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Local justice and the power of officiality in Southern Sudan
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Customary law exists in its unadulterated form in the rural mono-ethnic regions of the South... Questions of harmful cultural practices, draconian martial law, lack of professionalism and jurisdictional uncertainty plague the administration of justice... Customary law in southern Sudan largely embraces reconciliation and community harmony... restoring balance in the family unit and community. Traditional values and the community structure that reinforce them are under siege in post-conflict Sudan. (Mennen, 2008:3)

Traditional authority and customary law have attracted increasing attention in Southern Sudan since the 2005 Comprehensive Peace Agreement (CPA) and establishment of a semi-autonomous Government of Southern Sudan (GoSS). The largest component of GoSS and the signatory of the CPA, the Sudan People's Liberation Movement/Army (SPLM/A), had already taken conciliatory steps to improve its relations with the chiefs, who complained of abuses by SPLA soldiers during the long war from 1983.² At the same time, the international organisations working with GoSS to develop new governance structures have become interested in the potential of traditional, indigenous forms of government. Yet the result of this interest from both GoSS and the international organisations has been a tendency to over-simplify and at times sentimentalise the nature of 'traditional' authority and customary law. Chiefs are seen to embody the ancient traditions and cultural heritage of Southerners, for which the SPLM/A claims to have been fighting, while customary justice is frequently described rather romantically, as in the quotation above from a consultancy report (and e.g. Vandewint, 2004; SPLM, 2004).

The views expressed in international agency reports reflect wider studies of legal pluralism which tend to stress the idea of harmonious justice maintaining social equilibrium (e.g. Damren, 2002; see Moore, 1992:33; and on Southern Sudan: Makec, 1988). Moore, however, has long argued for the inherently *political* nature of dispute settlement and justice (e.g. 1970). With this in mind, the overly simplistic and sentimental assumptions about traditional justice circulating recently in Southern Sudan need to be countered by a deeper understanding of local justice and its particular relation to the state, as well as to local social and political hierarchies and divisions.

¹ This paper is drawn primarily from research conducted for a project funded by the Leverhulme Trust and the British Institute in Eastern Africa (2005-7) as well as from an AHRC-funded doctoral study under Justin Willis. I am particularly grateful to the chiefs in Yei, Juba and Rumbek who allowed me to attend their courts and consult the court records. The paper has also benefited from comments and questions at the CIDOB Foundation workshop on 'Peace and the Spoken Word: post-war reconciliation processes in Sub-Saharan Africa', 27-28 Nov 2008, Barcelona.

² For accounts of the war and the SPLM/A's relations with chiefs, see e.g. Johnson (2003), Rolandsen (2005), Branch & Mampilly (2005), Leonardi (2007a & b). On SPLM justice, see Kuol (1997 & 2000).

In practice, the chiefs' courts in Southern Sudan are busy punishing crimes as well as resolving disputes. These courts, especially in the towns, are a far cry from the idealised image of consensual, restorative justice based on 'unadulterated' local customs. Handling a range of cases from cattle theft, marital disputes and sexual offences to traders' debts, fights, theft, witchcraft accusations and even murders, the courts award compensation in cattle, money or kind, and at the same time prescribe penalties of fines, imprisonment or flogging. They often refer to current or outdated statutory penal codes, which are applied even when specific to much higher courts. People approach the court system as a kind of market-place, choosing or appealing to whichever court they believe will be favourable; the police also have varied interactions and overlaps with the courts. One international expert described the result as a 'mish-mash' of statutory and customary courts, while a local government official said they were 'mixed-up'.³

A more perceptive report by Scheye and Baker (2007) recognised that local justice networks could not be equated to 'non-state' justice, because of this overlap, and highlighted the disjuncture of justice and legality of courts, of which the Southern judiciary are also aware.⁴ Far from the chiefs' courts being a form of 'non-state' justice, it is their relationship *to* the state that has distinguished them from other local means of dispute resolution. This paper will argue that the courts amalgamate a highly personalised local judicial culture, in which skills of adjudication rest on social knowledge and can even be heritable, with the popular desire for an impersonal, abstracted and distant source of justice and enforcement.

Constitutional and legislative contradictions in Southern Sudan between customary, statutory and international law have not yet been resolved, but there have been some uncoordinated calls to record and 'codify' customary law, and to 'harmonise' it with national, international and human rights law (e.g. SPLM, 2004; Vandewint, 2004; Jones-Pauly, 2006; Human Rights Watch, 2009:37). The contradictions of these aims are reminiscent of the colonial period, when similar British attempts to preserve and yet reform African customary law resulted in an unequal 'composite colonial construction' (Moore, 2001:98). This colonial construction of 'traditional' justice is well-established. What is less commonly acknowledged, however, is that the resilience of the chiefs' courts may actually derive *from* their very composite and contradictory basis, because people can use them to appeal to different logics, and to convert value earned in one socio-economic arena into another currency. Southern Sudanese who have earned social reputation and standing in a local community can deploy this to win a case and perhaps earn alternative capital thereby, yet those who have partially separated from the rural community through education, employment and migration can also deploy their literacy and wider knowledge to argue their case on the basis of statutory or international legal principles. The courts are 'Janus-faced',

³ C. Jones-Pauly, cited in Gurtong, 'Big Decision On Chiefs' Powers Needed Says Local Government Top Man', 16 March 2007; Athiaan Majak, Commissioner of Yirol East County, cited in Gurtong, 'Traditional authority and local government - struggling together against continued centralization', 16 March 2007 (www.gurtong.org).

⁴ A senior Sudanese member of the GoSS Judiciary admitted turning a blind eye to the operation of courts lacking any real legality, because they were playing a vital role in meeting the demand for dispute resolution: Interview, 8 Jan 2007, Juba.

to use Mamdani's (1996:18) term for the colonial state, but in a more positive sense: they are responsive to appeals and pressures from both directions.

A further contradictory aspect of the chiefs' courts is masked by widespread Southern discourse in recent years, which has defended and upheld them as a means of local resistance against the abuses of military government. Yet while on the one hand the courts can be viewed as a key arena for 'the ongoing struggle between centralised bureaucratic authority and local autonomy' (Moore, 1992:44) – for resistance against the state – this does not fully acknowledge the efforts of local people to access and appropriate the effective force of the state through the courts for use in local conflicts and competition (cf. Eckert, 2006). The courts are used simultaneously to draw the state closer *and* to keep it at bay; their contradictions are produced by the ambivalence of local communities towards the state, as well as by the ambivalence of successive governments towards customary law.

Much discussion of governance and the state in Sudan has emphasised its alien, arbitrary and often militaristic origins and character, and highlighted the continuing moral and spatial demarcation between the *hakuma* (government) in its urban offices, and the rural community (Hutchinson, 1996; Mawson, 1989; Leonardi, 2007a & b). Such analysis of the state is undeniable, and the distinction between *hakuma* and 'home' continues to be apparent in local discourse. But this paper will argue that the discourse that has upheld local autonomy against state intrusion can obscure rather different practices. Obviously, increasing numbers of Southerners have been employed in the institutions of the *hakuma* and associated urban, bureaucratic arenas. But this paper focuses on the chiefs' courts as an institution through which a larger number of people have interacted quite deliberately with the state. Not only that, but it is the very arbitrary and alien nature of the state historically in Sudan that has been sought out. An important comparison can be made with Gordon and Meggit's study of law and order in Papua New Guinea, which argues that 'Enga see the state as containing elements *both* of neutral adjudication and of exploitation' (1985:11). New indigenous officials in the 1970s tasked with preventing local conflicts lacked not only the arbitrary powers of their expatriate colonial predecessors, but also the latter's 'appearance of power and distance' which had made them more effective (as summarised by Merry, 1991:907). As Enga sought to appropriate the government, it became drawn into local political competition and vulnerable to manipulation by their own 'Big Men'.

