State and non-state institutions in conflict-affected societies

Who do people turn to for human security ?

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Oxfam Novib

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2013

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1   This title was inspired by an article by Bruce Baker: Who do people turn to for policing in Sierra Leone? (2005)

Acknowledgements

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Executive summary

The debate on fragile states has triggered an interest in how people organize for everyday security and for issues of common interest in the absence of a functioning state. Drawing on two extensive case studies from Somaliland/Puntland and Afghanistan, this report discusses how people, in contexts of post-conflict state fragility, rely on a range of local institutions and arrangements that are partly home-grown, and partly organized and supported by the central state.

The study explores how state and non-state institutions at the local level are 'put to work' to further human security. It asks how, in contexts of state fragility, state and non-state institutions help people cope with and reduce the multiple insecurities in their lives. Starting point for the study has been the insight that fragile states are not ungoverned spaces but instead feature forms of governance and of local ordering that emerge from within: the idea of 'governance without government' as developed by Menkhaus and others (e.g. Menkhaus 2006). Following the literature on hybrid political orders and institutional multiplicity, the scope of non-state governance was defined in a broad way, to include customary forms of authority and social organisation, civil society, humanitarian organisations, rebel organisations or criminal groups, diaspora groups, and the private sector.

The central question for this study is: *How do people interact with local governance institutions (state/non-state, formal/informal) to shape their human security?* In order to understand how local institutions matter to human security in fragile settings, this research traced real responses of real institutions to real problems. The field studies started at people's experienced key threats to their human security and then analysed the responses of different types of institutions to these.

The two field studies took place in regions affected by conflict-related state fragility in Somaliland/Puntland (Sanaag region) and Afghanistan (Kunduz and Takhar provinces). These regions have been located, geographically or politically, at the 'fringes of the state', where the presence of the central state was historically marginal. In these contexts, local societies have typically developed robust and elaborate institutions and arrangements to cater for local needs of order and public goods. The studies discuss what type of institutions are found at the local level in these regions and what role they play in people's search for everyday human security. The focus is on drought and violent inter-tribal conflict (in Sanaag), administration of justice (Takhar), and water distribution (Kunduz).

The state has a very limited reach

The studies in Somaliland/Puntland and Afghanistan brought out very clearly that the state had a very limited reach. State presence has been affected by violent conflict and on-going political contestation. Efforts at state building are on-going but, at the time of research, these had as yet done little to increase the presence or legitimacy of the state 'on the ground'. The governance of everyday life in the regions studied relied to an important extent on well-developed and firmly rooted customary and informal institutions.

People rely on home-grown institutions to address their everyday human security needs

People rely on home-grown institutions to address their everyday human security needs related to livelihood stress, resource management and competition, and issues of order, security and conflict resolution. The type of non-state institutions that were found to be relevant primarily included customary authorities, community-level mechanisms for consultation and decision making, and emergent arrangements for addressing specific needs. With this, the findings mostly confirm the existing knowledge on customary institutions in fragile states.

Home-grown institutions are viewed positively in the eyes of local populations

People perceived home-grown institutions as strong, effective and appropriate. However, this was not a given. The legitimacy of these institutions derived from their performance in terms of responding to locally identified needs, familiarity, the fact that they were guided by locally accepted values (including equity), and that there were possibilities for constituencies to steer and hold leadership accountable. When specific institutions no longer meet these expectations, they may enter into decline. People will then look for alternatives, either by seeking to change the existing institution or by turning to an alternative.

The state is both 'absent' and 'present'

People mostly experienced the state as 'missing'. Despite efforts at increasing state presence, the state was seen as distant and lacked the legitimacy of home-grown institutions. People had an idea of what a state would ideally provide for them, but experienced a state which in their daily lives, for all practical purposes, could not deliver. The state, however, was clearly present on people's horizons and there were multiple references to the state as an idea, as the bigger whole of which people were part. Non-state institutions were depicted as 'nested' within that bigger polity. In exceptional situations that transcended local response mechanisms, such as the severe drought discussed for Sanaag, state agencies were turned to and did engage with the problem. This was one of the most surprising findings of the study: though people's everyday lives reflected a situation of "governance without government",

they maintained an idea of the state as the ultimate fall-back option in responding to critical events.

The institutional landscape in the studied regions is multiple and to some extent hybrid

Besides the variety of home-grown institutions and the institutions of the state, there were other sets of institutions: armed opposition groups (Afghanistan); and local and international civil society organisations (Somaliland/Puntland). The interaction between customary/home-grown institutions and state institutions could best be described as one of functional complementarity or perhaps pragmatic accommodation. In response to problems such as drought or the control of crime and violence, a concerted strategy was worked out which sought to build on the respective strengths. In these cases, the power of initiative rested to an important degree with the customary authorities.

Within these multiple institutional fields, non-state institutions change and adapt, in response to new challenges and the needs and strategies of local populations. This suggests indeed that the active pursuit of human security shapes both how institutions develop and how they relate to each other.

Implications for intervention

What can we learn from these studies to inform policy?
- The ambition to link with non-state institutions can be a fruitful entry point given the strength and importance of these institutions in many contexts. This requires carefully looking at 'what is there', both in terms of customary institutions and in terms of the role of the state.
- There is no need to make an 'either-or' choice between non-state institutions and the state: rather, take the existence of multiple institutions as a starting point and examine, for a particular context, what works, who, and in what constellation with other institutions.
- Agencies may follow a similar methodology as this research followed: that is, to follow where people go with their problems. The role of (international) NGOs could then be to support these institutions or arrangements, institutional trajectories and multi-institutional responses.
- Rights-based NGOs like Oxfam Novib can consider how customary or other non-state institutions can be treated as 'duty-bearers' in the absence of a well-functioning state.
- A key challenge is to avoid undermining local institutions by supporting them financially or through molding them too strictly to non-local criteria. Providing external resources to locally legitimate institutions may compromise their local accountability. Rather, the way forward would seem to be in a double strategy of engaging with duty bearers, and with local populations in their claim-making towards these authorities.

1

Introduction

The debate on fragile states has triggered an interest in how people organize for everyday security and for issues of common interest in the absence of a functioning state. This report aims to contribute to that debate. Drawing on two extensive case studies, from Somaliland/Puntland and Afghanistan, this report discusses how people, in contexts of post-conflict state fragility, rely on a range of local institutions and arrangements that are partly home-grown, and partly organized and supported by the central state.

This study explores how state and non-state institutions at the local level are 'put to work' to further human security. It asks how, in contexts of state fragility, state and non-state institutions help people cope with and reduce the multiple insecurities in their lives. The study is inspired by the idea of 'governance without government' as developed by Menkhaus and others (e.g. Menkhaus 2006) in the framework of the fragile states debate. This notion highlighted the importance of home-grown, non-state institutional arrangements to cater for some of the functions that the 'missing' state cannot or does not fulfil.[2]

This report synthesizes the main findings of two field-based studies, in regions affected by conflict-related state fragility in Somaliland/Puntland (Sanaag region) and Afghanistan (Kunduz and Takhar provinces). These studies discuss what types of institutions are found at the local level and what role they play in people's search for everyday security. The focus is on drought and violent inter-tribal conflict (in Sanaag), and administration of justice (Takhar), and water distribution (Kunduz). Both studies show how non-state, customary institutions enter into a complex interplay with state institutions.

The research was commissioned by Oxfam Novib and conducted by researchers from organisations from the countries studied: in Somaliland/Puntland this was the Social research and Development Institute (SORADI); in Afghanistan the research was conducted by the Cooperation for Peace and Unity, Afghanistan (CPAU). With the study, Oxfam Novib aimed 'to understand how [..] local structures emerge and transform, how people construct their own human security, and how outside actors can relate themselves to such developments.' (Oxfam Novib 2010a: 1). The idea was to tailor intervention repertoires better to locally emergent institutional arrangements. The study took place in the framework of a broader program entitled IS Academy Human Security in Fragile States, a collaboration between the Dutch Ministry of Foreign Affairs, Dutch NGOs and academic institutions. A team from Oxfam Novib and the IS Academy Human Security in Fragile States elaborated the research framework and provided feedback throughout the process.[3]

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2   In a similar vein Van der Haar 2001 developed the notion 'governance beyond government' (Van der Haar 2001).
3   The team included: Wim de Regt, Sarah-Jane Koulen, Gemma Andriessen, Fons van Overbeek, Thea Hilhorst, Peter Tamas, and Gemma van der Haar; end responsibility rested with Anne Pieter van Dijk and Gemma van der Haar.

