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Conference «Non-State Actors as Standard Setters: The Erosion of the Public-Private Divide» | February 8-9 2007 | Hotel Hilton Basel, Switzerland

What's new? Local and regional non-state actors on the margins of public policy in Africa.

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First Draft – not for citation

Introduction

When we talk of non-state actors we often refer to a classical three sector model of society with state, market/economy, as first and second so-called private sector and a third non-profit-sector. Especially with regards to a perspective bearing on standard-setting the state is seen as having a core position as law-maker setting the overall standards for a society. This common model dominated the scholarly and political discussion in the 1980s and 1990s and is still important both for the description of modern liberal democracies as well as a political program. However, it comes with hidden assumptions:

1) The state's existence is taken for granted, including its dominant role.

2) This three sector model is a widely shared political objective for the constitution of a modern liberal and democratic society. There are differences concerning the balance between the three sectors and the specific role for each one of them, but all three are seen as necessary. In principle, however, the existence of non-state actors is seen as positive.

3) The international political support for non-state actors, especially in transformation and developing countries carries the implication that these actors are new in some parts of the world and have to be promoted to overcome traditional social structures or outdated socialist regimes. Drawing from these assumptions a controversial discussion on non-state actors has been taking place. The question of the erosion of the public-private divide is currently an important issue. The papers to be presented in this workshop discuss this question as far as the field of development is concerned.

However, the call for papers for this panel takes us beyond this important discussion. A point that is not addressed in the papers is the one concerning other types of non-state actors on the "margins of conventional public policy, such as traditional leaders, cross-territorial traders or criminal organisations" (Call for Papers).

They are often more relevant politically in weak and failing states because there the "margins of public policy" are much wider than in well organised strong states. In considering the role of non-state actors in these weak and failing states in Africa we need to criticise the hidden assumptions in a more fundamental way.

The main objections are:

- The discussion on weak and failed states shows that the state cannot be taken for granted. And in weak states and in failed states the role of non-state actors can change dramatically.
- This diversity of non-state actors, including the private and NGO sector, is not at all new. The diversity of non-state actors is as old as the modern territorial state.
- From a worldwide perspective, the three sector model does not capture the actual diversity of non-state actors. In particular, non-state actors like warlords or criminal organisations do not fit into the political program of democratisation or good governance.

My paper focuses on the role of non-state actors in this specific situation where the public sector is weak or even absent. It offers a kind of contrasting perspective to the other papers presented here.

- In the first section I try to show the diversity of non-state actors beyond the conventional three sector model.
- In the second section I present a short history of how this diversity of non-state actors came into being.
- In the third section I examine the role of non-state actors in weak and failing states with a focus on standard-setting.
- Finally, in my conclusion I will briefly argue that the challenge facing us is not the distinction between

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the private and the public, but rather the absence of the public in Africa in a very specific sense.

1. The diversity of non-state actors: a tentative typology

If we take the concept of “non”-state actors seriously, it should actually mean non-state and actor. Actor means an actor on the political or societal level, but even with this limitation the range of non-state actors is extremely wide.

The African **non-profit sector** differs extremely from country to country, but the basic types of actors may be named (Neubert 1997a, 1997b, 2003). At first we find the well known range of NGOs that we already know from Western liberal democracies. The **non-profit sector** in developing countries and some transformation countries has very strong **international links**. Especially in African countries a considerable part of resources required for their functioning comes from international donors. In countries like Rwanda, Mozambique or Malawi the now diversified non-profit-sector is the result of a supply-driven policy.¹ The constituency of the African NGOs is often weak and many of these organisations would not survive without foreign funding.

Because of their considerable importance religious organisations, in particular, need to be appraised in detail. The catholic church and the mainstream protestant churches are like other non-profit-sector NGOs closely linked to their international partners. African churches and their welfare and development activities often depend on international funds, too. But in contrast to other NGOs, churches have a social basis of their own.² Especially Pentecostal and revivalist churches have managed to build up a strong constituency that functions as the main resource for the organisation. For example, in Ghana and Nigeria some of these African churches invest the funds generated by their constituency in well run enterprises, which add to their income.

In Islamic countries or regions Islamic groups have increasingly gained in importance. They mobilise their followers often into social movements and receive support from Saudi-Arabia, Libya, or in the case of the Ismaelites from Pakistan from the Agha Khan Foundation.

