

<b>Institution: DURHAM UNIVERSITY</b>
<b>Unit of Assessment: 30 (HISTORY)</b>
<b>Title of case study: Local justice and traditional authority in South Sudan (CS3)</b>
<p><b>1. Summary of the impact</b></p> <p><b>Cherry Leonardi's</b> research on local justice and traditional authority in Southern (now South) Sudan has influenced government policies and international aid agency programmes in the justice and governance sectors. It informed the drafting of a local government act by the Government of Southern Sudan [text removed for publication], by emphasising the importance and resilience of chiefship as a local institution of government and justice. It has also influenced the design of internationally-funded access to justice programmes in South Sudan, by recommending a bottom-up, empirical approach to judicial reform that focuses on the experiences and needs of litigants and local justice providers.</p>
<p><b>2. Underpinning research</b></p> <p>Since the end of Sudan's civil war (1983–2004), international agencies have undertaken programmes of post-conflict reconstruction and state-building as part of the processes that led to and have followed the secession and creation of the new state of South Sudan in 2011. These policy-makers and practitioners have tended to assume that the civil war resulted in the destruction of governance institutions. Leonardi's research on chiefship (often termed 'traditional authority') has provided a counterweight to these assumptions, by demonstrating the resilience of local-level institutions of government and justice throughout the decades of civil war.</p> <p>Studies of African chiefship in general have shifted from earlier arguments that it was a colonial 'invention' to an emphasis on its intermediary role between state and civil society, an emphasis which implies a separation of state from society. Leonardi's studies of chiefship in Sudan (2007, 2013) have challenged such clear-cut dichotomies between state and non-state forms of government and justice: chiefship should be understood as an integral institution of the local state, rather than as a non-state form of authority, as has frequently been assumed by contemporary international agencies. Leonardi shows that chiefs emerged during the nineteenth and twentieth centuries as the primary means of negotiating with state forces, alongside other indigenous forms of authority. The chiefs' courts became the primary institution of local justice <i>because of</i> their link to state authority and force, and their laws and procedures represent a long history of negotiating state laws and orders in local contexts (2007, 2009). She also identifies the popular demand for justice as a key factor in the institutionalisation of the chiefs' courts during the twentieth century (2009, 2013). These conclusions challenge Mamdani's thesis that in colonial Africa chiefship was 'decentralised despotism', by demonstrating that it has been and remains a means of regulating an otherwise unpredictable state and of obtaining access to its protection and resources.</p> <p>By emphasising the long-term and local-level processes by which the idea and the institutions of the state have taken hold in South Sudan, Leonardi encourages a focus on the resilience of the local state, rather than solely on the central state institutions. This research has important implications for understanding the role of traditional authority in contemporary governance and justice, and has become the basis of Leonardi's engagement with policy-makers and international aid agencies.</p> <p>Leonardi held a post-doctoral fellowship at Durham from 2005 to 2007, when she was appointed to a lectureship. She was promoted to senior lecturer in 2013.</p>
<p><b>3. References to the research</b></p> <ol style="list-style-type: none"> <li>1. C. Leonardi (2007), 'Violence, sacrifice and chiefship in Central Equatoria, Southern Sudan', <i>Africa</i>, 77, pp. 535–58 (doi: <a href="https://doi.org/10.3366/afr.2007.77.4.535">10.3366/afr.2007.77.4.535</a>)</li> <li>2. C. Leonardi (2009), 'La justicia local y el poder de la oficialidad en el Sudán Meridional', <i>Revista CIDOB d'Afers Internacionals</i>, 87, pp. 65–93 (<a href="http://dro.dur.ac.uk/10558/4/10558E.pdf">http://dro.dur.ac.uk/10558/4/10558E.pdf</a>)</li> <li>3. C. Leonardi, L. Moro, M. Santschi and D. Isser (2010), <i>Local Justice in Southern Sudan</i> (Washington DC: United States Institute of Peace and Rift Valley Institute)</li> </ol>

