750]

## 1. Introduction

After the end of the war in 2005, expectations of the new state in terms of development and social services were great in spite of the history of repression and coercion which had characterized statehood in Southern Sudan. The idea of a social contract to be built or restored between state and society became very popular. In fact, the SPLM had no experience of effectively providing basic services to the population[751]. Historically, the SPLM provision capacity had rather been a coordination capacity, through which the movement – later, the Government of Southern Sudan – managed to fill (some of) the gaps in its delivery function. This coordination role was encouraged and enhanced by the international donor community[752], whose generous contributions in terms of financial transfers for service delivery and capacity building programs fed an image of the state which became no longer discernible from private international actors in its delivery function.

Instead of focusing on the very function of delivering services, however, the focus of this chapter will rather be on "the kaleidoscope of popular expectations"[753], on how service delivery is perceived to work, and in which ways these perceptions, matched with service delivery donor-sponsored

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[750] The World Bank, "Comments on the Draft Strategic Options Paper: Making Decentralization Work for Basic Service Delivery," January 28, 2008, Local Government Board Archive. Reviewer #2, pp. 1-2.

[751] Mampilly, *Rebel Rulers*.

[752] Oliver Blake, "Framework for the Development of the Capacity of the Secretariat of Local Government and Civil Administration," Department for International, (January 21, 2004), Local Government Board Archive.

[753] Bierschenk and Olivier de Sardan (eds.), *States at Work: Dynamics of African Bureaucracies*, p. 402

projects, contribute to the process of state formation, in agreement with Didier Péclard who, reflecting on the number of non-state actors involved in the performance of state-like functions in so-called fragile states, affirms that: "the delegation of state attributes and functions to non-state actors has been a crucial part of the formation of these states"[754].

The first part of the chapter provides a brief overview of the provision of public goods and services in South Sudan in the era of international state-building projects, where an increasing number of donor-funded programs tend to focus on the delivery capacity of so-called fragile states in order to strengthen their legitimacy and reduce the risks of violent uprisings against ineffective institutions. Being "what makes the state visible to its citizens"[755], the focus on "service delivery" allows the strengthening of the state through a focus on one of its practical manifestations at the local level, where decentralized governments are increasingly identified as the main managers of the delivery function.

Through a case study from Yirol West County (Lakes State), the second part of the chapter explores how discourses on service delivery and decentralization contribute to shape local people's strategies to appropriate resources consistently with the ways in which distributive mechanisms are understood to work. Reproducing their position as intermediaries on the ambiguous line between state and society, traditional authorities play a key role in these strategies, contributing to state formation through the strengthening of the idea of state and appropriating its structures and bureaucratic procedures.

## 2. Providing services to South Sudan

In early 2013, a South Sudanese NGO tried to map Civil Society Organizations in Unity State in the framework of a civil society-empowerment project implemented in partnership with an International NGO[756]. Despite serious limits to the access to information[757], the NGOs managed to map over sixty CSOs, whose representatives where asked to fill in a form providing

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[754] Péclard, "State-Building, Legitimacy, and Development in Fragile Context", p. 3-4.

[755] Van de Walle and Scott, *The Role of Public Services in State- and Nation-Building,* p.9

[756] My field research in 2012 and early 2013 was facilitated by this International NGO. This survey was part of the activities that were carried out during the time of my stay in Bentiu in early 2013.

[757] For example, available lists of existing CSOs and NGOs in government offices and at the SSRRC in Unity State were not updated. Many of those listed did no longer exist, and many more had been created. While most of the CSOs had contact persons in town, there also might be organizations that have been missed out for difficulties in travelling to the rural areas

information on their vision, mission and ongoing or past activities. While most of them declared that their mission was to work in one or more 'development sectors' such as education or farming, many of them were very general in their statements and wrote that their goal was to provide services to the members of variously defined communities[758].

After the end of the war, expectations of service delivery – be it education, health care, water, housing or the maintenance of roads - were very high among South Sudanese, as confirmed by interviews and personal communications with virtually all non-government informants in all the field-work areas. Although most of the people interviewed were aware that social services were coming mostly through development aid funds the government was routinely blamed for the lack of these services.  While I, as a potential white representative of INGOs, was repeatedly asked to build schools, boreholes, or provide tools for doing construction work in the course of most of my interviews, it was the government failure to be deplored for the lack of the provision of these services. The "image of the state" was very powerful indeed, feeding into expectations of the state being able, at the very least, to bring in NGOs to do the job[759].

After having successfully achieved what was widely looked at as something very close to a victory, the new-born Government of Southern Sudan was invested of the responsibility of "mending the broken contract"[760], or perhaps a number of broken contracts: not only the one between the state and citizens, which in South Sudan had barely ever existed at all, but also between the former rebels and the many sections of the population that had not supported it so enthusiastically, as well as between the many southern Sudanese communities pitched against each other by divide-and-rule policies of successive governments. The government, it was repeatedly argued, owes its own existence to the people's support during the war and to later commitment of local leaders in mobilizing the people for the referendum, therefore it had to pay back its dues through development and services for the population[761].

The provision of public services was one of the major pillars of SPLM's peace-building and state-building strategy as shown in *Peace through Development* (2000), and was granted a prominent position also among post-conflict priorities with great emphasis on the "peace-dividend" character of

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[758] UCOET and Mani Tese, "CSO Mapping Report - Unity State," February 2013.
[759] Bierschenk and Olivier de Sardan, *States at Work*. p. 402
[760] Rolandsen, "To Mend the Broken Contract".
[761] Collective interview with Bany Loum Boma Court. Abang Payam, 04/12/2013.

services[762]. Indeed, post-2005 discourses on service delivery have been constantly intertwining with that on "peace dividends", in the belief that enabling newly established local state institutions to deliver material benefits to the citizens was crucial to avoid backdrops to war. Decentralized delivery would have increased the number of people benefitting from central resources, maximizing the positive outcomes of improving service delivery particularly to the rural areas[763].

## 2.1 Background to local understanding of decentralization: historical legacies in the provision of services

Bierschenk and Olivier de Sardan argue that states can never be repressive only. Indeed, since the idea of state started to materialize in the southern region of Sudan, despite the overwhelming violent character of authority, some minimum kind of delivery did take place at least to reduce the degree of resistance and to prevent people from fleeing from the centers of power. This was true also in pre-colonial time, when loyalty to a specific authority was bartered with specialized knowledge on the facts of nature and protection from external (both natural and man-made) threats[764].

The colonial administration used local authorities to exert control upon and extract taxes from local populations, appointing its own 'government chiefs' which often subverted pre-existing lines of authority and affiliation to groups, becoming even more open to the assimilation of outsiders. In order to acquire legitimacy in the eyes of their subjects, these new chiefs had to give something back in exchange for taxes, and this primarily was in the form of protection from colonial extraction, and secondly the channeling of external support in local warfare with other groups. To some extent, in Tillyean terms, chiefs represented the actors providing shield both from the 'racketeer' (the colonial state) and from 'external marauders' (the other competing groups), and this provided them with a good source of legitimacy in spite of their increasing incorporation into the colonial state structure. In the 1930s, salaries were introduced for government chiefs, encouraging the District Commissioners to merge chieftaincies to reduce the number of chiefs that had to be paid. The chiefs were

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[762] As Tilly shows, not war makes states and state make war: after war, the efforts done by the populations, the dead and the wounded, justify an increase of state intervention in society. Tilly, *The Formation of National States in Western Europe.*

[763] SPLM, "Peace through Development in the Sudan," 2000, http://www.sudansupport.no/filestore/PeacethroughdevelopmentbySPLA1999.pdf.

[764] Leonardi, *Dealing with Government in South Sudan.*

also encouraged to enlarge their chieftaincies as salaries were computed on the number of tax payers, therefore many smaller chieftaincies with less powerful chiefs were absorbed into bigger ones despite protest. The provision of services – schools, water points, roads - tended to be concentrated in the chiefs' headquarters, and their number to be determined according to rough population numbers provided by the chiefs themselves. This created incentives for the people to group into settlements under the authority of chiefs that were able to successfully negotiate the provision of services with the colonial government[765].

While during the civil war people tended to scatter and the few existing state institutions lost the capacity of controlling the population and of providing whatever kind of services or public goods they had provided before, local chiefs continued to work as justice providers and as community gate-keeper vis-à-vis the government and the rebel movements. Failure in the delivery of public services also during the Addis Ababa Agreement period in the 1972 became explosive due to the extremely high expectations among the population. When the civil war broke out again in 1983, the provision of resources, development and services to the southerners was one of the pillars of SPLM revolutionary discourse.

As shown in chapter 3, the SPLM had a long history of constructing its image as the major responsible for providing access to services to the population. Since the creation of the CANS in the mid-1990s, *payam* administrators were in charge of dealing with humanitarian agencies whose work was coordinated by the Sudan Relief and Rehabilitation Commission (SRRC). In SPLM controlled areas, relief became a synonym for services. The equation between foreign aid and services became even stronger when, towards the end of the 1990s, the number of projects involving the education, health or crops production increased. *Payams*, drawn loosely along the boundaries of existing chiefdoms, were increasingly identified as recipients of these 'services'[766], with local chiefs in charge of distribution or mobilization under the supervision of SPLM personnel. This largely reproduced a pattern of co-optation of the chiefs experimented during colonialism, when the use of customary authority as instruments of colonial power gave place to a "zero-sum politics" in which each of them was encouraged to only care for his own community[767].

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[765] Ibid.

[766] Rolandsen, *Guerrilla Government*; Branch and Mampilly, "Winning the War, but Losing the Peace?"

[767] Blundo, Olivier de Sardan (eds.), *Etat et corruption en Afrique*.

Chiefs were thus at the same time 'protectors' of their communities (limiting the extent to which they were affected by coercive extraction of resources and violence) and mediators of the state formation process, as their role of protectors could only be carried out through the 'management' of extraction[768]. The perceived distance with the *hakuma,* the sphere of the men in uniform (indistinctively including government and SPLM), and the protracted mediation function of the local chiefs, encouraged the strengthening of the "communitarian space" as the arena for claiming access to resources[769], and popular expectations of the chiefs' representativeness vis-à-vis the statutory authority. According to Cherry Leonardi, "Much more in hope than in reality, people expected chiefs to access such resources and to ensure that their communities were known and recognized in government offices"[770].

If chiefs had been communities' channels to services also during colonialism, the creation of SPLM-sanctioned units changed the way this process was understood to work. In the 1990s, the fragmentation of administrative units undid many colonial amalgamations upon justification that the population had increased. This fragmentation was in fact also motivated by political competition and ethnic or sectional divisions, exacerbated by the idea of decentralized service provision and by the possibility of extracting revenues from markets, customs and NGO taxes at a time when neither the chiefs nor the administrators and commissioners were receiving salaries. "These units gained such significance because people increasingly believed that they needed their own *boma* or *payam* to be recognized in order to receive services and resources from government or agencies"[771]. 'Communities' and chiefs thus came out to be a good lever to deal with SPLM state-like character, and access the resources it was able to channel.

Even if these resources very rarely materialized in these terms, the SPLM did manage to effectively channel humanitarian aid to the local population according to political or military alliances that were often met with the creation of administrative units. Consistently with *Peace through development*, which linked the delivery of goods and basic services to development and peace, a partnership of international development agencies and the SPLM started to

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[768] Tilly, "War Making and State Making as Organized Crime". On the mediation role of the chiefs, see Leonardi, *Dealing with Government in South Sudan*.
[769] Blundo and Sardan (eds.), *Etat et corruption en Afrique*.
[770] Leonardi, *Dealing with Government in South Sudan*. p.182.
[771] Ibid. p. 185.

provide basic services that were increasingly identified with development projects[772].

## 2.2 Service delivery in post-CPA Southern Sudan: donors' engagement…

With the end of the war approaching and the international community more actively engaging with the SPLM to facilitate its transition from rebel movement to ruling party, increasing attention was devoted to appropriate strategies to expand basic services for the population, considering it a vital tool to strengthen state legitimacy and promote peace[773]. The Sudan Joint Assessment Mission (JAM) conducted by the World Bank, UNDP and representatives of SPLM and the Government of Sudan provided a comprehensive assessment of transitional recovery and peace-building needs, becoming the major framework document for aid assistance to Southern Sudan during the interim period 2005-2011 (en lieu of the Poverty Reduction Strategy Paper)[774]. It identified eight thematic clusters: capacity building and institutional development; governance and rule of law; economic policy; productive sectors; basic social services; infrastructure; livelihoods and social protection; and information and statistics. Besides a concept note for the formulation of a Poverty Eradication Strategy for Sudan based on measures encouraging macro-economic stability, private investment, capacity building and institutional strengthening, the JAM report also expressed the need to provide 'peace dividends' to the population reallocating defense resources to "pro-poor and development priorities"[775]. The idea of 'peace dividend' creates a direct link between lack of development and services and violent conflict. Beside the need to improve the dire development indicators of the southern region[776], basic services must be provided to the people in order to contribute

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[772] SPLM, "Peace through Development in the Sudan"; Mampilly, "Stationary Bandits: Understanding Rebel Governance"; Johnson, *The Root Causes of Sudan's Civil Wars*.

[773] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).

[774] Nahuel Arenas-Garcia, "Pro-Poor Growth & Development in South Sudan: Post-CPA Aid Mechanisms, Poverty Reduction Strategies and the Role of the World Bank" (Institute of Studies on Conflict and Humanitarian Action (IECAH), 2010), http://www.iecah.org/web/images/stories/publicaciones/documentos/descargas/documento 6.pdf.

[775] Ibid.

[776] According to the South Sudan Development Plan 2011-2013, the country has 83% illiteracy rate, an infant mortality rate of 102 per 1000, a maternal mortality rate of 2054 per 100,000 live births (the highest in the world). UNDP, World Bank, SPLM, Government of

to the restoration of "peace and harmony", providing incentives for not resorting to war. They are divided into four key priority areas of intervention: education, health care, water and sanitation, and infrastructure[777]. The delivery of these services was to be managed mostly through multilateral arrangements, including UN agencies and pooled funding mechanisms. Among these, the most important one was the Multi Donor Trust Fund (MDTF), a pooled fund coordinated by the WB with a double purpose: to improve coordination and coherence of donors' action reducing transaction costs; and to enable the expansion of basic services. Fourteen donors pledged $650 million for the fund, while implementation was delegated to the Government, UN agencies and NGOs[778]. In fact, the MDTF was far less successful than what was expected both in the actual delivery and in its coordination role[779]. Due to its extremely low disbursement capacity, a number of parallel pooled funding mechanisms emerged, as well as bilateral funding agreements. According to a mid-term evaluation of the Joint Donor Team[780] by the Norwegian Agency for Development Cooperation (NORAD), in 2009 half of the aid flows to Southern Sudan were disbursed outside the MDTF[781].

Among the other funding mechanisms dealing with service delivery, there was the Basic Services Fund (BSF), initially managed by DFID and then turned into a multi-donor fund with the additional participation of Norway, Canada and the Netherlands and stronger involvement from the GoSS. BSF supported basic service delivery in three ways: through rehabilitation work (schools, clinics, and boreholes); through training (teachers, medical staff, and government); and through support for day to day operations. In 2007 BSF met 4% of the JAM targets for schools, testifying its effectiveness in actual delivery[782]. The Sudan Peace Fund, established in 2008 under the coordination of UNDP was also more effective than the MDTF in terms of delivery of basic

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Khartoum, *Sudan Joint Assessment Mission. Framework for Sustained Peace, Development and Poverty Eradication.* Synthesis, (March 18, 2005).

[777] UNDP, World Bank, SPLM, Government of Khartoum, *Sudan Joint Assessment Mission*.

[778] Wendy Fenton and Melissa Phillips, "Funding Mechanisms in Southern Sudan: NGO Perspectives," *Humanitarian Exchange Magazine* Issue 42 (March 2009).

[779] Ibid.; Arenas-Garcia, "Pro-Poor Growth & Development in South Sudan: Post-CPA Aid Mechanisms, Poverty Reduction Strategies and the Role of the World Bank."

[780] The Joint Donor Team for South Sudan was established in 2005 by the governments of Denmark, Canada, the Netherlands, Sweden, the United Kingdom and Norway to encourage donor harmonization in the Sudan. Its mission included to promote sustainable peace and poverty reduction, support the MDTF, to manage programs outside the MTDF and to strengthen cooperation with the GoSS.

[781] NORAD, "Mid-Term Evaluation of the Joint Donor Team in Juba, Sudan," Evaluation Report, (2009), http://www.oecd.org/countries/sudan/42682206.pdf.

[782] Ibid.

services through NGOs. However, generally speaking, service delivery often did not reach its objectives during the interim period both because of aid disbursement falling short of pledges, and because of the often lamented lack-of-capacity of newly established government institutions, a problem blamed for poor performance by both donors and the GoSS[783].

In spite of the predominant role kept by INGOs and UN agencies in the actual delivery of basic services during the interim and post-interim period, the JAM report emphasized the need to involve government institutions at national and sub-national levels with a planning and coordination role[784]: many of the state-building programs financed by the international community to strengthen government institutions and to build the capacity of the civil service were thus aimed to improve the state's coordination capacity in the Southern region, as we have seen particularly through enhancing local governments' consolidated planning and budgeting functions. The MDTF, initially set up for delivering tangible benefits to the population, was rather used for this last purpose. Other pooled funding mechanisms were also involved in the capacity-building and institution-building endeavor: the Capacity Building Trust Fund, for example, was created in 2004 under UNICEF's coordination and it ended up filling the gaps in MDTF performance or covering expenses that were not foreseen in MDTF planning[785]. Another example was the Strategic Partnership Agreement, which in 2007-2008 disbursed $15 million to Southern Sudan to projects focusing on capacity building, support to the Presidency, States and Local Government Recovery, and support to the Ministry of Finance and Economic Planning in the establishment of planning and budgeting procedures[786].

My purpose here is not to give a comprehensive list of all the funds and programs targeting service delivery in the interim-period, nor to evaluate the performance of any of those I mentioned. For the purpose of this chapter, it is however important to highlight donors' engagement with the government of South Sudan in the service delivery sector both in the very delivery function – through education, health, WASH programs -, and capacity building and training in planning and budgeting for government officers.

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[783] Arenas-Garcia, "Pro-Poor Growth & Development in South Sudan: Post-CPA Aid Mechanisms, Poverty Reduction Strategies and the Role of the World Bank"; NORAD, "Mid-Term Evaluation of the Joint Donor Team in Juba, Sudan."

[784] UNDP, World Bank, SPLM, Government of Khartoum, *Sudan Joint Assessment Mission. Framework for Sustained Peace, Development and Poverty Eradication.*

[785] Fenton and Phillips, "Funding Mechanisms in Southern Sudan: NGO Perspectives."

[786] NORAD, "Mid-Term Evaluation of the Joint Donor Team in Juba, Sudan."

While international direct engagement with the GoSS to support the provision of basic services has been a constant characteristic of the interim period, direct engagement with the Local Government was not considered a priority until the independence of South Sudan. Despite the enactment of the Local Government Act, the focus of most of the programs of capacity- and institution-building involving the provision of services remained at national and state level. Naoko Anzai, former Project Manager in the UNDP-led Local Government Recovery Program[787] in 2009-2011 and Project Manager for the World Bank at the time of our interview, described this local turn as relatively new, defining it as "a shift in paradigm":

> "[In 2009-2011] the attention on Local Government was not so high. (...) The International Community did not understand [its importance]. The attention was all on the National and State level. (...) I was away [from South Sudan] for one year and a half and now that I came back I found a total shift in paradigm: now a lot of attention is given to Local Government"[788].

This shift in paradigm is likely to have had several different causes. Besides the ineffectiveness of channeling funds for local development through corrupt State governments that never delivered to their citizens[789], in 2010 the mid-term evaluation of the work carried out within the JAM report framework suggested that more attention should be given to the levels of government below the states, both in terms of expenditures, and in terms of exploring possible harmonization with existing customary systems of authority[790]. Moreover, independence opened up larger margins of maneuver in program design, which no longer had to keep northern institutional arrangements in mind. In 2012 the Government developed several Service Delivery Frameworks (SDFs) for primary education, rural water and sanitation, basic healthcare and small-scale infrastructure, followed by a Local Services Support Initiative (LSSI) and a Local Service Support Joint Action Plan signed by six line ministries involved in the provision of services. The initiative was headed by the Ministry of Finance and Economic Planning with the aim of ensuring better coordination between the various sub-national levels of government, the central government

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[787] The UNDP-supported LGRP started in 2006 and went through successive phases until 2011, when it was eventually shut down for lack of funds. Its aim was mainly to strengthen the coordination capacity of the Local Government Board, the national body in charge of coordinating Local Governments.

[788] Interview with Naoko Anzai, Juba, 01/11/2013.

[789] Ibid.

[790] Jon Bennett et al., *Aiding the Peace A Multi-Donor Evaluation of Support to Conflict Prevention and Peacebuilding Activities in Souther Sudan 2005-2010*, Netherlands Ministry of Foreign Affairs and the authors, Joint Evaluation, 2010.

and donors in the provision of services at the local level[791]. This signals a growing tendency in concentrating the control over local development projects in the hands of governmental institutions, channeling funds through the government apparatus. In the words of Naoko Anzai:

> "The idea behind [this kind of programs] was that instead of continuing to channel funding through NGOs, creating these parallel systems of service delivery, it was worth trying to empower directly the Local Government"[792].

Besides the actual provision of services to the local population, another central focus of these initiatives is to "strengthen the capacity" of local governments. According to a document on the LSSI released by the Ministry of Finance and Economic Planning in early 2015:

> "Due to weak Local Government capacity, a lack of policy and procedural clarity, and poor oversight by national government, states have absorbed many Local Government functions"[793].

Great commitment was thus affirmed in order to put the Local Government in a position to take over the responsibility of service delivery as the level of government closest to the people.

## 2.3. … and government's commitment

The SPLM, for its part, was very active in establishing ad hoc institutions that could take care of the delivery function of the New Sudan. Since 2000, the SPLM never stopped emphasizing the role of the government in the provision of public goods and services. The Local Government Framework, approved in its final draft in 2006 after three-year process of consultation supported by the UN, GIZ and USAID, attributed the responsibility of "tak(ing) the towns to the

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[791] These initiatives are presented as internal strategies of the Ministry of Finance and Economic Planning and more broadly of the Government of South Sudan in all related documents I could access. However, during a personal communication, a senior worker of an international agency was very critical on the actual ownership of these strategies by South Sudanese governmental institutions and on their actual commitment to make the County level work. Talking about the Ministry of Finance and Economic Planning and the LSSI, he wryly specified: "when I talk about the Ministry of Finance, I basically mean ODI (Overseas Development Institute, UK) people that are running the Ministry. They work a lot on economic planning and public financial management. (…)There about 20 expats from ODI in the Ministry of Finance, (…) they basically run the Ministry. (…) LSSI was one of the initiatives from ODI, but it was always presented as a Ministry of Finance initiative". Personal communication, Juba, November 2013.

[792] Interview with Naoko Anzai, Naoko Anzai, Juba, 01/11/2013.

[793] Ministry of Finance and Economic Development, "The Local Services Support Initiative: An Overview" (Government of South Sudan, May 2015).

people" to local government institutions. An uncontroversial interpretation of this famous statement by John Garang, is that the government, especially the local government, should expand its reach in order to provide services to the rural population turning small settlements into towns[794]. The Local Government Board Chairman provided a very clear explanation of this statement at the Commissioners' consultation workshop on the Local Government Framework in 2006, bringing up an example to the audience's attention:

> "We should take an example from the commissioners of Kapoeta North county at Riwoto village. This is a county newly established with its Head Quarters at Riwoto Village. The commissioner never wasted time in Kapoeta or Torit where there are signs of civilization in the form of permanent infrashuctures *(sic)*. His Head Quarters is there in Riwoto village under a tree. Soon our partners, the UNDP, CRS, Pac and Dfit *(sic)* may visit him. They shall draw huge help to Riwoto village. In few years time Riwoto village shall turn into a vivid town, with all the developments that are associated with a town, mushrooming up. This commissioner shall have succeeded in taking a town to his people, as well as development. Those commissioners who are sitting in the Head Quarters of other counties shall be last to develop their areas. What a shame! Such commissioners should know they are together with the commissioner in whose counties capitals they are, seriously and actively developing alien County headquarters instead of putting such efforts in developing their own county Head Quarters."[795]

As shown in previous chapters, the idea of the town as the locus for accessing services and for claiming participation into state resources had a long history, going back to colonial time. This history was also acknowledged in the JAM report, whose authors highlighted the urban bias in Sudan's development[796].

In the 1990s, when the SPLM strongly imposed itself as a state-like actor, its authority was more diffuse, always coming from the center but spreading over the territory through SPLM-appointed chiefs, SPLM civil administrators and SPLM local commanders wherever the SPLM could claim to have a reach.

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[794] Interviews with local government civil servants and members of state parliaments and governments in Unity and Lake States, 2013; Interviews with members of the Local Government Board, Juba, 2013; Annina Aeberli, *Decentralisation Hybridized*, The Graduate Institute, Graduate Institute ePapers 14 (Geneva, 2012).

[795] Caesar Arkangelo Suleiman, "Speech of the Local Government Board Chariman at the Commissioners' Consultation on the Local Government Framework", p. 5.

[796] UNDP, World Bank, SPLM, Government of Khartoum, *Sudan Joint Assessment Mission. Framework for Sustained Peace, Development and Poverty Eradication,* p. 5. The argument of urban bias has been used to show how the concentration of resources in the urban areas was at the expenses of the development of the rural areas in developing countries. See Michael Lipton, *Why Poor People Stay Poor: Urban Bias in World Development* (Harvard University Press, 1977); Robert Chambers, *Rural Development: Putting the last first* (London ; New York: Routledge, 1983).

New centers of resource distribution emerged. The rhetoric of the SPLM government's commitment to provide for its citizens like no other government had done before was so powerful that people started to claim goods and services from what they perceived to be the source of authority, generally identified as 'government' even before it was actually institutionalized. By the end of the war, expectations of state delivery in terms of security and development were so high that, together with the feeling of having contributed enough to the southern liberation, it led to the emergence of a bottom-up paternalistic conception of the state, in which people started refusing the idea of community responsibility for things such as health centers or even clearing roads[797]. For example, in 2010, during an assessment organized by the World Food Program, the UN Office for the Coordination of Humanitarian Affairs and the Southern Sudan Relief and Rehabilitation Commission in Rubkhona county (Unity State), people often refused to commit to 'common-interest work' such as clearing roads or building parts of school infrastructures even if they thought that these were vital necessities for the community. This was partly due to the fact that this kind of community engagement was associated to programs of 'self-help' development compelled by the Government in Khartoum in the 1970s and 1980s[798]. Now that the government was perceived as a friendly one, it was expected more actively take care of its citizens and it was thus blamed for not providing adequate facilities and development to the community, which refused to work unless the government showed its commitment bringing NGOs projects to the area[799].

Definitely, the SPLM did promote a rhetoric defining the government, and particularly the local government, as the major responsible actor for service delivery to the population, which contributed to the idea that the legitimacy of the government rested primarily on its capacity to deliver. The institutionalization of the SPLM civil administration as the new Local Government of Southern Sudan relied on a powerful idea of decentralization, associating the creation of decentralized government units with the capacity of

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[797] Leonardi, *Dealing with Government in South Sudan*.

[798] Personal communication with Sharon Hutchinson, November 2015.

[799] By chance, I took part in this assessment as an intern of a local NGO based in Bentiu. Its purpose was to assess the availability of basic services and infrastructures in order to provide adequate and relevant support for the return of southerners coming back from Khartoum for the referendum. The final report of the assessment was not made public and was used for internal purposes only by WFP, UNOCHA and IOM. People's attitude towards the government's failures in service delivery seemed to be less openly bitter in Yirol West, most probably because of the closest relation that the SPLM had with Lakes State compared to Unity State, which was controlled by other rebel factions for most of the civil war (1983-2005).

controlling the territory and of bringing services and development also to the most remote rural areas. The legal framework disciplining the local government, analyzed in chapter 3, provides for services to be delivered by the level of government 'closest to the people', in accordance with the principle of subsidiarity. The Local Government Act includes the "provision of services to the people" and the "promotion of local development" among the responsibilities of Local Government Councils, confirming what was already stated in the Local Government Framework. The latter is dominated by the idea that the provision of public services is one of the most important functions of local governments[800]. In analyzing its content, Aeberli notices that the word "services" is repeated 162 times in the 92-page document and that previous failed experiences of decentralization and local government are blamed for having focused only on the maintenance of law and order, with no delivery function[801]. South Sudanese understanding of the link between decentralization and service delivery largely relies upon discourses put in place by the SPLM and, more generally, on the history of unfulfilled grievances of the population. Most of my sixty-four interviewees belonging either to the civil service or to traditional authorities confirmed this understanding, portraying the local government as the most important actor in the provision of services, often also stressing the need of equitable delivery to promote peace among communities. Traditional authority, which was incorporated among the tiers of local government by the LGA, was considered particularly important in the provision of public services: being the only 'representative' of the state at *boma* level in several instances[802], the chiefs play a fundamental role in planning, as they are best positioned to identify needs and priorities[803]. Both international aid agencies and local government officers insist on the role of the chiefs in implementing development projects aimed at improving the provision of services. According to Cherry Leonardi, after 2005, at least in some areas of South Sudan such as Equatoria, people started being selected as chiefs because they had past experience of dealing with internationals or just because they

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[800] Government of Southern Sudan, *Local Government Framework*, 2006; Government of Southern Sudan, *Local Government Act*, 2009; The Republic of South Sudan, *Transitional Constitution of the Republic of South Sudan*, 2011.

[801] Aeberli, *Decentralisation Hybridized*.

[802] Sarzin and Bekalu, "Scoping Mission for Proposed Local Governance and Service Delivery Program", p.5

[803] Interview with Peter Machieng Chan, Winrock-BRIDGE Project Officer for Governance sector, Bentiu, 15 March 2013)

knew English[804], making them potentially more effective in negotiating with foreign resource-providers.

In fact, despite the SPLM rhetoric and the actions undertaken by the Government of South Sudan such as the development of the Service Delivery Frameworks, for the whole interim period as well as immediate post-independence years most of basic services such as education, health and water&sanitation continued to be mainly provided by non-state actors working with foreign resources[805]. Oil revenues, a share of which was attributed to the Government of Southern Sudan by the CPA, fell short of expectations, not only due to continuous skirmishes on the North/South border that caused repeated interruptions in the extraction, nor to widely recognized corruption, but also for more structural causes. The drop in the oil price in 2008 obliged the GoSS to cut its budget by one third, with the consequent reduction of available internal resources[806]. Since oil revenues covered 98.6% of GoSS's budget, with very few alternative sources of revenues and an extremely weak fiscal basis, the provision of basic services continued to be dominated by international private actors such as NGOs and donors' contractors. In 2008, only 7% of the national budget was devolved to health and education expenditures, and only 3.4% to rural development. Half of the national budget was absorbed by salaries, while the security sector budget continued to increase due to growing internal insecurity, tensions on the North/South border and, lately, various armed rebellions which escalated into renewed civil war in 2013. According to a member of the former Secretariat for Local Government: "It is common knowledge that the Government of South Sudan (GoSS) has no financial ability to support the service delivery sectors"[807], and the capacity gap in newly appointed local government officers also contributed to the difficulty and the lengthiness of establishing forms of bureaucratized service delivery.

For the whole period between 2005 and 2011, and later after independence, the delivery function of the South Sudanese state was thus accomplished by hybrid bodies made up of governmental institutions and development agencies, which led to consider both of them being part of, and to

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[804] Leonardi, *Dealing with Government in South Sudan*.

[805] See for example Ministry of General Education and Instruction, Republic of South Sudan, *General Education Strategic Plan 2012-2017* (Juba, 2012) on resources available for the education sector and the gap to be filled by international donors. In 2009 the health sector was still heavily under-budgeted: INGOs run 86% of primary health care centers and paid for 75% of the staff. NORAD, "Mid-Term Evaluation of the Joint Donor Team in Juba, Sudan."

[806] Bennett et al., *Aiding the Peace A Multi-Donor Evaluation of Support to Conflict Prevention and Peacebuilding Activities in Souther Sudan 2005-2010*.

[807] Man et al., "Service Delivery Output", p. 3

some extent producing, the state. The problematic nature of the distinction between state and non-state in South Sudan has been acknowledged also by the Secure Livelihoods Research Consortium with relation to the huge presence of humanitarian and development aid[808]. Nevertheless, I would like to address here not only the objective difficulty of separating what is delivered by the government and what by development agencies, but also local understanding of both entities as inextricably mixed in the delivery function and the fact that local practices of state-making involve using decentralized institutions to claim governmental recognition in order to obtain a place from where to negotiate access to resources with resource-providers. In other words, these practices are based on the idea of a state of which international development agencies are an integral part.

# 3. Using the Local State: service delivery discourses and practices

### 3.1 The Local Governance and Service Delivery Project[809]

The World Bank's engagement in the service delivery sector can be traced back to the publication of the World Development Report *Making services work for the poor* (2004). In South Sudan, its engagement with local government in the support of service delivery started in 2011, taking over from the LGRP run by UNDP which was being closed for lack of funds[810]. A program scoping mission conducted in 2011 acknowledged that service delivery was very poor in the whole country, and that NGOs played a major role in it without necessarily coordinating with local authorities. This resulted in development and service delivery activities being conducted outside the County consolidated planning process[811], seriously hampering the sustainability of the projects.

The Local Governance and Service Delivery (LGSD) project was designed as a 5-year project directly engaging County executives and legislative bodies to

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[808] Rachel Slater, "What Does It Mean to Be Post-Crisis? Reflections from Research in Eight Conflict-Affected Countries," (Presentation, European Conference of African Studies, July 8, 2015).

[809] The project is currently also referred to as LOGOSEED.

[810] Interview Naoko Anzai, Program Manager of Local Governance and Service Delivery project (World Bank)/former Project Manager for Local Government Recovery Project (UNDP). Juba, 02/11/2013.

[811] The consolidated planning process has been supported by UNDP through the Local Government Recovery Program since 2006. See chapter 3.

enhance the provision of basic services, framed as not only as "peace dividends" but also as "independence dividends"[812]. Its characterization as a program dominated by a conflict-prevention component is confirmed by the project website, which indicates the theme 'Conflict prevention and post-conflict peacebuilding' as representing 46% of the project's objectives, followed by 'Municipal governance and institution building' constituting 29%[813]. The project includes different components: the delivery of block grants to Counties for *payam* development, community engagement in planning, implementation and oversight of local development activities at *boma*, *payam* and County levels, and capacity building for local governments on planning, budgeting, financial management, monitoring and evaluation[814].

The project is funded by the World Bank and the governments of Denmark, Norway and the Netherlands for a total of $98 million. It is implemented in partnership with the Local Government Board (LGB), the national coordination body for the local government, through a Project Management Unit (PMU) made of representatives from the World Bank and the Government of South Sudan, physically based within the LGB compound, though in a different, newly constructed building[815]. The PMU is headed by a WB consultant, and the other members are recruited by the Government of South Sudan "under the supervision of the World Bank"[816]. Its role was to identify the locations for the implementation of the project together with the LGB and to coordinate and supervise the disbursement of funds. It the initial plans, the PMU would have been handed over to an entirely governmental management in 2019

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[812] Sarzin and Bekalu, "Scoping Mission for Proposed Local Governance and Service Delivery Program."

[813] See LGSD project website: http://www.worldbank.org/projects/P127079/local-governance-service-delivery-program?lang=en

[814] See the World Bank website: http://www.worldbank.org/projects/P127079/local-governance-service-delivery-program?lang=en. Actually, the block grants will be delivered through a loan to the Government of South Sudan which will be paid back in 40 years after 10 years grace-period. Interview with Naoko Anzai, WB Project Manager, Juba, November 2013.

[815] Interviews with Naoko Anzai and Jaqueline Lwoki, Juba October-November 2013. Interestingly, the LGB compound hosts, in different buildings, offices from the UNDP ex-LGRP (involved in capacity building on planning and budgeting at County level, which was shut down during the course of 2013), GIZ (involved in technical trainings to government officers, though the head of the office repeatedly refused to be interviewed), and the World Bank-led PMU. Isaline Bergamaschi, talking about the Poverty Reduction Unit in Mali, notes that many capacity-building projects entail the creation of this kind of ad hoc "units", in a sort of externalization of managerial functions in need of specialist expertise. See Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali".

[816] Interview with Jaqueline Lwoki, World Bank Consultant at the Project Management Unit of the Local Governance and Service Delivery project. Juba, 25/10/2013

and the outbreak of the war in December 2013 does not seem to have caused major changes in the project schedule.

The implementation of LGSD started with a Fast Track Initiative financed by the Swedish International Cooperation Agency in 2012 in eight counties in four states: Lakes, Upper Nile, Jonglei and Western Equatoria. In fact, the outbreak of civil war forced the World Bank and LGB to defer its implementation in two of the initially selected states which were particularly affected by conflict, Jonglei and Upper Nile, replacing them with Warrap and Eastern Equatoria states[817]. In any case, the project is expected to involve all the ten states in successive phases[818]. The target areas within these states were identified by the LGB in cooperation with the PMU according to guidelines mainly concerning county capacity of accounting for grants[819]. County commissioners were involved in the selection of localities within the counties and usually managed to influence the decision-making process[820]. County block grants for *payam* development are incorporated into the national budgeting process by the Ministry of Finance and Economic Planning, in order to ensure that the central government does not lose control in what happens at sub-national levels. However, when it comes to disbursement of funds, these will be transferred directly to specific County bank accounts without transiting from national and State level coffers. According to a document released by the Ministry of Finance and Economic Planning in early 2015, the first phase of the project ended by the end of 2014 with the implementation of the projects identified by the communities involved[821]. This section will focus on the dynamics resulting from the process of community engagement and formulation of these projects in one specific area.

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[817] Ministry of Finance and Economic Planning and Local Government Board, "Local Governance and Service Delivery Project (LGSDP). Request of Expression of Interest (REOI)" (The Republic of South Sudan, 2015).

[818] Interview with Jaqueline Lwoki, World Bank Consultant at the Project Management Unit of the Local Governance and Service Delivery project. Juba, 25/10/2013.

[819] Government of South Sudan, "Environmental Social Management Framework. Local Governance and Service Delivery Project, Republic of South Sudan," June 2013, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/09/02/000442464_20130902104553/Rendered/PDF/E410900ESMF00L000PUBLIC00Box379818B.pdf.

[820] Interview with Peter Majur, IRC, Community Driven Development, Protection Team. Rumbek, 19/11/2013.

[821] Ministry of Finance and Economic Planning and Local Government Board, "Local Governance and Service Delivery Project (LGSDP). Request of Expression of Interest (REOI)."

## 3.2 Yirol West: "taking towns to the people" or people going to town?

One of the selected areas for the pilot implementation of LGSD in Lakes State was Yirol West County. While being relatively quiet in terms of security (especially compared to other areas in Lakes State, where inter-communal fighting is a constant feature), at the time of fieldwork Yirol West was experiencing a strong thrust towards administrative fragmentation, as local communities often advanced demands for the creation of new *payams*. In the past, it was quite easy to create new units as the official decision could be taken rather arbitrarily by the local SPLM authority. Historically, the establishment of new local political or administrative units has been linked with the increase in the availability of government positions, and used by politicians to buy loyalty from potential opponents. This phenomenon worsened with the huge inflow of foreign aid in the late 1990s and early 2000s when the number of administrative units also increased upon demands from local populations of being recognized autonomous administrative units in order to be able to negotiate independently with international NGOs for the implementation of projects in their areas[822]. Due to the lack of reliable population figures and the mechanisms of aid distribution, the 'wealth-in-people'[823] that a chief had to display during colonial time in order to access government resources lost importance and was replaced by a sort of wealth-in-chiefs, who were needed by groups of people to turn into an officially recognized community that could claim an administrative unit and be included in external resource distribution. As we have seen, in 2009, the Local Government Act (LGA) introduced population-based criteria for the creation of new counties, *payams* and *bomas*. These objective criteria where however matched with the quite subjective one of the "common interest of the communities (consideration of minority or majority ethnic group cases as may be decided by the Southern Sudan Legislative Assembly)"[824], suggesting that in some cases ethnic criteria might be considered. Moreover, due to the absence of reliable population figures, criteria based on the number of sub-units can still be used for *payam* and County levels.