Community based groups such as self-help groups, co-operatives, committees of local traders, artisans, rotating saving groups, or neighbourhood committees are a specific feature of the non-profit sector in African societies (just as is the case in developing countries as a

whole). Usually, they are seen as part of the third sector. However, co-operatives overlap with the private sector and neighbourhood committees, or the so called “civics” in South Africa, may take over local administrative functions.

The non-profit sector is open in the sense that there are organisations that overlap with the state-sector and the private sector. Additionally, there are also social and political opposition groups and/or political movements who question the existing political structures fundamentally. Some of them fight these structures using violence. We find separatist movements more or less along the lines of the radical communist groups we used to find in the West. Of these, Islamic movements are the most prominent ones. They may act on a political stage or they fight as guerrilla movements with armies or as terrorists.³ The new generation of terrorists acts now world wide. They may use supporters in the country of action, but they do not see themselves in a national, but rather in an international conflict. The most prominent example of this is that of Islamic terrorists and fighters, who unfortunately tend to be summed up under the rather imprecise heading of Al Quaida. To be sure this is not necessarily an Islamic phenomenon only. The left wing terrorists of 1970s und 1980s in Europe already had the vision of an international movement.⁴

The African private sector is much more diversified than its counterpart in modern Western democracies. Besides the typical formal sector it includes the so-called informal sector of micro-enterprises. In terms of economic strength more important are illegal economic activities such as small and large scale smuggling and drug trafficking. In weak states like Zaire under Mobutu or Sierra Leone or Liberia often medium and some large scale enterprises in farming and mining form a parallel economy besides the formal sector, a phenomenon that has already been described in detail by Janet McGaffey (MacGaffey 1987).

Whereas this parallel economy works and acts according to similar strategies as those employed in the formal economy, in failing states, in particular, we find entrepreneurs who draw their economic power from the use and control of violence (Mair 2002), which I want to call “violence entrepreneurs”. Often, they are referred to as

¹ See Glasgow's studies on the mushrooming of NGOs in these countries (Glasgow 1992; Glasgow et al. 1993).

² For Madagascar see the paper of Randrianja in the working group A.

³ For a better understanding of non-state actors using violence, one can specify these actors according to the criteria of (political) objectives, main types of fighting and violence, weaponry, resources for fighting, professionalisation of fighters, authority and command structure, co-ordination of strategy, links between fighters and population, “ethics of war” and occurrence of extreme war crimes (Neubert 2004b).

⁴ This holds also true for the communist movement which was right from the beginning a global movement. However, the national movements acted locally or nationally. International solidarity supported them politically and militarily, but the conflicts remained more or less national.

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“warlords”, but this conceals the role of “markets of violence” described by Georg Elwert (Elwert 1999). The use and non-use of violence is a commodity which can be bought. Violence entrepreneurs often do not pursue political objectives, but use violence to control resources, trading networks or make money from protection or ransom.

As far as these violence entrepreneurs are concerned, the weak state is an enabling environment for them. Their actions produce instability and violence, which in turn, creates conditions within which they can pursue their actions.

Another peculiarity, which we do not find in modern Western liberal democracies, is the existence of local “traditional” actors such as local leaders and local authorities and associations, including specific local communal structures. These are local chiefs or “kings”, councils of elders, secret societies, and local groups of young fighters who defend their community and/or carry out cattle raids in neighbouring communities. The term “traditional” refers to their source of legitimacy, which is derived from tradition. This does not mean that they are relicts from former, pre-colonial or pre-modern times. They may have been in existence for a long time, but this does not apply to all of them. Often, they have changed and have been transformed extensively. To be more precise, one should say that they are local actors in traditional garb. With that in mind I will refer to them simply as “local ‘traditional’ actors”.

These non-state-actors outside the conventional three sector model do not form a distinct fourth sector. Some share characteristics with organisations from other sectors. The parallel economy or violence entrepreneurs follow, at least partly, strategies we know from the private sector. Local “traditional” actors combine elements of self-organisation, which we would link to the non-profit-sector with elements of a local level authority, which may be in lieu of some state functions on this level.

Most of these actors are restricted to a local or sub-national level. Additionally, all of them are somehow located outside the formal institutions of a modern liberal democracy. I will address them with the rather weak indication of “informal non-state actors”. This underlines their distance from the conventional three sector model and from the formal institutions of a modern state.

