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INTEGRATING TRADITIONAL AND MODERN CONFLICT RESOLUTION: EXPERIENCES FROM SELECTED CASES IN EASTERN AND THE HORN OF AFRICA

Integrating Traditional and Modern Conflict Resolution: Experiences from selected cases in Eastern and the Horn of Africa

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ACCORD
THE AFRICAN CENTRE FOR THE CONSTRUCTIVE RESOLUTION OF DISPUTES

ACCORD

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Acknowledgements

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List of Acronyms

ACCORD	African Centre for the Constructive Resolution of Disputes
ADR	Alternative Dispute Resolution
AI	Amnesty International
AJC	Access to Justice Centre
ALF	Afar Liberation Front
ANDP	Afar National Democratic Party
ANLM	Afar National Liberation Movement
ANRS	Afar National Regional State
APDO	Afar Peoples Democratic Organisation
AU	African Union
AUPD	AU High-Level Panel on Darfur
CE	Common Era
CPA	Comprehensive Peace Agreement
CR	Conflict Resolution
CRC	Citizen Report Cards (Rwanda)
DDR	Disarmament, Demobilisation and Reintegration
DRC	Democratic Republic of Congo
DP	Democratic Party (Uganda)
DPA	Darfur Peace Agreement
ENTRO	Eastern Nile Technical Regional Office
EPLF	Eritrean People's Liberation Front
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESCR	Endogenous System of Conflict Resolution
FDRE	Federal Democratic Republic of Ethiopia
GACGC	German Advisory Council on Global Change
GEF	Global Environmental Facility
GoS	Government of Sudan
GPPAC	Global Partnership for the Prevention of Armed Conflict
HRW	Human Rights Watch
ICC	International Criminal Court

ICTR	International Criminal Tribunal of Rwanda
INGO(s)	International non-governmental organisation(s)
IPCC	Intergovernmental Panel on Climate Change
JEM	Justice and Equality Movement (Darfur)
KY	*Kabaka Yekka* (Uganda)
LJM	Liberation and Justice Movement
MAJ	Access to Justice Office
MINALOC	Ministry of Local Government (Rwanda)
MINIJUST	Ministry of Justice (Rwanda)
MRND	Revolutionary Movement for Development (Rwanda)
NA	Native administration
NBI	Nile Basin Initiative
NCP	National Congress Party (Sudan)
NGO(s)	Non-governmental organisation(s)
NJS	National Justice System
NMOG I	Neutral Military Observer Group I (Rwanda)
NRM	National Resistance Movement (Uganda)
NRM/A	National Resistance Movement/Army
NURC	National Unity and Reconciliation Commission (Rwanda)
OAU	Organisation of African Unity
PARMEHUTU	Party for the Emancipation of the Hutus (Rwanda)
PDRE	People's Democratic Republic of Ethiopia
RGAC	Rwanda Governance Advisory Council
RPF	Rwandan Patriotic Front
RPCM	Reconciliation and Peaceful Coexistence Mechanism
S-CAR	School for Conflict Analysis and Resolution
SECS	Sudan Environmental Conservation Society
SPLM	Sudanese People's Liberation Movement
SRF	Sudanese Revolutionary Front
TCR	Traditional conflict resolution
TPLF	Tigray Peoples Liberation Front
TNRS	Tigray National Regional State
UN	United Nations

UNAMID	United Nations and African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission to Rwanda
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNHCR	United Nations High Commission for Refugees
UNMIS	United Nations Mission in Sudan
UNOMUR	United Nations Observer Mission in Uganda-Rwanda
UNSC	United Nations Security Council
UPC	Uganda People's Congress
USAID	United States Agency for International Aid
UK	United Kingdom
WPE	Workers Party of Ethiopia

Introduction

Martha Mutisi

Contemporary Africa is faced with the reality of numerous evolving states that have to grapple with the inevitability of conflict. On their own, the fledgling institutions in these states cannot cope with the huge demands unleashed by everyday conflict. It is within this context that the complementarity between traditional institutions and the modern state becomes not only observable but also imperative.