In Southern Sudan similarly it is the very colonial origins of local judicial institutions, and the continuities of the character of the state from colonial to postcolonial periods, that has been key to the perception of state power behind the courts as not only arbitrary, but also therefore more distant and abstracted, even mysterious. Pre-colonial dispute resolution had also sought out detached or distant individuals or clans to act as neutral mediators. And, like in New Guinea, as the state has been increasingly appropriated and the towns invaded in recent years, so the state is becoming personal rather than impersonal, no less arbitrary but much less distant. In the 1970s, such processes were described more positively by Mawson (1989), as an indication of Southerners taking ownership of the state. But in recent years it is seen instead by many Southerners to have resulted in escalating violent conflicts and ineffective judicial systems. The capacity to enforce quick decisions and the power of 'officiality' (Eckert, 2006:69) is seen to have been eroded as the state has been recreated in 'post-

conflict' Southern Sudan and drawn into local politics. Much of this may of course be perception and discourse; the colonial governments too had their local allies, and state backing for the courts has no doubt always been fluctuating and inconsistent. But a discourse of 'official', 'neutral' justice has been absorbed into, or was always compatible with, local ideals, and it is this ideal which continues to be sought out through the chiefs' courts, or through appeals above and beyond them to state institutions.

This paper focuses therefore on local perceptions of 'the state' as manifested in the forms, procedures and powers of the chiefs' courts, rather than on the details of customary law, or a comprehensive survey of court cases. It derives from archival research and fieldwork in the three towns of Yei and Juba in Central Equatoria State, and Rumbek in Lakes State, and their environs. The influx of formerly rural courts into these towns in recent years reflects rapid processes of urbanisation, accelerated by the conflict-induced displacements of the last two decades, and more recent refugee returns. But the growing number of courts held inside the towns also reflects a deeper appropriation of the domain of 'government', or *hakuma*; while the deceased SPLM/A leader John Garang promised to 'take the towns to the people' (in terms of service provision), it is the people who are coming to the towns. So these courts are not necessarily distinctively 'urban' courts, but embody further amalgamations of village and town cultures and economies. If anything the courts have increased in importance as the increasing town populations have made the need to mediate the two more pressing. For the recent period, this paper relies on observation of the courts (between 2005 and 2007), interviews and some local court records (occasionally and sporadically going back as far as 1999).⁵ Such records have not survived from earlier periods however, apart from references to particular cases in colonial reports and diaries.

There are significant differences between these three towns and localities. Rumbek is in a cattle-keeping, Dinka-speaking region; Yei is in a Bari-speaking (Kakwa dialect), farming and trading area close to the Uganda border (like Rumbek the town was captured by the SPLA in 1997); Juba is the Southern capital in a Bari-speaking, mixed cattle and farming area: it remained under Government of Sudan control until 2005, and contains large displaced populations. As well as their different experiences and governments during the war, these sites also represent both sides of a widely-perceived and greatly over-generalised political fault-line in Southern Sudan between 'the Dinka' (or 'Nilotics') and 'the Equatorians' (including Bari-speakers). Nevertheless, there are commonalities among the three towns in terms of the way in which local people approach the courts and the kind of resources they deploy to advance their cases.

The remainder of the paper will firstly explore the historical context for the discourse of *hakuma* and 'home' in Southern Sudan, as well as the practices that belie this straightforward moral distinction, in terms of attempts to access the state through the chiefs' courts. It will then interrogate in more detail the symbolic power of the state in the courts in terms of their capacity to make public and to enforce settlements, particularly through written records and police. The public nature of the courts has

⁵ Where interviews were formally recorded, the date and place is given in the references. Much of the paper is drawn from informal observations and interviews which cannot be usefully cited.

reinforced local social inequalities by ‘shaming’ those with less social status and rewarding social reputation, yet it has also created an arena in which the social order can be challenged by appeal to ‘outside’ powers. The courts in principle transform chiefs from local ‘insiders’ into ‘outsider’, neutral judges. The paper will then turn to the perceived erosion of the ‘power’ of the courts and their increased receptivity to ‘money’, arguing that this is less about a diminishment of respect for chiefs and more about the changing economy and urbanisation. It reflects a deeper concern that the *hakuma* has come closer to the people, and in so doing has eroded the distant, arbitrary power of ‘officiality’ that is hoped for behind the chiefs’ courts. This in turn is seen to be undermining conflict resolution and settlement of fights and killings, contributing to continued or increased local and regional conflicts since the 2005 peace, and rendering questionable whether Southern Sudan can be termed ‘post-conflict’ at all.

Hakuma and home

Subject: I don't want Mr W to be my husband. I want a divorce letter.

Reasons: 1) He is not working.... 2) He is incapable... [details neglect and abuse]

With sincerity, hornour [sic] and respect your highly consideration will be highly appreciated. I don't want him “to be my husband”.

Yours sincerely....

This letter from 2003 lies in the neglected heaps of records in a town chiefs’ court, written in clear English handwriting over two pages, with the stamps of the local headman and chief, and orders to pass to the town court. It is revealing not only of the way that women and girls have come to frequent the courts in this town over arguments, fights and marital problems, but also of the means by which people seek to advance their case in the courts. This lady, or perhaps her scribe, was employing all the conventions of official bureaucracy, together with the English language, to make her case. The letter brought her access to the highest chiefs’ court in the town, which did grant her divorce. The expressions are strikingly similar to those in appeal letters written to the colonial authorities back in the 1940s and ‘50s.⁶ It implies that the power of the state behind the court may be accessed by employing the rituals and influences associated with the sphere of the government, or *hakuma*. This is a sphere that has become increasingly accessible and porous over the last century, but it continues to be differentiated in local discourse from the ‘village’, ‘rural area’, ‘home’ or ‘people’, as various vernacular words denote.

The *hakuma* first appeared in this region in the nineteenth century, initially in the form of military-commercial centres known as *zara'ib* (sing: *zeriba*), from which merchants from the north raided and traded ivory and slaves (Johnson, 1992). The Turco-Egyptian Government extended a similar system of fortified stations, depleting the surrounding areas for supplies and servants, recruits or slaves. When the British officers of the Anglo-Egyptian Condominium arrived at the beginning of the twentieth century, they established their government headquarters in or near the same stations, with a similarly military character, ensuring an appearance of continuity (Johnson,

⁶ E.g. in Equatoria Province 41.J.1, Southern Records Office, Juba (hereafter SRO).

2003:10). Members of the government have subsequently continued to be referred to as *turuk*, 'Turks', regardless of race. Nowadays in Southern Sudan, people apply the term *hakuma* to a bundle of urban, bureaucratic and military associations; 'he has gone to the *hakuma*' can mean that a child has entered school, or a boy has joined the army. In the Dinka language, *tueny* can be applied to a government or military officer, a school graduate, or even someone wearing clothes or living in the town. The Bari-speakers have similar words, *gela* and *miri*. Of course increasing numbers of people belong to this category, or have children who do, but there continues to be a distinction drawn between the sphere of the *hakuma* and the rural homeland. The former has retained its arbitrary and alien connotations, while the latter is upheld as a kind of moral community.

