



ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

CENTRE FOR FEDERALISM AND GOVERNANCE STUDIES

**AN EXAMINATION OF THE ROLE OF TRADITIONAL LEADERSHIP IN
STATE GOVERNANCE: THE CASE OF SOUTH SUDAN**

GONYIRI JOSEPH LUMA GONYIRI

**SUBMITTED IN PARTIAL FULFILMENT OF THE AWARD OF MASTER OF ARTS
DEGREE IN FEDERALISM AND GOVERNANCE STUDIES**

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ID No. GSR/7278/10

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**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE AWARD OF MASTER
OF ARTS DEGREE IN FEDERALISM AND GOVERNANCE STUDIES**

JUNE 2019

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Acknowledgement

The studies in Federalism and Good Governance have no doubt enriched my knowledge base and career as a local government practitioner. It, therefore, gives me tremendous pleasure to express my sincere gratitude and honour to those who contributed and stood beside me in this academic journey. It is my pleasure to mention my Academic Advisor, Dr. Zemelak Ayele, whose invaluable support has enabled me achieve this great goal of my life – completing my graduate studies. I am also indebted to the following for helping me pull through hard times and for their love, encouragement and support in one way or another:

- Dr. Laila B. Lokosang and his family
- The Forum for Federation of Ethiopia, Addis Ababa Office
- My university colleagues, with special mention, Mr. Shafii Eagle
- My dear wife and children who inspired me to pursue further university qualification
- Dr. Andu Zakaria Wani, the Chairman of Greater Equatoria Community in Ethiopia

Above all, I praise the Almighty God for answering my prayers, and for helping me pull through the numerous hurdles in my study journey and for His protection and blessing.

To God be the glory.

Abstract

Motivated by the fact that South Sudan is a new country with new setups for local governance and facing many challenges, including shortage of trained cadre in administration, after decades of conflict, this study sets out to explore the extent and strength of involvement of traditional authorities in performing local governance tasks. It is exclusively based on review of relevant literature on South Sudan and four learning countries (Botswana, Ghana, South Africa and Zimbabwe) based on three research questions.

Analysis found out that much as mechanisms based on constitutional provisions and legal frameworks have been created, traditional leadership institutions were grossly neglected. For this reason, these institutions could not effectively play their roles as it was the case under colonial and pre-independence governments, which amounts to their underutilization at the time when the country actually needs it most.

The study came out with three recommendations to the current and future governments of South Sudan and other important actors. First, the government should draw lessons from the good experiences of the four African countries examined in a parallel study. Second, it is the government's legal obligation to implement the provisions of the constitution and the enacted Local Government Act regarding the utilization and integration of traditional authority systems into local government systems. Third, government should allocate adequate financial resources in the national annual budgets to sustain traditional leadership institutions and to help them effectively serve the rural populations, especially in remote areas. The study also makes additional recommendations to the civil society and traditional leaders themselves, to exert pressure on the government to fulfil their constitutional mandate of integrating traditional

leadership into local governance systems, and to enable the environment for sustenance of this desired mutual collaboration, which is anticipated to have long-term developmental benefits to the country at large.

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List of Abbreviations and Acronyms

ANC	African National Congress
AWEPA	Association of European Parliamentarians with Africa
CLA	Communal Land Act
CONTRALESA	Congress of Traditional Leaders in South Africa
COTAL	Council of Traditional Authority Leaders
CPA	Comprehensive Peace Agreement
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
ICSS	Interim Constitution of the Republic of South Sudan
LGA	Local Government Act
LGB	Local Government Board
SPLM/A	Sudan People’s Liberation Movement/Army
TCSS	Transitional Constitution of the Republic of South Sudan
TGLA	Traditional Leadership and Governance Act
UN	United Nations
UNDP	United Nations Development Programme
USAID	United States Aid for International Development
WFP	World Food Programme
ZANU-PF	Zimbabwe African National Union – Patriotic Front

Chapter One

Introduction

1.1 Background

Traditional leaders, also known as chiefs, tribal leaders or traditional authorities, are found in most, if not all, of African rural areas as pointed out in Hoehne (2008, p. 6), citing Lutz and Linder (2004, p. 12). A working relationship between government institutions and traditional leaders is often sought by the former. Beall (2006) points out that due to political convenience, many African governments have sought co-existence with chieftaincy institutions. Ntsebeza (2005a, p. 24) arrives at the conclusion that “traditional leadership and institutions of multi-party democracy can co-exist, as in the case of South Africa in the post-apartheid era. Sklar (2003) proposes the notion of mixed government in which the government endeavours to promote the institution of traditional leadership and builds trust with them. Ray (1996) and Ray and van Rouveroy van Nieuwaal (1996) proposes that for this co-existence to work smoothly and avoiding conflict, certain principles have to be following and modalities for collaboration are agreed upon.

A number of definitions have been suggested by scholars such as Mthandeni (2002a) who defines a traditional leader as “a person who, by virtue of his ancestry, occupies the throne or stool of an area and who has been appointed to it in accordance with the customs and tradition of the area and has traditional authority over the people of that area or any other persons appointed by instrument or order of the government to exercise traditional authority over an area or tribe.”

A definition traditional leaders by Ray (2003, pp. 2–3) includes “political, socio-political and

politico-religious structures that are rooted in the pre-colonial period rather than in the creations of the colonial and post-colonial states.”

Chigwata (2015, p. 445) discloses that traditional systems of governance, which were presided over by kings, chiefs and village headmen, were the only structures of governance prior to colonialism. He provides example of the major ethnic groups in Zimbabwe – Shona and Ndebele which had political autonomy in their kingdoms. In the pre-colonial Shona Kingdom, decisions were arrived at by consultative processes involving the council of chiefs, advisors and headmen. Serious issues were referred by chiefs to their ward council and advisors and village headmen (Makahamadze, Grand, & Tavuyanago, 2009).

The Ndebele Kingdom had a highly centralized governance structure in which the king was the highest authority for decision making and thus exercised absolute power over his kingdom’s government and this includes control over land. Surrounding the king was a team of advisors comprising of headmen and other personalities in the royalty. The Ndebele Kingdom was segmented into provinces, regiments and wards. There administrative layers were governed by ‘great’ chiefs, chiefs and headmen.

Goodenough (2002) affirms that traditional leaders in the pre-colonial era made decisions affected their communities, but with consultation with councilors or representatives of their community members. The body of councilors is obviously the modern-day parliament, legislative assembly or House of Representatives. This is evidence that some semblance of democracy did exist in the pre-colonial times. Ndlovu and Svodziwa (2017) concurs with this narrative of existence of pre-colonial democracy as they state that during that time “elders and

community leaders met to resolve local conflicts and disputes using their own indigenous knowledge mechanisms.”

Tokpa and Yengbeh (2012), traditional leadership was the basis of local government in the pre-colonial days where kings who were supported by their chiefs, councilors or advisors. These traditional leaders served as political, military, spiritual and cultural leaders who looked after the wellbeing of their people and matters of land and defense of their people and territories. Tokpa and Yengbeh (ibid) intimated that this systems was a manifestation of some form of democracy.

A number of scholars among historians, sociologists and anthropologists argue that traditional leaders play an important role in different aspects of social, democratic and developmental aspects of their societies. Chigwata (2015) that in various settings of the African society, particularly in rural areas, traditional authorities continue to play an ever present role in people’s lives. and order of the government to exercise traditional authority over an area or a tribe.” Apart from being custodians of traditional law (Rukuni, Machingambi, Musingafi, Maxwell, & Kaseke, 2015), traditional leaders also play other pivotal roles such as conflict resolution, land use (Bikam & Chakwizira, 2014), facilitating the rule of democracy and social transformation at the local area level (Tshitangoni & Francis, 2018), socio-cultural influence (Omer, 2009a), among other roles.

It is because of this recognition that traditional leaders enjoy local legitimacy as asserted by Robinson (2008) and are elected to lead the people or are appointed by powerful formal authorities to link the government and the people. Chiefs help the modern state to mobilize the support of rural populations and achieve other democratic roles (Makahamadze et al., 2009). It is based on these outlined reasons that in some colonial and post-colonial governance systems

traditional leaders were entrusted to collect taxes on behalf the government (Georg. Lutz & Linder, 2004; Manning, 2008; Robinson, 2008). This is also why some African countries developed and enacted acts and legislations that defined the role of traditional authorities in local governance. It is also because of the widely recognized role of traditional leadership that in some countries formal structures for traditional leaders have been endorsed by legislation. Examples of such structures are the National Council of Traditional Leaders and the Congress of Traditional Leaders in South Africa (CONTRALESA), the National Council of Chiefs in Zimbabwe, the Council of Traditional Authority Leaders in South Sudan; National House of Chiefs in Ghana and Zambia, Council of Chiefs and Elders in Liberia, Council of Elders in Somalia, Council of Elders and Religious Leaders in Sierra Leone, and Council of Traditional Leaders in Namibia.

The systems of rule across in Africa changed substantially during colonialism in the 18th and 19th Centuries. For instance, in the Anglo-Egyptian Sudan the British colonial masters replaced the Dinka and Nuer chiefs based on their prophets by arbitrarily appointed the chiefs and arranged elections in which any tax-paying male person could stand to be elected as chief (Evans-Pritchard, 1940a). The main job description of these chiefs was to enforce peaceful coexistence through settlement if disputes based customary law, and to collect poll taxes for the government. Skalník (1996, p. 110) observes that the African traditional authority institutions were ‘tamed’ by the colonial powers and incorporated into colonial regimes. Keulder (2010) points on that during colonial days, kings were relegated to chiefs and this appointment was conducted with supervision of the colonial masters and elections.

The post-colonial era in which all African states become independent, did not restore the past/pre-colonial grandeur of traditional authority systems either. Chigwata (2015) argues that

despite that the institutions of traditional leadership in Africa have persisted, many governments of the independent countries ignored them. He disclosed that the ruling ZANU-PF government used the strategies of “co-opting, distorting or denying the presence of traditional authorities.” Peel and Ranger (1983) noted that the institution of traditional leadership in the post-independent government Zimbabwe, lost its legitimacy due to the presidential control. In the post-colonial Mozambique the government abolished the formal systems of chieftaincy, only to rescind this decision and decided to work with the chiefs.

However, despite these cited cases of neglect or reduced powers of traditional leadership in some countries in Africa, there are examples of governments that recognized traditional leadership institutions and have established smooth working relationship with them. Four African countries are considered typical case where government efforts to integrate traditional leadership structures with local governance structures appear to be heading in the right direction. These are Botswana, Ghana, South Africa and Zimbabwe. A common element in these countries is the establishment of formal corporate bodies or councils to bring traditional leaders together to dialogue on issues of current importance and advise the government to consider as policy or decision.

The UN Economic Commission for Africa (2007) notes a growing number of African countries have come to the realization that important roles traditional chiefs play. Some these countries had earlier tried to strip chiefs of their authority, but did not succeed in erasing them from existence, as chiefs continue to have significant control over local affairs of their communities, as well as brokering voting in elections rural areas as pointed out in von Trotha (Van Kessel & Oomen, 1997) and van Kessel and Oomen (1997).

The processes for integration of traditional systems and structures into local government structures are in different forms across countries (United Nations Economic Commission for Africa, 2007), but the four countries under study are given focus. In Ghana the House of Chiefs is mandated by the constitution to advise any authority on matters related to the chieftaincy and customary law. In Zimbabwe the Council of Chiefs has the primary role of managing traditional questions and responsibilities. In Botswana the *kgotla* (village assembly) regulates the power of the chiefs through a consensual decision-making process. In South Africa the Congress of Traditional Leaders of South Africa (CONTRALESA) played political role as it was formed by the African National Congress (ANC) during the apartheid era.

Traditional leadership institutions in South Sudan have existed throughout the different political periods from pre-colonialism through the post-independence period (i.e. from July 2011 to-date). During the colonial times, traditional leaders were initially undermined. However, seeing their power, voice and influence, the colonial rulers recognized the important role of chiefs in keeping the internal peace in their local communities. For this reason, the colonial governments developed and built institutions that would keep the traditional role in their communities. Likewise, the post-colonial regimes in Sudan did not take traditional leaders seriously. Traditional leaders were more recognized during the colonial era than in the post-colonial era. In the post-colonial periods, the institutions of traditional leadership in South Sudan have become weaker and weaker. This is owing to the protracted civil wars and lack of strategies to resource the chiefs to enable them carry out their duties diligently. However, traditional leaders have still remained important in South Sudan especially in rural areas. To date, traditional leaders still play key roles in peace mediations between communities, besides their judicial roles.

