Modern Government
and
Traditional Structures

An open consultation on present challenges in the South Sudan

April 14 – 16, 2005, Neuchâtel (Switzerland)

List of documents of the conference in Neuchâtel

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The successful conclusion of the peace agreement for Sudan in January 2005 brings not only new opportunities, but also new challenges to the people and authorities of the South Sudan. One of the challenges is to rebuild the war-torn society of the South, which was seriously damaged in social and political terms by two decades of armed conflict.

Another challenge lies in the accommodation and integration of Sudan's immense cultural and ethnic diversity. Since the social fabric of the South Sudan consists of more than sixty distinct communities (nationalities), there can be no unity without respect for its diversity. The latest UNDP report on human development is very relevant in this respect. It makes clear that countries do not have to choose between national unity and cultural diversity, and that policies recognizing cultural identities and encouraging diversity do not result in fragmentation or conflict.

Furthermore, both modern and traditional institutions of the South Sudan have been severely weakened by the war, resulting in a critical "institutional vacuum" in the South. It is therefore important to rescue whatever is left of legitimate institutions, and to rehabilitate and to adapt them to the new environment.

With the implementation of the peace agreement, the new political order of the South Sudan is slowly taking shape. In this light, the project for establishing a forum for the leaders of all the ethnic communities - known as the *House of Nationalities* – has become politically relevant.

The conference in Neuchâtel was attended by a number of prominent political personalities and scholars from Ghana, South Africa, Kenya, North and South Sudan, Oman, the US and Europe, by human rights activists, anthropologists, linguists, lawyers, members of the SPLM leadership as well as traditional leaders from Botswana and the South Sudan.

The participants of the conference are submitting these conclusions on the establishment of a future forum of nationality leaders' in the South Sudan for wider consultation to the South Sudanese community.

MAIN CONCLUSIONS

At the traditional leaders' conference on June 29th-July 5th 2004 at Kapoeta, New Sudan, the SPLM/SPLA, together with the traditional leaders, endorsed the principle of establishing a traditional leaders' forum in the South Sudan.

On the basis of the "Kapoeta Declaration" the participants of the conference in Neuchâtel discussed the functions and operational principles of such a forum.

I. Cultural and political significance of a forum

- The cultural diversity and wealth of customs and traditions are South Sudan's biggest assets, which need to be protected.

- Traditional structures are an important and legitimate element of social order in the South Sudan as over 80% of the population live in rural areas.

- In the past, traditional structures prevented and resolved many tribal conflicts.

- Respect for traditional structures and the ethnic diversity they reflect can greatly contribute to South Sudan's effort to build a nation.

- Tolerance of cultural differences and democratic values is crucial for allowing traditional structures to evolve and modernise.

- Tradition and modernity are not mutually exclusive but complement each other in many ways.

- Culture and traditions are not static, they evolve, and do so even more if respected and given the appropriate institutional expression.

- Every sustainable state-building process requires a system of checks and balances. To achieve stability and peace, the nationality leaders' forum must be part of this system.

II. Functions of a nationality leaders' forum

Forum for cultural diversity: Sudan's greatest wealth is in its cultures. In creating space for Southern Sudan's cultural diversity, the forum will be instrumental in shaping Sudan's nation-building process, which has to be based on cultural diversity and political unity. The forum should not only preserve culture, but also facilitate change in traditions and customs. Preservation of culture goes hand in hand with its smooth transformation.

Forum for conflict prevention and conflict resolution: Conflict prevention and conflict resolution build on the legitimacy of traditional structures. Intra- and inter-tribal conflicts have already in the past been settled most efficiently by traditional leaders. Regular meetings among them would not only help to resolve but contribute to prevent violent conflicts. In their capacity as mediators traditional leaders contribute in a effective and efficient manner to good governance.

Forum for linking central government to rural communities: The lack of communications infrastructure in South Sudan poses the challenge for the government to reach out to communities in remote areas. A forum for traditional leaders offers the opportunity to link rural areas to government structures by taking advantage of existing communication channels. As a consequence, rural societies will be able to participate in political decision-making.

Forum for customary law: Customary law constitutes a form of justice that is accessible and understandable for most people in rural areas. A traditional leaders' forum will have to take stock of the diversity of customary laws in the South Sudan, and to identify areas for reform. The forum should be able to address and tackle gender discrimination and harmful practices (such as the removal of teeth). The harmonisation and codification of certain aspects of customary law is another important issue such a forum could address.

Forum for the judiciary: Most chiefs already act de facto as final judicial instances. This is often the only form of justice people in rural areas can access. It remains to be seen to what extent different judiciaries can co-exist and the sort of jurisdictions they should have. In countries such as Botswana and South Africa the judicial competences of the traditional leaders have proven to be most effective as over 80% of all court cases are handled by traditional leaders. A forum could also act as a court of appeal for cases dealt with on the basis of customary law.

Forum for developing policy on local languages: The Peace Agreement acknowledges all local languages. However, with ostensibly so many languages in South Sudan, how can such recognition be made reality? There is a certain need to address the issue, for instance by exploring possibilities as to how the many different languages could be harmonised. Other related issues on language policy in the South Sudan could as well be examined by the forum.

Forum for advice on political issues: The forum could act as a body to be consulted by the government of the South Sudan on all issues affecting traditional communities. Any matter the forum considers relevant - whether it concerns local and regional development, peace-building, land policies or any other issue affecting traditional communities - should be reviewed, discussed and debated.

III. Operational principles of a forum

Level

In the South Sudan, the forum would primarily be established at state and national level. The current administrative structure of the South Sudan is changing rapidly. Due to various local and regional factors, one can observe a constant shift in administrative borders, in particular at county level. While the lower administrative levels have always been variable, the regional level has been relatively constant. The peace agreement stipulates that the three regions of the South Sudan will be subdivided into ten states. It can be assumed that the state level as well as the national level will be central to the political and administrative life of the South Sudan, and it is on these two levels that the role of the traditional leaders is most absent.

Linking state and national level

Since the number of nationalities within the individual states in the South Sudan varies between five and fifteen, the number of delegations for the forums at state level will vary accordingly. Given that nationality forms the basis for representation in the forums at state and national levels, the forum at national level is the sum of the forums at state level. Therefore, and according to the lists established so far, the nationality forum will have between 90 and 100 members.

Decision-making

Decisions in the forum shall be taken by consensus. The "one person one vote" principle is only one amongst several democratic ways of decision-making. Consensus-oriented decision-making procedures have a long tradition in Africa's culture and have generally been greatly inclusive and process-oriented.

Accreditation

The nationality is the basis of representation in the forum, and accreditation will be based on equal representation of each nationality. It is up to the communities to find their own ways of designating a legitimate representative to the forum.

Rotation

The traditional leaders' forum will change its location and meeting place on a rotational basis. The number of meetings per year remains to be determined. However, the frequency of meetings at state level will be denser than at national level where one to two meetings per year seem reasonable. The forum at the national level could also be hosted each year by a different nationality.

Women and Youth

The forum shall establish an institutionalised dialogue between the traditional leaders on the one side, and women and youth on the other side. Thus women and youth will be given a voice during the deliberations of the forum to allow them to raise issues they would like to be taken up and dealt with by the forum. The main focus of this dialogue could be the reform of customary law in the South Sudan.

Financing

The forum shall be financed by the corresponding level of government in the South Sudan. However, the members of the forum shall not be government employees, and in order to guarantee the forum's independence financial contributions from the government shall be endorsed by parliament.

The participants in the conference in Neuchâtel thanked the Swiss government for organizing this conference on the challenges of tradition and modernity in Africa, as well as Professor Kwesi K. Prah and Dr. Willy Mutunga for moderating it. The participants encouraged the international community to support this process further, and assist the traditional leaders from the South Sudan in establishing a nationality leaders' forum. In this respect they welcomed the idea to link traditional leaders from the South Sudan with their counterparts in other African countries such as Botswana, South Africa, Ghana and Somaliland where nationality leaders' forums exist already.

Southern Sudanese House of Nationalities Conference: Why this Conference?

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Ladies and Gentlemen.

My task this morning is to address the four points spelt out in the Background Paper for this Conference, under the sub-theme, "Why this Conference?" In the Background Paper the objectives of this workshop were summarized as follows:

- To develop and clarify further the concept of tribal leaders' forum in the South Sudan with the assistance of African and international experts;
- To address the fears and concerns of those critical towards such a forum;
- To mobilize and structure international support for the project;
- To encourage and assist the South Sudanese in its implementation.

In our lifetimes, in Africa in the post-colonial experience, right from the onset of the period of independence, there has been a tendency to suppress culture and ethnic diversity in the ostensible favour of national unity. What we have seen in the 50-odd years of this experience is that these efforts have hardly managed to entrench unity or suppress ethnic feeling. This experience includes the tensions which opened the way to the Nigerian Civil War in the 60s and the secession attempt of the Igbo in Biafra; the Ewe secessionist movement which followed the division of Togoland and the incorporation of British Togoland into pre-independence Ghana under the auspices of the United Nations; the simmering tensions between Akan and Ewe in Ghana; the Northern minorities and the Southerners in Ghana, the Northern nationalities and the South-west in the Cameroon; the Fang and the non-Fang in Gabon; the Ovimbundu and the Bakongo in Angola; the constantly fissiparous tendencies in the Congo; the Lendu / Hima divide, the Luo,

Kalengin, Kikuyu triangle of tensions in Kenya, the Masai Kikuyu in Kenya, the Hutu Tutsi divide in Rwanda and Burundi, allegations of Xhosa-nostra in South Africa to explain the dominance of the Xhosa in the African nationalist front, the problems in the Casamance (Senegal), the Liberian ethnic tensions and the closely similar Sierra Leonean situation, plus more all go to point out that firstly, ethnic diversity and possible tensions are not exclusive to any single country in Africa. Even in relatively homogenous ethnic societies like Somalia and Lesotho, there are still possible ethnic fissures in the body politic. In the case of Somalia, this is manifested along lines of clanship and in Lesotho it comes out as putative cleavages between the Bafokeng clan and the Bakwena clan. In Namibia, one often hears of tensions between the Ovambo and some of the demographically lesser nationalities. In the contemporary tensions in the Ivory Coast ethnicity has become a potentially serious fault-line. In Chad, the north and the south co-exist precariously. In Ethiopia, nationality tensions have been, in part, responsible for the tensions we have seen since the end of the Haile Selassie era.

What all this goes to show is the following; it is not possible to sweep ethnic realities in Africa under the carpet with the justification that they are expressions of tribalism and, like the proverbial ostrich, pretend in the name of national unity that they will vanish forever. It is rather better to acknowledge these cultural differences and give them democratic expression, celebrate them democratically and let people live in co-existential diversity in which there is both shared and interpenetrative cultural space and diverse cultural space for different ethno-cultural groups. Tolerance is a key value for this.

In recent years Uganda has made some limited progress in this respect. The strengthening of the Ugandan kingdoms has been recognizably beneficial for ethnic relations in the South of the country. Political solutions in the North are long overdue.

Most Africans on the continent live in tradition-bound communities in which age-old cultural values and behavioural patterns govern their everyday lives. These values supervise and socially control behaviour and define their being as Africans in their everyday lives. Overwhelmingly, these communities are rural and most people hardly ever travel outside their ethno-linguist world or beyond linguistic communities familiar to them. In this sense most rural Africans are ethno-linguistically and culturally localized and the recognizable solidarities, which guide their lives are ethno-culturally fairly circumscribed. This is the cultural world of the majority of Africans. They are generally tolerant communities and anthropologically invariably have interpenetrative and joking relations with their neighbours. Tensions arise when the leadership of these communities or the elites exploit ethno-cultural differences in order to invariably gain access to resources and other benefits. Thus, it is not ethnicity *per se* which causes conflicts and tensions, but rather, the use to which they are put by rival elites. Southern Sudan consists

quintessentially of tradition-bound African ethno-linguistic and cultural groups. The area is overwhelmingly rural. Cultural affinities are strong and maintain intense socializational solidarities on the African people. It is hardly possible to socially order the society without recourse to tradition and cultural values and it is necessary to recognize values, which have held the societies together in spite of the extended ravages of war. Indeed, Africans have been able to resist Arabization on the basis of their cultural values and realities. If peace is to remain and be sustained in the Southern Sudan it is necessary for Africans to be empowered with their cultural belongings; what they know and what they have. The House of Nationalities is a brilliant idea of how to recognize the cultural diversity, the linguistic variation and the ethnic affinities which exist on the ground and which order and socially control the lives of the people. It will enable the Africans of the Southern Sudan to consult, build, share cultural space and provide a forum to discuss issues, which impinge on their realities as historical and cultural entities. The House of Nationalities would meaningfully strengthen social order at the community and village level. It will serve as a bridge between the people and other societal superstructures. The House of Nationalities should not be conceived as a challenge to democracy but rather as a complement to democratic institutionalization. It will protect Africans against Arabization and cultural subjugation.

In the past, in my experience of the Southern Sudan in the early 80s, the elites were able to exploit ethnic differences in order to gain and maintain posts, and the successive Khartoum regimes have been able to adeptly exploit ethnic differences through the Southern elites. The House of Nationalities will help to protect the Southern Sudan against such tendencies in the future. Customary usages of a judicial kind, land adjudication issues, conflict resolution at the macro and micro level, and the dispensation of goods and services would be meaningfully mediated by the House of Nationalities. Thus, using the age-old institutions the House of Nationalities should provide a sure-footed institutional basis for building a new democratic society in the Southern Sudan

The Role of Traditional and Modern Practices in State Construction in South Sudan

The Nature and Danger of Fundamentalisms

We, the peoples of the Horn of Africa, have experienced first hand the tragic consequences of conflicts resulting from clashes between opposing fundamentalisms. Fundamentalism arises when choices confronting society are presumed to be between two irreconcilable options. The implication of this presumption is as self-evident as it is catastrophic. The disputes concerning the conflicting binary choices routinely motivate the adoption of another presumption with devastating implications: imposing of one of these choices requires subordinating those opposed to it or even their total eradication.

Religious fundamentalism lends itself best to this neat division between its "saved" supporters and its "damned" opponents for the simple reason that it draws on the premise that there is only one truth or one true faith. We are all painfully acquainted with the devastating consequences of this mindset and hence I will not waste your time by going over it. Our pre-occupation with only the religious variety of fundamentalism worries me, however, for it may allow other types to escape our attention. Drawing your attention to one particular form of fundamentalism that is rarely recognized is the aim of my presentation.

My topic thus is another manifestation of fundamentalism in the form of modernization. Modernizing fundamentalism started enjoying the upper in Africa starting in the 1900s due to one specific reason. Educated elements from then on were instructed to believe that African traditional institutions and practices "are, in their character, darkness and depravity, and in their effects, only evil and evil continually" (Davidson 1992: 43). This form of indoctrination remained in force in the period leading up to independence when "an ever-widening conflict of sympathy and purpose [developed] between the old traditionalists, standing for the resurrection of precolonial powers and prerogatives, and new nationalists for whom the old powers and prerogatives had no more value, but were obstructions to modernizing progress" (Davidson 1992: 73). The victory of the modernizing fundamentalists at the time of independence led to the ironic expectation that "Africa would be free: except, of course, in terms of political and literate culture, Africa would cease to be Africa" (Davidson 1992: 38). Behind this irony lurked the modernizing elite's tacit or explicit aspiration to transform African peoples into English, French, or Portuguese speaking nations.

The modernizing fundamentalists thus simply presumed that forging culturally homogeneous modern African nations would succeed only by de-Africanizing traditional society. We, the peoples of the Horn of Africa, share with other peoples of our continent the predicament of being subjected to the modernizing fundamentalists' de-Africanization agenda. However, our experience is unique in one particular respect. In our case, dominant groups claiming supremacy on the basis of their racial, religious, and nationality attributes led the de-Africanization process and implemented it in a peculiar fashion. They exempted themselves from de-Africanization due to their presumed non-African origins but employed it as a rationale for erasing the identities of the other more authentic African peoples under their domination. This had the implication of enabling the dominant groups' modernizing fundamentalism to operate side by side with its manifestations in the form of racial, religious, and national superiority. Consequently, they operate under the conviction that the traditional institutions and practices of these subordinate peoples have no positive role in solving social and political problems. However, are there instances in which our peoples' traditional approaches to problem solving have proven very effective?

I could cite many examples of such instances, but I will mention only one. I belong to the Oromo nation whose homeland stretches from close to the Sudan border to the Ogaden and from north of the Ethiopian capital to the Kenyan border. The Borana branch of the Oromos inhabits an area straddling the Kenya-Ethiopia boundary and ekes out a very meagre existence as pastoralists. The Borana and their neighbouring pastoralist groups started experiencing unusually severe periods of drought from mid-1980s onwards. Repeated drought reduced available pasture and water only to what is found in Borana homeland, as the result of which the Borana found themselves in conflict with many of their neighbours. Two such groups decided to send a delegation to meet with Borana elders in 1993 to find a more peaceful way out. After these early contacts made some progress, Borana elders suggested the convening of the representatives of all other stakeholders. This culminated in assembling representatives of 14 pastoralist groups, at which an arrangement acceptable to all of them was worked out (Suliman 1999: 288-90). The wisdom of Borana elders is simple but very important: the desperation and insecurity of one's neighbours could endanger one's security. I cite this example in order to motivate you to identify and tap into the effectiveness of your peoples' traditional approaches to problem solving.

Let me mention one very important presumption that stands in the way of identifying such positive aspects of our peoples' traditions. This is the presumption that African traditional political entities were either despotic or chaotic. Democracy in particular is considered alien to Africans who thus need coaching by Westerners or Western educated individuals. I am of the conviction, however, that democratic practices are widespread throughout traditional Africa. For example, the Oromo people used to practice a sophisticated democratic system in which they elect their leaders every eight years until they were conquered by northern Ethiopians at the end of the nineteenth century. And it is the survival of this legacy among the Borana that allowed them to arrive at the just arrangement mentioned earlier. The system survived best among the Borana because as pastoralists they were largely ignored by the conquerors.

The manner by which Borana deliberations commence and progress contrasts with the winner-take-all approach so closely associated with modern democratic practices. Borana deliberations begin with the presiding officer instructing participants to avoid argumentative and confrontational speech. He advises them: "Do not look for the worst in what others have said in order to undermine their position and win an argument; look for the best they have to offer, so as to find a common ground" (Legesse 2000: 214). Finding a common ground in order to achieve peace is thus the ultimate purpose and not the winning of the debate. I am mentioning this African approach to the conduct and end result of debates in order to encourage you to take a fresh look at your own peoples' traditional practices so as to identify their constructive aspects.

We can identify and employ the positive aspects of our peoples' traditional institutions and practices in order to structure and anchor our common states only under one condition. We should give up the agenda of cultural and linguistic homogenization. Only then can our common state institutions recognize and protect the prevailing cultural diversity of our peoples. The recognition of diversity is now actually a rising trend since it is increasingly acknowledged that the "legitimacy of the state and its related social, cultural and political institutions" can be guaranteed only if "the core features of citizens' identity are both recognised by the state [and also made] recognizable in the state" (O'Leary 1999: 92). The state anchors itself in the diverse peoples inhabiting its territory and thus becomes more stable if the various peoples see themselves reflected in the image of the state.

For the past so many decades we have exerted our energy towards moulding, hammering, and battering traditional African societies with the aim of fitting them into a preconceived state form. I believe our failed experiences should encourage us to consider the alternative; the alternative of constructing the state around existing social groups and in consultation with them. To be more specific the House of Nationalities could serves as the venue for such a consultation.

Tribalism and Nationalism
While we are looking at this issue of allowing diversity to be incorporated in the state and its portrayal, let me bring up one practice that is widespread in Africa. As you all know, African traditional societies are commonly called tribes and harnessing their solidarity is routinely referred to as practicing tribalism. Words and deeds have normally been at loggerheads in the behaviour of educated Africans where they concern tribalism. We, educated Africans, are as vociferous in denouncing tribalism as we are hypocritical in practising it when it serves our purposes. A Somali scholar puts this mismatch between words and deeds as follows: "it is hard to find a Somali politician who would feel free enough to declare openly and without qualms that his loyalty is, first and foremost, to his clan; on the other hand it is equally hard to find one who would place the interests of the nation above those of the clan, or who would act politically in a way independent of clan affiliation." None of us would be averse to benefiting from tribalism although we are very vocal in denouncing it. Leaders in particular have often driven the "tribalism" of their opposition underground while practising their own variety without shame or reservation. This is one of the factors that put Somalia on the course that resulted in the

total disintegration of both society and the state. What I am saying is this: we should not drive underground the inevitable tapping into traditional solidarity but bring it into the open, institutionalize it and channel it in a positive direction.

Modernizing fundamentalists have hypocritically targeted for eradication the traditions of other societies while openly working to celebrate and preserve their own in the Horn of Africa. They have used the agenda of homogenization as the justification for their aspiration to construct culturally and linguistically homogeneous African nations on the graves of entities called tribes. The underlying premise hence is the conviction that African traditional structures and practices are irreconcilable with modern ones. This is what I now completely disagree with for it reflects an assumption that these traditional structures and practices do not deserve recognition as being part of humanity's experience.

My firm stand is that both the traditional and modern state practices and institutions have to work in concert. Our very survival in fact depends on achieving this balance in our willingness to respect both tradition and modernity. We cannot expect to survive by cutting ourselves off from modern structures and practices operating at the global stage. Similarly we cannot expect to thrive by totally alienating ourselves from practices and structures handed down to us by our ancestors. What is the consequence of the reconciliation between the traditional and modern in conceptualizing our new state structures and practices?

This balancing of the modern and traditional has two interdependent positive consequences, the way I see it. It enables the states to simultaneously connect with the state system at the global sphere and to also extend their roots into the very soil on which they stand. I believe African states cannot operate with confidence and legitimacy at the global stage if they are not rooted in grassroots communities. And they cannot sufficiently serve the interests of these grassroots communities unless they connect and interact with the modern global forces. This is the general image that I propose as the starting point for your deliberation on how to root the state in the South Sudan in grassroots communities at one end and project it into the global sphere at the other end. The specifics need to be worked out by you who are better acquainted with the reality prevailing in your society and region of Africa

We should hence reject that the choice is between either the modern or the traditional. Instead we should tap into and employ the positive and applicable aspects of both. State institutions should hence reflect the positive aspects of both the traditional and the modern. How can the House of Nationalities serve such a role? It can serve as the repository of traditional practices and know-how. What possible roles can it have? It can, for example, serve as an additional channel of communication between the central state institutions and grassroots communities. It can also serve as an additional venue of deliberation on issues involving relations between nationalities. The modern sector may reflect participation in political life on individual basis while the House of Nationalities may serve the purpose of giving voice to traditional groups. All of this requires an intricate balancing act which can only be polished by conducting routine assessments in order to fine tune structures and practices. If you succeed in this enterprise you will make an important contribution to Africa. And I wish you success.

References

Davidson, Basil (1992). The Black Man's Burden: Africa and the Curse of the Nation-State. London: James Currey.

Legesse, Asmarom (2000). Oromo Democracy: An Indigenous African Political System. Lawrenceville, NJ: Red Sea Press.

O'Leary, Damian (1999). "Cultural Identity and Constitutional Reform: The Challenge of Northern Ireland." In P. J. Hanafin and M. S. Williams (eds.), Identity, Rights and Constitutional Transformation. Aldershot: Ashgate, pp. 89-110.

Suliman, Mohammed (1999). "Conflict Resolution among the Borana and the Fur: Similar Features and Different Outcomes." In Mohammed Suliman (ed.), Ecology, Politics and Violent Conflict. London: Zed Books, pp. 289-90

A Draft Paper Outline

Tribal Conferences and Conflict Resolution Experiences Under British and Sudanese Rule
Khalid Ali El Amin

Introduction

The British colonial rule in Sudan sometimes exhibits aspects of governance, which despite differences in time and context, could provide useful lessons for present day politicians and administrators. One area of policy experience from which lessons could be drawn is the way in which modern government deals and interacts with communities and societies that are traditional in structure and culture. Of particular relevance to modern government and traditional structures is the adoption of Tribal Conferences based on the indigenous mediation mechanism known as Agaweed. The British also innovated Annual Tribal Conferences based on local structures and culture to prevent and resolve conflict and maintain peace among tribes. Since their introduction by the British (both Tirbal Conferences and Annual Tribal Conferences in the 1920s and to the present day, they have served as a means of achieving in Sudan's countryside with different degrees of success during colonial and post colonial periods.

Tribal Conferences, which are based on the Sudanese mediation tradition of Agaweed, will be examined first under British rule and early Sudanese governments. The second phase, since the 1970s, in which Tribal Conferences have been changed significantly (into Inter-Tribal Reconciliation Conferences) will be examined next. The Third Part deals with Annual Tribal Conferences, a British innovation also based on tradition, and discuss their role in conflict early warning, prevention, management and resolution, under British rule. Annual Tribal Conferences under Sudanese governments since the 1970s will be sketched in the fourth part. The outline of the paper winds up with some conclusions.

Tribal Conferences under British Rule

And Early Sudanese Governments

To resolve conflicts between tribes the British adopted the indigenous Agaweed form of conflict resolution mechanism, with some slight modifications to turn it into Tribal Conferences. What the British modified is that mediators in inter-tribal conflicts are the leaders or *Nazirs* of other neighbouring tribes not party to the dispute (instead of men of wisdom from within the community) in the presence of some British officials[1].

Agaweed in Arabic means mediators and in this context it implies one form of conflict resolution adopted in many parts of the Sudan to restore peace between conflicting

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[1] Normally these are the concerned District Commissioners.

resolution adopted in many parts of the Sudan to restore peace between conflicting parties. Socially the party that does not accept the Agaweed verdict is not looked upon favourably by the local community. After understanding the two parties positions, they discuss among themselves work out strategy of how to approach the two parties. They divide themselves into two groups and negotiate with each party separately. Through patience and step by step negotiations all parties reach a consensus and reconciliation. In the final meeting the Agaweed announce their decisions as a resolution to the conflict. According to tradition both parties abide by the agreement. In most cases the agreement normally includes compensation for damages where one party, as a result of the dispute, suffers losses. The Agaweed proved to be a very effective mediation mechanism for resolving conflicts between groups (sub-tribal units of clan, lineage and extended family). Cultural traditions of accepting the Agaweed final verdict help the Agaweed mediation efforts. The Agaweed mechanism functions bottom-up and members of the Agaweed are drawn from amongst community members. They understand community culture, traditions, customs and values and apply it well to conflict resolution. In many cases the Agaweed intervention results in forgiveness and reconciliation.