The continuing role and influence of traditional leadership in modern Africa is hard to miss. Nonetheless, the relationship between the state and traditional institutions should not be taken for granted for it is a contested terrain fraught with complexities. While traditional institutions are rooted in the culture and history of African societies, the modern state exerts a large amount of influence on these institutions. In some cases the traditional institutions are politicised and have become instruments of propagating state ideology. In other cases, especially where they express dissent with the state, these traditional institutions have often been undermined or usurped by the state.

However, the uniqueness of traditional institutions, by virtue of their endogeneity and use of local actors, cumulatively enables them to either resist or even sometimes subvert the state. These traditional institutions, also known as endogenous conflict resolution systems continue to demonstrate their relevance in post-conflict states. This is especially true in the context of weak states that are overwhelmed with ongoing state-building processes. There is no clear-cut formula regarding the interactions between the state and traditional institutions. A relationship definitely exists between the two and understanding this could be central in the promotion of sustainable peace in post-conflict Africa. A key objective of this monograph is to examine the influence and impact of traditional systems on modern structures of governance and conflict resolution.

It is natural for scholars, practitioners and policy makers to ponder the relevance of this endeavour. The analysis of traditional methods of conflict resolution is not a new phenomenon. However, the extant literature on these institutions and processes is inward-looking, presenting them as if they existed in a political and structural vacuum. The present monograph seeks to transcend this approach. It focuses on the hybrid nature of the relationships between state structures and traditional institutions of governance, justice and conflict resolution. Its focus is on analysing the intricate patterns of interactions between state and local institutions of conflict resolution. Particular attention is given to the relevance of this interface in post-colonial states in the post-conflict phase.

ACCORD is proud to be publishing these case studies during this second decade of the millennium where the role of traditional institutions continues to be highlighted. Comprising five chapters all focused on Eastern and the Horn of Africa, the contributions follow a case study approach to highlight the modern-traditional connection. These case studies are: Afar in Ethiopia, Darfur, Rwanda, the Baganda community in Uganda and Sudan. Cumulatively, the monograph confirms that traditional institutions can play varied roles in preventing and resolving conflicts. The case studies vary in length, methodological approaches and schools of thought, reflecting the styles of the various authors. Despite their diversity, some common themes, perspectives and observations can be discerned.

Chapter 1 throws the spotlight on conflict resolution among the Baganda in Uganda by analysing practices under the *Ekika* System. It highlights the discord precipitated by the state's struggle to become more viable and democratic, and the resilience of traditional institutions of governance together with the latter's role as outposts of the state. The chapter employs an evolutionary approach by examining how Baganda practices have shifted in ritualism and character over time. The authors attribute some of these changes to 'the introduction and institutionalisation of western-type legal systems and judicial processes'.

Chapter 2 analyses a uniquely Rwandan approach to local justice known as *abunzi* mediation. It employs a peacebuilding paradigm infused with the developmental lens to explain the re-engineering of the *abunzi* mediation by the Rwandan government in 2006. The author discusses the synergy between

the *abunzi* and the modern, formal court system and how the state, through its Ministry of Justice and Ministry of Local Government, supports the operations of the *abunzi*. The chapter makes the case that although *abunzi* mediation existed in the pre-colonial era in traditional form, i.e. 'those who reconcile', the Government of Rwanda deliberately re-instituted *abunzi* mediation through statutory instruments. This gave the institution a double edged effect. The chapter discusses the complexities that are associated with combining a cultural and ritualised conflict resolution process with elements of state-mandated mediation. While paying attention to the benefits of the *abunzi* in localising justice, the author is wary of too much state oversight in local level processes.

Chapter 3 discusses the case of Afar in Ethiopia. It presents a gamut of actors in traditional conflict resolution and their complementary roles. The chapter argues that traditional institutions in the Afar region, especially elders, play a critical role in resolving conflicts between clans and sub-clans. The authors underline the cultural fusions between the state and local traditional structures by discussing how the Ethiopian state administration relies upon the peace committees composed of elders from the Afar to monitor conflict and promote peacebuilding. The chapter further discusses the inherent contradictions and paradoxes that define the interactions between the state at the national, and the Afar traditional leaders at the local level. These challenges include the issue of overlap between the formal state apparatus and traditional institutions, especially when the same individuals play dual role and occupy different offices.

