



**MAKING ORDER
OUT OF DISORDER**
CUSTOMARY
AUTHORITY IN
SOUTH SUDAN



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Map 1. (above) South Sudan

RIFT VALLEY INSTITUTE
SOUTH SUDAN CUSTOMARY AUTHORITIES PROJECT
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Making Order Out of Disorder: Customary Authority in South Sudan

CHERRY LEONARDI



Schweizerische Eidgenossenschaft
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The Rift Valley Institute (www.riftvalley.net) works in eastern and central Africa to bring local knowledge to bear on social, political and economic development.

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SOUTH SUDAN CUSTOMARY AUTHORITIES (SSCA) PROJECT

RVI's South Sudan Customary Authorities Project seeks to deepen the understanding of the changing role of chiefs and traditional authorities in South Sudan.

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COVER: A chiefs' meeting in South Sudan.

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Map 1. South Sudan

inside front cover

Executive Summary

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South Sudan's customary authorities—mostly, but not exclusively, termed as chiefs—were first formalized during the colonial period and became important intermediaries between South Sudanese communities and government officials. Later, during the conflicts between the government of Sudan and southern rebels, chiefs played a role as brokers between the rebels and local populations.

During the transition period that followed the Comprehensive Peace Agreement in 2005, and before South Sudan's secession in 2011, significant thought was given to defining the role of customary authorities within South Sudan's statebuilding project. This was interrupted by the country's civil war from late 2013, which shifted the focus towards humanitarian activities.

Chiefs, however, remain an important institution within local government and justice, where the country operates a hybrid system (combining both government and customary roles and laws). The vast majority of legal cases in South Sudan are handled by chiefs' courts, giving them considerable power and status within local government. But the capacity of chiefs to enforce court decisions and resolve local conflicts is limited without government support.

Chiefs have been valued for bringing a degree of order and regularity to relations with governments or military forces. But these relations have often been fraught and have also generated disorder, entangling chiefs in political and military conflicts. The most successful chiefs are also skilled politicians and adaptable alliance-builders, which enables them to operate effectively within a complex and often dangerous political environment.

Since the colonial period, chiefs have been dependent on governments recognising their intermediary role and making their authority effective. Yet the longstanding hybrid nature of their role means that chiefs have not simply become civil servants, but have continued to be recognised as customary authorities.

Chiefs play a leading role in defining custom. But custom is also a much broader resource for many other people to use in pursuit of moral and social order. Customs are continually discussed, debated and developing in changing contexts. History is also told and retold to make sense of the present.

The norms and values that create a sense of community have to continually be produced by the efforts of many different people, from religious leaders, community elders and teachers to associations of women, youth, or refugees. These traditions are expressed in range of forms, including the retelling of historical narratives and the recourse to divine explanations for events. Such explanations can be deeply political in their critique of the current order.

While much policy and analysis assumes that ethnic communities are the basis of customary authority in South Sudan, the reality is more complicated. Chiefdoms were established in the colonial period as territorial units smaller than tribes and sometimes including multi-ethnic populations. Urbanisation has also led to innovative practices and institutions for handling multi-ethnic disputes. To fully understand identity in South Sudan it is necessary to go beyond ethnicity and appreciate its many different forms, including clans, sections, age-sets, urban communities and spiritual leadership.

In a context of ongoing political uncertainty, economic hardship and humanitarian need, it is important to recognise the value of less tangible resources held and generated by South Sudanese, as they draw on deep historical, spiritual and cultural sources of inspiration and identity to try to forge a sense of order even in the midst of conflict and displacement.

Yet custom should not be romanticised: it can be used to define communities in exclusionary ways, to preserve patriarchal structures and to exert control over people. Making communities can also mean making boundaries, and differences in customs and cultures can be accentuated to incite division and conflict.

It is therefore all the more important to explore the deeper and more complex histories beneath any simplistic views of cultural traditions and customary authorities. These histories often reveal the commonalities, movements and dynamism of customs and cultures across and beyond South Sudan. They reveal shared cultures of dialogue and expression through speech, song, story, ritual and performance—a crucial resource for peacemaking.

While customary authority is embedded in South Sudanese life, it is not a static system of governance or affiliation. There is real worth in bringing together South Sudanese, without an overly proscriptive agenda, to discuss the current role and future of customary authorities in their country today.

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Introduction

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In recent years, South Sudan's internal conflicts have left little room for discussion of local government, justice or customary authority. In terms of South Sudanese and international state-building efforts, these issues were much more prominent in the interim period between the signing of the Comprehensive Peace Agreement (CPA) in 2005, which brought the war with Khartoum to an end, and the secession of South Sudan in 2011.

In the years since, national and international interest has increasingly focused on humanitarian assistance, peace negotiations and transitional justice, with customary authority considered primarily in terms of the role it might play in peacebuilding. Yet initiatives to harness this role in peace talks or bottom-up reconciliation have been limited and piecemeal. Chiefs—the most conspicuous form of customary authority—tend to complain of their declining status and consequent lack of authority in the face of guns, displacement and disrespectful youth.¹

This is not the first time that chiefs have bemoaned their authority being undermined by militarization, migration and modernization. Similar narratives were recorded in the run-up to the CPA, as well as in earlier periods.² However, the subsequent constitution and legislation of the emergent South Sudanese state gave chiefs a prominent role in local government and justice, enshrining custom as a source of law and identity.³ How should accounts given by chiefs of declining power be reconciled with the continuing resilience of customary authority?

The Rift Valley Institute's project on South Sudan's Customary Authorities (SSCA)—supported since 2015 by the Swiss Federal Department of Foreign Affairs—is a long-running attempt to explore this question. The research reports produced thus far by the project demonstrate that the resilience of customary authority cannot be understood simply as the preservation of unchanging traditions, which have somehow been protected from socio-economic change, state governance, war and displacement. To the contrary, the individuals and institutions that appear in these reports demonstrate that the survival and success of customary authority requires adaptability, political knowhow and a capacity

1 Rift Valley Institute, 'Now We Are Zero: South Sudanese chiefs and elders discuss their roles in peace and conflict', London: Rift Valley Institute, 2016.

2 UNDP Traditional Authority studies, 2005. In the 1930s and 40s, chiefs and elders were reportedly complaining about their loss of control over young men as the latter gained access to independent income from waged labour, see: Cherry Leonardi, *Dealing with Government in South Sudan: Histories of Chiefship, Community and State*, Woodbridge: James Currey, 2013, 74-6.

3 Government of Southern Sudan, 'Interim Constitution of Southern Sudan 2005', Ch. 1(5c), Ch. 174-5; Government of South Sudan, 'Transitional Constitution of the Republic of South Sudan 2011', Ch. 1(5b), Ch. 166-7; Government of Southern Sudan, 'Local Government Act 2009'.

to make alliances. A defining characteristic of the institution of chiefship is how rooted it is in relations with government.

Through economic, military and political brokerage, chiefs have worked at turning potential sources of weakness into sources of strength. Such sources of strength, however, can also become weaknesses, as armies win or lose, governments come and go, and economic circumstances change. Playing the role of chief has always involved fragility and strain, which explains why themes of sacrifice and suffering are often prominent in their historical narratives.⁴ Even so, the chiefs' story is one of political opportunism and skilfully playing the roles of intermediary. This role has been institutionalized over a long period of time, with many individual chiefs belonging to and/or being backed by established local judicial, governmental and police bodies, as well as powerful families and elites.

By exploring the political (and military) strategies of prominent chiefs, the reports by Kindersley, Felix da Costa, and Pendle and Chirriolo provide an important corrective to the romanticization of customary authority, particularly with regard to sources of legitimacy and the supposed neutrality of chiefly power.⁵ The reports also demonstrate the wider benefits that can arise from chiefs acting as brokers in their communities. But perhaps most importantly, all of the reports in the SSCA series demonstrate that customary authority is not limited to chiefs, and that chiefs are not the only custodians of customs and history.

In the context of the conflict, displacement and economic crisis currently blighting South Sudan, it is natural to focus on material needs and resources. It is equally important to recognise, however, that regardless of the context, people need communal memories and visions of a better life to sustain and empower them. Custom is a powerful source of political ideology, social control and moral regulation, and thus a valuable resource for constructing authority and community.

As the reports by Braak and Kenyi, Ryle and Machot, and Jedeit and Pendle show, custom and tradition can be invoked by the speeches, songs, writing and actions of a wide range of people.⁶ This in turn generates a sense of belonging and moral direction. While the communicated ideals may seem distant from the harsh realities of daily life, these words nevertheless retain power.