## Impact case study (REF3b)

4. C. Leonardi and M. Abdul-Jalil (2011), 'Traditional authority, local government and justice in Sudan', in J. Ryle, J. Willis, S. Baldo & Jok M. Jok (eds), *The Sudan Handbook* (Oxford: James Currey), pp. 108–121 (ISBN: 978 1 84701 030 8)
5. C. Leonardi, D. Isser, L. Moro and M. Santschi (2011), 'The politics of customary law ascertainment in South Sudan', *Journal of Legal Pluralism*, 63, pp. 111–42 (<http://dro.dur.ac.uk/9693/>)
6. C. Leonardi (2013), *Dealing with government in South Sudan: histories in the making of chiefship, community and state* (Woodbridge: James Currey) (ISBN: 9781847010674)

Markers of quality: British Academy Small Research Grant (2008–9); Leverhulme Trust Research Fellowship (2010), with the funder's final evaluation noting the benefits of the research for both academic and non-academic audiences; United States Institute of Peace funding for 'Local Justice in Southern Sudan' (2009–10). Item 6 is published by the leading publisher in African studies.

#### 4. Details of the impact

Since 2005 Leonardi has produced three reports which have affected government policies and aid agency programmes. The principal benefits of these reports have been:

- (1) increased recognition among governments and aid agencies of the significance of South Sudanese traditional authority for local governance and justice;
- (2) guidance on the existing local justice system for the planners and implementers of access to justice programmes in South Sudan [text removed for publication],
- (3) better informed methods of policy-oriented empirical research by the World Bank and the South Sudan Law Society on access to justice in South Sudan and in other conflict-affected states.

The key beneficiaries have been:

- (1) the Government of Southern Sudan (GoSS);
- (2) non-academic users and partners in the Rift Valley Institute (RVI), the UN Development Programme (UNDP), the United States Institute of Peace (USIP), the South Sudan Law Society (SSLS), the British Council, Pact, the UK Foreign and Commonwealth Office (FCO), and the Department for International Development (DfID);
- (3) stakeholders in justice and governance reform programmes in South Sudan and other conflict-affected states, such as the World Bank, the US State Department Bureau of International Law and Narcotics and KPMG Development Advisory Services.

**Report (1)** 'Traditional authorities in Western and Central Equatoria' (2005) was researched and written by Leonardi as part of a project on traditional authority by the UNDP, which employed Leonardi as a consultant on the basis of her expertise on chiefs. The report was commissioned by UNDP to inform the drafting of a 'local government framework' by the then rebel movement, which assumed power as the semi-autonomous Government of Southern Sudan (GoSS) in 2005. Report (1) advocated an official acknowledgement and clarification of the chiefs' judicial and administrative role at the 'boma' level (the lowest level of local government) and called for a simplification of local government structures. These findings contributed to the local government framework, which eventually became the GoSS Local Government Act, 2009: Chapters X–XII of the Act detail a central role for chiefs and customary law in local government and justice [source 5.1] [text removed for publication].

**Report (2)** 'Traditional administration and justice systems in Sudan' (2007) was a desk-based report, commissioned by a senior governance advisor at DfID who had read a 2006 conference paper by Leonardi. There is good evidence that this had influence on policy towards justice programmes in Sudan [text removed for publication].

**Report (3)** *Local Justice in Southern Sudan* [publication 3.3] [text removed for publication]. In 2008 the United States Institute of Peace (USIP) commissioned and funded a research project on 'Local Justice in Southern Sudan', conducted in 2009–10 through the Rift Valley Institute (a UK-based non-profit organisation, see CS1). Leonardi as Research Director designed and managed this project, which was undertaken in three locations in Southern Sudan by a team of three consultants with local assistants. Leonardi was lead author of the report, published jointly by USIP

and RVI in 2010.

The report was disseminated through high-profile launch events: (a) in Southern Sudan, attended by the Vice-President of GoSS and representatives of its Local Government Board and Ministry of Legal Affairs, members of the Southern Sudan judiciary and representatives of the US State Department Bureau of International Law and Narcotics; (b) at the international affairs institute, Chatham House, in London (<http://www.chathamhouse.org/events/view/156949>); (c) at the USIP headquarters in Washington DC (<http://www.usip.org/events/local-justice-in-southern-sudan>). During 2011 Leonardi presented the findings to the Danish Institute for International Studies (at a conference supported by the Danish Ministry of Foreign Affairs and the International Development Law Organisation), and to KPMG's International Development Services Conference in Nairobi.