Yirol West County was created between 2003 and 2004 following the split of Yirol county into Awerial, Yirol East and Yirol West. According to Yirol West County Commissioner, the area was divided to "bring the administration

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[822] Rolandsen, *Guerrilla Government*.
[823] Leonardi, *Dealing with Government in South Sudan*.
[824] Government of Southern Sudan, *Local Government Act*.

closer to the community"[825]. The division was done on ethnic lines, based on presumed colonial classification of settlements, giving administrative recognition to three sub-sections of the Dinka Agar. The Atuot subsection inhabiting Yirol West is very big and divided into six clans. Yirol West has currently a town council and six "officially" recognized *payams*. Given the lack of warrants of establishment for both Counties and *payams*, the official recognition in this case is given through their inclusion in the County consolidated planning and budgeting process.

In 2013, the chiefs of three sub-clans have submitted requests for the creation of three additional *payams*: Panlieth (currently in Geng-Geng area), Panakar and Watchabath (currently in Abang area).

**Table 5.1: Existing and Proposed Payam in Yirol West**

| Existing Payam | Current status |
|---|---|
| Abang | Payam |
| ➢ Panakar | Boma under Abang |
| ➢ Watchabath | Boma under Abang |
| Geng-Geng | Payam |
| ➢ Panlieth | Boma under Geng-Geng |
| Aluakluak | Payam |
| Geer | Payam |
| Anuol | Payam |
| Mapuordit | Payam |

The main argument advanced to justify the request was the lack of social services in the areas far from the existing *payam* headquarters, together with the population increase. In the words of a *boma* customary court member in Abang *payam*:

> "We were divided because we are many in Abang. If services come from the government, they cannot benefit everybody. The decision came from us to divide, so if the services come from the government everybody can benefit"[826].

The County Commissioner and the SPLM County secretary substantially agreed with this position. The County Commissioner argued:

> "The area [Abang] is very large. If you want to deliver the services to them, and divide the services given by the governor equally to *payams*, Abang will not

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[825] Interview with Majak Ruei, Yirol West County Commissioner. Yirol Town, 03/12/2013

[826] Collective interwiew with Bany Loum Boma Court. Abang Payam, 04/12/2013

receive enough because it's bigger. If it is divided, everyone will get its share and anyone will complain that [he] is being neglected"[827].

Being a native from the would-be Panakar *payam*, the SPLM County secretary was particularly supportive of the local chief's request, and wrote a letter to the Governor of Lakes State to speed up the approval.

The general understanding emerging from these quotations is that services are only delivered where administrative headquarters exist. Although Garang's statement of "taking towns to the people" was not directly mentioned by most of the local chiefs and court members but only by government officials, reference to the territorial extension of existing *payams* and to the long distance between rural settlements and existing *payam* headquarters were very common. Vague references to the increase of population numbers and to the impossibility of looking after such big population for one court alone were also frequent, showing the tension between the wealth-in-chiefs, deemed necessary to access resources, and the wealth-in-people, which was nevertheless considered a justification of vital importance for splitting chiefdoms, as if the process was nothing more than "the natural result of perennial indigenous processes of segmentation"[828].

Despite not having yet been approved by the State government, the three proposed new *payams* already have functioning Regional Courts. If, as Lund argues, "When an institution authorizes, sanctions, or validates certain rights, the respect or observance of these rights by people simultaneously constitutes recognition of the authority of that particular institution"[829], these courts undoubtedly exist as centers of authority: indeed, they regularly discuss cases related to marriages, divorces, adultery, dowry payment and so on, involving the sub-clans under their respective jurisdictions. Executive chiefs have been elected by local communities, and accepted by the county Commissioner.

The existence of redundant executive chiefs and Regional Court Presidents is given as a reason for creating a new administrative unit[830]. The

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[827] Interview with Majak Ruei, Yirol West County Commissioner. Yirol Town, 03/12/2013

[828] Leonardi, *Dealing with Government in South Sudan*. p. 190. In fact, in many areas of South Sudan the people had been historically pushed to under-estimate the numbers of their population as a form of defense from SPLA conscription and tax extraction. Interview with Mary Paul Ngundeng, Member of Parliament from Rubkhona County, Unity State Legislative Assembly. Bentiu, 09/02/2013

[829] Lund, *Local Politics and the Dynamics of Property in Africa*, p. 9; Lund, "Twilight Institutions." p. 9.

[830] Interviews with: James Akec, SPLM Secretary, Yirol West County. Yirol Town, 05/12/2013; Majak Ruei, Yirol West County Commissioner. Yirol Town, 03/12/2013; Daniel

physical presence of a Regional Court gathering to solve disputes among a certain group of people in a certain area seems to provide the evidence that the state is already there, and it only needs formal recognition as a *payam*. Playing on the ambiguous boundary between 'government' and 'community', the chiefs stress their position as community gate-keepers, at once expressing local grievances related to the lack of public services, and claiming to 'be the government' themselves for providing citizens with one of the most important public good: access to justice. The historical importance of their role as customary justice providers had been emphasized by the SPLM since the war time in opposition to *shari'a* law, which was one of the major arguments against the northern regime. If, as Leonardi argues quoting a DFID-commissioned report by Scheye and Baker, "local justice systems were certainly not 'non-state'"[831], the chiefs seem to be very much aware of this and use the evidence of their work 'on behalf' of the state to advance claims to a salary as government officers, again adding to the ambiguity of their positionality[832]. Interestingly, while in other areas local chiefs regret fragmentation, complaining about the erosion of their power as well as the reduction of the taxpayer-base from where chiefs were previously paid, again showing the continuous tension between the advantages of having a big population and those of having more administrative units, in this case they seem to make the choice of increasing the number of units, putting back to the government the responsibility of finding adequate resources to pay their salaries. One senior officer in the Ministry of Local Government in Rumbek bitterly complained about this: "[If we have to count chief's salaries] in County budgets, the numbers are threatening and will consume all the grants allocated to the Counties!"[833]. While delegating to the government the task of paying salaries, the chiefs also claim compensation for the war effort in the form of 'development' for their communities. Given the understanding of how basic services and resources are channeled to local

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Mangar Ayod, Geng-Geng Payam Administration. Yirol Town. 05/12/2013; collective interview with Watchabat Regional Court. Yirol Town, 04/12/2013.

[831] Eric Scheye and Bruce Baker, "The multi-layered approach: supporting local justice and security systems in southern Sudan" (Juba: draft report for DFID Strategic Development Fund, 2007), quoted in Leonardi, *Dealing with Government in South Sudan*. p. 200

[832] Interviews with Regional and Boma local courts, Yirol Town, December 2013.

[833] Interview with Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013. He was one of the senior administrators I had the possibility of interviewing: he was already working in the local government in 1970s, he joined the SPLM in the 1980s but was soon repositioned as a local government officer when the SPLM created its civil administration in the 1990s. He, as other old senior administrators, was very concerned for the economic viability of local governments, and often complained of the careless 'capture' of the local government discourse by politicians and by rent-seeker chiefs.

communities, the split of chieftaincies appears to be the most straightforward choice. This could be conceptualized as a problem of rational choice, as influent people in the communities are clearly interested in becoming chiefs, in running courts (for which they take tributes) and in claiming to be salaried by the government. At the same time, however, this won't be enough to account for the actual commitment in attracting 'development' and for the recognition and following they receive by their newly constituted constituencies. Self-interest may indeed explain at least partly the phenomenon of the fragmentation of chieftaincies, but the latter also keeps a strong collective dimension deriving from the participation of the local people. The understanding of how public services can be accessed provides for an incentive to the local people to stress their belonging to the new chief (and the new court), as a form of active adaptation rather than of passive reception of someone else's choice.

As in many other regions of South Sudan, however, access to public services is mainly provided by NGOs. Though in many cases the Local Government facilitates their work[834], local chiefs constantly complained about the government lacking goodwill to provide basic services to the rural areas, and thought that a better strategy was to try to intercept development aid directly from aid agencies. This is where the LGSD project steps in.

## 3.3 The Local Government Service Delivery project in Yirol West

In the initial phases of the LGSD project, the World Bank subcontracted international NGOs in order to 'prepare' local communities and administrators for receiving grants and managing them in a transparent way. Pilot needs assessments were conducted in the selected areas and development committees at county, *payam* and *boma* levels were set up. *Boma* Development Committees (BDC) elected their representatives based on the sub-clans inhabiting the area. BDC members were then to form the *Payam* Development Committee (PDC), with the *payam* administrator as its secretary[835]. These committees actively

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[834] For instance, the INGO running Yirol Town Hospital consults with the County Commissioner on regular basis in the organization of outreach campaigns for vaccination and other routine activities for disease prevention. Personal communication with INGO staff, Yirol Town, December 2013. In another instance, in Pariang County (Unity State), the Commissioner even managed to interfere with a NGO plans of implementation of an agriculture project forcing it to include a third *payam* in its implementation schedule (Field notes, Pariang county, February 2013)

[835] In the PDC, only one or two representatives of each sub-clan are allowed, according to the numbers of sub-clans in the area. If the Payam Administrator is a native of that area, he is

participated in the needs assessment that passed through the different levels of government to be included in the County planning process after evaluation and selection by the County Development Committee[836], made of PDC representatives and chaired by the county Executive Director[837].

Due to limited funds and time, the pilot did not cover all *payams* in Yirol West. Abang, Geng-Geng and Mapuordit *payams* were selected. Again, within these *payams*, not all the *bomas* were targeted. One of these was Kunyir *boma*, inhabited by the Jillek clan and administratively under Geng-Geng *payam*. However, due to its geographical proximity to Abang *payam* headquarter, the project management decided to place it under the responsibility of the latter in the implementation of the project. Nobody reacted to this: according to the local Community Mobilizer hired by the INGO working for LGDS project, there was a big difference between such a decision made by a donor according to technical criteria, and a political one, "coming from up there (the government)", to "weaken" Geng-Geng "giving one of its *bomas* to Abang"[838]. Instead, the move encountered the County Commissioner's unofficial blessing: while having opposed a similar arrangement between Mapuordit and Anuol *payams*, he did not interfere in the case of Kunyir[839].

counted in his sub-clan quota. Interview with Adok Ajok, Community Mobilization Officer for International Refugee Council in Yirol West County. Yirol Town. 03/12/2013

[836] Interview with Peter Majur, Project Manager of the international NGO, Rumbek Town, 19/11/2013. County Development Committees were first created in 1999 in the framework of the US-funded STAR project (see chapter 3) as liaison between INGOs, the Sudan Relief and Rehabilitation Commission and the population and were tasked with formulating development strategies and implementing development programs. They did not survive to the project (see D. E. Dembowski, "Evaluation of the Sudan Transitional Assistance for Rehabilitation (STAR) Program,"), but according to Naoko Anzai (interview, Juba, 1/11/2015) there was an attempt at revitalizing them in 2007 as the body in charge of making decisions over the use of Constituency Development Funds. In Yirol West, however, there was no CDC before LGSD according to the local community mobilizer involved in the project.

[837] Interview with Peter Majur International NGO Project Manager coordinator, Rumbek November 2013.

[838] Interview with: Adok Ajok, Community mobilization Officer for International Refugee Council in Yirol West County. Yirol Town. 03/12/2013; Daniel Mangar Ayod, Geng-Geng Payam Administration. Yirol Town. 05/12/2013.

[839] Interview with Peter Majur International NGO Project Manager coordinator, Rumbek November 2013.

**Table 5.2: LGSD project targeted areas in Yirol West:**

| Payam | Locality | Status |
|-------|----------|--------|
| Abang | Panakar | *boma* - with pending request to become a *payam* |
| | Betoi | *boma* – claimed by would-be Watchabath *payam* |
| | Aruau (Wuntiit) | *boma* – claimed by would-be Watchabath *payam* |
| | Kunyr | *boma* – administratively under Geng-Geng *payam*, placed under Abang by the LGSD project – claimed by would be Panlieth *payam* |
| Geng-Geng | Madbar | Village in the process of becoming a *boma* |
| | Pobur | *boma* |
| | Akekoi | *boma* |
| Mapuordit | Mabui | *boma* |
| | Aguraan | *boma* |

The strategy of targeting *payams* as basic units for development projects or grants allocation comes from the government praxis, still en vogue, of allocating financial resources equally to the states and local government units, as it was for relief aid during the war, without considering the population distribution[840]. Indeed, according to senior Local Government officers, the number of administrative sub-units, *bomas* and *payams* is still considered as the major basis to claim for new units and the government uses it to compute transfers to sub-national levels of government[841]. As seen in chapter 4, this is probably due to the lack of reliable population figures besides those provided by the contested National Census in 2008. Collective interviews with the chiefs confirm an understanding of this praxis as a strong incentive to create more administrative units:

> "The government doesn't allow us to request enough relief unless we are splitting into many *payams*. The government considers the *payams*, not the population. (…). Other things are also divided according to payams. NGOs come

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[840] Sarzin and Bekalu, "Scoping Mission for Proposed Local Governance and Service Delivery Program"; Leonardi, *Dealing with Government in South Sudan*.

[841] Interviews with Marial Amoum Malek, Member of Parliament in Lakes State Legislative Assembly, Chairperson of Committee on Local Government. Rumbek, 06/12/2013; Eli Achol Deng, member of the Local Government Board. Juba, 13/12/2013.

to the people of the *payams*. They want two or three people from the *payams* to work with them. Having more *payams* will benefit more people"[842].

"The splitting of the *payams* is very important because it will accommodate many people. (...) For instance, if we are one, if you come to visit us, if Kunyir is alone you can meet only Kunyir. If we are two, Kunyir and Panlieth, then you will meet both of us. This is why we want to be split, in order to be all accommodated by the services"[843].

In order to be "all accommodated by the services", however, the establishment of a *payam* through a functioning court is not enough. The chiefs and their courts need to be visible, possibly in town, close to centers where decisions concerning the location of development projects are made. The historical conception of the town as a center of knowledge related to government[844] has enriched itself with knowledge about development projects and service delivery. Since the 1990s, the chiefs' courts have been increasingly gathering in the towns. In some cases, they were appointed by SPLM to control urban areas; in other cases they moved to towns with their courts because of insecurity in the surroundings, like in Rumbek. But insecurity was not the only reason: many were "people who knew the government" for having previously been traders or anyway town-based, and they were expected "to deal effectively with government, and so to bring the material benefits of development projects and services"[845]. When these chiefs resided in town instead of their own rural *payams*, local authorities were often reluctant to explicitly declare that the reasons was also this kind of negotiation. Not only in Yirol West but also elsewhere (in Rubkhona county in Unity State, for example), their presence in town was nevertheless justified with reference to a total lack of basic services in the areas under their jurisdiction, usually described as 'lack of water'[846]. If on one side local government officers are supportive of the chiefs' claims for the creation of new *payams*, at the same time they also tend to understate the collective value of the chiefs' presence in town (chiefs are in town to represent grievances of their constituencies), sometimes reducing it to a personal

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[842] Collective interview with Bany Loum Boma Court. Abang Payam, 04/12/2013.

[843] Panlieth is one of the areas that presented a request for becoming an independent Payam. Currently it is a Boma under Geng-Geng Payam, but it is inhabited by the Jillek section of the Dinka Agar, a different section from the Geng-Geng one, Akot. Kunyir is a Boma currently under Geng-Geng Payam, but it is also inhabited by Jillek and willing move under Panlieth as soon as the latter is approved to be a Payam. In the long run, however, Kunyir chiefs have plans to become a Payam as well, claiming that the other Payams headquarters (be it Abang, Geng-Geng or Panlieth) are too far away from where the people live to ensure proper service delivery.

[844] Leonardi, *Dealing with Government in South Sudan*.

[845] Ibid. p. 162.

[846] Interview to James Awanichol, Abang Payam Administrator. Yirol Town, 04/12/2013; Garjang Gieng, Rubkhona County Commissioner. Rubkhona, 06/02/2013.

ambition of the chief, or to his unwillingness to live in places where no services are available. On one side they are supportive, on the other they treat the chiefs as a primarily self-interested actors, sometimes even with some degree of paternalism[847].

In a context in which respective roles and duties of customary and statutory authorities are not clearly defined, the chiefs gathering of their courts in town may indeed suggest a struggle for keeping their role and proving they can still effectively mediate the relation with the government bringing "services" to the rural areas, preventing migration of their own populations towards the towns as much as possible in order to keep alive the urban/rural dichotomy upon which their position is constructed. Being in town allows them to access and use the necessary information to reproduce their chiefly position.

> "The role of chief (is) to be responsible with the life of the community, and responsible for the NGOs coming to the area (...). If delegates from [the] government come, they only use state roads direct to executive chiefs. We have our local villages: if there is no road, we would not meet the delegate from the government. [We need] the chief (...) to meet executive directors from any NGO and the government"[848].

In the above quotations the hybrid nature of the providers of public services and the blurred boundary between NGOs and the Government are always visible. Chiefs are aware that funds and services come from NGOs, but still hold the state responsible for actual channeling resources towards each community, as suggested particularly by the first and third quotations. In the understanding of the traditional court members, aid agencies would always pass through the county Commissioner's office to consult the Local Government before initiating any development work. For this reason, most of the Regional Courts, including the newly established ones, do not gather in their *payam* headquarters, far from the town center, but in the much more visible arena represented by the square just in front of the county Commissioner's office, where all development agencies willing to implement projects in the area would

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[847] Interview with Majak Ruei, Yirol West County Commissioner. Yirol Town, 03/12/2013. A paternalistic attitude towards the chiefs and the will to display his own mediating role was very clear when *payam* administrators offered to introduce me to the chiefs, imposing their presence for the whole length of the (usually collective) interview, sometimes intervening to emphasize the importance of the government hierarchy in order to channel resources to the local level (Interviews with Daniel Mangar Ayod, Geng-Geng Payam Administration and Regional Court. Yirol Town. 05/12/2013; Interview with Jiir Payam Administrator and Town Court, Rumbek, 20/11/2013). Geng-Geng *payam* administrator even treated me as I was a resource he brought to the community: "She is here to report the challenges you are facing to the government!".

[848] Collective Interview with Geng-Geng Payam Regional Court. Yirol Town, 05/12/2013.

go to meet government authorities. In supporting chiefs' claims for administrative autonomy, the County Commissioner shows his sensitivity towards local communities' grievances and his commitment to comply with bottom up demands for development, using channels whose effectiveness in accessing 'state' resources is widely recognized and accepted.

## 3.4 Local state-making and political repercussions of decentralized service delivery discourse

Though the decision of the LGSD project management of moving a *boma* from a *payam* to another was presented as a technical arrangement motivated by geographical proximity, the process set in place through the World Bank's *payam* development grants has more 'political' consequences. It entails the establishment of a mechanism for planning and budgeting, the definition of priorities for a certain area, and decision-making on how funds will be spent through the formulation of plans that will be implemented by local government authorities and administrators[849]. This power is given to PDCs, which have the delicate task of merging *boma* Plans in order to have just one project funded by the World Bank for the whole *payam*, and will need to identify the exact location where the infrastructure linked with the project will have to be built. This decision-making process can be highly contentious, as suggested by the international NGO project manager in charge of the LGSD project:

> "When we were discussing the priorities, [the people living in Mapuordit Payam] said a school in Aguraan Boma and also in Mabui Boma. When [the two plans] came to the Payam for consolidation, the school became the first priority [of the Payam]. Now there is a challenge, because both of [the Bomas] want the school, [but] the budget cannot be passed with two schools [in one Payam] the same year"[850].

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[849] Interview with Adok Ajok, Community mobilization Officer for International Refugee Council in Yirol West County. Yirol Town. 03/12/2013

[850] Interview with Peter Majur, IRC, Community Driven Development, Protection Team. Rumbek, 19/11/2013. Aguraan project was selected because Aguraan BDC was considered more pro-active by the *payam* administrator – it had even started a collective farming activity to contribute to the BDC subsistence. Mabui *boma* was promised that its project would have been considered as a priority in the second phase of the project, but Mabui BDC insisted to present its project to the PDC even after the latter had already approved Aguraan project. Relations between Mabui and Aguraan were already tense due to a long-standing feud between the sub-clans inhabiting the two *boma,* Kuk and Peleu. When the feud becomes particularly intense, members of the sub-clan are prevented from going to the other sub-clan territory and from accessing any vital social service falling under the control of the rival faction, including the local hospital. It is therefore likely that, once the school will be built, more tensions will arise between the two. (Field notes from Mapuordit, 17-18/11/2013)

In the case of Kunyir Boma, the project creates a discrepancy between patterns of service delivery through the donor-funded initiative and the local administration hierarchy, to which Kunyir still needs to respond for other issues (for example, tax collection or planning and budgeting related to other government funded programs). At the same time, it also provides an alternative source of legitimacy for claims to administrative autonomy.

> "Kunyir has been identified as an area where the project will be implemented, but it doesn't matter in which *payam* it is located. Even if Panlieth is approved and Kunyir decides to go with it, it will still be involved in the project"[851].

This sort of 'administrative independence' seems to be one of the drivers of the attempted administrative rearrangement in Yirol West. As shown in Table 5.2, most of the *bomas* involved in the project have either requested to become *payams* in their own right, like in the case of Panakar, or to be part of new would-be *payams*, like in the case of Betoi and Wuntiit, claimed by Watchabath, and Kunyir claimed by Panlieth. This rearrangement has a double thrust: on one side, from those *bomas* such as Watchabath and Panlieth, respectively under Abang and Geng-Geng, which have not been selected among the project implementation areas; on the other side from Bomas that were selected, but fear being subjected to the priority-selection process in Payams where they feel to be minorities. Indeed, Kunyir *boma* Court did have the feeling of their priorities being overlooked during the needs assessment in Abang *payam*, and that since their needs were many, they had to be able to negotiate the priority interventions in their area from a stronger position:

> "During the project meetings, Kunyir community proposed water to be brought by the project, but [we] have been waiting up to now and water did not reach [us]. (…) We want to be a payam because we are very many, we have a big population. And we demand many things."[852].

Indeed, having to choose just one project in each *payam*, it seemed very unlikely that Abang PDC would have voted for the one proposed by a *boma* which is in fact part of another *payam*.

'Administrative independence' is seen as the best strategy to intercept resources and services from their providers, but also has a more explicit political dimension. Administrative units are the basis for the creation of electoral constituencies. In describing the reason why there were so many

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[851] Interview with Adok Ajok, INGO Community Mobilization Officer in Yirol West, Yirol Town, 3/12/2013.
[852] Collective interview with Panlieth and Kunyr Regional court, 05/12/2013.

requests for new *payams*, a Member of Parliament in Lakes State Legislative Assembly mentioned the "political aspect" of "taking towns to the people":

> "Those that will have a *payam* will have a chief that is a Regional Court, (...) and later on maybe they will have a constituency in the state assembly.(...)Taking towns to the people has a development aspect but also a political aspects"[853].

A revealing conversation with members of the Watchabath Regional Court (one of the proposed new *payams*) confirmed this point, stressing that until their clan did not manage to have a *payam*, it would be impossible to obtain representation in the state legislative parliament and the benefits deriving from having access to a stronger patron-client exchange.

> Court member: "Even though we are one [Luac clan in Abang], we are many and we need to be represented differently [in the State Legislative Assembly] so that the resources reach us. So that the resources are equally distributed.
>
> Researcher*: Do you think you have different priorities from the other areas of Abang and want to communicate separately with the government?*
>
> Court member: (...) Since we were one we did not benefit from the government. Now that we have separated we expect more delivery like elevated tanks to be installed in Betoi boma[854] (...). [Now] there is no person representing us in the assembly, in the parliament, and any student representing [Watchabath] *payam* is sponsored by the government. We expect that if we split from the other *payam* these things will happen in the future. That *boma* we mentioned, Betoi, we don't have clinic there. We don't have water there. (...) We are many and nobody represents us in the assembly. In case of election if we split, we may be represented in the assembly.
>
> R*: Do the representatives in the assembly come from other areas in greater Abang?*
>
> Court member: Representation is basically on one side. So we decided to split so to have representation also from our (sub)clan.
>
> R: *Did the other clan benefit from being represented in the parliament?*
>
> Court member: Yes, those ones are benefiting, because MPs *(Members of Parliament)* have a lot of money and they give them to their people. They are given big salaries. Surely we expect that in the near future we will be

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[853] Interview with Marial Amoum Malek, Member of Parliament in Lakes State Legislative Assembly, Chairperson of Committee on Local Government. Rumbek, 06/12/2013. A similar point was made by other senior government officials (Interviews with Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013; Eli Achol Deng, member of the Local Government Board. Juba, 13/12/2013). Referring to the ambiguous establishment criteria set by the law for Counties, *payams* and *bomas*, one senior member of the Local Government Board said : "Those Counties that are being created (...) need more *payams* to feed them and those *payams* will need more *bomas* to feed them and the whole population will depend on salaries from the government!"

[854] Betoi Boma is one of the projects targeted by LGSD under Geng-Geng Payam.

represented so that we also benefit like the other people. People are now benefiting from the government, you can see this tower? *(He points to a three-floor building nearby the place where we are having our discussion)* We are expecting this [kind of infrastructural improvements] from our kids"[855].

Various machinations trying to secure electoral constituencies for ethnic communities have been accounted for by Martina Santschi, who collected a number of valuable testimonies during the National Census in 2008, highlighting the political sensitivity of counting people. For example, she quotes a senior government officer in Central Equatoria state commenting on the political nature of the census, adding also about its economic nature:

> "Services like schools, hospitals and water will be given according to population numbers. If your people are less, you claim the population of your neighbor. Some of these fellows said 'Let us grab the people from the other county', even though they knew that it was not their territory"[856].

However, once it became clear that, more than people, it was important to count chiefdoms and administrative units, access to basic services as well as to electoral constituencies started being associated with administrative autonomy, resulting in continuous bottom up thrusts to administrative fragmentation. In the absence of election for County level governments, according to the Chairman of the LGB and to several of my informants, appointment of local prominent political figures such as County Commissioners also followed a sort of 'equitable distribution' among the different officially-recognized communities –those that have a *payam*[857].

Some, however, suggest that these thrusts are not fully bottom up but rather result from "politicians beating the drum" of local grievances and divisions for self-interested purposes[858]. A senior administrator of the Ministry of Local Government argued that "politicians" (including the County Commissioner) encouraged the grassroots to fragment in order to have more

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[855] Collective interview with Watchabath Regional Court. Yirol Town, 4/12/2013.

[856] Martina Santschi, "Briefing: Counting 'New Sudan,'" *African Affairs* 107, no. 429 (October 1, 2008): 631–40, p. 637.

[857] This dynamic of positions distribution was always treated as aconfidential information, perhaps because it was considered less acceptable from the lens of the democratic processes that were advertised as virtuous by representatives of the international community in South Sudan and in the Government's public speeches.

[858] Interview with Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013

local leaders that they could claim to be able to mobilize, even if in fact they only represented very few people[859].

In both cases, the double thrust (top down and bottom up) towards administrative fragmentation is fostered by the international contribution to patterns of resource provision presented as administratively effective without acknowledging their deeply political nature.

## 4. Conclusion

This chapter has shown how service delivery has become the 'new frontier' of state-building programs, where 'traditional' development projects (education, health care, water, provision of infrastructure) can be matched with capacity building for local institutions. Expectations of service delivery in post-conflict South Sudan were extremely high, and widespread was the idea that their provision was a responsibility of the new-born government as a due reward to the people for having contributed to the liberation struggle. The state, in the collective imaginary of South Sudanese, is a label linked to the provision of public goods and services and, more broadly, to the distribution of resources. These resources can come invariably from the government or from external resource providers, but in order to benefit from it, this label has to be pulled, appropriated; in other words, people need to show that they are part of this thing called state.

The state label is "used", on the one hand, to claim direct access to the negotiating arena with external resource providers. This appropriation of the state as described by state-building projects (made of local administrative units, Regional courts, Executive chiefs) takes place through discourses on decentralization and efficient service delivery, and practices of fragmentation aimed at receiving extraverted recognition (and funding) under the supervision of compliant local authorities. The need to increase the access to basic services, to make it more equitable, to foster participative processes and to identify reliable intermediaries with rural communities are elements clearly emerging from collective interviews with local chiefs as well as with *payam* administrators and the County Commissioner. In showing compliance with the requests from local traditional authorities, government officials demonstrate to

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[859] David Koak Guok, "Local Government Presentation to the Sixth Governors Forum on Demarcation of State and County Administrative Boundaries in Southern Sudan," 2008, Local Government Board Archive.

be aware of the importance of the 'community based ideology'[860] in donor-friendly lexicon about decentralization, though at the same time they also try to keep the hierarchy between them and the chiefs and to retain their role of first mediators between resource-providers and the chiefs.

If at first glance one could think that there is no state formation in this process, but only centrifugal thrusts to get one's own share of resources, the idea of the state is stronger than ever in people's minds and it expresses itself through the constant effort of being recognized as part of the state structure. The state is needed to sanction the existence of a community through extending its visible presence in its territory in order for this community to have access to resources. In a context of resource scarcity, dominated by discourses on decentralization and local autonomy, people "found that their officially-recognized 'community' and its chiefs might be a lever by which to obtain the most favourable terms for dealing with the state"[861], not only in its delivery function, carried out in tandem with international actors, but also in political representation. If on one hand access to resources is sought through personalized relationships with 'sons of the land' who need to be placed in prominent decision-making positions, on the other hand the LGSD project does expand what Bergamaschi calls the "bureaucratic access to resources"[862]. The idea of workshops, committees, planning and budgeting processes as essential paraphernalia for being included among the beneficiaries of 'public resources' (not only state, but also international) is consolidated, though loci of real power are kept clear from these invited bureaucratic spaces and rest with the power of recognizing communities as subjects entitled to be part of the delivery game.

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[860] Bierschenk and Olivier de Sardan, *States at Work*.

[861] Leonardi, *Dealing with Government in South Sudan*. p. 182

[862] Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali."

## Chapter 6: Land governance and communal political subjectivity

### 1. Introduction

As shown in chapter 4, the Land Act puts particular emphasis on communal land tenure, regulated by customary law. This form of tenure, based on a vaguely defined concept of 'local community', concerns primarily the rural areas, where: 'Traditional Authority within a specific community may allocate customary land rights for residential, agricultural, forestry and grazing purposes'[863]. This idea of tenure refers to a principle of land entitlement based on autochthony and on belonging to a specific community, more or less explicitly defined in ethnic terms and matched with a circumscribed territory. Not only does it reflect the SPLM's exaltation of the 'community' as the subject entitled to self-rule[864], but also the international 'neo-customary' mainstream privileging the formal involvement of the 'rural poor' into decentralization reforms aimed at increasing local autonomy from the central state[865]. While being rooted in poverty reduction concerns and strategies based on (formal) grassroots participation in development and decision-making over resources, this approach in fact recreates something similar to colonial ethnic homelands, functional to make society 'legible' to the state apparatus[866]. Moreover, it results in an extremely difficult implementation characterized by many flaws typically attributed by an institutionalist perspective either to interferences by the ruling elite through corruption, or to poor capacity of the civil servants in charge of putting into practice the principles contained in laws. This latter version, recalled also in the South Sudan Development Plan 2011-2013, repeats the well-known *leit motiv* of the lack-of-capacity:

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[863] Land Act 2009, art.15

[864] Interviews with Ezechiel Thiang, Lakes State Governor's advisor for peace and security, Rumbek, 07/12/2013; Peter Dak Khan, Member of Parliament, Unity State Legislative Assembly, Bentiu 08/02/2013; William Garjang Gieng, Rubkhona County Commissioner, Bentiu, 06/02/2013. See also Leonardi, *Dealing with Government,* 2013.

[865] See for example: Paul De Wit, "Land and Property Study in Sudan," Interim report, Project OSRO/SUD/409/HCR (Norwegian Refugee Council, UNHCR, FAO, August 2004); Eric I. Muchungu, "Land Administration and Cadastral Systems," SpacialWise Solutions (Nairobi: Norwegian People's Aid, 2009).

[866] Jocelyn Alexander, *The Unsettled Land: State-Making & the Politics of Land in Zimbabwe, 1893-2003* (Oxford : Harare [Zimbabwe] : Athens, Ohio: James Currey ; Weaver Press ; Ohio University Press, 2006); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998).

"The successful implementation of the Land Act and its regulations depends on the establishment at national, state and county levels of capacity to administer land rights and to govern the use of natural resources in ways that foster social and political stability and build an enabling environment for sustainable economic development"[867]

International consultants' frequent complaints about flaws and inconsistencies in the land legal framework which, together with the lack of capacity, would hamper its implementation should not rush the conclusion that the land reform is ignored by local actors. It is rather applied selectively, providing a discursive repertoire used to legitimize and justify a number of practices even when these seem to contradict the law. The 'real governance' of land thus takes shape in the interstices of the official reform, drawing heavily upon its most important principle: that the land belongs to the people, who are divided into communities with a strong political connotation, as they also correspond to local government and administrative units. If it is true, as Catherine Boone argues, that land tenure systems reflect the structure of politics[868], it can also be argued that, in South Sudan, the structure of politics is influenced by the system of land tenure, or at least reinforce each other, especially since this system has been set with considerable support from external forces explicitly interested in influencing the political and economic reality in the framework of a state-building enterprise. This enterprise is characterized by what Jean-Pierre Chauveau calls 'bureaucratic populism': the coexistence, in development interventions and policies, of the bureaucratic legal-rational ideal-type, which sets the framework for the developmental enterprise, and a form of populism characterized by an idealistic attitude towards local values and capacities[869]. In this case, the positive attitude towards the concept of community also has a pragmatic side, besides idealism, as it speaks to the need to buy loyalty from a deeply divided society accustomed to perceiving the neighbour as an enemy or at least as a competitor for access to resources. Its populist character lays in the fuzzy nature of the concept, which is never defined even if it represents one of the pillars of the land tenure reform, and it is used instrumentally according to the needs of different actors.

The centrality of the 'community' in land administration remains a key feature also getting closer to the urban areas, where the bureaucratization of

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[867] Government of the Republic of South Sudan, "South Sudan Development Plan 2011-2013. Realizing Freedom, Equality, Justice, Peace and Prosperity for All," August 2011. p. 48

[868] Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics* (Cambridge University Press, 2014).

[869] Jean-Pierre Chauveau, "Du Populisme Bureaucratique Dans L'histoire Institutionnelle Du Développement Rural En Afrique de L'ouest".

land relations increases and where the communal ownership of land meets individual land tenure regulated by statutory institutions and market relations. In these areas, the coexistence of the legal-rational bureaucratic apparatus with the emphasis on the importance of the community and of its local, 'traditional' values is even more visible when it comes to negotiate the transition of land from its rural status to an urban one. Besides the difficulties of determining the boundaries of the 'local community' and the tension between recognizing the latter as subject of right vis-à-vis a bureaucratic -though decentralized- state system, the sharp distinction between the two systems of land tenure is stated in the draft Land Policy and continuously affirmed in virtually all my interviews with town-based local government officers. In fact, the very distinction between urban and rural areas appears to be quite problematic in South Sudan, primarily because of the mobile and fuzzy character of the urban/rural frontier[870]. The negotiation of this frontier is contentious and continuously evolving, but it is precisely on this frontier that ethnic identity is more powerfully activated with a political connotation.

In this chapter, I argue that the intermittent way in which the land reform is implemented, giving place to a 'real governance' of land, does not depend on presumed implementation flaws and gaps mentioned above, but rather on its very nature. Particularly, the formalization of communal land rights on customary basis in the Interim Constitution and later in the Land Act has given more strength to customary claims advanced through discourses of belonging, leaving the definition of 'local community' to the legacy of a history of ethnic categorization of the rural population. In analyzing the dynamics of inclusion and exclusion from land, both understood as territory in its political and spatial connotation, and as an economic asset in its productive function, I identify two kinds of dynamics which I describe as vertical and horizontal dynamics. Vertical dynamics emerge within a supposed 'community' in the negotiation with external actors belonging to the formal statutory sphere and have to do with power relations and internal differentiation. Horizontal dynamics are those developing between entities mutually recognizing as communities in the definition of boundaries: physical boundaries, identifying the space the community owns and it is entitled to live in, in its coincidence with administrative borders; and symbolic boundaries, identifying membership in the community and the use of different discursive practices of legitimation to claim ownership or access to land. These dynamics draw a double trend of

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[870] Leonardi, *Dealing with Government in South Sudan.*

horizontal fragmentation and of vertical patronage relations which shape strategies of access to land and natural resources more broadly.

## 2. 'Sons of the soil' VS state representatives: making the community visible

This paragraph will focus on vertical dynamics emerging within a group identified as a 'community' both in administrative terms (belonging to the same administrative unit) and in 'customary' terms (speaking the same language and recognizing the authority of the same system of 'traditional authority'). These dynamics transcend the division between private and public, between state and societies, and between urban and rural, extending communal belonging also outside of the rural milieu to representatives of the state. They play out in the definition of membership and of mechanisms of participation in decision-making and in the enjoyment of the benefits deriving from land ownership. These mechanisms are particularly visible when it comes to transactions involving third parties, when external resources are brought to an area usually creating the need of intermediaries who can capitalize on their position negotiating on behalf of their 'community'. Although, as shown in previous chapters, this negotiation also happens when talking about development projects, it is rather when land is treated as an economic asset by for-profit actors – neither interested in any philanthropic action nor necessarily in the related advertisement of their goodwill vis-à-vis the local people - that these mechanisms show more abruptly. NGOs and development agencies more generally have been extensively criticized for their management-oriented approach with no true attention to the realization of objectives[871] and for their façade participation mechanisms used to legitimize a persistently top-down approach to development[872]. These critiques notwithstanding, the development industry has interiorized a number of mechanisms and structures – from consultation workshops to steering committees – aimed at least at displaying its effort in increasing local participation[873]. With the expansion of the scope of

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[871] Chauveau, "Du Populisme Bureaucratique Dans L'histoire Institutionnelle Du Développement Rural En Afrique de L'ouest."

[872] Sarah C White, "Depoliticising Development: The Uses and Abuses of Participation," *Development in Practice* 6, no. 1 (February 1996): 6–15.