In Yirol, for example, the ideal of *kong koc* (restraint) has become a point of identity, action and pride around which different groups can coalesce to make peace. In the western Nuer area, a

4 Cherry Leonardi, 'Violence, sacrifice and chiefship in Central Equatoria, Southern Sudan', *Africa 77/4* (2007): 535–58.

5 Nicki Kindersley, 'Politics, Power and Chiefship in Famine and War: A study of the former Northern Bahr el-Ghazal State, South Sudan', London: Rift Valley Institute, 2018; Diana Felix da Costa, 'Changing Power Among Murle Chiefs: Negotiating political, military and spiritual authority in Boma State, South Sudan', London: Rift Valley Institute, 2018; Naomi Pendle and Chirriolo Madut Anei, 'Wartime Trade and the Reshaping of Power in South Sudan: Learning from the market of Mayen Rual', London: Rift Valley Institute, 2018.

6 Bruno Braak and John Justin Kenyi, 'Customary Authorities Displaced: The experience of Western Equatorians in Ugandan refugee settlements', London: Rift Valley Institute, 2018; John Ryle and Machot Amuom, 'Peace is the Name of Our Cattle-Camp: Local responses to conflict in Eastern Lakes State, South Sudan', London: Rift Valley Institute, 2018; Jedeit J. Riek and Naomi R. Pendle, 'Speaking Truth to Power in South Sudan: Oral histories of the Nuer prophets', London: Rift Valley Institute, 2018.

female prophet has used ideals of moral community and custom to mobilize armed youth. In Ugandan refugee settlements, some people use an idealized past under Zande kings in order to recreate a sense of community. Far from being a dusty relic of history, custom is constantly being (re)created as people attempt to evoke a better future.

What emerges most clearly from these and other reports is that both the institutions and ideals of customary authority represent attempts to create order, often within contexts of disorder.⁷ Whether this takes the form of chiefs negotiating more regularized military requisitions, or traditional youth organizations being created, such attempts can help restore a sense of agency to people caught up in larger dynamics, often beyond their control.

These strategies often intersect with other sources of order, however, particularly those emanating from government and military forces. Attempts by chiefs to impose order may thus entail the adoption of aspects of military discipline, while alternative authorities may seek to create a new order through armed rebellion. Furthermore, the fact that ideas of custom and tradition are often harnessed in the promotion of ethnic identities is at least partly the outcome of successive governments' use of the tribe as an organizing category.⁸ This means attempts at bringing order can in turn produce division, conflict and disorder. It is nevertheless crucial to recognise that, often through recourse to custom and tradition, people are constantly striving to (re)impose a sense of order amidst war and economic crisis.

⁷ See also Wal Duany, 'Neither Palaces Nor Prisons: The Constitution of Order Among the Nuer', PhD dissertation, Indiana University, 1992.

⁸ Edward Thomas, *South Sudan: A Slow Liberation*, London: Zed Books, 2015, 19, 96–8.

Overview of Customary Authority in South Sudan

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A common theme running through all the SSCA reports is the plurality of customary authority in South Sudan. This ranges from family heads, elders and the collective leadership of generational age-sets, cattle camps or councils of elders, to individual spiritual and ritual authorities and the hierarchical structures of chiefs and headmen. Meanwhile, newer associations claiming to preserve and propagate ethnic or community custom and identity have formed over recent decades. These often involve former or current politicians, government officials and those known as intellectuals by virtue of their education and language skills.

The activities of NGOs have resulted in new terms—such as opinion leaders—for influential local figures who play a role in defining community custom, as well as selecting and advising more formal authorities. Church leaders, teachers, NGO employees, local government officials and wealthy businessmen may all similarly play an informal role in community governance and politics. Local authority is, in practice, hybrid, with the dividing line between state and non-state actors often blurred.

This hybridity is epitomised in the fact that chiefs act as both customary authorities and local government personnel. The term customary or traditional authority is most commonly applied to chiefs, yet the specific institution of government chief originated in the British colonial period (1899–1956).⁹ While some of the chiefs appointed by the colonial administration might have held or had some relation to existing forms of authority, others were former colonial interpreters, police, soldiers, or younger subordinates pushed forward by existing authorities to talk to the colonial forces. In vernacular languages they became known as ‘chiefs of the government’ and were given their own armed police and warranted courts. They were expected to collect taxes and enforce the orders of the colonial government, and in return they received salaries or were allowed to keep a proportion of the taxes they collected. They soon came to be among the wealthiest and most powerful men in their areas, and their sons were the first to be educated in the Christian missionary schools.

9 See also Y. Wawa, ‘The Kakwa Land Question and the Role of Chiefs’, unpublished report; Ohide Johnson Paul and Elizabeth Hodgkin, ‘Chiefs, Church, Women and Warriors: Searching for Peace and Reconciliation in Equatoria’, unpublished report.

During the Sudanese civil wars, chiefs managed relations with the government and rebel forces, often organizing supplies and conscripts for the latter. Some chiefs were directly appointed by the rebel Sudan People's Liberation Army (SPLA) military authorities.

Though the power enjoyed by chiefs is generally regarded as having diminished since the colonial period, chiefly families have produced many of the leading politicians, intellectuals and government elites of South Sudan. To ordinary people, the chief represents the *hakuma* (government) in the local community, albeit with a more recognisable face than the more distant government officers.¹⁰ At the same time, chiefs have often been treated by government or outsiders as spokesmen for their people, and even as more authentic representatives of communities than MPs or local councillors, reflecting the limits of democratic governance in South(ern) Sudan's history.

Chiefs have never governed so-called 'tribes'. Despite the British assumption that African society was tribal, the colonial authorities soon discovered that tribes were not unified political entities with discrete territories. Instead, chiefs were appointed to administer smaller sections, villages or clans. The colonial government also introduced the hierarchy of chief, sub-chief and headman, which still endures today (more recently these positions and the units they represent have been further subdivided, meaning their numbers have greatly proliferated).

The old colonial-era chiefdoms would have equated to what is now a *payam* or even a county, but nowadays chiefdoms tend to equate (or approximate) to the smaller *boma* administrative unit. Chiefs at the *payam* or county level are usually now termed head or paramount chiefs, while chiefs at all levels have retained their dual administrative and judicial authority, first granted by the colonial government with the 1931 Chiefs Courts Ordinance.

How are chiefs selected and appointed?

The colonial government encouraged the idea of hereditary rule, deliberately targeting the sons of chiefs for mission schooling. While the idea of electing chiefs has taken hold since the 1970s, the idea is very loosely interpreted. While in some areas, hereditary succession has been abandoned, in other areas the selection will often be limited to men belonging to the hereditary line of chiefs. Even so, this can still lead to a considerable pool of candidates,

¹⁰ Leonardi, *Dealing with Government*; Martina Santschi, 'Encountering and "Capturing" Hakuma: Negotiating Statehood and Authority in Northern Bahr El-Ghazal State, South Sudan', PhD dissertation, University of Bern, 2016.

and it is by no means automatic that the former chief's son will be chosen. In some areas, or on occasions when there are a number of suitable candidates, an election may be held, in which candidates stand at the front and supporters line up behind them.

At the other end of the scale, there are said to be instances where county commissioners (or former military commanders) have simply appointed their preferred candidate. It is clear that government appointees without sufficient local backing are generally unable to meet the needs of the government, meaning that most local government officers have acknowledged the need to consult with communities over the selection of chiefs. This consultation rarely involves, however, the mass participation of the chiefdom's population, and many chiefs still come from hereditary chiefly families.

What role do chiefs play in justice?

In common with the position of chief, the justice system in South Sudan is similarly hybrid, recognising custom as a source of law, and often blending statutory and customary legal principles and practices.¹¹ This means that rather than there being a clear distinction between statutory and customary courts, a spectrum of laws and practices exists across the hierarchy of courts. The vast majority of cases in South Sudan are handled by chiefs' courts. These have long functioned as the lowest tiers of the judicial hierarchy, rather than as a separate customary system, and are understood as such by most people.