This report synthesizes the findings and discussions as presented in the research reports on the regions of study: *'Governance without government': local non-state governance structures providing human security in Sanaag Region, Somaliland, Puntland* (SORADI 2011) and *Local institutions: people shaping their human security, a case study from Afghanistan* (Rassul 2012). The report builds on key texts generated in the course of the research program: the original proposal (Oxfam Novib 2010a); an outline of the conceptual discussion on fragile states and non-state institutions (De Regt et al 2010), approach papers prepared by the partner organisations (SORADI 2010, CPAU 2010) and the analytical choices made during a preparation workshop in November 2010 (Oxfam Novib 2010b). Reference to these documents is made where appropriate.

The report is set up as follows:
This introduction is followed by a section that outlines the conceptual framework that underpins this project, with reference to the relevant literature on non-state institutions in fragile states (chapter 2). After that, the research approach and methodology are discussed (chapter 3). The two sections that follow form the core of the report and present the main findings. The first section (chapter 4) discusses what local institutions and arrangements were found on the ground, and the second (chapter 5) zooms in on key aspects of the way these institutions worked and interacted in view of threats to people's security. The final section (chapter 6) sums up the main conclusions, discusses the contribution of the studies to the debate on non-state institutions, and considers implications for interventions.

2

Local institutions and human security: Research framework

This study is interested in how local state and non-state institutions are put to work in people's efforts to cope with multiple insecurities in their everyday life. It intersects concerns around state fragility with concerns around human security. Starting point for the study has been the insight, voiced insistently by critics of the notion of 'failed' or 'fragile' states, that fragile states are not ungoverned spaces but instead feature forms of governance and of local ordering that emerge from within, organised by conflict-affected societies to make up for the deficiencies of the state (De Regt et al 2010; Christoplos and Hilhorst 2009; Hilhorst et al 2010). While gaining prominence in the context of a retreating state, these institutions may have existed prior to state formation. This study wants to understand how these emergent arrangements and forms of local governance work. Given that, as the initiators of the study put it, 'not much is known about how people shape their lives in fragile environments, about the role of local institutions ordering their lives, about the emergence of home-grown local orders, how they function in practice, and about concrete changes due to external influences' (De Regt et al 2010: 21), the aim of the study is 'an empirical analysis of governance institutions *as they are*, *how they work*, and *how they are deemed useful* by the people affected by them' (De Regt et al 2010: 3, italics added).

An important starting point and source of inspiration for the research was the notion of 'Governance without government' developed by Kenneth Menkhaus and his colleagues. To the initiators of the research this notion suggested that fragile states do not imply ungoverned societies. Conflict-affected societies have the capacity to provide for human needs of security, order and development, without the necessity of a central state. As the program developed, other notions were introduced to complement and nuance the understanding on the role and importance of non-state institutions in the context of state fragility, such as 'hybrid political orders' and 'institutional multiplicity' (discussed below). Participants in the start-up workshop in November 2010, from the organisations that would carry out the research, reacted to the implicit assumption that non-state institutions, customary or otherwise, could fully substitute for the state at the local level. Instead, they argued, it was also important to uphold the ideal of a well-functioning and responsive state. This was why, in second instance, the more neutral term 'local institutions' was adopted for the research program, allowing for non-state as well as state institutions to come into the picture.
Below, the most important theoretical notions that informed the study are introduced.

Conceptualising non-state institutions in fragile states

One problem in the fragile states debate has been that it emphasized especially what is not there, i.e. how states fall short in their performance and fail to provide for security, order and services for their citizens, and that there is a need to 'build' or 'fix' the state. This vantage point is not very helpful – as critics have pointed out - if we want to understand how societies in fragile states work, how people survive, how things 'get done'. In response, several scholars have drawn attention to the importance of non-state institutions and arrangements in conflict-affected societies to fill the 'governance gap' created by a fragile state. The present study builds on the notions and insights developed by these scholars.

We build in this paper on broad definitions of institutions as forms of social order and regularised patterns of behaviour. Our working definition has been to understand institutions as the ways in which, and structures through which, society is ordered and public goods are provided for. **State institutions** are those endorsed and supported by a central state, and part of the formal state structure. **Non-state institutions** are those that operate outside of the formal support and endorsement of the state structure, though they might be recognised to some extent within that formal structure. State and non-state institutions are often labelled as formal and informal institutions respectively, but this is not entirely adequate, given the fact that non-state institutions may have a highly structured, formalised character. Non-state institutions may be based on custom and tradition, in which case they are termed **customary institutions**. Non-state institutions are not limited to customary institutions but may include newly emerging institutions, developed from the ground up or introduced by external actors (development agencies, armed oppositions groups, etc).

The notion of *'Governance without government'* has served as a major source of inspiration for this study. It was coined by Kenneth Menkhaus and his colleagues on the basis of what they saw in Somalia, where the collapse of the central state did not mean a collapse of society. Rather, societal arrangements developed to fill the gap created by the failing state, grafted upon customary institutions while also re-functionalising these institutions to meet new challenges (Menkhaus 2006). Through these institutions, Somalis were able to organize for many of the key functions around security, order, basic services and representation. Thus, the central argument of Menkhaus and his colleagues is that societies have the capacity to organize 'governance' without having to rely on a [state] 'government'.

As the study progressed, additional notions were taken up that have shaped the research design. This is first, the notion of *'hybrid political orders'*, developed by Volker Boege and his colleagues (Boege et al 2009), and second, the notion of *'institutional multiplicity'* (Di John 2008; Christoplos and Hilhorst 2009; Van der Haar 2012). The two notions are closely related, though there is some difference in emphasis.

The central idea captured in the notion of hybrid political orders is that fragile states rely to an important degree on non-state institutions in order to perform their governance functions. In the regions they researched (mostly researched South East Asia/Pacific), Boege and his colleagues found customary institutions to be key to making the state work: the provision of security, order, justice, and basic services relied on an intricate interplay of state and

customary institutions. The idea expressed in 'hybrid political orders' is that state and non-state institutions intertwine in the exercise of governance. Through this interaction, institutions from different origin (state and customary) mutually shape each other and the distinction state/non-state may get blurred.

The notion of *'institutional multiplicity'*, coined by the Crisis States Research Center, similarly focuses on the organisation of governance by other actors than a central state. The central idea is that in fragile and post-conflict settings multiple sets of institutions may emerge that provide the security and services that the state does not or cannot provide (DiJohn 2008; Christoplos and Hilhorst 2009; van der Haar 2012). In comparison with the notion of hybrid political orders, the idea of institutional multiplicity places less emphasis on customary institutions, based on tradition, and instead highlights the possibility that armed groups, resistance movements and international humanitarian organisations take up governance functions. It is thus a welcome addition to the notion of hybrid political orders. Institutional multiplicity furthermore recognizes different possible types of interaction between state and non-state institutions. Next to intertwining, highlighted in the work on hybrid political orders, it considers rivalry, pragmatic accommodation, or functional complementarity (Van der Haar 2012; Van der Haar and Heijke 2013).

Following the ideas in the literature on hybrid political orders and institutional multiplicity, the initiators of this research program defined the scope of non-state governance in a broad way (De Regt et al 2010), to include:
- Customary/traditional forms of authority and social organisation
- Civil society: community-based groupings and arrangements
- Humanitarian actors: UN or INGO based, in protracted conflicts and war-to-peace transitions
- Rebel groups, criminal networks
- Diaspora actors
- Entrepreneurial actors

The research thus kept an open mind as to the nature of the institutions that would be found to be relevant in the field. Similarly, it kept an open mind to the types of interactions and intertwining that could develop between different sets of institutions.