Two years after gaining her independence, South Sudan entered into another protracted war that caused sporadic displacement and devastated social fabric of the population and economic retardation. The country succumbed to military rule with rampant arms in the hands of many civilians. As a result of the crisis, traditional leaders became completely neglected and earlier efforts to establish institutions of traditional authorities as in Botswana, Ghana, South Africa, Zimbabwe and other countries, ground to a halt. The Government of South Sudan's Local Government Board, under direct support from UNDP, had formed the Council of Traditional Authority Leaders (COTAL), but this has remained non-functional since it was established. The country even enacted its Local Government Act and has a constitutional provisions which outlined the legal basis for the functioning of traditional leaders and defined its areas of partnership with the local government institutions.

There was a number of initiatives for integrating traditional leadership institutions in the local government system of governance. However, with the breakout of war, the traditional leadership institutions have become politicized as ethnicity and regionalism has infiltrated their fabric. South Sudan is home to sixty-four tribes, with diverse cultures and traditions. Therefore, there is need to conduct proper analysis of the social, demographic and political structures of the country and the institutions of traditional leadership in order to identify areas where they can be strengthened and its role in the governance and democracy is defined.

1.2 Statement of the Problem

Traditional authority institutions of South Sudan are not so much integrated with the formal local governance systems, however, the constitutional or legal basis is inadequate for governing

traditional institutions. This is reflected in the under representation of the traditional leaders in local government councils.

1.3 Objective of the Study

1.3.1 General Objective

This study aimed to contribute to the existing literature with a view of helping future South Sudanese local government to effectively utilize traditional institutions governing South Sudan in the post-conflict period.

1.3.2 Specific Objectives

Specific objectives of the study are:

1. To assess whether traditional authority institutions are integrated with formal local government.
2. To evaluate the constitutional basis governing traditional institutions / leaders in independence period.
3. To assess whether traditional leaders are represented in local government council.

1.4 Research Questions

It is against this background that this study sets out to attempt to respond to three research questions as follows:

- a) Are traditional authority institutions integrated with the formal local governance system of South Sudan? If so, how and to what extent are traditional structures interplay with the formal institutions of governance?
- b) Is the constitutional/legal basis enough for governing traditional institutions/leaders?
- c) Are traditional leaders represented in the local government councils? If so, in what capacity and how is their representation determined?

1.5 Significance of the Study

This study draws its significance in attempting to project a clear picture of the effectiveness of traditional leadership institutions in South Sudan and how they could be leveraged to improve the performance of local governance at the grass root level, especially in remote rural areas as in the case of few countries examined and discussed. It is anticipated that by so doing the local government institutions would deliver essential services to the communities without hindrance and conflict between both parties. It could then serve as reference material to all those interested in conducting further studies on local government.

1.6 Scope of the Study

This study specifically focused on analysing the setups of major traditional leadership institutions in South Sudan using four countries as a mirror. Furthermore, the study aims to contribute to the body of existing literature with a view of helping future South Sudanese local government system to effectively utilize traditional leadership institutions governing South Sudan in the post-conflict period.

1.7 Limitation of the Study.

The study is, therefore, limited in that it has not corroborated or triangulated the synthesis of the literature review with those from key informant interviews and focus group discussions.

1.8 Organization of the Thesis

This study is organized into five chapters with Chapter 1 being this introduction. Chapter 2 is on review of the relevant literature guided by the study questions. It elaborates on previous research works by other scholars. Chapter 3 is an overview of the different institutions of traditional authority in South Sudan, their typology, historical background and the extent to which they are being capacitated or supported to play significant role in governance, maintenance of law and order, besides their traditional roles. Chapter 4 undertakes a comparative analysis of the key findings juxtaposing the key findings from the four case study countries and South Sudan as of current situation. This chapter will also present general discussion of the findings. Chapter 5 covers conclusions and recommendations.

Chapter Two

Traditional leadership and local government institutions

2.1 Introduction

This chapter is exclusively on review of relevant literature on traditional leadership and local government institutions. The reviewed literature seeks answers to the three broad questions outlined in Chapter 1. The chapter examines typologies of traditional leadership in four learning countries, namely, Botswana, Ghana, South Africa and Zimbabwe and the role they play within their communities and governments, their usefulness or effectiveness in the context of governance, delivery of services and maintenance of peace, law and order. The chapter also examines how traditional leaders are integrated in the four learning countries within formal government institutions in order to play effective role in the various aspects of governance. Furthermore, the chapter attempts to take a look at the significance of traditional leadership in catalyzing political decision making processes, in order to determine the best possible strategies, based on some country experiences that local government institutions in South Sudan can draw from for integrating formal/constitutional government institutions with traditional ones.

The chapter starts with presenting some background information on the historical overview of traditional leadership in Africa. This is followed by definitions of traditional leadership. It also highlights some schools of thought regarding integration of formal government with traditional leadership from the African continent. Then the subsequent sections systematically aim to provide the answers to the five questions outlined above for each of the four countries selected.

2.2 Definition and Concept of Traditional Leadership

In this document the terms “traditional authority” and “traditional leader” are used interchangeably. Other titles of traditional leaders are “Chiefs”, “Village Headmen”, “Kings”, or local names or expressions such as “Mfumu” or “Inkosi” in parts of Southern Africa, “Fon” in parts of Cameroon, Igwe in parts of Nigeria, Kabaka of the Baganda tribe in Uganda, Sheikh in Islamic societies, etc.

Mthandeni (2002b, p. 1) defines a traditional leader as

“a person who, by virtue of his ancestry, occupies the throne or stool of an area and who has been appointed to it in accordance with the customs and tradition of the area and has traditional authority over the people of that area or any other persons appointed by instrument and order of the government to exercise traditional authority over an area or a tribe.”

In this sense, a traditional leader is installed by virtue of his/her ancestry and in respect of the prevailing customs and traditions to occupy the throne or stool of an area or the territory under his or her jurisdiction. According to Ray (2003, p. 2f) traditional leaders may “include kings, other aristocrats holding offices, heads of extended families, and office holders in decentralized polities, as long as their offices are rooted in pre-colonial states and other political entities”.

A traditional leader exercises traditional authority over the people of the given territory. He or she can be installed through a traditional order of heritage (Asamoah, 2012), selected by a body of community elders (Chigwata, 2015; G. Lutz & Linder, 2004), or appointed by instrument and order of the government to exercise traditional authority over an area or a tribe (Chigwata, 2015;

Sharma, 2004). Mthandeni (2002b) further states that Traditional leaders are social leaders and systems rather than actual government institutions. Ubink, J (2008) describes Traditional authority as “a characteristic feature in the landscape of modern African states”. Dodo (2013) extends the roles of traditional leaders to include moral and social functions.

Traditional authorities in Africa share some common characteristics. Logan (2008) identifies two of these characteristics. First, traditional leaders assume their positions by virtue of hereditary claim, rather than by way of elections. Second, they are connected to their societies through historical and cultural ties. Traditional authorities also commonly share traditional roles such as authority over land, natural resources and settlement of disputes (G. Lutz & Linder, 2004). Moreover, traditional leaders exercise their authority within the limits of their ethnic group or clan boundaries (Beke, 1999). Furthermore, traditional authorities are in most cases accorded cultural or ritual courtesies by their community members (Sharma, 2004). It is along these basis that they derive their legitimacy and obedience.

Mthandeni (2002b) describes the primary function of traditional leaders to be that of regulation and control of “relationship and social behavior”. In some countries such as Zimbabwe, traditional leaders are part of local government system (Chatiza, 2010). Similarly, the Botswana Chieftaincy Act (Republic of Botswana, 1987) outlines a number of functions and powers for the traditional leaders. Chiefs are also expected to play advisory roles to the local government authorities. However, according to Chigwata (2015) the colonial and post-colonial eras diluted the initial functions of traditional leaders and also transferred them to local government councils and community courts.

2.3 Historical Overview of Traditional Leadership in Africa

The institution of traditional leadership predates the colonial era (Chigwata, 2015; De Visser, 2005; G. Lutz & Linder, 2004). According to Chigwata (2015, p. 445) traditional governance systems have existed in the pre-colonial periods and were the “only governance structures with legitimacy to govern”. Makumbe (2010, p. 87), citing Linington (2001), reveals that traditional leaders have been part of the cultural system in Zimbabwe for centuries.

Traditional leaders used to be powerful and retained absolute ruling authority over their territories until the arrival of the colonial power in Africa. Ray et al. (1997) argue that the powers and glory that the institution of traditional authority used to enjoy, have diminished with passage of time, particularly during the colonialism period. They, however, observed that traditional leadership institutions have until today maintained their cultural, social and judicial functions at local levels in a number of countries. Crook (2005, p. 2) observes that traditional leaders by their hereditary nature “embody deep cultural values and practices”. Dipholo et al. (2014, p. 22) points out that prior to the advent of colonialism, traditional leaders exercised executive, legislative and judicial powers. They observe that in pre-colonial period traditional leaders held absolute power which they used to make laws. The United Nations Economic Commission for Africa (2007) points out that these institutions have considerably evolved over time from the pre-colonial, colonial and post-colonial periods. Jackson and Marquette (2003) state that historically traditional leaders tended to claim links to divine authority: a god, a spirit or ancestors. They argue that the nature of the institution of chieftaincy got changed by the colonial powers, who assigned the chiefs administrative responsibilities and in the process politicizing them.

Goodenough (2002), citing Somolekae and Lekorwe (1998) observes that in the pre-colonial era traditional leaders used to make “decisions that affected the traditional community and consulted with councilors who represent the interests of the community.” However, they were often manipulated by the colonial administration during the colonial era. Koenane (2018) notes that traditional leadership institution was democratic in as far as decisions were made by consensus. He argues that these institutions are still relevant and *sine qua non* in the governance of today’s South Africa and can contribute positively to the country’s development and the South African society, and particularly to its rural communities. This view is also shared by Ayittey (1991) who stresses that long before the arrival of Europeans in Africa, transitional leadership institutions were characteristically participatory and democratic and freedom of expression was common.

Chigwata (2015) reminds that traditional governance systems that overseen by kings, chiefs, headmen and village headmen were the only legitimate governance systems in Zimbabwe pre-colonialism. He points out that two dominant authorities coexisted in the country along their ethnic bases, namely; the Ndebele and Shona kingdoms. The (Ma)shona Kingdom was a sort of political organization and divided into relatively autonomous chiefdoms, which were in themselves sub-divided into wards with a number of villages under them. Makahamadze et al (2009) informs that democracy in chiefdoms, where chiefs consulted with their councils of advisors, councilors, ward and village headmen and even senior members of families (or elders) prior to making any decision. Also sharing in this view are scholars such as Keulder (1998), Mazrui (2002), Wamala (2004), Tangwa (1998), to mention but a few.

It therefore transpiring from the historical narratives of several researchers and scholars that prior to the advent of colonial powers, traditional leaders used to combine greater influence over their

populations which border those of current post-colonial governments. Traditional authority institutions were organized, had semblance of participatory democracy through consultation of village elders or headmen, and councilors. However, it is also clear that despite the commonalities, the form in which traditional authorities governed differed from one kingdom or ethnic group to another.

2.4 Schools of Thought

The role and significance of traditional leaders in governance systems and the institution of democracy, has aroused extensive debate among governance and decentralization scholars and political scientists. This debate has been along two schools of thought: the “traditionalist” and the “modernist” schools of thought. Specifically, the main area of divergence has been whether traditional leaders have positive or adverse effect on democracy and its processes, and whether or not they should be regarded as true representatives of their people and their aspirations. Logan (2008) perceives that in the context of modern African democracies is “complex and multifaceted.” Whereas the “Traditionalist” school of thought regards traditional leaders as truly representing their people and manifesting popular needs and aspirations, considering that they are accessible to the people and gain their respect and seen as legitimate, the “Modernist”, to the contrary regard traditional leaders as irrelevant and even antithetical to the rule of democracy.

As can be seen, the two schools of thought are on either pole (or the extreme end) of each other. However, there is some point of agreement. One dimension of this point of convergence is that both contenders agree that traditional authority and elected political leaders as competing against each other for political power and legitimacy (Logan, 2008). Both schools of thought also agree

that the institutions of traditional authority need to transform and adapt to the changing social and political environment such as being non-sexist and non-racial (Mthandeni, 2002b).

Considerable amount of arguments have been presented for the involvement and importance of traditional leaders in modern governance systems. Koenane (2018) opines that the institution of traditional authority is “legitimate and more democratic”. As such, traditionalists encourage this institution to play a vital role, as well as being compatible with modern democracy. This group of scholars call for integration of the traditional authority institutions with those of the modern institutions of democracy (Koenane, 2007, 2012; Mazrui, 2002; Wamala, 2006; Wiredu, 2000). Mthandeni (2002b) has the view that the traditional authority institutions are at the heart of rural governance and political stability, and thus should be part of rural development policy. He sees traditional leaders as a symbol of unity, maintenance of peace and preservation of culture and customs.