Customary law is not a fixed set of rules, but rather a process of negotiating settlements based on certain underlying principles fundamental to local socio-economic systems, such as the institution of marriage and bride-wealth, or the entitlement to compensation. Aspects of criminal law have, though, long been mixed in to the laws used by chiefs, and chiefs' courts—particularly in and around the towns—often work closely with the police, including having their own court police seconded to them. Chiefs' courts hear criminal and civil cases without much distinction, and tend to combine punitive sentences with awards of compensation. Where a county court exists, chiefs' courts may forward cases onto it, and vice versa, and litigants can appeal chiefs' court decisions in the county court.

Despite such linkages, the chiefs' courts are governed by the Local Government Act rather than the Judiciary Act, as chiefs form

11 Cherry Leonardi et al., 'Local Justice in Southern Sudan', Washington, DC: United States Institute of Peace and Rift Valley Institute, 2010; David K. Deng, 'Challenges of Accountability: An Assessment of Dispute Resolution Processes in Rural South Sudan', South Sudan Law Society, 2013; Rachel Ibreck, Hannah Logan and Naomi Pendle, 'Negotiating Justice: Courts as local civil authority during the conflict in South Sudan', Justice and Security Research Programme, London: LSE, 2017.

part of the decentralised local government system, within which they are accountable to county commissioners. The Act recognises a simple hierarchy of chiefs' courts, existent since the colonial period, albeit now structured according to South Sudan's local government units of counties, *payams* and *bomas* (see Box 1):

**Box 1. Local Government Act 2009:
Customary Court Structure (in theory)**

County Customary Law Council (not known to be functioning)

'C' Court—County Level Paramount Chief (variable functioning)

- Head Chiefs as members
- Hears appeals from 'B' courts and can be appealed to County Judge
- Criminal cases referred by statutory courts; 'cross-cultural' civil suits
- Supervised by County Commissioner (*not* Judiciary)

'B' (Regional) Court—Head Chief (Payam level)

- Chiefs as members
- Hears appeals from 'A' courts and can be appealed to 'C' court
- Major customary disputes (incl. land); minor public order cases
- Supervised by Paramount Chief

'A' (Chief) Court – Executive Chief (Boma level)

- Sub-chiefs as members
- Can be appealed to the 'B' Court
- Family/marriage cases, 'traditional feuds', 'local administrative cases'
- Supervised by the Head Chief

At each level, courts function as panels of chiefs, sub-chiefs, headmen or other elders. While the leading chief may pronounce the decision, he does not usually hear or decide cases alone. Where chiefs' courts enjoy proximity and good relations with the police, they have greater means of enforcing decisions, which can in turn render their courts more popular among complainants.

Generally, though, chiefs report limited capacity for enforcement, particularly in relation to powerful individuals and interests, or in relation to dealing with intercommunal fighting and killing.

Are chiefs a form of civil society?

It has often been convenient for both government authorities and international or national agencies to treat chiefs as spokespeople for their communities, and to assume they are the most legitimate form of authority at the local level. There is a basis for such assumptions. Many people express considerable loyalty to their chiefs and compare them favourably with higher government officials. Certain chiefs in particular have become widely respected for defending community interests. Most importantly, chiefs generally retain closer connections to rural communities than the urban, educated elite that tend to make up the civil society organizations recognised by international agencies, and so better understand their everyday life and concerns.

The paradox is that to effectively represent their communities, chiefs need either effective and amenable local government structures to channel their concerns upwards and outwards, or else their own political connections with urban, educated elites, as well as with government and international agencies. This may lead to them becoming increasingly detached from rural life. There is frequently tension over the selection or behaviour of chiefs, and intense personal or factional politics within and between chiefdoms. Local people do not necessarily feel they are represented by their chief, even if they are willing to express allegiance to him in certain contexts. Local-level elites and politics are also intertwined with higher-level power and politics. The most prominent chiefs tend to have close personal or familial relations with military and government officers at the state, or even national, level.

When chiefship is described as a customary institution, it can give rise to misleading assumptions about its legitimacy and separation from the state. All local-level authorities are, and always have been, fundamentally political. They reflect and embody local hierarchies and elites, which may have connections to powerful patrons at higher levels. This is not to say that chiefs are simply government puppets, as they are often outspoken critics of government and stubborn defenders of local interests. Being a successful chief requires considerable connections and political savvy, while chiefdoms are divided by status, wealth and factional

politics just as higher levels of government are. As the SSCA reports clearly demonstrate, that which is described as traditional is just as political and contested as any other aspect of government.

Customary Authorities as Brokers

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Across South Sudan, oral histories and traditions emphasise the plurality of pre-colonial authority, often confounding external attempts to impose a catch-all understanding of customary power structures. As Diana Felix da Costa writes in her report on the Murle, the challenge for government and outsiders has been not the absence of authority structures, but their abundance.¹²

Long-distance traders and imperial forces, on first reaching this region in the nineteenth and early twentieth centuries, assumed people were divided into tribes headed by kings or chiefs. In a context in which authority was often either wider or more localised than ethnic affiliations, and included multiple figures—such as chiefs of the rain or soil, spear-masters, war leaders, spirit-mediums and prophets, clan heads, respected elders and ruling age-sets—such attempts at identifying leaders often resulted in considerable confusion.¹³ Colonial officials often asked despairingly, which of these was the real chief? Conversely, where there was more evidence of centralised authority, such as in the Zande or Shilluk kingdoms, new government forces often perceived this as a threat.

From these situations of confusion, mistranslation and often violence, opportunities emerged for entrepreneurial individuals to forge new roles for themselves as intermediaries, allies and interpreters. The composition of their authority varied. Some were already powerful through their spiritual roles, while others acquired influence through the accumulation of guns, goods and military assistance from the foreigners.

What all such individuals had in common was the ability to negotiate some mutual benefit to both sides of these commercial and colonial encounters. Initially, this meant organizing the provision of supplies, labour and taxes to the trading and government forces, while securing a degree of protection and patronage to their communities and followers.¹⁴ This pattern has formed the basis for chiefly authority ever since, with several of the SSCA reports suggesting this has evolved into various forms of political, military and economic brokerage. Individual chiefs have acquired considerable power and profit as a result, justifying their gains on

¹² Felix da Costa, 'Changing Power'.

¹³ See also Ohide and Hodgkin, 'Chiefs, Church, Women'.

¹⁴ Leonardi, *Dealing With Government*.

the basis that it protects their people from punitive governance, military threats and other crises.

Chiefs with some schooling and/or previous experience as soldiers or police have often been best equipped to negotiate relations with military and political leaders, and even to become such leaders themselves. Figures such as Abdel Bagi Ayii Akol in Northern Bahr el Ghazal and Ismael Konyi in Boma became powerful militia leaders, exploiting their political connections or government positions to amass personal wealth and considerable patrimonial capacity.

Ismael Konyi is said to have helped pay for the marriages and school fees of ‘thousands of people’, including many now in senior government positions,¹⁵ while Abdel Bagi had ‘the power to shelter and protect’ those who ran to him: ‘If you joined him, he would award you with a [military] rank ... and also give you food.’¹⁶ In 1990s Gogrial, Chief Morris Ngor was able to exploit the relations he had forged with senior SPLA leaders at school and as an Anyanya soldier in the first Sudanese civil war to establish a thriving wartime market at Mayen Rual, which in turn made him the most powerful chief in the area.¹⁷

While there can be obvious individual benefits for chiefs, their position nevertheless depends on other people recognising the benefits of their brokerage. This is partly achieved through using patrimonial resources to attract followers and establish networks of loyalty. Chiefs, though, argue that their brokerage also brings wider benefits to the people of their area, primarily in terms of dealing with the demands of armies and governments in order to bring about some degree of order, regularity and protection. Their previous experience of, or relations with, military hierarchies can be presented as an asset, giving them the capacity to negotiate with otherwise threatening forces. This gave them a role, for example, in obtaining the release from government detention of people suspected of rebel connections. As one chief in Northern Bahr el Ghazal recalled: ‘we would go and negotiate their release from the prison in the military barracks’.¹⁸

Chiefs also claim to have enabled the safer movement of traders or migrants, managed military requisition, taxation or conscription by rebel forces on a more regularized and predictable basis, and accessed martial law and military justice to discipline individual soldiers.¹⁹ According to more senior political and military leaders from Yirol, in areas where chiefs endorse swift and strict punitive justice, military discipline can be welcomed as source of

15 Interview with John Kaka, county commissioner of Pibor South, Pibor town, 24 October 2017, cited in Felix da Costa, ‘Changing Power’, 25.