[873]Indeed, in the last twenty-five years, a number of efforts have been attempted at measuring and conceptualizing the extent, the outcomes and interests vested in participation. It is not my purpose here to provide a summary of these, as the concept of "community", rather than that of "participation" constitutes the focus of this chapter. For a review of the concept of

donors' action from traditional development projects to good governance and state-building, participation has become a common word also in general governance processes, which have been increasingly characterized by the institutionalization of mechanisms for consultation like user groups, forums and councils, even if they have often proved to be part of the development 'anti-politics machine'[874]. In spite of their questionable effectiveness in promoting real active participation to the project they are designed to assist, the existence of these mechanisms does provide some space of negotiation for local actors, making them visible through the category of 'local community'. Their deployment in development projects does not depend on the existence of a legal framework compelling donors to put them in place: it would be very weird indeed for the UN, GIZ, DFID or the World Bank to fund projects which do not contemplate at least a couple of rounds of consultation with local 'stakeholders'. Rather, the consultation/participation process is required by the donors to make sure that the local subjects are protected from outside interferences in local livelihoods, and indeed has been included in donor-supported law-making. In such an important domain as the use of land, this involvement is particularly important, as any private actor coming to invest in land is likely to alienate it for a long period of time, affecting the 'local community's' capacity of using that land. Who participates in the decision-making process and how, therefore, becomes a particularly productive arena for observing processes of negotiation within the 'community' and between the community and 'outsiders'. To look at 'the community' concept in its relation with other entities which are 'non-communal' in nature, provides a particularly interesting perspective to assess its internal dynamics against its conceptualization as a given homogeneous entity emerging from both the law-making process and discourses by virtually all the actors involved in the negotiation.

This paragraph will explore local community's internal power relations and the extensions of the meaning of 'community' to actors who would theoretically belong to other spheres according to the categories characterizing development and investment projects. It will be based on two case studies from Central Equatoria State, which provide a particular interesting portrait of these power relations: besides the tensions occurring between the definition of community and government, it also adds tensions between different levels of

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participation, see Andrea Cornwall, "Unpacking 'Participation': Models, Meanings and Practices," *Community Development Journal* 43, no. 3 (July 1, 2008): 269–83, doi:10.1093/cdj/bsn010.

[874] James Ferguson, *The Anti-Politics Machine*.

government which also contribute to the definition of how the concept of community has to be understood.

## 2.1 The "local community": a homogeneous entity?

According to Rolandsen, the fact that an ample section of the Land Act is concerned with leasehold may indicate that this form of tenure is foreseen as a very important component of the land management system[875], confirming the interest in fostering foreign investments in land. The South Sudan Development Plan 2011-2013 puts the productive use of the land at the very center of the Government's strategy of diversification of the economy[876]. Since 'the land belongs to the people', small-scale agriculture is repeatedly emphasized as the best and easiest strategy to promote economic growth. A quite typical approach to agricultural development can be traced in the document, based on securing tenure, access to credit, private investments. Occasional reference to bigger investments involving external actors is made, reminding that the Investment Promotion Act (2009) contains provisions ensuring that the rights of the legitimate owner(s) of the land are respected. In fact, rather than an active support to small-scale agriculture, the years between 2005 and 2011 have seen a growing number of foreign large scale land investments directly negotiated by the elite participating to the state apparatus, often on behalf of the 'communities' 'traditionally' owning the land[877].

One of the major concerns behind the legal recognition of customary rights to land was to foster the 'local communities' inclusion into processes of decision-making on the productive use of their land. This was looked at from several perspectives: as a strategic populist concession, from the part of the SPLM; as a tool to counter what has been defined as the 'new global land grab'[878] giving more power to 'local communities' by civil society activists; and as a key strategy of poverty alleviation by international development agencies, since the rural people would have had increased opportunities of keeping land

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[875] Rolandsen, *Land, Security and Peace Building in Southern Sudan.*

[876] In 2011, it was estimated that 98% of all South Sudan public sector revenues relied on oil income. The sudden shut-down of oil extraction in 2012, decided by the Government of South Sudan as a form of reprisal against the Government of Sudan, accused of leaking oil from the pipeline during its transport to Port Sudan, showed once again how dangerous this was for national economic stability. A leaked document from the World Bank went as far as portraying the decision as an 'irresponsible' one. Marcelo Giugale, "Note-to-File. Closed Hold, Not for Distribution or Attribution," Briefing (The World Bank, March 1, 2012).

[877] David K. Deng, *The New Frontier. A Baseline Survey of Large-Scale Land-Based Investment in Southern Sudan* (Norwegian People's Aid, 2011).

[878] GRAIN, "Seized: The 2008 Land Grab for Food and Financial Security," October 2008.

as their major source of livelihoods. All the texts forming the legal framework on land management (the Interim Constitution of Southern Sudan, the Land Act, the Local Government Act and finally the Transitional Constitution) indeed contain provisions binding the government to consult 'local communities' in decisions involving their land, not only in case of expropriations for public interest, but also in case 'third parties' get involved in productive investment projects.

In a context where development assistance is increasingly channeled towards capacity building and non-infrastructural interventions, private investments are assuming an important role as development and even peace-building partners[879]. For instance, the European Commission, South Sudan's second major donor, states that:

> "Effective development policy is essential in helping create better conditions for trade and investment in developing countries, as well as to ensure equitable distribution of their benefits for poverty eradication"[880].

The provisions contained in the laws, therefore, aim to make it a real "win-win strategy", as they also put time-limits for leases, and social and environmental obligations investors shall comply with. Specifically, private investments in the agriculture sector are considered particularly important by several government authorities[881] due to the need of diversifying sources of income for the country, which still relies heavily on volatile oil revenues. Investment in the agriculture sector would thus contribute building the economic viability of the new state. Acknowledging the role of private and foreign investments in agriculture development - and more generally, in natural resource development -, given southern history of revolt against top-down exploitative investments[882], a clause on 'indigenous community protection' was included also in the Investment Promotion Act passed in 2009.

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[879] Julien Barbara, "Nation Building and the Role of the Private Sector as a Political Peace-Builder: Opinion," *Conflict, Security & Development* 6, no. 4 (December 2006): 581–94, doi:10.1080/14678800601066595; Tobias Evers, *Doing Business and Making Peace?*, Swedish Institute of International Affairs, Occasional Paper 3, 2010, http://www.ui.se/upl/files/48638.pdf.

[880] European Commission and Directorate-General for Trade, *Trade, Growth and Development: Tailoring Trade and Investment Policy for Those Countries Most in Need.* (Luxembourg: Publications Office, 2012), http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf.

[881] Interviews with Timothy Thowl, Director General GOSS Ministry of Agriculture and Forestry 19/03/2012; Interview with Robert Ladu Luki, Land Commission Chairperson. Juba, 30/03/2012

[882] Johnson, *The Root Causes of Sudan's Civil Wars*.

Despite the emphasis on community participation, which shall include consultation with the community as a whole, going beyond the simple involvement of traditional authority in signing a contract or a Memorandum of Understanding with the investing company[883], several cases which have been described as 'land grabs' in a report published by Norwegian People's Aid (NPA) have occurred since the Government of Southern Sudan was formed. These cases are usually framed as conflicts between a company misbehaving – acquiring land through illegal deals either with the wrong level of government or with big men in the political or military elite with virtually no involvement of the local community[884] – and a local 'affected' community, portrayed through the victimizing terms of loss and destruction of livelihood assets and opportunities[885].

The framing of most of land investments in South Sudan as land grabs by international and local activists is functional to denouncing the scarce transparency and predictability of land transactions involving third parties, especially when it comes to foreign investment companies. At the same time, the homogenizing character of the 'land grabbing' narrative has been accurately outlined in Gilfoy's recent paper about land grabs in Liberia. Gilfoy's main argument focuses on the role played by advocacy campaigns against land grabs in concealing 'local communities' dis-homogeneity and internal conflicts, questioning, again, the ultimate definition of 'community'. This concealing power can also be observed in South Sudan as part of the 'bureaucratic populism' characterizing the approach to local state-building through the idea of 'community'. The homogenizing tendency can indeed be considered as functional in the project of creating local subjects distinct from the state, and it is therefore accentuated by projects aimed at strengthening their position vis-à-vis other actors – the government and private companies - such as those supported by civil society organizations. Different actors blame this gap in knowledge between 'local communities' and government/private companies for several different phenomena ranging from the abuses committed by government officials[886], to the lack of resistance of the local communities[887], or,

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[883] Government of Southern Sudan, *The Land Act*, 2009. Section 63.3; Government of Southern Sudan, *Local Government Act*, 2009. Section 89.

[884] Interview with Samson Wassara, Professor at Juba University, Dean of the College of Economic and Social Sciences. Juba, 25/03/2013

[885] K. Gilfoy, "Land Grabbing and NGO Advocacy in Liberia: A Deconstruction of the 'Homogeneous Community,'" *African Affairs* 114, no. 455 (April 1, 2015): 185–205,.

[886] Francesca Marzatico, "Challenges of Land Governance in the Making of a New Nation: Experiences from South Sudan".

at the opposite, for their resistance against 'development'[888]. In order to equip local communities with the appropriate knowledge for resisting abuses and welcome development – in other words, to contribute creating a vibrant civil society working as a watchdog vis-à-vis the ruling elite – NGOs such as NPA and the South Sudan Law Society started programs to disseminate the Land Act and create awareness on local communities' rights[889]. Part of these programs also included creating local civil society umbrella organizations, the Civil Societies Land Alliances (CSLA), in each of the ten states of Southern Sudan plus a national coordination body, who could take over the advocacy and sensitization activities in the long run. Both of the CSLA representatives I have talked to, Central Equatoria CSLA and Unity State CSLA put great emphasis on the idea that 'local communities' had to be assisted and protected from land grabs[890]. In the words of the chairlady of the CSLA in Central Equatoria: "We will start the dissemination of the Land Act so communities can know when there is land grabbing and also what to do in case they are victims". The trainings the NGOs were delivering would get everybody to "know the right procedures"[891]. One 'success story' mentioned was that in 2011 the 'local community' living in Lainya county (Central Equatoria State) - meaning, the people under the jurisdiction of four Paramount Chiefs who had control of the communal land - managed to obtain the cancellation of a lease agreement signed by the government with a foreign company with no community consultation[892]. Norwegian People's Aid support and the visibility obtained by national and international media played an outstanding role in this success, yet the latter

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[887] Interview to Michael Lot Gatluok, Chairperson of Unity State Land Alliance/Director General for Education, Panyinjiar County. Bentiu, 17/02/2013.

[888] It is precisely for this persistent 'resistance to development' that new centralizing tendencies have emerged in the government elite as expressed by the Transitional Constitution, stating that "All land in South Sudan is owned by the people of South Sudan and its usage shall be regulated by the government" (Section 169(1)). Interviews with Robert Ladu Luki, Land Commission Chairperson. Juba, 30/03/2012; 05/11/2013; Mary Paul Ngundeng, Member of Parliament from Rubkhona County, Unity State Legislative Assembly. Bentiu, 09/02/2013; John Kawais, Member of Parliament from Guit County, Unity State Legislative Assembly. Bentiu, 08/02/2013.

[889] Interview with NPA, Juba, February 2012; David Deng, South Sudan Law Society, Juba, February 2012.

[890] Interview with Lona James Elia, Central Equatorial Civil Society Land Alliance, Juba, 27/03/2012; Michael Lot, Unity State Civil Society Land Alliance, Bentiu, 17/02/2013.

[891] Interview with Lona James Elia, Central Equatorial Civil Society Land Alliance, Juba, 27/03/2012.

[892] Radio Miraya. "Lanya County committee push for cancellation of land lease conract". 12 August 2011. http://www.mirayafm.org/index.php/southsudan/6606-mukaya-payam-lanya-county-committee-push-for-annulment-of-land-lease-contract ; NPA."Striving to secure rights for 89.000 land users". 6 June 2012. http://www.npaid.org/en/news/?module=Articles&action=Article.publicShow&ID=19266

would not have been possible were the law not to recognize communal ownership of land. The point is, again, what is the 'local community'? Can success stories really exist if taken out from the reassuring framework of a Manichaean interpretation?

These programs, the provisions enshrined in the laws and even the description of the 'land grabs' in experts' papers[893], all contribute to strengthening the idea of the existence of a given homogeneous entity such as the 'local community', very poorly defined as we has seen, completely distinct and usually at odds with the government. This dichotomy is similar to that often advanced between state and society, but with an additional shortcoming related to the narrower boundaries of what is here identified as 'local community'. Once again, we are thus concerned with its definition, questioning the homogeneous character intrinsically attributed to it and reinforced through its framing in opposition to 'the government' and the 'private company'. In fact, however, the ambiguity of the notion of 'local community' opens new arenas of negotiation for all the actors involved for accessing the processes of decision-making through stretching the boundaries of communal membership to include also the 'sons of the soil' who would technically belong to other spheres according to laws and to international actors' understanding.

## 2.2 Representation or patronage? Extending the community boundaries up to the state

Just as in the domain of development projects, several standardized mechanisms and structures have started to be included into side-protocols signed by 'community leaders' (usually, the Traditional Authority) in order to guarantee at least an appearance of community participation into private investments concerning communal land. These mechanisms and structures usually include consultation workshops, during which a village is mobilized through local authorities to gather and meet representatives from the state or national government together with representatives of the private company; steering committees, formed of 'members of the community', in charge of supervising whatever 'social' development has been promised by the company, or to administer social funds where applicable; hand-over ceremonies, during which local chiefs receive a lump sum for the organization of the event, usually

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[893] David K. Deng, *Understanding Land Investment Deals in Africa* (The Oakland Institute, 2011); De Wit, Tanner, and Norfolk, "Land Policy Development in an African Context. Lessons Learned from Selected Experiences".

including the slaughtering of a bull or other similar acts of sacrifice and friendship between the host community and the investor; follow-up meetings, in which the local community can voice its grievances and monitor the fulfillment of promises; and so on. In fact, according to NGOs' reports on land-related investments in South Sudan, these arrangements are hardly ever implemented properly as to give to the 'local communities' a real chance of participating in decision-making. Most of the times, 'consultations' end up being a "formality to be undertaken only after the government and the investor have already come to an understanding on the important elements of the investment"[894]. Without presumptions of evaluating the effectiveness of these consultation mechanisms, it is however worth acknowledging that they have become routinized enough as to be claimed by local actors every time they feel sidelined, and it is precisely in this arena that all the flaws behind the idea of identifying three distinct subjects (local community, government, company) emerge.

The two case studies that will be presented in this paragraph are both located in Central Equatoria State and provide examples of different patterns of negotiation on the allocation and use of communal land involving third parties, using discourses of 'community' engagement and participation to conceal divisions within the very community and the actual impossibility of separating the 'grassroots' from their urban patrons.

### 2.2.1 Community participation dynamics in Tindilo Payam

Tindilo Payam is a very remote rural area of approximately 212,000 hectares, situated in Terekeka County, in the northern part of Central Equatoria State (see map 8 in Annex I). It comprises of five Bomas, mostly inhabited by Mundari pastoralist communities. In 2007, a Norwegian company working in the forestry sector for logging and carbon credit schemes came to the area and started negotiating a lease agreement of 179,000 hectares of communal land with the government of Central Equatoria State (see map 9 in Annex I)[895]. When the company decided to invest in the country, its representatives went to the Ministry of Agriculture and Forestry (MAF) of Central Equatoria State. For this reason, the Minister repeatedly brought it as an example of a private company following the "right procedures" for the negotiation of lease agreements:

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[894] David K. Deng, " 'Land Belongs to the Community". Demistifying the 'Global Land Grab' in Southern Sudan", p. 14

[895] At that time, the Land Act had not yet been enacted, but the recognition of customary ownership of land on communal basis was already stated in the Interim Constitution of Southern Sudan (2005).

"They are the only corporation that followed the right procedures: they came to us, we went to the community to have consultation, they engaged the community with Corporate Social Responsibility, they are doing really good. We are very happy with them and the community is benefiting a lot. They are planting trees, it is a long term investment."[896]

Pleased for what he interpreted as recognition of his legitimacy - rather than that of the national government - in negotiating such deal, the Minister decided to appoint a ministerial focal point for dealing with the company from his staff. The appointed officer was a native of Tindilo Payam. He encouraged the company to consult the Central Equatoria State Investment Authority, chaired by another native from Tindilo. After an assessment, unsurprisingly, the company ended up investing in Tindilo and employed the focal point from the Ministry of Agriculture as a Plantation Manager[897]. In the attempt to build closer ties with the government and the community, the company created a subsidiary branch registered in South Sudan with a Board of Directors initially made of one member from the Ministry of Agriculture of Central Equatoria State, one member from the Norwegian company, two members from the local subsidiary, one lawyer, one 'member of the community' and, finally, also one representative of the national Ministry of Agriculture and Forestry. Despite this attempt at involving the national government in the process of negotiation of the lease agreement, a senior official from the national Ministry of Agriculture and Forestry complained for the government having been "overcome":

"I was part of their board of directors, but I opposed the ninety-nine-year lease [*which they later obtained, n.d.a.*], so they kicked me out of it. (...) They were able to negotiate this agreement in this way thanks to their mingling with the local administration"[898].

According to the plantation manager, the board of directors formed in 2008 was dissolved in 2009 following criticism from international media: "it was not good to have government representatives in the board because of

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[896]Interview with the Minister of Agriculture and Forestry, Central Equatoria State, Juba, 26 March 2012.

[897] Interview with Justin Konga, Tree Farms Sudan plantation manager, Juba, February 2012; Interview with Joseph Kolang John, chair of the Central Equatoria State Investment Authority, Juba, 11/04/2012. In fact, the chair of the Investment Authority denied having influenced the choice and suggested that the company would have been brought to Tindilo by NPA, which was previously running a development project in the area. However, a representative of the NGO denied any link with the company and rather stated that they had pulled out of the area after the arrival of the company to avoid "being confused" with a private profit-seeking firm. Interview with NPA staff, Juba, 23/04/2012.

[898] Interview with Timothy Thwol, Director General of Forestry Sector in the Ministry of Agriculture and Forestry, Government of South Sudan, Juba, 19/93/2012

corruption, so [the company] decided to dissolve the board"[899]. Government representatives were replaced by representatives of the company. The member of the community was confirmed in its place. When I asked who he was and why he was appointed, the plantation manager answered: "The community member is someone who can understand this kind of issues. He was chosen by the community (...). He represents the community"[900]. He put great emphasis on the fact that the person chosen had to be well-connected and close to circles of power. This person happened to be the chairman of the Central Equatoria State Investment Authority, who was also appointed as the chair of a local Steering Committee formed in Tindilo following the first round of consultations with the local community. The Steering Committee was the body in charge of negotiating on behalf of the local community in order to get local demands for development included in the agreement that was being negotiated at the ministry level. It was formed by five members: besides its chair, there was a Member of Parliament coming from the area, an employee of the Investment Authority, a Juba-based chief looking after Tindilo people living in the capital city, and the local Paramount Chief, who was in fact the only member based in Tindilo. These consultations led to the stipulation of a Memorandum of Understanding which provided for a number of material benefits for the local residents such as the construction of a school, a health center, a football field and so on[901]. The MOU was incorporated in the agreement as a Community Support Program signed by the "Chairperson of Tindilo Payam Community"[902].

In spite of these negotiations, after having started a trial plantation and hired about a hundred workers, the company had "scaled down" its investment since 2010. The reasons for this interruption were unclear, and several informants provided different, scarcely plausible explanations[903]; however the Paramount Chief mentioned 'interferences' by the government, and the Plantation Manager confirmed that the national Ministry of Justice, where the lease had to be validated and registered to be turned into a title deed, was not responding to the company's requests to obtain the document. The latter thus

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[899] Interview with with Justin Konga, Tree Farm Plantation Manager, Juba, 29/03/2012
[900] Ibid.
[901] Ibid.
[902] "Community Support Program between Tindilo Payam and TreeFarms Sudan Ltd." (Appendix to the Land Lease Agreement, May 7, 2011).
[903] Several people, including the Investment Authority chairperson, suggested that the company had 'run out of funds', due to problems with 'their donors'. This reveals the great confusion between business and aid work, which emerged time and again in virtually all my interviews on this topic, mostly expressed through the borrowing of development aid terminology to talk about private companies and investments.

decided to wait until the administrative issue was sorted out, although its management was aware that the delay might have been a form of discontent for the way in which the whole leasing process was conducted. Perhaps for this reason, in 2012, there were rumors that the company wanted to go back to the initial composition of the board of directors in order to include representatives from the national government as well[904].

During an interview, talking about Tindilo forest investment, a senior official of the Ministry of Agriculture and Forestry of Central Equatoria State declared: "CSOs [Civil Society Organizations] are very concerned about land grabbing, but this is not the case. Tree Farm engaged the community and they also made an MOU with us[905]". Indeed, Tree Farm was often cited as one of the best examples of community involvement. Was 'the community' involved, then? At first glance, yes. Formal agreed-upon mechanisms and bodies had been put in place, community needs were taken into account, even local residents were generally happy about the conduct of the company and the major reasons of complaint had to do more with the apparent withdrawal of the company - and its unfulfilled promises, rather than with its presence[906]. The Paramount Chief, an old man who, at the time of my visit, looked very sick, also expressed a positive opinion about how the negotiation of the agreement was conducted, emphasizing that they even took him to Juba to sign the agreement as a member of the Steering Committee[907]. In spite of the Steering Committee being formed of Juba-based people who only held one meeting with the local residents to explain what the project was about, in spite of the community being represented by someone who was in fact also a state agent at the negotiation table with the company and the government, in spite of the negotiation being conducted entirely in Juba and of the poor information flows between the capital city and the village[908], the chiefs and the local residents I met during my visit to Tindilo were satisfied overall of how the 'sons of the soil' had taken care of development in Tindilo, even if the promised development did not actually materialize due to 'external constraints'. As a confirmation of their satisfaction,

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[904] Interview with Joseph Kolang John, chair of the Central Equatoria State Investment Authority, Juba, 11/04/2012

[905] Interview with DG of Forestry, Ministry of Agriculture and Forestry, CES, 28 March 2012

[906] Collective interview with residents, Tindilo Payam headquarter, 03/04/2012

[907] Interview with Paramount Chief Romano Ako, Tindilo Payam, 03/04/2012

[908] Interview with Joseph Kolang John, chair of the Central Equatoria State Investment Authority, Juba, 11/04/2012. Tindilo is about five-hour drive from Juba and at the time of fieldwork had no phone network coverage, therefore communication was difficult.

when in 2009 a Payam Development Committee was formed, the Investment Authority chair was again appointed as its director[909].

### 2.2.2. Concealing exclusion in Lainya County

Lainya is a county covering a surface of about 25,000 square kilometers, squeezed between Juba and Yei Counties in Central Equatoria State, at the border with Western Equatoria (see maps 8 and 10). The area is inhabited by about 89,000 people, predominantly belonging to the Bari-speaking agriculturalist group of Pojulu. Both Lainya and Yei have big teak plantations initiated during colonialism and kept as forest reserves under the control of the government. These reserves were extensively exploited during the war by the SPLA as a source of revenue, and by individuals both from the rebel army and the Sudan Armed Forces who smuggled logs through the Ugandan border. Researcher Elizabeth Ashamu, in an unpublished paper on Southern Sudan forest resources, quotes a southern politician saying: "Elsewhere, there were blood diamonds. For the North, there was blood petroleum – the [Government of Sudan] was drilling the South to purchase weapons from Korea, China, Iraq and the Soviet Union. For us, there was blood Teak".[910] Narratives around teak plantations are quite bitter, as the land was torn off from local communities in a "brutal way": "In the 1920s (...) people were evicted and displaced at the borders [of the plantation]. Some people participated in planting the forest, but saw no benefits and they also lost their land"[911]. For this reason, local residents acknowledge that the forest reserve belongs to the government (the Government of South Sudan, their liberation government, not the government in Khartoum), but at the same time are also very jealous of the customary ownership of all the land that falls outside of the 'gazetted' areas.

In 2007, a private company, Central Equatoria Teak Company (CETC)[912], financed by two development funds, negotiated a lease agreement with the government to exploit the already existing teak plantations and to expand the plantation into a vast area of natural forest customarily owned by the local

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[909] Interview with Joseph Kolang John, Central Equatoria State Investment Authority Chairperson, Juba, 11/04/2012; Collective interview with residents, Tindilo Payam, 03/04/2012. The Development Committee was formed of eleven people, most of who were based in Tindilo, and included also women and youth representation. While its role should be to 'supervise all development in Tindilo', it is unclear if it ever started working.

[910] Elizabeth Ashamu, "Post-Conflict Forest Governance in Southern Sudan" p. 18

[911] Interview with Soba Samuel Manase, Lainya county commissioner, Juba, 15/04/2012.

[912] CETC was one of two sister companies, with the other operating in Western Equatoria State with a similar - and apparently more effective - project.

community. Since the forest reserve was considered to be under the national government jurisdiction, the company started the negotiation with the national Ministry of Agriculture and Forestry (MAF), neither involving the local community nor state and local government institutions. In fact, however, the lease agreement signed in 2007 between the national MAF and the company only attributed to the latter 1,845 hectares of the government forest reserve located between Lainya and Yei Counties, while leasing out 50,000 hectares of the communally owned natural forest, where several families were residing, in Lainya County (Kenyi *payam*). The signing of this lease agreement created great discontent at State, County and *payam* level. The Minister of Agriculture and Forestry of Central Equatoria State kept on comparing the Norwegian company and CETC, remarking that the latter was "not as good" because "they did not involve the [state] government level", while they "were not supposed to go to the Counties without my knowledge and that of the [Central Equatoria State] Governor"[913]. This created great discontent also among Kenyi *payam* local residents who, backed by Lainya County Commissioner and the *payam* administrator, decided to occupy the forest to prevent the company from starting to work[914]. To stop them, the company was obliged to call 'stakeholders' workshops', which in fact were already foreseen in the agreement signed in 2007, to explain the project and to voice promises to the local residents concerning the construction of a school, a health center, a community center, an all-season road, etc.[915]. These workshops were held in the three concerned *payam* headquarters in both Lainya and Yei Counties with the participation of company members, national government officials and County and *payam* representatives, and their organization was agreed with local traditional authorities. Each *payam* received $2000 for the organization of a hand-over ceremony for the forest plantation in their respective areas - although the forest reserve was not considered to belong to them, the communities lived adjacent to it and used it for timber and non-timber products in their livelihood strategies. Three local Steering Committees - plus one with representatives from

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[913] Interview to Michael Roberto Kenyi Legge, Minister of Agriculture and Forestry, Government of South Sudan, Juba, 26/03/2012

[914] At the time of my visit, both Lainya and Yei County Commissioners had just been replaced, but I was only able to meet with Lainya former commissioner. Apparently, he was supportive of local resistance which was mobilized by Kenyi Payam administrator. In the other *payams* affected by the project, Pakula and Kejiko, in Yei County, local authorities were apparently more concerned of preserving the forest for the would-be investors to allow the local people to harvest the forest. Interview with Alfatah Margani, Yei Payam administrator, Yei, 16/04/2012; Felix Sebit, Pakula Boma Chief, Pakula, 16/04/2012.

[915] Interview with Felix Sebit Alfred, Pakula Boma Chief (Yei County). Pakula, 16/04/2012

the three *payams* - were created in order to supervise the spending of the $200,000 Social Fund which the company had committed to spend on 'community development projects', plus $5 per each cubic meter of 'sawn board exported'[916].

Though at the time of fieldwork the company was not harvesting the forest, some meetings with local resident had been held and the Steering Committees were formed both in Yei and Lainya County. Their members were chosen among authoritative and respected personalities in the communities, with the participation of the local chiefs, women and youth representatives[917]. In Kenyi *payam*, the Steering Committee was chaired by a man who introduced himself as a "son of Loka community", the *boma* where both the teak plantation and the natural forest included in the concession to CETC are located. He was also working in Lainya County Education Department, and considered himself also as a "local public authority" confirming the mixed nature of 'communal' participation structures involving people theoretically belonging to the sphere of the state, creating a gap in power between members of these institutions[918]. The chairman of the Steering Committee was satisfied for the happy-ending of community consultation by the company and for the promises they obtained, though upset because of the apparent halt in the company's operations between 2010 and 2012[919]. He was very keen on talking about the (minor) part of the agreement involving the forest reserve, and less so about the 50,000 hectares communally owned by the community residing in Loka *boma*, from which he hailed. However, he stressed the representative function of the Steering Committee also for the people residing in Loka natural forest area. He stated that the agreement was reached on that land because the people were residing there only temporarily, but, if fair conditions were provided, everybody had an interest in the coming of investors who could bring development and job

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[916]Interviews Kennedy Alfred, Assistant commissioner for Land, Yei River County. Yei, 16/04/2012; Timothy Thowl, Director General GOSS Ministry of Agriculture and Forestry 19/03/2012; Alfatah Margani, Yei Payam Administrator. Yei, 16/04/2012.

[917]Interview with Tito Benjamin, Chairman of Keny *payam* Steering Committee (Lainya County). Loka, 18/04/2012; The Government of Southern Sudan (Ministry of Agriculture and Forestry and Central Equatoria Teak Company Limited, "Management and Development of Teak Plantation Agreement, 2007," November 23, 2007.

[918] Interview with Tito Benjamin, chairman of Kenyi *payam* Steering Committee, Lainya, 18/04/2012.

[919] Several sources alleged that a new investment fund had replaced the two development funds that were previously financing Central Equatoria Teak Company, and that these caused delays in the initiation of activities. The new investor was allegedly trying to negotiate a time extension of the agreement with the national Ministry of Agriculture in March 2012.

opportunities[920]. A short visit to one of the household conglomerates characterizing the forest landscape in Loka *boma*, however, gave a rather different picture. One local headman claimed:

> "We settled here in 1972. (...) During the war, we were forced to move to the hill, but we came back in 2001 and we have no intention of leaving this place. (...) We know this area has been given to CETC, but we already told them that it is not acceptable for them to come and operate where people live. If they really want to expand into this area, they will have to come and sit again with the community, so we can identify together an area for the plantation".[921]

Technically, however, the company did already sit with the community. The problem was that, very clearly, a part of the community had been - willingly or not - excluded from the negotiation process. Besides the somewhat obvious remark that "whatever the collective rhetoric, (...) it is rare for the whole community to take part equally"[922] in 'participatory' or consultative processes, this situation unveils once again the tricky nature of the idea of 'local community', whose boundaries can be stretched to include well-connected individuals close to power from the bottom-up, like in Tindilo case, but also pulled from the high by people who can play a double identity, claiming a representativeness which is not always confirmed in practice.


## 3. Physical boundaries of the communities

These vertical dynamics, as I have called them, are not the only ones unravelling from the use of the concept of 'community' as the subject entitled to property rights and representation. If these vertical dynamics best appear when dealing with land as an economic asset, land can also have a symbolic and political value, representing the soil with which a polity is identified and involving issues of space and sovereignty.

As shown, in South Sudan the identification between the people and the land occurs not only on territorial criteria, but on ethnic criteria inherited from colonialism and reproduced by successive post-colonial governments, including the SPLM's. This paragraph will address horizontal dynamics emerging from the legal recognition of customary rights to land on a communal basis, entailing the definition of boundaries not between what is community and what it is not, but rather between one community and the other. It will thus deal with land as a

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[920] Interview with Tito Benjamin, chairman of Kenyi *payam* Steering Committee, Lainya, 18/04/2012.

[921] Interview with Samuel Lupai, Headman of Loka Community. Loka, 18/04/2012.

[922] White, "Depoliticising Development." p. 13

territory, and show how the overlapping between the legal-rational sphere of the state administrative sub-divisions and the customary sphere of communities and chiefs entitled to own and administer land within the same borders, hardens these borders and makes them contentious. The physical definition of 'communities' occasionally involves some state structures and institutions, usually when functional to strengthening claims to land. These disputes and conflicts, often portrayed as 'tribal', are in fact deeply connected with the very definition of the territory under the jurisdiction of one community or another, influenced by the recognition of ownership over that particular territory.

Records of land disputes in Southern Sudan during colonial time are very limited[923]. During the civil war (1983-2005), continuous displacement made control of the land ephemeral and contributed to enriching people's narratives of mobility. The creation of the Civil Authority of the New Sudan (CANS) superimposed administrative structures on what Mareike Schomerus and Tim Allen defined as "ethnic fiefdoms", with reference also to the militarization on ethnic basis of numerous groups leading to the mushrooming of 'tribal' militias during the civil war[924]. Still, in the mayhem created by the war, made of scorched earth strategies and endless fluxes of IDPs and refugees mixing up whatever historical pattern of human settlement existed since the pre-colonial and colonial times, land disputes on a larger scale than the individual or family were not common[925]. Land disputes for reasons other than access to pastures and water-points thus appear to be a phenomenon resulting from the CPA due to the formalization of a territorialized local government structure involved in the distribution of resources[926], and the growth in the available amount of these resources. These disputes appear to be particularly violent and long-lasting due to the difficulties of solving them without tackling their structural causes through temporary and flexible agreements, as it was done when their background was characterized by informality and ad hoc solutions. They increased during the first post-war census conducted in 2008, which further suggests their link with the creation of a modern state structure based on

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[923] Leonardi, *Dealing with Government in South Sudan*.

[924] Mareike Schomerus and Tim Allen, *Southern Sudan at Odds with Itself: Dynamics Od Conflict and Predicaments of Peace*, London School of Economics, 2010, http://www2.lse.ac.uk/businessAndConsultancy/LSEConsulting/pdf/southernSudan.pdf.

[925] Branch and Mampilly, "Winning the War, but Losing the Peace?".

[926]David Koak Guok, "Local Government View on Boarder Disputes and Emergent of Payam Administrative Structures (sic)," Letter to the President of the Government of Southern Sudan, (August 2008), Local Government Board Archive; Schomerus and Allen, *Southern Sudan at Odds with Itself: Dynamics Od Conflict and Predicaments of Peace*; Leonardi, *Dealing with Government in South Sudan*.

enumeration and standardized measurements of distances and settlements[927]. According to the Chair of the Local Government Board, new conflicts were caused by the establishment of *payam* administrative structures and enumeration areas for the census, as people "feared being split or merged with other people they did not want to be counted with"[928]. A quote by Aggrei Wolo, a senior official at the census headquarters in Central Equatoria State, in a paper authored by Martina Santschi on the census process, seems to confirm this:

> "This census is a political census. It will determine constituencies, referendum, and resources. It is also an economic census, because services like schools, hospitals and water will be given according to population numbers. If your people are less, you claim the population of your neighbour. Some of these fellows said 'Let us grab the people from the other county', even thought they knew that it was not their territory."[929]

Communities were counted and identified as 'belonging' to the place they occupied in a way that was functional both to the delimitation of chieftaincies and to the implementation of the principles contained in the Interim Constitution that 'communities' could hold rights in land and that these rights were to be protected by law. Attempts at keeping separate the boundaries of 'tribal' lands and the jurisdiction of local government units have been occasionally advanced during colonial time, but their failure has depended upon the association of chiefly office and ownership of land, which made it very difficult to exert central control over a situation in which some people from one chieftaincy may live on the land of others while still responding to the chief of their 'native' chieftaincy[930]. The rationale behind the land and local governance reforms in South Sudan was indeed to make the system legible and controllable, with a clear hierarchy of power going from the central government to the sub-chiefs, thus many claims on land started taking the form of border disputes[931].The identification of ethnic communities with local administrative units turned administrative borders into proxies for competition over land and any other resource that the control of land could grant access to. Despite SPLM leadership's rhetoric of restoring the presumed borders established by the

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[927] Lentz, "Decentralization, the Sate and Conflicts over Local Boundaries in Northern Ghana".

[928]David Koak Guok, "Local Government Presentation to the Sixth Governors Forum on Demarcation of State and County Administrative Boundaries in Southern Sudan," 2008, Local Government Board Archive.

[929] Santschi, "Briefing: Counting 'New Sudan,'" p. 637

[930] Berry, *Chiefs Know Their Boundaries.*

[931]Guok, "Local Government View on Boarder Disputes and Emergent of Payam Administrative Structures (sic)."

British[932], the borders established by the Chukudum Convention in 1994 approximately reflected the borders of the former districts created in the 1970s and abolished in the early 1980s. The Convention also set theoretical criteria for the formation of new Counties (ranging from population number to economic sustainability and to availability of local administrative capacity) which were soon sidelined for the sake of political concerns. As a result, Counties proliferated in order to absorb potential opponents of the SPLM/A, particularly in the Upper Nile region. According to local consultations conducted by the NGO Skills for Southern Sudan in 2004, this happened especially towards the end of the war, when the people's understanding of what Counties were for was that they would have constituted the baseline to establish electoral constituencies and lists of representatives for the second SPLM national convention[933].

Southern Sudan's legal framework disciplining local governance contributed to attribute meaning to local borders and institutions in charge of land administration. The Land Act, building upon the principles of land governance already included in the Interim Constitution of Southern Sudan (2005) enriched local understanding of borders as a way of negotiating collective ownership and access to land. The most appropriate institution to participate in this negotiation with public power or with other 'communities' was not necessarily the traditional one, but sometimes a piece of the local state structure which could more effectively express the local people's grievances vis-à-vis a central state often seen as abusive, corrupt and far away.

## 3.1 Administrative borders in the rural areas

Rural areas in South Sudan still host the great majority of the population. The National Bureau of Statistics signals that 83% of South Sudanese population lives out of town, and that the 78% relies on agricultural and pastoral activities as primary source of livelihoods, making access to land extremely important. Land in the rural areas, as we know, is allocated to individuals by traditional authorities, or used collectively for what concerns water sources, grazing and

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[932] Many of my informants stressed that the only way to settle the issue of internal borders was to revisit the same sources used for the North-South border: colonial archives. In fact, however, there is very limited evidence of the existence of colonial maps highlighting precise borders within Southern Sudan, besides a few places where iron poles along roads signal the limit of one tribal territory with the neighbouring one.

[933]Skills for Southern Sudan and Windle Trust Kenya, "2nd Draft of the Local Government and Civil Administration Consultative Workshop and Follow-up Meeting of the Technical Team," Draft report (Rumbek - New Site, January 2004), Local Government Board library.

fishing areas through seasonal agreements negotiated by the chiefs of different sections, sub-sections and clans. If administrative borders should theoretically only identify different areas of jurisdiction of state institutions, the association with chieftainships also makes them very relevant for land allocation, especially in the rural areas where all the land is deemed to be owned communally. In spite of the declared expectation of the government creating a commission to identify boundaries between 'communities' and then demarcate administrative borders[934], in South Sudan there is no such thing as homogeneous communities, let alone homogeneous communities sharing territory. The process of establishment of administrative units thus inevitably leads to the creation of ethnically mixed groups of people identifying themselves as 'communities' for several reasons (because they share language, or ancestors, or they recognize the same customary authority), but usually 'activating' their communal identity in opposition to others, in circumstances in which they feel marginalized. Sometimes, in these cases, they end up perceiving themselves as ethnic minority enclaves within these units, claiming not to be represented into local institutions, and not to have due control of their communal land. Although there is no government policy about this issue, the local governance system as it is would either encourage them to move to a place attributed to their own 'community', or to try to claim administrative independence at payam or county level[935]. Indeed, several requests for the creation of new counties have been advanced since 2005, but in 2007 the lack of clear decision-making procedures, financial constraints and a general disagreement within the SPLM on the most appropriate strategy to deal with this sort of issues[936] have brought the government to stop the creation of new counties.

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[934] Interview with Chamangu Awow Adogjok, Undersecretary of Local Government Board. Juba, 16/01/2013

[935] As shown in chapter 4, sometimes these claims can be structured through the 'bottom-up' creation of new traditional authorities, whose existence is than presented as evidence for the need of a new unit.