The chiefs' origins also lie in the nineteenth century, when local interpreters, agents and negotiators emerged from within or outside the *zeriba* to mediate with surrounding communities. By the early colonial period they were becoming institutionalised alongside other kinds of 'chief' (rain chiefs, spearmasters, earth priests and other spiritual leaders) as 'the chief of the government' (Bari: *matat lo gela*), or 'the chief of the cloth' (Dinka: *beny alath*), a reference to their uniforms or sashes. From the 1920s, British colonial officials began to establish ad hoc courts of chiefs in the South, which were formalised by the Chiefs Courts Ordinance of 1931. Neither the chiefs nor their new courts were 'traditional' in any sense at this point, and they incorporated many of the symbols and practices of colonial government: badges, uniforms, tables and chairs, written records and so on. In 1932 one British provincial governor expressed concern that these so-called 'native' courts were regarded by the people as "purely Government institutions", characterised by "an aping of what they thought were our ideas and our laws; and a tendency on the part of the chiefs' police to push people about, make them stand at attention and so forth."⁷

There is a significant literature on such colonial courts in Africa more widely, which has argued that so-called 'customary law' was largely invented by an alliance of colonial officials and the patriarchal gerontocracies of male chiefs and elders that dominated the courts (Chanock, 1985). Certainly the earliest court records in Southern Sudan do suggest a preoccupation with enforcing first and foremost the authority of the chiefs as agents of the colonial state, punishing disobedience or failure to provide tax and labour. Conservative British officials had also encouraged harsh disciplining of women and prevention of divorce in the 1920s.⁸ As Shadle (2003:262) argues, however, African case law in Kenya was in practice far more nuanced than the versions presented to colonial administrators, due to the ability of women to exploit divisions among 'senior' men in the 'patriarchal' courts. Even without the kind of court records used by Shadle, similar processes are evident in Southern Sudan, as adultery and divorce cases forced debates about marriage into the courts more from the 1930s, and as women and younger men found ways to influence these debates (Leonardi, 2005). As Willis (2003:114) argues, colonial efforts to construct 'traditional' authority in the Nuba Mountains, in order to demonstrate 'the power of the Government', resulted from an actual 'paucity of coercive resources'.

⁷ Governor Mongalla Province to Governor Upper Nile Province, 'Notes on native courts', 7 Sept 1932, National Records Office, Khartoum (hereafter NRO), Civil Secretary 1/13/42.

⁸ Brock, Governor Bahr El Ghazal, to Civil Secretary, 4 July 1929, NRO Civil Secretary 1/13/43; Holland, 'Lukiko District Order no. 3', 30 Sept 1923, NRO Mongalla 1/1/2.

The new 'government' chiefs' courts in Southern Sudan, with their arbitrary practices, did not necessarily replace prior methods of dispute resolution. As Johnson (1986:73-4) argues, there was often need for a deeper community resolution to disputes than could be achieved within a court that sat at the interface between government and people. Officials reported their discovery, for example, that rain chiefs in Central Equatoria were continuing to hold 'indigenous' courts; the Bari word for 'council', *putet*, reflecting continuing community practices of dispute resolution.⁹ Nowadays there is a general consensus that disputes should ideally be solved outside the courts, 'at home', with relatives or neighbours; it is those with 'bitter hearts' who refuse this advice and go ahead to the courts.¹⁰ The Yei chiefs' court records formally refer cases back to 'Home Affairs' for settlement, and the English word 'committee' is also increasingly used even in vernacular discourse to refer to groups of relatives and neighbours who attempt to solve disputes outside the courts. Marriage negotiations remain the preserve of the home sphere, except for the enforced bridewealth or compensation for cases of pregnancy or 'elopement'. As one sub-chief in Yei put it, marriage settlements are usually done out of court, and 'Government cannot enter there'.¹¹ Even chiefs are said to be unable to enter marriage negotiations outside their own families, and when courts hear cases of pregnancy or elopement where there is a willingness to marry, they will normally order the families to settle the bridewealth outside the court.

The courts continue to be viewed with ambivalence, but the 'government' chiefs have not been seen as belonging entirely or at all to the *hakuma*: instead they mediate with it. They are distinguished from higher judges who are said not to 'know' the people as the chiefs do, an indication of the chiefs' position inside the local social field. Yet the in-between position of the courts is also apparent from the sporadic handling of witchcraft and poisoning cases: at times when the government has been amenable, as during the SPLA administration of 'liberated' areas before 2005, courts have heard and punished such cases, e.g. by administering the alleged poison to the accused as a kind of ordeal trial. But in other periods, including more recently, government disapproval of such methods has driven these cases back into the private arena of villages or neighbourhoods, revealing the way that the official chiefs' courts stand partly outside any local moral community.

Officiality, publicity and the social order

There is then a widespread discourse that advocates settlement of disputes privately in the 'home' sphere rather than publicly in the court.

*Outside [i.e. outside the town/court] settlement is like the night and court is like daytime, where you can see everything... The court will make you talk openly whatever is in your heart, but it is better to maintain community things secretly... It is bad to write down small things [home settlements], because then it means that you are going to report it in court.*¹²

⁹ (Anon.) 'Juba District Handbook' (1933), NRO Juba District 1/2/6; 'Diary', April 1931, NRO Civil Secretary 1/39/104.

¹⁰ Interview (translated from Dinka) with elder headman, 25 May 2006, Abinajok village, Rumbek.

¹¹ Interview with sub-chief (in English), 22 Jan 2007, Ronyi village, Yei.

¹² Interview with elder man (translated from Dinka), 18 Nov 2006, Rumbek.

This is revealing of two important aspects of the chiefs' courts: their 'public' nature, linked to writing, and, less directly, their relationship to the local social order. For despite the rhetoric above, mature or elder men in Rumbek like this interviewee also say that 'to be a Dinka, you must go to court'. In this cattle-keeping area, litigation is a part of life for mature men. One young man approaching marriageable age was deeply proud when asked to pursue a bridewealth case on behalf of his uncles, because, he said, it showed that they recognised he was now 'responsible'. For women and girls, however, or for young men with fathers or other senior male relatives, going to court is said instead to be something 'shameful'. A group of women in a village on the edge of Juba, for example, recalled how a previous chief in the 1950s and '60s had forbidden young women or girls from taking cases to court 'because standing in court might make them learn to be stubborn'.¹³

What is shameful for some earns status for others, however. As elsewhere, the local courts invariably take into account the litigants' social standing, their reputation and the witnesses they can muster. It is often apparent that the outcome of a case is predictable in advance to those involved. The importance of social relations and social capital to the outcome of court cases means that the local justice system is bound to primarily reinforce existing social structures and inequalities. Leading, respected families and clans are more likely to win court cases, while the chiefs are sometimes sneeringly and mockingly dismissive of those they perceive as 'troublemakers' or 'immoral', or who lack strong ties to the local community.

This does not preclude however the sense of contest in court cases, which are often extremely adversarial in their style, in contrast to the sentimentalised descriptions outsiders sometimes give of customary justice. The social order is continually contested and there is a perception that court cases offer opportunities to earn status. Fanthorpe writes that chiefs in Sierra Leone are said to 'know a person's right' (2006: 44), a reflection of the kind of social knowledge that is amalgamated with wider forms of legal knowledge in the courts (Moore, 1992). The concept of one's 'right' is very powerful in Southern Sudan; it is made explicit in Dinka, for example, in the concept of *yic*. The way it is used however suggests less an absolute sense of right and wrong, truth and lies, than the ability to win recognition in court, not unlike the alternative winning of respect through fighting. Although some people are clearly nervous in court, they nearly always evince a defiant attitude and give often extremely long and detailed narratives of how they came to be in the court, whether as plaintiff or defendant (though the court members often make plain their assessment of the case by indulging or interrupting such speeches). There is a belief that one's speech can vindicate or betray one, because, in Dinka, '*yic* cannot be covered' by lies: 'when you have a right, you claim your right and nothing can cover it'.¹⁴ The courts clearly play an 'uncovering' role, digging up the soil of the social field. In part this fertilises the prevailing social structures. Kuol, a former Dinka judge, writes:

The attainment of justice, according to Dinka tradition, is a noble cause and the individual should mobilize the available resources in pursuit of it... Winning a claim before the court of law is more of an assertion of social prestige than mere material gain. (Kuol, 1997:18)

¹³ Group discussion (translated from Bari or Arabic), 28 Feb 2006, Nyaing village, Juba.