We should bear in mind that the types of non-state actors presented here are ideal types in a Weberian sense. In reality, these types overlap and a specific organisation may have features of several types at the same time. In particular, the different types of informal non-state actors presented here cannot completely cover all possible forms. These informal actors emerge mostly out of specific local settings which differ too much for us to be able to predict every possible type. The ones presented here

are those which are already known and which can be found in quite different settings.

2. What's new? A short look into the history of the diversity of non-state actors in Africa

Before I examine the roles of non-state actors especially in standard-setting, I would like to briefly present the history of non-state actors.

The three sector model started to make sense with the establishment of the modern territorial state in the 19th century. Since then we have had, of course, a private market sector as well as third sector organisations. From their beginning some NGOs have been involved in the process of standard-setting, either as watchdogs or as lobby groups. The most prominent examples in industrial countries from the 19th century are the Anti Slavery Societies in Britain and the USA and the Red Cross Society (Curti 1963, Lissner 1977).

NGOs were not only a European and North American phenomenon. In India the first welfare associations were founded in the 19th century, too. And in some African colonies, like Kenya, the first NGOs emerged in 1920s (Neubert 1997b).

We should also be aware that the mission societies and Christian churches were at the forefront of colonisation and established themselves in the colonies. Although they worked closely together with the colonial administration they acted independently from the colonial authorities and often presented themselves as representatives of the indigenous population. European churches were localized step by step (with local priests and later local bishops) and, especially in Africa, new African churches were founded.

The indigenous institutions in the colonies like chiefdoms, councils of elders, secret societies as well as the indigenous forms of law changed their role with the establishment of colonisation. Depending on the colonial policy these institutions could be integrated into the state apparatus as part of indirect rule to become state actors by definition. In other cases they were pushed aside as tradition and custom of dwindling relevance or they were seen as politically dangerous and abandoned. For a long time the coexistence of state administration and jurisdiction and local customary institutions and law was accepted. Protest movements were obviously another type of non-state actors. They were often interpreted as revival movements referring to pre-colonial values. Pre-colonial institutions and those of protest movements were seen as a transitional phenomenon that would end after full modernisation (or “civilisation”).

Against this historical background we can ask what is new concerning non-state actors in the Third World and

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particularly in Africa. There are two trends we should be aware of.

First, concerning third sector organisations we have since nearly 20 years been observing a rising interest in their work and a re-evaluation of their role. Under the heading of support for “civil society” this led to a policy of enabling the founding of organisations and support for their activities. The result is the supply-driven rising number of these organisations.

Second, pre-colonial or “traditional” institutions still remain in place. Even after independence and after the establishment of democratic regimes they are there and often as strong as ever. They just do not dwindle. Some African Governments even reinstalled local chiefs in the administrative system (e.g. Uganda). Especially in countries where the state is weak or in so-called “failed states”, these traditional non-state actors have been regaining power.

The existence of this type of non-state actors is not new, but it is only in the last years that we have discovered that their important role persists. This persistence attracts scholarly interest. Particularly in social anthropology these local forms of power are currently a highly valued object of research (Bellagamba & Klute 2007 (forthcoming), Lund 2006, McIntosh 1999, Skalnik 2004). Whereas anthropologists tend to be fascinated by this institutions and often argue in favour of them, political scientists are mostly more sceptical and take them as an indicator of problems of state building and complain about the decline of the state.

Additionally, even warlords are not an entirely new phenomenon. The concept can be applied to the situation in China at the beginning of 20th century (Osterhammel 1995).

Irrespective of the evaluation of the role of these non-state actors, it should be acknowledged that they are a matter of fact in Africa and should be taken into account as political and social factors.

3. Standard-setting by non-state actors in a weak or failing state: islands of order

The role of non-state actors in Africa in a reasonably working state is fairly well known. The case of Madagascar to be presented here gives a very good example of typical problems concerning the involvement of churches in national politics.

In weak or failing states or on the margins of the sphere of influence of the state the roles of non-state actors change. The political space left open by the state is contested between the state and different non-state actors who are driven by different motives and follow different strategies.

Standard-setting is not the main issue, but an effect of this contest and the resulting new division of the political space.

We have to bear in mind that there are two ways of standard-setting. First there is law or rule making using the polity to set standards.