[936] Before December 2013, when the new civil war broke out, there were two major positions: one held by President Salva Kiir Mayardit, supporting a more centralized system and reduction of the number of administrative and local government units; and one held by former vice President Riek Machar, who supported the doubling of existing units in what one of my informants termed "wild decentralization". More recently, the Government of South Sudan and the rebels of SPLM-IO led by Machar have been battling over two distinct reforms of the state-system, which would favour respectively the Dinka and the Nuer increasing the number of local government units under the control of the two 'communities'. See: Sudan Tribune. "South Sudan rival peace partners to negotiate solution to 28 states", 12 January 2016. Available at: http://www.sudantribune.com/spip.php?article57675; Radio Tamazuj. "Map analysis: Ethnic balance to change if 28 states approved". 22 November 2015. Available at https://radiotamazuj.org/en/article/map-analysis-ethnic-balance-change-if-28-states-approved

*3.1.1 Acholi-Madi land dispute: using the past to move the border*

Narratives of border disputes involving the control over land usually focus on several elements such as autochthony claims, access to resources, misinterpretation of customary law and practices, but the new civic state structure has also become a frequent reference in the formulation of claims to communal land in the rural areas. I will take here the example of a long-standing dispute between Acholi and Madi communities in Eastern Equatoria State[937]. Eastern Equatoria State is located in the south-eastern part of the country, in the Greater Equatoria Region, and has been characterized by strong presence of militias opposing the SPLM/A during the civil war. Despite having been comrades in the Equatoria Defense Forces (EDF), the Acholi have always been considered with some suspicion by other Equatorian communities because of their cross-border kinship ties with the Ugandan Acholi, and their presumed vicinity to the Acholi-based Lord's Resistance Army (LRA)[938].  Long time before all this happened, in the 1930s, when the British started exercising a closer control on the chiefs and their areas of jurisdiction, they attributed two distinct local government centers to the Madi and to the Acholi, based on the pre-existing chief courts centers of Magwi and Loa. Magwi was considered to belong to Acholi, while Loa was attributed to the Madi. The government did not interfere with customary ownership of land, but at the same time did not make any effort at trying to trace and negotiate with local understandings of the boundary between the two groups, thus creating a completely new border which started interfering with the flexibility of pre-existing land relations[939]. In this territorial repartition, a disputed area called Opari ended up under the administration of Magwi. After the end of British colonialism, the Government of Sudan kept the same administrative divisions in the southern region, but since the local administration largely remained incapable of exercising its authority on the territory under its jurisdiction, rural affairs concerning land remained under the authority of customary leaders. The creation of SPLM's administrative system made the location of government centers and the definition of their borders more important for smaller groups who did not want to be placed

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[937] This dispute is documented in details Robert Ladu Luki's files, stored in his office at the South Sudan Land Commission to which I had free access during my field work.

[938] Schomerus and Allen, *Southern Sudan at Odds with Itself: Dynamics Od Conflict and Predicaments of Peace*; Branch and Mampilly, "Winning the War, but Losing the Peace?"

[939] On colonial borders interfering with patterns of the exercise of chiefly authority see: Berry, *Chiefs Know Their Boundaries*.

under the authority of what they considered to be other communities[940]. In the words of an 'Acholi Community' position paper on border issues:

> "The Sudan People's Liberation Army has come up with a new philosophy of administration and breaking the administrative units into Bomas, Payams, Counties and States. Where possible, the government tries to align Boma boundaries to ethnic boundaries to sustain harmony"[941]

Since 2005, with the initiation of discourses about decentralization and communal rights to land, the position of local government centers and administrative units also became important in order to have a chance to claim communal rights to land in the rural areas. According to the same paper quoted above, expressing the Acholi's point of view, the dispute between Madi and Acholi would in fact be an administrative issue, rather than a land dispute: "It is this attempt to make Bomas homogeneous that may have triggered what people now refer to as a land dispute between the Acholi and the Madi"[942]. Acholi could thus keep administering Madi's territory: Madi's communal land ownership would not be threatened.

After the CPA, despite the overall continuity with pre-existing local government experiences in terms of territorial division, there was some reorganization mostly linked to the need to reduce excessive administrative costs while not upsetting important allies of the SPLM/A that could turn into potential spoilers of peace. Madi and Acholi, both characterized by a history of opposition to the SPLM/A during the war, were put together under the jurisdiction of Magwi County, whose administration was still dominated by the Acholi majority. The Madi community accused the Acholi of taking advantage of their control of the local government to encroach on Madi's land. In an attempt to settle the dispute, the governor created Pageri Payam for the Madi, but comprised within its borders also Opari Boma, claimed by the Acholi. Notwithstanding the killing of a Madi leader in 2008, the dispute did not escalate into real violence until 2010, when the Eastern Equatoria caretaker governor created Iwire Payam following pressures from the Acholi community

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[940] The difference that seems to emerge from my fieldwork on this topic is that while in Upper Nile and in most of Bahr el Ghazal the identification between 'community' and local government happens at County level, in some areas of Bahr el Ghazal and in most of Equatoria this seems to occur rather at *payam* and *boma* level.

[941] Acholi Community, "Lang Grabbing: A Taboo among the Acholi," Acholi Position Paper, The Acholi-Madi Peace and Reconciliation Conference (Torit: Inter-Church Committee, April 16, 2012), Land Commission Archive. p. 10.

[942] Ibid. p. 10.

to remove Opari Boma from the Madi Pageri Payam[943]. The dispute continued in 2011, with the Madi accusing the Acholi, allegedly backed by Magwi county authorities and the SPLA, of "illegal demarcation"[944] of Madi's land and of encouraging the settlement of Acholi "mercenaries" from Uganda "for their planned war of occupation"[945]. In a concept note prepared before the realization of a peace conference between the two groups, the Inter Church Committee identified the recognition of "tribal land ownership" among the causes of the conflict[946]. Despite the participation of key government representatives such as the Land Commission Chairperson, 'intellectuals' and international organization representatives, the conference, held in April 2012, did not manage to solve the dispute permanently, leaving Madi's feeling of political marginalization unanswered and the attribution of Opari still undefined.

**Table 6.1: Chronology of the Acholi-Madi dispute[947]**

| Year | Event |
|------|-------|
| 1930s | British local government centers are created in Magwi (Madi) and Loa (Acholi). Opari (disputed area) is put in Magwi |
| 1956-1990s | British administrative division is retained, but little control by the government |
| 1990s | The dispute emerges due to SPLM policy of aligning administrative and ethnic boundaries |
| 2005 | Magwi county is created including Madi's and Acholi's territories |
| 2006 | Following Madi's complaints, Pageri Payam is created. Opari boma (disputed area) is included. |
| 2008 | A Madi leader is killed |
| 2010 | EES caretaker governor creates Iwire Payam for Acholi. Acholi take Opari *boma*. |
| 2011 | The dispute escalates |
| 2012 | Peace conference organized by ICC is held |

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[943] Angelo Vuga, "Position Paper on the Acholi-Ma'di Conflict in South Sudan: A Roadmap for Justice and Peace in Magwi County," The Acholi-Madi Peace and Reconciliation Conference (Pageri Payam: Ma'di Community Council (MCC), April 4, 2012), Land Commission Archive.

[944]Ibid.

[945]Abdalla Keri Wani, "Presentation to Consultative Meeting on Acholi-Madi Land Dispute," Consultative Meeting Organized by Inter-Church Committee, Eastern Equatoria (Torit, March 17, 2012), Land Commission Archive.

[946]Inter Church Committee and State Peace Coordination Office, "Acholi-Madi Peace and Reconciliation Conference," Concept Note, (March 2012), South Sudan Land Commission Archive.

[947] Ibid.; Wani, "Presentation to Consultative Meeting on Acholi-Madi Land Dispute"; Angelo Vuga, "Position Paper on the Acholi-Ma'di Conflict in South Sudan: A Roadmap for Justice and Peace in Magwi County"; Acholi Community, "Lang Grabbing: A Taboo among the Acholi"; Robert Ladu Luki, "Land Issues under the New Land Regime," Presented at the Acholi and Madi Peace Conference (Torit: National Land Commission - RSS, April 17, 2012), Land Commission Archive.

In the dispute between the Acholi and Madi 'communities', their representatives – usually members of the town based elite, rather than traditional authorities, thanks to the former's stronger capacity of drawing 'external' attention as a further source of legitimacy - make constant reference to the past. The past referred to is the colonial one, but it is interpreted in opposite ways: the Acholi representative claims that the borders set by the British in 1956 did not coincide with ethnic boundaries and are not appropriate for modern South Sudan[948]; the Madi support the 1956 borders as the only certain point of reference to make sure that their community is not penalized by Acholi "historical expansionism"[949]. To support their respective narratives, the position papers produced by both sides for the Acholi-Madi peace conference held in 2012 in Torit continuously mention the colonial past, supporting their positions through specific reference or even quotations from colonial reports and accounts to sustain their interpretations. At the same time, however, they also give an important place to cultural and ancestral arguments based on names[950], on 'cultural attitudes'[951] or on elements of tradition such as songs[952]. The idea of communal land ownership emerges very clearly, and it is supported through the 'use' of state structures to 'demonstrate' their respective ownership of the land. Attesting one community's ownership of the land does not necessarily mean that others have to leave, but just that ultimate decision-making over land allocation and use shall be attributed to the host community and not to the guest community[953]. As put it in the Acholi community position paper:

> "We the Acholi hold onto what is ours very passionately. When we say an area belongs to Acholi we are not saying that it is a no go zone for the Madi or indeed any South Sudanese who is comfortable to live among us without causing us irritation"[954].

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[948] Angelo Vuga, "Position Paper on the Acholi-Ma'di Conflict in South Sudan: A Roadmap for Justice and Peace in Magwi County."

[949] Wani, "Presentation to Consultative Meeting on Acholi-Madi Land Dispute."

[950] Ibid.

[951] Acholi Community, "Lang Grabbing: A Taboo among the Acholi."

[952] Angelo Vuga, "Position Paper on the Acholi-Ma'di Conflict in South Sudan: A Roadmap for Justice and Peace in Magwi County."

[953] Interview Elijah Wal Chol, Nyeel Acting Payam Administrator. Nyeel, 25/02/2013.

[954] Acholi Community, "Lang Grabbing: A Taboo among the Acholi." p. 13.

### 3.1.2 Jikany-Ruweng: first-comers, late-comers and the governor's influence

The dispute between Madi and Acholi received particular visibility in the national and even international press thanks to the involvement of the church organization, and it was also well documented in the archives of the South Sudan Land Commission. Nevertheless, many other similar disputes remain rather invisible. These disputes often involve high-ranking government or military officials, as also alleged in the Acholi-Madi case, and are silenced through a mix of sense of fear, deriving from having an open confrontation with (military) power, and a 'waiting attitude' which characterized the relations between South Sudanese people and their government at least until December 2013[955]. An example of a less discussed land dispute is the one involving Manga area in Unity State. Unity State, an oil-rich area situated in the northern part of South Sudan between Upper Nile and Bahr el Ghazal, is one of the areas where ethnic fault lines have been particularly hot. Inhabited by a Nuer majority, Unity State is divided into nine Counties, two of which are considered to be 'Dinka Counties', while the others 'belong' to seven Nuer sections. During the civil war, most of Nuer areas have been strongholds of Riek Machar's SPLM splinter faction and other Nuer armed militias. Although the Government of Sudan never lost control of the capital city of Bentiu, in 2005 Taban Deng Gai, a Jikani Nuer zonal commander under Riek Machar, was appointed Governor and confirmed in power by the 2010 election. As the coincidence between community and County in Unity State is very strong in the people's perception, several border disputes have developed both in rural and urban areas, and Counties are said to 'encroach' on the territory of one another. Rumours also suggest a Jikany Nuer County expansionism fuelled by the governor. The area of Manga is a fertile riverine area on the northern side of the river Naam (the Dinka and Nuer name of the Bahr el Ghazal river), about 40 kilometres from Bentiu and it is situated on the border between Guit and Pariang Counties, the former 'belonging' to Jikany Nuer, the latter to Ruweng Dinka. According to Dinka informants, the area used to be called Minyang and to belong to Ruweng Dinka who used it as a grazing and fishing place[956]. The area was turned into a b*oma* and put under the

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[955] In fact, in 2013 voices criticizing the government authoritarian tendency and its policies became more vocal, going hand in hand with a parallel worsening of repressive actions ranging from censorship to imprisonment of opposition leaders and killing of critical journalists. After the beginning of the war started in December 2013 and the circulation of news about mass atrocities committed by both the rebels of SPLM-IO and the national army, government's consent seem to have been fading.

[956] Interview with Peter Makuaj, Member of Parliament in Unity State Legislative Assembly, Bentiu, 08/02/2013; and Elijah Wal Chol, Acting Payam Administrator, Nyeel, Pariang County, 25/02/2013

jurisdiction of Nyeel *payam* in Pariang County by SPLM administration during the war. Attacks by the Arabs and their 'Nuer allies' nevertheless continued in the area, which was not a settlement place but a grazing and fishing field where militarized youth from both sides met with their cattle: Manga was the name they used to identify it. Towards the end of the war, after some local peace agreements had been negotiated between Nuer and Dinka inhabiting the border areas between Western Upper Nile (Unity state) and Bahr le Ghazal (particularly Warrap state), displaced Jikany Nuer settled in the area. Since there was no permanent settlement, they were allowed to settle in Manga through an agreement with the local chief, with very limited frictions with the Dinka[957]. Nonetheless, when the war ended, they did not leave. Instead, their number started increasing. In the words of Nyeel *payam* acting administrator:

> "During the census [in 2008] the Nuer living [in Manga] were counted in that area, so they belong to us. They should be considered a Nuer minority in a Dinka area, but they don't want this. During the war, Dinka from Pariang were very few, so there were no clashes with the Nuer. Nuer lived in the area of Manga, and after the war refused to leave."[958]

The governor has been allegedly encouraging the settlement of Jikany Nuer in the area since 2006. Besides affirming his own estate property building a house and initiating a farm, in 2009 he unilaterally negotiated a lease agreement with an Egyptian company who fenced 105.000 hectares of land paying $125.000 per year to the State government, with no regard to communal ownership of land claimed by the Ruweng Dinka community[959]. In this way, an area which was previously used for grazing was turned into an agricultural area, at the same time increasing the number of herds and cattle-keepers willing to use it with Jikani Nuer youth, firing inter-communal tensions in the form of cattle raiding. By the end of 2009, Manga area, which had been already 'counted' as part of it because of its changed demography, was *de facto* 'annexed' by Guit County. Since little visible presence of the state administration can be claimed by either County, the annexation of a territory is usually claimed through the imposition of taxes, in a very colonial-like fashion. Guit County officers thus

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[957] Nuer and Dinka had a very long pre-war history of coexistence in the same territories, and since Nuer identity was particularly flexible they usually 'expanded' through the incorporation of Dinka peoples they found on their way. This pattern of expansion through incorporation came to an end with the militarization of Nuer and Dinka ethnic identities during the war. See Sharon Elaine Hutchinson, "Nuer Ethnicity Militarized".

[958]Interview with Elijah WalChol, Acting Payam Administrator, Nyel, Pariang County. 25/02/2013

[959] Deng, *The New Frontier. A Baseline Survey of Large-Scale Land-Based Investment in Southern Sudan*.; personal communication with residents in Pariang, 2013; personal communication with civil society activist from Pariang County, 2013.

started taxing traders passing by Manga through the river[960]. Tensions between the two communities increased in the form of cattle raiding, while several petitions of South Sudanese living abroad and identifying themselves as members of the Ruweng Dinka community denounced the expansion of Guit County on Pariang territory[961]. People identifying themselves as members of the Jikani Nuer community also had narratives justifying their claims over the area, though less vehemently. A Jikani Nuer Member of Parliament elected by Guit constituency, for example, reported the story of his grandfather, a Jikany Nuer who was allegedly born in Manga, as evidence of Jikani's first-comers' rights[962]. If the strong backing by the governor - according to one informant, he 'brought' 'Guit people' to Manga[963]- could make it all in all less urgent for Jikani Nuer to formulate this kind of narratives, a vaguely defined past confirms itself as the primary source of legitimacy in land claims. This past can change according to the circumstances and it can be either a vaguely defined past as the one singled out by the Jikani, or a more specific one as the one referred to by Ruweng Dinka talking about the struggles during the civil war.

In this case, the use of state structures to demonstrate the ownership of the land emerges even more clearly than in the case of Acholi and Madi community, suggesting that claiming to belong to one community or the other – and thus emphasizing differences and divisions- becomes a functional strategy for access to resources.

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[960]Interviews with: John Kawais, Member of Parliament from Guit County, Unity State Legislative Assembly. Bentiu, 08/02/2013; Peter Makuaj, Member of Parliament from Pariang County, Unity State Legislative Assembly. Bentiu, 08/02/2013; Michael Lot Gatluok, Chairperson of Unity State Land Alliance/Director General for Education, Panyinjiar County. Bentiu, 17/02/2013; Elijah Wal Chol, Nyeel Acting Payam Administrator. Nyeel, 25/02/2013; personal communications with representative of civil society groups in Bentiu and citizens from Pariang County, February-March 2013.

[961]"The State of Politics in Unity State and the Necessity of Forming an Inclusive Government: Is Unity State Government a Government of the Nuer, by the Nuer, and for the Nuer?," Signed by 57 Pariang County citizens, published by South Sudan News Agency, (February 2, 2012), http://www.southsudannewsagency.com/news/press-releases/the-state-of-politics-in-unity-state-and-the-necessity-of-forming-an-inclusive-government-is-unity-state-government-a-government-of-the-nuer-by-the-nuer-and-for-the-nuer; "Ruweng County Citizens Petition President Kiir against Internal Occupation of Ruweng Territory," Signed by Ruweng County citizens, published by South Sudan News Agency, (March 22, 2011), http://www.southsudannewsagency.com/news/press-releases/ruweng-county-citizens-petition-president-kiir-against-internal-occupation-of-ruweng-territory.

[962]Interview with John Kawais, Member of Parliament, Unity State Legislative Assembly (from Guit County), Bentiu 08/02/2013

[963] Personal communication, Bentiu, 20 February 2013.

## 3.2 The overlapping of ethnic and administrative boundaries: the case of Bentiu Town

Although most of South Sudan population lives in the rural areas, towns are rapidly growing, increasing the importance of peri-urban land and complicating land relations in and around the urban areas. The resulting dynamics closely resemble those observed in the rural areas, with the difference that they develop in a context in which, according to the existing legal system, claims to autochthony and belonging should leave room for bureaucratized systems of land tenure and land allocation. In practice, however, the contradictions of 'bureaucratic populism' characterizing the land reform emerge precisely on the rural/urban frontier and on its two different systems of tenure.

The urban frontier in Southern Sudan had historically expanded thanks to people's and chiefs' movements towards the government centers in search for services and opportunities. Since statehood in the region went hand in hand with war and successive waves of repression, urbanization also kept a fluctuating pace, for people who wanted to escape repression usually fled from towns. In the late 1990s, despite the war still ongoing, ideas about the better quality of life in urban centers gained momentum, thanks also to the relief aid that was delivered either near to the government or to the SPLM centers[964]. In the new post-CPA settings, and especially after the enactment of the Land Act, the spontaneous expansion of towns started being subject to attempts at planning and giving legitimacy to what had been perceived as lawless brutal eviction of communal land by the Government of Sudan in the years of the war. With the Land Act, peri-urban land started to be generally perceived as part of the land owned by the communities due to its non-urban character. It became 'urban' –and thus changed its administrative status- as soon as the government mapped it and demarcated it[965], but the process through which this should happen appears to be rather arbitrary and context-specific, as neither the Land Act nor the draft Land Policy carry any specific provisions about it[966]. What appears to have emerged as a relatively well-established praxis is some kind of

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[964] Leonardi, *Dealing with Government in South Sudan*. See also chapter 3 on the delivery of relief aid.

[965] Interview with Dudi Matad, Director of Land Department of Unity State Ministry of Physical Infrastructures, Bentiu, 19 February 2013

[966] The Land Policy, in its latest draft (2014) only says that peri-urban land can be hold "under community, public or private tenure, subject to principles of good land administration and planning and the comparative capacities of alternative tenure systems to administer land rights in given areas efficiently" (Land Policy 2014, p. 25-26). However, as shown in chapter 4, since communal land turned into the residual category for all the land not registered under a different form of tenure, peri-urban land falls under the communal tenure system as well.

negotiation with communal leaders customarily administering the land at the outskirts of towns, reaching agreements that usually entitle the 'local community' with free housing plots as a form of compensation. Though not being uniformly accepted across the whole country[967], this practical norm keeps claims to urban land in the collective sphere as well. In places where these claims could be supported through competitive narratives of autochthony, such as in Bentiu, they are reinforced by backing of politicians and elite members. The non-implementation of some of the legal provisions contained in the Land Act such as the establishment of non-ethnic town councils is thus often related to the will of keeping urban land under communal control, where access to it is more easily negotiable without interferences from the far-away central government. In Bentiu, Unity State capital, land was surveyed and demarcated by the State Ministry of Physical Infrastructure through mechanisms of expropriation/compensation determined on a case-by-case negotiation with the leaders of the dispossessed 'communities'[968]. Part of this negotiation involves reaching an agreement on the number of plots the community will be entitled to for free, after the demarcation of the land in question is carried out. These plots would be distributed by the chief to its subjects. If on one side this represents a legitimate compensation for the loss of their land, on the other it confirms the importance of asserting belonging to a community from an individual's perspective, and the 'community's' ownership of peri-urban land in order to being entitled to compensation in the form of free plots. In Bentiu, chiefs' claims upon peri-urban land are thus not aimed at keeping the state away from it, but rather at "drawing the state into debts and obligations to landowning patrons"[969]. Since most of the rural communities place great value on the possibility of easily accessing town services and opportunities, people living in the areas where urban development takes place tend to assert their ownership of the land with the aim of being somehow included into the repartition of benefits deriving from urbanization (plot allocation, the creation of new positions such as Block leaders, the construction of public infrastructures, etc.), often clashing with other people's claims of ownership. Thus discourses about belonging sneak in through the ambiguity of the urban/rural frontier even in

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[967] While these mechanisms appears to be in place in Bentiu and Rumbek towns, the cases of Nimule and Juba, which will be illustrated later in the chapter, warn against excessive generalization on its acceptance.

[968] Interview with William Garjang Gieng, Rubkhona County Commissioner, Bentiu, 06/02/2013; personal communication with civil society activist on urban land issues, Bentiu, November 2013

[969] Leonardi, *Dealing with Government in South Sudan*. p. 198

situations in which land tenure is expected to be handled according to statutory provisions.

The process of survey and demarcation of housing and plots for social services in Bentiu started in 2004. In 2013, a large portion of the urbanized area was surveyed, but the process was still proceeding towards the east and the south, respectively in the direction of Jikany and Leek Nuer land. These groups had a dispute on the control of the town mostly revolving around issues of autochthony and communal ownership of the land, involving, on one hand, traditional leaders, and on the other administrative agents vociferously animating a border dispute between Leek and Jikani's 'respective' counties, Rubkhona and Guit. The two Local Government units claim 'traditional ownership' of the land on behalf of 'their' respective communities. Around 2010, Guit County, which was established in 2005 among the last ones allegedly under pressure from Taban Deng Gai to secure a 'home county' to Jikany Nuer[970], started claiming the eastern area of the town, called Bim Ruo. The area was surveyed and demarcated in 2005, and plots were allocated to a variety of people coming from different areas of the State, including some Darfurians and Eritreans. The land was considered to belong to Leek Nuer, and they were compensated with a percentage of free plots[971]. In 2012, however, the Ministry decided to re-demarcate the area, claiming that houses were not built according to 'appropriate standards'. The people resisted for fear of being evicted and clashes broke out, although they did not hinder re-demarcation. Since the operation was carried out after the Jikany community started to claim the land in Bim Ruo, there was widespread belief among the dwellers that its aim was to oblige Jikany demands and re-distribute the urban land in a more favourable way to their community in order to justify Guit County claims of controlling part of the town. At the time of fieldwork, several families had been evicted from Bim Ruo and were asked to pay again to obtain a land title released by the Land Registration office. Some people had started rebuilding 'temporary houses' without permission from the Ministry of Physical Infrastructure, since, as remarked by the deputy chairman of the Land Registration Office: "Civilians don't have money to get the title"[972]. At the same time, however, those who decided to purchase back their title to land were often cheated by the ministry officers through a mixture of bribery and nepotism: one land title was sold

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[970] Personal communication with civil society activists, Bentiu, March 2013.

[971] Personal communication with BimRuo inhabitants and civil society activists, Bentiu, 2013

[972] Interview with Michael Torit, deputy chair of the Land Registration Office, Bentiu, 20/02/2013

several times – and the money taken by the officer in charge of the transaction -, but the officers were nevertheless careful to make sure that just one of the applicants had what it took to win if he filed a case at the High Court – usually, to have some blood or client connection with army generals, or with the Jikany community[973].

A similar case involved an area at the outskirts of Bentiu called Yoanyang, north of Bim Ruo and near the river Naam. Yoanyang used to be inhabited by a Leek sub-clan and a Jikany sub-clan. They were forced to flee during the civil war when fighting between the two factions of the SPLA became particularly intense. When Riek Machar's splinter group was re-absorbed into the SPLA in 2002, the area became a marketplace thanks to the proximity to the river which provides a relatively safe route for goods coming from Southern Kordofan and Ethiopia[974]. After the peace agreement, armed militias continued to be active in the area until 2007. When the militias were absorbed into the SPLA, Rubkhona County Commissioner started to send tax collectors to the port-market, exercising its administrative power over the area. The Jikany community, whose members considered themselves as first-comers, was unhappy. One particularly popular story was about a Leek man who was granted some land from a Jikany chief on the southern bank of the river, but contravened the customary rule of not planting trees on other people's land growing mangos. Using mangos as evidence that the land belonged to his family, the Leek man showed great disrespect for traditional arrangements[975]. In 2008, Guit County Commissioner too decided to send tax collectors to the area in order to assert its legitimate jurisdiction on Yoanyang as Jikany land. A dispute between tax collectors from the two Counties quickly escalated into open inter-communal violence. Six people died and several were wounded and displaced. The market was destroyed. To stop the fighting, the government sent in the army, who built up army barracks and settled in the area. Violence erupted again in 2009 and 2011, allegedly with the involvement of the army on the Jikany side. According to a Member of the Unity State Legislative Assembly from Guit County: "[Now, in early 2013] there is no fighting, but not even agreement. [The problem is that] the two sub-clans don't want to belong to the same

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[973] Personal communication with civil society activists, Bentiu, February-March 2013; Personal communication with residents in Bim Ruo, February March 2013.

[974] Interviews with John Kawais, Member of Parliament, Unity State Legislative Assembly, Bentiu 08/02/2013; Mary Paul Ngundeng, Member of Parliament, Unity State Legislative Assembly, Bentiu 09/02/2013; William GarjangGieng, Rubkhona County Commissioner, Bentiu, 06/02/2013; personal communication with traders in Yoanyang market, Bentiu, March 2013

[975] Personal communication with Yoanyang residents, Bentiu, March 2013

County"[976]. Later in 2013, after the removal of Taban Deng Gai from the governor's position within a framework of increasing political tensions at the national level, further fighting broke out allegedly caused by Leek, who felt better represented by the new governor Joseph Nguen Monytuil (hailing from Mayom County and closer to Salva Kiir's faction of the SPLM) and thought they could take back the area[977].

**Table 6.2: Chronology of Jikany-Leek dispute on Yoanyang[978]**

| Year | Event |
|------|-------|
| 2005 | Guit county is created |
| 2007 | Rubkhona county starts tax collection in Yoanyang |
| 2008 | Guit county also starts collecting taxes in Yoanyang |
| 2009-2013 | Guit collects taxes in Yoanyang |
| 2009 | Rubkhona county officers resist. Clashes occur between groups of armed men from the two sides |
| 2011 | Clashes occur. Alleged involvement of the army on Guit side |
| 2013 | Clashes occur allegedly started by people from Rubkhona in an attempt to 'take back' Yoanyang after the Governor's dismissal. |

In these cases involving the Jikany community, their connection with power is certainly an important element in the strategies of enlargement of Guit County. As one young man from Panyinjiar County puts it: "Because the governor is from Guit, those people they think they own everything"[979]. However, the connection with raw power coming from the vicinity to the state – and military - apparatuses is not enough to advance claims to land: instead, they need to be legitimized through discourses concerning customary land tenure as recognized by the constitution and the law, even when the areas in question

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[976] Interview with John Kawais, Member of Parliament, Unity State Legislative Assembly, Bentiu 08/02/2013

[977]Personal communication with local staff of an international NGO based in Bentiu (telephone). See also: Sudan Tribune. "Nuer clans clash in Unity state, 7 dead, 9 wounded", 20 November 2013.

[978] Interviews: Mary Paul Ngundeng, Member of Parliament from Rubkhona County, Unity State Legislative Assembly. Bentiu, 09/02/2013; J. member of Civil Society Organization. Bentiu, 2013; John Kawais, Member of Parliament from Guit County, Unity State Legislative Assembly. Bentiu, 08/02/2013; Garjang Gieng, Rubkhona County Commissioner. Rubkhona, 06/02/2013; collective interview with Traders in Yoanyang market, 03/2013; Sudan Tribune, "Nuer Clans Clash in Unity State, 7 Dead, 9 Wounded," November 20, 2013, http://www.sudantribune.com/spip.php?article48872.

[979]Interviewed in Bentiu, March 2013.

have been surveyed and demarcated as urban land and ideally brought under the distributive authority of government institutions. There is here a (theoretical) total overlapping between the local government unit and the ethnic 'community': once Guit jurisdiction is affirmed over the town, the Jikany community will benefit from having the town under 'its' control. The County border thus becomes a proxy for the ethnic community.

## 3.3 Local governments taking side in the allocation of urban land

Besides cases of competition over urban land between two communities who can both advance claims more or less based on autochthony and on customary ownership of the land where the town is built, several other conflicting situations emerge where different groups claim right to urban land appealing to different discourses. Borders are involved in these cases as well, but this time they are rather the symbolical borders dividing individuals who are considered to be members of the landowner community, and individuals who are considered as 'guests', or as late-comers with illegitimate claims over someone else's land. The first group would generally rely on narratives emphasizing the autochthony and customary discourses, while the second would rather support discourses focusing on historical events (such as right obtained through war) or on national citizenship and universal rights[980]. This divide is particularly evident in the urban areas, where the value of land is higher and the land tenure system would actually foresee individual access to land through statutory institutions.

### 3.3.1 Universal rights of citizens: government taking side with non-natives

The years right before the signing of the CPA were characterized by sudden processes of chaotic urbanization caused by return fluxes of people who had fled southern Sudan during the war. According to a paper prepared for the International Organization of Migrations (IOM), the population in Juba doubled between 2005 and 2013, and many other urban centers are believed to have double-digit population growth rates thanks to the two waves of returns after

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[980] Boone, *Property and Political Order in Africa*.

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the CPA and after independence[981]. IOM estimates that about two million people returned to South Sudan since the end of the war; many of those people decided not to move back to their areas of origin - or only went back very shortly - in spite of their predicted choice of staying where access to land would have been easier thanks to customary land tenure recognition[982]. In fact, having been living in towns in North Sudan or in East Africa for many years, many returnees were not prepared to adapt to agro-pastoralist life-styles and chose to stay in town[983]. As mentioned above, this compelled government institution to start developing basic urban planning mechanisms, negotiating the expansion of towns in communally-owned surrounding areas. Processes of negotiation varied greatly, with various degrees of resistance and diverse alliances supporting context-specific application of the law. As Nadeem Badiey shows in the case of Juba, different actors played an extremely diverse set of repertoires drawing upon discourses of autochthony versus universal rights to land, emphasizing local or national citizenship. In the well-studied case of Juba town, the Bari community claims of communal ownership of land in the peri-urban areas reflects an attempt at resisting what is perceived as an urban integration policy at best, and as a land grabbing operation at worst, orchestrated by the predominantly Dinka and Nuer SPLM/A elite[984]. The latter, instead, emphasize the right of all the citizens of Southern Sudan to reside in the capital city and to lawfully acquire land through the government. While, according to the law, the appropriate level of government for allocating land to urban dwellers shall be the lowest level of government[985], the government of South Sudan has a centralizing tendency in Central Equatoria often trespassing on the limit of competence of other levels of government, causing frequent intergovernmental conflicts[986]. This complicates a simplistic understanding of communal land rights as supported by the 'local people' against a state-supported individual and statutory right to land in the urban areas. In the debate over Juba land, the government of Central Equatoria

[981]Marisa O. Ensor, *Displaced Youth's Role in Sustainable Return: Lessons from South Sudan*, IOM Migration Research Series 47 (Geneva: IOM, 2013), http://publications.iom.int/bookstore/free/MRS_47_6Nov.pdf.

[982]Paul De Wit, "Land and Property Study in Sudan".

[983]Ensor, *Displaced Youth's Role in Sustainable Return: Lessons from South Sudan*.

[984] Naseem Badiey, "The Strategic Instrumentalization of Land Tenure in 'State-Building': The Case of Juba, South Sudan," *Africa: The Journal of the International African Institute* 83, no. 1 (2013): 57–77; Naseem Badiey, "Les dynamiques locales de la construction étatique à Juba, Sud-Soudan (2005-2008)," *Politique africaine* N° 122, no. 2 (July 1, 2011): 21–39; Sara Pantuliano, "Going Home: Land, Return and Reintegration in Southern Sudan and the Three Areas"; Rolandsen, *Land, Security and Peace Building in Southern Sudan*.

[985] Government of Southern Sudan, *Local Government Act*. (Section 92(2))

[986] Badiey, "The Strategic Instrumentalization of Land Tenure in 'State-Building.'"

State indeed sides with the 'traditional' authorities, constructing its role as a defender of the 'local community' in opposition to the GoSS[987].

In the less studied case of Nimule town, similar tensions between the 'local community' and the Eastern Equatoria State government arose around the establishment of the town council, as required by the Local Government Act 2009. Nimule is a town situated on the Ugandan border and hosts a huge displaced Dinka community in spite of the complaints of the Madi, who control Nimule Payam and claim to be the legitimate customary owners of the land[988]. Recently, Nimule was connected to Juba through a tarmac road and its importance as a border market increased. Even if the Local Government Board Chairman attributes conflict for the control of urban areas to the failure of the local administration to establish town councils, which should represent the legal-rational character of state power attributing equal citizenship rights to urban dwellers[989], in Nimule case this operation is rather looked at as an attempt by the SPLM government to exclude the local Madi community from decision-making over the land in town. It is the very decision of creating a new statutory institutional subject to cause tensions locally. In 2013, clashes erupted between the SPLA and the Madi community, who perceived the decision of establishing a town council as a move to strip the land away from community leaders in favour of the Dinka IDP community. When Madi chiefs refused to sign the demarcation document prepared without preliminary consultation with the communities, tensions between the Madi community and the army broke out: a Madi Head Chief was killed and Madi people were detained and harassed by the SPLA in Nimule military barracks. The community was forced to sign the document for the creation of the town council. In this case, the state government took the side of the national government, who had passed the law creating town councils and which was blamed for a decision ultimately subverting customary land tenure rights and extending them to new-comers[990].

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[987] Ibid. This tension emerged very clearly while conducting fieldwork on land private investments in Central Equatoria State in early 2012 from both GoSS officials and Central Equatoria State government officials.

[988] Sudan Tribune. "E. Equatoria's Madi community tells Dinka IDPs to go home". 18 August 2011, http://www.sudantribune.com/spip.php?article39867

[989]Guok, "Local Government Presentation to the Sixth Governors Forum on Demarcation of State and County Administrative Boundaries in Southern Sudan."

[990]Michael Okia Amuru, "Response to the Crisis in Madiland: Central Government Is Responsible," *South Sudan Nation*, September 26, 2013, http://www.southsudannation.com/response-to-the-crisis-in-madiland-central-government-is-responsible/; see also: Darius Tongu Swaka, "Crisis in Madi, Nimule, Is a Government Conspiracy to Grab Land," *South Sudan Nation*, September 24, 2013, http://www.southsudannation.com/crisis-in-madi-nimule-is-a-government-conspiracy-to-

If in both Juba and Nimule cases we have a 'local community' claiming rights to land on customary basis, emphasizing a local form of citizenship, and at least one level of the government attempting at enforcing a different system of land management, in places further away from the central government, where the ruling elite can exploit autochthony discourses to strengthen its control of the territory, some sort of complacency can be found towards local claims expressed through 'tradition', 'first-coming' or 'indigeneity' arguments.

In these cases, the situation is opposite to the one in Nimule, with local state institutions privileging a local conception of citizenship. In Bentiu, for example, the state government accepted to comply with a local clan's demands of control over the land, recognizing its claims as legitimate. Garkuothkam, a powerful sub-clan from the Leek Nuer section, successfully asserted its ownership of the land in a rapidly growing neighborhood in Bentiu Town, Bilnyang. The area was identified for survey in 2010, but Garkuothkam people understood the process as an attempt by the State Governor, the Jikani Nuer Taban Deng Gai, to formalize the settlement of people not belonging to the sub-clan. In 2011, several violent episodes left four people dead, allegedly because Garkuothkam sub-clan members "want(ed) the people living in Bilnyang to move away"[991], and this prevented the surveyors' team to carry out their work. According to one of Bilnyang block leaders[992]:

> "Garkuothkam became chief when I was a child, 40 years ago (...). He was very important, he stayed in office for a long time during the Arab period, and this is why his sons are all officials. They became officials before the peace agreement and this was useful to protect their people. Up to now their clan is very influent and respected by the community"[993]

Thanks to the number of sub-clan members in good positions in the oil sector, international NGOs and in the state government, Garkuothkam head

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grab-land/; Tulio Odongi Ayahu, "Lities, City Councils and Towns in South Sudan," *Sudan Tribune*, August 29, 2013, http://sudantribune.com/spip.php?article47851.

[991] Interview with Kerubino Paluath Deng, Block Leader in Bilnyang, Bentiu. 11/03/2013; Personal communication with residents in Bilnyang, representatives of CSOs members of the land coalition supported by the National Democratic Institute, Bentiu, February-March 2013.

[992] Block leaders are elected figures who look after good neighbourly relations in the block concerning all residents. They report to the government about whatever problem occurs, and to the town court when legal problems emerge. Interview with Kerubino Paluath Deng, Block Leader in Bilnyang, Bentiu. 11/03/2013.

[993] Interview with Kerubino Paluath Deng, Block Leader in Bilnyang, Bentiu. 11/03/2013.

chief managed to take 40% of the plots after the land was demarcated[994]. Allegedly, the appointment of a new Minister of Physical Infrastructure and Urban Planning from the Leek Nuer section, who was keener on complying with Garkuothkam demands than the previous one, was a consequence of protracted insecurity in the area, where the clan members insisted they did not want 'aliens' to settle[995].

In Rumbek Town (Lakes State), the land survey and demarcation process was over by the end of 2013. The process was less contentious than elsewhere, and members of the community traditionally owning the land before it was demarcated were allocated a percentage of the plots in each demarcated block. Remaining plots were intended to be distributed by the Directorate of Land and Survey in Lakes State Ministry of Physical Infrastructure to people applying for land in town[996]. When some of the people complained of having part of their land taken away from the government to allocate it to other people, community leaders managed to obtain additional plots from the Department of Survey on the basis of the community's customary ownership of land in the area[997]. This reduced the number of available plots for non-indigenous people. A man employed as an educational officer in a NGO based in Rumbek –a good town-job - claimed that he could not get a plot because he was from a different county (entailing that he was also from a different 'community'):

> "The land is a big problem. If you are not from here, it is very difficult to get land. Take me as example: I am from Cueibet County, but I work here in Rumbek Town, so I wanted to have a piece of land. I applied [to the Directorate of Survey], and then waited and waited until they showed me a small land, quite far from the town, and asked me for 15.000 SSP[998]. Of course, I could not afford it. I was forced to go back to my county headquarter to get land. I got a much bigger plot for half the price and now I am building on it"[999].

