
Traditional Authority Study
Report for Upper Nile Region

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1.0 Background

Fieldwork for this study was conducted in the counties of Payinjar and Leer in western Upper Nile, and Akobo in the central Upper Nile Region. These areas are occupied by a nilotic people from the Nuer tribe. The Nuer are divided into eleven territorial groupings, 'loose' as called by Hutchinson (1996 :22). The matrix below shows the territorial groupings of the counties studied.

County	Territorial group	Payam
Leer	Dok	Leer
		Guat
Ganyliel	Nyuong	Tiap
		Ganyliel
Ayod	Gaawar	Yen
		Mogok

The political organisation of the Nuer people before colonialism has been argued as being egalitarian – with no chiefs or kings. Kinship and residency affiliations played the role of political organisation. It is however acknowledged that they had laws, customs, and customs that governed human relationships (see Howell, 1954:22). He argues that it is these 'customs' that were being administered in tribunals today – though there was traditionally no distinction between criminal and civil law on the basis of conventional legal principles today. There were also no regular institutions for the enforcement of these traditional laws. The establishment of institutions to administer and enforce these laws was therefore a major intervention towards maintenance of law and order by the colonial government.

However, Johnson (1986 :60-64) convincingly argues for the existence of a form of local governance among the Nuer that, in our opinion was either not understood by other scholars or was just ignored. He argues that settlement of disputes was a process of negotiation where arbitration in disputes or feuds between social groupings often meant exposing all reasonable obligations involved and deciding whether and how they could be met. He argues further that such disputes were settled through discussions between *ad hoc* groups of mediators from opposing groups, mainly the *gat tuot* (translated to mean 'sons of bulls') and the earth priest (who would be from a neutral lineage) rather than through pronouncements of a single ruler (Johnson, :60). The discussions would continue until a consensus was reached. The opinion of the earth priest, whose main function was to mediate feuds, was not taken as judgement¹. The land priest was critical as an arbitrator because of his spiritual ability to curse the land. This sanction was always feared by the people and the judicious use of this threat would often persuade the parties to come to an agreement.

It is important to mention that the Nuer had resisted colonial rule – mounting resistance against the British for about two decades, in which period they fought running battles with their colonisers from about 1898 up to 1929 when they were finally defeated. Probably out of the experience of fighting with the Nuer, or because of what was considered an unusually high rate of feuding among the Nuer, concerns

¹ Johnson borrows this from Evans-Pritchard, *The Nuer*, 1940 :109

about pacification and public security dominated the administrative measures imposed by the colonial government (Johnson *ibid* :77). The introduction of the political institution of chiefs was in line with these concerns. Political hierarchies were introduced with the chiefs being responsible for activities that included collection of taxes, mobilisation of labour, and enforcement of law and order. The mixture of the innovation to establish institutions that are expected to administer laws derived from Nuer traditions/customs that the colonial government used was a strategy of maintaining administration and control and legitimacy among the Nuer. This new institution, the chiefs, would then become the local government and the administration of these laws would then become one of their functions.

The Nuer are known for their elaborate customary law. It is this that the colonial administration standardised since it was already being administered in Nuer tribunals. To date, the Nuer society continues to be governed predominantly using this customary law. A cursory look at some literature that gives accounts of how colonial government grappled with the choice of what would be the best way of administering the Nuer shows the shifting strategies of indirect rule that were being tried out². Initially, it was thought that using existing traditional leaders would be the way to go, but when this proved unsatisfactory for administrative reasons (may be because of the existing leaders were mainly spiritual leaders who, by virtue of their position, owed their allegiance to the supernatural) the revelation by Evans-Pritchard (cf. Johnson, 1980:71) about the functions of the senior men of the dominant lineages in the camps, the *gat tuot* or headmen, provided an alternative to the spiritual leaders that government embraced. The chiefs were then introduced along the lineage principle of the position of a headman.

The mixture of the innovation to establish institutions that are expected to administer laws derived from Nuer traditions/customs that the colonial government used as a was a strategy of maintaining administration and control to legitimacy among the Nuer. This new institution, the chiefs, would then become the local government and the administration of these laws would then become one of their functions.

1.1 The Nuer Society

The social organisation of the Nuer has been of interest since the acclaimed ethnographic study by Evans-Pritchard (1940) which described its uniqueness as a segmentary lineage system. This social organisation ascribes which persons can have certain rights and obligations at under specific circumstances. Because of the nature of this lineage system, actions of individuals are not viewed just as individual actions but rather are rather attributed to the lineage. For instance the responsibility of the acts of a killer is borne by his kinsmen and they will be obliged to contribute for restitution. We discuss this in more detail later. Being a patriarchy, lineage is traced through the males and the status of women is strongly relegated to a secondary position.

² See Johnson, Douglas H., 1986. Judicial Regulation and Administrative Control: Customary Law and the Nuer, 1898-1954. *Journal of African History*, 27 pp.59-78. London: Oxford University Press; Howell, P.P., 1954. *A Manual of Nuer Law.* London: Oxford University Press.

1.2 Armament in Upper Nile region

It is argued that the era of ‘government’ and that of ‘the gun’ among the Nuer is one (Hutchinson, op cit.:103). Nuer experience with colonial government was characterised by force in form of tribute collecting raids, forced labour, and introduction of government. This was later followed by the 1955-1972 civil war in the south, and then the second – 1983-2004. So right from the colonial period the gun and violence dominated the lives of the Nuer. As a result there has been an unprecedented proliferation of firearms in the region. In deed this was highlighted especially in Ayod where it was observed by both the local authority and the local people that each male of age had a gun.

The availability of guns in the population over the years has contributed to the intensity of feuding and fighting both inter and intra-community levels and has played part in shaping the nature of the relationships between the communities. The chiefs also observed that guns have affected the effectiveness and functioning of their offices. We shall substantiate these later.

1.3 The Institution of Chiefs in the Upper Nile Region

Although the institution of chiefs is not indigenous to the Nuer, their role in maintaining some form of governance and therefore social order from the introduction of this system in the colonial times through the years of the civil wars in south Sudan cannot be overemphasised. It was the general view of the people in all the three areas studied that the chiefs were the only authority that maintained a presence in the community and that reminded them of some form of governance and maintenance of stability in the region. The military did not have direct links with the local people and functioned through the chiefs. This makes the discussion on the role of chiefs in a post conflict south Sudan pertinent.