Chigwata (2015) holds a view that traditional leaders complement the role of the government in delivery public services to their citizens, especially in remote rural areas. Traditional leaders are seen to be useful in mobilizing rural population; a task a government might find difficult. Lutz and Linder (2004) states that because they recognize their important roles in supporting state policies, a number of African governments have relied on the support of traditional leaders for rallying the population in certain public programmes such as in the fight against AIDS, immunization campaigns and others. He sees that governments can find it difficult, if not impossible, to implement certain government policies without the support of traditional leaders. Koelble and Lipuma (2011) observe that as the state falls short of developing and maintaining control over remote rural areas, the African National Congress Government of South Africa had

to “form alliances with traditional leaders.” Jackson and Marquette (2003) states that the Mozambican government had to reverse its initial decision of abolishing the formal systems of chieftaincy after local communities expressed resentment over it. The government later decided to work with the traditional chiefs, rather than against them.

The modernists, on the other hand, express a totally different argument regarding the institution of traditional authorities. Some of them even perceive traditional leaders as chauvinistic and authoritarian (Logan, 2008). In other words, the modernist are totally opposed to the involvement of traditional leaders in modern institutions and institutionalization of democracy. According to Dipholo et al. (2014) the modernists maintain that the institution of traditional authorities should “become extinct”. In Mthandeni (2002b, p. 4), some modernists call for transforming the institution of traditional authority so as to “meet the requirements of a modern, non-sexist and non-racial democracy.” Mthandeni (2002b) uncovers the argument that these institutions are not commensurate with the precepts of democracy. They also perceive that such institutions are patriarchal, male-centered, racial, and tribal, as well as posing serious obstacles to democracy.

One of the strongest views held against traditional leadership institutions is that by Mamdani (1996) who contests that as rural Africans would remain mere subjects rather than empowered citizens should there remain under the jurisdiction of traditional leaders. This view is supported by Logan (2008) who regards traditional chieftaincy as holds back a society from realizing prosperity, democracy and justice, concluding that the duality of traditional leadership and modern governance systems does not deserve a place in a society that aims to be progressive.

It is also argued that the institution of traditional leadership was “distorted and corrupted” by the colonial powers (Koenane, 2018, p. 63). In Crowder (1964), traditional leaders are perceived by

the modernists to have been co-opted by the British colonial administrations into their ‘indirect rule’ system. Chigwata (2015) observes that these arguments are mainly advanced by political leaders of the liberation movements who saw traditional leaders as “the outsourced arm of colonial authorities and collaborators.”

Despite agreeing with the traditionalists some areas such as that both traditional and modern leadership institutions are by their nature a form of rule over people, the modernists differ strongly in that traditional leadership institutions should not be integrated the modern governance structures. Koenane (2018, p. 63) cites some modernists who argue that the traditionalist leadership institutions should not be integrated into modern democratic systems because “old-fashioned, patriarchal, oppressive to women and young people and excluded from their structures traditional leadership governance.” This is contrary to the traditionalists who contest that traditional authorities are legitimate and more democratic institutions and play a vital role in governance of a country. As stated elsewhere, both the traditionalists and modernists converge in that the institutions of traditional authorities need to undergo transformation in both social and political domains. Therefore, this study will focus on this point of agreement regarding to what extent are traditional leadership institutions interact with modern local governance authorities, rule of democracy and other public affairs.

2.5 Country Specific Contexts Regarding the Role of Traditional Institutions in Modern Governance Systems

Selected literature on each of the four selected countries in the study was reviewed, focusing on the form and extent of involvement of traditional leadership in or support governments in the course of delivery of public services, democracy and rallying their populations to accept or get

involved in specific programmes. Also included in this section, is views, observations and assessment of the effectiveness in the interaction between traditional leadership institutions and those of government and whether the integration of both forms of institutions with regards to the desired end product, which is delivery of services in a smooth and timely fashion. The section further presents the different recommendations by scholars to the specific countries with regard to lessons learnt and how to improve the interaction of the two institutions under study.

In **Botswana** Traditional leaders have continued to enjoy government recognition from the days when the country was a British Protectorate to date. According to Sharma (1997), the institution and associated traditional structures of chieftainship have survived the different stages of transformation of government institutions in the colonial and post-independent Botswana. It is reported that during pre-colonial times, traditional leaders have since enjoyed unlimited and undefined powers over their tribes, where they combined as custodians of land and settlers of disputes, ruled on matters concerning their subjects within the tribes and collected what was called 'Hat Tax' prior to the 1920s. The traditional authority institution was recognized and formalized in 1934 by the British colonial administration under what was called Native Proclamation.

Other scholars such as Ndlela (2008) report that during the British Protectorate rule, the institution of traditional authority and its systems had remained strong until Botswana gained its independence. He further reports that these traditional structures were later used by national political parties as means of political mobilization. The village public meetings or forums locally known as '*Kgotla*' were particularly effective for promoting political debates on public issues.

In **Ghana** the institution of traditional leadership was instrumental as it played advisory role in development issues at national and regional levels (Ray & Reddy, 2003). However, traditional leaders were prohibited from participating in politics. They were only to advise on matters pertaining to and affecting their chieftaincy (Georg. Lutz & Linder, 2004). Kyed and Buur (2005) observe that the British colonial powers assigned chief some administrative roles.

Crook (2005) present four arguments for involvement of chiefs in the Ghanaian social and political life. One of these considerations is that chieftaincy as a “very significant” element which should not be ignored. It is also thought that by its very nature, chieftaincy itself is a political institution that is highly contested and this is considering its association with power. It is further thought that some of the contributions by chiefs to local development efforts should be encouraged to continue through structured community-based mechanisms. Finally, it is thought that chiefs play a critical role in land administration and this role should, therefore, be formalized.

Beall and Ngonyama (2009, pp. 5 & 6) speak highly of the influence of traditional authorities in Ghana which they describe as constituting a parallel power to the state. The 1992 Constitution of Ghana has provided for creating a National House of Chiefs without executive or legislative functions, but only restricted to matters affecting their chieftaincies – a status quo dating back to the Kwame Nkruma reign (1957-1966) whose policy alienated the chiefs from politics and state formal structures. Kludze (2000) notes that although this constitutional provision (Article 242) does not mention chiefs directly, it has allowed for chiefs to be nominated into membership of District Assemblies. This serves as a clear recognition of the role of chiefs in local affairs. The Ghanaian traditional authorities (the Asantehene), who have an allocation of 22.5 percent of the

revenue from the Stool Lands (Ray, 1998), play economic and development roles which have been on the rise (Englebert, 2002). However, Asamoah (2012) cites some elements in the 1992 Constitution of Ghana that do not favour the role of traditional leadership in modern political systems. He observes that while there are provisions that favour chiefs some seek to exclude them from formally taking part in political roles.

A qualitative study by Asamoah (2012) found out that “chiefs play critical role in socio-economic and cultural development of Ghana”. He finds out that only a few of the interviewed informants were of the view that the institution of traditional authority had outlived its usefulness and should thus be prevented from participating in local government administration in Ghana. To the contrary majority of the key informants thought chiefs were still relevant and important in local governance systems. Asamoah (2012), therefore, recommends that the institution of chieftaincy should be maintained and that chiefs should be made to play a prominent role in administration of local government beyond their traditional court roles. He argues that if only left in the hands of local and government executive councils, governing of localities would be difficult. He asserts that chiefs have an effective role in assisting, encouraging and supporting the local government institutions and systems.

This perception contradicts that of the modernists who see the participation of traditional leaders in local government and politics as counter-productive (Kyed & Buur, 2005). The Economic Commission (United Nations Economic Commission for Africa, 2007) for Africa of the United Nations attributes some weaknesses in the capability of traditional leadership institutions to various limitations, especially with regards to accountability and gender equality. Some

weaknesses are attributable to economic costs for allocation to their constituencies and thus the possible inability to bring their populations out of poverty without the support from the state.

As in Botswana and Ghana, the institutions of traditional leadership in **South Africa** predate the arrival of white settlers and was the only known system of governance among the indigenous nations of South Africa (Koenane, 2018). He asserts that these indigenous systems were corroded by the white settlers who used or coerced traditional leaders to become their proxy to suppress those who were opposed to their white supremacy. Some of the traditional leaders were turned against their own. This made some traditional leaders to resist the colonial repressive policy. The colonial powers and apartheid regime in South Africa then resorted to remove and replace those resisting traditional leaders, while forcing others into exile.

Ubink (2008) notes that the position of traditional leadership in South Africa became stronger by the day. This peaked after the post-apartheid South African Parliament passed the Traditional Leadership and Governance Act (TLGA) and the Communal Land Act (CLA), which made the role of traditional authorities in the country's democracy clearer. The TLGA provides for the establishment and recognition of Traditional Councils which consists of 60 percent of traditional authorities and those they appoint. The CLA provides the Traditional Councils with unprecedented powers for allocating and administering land (Claassens, 2006; Ntsebeza, 2003, 2005b; Ntshona & Lahiff, 2003; Oomen, 2002).

As observed by Ntsebeza (2005a, pp. 7 & 8) the 1996 Constitution of the Republic of South Africa recognized the institution of traditional leadership while also advocating for liberal democracy in which all levels of government are represented. This includes local government while also recognizing the hereditary institution of traditional leadership for rural people. This

dual caused a legal travesty of contradiction. It caused all powers in rural areas, such as land administration and local government to be concentrated in the hands of traditional leaders. This is said to arise from the Apartheid legacy, and hence made traditional leaders to become despotic and subsequently feared and hated by the populations and thus compromising the rule of democracy (Ntsebeza, 2005a). This prompted scholars such as Bank and Southall (1996, pp. 408, 425–427) and Ray (1996) to advocate that traditional leaders should be denied from playing any constitutional roles. This means the traditional leaders be restricted to their customary roles. However, scholars such as Sklar (1994) argue that it is possible for the institution of traditional leaders to co-exist with that of elected representatives. Ismail (1999) supports what he calls “integrated model” in which proposes to integrate some aspects of traditional rule into post-colonial democratic local governance. He strongly some elements of “indigenous governance” can strengthen current efforts for nurturing a democratic culture among the African people.”

In **Zimbabwe**, traditional leaders historically fulfilled social, moral, economic and political roles. The social roles included welfare of community members. According to Dodo (2013, p. 32) some chiefs assisted the poor and orphans with food in rural communities, especially in times of drought and emergencies. Morally, traditional leaders inspired unity among the people. Chiefs also played cultural and spiritual roles. It was believed that chiefs command some power over ancestral spirits (Dodo, 2013). Economic roles covered provision of land for agriculture and grazing. Dodo (2013) reports that traditional leadership controlled most of the development projects. Dore (2001, p. 13) provides narratives and examples of traditional leaders control over natural resources. However, paper establishes that with growing human and livestock populations, “traditional rules do not comply with the principle of exclusivity of common

property regimes and, hence, do not in themselves offer a lasting solution to sustainable resource use.”

Traditional chiefs’ political roles included leading resistance to threats facing the community or the nation at large. An illustration of this point is that one traditional chief in Mashonaland East Province of Zimbabwe led his subjects to take part in commercial farmland demanding to be settled. Another case was that of a chief who led his people in a bloody resistance when his land was seized by the colonialists. Dodo (2013) observes that traditional leaders upheld the responsibility of maintenance of peace and stability through resolution of disputes. Chiefs had to be impartial and fair in fulfilling their judicial functions. Therefore, this caused chances of conflict were effectively minimized. In Holleman (1952) traditional chiefs were instrumental in the pre-colonial times in separating between grazing area (*ufuro*) and ploughing area (*urime*) as a strategy to prevent disputes arising when animals trespass into cultivated land. Such roles are reported to have earned chiefs respect and acclaim. Mzimela (2012) points out that there is historical evidence that shows that traditional leaders in South Africa led their people in struggles for recognition and that most of them sacrificed all they had during those struggles against alien systems of government.

In addition to the quadrilateral connection of roles (social/cultural, moral, political and economic), traditional leaders also acted as instruments for communication in the rural areas of Zimbabwe, as pointed out in Chakaipa (2010, p. 53). Ray and van Rouveroy van Nieuwaal (Ray & van Rouveroy van Nieuwaal, 1996) recommend that traditional chiefs should be empowered to act as conduits that facilitate communication between local people and the government. Traditional leaders are also viewed to be a form of effective and invaluable tool to support

communication in rural areas for two main reasons. First, for due to their hierarchical nature, information can be passed from one traditional authority level to another. Second, they are spread throughout rural Zimbabwe with exception of commercial farming areas and mining regions (van den Brink, Thomas, & Binswanger, 2007). Makumbe (2010, p. 95) points out that traditional leadership “build a bridge for two-way communication between the community and the governmental system at central and local levels for the purpose of promoting development and change.” Ray (1997) reports that one value addition of traditional leadership is that it is one way for articulating the needs and priorities of their communities and thus serving as an effective two-way channel of communication between the government and the people.