Despite having gone through the appropriate procedure foreseen by the Ministry of Physical Infrastructure to obtain a plot, the man's attempt was

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[994] Interview with Kerubino Paluath Deng, Block Leader in Bilnyang, Bentiu. 11/03/2013; Personal communication with residents in Bilnyang, representatives of CSOs members of the land coalition supported by the National Democratic Institute, Bentiu, February-March 2013.

[995] Personal communication with members from the land coalition supported by the National Democratic Institute, Bentiu, February-March 2013.

[996] Interview with Long Majok, Senior Inspector for Survey, Lakes State Ministry of Physical Infrastructure, Rumbek. 19/11/2013; and Nyantoic, secretary general of Land Committee, Rumbek, 19/11/2013

[997] Interview with Nyantoic, secretary general of Land Committee, Rumbek, 19/11/2013

[998] About $3.800, with the average salary of a local NGO worker (non-managerial position) being about $250-300 a month (data referring to November 2013).

[999] Personal communication with NGO worker, Rumbek, November 2013

unsuccessful because local state officers would attribute more importance to his ethnic belonging than to his right as a citizen to reside wherever he wished to. In Rumbek and Bentiu, 'aliens' are excluded from the allocation of land in areas perceived to belong to another community,  whereas 'locals' are favoured not only in the allocation of plots, but also in the resolution of disputes, even in contrast with statutory provisions[1000]. In all these cases, local elites, rather than traditional authorities, use discourses of belonging to keep the areas under the physical control of their own networks. However, in Juba and Nimule, where an outstanding part of the resident population is made of Dinka and Nuer IDPs who have settled there during the war, these claims clash with residents' claims backed by the national government. They are articulated through different narratives relying on more recent historical events -the civil war- rather than on autochthony[1001], and on the universal right of residing anywhere in the country as provided by the legal-rational side of the state-building enterprise.

The coexistence of the two discourses of autochthony and of the universal right of residence for the citizens of South Sudan, is constitutive of the making and unmaking of the physical and symbolic borders between 'communities', as referred to in South Sudan's state-building project. The cases illustrated above show how the emergence of two visions of citizenship - local and national - are negotiated through the instrumental use of the ambiguous character of the urban/rural frontier and of the very definition of 'membership' in the community. The ambiguous character of the borders of communities, be it physical/administrative borders claimed through the language of the state apparatus, or symbolic borders based on the definition of identity in opposition to other people's identity, defines a 'field of power over land'[1002] in which access to the emerging state and its resources is ultimately negotiated.

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[1000]Tiernan Mennen, *Customary Law and Land Rights in South Sudan*, Information, Counseling and Legal Assistance (ICLA) Project (Norwegian Refugee Council, 2012), http://www.nrc.no/arch/_img/9195246.pdf. This point was made also by activists involved in a civil society network supported by the National Democratic Institute to lobby government institutions on urban  land issue and assist victims of flawed land transactions in Bentiu Town. Interviews in Bentiu, February-March 2013.

[1001] Cherry Leonardi, "Paying 'Buckets of Blood' for the Land: Moral Debates over Economy, War and State in Southern Sudan," *The Journal of Modern African Studies* 49, no. 2 (June 1, 2011): 215–40.

[1002]Pierre-Yves Le Meur, "State Making and the Politics of the Frontier in Central Benin", p. 886

## 4. Conclusion

What do these case-studies have to do with the legal recognition of communal land, and what do they tell us about state-building and state formation processes in South Sudan?

In all the cases presented, reference to communal land ownership and control emerge very strongly. Its formalization for purposes of protection of people's rights and livelihoods (development agencies) and of local peace-making (SPLM) leaves open the question of who in fact is the community, and of defining its physical and symbolic boundaries. The struggle over definitions, compelled by the formalization of collective rights to land, becomes an arena of negotiation of a political subjectivity which draws on official discourses attributing neat boundaries between categories derived from the international state-building project. In fact, categories of local community, state, foreign company end up intertwining: if the liberal state-building project builds states upon the assumptions of the boundaries between these concepts, the actual state formation process blurs them. Liberal state-building recognizes communal rights to land and codes of conduct for the protection of vaguely defined 'local communities'; state formation encourages 'local communities' to extend their boundaries towards the top of the hierarchy of the state apparatus to include patrons that can guarantee access to resources.

Interestingly, in all these cases, claims over land are not advanced by traditional authorities, but rather by other actors in principle belonging to the civic structure of the state rather than to the customary one: Members of Parliament, local government officers, administrators or 'intellectuals', a term I often encounter when talking about the urban-based educated people from the 'community', usually working in the formal economy sector, who are thought to be close to power (or at least to understand its dynamics), and who can more effectively make the voice of the community heard. Visibility often passes through the translation of local grievances into English, so that they can draw the attention of NGOs or the press (like in the Acholi-Madi dispute and in the Lainya 'land grabbing' case). Particularly, statutory institutions officers seem to consider themselves in charge of 'protecting' their people's right to land and other entitlements. They manage to bring claims up to the decision-making levels of the government which the chiefs do not always have the authority to reach. By doing so, state officers endorse the legitimacy of customary discourses, which also confirms that claims are stronger and more likely to be satisfied if backed by state representatives. Ethnicity in South Sudan is thus reinvented by statutory officials rather than traditional authorities. This

contributes, on one hand, to make 'community' claims visible, either in the form of administrative disputes, related to the legitimizing and somehow obscure domain of the civic state; either in the form of routinized claims channelled through the legitimizing language of participatory development.

From a strictly institutionalist perspective, the continuous examples of deviance from ideal models in the form of interferences from state officials into formally customary land regimes, abuses by high-ranking politicians or military personnel, claims over formally public land through discourses revolving around communal identity and customs, represent pathological expressions of ineffective institutions. In fact, they can somehow be attributed to the attempt at formalizing into a modern state some of the worst legacies of colonialism which "produced knowledge that was hegemonic in intent but unsustainable in practice"[1003] about local populations, in order to make them 'legible'. As Jocelyn Alexander explains with regard to Zimbabwe, "'Legibility' worked in both ways: as a means for the state to 'see' its charges, and as a way for Africans to be 'seen', and so gain recognition for their claims to land"[1004].

Intertwining with the state-building project, the land tenure reform has exacerbated two features of South Sudan's politics: ethnic fragmentation and ethnic patronage as the main channel of access to power and resources. Though acknowledging the possible representative function of the patron-client relationship[1005], the dynamics deriving from these two features tend to turn citizenship into an "attribute of autochthony"[1006], dooming people to stick to their ethnic identity in order to access rights and resources.

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[1003] Sara Berry, "Debating the Land Question in Africa," *Comparative Studies in Society and History* 44, no. 4 (October 1, 2002): 638–68. p. 645.

[1004] Alexander, *The Unsettled Land.* p. 31.

[1005] Patrick Chabal, *Africa. La political del soffrire e sorridere* (Palermo: Duepunti, 2011).

[1006] Le Meur, "State Making and the Politics of the Frontier in Central Benin." p. 891.

## Conclusion

On 2nd October 2015, the President of the Republic of South Sudan Salva Kiir Mayardit announced on South Sudan TV an increase in the number of states from ten to twenty-eight. Shortly after, the National Bureau of Statistics released a map of the new administrative arrangements (see map 12). This move was quite unexpected, and seen as a direct challenge to the Agreement on the Resolution of Conflict in South Sudan (ARCISS), which was signed in August 2015 by the GoSS and the rebels of the SPLM-IO. Moreover, it came after the refusal of the government to increase the number of states from ten to twenty-one proposed by the rebels. Interestingly, the government's decision and the rebel's proposal are backed respectively by two-ethnic based think tanks emerged in 2013: the Jieng Council of Elders (JCE) (Dinka) and the Nuer Council of Elders (NCE), formed of prominent political figures belonging to the two groups[1007]. Criticism to the creation of the twenty-eight states was not only related to the fact that such a decision was against the ARCISS and had the potential of disrupting the already fragile peace deal, but also, and more importantly, to accusation of land grabbing by the Dinka. According to a newspaper article published on Radio Tamazuj, the creation of the new states would increase the Dinka community controlled surface of the country from 25% to 42%[1008]. A similar position is expressed also in an analysis of the Sudd Institute[1009], and confirmed by complaints advanced by other groups against Dinka trying to take control of their land[1010].

This new development speaks, once again, to two of the issues addressed by this thesis. Firstly, the informal coincidence between administrative territory and ethnic community is confirmed. Its informality is given by the fact that mention to ethnic balance is made neither in the Presidential Order establishing the new states[1011], nor in the press statement released by the JCE, in which reference is rather made to the principle guiding the decentralization reform in

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[1007] Augustino Ting Mayai, Nhial Tiitmamer, and Madut Jok Jok, "The Creation of 28 South Sudanese Stattes: Is It Economically and Legally Viable?," Weekly Review (Juba: The Sudd Institute, October 6, 2015).

[1008] Radio Tamazuj, "Map Analysis: Ethnic Balance to Change If 28 States Approved," November 22, 2015, https://radiotamazuj.org/en/article/map-analysis-ethnic-balance-change-if-28-states-approved.

[1009] Mayai, Tiitmamer, and Jok, "The Creation of 28 South Sudanese States: Is It Economically and Legally Viable?"

[1010] For example, see: Amanda Sperber, "South Sudan's Next Civil War Is Starting," *Foreign Policy*, January 22, 2016, http://foreignpolicy.com/2016/01/22/south-sudan-next-civil-war-is-starting-shilluk-army/.

[1011] President of the Republic of South Sudan, "Establishment Order Number 36/2015 for the Creation of 28 States in the Decentralized Governance System in the Republic of South Sudan," October 2, 2015.

the country, "taking towns to the people"[1012]. This notwithstanding, the final goal of subverting ethnic balances is widely recognized as the major justification of the reform[1013]. Secondly, the control of administrative units is directly linked to the control of land, as confirmed by the violent reaction from the Shilluk community. In the meanwhile, the negotiation between the SPLM-IO and the government, and those side-negotiations with other smaller armed militias, appear to be conducted on quite familiar basis, revolving around participation to state power and local autonomy from the centre.

How did we get to such a déjà-vu situation, which is indeed giving the same kind of déjà-vu outcome[1014]? The answer is very likely to lay in Southern Sudan historic pattern of state formation started during colonialism and continued throughout the two post-independence civil wars (1955-1972 and 1983-2005) up until its independence from Sudan. This thesis tried to explore the encounters between contemporary state-building projects and state formation drawing upon Berman and Lonsdale definition[1015]. More specifically, it looked at how the material and symbolic resources provided by the international state-building enterprise are turned into different forms of capital by different actors in the process of state formation. Contemporary international state-building in Southern Sudan started some years before the CPA was signed with the implementation of projects aimed at strengthening the SPLM's governing capacity. Linked to a broader liberal peace-building project, international state-building interventions reflected the conceptualization of state-building provided by the OECD-DAC as an exercise involving not only institution-building, but also the creation of legitimacy through effective delivery[1016]. For this reason, the international community emphasized the importance of local governance under several aspects. This thesis focused on three of them, described as 'negotiating arenas', providing repertoires and

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[1012] Jieng Council of Elders, "Press Statement of Jieng Council of Elders on the Creation of 28 States" ((by Ambrose Riiny Thiik and Joshua Dau Diu, October 7, 2015), http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/17559 /Jieng-Council-of-Elders-on-the-Creation-of-28-States.aspx.

[1013] Mayai, Tiitmamer, and Jok, "The Creation of 28 South Sudanese Stattes: Is It Economically and Legally Viable?"; Sperber, "South Sudan's Next Civil War Is Starting"; Radio Tamazuj, "Map Analysis: Ethnic Balance to Change If 28 States Approved."; Personal communication with South Sudanese civil society members, November 2015.

[1014] In February 2016, Riek Machar was re-appointed first Vice President of South Sudan, retaking the same place he occupied before the government reshuffle in July 2013. See Sudan Tribune, "Machar Appointed South Sudan's First Vice President," February 11, 2016, http://www.sudantribune.com/spip.php?article57985.

[1015] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa.* p.5.

[1016] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).

opportunities to actors engaging in it: the creation of a decentralized system of government, the deployment of service delivery structures and the reform of land governance. Although the latter is not directly associated with the state-building enterprise in public discourses, I argued that, besides constituting a sector of outstanding importance both in material and symbolic terms, its management according to contemporary international mainstream approaches responds to the same logic of 'localization' driving decentralization and service delivery reforms. In Africa, this localistic trend tends to rely on supposedly pre-existing institutions, such as customary and 'traditional authorities', and is thus believed to strengthen 'fragile' contexts through placing the 'community' at the center of society – as its basic unit.

These reforms are not top down as they may look like at first glance. In the first place, they are agreed between the Government of Southern Sudan and the donors in the framework of unequal partnerships[1017]. Extremely depoliticized reforms proposed by the international community as steps of state-building allow a convergence between the international state-building project and that of the SPLM. Both ultimately aim at the concentration of power into the hands of an identifiable and structured ruler within a circumscribed territory; the difference lays in the degree of politicization of the actions undertaken. Donor agencies promote an extremely depoliticized set of reforms through technical assistance and capacity building for the sake of good governance. In this context, the 'local' is treated as an arena in need of funds and technical capacity that will be conflict-free as long as it is managed effectively. The SPLM, on its part, had a much more political understanding of internal power balances and of the politics of technical assistance. Nonetheless, it adopted the same language of good governance, decentralization and development, and extensively drew on external material and symbolic resources to build a statehood façade in which the claims of the lack-of-capacity and the lack-of-resources became outstanding elements in the historic pattern of extraversion of the South Sudanese state. Decentralization was used on one side as a proof of an effort to democratize; on the other as a strategy of buying loyalty from local opponents and keeping SPLM's grip on power in spite of the continuous centrifugal thrusts.

State-building projects feed into a broader process of state formation which does not only involve governments and donors, but also a range of actors not necessarily occupying institutional positions. Plenty of South Sudanese

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[1017] Abrahamsen, "The Power of Partnerships in Global Governance".

social actors, faced with a rapidly changing institutional environment and with new opportunities of access to resources previously thought out of reach, take on discourses deriving from the state-building enterprise in their everyday lives, and seek strategies of access to resources which seems to be effective in the context provided by international and GoSS policy- and law-making.

These dynamics speak to the relationship between the agency of local actors and the structure provided by international state-building interventions flowing from a specific global context concerned with keeping international stability and strengthening the neoliberal system of governance. The depoliticization of reforms is one of the means to pursue these goals, translating into efforts to teach local governments how to govern pretending that politics is not involved. As Ferguson showed with the development anti-politics machine, international actors' pretense of being apolitical concealed the actual outcome of their programs, ultimately supporting the expansion of the state's capacity of control, as well as its possibility of exercising power[1018]. The emergence of what has been variously described as communitarianism[1019], neo-customary trend[1020], traditional resurgence[1021] in international interventions can be considered in a similar vein:  the community, framed as a 'traditional' unit, is considered a good means of lightening the central state, devolving responsibility over local matters to local structures in between the private and the public realm. The state is only left with a coordination role (as foreseen by New Public Management reforms) and can therefore easily emerge as a mere institutional façade concealing processes of power accumulation. This is not to say that the state does not in fact exist, or that it becomes irrelevant: the state keeps its relevance both in the material production of the 'rules of the game' of the state-building enterprise through direct negotiation with international actors (only those who can claim participation to state power can enter into these direct negotiations), and as an idea permeating grievances and claims from the bottom up. Moreover, the very creation of state institutions opens up new opportunities. The idea of the state, in the collective imaginary of South Sudanese society, is linked to the provision of public goods and services and, more broadly, to the distribution of resources. These resources can come invariably from the government or from external resource providers, but in order to benefit from them, the state has to be appropriated; in other words,

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[1018] Ferguson, *The Anti-Politics Machine*.
[1019] Darbon, "Crise Du Territoire étatique et Communautarisme".
[1020] Boone, *Property and Political Order in Africa*.
[1021] Geschiere, *The Perils of Belonging: Autochthony, Citizenship, and Exclusion in Africa and Europe*.

people need to show that they are part of it. The idea of the state is thus stronger than ever in people's minds and it expresses itself through the constant effort of being recognized as part of the state structure. At the same time, the communities emerging as right-bearing subjects from the state-building enterprise need to be sanctioned by the state, and the stakes in their recognition go well beyond the mere search for effectiveness in administration. A 'communal subjectivity' emerges out of the effectiveness and efficiency discourses in policies promoting self-rule, service delivery and access to land, producing a re-politicization process[1022] as soon as the communal discourse is appropriated by the local people and their 'traditional' authorities. If the former see in it an opportunity of being entitled to resource distribution, the latter use it to re-affirm their role and position between state and society, as gate-keepers of the 'local communities'.

Some have looked at the structuring of society on ethnic lines as a reproduction of colonial socio-political order, characterized by 'decentralized despotism' of the chiefs[1023]. In fact, it has also been argued that the position of the traditional authority is more nuanced, in many instances closer to that of mediators and protectors of their constituents than that of exploitative oppressors[1024]. However, the definition of the 'community' in ethnic terms can be considered as a very strong legacy of colonial time, which has been reproduced throughout Southern Sudan modern history. Its centrality in contemporary state-building and state formation processes derives from the incorporation of traditional authorities in the government structure and the consequent overlapping between the 'traditional' domain of communal customs and the bureaucratic domain of the state. This overlapping also emerges in state-building projects supported by the donor community.

This is not to say that inter-ethnic rivalries and centrifugal forces did not exist independently from contemporary 'external interferences' in Southern Sudan: they did exist even before colonialism, and the latter only contributed to their crystallization due to the hardening of ethnic boundaries. At the same time, however, quoting Biershenk, Doornbos points at the lack of politico-material conditions for the development of a national (unique) identity

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[1022] Harrison, *Neoliberal Africa*.

[1023] Mamdani, *Citizen and Subject*; Jesse C. Ribot, *Democratic Decentralization of Natural Resources: Institutionalizing Popular Participation* (Washington, DC: World Resources Institute, 2002).

[1024] Leonardi, *Dealing with Government in South Sudan*.

transcending ethnic allegiances in the African continent[1025]. Indeed, the overlapping of administrative and customary communal boundaries to which access to power and resources is linked does not provide material resources discouraging particularistic allegiances on ethnic basis; rather the opposite.

Neoliberalism, Graham Harrison argues, is a project of social engineering, but in its very deep penetration into states' institutions it also produces a phenomenon of 'victim blaming' for failures and drawbacks in processes imagined to be smooth and non-conflictive thanks to their alleged technical nature[1026]. This thesis has tried to find a delicate balance between a perspective that would attribute the outcomes of South Sudan's state formation process and the deep ethnicization of politics to structural constraints imposed by the international system and on historical legacies of state formation; and another perspective blaming South Sudan's state 'failures' to a local corrupt elite or to hopelessly 'tribal' masses (as much as the South Sudanese diaspora does)[1027]. Rather, it tried to show that elements emphasized by both perspectives are at play: on the one hand, blueprint international state-building projects carrying certain kinds of discourses; on the other, a local elite mostly concerned with keeping its grip on power. On top of these two aspects, there are millions of South Sudanese who act in their everyday lives following their understanding of social, political and economic changes in the country. They act considering their past experiences and the new opportunities provided by rapidly changing scenarios, of which the process of policy- and law-making constitutes an outstanding part, providing the 'rules of the game'[1028] and legitimizing repertoires. It is them who mostly contribute to the process of state formation, as they profit from the 'vulgarization' of power favored by the state-building enterprise; and it is them, also, who turn to 'political tribalism'[1029], as the 'rules of the game' make ethnicity a vital feature of inclusion into the state resource distribution.

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[1025] Bierschenk, Thomas (2003) 'Staat und Nation im postkolonialen Afrika: Ein Forschungsprogramm' ['State and Nation in Post-colonial Africa: A Research Programme']. Working Paper No. 26. Mainz: Johannes Gutenberg Universitat, Institut f ¨ ur Ethnologie und ¨ Afrikastudien.), quoted in Martin Doornbos, "Researching African Statehood Dynamics: Negotiability and Its Limits".

[1026] Harrison, *Neoliberal Africa*.

[1027] It is enough to look at editorials published sometimes on the Sudan Tribune or the Gurtong Project, and, more importantly, at the comments of South Sudanese abroad to these articles or on Facebook.

[1028] Hyden, Olowu, and Okoth-Ogendo, *African Perspectives on Governance*.

[1029] John Lonsdale, "Moral Ethnicity and Political Tribalism," *International Development Studies Occasional Paper*, no. 11 (2014): 131–50.

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## Annex I: List of interviews

**Individual interviews**

1. Chief Tunguar, Chair of the Town Traditional Court in Bentiu. Bentiu, 30/10/2010 (interview conducted in Nuer)*

2. Gordon Lam, NGO worker. Bentiu, 19/11/2010 (interview conducted in English)

3. David K. Deng, South Sudan law Society. Juba, 16/03/2012 (interview conducted in English)

4. Timothy Thowl, Director General GOSS Ministry of Agriculture and Forestry 19/03/2012 (interview conducted in English)

5. Christopher B. Lemi, Norwegian Forestry Group - Land Resource Survey and Information Center. Juba, 21/03/2012 (interview conducted in English)

6. Michael Roberto Kenyi Legge, Minister of Agriculture and Forestry, Central Equatoria State. Juba, 26/03/2012 (interview conducted in English)

7. Gideon Samuel, Director General of Forestry, Central Equatoria State. Juba, 27/03/2012 (interview conducted in English)

8. Lona James Elia, Central Equatoria Civil Society Land Alliance. Juba, 27/03/2012 (interview conducted in English)

9. Justin Konga, Plantatio Manager, Tree Farms Sudan. Juba, 29/03/2012; 05/03/2012; 12/04/2012 (interview conducted in English)

10. Clement Maring Samuel, Terekeka County Commissioner. Terekeka, 02/04/2012 (interview conducted in English)

11. Jeremiah Tiga, Assistant Commissioner for Forestry Sector, Terekeka County. Terekeka, 02/04/2012 (interview conducted in English)

12. Romano Ako Kude, Paramount Chief of Tindilo Payam. Tindilo, 03/03/2012 (interview conducted in Arabic)*

13. Joseph Nyeki, Chief of Mundari Bura Boma (Terekeka County). Mundari Bura, 03/04/2012 (interview conducted in Arabic)*

14. Joseph Kolang John, Chairman of the Central Equatoria Investment Authority. Juba, 12/04/2012 (interview conducted in English)

15. Soba Samuel Manase, Lanya County Commissioner. Juba, 15/04/2012 (interview conducted in English)

16. Kennedy Alfred, Assistant commissioner for Land, Yei River County. Yei, 16/04/2012 (interview conducted in English)

17. Alfatah Margani, Yei Payam Administrator. Yei, 16/04/2012 (interview conducted in English)

18. John Muga, Executive Director Yei County. Yei, 16/04/2012 (interview conducted in English)

19. Felix Sebit Alfred, Pakula Boma Chief (Yei County). Pakula, 16/04/2012 (interview conducted in Juba Arabic)*

20. Tito Benjamin, Chairman of Kenyi Payam Steering Committee (Lainya County). Loka, 18/04/2012 (interview conducted in English)

21. Thomas Taban Michael, Kenyi Payam Chief. Kenyi, 18/04/2012 (interview conducted in Juba Arabic)*

22. Samuel Lupai, Headman of Loka Community. Loka, 18/04/2012 (interview conducted in Juba Arabic)*

23. Denis Lumeri, resident of the forest settlement, Loka. 18/04/2012 (interview conducted in Juba Arabic)*

24. Abigaba Ibrahim, forester at Central Equatoria Teak Company. Loka, 18/04/2012 (interview conducted in Juba Arabic)*

25. Massimiliano Pedretti, Programme Manager EU Responsible for Rural Development and Food Security Sector. Juba, 23/04/2012 (interview conducted in Italian)

26. James Mindo, Director of Afforestation and Natural Forest Conservation, National Ministry of Agriculture and Forestry. Juba, 23/04/2012 (interview conducted in English)

27. Machien Justin Luoi, AECOM Project Manager. Bentiu, 29/01/2013 (interview conducted in English)

28. Clement Raan Senior Program Officer, National Democratic Institute (NDI). Bentiu, 13/02/2013 (interview conducted in English)

29. Peter Machieng Chan, BRIDGE Winrock Project Officer. Bentiu, 13/03/2013 (interview conducted in English)

30. Michael Lot Gatluok, Chairperson of Unity State Land Alliance/Director General for Education, Panyinjiar County. Bentiu, 17/02/2013 (interview conducted in English)

31. G., member of Civil Society Organization. Bentiu, 2013(interview conducted in English)

32. J., member of Civil Society Organization. Bentiu, 2010; 2013 (interview conducted in English)

33. Ajul Majok, Pariang County Commissioner, Pariang Town, 22/01/2013 (interview conducted in English)

34. Garjang Gieng, Rubkhona County Commissioner. Rubkhona, 06/02/2013 (interview conducted in English)

35. Primo Celerino, Local Government Board Inspector. Juba, 16/01/2013 (interview conducted in English)

36. Chamangu Awow Adogjok, Undersecretary of Local Government Board. Juba, 16/01/2013 (interview conducted in English)

37. Sirisio L. Oromo, Lecturer at Juba University - Director of Center of Peace and Development. Juba, 23/05/2013 (interview conducted in English)

38. Nelson Leben Moro, Lecturer at Juba University. Juba, 17/01/2013 (interview conducted in English)

39. Alfred Sebit Lokuji, Lecturer at Juba University. Juba, 25/03/2013 (interview conducted in English)

40. Elijah Wal Chol, Nyeel Acting Payam Administrator. Nyeel, 25/02/2013 (interview conducted in Dinka)*

41. Samuel Lony, SPLM Acting Chairperson for Unity State - Unity State Minister of Agriculture and Forestry. Bentiu, 01/02/2013 (interview conducted in English)

42. Martin Mut Mayan, Town Traditional Court Secretary. Bentiu 09/02/2013 (interview conducted in English)

43. Chiengjiek Puok, Director of Planning and Budgeting in Unity State Ministry of Local Government and Law Enforcement. Bentiu, 01/02/2013 (interview conducted in English)

44. Joseph Nhial, Chair of Unity State Land Commission. Bentiu, 11/03/2013 (interview conducted in English)

45. Issa Ali, Director General at the Ministry of Agriculture and Forestry in Unity State. Bentiu, 05/03/2013 (interview conducted in English)

46. Dudi Matad, Director of Land Department at the Ministry of Physical Infrastructure, Unity State. Bentiu, 19/02/2013 (interview conducted in English)

47. James Kuei, Land Committee Chairman, Unity State Legislative Assembly. Bentiu, 07/03/2013 (interview conducted in English)

48. John Kawais, Member of Parliament from Guit County, Unity State Legislative Assembly. Bentiu, 08/02/2013 (interview conducted in English)

49. Peter Dak Khan, Member of Parliament from Mayom County, Unity State Legislative Assembly. Bentiu, 08/02/2013 (interview conducted in English)

50. Peter Makuaj, Member of Parliament from Pariang County, Unity State Legislative Assembly. Bentiu, 08/02/2013 (interview conducted in English)

51. Mary Paul Ngundeng, Member of Parliament from Rubkhona County, Unity State Legislative Assembly. Bentiu, 09/02/2013 (interview conducted in English)

52. Kerubino Paluath Deng, Block Leader in Bilnyang, Bentiu. 11/03/2013 (interview conducted in Nuer)*

53. J. member of Civil Society Organization. Bentiu, 2013 (interview conducted in English)

54. J. member of Civil Society Organization. Bentiu, 2013 (interview conducted in English)

55. Michael Torit, Deputy Chairperson at the Land Registration Office, Unity State. Bentiu, 20/02/2013 (interview conducted in English)

56. Anthony Bentiu Guol, Director of Survey Department at the Ministry of Physical Infrastructure, Unity State. Bentiu, 14/02/2013 (interview conducted in English)

57. Michael Mayan, Panakar deputy Paramount Chief. Yirol Town, 04/12/2013 (interview conducted in Dinka)*

58. Chris Lewis, Area Coordinator, AECOM. Bentiu, 19/02/2013 (interview conducted in English)

59. M. member of Civil Society Organization. Pariang, 2013 (interview conducted in English)

60. Mabil Gurkei, Paramount Chief, Amongpiny Payam. Rumbek, 20-21/11/2013 (interview conducted in Dinka)*

61. Adam Moussa, South Sudan TV worker. Rumbek, 21/11/2013 (interview conducted in English)

62. B., youth. Rumbek, 2013 (interview conducted in English)

63. Aggrey Akec, Senior Administrator in the Ministry of Local Government and Law Enforcement, Lakes State. Rumbek, 19/11/2013 (interview conducted in English)

64. Nikodemo Arou Man, Local Government Board Member, Juba. 23/10/2013 (interview conducted in English)

65. Jaqueline Lwoki, World Bank Consultant at the Project Management Unit of the Local Governance and Service Delivery project. Juba, 25/10/2013 (interview conducted in English)

66. Michael Arensen, PACT Peace Program Manager, Juba, 29/10/2013 (interview conducted in English)

67. Paolo Girlando, EU Programme Manager, Rural Development and Food Security. Juba, 27/10/2013 (interview conducted in Italian)

68. Chris Wulliman, Program Manager, AECOM. Juba, 01/11/2013 (interview conducted in English)

69. Mark Dawson, Chief of Party, ARD Tetra Tech. Juba, 01/11/2013 (interview conducted in English)

70. Naoko Anzai, Program Manager of Local Governance and Service Delivery project (World Bank)/former Project Manager for Local Government Recovery Project (UNDP). Juba, 02/11/2013. (interview conducted in English)

71. Robert Ladu Luki, Land Commission Chairperson. Juba, 30/03/2012; 05/11/2013 (interview conducted in English)

72. Albert Pitya Redentore, Minister of Local Government of Central Equatoria State, 01/11/2013 (interview conducted in English)

73. Francesca Marzatico, EU Technical Avisor on Land Governance at the national Ministry of Land, Housing and Physical Infrastructure. Juba, 06/11/2013 (interview conducted in Italian)

74. Mathieu Goodstein, EU Attaché - Democratization. Juba, 07/11/2013 (interview conducted in English)

75. David Chan Thiang, Director of the National Bureau of Statistics. Juba, 08/11/2013 (interview conducted in English)

76. Edmund Yakani, Executive Director of Community Empowerment Project Organization (local NGO). Juba, 29/03/2012; 01/11/2013 (interview conducted in English)

77. Florence Siama Klani GIS specialist, CRMA project, at National Bureau of Statistics. Juba 08/11/2013 (interview conducted in English)

78. John Deng Mabor, Town Traditional Court clerk. Rumbek, 10/11/2013 (interview conducted in English)

79. Athian Majak Malou, AECOM Conflict Advisor for Wulit Region. Rumbek, 11/11/2013 (interview conducted in English)

80. AECOM Regional Program Manager, Lakes State - Wunlit Region (interview conducted in English)

81.    PAE Conflict Mitigation. Rumbek, 11/11/2013(interview conducted in English)

82.    Louis Bagare, FAO Project Coordinator. Rumbek, 12/11/2013 (interview conducted in English)

83.    Minister of Local Government of Lakes State. Rumbek, 12/11/2013 (interview conducted in English)

84.    Alfred Ater, local NGO working with NDI - Political Party (interview conducted in English)

85.    Makur Chol, officer, National Bureau of Statistics. Rumbek, 12/11/2013 (interview conducted in English)

86.    Isaac Mayom Malek, Commissioner of Cueibet County. Rumbek, 13/11/2013 (interview conducted in English)

87.    Wulu County Commissioner. Rumbek, 14/11/2013 (interview conducted in English)

88.    Manyang Luc, Yirol East County Commissioner. Rumbek, 15/11/2013 (interview conducted in English)

89.    Ayeen Meen Ador, Lakes State Legislative Assembly - Land and environment committee. Rumbek, 15/11/2013 (interview conducted in English)

90.    Patrik, UNDP Rumbek, Financial Management Specialist. Rumbek, 15/11/2013 (interview conducted in English)

91.    S., youth, NGO worker. Mapuordit, 2013 (interview conducted in English)

92.    Daniel Marial Makuach, Principal of the Comboni Secondary School in Mapuordit and Parish Chairman. Mapuordit, 17/11/2013 (interview conducted in English)

93.    Long Majok, Senior Inspector for Survey, Ministry of Physical Infrastructure, Lakes State. Rumbek, 19/11/2013 (interview conducted in English)

94.    Nyantoic, Land Committee Rumbek, secretary. Rumbek, 19/11/2013 (interview conducted in English)

95.    Rosario Iannetti, Comboni Brother, Mapuordit Hospital. Mapuordit, 17/11/2013 (interview conducted in Italian)

96.    J., NGO worker. Rumbek, 2013 (interview conducted in English)

97.    Peter Majur, IRC, Community Driven Development, Protection Team. Rumbek, 19/11/2013 (interview conducted in English)

98.    Nelson Makoi, field officer, International Republican Institute. Rumbek, 20/11/2013 (interview conducted in English)

99. Derg Makueir, Spear Master. Rumbek, 21/11/2013 (interview conducted in Dinka)*

100. Chol Dut, SPLM secretary for popular and syndicated organizations, Lakes State. Rumbek, 22/11/2013 (interview conducted in English)

101. A., youth, NGO worker. Rumbek, 23/11/2013 (interview conducted in English)

102. Majak Ruei, Yirol West County Commissioner. Yirol Town, 03/12/2013 (interview conducted in English)

103. Adok Ajok, Community mobilization Officer for International Refugee Council in Yirol West County. Yirol Town. 03/12/2013 (interview conducted in English)

104. James Awanichol, Abang Payam Administrator. Yirol Town, 04/12/2013 (interview conducted in English and Dinka)*

105. James Akec, SPLM Secretary, Yirol West County. Yirol Town, 05/12/2013 (interview conducted in English)

106. Daniel Mangar Ayod, Geng-Geng Payam Administration. Yirol Town. 05/12/2013 (interview conducted in English)

107. Marial Amoum Malek, Member of Parliament in Lakes State Legislative Assembly, Chairperson of Committee on Local Government. Rumbek, 06/12/2013 (interview conducted in English)

108. Ezechiel Thiang, SPLM secretariat for peace and reconciliation. Rumbek, 07/12/2013 (interview conducted in English)

109. Zecharia Gum Ater, Youth Union Leader. Rumbek, 09/12/2013 (interview conducted in English)

110. Samson Wassara, Professor at Juba University, Dean of the College of Economic and Social Sciences. Juba, 25/03/2013; 10/12/2013 (interview conducted in English)

111. Guyson Androga, UNDP ex-Democratic Governance Unit, now MDG unit. Juba, 11/12/2013 (interview conducted in English)

112. Daniel Awet Akot, Member of the National Legislative Assembly, former Chairperson of SPLM Local Government Secretariat. Juba, 12/12/2013 (interview conducted in English)

113. Judith Omondi, CRMA project manager, UNDP. Juba, 13/12/2013 (interview conducted in English)

114. Eli Achol Deng, member of the Local Government Board. Juba, 13/12/2013 (interview conducted in English)

115. Carlo Scaramella, (ex-)Humanitarian advisor for WFP in Khartoum between 1991-1992. Skype interview, 21/05/2015 (interview conducted in Italian)

**Group interviews/discussions**

1. Residents of Kueryiek Payam, Mayom County, (Unity State), 22/11/2010** (in Nuer)*
2. Residents of Mankien Payam, Mayom County, (Unity State), 23/11/2010** (in Nuer)*
3. Anyel Abiel Boma, Aweng Payam, Twich County (Warrap State), 24/11/2010** (in Dinka)*
4. Residents of Tindilo Payam. Tindilo, 03/04/2012 (in Arabic)*
5. Residents of Pakula Boma. Pakula, 17/04/2012 (in Arabic)*
6. Residents of Bim Ruo, 02-03/2013 (in English, Arabic, Nuer)*
7. Traders in Yoanyang market, 03/2013 (in Arabic and Nuer)*
8. Jiir Payam Town Court, Rumbek, 20/11/2013 (in Dinka)*
9. Youth from Wulu attending a workshop on peacebuilding at Pandor. Rumbek, 02/12/3013 (in English)
10. Bany Loum Boma Court. Abang Payam, 04/12/2013 (in Dinka)*
11. Watchabat Regional Court. Yirol Town, 04/12/2013 (in Dinka)*
12. Geng-Geng Payam Regional Court. Yirol Town, 05/12/2013 (in Dinka)*
13. Panlieth and Kunyr Regional court, 05/12/2013 (in Dinka)*

**Direct observation**

1. Traditional Town court hearing, Bentiu, 07/02/2013 (in Nuer and Arabic)*
2. Commissioners' forum, Rumbek, 13-14/11/2013 (in English and Arabic)*
3. Meeting between the LGB leadership, the Swiss cooperation and the delegation of chiefs from Botswana, South Africa and Ghana. Juba, 23/10/2013
4. Workshop for the presentation of the report "Unity in Diversity", COTAL project. Juba, 24/10/2013 (in English, with translations)*
5. 7th Development Policy Forum on the New Deal Compact, organized by the Ebony Centre. Juba, 08/11/2013.
6. Traditional Court hearing, Panlieth and Kunyir Regional Court. Yirol, 05/12/2013 (in Dinka)*
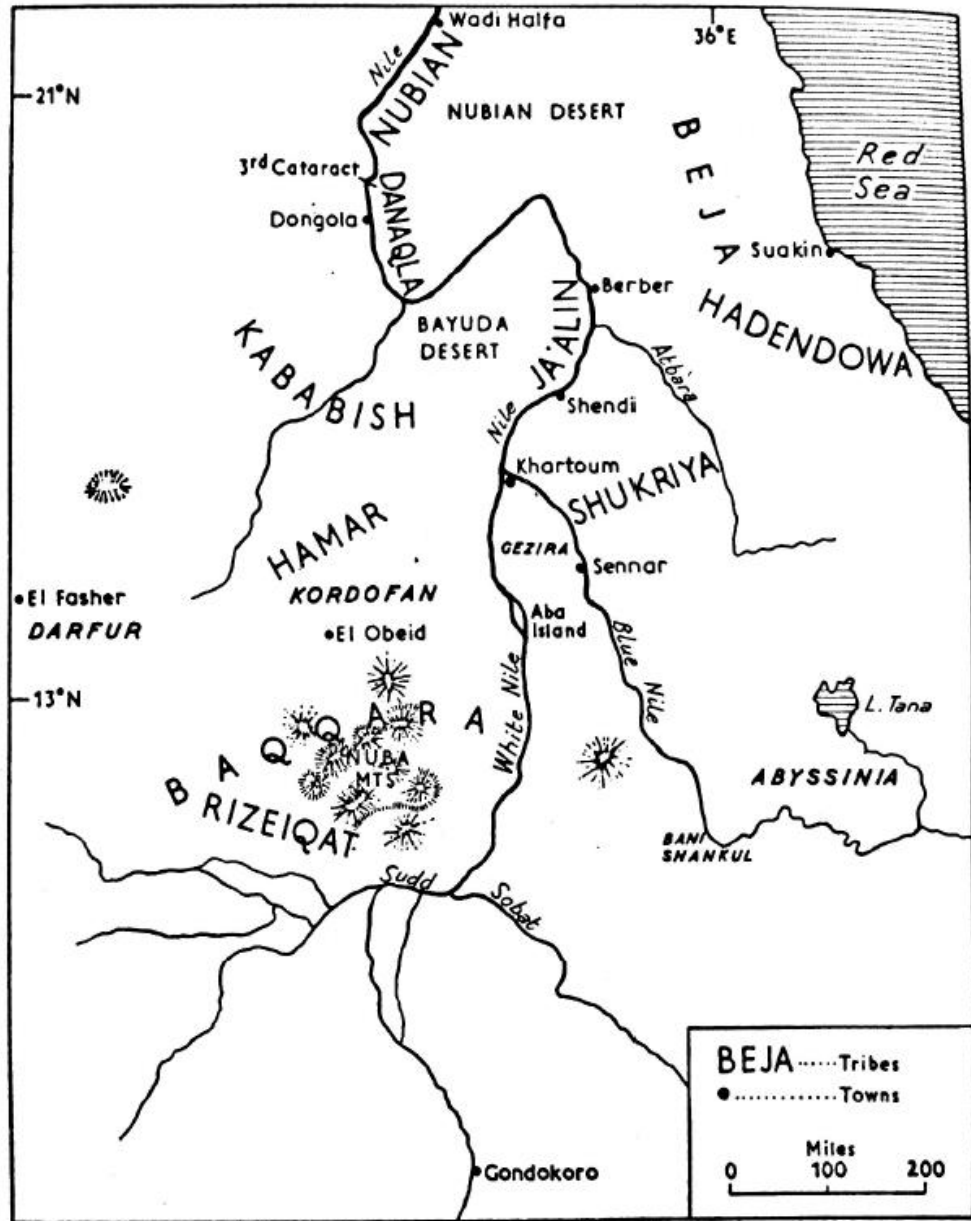
*Interviews conducted with translators.