Second, standards may be set by action as well. One example is service provision by NGOs. In countries where NGOs offer reliable educational and health services they influence the expectations of the people. People will compare the availability and the quality of government services with those of the NGOs. If government services are worse the government will lose reputation and a process of creeping de-legitimisation may take place (Neubert 1997a, 1997b). The NGOs' action produces standards for service provision.

Another example may be violent actors like warlords or violence entrepreneurs, rebels or terrorists. Constant attacks and use of violence may change the perception of violence. In particular, if those responsible for attacks are not pursued and punished a culture of impunity may develop (Neubert 2004a). This amounts to the establishment of new standards for the use of violence.

My main concern is on standard-setting by rule making in a very basic sense. Every social order is based on standards and rules defining basic values, ways to live together and things that are permitted and those which are not. In a situation where the state is too weak to impose rules or is even absent, non-state actors can fill this gap. Therefore, weak and failed states offer us a kind of laboratory to find out the different forms of standard-setting by non-state actors, which might otherwise be hidden behind the dominating role of the state.

However, not every social situation is an order in this sense. In short order needs to include a certain number of people and includes notions of authority and obedience and a certain stability over time.

Additionally, the examination of standard-setting in this open political space helps us to understand weak and failing states better.

The impression of anarchy which often goes together with failed states is much too simple to describe the social situation. We will see that different forms of order, often very fragile, are established. Most of these orders are limited in space and often in time, **they are more or less temporary islands of order below the level of the state.**

A simple heuristic structure for the examination is the division between standard-setting by formal non-state actors and standard-setting by non-formal non-state actors.

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Formal non-state-actors

Even in failed states we may observe that some kind of formal organisation remains and pursues their objectives, even though no public services are available, no public security is guaranteed and the official courts are not working.

Mining, oil or timber companies in Africa explore the natural resources often when the political situation is unstable or the country is at war. They use private security companies to protect their business including the places where they work and those where their employees live. Cabinda, the oil producing enclave of Angola, produced all through the Angolan civil war protected by private security. The coltane and diamond producing mines and the timber companies in the D.R. Congo, in Liberia and Sierra Leone worked mostly during war times. They tried to protect themselves through hired guards and, often, they collaborated with one of the warring factions. The companies bought security from these violence actors by paying protection money. As long as business was profitable they kept on producing. Security was calculable in costs. Often, they gained from the absence of the state which was unable to collect taxes. And the companies were mostly free from ecological regulations and limited licences for exploration.

In "its" territory the company has ultimate authority. It provides the necessary services, it guarantees protection and all decisions on law and order in the camp are in the hands of the company. However, the territory controlled by private companies is extremely limited and usually does not reach beyond the production plant or the mining site and the employees' quarters.

Non-profit organisation like humanitarian aid and refugee organisations often are active in areas of weak state presence or where the state is actually absent? Usually they come in when the state is no longer able to take care of its citizens, displaced persons or refugees. Especially in the case of displaced persons and refugees, aid organisations set up special camps. Usually, they need permission from the government, but aid organisations run the camps by themselves. In most cases the camps are used at least for months, often, however, for years. Aid organisations often take the role of a local administration, care for basic needs (food, water, housing, medical treatment, sanitation) and in longer lasting camps they set up schools, too. With control over all basic needs they have a far reaching authority, which may even include a kind of jurisdiction.⁵

⁵ Bigger camps are often under the authority of the UNHCR. This introduces here an intergovernmental organisation, which has been left out in the typology. However, in context described here the UNHR is seen from the perspective of the hosting state in a similar position as NGOs like the Red Cross and other humanitarian aid organisations.

Aid organisations acquire a quasi-state function. This is not intended and it puts an extra burden on their work. But their ability to provide for basic needs, the need to organize the day to day life in the camp and the need to decide who gets support under what conditions put them in this powerful position. Like the companies, aid organisations establish a new order, which includes a set of norms and regulations. The norms themselves draw from human rights regulations and from practical needs and experience. In many cases aid organisations put some participatory structure in place with spokespersons for the dwellers. These may be elected or not. However, aid organisations have space for taking their own decisions and for making their rules.

Like in the case of companies the territory under the authority of aid organisations is limited and usually does not extend beyond the camp itself. In both cases, i.e. company sites and aid camps, we find clearly marked "islands of order" with their particular rules and regulations and a limited spatial authority. Companies and aid organisation gain legitimacy from the guarantee of basic security and the provision of a place where people can live.