Despite these well illustrated roles of traditional leaders to reinforce their importance in governance institutions, the 1981 Zimbabwean Customary Law and Primary Courts Acts stripped them of judicial functions to leave them as cultural and ceremonial figureheads (Tokpa & Yengbeh, 2012). Outraged by the policy, the traditional leaders demanded for repeal of the act, which yielded fruits when in 1993 the government relented and allowed traditional leaders to take part in economic, social, religious and social life (Tokpa & Yengbeh, 2012).

However, the 1998 Constitutional Act of Zimbabwe recognizes the traditional chiefs’ institution and allowed the formation of Council of Chiefs whose main aim was represent tribal communities. Chigwata (2015, p. 450) points out this Constitutional Act was “the clearest sign of the government’s positive attitude towards traditional leaders”, which restored the powers of traditional leaders to allocate rural land and handle criminal cases in rural areas. The Act also provided for establishment of the Council of Chiefs and Provincial Assemblies of Chiefs, which

together represented platforms for government to consult with chiefs on issues affecting them and the populations under their jurisdiction.

The Constitution of Zimbabwe recognizes the institution of tradition leaders and provides for the formation of Council of Chiefs to represent traditional people and tribal communities. After independence, the government dismantled the inherited legal dualism in favor of creating a single politically unified, non-tribal nation. The Customary Law and Primary Courts Act of 1981 stripped the judicial functions from traditional chiefs and explicitly left them as cultural and ceremonial figureheads. Traditional chiefs and local communities were outraged, and demanded for a reversal. Chigwata (2015, p. 449) recalls that in the 1980s and 1990s traditional leaders resorted to lobbying the national government to restore their powers. Chatiza (2010, p. 16) points out that despite losing significant powers, traditional leaders still “retained significant influence in rural.” In 1993, the government addressed the issue by strengthening the institution of traditional leaders regarding economic, social, religious and political life. Their support and cooperation was later considered to be vital for effective implementation of policy and development of rural areas. Dodo (2013) reveals that the combined effect of both factors led to government policy shift in the late 1990s. Chigwata (2015) observes that this positive attitude by the government towards the institution of traditional authorities continued post the first decade of the Millennium.

2.6 Institutional Mechanisms for Integrating Local Government and Traditional Institutions

This section provides answers to the fifth question on best possible strategies for integrating traditional leadership institutions into modern governance and elected institutions. It examines

some findings and conclusive thoughts by scholars regarding strategies for the integration to take place. There are several proponents of integration, including Chigwata (2015), United Nations Economic Commission for Africa (2014), Skalnik (1996) and Ismail (1999). But perhaps the most elaborately and comprehensively presented argument in support of integration, is that by Chigwata (2015) who argues that despite an earlier attempt by the ZANU-PF government of Zimbabwe to undermine and even prevent the institution of traditional authorities from indulging in democratic governance at the local level, they have remained influential at the grassroots level and influencing local government performance. He suggests that traditional leaders “play a pervasive and ever-present role in the lives of people in rural areas.” Despite the several reforms that the colonial and post-colonial governments in Zimbabwe in which the traditional leadership has been co-opted, distorted or denied participation in political governance, it has survived the test of time and has continued to play an important role in the lives of rural populations. Chigwata (2015), therefore, proposes that the only viable strategy is to incorporate them into the formal local political institutions.

A strong supporter of an integrated model is Ismail (1999) who opines that traditional leadership in South Africa underwent “dramatic marginalisation”, or that the institution of traditional leadership has been accorded a “symbolic” status. Therefore, he recommends a model in which traditional (or indigenous) leaders are engaged with some aspects of liberal (or Western model) of democracy in order to strengthen efforts for building a democratic culture among the African people. His main point of argument is to incorporate traditional leaders in local governance systems.

Skalnik (1996, p. 111) also argues for recognition of the authority of indigenous African institutions by leaders of modern governance institutions rather than rejecting and estrangement. He maintains that “various elements of leadership had their roots in different traditions, sectors of population, and localities.” He also saw traditional leadership institutions as instrumental in “direct democracy and complementing representative democracy.” In his opinion, the non-incorporation of traditional institutions into post-colonial democracy is in itself violation of democracy.

The United Nations Economic Commission for Africa (2007) advises that there is need to recognize and address the co-existence of African traditional leadership with the elected government. For this to happen, it is necessary to forge a coherence between traditional authority institutions with the modern democratic institutions. It is also recommended that the two sides should rather not be in competition against one another, but to find effective ways for integrating both institutional set ups for better provision of services to the citizens, represent their common interest and deliver justice. Mngomezulu (2009) holds a view that one of the reasons that made contemporary African governments to recognize traditional systems and regard them as partners, is that the latter has proved resilient and being part of the socio-political landscape; thus it should not be ignored.

There is enduring argument that pre-colonial Africa had its own democracy. Part of this school of thought is Ayittey (1999) who argues that the reasoning that the pre-colonial Africa did not have viable democracy of its own is a flawed. Ntsebeza (2005a) the institution of traditional leadership has been characterized by participatory democracy, but not representative democracy. He therefore holds the view that traditional institutions be incorporated into the post-colonial

African democratic systems and that both are vital in post-colonial transition. Skalnik (1996) and other scholars insist that historically African societies practiced a form of direct democracy, but the questions remains as to whether this is peculiar to Africa.

In further support to the idea of integration, Dia (1996) and Wunsch (2000) argue that if traditional leadership systems are increasingly relied upon in governance of public affairs, it could cause reduction in transaction costs due to the greater availability of social capital among indigenous groups than post-colonial societies. Englebert (2000, p. 62) suggests that “building upon traditional institutions would reduce illegitimacy of the African state and, thereby, the need for unproductive neo-patrimonial policies.”

Pro-integration scholars agree that integration should not just be done without certain mechanisms put in place. An example is Keulder (1998) who points out that both modernists and traditionalists concur that the institution of traditional leadership needs some reform in terms of its composition and functions to new environments and emerging situations. Makumbe (2010, p. 96) reports recommendations of Zimbabwean parliamentary delegation after a study tour to Botswana, Namibia and Zambia in which they identified four approaches to an effective relationship between local authorities in the three countries as follows: First approach is “non-regulated dualism” in which elected structures should co-exist side by side with traditional authorities, and that either or both should not be governed by legislation. Second approach is “parallelism” or “regulated dualism” in which necessitates that both traditional structures and elected councils exist side by side by law, and are equal to and independent of each other. In other words, both structure operate parallel to each other. The third approach is termed “subordination”, which means that either traditional authorities or the elected local authorities

are made subordinate, and answerable to, the other. Naturally, the traditional authorities are obliged to be the subordinate to the elected structure. The fourth approach, is the “harmonization” approach which recognizes that, despite each of the two authorities having its specific and specialised roles, both also share common roles, thus this necessitates harmonization for the benefit of local areas under their control.

Sharma (2004) in his study on the role traditional leaders play in Botswana, recommends that traditional leaders must undergo training in the numerous aspects to help them main their relevance and to perform their roles efficiently and effectively. He adds that traditional leaders must accorded improved service conditions and with resources, which include offices furniture, equipment and transport, in order to make them efficient and facilitate two-way communicate between the government and the people at the community level.

Makumbe (2010, p. 96) weighs the demerits of the first, second and third approaches, which he sees as being problematic or leading to creating conflict. He highlights the recommended approach by the delegation to the government of Zimbabwe, which is to adopt the fourth approach in which a legislation should be enacted so that traditional and elected structures are harmonized in such a way that a quota of traditional leaders are added to all local government and national structures.

A number of scholars paint a good image of integration of traditional leadership institutions into the elected local government structure through shared experiences and examples. Williams (2000) gives an example of how traditional authorities in KwaZulu-Natal, South Africa, are integrated into the state’s core organs at the local government level, which includes being 20 percent of traditional chiefs being appointed ex-officio members of the Regional Council.

2.7 Traditional Leadership and Local Governance in South Sudan

This section examines traditional leadership (chieftaincy) setups in South Sudan and the extent of their contribution to local governance, democratization and wellbeing of rural populations based on review of literature and documents obtained from the Ministry of Federal and Constitutional Affairs of the Republic of South Sudan. The chapter is divided into six sections following the introduction.

2.7.1 Demographic Overview and Typology of South Sudanese Societies

South Sudan is characterised with a polarized cultural and demographic typology, which is arguably one of the overarching root causes of the conflict that flared up in mid-December 2013 and continued for five years. The country has different ethnic origins or nationalities (Gurtong, 2004; HACDAD, 2002). Population is distributed into three main demographic groups: Nilotic people; Bantu speaking people; the Nilo-Hamites.

The Nilotic peoples of the Sudanic groups (also known as the Nilotes) are typically and predominantly pastoralist (with a large section being semi- or pseudo-nomadic). These groups is comprised of the Dinka (the largest ethnicity), Nuer (Naath), Collo (Shilluk), Acholi, Luo (Lwo or Lwoo) speaking tribes, Pari; Anywaa (Anyuak), Atuot and others. The Nilotic people are divided into two linguistic and cultural groups, namely; the The Dinka-Nuer group and the Lwo speaking group.

They are characterised by distinct physical looks; generally tall, slender, very dark skin complexion and linguistic etiologic origin. Another of their common characteristics is facial or body scarification. Obsession with cattle ownership is also one of their common sources of social

values and trade. Chieftaincy typologies differ sharply among these groups. For example, the Dinka traditionally do not have formal and hereditary chiefdoms or kingdoms as do the Collo and Anywaa who are ruled by kings dating back to pre-colonial times.

The Bantu speaking groups (or clusters) of people who share cultural and demographic heritage with the rest of Bantu ethnicities of the Greater Congo Basin and the Great Lakes Region. The Bantu ethnicities are typically sedentary peasant who mainly depend on farming for their livelihoods in addition to forest gathering, small ruminant livestock and poultry. Unlike the Nilotic ethnicities, the Bantu-speaking ethnicities are shorter in stature and have lighter skin complexion compared to the Nilotic group. The Azande (Zande), which share a long border with Democratic Republic of Congo and Central African Republic is the predominant group in the Bantu speaking cluster. They were historically ruled by a King known as Gbudwe. Other groups include the Moru, Avuka, Mundu, Balanda, and other smaller tribes numbering between a few thousands to about 15 thousand persons.

The Nilo-Hamites group of ethnicities span across the borders of South Sudan with Ethiopia, Kenya and Uganda westwards to the border with DR Congo. This group is mainly a mix of peasant and agro-pastoralist populations. Traditional leadership govern this group and it comprises of tribal chiefs and kings. Among the prominent ethnicities in the Nilo-Hamitic group are Toposa, Otuho and the Bari speaking group (Bari, Kakwa, Kuku, Mundari, Nyangwara and Pojulu). A compendium of ethnicities can be found in the book “The House of Nationalities” (HACDAD, 2002).

2.7.2 Historical Overview of Traditional Leadership in South Sudan

Traditional authorities in South Sudan are often called “Chiefs” or “Kings” (with their local tribal names), depending on the tribe they have authority on. Like in many African countries, traditional authorities have been in the country since the pre-colonial times (Hoehne, 2008; Santschi, 2014). Santschi (2014) points out in the pre-colonial times, chiefs were involved in local conflict resolution, but with the coming of the colonial powers, they also played some roles which are tied to local government institutions.

The importance of traditional authorities became prominent under the Native Administration policy of the Anglo-Egyptian rule in the Sudan (1899-1956). The role of tradition leadership in local governance system started with the first period of the British colonial rule which enacted and implemented the Civil Justice Act of 1929 (Fadlalla, 2009) and its successor the Civil Law Act 1990.

The Native Administration was introduced in the 1930s under ‘Southern Policy’ as a system of ‘indirect rule’. The system created indigenous structures of authority, employing indigenous or customary law and justice to keep administrative costs low and simple (Douglas H. Johnson, 2003). During the British Colonial Administrations, traditional leaders were exploited to perform tax collection in addition to their traditional roles of conflict resolution (Idris, 2017). Other important roles of traditional chiefs were/are to administer customary law in native courts and organize work (Schomerus & Aalen, 2016).

The system of local governance in South Sudan passed through six different political episodes; Anglo-Egyptian rule, post-independence period of the Sudan (1956-1972), the Southern Sudan

Self-Governance (1972-1983), the Sudan civil conflict period (1983-2004), the post-conflict Transitional period (2005-2011) and the Independence period.