**Annex II: Maps**
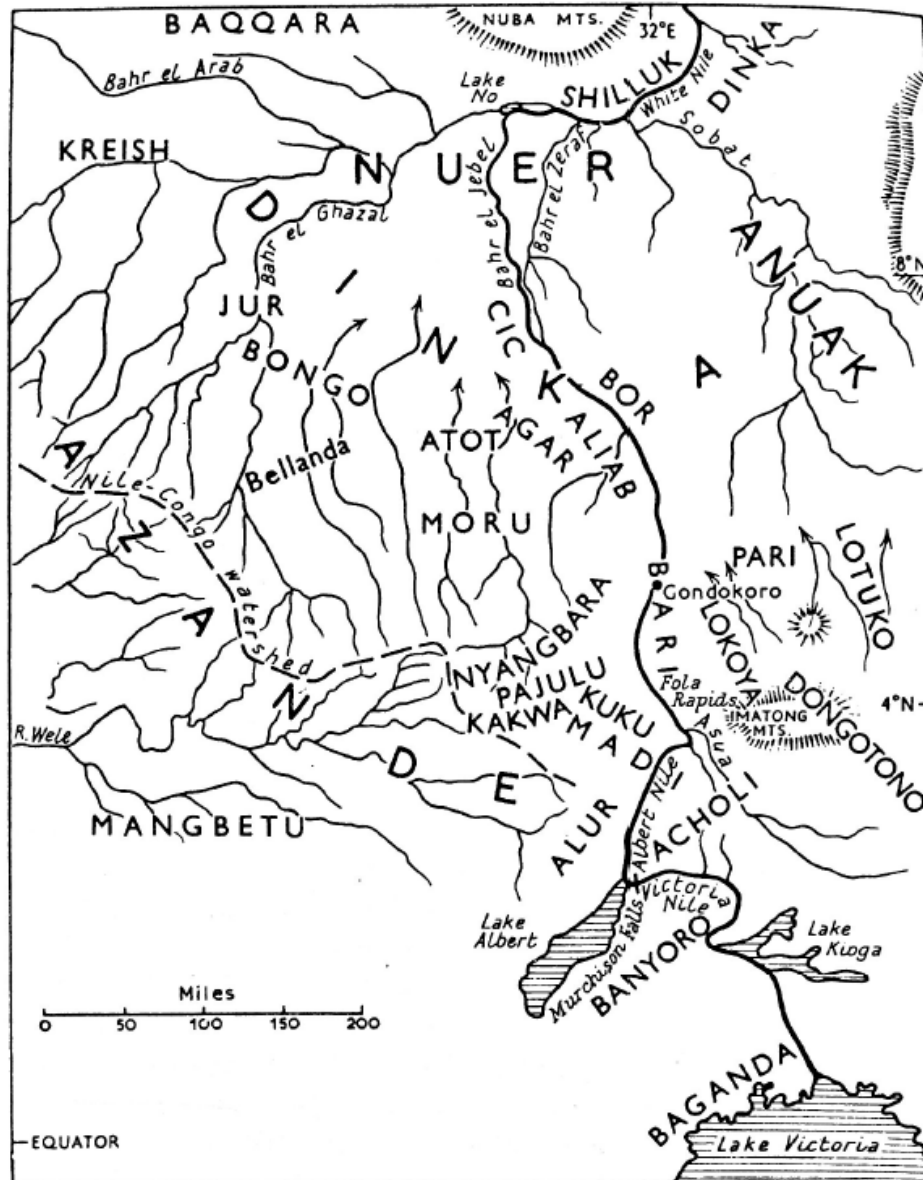
# Map 1. South Sudan: fieldwork locations
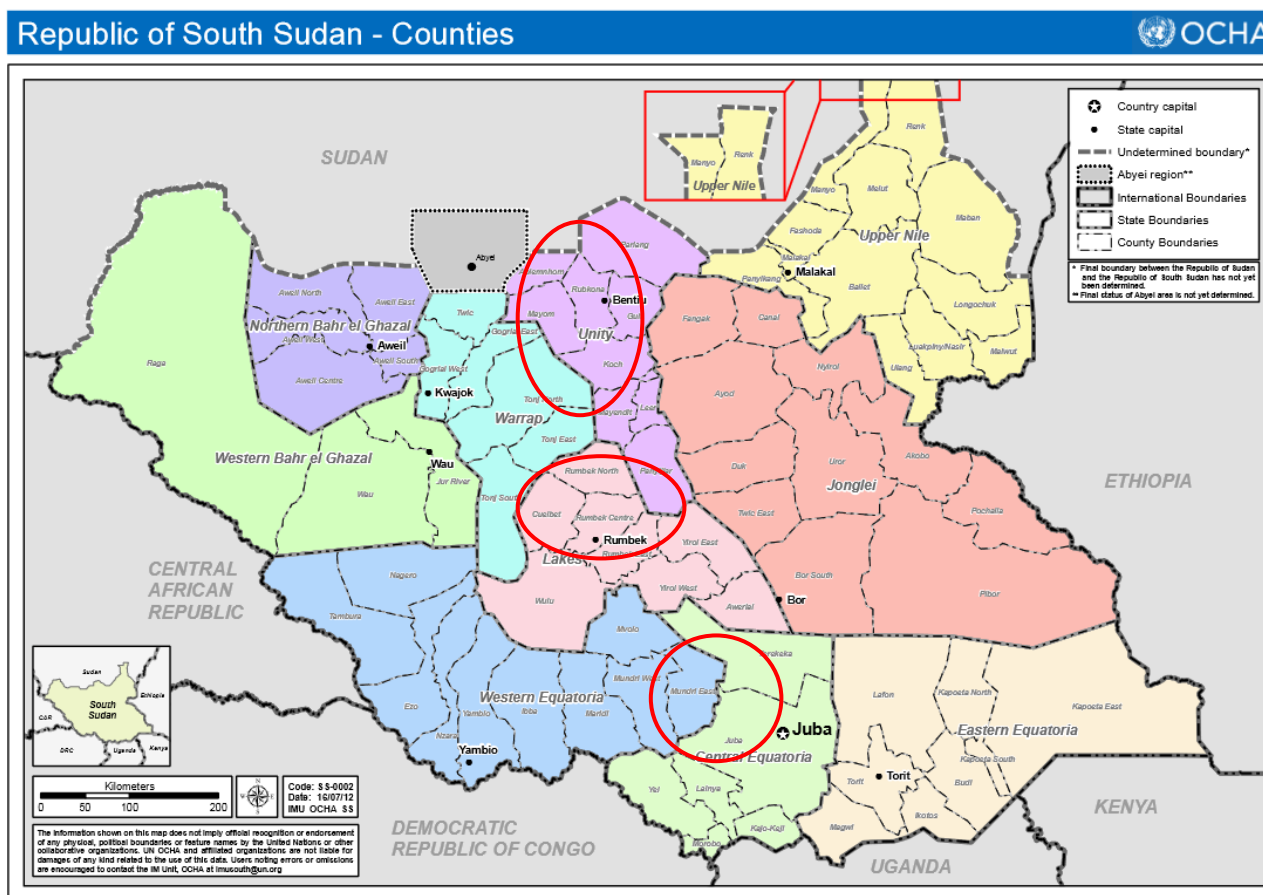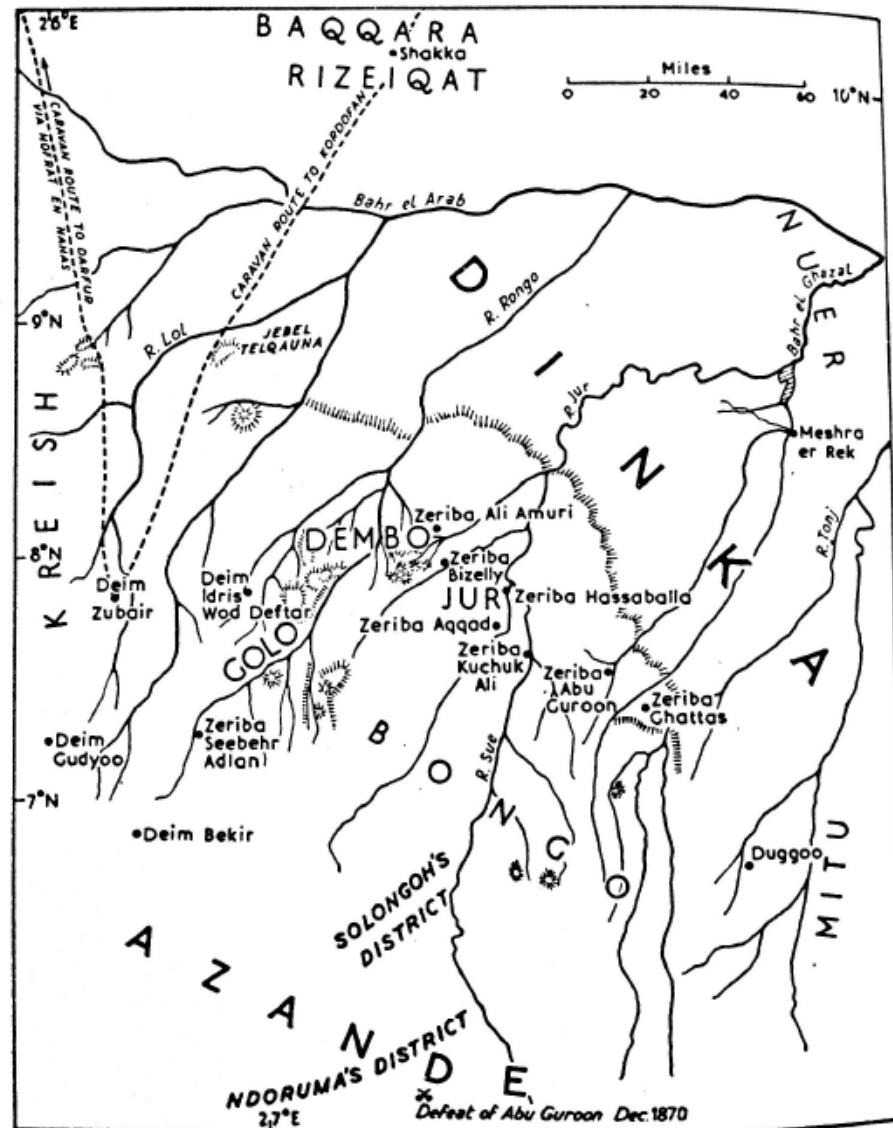
**Map 2. The Northern Sudan, 1839**



Source: Richard Gray, *A history of the Southern Sudan 1839-1889.* Oxford University Press, 1961.

# Map 3. The Southern Sudan and its tribes



Source: Richard Gray, *A history of the Southern Sudan 1839-1889.* Oxford University Press, 1961. p. 8
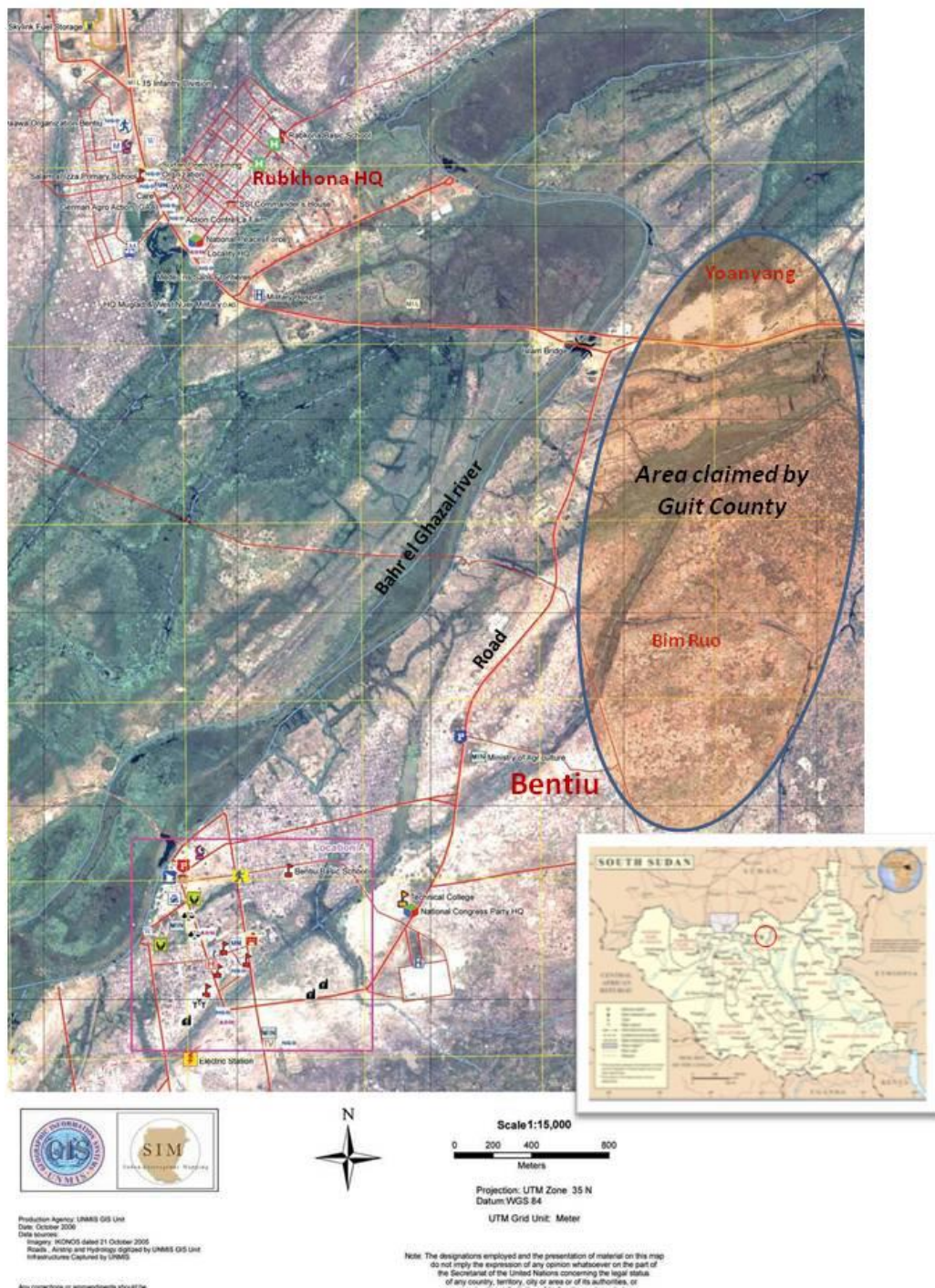
# Map 4 . Zeriba of the Bahr el Ghazal



Source: Richard Gray, *A history of the Southern Sudan 1839-1889.* Oxford University Press, 1961. p. 60. (from G. Schweinfurth, *The Heart of Africa*. New York: Harper & brothers, 1874)
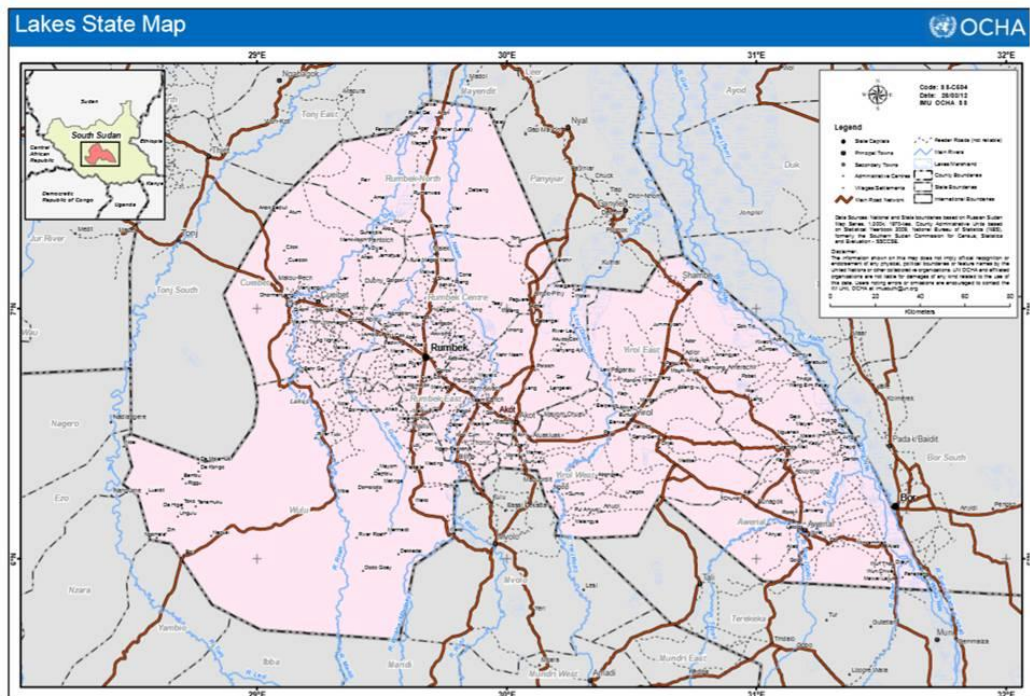
# Map 5. Bentiu map



Bentiu map

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## Map 6. Lakes State



## Map 7. Yirol West
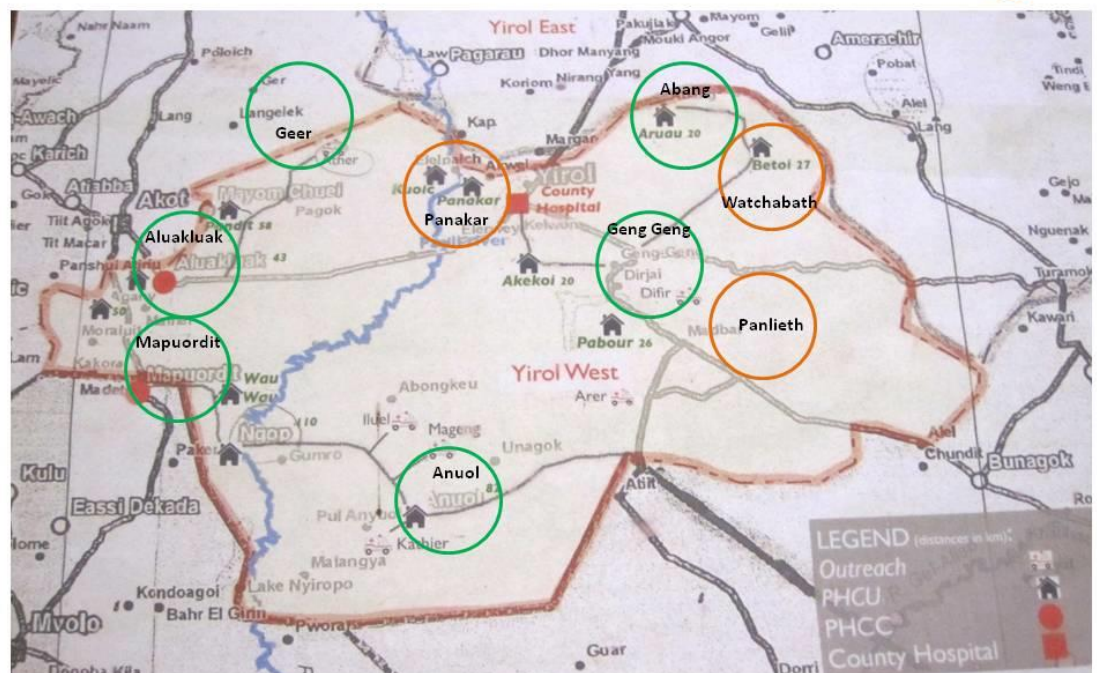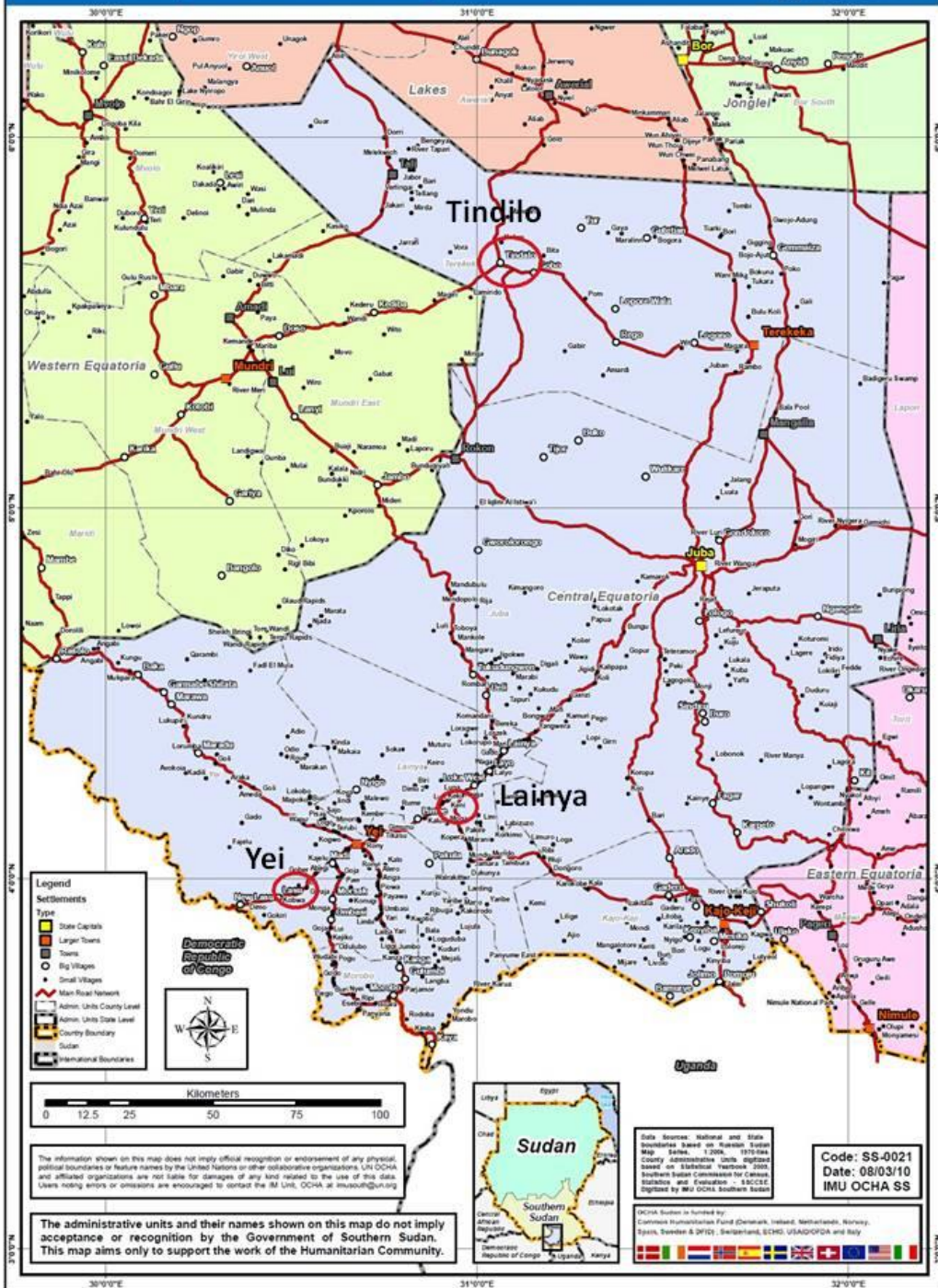


Map provided by the Italian medical NGO CUAMM working in Yirol Town Hospital, 2013

## Map 8. Central Equatoria State

Central Equatoria State Map
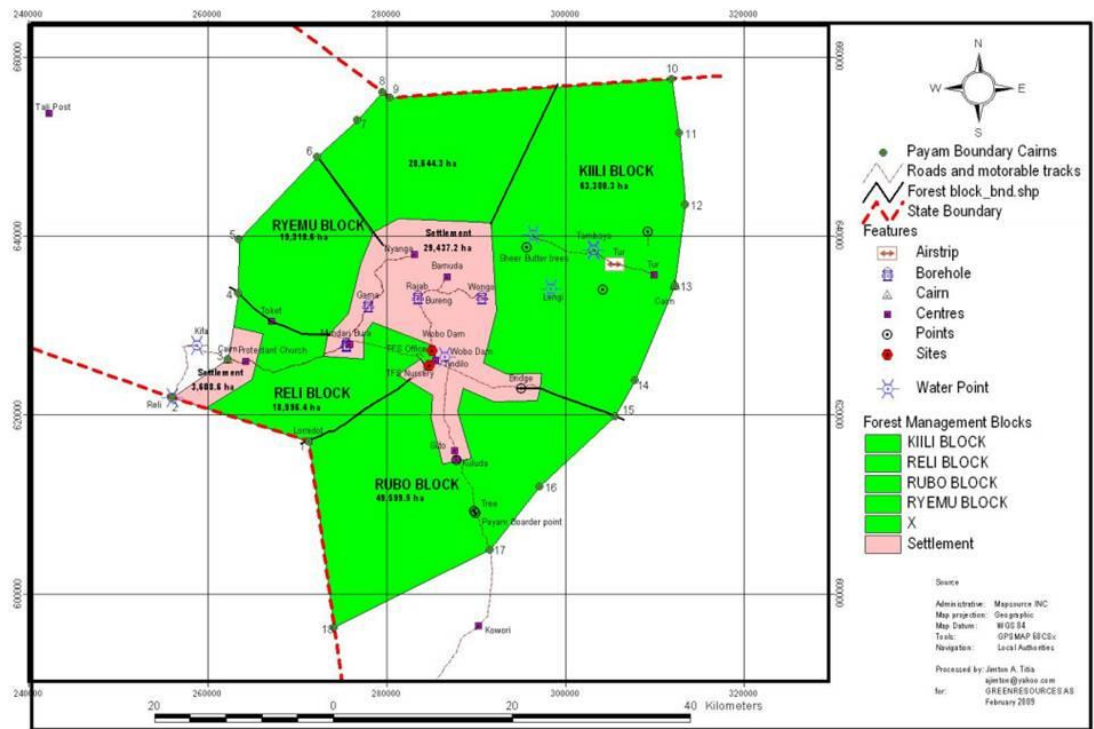
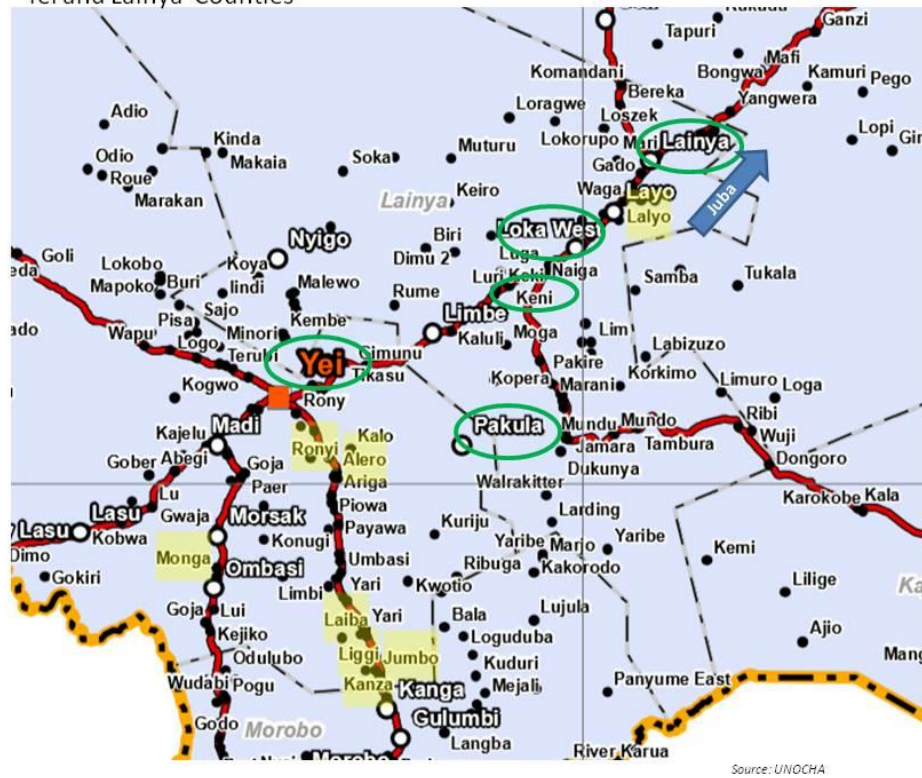# Map 9. Tindilo

Tindilo Payam forestry project

# Map 10. Yei and Lainya Counties



Source: UNOCHA

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# Map 11. Magwi County and Nimule
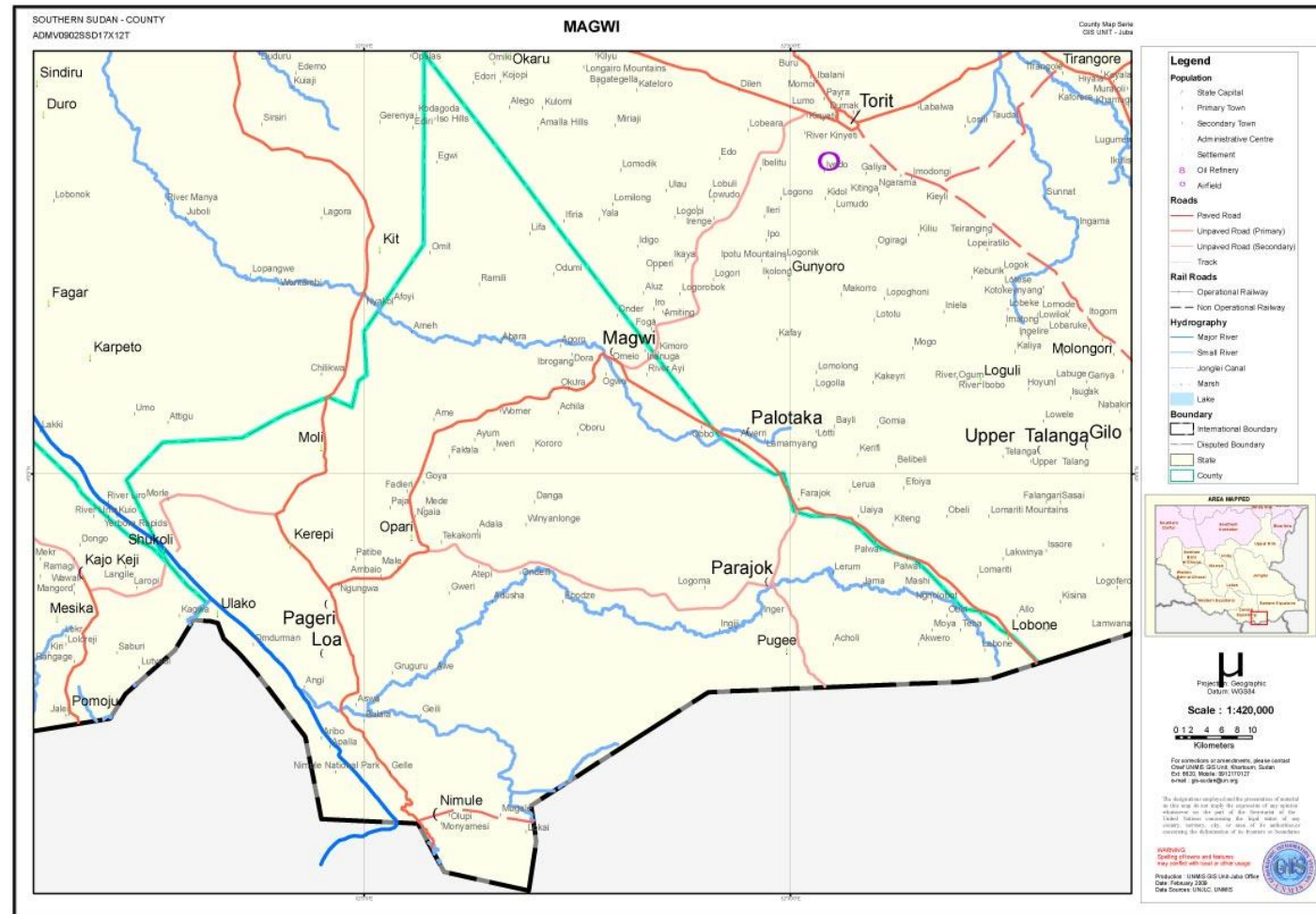
## Map 12: South Sudan with 28 states (2015)
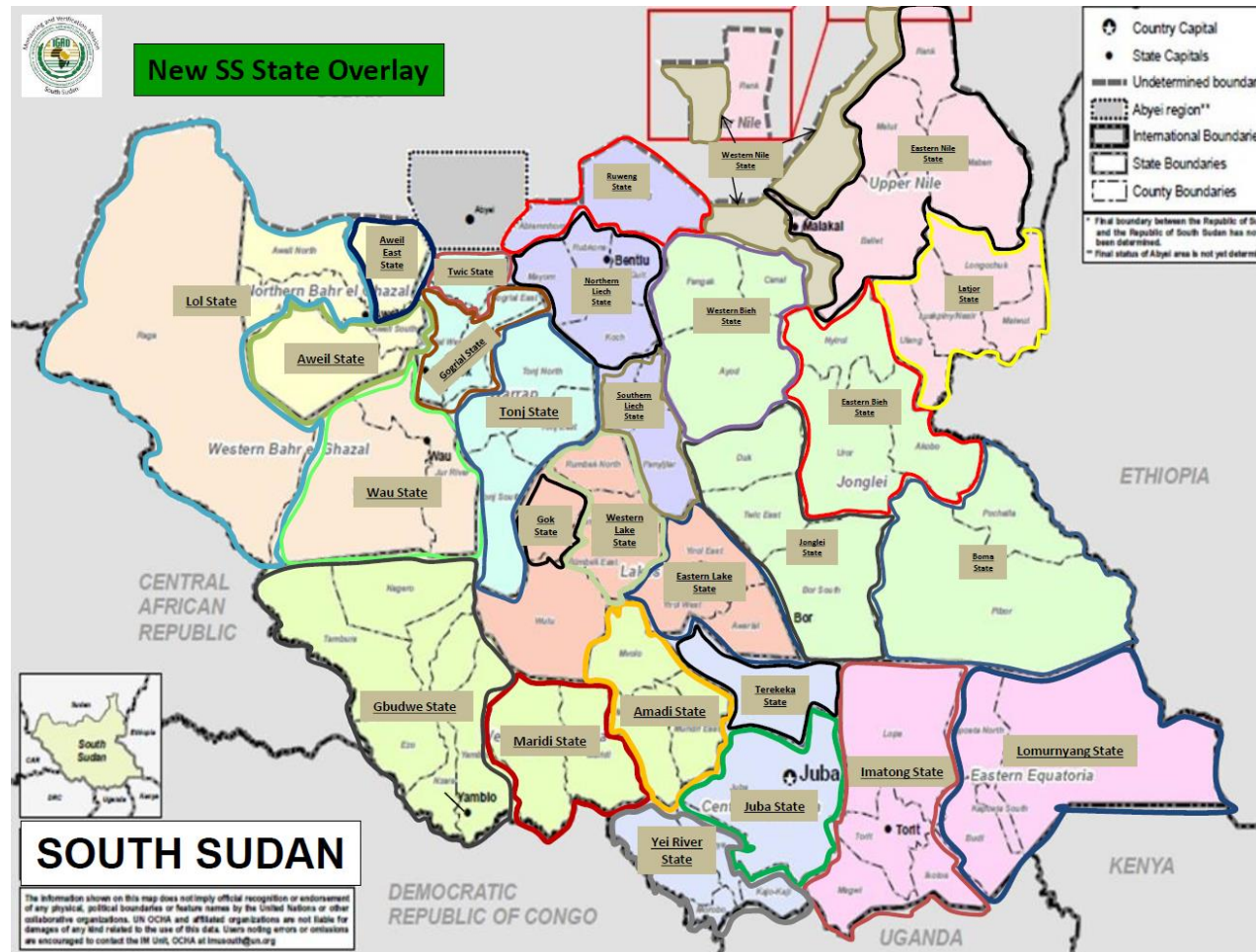
## Costruire il Sud Sudan. Discorsi, pratiche e attori di un progetto negoziato (1999-2013)

Questa tesi si propone di analizzare l'interazione tra i programmi di state-building contemporanei e il processo di formazione dello stato in Sud Sudan. L'analisi si appoggia alle definizioni di Berman e Lonsdale di *state-building* come "sforzo consapevole volto alla creazione di un apparato di controllo", e di *state-formation* come "processo storico il cui prodotto è un insieme inconscio e contraddittorio di conflitti, negoziazioni e compromessi tra gruppi diversi il cui perseguimento di azioni interessate e compromessi costituisce la 'volgarizzazione' del potere"[1030].

Programmi internazionali in sostegno alla costruzione dello stato sono cominciati in Sud Sudan qualche anno prima della firma dell'accordo di pace (Comprehensive Peace Agreement, CPA) nel 2005, e hanno continuato a costituire una parte importante dell'assistenza internazionale diretta alla regione per tutto il periodo di interim tra il 2005 e il 2011, quando la popolazione sud sudanese ha votato quasi all'unanimità a favore dell'indipendenza dal Sudan. A partire dal 2005, nonostante i livelli di violenza siano di fatto sempre rimasti piuttosto elevati[1031], il Sud Sudan è stato definito come un contesto 'post-conflitto', teatro di un interventismo volto al rafforzamento della governance e al mantenimento della stabilità.

Questa tesi guarda all'intervento di state-building nel suo complesso come ad un'arena di negoziazione[1032] della statualità sud sudanese, nell'ambito della quale le iniziative promosse o sostenute dalla comunità internazionale forniscono risorse materiali e simboliche che gli attori coinvolti possono trasformare in forme diverse di capitale[1033] alimentando il processo di formazione dello Stato. Questa negoziazione, tuttavia, non coinvolge soltanto gli

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[1030] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* (Athens: Ohio University Press, 1992).

[1031] Si stima ad esempio che nel 2009 il numero delle vittime causate da violenza inter-comunitaria in Sud Sudan (post-conflitto) sia stato superiore a quello delle vittime in Darfur (considerata invece una situazione di conflitto). International Crisis Group, *Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan*, Africa Report 154, 2009.

[1032] Tobias Hagmann and Didier Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa," *Development and Change* 41, no. 4 (2010): 539–62.