Our findings indicate similarity in the application of customary law in all the three counties studied. As such, the discussions below apply to all the three areas unless otherwise indicated.

1.4 Orientation

On account of the current concerns of the people in the areas of study, and the information from secondary literature regarding the state of affairs among the Nuer right from the colonial era, this report is inclined to discussing the judicial functions of the chiefs. This is because settling of feuds and conflicts has and is still the central function of traditional authority.

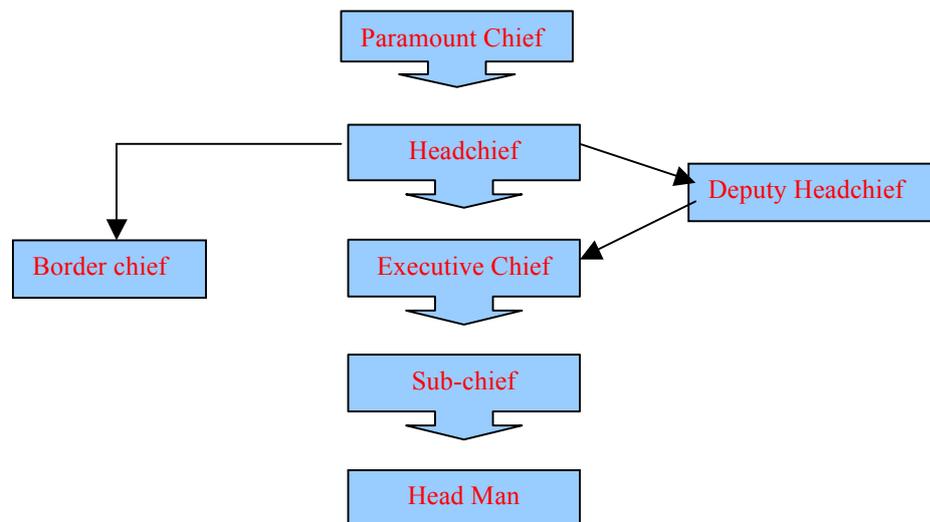
2.0 *Traditional Authority in Upper Nile*

The people understood traditional authority as the institution of chiefs, and this is the context in which it is used in this report. It is recognised as those leaders who are based in the local community and derive their power from their local roots, their communities, as opposed to the modern state.

As we argue above, whereas there were no indigenous ‘chiefs’, as we know them today, among the Nuer, the function of the present day chiefs was performed by the *gat tuot* and *kuar muon*. This in our view nullifies the argument of the Nuer as an egalitarian society.

From when they were introduced, chiefs have enjoyed a privileged social position in their community. A chief commands power and authority and is regarded with esteem by his community. The power and authority they wield is derived from personal charm, from the social/political position held, and also from personal wealth that is often associated with them. This will be described in detail in the subsequent sections.

The hierarchy of the traditional authority in this region, in descending order, is as follows:



2.1 The activities and responsibilities of the chiefs

2.1.1 The Headman (*gat tuot*)

This is the lowest level of traditional authority. *Gat tuot* is the leader for his lineage – which may consist of anywhere from 50 to 100 households. *Gat tuot* comes to office by the respective lineage electing him. This individual is expected to know of all the members of his lineage and keep track of them wherever they are – literally anywhere in the world. He keeps record of births and deaths among his people, in short he is the living record of his lineage. Such a man should have the reputation of being strong in character so that he will not betray his lineage in case a member of the lineage gets into conflict with someone outside the lineage.

Gat tuot is responsible for mobilising his members for self-help activities like clearing wells and clearing roads. In both Ganyliel and Ayod, there was some clearing of roads that was being done at the time of fieldwork. The various headmen had been responsible for mobilising labour for the work and was responsible for keeping record of whose turn it was to work and when to change the shifts. Since the work was done under the 'food for work' scheme with the World Food Programme (WFP) where individuals receive food rations in return for labour rendered for community work, the role of the headmen in keeping record of who works was essential.

The headman is also the custodian of all the property of the lineage. Nothing is given out from or comes into the lineage without his knowledge. If someone wants to borrow livestock from a kinsman or friend for instance, the approval of the headman is sought and he acts as witness. This is so because in the event of disagreement over when to return as sometimes happens, it is headman who acts as witness.

The headman is responsible for maintaining harmony among his people by ensuring that they adhere to all the traditional/cultural provisions. For instance, marriage is regarded as a clan issue. When a girl gets married the bride price is distributed to close kin. If any member is dissatisfied with the amount received, the complaint is forwarded to the headman. On the other hand, when a man gets married, he seeks blessing for the idea and his choice from his headman. The contributions of the bride price are made by the closest members of the lineage of the groom. If any of the members of the lineage of the groom has a complaint about the portion of their contribution towards the bridewealth, the complaint is forwarded to *gat tuot*.

We should mention here that the judicial functions of *gat tuot* are concentrated at the level of his lineage – mainly settling minor domestic disputes. These include cases involving small stock like goats, and where one or two cattle are concerned. This is the smallest unit that performs judicial functions.

He is also responsible for the widows in the lineage. If a man dies, it is *gat tuo*'s responsibility to assign someone to inherit the widow. This is done in a meeting of the family of the deceased but chaired by the headman. It is the family of the deceased that is responsible for appointing the heir. Such a situation necessitates the intervention of *gat tuot*. However, it was explained that there are cases where the widow rejects the heir. The discussion indicated that this is often a difficult situation because a woman traditionally has little say on this because the family of the deceased is entirely responsible for her because of the bride-price paid. Because of this, the widow is sometimes forced to go with whomever the family chooses as heir. She is sometimes forced to put up with an abusive, lazy or extravagant man. It was however mentioned that some women have resisted such decisions and have forced the headmen to help get them alternatives even from outside the kin of the deceased.

On the administrative side, *gat tuot* executes all the policies, decisions and instructions from the either the chiefs or the local authority. He is the last point of implementation of execution of such decisions since he is directly in touch with the members of his lineage. The headman is accountable to the sub-chief.