¹⁴ Interview with County Court Judge (in English), 4 Nov 2006, Rumbek.

The local social order and its inequalities are certainly reinforced in part through the courts, but this is a dynamic process in which they are *produced*; the digging and uncovering of court cases exposes everyone involved to public scrutiny. And, as the emphasis on the *public* nature of the courts reveals, they are also seen to exist partly outside the private realm of social relations or community. They straddle the theoretical boundary between *hakuma* and home, overlapping into both. Part of the reason for the gradual acceptance of these courts in the colonial period lies in the perception that their judgements could transcend the local social order, offering opportunities to the otherwise marginalised. Obviously the discourse of ‘shame’ has partly been used by elite men to counter such ambitions, but this has not actually succeeded in keeping all ‘non-elite’ men and women from pursuing court cases. In addition, there is also an aspect of indigenous judicial culture which emphasises the need for fairness and neutral arbitration. In Rumbek, for example, people are often careful to take their cases to courts of chiefs to whom they are *not* related, so that if they win the case, their opponents cannot simply appeal on the basis of favouritism. More crucially, fights and conflicts require neutral arbitration, formerly provided by unrelated clans, or spiritual leaders like spearmasters and prophets who were detached from the conflict by the nature of their spiritual power, and were able to transcend ethnic or sectional divisions (Johnson, 1986; cf. Komma, 1998).

It is apparent that the colonial government, embodied particularly in the British District Commissioner (DC) who was also magistrate and police commander, came to be perceived as a potential new source of outside arbitration and adjudication. In just one of many such examples, a former DC recalled his treks to the chiefs’ centres, where ‘thronged the litigants, each bent on the direct approach to the D.C. as the quickest means of getting what he thought was justice’.¹⁵ In turn, the obvious support of the government for the chiefs’ courts from the 1930s imparted a sense of power behind the court decisions, even though British officials frequently reported ineffectual enforcement of settlements. Justin Willis (2005) has explored the role of a Northern Sudanese colonial chief or *nazir*’s court in Kordofan, in terms of its acquisition of ‘*hukm*’, which he defines as ‘the ability to punish through a government-recognised court’. Willis largely views this court in the light of arguments for the colonial invention of traditional authority. But his account also reveals the ambiguity of *hukm*, as a resource for litigants, as well as a source of arbitrary power for the *nazir*.

The similar term *hakuma* (or more often ‘*ukuma*’) is also used in some parts of the South in relation to court judgements as well as ‘government’. One elderly headman in Yei explained that punitive justice originated in the brief period of Belgian rule there at the beginning of the twentieth century: he said that the ‘French’ brought ‘*hukum*’, which he explained as ‘hitting you with the back of a gun’; before that, people just took their own revenge.¹⁶ There are, perhaps, also parallels with vernacular expressions, such as *riel* in the Dinka language. ‘Government power’ in Dinka is *riel akuma*, and is similarly associated with ‘guns’ which make people fear the ‘laws’ (*ganun*).¹⁷ *Riel* is an interesting word in that it is used of spiritual power as well as of *hakuma* and courts. But in this latter context it also relates to physical force

¹⁵ Howell Papers, Sudan Archive, Durham (hereafter SAD), 769/5/54.

¹⁶ Interview with headman (translated from Kakwa), 6 Oct 2005, Gimunu village, Yei.

¹⁷ Interview with elder man (translated from Dinka), 7 June 2006, Rumbek.

and effectiveness; the power of government – and police/military – is often explained as a more immediate one than the curse of the spiritual leader, which takes time to take effect as illness or accident.

The courts are believed to have access to the wider (and sometimes murky) forces of the *hakuma*; the police and army. The court bailiffs in Rumbek are known as *beny riel*, ‘chiefs of power’, responsible for collecting money and cattle after cases, and whose link to the *riel* of the court is symbolised by papers and ‘receipts’. A CMS missionary in Rumbek in the colonial period recalled how ‘in colloquial speech we used to be told again and again by Dinkas who wanted a paper from us... “You have power”’, which he defined as ‘material influence or authority’.¹⁸ In Bor, also a Dinka-speaking area, the official chiefs’ court was also known as the court of *riel*, translated by Zanen and Van Den Hoek (1987) as ‘strength’. One leading chief in Rumbek declared that he could settle cases even involving someone with a gun: ‘If he resists I shall use *riel* to bring what the *akuma* has asked of him.’¹⁹ During the war from 1983, people also appealed to the military authorities to settle or enforce their cases (Kuol, 2000:19), even though such powers were like ‘fire’.²⁰

It is this ‘power’ behind the court, symbolised in its papers, rituals and architecture, that has been sought out by local people, rather than simply being imposed upon them. As the missionary’s memoir suggests above, and as Hutchinson (1996:270-98) has explored in the case of Nuer communities, the written paper or record has been an intrinsic symbol of – and means of accessing – this power. From the 1930s, the chiefs’ courts began to keep written records. In Yei, the first court president was chosen not because he was the ‘bigger’ chief, but because he was “the only one that can read and write”.²¹ The court clerk has become a central feature of the courts even in areas where chiefs remain illiterate, and since the colonial period there have been the usual reports of clerks manipulating their influence over the court record and the fees collected. Scheye and Baker (2007:21) describe the court clerk as the ‘lynchpin’ of local justice, citing a Malakal chief who stated that ‘the clerk is the mediator between the court and the people’.

It is the written record which is cited in some areas as the principal reason for the popularity of the early chiefs’ courts. Back in 1937, in the district neighbouring Rumbek, a British DC reported ‘a feeling abroad that the written evidence of a court record has a peculiar virtue of its own’.²² This was made less ‘peculiar’ by the Rumbek DC, who attributed the ‘growing desire for the written record of a court’ to the involvement of British DCs in courts: ‘it was observed that a man who could point to a recorded court judgement was much more likely to obtain his cattle than another who relied on the decision made by the ‘Gol’ elders or some traditional ‘cutter’ of cases’.²³ In light of the tendency to call in debts decades after they were first incurred, it is not surprising that people quickly saw the practical advantage in paper records (cf Moore, 1992:30). One of the Rumbek court presidents explained how the pan-Dinka Wanhalel laws agreed in 1975 established the ‘right’ of parents to a minimum number

¹⁸ L. W. C. Sharland, Annual Letter, Rumbek Aug 1955, SAD 865/2/40.

¹⁹ Interview with Chiefs’ Court President (translated from Dinka), 4 May 2006, Rumbek.

²⁰ Interview with young male teacher (in English), 12 Nov 2006, Rumbek.

²¹ Davidson, ‘Note on Chief’s Court at Yei’, 15 May 1929, NRO Civil Secretary 1/13/42.

²² Penn, 22 Nov 1937, Yirol District 66.A.8, in Howell Papers, SAD 767/8/20.

²³ Lakes District Handbook, 1940, SRO Equatoria Province 1.G.2.

of bridewealth cattle: ‘36 cows could be written down and called Wanhalel marriage, to make the family of the girl have power to collect those cows from the family of the boy’ [my emphasis].²⁴ Again, writing accesses ‘power’; literacy is seen as an alternative to violence as a means to effect an outcome (so that the pen is comparable to the spear: Hutchinson, 1996:286).