The study focuses on conflict-affected regions. These regions have been located, geographically or politically, at the 'fringes of the state' (Van der Haar 2012; De Regt et al 2010), where the presence of the central state was historically marginal due to e.g. physical remoteness or lack of strategic interest. In these 'marginal' contexts, local societies have typically developed robust and elaborate institutions and arrangements to cater for local needs of order and public goods. The institutions encountered in our study are to an important degree based on tradition and custom and hence labelled 'customary' or 'traditional' institutions. In the conflict and post-conflict settings studied in this report, some of these customary institutions are re-invigorated and take on new functions in order to respond to the governance gaps created by a (partly) retreating state. As people seek to respond to the challenges of these changes, old institutions change and new arrangements emerge. We have tried to capture this with the term 'home-grown' institutions.

Human security in fragile states

Human security is under threat in post-conflict settings. This research is concerned with how people organize to cope with the multiple insecurities of their everyday lives and how they seek to enhance their security through local institutions. The study is not limited to physical insecurity following from violent conflict, but rather considers multiple risks, threats, and sources of insecurity: violence and conflict, as well as droughts, loss of assets, or precarious livelihoods.

A camel herd just watered and leaving its dry season well in Sanaag region.

The notion of human security came up to redefine the central concern of security. Security should no longer be understood as the security of the state but as the security of human beings, 'a concern with human life and dignity' (United Nations Development Programme (UNDP) 1994: 22). In its original definition it includes safety from chronic threats such as hunger, disease and repression, as well as protection from shocks and disruptions due to e.g. conflict and disaster (UNDP 1994: 22). It comprises both freedom from fear (including personal physical security, political security) and freedom from want (socio-economic security, including freedom from hunger, economic security and health) (De Regt et al 2010: 9).

The particular interest of this study has been to understand how local institutions work and contribute to human security (De Regt et al 2010: 13). The study is interested in the way in which institutions and governance shape the pursuit of human security in fragile settings. In line with this, the field studies were designed to start from what people experience as key threats to their human security and then analyse the responses of different types of institutions to these.

Local institutions and human security: Research approach

In order to understand how local institutions matter to human security in fragile settings, this research opted for tracing real responses of real institutions to real problems. To capture this, the central question was phrased as follows:

How do people interact with local governance institutions (state/non-state, formal/informal) to shape their human security? (Oxfam Novib 2010b: 2)

Sub questions were formulated (Oxfam Novib 2010b: 2/3), related to:
- *Key issues* in the pursuit of human security, as defined by people locally, which could be related to livelihood, security and order, or public services;
- *Institutions people turn to* in pursuit of a solution to their problems, and with what *motivations and expectations*
- The *response* of these institutions and the *outcomes* in addressing the needs
- The *reach, usefulness, effectiveness and legitimacy* of these institutions, as evident from the above
- The *dynamics of change* of these institutions

The fieldwork would focus on real-life problems: How were institutions put to work by people in the face of these threats or problems? How did these institutions address the issue and how was that evaluated by the affected population? And: What does that tell us about the importance of these institutions for human security?

The research wanted to make visible what different local institutions mean in people's lives without making a priori assumptions about what works and what does not. The research was open-minded about the reach of different institutions, their effectiveness, or legitimacy; these would be established through the fieldwork. The kind of topics to which governance could relate was defined broadly, including conflict resolution and administration of justice, resource access and management, the provision of basic services, taxation and economic regulation (De Regt et al 2010: 24). The idea behind this was that governance spans many aspects of local life and that which of these would be highlighted in the field studies would depend on the context and what were felt to be strong needs locally.

The methodology that was elaborated meant to identify and follow specific concerns that were deemed relevant locally. A first step was to identify these concerns and the next step would then be to trace to which institutions people turned to resolve their issues, the ways in which different institutions responded to these issues, and the kind of outcomes this produced. In this way, the research hoped to get a notion of the reach, effectiveness and legitimacy (or lack thereof) of different types of local institutions based on real life.

Central in this methodology is the question: Who [what institution] do people turn to? This was inspired by Bruce Baker's study on policing in fragile settings (Baker 2005), on which he reports in his article 'Who do people turn to for policing in Sierra Leone'. This entry point, of following real people with real concerns, has the advantage of moving beyond merely 'mapping' the institutions, towards getting a grasp on how institutions work. People's

discussions about their motivations, expectations and experiences, their evaluations of the way different institutions dealt with their problems, tells us about legitimacy and effectiveness: When and why do people experience institutional responses as appropriate, effective, or legitimate? We also chose this methodology in order to be able to analyse how institutions transform and interact with each other on the ground, and with what consequences.

To sum up, with this approach we hoped to contribute to the understanding of local institutions and human security in essentially three ways:

- Understanding the *workings* of local institutions: The research wanted to move beyond analysing the mere existence of institutions at the local level, to analyse their actual functioning in the face of threats, insecurity and vulnerability.
- Understanding the *interaction* between different types of institutions: The research took as a starting point that local institutions do not operate in a vacuum, but in a field of institutional multiplicity. In the response to human security problems, multiple institutions play a role and they may influence and interact with each other.
- Understanding how institutions *change*: In the face of specific concerns and contextual changes, local institutions transform. New arrangements may emerge, partly grafted on what was there; existing institutions may transform; some may develop and re-functionalize, others may lose ground. The institutional responses crafted by local societies are a function both of what is needed (the governance 'need') and of what is there (the institutions 'on offer').

3

Research set-up and process

Research set-up

The initiators of the programme at Oxfam Novib selected three countries for field research: Somaliland/Puntland[4], Afghanistan, and South Sudan (where the study could not be completed). These countries were selected on the basis of a combination of theoretical and practical considerations. First, these are countries with a high state fragility, related to violent conflict, and where one would expect to find non-state institutions for local order, security and service provision at the local level (SORADI 2010, CPAU 2010, RBC 2010). Second, Oxfam Novib had partners in these countries which could be involved in the research.[5]

It was an explicit choice of Oxfam Novib to have the research conducted by local organisations, in line with their overall approach. In this way, Oxfam Novib would allow knowledge about local issues to be collected and processed by local actors, a modus which the organisation believed would contribute to capacity building, one of its core mandates. From a research perspective, this choice offered the advantage of overcoming access and language problems that would have seriously limited external researchers.

For each of the selected regions, Oxfam Novib identified local organisations which had a strong network and previous research experience 'on the ground' and which hosted the necessary research capacity. These organisations were then contracted for the research programme, each for three months. The research process included the development of a conceptual background paper by the IS Academy partners (De Regt et al 2010) and a preparatory workshop with the main researchers from the three countries to discuss the approach, the methodologies and the desired outputs. Scholars from Disaster Studies at Wageningen University (including the author of the present report) acted as resource persons and facilitators during the workshop. As an outcome of this workshop, the central research questions were defined (Oxfam Novib 2010b). In line with the ambitions of the programme, a range of qualitative methods were proposed, with semi-structured interviewing and focus group discussions as the main elements.

The research teams selected the regions and within these the specific sites which were considered particularly interesting for the purpose of the research, while also being

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4   This report follows the terminology used in the original report to indicate the border area between Somaliland and Puntland. This use of terminology does not imply any judgment on the formal status of the region.

5   South Sudan would have been a particularly interesting case to understand how local institutions change in the face of post-conflict state-building.

accessible to the researchers. The teams were to adapt and operationalize the overall design into specific instruments (e.g. interview protocols) which allowed them to adjust to the specificities of the context as well as the capacities of the research team. In preparation for the fieldwork each of the teams wrote an 'approach paper' (SORADI 2010; CPAU 2010; RBC 2010) in which the choices were justified.

The fieldwork was organised and carried out by the local partners. In the three countries, research teams were formed with both senior partners and local fieldworkers. Reports were submitted for feedback to the programme responsibles at Oxfam Novib and academic facilitators from the IS Academy Human Security in Fragile States (including the author of this report). In response to the feedback received, the reports were finalised. This synthesis report relies on these reports.