During the British rule the Tribal Conference, when convened to resolve a tribal conflict, was a small group of powerful community leaders (tribal leaders) with very strong grassroots relationship. During the negotiations the two leaders representing the two tribes party to the dispute return to their tribesmen (normally tribal leaders of lower rank) who would be outside the conference hall for consultation and negotiations. Sub-tribal leaders normally consult with their rank and file tribal folks. Through several rounds of negotiations, side talks and consultations between tribal leaders and their tribesmen the final agreement reached is a result of consent of both parties. It is an agreement endorsed by the grassroots who are aware of its details through communication between their middle rank tribal leaders and their representative (the *Nazir*) at the conference table.

The British preserved the Agaweed mechanism and the way it functions and did not intervene in the negotiations or the deliberations of representatives at the tribal conferences In addition, tribal leaders who attended these conferences as Agaweed did have full powers and were not pressurised to reach solutions. Discussion and deliberations were allowed to proceed freely and agreements were reached by consensus according to tradition[1]. Although conformity and commitment to implement the agreement is imposed and necessitated by tradition, the presence of the colonial government officials is to guarantee that an agreement is implemented.

Because grassroots are involved and consulted during the negotiations together with the respect tribal leaders' commanded, decisions are respected and implemented. This is one important reason why these Tribal Conferences derived from the Agaweed were a remarkable success in solving many inter-tribal conflicts during British rule and early post independence period.

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[1] District Commissioners used to attend, but as observers and like other notables who also attend were there to help, if government assistance was needed.

Tribal Conferences Post 1970 (Inter-Tribal Reconciliation Conferences)

This Agaweed form of conflict resolution, which was developed by the British into tribal conferences, have recently been made into an ineffective a semi-formal *ad hoc* organisation called Inter-tribal Reconciliation Conferences[1]. As will be seen below tribal conferences, which have functioned so well in the past, have recently repeatedly failed to resolve many serious tribal conflicts that have devastated Sudan during the last few decades; particularly in Darfur.

The structure of Tribal Conferences has been modified to incorporate more tribal leaders, notables, representatives of relevant government bodies and above all central government top officials sometimes including the vice-president, a number of ministers, presidential aides and consultants.

A delegation representing each of the two tribes party to the conflict are also invited. Some specialised committees are formed to collect information, study specific relevant technical issues and provide recommendations. Then one representative from each delegation of the two tribes party to conflict addresses the conference, reading from a prepared text, citing the case of his tribe.

An Inter-Tribal Reconciliation Conference is normally convened when a serious tribal conflict erupts. When convened to devise a resolution to a conflict, it considers and discusses different issues of relevance to the conflict at hand. The issues differ from one conference to another according to the relevance of problems and issues involved in the settlement of each tribal conflict a conference is called upon to deal with. Land, access to water and water yards, corridors for pastoralist issues, possession of firearms as well as tribal political offices, are among the common issues recently figured prominently in tribal reconciliation conferences.

As the issues involved in inter-tribal conflicts are very complex, the number of those convening is too large (300) and the conference takes four to five days, not all members of the conference do take part in the deliberations. In addition the presence of top government officials exerts direct and indirect pressure on the delegates of the conflicting tribes. The conference ends up with the announcement of the final decisions and recommendations[2], which are reached without discussing the details.

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[1] Tribal Reconciliation Conferences have emerged out of Tribal Conferences (has to be distinguished from Annual Tribal Conferences) to settle disputes between two conflicting tribes.

[2] Final decisions are not reached through consultation and consent but through a lot of pressure and arm twisting. Decisions are obligatory to the two parties in conflict to abide by. Recommendations are suggestions for the government to carry out to facilitate conformity to the agreement and the sustain peace

they have already signed at the start of the conference. Although the Agaweed consult with the two parties, they mostly endorse the recommendations of specialised committees, with some slight modifications. These are finally adopted as the conference decisions and recommendations.

The conference final decisions and recommendations <u>might not</u> be convincing to the representatives of the two tribes in conflict but they are still accepted in response to government overt and covert pressure. The mere presence of this parade of top government officials is sufficient to press the representatives of both tribes not to express their views, particularly under oppressive governments, which could be considered dissent. Acceptance of decisions is to conform with their deputation to the Agaweed and also a response to the government leverage.

The lack of grassroots participation is one major contributory factor to the failure of Tribal Reconciliation Conferences. Grassroots neither understand the agreement nor in most cases agree to it. In the hurry to reach an agreement, implicitly drawn on government terms, much grassroots concerns are left out and it is what is left out that ignites the conflict once again. Subsequently, the two parties see the conference from the viewpoint of loss and gains rather than compromise and reconciliation. The party that feels or perceives itself to lose would find any excuse as an opportunity to let itself free of the decisions.

The inflation of the conference to include a large number of delegates does not allow discussion of details that matter most to the grassroots. The time is normally too short for members of the two disputing parties to express and voice grassroots' views and concerns; in seeing the forest the sight of the trees is lost and so is grassroots' consent.

Although heavy central government involvement in tribal reconciliation conferences partly shows concern over the security threat tribal conflicts pose, yet it has played a negative rather than a positive role in these conferences and thus limited their effectiveness. Tribal Reconciliation Conferences have as a consequence been turned from an adapted form of an indigenous conflict resolution mechanism that functions bottom-up into a semi-formal governmental *ad hoc* organisation that functions top-down. Government leverage substituted consultation, negotiation, traditional arbitration and grassroots active participation and consent. Although well-elaborated agreements signed by all parties decorated with the stamp and signatures of top government officials are produced and announced in practice that did not worth more than the paper on which these agreements are type-written. Soon after the conferences disbanded, tribal conflicts erupt once again as a testimony to the failure of a gathering which looks more of a political parade than a true Tribal Reconciliation Conference.

Annual Tribal Conferences as CPMR Mechanisms under British Rule And Early Sudanese Governments

Annual Tribal Conferences were an innovation initiated by the British and continued to function till the Native Administration started to decline by the 1960s. Annual Tribal Conferences were gatherings of tribal leaders for each province held annually

in different parts of the Sudan. In every province an annual conference attended by local tribal leaders of different ranks, which included some from different tribes, was convened annually in the past. Leaders used to discuss conflict and friction between tribes for the previous year resolve current problems, which could lead to conflict. But most importantly tribal leaders at the conference exchange information on issues of common concern likely to create tribal friction in the following year[1]. Precautionary measures are taken to avoid and prevent inter and intra-tribal interaction that could lead to the eruption of such conflicts. Plans are also drawn to manage and resolve such conflicts when they occur.

The most important of these annual tribal conferences held by local administrators and tribal leaders was Safaha's which lies on the two banks of Bahel Arab river forming a bridge between the Dinka in the South and Reziegat tribe in the North. Safaha is thus a meeting place between North and South, between Arab tribes of the North and the Dinka tribes of the South. Administrators and local tribal Dinka and Arab leaders convene at Safaha annually to conduct discussion and consultation on issues of common concern. As any other annual tribal conference, issues and problems that might disrupt relations between the two sides are discussed. Issues and problems for the previous year reviewed, current problems discussed and resolved. During the conference period people from both sides gather in Safaha in great numbers, both Dinka and Arab to sing and dance[2] while leaders were in continuous session.

Annual Tribal Conferences (The Tribal System Conference) 1995

Since the 1970s Safaha and other annual tribal conferences ceased to function after the dissolution of the Native Administration and the decline of tribal leaders' political position. The government has initiated the Tribal System Conference as a substitute in 1995. The Tribal System Conference, which is a gathering of all Sudanese tribal leaders, is the former Annual Tribal Conference reconstituted and renamed. The aims of the conference as declared by the government include getting the leaders of different Sudanese tribes to come together, know each other and exchange experiences. Experts on different relevant issues address the conference and the presentation of cultural activities of different tribes including, folklore songs, dances and exhibitions of handicrafts[3]. The Tribal System Conference was a failure and held only once; in 1995.

Tribal leaders, participants in the Conference did not discuss particular issues or come up with specific decisions or recommendations

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[1] For example changes in rainfall patterns and the expected associated change in pastoralist movement are brought to the attention of the leaders of tribes likely to be affected by such change.

[2] Safaha could be viewed as a true grassroots peace festival.

[3] A joint Dinka Arab court was established to function on both sides of Safaha. The Joint Court is composed of two sub-courts; the Sultan of the Dinka, Reing Lwal heads the Dinka sub-court and a Reziegat Omda, Mohammed Salim Abu Kalam heads the Arab sub-court. Each of the sub-courts forming the Joint Court function separately on both sides of the river to deal with Dinka and Arab cases and problems respectively. However, when there is a case of dispute involving both Arab and Dinka, the two sub-courts form one joint court to look into the case.

the conference itself; its objectives, composition and the dominance of the government. Unlike the former Annual Tribal Conference no tangible results were expected from it. The composition was also different from the former Annual Tribal Conference that was devised by the British. Instead of tribal leaders in a particular province coming together to discuss and resolve specific problems related to that locality as was the case in the Annual Tribal conferences, The Tribal System Conference (1995) was a gathering of tribal leaders from all over the Sudan. This together with heavy government involvement, the gathering was turned into a semi-governmental *ad hoc* body losing its former independence. Government intervention has been motivated by concerns to achieve political ends rather maintain inter-tribal peace. All these factors inhibited the gathering from exercising former conflict early warning, prevention, management and resolution functions.

Past experience has shown that Annual Tribal Conferences held in different provinces of the Sudan were effective conflict early warning, prevention, management and resolution mechanisms during British rule and early post independence period. The infrequent occurrence of tribal conflicts, their small-scale and the relatively insignificant consequences of past tribal conflicts could partly be regarded as an evidence of the success of Annual Tribal Conferences during British rule. When it has recently been reconstituted as the Tribal System Conference, the mechanism has failed to function as an effective conflict prevention, management and resolution mechanism.

Some of the main reasons for the failure of annual tribal leaders' gathering are the following:

The change in the position of tribal leaders and the gradual erosion of their power base within their communities;

The change in the structure and composition of annual tribal conference from being composed of tribal leaders of localities (provinces) to a gathering that includes all tribal leaders of the Sudan.

The heavy politicisation of the conference and intensive government involvement in the preparation for it and the conduct of its affairs have all reoriented the tribal gathering from its original local specific problems to those of government policy and strategy;

The reformulation of these annual tribal gathering, which used in the past to deal with specific issues of tribal conflict and peace, into a means of indoctrination and co-optation of local leadership.

Some Conclusions
The adoption of Agaweed in the form of Tribal Conferences not only manifests a practical approach to effective governance by incorporating indigenous social and political structures into modern government but also the wisdom of appreciating indigenous cultural values, social norms and mechanisms that have maintained

stability without central government intervention for centuries.

The experience also shows traditional culture and structures have the capacity to maintain, administer, resolve conflict and sustain peace amongst both within and between communities.

The success of tribal conferences could mainly be attributed to minimal government intervention, the power tribal leaders enjoyed, grassroots involvement and participation, lean effective structure and the resolution of conflicts on the basis of consent and reconciliation.

Its successor "Inter-Tribal Reconciliation conferences" have involved heavy government intervention, large inappropriate membership, and does not take enough time to resolve conflicts. The lack of participation of grassroots and the ever present government pressure, since the 1970s, mere announcements that do little to quell grievance and tension at the grassroots level. Despite numerous inter-tribal reconciliation conferences, sustainable inter-tribal peace has thus become unattainable.

Similar conclusion could be drawn from the experience of Annual Tribal Conferences during British rule and post independence governments. But the most important

References

El Buni, A, <u>Traditional Elite-State Relations: Central Sudan Area</u>, (in Arabic),Local System Conference, Khartoum, 1995.

El Hardalo. A.A, <u>Preliminary Notes on Civil Society in Sudan</u>, (in Arabic), Mahawir, No.I, July 1998.

El Tigani Mustafa, <u>The Causes of Tribal Conflicts</u> (in Arabic), Symposium on Perspectives on Tribal Conflicts in Sudan, University of Khartoum, Institute of African and Asian Studies, Khartoum, 1998.

Fuad Eid, <u>Tribal Conflicts: Roots of Explosion and How could be Contained</u>, (in Arabic), Local System Conference, Khartoum, 1995.

Hassan Ibrahim Ali Fadul, <u>Impact of Tribal C</u>onflict, A Symposium on Perspectives on Tribal Conflicts in Sudan, University of Khartoum, African and Asian Studies, Khartoum, 1998.

Sudan News Agency, <u>National Salvation Revolution</u> (1989-1999), A Decade of Accomplishments, Khartoum, July 1999.

Louis-Mari Nindorera, <u>Keepers of Peace: Reviving the Tradition of Bashinganthe in Burundi</u>, Online Journal of Peace and Conflict Resolution, 1.4.

Manzoul Adalla, <u>Tribes, Tribalism and Conflict in Sudan: The Dilemma of Concepts and Policies</u>, Symposium on Perspectives on Tribal Conflicts in Sudan, University of Khartoum, African and Asian Studies, Khartoum, 1998.

Ministry of Social Planning, <u>A Memo on the Conference of the Local System</u>, (in Arabic), 1995.

Mohamed El Amin Khaliefa, <u>Peace Steps in Ten Years, 1989-1999, Documents and Facts</u>, Sudan Press, Khartoum, 2000.

Mohamed Hassan Ahmed, <u>Native Admin</u>istration, Conference on the Local System, Khartoum, 1995.

Neil Funk-Unrau, "Glen Fisher: The Mindset Factors in Ethnic Conflict: A cross-cultural Agenda, Intercultural Press, 1998, <u>A Review article</u>, Online Journal Of Peace and conflict resolution, 1.5.

North Darfur State, <u>The Powers of Local administration Leaders: Routes of Passage and </u>Pasture, El Fashir, 1994.

North Darfur State, <u>Security Problems in North Darfur</u>, (in Arabic), Local Administration Conference, El Fashir, May 1994.

Sharaf El Dein El Amin, <u>Some consequences of Tribal Conflicts in Sudan</u>, (in Arabic), Paper presented to a Symposium on "Perspectives on Tribal Conflicts in Sudan" , University of Khartoum, African and Asian Studies, Khartoum, 1998.
Sudan Liberation Army, MANIFESTO, July 31st, 1983.

West Darfur State, <u>Joint Comprehensive report for the Evaluation of Damage in the January 1999 Events in the State</u>, (in Arabic), Internal Report, The Ministry of Social and Cultural Affairs, West Darfur State, Guneina, May 1999.

West Darfur State, <u>The Conditions of the Sudanese Displaced in Ch</u>ad, (in Arabic) Internal Report, Guneina, 1999.

West Darfur State, <u>Laws of West Darfur State, The Law Organising Local Administration for 1999</u>, (in Arabic), Guneina, 1999.

West Darfur State, <u>Conference on Comprehensive Security and Peaceful Coexistence</u>, (in Arabic), Recommendations, Guneina, Nov. 1997.

Yousif Fadul Hassan, <u>Tribal Structure in the Sudan of the Nile Valley: an Analytical Perspective</u>, (in Arabic), Paper presented to the Conference on the Local System, Khartoum, 1995.

Various Documents on Tribal Conferences

Inter-Tribal Masaliet-Arab Tribes Reconciliation Conference, May-June 1996
- Masaliet Address letter to the Conference
- Arab tribes Address letter to the Conference
- Members of the Delegations of the two sides
- List of losses and damages
- members of the agaweed group
- Resolutions
- General recommendations

Inter-Tribal Masaliet-Arab Tribes Reconciliation Conference, May-June 1999

- Members of the Delegations of the two sides
- List of losses and damages
- members of the agaweed group
- Resolutions
- General recommendations

Personal Interviews

1. Fuad Eid, Former Senior Local Government Officer, Former Central Agency for tribal Affairs, well-experienced in Conflict Resolution and Conflict Management and the one of the main sources on Darfur, January 27, April 3rd, April 22nd , May 8th , 2001.

2. Abdel Gadir Munim Mansour, Nazir of Hamar Tribe, Kordofan, April 12, 2001.

3. El Khier Abdel Rahim, senior Local government Officer, West Darfur, April 21, 2001.

4. Mahmoud Adam Daoud, Nyala University Staff member, Born and Living in West Darfur, May 2nd,2001. Also collected some additional data.

5. Ahmed Abdel Gadir Arbab, Former Governor of Darfur, April 23, 2001.

6. Idris Ibrahim Idris, Member of West Darfur Legislatve Council, April 9, 2001.

7. Aman Haroun, Senior Local Government Officer, North Darfur, March 20, 2001.

Southern Sudanese House of Nationalities: Operational and Procedural Issues

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What do we envisage to be the Terms of Reference, Operational and Procedural Guidelines for the projected House of Nationalities? A number of issues spring to mind under these considerations. These issues relate to questions of accreditation, competence, institutional stratification, routine and frequency of meetings, the routine of rotation of meeting places, the place and role of women and youth, internal electoral procedures and last, but not least, financial considerations.

With regard to all these considerations two factors or guiding principles are relevant. These are the principle of democracy, and the issue of demographics and demographic balances. Whatever we do the basis of legitimacy should be grounded on firm principles of democracy and democratic institutionalization. Closely allied to this, is the issue of population size of the constituencies which we want to represent. If these two principles are used indiscriminatively all cultural and national diversity can be represented according to their population strength. It is the only way to ensure that there is fairness in the distribution of power and authority within the forum. In the Background Paper we ask that,

> *Accreditation*: How are the representatives of the nationalities to be selected? Different nationalities may have different procedures. Who shall intervene in case of misuse or conflict of representation within one community? Is the list of about 90 communities an appropriate basis to start with? Since a tribal leaders' forum is a non-partisan institution, should leaders involved in active party-politics have to be excluded?

The only safe and politically responsible way of dealing with these issues is that all nationalities should be represented but that the strength of their representation, i.e. the number of their representatives should be a reflection of their population size. The constituency which votes these representatives should be mutually exclusive, in other words, members of the constituency cannot vote twice. One must not be able to vote as, for example, a Bari and at the same time a Mondari. Once the voters rolls have been composed each person must be identifiable to one nationality of his/her own choice and

vote within the constituency of that nationality. The list of about 90 communities is a good point of departure, but it needs to be revisited and scrutinized to ensure that it is comprehensive and does not allow any overlaps. It is my view that it is impractical to exclude party-politics from the nationality leader's forum (note that I do not say tribal leaders' forum, I say nationality leaders' forum). If it is a forum for chiefs, then it might be possible to exclude party-politics.

The Background Paper also says that,

> The forum was tentatively given the name of *House of Nationalities*, not House of Chiefs. The difference may seem minor, but some South Sudanese thought it was politically important to always remind its members that they represent the communities, and not the chiefs. This approach may also open the way for a more democratic selection of those who represent their nationality in the House. The name does not matter, and some South Sudanese call the forum already *al-Mazalla al-kawmiya*.

The above observation and the rationale on which it is based is very sound. It defines the forum as a platform for dealing with nationality issues and how they impinge on the social lives of people and communities and not necessarily a forum for Chiefs. If Chiefs seek representation on the forum they may possibly have to compete openly with all-comers. On the other hand, if it is meant to be a House of Chiefs, in the literal sense, then it must be that.

Our Background Paper also, with respect to *Competence* states that,

> *Competence*: a tribal leaders forum is expected to have mainly a consultative competence. Are there areas where a binding competence should be considered, beyond purely internal matters? Some issues of customary law?

The relevance of customary law should be acknowledged as a system of social control and social sanctions regulating social behaviour in culturally fairly homogenous tradition-bound communities. Most social behaviour is governed, in the minds of members of the communities by practices within the jurisdictional area of customary law and customary usage. The question we have to answer is that under whose specific authority should the dispensation of customary law be attributed? If it is the Chief or Headman or Lineage Head or Clan Head, can this person also be at the same time a representative of the *House of Nationalities*? This issue needs to be sorted out. There is need also for customary law to transit its institutional base in orality to literacy; i.e. customary law has to be written and codified so that it acquires statutory character and is not subject to idiosyncratic adjudication. Transparency in judgment and justice must not only be done, but must also been seen to be done, in clear and invariable ways.

With regards to the point that,

> If there are *different layers of tribal leaders' forums*, one on the national level of
> the South Sudan, another one on the level of the ten states (and possibly even on
> the local), what will be the relation between them?

There would appear to be wisdom in the consideration of different layers of tribal
leaders' forums. This issue would need to be given thorough consideration, especially
in as far as matters of competence, relevance and avoidance of conflict in competence
areas are concerned. Generally, issues of competence should define the different
layers, and the hierarchy in the layers should be premised upon superiority of layers,
as you move up the stratificational ladder.

With regard to frequency of meetings,

> *Frequency of meetings*: the more meetings are taking place, the bigger the risk that
> the members of the forum loose contact with their own community, and that they
> fail to assume their proper role at home. The traditional leaders conference
> suggested to have a meeting once a year at the level of the South Sudan as a whole,
> and twice a year at state level, with a duration of about 2-3 weeks each. Is that a
> realistic proposal?

It would seem that this reading of the situation and the proposal on the table is a
realistic one. But arguably some flexibility in the initial stages would be wise. A
firmer decision on the issue should be made after about six months of the life of the
House of Nationalities.

The question, in the Background Paper, of,

> *Rotation* of places for meetings: whether the meeting place of the tribal
> leaders' forum within the states of the South Sudan should rotate is an open
> question. As far as the annual meeting is concerned one can assume that a
> rotation among the different states would be politically important. The hosting
> community would also assume the chairmanship (like the European Council
> today).

This issue, it would appear, would be dependent on the availability of infrastructure,
support services and costs. Obviously, the greater the rotation the better the feeling of
ownership by all communities concerned. But in order to realize this, important
issues of resource allocation, infrastructure and costs will have to be considered.
These considerations would obviously have to be balanced against the benefits of
rotation.

The Background Paper also has this to say with regard to *Women and Youth,*

> Role and place of the *women* and the *youth*: how can a tribal leaders forum operate as an avenue for an institutionalized dialogue between the traditional leaders on the one hand, and the women and youth on the other and?

This is a very important dimension of this work of the leaders' forum. The institutionalization of dialogue between traditional leaders and youth and women will help in the highlighting of women and youth matters which are so important in the social life of communities. It will help also to decentralize and disaggregate issues which should not automatically be unilaterally handed to traditional leadership. It will provide a legitimate voice to these two constituencies in matters where divergent interest may compete for expression, discussion, and policy decision-making and implementation.

With regard to, (Background Paper)

> *Internal procedures of the forum*: how is the chairman being selected? Should there be a "committee" that organises and runs the meetings? Meetings of the forum would be chaired by its members, not by politicians.

It is difficult to firmly, at this point, state how the Chairperson (not Chairman, it could be a woman) should be selected. Clear guidelines have to be formulated for this. And in principle, the Chair should be elected, or selected and rotated.

The question of *Finance* is an important matter on which rests most of the considerations we have so far made. In the Background document it is stated that,

> *Financing*: after an initial period, the forum of the tribal leaders has to be financed by the South Sudan itself, without international support. On state level, the costs for two annual meetings should not be prohibitive, since there are only 10-20 nationalities to be represented. On the level of the South, the hosting nationality would have to bear quite some costs, but due to the rotation of places that would happen only once in a few decades.

Careful consideration will have to be given this matter. We have to realize that this institution is an important one for the consolidation of democratic practice and processes in the South Sudan. It is therefore in the interest of all who want to see the protection and consolidation of the cultural and social lives of the African communities in the Sudan to learn to put their money where their mouth is, and provide the finances necessary for the successful operation of this institution. Thank you.

Neuchâtel, April 16, 2005

The Debate on the House of Nationalities

Addressing the fears of the skeptics

by

Dr. Charles Saki Bakheit *

Introduction

History abounds with examples where good ideas often have to overcome many resistances before they finally see the light of day. To a certain extent, the concept of a formal forum for traditional leaders for Southern Sudan embarked on a similar journey since the seeds of the idea was planted in the Aberdare Country Club in the November of 2000. In one respect, it is important that the idea should be thoroughly scrutinized, understood, and the skeptics' concerns fully addressed, if the idea is to become accepted, and if its implementation is to succeed. It is only when an idea comes under intense camera, turned upside down, inside out, that its weakness as well as its hidden values are unmasked. In this respect, the roles of the critics and the skeptics should be appreciated in the ongoing debate.

The fears and objections to HoN

In the last two days we have been treated to very rich and informative talks, and passionate discussions on the concept of modern government and traditional structures, and how all these can be married in some way to suit the case of Southern Sudan. We have been feted on the role of traditional structures in other African countries, discussed how this can be applied to Southern Sudan. We have also addressed such issues as who indeed constitute traditional leaders, and touched the operational aspect of a forum for traditional leaders. Even the name has been put under the camera. In fact these excellent papers and the subsequent discussions have in one way or the other addressed most of the fears and concerns of many skeptics, to the extent that my task here has been made a lot easier. I am therefore going to run the risk of repeating much of what has already been said, in a brief and crisp way. The intention here is to summarize as much of the material as possible into one single document. The list of concerns is by no mean exhaustive, and

participants are welcome to add more to it. The aim here is not to demonize any particular groups or persons, but rather to get focused on specific and genuine areas of doubts.

It is most encouraging to learn that, as a result of several workshops, the southern women and youth have emerged as the avant-guard groups to embrace the concept of the HoN. They both perceive this forum as one of change and one that will offer them the opportunity to engage their traditional leaders in constructive and fruitful dialogue in a way never done before. This is a positive and very significant development for the HoN, because women in the society provide powerful driving force for societal change, while the youth will be inheriting the future leadership of the nation state. For even greater significance is what we have heard from the Deputy Chairman of the SPLM, the day before yesterday, that the movement has actually accepted the idea of a forum for the traditional leaders when the Chairman endorsed the recommendations made during the meeting of traditional leaders when they gathered recently in Newsite. Among the recommendations was one that specifically asked for such a forum. It is most significant in that, as the SPLM is the main player in the shaping of the next GOSS and its constitution, its endorsement is vital to the idea, To the movement I say that now that since the talk is almost over, we would like to see it walk the walk. There are still the problems of working on the details of interfacing such a forum with the modern structures of the state and operational issues, and some fine-tuning, but I believe, these can be achieved if we put our minds to them, without prejudice. Nonetheless, there are still skeptics, both in and outside the movement, whose concerns and fears need to be adequately addressed if the idea is to move a step towards implementation. It is therefore imperative that we address some of their concerns, and allay their fears. We now examine some of these concerns below.