16 Kindersley, ‘Politics, Power and Chiefship’, 28–9.

17 Pendle and Chirriilo, ‘Wartime Trade’.

18 Kindersley, ‘Politics, Power and Chiefship’, 27.

19 Kindersley, ‘Politics, Power and Chiefship’; Pendle and Chirriilo, ‘Wartime Trade’.

order. There are, however, also widespread concerns that power has shifted from customary or even civil governmental authorities to those with guns.²⁰

The commonly repeated claim that chiefs have become powerless in the face of armed men is too simplistic. As several of the SSCA reports show, some chiefs have become adept at working with these armed men, and may even have taken up arms themselves. While some may have made a success of this, however, their role and strategies are risky, frequently placing them on the frontline for reprisals by one or both sides in armed conflict. Even in more localised conflicts, chiefs are often prominent targets for revenge killings. As one chief in Northern Bahr el Ghazal put it, during the SPLA war of the 1990s, 'leadership killed people. So once you are appointed to be a leader, it is then between death and living'.²¹

Aside from direct threats to chiefs attempting to negotiate with or caught between military forces, there is also a danger that chiefly legitimacy and moral authority can be undermined by such activities. During the colonial period, there was often a deliberate separation of government chiefs from other kinds of authority in many areas of South Sudan. This is often explained by the need to protect or isolate vital forms of spiritual authority from the corrupting effects of working with governments. It may also be, as some colonial officials suspected at the time, that people might feel compelled to obey the orders of certain traditional authorities and therefore did not want such figures to be in a position of issuing unwelcome government demands. Colonial officials themselves mistrusted such spiritual authorities—for example, red chiefs, rain chiefs, prophets or spear-masters—*because* their authority was inherently independent of government control and they therefore had less reason to be obedient to government.²²

Relations with government

Working with government is a risky decision, and one that can also rapidly shift from advantageous to dangerous. Even some of the most powerful chiefs, such as Ismael Konyi or Morris Ngor, have faced challenges in navigating changing economic, military and political circumstances. The decline of the market developed by Chief Morris at Mayen Rual is a striking example of how their fortunes can fluctuate,²³ with many chiefs ending up on the wrong side during wars and losing their position or lives as a result.

²⁰ Ryle and Machot, 'Peace is the Name', 45–7, 90–91.

²¹ Kindersley, 'Politics, Power and Chiefship', 27.

²² Leonardi, *Dealing with Government*, 55–9.

²³ Pendle and Chirriilo, 'Wartime Trade'.

Chiefs are not just brokers with military and political forces, however, but also with the broader aspects of *hakuma*, notably government justice, law and order. It is this that has given their role more stability and made chiefship an enduring institution. As a chief in Northern Bahr el Ghazal put it, during wartime most chiefs ‘had no protection; [it was] only law that gives [them] respect’.²⁴ Chiefs’ courts have been the primary providers of justice across South Sudan ever since their establishment in the colonial period, and it is their backing by government that distinguishes them from other forms of dispute resolution, providing greater likelihood of enforcement and restitution. One Murle chief emphasised the immediacy of government power, in contrast to the often slower working of spiritual powers:

If I want something now-now, I’ll use government force. My position in the government is what I’m now deploying. I’m working for the government. If I feel I am having some difficulties in a [court] case, I will request power from the government.²⁵

Chiefs’ access to bureaucratic power can be seen as a resource beyond their courts too, such as in the recent land dispute in Mayen Rual recounted by Pendle and Chirriilo. As one trader put it, Chief Morris ‘will use papers to get our rights’.²⁶ Chiefs can also be a vital conduit through which to access government resources, as even a young man from a self-defence force in Western Equatoria emphasised:

It is the chiefs who know and present issues to the government. Many people are far from the government and the government does not know about them or their challenges. If anything happens, the government will not know . . . It is the chief who knows.²⁷

Chiefs have in turn received legal recognition—from the 1931 Chiefs Courts Ordinance to the 2009 Local Government Act—upholding the continued judicial and executive roles of chiefs in local governance. The 2009 Local Government Act goes beyond previous legislation in describing traditional authorities as ‘semi-autonomous authorities at the State and local government levels’,²⁸ and stating chiefdoms ‘shall be the traditional community authority through which the people shall rule themselves’.²⁹ The legal powers of chiefs are thus considerable and their accountability limited, even if many struggle to assert such powers in the face of other dominant interests.

24 Kindersley, ‘Politics, Power and Chiefship’, 23

25 Interview with Chief Charburolokoli, red chief from the r̄aroti clan and paramount chief of Kongor, Pibor town, 19 October 2017, cited in Felix da Costa, ‘Changing Power’, 19.

26 Pendle and Chirriilo, ‘Wartime Trade’, 22.

27 Focus group discussion with former Arrow Boys, Bweyale, 6 August 2017, cited in Braak and Kenyi, ‘Customary Authorities Displaced’, 30.

28 Government of Southern Sudan, ‘Local Government Act 2009’, Ch. 12, Section 112, 1a.

29 Government of Southern Sudan, ‘Local Government Act 2009’, Ch. 12, Section 114, 1.

Declining power and nostalgia

Much nostalgia is expressed, particularly by chiefs, for the power of their colonial predecessors. Back then, chiefs were the main intermediaries with government, and guns were licensed and restricted to chiefs and police. Now, access to power and weaponry has become diffuse, contributing to a sense of danger and disorder that can make people long for a return to strong colonial-era chiefship. There is plenty of evidence, though, of abuse and inequity under colonial chiefs, just as there is under the most powerful political-military entrepreneurs today. Unless internal mechanisms for holding chiefs to account by their communities can also be strengthened, restoring their power would not necessarily improve local or national governance.

At the same time, the nostalgia for more effective chiefly authority reflects a widespread desire for regularized, consistent mechanisms for preventing conflict and enforcing justice. The absence of such mechanisms is not simply down to the spread of guns or decline of chiefs, but to the fragmenting of government and military power more generally. Customary authority institutions cannot be understood in isolation from changing state governance. This is often obscured by the strategies chiefs employ as they try to carve out a space for their authority, which is both connected to and distinct from the state.

The language of custom is a political resource used by a diverse range of individuals, holding varying degrees of legitimacy, in order to distinguish their authority as chiefs from other kinds of government power, even as they rely on that power. Sultan Ismael Konyi is particularly open about his selective deployment of the language of custom in contexts where government laws may have little appeal:

At the moment, I have two leadership roles. First, I am a red chief, then followed by governor. I talk as a governor first, then if they don't listen, I'll use the system of red chief. Many Murle are illiterate. They only believe in customary laws, rather than government laws, because it is this system of red chiefs that keeps us together. That's why if I talk to [rural] Lajo and Kurenen [age-sets], they listen to me.³⁰

30 Interview with Sultan Ismael Konyi, Pibor town, 21 October 2017, cited in Felix da Costa, 'Changing Power', 29.

Communities and Custom Beyond Chiefs

Chiefs are not the only ones drawing on historical traditions and the language of customary authority as a political resource, though their institutional recognition gives them particular opportunity to do so. The language of custom also creates a broader space in which even highly contentious issues surrounding rights, (in) equality and exclusion can be debated in a seemingly apolitical way, thus rendering them unthreatening to political authorities. This has been and remains a vital resource during the recurrent situations of repression experienced by South Sudanese from the colonial period onwards, and perhaps helps explain the prominence of custom and tradition in public discourse.

The use of custom also shapes the terms of political debate, encouraging people to claim authority, rights and representation as communities rather than as individuals. While this tendency can have divisive and exclusionary consequences, as discussed below, it is nevertheless important to recognise custom as a bundle of ideas and narratives that has the capacity to build a strong sense of community. This is a vital resource in any context, but perhaps particularly so when people have experienced such extensive displacement and destruction.

The creation and evolution of custom

Custom is never an established or uncontested fact, but is continually open to competing definitions. Though it is perhaps most commonly associated with older generations' often nostalgic recourse to an idealized past, in which youth and women obeyed their parents, husbands and chiefs, and when communities were cohesive and harmonious, visions of a better past are not the monopoly of elders. Strikingly, some young men in Ugandan refugee settlements see the potential restoration of customary or royal authority as an opportunity to reverse the inflation of bride-wealth, associating the historic kingdom of Gbudwe with easier marriages.³¹ Young men in Boma State also expressed considerable respect and enthusiasm for the authority of red chiefs and the importance of traditional age-set organization.³² Some forms of youth organization, such as the *monyomiji* of Eastern Equatoria,

³¹ Braak and Kenyi, 'Customary Authorities Displaced', 30.