As the research progressed, some limitations to the chosen set-up became apparent. One limitation was that the fieldwork itself was not followed closely by the research initiators or the academic facilitators from the Netherlands. This has implied that many of the key methodological choices, such as the selection of respondents, selection of interviewers, the interview protocols, and the processing of the interviews, have not been part of joint reflection. A closer look at methodological choices would have supported the interpretation of the findings. Closer contact during this period might also have avoided the unfortunate outcome in the South Sudan case, where the research team was not able to complete the study, even though they were active participants in the first phases of the research..

In addition, it became clear that the ambitions for the research, in terms of the depth of the analysis on the workings of institutions (incl. interaction and dynamics), could not be fully met, given the time frame and the background of the research teams.

Somaliland/Puntland study: Sanaag region

The team at SORADI selected Sanaag region for conducting the study. It was selected for being the most remote and least developed area of Somaliland/Puntland, which has historically strongly relied on community structures and traditional arrangements for order, security and basic social services (SORADI 2011: 6/7). To this day, it is one of the regions least incorporated into state structures. Field research in Sanaag aimed at 'analyzing governance in conditions of protracted state failure and relative absence of formal government structures. [...] The research findings involve the practical attempts by populations and individuals [...] to cope with the consequences of long-term state collapse and political crisis' (SORADI 2011: 3).

The collapse of the Somali central state has meant that government structures and services largely disappeared from the region (SORADI 2011: 73). Neither one of the two competing political entities has full effective control over the region, and especially in the rural areas there is a 'de facto absence of formal governance structures' (SORADI 2011: 74). Since 1997, the Somaliland administration has established a police force, judiciary systems as well as regional and district administrations, but these have been mostly limited to the bigger towns (SORADI 2011:14).

The research focused on four communities situated on the clan-border lines in Sanaag region.[6] These villages were selected because they have relied on self-governance for a long period and have been at the frontline of the armed struggle between the Somali National Movement and the Barre regime. Most of these villages were also venues for the peace meetings during 1991-1993 (SORADI 2011: 9).

The research was conducted in several stages in a period spanning from April to December 2011. A mix of qualitative and quantitative methods was used. One-to-one interviews (60) were conducted with selected key informants including local leaders such as sub-clan and lineage elders as well as other community members, and representatives of the regional and district government. Several focus group discussions were held and participatory appraisal techniques were used to rank institutions according to their importance in the local context. In addition, a questionnaire was conducted including 40 individuals forming a cross section of the studied communities.

The research was organized and conducted by a team of researchers and enumerators led by Haroon Ahmed Yusuf, deputy director of SORADI, based in Hargeisa, Somaliland (SORADI 2011: 7/8).

In addition to the general appraisal of institutional complexity, the field study focused on two particular issues of concern affecting human security at the time of research: the drought that faced the region in the first half of 2011 and a conflict between two clans that led to violence in the second half of 2011 (SORADI 2011: 8). These were two situations experienced by people as critical threats to their security putting their existence under pressure.

Afghanistan study: Takhar and Kunduz provinces

CPAU was the organisation in charge of the Afghanistan study. The CPAU team decided to focus on two areas of key concern in human security as experienced by 'ordinary Afghans'. The rule of law, especially the role of the informal justice system was studied in Takhar province. Water access and institutions that govern water distribution, were studied in Kunduz province. These areas of focus were chosen based on previous research by CPAU, and motivated by CPAU's familiarity with the area, allowing the researchers to build on the contacts and trust already established (Rassul 2012: 3).

In both provinces, decades of war and violence lead to the breakdown of institutions, both state and non-state. In Takhar, the decades of war severely damaged both the material infrastructure (e.g. court houses) and the human capital of the formal justice system (Rassul 2012: 17). Takhar province was at the frontline of war between Mujahedeen and Taliban, leading to the collapse of the justice system. The fall of the Taliban created a vacuum (ibid: 23). Considerable investments have been made since 2001 but these have not been able to bring it up to the required level (ibid: 17). In Kunduz, traditional water management structures eroded, which has given rise to pervasive conflicts around water management (Rassul 2012).

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6   Jidali, Carmaale, Shimbiraale and Dararweyne

Local Afghans in Kunduz and Takhar expressed a strong concern with physical security: they identified peace and security as a basic requirement for human security. In addition, they had strong concerns with their economic and livelihood situation. Many respondents were insecure about being able to provide for their families (Rassul 2012: 5/6).

Data collection in both Takhar and Kunduz took place between June and October 2011, in two rounds. The research team employed qualitative methodologies. The first round relied mostly on focus group discussions including community members and formal and informal officials (four focus group discussions in each province). The second round of data collection was done through structured interviews with employees or leaders of formal institutions, informal institutions, as well as with community members (30 in Takhar, 57 in Kunduz) (Rassul 2012).

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State and non-state institutions 'on the ground'

The studies in Somaliland/Puntland and Afghanistan clearly brought out the importance of customary and informal institutions in everyday life. In both cases, state presence has been affected by violent conflict and on-going political contestation. Efforts at state building are on-going but, at the time of research, these had as yet done little to increase the presence or legitimacy of the state 'on the ground'. Local institutions developed to this background of a distant and contested state. This did not mean that the state was absent or irrelevant in people's understanding. Perhaps surprisingly, the state was a central reference also for people mostly governed, in everyday life, by customary institutions.

The importance of customary institutions

In both regions studied, customary institutions were found to be prominent, well-rooted in local society and highly significant in resolving issues of order, security and conflict resolution, and resource access and management. These institutions have evolved largely in the context of historically absent or distant states. Protracted conflict had the effect of further limiting the effective presence of the state, which created both the room and the necessity for local arrangements and institutions to develop.

In Sanaag region, the research found people to rely strongly on traditional arrangements and institutions. The collapse of the Somali central state has meant that state structures and services largely disappeared from the region (SORADI 2011: 74). In response, people turned to what they knew, leading to a strengthening of customary institutions. As the report puts it: Sanaag 'has seen the reconstitution and emergence of a whole range of informal arrangements, associations and local agreements between non-state authorities such as clan elders, customary authorities, and community based organisations and transnational businessmen that try to cope with the uncertainty of state collapse and political crisis' (SORADI 2011: 3). The customary system is unchallenged: 'All the respondents agreed that the traditional system of governance comprising the Council of Elders, clan and sub-clan chiefs, and religious men are the most trusted and effective social arrangements and institutions in the region' (SORADI 2011: 14). The state is experienced as largely absent: 'Government agencies have been inactive since the collapse of central administration in 1991' (ibid).

Respondents relate the salience of customary arrangements to the history of state disintegration and retreat: 'Though the traditional system of governance has always

functioned in parallel with the formal state and government, it was during conflict and after the collapse of the state that the Somali people, including those in Sanaag, turned back to their 'tradition' as a source of knowledge and experience for solving their problems and started seeking the Elders to restore stability' (SORADI 2011: 17).

For Takhar, Afghanistan, the picture is similar. Fieldwork in Takhar province indicates that 'the informal justice institutions are the primary institutions turned to by the community members when facing a conflict. All respondents, no matter their age, gender or societal status, have answered that whenever faced with a justice issue, they first approach the informal justice institutions' (Rassul 2012: 17). In this province, 'the formal legal system has never really been centralized or managed to adequately penetrate into rural areas of the country' (Rassul 2012: 7). Formal rule of law has been 'fragmented' and had 'limited reach, especially into rural areas' (Rassul 2012: 8).

Alongside this ineffective and fragmented formal legal system, the informal justice system has developed and become central to justice at the local level. Disputes that cannot be solved at the level of individual families are solved through informal justice institutions, amongst which the *Jirga* and/or *Shura* are the most significant. (Rassul 2012: 8) These institutions are 'well developed' and 'deeply embedded' in local society (ibid: 9), and thus fill the gap left by formal justice institutions. It is estimated that around 80% of all disputes in Afghanistan 'are solved through the informal institutions' (Senier 2006, Coburn & Dempsey 2010, in Rassul 2012: 10).