1.   The HoN is a threat to the movement and a cover-up for the opposition against the movement.

This is a fear that may be harboured by some members of the movement. They believe it is dangerous to enhance the self-consciousness of ethnic communities,

which proved disastrous to southern unity in the past. They are concerned that some unhappy members in the movement may easily use such a forum to weaken it from within. They also fear it could be used by those in the opposition to undermine it

To all these, we can only appeal to those holding these views to show political maturity and not see conspiracy beneath every stone. The movement has already been able to convene conferences of traditional leaders, and have witnessed their tremendous wisdom, has heard from the traditional leaders themselves as recorded in their resolutions in their Kamuto declaration, and has witnessed their abilities in resolving conflicts between communities. Needless to say, some of these conflicts were caused by the politicians who were actually unable to resolve them. Things can only get better, and such forums can become more productive if they get constitutional legality and are regulated, and empowered with well-defined functions. The bigger risk and danger will be if this until now non-partisan institution is left unattended, unharnessed, and taken advantage of by some ill-intentioned groups.

1.   **The HoN is an obstacle to the building of a modern state.**
Some critics argue that the role of traditional leaders should not be brought together at either the state or the national level where they will be in direct competition with the GOSS, which may interfere with the national effort to develop and build a modern state. They argue that traditional leaders' role is irrelevant to the building of the modern state, and should be confined to their immediate communities, and whenever necessary to communities in conflict.

The process of modernization of the south cannot be carried out without the help of the traditional leaders. They will have to be brought on board and to play constructive roles in the process. We must bear in mind that the south is predominantly a rural community, with more than 80% of the population living in rural areas administered by these traditional leaders. The most effective way to get messages through to the grassroots is often through their traditional leaders, as exemplified by the recent gathering of

traditional leaders at the Newsite, to be briefed about the CPA. In this respect, the forum actually will become a very powerful agent of development and modernization, unless of course if modernization is only for the less than 20% urban dwellers. Besides, should a conflict develop between traditional community leaders and the modern elite, the forum provides a convenient platform to address and defuse it. As King Adongo eloquently put it yesterday: If areas are in conflict, we can,t talk of development.

1. **The HoN can only be looked at once the national (Southern) identity is built.**

It is also argued that the HoN will not help build a national identity. It will instead only create tribal/local mosaic of an identity. Moreover, small ethnic communities would be over-represented, and would be more interested in their narrow interest rather than that of the totality of the communities in the South.

Contrary to what the critics fear, the HoN may actually provide the opportunity to portray and blend the rich cultural diversity of the South, and is therefore going to be an important source of building a true southern Sudanese identity. The foundation of the identity of a people rests on their cultures and traditions, and it draws its texture and strength from them. No genuine southern identity can be built without the involvement of the traditional leaders, who are more or less the custodians of the cultures and traditions of the sixty plus ethnic communities in the south, big or small. Moreover, the worthiness of a culture or tradition should not be determined by the size of the ethnic group it comes from.

2. **The HoN is a counter power with no democratic legitimacy**

It is argued that the traditional leaders are not elected democratically, are often authoritarian, and are there by accident of birth. Hence, they have no legitimacy and their role should not be strengthened. Besides, the argument continuous, they will

monopolize power and prevent modern forces from expanding and penetrating their communities. Moreover, there is no need to spend our limited resources on an irrelevant project like the HoN. Such resources would be best used to solve more urgent problems such as those of environment and ecology, for instance.

My response to that is the HoN will have well defined and specific roles to play that will be enshrined in the constitution of the state. The roles, which will be confined to that of an advisory function can be restricted to areas where these leaders have knowledge and legitimacy, on issues of land, customary law, settlement of conflicts between communities and the judiciary, all to be spelled out in the constitution. Within this context, it is hard to see traditional leaders high-jacking the powers of nationally elected representatives and prevent modern forces from expanding.

The resources for the HoN will be well worth it, given the benefits that the forum will provide. At a fraction of the price, they will be able to prevent conflicts that may cost the country millions and many innocent lives. Moreover, the amount will be minuscule compared to all the benefits the elected members will be voting for themselves. As these traditional leaders will already be awing salaried government employees anyway, the state may need only pay them according to the number of sitting sessions or committee work they may have participated in, plus administrative overheads and other relevant allowances that will not break the nations coffers.
As regards their sometime authoritarian behavior, the forum can be used to check any such tendencies, make them more informed and enlightened.

1. The HoN will cause tribal tensions.

It is argued that, since the HoN will raise tribal consciousness, it will encourage ethnic competition and rivalry. Moreover, it is not possible to grant equal treatment to all 60 plus ethnic communities, since the size of the population of the bigger communities is at least 20 times that of some of the smaller ones. The HoN will tend to favour the smaller ethnic groups, and should be dabbed the "House of Minorities".

All cultures and communities deserve the same respect, and need the same protection. Besides some of these ethnic communities have sections that are recognized as distinct that would be represented as separate ethnic groups in their own right. This would give some of these big communities adequate representation. Furthermore, we must not forget that the HoN will be operating on a consensus basis, where the smaller communities can play important role of maintaining some balance.

With respect to competition, a healthy competition, under controlled environment, can be good for progress, self and community development.

We must remember that one of the injustices we have been fighting against is that of marginalization. Hence we should not also not be instrumental in passing the injustice of marginalization to the traditional leaders or marginalize our own cultures.

There are parallels between this form of representation and the representation of nations in the UN, or the representation of states in the senate where population size do not count, but without the powers these representatives have. The HoN aims at having ethnic communities treated as equals, irrespective of their population sizes and at uniting all the ethnic communities. The HoN will thus provide the communities with the forum to resolve any misunderstanding that may lead to tensions among them. Some of the most stable states in Africa do have such forums, while those states that have neglected to involve the traditional leaders of their different ethnic communities have had very bloody history of ethnic cleansing and ethnic tensions, instability and under-development.

1. **Democratically elected representatives to parliament should suffice in representing the interests of all groups in their constituencies.**

The HoN encourages double representation. What is it that, say, Belanda tribe should have which can only be guaranteed by direct representation in the HoN that a democratically elected member of parliament will not guarantee? Why should the basis representation in the HoN not be on groups sharing common cultures and traditions instead of on pure tribal labeling?

In response one can say that, the duties of a member of parliament covers a wide area, and the member may not be that well versed in customary law or, may have just a pedestrian knowledge of the cultures and traditions of the ethnic groups in his/her constituency. Moreover, certain constituencies such as the one I come from, may have several ethnic segments with distinct languages, cultures and traditions, which the representative cannot claim to know that well.

Furthermore, representatives in parliament are often very much occupied with party and national politics, and their visits to their constituencies are often one days wonders. The traditional leaders are often the first line of authority, and it is they who can be most effective in transforming their societies.

1. **Our various cultures and traditions in the south are often not in conformity with the rules of modern democratic practices and other norms of good governance.**

It is argued that our various cultures and traditions are only rich and functional within the borders of the respective ethnic communities. They lack universal appeal, and unless they are tested and proven to be in conformity with the requirements of modern society, they are not worth retaining.

My response to this argument is simple. Unless these cultures and traditions are given the chance of being tested there is no way we are ever going to know if they can stand the test of time or have universal appeal. Moreover, most of our communities have always operated by consensus, a solid democratic principle. Hence to claim that our cultures and traditions are not rooted in democratic values is not absolutely true. True that there are some customs and traditions that are no longer compatible with the times. It is precisely for this reason that the HoN can be of value, to be able to root out such anachronistic practices, while at the same time to blend the new with the old in a harmonious manner. Often laws that are passed to banish traditions that are incompatible with modern life, without the support of the traditional leaders become hard to implement. If the traditional

leaders are involved from the start in devising these laws, their successes would more guaranteed.

Last but not least, the idea of dismissing our cultures and traditions wholesale, is in itself very dangerous and disturbing. A people without culture are a lost people.

I end here with a quote from the HoN booklet, by Dr. Conradin Perner, which says "… the real assets of the Sudan are neither found in petrol-fields nor watercourses, but in its extraordinary cultural diversity". If we fail to capitalize on these assets, then we will lose everything.

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* This presentation was made at the conference on "Modern Government and Traditional Structures" that took place from April 14 – 16, 2005 in Neuchâtel (Switzerland)

"Ascertainment and Updating of
Customary Law Regimes in the Southern Sudan"

A proposal submitted by *the SPLM Steering Committee on Customary Law* of the
SPLM Secretariat for Legal Affairs and Constitutional Development /SOLA)
to the First Customary Law (CL) Work-Plan-Workshop (Dec.14th-Dec,16th,2004)

Background and Context

Customary Law **(CL)** and practice is a vital element of Southern Sudanese life. It is
the basis of all social organizations and the means to guide the regulation of
relationships. There are many CL regimes in south Sudan and these vary from place
to place but covers the whole region. It is these CL regimes that are most understood
by the people and their importance comes from their development in societies
formed long before foreigners arrived in the area and the modern state emerged. The
many CL systems in Sudan therefore have a long history and hold a deep attachment
for the people. Given this attachment and the way they have been affected by the
war but the crucial role they will play post war, CL is a theme that needs particular
attention and investment.

CL has become one of the main victims of the war. It has been interfered with and
undermined in many ways through the war period. There has been interference
from the military and from other power systems leading to a general disregard for
CL and its owners and custodians. This has especially affected the traditional
authorities – the chiefs and elders, and has led to many negative consequences –
particularly the loss of authority of traditional chiefs to control, locally, the youth and
therefore local conflict.

However interference started long before the war with the incoming of other peoples
and powers to colonize the Southern peoples and attempt to impose other
governance systems upon them. The Arab-Turko invasions in the early 1800s were a
major watershed followed by the Anglo-Egyptian colonial period, though in 1920, in
what is known as Milner Report, the said colonial powers realized the need to have
the tribal traditional structures and laws utilized in their system of governance.
Hence the Chief Courts Ordinance, 1931, which applied to the then three Southern
Provinces of Bahr el Ghazal, Equatoria and Upper Nile; and the Native Courts
Ordinance, 1932, which applied to the remaining six Northern Provinces. Also,
section 5(a) of the Civil Justice Ordinance, 1929, provided for the application of
customary law in the first place, and then Sharia law in the second place; i.e., section
5(b) of the same ordinance.

With the coming of independence things did not improve. The efforts made by the
Northern elites to impose Arabist and Islamic agendas on the south were an attempt
to subjugate the people through foreign systems – political and religious, and to
marginalize and even dispel the traditional CL systems. One of the main causes of

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the current Sudan conflict is the struggle to preserve identities and ensure respect for ethnic differences and practices. Each of these invasions in different ways has impacted CL in South Sudan. Custom, which used to be the main source of legislation in the Sudan, was relegated to a lower position and the Islamic Sharia was upgraded with its application not confined to personal matters of the Muslims, but, unfortunately, extended to the criminal sector.

When the war started again in 1983 the threat to the customs and traditions of the Southern people was an underlying cause that was worth fighting for. The 'liberation' struggle has encompassed the fight for dignity, self determination and respect for local cultures and values. The war, however, exacerbated these undermining processes as military necessities and the revolutionary governance overshadowed traditional authorities and practices.

Today, as peace approaches, there is increasing demand and recognition that these undermining influences need redressing and that there is need to revitalize CL. However whilst there is demand to restore the role of CL in the South, the exposure to modern ways has also led to the recognition that some aspects are no longer justifiable in the 21st century.

So the ascertainment, re-statement, review and reform of CL will not be an easy process. It will take time. It needs lots of consultation and careful analysis. It will involve lots of education on all sides – from the traditional side of modern human rights demands and from the modernizers, a listening and learning approach to understand the perspectives of the CL custodians and practitioners if change is to be understood and owned. This process needs to begin as soon as possible and will continue for a number of years.

Most CL regimes in South Sudan are not written down. Some has been – the Dinka through Wanh Alel and Nuer through Fangak processes. However in view of the fact that customary law is a dynamic law that change shape and content as societies move towards modernity and face realities of the day, these written regimes needs to be updated. Efforts by anthropologists - Evans-Pritchard, P.P.Howell, Wendy James, Sharon Hutchinson, Simon Harrigan, and legal scholars - Dr. Francis M.Deng, John Wuol Makec, amongst others - have over the years captured some of these CL systems. However, the vast majority of CL regimes, still, require substantial work to first ascertain and record them. If that is done, then the processes of review, reform and harmonization, where possible, of specific rules within specific CL regimes and across different CL regimes shall follow. As said this may take many years to complete.

Problem Statement and Analysis

The following stand as issues that justify the need to quickly start the ascertainment of various customary regimes in South Sudan:

1- There is a demand from the people for their CL systems to be restored to the centre of their governance system. How this will happen, given the incoming modern governance system, needs to be addressed. Where does it fit with the recently signed peace protocols between the SPLM and GoS and the levels of government identified there-in?

2- As a prerequisite to meet the people's demand as stated above and for the purposes of democracy and doing justice to every community, **there is a need to ascertain and record customary laws of all communities in South Sudan.**

3- There is need to harmonize within CL systems. For example, different practices and laws apply within the same Dinka tribe according to location and impact of the war. There is a need to harmonize within Dinka CL system before they can harmonize with other tribes with similar CL system.

4- Many people are expected to return soon. Some are already doing so. **There is a need to set things right so the returning IDPs and refugees can find the CL systems well based and capable of accommodating them.** Some of these people returning will come with new ideas brought from outside and through exposure to other systems. This may lead to confusion and conflict and other problems if the CL systems in the South are not firmly in place to manage this return.

5- There is need to fight negative practices in the CL systems. Many aspects are contrary to human rights, women's rights and child rights. This has to be corrected. Issues such as forced marriages, early marriages of underage girls, payment of women as compensation for life in homicide cases in some communities, and lack of inheritance and succession to property rights for women ...etc, all need to be reviewed. You can not make this correction unless you have ascertained various customs of the communities to establish how these issues stand in each system.

6- The issue of land tenure is another major issue, especially, when linked to returns. Present CL systems do not protect land from misappropriation by the State or by giant private enterprises. **There is a need for this protection, especially, post war.** Even without land grabbing, new ideas of individual land ownership versus common land ownership will lead to problems.
Hence the need to harmonize modern ideas and principles with traditional ones.

7- There are some areas of modern life which are not catered for, specifically, under CL. This can be reconciled but needs discussion and agreement.

8- There is a need to address the interface between CL and Statutory law.

9- There is need to discuss the role of Traditional authorities in the development of the modern state and how do the local government structures impact on the people's traditional structures and affect their social organizations.

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Expected Outputs:
- That most, if not all, customary law regimes in southern Sudan, Nuba Mountains and southern Blue Nile regions are ascertained and documented.
- That the few written/ codified CL regimes are updated/ amended.
- That **data base** shall be available for future research, review and development of customary law.
- That **data base** shall be available for the introduction of customary law into courses of Para-legal training and any future legal training and courses.
- That **data base** shall be available for any future national or state legislation related to customary law.

Methodology:

1- Since customary law is a business of ethnicity, communities in the South Sudan, the Nuba Mountains and Southern Blue Nile must:
- first be grouped on ethnicity basis.
- second, researchers be identified, trained on research methodology and research teams formed to undertake ascertainment and documentation of CL in each ethnic group. The said research teams shall include national and expert experts.

2- For updating of Wanh-alel, Fangak and any other written CL regimes, researchers be identified, trained on research methodology and research teams be formed in accordance with the number of the CL written regimes to undertake the updating processes therein. The said process could be by way of filling in questionnaires or by organizing inter-chiefs meetings or focus group discussions.

Modern Government and Traditional Structures in South Sudan

Neuchâtel, April 14-16, 2005

Draft transcript of presentation by John Ryle, Rift Valley Institute

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This morning I was the *agamlong*, as the Dinka call it, the interpreter, reading the words of others. This afternoon I am speaking on my own account.

There is an English saying, "Don't teach your grandmother to suck eggs." It warns against lecturing people who know more than you do. So I speak with trepidation. I feel privileged to take part in this discussion, though, a discussion that has been going on among Sudanese for some time. And I salute the Swiss Government for supporting it.

This is not routine courtesy. We have seen the spectacle - in Oslo - of donor governments pouring money into Sudan – or promising to do so. They are guided by development schemes and programmes thought up in Washington and Brussels - imported schemes not rooted in an understanding of Sudan, of its complicated history and diverse political economy. Nor of its multifarious wars. Because of this, I fear, the promise of development may remain unfulfilled.

There has been much discussion also, in the peace negotiations - in the international arena in general - of an internal source of wealth, Sudan's mineral resources. And of oil revenues that are already flowing.

We know, though, that in almost every country in Africa with mineral resources, their exploitation has brought only poverty (Botswana excepted). There is a phrase for this: the resource curse. In Sudan, the best chance of averting this curse, it seems to me, lies in invoking the country's real source of wealth. Not money. Not minerals. But culture.

In supporting the idea of a House of Nationalities the Swiss government has taken a subtle approach to the problem of state formation in Sudan. It has been attending to something that has been happening among Sudanese themselves, a strain of thought that has emerged from the experience of the last twenty years and more.

In the debate over the House of Nationalities a variety of purposes have been proposed. Some of these purposes may appear contradictory. Thus the House of Nationalities is intended, on the one hand, to conserve culture and, on the other, to act as a forum for debate about cultural change. It is dedicated to the

preservation of indigenous languages, but its discussions are likely to take place, of necessity, in a lingua franca that is not native to Southern Sudan, in English or in Arabic. (Though you can argue that Southern Arabic, while not indigenous, does qualify as a local language.)

A third paradox is that the idea of the House of Nationalities, which concerns itself with tradition and local culture, has been discussed with greatest vigour by the most modern and cosmopolitan sector of the population, by educated people, by intellectuals, by those in the diaspora, by the youth. How many Sudanese traditional leaders are here at this meeting today? Just two.

(It is worth noting, however, that in Sudan "the Youth" is a version of an indigenous institution. Age-sets, as Professor Kwesi Prah reminded us, are a key feature of societies across Africa. In Europe and America people do not talk about "The Youth", in this sense. They talk about "young people". And Westerners in Africa are often surprised to find people of thirty years or more described as "Youth".)

In order to extend our discussion and seek a resolution of these contradictions – some apparent, some real - I would like to look at the institutions of leadership in various Sudanese societies. And at some related questions of culture and language.

The ethnic and social diversity in Sudan is not simply a set of differences in language and habitat and mode of livelihood. It is the product of divergent histories. These histories differ in the relation of particular groups to the state, ie to centres of greater military and political power.

There is the well-established divide between the northern Arab riverain groups (from which the elites of the modern Sudanese state are drawn) and the economically marginal groups away from the centre. There are equally significant differences, however, between one group and another on the periphery. As I said, such differences are not just a matter of culture or language. They are differences of internal political organization. And these differences of political organization are related to the varying relations between these groups and invading forces - ie between them and the centres of greater power – and to the extent to which they resisted or were assimilated or accommodated them.

This means, among other things, that the term "traditional leadership" (as used in the title of this seminar) is liable to mean something different from one ethnic group to another.

In documents concerned with the house of nationalities the phrase itself has already developed a number of variants The formulation "tribal leaders and chiefs" has been used interchangeably with "traditional leaders". But all these terms need to be examined: "tribe", "chief", "tradition". They may mean different things in different places. And in different languages. The political history of a particular group needs to be understood in order to understand the role of leaders within it.

The house of nationalities will be composed of leaders from many different groups. And they are likely to be leaders in different senses, with different powers and different kinds of representativeness. As Professor Kwesi Prah mentioned this morning and Dr Lam Akol reiterated, the Reth of the Shilluk is not the same in relation to his people as a chief of the Balanda or an earth priest of the Nuer. (He is, however, as we saw in last night's film, close to the King of the Anuak, in terms of his political significance, both of them being descended from the Luo ancestor Nyikang).

Let us consider the "chiefs". Today we are in the presence of such chiefs - like my uncle Chief Dut Malual - and the sons and daughters of chiefs (that is many of the rest of those present). I hope they will forgive my presumption in discussing their role.

In Sudan, as we have heard, the institution of chieftainship was taken up and developed by the imperial power, by the British administration, in the first half of the nineteenth century. It was based on the administrative model of indirect rule devised in West Africa by Lord Lugard – who was a famous British chief. Dr Lam Akol and Dr Deng Biong have explained why and how indirect rule worked in Sudan. Though they missed out one important attraction of indirect rule to the British administration: that it saved money. Indirect rule was cheap, something worth remembering in the age of billion dollar aid programmes.

Indirect rule developed into a system of native administration, with chiefs' courts and chiefs as tax collectors. Existing pre-colonial leaders were coopted and empowered in return for their fealty to the administration. This is a system, as we are aware, that endures in Sudan to this day (though in the north it was abolished by one post-independence Khartoum government, then partially restored by another).

We heard this morning from Dr Khalid about the development of conflict resolution mechanisms under British rule, which further formalised and extended the role of chiefs.

In certain cases - that of the Azande for instance - the British administration found clear political hierarchies that had already been established in pre-colonial times. (This, as most of you know, was because the Azande themselves were under the pre-existing authority of invading lineages from West or Central Africa.) Once military resistance had been suppressed, these existing hierarchies lent themselves to incorporation into the colonial administration.

In other cases, such as that of the Nuer or Dinka (peoples who were - and still are - without an established central authority), colonial chiefs were drawn variously from existing spiritual leaders and from the few local inhabitants who had experience of the world outside Dinkaland or Nuerland (as soldiers for instance, in the army of the Turkiyya or the Mahdiyya.) The British had difficulty establishing the system of indirect rule among these groups because the authority of the existing leaders was limited.

But fifty years of British administration managed to establish government chiefs as part of the fabric of life among the Nuer and Dinka, as much as other groups. "Tradition" adapted to the new powers in the land.

Some tribal groups in Sudan, such as the Madi of Equatoria, are actually the creation of invading forces. The nucleus of Madi ethnicity is found in communities that formed round garrisons of mixed ethnicity set up in Equatoria under the Turkiyya.

Let us look again at the Dinka example, at the chiefly system of the Western Dinka, one that you will often described as "traditional leadership" in the recent literature of aid and development.

Among the Dinka there is a hierarchy of *baany baai* (government chiefs) comprising *bany alam thith*, *bany alam chol* (or *bany kor*) and *nhom gol*. These words translate as "red-cloth chief", "black-cloth chief" and "head of the hearth". The language is Dinka, *thong monyjang*, but the terms are translations of an imperial administrative hierarchy: executive chief, sub-chief and lineage leader. This is a system that was formalized by the British for purposes of tax collection and local courts. The red cloth and the black cloth are sashes awarded by the colonial administration as symbols of authority, used throughout Sudan.

(Elsewhere in Sudan, in Arabophone communities the equivalent figures were termed *sheikh* and *omda* and *nazir* (rarely *sultan,* a term used more in the South). The terms were drawn from Arabic, but, again, this did not mean they corresponded to existing indigenous roles. Here I would draw your attention again

to Dr Khalid Ali el Amin's paper – which has additional material he didn't have time to cover in his talk this morning.)

Pre-colonial political authority among the Dinka involved only two kinds of leader, *bany bith* and *bany wut*, the spear master and the master of the cattle camp, the spiritual leader and the war leader. Those other terms, the various gradations of *baany baai*, are, by origin, artifacts of colonialism.

Bany bith and *bany wut*, the pre-colonial institutions, still exist, but in a new relation to these other kinds of *bany*, to the other powers in the land. Among some Dinka groups the patriline that possessed the *bith*, or sacred spear (ie that had spiritual authority), also became *baany baai* - government chiefs. Elsewhere in the Dinka polity it was held that to accept a government role would diminish the spiritual authority of the *bany bith*. There is a profound moral and political issue here concerning the collective identity of one of the principal Sudanese ethnic groups. The idea of a House of Nationalities provokes reflection on questions like this. And this is surely a good thing.

Historical considerations of the kind outlined above do not mean that government chiefs are inauthentic. Or that their authority is illegitimate. What it means is that their role is historically contingent; that it is itself the product of an on-going negotiation with modernity. And that it is not always separate from sources of national or regional power. It means that tradition also evolves, is continuously reinvented.

So when we speak of the House of Nationalities as an institution that will both conserve and also adapt and reconcile cultural traditions, this adaptation is something that has always happened, that happens continually. The difference, as I understand it, is that a House of Nationalities would make this a more conscious and collaborative process, something that could become central to the difficult business of constructing a national identity.

Some final words on chiefs. These days, chiefs are elected, but in many areas they are still drawn from chiefly families established during the colonial era. Often, therefore, they are part of an emerging elite within their ethnic constituency. This elite extends beyond the "traditional" realm.

The British authorities encouraged chiefs to send their children to school. Sometimes they forced them to. This meant that educated elites in a good many parts of the South were – and still are - predominantly drawn from chiefly families. The chiefs may form part of a kin-based power complex that includes

politicians at the national level (and military leaders in the SPLA areas). There is no clear boundary here between the traditional and the modern sector.

One of the effects of the war, in certain areas of the South, is that there are more educated chiefs. Is this a growing tendency? The SPLM/A administration, the "government of the sons" as the Dinka call it, has drawn chiefs closer to the administration in areas of core SPLA support. Elsewhere the opposite has been the case. The fate of chieftaincy under the SPLA is a question which I expect other speakers will tackle, as it is clearly central to the question of the House of Nationalities. It is encouraging that there is now an active programme of research into customary law on the part of the SPLM legal department.

As we have seen, the government chief is only one kind of "traditional" leader. There are others, not incorporated into national or local administration, who would have a claim to be represented in the House of Nationalities, ritual specialists of one kind and another: *kujur*s from the Nuba mountains, Nuer earth priests and prophets, or Zande diviners and witchdoctors.

All this means that representatives in a "House of Nationalities" might well comprise people with differing roles within their communities. So they would not be like members of a parliament, each with the same relation to their constituency. The kind of power and influence they exercised within their community would be liable to differ.

Now for some questions about other aspects of culture. Outsiders taken with the idea of an institution intended to conserve indigenous culture in Sudan should not suppose that the expressions of culture will always be to their liking. They are not to the liking of all Sudanese either.

"Traditional values" can be warlike. They can be ethnocentric, vengeful, discriminatory, sexist. The role of chiefs in peace making has often been highlighted (in accounts of events such as the Wunlit meeting of 1998). But "traditional leaders" may be war leaders too. The Nuer prophet Wut Nyang Gatkek, for instance, led a Nuer militia in the 1990s.