³² Felix da Costa, 'Changing Power', 30.

are themselves upheld as customary institutions in many South Sudanese societies.³³

Newer forms continue to evolve. The *gelweng* defence forces, organized in the 1990s in the Lakes region, are described by Ryle and Machot as ‘a neotraditional institution’ which has the potential to work closely with customary authorities and even provide the next generation of chiefs.³⁴ Very different kinds of community and youth organization are emerging in the Uganda refugee settlements, where leadership is increasingly taken on by ‘younger, better-educated, English speaking people able to connect to the state and NGOs’.³⁵ It is this kind of experience that may provide a future generation of chiefs, thereby repeating historical patterns.

Such change and initiative also demonstrate how customary authority is continually evolving as people try to find solutions to crisis and conflict, and to reconstitute a sense of order and community:

When asked about customary authority, people often also speak of a much wider notion; that there is a given order of things that is taught to youth, reinforced on significant days—births, weddings and burials—and permeates other spheres of normativity, such as the government and church.³⁶

These underlying norms can be reproduced independently of formal customary authority, through other institutions, events and discourses, and through media such as songs and historical narratives. The concept of *kong koc* in Yirol—the ability to show restraint and patience in order to avoid conflict—has become an ideal around which multiple interests have coalesced to construct a sense of identity and pride. Though not a new value, *kong koc* has gained prominence in the recent politics of Greater Yirol,³⁷ where the success of peacemaking efforts has enabled local actors to forge a degree of order. They contrast this with the lack of *kong koc* at the national level.

33 Ohide and Hodgkin, ‘Chiefs, Church, Women’.

34 Ryle and Machot, ‘Peace is the Name’, 54–61, 90.

35 Braak and Kenyi, ‘Customary Authorities Displaced’, 37.

36 Braak and Kenyi, ‘Customary Authorities Displaced’, 17.

37 Ryle and Machot, ‘Peace is the Name’, 72–3.

Divine, spiritual or historical narratives

In different ways, other assertions of custom and interpretations of history work similarly to restore a sense of individual and community agency, and offer visions of a better future. The oral histories of Nuer prophets collected by Jedeit Riek in the Bentiu UN Protection of Civilians Site (PoC) provide a striking example of this. As Jedeit and Pendle show, by pointing to divine causes and

solutions these histories offer alternative explanations of war and crisis that challenge elite political and military narratives. In the PoC context, where people's options are so restricted, such interpretations restore a sense of agency:

If the causes of war are found in the relationship between humanity and the divine, then people have the ability to correct this situation; they can rectify their relationship to the divine as individuals and as a community.³⁸

When proposing or debating concepts of transitional justice in South Sudan, it is important to recognise belief systems that explain calamities in terms of divine or ancestral spiritual anger.³⁹ Nuer oral histories also present divine authority as an alternative source of protection and safety to that offered by the gun.⁴⁰ Sometimes seemingly miraculous victories or escapes during war are narrated by South Sudanese as evidence of divine intervention, or as the work of the land itself, protecting its own from outside threats. In the same vein, ritual cleansing of the land from wartime bloodshed can be a vital element of post-conflict reconstruction, as are rituals and sacrifices relating to the return of combatants and refugees.

For some people, a belief in divine justice enables them to exercise restraint from pursuing their own revenge, akin to the concept of *kong koc*. These deeper spiritual beliefs are perhaps increasingly overlooked as many South Sudanese adopt discourses of Christianity or rational secularism, particularly in conversation with foreigners. There is considerable syncretism in religious beliefs, allowing an underlying concern with ancestral spirits and the power of sacrifices or curses to survive in varying degrees of harmony with Christianity. As past peace initiatives show, spiritual beliefs and practices can provide important motives, mechanisms and sanctions for making and keeping peace, and for countering the prevailing power of the gun.

Historical memories and narratives can similarly work as a form of resistance to dominant discourses, and as a way of restoring a sense of agency to people. As Braak and Kenyi show, for some in Western Equatoria the history of the Zande kingdoms is a resource for imagining a better future, and for engendering a sense of ethnic community.⁴¹

Narratives and discourses of tradition often provide a kind of coded language for expressing political critique in South Sudan. While such critiques may be less audible or appealing to external

38 Jedeit and Pendle, 'Speaking Truth to Power', 51.

39 Wawa, 'The Kakwa Land Question'.

40 Jedeit and Pendle, 'Speaking Truth to Power', 19.

41 Braak and Kenyi, 'Customary Authorities Displaced'.

observers than those of civil society organizations using the (often English) language of human rights, democracy and justice, the former speak in powerful ways to local communities, evoking a sense of identity, pride and possibility.

Conversely, as shown by both Braak and Kenyi, and Jedeit and Pendle, appeals to custom can drive conflict as well as peace.⁴² Any version of history or tradition is deeply political, and therefore potentially divisive and exclusionary. Nuer prophets can justify military action as a moral struggle to restore order and right customs.⁴³ For non-Zande in Western Equatoria, the potential recreation of Gbudwe's kingdom can be interpreted as threatening domination by a majority ethnic group.⁴⁴

Custom works as a language and strategy for asserting authority, order and morality within a community, as well as reversing or reinterpreting the devastating effects of war and large-scale change. It can also, however, be deployed to defend or promote a particular definition of community in opposition to or in competition with other groups. As politics and conflicts in South Sudan have become ever more ethnicised, it is easy for custom to become the focus for evoking ethnic identity and pride, and for (implicitly or explicitly) critiquing other ethnicities. Even the most peaceable of values, such as *kong koc*, thus contributes to drawing contrasts with other ethnic groups.

⁴² Braak and Kenyi, 'Customary Authorities Displaced'; Jedeit and Pendle, 'Speaking Truth to Power'.

⁴³ Jedeit and Pendle, 'Speaking Truth to Power'.

⁴⁴ Braak and Kenyi, 'Customary Authorities Displaced'.

Boundaries of Customary Authority

Customary authority relies on the existence of communities. Rather than such authority emerging organically from pre-existing forms of social organization, however, the reverse has often been true, with the creation of chiefs in particular having come to define territorial communities. The broader ideologies of custom discussed above, meanwhile, play an important role in producing a more emotive and moral sense of affiliation. Custom is used to create and maintain communities, but what kind of communities are these and how are they defined and delimited?

Ethnicity, community and territory

Much policy and political rhetoric related to South Sudan assumes that ethnicity is the primary basis for community in the country. Such was the assumption of colonial administrators, resulting in their frequent frustrations at the extent of movement and interethnic interaction and the lack of neat tribal boundaries or overall tribal leadership. Sudanese nationalism did little to disrupt government assumptions that the tribe was the most important form of identity and affiliation in the South. As a Murle intellectual explained to Felix da Costa, 'the Sudanese government was looking at South Sudan through tribes', and hence seeking to identify and build up an ethnic 'focal point', such as Sultan Ismael for the Murle.⁴⁵

From the 1990s onwards, both the Khartoum government and the SPLM/A administration reinforced such approaches through the restoration of Native Administration in Sudan and the SPLM's increasing emphasis on customary law and traditional authority in the South.⁴⁶ The Nationality Act (2011) of the new Republic of South Sudan defined national citizenship both in territorial and ethnic terms, with individuals qualifying either by their or their parents', grandparents' or great-grandparents' birth in South Sudan, or by their belonging to 'one of the indigenous ethnic communities of South Sudan'. In practice, the ethnic definition was the one most often applied by the new citizenship office, providing chiefs with a sometimes lucrative role issuing statements confirming an individual's ethnic belonging.⁴⁷

45 Felix da Costa, 'Changing Power', 23.

46 Thomas, *South Sudan*, 128–66; Cherry Leonardi and Musa Abdul Jalil, 'Traditional authority, local government and justice', in *The Sudan Handbook*, eds. John Ryle et al., London: Rift Valley Institute, 2011.

47 Ferenc Marko, 'Negotiation and Morality: the ethnicization of citizenship in post-secession South Sudan', *Journal of Eastern African Studies* 9/4 (2015): 669–84.

Chiefdoms have never, however, been defined solely by ethnicity. If anything, chiefdoms were supposed to map onto smaller sub-ethnic units such as the *wuot* (cattle-herding sectional divisions) among Dinka, or the extended clan structures of areas such as Central Equatoria. Even at this level, though, chiefs were not simply the head of a section or clan, with the government increasingly defining their jurisdiction primarily in territorial terms.