2.1.2 Sub Chief (central – *lam*, western - *wokel*):

The sub-chief co-ordinates the activities of the headmen under him – normally three in number. He ensures that the decisions from the higher chiefs or the local authority are executed by the headmen under him. He provides backup to the headmen in case they meet some challengers in executing some of the duties assigned to them.

The sub-chief is also responsible for the property of the sub-clan. The livestock, the land and its borders, land use disputes, co-operation between sub-clans are all under his jurisdiction.

He is responsible for mobilising his sub-clan over issues like blood wealth / blood compensation but through *gat tuot*. It is the members of a sub-clan who bear the blood compensation. Cases of divorce are sometimes taken directly to the sub-chief, and it is the sub-chief who calls in the headman to give his views on the matter during the hearings. This is because the headman will already have handled the issue at family level and so is expected to be knowledgeable about it.

The sub-chief reports to the executive chief, and is the one to whom the executive chief gives instructions.

2.1.3 Executive Chief (central - *wic lok*, western – *reth*)

Each executive chief has an average of three sub-chiefs under him. He is the one who assigns the sub-chiefs their duties other than what is referred to them by their headmen.

It is the executive chief who handles inter-clan conflicts. He does this together with the sub-chiefs and headmen of the respective clans. It is the executive chief who has the powers to disperse feuding groups that the sub-chiefs cannot manage.

If the matter to be solved is homicide, theft, assault, border conflicts, or any other matters forwarded by the sub chiefs that cannot be handled by the executive chief, such cases are forwarded to the head-chief. The head-chief chairs the court sessions and the executive chiefs sit as members.

In the hierarchy, the executive chief reports to the head-chief.

2.1.4 Headchief (Central – *kuar book*, Western – *book*)

This is the most senior position in the section. He is responsible for two-to-three executive chiefs – depending on the size of the section. The headchief is the co-ordinating office between government and the community. This is the first point of dissemination of information from government. It is the responsibility of the headchief to ensure that the information is transmitted to the community using the chain of traditional authority as described above.

The position of the deputy head-chief was mentioned in Leer and was described plainly as one who deputises the headchief. The duties of the deputy headchief are assigned by the headchief. It was argued that responsibilities of the headchief were many and necessitated assistance.

2.1.5 Paramount Chief (*Thieb*)

The paramount chief is the most senior headchief. However, the area controlled by the paramount chief was not easily established. There were two paramount chiefs, both based at Ganyliel in Payinjar county. They are currently the most senior chiefs and were being referred to in both Ayod and Leer as the known paramount chiefs. They are too old to move long distances and so their role is diminishing. They are now revered more as legends.

2.1.6. *Kuar muon*: The spiritual leader

Kuar muon plays a significant role in the governance and maintenance of law and order in their communities. Before the introduction of the chiefs, he used to play the role of arbitrator in the settlement of blood feuds. With time, the spiritual leader was abandoned by the colonial government through the introduction of the chiefs. However, this did not totally abolish the role that was played by *kuar muon* but only limited their functions to only spiritual ones. Although *kuar muon* no longer engages in arbitration over blood feuds, his role in cleansing by removing the spiritual obstacles that may hinder solving conflicts between feuding groups is still solicited. And so is his role in protecting a killer as we describe it below.

In civil cases where it is difficult to establish who is telling the truth, the chiefs often request the services of *kuar muon*. He performs a ceremony called *kuel / kuac* where, after muttering some words, the two litigants are for instance asked to jump over *kuar muon*'s stick with the curse that whoever was not telling the truth would either die, run mad or fall victim of some disaster. Whoever knows that s/he is not telling the truth will not jump over that stick because of fear of the repercussions – and so this will be a confession from whoever is guilty.

However, the chiefs in Ayod observed that some people have discovered a way out of this today and it is by claiming that they are Christians and do not want to engage in the 'witchcraft' of *kuar muon*. This is said to have affected the traditional system of establishing the truth. However, one head chief in Ayod said they sometimes insist on performing the ritual – but at a diminishing rate.

What we would like to highlight here is the fact that the bulk of the responsibilities of maintaining harmony in the community, and mobilisation, fall under the headman. This is because *gat tuot* precedes the institution of chiefs and traditionally has more leverage in society.

2.2 Functions of Traditional Authority

The functions of the traditional authority can be classified into three broad categories: i) cultural/traditional, ii) judicial, and iii) administrative. Below is a descriptive presentation of how a chief executes each of these functions. It should be noted here that although we separate the functions of chiefs into these three categories, they are complementary and so should not be viewed in isolation. However, it is this separation of functions that defines the mandate of each level of the chiefs.

In all the three counties, the chiefs argued that they were preoccupied with the judicial functions more than any other and so it was argued that that whoever is elected as chief ought to be well versed with the rich Nuer customary law in order to avoid making questionable judgement. Whereas chiefs are currently applying the local systems of dispute resolution, it will not be long before they may be applying a plural justice system with – using both the state and local systems of justice. When this happens, there may be need to rethink the competencies of the chiefs in line with the modern administrative, economic, social and political challenges.

We would like to mention here that this report will limit itself to briefly discussing those aspects of customary law only insofar as they help to highlight the nature of Nuer customary law with the view to showing what the traditional leaders deal with today. Incorporating traditional authority to the proposed local government system needs to be done with a clear understanding of the nature of the traditional authority today.

Both the chiefs and the local people argued that the life of a chief was better than that of the ordinary person. Firstly, the social and political position gives them a higher social status than other men. Secondly, it was argued that the chiefs had some form of income, irregular as it may be. In a place where earnings are almost non-existent, this obviously becomes enviable. The chiefs are entitled to a percentage of the fines and collections they make. They also receive part of the court fees that are paid by litigants. They are also entitled to privileged allocations of relief supplies that are allocated to their communities. These earning put them in a better economic position than the ordinary man.