There is a well-documented conflict between the Dinka of Northern Bahr-el-Ghazal and two Baggara Arab tribes, the Rizeigat of Darfur and the Misseriya of Kordofan. The Rizeigat were one of the few Northern tribes where the traditional leadership survived the abolition of native administration by President Nimeiri. Yet the Nazir of the Rizeigat presided over decades of large-scale raiding and abduction of Dinka villagers from the south. (Was this because he was unable to resist pressure to become a tool of the Government? Does the absence of the Southern Cattle Rizeigat from the current conflict Darfur mean that they have learned a lesson?)

Another potentially contentious matter. One of the most striking traditional practices of Nilotic societies is ritual scarification (and removal of the front lower teeth in children). Scarification is one of the clearest marks of cultural diversity in Sudan. Such practices are opposed by most educated Sudanese. And they are routinely condemned - most recently at the Chiefs and Traditional Leaders Conference in Kapoeta County (June/July 2004). But they endure, nevertheless. Will an institution set up to preserve diversity celebrate scarification and ritual dentistry? Or will it reject it, as Professor Kwesi suggested this morning?

Well, we saw last night that change can be made in the heart of tradition. The King of Anuak still has his lower front teeth. Does this mean that Anuak villagers will leave off this practice? Such things may one day be discussed in the house of nationalities in Otalo or Pochala. *Inch'allah.* Once again, it is surely good for this to happen, for these things to be discussed at every level of society.

Similarly, many of the peoples of Southern Sudan have long practiced the inheritance of wives by the deceased husband's brother. The levirate, as it is called in the Old Testament. This is - arguably - an institution that oppresses women. (Its defenders might argue that it protects them.) Should it be preserved and celebrated? Or should it be proscribed in conformity with the ideas of individual human rights promulgated in international legislation?

This, too, is a topic that is likely to be the subject of debate in a house of nationalities. And this is how it should be. It is here, in a Southern Sudanese forum, and not in a Unicef committee room in New York that such questions should be resolved.

Are there traditional women leaders in Sudan? With rare exceptions, such as the female rain-makers of the Lotuho, women have not had explicit leadership roles. There are, of course, women of influence to be found in every community, midwives and religious leaders. And there is an emerging cadre of educated

women who have taken up the opportunities offered by education and the international presence. The idea of a house of nationalities has been strongly supported by some Sudanese women. But how will women be represented in it? By educated women or by women from village communities? Or by both?

Finally, Language. One thing we can all agree on, I think, is the desirability of preserving indigenous languages. As Dr Riek mentioned, this has been officially recognised in the CPA. More than scarification, more than particular marriage customs, local languages are the primary repository of the cultural heritage of Southern Sudan.

All over the world languages are dying out, disused, unwritten, unspoken. In Sudan, though, they survive, in their hundreds. In the Nuba Mountains alone, as is frequently pointed out, there are dozens of mutually incomprehensible languages. The preservation of these living tongues is a marvel. One that should be celebrated. But there is a paradox: in order to celebrate it, in order to discuss the preservation of this uniqueness it is necessary to use another language, a lingua franca.

Take the Nuba. Theirs was a war of cultural survival against the encroachment of Arab Islamic political domination. But in order to create political unity between different Nuba groups, in order to create common political institutions, they had to use the language of those they fought. In order to come together as Nuba they needed a language that was not a Nuba language. Likewise in the South, the lingua franca is Arabic or English. And so too it will be in the House of Nationalities – at least at the national level. How, otherwise, can you be neutral between languages? Even within the states of Southern Sudan there is almost no state where only one language is spoken.

What is the best way of preserving and developing indigenous languages? It is through education, through the use of indigenous languages as the language of instruction in schools. And through the development of written forms of these languages - text books and grammars and dictionaries. But the very act of writing a language transforms its relation to the rest of the world. You preserve a language by incorporating it into the same processes that are at work transforming your society: literacy and universal education.

Some of you will remember the Institute of Languages in Yambio in the 1970s, set up by the Summer Institute of Linguistics. SIL is a Christian missionary organization that has taken on the task of translating the Bible into all known languages. An important part of their work in Sudan, as elsewhere, was the promotion of indigenous language education and the publishing of texts in many of the languages of the

South. The Summer Institute worked with the Regional Ministry of Education and did valuable work in preserving local languages. But as an evangelical protestant organization SIL was set on the abolition of other manifestations of local culture, of traditional religious beliefs, of witchcraft and divination. Thus it aimed to preserve languages on the one hand and transform culture on the other.

Even if your aim is not evangelization, the act of preservation will transform what you are trying to preserve, whether you like it or not. It happens through education, and the self-awareness that comes from it. This is inevitable. To conserve you must transform. The point is to recognise this inevitability and shape institutions accordingly.

ENDS

EASTERN SUDAN INDIGENOUS CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION MECHANISMS

Effectiveness, Continuity and Change

KHALID ALI EL AMIN

Introduction

Of all the regions of the world, Africa is one of those most devastated by violence. In one sense Africa's bloody conflicts could be viewed as outbursts of accumulated grievances generated, but not accommodated, by socio-economic and political change. They are expressions of unsettling tensions brewing beneath the surface, only to erupt in sudden upheavals that chafe fragile African nation states to their foundations. The resultant violent ruptures signify not only moments in the continuing process of socio-economic and political change, but also the loosening of cultural traditions, values, customs and norms that for so long have maintained the coherence, harmony and stability of Africa's local communities.

In some cases, cultural values seem to have survived socio-economic change and, despite the disruption of Africa's socio-economic and political structures, the continent remains home to powerful values, norms and traditions that support effective mechanisms which prevent, promote and review harmony and social tranquility. The persistence of norms and values that support indigenous conflict prevention, management and conflict resolution mechanisms in eastern Sudan provides an example of how indigenous African cultures and institutions may be more effective than, and even superior to, modern state institu-

tions in preventing, managing and resolving conflict of all types.

As the following cases from Eastern Sudan show, conflict itself, when it occurs, and its containment and settlement are seen as a collective responsibility, drawing the participation of leaders and members of the community-participate. Most importantly, the resolution of conflict may take the form of forgiveness and reconciliation instead of punishment.

This paper deals with the conflict prevention, management and resolution mechanisms the Beja have adopted to resolve different items of disputes and conflict. The main thrust of the argument is that, despite socio-economic and political change, traditional conflict prevention, management and resolution mechanisms among the Beja people of eastern Sudan have not only shown resilience but have also proved more effective than those provided by the modern state.

Available sources on the Beja are meagre and, though some are of these is made for the main theme of the paper — ones of conflict, prevention, management and review — resource persons from the area, who have worked there for a long time are the principal source of information.

In the first section a brief background to the Beja and their region is given, followed by a discussion of the Rashaida-Hadendowa conflict and how the two dealt with using traditional

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tional and government conflict management mechanisms. The third section is devoted to inter-Beja conflicts, their most common causes and the manner in which they are dealt with using indigenous mechanisms. In turn, the fourth section is devoted to Beja intra-tribal conflicts and the mechanisms used to deal with them. In all instances there is a brief description of the case or procedure, followed by a brief analysis. Finally a number of conclusions are drawn and recommendations made.

Eastern Sudan: Background and context

Eastern Sudan is inhabited principally by the Beja, one of the most ancient of Sudan's population groups. They occupy the area of the Red Sea Hills and the eastern desert that extends northwards from the Eritrean and Ethiopian borders to that of Egypt; to the east the area flanks the Red Sea and to the west the Atbara and Nile Rivers.

Sources differ as to the origin and tribal composition of the Beja, and the categories of tribes and sub-tribes that comprise this ethnic group. However, the Beja of the Red Sea Hills may be grouped into four main tribes, each with a *nazara*[1] of its own: Basharin, Bani Amir, Hadandawa and Amar'ar. A *nazir* heads each of the four tribes, which are subdivided into a number of hierarchical sub-divisions. Below the apex of the tribe are sub-divisions of *khats*, each of which is headed by a *sheikh elkhat*. Each *khat*, in turn, is divided into a number of *omodyyas*, each headed by an *omda*. The *omodyya* is further sub-divided into smaller sub-sections composed of a village or number of villages each headed by a *sheikh*. These subtribal political offices constitute a systematic hierarchy of power structures, labelled in Arabic in descending order, *nazara, khat, omodyya*, and *mashaykha*. In addition there are smaller tribes that been have the independent office of *omodyya*: Urtega; Ashraf; Mihieliktab and Habab.

Tribal divisions among the Beja are very blurred, and sometimes smaller sub-tribes are referred to as tribes and there may be separate

*mashaykha*s for such small tribes not belonging to a tribal *nazara*. Prior to the erosion of the formal administrative power of local leaders these divisions represented geographic units as well as administrative ones. In the Red Sea area of eastern Sudan, and with the exception of the Rashaida who are relative newcomers of almost pure Arab origin, the entire population is ethnically virtually homogenous. All tribes belonging to the Beja group claim a common ancestry with both Arab and Hamitic blood. Also, with the exception of the Rashaida, all Beja tribes speak different versions of the same language, TuBedawiye, which functions as a common denominator holding together the different Beja tribal groups.[2] These similarities and differences are significant when considering the Hadandawa-Rashaida issue.

The main economic activity among the Beja is the rearing of camels, sheep and goats. Although dura (sorghum) farming is practised on some wadi land, settled peasant farming communities with agriculture as their main economic activity are rare among the Beja; most Beja are nomads and animal rearing is the principal economic activity. The homogeneity of livelihoods is an additional factor that minimises the incidence of violent conflict, which would be more likely to arise from friction between pastoralists and peasant farmers. Although conflicts may be fairly frequent, the similarities of economic existence, combined with the potency of conflict prevention, management and resolution mechanisms, contribute to the infrequency and low intensity of these conflicts.

The origin of conflict in eastern Sudan

Before entering into a discussion of the causes of local conflicts, and the mechanisms designed to prevent, manage and resolve them, two important observations must be made about the situation in the area of the Red Sea compared with that in Darfur. Inter-tribal conflicts in the Red Sea area are rare, and when they occur they are not as severe in terms of scale, weaponry used and loss of

human life or property. The reasons for this have to do with demographic factors, patterns of economic activity, ethnic homogeneity, the traditional approaches applied to deal with conflicts and the extent to which the latter have remained effective.

Because the Beja are predominantly pastoralist, competition over natural resources, chiefly land and water, is the major cause for virtually all forms of inter-group, inter-communal and intra-communal conflict. Land use and claims to its ownership are governed by certain customary rules, the violation of which also brings about the eruption of conflict.

As in Darfur, claim to the right of land ownership is vested in the tribe. Tribal subdivisions (branches of the tribes: lineage groups or clans) claim the right of ownership to specific areas of tribal land. Clan, lineage and household use of communal land is regulated by customary rules (*salif*) overseen by the traditional tribal leadership. Tribal leadership is hierarchically structured, with the *nazir* of the tribe at the apex assisted by a number of *khats sheikhs*; each of the latter supervises a number of *omdas*. Each of these, in turn, supervises a number of *sheikhs*; each *omda* is responsible for the supervision of a lineage or a clan occupying a number of villages. This hierarchy is based on the native administration system instituted by the British during the 1920s, which, despite modifications during the post-colonial period, has remained very effective in some parts of the Sudan, particularly in the east. The British empowered traditional tribal leaders with an administrative, economic and judicial authority they enjoyed till the early 1970s when the Nimeri regime abolished the native administration system.

Lands under communal ownership at different levels (*nazara, omodya* and *mashyakha*) are vaguely demarcated. Customary rules governing the right of access to land and water resources by community members and outsiders (non-community members) emphasise the communality of land ownership. Members of the tribe and outsiders have the right of free access to pasture and water

sources, but not to the construction of permanent installations such as wells. The construction of wells and other fixed installations by members of the tribe or outsiders is considered an attempt to establish exclusive ownership claims to communally owned and used land. The lineage group claiming the communal ownership of land usually resists such attempts to establish exclusive ownership and use of rights, and this can lead to conflict.

The differentiation in access to land and other resources according to customary rules is related to tribal and lineage communal claims to land ownership and whether the user is a member of the group. The group collectively maintains ownership over land, but there are cases in which individual ownership rights to certain lands and wells are also recognised. Land and trees in the vicinity of villages called *damar* are collectively owned and thus the group also collectively uses pasture and firewood in the proximity of villages.[3]

Although, according to custom, outsiders could have free access to land and water, they have to follow tradition in certain circumstances, as an acknowledgement that they do not claim the ownership of the land they use. There are certain symbolic gestures outsiders must perform in accordance with tradition to demonstrate recognition of the right of ownership of the group or household claiming this. In the case of land being cultivated or wells used by outsiders or non-group members, the latter have to pay a small amount of produce or money to those claiming the ownership of land; this is called *gudab*.[4] Normally the amount is very small and is a symbol of recognition of ownership rather than tribute or rent. The importance assigned to the recognition of land ownership is such that if a camel or a goat is slaughtered in a particular place, part of the meat is given in *gudab* to the individual or group claiming ownership of the land. There are also customary rules that organise access to water. According to custom (*urf*) individuals (tribesmen and outsiders), riding camels and passers-by may have access to water from any well. However, camel herds may have access only to wells owned by the

tribe or sub-tribe, and only by arrangement to wells owned by other tribes.

Forms of conflict in eastern Sudan can be subdivided into three main categories:

- Inter-tribal conflicts; between Beja tribes and tribes other than Beja; principally the Rashaida.
- Inter-tribal conflicts among the Beja tribes.
- Intra-tribal conflict: conflicts that occur within the tribe between clans and lineage groups belonging to the same tribe.

With certain exceptions, these three forms of conflict are usually associated with land ownership, land use, land borders and conformity to the rules governing access to land and its use. In the inter-tribal conflict between the Beja and Rashaida, between the different Beja tribes and within the Beja tribes, land is the major factor. Inter-tribal conflict between the Rashaida and the Beja has arisen principally over tribal land ownership and the political office of *nazara* associated with it. Land ownership and the political position of the tribe are intimately interrelated and the tribe that owns or has established claim to land has its recognised political position relative to other tribes reflected in the political office of *nazara*.

The inter-tribal conflict of the Rashaida and Hadandawa

Claims to tribal land ownership date back centuries among the Beja tribes. Historically speaking, the Rashaida are recent migrants to the Red Sea Hills who entered Sudan from Hejaz (Saudi Arabia at present) by the end of the 19th century.[5] They are ethnically distinct from the Beja and have maintained a different culture, traditions and values and so remained somewhat isolated, having little interaction with the Beja. Although as pastoralists they graze on the land of other Beja tribes, the Rashaida live mainly among the Hadandawa.

The Rashaida, however, are considered outsiders who do not have land. But as pastoralists, and in line with the customary rules governing land use, they have continued to enjoy the right of land usage and access to water, with other Beja tribes. Politically, the

Rashaida have only the lesser ranking traditional tribal political offices of *omodya* and *mashyakha* to solve problems among them. Because they do not have tribal lands (one vast land area said to be communally the whole tribe) of their own, the Rashaida do not have the office of *nazara* and their political position is subordinate to that of the Beja tribes in whose land they move.[6] Their *omdas* fall administratively under the jurisdiction of the *nazir* of the Hadandawa.[7]

Conflict between the Hadandawa and the Rashaida who live among them has usually been about pasture and water.[8] In recent years this has become a political conflict over the Rashaida's demand for the independent tribal political office of *nazara*. Until now, however, there has never been a major outbreak of violence between the Rashaida and other Beja tribes, including the Hadandawa. So far, and partly this could be attributed to the mechanisms adopted to prevent conflict and the respect for values and norms governing conflict prevention, management and resolution, despite tension between the Rashaida and other Beja tribes, friction has been resolved peacefully and has not turned into large scale violence.

Tribal Conference and the 1933 agreement

Peaceful coexistence between the Rashaida and Hadandawa was confirmed by an agreement between the two tribes signed in 1933.[9] The aim of the agreement, which was negotiated and signed by both the Hadandawa and Rashaida leaders and notables, was to safeguard the interests of the two tribes and maintain peace and security between them. Although more than half a century has passed since the agreement was signed, it is worth discussing in some detail for three reasons. First, the principal terms set out by the 1933 agreement have constituted the basis for the relationship between the Hadandawa and Rashaida to the present day.[10] Second, commitment to abide by its terms has led to the preservation of peace between the two tribes for almost half a century; and, third, the 1933 agreement is highly relevant to the present potential for conflict, and is essential to

understanding the situation.

The Rashaida agreed to the following terms of the agreement:

- They recognise Hadandawa ownership of the land and water the Rashaida use and that have no objection to this arrangement.
- They concede that they have access to water only from certain wells.
- They agree to graze their livestock only on certain pasturelands.
- They accept that if they are allowed to cultivate the rain-fed lands of the Hadandawa they must pay to the owner (be it a sub-tribe or an individual) a specified amount of money and a certain amount of produce according to custom (gudab).
- They agree to abide by the instructions of the Hadandawa tribal leaders with regard to wadi cultivation. They must obtain permission from the owner of the land, the tribal leader in the area or the deputies of the nazir.
- The Rashaida have no right to pasturage, arable land or water in times of drought.[11]

In terms of this agreement the Rashaida accepted that the Hadandawa tribe owns the land and conceded any land ownership claims of their own. In addition to other restrictions, which emphasise the Hadandawa's dominance and land ownership rights, the Rashaida resigned themselves to the fact that during droughts, when land and water are scarcer, they enjoyed rights neither to pasturage nor to water. For the Hadandawa, the agreement emphasised and reaffirmed what they regarded as their indisputable land ownership rights. For the Rashaida the signing of the agreement was a recognition of the *de facto* situation that they have no permanent rights in land and that the right of access to land and water they enjoy is permitted only by the generosity of the Hadandawa.[12]

In 1950 the Rashaida asked permission to extend their grazing areas and to dig some wells because they were unable to graze their livestock in Eritrea as a result of the deterioration of the latter's internal political situation. That same year an agreement was negotiated and signed by the leaders of the two tribes together with government representatives.[13]

The 1950 agreement modified that of 1933, to allow the Rashaida a measure of flexibility in terms of their access to land and water. The key stipulations of the 1933 agreement remained intact, however, including the emphasis on the Rashaida's lack of land ownership rights, and the general restrictions maintained in terms of access to pasture and water and the conditions attached to cultivation. Nonetheless, the 1933 agreement and the modifications of 1950, which gave the Rashaida a little more flexibility in accessing water and pasturage, remained the basis that has governed the Rashaida-Hadandawa relationship until today.

Occasional tension and minor clashes occurred between individuals from both tribes, and the *nazir* of the Hadandawa complained that the Rashaida violated the agreement. In 1959 pressures increased and two meetings were held between the *nazir* and the *khat sheikhs* of the Hadandawa on the one hand and the *omdas* and *sheikhs* of the Rashaida on the other.[14] The complaints and arguments of both sides were heard in the presence of a district commissioner and an administrative officer. *Wagab* (postponement of the dispute for a specified period of time) was agreed and another meeting scheduled for May 1960 to discuss Hadandawa complaints, the reasons for clashes and to finalise solutions to outstanding issues.

The meeting of the leaders of both tribes was held in Aroma on the date specified by the *wagab*, one year after the previous meeting. The district commissioner and the *agaweed* attended the meeting; the *agaweed* included the *nazir* of the Bani Amir, the *nazir* of the Amara'ar, the *nazir* of the Shukryya, the *nazir* of Dar Bakr and several other notables. The meeting, which was based on the *agaweed* principle, was a small tribal conference, in which the Rashaida expressed dissatisfaction for the first time with their position in relation to the fundamental issue of land. This was one of the issues that had led to tension prior to the 1959 meeting when the Rashaida had refused to pay *gudab* in recognition of Hadandawa land ownership rights. Land ownership and the extent of the Rashaida's adher-

ence to the 1933 agreement were the main issues discussed in the meeting. The Rashaida wanted to be granted *nazara* and land rights. In the words of one of their leaders, "If the country is for certain people the government has to transfer them to where there are no people." [15]

By focusing on maintaining stability and avoiding conflict, the *agaweed* worked to preserve affirmed tradition and customary rules. Apart from various measures agreed upon to reduce tension and prevent clashes between the two parties, the major decision of the mediators was to reaffirm support for the 1933 agreement, emphasising Hadandawa land ownership rights and treating the Rashaida as guests[16]. The Rashaida's recent persistent challenge to this principle, which was incorporated as the first clause of the 1933 agreement, could have led to violent conflict between the two tribes. In reaffirming the existing principle, the *agaweed* demanded that the Rashaida pay *gudab* according to custom.

The resurgence of the conflict in recent years, which has taken a political form, began in the 1980s, when the Rashaida demanded a *nazara* for their tribe. During that period, the Rashaida's political position improved considerably as a result of their association with Saudi Arabia and their involvement in smuggling.[17] The Rashaida made huge efforts to match their growing economic power with a parallel improvement in their relative political power. This was reflected in their attempt to obtain the appointment of a *nazara* of their own, independent of the Hadandawa.

The Hadandawa and Bani Amir objected to the Rashaida's claim, arguing that the latter did not own land, a precondition for them being allowed an independent *nazara*. In other words, for the Hadandawa, if the Rashaida were to be allowed a *nazara* it would imply a claim to land. For the tribe and other sub-tribal entities, ownership of, or claim to, land involves more than just the productive use of land. For the tribe, tribal land ownership is strongly associated with the recognition of the position of the tribe as an independent entity. Land ownership symbolises cultural identity, history and the myths

that its members are descended from the same ancestor. Tribal land, which has been passed from one generation to the next, has to be protected and preserved according to culture and tradition. This also applies to sub-tribal units, which are as jealous as the tribe itself in protecting the land they claim to have inherited as their own from their forefathers. Thus claim to land ownership, even to unused land, is jealously maintained by tribes and sub-tribal divisions and clans. Although outsiders may enjoy the right of use as much as the members of the tribe, rules that distinguish between land ownership and the right of use have to be observed, including the payment of *gudab* and claims to *nazara*, both of which are closely associated with land ownership.

The Rashaida's attempt to have *nazara* or a tribal *dar* of their own, which intensified after independence in 1956, could not be settled by the traditional mechanisms for dealing with disputes. The Rashaida were keen to get the government's support for their demands for equal treatment with other Sudanese.[18] The effect of government intervention, however, raised regional tensions without resolving the root cause of the problem.

Shortly before it was overthrown in a coup at the end of June 1989, Sadiq el-Mahdi's government declared the creation of *nazara* for the Rashaida in the eastern region in May that year.[19] The declaration of the creation of *nazara* for the Rashaida further aggravated relations with the Hadandawa. Clashes in Kassala and the surrounding areas were averted when the government rescinded this decision and announced the creation of the Rashaida Administration as a separate administrative entity, but without land ownership. Political parties became involved in the conflict between the Rashaida and Hadandawa, with the two major parties, the Democratic Unionist Party (DUP) and the Umma, ranged themselves behind the opposing groups. The vacillation in government policy partly reflected these opposing positions. All Beja tribes fiercely resisted the creation of a Rashaida Administration and a large demonstration was planned for June.the 30th, 1989. That same day, however, the military seized

power in Khartoum, a move that eclipsed local differences for the time being.[20]

Over the following decade, local and national power politics interacted closely over the dispute as to whether *nazara* should be appointed for the Rashaida. In 1990, the new regime partly retained the power of the traditional tribal leaders and the Rashaida Administration was re-established following negotiations between the government and tribal leaders. The new Rashaida Administration has a structure similar to that of the *nazara*. During the period 1992-1996, however, a West Kassala Local Council for the Rashaida, with demarcated borders, started to take shape on land the ownership of which is claimed by other Beja tribes including the Hadandawa and Bani Amir.[21] While this process virtually created a *de facto nazara* for the Rashaida (an administrative body independent of the Hadandawa having powers over a territory with demarcated borders), it also created a situation of potential conflict. The issue must still be finally resolved with the consent of all tribes concerned, and without undue pressure from the government, if conflict is to be avoided.

The Rashaida have been partially successful in drawing government intervention on their behalf. Khartoum granted them administrative independence from the Hadandawa and certain territorial rights, creating a political office in effect equivalent to *nazara*: the Rashaida Administration and West Kassala Rural Council.

There were a number of reasons for this. Sudan's military governments, dominated as they were by a modern elite, particularly under Nimeri's rule, tended to try to weaken traditional tribal leadership. This favoured the attempt of the Rashaida to loosen its bonds to the Hadandawa. Democratic governments controlled by the *Khatmiyya* and the DUP supported the Rashaida, who were seen as loyal *Khatmiyya* supporters. The emergence of a small but vocal Rashaida educated elite also publicly articulated Rashaida demands at regional and national levels. In recent years, the growing economic power of the Rashaida has been used in support of the National

Islamic Front (NIF) war effort, particularly in the east. The NIF government has reciprocated by recognising the role of the Rashaida and created West Kassala Local Council as a reward.

The Rashaida-Hadandawa conflict: Functioning conflict prevention, management and resolution mechanisms:

In contrast with the stresses experienced in recent years, the mechanisms for conflict prevention, management and resolution functioned effectively prior to the 1970s in dealing with disputes between the Rashaida and Hadandawa. The earlier success was largely the result of the Rashaida accepting traditions relating to tribal land ownership and the associated tribal political authority: the office of the *nazir* (**nazara**). The Rashaida's acceptance of tradition, and their respect for the outcome of indigenous conflict prevention, management and resolution mechanisms based on those traditions, enabled them to share economic resources with the host tribe harmoniously. In short, the Rashaida's general conformity to tradition since they entered Sudan in the 19th century led to their acceptance among the Beja, and the avoidance of significant conflict. The Rashaida's ability to adapt to the limitations set on their access to land and water resources contributed to their willingness to adhere to traditions and conform to the 1933 agreement.

In more recent years, however, the traditional mechanisms preventing conflict between the two tribes have come under severe stress. This tension has been aggravated by the Rashaida's renewed attempt to demand the tribal political office of *nazara* separate from, and independent of, the Hadandawa. A partial explanation for this development was the increase in the Rashaida's economic power, which promoted their aspirations to the tribal political office of *nazara* in violation of tradition and the 1933 agreement. The interrelationship between tribal land ownership and the tribal political office of *nazara*, led the Hadandawa resolutely to resist the Rashaida's attempts.