During the British colonial rule, which later transformed to Anglo-Egyptian administration, the legality of traditional leaders' involvement in the modern system of governance derived from the Native Administration policy. This was a special way of decentralizing Sudan and giving traditional chiefs power to collect tax and resolve conflicts. Chiefs also acted as intermediaries between local government authorities and communities (Idris, 2017). The institutions of traditional leadership in South Sudan has heterogeneous structure depending on ethnicity and form of livelihood. In typically pastoralist communities such as the Dinka, Nuer and Murle – which together constitute the majority of the population of the then Southern Sudan – traditional leadership is mostly non-hereditary (Douglas H. Johnson, 2003; Leonardi, Miajak, & Höt, 2005). Hoehne (2008) writes that “in the absence of reliable traditional institutions the British set out to create them. They established chiefs and sub-chiefs representing relatively small sections of the population.” Badal (2005) points out that “the British developed two different patterns of administration: one for the pastoralists, and one for the sedentary communities.

The post-independence period of Sudan of 1956-1972 was marred by civil war between the Government of Sudan and pro-secession of South Sudan rebels. In this period traditional leaders continued with the role the colonial power assigned to them.

During the conflict period (1983-2004), traditional structures were undermined by the rebel movement (SPLM/A) and the government military structures. This made the former to act as intermediary between the rebel authorities and local populations (Hoehne, 2008). Subsequently, in the mid-1990s the rebel administration in South Sudan changed their stance toward traditional

leaders and started to appreciate their importance. This is understandable as the rebel administration was preoccupied with managing the war and its own army. Moreover, the rebellion experienced a split within its ranks (Nyaba, 1997).

In the post-civil war transitional period (also known as “CPA Period”), the functions of traditional leaders are specified in the Local Government Act (LGA) of 2009. However, Idris (2017, p. 3) contends that the LGA does not precisely define the roles of traditional chiefs and that “there are contradictions between modern values and traditional governance.” Following the internal displacement of chiefs during the 21 years of civil war, which mostly had its epicentre in South Sudan, a number of new chiefs emerged. Some of these new chiefs were appointed by both the government and rebel authorities (Idris, 2017).

In the independence period (from July 2011 onwards), the roles and functions of traditional leaders in South Sudan is engrained in the Transitional Constitution of South Sudan, which was enacted at independence. Article 165(6i) of this constitution states “acknowledge and incorporate the role of Traditional Authority and customary law in the local government system” (Government of South Sudan, 2011). The same constitution (Article 167) delegates the definition of the roles of traditional authorities to the legislative organs of the states. This includes establishment, composition, functions and duties of councils for Traditional Authority leaders.

2.7.3 The Typology of Traditional Leadership Institutions in South Sudan

The institutions of traditional leadership in South Sudan are heterogeneous and differ according to cultures. There is a number of peculiarities in the outlook and structures of traditional leadership in South Sudan. It is important, therefore, to take a look at the typologies of a

selection of traditional authority institutions of ethnicities such as the Azande, Collo, Anywaa, Otuho and the smaller tribes that have common forms of traditional leaderships.

2.7.3.1 The Avungara Kingdom of the Azande

The Azande is a culturally diverse group of people who for two centuries have been ruled by a number of kingdoms. The Azande are spread across the borders of three countries: DR Congo, Central African Republic and South Sudan. It is widely believed that the Azande migrated from what is now Central Africa Republic. They occupy a large territory extending about 500 miles from east to west which is characterised by tropic rain forest of the Congo Basin.

It is reported (“Azande,” 2009) that the Azande were ruled by a great Kingdom which was destroyed by the Belgian, French, Mahdists of Sudan, and finally the British during the European scramble for Africa. The Azande chiefdoms were passed down through the Avongara lineage. The Avongara controlled military, economic and political authority over their subjects. The social anthropologist Evans-Prichard (1967) the unmarried Azande men were used as labourers and warriors. The Avongara (plural) are descendants of great Vongara of the Abakundo dynasty or clan, who was considered a just settlement of disputes and his court was highly respected (Evans-Pritchard, 1957). The Avongara kingdom was passed down to two sons of King Ngura by the names of Tombo and Mabenge. These Azande kings were said to have fought a number wars to maintain their independence against Arabs and Europeans.

Modern history of the Azande is symbolized in the Kingdom of Gbudwe which reigned until the Anglo-Egyptian rule. King Gbudwe ruled until his death in 1905. He was descended by King Ngangi and later his son Tombura. The Gbudwe Kingdom was characterised with violence, as the king and princes led wars to concur neighbouring tribes and territories. It seems that King

Gbudwe was the type of middle age European or Zulu kings who fought political wars. Apart from their autonomy, there is no historical narrative showing that the Azande kings were involved in local government administration. However, one thing is clear that with the coming of the British colonial power, the Azande kingdom dissipated and was replaced by chiefs; hence, like in the rest of the country, the chiefs fulfilled roles assigned to them under the Native Administration.

2.7.3.2 The Collo (Shilluk) Kingdom

The Collo (commonly known as Shilluk) is a member of the Lwoo (Luo) nation, which is a large group of scattered tribes, including the Luo of Kenya, Acholi of South Sudan and Uganda, Alur of Uganda, Pari of South Sudan, the Jur and its segments in South Sudan, Anywaa/Anyuak of Ethiopia and South Sudan, the Funj (or Apuny) of Blue Nile State in Sudan, among others. The Collo occupy the land along the River Nile and part of Sobat River in what is known as Upper Nile State.

It is believed that the Collo nation was founded by King Nyikang the son of Okwa who ruled for 30 years between 1537 and 1567 (Akol, 2010). From that time and, for four centuries and a half, 33 kings have ruled over the Collo land. The Shilluk word for king is *Reth/Rädth* who is treated as super being possessing the spirit of Nyikang son of Okwa. Akol (2010) opines that the Collo are “politically the most highly organized of the Nilotes.” The Collo believe that the *rädth* is possessed by the spirit of Nyikang and is his incarnation.

Being a political organisation, the *Rädth* presides over government and is assisted by chiefs and a group of elders. A chief (*nyiradh*) is in charge of a village, while an elder is in charge of

homestead. The *Rädh* appoints the chiefs (*nyiradhs*) who are accountable to him. A Council of Chiefs elects the *Rädh* provided that his father was also a *Rädh*.

The Collo, who had advanced to settle west of the White Nile to Khartoum (believed to be the Collo word for *kier-a-tum* or where two rivers meet), were pushed backward to the present northern border of South Sudan by sheer power of firearms of the Turco-Egyptian army and later the *Mahdiya* army of Sudan. It is also reported that Collo depopulated themselves due to engagements with other armies from neighbouring tribes, such as *Beel* and *Funj* (*Apuny*), especially when their warrior kings attempted to expand east of the Nile. Akol (2010, p. 6) reports that due to their antagonistic characters and defiant actions the Collo lost hundreds of warriors and four of their kings; Kwadhker, Ajang, Kwikon the son of Kwadhker and Yor). It is to be noted that the British administrators had stationed at Fashoda, which is also the headquarters of the Collo Kingdom until today, and established it as their provincial headquarters. This led to the colonial power taking charge in replacing the kings as in the case of the disposition of *radh Kur wa Nyidhok* by Administrator of Fashoda province, Mr. G.E. Mathews, the first

It seems the Collo kings of the 18th and 19th Centuries were more preoccupied with wars, local rivalry among the royals, military training and preparedness for defence of their territory than investing in building peace and ushering in stability, progress and civilization. Their aggressiveness must have resulted in causing instability within the kingdom, which might have limited their capacity to concentrate on governing and development by way of producing their own food and engaging in trade and small industry. This war-like culture might have also discouraged the Anglo-Egyptian colonialist and Turkish rules before them from conferring

administrative powers to the *nyiradth* to act as local government executives, as is the case with other parts of Sudan and British colonial administrations.

Another factor to the poor (or lack of) involvement of the Collo kings in local governance of their territories, as well as cooperating with the government of the colonial administration, is that the Collo kings consider their reign and power as sovereign (Graeber, 2011). The kings also consider themselves and are treated by their subjects as sacred and command divine spirits. This can be found in the narratives of Goldsmiths (2011), Omer (2009b) and Hoehne (2008). These authors note that the Collo Kingdom, like the Azande Kingdom are centralized traditional authorities, as can be seen from rule by a lineage. This makes the traditional authority to undemocratic in their functioning and thus making their integration into modern or conventional local government systems rather not easy (Hoehne, 2008; Omer, 2009a).

2.7.3.3 The Kingdom of the Anywaa (Anyuak)

The Anywaa (the preferred spelling by natives but commonly known as Anywak, Anyuak or Anuak) is a member of the Lwoo/Luo family of tribes and the larger anthropological group of the Nilotics (or Nilotes. The names is also distorted by historians who spelt it as ‘Anuak’ (Evans-Pritchard, 1940c, 1940b). The Anywaa inhabit a territory in the eastern part of South Sudan and south-western Ethiopia (Gambella Region) and have been there for hundreds of years. Majority of them live in Ethiopia. Akol (2010) reports that the Anwaa branched off from the Collo nationality and settled in the eastern part of River Nile and specifically along the Sobat (one of the tributaries of the White Nile), Pibor, Akobo, Gillo, Agwei, Oboth and Baro rivers .

The Anywaa are agro-pastoralists, just like the Collo, thanks to the rich Savannah grassland, annual rainfall of about 800mm. It is reported that due to frequent cattle raids from neighbouring

Murle tribe, the Anywaa decided not to keep large herds of cattle. Being riverine people, they subsist on both fishing and small scale agriculture. The rivers provide them with fertile arable land and abundant fish (Kurimoto, 1996).

According to oral history captured in the Encyclopedia of the World Cultures (“Anuak,” 1996), the Anwaa migrated from the north-west, probably from the territories just below the Sahara Desert, some four hundred years ago. Wall (1975), citing (1957) points to common and structural relationship in the political system of the Anywaa and the Collo. Evans-Pritchard (1940b, p. 15) points out that the village is the most important political unit with each village associated with one lineage of a clan and one founder known as ‘*kwai ngam*’ or ‘owner of the village’ (Wall, 1975). The village headman is often chosen from the dominant lineage occupying the village and is usually regarded as the one to whom every member of the village pledges loyalty. The village headman is, therefore, the first line traditional, cultural and political authority in the Anywaa culture. His subjects usually approach him on their knees to greet and address him in a show of respect. The village headman is surrounded by a number of deputies and court officials. A village headman is served by a few retainers who are usually from among the youth of the village (Wall, 1975).

Among the roles of village headmen is generous distribution of food and gifts to his people. This makes him earn loyalty and also duration in power, as he can be removed by his village people whenever he fails to command a large majority of the people. He usually leads and decides by consensus and efficient system of patronage within his village (Wall, 1975). Otherwise, he faces as village revolution (*agem*) and gets deposed by his village people, in which case another member of the village ruling lineage whose father was a headman. The deposed headman is then

forced to flee to a neighbouring village as a “refugee”. This implies village leadership system is sort of democratic and far from being autocratic.

However, the south-eastern Anywaa follow a different political system the headmen compete for authority with a noble clan known as the *nyiye*, who are members of a single clan spread throughout the land of the Anwaa and who are descendants of a mysterious man, Ukiro, according to Anywaa mythology (Evans-Pritchard, 1940b; Lienhardt, 1957).

Wall (1975) observes that noble clan rivalry and introduction of firearms around 1900 led to increasing centralization of power in the hands of only three powerful clans. When the British started their rule in Sudan by 1921 the traditional system of the Anwaa which drifted toward greater centralisation ended, effectively replacing it with the policy of the British Sudan Native Administrations. The post-colonial governance in South Sudan, and especially during the civil war, even worked to weaken the institutions of traditional leadership. Badal (2005, p. 14) points out that many chiefs were appointed by the government or guerrilla leaders without regard to democratic or traditional processes. For the British colonial administration, the intention was obviously to use the traditional leaders for tax collection as Delmet (2013, p. III) writes

“Local administration, law, and tax collection were implemented in rural areas through the involvement of tribal, lineage, and village chiefs who were not always the legitimate beneficiaries, as the latter were sometimes isolated out of mistrust or retaliation.”

Prior to this, like the Collo and Azande, the Anwaa system of rule is more of centralized hierarchical structure (UNDP, 2010, p. 23). Review of literature does not provide any written

record about the role of Anywaa traditional leaders in local government administration or their recent linkage to the local government, which in modern times is under Jonglei State or the new states created by South Sudan's President Salva Kiir Mayardit (Idris, 2017).