2.2.1 Cultural/Traditional function

Protection of land is a major responsibility of traditional authority. Access to grazing land, field for cultivation, and water sources are a critical factor. Ownership of land is by descent – where descendants own the land of their ancestors. Whereas the discussions did not delve much into issues over land, the Lou Nuer had moved their herds (luak) to the riverbanks in Gawaar territory for watering because it was dry season and the river offered them assurance of water for the stocks. Whereas land and property issues did not feature much as a problem, raids by neighbouring groups often occurred at or near shared resources. The Lou Nuer were accused of raiding livestock and food from their Gawaar neighbours.

The chiefs handle various types of disputes and feuds at family, lineage, sub-clan, clan and inter-clan levels. These include such matters as domestic and family disagreements, marriage, adultery, and issues of property to mention a few. Such matters are handled at the level of the headman, sub-chief, and the executive chief depending on the magnitude of the disagreement/conflict. However, if either party is not satisfied with the judgement given at a said level, they may appeal up to the office of the headchief. Below we give brief explanations of some of the cultural functions of chiefs under traditional authority, or the judicial court at county level.

Marriage: among the Nuer, marriage is a kinship affair. It is the transfer of the agreed number of livestock from the groom and his kinsmen to the parents of the father or guardian of the bride and his kinship group that seals marriage. It is the kinship

relationships that determine the collection of the bridewealth since it is not just the groom and his family who raise the required bridewealth but his lineage. The various discussions with the communities and the chiefs revealed that there was no fixed bridewealth but ranged from 35, which was generally accepted as the minimum, up to sometimes over 100 heads of cattle. It was explained that it is individuals with special kinship relationships with the bride who are entitled to shares of the bridewealth received when a girl gets married.

As mentioned above, it is the responsibility of the headman to ensure that individuals who are entitled to either give or receive are accorded their right or obligation. If there is any dispute in either case, the matter is handled by *gat tuot*. But if the matter is deemed complicated, or if there is dissatisfaction with *gat tuot's* judgement over either a right or obligation, the aggrieved party may appeal to the higher chief.

Marriage, the union of a man and woman as described above and as other communities ordinarily know it, is only one of the unions under the Nuer customary law. Others include ghost marriage – where a woman is married for a deceased man and given to one of his kinsmen, preferably brother, if he had not married at the time of his death. The children produced by the woman will belong to the dead man and under no circumstances is the biological father expected to refer to them as his children. Similarly if a man dies, the children fathered by whoever inherits his widow belong to the dead husband.

Adultery: cases related to adultery are a common occurrence in all the counties that we visited. Cases of adultery are handled by the various chiefs depending on the gravity of the matter. However, it was observed that the nature of the feuds emanating from adultery are changing face with the end result sometimes being homicide. The prevalence of firearms and the relatively high bridewealth were said to be responsible for the sometimes extreme reaction by the husband. As a young man from Ayod put it, “the adulterer is either hurt or even killed ... but you can sympathise with the husband, he will have gone through a lot to get the livestock and someone just comes to play with the woman you paid so much for”. As to whether the groom bears the burden of bridewealth alone and is not shared with his kin as demanded by culture, he argued that sometimes the kin genuinely do not have livestock and so the bulk of the cost is borne by the groom.

Gat tuot is expected to establish the facts and will attempt to solve the matter with the family members concerned or in conjunction with his counterpart if the man belongs to another lineage. If the matter is not resolved it is then forward to higher chiefs.

Nuer law acknowledges that adultery is infringement of a husband's rights and is considered a wrong that demands compensation in the form of cattle. The indemnity for adultery stands at seven head of cattle in Ganyliel. Four of these go to the husband and three to government. In Ayod county the fine is six head of cattle, 4 of which are given to the husband and two for government.

Widow inheritance: widow inheritance among the Nuer is sometimes an area of contention. The headman is the first to officiate in any discussions on widow inheritance since he is head of his kin. The men of Tiap Payam in Ganyliel county argued that it is often desirable that a case of widow inheritance does not get out of

family/lineage discussions because it is more of a family/lineage matter and is therefore discussed within the family/lineage that contributed for the marriage. It is only where an agreement is not reached the matter is referred to the executive chief or headchief.

In the discussion with the women, there was a general observation that it was difficult for a widow to take a man of their preference because she can only pick from within the family/lineage of her deceased husband. They blamed this on the high bridewealth because it eliminates the option of leaving since the family of the widow will be required to refund the bridewealth. They mentioned that refusal of the person given by the family/lineage may sometimes be grounds for divorce especially if it is a young marriage.

Divorce: the dissolution of marriage was presented as a contentious issue. Since marriage involves the husband and his kinsmen and the wife and her kinsmen, the marriage relationship is more complex than in societies that consider it an affair of two, the husband and the wife. The relationship of the two sides is sealed through transfer of bridewealth and since this bridewealth is distributed to the close kin of the woman, divorce becomes complex since all those who receive the bridewealth are expected to give it back upon dissolution of the marriage. Consequently the grounds for divorce are set out and ought to be adhered to. One of them is adultery. A husband may institute divorce if he learns that his wife has committed adultery and he is not willing to receive compensation for adultery as provided for under customary law as described above.

If a woman fails to produce a child, she is declared barren and the husband often demands divorce. Under such circumstances, all the cattle is paid back. If a woman produces only one or two children and stops producing, this can be ground for divorce. It was also explained that marriage can only be stable if a woman produces more than three children. However, in case a wife has produced some children, the husband gets back bridewealth less what is deducted for the children the woman produced.

A woman can also be divorced if the husband accuses her of nagging him and especially if it is related to a polygamous relationship. A wife is not expected to fight either her husband or her co-wife because of jealousy. If this is established, the consequences are severe for the wife and are often tantamount to divorce. The women explained that if their own kin learn of such character, a delegation may be sent to counsel the woman because they can anticipate what is coming, divorce and therefore refund of bridewealth.

If the woman is considered lazy, the husband may also seek divorce.

The above are conditions upon which a husband can seek divorce. However, a wife can also seek divorce under the circumstances below.

1. Impotence of the husband. However, it was explained that sometimes the man marries a woman for purposes of maintaining his name. If he is open about it to his wife (because it is considered shameful and would not like others to know), he allows the wife to choose a regular partner with whom she will produce children for her

eunuch husband. He will always look the other side or turn a deaf ear to all the accusations about his wife's promiscuity. The children born will belong to him. Otherwise, this is reason ample enough for the family to grant divorce.