Contributing to the growing stress on local

conflict prevention mechanisms in recent times was the heavy involvement of the central government in the Rashaida-Hadandawa dispute. State involvement brought with it the adoption of a top-down approach to conflict resolution in place of the bottom-up approach that had proved so successful in the past. The Rashaida exploited the struggle for power at the centre of the state to win the support of Khartoum for their cause. Subsequent government intervention, although it may have brought apparent gains to the Rashaida, also exacerbated the mistrust between them and their Hadandawa and Bani Amir hosts. In consequence, friction and mistrust have replaced the peaceful coexistence based on respect for tradition that had regulated harmonious relations between both tribes for so long. Government concessions to the Rashaida's demands for the creation of the independent tribal political office of *nazir* (nazir is the one who occupies the office, what the Rashaida demanded is the affirmation of the office for the tribe. Who occupies the office from amongst them may well be an issue over which competition and conflict might arise amongst the Rashaida themselves.) and the grant of certain tribal land ownership rights without consulting the other concerned Beja tribes have led to a situation of potential discord which could erupt into violence at any time.

The top-down approach adopted by various Sudanese governments in the case of the Rashaida, bypassed local tradition and custom. Consultation, consent and even informing concerned tribes of government moves and intentions were neglected. This situation created suspicion on the part of the Hadandawa and other Beja tribes and violence could be the result in the future if the situation is not handled carefully and the conflict resolved through the engagement, participation and the consent of all the parties concerned.

Inter-tribal conflict between the Beja tribes

Conflict over land borders

The principal causes of conflict between the Beja tribes are also related to land and competition over resources, though this does not amount to the denial of the right to land ownership, as in the case of the Rashaida. Since each of the four main Beja tribes has its own land and *nazara*, inter-Beja tribal conflicts arise over land borders. As borders between the four tribes and sub-tribal units within them are vaguely defined and not clearly demarcated, the point where land owned by one tribe ends and that of another begins is a matter for dispute and occasional conflict. Such disputes among tribes frequently occur between two neighbouring sub-tribal divisions belonging to two different tribes. Often, this is also the cause of conflict within one tribe, between its own smaller sub-divisions. Thus, the issue of land borders between Beja tribes and within these tribes is the most prevalent cause for conflict.[22]

Such border disputes could easily escalate into major inter-tribal conflict and therefore constitute a potential threat to peace. In 1999 violent conflict nearly resulted between two sub-tribes belonging to two different tribes. The Hannar, a sub-tribe of the Basharin, and the Keilab, a sub-tribe of the Amara'ar, each claimed a piece of land situated in the Halaib area of north-eastern Sudan. The *sheikhs* were unable to solve the problem of conflicting claims and both sides stuck to their positions.

The normal preventive procedure was followed after the intervention of *omdas* and *mashaykhs* to avoid violent conflict. The procedure included giving *gullad* not to use force or resort to violence and *wagab* (truce) to freeze the problem until a peaceful solution could be reached at some future date. *Taiweg* (commitment) has to be respected according to *salif* tradition, and in the event of it being violated, this is seen as the responsibility of the *sheikh*. *Wagab*, which is the deferment of the problem, helps to calm feelings and give time to create the appropriate conditions for the mediators to negotiate a settlement

acceptable to both parties.

For the *majlis* held on the *wagab* (the fixed postponed date) a religious leader called *sharif* in the area west of Port Sudan was called in to help with mediation effort. Because of his religious position, he was held in great respect by both sub-tribes. After listening to the respective arguments he took action and demarcated borders. Both sub-tribes accepted his judgement and the problem was peacefully resolved.

In the resolution of this conflict the respect of the sub-tribes for both the tribal tradition of *salif* and religious beliefs played a significant role. The *gullad*, *wagab* and *tatweg* values of *salif* and respect for tribal leaders helped manage conflict between the two tribes and prevented violence. The intervention of an influential religious figure contributed, with the weight of the traditional tribal leaders, to the resolution of a potentially dangerous border dispute.

Murder and tribal security

Another major cause of inter-tribal conflict is the case of a member of the tribe being murdered by somebody from a different tribe. This sometimes results from disputes about camels, personal honour or land borders. Regardless of the conditions underlying a murder, if the consequences are not contained in time this act may lead to a pattern of revenge and counter-revenge and descend into a tribal affair involving more general conflict. This makes the act of murder and the effort to settle it a tribal responsibility, because the tribe functions to protect the individual member. When harm is done to the individual it is the tribe whose support is sought and the tribe that comes to the aid of the individual. According to tradition if an individual member of the tribe is killed, his close kin and fellow tribesmen have to take revenge. Revenge is also a tribal matter and any member of murderer's tribe, particularly his close kin, may be killed. Once the cycle of mutual revenge has begun, it is difficult to halt the process, for the conception of individual honour is extended to the tribe and dictates that the latter has to stand by the indi-

vidual and itself take revenge. Until revenge is taken, tradition dictates that women refrain from mourning the dead. These concepts of honour and revenge are common to all Beja tribes.

It is important for the collective security of the tribe's members that those intending to commit such a crime, or any lesser one that might lead to it, realise the grave consequences of their actions. Preventing an individual act from developing into an inter-tribal conflict is one important mechanism among the Beja for containing violence.

What helps in making this mechanism successful is the grassroots' attendance of the *majlis* normally formed to resolve the dispute. Although parties to the dispute do not participate in the discussion themselves – the presentation of arguments and positions, suggestions and consideration of solutions – those concerned with the matter of the dispute are informed and indirectly involved at all stages of the resolution process. When a resolution is reached it is through agreement by the parties, represented indirectly by the *majlis* through negotiations with their *sheikh*. This form of participation of the grassroots facilitates understanding and respect for the decision being reached.

Other ordinary members of the tribe are informed of circulating news and information through traditional mechanisms called *sakanab*, which conveys news of the solution reached to other concerned tribesmen. As part of a long greeting ritual when two or more individuals meet, news of issues of importance is communicated. This may include news about rain, animal diseases, grain prices, major problems of inter-tribal disputes, disputes or conflicts that have been resolved and the details of the agreement.[21] A tradition of honesty in reciting and retelling news ensures the credibility of the information communicated.

Beja inter-tribal conflict prevention, management and resolution mechanisms:
Traditional leaders' majlis mediation

In the event of a member of one tribe murdering a member of another, the tribe to

which the killer belongs immediately acts to calm the situation and prevent further escalation. It intervenes through *sheikhs* and *omdas* to apologise and the *omdas*, *sheikhs* and probably the *nazir* or *nazirs* mediate to first get *gullad* (word of honour) from the tribe of the deceased that it will not take revenge and will abide by a truce (*wagab*). Until such undertakings are received, the *omdas* and *sheikhs* would insist that the burial of the murdered tribesman would not take place. According to custom it is considered inappropriate and socially unacceptable to refuse the solutions put forward by tribal leaders mediating the conflict.

The mediation of *sheikhs*, *omdas* and *nazirs* of other tribes conducted immediately after the case, is tantamount to the recognition of the right of the injured tribe to an apology and a demonstration of respect, to which the injured tribe normally responds positively. The injured tribe usually gives *gullad* and accepts the truce, thus averting the danger of further violence. The issue of murder is contained and kept as between individuals.[24]

Subsequently the crime may be either submitted to court or be resolved through traditional tribal mechanisms of dispute resolution. The resolution of the dispute may end by the relatives and close kin of the murdered person accepting compensation (*diya*) and in many cases the traditional mechanisms of tribal leaders' mediation results in forgiveness being granted by the relatives of the victim. This is considered *salif* for the forgiving tribe, which in return receives forgiveness in the event of one of its tribesmen committing murder against the same tribe or sub-tribe in the future.

In most cases, even if the case is submitted to court, time is accorded to traditional tribal leaders to resolve the conflict. Even in cases when the court has passed a death sentence, traditional mechanisms can still attempt to resolve the case according to custom, and if forgiveness is granted by the victim's tribe the court normally endorses the settlement and cancels the formal case.

In the traditional settlement of such a dispute, a *majlis* (conference) is convened to look

into the case. The *majlis* is composed of *omda*, *mashaykh* and a wise elder from each tribe or sub-tribe called *sorknab*, together with the parties to the dispute and other interested members of the tribe. The *sorknab* is normally experienced in dispute and conflict resolution and has the ability to cite wise sayings and verses to remind the conflicting parties of the virtues of reconciliation, tolerance and forgiveness. He is also well-versed in precedents, *salif* and the details of tradition and custom.

In addition, notables, neutral parties and men known for their wisdom who enjoy the respect of all parties, attend the *majlis*. The presence of a *nazir*, *sheikh* or *omda* from another tribe is especially valued and helps parties to the dispute come to a solution and adhere to it. The first issue the *majlis* considers is whether *gullad* has been respected. Although all parties concerned attend the *majlis*, their *omda* or *sheikh* presents their case and arguments. The process of reconciliation starts and dialogue between the two disputant parties is conducted indirectly through their *omdas* and *sheikhs*. Parallel talks outside the *majlis* chamber are normally conducted between the parties to the dispute and their tribal leaders on the one hand and the mediators on the other. Then each party's arguments are presented indirectly to the *majlis* through their tribal leaders who act as representatives, and modify the positions originally held, in accordance with the broader interests of the tribe and sub-tribe relative to other groups. The process continues until compromise and a resolution acceptable to all parties is reached. Cases usually end with reconciliation and forgiveness, which is the aim of the tribal leaders.

Such a successful outcome demonstrates the tribal leader's influence among his community and also enhances his position among other tribal leaders. It also enhances his reputation and ability to mediate successfully in future, at all levels of Beja society. The granting of forgiveness in one instance would also involve reciprocal obligations in future cases (the tradition of *salif*).[25]

Thus, there are factors related to objective conditions, traditions, identity and culture that may lead on the one hand to the escala-

tion of conflict and on the other hand provide for conflict prevention and resolution outside the jurisdiction of a modern state. In a modern state system, the act of murder is considered an individual act punishable by law, and only the individual who commits the crime is held responsible. However, under conditions in which tribal loyalty and identity take precedence, such a crime is considered an act committed against the tribe and revenge may be exacted accordingly. Thus, while the act of murder is considered a tribal responsibility, the punishment for which may be extended to all other tribal members, the settlement of the conflict arising from it is also a tribal responsibility which has to be shouldered and resolved by the tribe whose member has committed the crime.

Actions and responses by the tribe to which the murdered individual belongs are shaped, oriented and conditioned by intense feelings and perceptions of identity and honour, which, if not swiftly contained, may lead to major inter-tribal conflict. Thus tribal identity and feelings, perceptions and the actions that follow from them are rooted in objective conditions that give the tribe and loyalty to it primacy over individual considerations. In the absence of effective modern state bodies, for reasons of geography, ecology or socio-economic factors, the tribe is the most viable entity providing security to its members. The individual act of murder is thus considered a violation of one tribe's security and through the anticipated act of revenge the security of the tribe to which the murderer belongs is also threatened. Because of this mutual threat, actions of murder and revenge involving two different tribes or sub-tribes become subjects of intense inter-tribal diplomacy to prevent escalation and achieve a settlement that serves the interest of the two contending tribes in restoring peace.

Tribal mechanisms designed to maintain peace and security and handle inter-tribal cases of murder and revenge, thus extend even further than modern state law to achieve forgiveness and reconciliation.

Beja intra-tribal conflicts: Causes

The violation of rules governing communal land use

The violation of *salif* rules governing the use of communal land owned by the tribe may also be a cause for conflict within the tribe or sub-tribe. Among the Beja, customary rules ensure equal right of use of communally owned land among members of the tribes as well as outsiders. Households' or individuals' attempts to erect permanent installations or construct wells on tribal or sub-tribal communal land without seeking permission and consent of the group claiming ownership are resisted even by close kin. The construction of fixed installations such as water wells is understood to establish exclusive land ownership and use rights. If those intending to construct fixed installations are not from the same lineage or sub-tribal group, permission and the commitment to pay *gudab* have to be agreed upon between the two groups. The violation of such rules often gives rise to disputes that could develop into violent conflict.

The violation of land use customary rules: The Guraieb-Henseilab conflict

One such dispute caused by the violation of rules governing land use, was that which developed between the Guraieb and Henseilab sub-tribes. During the 1980s when the Khartoum-Port Sudan road was constructed, some Guraieb tribesmen started to erect huts near the road at a rocky place called Agaba, to rent as guesthouses to travellers and truck drivers. But the Heinseilab claimed ownership of the land on which the huts were to be constructed and strongly objected to this move. According to custom *salif*, the Guraieb violated tradition by not obtaining the Henseilab's permission prior to the construction of the huts. According to custom this amounted to the denial of land ownership rights claimed by the Henseilab. Violent conflict seemed a possible result.

The indigenous mechanism of conflict prevention started to function to contain the situation at an early stage, before matters could get out of hand. *Nazirs*, *omdas* and

sheikhs intervened and involved tradition to prevent, manage and resolve the conflict. *Gullad* and *taiweg* (word of honour and commitment) were secured from the Guraeib not to proceed with the construction of the huts. A *wagab* not take any action was also obtained from both sub-tribes until a *majlis* could be convened (freezing and postponing the problem to a fixed future date) to discuss the problem and reach a peaceful solution. The *majlis* was held and both parties presented their arguments. At the conclusion of its deliberations the *majlis*, composed of tribal leaders and wise men, passed a verdict that the land was the Henseilab's and that the Guraieb tribesmen had no right to erect the huts. Both parties accepted this verdict and the dispute was peacefully settled.

In all the steps taken, respect for *salif* tradition by the two parties to the dispute was decisive. This is part of the culture, values and traditions that are inseparable from the rest of Beja social, economic and political life as it has evolved to deal with an inhospitable and difficult environment.

Beja intra-tribal conflict over power
Competition for tribal political office

Conflicts also arise from within the tribe or the sub-tribe as a result of competition for various tribal political offices. The most frequent is that for tribal political office of a lesser rank, such as *omodyya* and *mashaykha*. According to custom, succession to all tribal political offices (*nazara*, *omodyya* and *mashaykha*) is hereditary. On the death of a father who holds office, the eldest son succeeds to the position. There are cases, however, in which the *omda* or the *sheikh* appoints a cousin or nephew as his deputy (*wakil*) even if he has eligible sons. The *wakil* exercises such powers as political office has bestowed on him, while the *sheikh* or the *omda* is still alive, in cases in which the latter are absent, sick or aged.

When the tribal leader dies there are cases in which the son traditionally entitled to the office, claims it and the *wakil* who has experienced the power of office also extends his claim to continue occupying the post. In such

a situation, conflict over the tribal political office of *omdyya* or *mashaykha*, arises between the two close relatives, each claiming the office for himself, and the group (the sub-tribal unit) divides its support between the two contenders.

One such conflict began in Tokar in the 1990s after the *omda* of the Shaayab sub-tribe of the Hadandawa died. During his life as the *omda*, he had appointed his cousin as his *wakil*. Upon his death his cousin claimed himself to be the *omda* unless the sub-tribe disputed this. The late *omda*'s son, who also claimed to be the *omda*, challenged him. This could have led to a dangerous confrontation between the two factions of the divided sub-tribe giving support to each of the two contenders- making more clearer the likely intra sub-tribal confrontation.

According to tradition a meeting for the sub-tribe was held to settle the dispute. The *nazir* of the Hadandawa attended the meeting in addition to *omdas*, *sheikhs* and wise men and other members of the sub-tribe, which had divided their support equally behind the two contenders. According to *salif* tradition, and as the office is hereditary, the issue could have easily been settled with a judgement in favour of the *omda*'s son. The *wakil*, however, confident in the support he had built up over the years, insisted on putting the matter to the sub- tribe. The meeting ended without reaching a final resolution.

As the divided sub-tribe was gathering in the Mahalyya headquarters, in Aroma, and was unable to reach an agreement on who was to be their *omda*, the Tokar Administrative Officer issued a decree appointing the *wakil* as the *omda*. Conflict erupted and the two groups of supporters clashed inside the Mahalyya using traditional weapons. The police were called in and, although they managed to contain the situation, tension between the two groups remained high and conflict could have resumed at any time had it not been for the intervention of other tribes to settle the dispute according to *salif*.

Other tribes including the Amar'ar, Bani Amir,and Urtega joined the Hadandawa to intervene through their *nazirs*, *omda*s and

mashaykh to contain the situation. They first got *gullad* and *wagab* from both sides pending the convening of a *majlis*. The *majlis* issued a ruling according to custom (*urf* and *salif*) for the *omda's* son. This was approved by other tribal leaders attending the *majlis*, for they were also as keen to maintain the tradition that keeps office for their sons in turn.

Although the violent conflict has been avoided, the issue is not completely resolved, for the *wakil* still enjoys considerable popular support. There are attempts to appoint the latter as *wakil* for Port Sudan as a compromise, in an attempt at a final resolution of the problem.

Despite the fact that the traditional mechanisms of resolving disputes have not been wholly successful in putting an end to this conflict as in all similar intra-tribal disputes, they have been effective in containing the conflict. It has not erupted into large-scale violence and despite the potential for violence, the competition between the two contenders remained peaceful. The conflict involves tradition and adherence to it. But when tradition, generally strictly adhered to, is violated and supported by almost half of the sub-tribe's members, as is the case of the support for the Omda's cousin, there must be good reasons for this. The questions of why the Omda did not appoint his son as his deputy and why there has been much support for the Omda's cousin, meaning less support for the Omda's son despite his hereditary right are questions not in favour of the Omda's son. All these questions indicate that the Omda's son has only his hereditary right of succession to qualify him for the office. The Omda's cousin seem to possess the leadership qualities that gained him the support of his uncle (the late Omda) and half of his tribesmen.

There are two forms of intervention to resolve this conflict. One form is government intervention represented by the administrator's decision to condone the Omda's cousin as Omda. Although it looks appropriate despite its break with tradition, this form of government intervention did not work because it was not based on consultation and

negotiations and is an example of a top-down approach. The support the Omda's cousin commanded would have made it possible to accept the break with tradition and get the cousin appointed as Omda had tradition been somewhat secularised.

The second form of intervention is that of the traditional tribal leadership. The underlying principle of conformity to tradition and respect is on the side of the traditional tribal leadership, however, their interest in this case is to get the son appointed, which has implications for the succession process of their sons. Subsequently the weight of the other half of the tribe and the judgement of the former Omda were neglected and so the traditional tribal leadership also failed. Government intervention failed to put an end to the conflict, as had the traditional mechanisms of conflict prevention, management and resolution. It is a rare case of stalemate or deadlock, where tradition which is widely respected has not been adjusted to take account of changing conditions. However, large-scale violence was prevented using both modern (the use of the police) and traditional mechanisms (Gullad, Wagab and Salif).

Despite the limited success of traditional mechanisms in resolving this issue, they have been effective in containing the conflict. There must be underlying reasons why the traditional succession is contested, and why the late *omda* appoint his cousin rather than his eldest son as *wakil*. This would suggest that though the son enjoys the hereditary claim, the cousin has leadership qualities that are valued by some of the tribe.

Central government intervention will not be effective in such a case, because it fails to involve the consultation and negotiation inherent in traditional attempts at resolution. This is a rare case of stalemate or deadlock, where tradition that is widely respected has not been adjusted to take account of changing conditions.

Conclusions and recommendations

Inter-tribal conflicts among the Beja rarely escalate into violence, unlike the situation in Darfur. There are various reasons for this.

Although the Beja have potent forms of conflict management and resolution, tradition assigns greater importance and emphasis to conflict prevention mechanisms. The point is not that preventive mechanisms exist, but that they are effective because popular culture, norms and values support them. The cultural conceptions of *gullad* (word of honour), *wagab* (truce and waiting until the situation calms down and sufficient consultations and negotiations are conducted) and *taiweg* (commitment) all help to keep conflict at manageable proportions and prevent escalation. Respect for and adherence to these values facilitate the role of wise men and tribal leaders to prevent, manage and resolve conflicts and reinforce the effective functioning of conflict prevention, management and resolution mechanisms. Ample time is given for consultation, dialogue and mediation to reach consensus. Forgiveness, which is often the outcome of conflict resolution, is superior to the results of modern law not only because the latter emphasises punishment but also because through forgiveness the seed of resolving possible future conflict according to the *salif* tradition is sown.

Despite the reduction of the powers of traditional tribal leaders, who were once the state's only symbols in Sudan's countryside, since the 1960s, in the Red Sea Hills area their position at all levels among the Beja has remained generally strong. Certainly there have been some socio-economic and political changes, including the emergence of a new Beja educated elite, but traditional tribal leadership has retained great power and influence in the daily lives of the Beja; this is particularly true of tribal leaders at the lower levels (*omda*s and *sheikh*s). The main reasons for this strong traditional leaders' influence is the geography and the natural environment of the Beja. Living in a very inhospitable environment and thinly spread, Beja pastoralists are scattered over a wide geographic area and the presence of state bodies and personnel, partic

ularly those responsible for keeping the peace, is very weak. Consequently, *sheikh*s and *omda*s still play a very important role in tackling petty crime, solving community problems and representing community interests to higher state bodies. Moreover tribal leaders are more accessible to the Beja at grassroots levels, making it easier to handle problems in time.

The low population density of the Red Sea Hills means that competition over resources (land and water) is less fierce here than in other parts of the Sudan where the population density is higher as in the case of Darfur in western Sudan.

Almost all Beja tribes are pastoralists and there are very few settled peasant-farming communities. The presence of large settled farming communities would have presented an acute problem of conflict of interests between pastoralists and peasant farmers which is a major source of violent conflicts in Darfur region.

Despite the heterogeneity of the Beja tribes, the similarity of their language, culture and values, resulting from similarity of origin and strict adherence to both Islamic principles and indigenous cultural values (*salif*) all serve as elements of unity in diversity rather than friction

Recommendations

The traditional mechanisms of conflict prevention have been very effective and successful in eastern Sudan and in Darfur in the past, though not in Darfur at present. To preserve the functioning of these preventive mechanisms in eastern Sudan and avoid future intra and inter-tribal violence, a number of general measures need to considered

- Support for tribal traditional leadership at all levels, even if this leadership is not officially retained within formal state administrative structures. Financial and material support would enhance its ability to handle conflicts in accordance with tradition (truce-wagab, word of honour-gullad) and in close collaboration, consultation and negotiation with the grassroots
- The state should continue allowing tribes

in the eastern region to resolve their disputes by themselves according to tradition and employ state bodies only as observers and guarantors. With the exception of a few conflicts, this is what the state has so far done and also this has contributed to the effectiveness of traditional conflict prevention, management and resolution mechanisms.

- If the state has to intervene, intervention needs to be bottom-up to be effective in restoring peace rather disrupting it. Consultation and negotiations with the grassroots and their leaders at all levels must be conducted and consensus reached before decisions are taken.

Specific measures have to be taken to prevent the Hadandawa-Rashaida conflict from erupting into violence in the future. These measures have to include:

- Encouraging the Hadandawa and Rashaida to engage in a dialogue to negotiate, develop mutual understanding and reach an agreement on the Rashaida's independent administrative body, according to tradition but taking into account changing circumstances.

- Securing the agreement of all tribes affected by the creation of West Kassala Rural Council, including the Hadandawa, to agree to resolve the issue of land for the Council according to tradition.

- Both the above issues could be handled according to tradition through consultation and negotiation. The Rashaida could pay *gudab* in recognition of the Hadandawa and other Beja tribes' ownership of the land and retain the land for Kassala Rural Council. Given the disparity in access to financial resources between the two parties this, which is also a measure of resource reallocation, could reduce tension and create mutual interests. The resources from *gudab* could be used to improve social services in the drought and poverty-ridden Beja area. Alternatively these resources could be used to improve food security for the Beja, by using it to purchase food reserves from the neighbouring food surplus Gadaref area to guarantee food availability and sta-

bilise food prices during droughts.

Conflict management mechanisms among the Beja tribes are interrelated to actions and procedures intended to prevent and resolve conflict. In all cases it must be emphasised that a bottom-up approach is likely to be more efficacious than measures imposed from above or outside.

Notes

1. *Nazara* is a tribal political office originally instituted by the British administration. It is the highest tribal political office, heading a tribal hierarchy of junior political offices. *Nazara* is also a symbol of the recognition of the tribe as political entity and in most cases *nazara* corresponds to a real but vague territorial entity for the tribe.

2. S Pantuliano, Changing livelihoods: Urban adaptation of the Beja pastoralists of Halaib Province (NE Sudan)and NGO planning approaches, Unpublished PhD Thesis, University of Leeds, 2000, pp. 33-35.

3. Ibid, p. 90-91.

4. Ibid. p. 91

5. M Suliman Sudan: Wars Over Resources and Identity, (in Arabic), Cambridge Academic press, Cambridge, 2000, p. 279.

6. Notice the similarity to the position of Arab tribes among the Masaliet, Fur and other indigenous African tribes.

7. The Rashaida have three sub-tribes; Zneimat, Bra'asa and Bratekh, with one omda heading each sub-tribe). See Abdel Rahman Badawi Abu Al Bashar, The Tribal Conflict in Kassala between El Beja and El Rashaida: 1985-1995, (in Arabic), Unpublished M.Sc. Thesis, The Institute of Disaster Management, 1998, p. 40-43 and also see A Suliman. op cit, p. 280.

8. Although there are cases of friction between the Rashaida and Hadandawa over murder cases and the theft of camels, these are minor and are normally handled and contained according to *urf* and traditional conflict prevention mechanisms so as not to escalate into major inter-tribal conflict.

9. Abdel Rahman Badawi Abu Al Bashar, op cit, p. 68.

10. Some issues included in the agreement have been contended since the 1970s by the Rashaida and have thus become a source for the current covert unsettled conflict between the Rashaida and Hadandawa.

11. Abdel Rahman Badawi Abu Al Bashar op cit.p. 68.

12. The Rashaida have adapted themselves to the restrictions on access to land and water imposed on them by the 1933 Agreement. Some of these adaptations include entry into Eritrea to have access to more pastureland. Water is bought from the Hadandawa when the wells they have been allowed access to are insufficient to water their

animals. The Rashaida also purchased dura from the market to supplement the grain shortage resulting from the restrictions placed on cultivation.

13. Quoted Abdel Rahman Badawi Abu Al Bashar, op cit, p. 70.

14. Ibid.p. 72.

15. Ibid.p. 75.

16. Ibid.p. 75

17. In their appearance the Rashaida are not very different from Saudis and they receive special treatment by the Saudi authorities when they enter Saudi Arabia. This has facilitated Rashaida access to jobs in Arabia and accordingly they have been able to build up wealth and camel herds, buying Beja camels.