2.7.3.4 The Dinka and Nuer Traditional Leadership Structures

The two members of the Nilotic group share common characteristics; physical look, mode of livelihood, co-existence in the same larger territories on both sides of the Nile, cultural practices and belief systems, and even certain words. Hutchinson (1962) describes the closeness of the Dinka and Nuer which dates back to some five hundred years ago.

Taken together, the two communities might number about half of the population of South Sudan, which has 60 or more tribes. Among the glaring similarities is that their livelihood revolves around livestock and exclusively cattle, which also – culturally speaking – gives them a source of pride and self-esteem. For an average Dinka and Nuer, cattle is almost everything to live for, including cultural rites, such as songs and poetry, and social fulfilments, such as marriages, funerals, other ceremonies and gifts to very important guests (Delmet, 2013).

Despite the dominance of similarities rather than difference, the two tribes have history of rivalry and traditional animosity. Heightened by politics and existence of modern instruments of warfare, such as automatic machine guns, this rivalry and mistrust peaked during the last three decades (D. H. Johnson, 2014; H. Johnson, 2016; Nyaba, 1997, 2013). To fill this vacuum, the British colonial administration in the former Southern Sudan decided to create traditional institutions by establishing chiefs and sub-chiefs (Hoehne, 2008). Autocratic chiefs were removed and not given any leadership roles, while loyal ones were given special privileges (Douglas H. Johnson, 1986). Meanwhile, two distinct patterns of traditional leadership were

provided to the pastoralist communities and then for the sedentary communities. Since pastoralists are mobile and transient communities by their nature, their chiefs were given mobile and flexible administration. Meanwhile, the sedentary communities were given more stable administration.

During the subsequent post-colonial administrations of pre-independent South Sudan, the civil war frustrated any plans for developing a working relationship between the Nuer and Dinka traditional leaders and local government institutions. The two groups were also heavily involved in the civil war which pitted the North against South and also in a war between themselves (Hoehne, 2008, p. 14). That 21-year civil war was so bloody with substantial amount of inter-tribal war, particularly in Jonglei State where both Dinka and Nuer have coexisted for centuries as hostile communities.

The position of traditional leaders in society and their association with formal governance institutions has reportedly taken a down turn. A traditional chief from Twic State (formerly a county), Chief Jacob Madhel Lang, reminisced the days under the British Native Administration, which he hailed as treating traditional authorities with respect.

2.7.3.5 The Dinka Traditional Chieftaincy

The Dinka inhabit the land extending north, west and south of the central Nile basin. In Dinka culture traditional chiefs are selected from those regarded as spiritual leaders who are also known as “spear masters” and recognized for their role in settling disputes. These are customarily prominent people who wisdom and excel in persuasion of community members and threatening them with a curse spell if they did not listen.

At the lowest tier of traditional chieftaincy structure is a “Clan Leader”. A clan leader is selected by their respective communities from among elders who showed the character of fairness, sympathy to others and demonstrating good negotiation skills. One of the major roles of the clan leader is to register young men for poll tax and social service tax. This is in addition to the roles of settling disputes, looking after widows, orphans and other vulnerable members of their community. In the event of murder of a community member, the clan leader collected the “blood price” from the family of the one who has committed the murder. A “blood price” is compensation paid to the kin of a victim by the kin of his/her killer. The layer above that of the clan leader is the Sub-Chief whose role is to settle minor disputes between communities (those under clan leaders). The Sub-Chief is responsible for a group of clan leaders.

In Dinka society the chief ascend to the seat either through election or succession of inheritance in the ruling lineage. But, during the British Colonial Administration, all Dinka chiefs were appointed (1920s). The Dinka chief fulfilled both judicial and administrative responsibilities; the latter being to collect social service tax and executing small development projects for the wellbeing of his community, such as small road construction, schools, health centres and executing government policy and the needs of the community. A Dinka chief’s judicial powers include setting of court cases according to the customary law, and mediation of minor civic cases such as marriage, divorce, inheritance and distribution of land (Rift Valley Institute, 2016).

2.7.3.6 The Authority of Traditional Leadership of the Nuer

The Nuer, also known as Naath (Liah, 2017) is believed to be one of the ancient Eastern Sudanic nationalities and their language is perceived to date back to the days of the Cush. The Nuer are also believed to have moved east from the western parts of the White Nile.

A hard-core cattle keeping people, the Nuer are devoted to their cows, which are taken as a source of pride and social security. But, cattle is also the source of many disputes and mortality due to killings among the Nuer, as in the Dinka Community. They mainly occupy what is currently known as the “Greater Upper Nile Region” which is split by the Nile.

Like the Dinka and other tribes in Nilotic family, the Nuer society predominantly orients to Monotheistic Animism. They associate leadership with spiritual powers, which is reflected in the form of fulfilment of ritual or sacrifice and prayer to spirits in the sky (Liah, 2017). The Nuer consider themselves as a nation (Wejtuor, Chiek, & Manyon, 2016). They are organized into tribes and each tribe is comprised of a number of lineages. The Nuer tribal structure does not have an overall political authority, as political roles are vested in the clans. They fall into what is described in Middleton and Tait (1958) as “Tribes without Rulers”, or in Pasquinelli (1986) as “Power without the State”.

Even though the British Native Administration policy was implemented across the entire territory of the former Sudan, the Nuer still ascribe to the religious authority of some spiritual leaders often referred to as ‘prophets’. Prophet Ngundeng Bong (1846-1906) is first of the Nuer prophets and is still considered the most powerful (Hutchinson, 1962, p. 12). However, the British colonial administration applied the same administrative arrangements for integrating the Nuer cultural leadership systems into local governance institutions. The British replaced the arbitrarily appointed Nuer Chiefs with elected ones among those who paid taxes (Hutchinson, 1962).

2.7.3.7 Contemporary Chieftainships of South Sudan

Focus in this sub-section shifts to traditional leadership structures with more or less equal power and influence to all clans and little stratification on the basis of political power and economic influence. This type of traditional leadership structure is common in the relatively smaller tribes that mostly occupy what the south-most territories of Equatoria and non-Dinka tribes in the Bahr el-Ghazal region along the Jur River. To complete the picture, the institutions of traditional leaders of communities which have long passed the ancient traditional leadership systems. These are the Bari speaking tribes of the Greater Equatoria Region of South Sudan.

2.7.3.8 Bari-Speaking Society

The Bari speaking people is comprised of a group of seven tribes that share common origin, language culture and territory (currently known as Central Equatoria). These are Bari, Kakuwa, Kuku, Mundari, Nyepo, Nyangwara and Pojulu (Delmet, 2013). Categorized as part of the Nilo-Hamitic, and sometimes as Nilotic linguistic cluster, the Bari people have co-existed for generation with five other smaller tribes, namely; Lugbara, Kaliko, Mundu, Makaraka, Lulubo, Lokoya and Avukaya. They are predominantly a peasant community with small amount of livestock mainly kept as a source of food and economic security.

Given their central location along the Nile and its hinterlands, the Bari people were exposed to different foreign occupations ranging from Arab slave traders, the expeditions of the Turkish Empire and European Missionaries. This exposed the Bari people to education and catechism earlier than other ethnic groups. With their relatively non-aggressive and welcoming behaviour towards foreigners, the British and later Italian Missionaries found it easy to settle among the Bari and other Equatorial nationalities. This gave the people exposure to European civilizations

and other influences as documented by Graeber (2011) who cited researchers like Simonse (1992). On the negative side, the Bari people suffered the brunt of the slave traders, especially by the Turk and Belgians who forced them into labour camps and exploited them to transport ivory on their heads over long distances into the Atlantic coasts of Central Africa (Graeber, 2011).

The traditional leadership system is comprised of paramount chiefs who were previously appointed by provincial commissioners in the colonial and post-colonial eras, chiefs who are traditional heads of tribes, sub-chiefs who are heads of clans. Prior to the independence of South Sudan in 2011, traditional chiefs in Central Equatoria preside over “A” Courts (or sub-district courts) and surrounded by Sub-Chiefs and refer cases to “B” Courts (or district courts). They combined these roles with other formal roles such as maintaining general order and carrying out executive orders issued by district commissioners such as general cleaning of townships and trading centres, regulation of beer taverns, rallying their people to abide by public health campaigns (e.g., vaccinations) and agricultural extension services. As evidence of their recognition and integration into government, senior chiefs wore uniforms and their courts (“A” Courts) were constructed and furnished by government. Until the late 1970s chiefs were deliberately selected from those who were literate with exception of a few.

However, the protracted wars watered down the roles of traditional leaders in the Bari speaking communities. Speaking in a meeting of traditional leaders organized in 2016 by the Rift Valley Institute (2016), which took place in Kuron Village in Eastern Equatoria State, Elder Tartisio Wandu who was representing Chief Wilson Peni of Azande Kingdom, stated:

“The role of the chiefs during the British Colonial period was to be fathers of the people, representatives of the local communities. Under the British, the chiefs

were respected...Wherever he moved, people stood and removed their hats, and put their hands in his pockets to give money. Today, chiefs have no honour, their honour is at zero... The power of the chiefs has been eroded.”

This says a lot about the shift in the role of chiefs and their importance among the people. Majority of the chiefs who spoke in the mentioned meeting spoke highly of their past glory, position in society and government and lamented the present where they have been neglected. The Dinka Chief Jacob Madhel Lam, recalled that the British administration created the Native Administration and appointed chiefs from among respected people. This preceding sections described the typology of the different traditional leadership systems and the context to which traditional institutions have blended into local and federal institutions of governance in South Sudan. As described in Section 3.2 traditional leadership became integrated into local governance systems since the colonial administration in Sudan that recognized customary law as suitable for settlement of disputes among the natives (UNDP, 2010). Idris (2017) notes that the local government institutions in South Sudan are comprised of both formal state structures and traditional authorities. These institutions have evolved over time and have undergone significant changes, particularly during the over two decades of civil war in Sudan, which saw enormous changes in the role of traditional chiefs and community leaders (UNDP, 2010).

Since the inception of the CPA in 2005, which established a six-year transitional government in the then Southern Sudan, the roles and responsibilities of traditional leaders gained considerable attention. It is in this context that the Local Government Board (LGB) was established with

substantial support from UNDP and other international organisations, notably GIZ and UNWOMEN (Ministry of Justice, 2013). As stated earlier both the Transitional Constitution of South Sudan and the Local Government Act 2009 recognize the roles traditional leadership plays in public affairs. This is owing to the fact that traditional leaders are widely respected and recognized (Ministry of Justice, 2013).

Section 119 of the Local Government Act 2009 provides for the formation of the Councils of Traditional Authority Leaders, in conjunction with Article 172 of the Constitution. The LGA outlines the main function of the COTAL, among others, to “provide a forum for dialogue with all levels of government on matters of customs and traditions of the people of Southern Sudan.” This function expresses the need for cooperation and collaboration, sharing ideas and arriving at joint decisions and policies regarding governance and delivery of services to the population. It recognizes that traditional leaders can play a complementary role to local government institutions.

In conclusion, the study has shown that the gains that traditional leadership institutions have made after the colonial and post-colonial eras, have somewhat vanished as a result of the two-decades civil war, and then following independence South Sudan. Unfortunately, this has happened even when there is substantial opportunity provided through a collaboration between the Local Government Board and UNDP to train traditional leaders in local governance and general concepts for improving services in the rural communities they lead.

2.7.4 Legal Frameworks Governing Traditional Authorities in South Sudan

This section attempts to answer the second research question, which is to discuss the legal basis or frameworks that provide traditional leaders the legitimacy in South Sudan. As stated in the forgoing chapters, South Sudan ratified the Local Government Act (LGA) in 2009. The LGA derives directly from the Transitional Constitution which was amended in 2011, just in the eve of the country's independence. The two documents provide the framework governing the establishment of local government institutions, guiding principles, objectives, structure and components, and the mandate, duties and responsibilities of traditional leaders in performing state functions within their areas of jurisdiction.

The subsequent part of this chapter comprises four sections. Section 4.2 describes the constitutional provisions for local government structure in South Sudan and outlines the provisions in both the constitutions and the LGA guiding the functioning and responsibilities of traditional authorities with special focus on how they relate to formal structures and officials of local government entities within their geographical boundaries. It then provides an examination and discussion of these provisions with the lens of whether or not they are being fulfilled and the possible enabling or limiting traditional authorities to perform their duties as provided for in the constitution or the LGA. Section 4.3 assesses the extent to which the provisions under the legal frameworks for incorporating traditional leadership institutions into local government systems have been followed through by action. Section 4.4 highlights good lessons that can be drawn from the case study of the four countries (i.e., Botswana, Ghana, South Africa and Zimbabwe) as discussed in Chapter 2 which the local government policy makers in South Sudan can adapt in

order to guide in proper integration of traditional authority institutions and enable them contribute effectively in improving performance of the local government help it meet its objectives. Section 4.5 draws conclusions on the main findings of the study.