2. Failure to provide for the family. If the husband fails to support his family by providing for them because he is either a coward and cannot raid cattle, does not go hunting, does not go fishing or does not cultivate, the wife may seek to dissolve the marriage.

3. If the man is accused of spousal abuse, the woman may win divorce. Such a husband often experiences dejection from his kin because battering a woman – which is considered a cowardly and unmanly act.

In all the above cases, the aggrieved party consults with the family and lineage first before *gat tuot* is called in to arbitrate. If the case cannot be handled, then it is forwarded to the executive chief or the head-chief depending on the gravity of the matter.

Whereas there are grounds for either party initiating the dissolution of a marriage, there was a general argument by the women that they often found it difficult to pursue divorce cases. They argued that sometimes the resistance comes from their own kin because of fear of refunding the bridewealth. On the other hand, they argued that the male dominated courts often made it look like they have failed to prove their case and dismissed the case with costs – because you are 'tarnishing the name of the husband'. This argument was discredited by the chiefs who argued that women most times failed to convince the court.

However, where the husband's kin believe their kinsman is accusing his wife unfairly for purposes of divorcing her, one of the men may offer to take her instead – if she accepts. Some of the women said they preferred this if the man is acceptable to them because it saves them the embarrassment of being divorced and also saves their kin the task of reimbursing the bridewealth.

We would like to observe here, though, that the nature of the social structure among the Nuer makes wives 'property of the clan' justified by the practice of kinsmen making contributions for the bridewealth. As a result, if the husband dies, the woman is to be inherited by the deceased's kinsman and when either party seeks to dissolve the marriage, the kinsman of the husband have a role to play and have to be convinced that it is the best option. Some women saw the positive side of this as protection, while others thought they literally had so many to please. All in all, we can say that the system is designed not to leave women free but to maintain control over them as property of the clan.

Assistance for the vulnerable: one of the advantages of the segmentary lineage system among the Nuer is that one's kin are obliged to provide assistance if one of their kinsmen is in need. It was explained that if, for instance, a kinsman is in dire need for reasons not attributed to laziness or of personal making, either he or any other kinsman will inform the headman of the situation. It is then incumbent upon the headman to approach a close and wealthy kin to provide assistance to the needy

kinsman. This is done not as a favour but as a responsibility of kinsmen. If a kinsman refuses to provide the requested assistance, he can be dragged to court.

2.2.2 Judicial functions

The judicial functions of the chiefs far outweigh any other functions they may be involved in. There is a historical side to this as various literature indicate that the colonial government was concerned about how to bring about a justice system that would be both acceptable and effective in a community that was riddled with feuds³. The concern was the swift settlement of disputes and enforce judgements, which of course was different from the traditional Nuer justice system, which was based on social obligation and a spiritually sanctioned moral order (see Johnson, 1986). It is important to underscore the argument that the legend for the wealth of the Nuer is associated with their relationship with their immediate neighbours, the Dinka. Nuer customary law is dominated by cattle feuds.

Homicide was one of the most referred to cases that come for arbitration in all the three counties we visited. We were interested in finding out whether this was because murder was prevalent in the region. In deed the chiefs acknowledged that there were cases of murder but did not think they were very common. A man in one of the discussions in Leer explained that the easy reference to arbitration on murder cases when asked about the functions of chiefs was because murder is a serious crime and so often gets high profile. However, the literature indicates a prevalence of cases of homicide and whereas the argument of homicide being high profile may stand, real examples were sometimes given – indicating the prevalence of homicide.

Homicide among the Nuer is differentiated into various categories with regard to the circumstances under which the homicide is committed. Homicide attracts a fine in bloodwealth, livestock, and a jail term. It is the classification of homicide that determines the amount of compensation in bloodwealth that it attracts. Below, we describe some of them.

1. Premeditated killing: if someone is killed intentionally the rate of compensation depends on the weapon used. If it was committed with a spear, the killer is fined 50 head of cattle, if it is with a gun, the compensation is 100 head of cattle, and in both cases the killer also serves a six-year jail term.
2. Accidental killing: the case of accidental killing generated varied positions during the discussions. If a case of homicide is clearly established as accidental, but using a spear (the task of establishing of which rests with the headchief) blood compensation will then be negotiated – and often falls below the standard murder number of 50 head of cattle. An example of an adulterous man was given in Ayod. If a man caught in adultery is killed, the court acknowledges that the killer ‘overreacted’ but was in one way justified because of the humiliation the act caused him. This justifies it being downgraded from cold-blooded murder.

³ See Johnson, Douglas H., Judicial Regulation and Administrative Control: Customary Law and the Nuer, 1898-1954, *Journal of African History*, 27 (1986) pp.59-78. Great Britain; Howell, P.P., *A Manual of Nuer Law*, London: Oxford University Press; Hutchinson, Sharon E., *Nuer Dilemmas*. London: University of California Press.

However, if the accidental killing is by use of a gun, then the blood compensation is set at 70 head of cattle.

3. Ambushing and killing of a person was also mentioned. This is regarded as a cowardly act that is against Nuer standards of bravery. One who snipes or ambushes his victim is looked down upon and it was argued that such a man is not given the satisfaction of having killed a person by requiring smaller compensation. It was argued that the Nuer believe in 'fair fight' where one party informs the other of his/her intention for a fight for a specified reason. If in the fight that ensues one person is killed, this is considered a fair fight and the circumstances then analysed in the hearing for homicide that follows.
4. If a man elopes with a woman and she dies in his home before he pays bridewealth, he is obliged to pay compensation for her death. However, the bloodwealth paid in this case is the minimum of the bridewealth, which is about 35 head of cattle.
5. If someone was wounded in a brawl but did not die. Watch is kept to see whether that wound can become fatal later. If at a later date – sometimes years later – the person dies from complications that are attributed to the wound, the person who wounded the deceased is immediately called the killer and full compensation for murder is demanded.