18. It is important to notice here that the British allowed the traditional conflict prevention and resolution mechanisms to function and settle disputes, including the Hadandawa-Rashaida conflict, with minimal or no government intervention. This resulted in the 1933 Agreement, which has provided peace between the two tribes to the present day. But instability started after independence in the late 1950s. Although the 1933 Agreement has not been abolished, both the Rashaida and the government have violated it.

19. The Governor of Kassala issued a Decree in April 1989 appointing a *nazir* for El Rashaida. See Abdel Rahman Badawi Abu Al Bashar, op cit, p.84.

20. Notice that this was taking place during the same period the Fur-Arab conflict in Darfur was being dealt with. While preparation were going ahead for convening a tribal conference to resolve Fur-Arab conflict was scheduled for 30 June 1989, the Hadandawa demonstration was planned for the same day objecting to the creation of *nazara* for the Rashaida.

21. See Abdel Rahman Badawi Abu Al Bashar, op cit, pp. 92-95. Informal Personal Interview with Idris Ibrahim, Local Leader, The Legislative Council, June 2001.

22. Information on cases of conflict among the Beja tribes and sub-tribes and on procedures to prevent, manage and resolve them are lacking. The main source for the following sections is personal communication with resource persons. Unless otherwise cited all the information on cases of conflict and procedures pursued to deal with them following traditional conflict prevention, management and resolution mechanisms, is extracted from information provided in a lengthy discussion with a group made up of officials most of whom are from amongst the Beja tribe. This group of Beja officials who also worked for a long time in different parts of the Beja area as local government or development officers and they are well-informed resource persons. The group includes, Mohamed Ahmed Osman, Local Government Officer; Halalb; Abdella Littab Local Government Officer; Hasseina Hag Ali, Development Officer, Kassala; Alawla El Hadi Ahmed, Adil Mahagar, Local Government officer, Port Sudan; Omyma Ahmed, Local Government Officer, Port Sudan; Amal Suliman Development Officer, Port Sudan.

23. Group discussion and also S Pantuliano, op cit. p. 61.

24. Actually this may not be exactly the case. Being an individual matter, in cases of murder, as a result of maglis mediation, is actually relevant only in as far as containing the case from escalating into further inter-tribal violence. The tribe is still involved in the proceeding resolution stages, which it can end it by forgiveness or by supporting its member through the judicial process.

25. Getting forgiveness form his tribesmen the tribal leader gets salif obligation from the tribe granted forgiveness. This, in turn, enables him to settle future murder disputes with other tribes; particularly the one granted forgiveness, by reciprocating by giving forgiveness. This tradition is one major factor halting murder cases from developing into inter-tribal conflict through revenge and counter revenge.

Consolidating Democracy and Building the Nation:
Chiefs in South Africa

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South Africa is a republic with several thousand chiefs and headmen, and seventeen kings, paramount chiefs and queens. Most are gathered in two provinces (KwaZulu-Natal and the Eastern Cape) while the two richest provinces (Gauteng and Western Cape) have no chiefs at all. There are very few female chiefs and even fewer young men represented in their ranks.   How we reconcile the democratic traditions of a republican state with the inherited role of the chief, as the leader of his community, is at the heart of my talk today.

I. History:

Chiefs existed throughout what we know of South African history. The Khoi pastoralists who met the first Dutch settlers in the 1650s were led by chiefs. Even the acephalous San hunter-gatherers who lived in small bands without conspicuous chiefs developed their own systems of chiefly rule, particularly as their independence was threatened. Over time the Dutch destroyed the Khoi chiefdoms and incorporated their members into the labour force on settler farms. Later, many of the descendents of these rural Khoi made their way to mission farms where they constituted Christian communities with their own leaders. Other descendents of the Khoi made their way, under their chiefs, across the frontier to form highly mobile, armed communities called Griquas, Oorlams or Basters. A quarter century after the British seized the Cape in 1806, the new colonial power recognized the authority of some of these independent chiefs.

The British developed a high regard for the chiefs of the Bantu-speaking agriculturalists against whom they fought on the eastern Frontier.   In the early years of British rule at the Cape, as imperial armies pushed African peoples back from the Fish river, the British incorporated the newly colonized areas, and their occupants, into the Cape Colony. These areas were initially ruled by the Governor in Cape Town with the aid of nominated assistants drawn from the settler establishment. But in 1853 the Cape was given a new constitution based on notions of liberal democracy imported from Britain. This introduced a colour-blind franchise open to all males who earned £50 a year or who owned property worth £25. Voters were not required to be literate. Men who met the low franchise qualification were eligible for election to the House of Assembly; but a relatively high property qualification (£2,000 fixed or £4,000 unfixed property), restricted entrance to the Upper House, or Legislative Council. The first representative government was elected in 1854 but, within twenty years, this democratic system came under pressure as the Cape started to annex large areas of land, and its African occupants, to the east of the Kei river. Rather than provide these new citizens with the franchise, the Cape politicians developed a form of Indirect Rule through which the Transkeian chiefs

continued to govern their own people – although with the aid of government magistrates. At the beginning of the twentieth century a parliament for chiefs, or Bunga, was erected in the Transkeian capital of Umtata. Chiefs sat alongside magistrates in the Bunga where they represented their communities and, in this building, discussed and voted on issues of interest to their communities.

In the colony of Natal, established by the British in 1843, a different form of Indirect Rule emerged. In this area, a form of segregation was initiated at the onset of British rule as the land was divided between European settlers and African chiefs who ruled in areas "reserved" for African occupation, as well as on "Crown land" (that still had to be sold) or on large mission farms or "reserves". This "Shepstonian system" (named after its inventor) acted as a model of Indirect Rule for other parts of the British empire, especially at the Cape. It turned the chief into a paid government official who maintained law and order and who collected taxes for the government. Some historians argue that the roots of segregation are to be found in the Shepstonian system as, although the chiefs continued to exercise a limited authority over their people, almost all Africans were prohibited from participating in the electoral politics of the colony.

In the interior, settlers escaping from British rule at the Cape formed two, independent republics during the late 1830s-40s. These descendents of the early Dutch settlers initially gathered in the interior in their own political communities under their own chiefs. In the early 1850s these communities coalesced to form the Orange Free State and the South African Republic that were duly recognized by the British as independent territories. Independent chiefs ruled many areas claimed by these impoverished republics well into the 1880s. The discovery of gold transformed the Transvaal and the last of the independent chiefs was finally conquered in 1898 and he, like the chiefs to the south, was incorporated into a rural "location" or reserve. The chiefs in these republics could advise the local representatives of the "Native Affairs" department – but only on an informal basis. Africans in these "trekker" republics had no political representation.

The Union of South Africa, established in 1910, brought together the Cape, Natal, Transvaal and Orange Free State but left "the native question" unresolved. Africans who qualified to vote in the Cape continued to do so while those in the Transvaal and OFS were excluded from electoral politics – as were almost all African in Natal. Even in the Cape, the qualifications for the franchise were constantly raised in such a way as to exclude Africans; and the Bunga provided the main outlet for African political ambitions. During the 1920s, segregation provided the Union with a comprehensive answer to the "native question". This caused Africans in the Cape to be removed from the common voters' role in 1936. Africans throughout South Africa were then allowed to vote for white members of parliament who would represent their interests. In this way, blacks were excluded from sitting in the national parliament; and their voting power was effectively segregated to a handful of white parliamentary representatives.

In the meantime, segregation reinforced the role of the chiefs who were regarded by most white politicians to be the "real" representatives of the African people. As early as 1913, the Natives' Land Act prohibited whites from buying land in those areas of South Africa

reserved for African occupation. While Africans were also prohibited, under the law, from buying land in "white" areas, the extent of the reserves (i.e. those areas ruled by chiefs) was increased by the Act. In the 1920s various laws were passed in an attempt to stop the disintegration of the chiefs' powers; for as South Africa became an industrial country, large numbers of men (and increasingly women) had started to escape the control of the chiefs.   The new laws recognized the role of the chiefs as civil servants, provided them with a formal income, and entrenched tribal law and custom. Under this legislation, the government eventually recognized various "Paramount" chiefs – most notably the Zulu chief (whose ancestors had never governed the Zulu-speaking people living south of the Tugela river in the British colony of Natal).

Under the Apartheid system established in 1948, segregationist politicians saw the chiefs and the reserves as a solution to a "native question" that had reemerged as "detribalized" Africans increasingly demanded direct representation in the electoral politics of the nation. In the 1950s the various reserves were enlarged and incorporated into "Territorial Authorities" that came to be known as ethnic "homelands" or "Bantustans". In these areas chiefs ruled "Tribal Authorities" and were nominated to fill most of the seats in the legislative assemblies. In the Transkei this meant that the Bunga became the parliament of the Transkeian homeland that, in 1963, became an "independent" state. In reality, most homelands remained almost entirely dependent for their finances on the central government in Pretoria (which was dependent on the whites-only parliament in Cape Town). However in at least one homeland, the Tswana state of "Bophuthatswana", the local government was able to acquire sufficient revenue (in this case from platinum mining) to establish an independent economic infrastructure. In KwaZulu, chief Mangosotho Buthelezi originally came to power with the support of the exiled African National Congress. But by the late 1970s he had developed a mass-based political following in KwaZulu that threatened the dominance of the ANC in the area. Elsewhere, two homelands (besides the Transkei and Bophuthatswana) took independence and, in the 1980s, were seized by military dictators (Venda and Ciskei).

Chiefs were not simple collaborators in the running of the homelands. In September 1987 a group of 38 chiefs met to form a Congress of Traditional Leaders of South Africa that operated independently of Inkatha. Contralesa served the interests of chiefs but, unlike Inkatha, called for the dismantling of the Bantustan system. However in most parts of South Africa chiefs supported apartheid structures and prevented the ANC from infiltrating into their territory. In the KwaZulu-Natal area the competition between the ANC and the Inkatha Freedom Party of chief Buthelezi led to open fighting in the mid-1980s. When the transfer of power was initiated in South Africa in 1990, this fighting spread to other parts of the country and, as the country approached an electoral solution to its problems, a low-intensity civil war broke out. In the end, the homeland leaders constituted the last defenders of the apartheid system (on which they were dependent for their political survival). While some homelands openly supported the ANC in the early 1990s (Transkei and Venda), others prepared to do battle. When the ANC tried to seize control of the independent Ciskei homeland in 1992, the local military dictator gave orders to fire on demonstrators – of whom over thirty were killed. In similar circumstances in Bophuthatswana, chief Mongope called on armed right-wing opponents

of majority rule for support. This brought South Africa close to the edge of full-scale civil war in early 1994. Even when Bophuthatswana eventually fell to the ANC, chief Buthelezi refused to capitulate and, until the last moment, and in the midst of a rising civil war, refused to collaborate in the transfer of power (that eventually resulted in the democratic elections held in April 1994).

II.   The New South Africa:

The ANC emerged from the elections in 1994 with the support of over sixty per cent of the electorate. But twenty per cent of the electorate voted for he National Party (that had governed the country since 1948) and a further ten per cent, almost entirely in rural KwaZulu-Natal, supported chief Buthelezi's IFP. The country remained divided between those who saw the authority of the chiefs as a form of "decentralized despotism" (Mahmood Mamdani), mainly the trade unionists and youth who had brought about the transfer of power, and those who saw the chiefdom as a structure on which to build a form of "authentic African democracy". Although chieftaincies excluded almost all women and young men, and depended on inherited power, it was argued that they could be restructured in such a way as to become more representative of the population at large. Chiefs had been included in the final stages of the negotiated transfer of power, when they were included in the multi-party conference (the Convention for a Democratic South Africa or Codesa) that resulted in the democratic elections of April 1994. Many chiefs were concerned to extend this political role under ANC rule.

Chapter twelve of the new constitution of South Africa, drawn up in 1996, recognized the position of chiefs in a democratic South Africa. At the same time, it held out the possible creation of (local) houses of traditional leaders in which chiefs could gather as a lobby group in support of their, and more broadly local, interests. The new constitution also held out the possible creation of a Council or House of traditional leaders that would serve the same function at a national level. The followers of the governing ANC had fought the chiefs, sometimes physically, in the decade leading up to 1994; and most remained intrinsically opposed to the power of the chiefs. In the new rural and urban municipalities created to replace apartheid structures at the local level, chiefs were relegated to an advisory position and were subordinated to local elected councils. Many chiefs opposed this development as the new municipalities cut into, and divided, their old Tribal Authorities. Elected councils thus replaced chiefs as centres of local power and threatened to undermine forms of local, provincial and national remuneration received by chiefs.   However, in the national elections of 1994 and 1999 it became clear to the ANC that the chiefs exercised an important influence over their followers during elections. In some rural constituencies, such as the Northern (Limpopo) province, chiefs contributed to an overwhelming ANC victory of close to 98%. The chiefs' opposition caused local elections to be postponed three times. In 2000, chiefs again threatened to organize a boycott of local elections as these proposed to replace them everywhere with elected councils (to which they would serve as advisory officers).

In 2003 the South African parliament attempted to settle some of these issues when it passed a Traditional Leadership and Governance Framework Bill. This envisaged the establishment of "traditional councils" when the provincial premier recognized the legitimacy of "traditional communities" at the local level. These bodies would use 'custom and tradition' to maintain order, and provide spiritual guidance, in local communities. In areas with elected local councils, these 'traditional councils' would serve in an advisory capacity. Where traditional councils have been established, they are dominated by chiefs but will, theoretically, require a female representation of 30-40 per cent. The traditional councils are expected to both challenge and accept custom for, although chiefs are viewed as "traditional rulers", they are also encouraged to promote gender equality and discourage established forms of discrimination.

Under the legislation, Provincial Houses of Traditional Leaders have been (or will be) established in six of the nine provinces of South Africa. If the Griqua "chiefs" are recognized as traditional leaders, an HTL will be established in another province (the Northern Cape). Each HTL supplies the 20-member National Council of Chiefs, established in Pretoria in 1997, with a fixed number of representatives. In KwaZulu-Natal, the most populous province, 26 regional authorities send 84 chiefs to a House of Traditional Leaders, established in 1996, in Ulundi. This body, in turn, sends three representatives to the National Council of Traditional leaders (established in 1997) in Pretoria. During the apartheid period, Inkatha drew on the support of the Zulu king, Goodwill Zwelithini, as the leader of the Zulu chiefs and people. On the eve of the 1994 elections he was provided with the revenues drawn from a large tract of government land that allowed him to break away from the control of Inkatha.

The major function of the traditional councils is to advise government, at the local and national levels, on local "custom and tradition". They will also engage in development work, particularly in the struggle against HIV/AIDS; they will register voters for local and national elections; and they will allocate land to community members. Under the Communal land Tenure Bill of 2004, government aims to transfer the control of 'communal lands' from the chiefs to 'communities' through Traditional Councils and Land Allocation Committees that will oversee the distribution of land in such a way as, for the first time, to provide security of tenure for those living on land, including women. But the act will also entrench the power of the chiefs who will be expected to "administer" the land.

The role of the chiefs in a future South Africa remains a major point of contention. Chief Mangosotho Buthelezi has emerged as the loudest critic of the recent legislation that, he fears, will subordinate the Zulu king to the elected (ANC) provincial leader, the (provincial) Minister of Traditional Affairs and the (national) Minister of Provincial and Local government. He is particularly worried that it will make chiefs little more than instruments of municipal government; and that the removal of the chiefs from their position of power and respect will undermine the ritual and substance of a separate Zulu identity and nation. Negotiations over the role of the chiefs in the consolidation of democracy and nation-building will, undoubtedly, remain an important issue in South African politics.

BIBLIOGRAPHY:

Comaroff, John L.; "Chiefship in a South African Homeland" *Journal of Southern African Studies* 1, 1, 1974

Mulaudzi, Maanda: "Chieftainship and its relationship to democracy (past and present) in *Democracy X: Marking the Present: Re-presenting the Past* (Pretoria, 2004), eds., A.W. Oliphant, et. al.

Maloka, Tshidiso: "Populism and the Politics of Chieftaincy and Nation-Building in the New South Africa" *Journal of Contemporary African Studies* 14, 2, 1996.

McIntosh, Alistair: "Rethinking chieftaincy and the future of rural local government" *Transformation* 13, 1990

Skweyiya, Zola, "Chieftaincy, the ethnic question and the democratization process in South Africa" (unpublished paper, Community Law centre, University of the Western cape, 1993)

Williams, J.M.: "Leading from Behind: democratic consolidation and the chieftaincy in South Africa" *Journal of Modern African Studies* 42, 1, 2004

The House of Nationalities

The idea has been tested in constitutional debates on Devolution of Power in Kenya

a comment by Willy Mutunga, Neuchâtel 14-16 May, 2005

Background

The constitutional debate in Kenya has not been concluded. In 2003 I was a delegate to the constitutional conference which debated the provisions of the new constitution. The issue of devolution of power (which dealt with the powers of the Executive, checks and balances, local governments, provincial governments, people's participation in governments, the second chamber of the legislature, citizenship, identity, and cultures) is the one that is worth reflecting upon in drawing parallels with the idea of the House of Nationalities.

The Constitutional Provisions

The draft constitution, based on views of Kenyans reflected the following concerns on the issue of devolution of power: the presidency was dictatorial and undemocratic; local governments had no autonomy or resources and they were appendages of the Centre via the Ministry of Local governments; the provincial administration was an extension of presidential authoritarianism to the provinces and districts; while local authorities and governments reflected certain ethnic compositions, those ethnic groups had no voices in the local governance of their areas; women did not have an equal voice in matters of governance at the national, provincial and local levels; issues of citizenship, identity and the rights of minorities had not been sufficiently addressed; Northern Kenya was a crucible of human rights violations, marginalization, oppression and the region's resources were exploited without the authority of the inhabitants of Northern Kenya; development in the sense various colonial and post-colonial governments interpreted it did not apply to areas that had been marginalized since the colonial period; and local cultures and knowledge were not respected and modernization had come to mean mainstream religions oppressing traditional ones as well as dismissing people's cultures as satanic and backward. The people of Kenya wanted this situation changed and righted once and for all.

The Constitution of Kenya Review Commission dealt with these concerns and addressed them in the following provisions: provisions on citizenship guaranteed the rights of all Kenyan citizens to equality and equity; minorities were to be protected; the presidential powers were democratized and decentralized through various checks and balances (parliament, the judiciary and various citizen institutions that gave citizens power to protect their rights vis-à-vis the state), autonomous provincial and local governments, the second chamber of the legislature, and control by the citizens over land and resources; a

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modern bill of rights; proportional representation; affirmative action; and the protection of the culture of people of Kenya.

There were furious debates on all these provisions. It is true to say that these debates are continuing. One crucial addition to the CKRC draft was a chapter on culture that delegates to the National Conference felt had to be inserted. I do not think there was a consensus on what "culture" is or ought to be but the general principle that the culture of Kenyan people must be protected and an attempt to grapple with the problem was positive.

It is important to note that the booklet on the House of Nationalities was distributed among some of the delegates at the National Conference. Professor Yash Ghai, the Chair of the Conference had perused the "blue booklet" long before the National Conference started. Some of us who were familiar with the booklet advanced the following ideas:

1) the second chamber of the legislature was to be House of Ethnic Communities/Elders with clear powers to mediate conflicts between central and local governments; the second chamber would debate the share of resources to the local governments with the central government; the second chamber would prevent, manage and resolve conflicts among ethnic communities; the second chamber would act as an advisory institution for the first chamber on matters that the first chamber requested it to do and it would meet at least four times a year; the funding for the second chamber would come from the central and local governments; the members of the second chamber would comprise the heads of the various local governments in the country and would be subjected to affirmative action provisions; and the second chamber, much like the German second chamber would debate and resolve the movement of resources between local governments;

2) local governments would have the structures given in the draft constitution that the CKRC produced, a local legislature and local government. We did not see the need for provincial and locational governments if the local governments were representative and took into account the rights of minorities in their jurisdiction. Kenya has experienced with local governments since the colonial period as well as provincial and locational governments. We thought the countries resources would be better spent by concentrating on local governments and removing all the weaknesses of such governments. (The Sudan is a big country and provinces and locations could be important in reinforcing autonomous and democratic local authorities, but I do not know!);

3) ethnicity, racism, xenophobia, regionalism, religious differences would be some of the issues the second chamber and local governments would deal with on day to day basis;

4) the second chamber and local governments would have a great say in the education, development, cultures of the local areas;

5) the bill of rights would be a national manifesto;

6) regionalism (majimbo) as suggested by various participants would result in the decentralization of executive authoritarianism and ethnic chauvinism and had to be rejected; and

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7) presidential dictatorial powers were not going to be democratized by simply sharing of executive power among ethnic barons of major ethnic communities but by allowing the formation of the second chamber and strengthening the local authorities (and of course, the other checks and balances that liberal democratic constitutions provide).

South Sudan must take leadership on this issue

Experiments in governance are not cast in stone but there is always an authorship that is charged with implementation. Kenya was the author of coalition of political parties and a constitution that would be an improvement on the South African constitution. Because of lack of political will on the part of the Kenyan politicians, Kenya has failed to take leadership on both issues. I have heard it said in Uganda and Tanzania that opposition unity does not work in East Africa and they quote the Kenyan experiment to back up their argument. I have heard it been said that coalition governments do not work, again because of the failure of the Kenyan experiment. While Kenya and other countries are watching to see what they can learn from the South Sudan experiment on all the issues that the House of Nationalities encompasses, they will soon say that devolution of power does not work in Africa and, therefore, dictatorships ought to be justified.

If the House of Nationalities can at least bring and sustain peace in South Sudan that would be its lasting legacy. Writing about the Afghan society on same issue Professor Mahmood Mamdani argues that "historically, Afghan society managed its cultural diversity through a highly decentralized polity and society. A centralizing state project was likely to exacerbate rather than contain these differences. The lesson of history is clear: cultural differences need not translate into ideological difference."[1]

The House of Nationalities emphasizes cultural differences as cornerstones of national unity and that cultural and ethnic diversity, national identities and differences are the wealth of the South Sudan. South Sudan has reached a crossroad: try this noble idea or follow the easy route that national and international vested interests find predictable and easy to implement, the route of external and internal dictatorships that will oppress the citizens of South Sudan while exploiting its resources and denying its people peace, security, prosperity and democracy.

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[1] *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (Kampala: Fountain Press, 2004), 153.

Cultural liberty in today's diverse world

How will the new constitution of Iraq satisfy demands for fair representation for Shiites and Kurds? Which—and how many—of the languages spoken in Afghanistan should the new constitution recognize as the official language of the state? How will the Nigerian federal court deal with a Sharia law ruling to punish adultery by death? Will the French legislature approve the proposal to ban headscarves and other religious symbols in public schools? Do Hispanics in the United States resist assimilation into the mainstream American culture? Will there be a peace accord to end fighting in Côte d'Ivoire? Will the President of Bolivia resign after mounting protests by indigenous people? Will the peace talks to end the Tamil Sinhala conflict in Sri Lanka ever conclude? These are just some headlines from the past few months. Managing cultural diversity is one of the central challenges of our time.

Long thought to be divisive threats to social harmony, choices like these—about recognizing and accommodating diverse ethnicities, religions, languages and values—are an inescapable feature of the landscape of politics in the 21st century. Political leaders and political theorists of all persuasions have argued against explicit recognition of cultural identities—ethnic, religious, linguistic, racial. The result, more often than not, has been that cultural identities have been suppressed, sometimes brutally, as state policy—through religious persecutions and ethnic cleansings, but also through everyday exclusion and economic, social and political discrimination.

New today is the rise of identity politics. In vastly different contexts and in different ways—from indigenous people in Latin America to religious minorities in South Asia to ethnic minorities in the Balkans and Africa to immigrants in Western Europe—people are mobilizing anew around old grievances along ethnic,

religious, racial and cultural lines, demanding that their identities be acknowledged, appreciated and accommodated by wider society. Suffering discrimination and marginalization from social, economic and political opportunities, they are also demanding social justice. Also new today is the rise of coercive movements that threaten cultural liberty. And, in this era of globalization, a new class of political claims and demands has emerged from individuals, communities and countries feeling that their local cultures are being swept away. They want to keep their diversity in a globalized world.

Why these movements today? They are not isolated. They are part of a historic process of social change, of struggles for cultural freedom, of new frontiers in the advance of human freedoms and democracy. They are propelled and shaped by the spread of democracy, which is giving movements more political space for protest, and the advance of globalization, which is creating new networks of alliances and presenting new challenges.

Cultural liberty is a vital part of human development because being able to choose one's identity—who one is—without losing the respect of others or being excluded from other choices is important in leading a full life. People want the freedom to practice their religion openly, to speak their language, to celebrate their ethnic or religious heritage without fear of ridicule or punishment or diminished opportunity. People want the freedom to participate in society without having to slip off their chosen cultural moorings. It is a simple idea, but profoundly unsettling.

States face an urgent challenge in responding to these demands. If handled well, greater recognition of identities will bring greater cultural diversity in society, enriching people's lives. But there is also a great risk.

These struggles over cultural identity, if left unmanaged or managed poorly, can quickly

Cultural liberty is a vital part of human development

become one of the greatest sources of instability within states and between them—and in so doing trigger conflict that takes development backwards. Identity politics that polarize people and groups are creating fault lines between "us" and "them". Growing distrust and hatred threaten peace, development and human freedoms. Just in the last year ethnic violence destroyed hundreds of homes and mosques in Kosovo and Serbia. Terrorist train bombings in Spain killed nearly 200. Sectarian violence killed thousands of Muslims and drove thousands more from their homes in Gujarat and elsewhere in India, a champion of cultural accommodation. A spate of hate crimes against immigrants shattered Norwegians' belief in their unshakable commitment to tolerance.

Struggles over identity can also lead to regressive and xenophobic policies that retard human development. They can encourage a retreat to conservatism and a rejection of change, closing off the infusion of ideas and of people who bring cosmopolitan values and the knowledge and skills that advance development.

Managing diversity and respecting cultural identities are not just challenges for a few "multiethnic states". Almost no country is entirely homogeneous. The world's nearly 200 countries contain some 5,000 ethnic groups. Two-thirds have at least one substantial minority—an ethnic or religious group that makes up at least 10% of the population.

At the same time the pace of international migration has quickened, with startling effects on some countries and cities. Nearly half the population of Toronto was born outside of Canada. And many more foreign-born people maintain close ties with their countries of origin than did immigrants of the last century. One way or another every country is a multicultural society today, containing ethnic, religious or linguistic groups that have common bonds to their own heritage, culture, values and way of life.