The field study on Kunduz, on water governance, sketches a slightly different picture. Here it was not state governance, but a traditional institution for water governance that was undermined by the years of conflict. The distribution of irrigation water in Kunduz has historically relied on the *Mirab* system (discussed in more detail below), backed by the state. Fieldwork in this region found that the war has however eroded the effective working and the legitimacy of the *Mirab* system and that it was losing ground. People have increasingly turned to the informal justice institutions to solve water-related problems previously addressed by the *Mirab* (Rassul 2012).

'Home-grown' institutions: Tradition, and more

Many of the most prominent and significant institutions found during fieldwork in the regions of study can be called 'customary', that is, rooted in the customs and traditions of the local society and 'informal', in the sense of , not designed or managed by the state system. These institutions are associated with historically grown social formations (clans, tribes, localities). They are perceived by local actors as 'home-grown', developed in and recognised by the local society.[7] In addition to arrangements rooted in tradition, the field studies also showed emergent community-based arrangements to respond to specific needs. Though at least partly grafted on customary forms of deliberation and consultation, these arrangements take on new forms and functions.

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7   This does however not exclude that they may have been shaped by state intervention in the past, as is quite clearly shown in the case of Afghanistan.

*A village/clan Guurti discussing
drought problems.*

In both case studies, customary institutions referred to include authorities, as well as bodies of norms and rules, and mechanisms for consultation and deliberation. In Sanaag, many of the traditional institutions are organized on a clan or sub-clan basis. The main institutions include the *Guurti* or Council of Elders, which exists at different levels, from the local to the national. The main role of the *Guurti* at the local level relates to dispute settlement and resource management, but their function is often broader: the *Guurti* 'plays the roles of all the non-existent or ineffective government institutions' (SORADI 2011: 18). *Guurti* members are nominated by clan members and 'serve without payment' (SORADI 2011: 18). At the level of individual villages, one finds village headmen and committees (SORADI 2011: 19).[8]

These customary authorities work with and enforce a body of rules known as *Xeer*, or 'covenants'. There are 'typically strong sanctions for violating these *Xeer,* with monitoring and enforcement controlled by the *Guurti* or Council of Elders' (SORADI 2011: 40). A last key element in customary arrangements in Sanaag are the *Shir*, gatherings or meetings which are called to address 'any major decision that would impact the community, whether it concerns the distribution of resources, creation of laws, or, most importantly, resolving conflicts' (SORADI 2011: 23; following Lewis 1999).

In the informal justice system in Afghanistan we similarly find customary authorities, meetings and a body of rules. *Jirga* is the term used for the 'consultative gathering' which can involve a few or a large number of people (Rassul 2012: 8). The term *shura*, from Arabic, similarly refers to the process of 'consultation', though it has a more permanent character, like a council (Rassul 2012: 8/9; following Coburn and Dempsey 2010). These informal institutions function at community or supra-communal level. They work on the basis of a customary body of rules and norms called *narkh*, and the views of the authorities in charge, the *marakachian,* a body of esteemed elders and leaders. The judgement they issue, the *prikra*, is morally and socially binding (Rassul 2012: 9).

Next to these institutions based on tradition and custom, the Sanaag study highlighted the importance of flexible community-based arrangements, the so called 'ad hoc committees'. These are committees formed at the community level to respond to specific needs and

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8   Most of these institutions are mostly or exclusively open to men. Women hold weekly meetings, the Sitaad, which serves as a coordination and dispute resolution institution between women (SORADI 2011: 20).

critical events: 'Whenever a certain type of crisis happens they respond by forming an ad hoc committee which is assigned to look after that issue until [...] [it] no longer is a threat to peace and stability of the community. The ad hoc committees constitute the basic social arrangements or institutions that serve the community in various capacities' (SORADI 2011: 15). Interestingly, these committees are only referred to, in the study, by their English name. It is not possible, on the basis of what the Sanaag study reveals, to go into further detail about the history of these committees (are they based on earlier forms of social organisation or a recent innovation?), or the way they relate to the *Guurti*.

Also the Afghanistan study shows that the traditional goes hand in hand with flexibility and innovation. In Kunduz fieldwork found that the informal justice system, based on *shura/jirga*, started to assume a broader range of functions that had not been part of its traditional mandate, such as, in this particular case, issues of water governance.

Other non-state institutions: local civil society, international agencies, the private sector, and armed groups

Both studies found that other non-state institutions were present in the local institutional landscape, next to the customary structures.

The Sanaag study mentions a range of institutions that fulfil governance functions to compensate for the 'missing' state: trade and business networks (especially in the urban settings), loan providers, and local and international NGOs: ' Many non-state actors emerged and assumed government roles' (SORADI 2011: 20/21). The study elaborates most on the role of international NGOs that engage especially in service delivery, and sometimes in the provision of humanitarian aid. The study stresses that these organisations generally coordinate their activities with the *Guurti* or village committees (ibid: 33), in what is overall deemed a rather successful combination.

The Afghanistan study on the contrary brings out the role of armed groups opposing the Afghan state. In the regions they control, armed opposition groups form another layer of governance, next to the customary governance. These groups may function like a parallel state. In some cases, as shown, they develop 'their own complex legal system': 'In AOG [armed opposition groups] controlled areas, when a dispute cannot be solved by local informal institutions, the disputants will turn to the local AOG commander' (Rassul 2012: 14). The case, if not resolved, can be taken up at higher levels, e.g. the Justice Committee of the AOG District Commission.

How does the state fit in?

Does the state have any place alongside non-state institutions exercising governance? In the studies on Afghanistan and Somaliland/Puntland, the state is both 'absent' and 'present' in the local institutional field. Though fieldwork highlights the limited presence and effectiveness of the state, and brings out the reliance on customary and other non-state

institutions, it also found the state to be part of people's horizons and to be present as an *idea* (Abrams 1988 [1977]) and a resource.

People are supposedly connected to the state through structures that reach down to the local level. These are, however, experienced as far removed from the immediate on-the-ground realities of people's lives. In the case of Sanaag, following the introduction of a multi-party system in Somaliland in 2001, elected District Councils were formed in 2002 (SORADI 2011:28), 'elected by and represent[ing] all the major villages' in the district (SORADI 2011: 27). However, the fieldwork suggests that these bodies remain geographically distant and come into the picture only under extraordinary circumstances, i.e. when the problem at hand exceeds local capacity to handle it. Respondents 'confirmed that they rarely see or meet the representatives or authorities of the formal governments that claim jurisdiction over their localities. These entities come to the areas only when they need the political support of the local people and their leader' (SORADI 2011: 63).

In everyday life, people experience the state as 'missing' or 'absent', yet it was certainly present as a *reference*. Respondents voiced concern with this 'missing' state, upholding an ideal in which the state would be the ultimate provider of order, security and services. In this regard, CPAU noted 'There is a strong belief among the respondents [...] that it is the state which is responsible for providing security' (Rassul 2012: 20). Respondents understood local institutions and arrangements as 'nested' in this bigger construct of the national state (Ferguson & Gupta 2002). The fieldwork shows how people consider the state as a fall-back option when problems cannot be solved locally.

Relative legitimacies

In the regions of study, a situation of institutional multiplicity was found where 'governing' is done by both state and non-state institutions. How do local actors perceive and experience this multiplicity? How do they plot the customary, state and non-state institutions in relation to each other? In both cases, people were found to compare and contrast institutions in terms of their legitimacy and performance. Typically, the worst classifications were being reserved for the state. As put in the Afghanistan study: 'Most respondents declared that they see the government as entirely corrupt and always seeking to rob its people of their money, without solving any of their problems (Rassul 2012: 35).

In Sanaag, respondents were asked to judge local institutions on the basis of criteria developed together with them. These criteria included achievements, honesty and patience; justice and equity; transparency and accountability; decision making capacity; willingness to take advice; how fast they respond to needs; voluntarism; and concern for marginalised groups (SORADI 2011: 60). From people's ranking of institutions based on these criteria the *Guurti* and other customary leadership rank amongst the highest, but so do NGOs (with regional variations). The government is ranked at the lower end (SORADI 2011: 61 table). This resembles the findings in Afghanistan (Rassul 2012: 18 box), where the following reasons are given for why people choose to come to the *shura*: they 'solve our problems without any salary'; 'they are honest', 'we know them better'; 'we can easily have access to them'.