Territorial chiefdoms included many groups or individuals from different clans, sections or even ethnicities, something colonial officials reluctantly had to accept. Only more recently has the idea gained traction that each sub-ethnic section should have its own chief and local administration, resulting in increasingly fragmented chiefdoms.⁴⁸ At the same time, as urbanisation has increased, town-based chiefs have often established multi-ethnic court panels or invited chiefs from other ethnic groups to assist in resolving cross-ethnic cases.

While South Sudan's Local Government Act (2009) defines communities in territorial terms, it confuses the issue by adding a kinship descriptor:

The Community shall comprise of clans, neighbourhoods and families who reside within the territorial area of a Local Government Council ... The clan or neighbourhood shall be the family tree of all the families residing in the villages of a Boma or the residential areas of a Quarter Council.⁴⁹

Territorial definitions have been strengthened by government policies, decentralised local government and even by aid interventions, which tend to target villages and localities. Even so, people continue to move and migrate, not least in repeated contexts of war and displacement.

There remains uncertainty over whether communities are defined by residence or by ethnicity and ancestry, and whether people should recognise the authority of the chief in the place they live or in the place they are believed to originate. Such questions are increasingly provoking disputes and even conflicts, particularly in a context in which land is becoming more valued and contested.

Boundaries and belonging

As Pendle and Chirriilo's report on Mayen Rual shows, over the past twenty years there has been a shift away from people being

49 Government of Southern Sudan, 'Local Government Act 2009', Ch. 11, Sections 107–8.

48 Leonardi, *Dealing with Government*, 107-124, 183-6.

welcomed and valued as the basis for a chiefdom's wealth and strength, towards increasingly exclusive policies of land access and territorial belonging.⁵⁰ In this context, custom becomes a tool for claiming primary or autochthonous rights over land, in the process excluding others. Custom thus becomes a means of distinguishing insiders and outsiders, and differentiating political and legal rights accordingly.

This shift is particularly evident in the recent proliferation of disputes over administrative and communal boundaries,⁵¹ and perhaps more than anything, this question of boundaries demonstrates the evolving, composite and contested nature of custom. During (and since) the era of African nationalism in the twentieth century, colonial boundaries were deeply criticised for imposing artificial lines through and between social, cultural and economic areas. These colonial boundaries are, however, seemingly becoming absorbed into bodies of historical and customary knowledge in South Sudan, with people pointing to them as an authentic basis for delimiting administrative and communal territories.⁵² Such boundaries are rarely clear or uncontested, nor do they tend to correspond to people's conceptions of clan or sectional boundaries (which are often not linear in any case).⁵³ The authority afforded colonial boundaries, though, demonstrates how custom absorbs new aspects, as well as revealing the influence of successive government policies on the definition of territorial communities.

Authority and exclusion

Defining communities and the rights accorded their members through the use of custom can be the basis not only for exclusion and intercommunal conflict, but also for maintaining power and inequality within these communities. While the language of custom may be open to anyone to use, the terms of debate are inherently weighted in favour of official customary authorities, such as chiefs, and the less formal but no less influential structures of gerontocracy and seniority in societies and extended families.

These structures are often invisible to outsiders unaware of the history of dominant families and social and kinship relations in a particular area. They are also complicated by individual and collective access to sources of power outside these social structures. This means that even someone who might be marginal in terms of family position, age or gender can still have influence over custom

50 Pendle and Chirriilo, 'Wartime Trade'.

51 Peter Hakim Justin and Lotje De Vries, 'Governing Unclear Lines: Local Boundaries as a (Re)source of Conflict in South Sudan', *Journal of Borderlands Studies* 34/1 (2019): 31–46; Cherry Leonardi and Martina Santschi, 'Dividing Communities in South Sudan and Northern Uganda: boundary disputes and land governance', London: Rift Valley Institute, 2016; Mareike Schomerus and Louise Aalen, eds., 'Considering the State: Perspectives on South Sudan's Subdivision and Federalism Debate', London: Overseas Development Institute, 2016; Thomas, *South Sudan*.

52 The Revitalised Agreement on the Resolution of Conflict in South Sudan (R-ARCSS), signed in 2018, established a Technical Boundary Commission to define and demarcate 'tribal' boundaries as at 1 January 2015. See Douglas Johnson, *By the River and the Gates: Interpreting Contested Borderland Agreements* (London: Rift Valley Institute, 2018), 504–527.

by virtue of their powerful connections to government, international agencies, churches or other sources of authority, including divine inspiration and spirit possession.

In general, however, it is the predominantly older, male members of the community that have most recourse to the language of custom. It is they who can most effectively claim knowledge of history, laws and moral codes, on the basis of age, family positions, hereditary lineage, religious authority and/or government careers. As Ohide and Hodgkin discuss, despite older traditions of female leadership and peacemaking, women in Isoke struggle to make their voices heard in community meetings.⁵⁴

On the surface, the language of custom and community tends to evoke positive associations of authenticity, belonging and harmony, which is partly why it is so useful. It is important to recognise, though, that customs and communities can be defined in deeply exclusionary ways, creating or maintaining individual and structural forms of power and privilege. By enshrining customary authority and ethnic definitions of citizenship in its laws and constitutions, the South Sudanese state has ensured its people will have to stake a claim to their rights on the basis of communal belonging.

It is therefore unsurprising that tensions are increasing over the definition and boundaries of these communities, that military and political mobilization increasingly follows ethnic lines, or that attempts at ensuring more equitable political representation increasingly translates to promoting ethnic models of federalism or power-sharing.

54 Ohide and Hodgkin, 'Chiefs, Church, Women'.

Customs in Common and the Search for Order

The reports produced by the SSCA project, which cover a wide geographical range and diversity of livelihoods and cultures, provide a much-needed corrective to the ethnicization of customary politics. In doing so, they reveal the extent to which commonalities exist in customary authority and understandings and uses of custom, as well as experiences of disorder and strategies for trying to create order.

Interrelations and integration

For all that historical narratives and colonial maps might be used to assert ethnic boundaries or mobilize military action along ethnic lines, South Sudanese oral histories tend to tell more complex stories of historic social relations, migrations and affiliation. This is evident in Jedeit and Pendle's discussion of oral histories about Nuer prophets. Despite narrating Nuer–Dinka conflicts, these histories associate the divine inspiration of the prophets with 'migration, travel and connections to foreign peoples', rather than emphasising ethnic exclusivity.⁵⁵ This is also typical of oral histories in other parts of South Sudan, in which migration and intermingling are central themes, with territorial communities often composed of people with multiple ethnic origins, coming together through processes of accommodation, conquest, capture, marriage or dependency.

Historically, the language of kinship, lineage and clan has been an important tool for assimilating outsiders, meaning they or their descendants are addressed as sons or daughters regardless of actual blood relationships. Maternal kinship relations are also highly valued in forming bonds between people of different clans and ethnicities, which is why women and bride-wealth practices have been so important in maintaining peaceful social relations.

Oral historical work holds real potential for uncovering, recovering and reminding people of the networks forged through past marriage, migration, trade and exchange, and of the mechanisms

⁵⁵ Jedeit and Pendle, 'Speaking Truth to Power', 15.

'Contesting the militarization of the places where they met: the landscapes of the western Nuer and Dinka (South Sudan)', *Journal of Eastern African Studies* 11/1 (2017): 64–85; see also Douglas Johnson, 'Tribal Boundaries and Border Wars: Nuer–Dinka Relations in the Sobat and Zaraf Valleys, c. 1860–1976', *Journal of African History* 23/2 (1982): 183–203; 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* 42/2 (1999): 125–145; Sharon E. Hutchinson, 'Peace and Puzzlement: Grass-roots Peace Initiatives between the Nuer and Dinka of South Sudan' in *Changing Identifications and Alliances in North-East Africa: Sudan, Uganda, and the Ethiopia–Sudan Borderlands*, eds. Gunther Schlee and Elizabeth Watson, New York: Berghahn, 2009.

57 Ryle and Machot, 'Peace is the Name', 74–6.

58 See also Jok Madut Jok, 'Diversity and Nation Building in South Sudan', Washington, DC: United States Institute of Peace, 2011.