The power of writing is also reflected in the law books used by many of the chiefs’ courts nowadays. In Yei and Juba, chiefs refer in their sentences to ‘section number...’ from the New Sudan or Sudan Penal Codes, encouraged by the police referral forms which also do this. Ironically the Codes to which they refer actually state that most cases (adultery, rape, theft, arson and so on) should be heard by higher judiciary courts, and prescribe heavier punishments than the chiefs can award. But nevertheless, they clearly feel that it adds authority to their sentences, both in the eyes of the people and of the government (or foreign observers). Some people, especially youth, recommend that all chiefs should have codes of law, to ensure that they judge fairly; the written law is thus seen to have a power of neutrality. The courts also make liberal use of ink stamps to authorise summonses, arrest and imprisonment warrants, receipts and general correspondence. Chiefs repeatedly emphasised to me that the ink stamp showing the name of their court is what makes them a chief, or reveals that they are a chief. The Arabic word, *waraga*, for paper comes up constantly in the court as people request summonses, receipts, letters and orders.

In Rumbek most chiefs are illiterate, but here the role of the *agamlong* – sometimes translated as ‘interpreter’ but more literally as ‘repeater of law’ – is revealing. On a practical level, the *agamlong* enables the audience in the court to hear by repeating more loudly the words of chiefs and parties to the case; in other words he makes the case more public. The institution of *agamlong* is said to have started with the spearmasters; the *agamlong* mediated the requests for blessings from the spearmaster and his response, so that people had confidence because the spearmaster ‘did not work alone’.²⁵ This appears to be a means of abstracting and distancing the individual person of the spearmaster from the speech that came through him. Similarly the court *agamlong* was explained to me in English as making things ‘official’: ‘he repeats what is said so that it becomes law’.²⁶ He is also another kind of witness, and even in marriage agreements a maternal relative is usually chosen to be the *agamlong*, the principal witness in case of future problems, since in Rumbek marriages are not usually recorded in writing, as they increasingly are elsewhere. The purpose and role of the *agamlong* is thus comparable with writing (and court clerk) in local understanding; it turns speech into public, official and durable statements and laws, and it functions as a neutral witness (cf. Moore, 1992:30):

*You go to the court where all the chiefs are together, because a court where cases are to be written is not to be judged by one chief alone. If a case is not written down, it is like it is not seen, because it has no number, so if there is any appeal later and the appeal court asks for the papers, if they are not there, the case is not seen.*²⁷

²⁴ Interview with County Court Judge (in English), 4 Nov 2006, Rumbek.

²⁵ Interview with elderly former *agamlong* to a spearmaster (translated from Dinka), 7 June 2006, Rumbek.

²⁶ Interview with church translator (in English), 13 June 2006, Rumbek.

²⁷ Interview with elderly former schoolteacher (in English), 17 Nov 2006, Rumbek.

The prominence of writing and papers in the chiefs' courts and their connection to the power of the state has always opened up opportunities to people who might lack status in other arenas. Many of the chiefs have not been literate, though some were or are, and nor have many of the elders who attend or advise the courts. At times there have been tensions between chiefs and the literate court clerks, often resulting in prosecution or removal of the latter. Since the colonial period, younger men and women who have had some schooling have been able to draw upon the power of writing or their access to missionary or church authorities, or employers, to support their cases in court (e.g. Leonardi, 2007c). Colonial records are full of appeal letters from the 1940s and '50s, written by minor government employees to object to chiefs' verdicts, and employing standard expressions like 'for your kind consideration'.²⁸

Nowadays, people who have been abroad, often as refugees, have learned languages and idioms which they deploy in court; many young women in particular use occasional English words or phrases, or insist, for example, on paying court fees in US dollars rather than local currency. In cases involving physical hurt, litigants are supposed to obtain the well-known 'Form No. 8' from the police, to be filled in by a medical officer. A recent report on cases of gender-based violence criticises the use of the form (Mennen, 2008:45), but it appears to have been seized upon with alacrity in many cases as an additional 'paper' resource by which to strengthen one's case. The men and women who most often deploy in court their literacy, language and wider experiences are those who are town-dwelling, often young, and usually returnees from displacement or refugee camps. They are viewed with disapproval by others as being too quick to 'rush' to court to air in public minor quarrels, jealousies and fights that should be kept private, but they demonstrate that the courts have become arenas for debate and contesting values and logics. The rights-based campaigns by international and Sudanese organisations have provided further ammunition with which to criticise and challenge the judicial authorities. One chief in Juba explained that town people tend to be more 'clever' in their cases than those in remote areas:

*The people close by are always collecting regulations from the police. People like to go and watch the judges settling cases, just to learn, so you find that people even know the right sections for their cases.*²⁹

Money, market-place and multiple economies

The increasing recourse to courts by urban youth reflects the major changes in society and economy over the last decade or more, as towns have swelled in population (and incorporated formerly rural courts), and as employment opportunities in international organisations and companies have expanded. The distinction drawn between the 'home' and the *hakuma* or the town also has a central economic dimension, reflecting the (increasingly blurred) division between 'money' and 'non-money' spheres, the latter defined by social capital, marriages and the exchange of cattle and livestock (Hutchinson, 1996). It is in the interaction between these two spheres that some of the additional significance of the courts lies; introduced at the same time as the money

²⁸ E.g. in SRO Equatoria Province 41.J.1.

²⁹ Interview with chiefs' court president (in English), 19 Dec 2006, Juba.

economy began to impact on people, they have played an important role in resolving disputes in both money and non-money economies, and in mediating between the values of the town and of the village. The chiefs' courts are closely linked to the money economy, especially as many of them are now located inside the towns, and often in close proximity to the market areas. They often deal with financial debts and disputes between traders, and they collect fees and most fines in the form of cash. As court records reveal, these were a source of cash income for the military authorities until as late as 2005. As one chief put it, money must be paid for a court case to be heard.³⁰

The 'laws' that the courts refer to are principally their financial regulations, in terms of sentences or compensation amounts. As the name *agamlong* shows, the local Dinka word often translated as 'law' is *long*, but its meaning is clearly not identical; it means 'court' or 'cases' rather than 'laws', and it seems to derive originally from the speeches of the spearmasters. Customary 'law' is thus more about speech and settlement, process and outcome, than about prescriptive laws. The Bari word *saresi* is used in Yei and Juba to refer to the norms that might explain and justify court decisions, but which are not the same as 'laws'. In fact in Rumbek, Juba and Yei, the Arabic word *ganun* is used much more commonly to translate 'laws'. When then asked to explain what *ganun* are, most people say that they come from the government, and then explain the different amounts of penalties and compensation which the various courts are able to award. The amounts of bridewealth/compensation for pregnancy and bloodwealth payable in court cases is accepted as being set by the government. The court fines – *garama* or *akarama* – are understood as the 'government's share', sometimes referred to as 'money for the table', a reference to the symbolic architecture of tables and chairs that has been central to the chiefs' courts since their colonial institution. So the settlement of disputes is understood as a kind of service, for which the government must be paid, or as a means by which the government has been able to insert itself into, and appropriate from the local economy. As one elderly woman in Juba declared, it is better to settle disputes at home than to give money to be 'eaten' by the court.³¹

However, the chiefs' courts also operate in non-money terms, continuing to award compensation and even some fines in the form of cattle and livestock. In Rumbek, nearly all compensation takes the form of cattle, while in Central Equatoria the use of money is much more prevalent. But except in cases of monetary debt or theft, the courts primarily use money to *represent* social obligations, much as cattle are also used. In marriage payments money is always defined as representative: money *for* 'the stick of the old man', 'opening the gate', 'writing the letter', the girl's school fees, and so on. Similarly in the courts, money represents compensation (e.g. for days of hospital treatment/rest), restitution of unfulfilled obligations (e.g. the duties of a husband/wife), or recognition of family/social support (like the payment for 'returning the in-laws' home after they have come to settle a marital problem), and this is more important than its simple cash value. This is particularly apparent in cattle-keeping areas, where, if bridewealth cattle and goats are translated into money payments in the courts, it is at far below the market rates. Money is also often combined with livestock in court judgements even in non-cattle areas, where a goat or chicken is needed for

³⁰ Interview with 'town' chief (translated from Dinka), 31 Oct 2006, Rumbek.