2.7.5 Constitutional and LGA Provisions on the Institutions of Local Government and Traditional Authorities

Following the establishment of the previous region of the Republic of Sudan - Southern Sudan – by the act of the Comprehensive Peace Agreement (CPA) signed between the former Government of the Republic of Sudan and the former rebel Sudan People’s Liberation Movement/Army (SPLM/A), on 9th January 2005, the pre-independence Southern Sudan Legislative Assembly (SSLA) ratified what was called the Interim Constitution of Southern Sudan (ICSS). The ICSS was amended after the January 2011 Referendum that gave the former autonomous region the right to secede from the Republic of Sudan and renamed the Transitional Constitution of the Republic of South Sudan (TCSS) as described in Footnote 19 in Mennen (2012, p. 14). The TCSS (Government of South Sudan, 2011) was passed by the SSLA in the eve of independence and signed into force by the President on Independence Day 9th July 2011.

Article 47 of the constitution provides for three levels of government, namely; national government, state government and local government, which is structured into counties, payams and bomas (respectively the equivalent of districts, sub-districts and wards/townships in other countries), as provided for in Article 165(5) of the same constitution. Ideally, this is a provision for devolution of powers (decentralization) cascading from the community level up to the national level to give meaning of democracy as stated in Article 2 of the constitution that “Sovereignty is vested in the people and shall be exercised by the State through its democratic

and representative institutions...” read in conjunction with Article 48(1)(c) which recognizes “the need for the involvement and participation of all people of South Sudan at all levels of government.” The constitution in Article 48(2)(b) also states that the national government shall “respect the powers devolved to the state and local governments.” These provisions are echoed in Section 209 of the LGA.

A noteworthy and most relevant provision of the constitution, is the integration of traditional leadership institutions into local government. Article 165(6)(i) succinctly states: “acknowledge and incorporate the role of Traditional Authority and customary law in the local government system.” This provision is further reproduced in Section 19 of the LGA. The purpose of integration is explained in Sub-section (j) under this article, and that is to “involve communities in decisions relating to the exploitation of natural resources in their areas and promote a safe and healthy environment.” In this sense, the institution of traditional leadership is by definition part and parcel of the local government system. Article 166 specifically recognizes traditional leaders and customary law, while Article 167 provides for “the role of traditional leaders as an institution at the local government on matters affecting local communities.” This clearly means that traditional leaders are empowered by the constitution to be the link between the local or rural communities and the government through the lower local government structures and thus conforms with Idris (2017, p. 3). As regards specific functions, responsibilities and entitlements of traditional leadership institutions, the Article 167(2) leaves it for separate legislation to be established by the national and state levels.” This provision is mirrored in the Local Government Act Section 115(5), which states that “the powers, functions, and duties of the Paramount, Head and Executive Chieftainships, shall be Act Section 115(5), determined by local legislation and regulations.”

The LGA makes specific provisions for the establishment of mechanism for integrating traditional leadership into local governance systems. Section 105 states that Paramount Chiefs shall be elected by Head Chiefs and Chiefs, whereas Head Chiefs shall be elected by Chiefs and Sub-Chiefs. Section 117 of the LGA provides for the election of traditional authority leaders. Two provisions of the LGA describe mechanisms or instruments for formally bringing together traditional leaders or paramount chiefs as an official body/institution to advise and bring issues of their communities to the attention of the state governments. One of these mechanisms is the Council of Traditional Authority Leaders (COTAL), as provided for in Section 119 of the LGA and which are to be constituted and function at the state level.

Section 123(1) of LGA establishes the Local Government Board (LGB). The main mandate of the LGB, in brief, is to “provide guidelines and clarification, where necessary” (Local Government Board, 2009) and, also, to transform the units of local government (i.e, counties, payams and bomas) into a modern, integrated, citizen-centred inter-governmental system as described in Idris (2017, p. 5) and citing the World Bank (2015, p. 44).

Notable of the many specific functions of the LGB is to “recommend to the President the formation of a High Level Technical Committee for the creation and establishment of Local Government Councils in the 10 States of South Sudan.” Another key function is to “review and recommend on the performance and administration of local government affairs of each Local Government Council” (AWEPA, 2016). Meanwhile, the functions of traditional leaders and the COTAL have not been clearly defined. Section 19 of the LGA describes the responsibilities in general terms by stating that “traditional leaders represent their people in County Legislative

Council” and that they shall perform their administrative and customary functions at the boma level.

2.7.6 Status of Implementation of the Key Provision of the Legal Framework in South Sudan

This section examines the extent to which the provisions under legal frameworks governing incorporation of traditional authority institutions, have been put into use. It is not enough to recognize the institution of traditional authority and provide a legal framework for this contribution, but good intentions must be followed up by action. Lutz and Linder (2004, p. 2) provides sound reasons why it is critical to involve traditional leaders to play roles beyond just decentralization, stressing that “recent experience has shown that successful decentralization has to take existing traditional structures into account.”

The section then discusses the implications of non-implementation of those provisions the two legal frameworks left hanging with regard to performance of local government institutions and sustenance of peace from the grassroots. The rationale of this analysis is to provide logical basis for recommending the appropriate course of action to be taken for empowering traditional leadership institutions to contribute to sustaining peace and stability, development, provision of services and policy.

With regard to the provision for incorporating traditional authority and customary law in the local government system, there is no evidence that this has been done. The main factors are the protracted conflict which flared up at the end of 2013, political will and non-allocation of budgetary resources. However, if the government had considered strengthening and empowering

these institutions, the rural populations would have been preoccupied with various activities that would result in improving their livelihood and appreciating the dividends of peace and tranquility, thus they would not be exploited easily by politicians to fight their personal war.

It is also definition of powers, functions, and duties of traditional leaders by state legislative assemblies has not been done. Although this can be done easily, following examples from other countries, it was unfortunate that such exercise was not carried out. This is a pre-cursor for the integration to take place. Not acting is also a sign of lack of political will and gross undermining of an important constitutional provision. The implications of not letting traditional leaders know that they have a role to play in development, peace and stability and other governance activities, make them feel unappreciated by government and create dissent in them. They are by implication encouraged to be rebellious against government, especially if they are not from the ethnicity of the political leaders. This is documented in a testimony (Rift Valley Institute, 2016, p. 13) by Paramount Chief of one of the smallest tribes of South Sudan – the Bongo – who have co-existed with the largest tribe of the Dinka during the British colonial administration days.

The provisions for establishment of the Council of Traditional Authority Leaders (COTAL) has been partially implemented in five states of Eastern Equatoria, Central Equatoria, Western Equatoria, Lakes and Warrap. However, according to the Local Government Board of South Sudan (2009) these COTALs have no legal basis because they were established much before the Local Government Act was enacted. This implies that the five COTALs lack common terms of reference. The onus is therefore on the LGB to follow through and facilitate the establishment of COTALs in all the states of South Sudan, while also creating a capacity for coordinating their activities. Otherwise, the vacuum might lead to the difficulty of supporting and capacitating

traditional leaders on individual basis instead of consolidating support through their corporate state organizations. It might also frustrate the good intentions behind creating them.

In general, it seems that the non-implementation of these cited constitutional provisions, is deliberate undermining of the roles of chiefs by the reigning regime. A paramount chief and Chairman of the Warrap COTAL of the Dinka, Chief Jacob Madhel Lang, as cited in the Rift Valley Institute (2016, p. 13) laments that “the 2009 Local Government Act has brought great change. All the powers of the chiefs have been taken. Cases that used to be taken by the local chiefs are now seen as criminal cases, which cannot be settled at the customary level.” According to this Chiefs, some of these powers grabbed by government which their pre-colonial and colonial administrations’ predecessors used to enjoy, included “collection of social service tax, construction of local roads, schools and health centres, execution of government policy and representation of community needs to the government, and settling cases according to customary law.” This testimony is reinforced in the same gathering by Paramount Chief Lopwony of Toposa who boldly stated that “the chiefs have no support from government”. It is evident, therefore, that their integration of chiefs into local government institutions in the independence period has remained on paper only. As it was the case in Zimbabwe prior to 1998 where the role of traditional leaders were limited (Chigwata, 2015, p. 448) and in South Africa (Ntsebeza, 2005a, p. 4), it seems that it is characteristic attitude of past-liberation movements that ascend to power (i.e. SPLM in South Sudan, ZANU-PF in Zimbabwe and ANC in South Africa), although in the case of South Africa and Zimbabwe there has been a reversal of policy towards involvement of traditional leaders in government administration in the last decade.

As can be seen, the clear picture emanating from these lessons is that the governments of the four countries have not only institutionalized the role of traditional leadership in local government systems, but also provided the enabling environment for them to serve their population. It is also evident that constitutional provisions for collaboration between traditional leaders and local government officials is not only remaining on paper but put into action. Furthermore, it is also noted that traditional leaders are provided the space to advise the government as in the case of South Africa, Ghana and Zimbabwe. As of chiefs, sub-chiefs and headmen advising them, they are conversant with needs and issues senior traditional leaders have got their group of the grassroots and are therefore well placed to connect the government with realities on the ground, especially in areas that are remove from seats of government.

The information presented provides a solid ground to recommend to local government policy makers in South Sudan to recognize the role of traditional leaders in local government. South Sudan being a young country with less than ten years of existence as an independent country stands to learn from the experience of other countries which have established systems for devolving governance powers up to the rural areas. This is particularly true for rural areas that are too far from centres of government, whether counties, payams, or even Bomas. South Sudan is relatively sparsely populated with a population density of about 13 people per square kilometers, ranking 214th in the world. Furthermore, it is also shown that traditional leadership institutions can play a major role in sustenance of peace. The four countries that have been used as a case study are characterized by peace and stability since their independence. Therefore, it makes a lot of sense that South Sudan should not only provide legitimacy to traditional authorities, but also to implement the provisions so that the intended purpose will be fulfilled and the dividends from the actions will be realized, whether in the form of peace and stability,

smooth relationship between traditional leaders and government, or helping local government institutions to make informed decisions with regard to delivery of services to remote rural populations.

Chapter Three

Methodology

3.1 Introduction

This study is exclusively based on extensive review of relevant literature. It makes comparative analysis based on key findings of case studies of four countries: Botswana, Ghana, South Africa and Zimbabwe and relating their experiences to those of South Sudan. All researchers need to be confident about the foundations upon which their studies are built. This is the principle that informs this study, which is based on secondary rather than primary research methodologies and qualitative research approaches. It is premised on the concept that an extensive review of literature is equivalent conducting interviews of a key informants. For this reason, scores of literature material based on other studies by researchers from different backgrounds (historians, anthropologists, political scientists, biographers and governance specialists), scholars and social scientists, was reviewed over a period of six months (from January to June 2019). It led to an understanding of how traditional leadership institutions functions in the countries under study across a spectrum of time; from the pre-colonial times to the present.

The four countries were purposefully selected based on a number of considerations, three of which are worthy to note. First, they all shared the same colonial power – the British Colonial Administration – and their legacy in Africa. It is to be noted that the British had occupied some parts of South Africa such as the former Natal Province, prior to their war with the white settlers originally from the Netherlands. Second, there is wealth of literature on traditional leadership institutions and their roles in those countries. Third, these countries have abundant narratives on

attempts to integrate traditional leadership institutions into local governance operations, service delivery systems and decision making institutions (local government councils, houses of chiefs, committee, etc.).

3.2 Design of the study

The rationale of the approach adopted in this study is based on the researcher's understanding that findings of several researches is the same as conducting an extensive interview of key informants in a qualitative study. The researcher, therefore, developed a tool for interrogating other scholarly works conducted in the four countries, including the country which is the subject of the study – South Sudan. Since the main aim of this study is to assess the effectiveness of traditional leadership institutions in accelerating governance within a government system, a list of questions were drawn based on specific aspects and the points of interaction between the different traditional leadership institutions and the corresponding governance system of the specific country under study. Synthesis of the findings were then developed and examined against specific benchmarks to generate commonalities and peculiarities. In order to achieve this, the researcher employed descriptive analysis. Descriptive research is used to obtain information concerning the current status of a phenomenon and to gain insight into operations associated with certain processes.

The tool for interrogating the literature reviewed on the 4+1 countries (i.e., four learning countries and South Sudan) is based on five specific questions examining: a) the typology of traditional leadership institutions in each country; b) the perceptions of the usefulness and effectiveness of these institutions as relating to governance, delivery of services and maintenance of peace, law and order; c) the extent to which these traditional institutions are integrated into

governance systems of the country; d) their significance in catalysing government decision making systems; and e) the best practices or lessons to be learnt to inform policy for integrating traditional leadership institutions into contemporary governance.