Cultural diversity is here to stay—and to grow. States need to find ways of forging national unity amid this diversity. The world, ever more interdependent economically, cannot function unless people respect diversity and build unity through common bonds of humanity. In this age of globalization the demands for cultural

recognition can no longer be ignored by any state or by the international community. And confrontations over culture and identity are likely to grow—the ease of communications and travel have shrunk the world and changed the landscape of cultural diversity, and the spread of democracy, human rights and new global networks have given people greater means to mobilize around a cause, insist on a response and get it.

Five myths debunked. Policies recognizing cultural identities and encouraging diversity to flourish do not result in fragmentation, conflict, weak development or authoritarian rule. Such policies are both viable, and necessary, for it is often the suppression of culturally identified groups that leads to tensions.

This Report makes a case for respecting diversity and building more inclusive societies by adopting policies that explicitly recognize cultural differences—multicultural policies. But why have many cultural identities been suppressed or ignored for so long? One reason is that many people believe that allowing diversity to flourish may be desirable in the abstract but in practice can weaken the state, lead to conflict and retard development. The best approach to diversity, in this view, is assimilation around a single national standard, which can lead to the suppression of cultural identities. However, this Report argues that these are not premises—they are myths. Indeed, it argues that a multicultural policy approach is not just desirable but also viable and necessary. Without such an approach the imagined problems of diversity can become self-fulfilling prophecies.

Myth 1. People's ethnic identities compete with their attachment to the state, so there is a trade-off between recognizing diversity and unifying the state.

Not so. Individuals can and do have multiple identities that are complementary—ethnicity, language, religion and race as well as citizenship. Nor is identity a zero sum game. There is no inevitable need to choose between state unity and recognition of cultural differences.

A sense of identity and belonging to a group with shared values and other bonds of culture is important for individuals. But each individual can identify with many different groups. Individuals have identity of citizenship (for example, being French), gender (being a woman), race (being of West African origin), language (being fluent in Thai, Chinese and English), politics (having left-wing views) and religion (being Buddhist).

Identity also has an element of choice: within these memberships individuals can choose what priority to give to one membership over another in different contexts. Mexican Americans may cheer for the Mexican soccer team but serve in the US Army. Many white South Africans chose to fight apartheid as South Africans. Sociologists tell us that people have boundaries of identity that separate "us" from "them", but these boundaries shift and blur to incorporate broader groups of people.

"Nation building" has been a dominant objective of the 20th century, and most states have aimed to build culturally homogeneous states with singular identities. Sometimes they succeeded but at the cost of repression and persecution. If the history of the 20th century showed anything, it is that the attempt either to exterminate cultural groups or to wish them away elicits a stubborn resilience. By contrast, recognizing cultural identities has resolved never-ending tensions. For both practical and moral reasons, then, it is far better to accommodate cultural groups than to try to eliminate them or to pretend that they do not exist.

Countries do not have to choose between national unity and cultural diversity. Surveys show that the two can and often do coexist. In Belgium citizens overwhelmingly replied when asked that they felt both Belgian and Flemish or Walloon and in Spain, that they felt Spanish as well as Catalan or Basque.

These countries and others have worked hard to accommodate diverse cultures. They have also worked hard to build unity by fostering respect for identities and trust in state institutions. The states have held together. Immigrants need not deny their commitment to their families in their countries of origin when they develop loyalties to their new countries. Fears that

if immigrants do not "assimilate", they will fragment the country are unfounded. Assimilation without choice is no longer a viable—or a necessary—model of integration.

There is no trade-off between diversity and state unity. Multicultural policies are a way to build diverse and unified states.

Myth 2. Ethnic groups are prone to violent conflict with each other in clashes of values, so there is a trade-off between respecting diversity and sustaining peace.

No. There is little empirical evidence that cultural differences and clashes over values are in themselves a cause of violent conflict.

It is true, particularly since the end of the cold war, that violent conflicts have arisen not so much between states but within them between ethnic groups. But on their causes, there is wide agreement in recent research by scholars that cultural differences by themselves are not the relevant factor. Some even argue that cultural diversity reduces the risk of conflict by making group mobilization more difficult.

Studies offer several explanations for these wars: economic inequalities between the groups as well as struggles over political power, land and other economic assets. In Fiji indigenous Fijians initiated a coup against the Indian-dominated government because they feared that land might be confiscated. In Sri Lanka the Sinhalese majority gained political power, but the Tamil minority had access to more economic resources, triggering decades of civil conflict. In Burundi and Rwanda, at different points in time, Tutsis and Hutus were each excluded from economic opportunities and political participation.

Cultural identity does have a role in these conflicts—not as a cause but as a driver for political mobilization. Leaders invoke a single identity, its symbols and its history of grievances, to "rally the troops". And a lack of cultural recognition can trigger violent mobilization. Underlying inequalities in South Africa were at the root of the Soweto riots in 1976, but they were triggered by attempts to impose Afrikaans on black schools.

While the coexistence of culturally distinct groups is not, in itself, a cause of violent conflict,

it is dangerous to allow economic and political inequality to deepen between these groups or to suppress cultural differences, because cultural groups are easily mobilized to contest these disparities as injustice.

There is no trade-off between peace and respect for diversity, but identity politics need to be managed so that they do not turn violent.

Myth 3. Cultural liberty requires defending traditional practices, so there could be a trade-off between recognizing cultural diversity and other human development priorities such as progress in development, democracy and human rights.

No. Cultural liberty is about expanding individual choices, not about preserving values and practices as an end in itself with blind allegiance to tradition.

Culture is not a frozen set of values and practices. It is constantly recreated as people question, adapt and redefine their values and practices to changing realities and exchanges of ideas.

Some argue that multiculturalism is a policy of conserving cultures, even practices that violate human rights, and that movements for cultural recognition are not governed democratically. But neither cultural freedom nor respect for diversity should be confused with the defence of tradition. Cultural liberty is the capability of people to live and be what they choose, with adequate opportunity to consider other options.

"Culture", "tradition" and "authenticity" are not the same as "cultural liberty". They are not acceptable reasons for allowing practices that deny individuals equality of opportunity and violate their human rights—such as denying women equal rights to education.

Interest groups led by self-appointed leaders may not reflect the views of the membership at large. It is not rare for groups to be dominated by people who have an interest in maintaining the status quo under the justification of "tradition" and who act as gatekeepers of traditionalism to freeze their cultures. Those making demands for cultural accommodation should also abide by democratic principles and the objectives of human freedom and human rights. One good model is the Sami people in Finland, who enjoy autonomy in a parliament that has democratic structures and follows democratic procedures but is part of the Finnish state.

There does not need to be any trade-off between respect for cultural difference and human rights and development. But the process of development involves active participation of people in fighting for human rights and shifts in values.

Myth 4. Ethnically diverse countries are less able to develop, so there is a trade-off between respecting diversity and promoting development.

No. There is no evidence of a clear relationship, good or bad, between cultural diversity and development.

Some argue, however, that diversity has been an obstacle to development. But while it is undeniably true that many diverse societies have low levels of income and human development, there is no evidence that this is related to cultural diversity. One study argues that diversity has been a source of poor economic performance in Africa—but this is related to political decision-making that follows ethnic rather than national interests, not to diversity itself. Just as there are multi-ethnic countries that have stagnated, there are others that were spectacularly successful. Malaysia, with 62% of its people Malays and other indigenous groups, 30% Chinese and 8% Indian, was the world's 10th fastest growing economy during 1970–90, years when it also implemented affirmative action policies. Mauritius ranks 64 in the human development index, the highest in Sub-Saharan Africa. It has a diverse population of African, Indian, Chinese and European origin—with 50% Hindu, 30% Christian and 17% Muslim.

Myth 5. Some cultures are more likely to make developmental progress than others, and some cultures have inherent democratic values while others do not, so there is a trade-off between accommodating certain cultures and promoting development and democracy.

Again, no. There is no evidence from statistical analysis or historical studies of a causal

relationship between culture and economic progress or democracy.

Cultural determinism—the idea that a group's culture explains economic performance and the advance of democracy—as an obstacle or a facilitator, has enormous intuitive appeal. But these theories are not supported by econometric analysis or history.

Many theories of cultural determinism have been advanced, starting with Max Weber's explanation of the Protestant ethic as a key factor behind successful growth in capitalist economies. Persuasive in explaining the past, these theories have been repeatedly proven wrong in predicting the future. When Weber's theory of the Protestant ethic was being touted, Catholic countries (France and Italy) were growing faster than Protestant Britain and Germany, so the theory was expanded to mean Christian or Western. When Japan, the Republic of Korea, Thailand and other East Asian countries achieved record growth rates, the notion that Confucian values retard growth had to be jettisoned.

Understanding cultural traditions can offer insights to human behaviour and social dynamics that influence development outcomes. But these insights do not offer a grand theory of culture and development. In explaining economic growth rates, for example, economic policy, geography and the burden of disease are found to be highly relevant factors. But culture, such as whether a society is Hindu or Muslim, is found to be insignificant.

The same is true with reference to democracy. A new wave of cultural determinism is starting to hold sway in some policy debates, attributing the failures of democratization in the non-Western world to inherent cultural traits of intolerance and "authoritarian values". At the global level some theorists have argued that the 21st century will see a "clash of civilizations", that the future of democratic and tolerant Western states is threatened by non-Western states with more authoritarian values. There are reasons to be sceptical. For one thing, the theory exaggerates the differences between "civilization" groups and ignores the similarities among them.

Moreover, the West has no monopoly on democracy or tolerance, and there is no unique line of historical division between a tolerant and democratic West and a despotic East. Plato and Augustine were no less authoritarian in their thinking than were Confucius and Kautilya. There were champions of democracy not just in Europe but elsewhere as well. Take Akbar, who preached religious tolerance in 16th century India, or Prince Shotoku who in 7th century Japan introduced the constitution (*kempo*) that insisted that "decisions on important matters should not be made by one person alone. They should be discussed by many". Notions of participatory decision-making on important public issues have been a central part of many traditions in Africa and elsewhere. And more recent findings of the World Values survey show that people in Muslim countries have as much support for democratic values as do people in non-Muslim countries.

A basic problem with these theories is the underlying assumption that culture is largely fixed and unchanging, allowing the world to be neatly divided into "civilizations" or "cultures". This ignores the fact that while there can be great continuity in values and traditions in societies, cultures also change and are rarely homogeneous. Nearly all societies have undergone shifts in values—for example, shifts in values about the role of women and gender equality over the last century. And radical changes in social practices have occurred everywhere, from Catholics in Chile to Muslims in Bangladesh to Buddhists in Thailand. Such changes and tensions within societies drive politics and historical change, so that the way power relationships affect those dynamics now dominates research in anthropology. Paradoxically, just as anthropologists have discarded the concept of culture as a bounded and fixed social phenomenon, mainstream political interest in finding core values and traits of "a people and their culture" is growing.

Theories of cultural determinism deserve critical assessment since they have dangerous policy implications. They can fuel support for nationalist policies that denigrate or oppress "inferior" cultures argued to stand in the way of national unity, democracy and development. Such attacks on cultural values would then fuel violent reactions that could feed tensions both within and between nations.

Human development requires more than health, education, a decent standard of living and political freedom. People's cultural identities must be recognized and accommodated by the state, and people must be free to express these identities without being discriminated against in other aspects of their lives. In short: cultural liberty is a human right and an important aspect of human development—and thus worthy of state action and attention.

Human development is the process of widening choices for people to do and be what they value in life. Previous *Human Development Reports* have focused on expanding social, political and economic opportunities to expand these choices. They have explored ways that policies of equitable growth, expansion of social opportunities and deepening of democracy can enhance those choices for all people.

A further dimension of human development, difficult to measure and even to define, is vitally important: cultural liberty is central to the capability of people to live as they would like. The advance of cultural liberty must be a central aspect of human development, and this requires going beyond social, political and economic opportunities since they do not guarantee cultural liberty.

Cultural liberty is about allowing people the freedom to choose their identities—and to lead the lives they value—without being excluded from other choices important to them (such as those for education, health or job opportunities). In practice there are two forms of cultural exclusion. First is living mode exclusion, which denies recognition and accommodation of a lifestyle that a group would choose to have and that insists that individuals must live exactly like all others in society. Examples include religious oppression or the insistence that immigrants drop their cultural practices and language. Second is participation exclusion, when people are discriminated against or suffer disadvantage in social, political and economic opportunities because of their cultural identity.

Both types of exclusion exist on an extensive scale, across every continent, at every level of development, in democracies and authoritarian states. The *Minorities at Risk* data set, a research project including issues relating to cultural exclusion that has reviewed the situation of minority groups worldwide, estimates that about 900 million people belong to groups that are subject to some form of either living mode or participation exclusion not faced by other groups in the state—around one in every seven people around the world.

Of course, suppressions of cultural liberty fill the spectrum. At one extreme is ethnic cleansing. Then there are formal restrictions on the practice of religion, language and citizenship. But more frequently cultural exclusion comes from a simple lack of recognition or respect for the culture and heritage of people—or from some cultures being considered inferior, primitive or uncivilized. This can be reflected in state policies, as in national calendars that do not observe a minority's religious holiday, schoolbooks that leave out or belittle the achievements of minority leaders and support to literature and other arts that celebrate the achievements of the dominant culture.

Living mode exclusion often overlaps with social, economic and political exclusion through discrimination and disadvantage in employment, housing, schooling and political representation. The occupational castes in Nepal have under-five mortality rates of more than 17%, compared with around 7% for the Newar and Brahmin. In Serbia and Montenegro 30% of Roma children have never attended primary school. Latin Americans of European descent often express pride that they are colour blind and insist that their states are too. But across the continent indigenous groups are poorer and less represented politically than the non-indigenous. In Mexico, for example, 81% of indigenous people are reckoned to have incomes below the poverty line, compared with 18% for the general population.

Living mode and participation exclusion, however, do not always overlap. People of Chinese ancestry in South-East Asia, for example, are economically dominant yet have been culturally excluded, for example, with Chinese language schools restricted, publishing in Chinese prohibited and people of Chinese descent socially pressured to adopt local names. But more often

living mode exclusion reinforces exclusion from other opportunities. This is particularly so for language. Many groups, especially large minorities such as the Kurds in Turkey and the indigenous people of Guatemala, are excluded from political participation and economic opportunities because the state does not recognize their language in schools, law courts and other official arenas. This is why groups fight so hard for their languages to be recognized and used in instruction and in political and legal processes.

None of this is utopian. Incorporating multicultural policies is not always easy. Democracy, equitable development and state cohesion are essential, and many countries are successfully developing multicultural policies to address cultural exclusion.

Cultural liberty will not just happen, any more than health, education and gender equity just happen. Fostering it should be a core concern of governments, even where there are no explicit policies of persecution or discrimination.

Some argue that guaranteeing individuals civil and political rights—such as freedom of worship, speech and association—is enough to give them the ability to practice their religion, speak their language and be free of discrimination in employment, schooling and many other types of exclusion. They argue that cultural exclusion is a by-product of economic and political exclusions and that once these are resolved, the cultural exclusion will disappear of its own accord.

This has not happened. Many rich and democratic countries, for example, profess to treat all citizens equally, but are nonetheless home to minorities who lack proper representation in politics, and for whom harassment and difficulty in accessing public services are their daily fare.

To expand cultural freedoms requires explicit policies to address denials of cultural liberty—multicultural policies. To do this, states need to recognize cultural differences in their constitutions, their laws and their institutions. They also need to formulate policies to ensure that the interests of particular groups—whether minorities or historically marginalized majorities—are not

ignored or overridden by the majority or by dominant groups. And they need to do so in ways that do not contradict other goals and strategies of human development, such as consolidating democracy, building a capable state and ensuring equal opportunities to all citizens. This is not easy, but there are many examples of countries around the world adopting innovative approaches for managing cultural diversity. This Report focuses particularly on five central policy areas: political participation, religion, access to justice, language and access to socioeconomic opportunities.

Policies for ensuring political participation

Many historically marginalized groups are still excluded from real political power, and so they often feel alienated from the state. In some cases the exclusion is due to a lack of democracy or the denial of political rights. If so, democratization would be an essential first step. However, something more is required, because even when members of minorities have equal political rights in a democracy, they may be consistently underrepresented or outvoted, and so view the central government as alien and oppressive. Not surprisingly, many minorities resist alien or oppressive rule and seek more political power. That is why a "multicultural" conception of democracy is often required.

Several emerging models of multicultural democracy provide effective mechanisms for power sharing between culturally diverse groups. These kinds of power-sharing arrangements are crucial for securing the rights of diverse cultural groups and minorities and for preventing violations—either by majoritarian imposition or by the dominance of the ruling political elite.

Electoral reforms address the chronic underrepresentation of Maoris in New Zealand. With the introduction of proportional representation in place of the winner-takes-all formula, Maori representation rose from 3% in 1993 to 16% in the 2002 elections, in line with their share of the population. Reserved seats and quotas have been critical to ensuring that the scheduled tribes and castes had a voice in India and that ethnic minorities were represented in Croatia.

Several emerging models of multicultural democracy provide effective mechanisms for power sharing between culturally diverse groups

Federal arrangements are an important approach to power sharing. Almost every one of the dozen ethnically diverse countries that are longstanding democracies has asymmetrical federal arrangements in which subunits of the federal state do not all have the same powers. This arrangement responds flexibly to the needs of different groups. For example, Sabah and Sarawak have a special status in Malaysia, as do the Basques and 14 other *comunidades autónomas* in Spain, with autonomy in areas such as education, language and culture.

Some indigenous people, such as the Inuits in Canada, have also negotiated self-governing territories. The lesson is that such power sharing arrangements have broadly proven to be critical in resolving tensions in countries historically confronted with secessionist movements, as in Spain. Introduced early enough, when tensions are mounting, they can forestall violent conflict.

Policies for ensuring religious freedom

Many religious minorities suffer various forms of exclusion, sometimes due to explicit suppression of religious freedom or discrimination against that group—a problem particularly common in non-secular countries where the state upholds an established religion.

But in other cases the exclusion may be less direct and often unintended, as when the public calendar does not recognize a minority's religious holidays. India officially celebrates 5 Hindu holidays but also 4 Muslim, 2 Christian, 1 Buddhist, 1 Jain and 1 Sikh in recognition of a diverse population. France celebrates 11 national holidays, 5 are non-denominational and of the 6 religious holidays all celebrate events in the Christian calendar, though 7% of the population is Muslim and 1% Jewish. Similarly, the dress codes in public institutions may conflict with a minority's religious dress. Or state rules about marriage and inheritance may differ from those of religious codes. Or zoning regulations may be at odds with a minority's burial practices.

These sorts of conflicts can arise even in secular states with strong democratic institutions that protect civil and political rights. Given the profound importance of religion to people's identities, it is not surprising that religious minorities often mobilize to contest these exclusions. Some religious practices are not difficult to accommodate, but often they present difficult choices and trade-offs. France is grappling with whether headscarves in state schools violate state principles of secularism and democratic values of gender equality that state education aims to impart. Nigeria is struggling with whether to uphold the ruling of a Sharia court in a case of adultery.

What is important from the human development perspective is to expand human freedoms and human rights—and to recognize equality. Secular and democratic states are most likely to achieve these goals where the state provides reasonable accommodation of religious practices, where all religions have the same relation to the state and where the state protects human rights.

Policies for legal pluralism

In many multicultural societies indigenous people and people from other cultural groups have pressed for recognition of their traditional legal systems to gain access to justice. For example, the Maya in Guatemala suffered centuries of oppression, and the state legal system became part of the system of rule of law, because it did not secure justice and because it was not embedded in the society and its values.

Several countries such as Guatemala, India and South Africa are developing approaches to legal pluralism, recognizing the role of the judicial norms and institutions of the communities in different ways. Demands for legal pluralism meet opposition from those who fear that it undermines the principle of a unified legal system or that it would promote traditional practices contrary to democracy and human rights. For sure, conflicts do arise—South Africa, for example, is grappling with the conflict between the rights of women to inheritance under state constitution and the rights denied under customary law. There are real trade-offs societies must face, but legal pluralism does not require wholesale adoption of all traditional practices. Culture does evolve, and cultural liberty is not a knee-jerk defence of tradition.

Language policies

Language is often the most contested issue in multicultural states. Some countries have tried to suppress people's languages, labelling their use subversive. But the more frequent source of widespread exclusion in even well-established democracies is monolingual policy. The choice of official language—the language of instruction in schools, the language of legislative debates and civic participation, the language of commerce—shapes the barriers and advantages individuals face in life—political, social, economic and cultural. In Malawi the Constitution requires all parliamentarians to speak and read English. English and Afrikaans are still the de facto languages used in the courts of South Africa, even though nine other languages are now officially recognized. Recognizing a language means more than just the use of that language. It symbolizes respect for the people who speak it, their culture and their full inclusion in society.

The state can be blind to religion, but it cannot be mute to language. Citizens need to communicate to feel a sense of belonging, and the choice of official language symbolizes the national identity. That is why many states resist recognizing multiple languages even when they champion civil and political freedoms.

Many countries are finding ways to accommodate the twin objectives of unity and diversity by adopting two or three languages, recognizing a unifying national language as well as local languages. In many colonized countries this has meant recognizing the language of administration (such as English or French), the most widely used local language and a mother tongue at local levels. Tanzania has promoted the use of Kiswahili along with English in schools and government. India has practised a three-language formula for decades; children are taught in the official language of their state (Bengali in West Bengal, for example) and are also taught the two official languages of the country, Hindi and English.

Socio-economic policies

Socio-economic injustices and inequalities in income, education and health outcomes have been the defining feature of many multi-ethnic societies with marginal groups—blacks in South Africa and indigenous people in Guatemala and Canada. These exclusions reflect long historical roots of conquest and colonization—as well as entrenched structures of hierarchy, such as caste systems.

Economic and social policies that promote equity are critical in addressing these inequalities. Redressing biases in public spending as well as targeting basic services to people with lower health and education outcomes would help—but would not be enough. Multicultural policies that recognize differences between groups are needed to address the injustices that are historically rooted and socially entrenched. For example, simply spending more on education for children of indigenous groups would not be enough, for they are disadvantaged if school instruction is in the official language only. Bilingual education would help. Claims over land—such as the claims of indigenous people over land with mineral resources or the land settled by white colonizers in Southern Africa—cannot be resolved with policies that expand socio-economic opportunities.

Experience in India, Malaysia, South Africa and the United States shows that affirmative action can reduce inequalities between groups. In Malaysia the ratio of average income between Chinese and Malay populations declined from 2.3 in 1970 to 1.7 in 1990. In the United States the proportion of black lawyers rose from 1.2% to 5.1% of the total and the proportion of black physicians from 2% to 5.6%. In India the allocation of government jobs, admission to higher education and legislative seats to scheduled castes and tribes has helped members of these groups climb out of poverty and join the middle class.

None of these policies is without its complexities, but the experience of many countries shows that solutions are possible. Bilingual education may be contested as ineffective, but that is because it receives too little support to ensure quality. Affirmative action programmes may be contested as creating permanent sources of inequality or becoming a source of patronage—but they can be better managed. These are ways of responding to demands for cultural inclusion. But we must also recognize that in the world today there are also more movements for cultural domination that seek to suppress diversity.

Multicultural policies that recognize differences between groups are needed to address injustices historically rooted and socially entrenched

Movements for cultural domination threaten cultural liberty. Fighting them with illegal and undemocratic measures violates human rights and does not make the problem go away. Democratic accommodation is more effective in exposing the intolerant agendas of such movements and undermining their appeal.

The maintenance of a liberal society depends on respecting the rule of law, listening to political claims and protecting fundamental human rights—even those of vile people

People leading movements for cultural domination believe in their own cultural superiority and try to impose their ideologies on others, both within and outside their community. Not all such movements are violent. Some coerce others using political campaigns, threats and harassment. In the extreme they use violent means as well—hate attacks, expulsions, ethnic cleansing and genocide. As a political force intolerance is threatening to overwhelm political processes in countries around the world. Movements for cultural domination take different forms: political parties, militias, violent groups, international networks and even the state. It is naïve to assume that democratic societies are immune to intolerance and hatred.

The underlying causes for the rise of movements for cultural domination often include manipulative leadership, poverty and inequality, weak or ineffectual states, outside political interventions and linkages with the diaspora. These factors can also inspire nationalist movements—say, for autonomy or secession. But movements for national autonomy are not the same as movements for cultural domination. For one thing, movements for cultural domination can often arise within the majority group that already dominates the state—such as extreme right parties in many European countries. Conversely, many movements for national autonomy can be quite liberal, recognizing the importance of accommodating diversity within an autonomous territory and seeking only the same respect and recognition as other nations. What distinguishes movements for cultural domination is their assertion of cultural superiority and their intolerance. Their targets are freedom and diversity.

The question is how to deal with them? States have often tried to confront these movements with repressive and undemocratic methods—bans on parties, extrajudicial detentions and trials, legislation that violates fundamental rights and even indiscriminate force and torture. These measures often suppress legitimate political demands and processes, resulting in much more extreme reactions. When the Islamist Salvation Front (FIS) won the first round of elections in 1991 in Algeria, the military intervened and banned the party. The result: a civil war that cost more than 100,000 lives and spurred the growth of intolerant and violent groups.

Instead, democratic accommodation works. Allowing extreme right parties to contest in elections can force them to moderate their positions as well, for example, with the Freedom Party (FPÖ) in Austria or the Justice and Development Party in Morocco. Electoral competition exposes the fringe appeal of other groups (the Progress Party in Denmark). Democratic accommodation also gives states the legitimacy to prosecute hate crimes, reform the curriculum of religious schools (in Indonesia and Malaysia) and experiment with community initiatives to improve relations (Mozambique and Rwanda).

The maintenance of a liberal society depends on respecting the rule of law, listening to political claims and protecting fundamental human rights—even those of vile people. Intolerance is a real challenge for cultural liberty—that is why the means to deal with it must be legitimate.

Globalization can threaten national and local identities. The solution is not to retreat to conservatism and isolationist nationalism—it is to design multicultural policies to promote diversity and pluralism.

So far the focus has been on how states should manage diversity within their borders. But in an era of globalization states also face challenges from outside their borders, in the form of international movements of ideas, capital, goods and people.