³¹ Interview with elder woman (translated from Bari), 21 March 2006, Juba na Bari village, Juba.

purificatory purposes (especially regarding children in adultery/remarriage cases) and still cannot be substituted by money. In addition, money paid to bail people from prison may be described in the vernacular as ‘exchange’ money – ‘he has exchanged himself with money’ - which is the same terminology as that used for cattle exchanges. Jail therefore functions less as a punishment than as a debtors’ prison (see also Human Rights Watch, 2009:35-6). Money inevitably represents something else, and thus its use in the courts is a way of converting between the monetary economy and the local livestock or moral and social economies.

There are, however, concerns in recent years that some courts are being drawn too much into the money economy through bribery and corruption, making them less accountable to the local moral economy, and privileging those with access to money. There is also a perception that the courts have become more concerned with extracting the monetary payments of fees and fines than with ensuring that compensation is paid. Some specifically associate these alleged tendencies with the new *hakuma*:

*Up to now in this war, they have not returned to the laws of the past... They are working with the laws of the SPLA: laws of fighting/war... Its laws are very good at charging people money.*³²

Yet the criticism of the chiefs’ courts for becoming vulnerable to ‘money’ is perhaps primarily an expression of the tensions of the changing economy, in which those with education or relatives abroad have access to cash, while others remain more dependent on their rural livelihoods, or on wealth in livestock. There is no single local elite, although there are connections between different kinds of elite: at times the chiefs appear to be defending a traditional socio-economic order against the corruption and abuses of politicians and military officers, and the new cultures brought with young returnees; at other times their close relations with government and town elites is apparent. Going to court is vital to regulate the cattle economy, yet it is also seen as a way to access cash; people are said to go to court because they ‘want money’.

Following the series of advances and capture of towns in 1997, the SPLM began to introduce a new terminology for the administrative and judicial hierarchies: County, Payam and Boma/village. The last few years have seen a rapid proliferation of new and sub-divided units, as each clan or section has been convinced that their access to state resources depends upon being recognised as a unit. The number of courts has increased concomitantly, and some courts have moved into the towns, with the result that Rumbek, for example, now has scores of courts sitting within its bounds, even representing units of neighbouring counties. In general, the increase in the numbers of courts and the erosion of a rigid hierarchy means that a kind of judicial ‘market-place’ operates, which is described by some as ‘confusion’, but in which people also have considerable choice as to which court to open their case in. As one headman in Juba put it, ‘Courts are like a church: you can pray anywhere’³³. This in turn means that certain courts gain a reputation for good judgements and attract large numbers of cases. People may even go directly to higher courts like the county magistrates; there is something of a gambling mentality that the higher the court fee, the higher the

³² Interview with elder (translated from Bari), 9 September 2005, Yei.

³³ Interview with town headman (translated from Bari), 10 Jan 2007, Juba.

potential reward, as well as a desire to conduct the case in the most prestigious or authoritative court. In the towns, especially the rapidly expanding capital of Juba, the chiefs' courts hear cases from a variety of ethnic groups; one lowly headman in an IDP camp, for example, gained a reputation for good judgement and frequent floggings in his court, and so attracted cases from other displaced and urban communities.

The popularity of flogging as a punishment in Juba might appear to reflect the impact of Sudanese penal codes in a town that remained in the hands of the Khartoum government. But there appears rather to be a satisfaction with the enactment of immediate discipline. These courts make the dominating aspect of justice particularly apparent, flogging teenagers for sexual offences or petty crimes. However, the chiefs are distanced personally from such punitive justice, reflecting an apparent desire to abstract and depersonalise the use of force. A recent report highlighted the deliberate recourse to a policeman to administer lashes in Juba chiefs' courts:

It was said that it was crucial that a police officer carried out the sentence and did so in uniform because then the execution of the sentence assumed legality, appeared impersonal, and looked "official". (Sheye & Baker, 2007:19)

This is precisely the concept of impartial, official, government power that people have long sought through the chiefs' courts. It reflects the need for justice and punishment to appear both collective *and* impersonal, which is also apparent in the role of the *agamlong* in Rumbek, and may also lie behind the widespread use of oath-taking in the courts using spears, animal sacrifices or a Bible. As Fields (1985:264) argues, central African ordeal trials imparted the power of the collectivity, reducing the role of the diviner or chief to a mere agent. The use of police and court bailiffs by the chiefs in Southern Sudan seems designed to serve a similar purpose. The chiefs' courts combine the notion of a collective will with an impersonal power of enforcement:

Beny riel [court bailiff] is the one given instructions and power by the government; it is not his own power. Like if a group sit like this and decide something, and then ask one of the group to carry out that thing, he is beny riel. We have authorised him to have that power, so we have to accept it.³⁴

In the person of the beny riel, or the institution of the chiefs' court, there seems to be a fusion of externally-derived governmental power, and an internally-rooted abstraction of the collective will. This in turn suggests a construction of the state itself from the 'bottom-up' as well as from top-down.

Since the colonial period, the state police have also been sought out, however, because they represent an entirely alien or distant force. Even after a history of arbitrary and often abusive police behaviour, and their continuing overlap with the military, Southern Sudanese take cases voluntarily to the police, who are also closely connected to the chiefs' courts. Increasingly between 2004 and 2007, when asked what they do if someone wrongs them, people say they would go to the police, who then send them to the appropriate court. This seems to mark a change from a time

³⁴ Interview with elder man (translated from Dinka), 18 Nov 2006, Rumbek.

when the police were largely restricted to maintaining law and order in the towns. Sometimes the police attempt to settle the crime or dispute themselves without even sending the case to court, but they also direct cases to particular courts, and in Yei and Rumbek chiefs can request that the police arrest or imprison someone. The reversal of this in Juba, where, since the 1990s, chiefs must obtain warrants of arrest from the police attorney, is a cause of vocal complaint by the chiefs that they have lost their 'powers'.

A widespread rule of thumb is that cases involving any 'blood' should be taken to the police, but the 'Form no. 8' for medical treatment has become crucial in obtaining compensation according to the number of days of treatment/rest awarded, and so even relatively minor injuries or bruises are reported to police and hospital. Some women in particular pursue this avenue if beaten by their husbands or other women. There are widespread complaints that police involvement makes disputes escalate more quickly: people should try to resolve things before 'rushing' to the police and their guns, because prison or money penalties will damage social relations; this use of 'government' force should be a last resort. Clearly the police themselves have successfully inserted themselves between people and courts, and have taken entrepreneurial advantage of the official space they inhabit in the towns. But more importantly, there is also a popular desire for that officialdom because people feel that uniforms and written forms add authority to their claims. The paradoxes of the ambivalence with which the power of the state is viewed are particularly apparent in attitudes and practices towards the police, who are much more part of the *hakuma* than are the chiefs.