[1033] Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field," *Sociological Theory* 12, no. 1 (1994): 1–18.

attori che si interfacciano direttamente con i donatori (come i rappresentanti dell'ex movimento ribelle Sudan People's Liberation Movement/Army (SPLM/A, oggi partito di governo)), né coloro che occupano posizioni di potere nelle istituzioni. Esso coinvolge anche centinaia di migliaia di Sud Sudanesi, i quali si trovano ad affrontare un ambiente in rapido cambiamento in cui emergono nuove opportunità di accesso a risorse precedentemente inaccessibili attraverso l'interazione quotidiana col potere e con le istituzioni statali.

Considerata la vastità dei programmi di state-building e la molteplicità di aspetti che essi toccano, questa tesi si concentra su tre elementi specifici che in Sud Sudan occupano un posto importante nell'intervento internazionale nella regione autonoma post-2005 e poi nel Paese dopo la sua indipendenza: la creazione di un sistema di governo decentrato, la creazione di strutture e procedure per l'erogazione di servizi e la riforma del sistema fondiario. Anche se questi aspetti non sono sempre inseriti nel novero dei settori direttamente legati allo state-building, considerato per lo più come un processo di rafforzamento dell'apparato di controllo statale e di stabilizzazione della situazione di sicurezza[1034], tutti e tre hanno visto un crescente coinvolgimento della comunità internationale attraverso programmi di sostegno alle strutture statali locali e alla formazione della pubblica amministrazione in numerosi contesti post-conflitto africani e non.

Questa tipologia di interventi riflette la recente concettualizzazione di state-building fornita dal Comitato per l'Aiuto allo Sviluppo (DAC) dell'Organizzazione per la Cooperazione e lo Sviluppo Economico (OCSE) come un esercizio che riguarda non soltanto la costruzione di istituzioni, ma anche la creazione di legittimità attraverso l'erogazione efficace di servizi essenziali[1035]. In Sud Sudan, questi programmi non sono solo stati sostenuti dalla comunità internazionale di donatori, ma anche dall'SPLM/Governo del Sud Sudan e da vari altri attori socio-politici locali (autorità tradizionali, rappresentanti delle istituzioni statali a livello locale, ecc.) nonostante i loro interessi spesso divergenti. Queste tre aree di intervento costituiscono quindi delle arene di negoziazione specifiche, in cui attori diversi mettono in campo la propria idea di stato attraverso l'utilizzo di discorsi presi in prestito dal mondo dei donatori. Lo sviluppo di politiche e di quadri legali in questi tre settori fornisce, almeno in parte, le 'regole del gioco'[1036] nell'ambito delle quali i vari attori si muovono,

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[1034] Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge, U.K. ; New York, NY: Cambridge University Press, 2004).

[1035] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).

[1036] Göran Hyden, Dele Olowu, and Hastings W.O. Okoth-Ogendo, *African Perspectives on Governance* (Trenton, NJ: Africa World Press, 2000).

incoraggiandoli ad agire in un modo o nell'altro nelle loro interazioni quotidiane con lo stato e le sue strutture.

Il primo capitolo fornisce il quadro teorico in cui si muove la tesi, partendo dall'osservazione che, nonostante la sua presunta marginalizzazione causata dalla globalizzazione e la sua conseguente 'fragilità' o 'debolezza', lo stato conserva un'importanza fondamentale sia da un punto di vista simbolico che da un punto di vista pratico nell'implementazione di politiche pubbliche. In particolare, gli stati in contesti di conflitto si trovano al punto di incontro tra progetti di state-building internazionale (che caratterizzano sempre di più le strategie di intervento della comunità internazionale in questo tipo di contesti) e il loro processo storico di formazione, caratterizzato dalla presenza di attori diversi che, in alcuni casi, si contendono il controllo dello stato.

La prima parte del capitolo analizza il concetto di state-building emerso negli anni 1990 insieme a quello di peace-buidling, mostrando come esso derivi da un background teorico che associa lo sviluppo alla sicurezza, e la fragilità dello stato all'insicurezza globale. Negli ultimi anni, gli interventi di state-building hanno sempre più guardato al livello locale, concentrandosi sulla creazione di sistemi politici decentrati e di meccanismi di erogazione di servizi su base locale. Il decentramento delle funzioni dello stato è direttamente associato al rafforzamento della legittimità delle istituzioni locali agli occhi della popolazione. In Sud Sudan esiste poi un altro settore di intervento che, sebbene non sia normalmente associato agli interventi di costruzione dello stato, si ripercuote direttamente sulla creazione e sull'esercizio dell'autorità. Si tratta della riforma del sistema fondiario, che ha ha visto un crescente impegno della comunità internazionale negli ultimi anni nonché un cambiamento di rotta rispetto agli anni 1980 e 1990. Anche in questo settore si è infatti assistito ad una 'svolta localistica', rappresentata dalla progressiva legalizzazione dei diritti consuetudinari alla terra su base comunitaria. In Sud Sudan, in particolare, la riforma del sistema fondiario si intreccia con quella del governo locale e al progetto di state-building nel suo complesso in un modo che rende difficile analizzarli separatamente.

La seconda parte del capitolo si concentra invece sul concetto di formazione dello stato, evidenziando come essa sia influenzata non soltanto dai programmi di state-building ma anche da strategie di appropriazione e adattamento di alcuni dei suoi elementi ad opera di vari attori locali. Il processo di formazione dello stato deve quindi essere analizzato in una prospettiva storica che tenga conto del suo carattere incrementale e del fatto che esso è prodotto da un processo di continua negoziazione che avviene nelle varie arene create dall'intervento di state-building. In Sud Sudan questo processo di negoziazione è il prodotto dell'interazione tra tre insiemi di attori: quelli che

appartengono a un livello 'internazionale' (i donatori), quelli che appartengono a un livello 'nazionale' (i movimenti ribelli e il governo del Sud Sudan), e quelli che appartengono a un livello 'locale' (autorità sub-nazionali, cittadini comuni). Questi insiemi di attori sono diversi e nella loro interazione danno vita a relazioni trans-scalari: come sostengono Siméant, Lickert e Pouponneau, "tutta la politica è locale", cioè persino la politica ai più alti livelli si manifesta in luoghi specifici e le sue dinamiche devono essere localizzate. Allo stesso tempo, ciò che accade a livello 'locale' (nazionale, sub-nazionale o persino al livello micro di un villaggio) non risponde necessariamente a logiche micro-locali[1037]. Piuttosto, gli attori che operano a livelli diversi tendono, con le loro pratiche, a confondere e mescolare i confini di questi livelli, sebbene questi confini siano invece costantemente riprodotti nei discorsi che utilizzano.

Il secondo capitolo fornisce una prospettiva storica alle interazioni tra tentativi di costruzione dello stato Sudanese (tale da estendere il proprio controllo anche sulla regione meridionale) e il suo processo di formazione a partire dal 1820, anno in cui l'Egitto di Muhammed Ali invase il Sudan. Anche se il Sudan meridionale era già parte di un'economia regionale basata sul commercio degli schiavi che fornivano la forza lavoro necessaria ai vari regni sudanesi lungo il fiume Nilo, il 1820 può essere considerato il momento in cui le influenze del sistema internazionale hanno cominciato a incidere in modo più consistente sullo scenario politico sud sudanese. Se fino al XIX secolo la regione era stata caratterizzata principalmente da relazioni economiche e dall'ascesa e declino di unità politiche relativamente piccole, l'arrivo, per quanto disorganizzato, degli emissari di un grande stato burocratico ha alterato gli equilibri economici e politici in modo duraturo. Inoltre, anche se gli emissari del governo egiziano non riuscirono a stabilire un reale controllo sulla maggior parte delle aree che sostenevano di aver conquistato, la dominazione straniera portò un livello di violenza senza precedenti, influenzando le strategie locali di accumulazione del potere e il modo in cui la gente le affrontava[1038]. In quel periodo, le forze straniere non erano più lontane, all'altro capo di reti economiche, ma cominciavano a diventare più vicine, costruendo stazioni commerciali e imponendo la loro superiorità militare. Diversi studi hanno dimostrato che la penetrazione delle potenze straniere in Africa non è dipesa solo dalla loro capacità di raggiungere aree e popoli remoti[1039]. Mettendo

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[1037] Johanna Siméant, Victoria Lickert, and Florent Pouponneau, "Échelles, Récifs, Bureau - Terrains Du Politique à L'international," in *Guide de L'ênquete Globale En Sciences Sociales, by Johanna Siméant (ed.)* (Paris: CNRS Editions, 2015).

[1038] Douglas H. Johnson, "The Structure of a Legacy: Military Slavery in Northeast Africa".

[1039] Cherry Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community & State*, Eastern Africa Series (Woodbridge, Suffolk: James Currey, 2013); Bruce J. Berman, "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism," *African*

l'*agency* africana al centro dell'analisi, questi studi sostengono che la penetrazione straniera fu piuttosto il prodotto di strategie endogene di relazione con gli stranieri piuttosto che di sottomissione passiva agli invasori. In un certo senso, quindi, il 1820 può essere considerato anche come il momento in cui emerge il carettere extravertito della statualità sud sudanese, inteso come la capacità di capitalizzare sul proprio assoggettamento[1040] grazie alla sovrapposizione tra il tentativo di creare una forma di Stato centralizzato e i processi di formazione dello Stato pre-esistenti.

L'idea dello Stato come potere centralizato al di sopra di una comunità politica è arrivata in Sud Sudan sotto tre diverse forme che si sono spesso mescolate le une alle altre. L'imposizione della forza fisica è stata la prima forma di potere ad affermarsi nelle relazioni tra invasori e popolazioni locali nella fase iniziale della penetrazione, prima Egiziana e poi Britannica, nella regione sud sudanese, e non è mai stata totalmente sostituita da forme di dominazione più routinizzate (e meno costose). La seconda forma è stata la burocratizzazione di alcune pratiche di governo negli avamposti governativi e ovunque i funzionari coloniali riuscissero ad arrivare attraverso i mediatori locali. Anche se la capacità di azione del governo variava molto da zona a zona, questo conferì un certo grado di 'prevedibilità'[1041] alle relazioni tra il governo e la popolazione se non altro al livello di ogni località, cosa che contribuì ad aumentare la legittimità del governo come autorità neutrale nella risoluzione delle dispute, o, se non neutrale, almeno di sostegno ai propri alleati locali. La terza forma sotto cui il potere esterno si è manifestato è stata la creazione di nuove fonti di legittimità per nuovi aspiranti leader locali. Introducendo nuove opportunità di accumulazione di potere e nuove forme di autorità, lo stato coloniale si è affiancato alle fonti di legittimità pre-coloniali (anzianità, legami di sangue, relazioni di reciprocità) centralizzandole e fornendo alternative a coloro che ne erano esclusi[1042]. Nuovi imprenditori politici locali sono quindi emersi, legittimati dalla loro capacità di gestire l'interazione con il governo in modo da trarre beneficio per i loro 'clienti'. Pur rimanendo nell'ambito di quella che Leonardi ha definito "l'economia politica della conoscenza"[1043], il loro potere si

*Affairs* 97, no. 388 (July 1, 1998): 305–41; Hagmann and Péclard, "Negotiating Statehood"; Jean-François Bayart, "L'historicité de l'Etat importé," *Les Cahiers du CERI*, no. 15 (1996), http://www.sciencespo.fr/ceri/sites/sciencespo.fr.ceri/files/cahier15.pdf.

[1040] Jean-François Bayart, "L'Afrique Dans Le Monde : Une Histoire D'extraversion," *Critique Internationale* 5, no. 1 (1999): 97–120, doi:10.3406/criti.1999.1505.

[1041] Con questa espressione, Cherry Leonardi si riferisce al grado di standardizzazione dell'interazione tra la popolazione e il governo coloniale: in altre parole, l'azione di governo diventava 'prevedibile' quando si raggiungeva un accordo sulla relazione di scambio tra le parti. Leonardi, *Dealing with Government in South Sudan*.

[1042] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

[1043] Leonardi, *Dealing with Government in South Sudan*.

è affermato grazie ad una strategia di extraversione dell'accumulazione di potere.

I governi post-coloniali hanno continuato i tentativi di costruzione di uno stato centralizzato principalmente attraverso coercizione e riforme amministrative, lasciando in disparte i meccanismi di legittimazione dei nuovi sistemi di governo istituiti. I capi locali, per lo più di origine coloniale, sono rimasti le uniche autorità legittime soprattutto nelle aree rurali, nella misura in cui erano capaci di mediare le richieste estrattive dei poteri 'esterni'. Il contesto di guerra che ha caratterizzato gran parte della storia post-coloniale della regione sud sudanese ha fatto sì che il controllo dello stato centrale sia rimaso piuttosto debole, e che parallelamente siano emersi altri attori con nuove rivendicazioni di legittimità. Questi ultimi si sono imposti sulla scena attraverso la violenza, ma hanno saputo utilizzare strumenti di affermazione più complessi. Attraverso una retorica di liberazione dal regime di Khartoum e risorse provenienti principalmente da alleati stranieri, essi sono riusciti a creare una forma alternativa di *hakuma*[1044], una nuova fonte di potere centralizzato in competizione con quella del governo, appoggiandosi a loro volta ai capi locali per lo svolgimento di funzioni amministrative.

L'intervento internazionale di state-building rappresenta solo l'ultima fase di un processo storico in cui tentativi 'esterni' di costruzione dello stato si mescolavano alle dinamiche locali di competizione per il potere. Il terzo capitolo descrive le prime fasi di questo intervento prima della fine della seconda guerra civile tra il governo di Khartoum e l'SPLM/A (1983-2005), soffermandosi in particolar modo sulla sua sovrapposizione con il progetto di state-building dell'SPLM. Se tra la fine delgi anni '80 e i primi anni '90 l'intervento internazionale era stato mosso principalmente da logiche umanitarie e di sicurezza globale, alla fine degli anni '90 esso si è re-indirizzato verso un sostegno più attivo e consapevole alla costruzione dello stato nel cosiddetto 'New Sudan'[1045]. Pur seguendo logiche geopolitiche e strategiche, la comunità internazionale ha continuato a definire il proprio coinvolgimento in Sud Sudan come apolitico e neutrale, guidato unicamente da obiettivi umanitari. Di fatto, questo intervento ha fornito all'SPLM importanti risorse materiali e

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[1044] *Hakuma* significa 'governo' in lingua araba. La parola è stata incorporata nel vocabolario di numerose lingue locali fin dall'inizio della dominazione araba per identificare la sfera degli 'uomini in uniforme', includendo quindi non solo i funzionari di governo, ma anche i movimenti ribelli e, in una certa misura, anche le agenzie di aiuto internazionali. Cherry Leonardi, "'Liberation' or Capture".

[1045] Se all'inizio della guerra l'espressione 'New Sudan" era riferito ad un Sudan democratico e unito, a partire dalla metà degli anni 1990 il termine ha cominciato ad essere utilizzato per identificare la regione meridionale del Sudan e le 'tre aree' (Sud Kordofan, Abiey e Blue Nile), dove i ribelli controllavano buona parte del territorio. Il CPA ha poi definito New Sudan il territorio sotto la giurisdizione del Governo del Sud Sudan.

simboliche che hanno consentito la sua affermazione come possibile attore di governo rispetto ad altri gruppi armati attivi sulla scena sud sudanese. L'SPLM aveva un suo progetto di state-building per rafforzare il suo controllo del territorio non soltanto attraverso l'uso della forza, ma anche con l'istituzione di un sistema amministrativo e l'erogazione di servizi in cambio della lealtà di capi militari locali e per aumentare la propria legittimità come attore di governo agli occhi della popolazione. Grazie al sostegno della comunità internazionale, inizialmente sotto forma di aiuti umanitari alle zone liberate, e poi di sostegno diretto alla capacità amministrativa dei funzionari locali del movimento, l'SPLM è riuscito a creare un vero e proprio "stato-nello-stato"[1046].

Da questo processo di creazione di nuove istituzioni (para)statali durante la guerra emergono due tendenze persistenti del processo di state-building e in quello di formazione dello stato in Sud Sudan. In primo luogo, la convergenza dei due progetti di state-building, quello dell'SPLM e quello della comunità internazionale (entrambi con l'obiettivo principale di concentrare il potere nelle mani di un gruppo di governo identificabile e strutturato in un territorio circoscritto) è stato possibile grazie alla depoliticizzazione dei discorsi sulla pace, la good governance e lo sviluppo che dominano l'arena internazionale[1047]. L'SPLM ha potuto concentrare la propria propaganda politica sui negoziati di pace a livello nazionale con il governo di Khartoum, mentre il 'locale' è stato relegato ad una dimestione amministrativa, da sostenere con risorse economiche e capacità tecniche senza bisogno di una particolare sensibilità alle sue dinamiche politiche. In secondo luogo, l'SPLM ha confermato l'extraversione dei modi di accumulazione di potere come caratteristica sostanziale degli attori politici sud sudanesi. Se la sua storia di movimento ribelle da un lato ricorda lo "*state-making through war-making*" di Tilly[1048], allo stesso tempo l'ascesa dell'SPLM non può essere separata dal sostegno esterno che ha ricevuto. La sua accumulazione delle varie forme di capitale (forza fisica, economica, culturale e simbolica), che Bourdieu considera al centro della formazione dello stato[1049], è stata certamente facilitata (quando non interamente permessa) dall'interazione con potenze straniere che hanno fornito risorse decisive alla sua sopravvivenza, soprattutto nei numerosi momenti di crisi che hanno costellato la sua storia.

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[1046] Kingston and Spears (eds.), *States-within-States*.

[1047] Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London; New York: Zed Books, 2001); James Ferguson, *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994).

[1048] Tilly, "War Making and State Making as Organized Crime".

[1049] Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field."

I programmi sostenuti dalla comunità internazionale a partire dal 1999, quando il progetto STAR (Sudan Transitional Assistance for Rehabilitation) è stato avviato con l'obiettivo di formare gli amministratori locali della struttura di governo civile dell'SPLM (Civil Administration of the New Sudan), rappresentano una nuova spinta alla costruzione dello stato. Essi si sono trovati a rafforzare, ancora prima che la struttura statale vera e propria, la leadership del movimento ribelle, che ha potuto così ammantarsi della legittimità derivante da una facciata di statualità[1050]. Questa relazione simbiotica con gli aiuti, e in particolare con gli aiuti diretti al settore della 'governance', è sopravvissuta alla creazione del governo del Sud Sudan e all'indipendenza del Paese, e continua ad influenzare il discorso politico e a fornire risorse materiali e simboliche fondamentali che alimentano le dinamiche politiche locali.

Il quarto capitolo si concentra sul periodo identificato come 'post-conflitto', cioè quello successivo alla firma degli accordi di pace tra Governo e SPLM nel 2005. Esso analizza la creazione del sistema di governo decentrato e la parallela riforma del sistema fondiario, che riconosce la legalità dei diritti consuetudinari su base comunitaria. Queste riforme vanno contestualizzate nell'ambito degli interventi 'post-conflitto' volti a contrastare la 'fragilità' dello stato in Sud Sudan e sono state entrambe fortemente sostenute dalla leadership dell'SPLM prima con il suo leader storico John Garang, e poi, dopo la morte di quest'ultmo in un incidente aereo pochi mesi dopo la firma degli accordi di pace, con Salva Kiir Mayardit. Garang era stato un forte sostenitore dell'unità del Sudan e dei suoi popoli ma, allo stesso tempo, fin dalla metà degli anni 1990 aveva sostenuto un sistema di governo decentrato per motivi sia ideologici che pragmatici. Da un lato, un sistema decentrato avrebbe garantito l'autogoverno alla moltitudine di comunità etniche sud sudanesi, in netto contrasto con lo stile di governo centralizzato e autoritario del regime di Khartoum. Dall'altro, Garang era convinto che un sistema decentrato fosse l'unico modo di tenere sotto controllo la frammentazione della società sud sudanese[1051]. Oltre ai suoi presunti benefici in termini di democratizzazione e sviluppo[1052], è stato anche per la sua capacità di disinnescare i conflitti a livello centrale e di ampliare l'arena politica attraverso nuove posizioni a livello locale da distribuire a

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[1050] Philip Abrams, "Notes on the Difficulty of Studying the State".

[1051] Naseem Badiey, *The State of Post-Conflict Reconstruction: Land, Urban Development and State-Building in Juba, Southern Sudan* (Boydell & Brewer Ltd, 2014).

[1052] Dele Olowu and James Stevenson Wunsch, *Local Governance in Africa: The Challenges of Democratic Decentralization* (Boulder: Lynne Rienner Publishers, 2004); Gordon Crawford and Christof Hartmann, *Decentralisation in Africa: A Pathway Out of Poverty and Conflict?* (Amsterdam University Press, 2008).

potenziali oppositori che il decentramento è stato così attivamente sostenuto[1053].

Sia la riforma del governo locale che quella della terra si fondano sul concetto di 'comunità' come unità di base della società Sud Sudanese (soprattutto nelle aree rurali, abitate dall'83% della popolazione). La centralità di questo concetto è stata incentivata dall'incorporazione delle autorità tradizionali nel sistema di governo locale e di gestione della terra sulla base della loro presunta legittimità intrinseca, della continuità nello svolgimento delle loro funzioni nella governance locale, e della loro migliore conoscenza dei bisogni delle popolazioni locali[1054]. Nel tentativo di definire la portata della loro autorità e le loro giurisdizioni, tuttavia, il concetto di 'comunità' assume connotati etnici che derivano dall'eredità coloniale e da quella della guerra, ma sono aggravati dall'attribuzione di funzioni relative alla regolazione dell'accesso ad alcune risorse e alla sovrapposizione tra la sfera consuetudinaria e la sfera burocratica dello stato. Dal momento che il diritto di autogoverno e quello di accesso alla terra sono garantiti dalle autorità tradizionali, 'appartenere' ad un capo significa essere riconosciuti in quanto membri di una 'comunità', i cui diritti collettivi possono a loro volta essere riconosciuti dallo Stato. In questo modo si spiega la proliferazione di capi e delle relative unità amministrative: essa risponde al tentativo di emergere agli occhi dello Stato e di essere inclusi nel gioco della distribuzione delle risorse. Questo incoraggia però una frammentazione orizzontale della società, che è allo stesso tempo rivendicata dal basso e funzionale al modo di governo dell'SPLM.

Il quinto capitolo si concentra sull'erogazione di servizi come strumento di state-building nel contesto sud sudanese dopo la fine della guerra civile, un contesto caratterizzato da una forte presenza di agenzie umanitarie e di sviluppo. L'erogazione di servizi è in effetti diventata una sorta di 'nuova frontiera' dei programmi di costruzione dello stato, in cui progetti di sviluppo 'tradizionali' (istruzione, sanità, acqua, costruzione di infrastrutture) si incontrano coi progetti di capacity-building per le istituzioni locali al fine di renderli più sostenibili. Un numero sempre crescente di donatori, infatti, si concentra sulla capacità di erogare servizi dei cosiddetti stati fragili ritenendo di rafforzare la loro legittimità agli occhi delle popolazioni locali e di ridurre il rischio di rivolte contro istituzioni inefficaci. L'attenzione all'erogazione di

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[1053] Wolfram Lacher, "South Sudan: International State-Building and Its Limits," *German Institute for International and Security Affairs*, Research Paper, 4 (February 2012), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP04_lac.pdf; A. de Waal, "When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan," *African Affairs* 113, no. 452 (July 1, 2014): 347–69, doi:10.1093/afraf/adu028.

[1054] Olowu and Wunsch, *Local Governance in Africa*.

servizi si inserisce particolarmente bene in un contesto caratterizzato dal sostegno alle riforme di decentramento: i governi decentrati sono infatti considerati i principali gestori della funzione di erogazione, "ciò che rende lo stato visibile ai suoi cittadini"[1055].

Il capitolo analizza in particolar modo il "caleidoscopio delle aspettative popolari"[1056] sull'erogazione di servizi, e la modalità con cui la percezione di come accedervi contribuisca al processo di formazione dello stato. Nel Sud Sudan post-conflitto, le aspettative di miglioramento dell'accesso ai servizi essenziali erano estremamente alte, ed era opinione diffusa che fosse compito del neonato governo sud sudanese occuparsi di ricompensare in questo modo gli sforzi della popolazione, grazie ai quali la regione ha ottenuto l'autonomia e l'SPLM ha preso il potere. Nell'immaginario collettivo della popolazione, "Stato" è quindi rapidamente diventato sinonimo di erogazione di servizi pubblici e, più in generale, di distribuzione di risorse. Poco importa che queste risorse provenissero effettivamente dallo Stato, o piuttosto da attori esterni: l'importante, per accedervi, è poter in qualche modo dimostrare la propria 'appartenenza' allo Stato attraverso una delle sue strutture. Attraverso un caso studio analizzato nella Contea di Yirol West (Stato di Lakes), il capitolo mette in mostra i tentativi delle comunità locali di accedere ai servizi con strategie che rispecchiano la comprensione locale dei meccanismi di distribuzione. In particolare, il capitolo mostra come lo Stato venga 'usato' per rivendicare un accesso diretto all'arena di negoziazione per ottenere risorse 'esterne' attraverso l'appropriazione delle sue strutture così come esse vengono definite nell'ambito dei programmi di state-building: le unità amministrative locali, le corti regionali, i capi esecutivi. La pratiche discorsive messe in campo dagli attori coinvolti in questi tentativi (funzionari di governo locale, autorità tradizionali) riprendono quelle, tecnocratiche, che caratterizzano le politiche internazionali e governative sull'efficienza del decentramento e dell'erogazione di servizi pubblici. Esse si traducono in pratiche di frammentazione finalizzate ad ottenere un riconoscimento (e finanziamento) extravertito sotto la supervisione di autorità locali condiscendenti. L'esigenza di aumentare l'accesso ai servizi di base in modo da renderlo più equo, incentivare processi partecipativi e identificare intermediari affidabili con le comunità rurali sono elementi che emergono chiaramente dalle interviste con i capi  e con gli amministratori locali. Questi ultimi, sostenendo le richieste delle autorità

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[1055] Steven Van de Walle and Zoe Scott, *The Role of Public Services in State- and Nation-Building: Exploring Lessons from European History for Fragile States*, University of Birmingham, Governance and Social Development Resource Center, 2009, p.9

[1056] Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds., *States at Work: Dynamics of African Bureaucracies*, Africa-Europe Group for Interdisciplinary Studies, volume 12 (Boston: Brill, 2014). p. 402

tradizionali di creare nuove unità amministrative, mostrano di essere ben consapevoli della 'ideologia comunitaria' che caratterizza la retorica dei dononatori, nonché del loro ruolo di livello ulteriore di mediazione tra gli attori 'esterni' e i capi tradizionali. In un contesto caratterizzato dalla scarsità di risorse, dominato da discorsi sul decentramento e sull'autonoma locale, i sud sudanesi "si sono resi conto che la loro 'comunità' ufficialmente riconosciuta e i loro capi posso essere una leva attraverso la quale ottenere condizioni più favorevoli per interagire con lo stato"[1057], non soltanto dal punto di vista dell'erogazione di risorse, ma anche da quello della rappresentanza politica. Se da un lato l'accesso alle risorse viene cercato attraverso una relazione personale coi 'figli della terra' che occupano posizioni di potere, i programmi internazionali di sostegno all'erogazione dei servizi pubblici ampliano ciò che Begamaschi chiama "l'accesso burocratico alle risorse[1058]. Si consolida l'idea che workshop, comitati, processi di pianificazione e formulazione di bilanci costituiscano un'attrezzatura indispensabile per essere inclusi tra i beneficiari delle risorse pubbliche, ma allo stesso tempo il potere reale è tenuto lontano da questi spazi di negoziazione'su invito', saldamente nelle mani di chi ha l'autorità di riconoscere ufficialmente le 'comunità'.

Il sesto capitolo analizza l'applicazione del concetto di comunità nel settore fondiario, di nuovo soffermandosi sulla convergenza tra la retorica dell'SPLM e quella dei donatori internazionali. Benché derivante da preoccupazioni legate alla riduzione della povertà e da strategie fondate sulla (formale) partecipazione dal basso nei processi di sviluppo e di presa delle decisioni, la valorizzazione del concetto di comunità in Sud Sudan sembra ricreare uno scenario simile a quello dei territori etnici coloniali, funzionali a rendere la società 'comprensibile' agli occhi dell'apparato statale. La riforma del sistema fondiario in Sud Sudan prevede infatti che lo stato riconosca la legalità dei diritti consuetudinari delle 'comunità locali' nelle aree rurali, riconoscendo queste ultime come legittime proprietarie terriere nelle loro rispettive 'aree d'origine'. La terminologia usata rimane deliberatamente indefinita: lo stesso concetto di 'comunità locale' non viene mai chiarito nel Land Act (2009) nè nella bozza di Land Policy che dal 2011 è in discussione in parlamento. L'interpretazione pratica affermata fin dal 2005, quando la Interim Constitution of Southern Sudan ha dato statura legale al principio che "la terra appartiene al popolo", è una sovrapposizione tra l'unità amministrativa (*payam* e *boma*, ma in alcuni casi anche Contea) e la 'comunità'.

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[1057] Leonardi, *Dealing with Government in South Sudan*. p. 182

[1058] Isaline Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali," in *States at Work. Dynamics of African Bureaucracies,* by J.P. Olivier de Sardan & T. Bierschenk, Africa-Europe Group for Interdisciplinary Studies 12 (Leiden: Brill, 2014), 271–99.

La 'comunità' rimane centrale nell'amministrazione della terra anche avvicinandosi alle aree urbane, dove la burocratizzazione delle relazioni terriere aumenta e dove la proprietà comunitaria incrocia la proprietà individuale regolata dalle istituzioni statutarie e dalle leggi del mercato. In queste aree, la coesistenza dell'apparato legal-razionale burocratico e dell'enfasi sull'importanza della comunità con i suoi valori locali e tradizionali è ancora più marcata, soprattutto quando si tratta di negoziare la transizione della terra dal suo status 'rurale' a quello 'urbano'. In Sud Sudan, però, la distinzione tra urbano e rurale presenta degli elementi di problematicità a causa del carattere molto mobile e nebuloso di questa frontiera[1059]; allo stesso tempo, è proprio su questa frontiera che l'identità etno-politica si attiva in modo più potente[1060].

Il fatto che la riforma della terra non venga applicata in modo coerente e totale viene spesso attribuito a incongruenze all'interno dei testi di legge o alla mancanza di capacità e competenze tecniche del personale che dovrebbe occuparsi della sua implementazione. Tuttavia, ciò non significa che la riforma sia ignorata dagli attori locali, bensì che essa ancora una volta fornisca risorse materiali e discorsive che vengono utilizzate selettivamente, producendo una 'governance reale'[1061] della terra. La governance reale e quella formale della terra si fondano sugli stessi principi: che "la terra apartiene al popolo"[1062], il quale è diviso in comunità con una forte connotazione etno-politica derivante dalla loro corrispondenza con le unità di amministrative e di governo locale. Se è vero, come sostiene Catherine Boone, che il regime di proprietà terriera riflette la struttura della politica[1063], possiamo dire che, in Sud Sudan, la struttura della politica è influenzata dal regime di proprietà terriera, o che almeno essi si influenzino a vicenda, soprattutto dal momento che il sistema fondiario è stato riformato con un supporto consistente da parte di forze esterne esplicitamente interessate ad influenzare la realtà politica ed economica locale nell'ambito di un intervento di state-building.

La formalizzazione dei diritti consuetudinari su base comunitaria, sancita prima dalla Interim Constitution e poi dal Land Act, ha rafforzato le rivendicazioni alla terra avanzate in base all'appartenenza etnica, lasciando la

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[1059] Leonardi, *Dealing with Government in South Sudan*.

[1060] Jocelyn Alexander, *The Unsettled Land: State-Making & the Politics of Land in Zimbabwe, 1893-2003* (Oxford : Harare [Zimbabwe] : Athens, Ohio: James Currey ; Weaver Press ; Ohio University Press, 2006); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998).

[1061] Jean-Pierre Olivier d Olivier de Sardan, *Researching the Practical Norms of Real Governance in Africa* (Overseas development institute (ODI), 2008).

[1062] Questo motto costituiva era uno dei cavalli di battaglia dell'SPLM durante la guerra per dare maggior forza alle proprie rivendicazioni di controllo delle risorse sud sudanesi a nome della popolazione locale.

[1063] Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics* (Cambridge University Press, 2014).

definizione di 'comunità locale' all'eredità della categorizzazione etnica della popolazione rurale. Analizzando le dinamiche di inclusione ed esclusione dall'accesso alla terra, sia intesa nella sua connotazione politica e spaziale di territorio che in quella economica di risorsa produttiva, il capitolo si sofferma su due tipologie di dinamiche: dinamiche verticali ed orizzontali. Le prime emergono all'interno di un gruppo comunemente definito 'comunità', nella negoziazione con attori esterni che appartengono alla sfera istituzionale formale, e riguarda le relazioni di potere e la differenziazione interna. Le dinamiche orizzontali si sviluppano invece tra entità che si riconoscono a vicenda in quanto 'comunità' nella definizione dei loro rispettivi confini: confini fisici, che identificano lo spazio, spesso coincidente con un'unità amministrativa, di cui una comunità è proprietaria e in cui ha diritto a vivere; e confini simbolici, che identificano l'appartenenza alla comunità e l'utilizzo di diverse pratiche discorsive per legittimare la proprietà o l'accesso alla terra. Queste dinamiche corrispondono a due tendenze di frammentazione orizzontale e di patronage verticale, che plasmano le strategie di accesso alla terra da parte della popolazione locale.

L'interazione, descritta da questa tesi, tra *state-building* e *state-formation,* e tra tutti gli attori che prendono parte a questi due processi, si interroga sulla relazione tra la *agency* degli attori locali e la struttura determinata dagli interventi internazionali di state-building che hanno origine in un preciso contesto internazionale preoccupato di garantire la stabilità e di rafforzare il sistema di governance neoliberista. Nel tentative di raggiungere questi obiettivi, le riforme vengono depoliticizzate e persino l'istituzione di governi locali viene presentata come un'operazione tecnica di capacity building, pretendendo che la politica non c'entri. In un certo senso, l'emersione delle 'comunità' come soggetti titolari di diritti risponde all'esigenza di lasciare lo Stato con un ruolo di mero coordinamento, delegando invece l'erogazione di servizi e la gestione dell'accesso alle risorse ad entità dalla natura ibrida tra il pubblico e il privato. In realtà però l'idea dello Stato resta estremamente forte nell'immaginario collettivo della popolazione sud sudanese, e si esprime proprio nel tentativo costante di essere riconosciuti come parte della sua struttura (ad esempio attraverso la creazione di nuove unità amministrative). È infatti comunque lo Stato, nel suo livello centrale, che conserva il potere di riconoscere ufficialmente l'esistenza di una comunità, e gli interessi in gioco in questa opera di riconoscimento vanno ben al di là dell'efficienza amministrativa. I discorsi sull'efficienza e l'efficacia dell'amministrazione sono infatti funzionali alla definizione di un soggetto comunitario nell'ambito delle politiche di sostegno all'auto-governo, all'erogazione di servizi e all'accesso alla terra,

producendo di fatto una ripoliticizzazione del processo di state-building[1064] attraverso l'appropriazione di questi discorsi da parte della popolazione locale e delle autorità tradizionali.

Lo state-building, inteso nel modo in cui questa tesi ha cercato di connotarlo, ha portato, in Sud Sudan, ad un'aumento dell'etnicizzazione della politica. Questo non significa, naturalmente, che rivalità etniche e spinte centrifughe non esistessero indipendentemente dalle 'interferenze esterne' nella statualità sud sudanese. Tuttavia, citando Bierschenk, Doornbos sottolinea la mancanza di condizioni politico-materiali per lo sviluppo di un'unica identità nazionale al di sopra delle affiliazioni etniche nel continente Africano[1065]. In effetti, la sovrapposizione tra i confini amministrativi e quelli 'comunitari' a cui è legato l'accesso al potere e alle risorse non rappresenta certo un incentivo in questo senso; piuttosto è vero il contrario.

Cercando un equilibrio difficile tra *agency* e struttura, questa tesi ha cercato di mantenersi equidistante da una prospettiva che vorrebbe attribuire il risultato del processo di costruzione dello Stato sud sudanese interamente ai limiti strutturali imposti dal sistema internazionale e dall'eredità storica del processo di formazione dello Stato nella regione; e da un'altra prospettiva che invece attribuisce il 'fallimento' dello Stato Sud Sudanese interamente alla corruzione delle elite locali o al 'tribalismo' del 'popolo' (come spesso fa la stessa diaspora sud sudanese)[1066]. Piuttosto, ha cercato di combinare elementi di entrambe le prospettive: da un lato, progetti di state-building standardizzati, portatori di una certa tipologia di discorsi; dall'altra, un'elite locale principalmente preoccupata di conservare il potere. Al di là di questi due elementi, ci sono poi milioni di Sud Sudanesi che agiscono nelle loro vite quotidiane sulla base della loro comprensione dei cambiamenti sociali, politici ed economici del Paese. Essi agiscono considerando le loro esperienze passate e le nuove opportunità create da scenari in rapido cambiamento, di cui il processo di formulazione di leggi e politiche costituisce parte integrante. Il loro contributo al processo di formazione dello Stato è forse il più importante, in quanto essi beneficiano della 'volgarizzazione' del potere favorita dall'intervento di state-building; e, ancora, sono loro che si rivolgono al

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[1064] Graham Harrison, *Neoliberal Africa: The Impact of Global Social Engineering* (London ; New York: Zed Books, 2010).

[1065] Bierschenk, Thomas (2003) 'Staat und Nation im postkolonialen Afrika: Ein Forschungsprogramm' ['State and Nation in Post-colonial Africa: A Research Programme']. Working Paper No. 26. Mainz: Johannes Gutenberg Universitat, Institut f ¨ ur Ethnologie und ¨ Afrikastudien.), quoted in Martin Doornbos, "Researching African Statehood Dynamics: Negotiability and Its Limits," *Development & Change* 41, no. 4 (July 2010): 747–69,.

[1066] Basti pensare agli editoriali pubblicati occasionalmente sul Sudan Tribune o dal Gurton Project, nonché ai commenti di Sud Sudanesi all'estero a questi articoli o sui social network.

'tribalismo politico'[1067] quando le 'regole del gioco' rendono l'enticità una caratteristica fondamentale per accedere alla distribuzione di risorse da parte dello Stato.

[1067] John Lonsdale, "Moral Ethnicity and Political Tribalism," *International Development Studies Occasional Paper*, no. 11 (2014): 131–50.

## Construire l'État dans le Sud Soudan. Discours, pratiques et acteurs d'un projet négocié (1999-2013)

L'objectif de cette thèse consiste à analyser l'interaction entre les programmes contemporains de construction de l'État et le processus de formation de l'État du Sud Soudan. L'analyse prend sa source dans le travail de Berman et Lonsdale qui ont défini le *state-building* comme « un effort conscient de création d'un appareil de contrôle », et le *state-formation* comme « un processus historique dont le produit est un ensemble inconscient et contradictoire de conflits, négociations et compromis entre différents groupes dont les intérêts et accords personnels conduisent à la 'vulgarisation' du pouvoir »[1068].

Les programmes internationaux contemporains de soutien à la construction de l'État ont commencé au Sud Soudan quelques années avant la signature de l'accord de paix en 2005 (Comprehensive Peace Agreement, CPA). Ils ont constitué une partie importante de l'aide internationale dans la région pendant toute la période transitoire comprise entre 2005 et 2011, quand la population sud soudanaise a voté par referendum en faveur de l'indépendance du pays. À partir de 2005, malgré des niveaux de violence encore assez élevés[1069], la communauté internationale définit la situation au Sud Soudan comme un contexte de 'post-conflit'. Le pays est alors devenu le théâtre d'un interventionnisme ayant pour finalité le renforcement de la 'gouvernance' et le maintien de la stabilité.