State and customary institutions are contrasted in stark terms. In Sanaag traditional leaders are seen as 'relatively legitimate' whereas government officials are seen as 'predatory and corrupt' (SORADI 2011: 36). Government officials are discredited for using 'patronage and strategic co-optation' of clan representatives to 'mobilize loyalty from the community' (ibid: 36). Local governments are seen to lack skill, capacity and motivation (SORADI 2011: 30). Traditional leaders on the other hand are imputed with positive motivations, such as the willingness to serve their clan, though an interest in personal gain is not excluded: 'Most respondents believe that the primary motivation of the traditional leaders is to look after the interests of their clan groups, and that mostly includes stopping harm from coming to their groups.' (SORADI 2011: 15) This does not mean an uncritical attitude towards the customary system. Respondents recognised that traditional leaders are also motivated by other factors including clan interests, personal responsibility, 'prestige and financial gain, interest in leadership and empowerment' (SORADI 2011: 15).

The study in Takhar province (Afghanistan) similarly found that people tended to credit the customary institutions for being 'more accessible, trusted and time efficient', whereas they discredited the formal system for corruption, nepotism and bad performance (Rassul 2012: 17/18). Rassul suggests that: 'the positive perception of the informal justice system seems to be shaped more by the misconduct of the formal justice system rather than the conduct of the informal justice system' (2012: 17). However, it is also a positive choice. The research showed 'that people opt for the informal system because they are led by well-known, trusted, and respected elders, active in the community and with a reputation of being fair and devoted' (Rassul 2012: 19). In addition, 'decisions are made according to well-known traditional rules rooted in cultural values' (ibid). The informal justice institutions combine both traditional authority and sufficient competence, which contributes to decisions which satisfy all parties, in most cases (ibid).

Also the fact that the informal justice system in Afghanistan works with 'restorative justice' contributes to its legitimacy. Restorative justice, as has also been argued for other parts of the world, allows for a restoration of social relationships and with that of people's 'support structures, enabling people to manage various kinds of shocks' (Rassul 2012: 11). Informal justice seeks the reintegration of offenders into their communities, and thus minimizes the damage to the household of which they are part (Rassul 2012: 11, 12).

In both cases studied (Somaliland/Puntland and Afghanistan) the research found that the legitimacy of customary institutions relates to whether customary authority is seen as mandated by and accountable to communities. Respondents in the Sanaag study highlighted that community members have possibilities to influence the selection and performance of traditional leaders and village-level committees. Local customary authorities or committees 'cannot enforce their decisions without the support of the overwhelming majority of the community' (SORADI 2011: 39), though the question remains how such support is achieved. In the same vein Rassul concludes for the Kunduz study that it was precisely the lack of accountability of the traditional *Mirab* system that motivated people to turn to alternatives.

5

Local institutions 'at work': Interaction and change

This section explores in more detail how state and non-state institutions interact and mutually influence each other in relation to specific problems. The analysis makes clear that a fair degree of functional complementarity exists between state and non-state institutions, especially in the case of Sanaag region, though instances of rivalry are also found. The studies also bring out that institutions, and the relations between them, transform, shaped by people's choices in the search of solutions for their everyday problems and insecurity.

State and non-state institutions responding to crime and violence

In both Sanaag and Takhar the administration of justice and prosecution of crimes, is a task in which both state and non-state institutions play a role. This topic offers an excellent window on the nature of the interactions between different sets of institutions.

A gathering for the announcement of the resolution of clan-conflict.

In the case of Sanaag, customary and state institutions were found to complement each other. In general terms, respondents – even those in government functions - highlighted the primacy and strength of the customary institutions: 'Many respondents that were government representatives on the district and regional level admitted that the secular law system and the police rather assist the traditional authorities in fulfilling their functions than the other way around; and most governmental officers admitted quite openly their dependence on traditional elders: 'without Elders we could not do anything' (Erigavo police

commander). The common view throughout Sanaag seems to be that the main function of the police is to assist traditional authorities' (SORADI 2011: 26). There is some recognition also for the fact that this works both ways: ' the strength of the local authority also depends on strong government backing', as they can call in police assistance for law enforcement. (ibid: 68). The relation is one of 'nested' institutions: the government comes into play mostly when the 'traditional system fails to resolve the conflict' (SORADI 2011: 16; Ferguson & Gupta 2002).

In response to specific – and sometimes new - challenges, a pragmatic and functional division of labour was developed. The fieldwork in Sanaag presents an interesting case of this. In Sanaag, elders, government officials and security forces collaborated to stop a cycle of revenge killings and armed clashes that went on for several years. Longer existing tensions between two sub-clans escalated as a police commander of one of these sub-clans was killed by gunmen from the other sub-clan in 2009. The conflict then broadened into an open confrontation between the latter sub-clan and the Somaliland military, which was brought in by the Governor to control the situation (SORADI 2011: 44). The sub-clan elders captured the murderer who was brought before a traditional council of elders as well as a sharia court. The civil court in turn executed the verdict (execution). On each side, a Committee of seven Elders was set up to manage the case and contain further violence. They acted also as the liaison with government officials and the police.

These efforts, however, could not stop the cycle of violence, and further killings took place. The conflict attracted national interest and clan elders from other regions started to insist on a solution. A mediation committee was formed with five elders from each of the rivalling sub-clans, with the assignment 'to investigate all murder cases and come up with a final ruling based on the traditional Xeer' (ibid: 52). They would implement the decisions taken 'with the help of the government' (ibid). Security forces enforced a curfew and were able to restore security (ibid: 53). In addition, fifty selected elders on both sides would take an oath to agree to the outcome of the mediation committee and ensure local compliance. The central government acted as the 'coordinating body' between the different groups.

This is a clear case of institutional multiplicity where different institutions complemented each other: decisions were based on *Xeer*, endorsed by all relevant actors, state and customary, and then 'filed with the district and regional courts', copies being sent also to the national high court (ibid: 54). Concerted efforts were taken in response to a situation that neither the state nor the elders were able to address on their own. An important factor in this multi-institutional solution was the fact that both victims were police officers. Elders argued that this meant that the cases exceeded their normal capacity (e.g. the responsibility to capture the fugitives) and that instead the responsibility 'was on the side of the Somaliland government' (ibid: 51). The case posed a new question: 'the question is who is liable or responsible for the death caused by a police commander; the government or his sub-clan?' (ibid: 55).

The study in Takhar province, Afghanistan, similarly found interaction between the formal and informal justice institutions, leading in this case to a hybrid system, where institutions intertwined. The different institutions were found to be 'in the process of adapting to each other' with 'the notion of formal versus informal [is] slowly diminishing' (CPAU 2012, in Rassul 2012: 20). Citing from the report:

'The informal system is often focused on solving local cases which do not involve criminal acts, while the formal system is in charge of criminal cases, from assault, to murders, kidnappings, and criminal offences. [...] The formal and informal justice institutions have responded to people's needs and the situation at hand by increasing their communication with each other in terms of cases being referred to each other by either institutions and official documents sent by the formal system to the informal on specific cases that they had resolved. During the field research in Takhar CPAU found that there are instances where the informal system cannot resolve a dispute, primarily criminal cases and thus [the in]formal [system] refers it to the formal court system. While on the other hand there are minor civil cases which are deemed to take too much unnecessary time in the formal system which are referred to the informal system. During focus groups discussion in Takhar the respondents also mentioned a few instances where a dispute had grown worse in the formal system and was sent to the informal in order to get it resolved.' (ibid: 20/21, based on focus group discussions in Takhar)

The study concludes that the informal justice institutions have become a 'key component in people's lives and in their strategies in addressing various human security concerns. [..] People use these institutions in order to access the formal system and thus minimize individual exposure to the shortcomings of the formal system through a collective approach' (ibid: 37).