Corruption, conflict and a personalised state

At the same time that increasing numbers of people appear to be going to court and police, and seeking to access the state as a source of neutral and effective adjudication, there is a widespread perception that state power is no longer as distant and impersonal, and that this is rendering it less effective in resolving serious conflicts. In reality the coercive 'power of Government' has always been limited (Willis, 2003), but nostalgic views of its past effectiveness do reveal specific concerns with the way that it has been appropriated in divisive ways by current leaders. The police, for example, are widely reported to be powerless in relation to the military; the latter are said to follow 'jungle' or 'bush' law rather than obeying state authorities. A recent report cited one soldier who had seized a piece of land as having declared 'we don't need law because we liberated this land' (Human Rights Watch, 2009:32). Military and/or police brutality is certainly nothing new in Southern Sudan, but the absence of an appearance of discipline and coordination of state force has undermined the association of 'law' with 'government'.

The failings of the judicial system are particularly debated in cattle-keeping areas like Rumbek, where local and regional conflicts between young men of different sections have occurred frequently since 'liberation' in 1997 and are continuing since the CPA of 2005. Such conflicts are frequently attributed to the proliferation of small arms in the region (e.g. Garfield, 2007), although local people elaborate this problem to blame SPLA leaders specifically for interfering in the conflicts and supplying weapons for their own profit. But others also highlight the failure to achieve conflict resolution

through the courts, for a number of reasons. The judiciary courts that have largely heard the homicide cases resulting from fighting are accused of corruption and deliberate delaying of hearings. They are also seen to prioritise the extractive aspect of court penalties, the fees and fines, rather than the execution of compensation awards, so that the value of the lives lost can only be reclaimed by revenge and further raiding. But above all, the chiefs are seen (and admit themselves) to be ineffective because they are no longer effectively backed up by military and police power; instead the latter are said to release prisoners and interfere in court cases. This really reflects a more fundamental perception of the politicisation of local justice and administration. The confused and eroded hierarchy of appeal from lower to higher courts is particularly highlighted as a problem, and again reflects the loss of a clear, official and progressive avenue to accessing the power of the state.

Some of these problems were discussed as early as 1999 during the landmark Nuer-Dinka peace conference at Wunlit (one of a number of ‘people-to-people’ peace initiatives organised by NGOs and churches, particularly the New Sudan Council of Churches). Wunlit has been widely hailed as a success story, bringing an end to the devastating Nuer-Dinka conflicts that had followed the 1991 split in the SPLA leadership. The Wunlit discussions revealed the perceived ineffectiveness of local justice in homicide and raiding cases, lamenting the loss of former resolution of fighting through the payment of ‘bloodwealth’ compensation. This reveals the interconnection of local justice and wider conflict resolution, which has also become apparent in the continuing conflicts since 2005. Nostalgia for both effective enforcement of compensation payment and for the capital punishment of the colonial period reflects a desire for the governmental ‘power’ that used to back up chiefs’ settlements, but which has become too factionalised and politicised to do so effectively any longer. As one NSCC woman activist explained:

They [the chiefs] had just lost power [my emphasis]... We have to get our powers back from whoever has stolen them from us... The SPLA is willing to give back the powers.³⁵

Although this is a statement in English, it implies a similar notion of ‘power’ to the *riel* (in Dinka) that people have sought to access through the chiefs’ courts.

To cement the Wunlit agreements, spiritual leaders sacrificed a white bull and cursed any who would break the peace agreement. Yet the need to avoid idealising these local peace-making initiatives was highlighted by one of the participating chiefs:

Even if we sacrifice a hundred head of cattle to confirm our agreements, in the end will we be able to restrain the actions of the soldiers when they determine to raid?³⁶

The Rift Valley Institute report into the people-to-people peace processes concludes that ‘local peace agreements will only be transitory unless supported by government and other controlling authorities’ (Bradbury *et al*, 2006:9). Such grass-roots peace initiatives, however well-intentioned and deeply meaningful, cannot follow through

³⁵ Awut Deng Acuil, 2004, cited in Bradbury *et al* (2006:46).

³⁶ Chief Gaga Riek Machar, 1999, cited in Bradbury *et al* (2006:2).

and ensure long-term maintenance without a degree of government backing. But the current government is no longer seen as the historically arbitrary but distant *hakuma*; it has been appropriated and brought closer by Southern Sudanese, but in the process is seen to have become more divisive and factional, siding with one or other parties in conflicts. There are rather nostalgic local memories of the later colonial government's success in ending conflicts by a combination of state-enforced justice with the added sanction of sacrifices performed by spiritual leaders. But as one woman in Rumbek explained, there used to be a difference between 'government' and 'people', whereas now 'everyone has guns'.³⁷ The gun is not in itself the cause of the increased fighting but it symbolises the diffusion and banalisation of the force of the *hakuma*, rendering its former concentration in the courts and police less potent. According to local discourse, the state *should* be distant, an abstraction, in order to be effective.

The new government has been seeking to extend greater control over the chiefs and their courts, as well as over local peace initiatives. The Ministry of Legal Affairs and Constitutional Development has particularly advocated the recording, codification and 'harmonisation' of customary law. The three towns discussed in this paper have all been a focus for international and government interventions in the judicial system; chiefs have become adept at the 'workshop' and its rituals. The government desire to record customary law is in effect an attempt to turn it into a statutory set of codes and to restrict the chiefs' autonomy in decision-making, which is not actually based on a particular body of rules but on particular practices and logics. Both government and international agencies tend to associate customary law with specific ethnic groups,³⁸ partly reflecting a serious tension over cattle-keepers who have moved in to agricultural areas, and whose cattle-based compensation is seen to be incompatible with other forms. Yet in individual cases, the courts are quite capable of finding a suitable exchange between different economies (see also Scheye & Baker, 2007:18). This is really a political issue, reflecting the inherently political nature of justice. As politics become increasingly 'tribal', so law is held up as an aspect of ethnic culture to be defended not so much against a homogenising state, but against a state perceived to have been appropriated by other ethnic groups.

Conclusion

As Giblin (2005) has explored in the case of Tanzania, people may seek refuge from the state in their home or kin communities, and yet simultaneously seek to break down their exclusion from the state. Southern Sudanese have needed their chiefs to mediate with often dangerous government forces to deflect the demands and violence of the latter. Yet they have also struggled to access the power of that force for their own ends, whether in dispute resolution or in political and military arenas. This contradictory relationship has bred further paradoxes, as collectively, Southerners have successfully appropriated the government, and increasingly invaded the towns and 'official' or 'public' spaces. Now the consequence is growing concern at the blurring of the boundary between town and village, *hakuma* and 'home', a concern manifest in a range of discourse from criticism of the youth who are no longer

³⁷ Interview with middle-aged woman (translated from Dinka), 26 May 2005, Rumbek.

³⁸ Vandewint (2004:13): 'Each different tribal group in southern Sudan has its own discrete body of customary law... In effect there are fifty separate bodies of customary laws'; also C. Jones-Pauly cited in Santschi (2007:6).

ashamed to air their 'home' disputes in the public arena of the court, to condemnation of political and military officers of the *hakuma* for escalating conflicts and corrupting the judicial system. The power of the state perhaps appeared more neutral and effective when it was more alien and mysterious, although such government neutrality is more likely a nostalgic hope rather than a historical experience. But regardless of the reality of state power, people have sought to utilise it through the chiefs' courts by adopting its symbols and rituals, and by appealing to its capacity to enforce settlements. The result is arenas in which resources and capital from different economies and cultures are deployed and debated, and in which the local social order and wider political structures are simultaneously reinforced and contested.