The report contested the current direction of GoSS policy, which favoured the ascertaining of customary law in written form, and it argued that this would not improve access to justice. Instead, it emphasised the importance of the chiefs' courts for local-level access to justice, noted their flexibility and capacity for change, and made policy recommendations designed to support the positive aspects of this local justice system. These conclusions and recommendations contributed to a policy shift among international agencies away from the ascertainment of customary law and from reliance on the police and other central state institutions, to a focus on improving local access to justice [source 5.2] [text removed for publication].

The report has influenced the work of other bodies [text removed for publication]. The South Sudan Law Society (SSLS) is an indigenous legal organisation based in Juba, South Sudan. Its research director states that he has 'made extensive use of Dr. Leonardi's work in several research projects that I have managed... The SSLS is also conducting an assessment of local justice systems in South Sudan for which we took as a starting point the excellent work that Leonardi and her colleagues did on local justice for the USIP in 2010' [source 5.3].

The *Local Justice* report has had further influence through reports produced by other international agencies. For example, it is a leading source for a study of local concepts of protection in South Sudan by 'Local to Global Protection', an initiative supported by Danish and Swedish government aid [source 5.4]. The World Bank guide to *Doing business in Juba 2011* uses the report to establish the point that problems with formal courts have led people to resort largely to customary courts, and hence to call for reform of the formal legal and judicial system [source 5.5]. The report is used by Human Rights Watch to make a similar point about the greater accessibility and familiarity of customary courts, in a report on arbitrary detention [source 5.6]. A report on women's imprisonment in South Sudan by the Strategic Initiative for Women in the Horn of Africa (a coalition of women's groups supported by Oxfam Novib) quotes extensively from the *Local Justice* report in order to show the long history of overlap between customary and state laws and courts. It declares that Leonardi 'compellingly describes' the risks of simply recording customary law, and it urges the need instead to engage 'imaginatively' with traditional authorities [source 5.7]. The emphasis in *Local Justice* on the blurring of customary and statutory laws and courts has been taken up by various agencies including Save the Children [source 5.8]. Leonardi has discussed the report's findings directly with several agencies working on government and justice within South Sudan, including the Swiss Federal Department of Foreign Affairs, KPMG Development Advisory Services, the International Commission of Jurists, the UN Mission in South Sudan Justice Advisory Section and the EU South Sudan Rule of Law Programme.

Leonardi's work has had further influence beyond policy focused on South Sudan. Her criticisms of the policy of recording customary law are referenced in a UN report designed to promote and guide engagement with informal justice systems by international agencies [source 5.9]. The World Bank's 'Justice for the Poor' programme manager attests that the *Local Justice* report 'has had a significant impact on the way practitioners understand justice in conflict affected states generally. Instead of focusing on legal clarity and particular institutional forms, it is now much more widely accepted that the starting place should be user experiences and needs based on empirical data... The methodology used by Dr. Leonardi has influenced studies in CAR (World Bank), Solomon Islands (World Bank), Haiti, and South Sudan (SSLS).' [source 5.2].

## Impact case study (REF3b)

**5. Sources to corroborate the impact**

[1] GoSS Local Government Act (2009): <http://www.goss-online.org/magnoliaPublic/en/Independent-Commissions-and-Chambers/Local-Government-Board-.html#publications>

[text removed for publication]

[2] Testimony from the former Senior Rule of Law Advisor at the USIP, now programme manager, Justice for the Poor, World Bank

[text removed for publication]

[3] Testimony from Research Director, South Sudan Law Society (2012)

[4] Local to Global Protection, *South Sudan: waiting for peace to come* (2011)

[5] The International Bank for Reconstruction and Development / The World Bank, *Doing business in Juba 2011* (2011)

[6] Human Rights Watch, *'Prison is not for me': arbitrary detention in South Sudan* (2012)

[7] SIHA, *Falling through the cracks: reflections on customary law and the imprisonment of women in South Sudan* (2012)

[8] Save the Children UK, *South Sudan: A post-Independence agenda for action* (2011)

[9] UNDP, UNICEF and UN Women, *Informal justice systems: charting a course for human rights-based engagement* (2012)

And further confidential sources [text removed for publication].