Cette thèse analyse l'entreprise de construction de l'État en tant qu'arène de négociation[1070] sur la nature étatique de la région sud soudanaise, où les initiatives promues ou soutenues par la communauté de bailleurs de fonds fournissent des ressources matérielles et symboliques. Les acteurs impliqués transformeront celles-ci en différentes formes de capital[1071], en alimentant le processus de formation de l'État.

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[1068] Bruce Berman and John Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.* (Athens: Ohio University Press, 1992). p.5.

[1069] On estime par exemple qu'en 2009 le nombre de victimes de violences intercommunautaires a été plus élevé au Sud Soudan (situation 'post-conflictuelle') qu'au Darfour (situation de conflit ouvert). International Crisis Group, *Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan*, Africa Report 154, 2009.

[1070] Tobias Hagmann and Didier Péclard, "Negotiating Statehood: Dynamics of Power and Domination in Africa," *Development and Change* 41, no. 4 (2010): 539–62.

[1071] Pierre Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field," *Sociological Theory* 12, no. 1 (1994): 1–18.

Cependant, cette négociation n'implique pas uniquement les acteurs qui interagissent directement avec les bailleurs de fonds (les représentants de l'ex-mouvement rebelle Sudan People's Liberation Movement/Army (SPLM/A, aujourd'hui parti gouvernant)), ni ceux qui occupent des positions de pouvoir dans les institutions. Elle implique aussi des milliers de Sud Soudanais, qui doivent faire face à un environnement qui change rapidement, caractérisé par l'émergence de nouvelles opportunités d'accès à des ressources qui étaient inaccessibles jusque-là, à travers des interactions quotidiennes avec le pouvoir et les institutions étatiques.

Étant donné la dimension des programmes de *state-building* et la multitude d'aspects qu'ils touchent, cette thèse se concentrera sur trois éléments spécifiques qui occupent une place importante de l'intervention internationale dans la région autonome après 2005, puis dans le pays après son indépendance : la création d'un système de gouvernement décentralisé, la fourniture de services publics et la réforme du système foncier. Bien que ces aspects ne soient pas toujours liés aux entreprises de *state-building,* considéré plutôt comme un processus de renforcement de l'appareil de contrôle étatique et de stabilisation d'un point de vue sécuritaire[1072], tous les trois témoignent de l'engagement croissant de la communauté internationale, à travers des programmes de soutien pour les structures étatiques locales et la formation de l'administration publique dans des contextes d'après-guerre en Afrique et ailleurs.

 Cette typologie d'intervention reflète la récente conceptualisation de *state-building* donnée par le Comité pour l'Aide au Développement de l'Organisation de Coopération et Développement Économiques (OCDE) : un ensemble d'actions qui ne concernent pas uniquement la construction d'institutions, mais aussi la création de légitimité à travers une fourniture de services efficace [1073]. Au Sud Soudan, ces projets furent bien sûr soutenus par la communauté internationale de bailleurs de fonds, mais aussi par le SPLM/Gouvernement du Sud Soudan, et par d'autres acteurs socio-politiques locaux (autorités traditionnelles, représentants des institutions étatiques au niveau local, etc.) malgré leurs divergences d'intérêts, parfois même en compétition. Ces trois domaines d'intervention représentent des arènes de négociation spécifiques, dans lesquelles les différents acteurs mettent en place leur idée d'État en utilisant des discours empruntés aux bailleurs de fonds. Le développement de politiques et de cadres légaux dans ces trois secteurs établit,

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[1072] Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge, U.K. ; New York, NY: Cambridge University Press, 2004).

[1073] OECD, "Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience," OECD Discussion Papers, (2008).

au moins partiellement, les 'règles du jeu'[1074] selon lesquelles les acteurs se comportent dans leurs interactions quotidiennes avec l'État et ses structures.

Le premier chapitre installe le cadre théorique pour le développement de la thèse. Son point de départ s'appuie sur l'observation que, malgré sa marginalisation supposée due à la mondialisation et sa conséquente 'fragilité' ou 'faiblesse', l'État conserve une importance fondamentale d'un point de vue à la fois symbolique et pratique dans la mise en œuvre des politiques publiques. En particulier, les États dans des contextes conflictuels se trouvent à l'intersection entre projets de *state-building* international (qui caractérisent de plus en plus les stratégies d'intervention des bailleurs de fonds dans ce type de contexte) et leur processus historique de formation, caractérisé par la présence de différents acteurs qui se disputent le contrôle de l'État.

La première partie du chapitre examine le concept de *state-building.* Apparu dans les années 1990 et associé au *peace-building,* il dérive d'une théorie qui associe le développement à la sécurité, et la fragilité de l'État à l'insécurité globale. Récemment, les interventions de *state-building* se sont davantage concentrées sur le niveau local, sur la création de systèmes politiques décentralisés et de mécanismes locaux de fourniture de services. La décentralisation des fonctions étatiques est directement associée au renforcement de la légitimité des institutions locales aux yeux de la population. Au Sud Soudan, il existe aussi un autre domaine d'intervention qui, bien que n'étant généralement pas associé aux interventions de construction de l'État, a pourtant des effets directs sur la création et l'exercice de l'autorité : il s'agit de la réforme du foncier. Non seulement la communauté internationale s'y engage de plus en plus ces dernières années, mais les approches appliquées dans les années 1980 et 1990 ont changé. Ce secteur a aussi assisté à une 'tournure plus locale', dont témoigne la légalisation progressive des droits communautaires coutumiers à la terre. Au Sud Soudan en particulier, la réforme du système foncier est entremêlée au système du gouvernement local et, plus largement, au projet de construction de l'État, ce qui rend difficile de mener une analyse séparée.

La seconde partie du chapitre se concentre sur le concept de formation de l'État, en montrant la façon dont elle est influencée non pas uniquement par les programmes de *state-building* internationaux, mais aussi par des stratégies d'appropriation et d'adaptation de certains de ses éléments par les acteurs locaux. Le processus de formation de l'État doit donc être analysé dans une perspective historique qui rende compte de son caractère cumulatif et du fait qu'il naisse d'une négociation continue se déroulant dans les différentes arènes

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[1074] Göran Hyden, Dele Olowu, and Hastings W.O. Okoth-Ogendo, *African Perspectives on Governance* (Trenton, NJ: Africa World Press, 2000).

créées par l'entreprise de construction de l'État. Au Sud Soudan, ce processus de négociation est le résultat de l'interaction de trois groupes d'acteurs : ceux qui appartiennent au niveau 'international' (les bailleurs de fonds), ceux qui appartiennent au niveau 'national' (les mouvements rebelles et le Gouvernement du Sud Soudan), et ceux qui appartiennent au niveau 'local' (autorités sous-nationales, citoyens communs). Ces groupes d'acteurs sont différents, et leurs interactions donnent lieu à des relations trans-scalaires : comme l'indiquent Siméant, Lickert et Pouponneau, « toute la politique est locale » : c'est-à-dire que même à ses plus hauts niveaux, la politique se passe dans des lieux spécifiques et ses dynamiques doivent être localisées. Néanmoins, ce qui se passe au niveau 'local' (national, sous-national ou même au micro-niveau du village) ne répond pas uniquement à des logiques micro-locales[1075]. Les acteurs opérant à des niveaux différents ont plutôt tendance à mélanger les limites de ces niveaux, bien que ceux-ci soient constamment reproduits dans leurs discours.

Le deuxième chapitre place dans une perspective historique les interactions entre les tentatives de construction de l'État Soudanais (pour étendre son contrôle sur la région méridionale) et le processus de sa formation dès 1820, quand l'Egypte gouvernée par Méhémet Ali a envahi le Soudan. Bien que le Sud Soudan fasse déjà partie à l'époque d'une économie régionale basée sur le commerce d'esclaves pour fournir la main d'œuvre nécessaire aux royaumes soudanais le long du Nil, l'année 1820 apparaît néanmoins comme le moment où les influences du système international commencèrent à affecter le scénario politique sud soudanais plus en profondeur. Jusqu'au XIXème siècle, la région était surtout caractérisée par des relations économiques et par les flux et reflux d'unités politiques relativement petites. L'arrivée, bien que désorganisée, des émissaires d'un grand État bureaucratique a altéré durablement les équilibres économiques et politiques locaux. De plus, même si les émissaires du gouvernement égyptien ne parvinrent pas à établir de contrôle réel sur la plupart des régions qu'ils déclaraient avoir conquises, la domination étrangère introduisit toutefois un niveau de violence sans précédent, qui influença la transformation des stratégies locales d'accumulation de pouvoir et la façon dont les personnes les affrontaient[1076]. Pendant cette période, les forces étrangères à l'autre extrémité des réseaux économiques n'étaient pas si distantes, et se rapprochaient en construisant des stations commerciales et en imposant leur supériorité militaire. De nombreuses études ont montré que la pénétration des

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[1075] Johanna Siméant, Victoria Lickert, and Florent Pouponneau, "Échelles, Récifs, Bureau - Terrains Du Politique à L'international," in Johanna Siméant (ed.), *Guide de L'Enquête Globale En Sciences Sociales,* (Paris: CNRS Editions, 2015).

[1076] Douglas H. Johnson, "The Structure of a Legacy: Military Slavery in Northeast Africa," *Ethnohistory* 36, no. 1 (January 1, 1989): 72–88.

puissances étrangères en Afrique n'est pas uniquement le résultat de leur capacité à atteindre des régions et des populations reculées[1077]. En plaçant l'*agency* Africaine au centre de l'analyse, ces études soutiennent que la pénétration étrangère fut davantage le résultat de stratégies endogènes dans la relation avec les étrangers, qu'un exemple de soumission passive aux envahisseurs. L'année 1820 peut donc être considérée comme le moment où le caractère extraverti de la nature étatique sud soudanaise se révèle. Il s'agit de sa capacité à capitaliser sur son propre assujettissement[1078] grâce à la superposition entre la tentative de créer un État centralisé et les processus de formation des États préexistants.

L'idée de l'État en tant que pouvoir centralisé au-dessus d'une communauté politique est donc arrivée au Sud Soudan sous trois formes différentes qui se sont souvent mélangées les unes aux autres pendant toute la période coloniale. S'imposer par la force physique détermina la première forme de pouvoir née des relations entre envahisseurs et populations locales au début des conquêtes égyptienne et britannique au Sud Soudan, et elle ne fut jamais totalement remplacée par d'autres formes de dominations routinières (et moins coûteuses). La deuxième forme fut la bureaucratisation de certaines pratiques administratives dans les avant-postes gouvernementaux. Bien que la capacité d'action du gouvernement puisse beaucoup varier d'une région à l'autre, cela conféra toutefois un certain degré de 'prévisibilité'[1079] aux relations entre gouvernement et population, au moins au niveau de chaque localité, contribuant à légitimer le gouvernement en tant qu'autorité neutre (ou du moins, bénévole vis-à-vis ses propre alliés) dans la résolution de conflits locaux. La troisième forme dans laquelle le pouvoir extérieur s'est manifesté fut la création de nouvelles sources de légitimité pour les nouveaux leaders locaux en devenir. En introduisant de nouvelles opportunités d'accumulation de pouvoir et de nouvelles formes d'autorité, l'État colonial a enrichi les sources de légitimité précoloniales (âge, liens du sang, relations de réciprocité), il les a centralisées et a fourni des alternatives à ceux qui en étaient exclus[1080]. De nouveaux

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[1077] Cherry Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community & State*, Eastern Africa Series (Woodbridge, Suffolk: James Currey, 2013); Bruce J. Berman, "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism," *African Affairs* 97, no. 388 (July 1, 1998): 305–41; Hagmann and Péclard, "Negotiating Statehood"; Jean-François Bayart, "L'historicité de l'Etat importé," *Les Cahiers du CERI*, no. 15 (1996), http://www.sciencespo.fr/ceri/sites/sciencespo.fr.ceri/files/cahier15.pdf.

[1078] Jean-François Bayart, "L'Afrique Dans Le Monde : Une Histoire D'extraversion," *Critique Internationale* 5, no. 1 (1999): 97–120.

[1079] Avec cette expression, Cherry Leonardi se réfère au degré de standardisation de l'interaction entre la population et le gouvernement local : l'action de gouvernement devenait 'prévisible' quand il y avait un accord sur la relation d'échange entre les deux parties. Leonardi, *Dealing with Government in South Sudan*.

[1080] Berman and Lonsdale, *Unhappy Valley Conflict in Kenya & Africa. Book One: State & Class.*

entrepreneurs politiques locaux ont donc vu le jour grâce à la légitimité obtenue de leur capacité à gérer l'interaction avec le gouvernement de façon favorable pour leurs clients. En restant dans le cadre de ce que Cherry Leonardi a défini comme 'l'économie politique de la connaissance', leur pouvoir s'est accru grâce à une stratégie d'extraversion de l'accumulation de pouvoir.

Les gouvernements postcoloniaux ont poursuivi les tentatives de construire d'un État centralisé notamment à travers la coercition et les réformes administratives, sans tenir compte des mécanismes de légitimation des nouveaux systèmes de gouvernement établis. Les seules autorités reconnues comme légitimes, surtout dans les zones rurales, sont restées les autorités 'traditionnelles' d'origine coloniale, dans la mesure où elles étaient capables de véhiculer les exigences extractives des pouvoirs 'extérieurs'. Le contexte de guerre qui a caractérisé la majorité de l'histoire postcoloniale sud soudanaise n'a pas permis de renforcer l'État central dans la région, alors que d'autres acteurs ayant de nouvelles revendications de légitimité entraient sur scène. Ces derniers se sont imposés par la violence, mais ils ont su utiliser des instruments de domination plus complexes. Grâce à une rhétorique de libération du régime Soudanais et à des ressources provenant principalement des alliés étrangers, ils ont réussi à créer une forme alternative d'*hakuma*[1081], une nouvelle source de pouvoir centralisé, en compétition avec celui du gouvernement, en s'appuyant de la même manière sur les chefs locaux pour l'exécution des fonctions administratives.

L'entreprise internationale de *state-building* n'est que l'étape la plus récente d'un processus historique pendant lequel des tentatives 'externes' de construction de l'État se mélangeaient aux dynamiques locales de compétition politique. Le troisième chapitre décrit les premières phases de cette tentative avant la fin de la seconde guerre civile entre le gouvernement de Khartoum et le SPLM/A (1983-2005), en soulignant en particulier le chevauchement entre le projet de *state-building* de la communauté internationale et celui du SPLM. Alors qu'entre la fin des années 1980 et le début des années 1990, l'intervention internationale dans la région était motivée principalement par des logiques humanitaires et de sécurité mondiale, elle est reformulée vers la fin des années 1990 en faveur d'un soutien plus actif et conscient à la construction de l'État du 'Nouveau Soudan'[1082]. Bien que la communauté internationale suive des

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[1081] *Hakuma* est le mot Arabe pour 'gouvernement'. Il a été incorporé dans plusieurs langues locales du début de la domination Arabe, et il est utilisé pour identifier le domaine des hommes en uniforme. Ainsi, il n'inclut pas seulement le gouvernement mais aussi les mouvements rebelles et parfois, les agences d'aide internationales. Cherry Leonardi, "'Liberation' or Capture: Youth in between 'hakuma', and 'home' during Civil War and Its Aftermath in Southern Sudan," *African Affairs* 106, no. 424 (July 1, 2007): 391–412.

[1082] Alors qu'au début de la guerre civile l'expression 'New Sudan' était utilisée en référence à un Soudan démocratique, uni et reformé, dès le milieu des années 1990 le terme a

logiques géopolitiques et stratégiques, elle a continué à définir son engagement au Sud Soudan en termes apolitiques et neutres, poussée seulement par des objectifs humanitaires. En fait, cette intervention a fourni d'importantes ressources matérielles et symboliques au SPLM, lui permettant de s'affirmer en tant que possible acteur gouvernemental par rapport aux autres groupes armés actifs sur la scène sud soudanaise. Le SPLM avait son projet de *state-building* visant à renforcer son contrôle du territoire, non pas simplement par l'usage de la force, mais aussi à travers l'institution d'un système administratif et la fourniture de services publics comme monnaie d'échange pour obtenir la loyauté de chefs militaires locaux et pour accroître sa légitimité de gouvernant aux yeux de la population locale. Grâce au soutien de la communauté internationale, d'abord sous forme d'aide humanitaire aux régions libérées, puis de soutien direct à la capacité administrative des fonctionnaires locaux du mouvement, le SPLM fut capable de créer un véritable « état-dans-l'état »[1083].

Dans ce processus de création de nouvelles institutions (para)étatiques pendant la guerre, deux tendances persistantes du processus de construction et de formation de l'État au Sud Soudan se manifestent. En premier lieu, la convergence des deux projets de *state-building*, celui du SPLM et celui de la communauté internationale (partageant le même objectif de concentrer le pouvoir dans les mains d'un groupe de gouvernement identifiable et structuré dans un territoire limité) fut possible grâce à la dépolitisation des discours sur la paix, la bonne gouvernance et le développement qui dominent l'arène internationale[1084]. Le SPLM a pu concentrer sa propagande politique sur les négociations de paix au niveau national avec le gouvernement de Khartoum, tout en reléguant le 'local' à la dimension administrative. Celle-ci devait être soutenue par des ressources économiques et des capacités techniques sans nécessiter une véritable attention envers ses dynamiques politiques. En deuxième lieu, le SPLM a confirmé l'extraversion des modes d'accumulation du pouvoir en tant que caractéristique substantielle des acteurs politiques sud soudanais. Si son histoire de mouvement rebelle peut être vu d'un côté comme similaire au « *state-making throuhg war-making* » dont parle Tilly[1085], en même

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été de plus en plus employé pour identifier la région méridionale du Soudan et les 'trois zones' (Abyei, Sud Kordofan et Blue Nile) où les rebelles contrôlaient le territoire. Ensuite, il a été utilisé dans le CPA pour définir le territoire sous juridiction du gouvernement du Sud Soudan.

[1083] Paul W. T. Kingston and Ian Spears, eds., *States-within-States: Incipient Political Entities in the Post-Cold War Era* (New York: Palgrave Macmillan, 2004).

[1084] Mark R. Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London; New York: Zed Books, 2001); James Ferguson, *The Anti-Politics Machine: "Development," Depoliticization, and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994).

[1085] Charles Tilly, "War Making and State Making as Organized Crime," in Peter Evans, Dietrich Rueschemeyer and Theda Skocpol *Bringing the State Back In,* (Cambridge: Cambridge University Press, 1985).

temps, l'ascension du SPLM ne peut pas être séparée du soutien extérieur qu'il a reçu. Son accumulation de diverses formes de capital (force physique, économique, culturelle et symbolique), que Bourdieu pose au centre de la formation de l'État[1086], a été certainement facilitée (ou bien, entièrement permise) par l'interaction avec des puissances étrangères qui ont fourni les ressources indispensables à sa survie, surtout pendant ses nombreux moments de crise.

Les programmes soutenus par la communauté internationale à partir de 1999, quand le projet STAR (Sudan Transitional Assistance for Rehabilitation) a été lancé avec l'objectif de former les administrateurs locaux travaillant dans la structure du gouvernement civil du SPLM (Civil Administration of the New Sudan), représentent une nouvelle tentative de construction de l'État au Sud Soudan. Ils ont renforcé non pas la structure étatique, mais plutôt le leadership du mouvement rebelle, qui a pu tirer profit d'une légitimité issue d'une nature étatique de façade[1087]. Cette relation symbiotique avec l'aide, en particulier celle destinée au secteur de la 'gouvernance', a survécu à la création du Gouvernement du Sud Soudan et à l'indépendance du pays, et continue d'influencer le discours politique et de fournir les ressources matérielles et symboliques fondamentales qui alimentent les dynamiques politiques locales.

Le quatrième chapitre se concentre sur la période identifiée comme 'post-conflit', c'est-à-dire la période successive à la signature des accords de paix entre le gouvernement du Soudan et le SPLM en 2005. Il propose d'analyser parallèlement la création du système de gouvernement décentralisé et la réforme du foncier, qui reconnaît la légalité des droits coutumiers et communautaires. Il faut contextualiser ces réformes dans le cadre des interventions 'post-conflit' finalisées au renforcement d'une région définie en termes d'État 'fragile'. Elles ont été fortement soutenues par le leadership du SPLM avec John Garang ainsi qu'avec Salva Kiir Mayardit, qui lui a succédé à sa mort quelques mois après la signature des accords de paix. Garang avait soutenu très activement l'unité du Soudan et de ses peuples, cependant, dès le milieu des années 1990, il avait aussi soutenu un système de gouvernement décentralisé pour des raisons aussi bien idéologiques que pragmatiques. D'un côté, un système décentralisé aurait garanti l'autogouvernement aux nombreuses communautés ethniques sud soudanaises, en opposition avec le mode de gouvernement centralisé et autoritaire du régime de Khartoum. De l'autre, Garang pensait qu'un système décentralisé était la seule possibilité de

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[1086] Bourdieu, "Rethinking the State: Genesis and Structure of the Bureaucratic Field."

[1087] Philip Abrams, "Notes on the Difficulty of Studying the State (1977)," *Journal of Historical Sociology* 1, no. 1 (March 1, 1988): 58–89.

gouverner la fragmentation sud soudanaise[1088]. Hormis ses bénéfices supposés en termes de démocratisation et développement[1089], la décentralisation a aussi été soutenue pour sa capacité à désamorcer les conflits au niveau central et à élargir l'arène politique à travers la création locale de nouvelles positions pouvant être distribuées aux opposants potentiels[1090].

Les deux réformes du gouvernement local et du foncier s'appuient sur le concept de 'communauté' entendue comme unité de base de la société sud soudanaise (en particulier dans les régions rurales, où vit 83% de la population). La centralité de ce concept fut encouragée par l'incorporation des autorités traditionnelles au système de gouvernement local et de gestion de la terre selon leur légitimité supposée, par la continuité de leur rôle dans la gouvernance locale, et par leur meilleure connaissance des situations et des besoins locaux[1091]. En essayant de définir le champ de leur autorité et leurs juridictions, le concept de 'communauté' s'ethnicise, suite à l'héritage colonial et à celui de la guerre. Cette ethnicisation est aggravée par l'attribution aux chefs locaux de fonctions qui touchent la réglementation de l'accès à certaines ressources et par la superposition des sphère coutumière et sphère bureaucratique de l'État. Étant donné que le droit d'autogouvernement et d'accès à la terre sont garantis par les autorités traditionnelles, 'l'appartenance' à un chef est nécessaire pour être reconnu en tant que membre d'une communauté, et bénéficier de ses droits collectifs qui sont reconnus par l'État. La prolifération des chefferies et des unités administratives peut être expliquée dans cette perspective : elle répond à la tentative d'être visible aux yeux de l'État et d'être inclus dans le jeu de distribution des ressources. En réalité, il y a en même temps une fragmentation horizontale de la société qui est revendiquée par le bas, tout en étant fonctionnelle au mode de gouvernement du SPLM.

Le cinquième chapitre analyse la fourniture de services publics en tant qu'instrument de *state-building* dans le contexte sud soudanais dès la fin de la guerre civile. Ce contexte est caractérisé par une forte présence d'agences humanitaires et de développement. La fourniture de services publics est en effet

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[1088] Naseem Badiey, *The State of Post-Conflict Reconstruction: Land, Urban Development and State-Building in Juba, Southern Sudan* (Boydell & Brewer Ltd, 2014).

[1089] Dele Olowu and James Stevenson Wunsch, *Local Governance in Africa: The Challenges of Democratic Decentralization* (Boulder: Lynne Rienner Publishers, 2004); Gordon Crawford and Christof Hartmann, *Decentralisation in Africa: A Pathway Out of Poverty and Conflict?* (Amsterdam University Press, 2008).

[1090] Wolfram Lacher, "South Sudan: International State-Building and Its Limits," *German Institute for International and Security Affairs*, Research Paper, 4 (February 2012), http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2012_RP04_lac.pdf; A. de Waal, "When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan," *African Affairs* 113, no. 452 (July 1, 2014): 347–69, doi:10.1093/afraf/adu028.

[1091] Olowu and Wunsch, *Local Governance in Africa*.

devenue une sorte de 'nouvelle frontière' des programmes de construction de l'État, où les projets de développement 'traditionnels' (éducation, fourniture d'eau, projets sanitaires, construction d'infrastructures) rencontrent les projets de *capacity-building* destinés à rendre plus durables les institutions locales. Un nombre croissant de bailleurs de fonds s'est concentré sur la capacité de fourniture des services publics dans les États 'faibles' comme forme de soutien de leur légitimité aux yeux des populations locales, pour réduire le risque de révoltes contre des institutions inefficaces. Dans un contexte caractérisé par l'attention au renforcement des systèmes de gouvernement décentralisés, la responsabilité de la fourniture des services publics est attribuée aux gouvernements locaux étant donné leur fonction de « rendre l'État visible à ses citoyens »[1092].

Le chapitre se focalise notamment sur le « kaléidoscope des attentes populaires »[1093] autour de la fourniture des services publics et sur l'impact qu'ont les stratégies d'accès aux services de la population sur le processus de formation de l'État. Dans le Sud Soudan d'après-guerre, les attentes d'un meilleur accès aux services de base étaient très élevées. L'opinion publique était convaincue que le nouveau gouvernement sud soudanais avait la responsabilité d'indemniser la population locale pour ses efforts pendant la guerre, qui avaient permis d'obtenir l'autonomie régionale et l'indépendance, ainsi que l'ascension du SPLM au pouvoir. Dans l'imaginaire collectif de la population, l'État est donc devenu un synonyme de la fourniture des services publics et, plus généralement de distribution des ressources. Peu importe que ces ressources proviennent effectivement de l'État ou des acteurs externes : l'important pour y accéder est de pouvoir démontrer son appartenance à l'État par le biais de l'une de ses structures. À travers un cas d'étude dans le comté de Yirol West (état de Lakes), le chapitre montre les efforts des communautés locales pour accéder aux services avec des stratégies qui reflètent la compréhension locale des mécanismes de distribution. Le chapitre souligne notamment la façon dont l'État est 'utilisé' pour revendiquer un accès direct à l'arène de négociation où les ressources 'externes' sont attribuées, à travers l'appropriation de ses structures définies dans le cadre des programmes de *state-building* : les unités administratives locales, les cours régionales, les chefs exécutifs. Les pratiques discursives mises en place par les acteurs engagés dans ces efforts (fonctionnaires du gouvernement local, autorités traditionnelles) reproduisent

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[1092] Steven Van de Walle and Zoe Scott, *The Role of Public Services in State- and Nation-Building: Exploring Lessons from European History for Fragile States*, University of Birmingham, Governance and Social Development Resource Center, 2009, p.9

[1093] Thomas Bierschenk and Jean-Pierre Olivier de Sardan, eds., *States at Work: Dynamics of African Bureaucracies*, Africa-Europe Group for Interdisciplinary Studies, volume 12 (Boston: Brill, 2014). p. 402

celles qui caractérisent les pratiques internationales et gouvernementales sur l'efficience technique de la décentralisation et de la fourniture des services publics. Elles produisent des pratiques de fragmentation pour accéder à une reconnaissance (et un financement) extraverti sous la supervision d'autorités locales complaisantes. L'exigence d'accroître l'accès aux services essentiels pour les rendre plus équitables, d'encourager des processus participatifs et d'identifier des intermédiaires fiables avec les communautés rurales ressort clairement des entretiens avec les chefs et les administrateurs locaux. Ceux-ci, en soutenant les requêtes avancées par les autorités traditionnelles de créer de nouvelles unités administratives, montrent qu'ils sont bien conscients de l'"idéologie communautaire' qui caractérise la rhétorique des bailleurs de fonds, ainsi que de leur rôle d'intermédiaire supplémentaire entre les acteurs 'externes' et les chefs traditionnels. Dans un contexte caractérisé par le manque de ressources, dominé par les discours sur la décentralisation et sur l'autonomie locale, les sud soudanais « se sont rendus compte que leur 'communauté' officiellement reconnue et leurs chefs locaux peuvent être un levier grâce auquel obtenir les conditions les plus favorables pour interagir avec l'état »[1094], non pas uniquement du point de vue de l'accès aux ressources, mais aussi de celui de la représentation politique. Alors que l'accès aux ressources est pensé à travers une relation personnelle avec les 'fils de la terre' qui occupent des positions de pouvoir, les programmes internationaux de soutien à la fourniture des services publics élargissent ce que Bergamaschi appelle « l'accès bureaucratique aux ressources »[1095]. L'idée que des ateliers, comités, processus de planning et formulation de budgets représentent des outils indispensables à inclure parmi les bénéficiaires des ressources publiques se renforce. Toutefois, le pouvoir réel est tenu bien à l'écart de ces espaces 'invités' de négociation, contrôlés par ceux qui ont l'autorité de reconnaître officiellement les 'communautés'.

Le sixième chapitre examine l'application du concept de communauté au foncier, en se focalisant sur la convergence entre la rhétorique du SPLM et celle des bailleurs de fonds. L'accent sur le concept de communauté au Sud Soudan dérive certes des préoccupations liées à la diminution de la pauvreté et des stratégies basées sur la participation par le bas (formelle) au processus de développement et de prise de décisions, mais il semble recréer un autre mécanisme : un scénario similaire à celui des territoires ethniques coloniaux, pensé en fonction de la compréhension de la société locale aux yeux de

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[1094] Leonardi, *Dealing with Government in South Sudan*. p. 182

[1095] Isaline Bergamaschi, "Building State Capacities? The Case of the Poverty Reduction Unit in Mali," in *States at Work. Dynamics of African Bureaucracies, by J.P. Olivier de Sardan & T. Bierschenk*, Africa-Europe Group for Interdisciplinary Studies 12 (Leiden: Brill, 2014), 271–99.

l'appareil étatique. Avec la réforme du foncier au Sud Soudan, l'État reconnaît la légalité des droits coutumiers des 'communauté locales' dans les zones rurales, en les reconnaissant en tant que propriétaires légitimes de la terre dans leurs respectives 'zones d'origine'. Les termes utilisés restent intentionnellement indéfinis : le même concept de 'communauté locale' n'est jamais clarifié ni dans le Land Act (2009), ni dans le brouillon de la Land Policy qui depuis 2011 est en discussion au Parlement. L'interprétation pratique qui s'est affirmée depuis 2005, avec la légalisation du principe que 'la terre appartient au peuple' dans l'Interim Constitution of Southern Sudan, a produit un chevauchement entre l'unité administrative (*payam* et *boma*, mais parfois aussi comté) et la 'communauté'.

La communauté reste également centrale pour l'administration de la terre dans les zones urbaines, où la bureaucratisation des relations terriennes s'accroît et où la propriété communautaire croise la propriété individuelle réglée par les institutions statutaires et par les lois du marché. Dans ces zones, la coexistence de l'appareil légal-rationnel bureaucratique et l'accent sur l'importance de la communauté avec ses valeurs locales et traditionnelles est encore plus marquée, surtout quand il s'agit de négocier la transition de la terre de son statut 'rural' à son statut 'urbain'. En réalité, la distinction entre urbain et rural est problématique au Sud Soudan étant donné le caractère très mobile et flou de cette frontière[1096], mais c'est précisément sur cette frontière que l'identité ethnico-politique est activée dans toute sa puissance[1097].

Le fait que la réforme de la terre ne soit pas appliquée de façon cohérente et totale est souvent attribué aux décalages dans les lois ou au manque de capacités et de compétences techniques du personnel qui devrait s'occuper de sa réalisation. Pourtant cela ne signifie pas que la réforme soit ignorée par les acteurs locaux, mais plutôt, encore une fois, qu'elle fournit des ressources matérielles et des discours qui peuvent être utilisés de manière sélective, en créant une 'gouvernance réelle'[1098] de la terre. Les gouvernances réelle et formelle se fondent sur les mêmes principes : que la 'terre appartient au peuple'[1099], qui est divisé en communautés avec une forte connotation politique en fonction de leur correspondance avec les unités administratives et du gouvernement local. S'il est vrai, comme le dit Catherine Boone, que le régime

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[1096] Leonardi, *Dealing with Government in South Sudan*.

[1097] Jocelyn Alexander, *The Unsettled Land: State-Making & the Politics of Land in Zimbabwe, 1893-2003* (Oxford : Harare [Zimbabwe] : Athens, Ohio: James Currey ; Weaver Press ; Ohio University Press, 2006); James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Yale University Press, 1998).

[1098] Jean-Pierre Olivier d Olivier de Sardan, *Researching the Practical Norms of Real Governance in Africa* (Overseas development institute (ODI), 2008).

[1099] Cette phrase occupait une place très importante dans la propagande du SPLM pour renforcer l'idée que les ressources sud soudanaises appartenaient à la population locale.

de propriété foncière reflète la structure de la politique[1100], on peut aussi affirmer qu'au Sud Soudan la structure de la politique est influencée par le régime de la propriété foncière. Ou du moins, qu'il y a une influence réciproque, surtout vu que le foncier a été reformé avec le soutien très marqué des forces externes dans le cadre d'une entreprise de *state-building* ayant pour objectif de changer la réalité politique et économique locale.

La formalisation des droits coutumiers communautaires, établie par l'Interim Constitution et puis par le Land Act, a renforcé les revendications terriennes sur la base de l'appartenance ethnique, en laissant la définition de 'communauté locale' à l'héritage de la catégorisation ethnique de la population rurale. En analysant les dynamiques d'inclusion et d'exclusion d'accès à la terre, dans son acception politique et spatiale de territoire et dans le sens économique de ressource productive, le chapitre se focalise sur deux typologies de dynamiques : dynamiques verticales et dynamiques horizontales. Les premières naissent à l'intérieur d'un groupe défini en termes de 'communauté', dans la négociation avec des acteurs extérieurs qui appartiennent à la sphère institutionnelle formelle, et concernent les relations de pouvoir et la différentiation interne. En revanche, les secondes se développent entre des entités qui se reconnaissent mutuellement en tant que communautés, avec leurs limites : des limites physiques, identifiant l'espace, qui correspondent souvent à une unité administrative, dont la communauté est propriétaire et où elle a le droit de vivre ; et des limites symboliques, identifiant l'appartenance à la communauté et l'usage de différentes pratiques discursives pour légitimer la propriété ou l'accès à la terre. Ces dynamiques correspondent à deux tendances de fragmentation horizontale et de patronage vertical qui influencent les stratégies de la population locale d'accès à la terre.

L'interaction, décrite par cette thèse, entre *state-building* et *state-formation*, et entre tous les acteurs qui participent à ces deux processus, peut être rapprochée des questionnements sur la relation entre l'*agency* des acteurs locaux et la structure déterminée par les interventions internationales de construction de l'État, qui tirent leur origine du contexte mondial inquiet du maintien de la stabilité et du renforcement du système de gouvernance néolibérale. En essayant d'atteindre ces objectifs, les réformes sont systématiquement dépolitisées et même l'institution de gouvernements locaux est présentée sous l'apparence technique du *capacity-building*, comme si la politique n'était pas du tout impliquée. D'un certain point de vue, l'émergence des communautés en tant que sujet ayant des droits collectifs répond à l'exigence d'affaiblir le rôle de l'État en ne lui attribuant qu'un rôle de

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[1100] Catherine Boone, *Property and Political Order in Africa: Land Rights and the Structure of Politics* (Cambridge University Press, 2014).

coordination, déléguant au contraire la fourniture de services publics et la gestion de l'accès aux ressources à des entités de nature hybride entre public et privé. Pourtant, l'idée de l'État reste extrêmement forte dans l'imaginaire collectif de la population sud soudanaise, et elle s'exprime avec l'effort constant d'être reconnu dans la structure étatique (par exemple, à travers la création de nouvelles unités administratives). Cependant, c'est toujours l'État au niveau central qui garde le pouvoir de reconnaître officiellement l'existence d'une communauté, et les intérêts en jeu dans cette opération de reconnaissance vont bien au-delà de l'efficience administrative. Les discours sur l'efficience et l'efficacité de l'administration servent à définir un sujet communautaire dans le cadre des politiques de soutien à l'autogouvernement, à la fourniture de services et à l'accès à la terre. Ils créent ainsi une repolitisation de fait du processus de *state-building*[1101] à travers l'appropriation de ces discours par la population locale des autorités traditionnelles.

Au Sud Soudan, la construction de l'État, au sens où cette thèse a essayé de le présenter, a provoqué une augmentation de l'ethnicisation de la politique. Cela ne signifie pas qu'il n'y avait pas de rivalités ethniques et poussées centrifuges indépendamment des 'interférences externes' dans l'État sud soudanais. Néanmoins, en citant Bierschenk, Doornbos souligne le manque de conditions politico-matérielles de soutien au développement d'une identité nationale unique supérieure aux affiliations ethniques dans le continent Africain[1102]. En effet, la superposition des limites administratives à celles communautaires auxquelles l'accès au pouvoir et aux ressources a été lié, ne constitue certes pas un avantage dans ce sens.

En cherchant un équilibre difficile entre *agency* et structure, cette thèse a cherché à se tenir à équidistance entre une perspective qui voudrait attribuer le résultat du processus de construction de l'État sud soudanais entièrement aux limites structurelles imposées par le système international et par l'héritage du processus historique de formation de l'État dans la région ; et une perspective qui, au contraire, attribue entièrement la 'faillite' de l'État sud soudanais à la corruption des élites locales ou au 'tribalisme' du 'peuple' (comme le font souvent les membres de la diaspora sud soudanaise)[1103]. Cette thèse a essayé

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[1101] Graham Harrison, *Neoliberal Africa: The Impact of Global Social Engineering* (London ; New York: Zed Books, 2010).

[1102] Bierschenk, Thomas (2003) 'Staat und Nation im postkolonialen Afrika: Ein Forschungsprogramm' ['State and Nation in Post-colonial Africa: A Research Programme']. Working Paper No. 26. Mainz: Johannes Gutenberg Universitat, Institut f ̈ ur Ethnologie und ̈ Afrikastudien.), quoted in Martin Doornbos, "Researching African Statehood Dynamics: Negotiability and Its Limits," *Development & Change* 41, no. 4 (July 2010): 747–69,.

[1103] Il suffit de regarder les articles d'opinion souvent publiés entre autres par le Sudan Tribune et par le Gurtong Project, et les commentaires des lecteurs de ces articles, ou publiés sur les réseaux sociaux par les Sud Soudanais à l'étranger.

plutôt de combiner certains éléments des deux perspectives : d'un côté des projets de *state-building* standardisés, qui entraînent un certain type de discours ; de l'autre, une élite locale principalement préoccupée par le maintien du pouvoir. Au-delà de ces deux éléments, il y a aussi des milliers de Sud Soudanais qui agissent dans leurs vies quotidiennes en fonction de leur compréhension des changements sociaux, politiques et économiques du pays. Ils agissent en considérant leurs expériences passées et les nouvelles opportunités créées par des scénarios qui changent rapidement, dont le processus de formulation de lois et de politiques constitue une partie importante. Leur contribution au processus de formation de l'État est peut-être la plus importante, car ils bénéficient de la vulgarisation du pouvoir encouragée par l'intervention du *state-building*. Ce sont eux, aussi, qui se tournent vers le 'tribalisme politique'[1104] quand les 'règles du jeu' font de l'ethnicité une caractéristique fondamentale pour accéder à la distribution des ressources étatiques.

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[1104] John Lonsdale, "Moral Ethnicity and Political Tribalism," *International Development Studies Occasional Paper*, no. 11 (2014): 131–50.