Chapter 4 focuses on Darfur. It pays attention to the role of the traditional legal system known as the *judiyya* in addressing lower level offences that were committed during the war in Darfur. The *judiyya* is a grassroots system of arbitration that focuses on reconciliation and the restoration of social relationships in the community. The chapter argues that its use in Darfur would enable populations to find justice instead of relying solely on international tribunals for addressing war crimes. It emphasises the responsiveness of the *judiyya* to the context in Darfur, positing that this system is restorative, conciliatory and community-based thereby positioning it towards building the larger peace agenda in Sudan. The author also underlines the relevance of the *judiyya*, especially its emphasis on restitution and compensation for loss

or damage incurred during or as a result of conflict. Drawing on the use of the traditional *Gacaca* system of justice, the author concludes by making suggestions that may improve delivery of peace and justice by the *judiyya* in post-war trials in Darfur.

Chapter 5 also explores the role of indigenous processes but from an environmental management dimension. Basing the analysis on the climate change adaptation framework and resource scarcity thesis, the chapter investigates the role of traditional mechanisms of conflict transformation in dealing with farmer-pastoralist disputes. Focusing on the *judiyya, a* citizen-based form of third-party mediation, the chapter examines how this uniquely traditional process can be employed to address environmental issues and resource-related conflicts. The analysis draws attention to the intricate nature of *judiyya* as the concept and practise can be applied to conflict transformation at various levels, including by community leaders, elders and government officials, depending on the nature of the dispute. For this reason, the author proposes the need to consider using *judiyya* to resolve larger-scale and tribal conflicts in Sudan. Lastly, the chapter considers the challenges of this form of customary mediation and how these conundrums can be addressed.

From Afar to Darfur, Rwanda, Sudan and ultimately to Uganda, traditional institutions of conflict resolution have demonstrated their resilience and utility in twenty-first century post-colonial and post-conflict Africa. Despite some identifiable gaps, these institutions are likely to remain a key defining feature of the face of conflict resolution in Africa. The chapters which follow will enable readers to join in the debate over the nexus between traditional and modern structures of governance and conflict resolution. Readers will also emerge with questions and perhaps ideas for further research on how to close these gaps.

Conflict resolution under the *Ekika* system of the Baganda in Uganda

Ashad Sentongo and Andrea Bartoli

Introduction

Conflicts everywhere unleash complex dynamics emerging from the interaction of multiple actors. In Africa, conflicts have been a part of the state formation process as polities incorporated in a plurality of groups (especially ethnic and religious ones) express themselves at the national level. Yet the effectiveness of the political participation of these groups as well as the capacity of the state to authentically relate and respond to needs at the communal level varies enormously. Uganda offers a prime example of how state-centric approaches for resolving tensions might be insufficient. There is palpable tension between cultural institutions and the state, ethnicity[1] and citizenship, customary constructs and civil traditions. This tension might be good. It might create conditions for collaboration and complementarity. It can enrich the collective discourse and open up new possibilities for enduring peace at both the state and the communal levels. However, it can also develop into enduring rivalries and destructive hostilities. With state and traditional actors competing for space and influence in ways that elude collaboration, conflicts are provoked while dealing with social, political and resource issues. Underlying this competition are cultural values and traditional practices by different ethnic groups that endure as 'webs of significance' (Geertz, 1973:5). Members used these to analyse and resolve conflicts even before the modern state.

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1   Ethnicity is what Africans call tribe (Volkan, 1997). An ethnic group is 'a collectivity of people who share the same primordial characteristics such as common ancestry, language and culture'. Ethnicity represents 'those behaviours and feelings about oneself and others that supposedly emanate from membership of an ethnic group' (Assefa, 1995).

In Uganda, the continuing struggle for the state to become more viable and democratic has also transformed or replaced a number of traditional methods of conflict mitigation and resolution. This is evident among the Baganda ethnic group, which is the focus of this chapter primarily because it has been seen as a 'prototype ethnic group' (Fearon, 2003).[2] In Uganda the Baganda are the largest of over 45 ethnic groups, making up 18% of 30 million people in the country, and strategically located in the central region of the country. They were a privileged group under the colonial government in areas of appointment to positions of leadership, education and economic development. The Baganda people as a group continue to be influential in affairs of state to the extent that conflicts which occur in their region also affect the rest of the country.