For an aid organization to establish aid camps and aid facilities and to secure its existence, it requires some arrangement with the host state. But at the fringes of the state's sphere of influence or in cases of sheer absence of the state (e.g. wide parts of Somalia) aid organisations have to negotiate with all those actors who are or may become strong enough to intervene. Although aid organisations usually try to take a strictly neutral position in conflicts, they always get tangled up in the politics of a conflict. They help people to survive in the war; they can never be sure that they will not take care of fighters seeking short term refuge in the camps. The organisation has to pay protection money to the groups who may attack them and it has to accept that fighters may partake of aid, too. This has been extensively described for the Horn of Africa or for Sudan (DeWaal 2000).

Another case is the role of the NGO CARE in Mozambique during the civil war in the 1980s. CARE was at that time responsible for food-aid for Mozambique. This aid was essential for the survival of civilians. With this strategic resource CARE could dictate terms and ways of delivery of the aid. According to Joseph Hanlon (Hanlon 1991) CARE used this position to undermine the socialist policy of Mozambique and interfered, therefore, in the political system of the country. Formulated according to the discussion of the conference, CARE influenced basic processes of standard-setting. From Hanlon's leftwing perspective CARE acted more or less willingly as a kind of Trojan horse for US foreign policy.

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Informal non-state actors

Standard-setting by informal non-state actors is as diverse as the actors themselves are. Therefore, it is only possible to show some typical forms of standard setting. This overview cannot be complete and the specific patterns of standard-setting presented here are realized in different localities and is highly variable depending on the local situation.

Warlords, rebels or an elaborated parallel economy are linked to the phenomena of weak or failing states. Especially with warlords or violence entrepreneurs and small rebel groups or so-called militias we often associate anarchy and complete absence of order. There are situations of this type. Only a few weeks ago, when the union of Islamic courts was chased away from Mogadishu by the Ethiopian army, a situation of anarchy emerged briefly until the Ethiopians and the transitional government took over (Weber 2007).

But these radical anarchic situations are not a general feature of warlordism. This picture of anarchy is too simple. At first inside these groups there exists an order. It is set often arbitrarily by the leader, but it has to be followed. Additionally, rebel groups, militias and even warlords have a local refuge as a base for action. This is the place where their entourage stays during fighting (Klute 2006). This creates an island of order somewhat similar to the refugee camps or protected company sites. The order set up in these refuges must neither be very stable, nor does it automatically protect civilians or guarantee some kind of justice or effective policing. Only violence entrepreneurs with some political ambitions may look for a more stable order.

Most of the people live outside these havens for fighters and outside the camps of aid organisations or companies. With the state absent they try to organize themselves. Even during ongoing civil wars local communities try to keep some kind of order according to local principles. Especially in rural Africa, "local traditional actors" act in these cases as the main forces of order. These traditional leaders, council of elders, or community groups are usually already in place. In remote areas even times of peace the state is not present on the local level so that these local "traditional" actors may be uncontested.

However, a situation of civil war, which we find often in failed states, makes a difference. In peace times there is crime and there may even be raids, but the action of groups using violence is limited either by the state or by the local communities who are able to protect themselves. During civil wars rebel groups and militias grow stronger and can hardly be controlled by local communities or the weakened state.

We have to admit that our knowledge about local order during civil wars is extremely limited. We rarely find studies on this kind of order because these are the worst situations for field research that anyone can imagine.

These local "traditional" actors gain importance in post-war situations, too. They can be seen as a nucleus of a post-war order.

One example of the re-establishment of order by local "traditional" actors is the end of the Tuareg rebellion in Northern Mali (Klute & Trotha 2001, Klute & Trotha 2004). In the early 1990s, the Tuareg rebelled against the Malian state. In a later stage of the conflict the Tuareg were divided by disagreements amongst themselves. Consequently, different factions began to fight one another. When the constant warring led to a kind of civil war and became a threat mostly to the Tuareg population the fighters lost support from their local communities. The Tuareg elders saw themselves responsible for restoring peace and started negotiations among the Tuareg factions and between the Tuareg and the Malian state. The elders succeeded in regaining control over the young fighters and in the end a peace agreement was negotiated. The young fighters were demobilized and were supported by an aid programme. The interesting point was that the Malian state agreed to give the Tuareg, at least informally, a kind of semi-autonomy.