3.3 Data Source

The study being exclusively qualitative, extracts information from a purposefully drawn body of literature conducted in five countries, including the country of interest – South Sudan. It used the set of questions outlined in Section 3.2 to arrive at specific findings and conclusions. The study deliberately and exhaustively delved into review of the body of literature using secondary sources covering hard and soft copy books, published journal articles, governance practice guidelines, reports and working papers. Notes were then taken as categorised by the five research areas outlined in Section 3.2 above.

Chapter Four

Results and discussion

4.1 Introduction

This Chapter covers the findings of investigations carried out based on the three research questions outlined in Chapter 1. Section 4.2 provides answers to the first study question, i.e., the extent to which traditional leadership institutions are integrated into modern governance systems and how the two types of institutions interacted with one another. Section 4.3 catalogues the legal basis or instruments that provide an enabling environment for integrating traditional leadership into formal local governance systems and informing how they interact and perform. Section 4.4 describes the extent to which traditional leadership are influencing critical decisions for betterment of people's lives. Section 4.5 then generates the synthesis of key lessons learned from the assessment in order to inform conclusions and recommendations.

4.2 Integration of Traditional Authority Institutions in Modern Governance System of the Post-Independent South Sudan

The study has arrived at a number of findings based on the comparative analysis between South Sudan on the one hand, and four learning countries (Botswana, Ghana, South Africa and Zimbabwe), on the other. Overall, a glaring finding is that integrations can only be possible if there is strong political will from the government, and if it also recognizes the value addition of traditional leadership institutions and invites their partnership. The case of Botswana and later Botswana in regulating the roles of traditional leaders and funding their operations is seen to be

working well and something South Sudan can benefit from. It has been established that alienating traditional leadership institutions, is counter-productive. Recognition is key in instilling self-esteem, confidence, trust and good working relationships.

Another important findings is that for the integration to work and be effective as it was to some extent during the colonial days, traditional leadership institutions need to be capacitated through in-service training in local governance and also budgeted funds. Traditional leaders should not be seen as archaic and irrelevant. With the changing demographic landscape, a growing number of traditional are nowadays in the economically active age bracket. If trained and facilitated, they can contribute to developmental and peace building programs of the government effectively.

A third finding is that traditional leaders can be role models to the young people and can be change agents, as they combine as cultural icons and a symbol of community honour and heritage. This is particularly the case with traditional kings, which are rampant across Africa and exist in some parts of South Sudan, such as the Collo and Azande royal institutions.

4.3 Extent of Implementation of Legal Frameworks Binding Integration of Traditional Authorities Leadership to Fulfil Government Functions

Findings from the literature reviewed shows that the legal frameworks providing for the integration and functioning of traditional leadership institutions varied in terms of their forms and implementation across the five countries examined. However, the countries which are implementing the provisions of their legal frameworks and constitutions through setting up mechanisms and sustaining them, such as Botswana, Zimbabwe and Ghana appear to be reaping the fruits of this action. South Sudan is yet to put action into words and what is contained in

published books. Lack of political will is a prominent factor in rendering the legal frameworks ineffective.

It is further found out that apart from complaining, there are no established lobby groups and strongly expressed voices by traditional leaders themselves or their subjects to influence support from the government in South Sudan. Although the current government of South Sudan has inherited the Local Government Board, which has the mandate of capacitating and facilitating the work and input of traditional leadership institutions to make them effective and useful, the institutions has suffered substantial neglect, such as not receiving funding for their activities.

Overall, existence of legal frameworks does not translate into the desired results unless there are effective political will and support systems by government and local government institutions. The budget of the Local Government Board and its work plans need to be supported to enable it function. It is found out that traditional in South Sudan were far better supported during colonial administrations and the administrations immediate following the British colonial power. The historical support from government included earning a percentage of the revenue from local taxes, equipped courts, provision of means of transport and uniform. The chiefs then had better self-esteem and gained recognition and respect from their subjects. This is no longer the case with the current government.

4.4 Involvement of Traditional Leaders in Local Government Decision Making Structures

It is observed that roles played by traditional leadership institutions varied across countries in Africa, and specifically in the countries studied. The best performing traditional leadership

institutions were those that received significant support from the government, as well as recognition and facilitation. Botswana stands out to be the country where traditional leaders are not only recognized but enabled up to the village level. This is followed by Ghana where the traditional leaders have recognized authority over land rural governance. South Sudan, to the contrary, provides a poor enabling ground for traditional leaders to play their role effectively and get involved in democracy consolidation, peace building and service delivery. It is probably not surprising that conflict is rampant in the country, as people are not satisfied and not happy.

4.5 Results, Lessons Learnt in Integrating Traditional Leadership Institutions into Contemporary Governance Systems

It is evident that South Sudan as a new country can learn a number of important lessons and experiences in integrating traditional authorities from the case of the four countries (Botswana, Ghana, South Africa and Zimbabwe) as discussed in Chapter 2. Table 4.1 below presents the key components of the working setups and relationships with local government for smooth functioning of local government and delivery of services at the local/rural levels.

Table 4.1 Key elements for integration in four countries South Sudan could learn from

	Country	Lesson to learn integrating traditional leadership into local governance
1	Botswana	From the start of the post-colonial period Incorporating <i>kgotla</i> village councils to perform local government responsibilities in rural areas (Englebert, 2002). This <i>Kotla</i> is a consensual decision set up which helps regulate the power of local chiefs (United Nations Economic Commission for Africa, 2007). The <i>Kotla</i> is useful for promoting political debates on public

	Country	Lesson to learn integrating traditional leadership into local governance
		issues (Ndlela, 2008).
2	Ghana	<p>Non-interference of the state in the traditional roles of chiefs such as land administration (Amanor, 2008, p. 77).</p> <p>Chiefs are nominated into membership of District Assemblies and, therefore, take part in local legislation (Kludze, 2000).</p>
		Chiefs are provided with the conducive enabling environment to play socio-economic and culture development roles within the local government system (Asamoah, 2012).
3	South Africa	<p>Recognition by ruling political party leadership that traditional/customary leaders have a significant role to play in local government systems, with particular reference to rule of democracy and taking development to hard-to-reach areas, as well as help them channel their grievances and those of their constituents (Beall & Ngonyama, 2009).</p> <p>Traditional Councils have been constitutionally provided with powers for allocating and administering land land (Claassens, 2006; Ntsebeza, 2003, 2005b; Ntshona & Lahiff, 2003; Oomen, 2002).</p> <p>20 percent of traditional chiefs getting appointed as ex-officio members of the Regional Council (Williams, 2000).</p>
5	Zimbabwe	The Council of Chiefs has been enabled to play their role as provided for in the Constitution especially being empowered and facilitated to act as the intermediary between the local governance institutions and the rural people (Chatiza, 2010; Chigwata, 2015).

Chapter Five

Conclusion and Recommendations

5.1 Conclusion

This section draws conclusions based on discussions in the preceding chapters with specific reference to the three research questions outlined in Chapter 1. Based on extensive review of relevant literature on traditional authority institutions, systems and roles in Africa with specific focus on South Sudan and four countries studied with the aim of drawing lessons, the study managed to arrive at concrete findings. The study used the body of researchers and scholars who gathered information on five Africa countries, including the country of Focus, South Sudan, as key informants in a standard qualitative study. In other words, the study adopted the approach of triangulation to make analysis based synthesis of findings. In a nutshell, the study exclusively adopted a literature review approach rather than field data collection approach. It is to be recalled that the study sets out to respond to three key questions. First, on whether traditional authority institutions were integrated into formal local governance systems in South Sudan and to what extent such integration worked. Second, the legal framework upon which the integration is supposed to be based. Third, whether traditional leaders were represented in local government and how this representation was determined.

The study has revealed that the answers to the first question is a 'no', while the answer to the second question is a 'yes'. South Sudan has not embarked in any known process for making use of traditional leaders by integrating them into the local government structures. The findings also revealed that there appeared to be no goodwill from the country's political leadership and

executive organs to enable the process of integration to commence. It is shown that the inclusion of traditional leadership provisions into the constitution and the Local Government Act was only made possible from donor funds; otherwise, nothing would have taken place at all. This is evidenced by the fact that the training conducted to some paramount chiefs, the manual for traditional leaders and the formation of the Council of Traditional Authority Leadership were sponsored by UNDP, the European Union, the World Bank, USAID and other donor organization. Some authors revealed that the Local Government Board which was formed prior to independence of South Sudan struggled to function as officials would go for months without pay and living on allowances only. Testimonies from traditional leaders also suggest that they receive absolutely no support from the government.

Much some structures for supporting and for bringing traditional authorities together into formal structures such as the Local Government Board and COTALs were created, similar to those in Botswana, Ghana, South Africa and Zimbabwe, it is clear that these structures did not get the right enabling environment in the form of political will, budgetary allocations and even infrastructure. There is adequate evidence showing that Traditional Leaders in the post-independence period are far worse compared to those who functioned during the pre-colonial or colonial days.

Meanwhile, in the control countries studied, integration of traditional leaders into formal local governance institutions and systems took a turn for the better, even in countries where their governments had initially shied away from recognizing or playing down the importance of the role of traditional authorities. South Sudan could not come close to any of the four countries in this regard.

Furthermore, while it is possible that the civil war that erupted in 2013 could be a major factor in this lack of action, it should also be recognized that had the traditional leaders been absorbed in the same way as the British colonial power capacitated and enabled them to carry out some government roles such as collection of taxes, conflict resolution and advising the government, probably things could not have gotten out of hand. It is also noted that traditional leaders felt neglected and some of their powers were taken away such as being able to provide discipline and prosecute criminal, as senior army officials assumed that role, and even if they managed to arrest and convict criminals there is high possibility of the prisoner being set free by army officers. This was made in testimony by some of the paramount chiefs, as provided in some of the literature reviewed.

On the positive note, South Sudan has done well in enacting the Local Government act and its Transitional Constitutions has ample provisions to encourage government institutions to recognize traditional authorities and to guide their work should they capacitated. However, a lot needs to be done to make these documents become worth the efforts that led to their production.

5.2 Recommendations

This report offers recommendations along three categories. The first category targeted by the recommendations is Government Executive organs and policy makers, especially those mandated by constitution to implement its local government and rural development provisions. The second set is for civil society organizations and media practitioners. The third set of recommendations goes to traditional authorities themselves.

As highlighted in Chapter 4, South Sudan Government represented in its Executive arm, should see the value in utilization the capital of traditional leaders, drawing lessons from the experience of Botswana, Ghana, South Africa and Zimbabwe as discussed in Chapter 2. Traditional leaders should not be looked down upon as a liability. The fact that the colonialist provided a legislation for their embrace by local government institutions should serve as good testimony for encouraging a positive attitude toward them. The literature has provide minute details on the added advantage that traditional leadership institutions can bring. It takes only recognition, organizing into corporate bodies, providing them with terms of reference and some stipends to boost their morale and self- esteem. In fact, South Sudan needs traditional leaders to be actively serving as ex-officio civil servants, as in most cases they are elected by the people and represent the interests of the people. They just need the right enabling environment.

Civil society organizations also have a major role to play in local government, especially in advocating and pressurizing government to implement provisions of the constitutions and legislature enacted acts. Their role is also provided for in Section 125 of the Local Government which stipulates that the local government and law enforcement institutions have the responsibility to “establish inter-county fora to foster relations between the local authorities, civil society organizations and the private sector in service delivery”. It is in this light that it is recommended that civil society should devise a strategy to strongly advocate to the executive and legislative organs of the government to allocate funds in its national annual budgets for the operationalization of constitutional and LGA provisions for establishment and functioning of COTALs. Some of these resources should also be used for training local government authorities at all levels on how to play their local governance roles effectively. The media also has the role

of exposing the government recalcitrance in meeting its obligations. They can do this by publishing the complaints of traditional leaders about being undermined.

The third category of those to be addressed are the traditional leaders in order to assert their right to be resourced by the government and responsibility toward serving their people. Traditional leaders should also keep mounting pressure to the government by, for example, threatening to refuse to participate in any democratic elections, among other forms of passive pressure. Literature reviewed has shown that some traditional leaders are respected by their constituents and that is why the Turkish, Anglo-Egyptian and the successive post-colonial administrations in Sudan came out with decisions to work with them rather than undermine or disband them.

In general, it is highly recommended that South Sudan can fare better with incorporation of traditional authority institutions in terms of delivery of services to the rural populations, using their customary influences to maintain law and order, advising local government structures on how to meet the demands of the people and to regulate the powers of each other through their corporate organizations under the guidance of the constitution.

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