The study in Kunduz identifies a third actor in the field of justice: the justice system of the armed opposition groups. The study found this system to enter into competition with the customary justice system; the system of the armed opposition groups was found to put the informal system under pressure (ibid: 14). The study judges that the AOG justice system is 'not corrupt, swift and is rigidly enforced', however, unlike the customary justice system, it is 'not focused on restoring relationships' and 'not in line with local traditions' (Rassul 2012: 15). The study makes an interesting remark on women's access to justice: this is limited in both the formal and the informal justice system, where women are dependent on male relatives. In some cases, women can expect better outcomes from Taliban justice – the AOG system (Rassul 2012:15). This is an issue that deserves further exploration.

Multiple institutions responding to drought

During the fieldwork period in Sanaag, in 2011, a severe drought affected the region, leading to water shortage and high levels of livestock death. This led to high levels of livelihood stress. The situation prompted institutions at all levels to a response. The drought was a critical event that put existing institutions and governance arrangements to the 'test', and revealed their response capacity, their capacity to deal with new, unprecedented situations, and their capacity for concerted action.

The affected herder families initially relied 'on their own resources and assets, such as distress sale of their livestock' (SORADI 2011: 22). As the problems worsened community-level solutions were sought. The Village Committee took on a prominent role linking other key actors such as the *Guurti* and the District Council representatives. As the study put it: 'the

An Council of Elders waiting for a Government delegation to discuss community issues.

village committee is the primary interface of traditional/local and formal/national structures and is where the interaction takes place' (ibid: 23).

In various localities so-called Drought or Emergency management committees were formed by the population (an example of the ad hoc committees mentioned in the previous chapter). For each of these committees, 5-7 members were selected for their 'experience and capability to guide the community' and 'come up with solutions to mitigate the effects of drought' (ibid: 23). Some of the committees included *Guurti* members. The Drought management committees collected information on the extent of the problem, consulted with different groups of population and proposed a number of measures, related to water management and distribution. They also organized calls for assistance to government, NGOs, and businessmen (ibid: 24-26).

Given the region-wide impact of the drought, the issue was taken to the level of the regional government. The governor of Sanaag called for an emergency meeting which included regional governmental representatives as well as police and military commanders as well as prominent *Guurti* members (ibid: 28). In the meeting it was decided to 'alert the national government and the international humanitarian agencies' and 'appeal for drought relief' (ibid: 28); to create Drought response committees at the regional and district levels, and 'officially recognize' drought committees that had already been created at the local level by the Village Committees and local *Guurti* (ibid: 29).

The Drought Committee at district and village levels coordinated their actions, seeking to build on each others' strengths. The District Drought Committee was responsible for fundraising and developing and executing a drought response plan, mostly water trucking. (ibid: 29): 'The District Committee published and disseminated the drought response plan, including the allocations and distribution plans to different villages and locations. This information is made public in order to reduce conflict over the sharing and distribution of resources' (ibid: 29). The village-level committees on their turn developed a 'plan of sharing, allocating and distributing the resources among the affected villages and communities': 'The responsibility for the distribution and sharing at the village and rangeland locations is assigned to the Village Committees', including the local *Guurti*. 'Since they know the needs of their people they are the most suitable body to manage the local response to the drought' (ibid).

The central government of Somaliland also played a role. It declared an emergency situation and 'published an international appeal for help'. The Somaliland government 'organized and delivered funds for water trucking, technical assistance and [...] maintenance of water sources' (ibid: 31). The assistance amounted to about 20,000 USD (ibid: 31). In comparison, the District Drought Committee and Erigavo Municipality managed to raise 1500 USD each (29). The support mentioned did not fully cover the needs of the affected populations and additional support was given by international and national NGOs, CBOs, and through the diaspora (directly to their relatives) (ibid: 31, 35).

The drought response offers an example of complementarity between state and customary institutions at different levels and the development of new institutions and modes of working. Overall, respondents felt that 'the multi-institutional response to the drought of 2011 has been relatively effective, efficient and timely' (ibid:36). The study credits the arrangements that emerged for their 'flexibility and pragmatism'. It was seen as very positive that despite the rivalry that was frequently seen to occur between government, traditional leaders, and civil society organisations, this experience demonstrated that they were able to work together (ibid: 36). There was criticism of the fact that some politicians used the delivery of the assistance for political competition. The report suggests that the drought relief was delivered by a Ministerial Delegation 'to display to the local communities and their traditional leadership that the government is concerned and cares about them and eventually gain political support from the local population' (ibid: 31).

Changing institutions in water governance

The case study in Kunduz provides an example of how the relative importance and the relations between different institutions can change. As a traditional institution loses legitimacy, people try to change it or turn to another, trusted, institution to solve their water-related concerns.

In Afghanistan much of the agricultural production relies on irrigation systems, such as canals, mostly shared by several communities. For the distribution of irrigation water between upstream and downstream villages and within villages people historically have relied on home-grown forms of water management. The central institution in water management has historically been the *Mirab*, which, with some regional variations, refers to an individual from the area, elected by the communities, in charge of ensuring fair water distribution between upstream and downstream villages. The *Mirab* usually receive payment for this work, through contributions of all land owning households in the area they are responsible for (Rassul 2012: 30, also Lee 2007, Roe 2008).

As a consequence of war, the *Mirab* system has lost effectiveness and legitimacy. Though it was still mentioned by respondents as central to water management, and approached by them for water-related concerns, people increasingly turn to 'local informal justice systems for resolving water related conflicts' (Rassul 2012: 32).

Fieldwork found that the *Mirab* system is negatively affected by local divisions and the 'continued power struggles between the state, the Taliban and the local *arbakis*/warlords'. The *Arbaki* are local militia groups which override or co-opt *Mirabs*: 'In front of the *Arbaki*, the *Mirab* does not have enough power to properly enforce its decisions' and the *Arbaki* prevent the water from reaching downstream villages. As a farmer from the region stated: '*Mirab* was better than *Arbaki* at managing the water; now *Arbaki* just took over because they have weapons, [..] they are young and nobody can stand them, they just are afraid of them' (cited in Rassul 2012: 33). In some other cases, the *Arbaki* take over the *Mirab's* functions in water distribution but privileging wealthier water users who can afford to pay more.

In earlier days, during the reign of Zahir Shah, the enforcement capacity of the *Mirab* relied increasingly on government support (e.g. providing police assistance). The current weakness of the state has meant that the *Mirab* is no longer able to enforce its decisions effectively (Rassul 2012: 34). The *Mirab* system has responded by resorting to corruption ('bribes for water'), seeking alliance with powerful actors, which could be Arbaki, warlords or politicians, and relying on intimidation. (ibid)

The fieldwork in Kunduz found that in some cases, people have take action against corruption and abuse by *Mirabs*. The study recounts how in one district 'people collaborated in preventing a corrupted *Mirab* from being nominated through his powerful connections, and struggled until they could fairly elect their own *Mirab*' (Rassul 2012: 35).

The breakdown of water management institutions has given rise to 'uneven distribution of water', negatively affecting especially the downstream communities. The breakdown of the system has meant that 'there are no checks on claims to water resources'. Water-related conflicts further divisions and antagonisms at the local level and negatively affect people's livelihoods and well-being. As the field research brought out: this has motivated people to 'find alternative ways of organizing access to and resolve local conflicts over water. One such example found during the field study [...] has been an increased use of informal justice institutions to manage and resolve water related issues' (Rassul 2012: 29). The informal justice system is trusted and, in the eyes of people, provides 'a viable alternative' (Rassul 2012: 36). In some cases, people turn to the informal justice system as an alternative to the *Mirab* system which they no longer trust. In other cases, 'the informal justice system is used as a means of further supporting the *Mirab* system and [to] enable it to withstand the pressure from various groups and power holders' (Rassul 2012: 36). This testifies to the capacity of local societies to adapt informal institutions in view of new circumstances.

Emerging threats to non-state institutions

Both case studies emphasise how non-state institutions are dynamic and respond flexibly to changing circumstances. However, the studies also show some concern with current trends that might undermine the customary and informal institutions. A first concern relates to the social cohesion, that provides the basis to the effectiveness of non-state institutions. The *Mirab* system discussed above was found to be affected by local divisions. The Sanaag study expressed concern with a 'multiplication' of leaders as small sub-groups have elected their own traditional leaders, and the 'weakening of community values and norms' (SORADI 2011: 65).