Systems evolve over time to constitute users and managers. They contain maintenance and security mechanisms to ensure continuity. This paper analyses the Baganda kinship system – *Ekika* (singular for kinship group) – as an endogenous system of conflict resolution (ESCR). Managers of the system are called *Bataka* (clan or kinship group leaders and custodians of ancestral land) and the users are called *Bazzukulu* (clan members considered their 'grand children'). Under the system, *Mukago* (blood pact), *Kisaakaate* (enclosure), *Kutawulula* (disentangle) and *Kwanjula* (introduction) are some of the traditional practices through which conflicts are mitigated and resolved. Fearon and Laitin (1996) state that mechanisms that are inclusive and transparent are necessary to moderate cross-group and in-group problems of opportunism to avoid the costs of violence and capture the benefits of peace. In Buganda, such practices function as public processes to resolve conflicts and promote peace among members and between them and other ethnic groups. These are implemented through well-organised and supervised social-political structures. Some of them endure and continue to influence social-political relations in Buganda. Others have evolved to adapt to dictates of the modern state, but with

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2   One whose membership is reckoned primarily by descent by both members and non-members, who view such membership as normatively and psychologically important to them, with shared cultural features e.g. a common language, held to be valuable by a large majority of members of the group. It has a defined territory, with a shared history based on facts that make the group 'stand out alone'.

great limitations, while others again have been overtaken by social and political developments in the country.

Fisher (2009:329) states that 'conflict resolution works to increase cooperative aspects, while recognizing that competitive elements in conflict situations require a firm and yet conciliatory combination of strategies.' Among the Baganda, *Ekika (*kinship group) is the focal point from which the social organisation of the group and subsequently political structures of the kingdom emerged. The system utilises a number of strategies and structures to respond to social and political conflicts separately. But these complement one another to keep members united and in peace, enabling them to promote and protect the interests of the kingdom. Differences in political affiliations or opposition to decisions taken by the monarchy do not undermine the way members of the group perceive and conduct themselves as a collective, especially when threats occur. The Baganda kinship system therefore provides useful insights into the indigenous mechanisms of conflict mitigation and resolution, the maintenance of peace and social harmony, and the challenges to such mechanisms in a modern state.

Social conflicts under the Baganda kinship system

The Baganda are members of the Ganda tribe. Ganda means 'bundle', Muganda is the singular and Baganda is the plural (Ray, 1991:71), which refers to all members of the group bundled together by a common ancestry and language. 'Bu' is a prefix signifying the Baganda state that members claim has existed for 400 years (Englebert, 2002). The group's name is drawn from the analogy that one stick breaks more easily than a bundle of sticks, and the more the bundles hold together, the more difficult it becomes to break them. Hence methods that deal with conflicts among the Baganda put great emphasis on keeping the 'bundles' together. Most methods emphasise prevention, while others seek to ensure total reconciliation whenever they are applied to resolve manifest conflicts. Each kinship group is a 'bundle', made up of related individuals and families who trace their lineage to a common ancestry. Legend holds that the founder of Buganda was called Kintu, his family was the first kinship group,

and he was the first King[3] of Buganda. This and other myths are often invoked in the region to 'produce mass attitudes, mobilization and in-group policing' (Kaufman, 2006:52) necessary to achieve peace and forgiveness between members, maintain unity of the group, or mobilise members to address any threats to the monarchy.

The myth about the origin of the Baganda serves to preserve a common culture and ancestry and provides the rationale behind the methods used to mitigate and resolve conflicts in Buganda. Currently 52 kinship groups make up Buganda, and members refer to themselves as *Baana ba Kintu* (descendants of Kintu) (Englebert, 2002). Each kinship group is associated and named after a *Muziro* (totem) in the form of an animal, insect, plant, bird, or fish. No single kinship group or family can dominate the whole Baganda ethnic group, as would be the case if, for instance, the name of an individual was used to describe the whole group. In such a case the family would claim to be more superior to all other families on the group. For this reason all individuals and families have equal membership within the kinship group. Fallers (1964:445-6) further observed that the Baganda 'were acutely conscious of their uniqueness and mutual kinship, and their institutions and culture were to a marked degree organized around the nation as a whole and its well-being.' Totems also remain strong symbols of intra-clan equality and Baganda identity. Thus different kinship groups and the monarchy mobilise members to congregate each year to celebrate their ancestry, culture, and brotherhood, thereby reinforcing their unity.