It was explained that when a killing takes place, the killer immediately informs his relatives of what happened – if he has time. Alternatively, he reports to the local authority. If he reports to his family first, he is then accompanied by his kin to the spiritual leader, *kuar muon*, to confess the killing. The killer then sacrifices a bull, which he will have gone with, in the presence and home of *kuar muon*. The ritual is performed because it is believed that the spirit of the dead person haunts the killer to the extent s/he will be possessed and will not be able to eat. It is believed that if this ritual is not conducted within a few days of the killing, the killer will die. The ceremony is supposed to give temporary coverage to the killer during the time of the hearing before the blood compensation is made. It is only after the ritual that the killer reports to the government administration. If the killer is arrested by the local authority before he performs the ritual, the local authority will then call *kuar muon* to perform the ceremony. It is after this that the hearings will start. During the hearings, *kuar muon* will be called to testify.

What is important to mention here is that even where there is no witness to the killing, the killer will present his/herself to the authorities because of the belief that the spirit of the deceased will seek vengeance. It was mentioned that on some rare occasions it is *kuar muon* who reports the case to the authorities because of fear of the effects to him as an individual. It is believed that if *kuar muon* does not report the killing after knowing that the person he performed the cleansing ritual on has not reported the killing, then he is an accomplice, and the omen does not spare him. It should, however, be noted that the protection provided by this ritual is only short lived. The long-term solution is paying the bloodwealth.

The belief is that the omen does not affect the killer alone, but also his kin. As a result, they give pressure to the killer to perform the ritual in case he delays to visit

kuar muon. When the verdict is reached – often payment of bloodwealth – the theory of collective responsibility is applied in raising the required number of livestock. As alluded to above, the kinship system applies and it is the segment of the killer that is responsible for raising the required livestock.

Case

Homicide has been at the centre of feuds among the Nuer for long because it is viewed as indignation to the family/lineage and kin of the deceased and it is their responsibility to avenge the death of their kin. The case below serves to illustrate this.

There was a marriage ceremony that took place in the outskirts of Leer town in course of this study. When one of the men who had been invited to attend the ceremony requested for a drink, another man stopped the person who was taking the drink and asked him who he was going to serve. He showed him the guest who was to be served. The man then came to the guest and asked him what he was doing there. Perplexed, the guest responded that he was invited. The man who approached him then asked him whether he knew the person he was talking to. He replied that he did not know.

As the assailant walked away he saw an old man sitting at the side with a spear. He went over to him, slapped him on the face and grabbed the spear he was holding. He then came back and stood in front of the guest. “Your brother killed my brother and we have to settle that here today” he said. Knowing what that meant, the guest tried to get up, but before he could do it, the assailant thrust the spear into his stomach. In the struggle that ensued, the victim then held the spear, managed to pull it out, and wrestled the attacker down. He also speared him through the stomach once, twice, and when he tried to spear him the third time, he lost energy and fell. The two badly injured men were then carried to Leer health centre. Both died the next day.

In the discussions, the people blamed the visitor for going to a place where he knew his kinsman had killed someone. They argued that in spite of bloodwealth having been paid, members of the two lineages have to maintain distance for some years because it is common for a kinsman of the deceased person to seek revenge. After all what would happen is that the bloodwealth that had earlier been paid is returned!

The visitor was a Captain in the SPLA and it was argued that his brother committed the homicide in his absence. Had he known that this marriage was taking place near the family of the man his brother killed he would not have gone there.

Since both the assailant and victim died, case closed.

2.2.2.1 Independence and interference

There was a feeling among the chiefs that their powers and functions were interfered with – and this especially during the period of the civil war. On the general situation, it was observed that some areas of jurisdiction were no longer accessible to the chiefs because of insecurity. One of those mentioned is the office of the border chief. The border chief was less referred to during the study, but was singled out in the meetings

with the various chiefs as the most affected by interference by the military. They argued that since military personnel were not arbiters, solving border problems was most times difficult and the military option was often sought. Since border areas often attract resource-based conflicts, and access to most of these areas was rendered difficult by the war, the military assumed the administration of these areas.

The chiefs also decried the existence of military courts that they claimed did not only compromise their courts but also did not give the people the justice they deserve. This is because, they claimed, there was no appeal to the verdicts from the military courts. They were also not happy that they sometimes had to execute the decisions of the military courts. Decisions that they said were sometimes not fair. Their hope was that with the comprehensive peace agreement the systems would get back to function as before, or better.

2.2.3 Administrative functions

We classify the other functions of the chiefs as administrative. These include such functions as collecting taxes and mobilising labour for development and/or self help activities. Probably because of the many years of the civil war, the administrative function that immediately came to the minds of the people in all the three communities was the collection of resources for the war effort. The chiefs explained that the SPLA often sent out a request for either grain or livestock for feeding the soldiers and a specific amount of grain or number of cattle was assigned to each county. These would then be divided to each community and the headchiefs given the responsibility of raising them. Each headchief then allots each executive chief under him specific amounts to be collected. The executive chief then divides this to his sub-chiefs who then pass down the amounts to the headmen who are responsible for the final mobilisation of the required resources. When the full amount has been collected, what is collected is then forwarded through the same hierarchy up to the head-chief – who then hands the collection to the local authority.

The other administrative function that was mentioned was mobilising personnel for recruitment into the SPLA. The communities and the chiefs in all the three counties studied observed that when the SPLM needed to beef up its forces, the recruitment followed the same format as the mobilisation of resources – where specific targets were communicated to the chiefs. The head-chief would then communicate this all the way down to the headmen. The headmen then mobilised their communities and families offered their sons to join the army. Since the families had offered their children to join the forces, they felt obliged to provide food and any other support to the SPLA because they felt that they were directly assisting their children or kin.

2.2.4 Changes in the functions

The chiefs observed that there had been some changes in their powers and functions from what they used to do in the past. Whereas they continue to perform judicial functions, they felt that their powers had been compromised by what they called militarisation of both the community and the administrative structures. They argued that they did not have opportunity to make any input into the decisions especially in the area of resource mobilisation (human and material). They noted that as a result

they were sometimes forced into implementing what they thought as unrealistic or unfair requirements in terms of quantities of grain and livestock. This was mainly so when there was poor harvest – since people were not able to cultivate much because of the insecurity. Family labour was lost as individuals migrated and others joined the military.