59 Felix da Costa, 'Changing Power', 10.

60 Jedeit and Pendle, 'Speaking Truth to Power', 34–40; see also Francis Mading Deng speaking in the Rift Valley Institute Juba Lecture Series 2017, in Rift Valley Institute, 'Cultures of Dialogue: Local and national experiences in South Sudan', London: Rift Valley Institute, 2018, 7; Wal Duany, 'Neither Palaces Nor Prisons'.

in place for maintaining or restoring peaceful relations between neighbouring groups. Such underlying connections were apparent even in the worst of the recent conflicts, when, for example, Nuer and Dinka in Ganyliel and Amokpiny maintained peaceful movement and trade despite falling on opposing sides of the ethnicised conflict. They did so by drawing on both longer-term and recent interrelations brought about by trade and marriage, including the marriage of the Dinka chief of Amokpiny to a Nyuong Nuer wife.⁵⁶

As Ryle and Machot show, Eastern Lakes State, south-east of Amokpiny, similarly became a refuge for both Nuer and Dinka fleeing conflict. In general, people in Yirol assert greater historic and cultural commonalities with their Bor Dinka and Mundari neighbours than with other Dinka communities to the west, and have strengthened these inter-ethnic relations through recent wrestling competitions.⁵⁷ Such historic relations and recent initiatives provide useful alternative narratives and strategies with which to counter tribalisation in South Sudan.⁵⁸

Non-tribal identities and political ideals

It is also apparent from the SSCA reports that in order to understand contemporary political and military allegiances, it is necessary to interrogate other, non-tribal, sources of identity and affiliation, including spiritual authorities, clans, sections and age-sets, co-residential communities, and personal relationships. Historic military and political allegiances have in turn become structuring factors in contemporary politics. This is evident, for example, in Boma State, where 'unresolved political divisions linked to historical tensions between the PDF and the SPLA still permeate Murle political dynamics'.⁵⁹

The complexity of affiliation and identity across South Sudan demonstrates a continuing plurality of power, which works against the efforts of military and political elites to centralise and monopolise control. There are no traditions of absolute authority in South Sudan, with even historically powerful figures—such as Nuer prophets—open to challenge and criticism.⁶⁰ Indeed, there is a much stronger tradition of debate and vocal critique, and in turn of individual authority being earned and

maintained through oratory skills. The ‘words of a red chief’ or the speech of a Nuer prophet are powerful because they can invoke spiritual and divine authority and action.⁶¹ Similarly, such skills on the part of chiefs can ensure protection and access to resources, for example by negotiating with humanitarian agencies to obtain food aid.⁶²

The role of chiefs in relief distribution has also been built on long-standing traditions placing responsibility on them for combating hunger, for example by asking relatives or others to contribute towards feeding anyone close to starving: ‘We do this in order to take care of the vulnerable’.⁶³ A common political ideal across South Sudan is that authority should be generous and productive. In essence, individual power and wealth is acceptable provided it benefits the wider community. This ideal is arguably more important than ideas of political representation, equality or selfless leadership, and underpins practices of patrimonialism: ‘As a leader you must feed people. You must have wealth!’⁶⁴

The loss of the material wealth of elders and chiefs displaced in Uganda is thus experienced by some as a source of insecurity rather than as a liberating opportunity to reshape the social order.⁶⁵ As the important and still highly relevant study by Simon Harragin emphasised in 1998, vulnerability is defined by South Sudanese above all in terms of lack of kinship and social support. For such vulnerable individuals, the patronage of chiefs or other wealthy figures has long been crucial, even if this implies relationships of dependency and subordination.⁶⁶

Contested authority

The SSCA reports remind us that even these apparently shared ideals of generous authority, productive speech and political plurality are themselves contested, debated and reworked. This is particularly evident in the Ugandan refugee settlements, with Braak and Kenyi recording considerable debate over the hereditary, male authority of chiefs and kings.⁶⁷ All the reports reveal both criticism and praise for the various forms of customary authority, and a strong sense of how custom is being constantly reconstituted. Far from being wedded to conservative, age-old traditions, South Sudanese tend towards debating their history and customs whenever there is space for such dialogue. As Ryle and Machot put it, they are ‘good at talking’.⁶⁸ This should be seen

61 Felix da Costa, ‘Changing Power’, 27; Jedeit and Pendle, ‘Speaking Truth to Power’.

62 Kindersley, ‘Politics, Power and Chiefship’, 22; Ryle and Machot, ‘Peace is the Name’, 27.

63 Interviews in Kindersley, ‘Politics, Power and Chiefship’, 14, 21, 26.

64 Interview with county commissioner, Yambio, 27 January 2015, cited in Braak and Kenyi, ‘Customary Authorities Displaced’, 24.

65 Braak and Kenyi, ‘Customary Authorities Displaced’, 20.

66 Simon Harragin, ‘The South Sudan Vulnerability Study’, Nairobi: Save the Children UK, 1998.

67 Braak and Kenyi, ‘Customary Authorities Displaced’, 30–6.

68 Ryle and Machot, ‘Peace is the Name’, 91.

as a serious cultural asset, rather than cause for wry smiles among meeting facilitators.

Even colonial-era chiefs continually discussed changes to customary law through annual meetings. As Wal Duany writes, maintaining ‘an open decision process’ is ‘the very essence of the processes of governance in Nuer villages and cattle camps’.⁶⁹ It is when the political space for dialogue is closed down that there is potential for more exclusionary dominant narratives to be imposed, often provoking resistance and conflict.

Successful peacemaking requires sustained, recurrent space being made for dialogue, rather than one-off meetings or short-term initiatives.⁷⁰ Customary authority has been produced and reproduced, even in contexts of considerable violence and disorder, through what one chief terms ‘the weapon of the mouth’.⁷¹ This includes negotiation with outside forces and resources; interlocution with spiritual, ancestral and divine powers; mediation and resolution of disputes, conflicts and court cases; discussion, preaching and teaching in families, schools, churches, councils of elders, age-sets or community organizations; and the production of historical narratives and songs.

The reports demonstrate that, above all, customary authority is a product of and resource for the ongoing struggle to create moral, social and political order in the face of often considerable adversity. The histories of Nuer prophets of the divinity Maani ‘offer an aspirational promise of a better, more certain, political order’.⁷² Similarly aspirational is the roundabout in the centre of Yirol town, with its concrete sculpture of the nation as a cooking pot, held up by hearthstones representing both chiefly order and the role of women in peacemaking.

Hearthstones are often used to represent communities, placing women as their custodians at the centre of the idealized family and community. Inscribing the sculpture’s hearthstones with the names of historic chiefs evokes the ideal of chiefs feeding their people, as well as alluding to an underlying governance structure for supporting the nation. The female police captain who directed the roundabout’s construction compared its role in bringing order and safety to the traffic to that of the chiefs’ court in bringing peace and good governance to the community.⁷³ There may thus be no better illustration of the ways in which custom is both evoked and reworked to bring about a sense of order, and the creativity and agency of those striving to construct it.

69 Wal Duany, ‘Neither Palaces Nor Prisons’, 7.

70 Ferdinand von Habsburg, Winnie Gulliver and Silvio William, speaking in the Rift Valley Institute Juba Lecture Series 2017, in Rift Valley Institute, ‘Cultures of Dialogue’, 19–28; Ohide and Hodgkin, ‘Chiefs, Church, Women’.

71 Chief Lopwon Alphonse, speaking at Kuron peace village in April 2016, cited in Rift Valley Institute, ‘Now We Are Zero’, 18.

72 Jedeit and Pendle, ‘Speaking Truth to Power’, 15.

73 Ryle and Machot, ‘Peace is the Name’, 25.

Conclusion

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Customary authority is embedded in South Sudan's politics and governance

The SSCA reports provide a vital corrective to any tendencies to romanticize customary authority or to assume without question the legitimacy or pacifism of chiefs. Chiefs remain an integral component of local government and judicial structures, and so are in a position to express the needs and concerns of ordinary people in ways few other spokespeople can. This provides them with the potential to play a role in peacebuilding that has a deeper and more significant reach than any national peace process has so far achieved.

However, as the SSCA reports clearly show, chiefs are not isolated from political and military alliances, divisions and conflicts, and are just as—if not more—accountable to local and higher government authorities than to ordinary people living in their chiefdoms. For their judicial and administrative role to be effective, chiefs need strong coordination with local government, police and judiciary, and often also military and political powers. Put simply, working with chiefs means working (directly or indirectly) with government.