Expanding cultural freedom in this age of globalization presents new challenges and dilemmas. Contacts between people, their values, ideas and ways of life have been growing and deepening in unprecedented ways. For many, this new diversity is exciting, even empowering. For others, it is disquieting and disempowering. Many fear that globalization means a loss of

their values and ways of life—a threat to local and national identity. An extreme reaction is to shut out foreign influences, an approach that is not only xenophobic and conservative but also regressive, shrinking rather than expanding freedoms and choice.

This Report advocates an alternative approach that respects and promotes diversity while keeping countries open to global flows of capital, goods and people. That requires policies reflecting the goal of cultural liberty. Policies need to explicitly recognize and respect cultural difference. They also need to address imbalances in economic and political power that lead to loss of cultures and identities.

Such alternatives are being developed and debated in three hotly contested areas:

• Indigenous people are protesting investments in extractive sectors and misappropriations of traditional knowledge that threaten their livelihoods.

• Countries are demanding that cultural goods (mainly cinema and audiovisual products) not be treated as any other goods in international trade since imports of cultural goods can weaken national cultural industries.

• Migrants are demanding accommodation of their way of life and respect for the multiple identities they have in both the local community and their country of origin. But local communities are demanding that immigrants assimilate, or be turned away, for they fear that their societies are becoming divided and that national values and identity are being eroded.

How can these demands be accommodated? How should diversity be respected, and the asymmetries addressed?

Indigenous people, extractive industries and traditional knowledge

Investments that disregard indigenous people's rights to land and its cultural significance as well as its value as an economic resource will inevitably invite opposition. So will patenting traditional knowledge under the same conditions. Three principles are critical: recognizing indigenous people's rights over knowledge and land, ensuring that indigenous groups have voice (seeking their prior informed consent)

and developing strategies for sharing benefits.

Some initiatives, though still limited, are being taken by corporations and national governments to work with indigenous communities in developing new investments. In Peru government and corporations have learned the lessons of previous confrontations and have been involving indigenous communities in decision-making in the Antamina zinc and copper mine since 2001. In Papua New Guinea investments in community development projects accompany extraction activities. Collaborative ventures between mining companies and indigenous people in North America and Australia have brought monetary benefits while preserving traditional lifestyles.

Many national governments are taking steps to recognize traditional knowledge. Bangladesh recognizes community-based rights to biological resources and associated traditional knowledge. Lao PDR documents knowledge in its Traditional Medicines Resource Centre. South Africa has promised to share with the San Bushmen the proceeds from drugs developed based on their knowledge. Countries have already found ways of using existing intellectual property rights systems to protect traditional knowledge. Industrial designs are used to protect carpets and head-dresses in Kazakhstan. Geographical indications protect liquors and teas in Venezuela and Viet Nam. Copyrights and trademarks are used for traditional art in Australia and Canada.

Recognizing diversity means that different notions of property rights and the cultural significance of knowledge and art forms be accommodated within global regimes. This requires international action. If current intellectual property standards cannot accommodate commonly known traditional knowledge or its attributes of group ownership, the rules will need to be revised. Loans to countries and companies for projects that wrongly acquire property or do not compensate communities should be withdrawn.

Cultural goods

Should cultural goods be protected in international trade to help protect cultural diversity in the world? Are films and audiovisual products cultural goods? Two principles are critical: recognize the role of cultural goods in nurturing

creativity and diversity, and recognize the disadvantage of small film and audiovisual industries in global markets.

Diversity in cultural goods has its own value because it increases consumer choice and enriches people's cultural experience. But cultural goods also enjoy economies of scale. So the products of large producers tend to crowd out the products of smaller producers, particularly in poorer countries.

How can diversity be promoted? Mounting barriers to trade is not the answer, since that reduces choice. Support to cultural industries rather than tariffs would do more for diversity. Argentina, Brazil and France have successfully experimented with production subsidies and tax breaks for cultural industries, without stopping the flows of cultural products from overseas to local markets. Hungary diverts 6% of television receipts to promote domestic films. Egypt uses public-private partnerships to finance the infrastructure for film making.

Immigration

Should immigrants have to assimilate or should their cultures be recognized? Three principles are critical: respect diversity, recognize multiple identities and build common bonds of belonging to the local community. No country has advanced by closing its borders. International migration brings skills, labour and ideas, enriching people's lives. Just as traditionalism and religious practices that violate human rights cannot be defended, forced assimilation cannot be a viable solution.

Identities are not a zero sum game. Consider this, from a Malaysian in Norway: "I am often asked how long I have lived here; '20 years', I say. The next remark often is 'Oh, you are almost Norwegian!' The assumption here is that I have become less Malaysian because it is common to think about identity as a zero sum game; if you have more of one identity, you have less of another. Identity is somehow imagined like a square box with a fixed size."

Two approaches to immigration dominate most countries' policies: differentialism (migrants keeping their identities but not integrating into the rest of society) and assimilation

(without the choice of keeping the old identity). But new approaches to multiculturalism are being introduced that recognize multiple identities. This involves promoting tolerance and cultural understanding, but also specifically accommodating religious practice, dress and other aspects of everyday life. It also involves acknowledging that immigrants are voiceless and insecure in the face of exploitation and providing support for integration such as language training and job search services.

Countries are expanding the rights of civic participation to non-citizenship—"denizenship" (Belgium, Sweden). And more than 30 countries now accept dual citizenship. To reduce misconceptions and prejudices the Commissioner's Office of the Berlin Senate for Integration and Migration funds immigrant organizations, uses public information campaigns and offers legal consultations in 12 languages to help with jobs and tackle discrimination.

But these policies are contested. Bilingual education in the United States and the wearing of headscarf in France are divisive issues. Some fear that they challenge some of the most fundamental values of society—such as commitment to adopt the American culture, or the French principles of secularism and gender equality.

* * *

Expanding cultural freedoms is an important goal in human development—one that needs urgent attention in the 21st century. All people want to be free to be who they are. All people want to be free to express their identity as members of a group with shared commitments and values—whether it is nationality, ethnicity, language or religion, whether it is family, profession or avocation.

Globalization is driving ever-increasing interactions among the world's people. This world needs both greater respect for diversity and stronger commitment to unity. Individuals have to shed rigid identities if they are to become part of diverse societies and uphold cosmopolitan values of tolerance and respect for universal human rights. This Report provides a basis for discussing how countries can make that happen. If the short history of the 21st century has taught us nothing else, it is that ducking these questions is not an option.

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Extracts from:

OUR COMMON INTEREST

REPORT OF THE
COMMISSION FOR AFRICA

March 2005

EXTRACT FROM PART 1: THE ARGUMENT (PAGE 16 – 63)

Through African eyes (page 26 – 29)

Ask the big question: 'What is development for?' and you get very different answers in different cultures. Many in Western countries see it as being about places like Africa 'catching up' with the developed world. In Africa, by contrast, you will be more likely to be told something to do with well-being, happiness and membership of a community. In the West development is about increasing choice for individuals; in Africa it is more about increasing human dignity within a community. Unless those who shape Africa's development make this integral to the way they formulate their policies they will fail.

The trouble is that in the debate on development, though we all use the same terms, we often don't mean the same thing by them. Different cultures manifest their ideas of political and economic freedom in very different ways. For this reason the Commission decided to consider the issue of culture before embarking on political and economic analysis. By culture we are talking about far more than literature, music, dance, art, sculpture, theatre, film and sport. All of these, of course, are for any social group part of its shared joy in the business of being alive. But culture is more than the arts. It is about shared patterns of identity. It is about how social values are transmitted and individuals are made to be part of a society. Culture is how the past interacts with the future.

Africa's past is one in which, in pre-colonial times, people grouped themselves through clans. Their culture was strong on kinship ties and a sense that the members of the group were responsible for and to one another. Many of these features, such as the relationship between elders and non-elders, persist today. Not least here is the 'big man' culture which requires a successful member of the clan to offer patronage to other members – a phenomenon which is rarely taken with sufficient seriousness by development policymakers. Patron-client relations should not be dismissed as temptations to nepotism and corruption; they reveal something about African senses of community.

Culture in this sense is not some bolt-on extra. It has to be built into our understanding, our analysis and our process. That is one of the reasons why, from the outset, we insisted that the Commission for Africa must consult as widely as possible, within Africa as well as within the developed world. As one of our Commissioners, Trevor Manuel, South Africa's finance minister, put it, quoting an African proverb: "Until the lions have spoken the only history will be that of the hunters". The consultation we launched had participants who ranged from east African slum dwellers and women from rural West Africa to the top elected and unelected decision-makers in Africa and the rich world. We asked them all the same question: what is actually working across the continent, and what is not?

Time and again two messages were reinforced to us. The first was of the need to recognise Africa's huge diversity. The second largest continent in the world, it contains more than 50 countries which hold an enormously rich mix of peoples, cultures, economies, history and geographies. Africa is many places, as is reflected in the French expression les Afriques. This means that there can be no "one size fits all" solutions.

The second message was that Africa's strength lies in social networks which are invisible to many outsiders. What can appear to donors as a form of anarchy is in fact structured; it is just that these are structures which Westerners are not trained to perceive. Africans survive – and some prosper – in the face of low incomes and few jobs in the formal economy. They do so using a complex network of social relations that make decisions about who gets start-up capital for small enterprises or interest-free loans in emergencies. These networks may be informal but they reveal how African people will get involved in activities where they can see purpose and direction.

What is also clear is that, in many places, such networks are seen as alternatives to the state. That is most obviously true in places like Somalia where the state has completely collapsed. But all across Africa there are 'failed states' in the sense that they are unable to provide the basic legal and economic frameworks, or public services like health and education, which citizens expect. There is a widespread cynicism with politicians. In the Wolof language the word politig has come to mean lying or deception. Voters have become disillusioned. Turnout is in decline in elections all across Africa.

For too many, perhaps a majority, the state is an irrelevance or a burden. For them their primary loyalty remains with the family, clan or tribe. Increasingly, though, something else is moving into the vacuum. It is religion. Religion has always been important in Africa but at present all across Africa people are converting in large numbers to Christianity, often in its more evangelical manifestations, and to Islam most particularly in the puritan Wahhabi form, encouraged by money from Saudi Arabia. There is also a big revival in traditional African religions including secret initiation societies. Where the state can no longer deliver, religious movements are gaining a new attractiveness.

This has very practical consequences. In the Congo, because there is no working national postal service, people leave letters in Catholic churches to be transmitted to other parts of the Congo since the Church is the only reasonably coherent nationwide infrastructure. In Senegal the Mouride Brotherhood has expanded to cover almost a third of the population with a singular mixture of Sufi Islam, entrepreneurial enthusiasm and committed members overseas who remit significant amounts of money. Religion, particularly Islam and Christianity, offers a way to plug into globalisation. Saudi Arabia and Persian Gulf countries have become part of an African trading network as well as reception zones for

African migrant workers. And many of the new evangelical churches have relationships with rich churches in the United States.

This has at least two implications for development in Africa. Religion can be a model for the state. If the African state is to become more effective it needs to understand what it is about religion that builds loyalty, creates infrastructure, collects tithes and taxes, fosters a sense that it delivers material as well as spiritual benefits. Religion can, of course, be misused but it can also be a partner in development. Faith leaders have great influence on shaping social attitudes, community relationships, personal responsibility and sexual morals. In Ethiopia the government recently secured a ruling from the Patriarch of the Ethiopian Orthodox Church which gave farmers permission to work on 160 days a year which had previously been thought of as religious festivals, when to work would be a sin; agricultural productivity has since risen by more than 20 per cent a year. In Kenya medical workers are already using shamans to transmit primary health care. Clerics, traditional religious leaders and Islamic imams are increasingly prominent in the fight against HIV and AIDS. But this must not be seen simply as an attempt to co-opt religious leaders and traditional healers into disseminating the messages of foreign cultures. An appreciation of the role of religion in African life will require some fundamentally different approaches by the international community.

One commonly held fallacy about culture is that it is the expression of unchanging tradition. Those who hold this view usually see African cultures as regressive and tribal and therefore inimical to development. African culture, they often say, is an irrational force that generates inertia and economic backwardness. This is contrary to the evidence. History shows African cultures to have been tremendously adaptive, absorbing a wide range of outside influences and impositions, as well finding ways to survive often difficult natural, environmental and social conditions. Such influences are not all positive. Many African cultures nurture a sense of denial and passivity, or encourage the abuse of women, or pay respect to the elderly with such deference that they exclude the young who now make up half the population of the continent. But the dynamics of culture mean that people can be critical of what they have inherited. The lesson is that culture is an agent of economic and social change.

The way that the mobile phone is changing life in Africa today is a vivid example of that. The use of mobile phones in Africa is increasing much faster than anywhere else in the world. Some 75 per cent of all telephones in Africa are mobile. A driving force in their spread has been the need for people to keep in touch with family news, but cellphones are also used to help poor people in remote areas find employment without travelling long distances. But the new technology is bringing many indirect spin-off.

In farming communities in Tanzania, where butchers cannot stock large amounts of meat because they have no electricity or cannot afford a refrigerator, shops previously often ran out of meat. Nowadays customers use mobiles to place orders ahead of collection, enabling butchers to buy the right amount to satisfy their

customers' needs and developing the entire supply chain. Mobile servers on motorbikes are now providing telephone connections in rural parts of South Africa. Already evidence is emerging that data collection via cellphones has the potential to dramatically increase efficiency within health budgets; pilot schemes in Uganda are already showing savings of as much as 40 per cent.

The continent is ahead of much of the world in the use of pre-paid phone cards as a form of electronic currency. Africans in the developed world are buying pre-paid cards and sending them, via cellphones, to their relatives back home, who can then sell the cards to others. Thus the cards have become a form of currency by which money can be sent from the rich world to Africa without incurring the commission charged on more conventional ways of remitting money.

The mobile phone is creating virtual infrastructures and raising the possibility of unthought-of transformations in African culture, infrastructure and politics – studies show that when 20 per cent of a population has the ability to exchange news and ideas through access to cellphones and text messaging, dictatorial or totalitarian regimes find it hard to retain power. Changes such as these should alert us to the possibility of other developments which it is difficult if not impossible to foresee – and which may undermine some of the traditional assumptions in our thinking about development. A report like this must always leave room for us to expect the unexpected.

Those who ignore culture are doomed to failure in Africa. The outsiders who ran a workshop on AIDS in Angola recently learned that. They came to pass on their knowledge about transmission and prevention. They left having obtained new understandings of cultural practices such as initiation rites, scar-tattooing, blood brother practices, means of breaking the umbilical cord, polygamy and traditional marriage and healing practices. Only then did they come to understand why their education and awareness programmes had not resulted in higher use of condoms or lowered rates of infection. They had not known enough about local cultural norms and values on sexuality.

Those who understand culture can find new ways to succeed. Before civil war plunged Somalia into a condition of warlord-dominated anarchy, order was maintained by the country's traditional courts of tribal elders, the Tol. These made each clan collectively responsible for the actions of its individual members – if one man stole, his whole clan could be fined for it. In most parts of the country the power of the Tol has been abolished by the warlords. But in Somaliland, a place of modest but ordered prosperity, the Tol has not only been retained it has been incorporated into the second chamber of parliament. Few in Somaliland doubt that the continued existence of the old system is a key component in the relative stability there. Such a hybrid system is not one which a political theorist might have invented given a blank sheet of paper. But it is one, with its odd mix of African and Western systems of governance, that clearly works. The challenge is to harness the cultures of Africa to find such workable hybrids for the rest of the continent.

The overall lesson is that outside prescriptions only succeed where they work with the grain of African ways of doing things. They fail where they ignore, or do not understand, the cultural suppositions of the people they seek to address. The international community must make greater efforts to understand the values, norms and allegiances of the cultures of Africa and in their policy-making display a greater flexibility, open-mindedness and humility.

Modern Government and Traditional Structures: An open consultation on present challenges in the South Sudan
April 14 – 16, 2005, Hotel "Beau Lac", Neuchâtel /Neuenburg, (Switzerland)

1. Introduction

The successful conclusion of the peace agreement for Sudan in January 2005 brings not only new opportunities, but also new challenges to the people and authorities of the South Sudan. One of the challenges is to rebuilt the war-torn society of the South, which got seriously damaged in social and political terms by two decades of armed conflict. There is an obvious need for an institutionally supported healing process.

Another challenge lies in the accommodation and integration of its immense cultural and ethnic diversity. Since the social fabric of the South Sudan consists of more than sixty distinct communities (nationalities), there is no unity without respecting its diversity. The latest UNDP report on human development is very relevant in this respect. It rebukes a number of "destructive myths" about nation building, which were aiming at culturally homogenous states with single identities. The UNDP report makes clear that countries do not have to choose between national unity and cultural diversity, and that policies recognizing cultural identities and encouraging diversity to flourish do not result in fragmentation or conflict.

Furthermore, both modern and traditional institutions of the South Sudan were severely weakened by the war, and this has led to a critical "institutional vacuum" inside the South. It is therefore important to rescue whatever is left of legitimate institutions, and to rehabilitate and to adapt them to a new environment.

In this light, Switzerland has been supporting a project that aims at establishing a forum for the representatives of all the ethnic communities (known under the name of House of Nationalities) in the South Sudan, where they can meet and consult each other on a regular basis. Rehabilitating traditional authorities does not prevent modernisation. In fact, through a number of workshops, the women and the youth have emerged as the most active supporters of the House of Nationalities in the South Sudan, since it gives them a platform for an open and public dialogue with the traditional leaders. They see it as a forum for change.

With the implementation of the peace agreement, the establishment of the ten states in the South as well as the introduction of new institutions, the new political order of the South Sudan is slowly taking shape. Establishing a tribal leaders' forum in the South Sudan is also to be seen in the context of strengthening the peace agreement in the South Sudan. The question is how to rehabilitate traditional institutions, and how to create a harmonious integration and cooperation between the traditional and modern institutions in the South Sudan.

2. Why This Conference?

Traditional structures are present throughout Africa and still occupy particularly in rural areas an important place in peoples social and political life. This phenomenon, whether we like it or not is a reality that has to be acknowledged in one way or the other; a tribal leader's forum could be one.

However establishing a traditional leaders' forum in the South Sudan raises delicate issues. The first question is whether traditional institutions can successfully be rehabilitated, and how this could possibly be done. Another line of questions deals with the functions such a forum should or could have, the political role it should (should not) play, and the kind of working relation it has to forge with the political authorities. There are other issues related to the proper functioning of such a forum that need to be addressed: how would members get selected, how could the forum work, what competence should it have?

The goal of this workshop is to mobilize African and international knowledge to address these issues. What do other African experiences tell us about the benefits and risks of establishing a traditional leaders' forum? How can African and international experts assist the South Sudanese along that road? How does such a project relate to other governance challenges in Africa, such as legitimacy of the state, state failure, cultural diversity and nation building? The objectives of the workshop can be summarized as follows:

To develop and clarify further the concept of traditional leaders' forum in the South Sudan with the assistance of African and international experts;

- To address the fears and concerns of those critical towards such a forum;
- To mobilize and structure international support for the project;
- To encourage and assist the South Sudanese in its implementation.

3. Background

The concept of a traditional leaders' forum was developed by Sudanese intellectuals during two workshops held in 2000 and 2001. In January 2003, more than seventy leaders of the South Sudanese Civil Society and representatives of various ethnic groups met for three days in Nairobi and came up in strong support of the project, agreeing that all communities should decide themselves on the implementation of a House of Nationalities (HoN) during a national conference to be held inside the South Sudan.

Through a number of workshops organized during the years of 2003 and 2004, the idea of creating a traditional leaders' forum spread all over the South Sudan. Of great significance was also the first women conference on the same issue held in Lokichokio in November 2003 when the seventy participants agreed that a forum of traditional leaders would provide them with a most efficient platform for improving the status and role of women in the South Sudan.

In June 2004, the SPLM invited over 300 kings, chiefs and spiritual leaders of the South Sudan to a historical conference. Though the SPLM leadership made there its scepticism towards the HoN publicly known, it eventually ended up endorsing the recommendations of the conference wherein the chiefs were calling for a forum for regular meetings of

traditional leaders representing all the ethnic communities (el-Mazalla el-kawmiya) in the South Sudan.

Quotes from the Kamuto Declaration

"WE, the Traditional Leaders and Chiefs of New Sudan having met at Kamuto, Kapoeta County, New Sudan, from June 29th - July 10th, 2004, do hereby (extracts):

- Call upon the SPLM and Government of South Sudan to assist with establishing county, state and national forums for the Traditional Leaders and Chiefs, and to continue organising such an event at least once every year, where they shall meet at county level once every three months and at a state level once every six months.
- Establish peace-building networks and institutions, devoted to popularising the sentiments and values of peaceful coexistence within and among communities.
- Commit ourselves to resolving all disputes amicably and peacefully through our established legitimate institutions.
- Enhance the role and responsibilities of Traditional Leaders and Chiefs in all aspects, particularly as regards the tenure and ownership of land and other resources belonging to their respective communities.
- Conduct meetings, discussions or studies between various Traditional Leaders and Chiefs to acquaint themselves with each others' customary laws."

4. The Possible Role of a Traditional Leaders' Forum

In view of the consultations conducted so far, the House of Nationalities, as the project is known, is expected to perform at least five functions, all of them contributing in their own way to help stabilizing the political situation in the South Sudan. The first two tracks may be more urgent than the others, but the remaining ones are no less important in a long-term perspective.

- To create an institutional space for the cultural and ethnic diversity – and a symbol for it at the same time. The preservation of their culture was a driving force of the armed resistance against the various governments in Khartoum. But cultural diversity will remain vulnerable to manipulation by political actors without an institutional protection. On the other hand, change is necessary for the survival of cultures. When neglected or met with contempt, cultures tend to turn defensive, aggressive and reactionary. In creating awareness of the culture and its importance, the forum is paving the way for a culture of change.

- To function as a forum where the traditional leaders are consulted on issues of land and customary law. Traditional leaders have an uncontested know-how and legitimacy to address those issues, and their forum provides an ideal forum for such consultations.
  If the traditional leaders are not consulted on the issue of communal land, new conflicts will break out. In addition, customary law cannot be successfully

- reformed without the traditional leaders' support. To institutionalize a political dialogue between the traditional leaders, the women and the youth is the most effective instrument to facilitate change on the ground.

- To solve possible conflicts among the South Sudan's communities, and to settle disputes before they escalate into violence. In view of the war-torn society and the easy access to fire- arms in the South after 20 years of civil war, its function of settling conflicts is both very urgent and important; its success or failure may make or break the implementation of the peace-agreement. Moreover, a successful integration and demobilization of the militias requires a sustained support by the traditional leaders. A traditional leaders' forum can provide the natural platform to this end.

- To give to the political culture of transparency and consensus in the South Sudan an institutional expression. Without effective recognition, this culture will be lost in the midst of new political and administrative structures, which are established for speeding up development and for absorbing foreign assistance. The deeply rooted sense of open consultation and legitimate authority has to find an institutional expression, and a House of Nationalities can provide exactly this.

- To protect the independence of the judiciary. Traditional leaders are the custodians of culture and traditional justice. In the traditional leaders' forum they have to settle the disputes among the communities. Therefore, traditional leaders have a strong sense for justice. There is no other force in the South Sudan that has comparable strength and incentives to protect the independence of the judiciary from the executive. The election of judges by traditional leaders is an option to be explored. Historically, the respect of individual property rights (for rich and poor) has been the single most important factor for long-term development. The independence and the integrity of courts and judges are indispensable to this end.

5. Operational and Procedural Issues

There are many procedural issues that need to be explored and evaluated carefully:

- **Accreditation:** How are the representatives of the nationalities to be selected? Different nationalities may have different procedures. Who shall intervene in case of misuse or conflict of representation within one community? Is the list of about 90 communities an appropriate basis to start with? Since a tribal leaders' forum is a non-partisan institution, should leaders involved in active party-politics have to be excluded?

- The forum was tentatively given the name of House of Nationalities, not House of Chiefs. The difference may seem minor, but some South Sudanese thought it was politically important to always remind its members that they represent the communities, and not the chiefs. This approach may also open the way for a more democratic selection of those who represent their nationality in the House. The

name does not matter, and some South Sudanese call the forum already al-Mazalla al-kawmiya.

- **Competence:** a traditional leaders forum is expected to have mainly a consultative competence. Are there areas where a binding competence should be considered, beyond purely internal matters? Some issues of customary law?

- If there are different layers of traditional leaders' forums, one on the national level of the South Sudan, another one on the level of the ten states (and possibly even on the local), what will be the relation between them?

- Frequency of meetings: the more meetings are taking place, the bigger the risk that the members of the forum loose contact with their own community, and that they fail to assume their proper role at home. The traditional leaders conference suggested to have a meeting once a year at the level of the South Sudan as a whole, and twice a year at state level, with a duration of about 2-3 weeks each. Is that a realistic proposal?

- Rotation of places for meetings: whether the meeting place of the traditional leaders' forum within the states of the South Sudan should rotate is an open question. As far as the annual meeting is concerned one can assume that a rotation among the different states would be politically important. The hosting community would also assume the chairmanship (like the European Council today).

- Role and place of the women and the youth: how can a traditional leaders forum operate as an avenue for an institutionalized dialogue between the traditional leaders on the one hand, and the women and youth on the other and?
- Internal procedures of the forum: how is the chairman being selected? Should there be a "committee" that organises and runs the meetings? Meetings of the forum would be chaired by its members, not by politicians.

- Financing: after an initial period, the forum of the traditional leaders has to be financed by the South Sudan itself, without international support. On state level, the costs for two annual meetings should not be prohibitive, since there are only 10-20 nationalities to be represented. On the level of the South, the hosting nationality would have to bear quite some costs, but due to the rotation of places that would happen only once in a few decades.

6. The Programme

The programme is structured around three parts. A first part intends to put the concept of House of Nationalities into its wider context, namely the role of traditional structures in Africa. At the same time the concept will be explored in relation to the social and political challenges of a post-war situation.

A second part will be dealing with five different functions of a traditional leaders' forum: A first function concerns the conflict resolution potential of such a forum. The second will address the issue of customary law, it's importance and potential to bring about social change. A third function to be discussed is the issue of cultural diversity and its institutional expressions. The forth function concerns the political culture in the South Sudan and its potential for consensual decision making while the last function that will be discussed shall address the judiciary as possible intervention area for the forum.

The third part of the programme is dedicated to operational questions. Based on the discussions and debates on the different function the participants are invited to explore concrete options as to how these functions could be best put into practice. If possible the conference will end with concrete recommendations with regards to the way forward in establishing a traditional leaders' forum in the South Sudan and how best such a forum could function