On the side of judicial powers, the chiefs observed that they had difficulties in executing justice mainly resulting from the militarised society they were dealing with. It was explained that it sometimes becomes difficult to collect fines when they are imposed on individuals who are either armed or have kinsmen who rank high in the SPLA. Under such circumstances, the chiefs argued that they sometimes just facilitated dialogue between feuding parties and worked towards a peaceful resolution of the conflict – depending on the nature of the conflict – where possible without imposing the fines.

It was however noted that the cultural functions have not been affected much and they pretty much remain and operate in the same manner.

2.2.3 The role of women in traditional authority

Specific discussions were conducted on the role of women in traditional authority. Both paramount chiefs we met observed that women did not play any role in traditional authority until the recent policy by the SPLM requires that at least one member of the traditional courts should be a woman. One of them argued that Nuer political system did not provide space for women to participate in governance issues by holding office and until recently he had not imagined that women could become chiefs. Whereas he indicated that he did not mind the decision, he suggested that they needed some training and orientation first because most of them are ignorant of what chiefs do, and that they should also be prepared to meet the challenges of the workload of being a chief.

In the discussions with the women in Ayod, they expressed appreciation for the opportunity. However, they were sceptical whether it would translate into better justice for the women. They had, together with the women in Ganyiel, decried what they considered an unfair justice system because of the absence of women in the courts. Their argument was based on what they claimed as their inability to say certain things in court because of the reaction they would get from the male dominated courts. As a result they often opted not to say such things even if it were their last defence. No wonder they could not give us examples of such issues since we are men.

While discussing the appeals system, one woman had mentioned that it was not useful for them (women) to continue with appeals because they would find the same men even in the higher courts.

The new policy of including one woman in the local courts had been implemented in Leer county and every court had one woman. The present deputy headchief is actually a woman. These women also competed for these positions and were elected into office. However, on the two occasions we attended court sessions, the female

members were absent. We were told that they either had a sick, or there was no one to be left at home.

In Ayod and Ganyliel, the men argued that there was need to train and orient the women in matters of customary law. Whereas they acknowledged that this would apply even to the young male chiefs, they argued that women have previously had no interest in the vast aspects of Nuer law except in those issues that directly affect them because it was not useful since they had never expected to play a role in judgement.

The general observation we would like to make regarding the absence of the women in the courts is something that has always been said about the inclusion of women in various non-traditional roles. Since there is no reduction in the roles and responsibilities of the women in as far as their usual chores are concerned participation in the courts then becomes an addition to the usual burden. The woman then has to make a choice of those activities that fulfil her traditional responsibilities.

3.0 Traditional Authority and Local Government Administration

The study also sought to understand the relationship between traditional authority and the local government. The SPLM Chukudum Convention of 1994 resolved on the separation of military and civil administration. This gave the impetus for structures of civil administration to be established and strengthened. The existing local government structure includes the Payam (an administrative unit of the county) and the Boma (a smaller administrative and territorial unit comprising a minimum population of 5,000 people). The Payam is headed by a Payam administrator and he plays the co-ordinating role between the county, the Payam and the Bomas. The Payam transmits government policy down to the traditional authority. The resources mobilised are handed to government by the head-chief through the Payam. The Payam administrator ensures the implementation of government policy by the Bomas.

The highest judicial level of the chiefs is the office of the headchief. Beyond this, the headchief refers cases to the county judge. It is only if the case is not resolved at this level that it will be forwarded to the county judge.

The above discussions indicate that it is of necessity that the chiefs and administration staff work hand-in-hand. However, it should be noted that in spite of the fact that a Payam administrator is a political appointment, the failure of the Payam administrator to work together with the head-chief for whatever reasons leads to the withdrawal of the Payam administrator from office. This is because this would cause a fracture in the administrative chain. An example of such a situation occurred in Leer just as the team was leaving after the fieldwork. The Payam administrator for Piliny Payam was dismissed from office. Although the team could not immediately establish the reasons, it was said that it was because he failed to work with the headchiefs. This shows the importance the SPLM government attaches to the chiefs. The role they play as the link between the communities and government is critical.

4.0 Selection and De-selection

When the institution of chiefs was introduced to Nuer territories, it was introduced with elections as a method of people coming to office. Where people have justifiable reasons for rejecting a chief, he is voted out of office.

The team was privileged to meet with two of Nuer's most revered Paramount Chiefs; Daniel Malwal Wuon and William Ruei Koung. Malwal Wuon is regarded as the most senior chief in the Upper Nile region. His father was probably one of the first chiefs in the region and was a paramount chief himself. He explained that, as a young man, the colonial officers used to take him along with them as they conducted business in the region. One day, after his father had become old and weak, the colonial officers called the community together to ask for their approval for him to become a chief. He explained that since he had been doing some work with the colonial officers, the people were convinced that he could be their chief and they accepted. His father was still alive through, and so he was a junior chief to his father.

His father assigned him the responsibility of handling all cases related to livestock, while he handled administrative matters. This made sense since the livestock is kept at the grazing areas away from the holes and often necessitates walking long distances to the kraals if there was a case to be handled – which the old man could no longer handle.

After his father died, someone else was elected as paramount chief. He argues that he could not take that position because he was still considered junior. It was after the death of this chief that he assumed the position of paramount chief.

Reui Koung served in the British army before he was elected chief in 1952. He claimed that people elected him because they thought he was knowledgeable since he had served outside the country during his service in the military. He started as a sub-chief and grew through the ranks up to now that he is a paramount chief. He narrated that he was elected chief following the withdrawal of his predecessor from chieftaincy for what the community said was his failure to handle matters convincingly.

Both the chiefs and the local people in all the three areas studied argued that the system of elections was good because the elected chief will be one the people are convinced can handle their problems. Also since they were the ones who elected the chief to office, he will be accountable to the people and will be objective in executing his duties because he knows that if he disappoints the electorate, they will withdraw him from office.