Actually, the Tuareg accepted the Malian state. In turn, in the Tuareg region, authority was held by Tuareg elders and not by the Malian state. The result is a structure described by Klute & v. Trotha (Klute & Trotha 2001, Klute & Trotha 2004) as "parastatal" authority. The Tuareg elders installed themselves as the main political authority in their region. The presence of the Malian state in the region is only symbolic and the Tuareg are quasi-autonomous. The traditional Tuareg nobles rule according to their interpretation of Tuareg norms and values which are not covered by the Malian constitution and do not refer to Malian laws. From a juridical point of view the norms are at best part of what we might call customary law. This local Tuareg order was successful in providing local peace and political stability by ignoring or even violating the legal norms of Mali with the consent of the Malian government. This order and its norms are legitimised in reference to "Tuareg tradition" which, in turn and simultaneously, is interpreted by the local leaders themselves.

In urban areas we find other forms of community security. In these cases newly formed groups of young men are used to fill the gap left open by an absent or corrupt police as a kind of local security or police force. These vigilante groups provide some order according to locally declared rules. In some cases they are related to the public authorities. More often than not they act as a substitute for the missing or failing state police and jurisdiction.

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In Uganda this local security force is appointed and controlled by a local security committee formed by the people with a formally elected board. The security committees are bound by Ugandan law, but they interpret and define rules and norms according to local perceptions. Violations of laws by these security groups do happen (Baker 2006).

In post-conflict Sierra Leone young ex-combatants formed a security force, which acted in widely autonomous and rather arbitrary manner. However, they fulfilled the function of maintaining some order (Baker 2006).

Another example is that of the Nigerian city of Aba at the end of the 1990s. The threat of crime grew so strong that traders established a troop of young men as a local force, i.e. the "Bakassi boys" (Harnischfeger 2001, 2003). They are paid by the traders of the town and act as a de facto police. Neighbouring towns followed this example and engaged the Bakassi boys as local security force, too. They pursue criminals and as demonstration of their power they organise public executions of criminals and act as police and court at the same time. The regular police still exists. In the beginning they tried to block the actions of the Bakassi boys but step by step they had to accept them as a powerful reality and did not interfere anymore.

The people support the Bakassi boys because, unlike the police, they are not corrupt. The Bakassi boys do not only fight criminals, but also witchcraft. The order established by Bakassi boys does not follow Nigerian laws. Beside the fact, that the Bakassi boys create compliance by force their standards of wrong and right are consistent with local concepts and therefore are accepted by the people.

The role of religious groups and churches in the formal process of policy and law making will be examined in the following paper on Madagascar. In weak and failing states another important feature of religious groups gains more importance. One attraction of these religious groups is the promise of morality and the guarantee that members of a religious group will lead their lives according to this morality. Inside the movement this creates a space of mutual trust and offers security. Outside the religious group the members often obey the same norms. These intrinsic norms are an important factor of order in place and provide spaces of security. Again, Nigeria offers numerous examples of this process either carried out by Christian churches or by Islamic groups. In a wider sense the calls for Sharia laws can be fuelled by similar motives.

The last cases presented here do not really fit into a dichotomy between formal and informal actors. The actors often act as hybrids, like the parastatal Tuareg arrangement. In some cases we may also find a combination of formally divided roles. One case is described by

Luca Jourdan (Jourdan 2007 (forthcoming)), who did field research in North Kivu (D.R. Congo). In the Kivu-region, which was ravaged by the Great Lakes conflict for years, Eugene Serufuli was o Governor from 2000 up to the election in 2007. At the same time, he ran an NGO with the promising name "Tout pour la Paix et le Développement" and a militia called "Local Defense Forces". This chameleon-like institutional representation offers the possibility of choosing the role, which is most convenient to pursue a specific objective. At the same time, he is able to act under any condition. If violence and civil war come back he can rely on his fighters. If peace stabilizes the NGO business will profit from the typical development peace dividend. His position as a Governor gave him security in more stable times. However, the free elections undermined his strong position.