Custom is a political resource

Asserting custom is a means of defining a community, regulating the behaviour of its members and claiming authority over them. While appealing to tradition can be an effective and emotive way of gaining political support, one person's valued tradition may be another's source of oppression. Asserting custom is also a way to critique perceived threats from within or outside the community, including from government or international agencies, or ethnic groups perceived to be more dominant or expansionist. Custom is a kind of political ideology and language of debate, not a fixed set of laws and norms. As such, it can be deployed in both inclusive and exclusionary ways.

Customary authority is not defined by ethnic boundaries

Customs and customary authorities are not parcelled out in neat ethnic compartments, despite recurrent government attempts to organize society and government along tribal lines. There is, of course, considerable diversity in cultures and livelihoods across the country, which is important to people's sense of identity and belonging. There is also, however, much that is shared or mutually recognisable, potentially providing a basis for broader inter-community dialogue and understanding.

The boundaries of customary authority do not correspond to ethnic boundaries. This is due to common histories of movement and intercommunal relations, and due to the fact it was impossible to neatly map the administrative boundaries of chiefdoms and local government units onto either ethnic or sub-ethnic territories, the boundaries of which were rarely linear.

History is a resource for the present and future

Researching history can seem like an academic or esoteric indulgence, particularly in contexts of humanitarian crisis. As these reports reveal, however, crisis, conflict and displacement only increase people's eagerness to debate their history, as they seek means to explain their present predicament, restore their individual and collective agency, and evoke visions of a better future.

While nostalgia for customary authority and a lost social order may seem like an overly romantic idealization of the past, we should not be too quick to dismiss such views of history. It is often said that South Sudan lacks visionary leadership, yet perhaps it is in discussing the past that political visions for the future are revealed. If people can recall a time when things worked better or when there was greater peace and order, perhaps the next step should be to dig into the reasons for this in order to find progressive rather than regressive answers to contemporary disorder.

Historical and anthropological research also offers a means of bringing different generations together, exploring the connections between different communities and regions, and building the capacity of the country's research sector. As with custom, though, history is inevitably political, meaning research initiatives must take account of its contentious and divisive aspects as well as its potential for generating greater cohesion.

Discussion and debate are among the most important shared traditions in South Sudan

The SSCA reports demonstrate the importance of speech, debate and mediation in the shared political cultures of South Sudan. One of the most valued attributes of a good chief is said to be their outspokenness in the face of government or other powerful interests. It is also said that a major reason conflict prevention and mediation was more effective in the past was due to the annual chiefs' meetings and border meetings. These resolved disputes between different administrative areas, discussed and agreed laws and judicial practices, and even made agreements that attempted to prevent future conflicts.⁷⁴ Key to their effectiveness was having regular meetings over a sustained period of time, which is also vital to any successful peacemaking.

Too often, meetings and workshops are focused on outcomes, resulting in discussion being steered towards formal resolutions, roadmaps and plans. However important these may be, it is vital to recognise the value of dialogue as an outcome in itself, with conversations that take place during breaks or around the edges of a conference or meeting often being as, if not more, valuable than formal discussions. This is especially the case if the goal is to build longer-term relationships and networks among participants.

The SSCA reports embody the many conversations that took place between youthful researchers and a wide range of interviewees, which may be as important an outcome as the reports themselves. Similarly, the meetings held among the researchers and between youth and chiefs, as well as the public lectures organized as part of the SSCA project, all created vital spaces of dialogue at a time when other kinds of political debate have become greatly restricted.

The nature of donor funding necessitates concrete outputs and demonstrable achievements from projects, making it harder to justify the ephemeral and unquantifiable benefits of simply bringing people together. The examples provided by these reports and in South Sudan's recent history demonstrate only too clearly, though, that individual and collective relationships can make the difference between peace and conflict.

There is value in bringing people together

The aim of this report, and of the broader project from which it emerges, is not to be prescriptive in relation to the future of

⁷⁴ Kuyang Harriet Logo, speaking in the Rift Valley Institute Juba Lecture Series 2017, in Rift Valley Institute, 'Cultures of Dialogue', 9–11.

customary authority in South Sudan. Rather, the aim is to deepen understanding of the role and potential of customary authority, and to encourage the opening up of political and practical space for research, discussion and debate. The project demonstrates the simple value of bringing together young South Sudanese researchers to talk—both with each other, as well as with chiefs and elders, other youth, and national and international researchers—about the history and cultures of the country’s different regions. This could be built upon by more sustained provision of research training, dialogue forums, library, IT and social spaces for youth to come together, as well as projects for oral history, arts and cultural exchange across communities.

Similarly, there is undoubted value in bringing chiefs together in more regular and sustained ways, in order to build the kind of relationships, networks and mechanisms for maintaining peace that are often pointed to as a lost resource. Above all, the value of custom and history is that it encourages a focus on solutions, capacities and resources that lie within the memories, institutions and cultures of South Sudan, rather than on what is needed from outside.

No one would deny the material needs and suffering of South Sudan’s people, but the solutions are not solely material. The SSCA reports demonstrate that discussing customs and histories in open-minded and inclusive ways can be profoundly empowering, restoring agency and interpretation to South Sudanese as they seek to create order and community.

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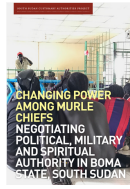
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Selected RVI publications



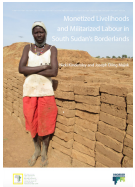
Peace is the Name of Our Cattle-Camp

This report considers the communal resources brought to bear on conflict resolution in Eastern Lakes State, beginning shortly before the CPA, and on local understandings of this process.



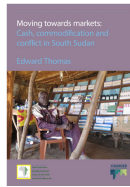
Changing Power Among Murle Chiefs

This report investigates how Murle customary authorities navigate and negotiate political, military and spiritual authority, while simultaneously challenging the view that Murle society has no organic leaderships structures.



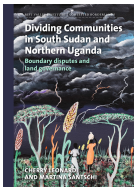
Monetized Livelihoods and Militarized Labour in South Sudan's Borderlands

The report uses the concepts of stress, risk and precarity as a frame of reference for understanding the fragmented and contingent futures that people in the borderland are navigating.



Moving Towards Markets

This report looks at how South Sudan's subsistence system, which organized the production and distribution of wealth around kinship and social networks, is being replaced by a market economy, and what the consequences of this are for the country and its people.



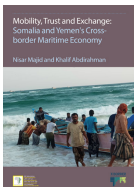
Dividing Communities in South Sudan and Northern Uganda: Boundary disputes and land governance

This report argues that boundary disputes must be understood in the context of changing land values, patterns of decentralization and local hybrid systems of land governance.



The role of transnational networks and mobile citizens in South Sudan's global community

This report explores the nature of the impact of South Sudan's international community on the evolution of the country's civil wars.



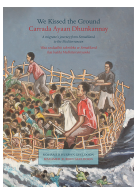
Mobility, Trust and Exchange

This report outlines the local social and economic relations that criss-cross the maritime border between Yemen and Somalia, and which make an important contribution to the resilience of communities in both countries.



Un microcosme de militarisation: Conflit, gouvernance et mobilisation armée en territoire d'Uvira

Ce rapport analyse la militarisation en territoire d'Uvira et la manière dont celle-ci façonne les rapports entre conflits locaux, gouvernance et mobilisation armée. *Also in English.*



Carrada Ayaan Dhunkanny: Waa socdaalkii tahrribka ee Somaliland ilaa badda Medhitereeniyanka

Sheekadani waa waraysigii ugu horreeyay ee ku saabsan waayo aragnimadii wiil dhallinyaro ah oo reer Somalil- and oo taahrribay. *Also in English.*

South Sudan's customary authorities play an important role in local government, justice, and as intermediaries or brokers between local communities and the government. While significant attention was paid to the role of customary authorities in South Sudan's statebuilding project prior to the country's secession in 2011, the start of South Sudan's civil war in December 2013 reoriented the focus towards humanitarian activities. *Making Order Out of Disorder*, which synthesizes and expands on the reports from RVI's South Sudan Customary Authorities project, refocuses attention back to their position and importance in the country today.

The report considers the hybrid role of customary authorities in governance, the part they play in defining customs, and the evolving nature of chiefship within a rapidly changing and urbanizing society. It concludes that chiefs, and other customary authorities, have retained a meaningful role within South Sudan and do not constitute a static system of governance or affiliation. Given this, there is real value in including them within peacebuilding and other discussions about the future of the country.



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