A second concern is with the institutions getting 'corrupted'. The closer interaction with the state can be a risk factor in this regard. In Sanaag people were concerned about traditional leaders 'getting too closely associated with the government and its politics' (SORADI 2011: 26). Some respondents argued that 'traditional leaders were lured by the possibility of marshalling new forms of power from their close association with the State and its politics, since this means access to state resources and positions of power in the government. This is widely believed to have degraded the traditional authority system' (SORADI 2011: 26).

This resembles what happens in Kunduz, where the support by the international community might pose a similar threat. Fieldwork found informal justice institutions are starting to be affected by corruption: 'the increased engagement by the international community with *jirgas/shuras* in assistance delivery [...] is bringing the financial factor into these institutions. Where traditionally the motivation for community elders and others who mediate between the parties has been merit and honour, these motivations are now in danger' (Rassul 2012: 13).

6

Conclusions

The studies cited in this report, on Afghanistan (Kunduz, Takhar) and Somaliland/Puntland (Sanaag) brought out very clearly that the state had a very limited reach. The governance of everyday life in the regions studied relied to an important extent on well-developed and firmly rooted customary and informal institutions. The studies thus confirmed the fact that people rely on home-grown institutions to address their everyday human security needs related to livelihood stress, resource management and competition, conflict and violence. The type of non-state institutions that were found to be relevant primarily included customary authorities, rooted in tradition, community-level mechanisms for consultation and decision making, and emergent arrangements for addressing specific needs. With this, the findings mostly confirm the existing knowledge on customary institutions in fragile states.

Overall, the studies brought out that the home-grown institutions were viewed positively in the eyes of local populations. People perceived them as strong, effective and appropriate. This was not a given, however. The legitimacy of local level institutions derived from their performance in terms of responding to locally identified needs, familiarity, the fact that they were guided by locally accepted values (including equity), and that there were possibilities for constituencies to steer and hold leadership accountable. When specific institutions no longer meet these expectations, they may enter into decline, as was described for the *Mirab* system in the Afghanistan study. When given the opportunity, people will then look for alternatives, either by seeking to change the existing institution or by turning to an alternative institution.

In the regions studied, the state was both 'absent' and 'present'. People mostly experienced the state as 'missing'. Despite efforts at increasing state presence, the state was seen as distant and lacked the legitimacy of home-grown institutions. People had an idea of what a state would ideally provide for them, but experienced a state which in their daily lives, for all practical purposes, could not deliver. The state, however, was clearly present on people's horizons and there were multiple references to the state as an idea, as the bigger whole of which people were part. Non-state institutions were depicted as 'nested' within that bigger polity. The analysis brought out that in exceptional situations that transcend local response mechanisms, such as the severe drought discussed for Sanaag, state agencies were turned to and did engage with the problem. This was one of the most surprising findings of the study: though people's everyday lives reflected a situation of 'governance without government', they maintained an idea of the state as the ultimate fall-back option in responding to critical events.

The studies make clear that the institutional landscape in the regions studied is multiple and, to some extent, hybrid. Next to the variety of home-grown institutions and the institutions of the state, other sets of institutions were: armed opposition groups (Afghanistan) and

civil society organisations and international NGOs (Somaliland/Puntland). The field studies shed light on what types of interactions occur in this multiple field. The interaction between customary/home-grown institutions and state institutions as brought out by the studies could best be described as one of functional complementarity or perhaps pragmatic accommodation. In response to problems such as drought or the control of crime and violence, a concerted strategy was worked out which sought to build on the respective strengths. The state was relied on, for example, for its greater capacity to enforce security, but customary authorities were needed to achieve acceptance of de-escalation measures amongst the population. In the case of the drought in Sanaag, the regional government took on a coordinating role, in conjunction with humanitarian agencies, but implementation was organised through local arrangements. In these cases of complementarity, the power of initiative rested to an important degree with the customary authorities: they were the ones to decide to approach state agencies or other actors in search of specific problems.

A general concern relating to situations of institutional multiplicity or legal pluralism is with the confusion and overlap between different justice systems, and the risk of widespread forum shopping. Though the case reports make some mention of unclarity over competencies, this is not the main concern emphasised. To what extent hybrid systems evolve in which customary and state justice systems intertwine to such a degree that they cannot be easily distinguished from each other, could not be determined on the basis of the case studies. The impression is that the situation is rather one of an intricate, and evolving, division of labour between collaborating but distinct partners.

The studies showed that within these multiple institutional fields non-state institutions change and adapt, in response to new challenges and the needs and strategies of local populations. This suggests indeed that the active pursuit of human security shapes both how institutions develop and how they relate to each other.

Reflections on the research approach

The approach chosen in this research program was to follow real problems and how these were addressed by the institutions people turned to. Looking back, we have found this approach indeed fruitful to move beyond static and possibly idealised pictures of the nature of and relation between state and non-state institutions. At the same time, the initiators and academic facilitators of the program feel that the full potential of the approach has not been realised in the current studies, partly due to time constraints and because of possibly different expectations between them and the research teams who effectuated the studies. We consider that more in-depth analysis of specific cases followed in their trajectory through the institutional landscape and hence of institutions 'at work', would have increased the contribution of this research to the debates on local institutions in fragile states.

A limitation in the present study has been the lack of a diversity of viewpoints. The studies give a suggestion of a strong consensus on the importance, effectiveness and legitimacy of customary institutions, and the question is whether this consensus remains when a diversity of actors differentiated on the basis of gender, age, economic position, ethnicity or political

affiliation is interviewed. This would allow also for understanding how differences in power or interest shape people's perception of institutions and institutional response. Following individual cases from different types of people would probably bring out a more variegated image in which it becomes clear that there are multiple answers to the questions 'Who do people turn to?' and 'how do institutions work', 'for whom' and 'when'. This would help enormously in assessing whether customary institutions also work for women, to name but one of the potentially most controversial issues.

Implications for intervention[9]

This research program had the ambition to contribute to 'fashioning intervention strategies that appropriately support human security and state building in fragile environments' (de Regt et al, 2010: 2). Oxfam Novib is committed to building 'its interventions on existing, and therefore sustainable arrangements' (ibid: 23), an ambition that is now widely shared and often summarised under the heading of 'working with what is there' (Hilhorst et al 2010). What can we learn from the studies to inform policy?

The ambition to link with non-state institutions can be a fruitful entry point given the strength and importance of these institutions in many contexts. However, the ambition to *work* with what is there, requires carefully *looking* at what is there, both in terms of customary institutions and in terms of the role of the state. It can be problematic when international NGOs assume too soon that 'there is no government', in contexts where the state is a meaningful institution to people that complements the customary or informal in specific ways.
Following on the above: there is no need to make an 'either-or' choice between working with state or non-state institutions. The existence of multiple institutions can rather be taken as a starting point and, for a particular context, it would need to be examined what works, how, and in what constellation with other institutions. To do that, agencies may follow a similar methodology as was followed for this research: that is, to follow where people go with their problems. The role of (international) NGOs could be to support effective institutions or arrangements, irrespective of their form or origin, as well as specific institutional trajectories and multi-institutional responses. This is in line with many agencies' original intent to reduce people's vulnerabilities and insecurity, and to seek and strengthen those institutions and arrangements that contribute to that.

Rights-based NGOs like Oxfam Novib can approach customary or other non-state institutions as 'duty-bearers' in the absence of a well-functioning state. This means these institutions can be engaged in dialogue on their duties towards their constituencies. A key challenge is to avoid undermining effective local institutions by supporting them financially or through molding them too strictly to non-local criteria. Providing external resources to locally legitimate institutions may compromise their local accountability and lead to tensions, as was shown in the case of the *Mirab* in Afghanistan. Rather, the way forward would seem to be in a double strategy of engaging with duty bearers (whether

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9   This section benefitted highly from the input of Anne Pieter van Dijk and Wim de Regt.

customary, state, or otherwise) on their ideas and understandings of public responsibility and service, and with local populations in their claim-making towards these authorities. The strong sense that customary authorities are mandated from below, as encountered in the studies, creates room for dialogue on accountability and responsiveness.

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