From the perspective of standard-setting this multiple-role player presents a highly ambiguous figure. Depending on the role he takes the norms, which he upholds may be completely contradictory. As long as all the different roles are an option one cannot expect that he will consequently represent law and order as a governor. However, using his official role he may pursue rival warlords in the name of law and security.⁶

The last examples, like the Bakassi boys, the religious groups and the hybrid figure of the violence-entrepreneur-governor-NGO-leader point out that not every order constitutes an isolated and clearly demarked island (of order). First, between the islands there is an open political space. Second, especially in urban areas we may find overlapping and competing orders, e.g. the order represented by the Bakassi boys and the order represented by the regular police. Third, some orders cannot be linked to a territorial space but to a social space, like the morality created by a religious group.

In all these cases we find a situation similar to the legal pluralism. The actors in spaces of overlapping orders have to negotiate which order they will follow. This negotiation is by no means an open process but influenced by the power of the actors involved.

4. Conclusions

The cases presented here point out a general problem in weak and failing states or in post-conflict situations. The state is no more or not yet able to guarantee a minimum of public security and order. Therefore, all kinds of non-state actors like religious communities, local "traditional"

⁶ This is not an exceptional case. Kabila senior started his career as a smuggler, became a warlord, and with the help of his allies at the time, i.e. Rwanda and Uganda, he was installed as President of the Congo. Bemba, who ran unsuccessfully for the Congolese presidency in 2006 against Kabila, gained his political power after having started off as a warlord, too.

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actors, community groups, aid organisations and even companies are involved in retaining order. In this situation standard-setting is crucial. To establish a new order basic questions have to be answered: What are the basic values? Who formulates rules and how are values and rules legitimized at the local level?

In this situation we cannot speak of a public-private divide, but of a public vacuum. Non-state actors take over the state function of standard setting. They fill the space left-open by the state. But in doing this, the state risks losing even more ground and its legitimacy may be eroded even more.

However, the islands of order created by non-state actors follow completely different patterns. The result may be an incomplete patchwork of overlapping orders. The patchwork of orders depicts the situation of a weak or failed state.

The question is whether and how this patchwork could be overcome. We have to accept that any attempt to construct a new overall order does not start from “zero” but has to take the patchwork of orders into account. One possibility is a strengthening of the state and a reconquering of political space. This has been tried in Sierra Leone or Liberia. Another possibility is that some of the non-state actors are strong enough to become political actors in their own right and may gain the ability to negotiate with the state or with other similar powerful actors a new order that replaces the old one and creates a new state. Uganda after the civil war may be an example of that.

In any case, if we want to have a fuller understanding of non-state actors’ role in standard-setting in weak or failing states we need to study these local arenas, too. We must accept that these processes are not restricted to a few exceptions, but are, at least currently, part and parcel of standard-setting in large parts of Africa and some other parts of the world, too.

In these processes the formality or informality or the non-state actors is of minor importance because in the process of establishing a new order and standard-setting informal actors may gain a formal role. It is more important to know where the actors come from, or whether the non-state actor can claim indigenous links. Aid organisations and companies may be highly efficient in running their islands of order, but they neither want to nor are they in a position to reinstall an overall order on their own.

For further studies it will be necessary to look deeper into the ways in which new standards and order are established.

- How is order implemented and how are standards upheld. In the examples given here this is done by violence, by conviction or by creating commitment.
- How are the standard-setters and the new order legitimised? In the examples given here legitimacy is based on tradition, spiritual power, coercion, the ability to offer security or on action (provision of security and services), in one case even on election (security committees in Uganda).
- What values form the basis of the new order? In the examples given here the order referred to tradition, religion, human rights but on a kind of arbitrary rules but not to the rule of law.

The role of local and regional non-state actors on the margins of public policy in the process of standard-setting at first reminds us that in some parts of the world we should rather speak of the public vacuum than of a public-private divide.

Second, in these cases standard-setting is linked to the fundamental societal process of stabilizing or re-establishing order.

Third, the non state actors who are involved in this process range from humanitarian aid organisations, over local chief, community groups to violence entrepreneurs with an extremely diverse set of motives and values. Many of the values on which the orders to be established rest contradict liberal democratic normative orientations.

Fourth, the bottom-up production of order is neither automatically just, nor does it lead to stable order every time. In short, these processes are part and parcel of African reality, but there is no reason either to romanticise them or to condemn non-state actors who do not live up to liberal democratic expectations.⁷

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I have to thank Elisio Macamo for his comments.

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