As to whether the position of chiefs can be dominated by particular lineages since there is likelihood that kin vote for their own, there was scepticism that such a situation would arise because of what they claimed as Nuer democracy where individuals come to office on merit. An example was given about Nuer policy of assimilating foreigners they either capture or who want to settle with them peacefully. As a sign of being accepted, Nuer traditionally elected such individuals as their leaders. This was said to be a sign that the Nuer are not a power hungry people. But time will tell as to how long this principle would maintain a representative democracy.

A chief is removed from office if he is accused of any of the following

- Nepotism: if a chief is seen to be exercising bias because of blood relations, this is tantamount for removal from office.
- Favouritism: if a chief is not objective in handling matters, he can be removed from office
- Taking bribes: if a chief is accused of taking bribes in order to either pass biased judgement or exempt individuals from any form of taxation, he will be withdrawn from office.
- Corruption/embezzlement: as mentioned above, chiefs are responsible for collecting tributes, fines and contributions. If a chief is accused of misappropriating these resources, government removes him. However, it was explained that if government wanted to remove a chief, the local people had to be informed about it and that they should be convinced that removal from office was the best option depending on the magnitude of the crime.

In the discussion on term limit, it was the view of the chiefs that since the people are free to remove a chief when they are dissatisfied with his performance, then term limit should not arise. Their argument was that as long as a chief is accepted by his people then he should stay in office. The local people in the various meetings held similar view. One woman from Ayod rejected the idea of term limit arguing that the people would be stuck with a bad chief simply because his term was not yet over. The general view was therefore that chiefs should not have a term limit and that the people should be free to withdraw them from office if there is a convincing reason to do so.

The procedure for removing a chief is such that some individuals often mobilise the rest of the community and convince them that a particular chief is not worth keeping in office because of certain reasons. They have to convince the rest of the people that removing the chief will be beneficial to them and they also have to provide an alternative – in effect campaigning for the proposed candidate. If the proposal is accepted, a delegation then takes the grievance to the county Executive Director. After getting the explanation for the reasons for withdrawing the chief from the delegation, he then invites the accused chief for questioning in order to get his side of the story. He will then inform the chief that since most of his people no longer want him, the people will be given chance to elect another chief. However, the accused chief is always given chance to stand for re-election if he feels he is being removed from office unfairly and that he still has support. Elections are then conducted on an agreed date in open air. Voting is conducted by the electorate queuing behind the persons of their choice. The one with the highest votes will be declared chief.

It was argued that the community as a whole, men, women, youth and even children play a role in the election process. The women in Ganyiel explained that during some of the mobilisation processions, children were instrumental in making noise and beefing up numbers in the crowds – which numbers sometimes intimidate the opponents. They argued that whoever does not participate during the election of a

chief does so out of their own will and not because the current system bars them from participating.

It is interesting to observe that election by universal suffrage – which is seen as a democratic principle is practised by the Nuer as a tradition in the election of their chiefs. Respondents argued that there is no better opportunity for them to participate in the election of their chiefs than an open and public manner as is currently practised. “We Nuer we don’t like doing things in hiding, we are frank and if we don’t like you will reject you on your face”, said one man from Ayod. The possibility of having the position of chiefs hereditary drew laughter.

5.0 *The question of harmonisation*

Views were sought from the various respondents as to whether, and how traditional authority could be harmonised in South Sudan. In most cases the discussion on this issue did not last because the people felt that Nuer law is unique, detailed and complicated and would be difficult to harmonise with those of other communities. The easiest example drawn was often the difference in the penalty for homicide between the Nuer and Dinka traditional laws. Whereas blood compensation for homicide among the Nuer is fifty head of cattle, it is thirty five head of cattle among the Dinka. One chief asked, “so which one do we take if it has to be harmonised?” harmonisation was seen as agreeing on which laws to adopt.

The discussions often ended by the view that the other communities in South Sudan have a lot to learn from the Nuer customary law and as long as it is used as the measure for harmonisation then it would be fine. Otherwise, if other principles are brought in then Nuer neighbours were bound continue to be affected by the application of Nuer laws since the Nuer were going to continue applying the laws they have lived by for generations. There was some acknowledgement that there was need to harmonise structures for consistency.

Harmonisation of customary law was rejected in all the three counties in the Upper Nile region. With the differences in customary law today, this certainly poses a challenge to the incorporation of traditional authority in local governance and some form of uniformity in diversity may have to be forged.

6.0 *Needs and suggestions for effective participation*

The chiefs highlighted areas they thought they needed assistance in for them to perform more effectively. The most frequently pointed out one was the need for security. They observed that their communities were armed and that this made enforcement of decisions and judgements difficult. The difficulty with dealing with those fined was that they have sometimes threatened the lives of the chiefs.

An example was given in Leer where an executive chief was stabbed to death after he confiscated livestock from someone who had resisted making contributions. This individual had not made any contribution for three rounds and when his headman

approached him, he chased him away. The matter reached the office of the executive chief who went to the man's kraal and confiscated the accumulated three head of cattle. When the man learned of it, he came to the Leer town where the headchief was and found him relaxing with friends at the market. He walked straight to him and asked him why he took his cattle. When the chief tried to explain, he told him to shut up and assured him that he was going to kill him. He then drew a knife which he had concealed and stabbed the chief repeatedly. He was however publicly executed by government as a deterrent for others. The need for effective disarmament was pointed in order to curb both the prevalence of violence in the region and to improve the safety of the chiefs.

The need for training or orientation was also mentioned. The chiefs appreciated the fact that the peace situation would usher in different challenges that they ought to anticipate and be able to contend with. One of the chiefs observed that they needed to understand how to apply the Nuer law vis-à-vis international law. They also noted that some of the chiefs were more experienced than others and that opportunities for sharing of experiences would help the younger and less experienced chief to learn.

It was also noted that since various development programs were likely to be introduced in the region, it is prudent that the chiefs get orientation on how to handle development projects.

The question of remuneration was raised. It was observed that chiefs, like all other workers in the South, are currently not paid. As mentioned above, they generate some income from the fines and court fees. Lack of payment certainly raised concern among the chiefs and there were high expectations because of the peace agreement. One of the headchiefs observed that it was difficult to work with a people [chiefs] who were not receiving a salary and yet a lot was expected of them.

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