This aspect of negotiation in the courts cannot be captured by legislation and codification of customary law. If the latter is recorded, it will represent idealised normative rules, which will no doubt be added to statutory law books as a means by which to add authority to decisions. But those decisions will continue to be made by chiefs and court members on the basis of individual cases and social context, just as in other local-level justice systems around the world, including lay magistrate courts (see Gordon and Meggitt, 1985). A bigger concern is that the process of recording such 'laws' would highlight divisive ideas about ethnic difference. If one thing is apparent from the 'mish-mash' of local justice in Southern Sudan, it is that the chiefs' courts do not follow some ancient tribal laws, but instead combine local social knowledge with wider influences and aspects of the *hakuma*. As such they provide arenas for negotiation that have little difficulty in mediating different economies or cultures. The commonality across the research sites discussed in this paper lies in the consistent claims made upon the power of the state in the pursuit of local claims and the ideal that that power should transform the chiefs into neutral outsiders, whilst retaining their inside knowledge of the local social field. In this sense it is less their 'semi-autonomy' (Moore, 1973) that is significant or surprising than their 'semi-articulation' with the state, however intermittent or arbitrary the power of the latter has been.

References

- Bradbury, M., Ryle, J., Medley, M. & Sansculotte-Greenidge, K. 2006. *Local Peace Processes in Sudan: a baseline study*. Rift Valley Institute: London.
- Branch, A. & Mampilly, Z. C. 2005, 'Winning the War but Losing the Peace? The dilemma of SPLM/A civil administration and the tasks ahead'. *Journal of Modern African Studies* 43/1: 1-20.
- Chanock, M. 1985. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.
- Damren, S. C. 2002. 'Restorative Justice: prison and the native sense of justice'. *Journal of Legal Pluralism* 47: 83-111.
- Eckert, J. 2006. 'From subjects to Citizens: legalism from below and the homogenisation of the legal sphere'. *Journal of Legal Pluralism* 53-4: 45-76.
- Fanthorpe, R. 2006. 'On the limits of liberal peace: chiefs and democratic decentralisation in post-war Sierra Leone', *African Affairs* 105 (418), 27-49.
- Fields, K. E. 1985. *Revival and Rebellion in Colonial Central Africa*. Princeton University Press: Princeton.
- Garfield, R. 2007. *Violence and Victimization in South Sudan: Lakes State in the post-CPA period*. Small Arms Survey: Geneva.
- Giblin, J. L. 2005. *A History of the Excluded: Making Family a Refuge from State in Twentieth-Century Tanzania*. Oxford: James Currey
- Gordon, R. J. & Meggitt, M. J. 1985. *Law and Order in the New Guinea Highlands*. Hanover, NH: University Press of New England.
- Human Rights Watch. 2009. *"There is No Protection": Insecurity and Human Rights in Southern Sudan*. New York.
- Hutchinson, S. 1996. *Nuer Dilemmas: Coping with Money, War and the State*. Berkeley.
- Johnson, D. H. 1986. 'Judicial Regulation and Administrative Control: Customary Law and the Nuer, 1898-1954'. *Journal of African History* 27, 59-78.
- Johnson, D. H. 1992. 'Recruitment and Entrapment in Private Slave Armies'. *Slavery and Abolition* 13: 162-73.
- Johnson, D. H. 2003. *The Root Causes of Sudan's Civil Wars*. Oxford: James Currey.
- Jones-Pauly, C. 2006. 'Recommendations of the Workshop on Customary Law, Juba, Southern Sudan, 13-15 November, 2006: a commentary'.

Komma, T. 1998. 'Peacemakers, Prophets, Chiefs and Warriors: Age-Set Antagonism as a Factor of Political Change among the Kipsigis of Kenya', in E. Kurimoto and S. Simonse (eds.), *Conflict, Age and Power in North East Africa*, 186-205. Oxford: James Currey.

Kuol, M. A. 1997. *Administration of justice in the (SPLA/M) liberated areas: court cases in war-torn Southern Sudan*. Oxford: Refugee Studies Programme.

Kuol, M. A. 2000. 'The Anthropology of Law and Issues of Justice in the Southern Sudan Today'. MPhil thesis: University of Oxford.

Leonardi, C. 2005. 'Knowing Authority: Colonial Governance and Local Community in Equatoria, Sudan, 1900-56'. PhD thesis: Durham University.

Leonardi, C. 2007a. "Liberation" or capture? Youth in between *hakuma* and 'home' during civil war and its aftermath in Southern Sudan'. *African Affairs* 106/424: 391-412.

Leonardi, C. 2007b. 'Violence, sacrifice and chiefship in Central Equatoria, Southern Sudan'. *Africa* 77/4: 535-558.

Leonardi, C. 2007c. 'The Poison in the Ink Bottle: Poison Cases and the Moral Economy of Knowledge in 1930s Equatoria, Sudan'. *Journal of Eastern African Studies* 1: 34-56.

Makec, J. W. 1988. *The customary law of the Dinka people of Sudan: in comparison with aspects of Western and Islamic laws*. Afroworld: London.

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

Mawson, A. N. M. 1989. 'The triumph of life: political dispute and religious ceremonial among the Agar Dinka of the Southern Sudan'. PhD thesis: Cambridge.

Mennen, T. 2008. *Adapting Restorative Justice Principles to Reform Customary Courts in Dealing with Gender-Based Violence in Southern Sudan*. DPK Consulting for UNFPA, San Francisco, CA.

Merry, S. E. 1991. 'Law and Colonialism: review essay'. *Law and Society Review* 25/4: 889-922.

Moore, S. F. 1970. 'Politics, Procedures and Norms in Changing Chagga Law'. *Africa* 40/4: 321-344.

Moore, S. F. 1973. 'Law and Social Change: the semi-autonomous social field as an appropriate subject of study'. *Law and Society Review* 7/4: 719-746.

Moore, S. F. 1992. 'Treating Law as Knowledge: telling colonial officers what to say to Africans about running "their own" native courts'. *Law and Society Review* 26/1: 11-46.

Moore, S. F. 2001. 'Certainties Undone: fifty turbulent years of legal anthropology'. *Journal of the Royal Anthropological Institute* 7/1: 95-116.

Rolandsen, O. 2005. *Guerrilla Government: political changes in the Southern Sudan during the 1990s*. Uppsala: Nordiska Afrikainstitutet.

Santschi, M. 2007. *Report on the Traditional Leaders Conference 9th-13th august 2007, Torit, Eastern Equatoria State*. Swiss Peace.

Scheye, E. & Baker, B. 2007. *The Multi-Layered Approach: Supporting Local Justice and Security Systems in southern Sudan*. Draft report for DFID Strategic Development Fund.

Shadle, B. L. 2003. 'Bridewealth and Female Consent: Marriage Disputes in African Courts, Gusiiland, Kenya'. *Journal of African History* 44: 241-62.

SPLM Secretariat for Legal affairs and Constitutional Development, Customary Law Steering Committee. 2004. *Report on the First Customary Law Work Plan Workshop*. Nairobi.

Vandewint, C. (et al) 2004. *A Study of Customary Law in Contemporary Southern Sudan*. World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs.

Willis, J. 2003. 'Violence, authority and the state in the Nuba Mountains of Condominium Sudan'. *The Historical Journal* 46/1: 89-114.

Willis, J. 2005. '*Hukm*. The Creolization of Authority in Condominium Sudan'. *Journal of African History* 46: 29-50.

Zanen, S. M. & Van Den Hoek, A. W. 1987. 'Dinka Dualism and the Nilotic Hierarchy of Values', in P. E. de Josselin de Jong, R. de Ridder, Jan A. J. Karremans, *The Leiden Tradition in Structural Anthropology*. Brill: Leiden.