A kinship group leader is called *Mutaka* (singular for *Bataka*) where *Ttaka* means land. Therefore, a kinship group exists only if it can be identified with *Obutaka* (ancestral land) and the *Omutaka* is the custodian of that land where ancestors are believed to have originated and were buried. Baganda religion developed from this view, where *Lubaale* (a spirit of past *Bataka* considered to have excelled in war, family, or agriculture) is 'worshipped and for whom a shrine would be erected' (Green, 2010:12). Depending on which areas a late *Mutaka* excelled in serving his group, all Baganda recognise such excellence

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3   King and Kabaka are used interchangeably in this chapter depending on the context, to
     refer to a King in Buganda.

and visit the shrine to worship and ask his spirit for blessings regardless of membership of the group. Therefore religion among the Baganda is not divisive, and rests on the belief that past *Bataka* from different kinship groups excelled in different aspects of life. Together their spiritual guidance is needed to enable members fulfil all functions necessary for 'bundles' to keep together and defend the kingdom.

A kinship group represents an extended family whose structure is organised hierarchically, through a patriarchal lineage. The following order is from the bottom to the top:

(i)   *Nnyumba* (home of birth headed by father, including his immediate family)

(ii)   *Luggya* (homestead headed by paternal grandfather including his immediate family)

(iii) *Mutuba* (bigger group of related homesteads)

(iv)   *Lunyiriri* (paternal lineage)

(v)   *Ssiga* (a family grouping of paternal lineages)

(vi)   *Kasolya* (peak of the kinship group headed by the *Omutaka*).

At the highest level, all the kinship groups are represented in the *Olukiiko Lw'Abataka* (*Bataka* General Assembly). Conflicts involving marriage, inheritance, adultery, fornication, theft, burglary, false accusations, and other grievances involving social inequality are handled through these social structures.

In spite of the large and extended membership, in-group policing is a salient feature of this structure and serves to prevent conflicts, strengthen the lineage, and to preserve culture, integrity and good morals. The success or disgrace of one member applies to the whole kinship group. Family and kinship group members are obliged to participate in celebrating success and enforcing the judgement or punishment issued by elders. This is regardless of one's status in the community. Individuals are encouraged to own property, pursue success at all levels and have respectful careers because it contributes to the shared status of the kinship group. For that matter, disgraced individuals can be ostracised at the least, but members can also disavow their kinship groups and ask to be assimilated into other kinship groups, especially if the *Kabaka* was unhappy with the group's

leaders. To prevent or resolve conflicts and other similar situations, the Baganda have developed a number of methods. The most notable are those which follow.

Kwanjula

The practice of *Kwanjula* (introduction) among the Baganda includes a full recitation of the structure of one's kinship group. This involves mentioning the names of the group's leaders at each level as indicated above. This functions to demonstrate ancestral origin and lineage especially during an installation to a position of traditional authority and the acceptance of non-family members into Baganda families. For example, on marriage, partners introduce their family members to in-laws during a special ceremony also called *Kwanjula*. Representatives of each partner recite their immediate and distant kinship group lineages *(Kulanya)*, to clarify the person's totem, kinship group and ancestral origin. In doing so, the practice creates a special relationship between group leaders and subjects, partners and their in-laws, and also their extended families. The practice signifies the creation of a bond that holds families from different kinship groups together, and is 'regarded as one of the key determinants of social cohesion' (Dykstra, 2006:4).

Coser (1956:36-48) argues that social systems provide safety valves that prevent conflict or its disruptive effects where hostility and a predisposition to engage in conflict can be managed without change in relationships within groups. Among the Baganda, marriage within one's own kinship group is a taboo and *Kwanjula* functions as a safety-valve to (i) determine that partners do not disgrace their families by marrying within their respective kinship groups, and (ii) promote culture and belongingness of kinship groups together as a bundle. In this way the practice is a promise and commitment to non-aggression and peaceful coexistence by families and kinship groups, bonded through marriage between their members. Violence and other forms of conflict between kinship groups remain rare in public and are almost unheard of since this signifies violation of such a bond and therefore a disgrace to members. Unifying relationships are created during the process to symbolise a willingness by partners to subordinate individual interests to those of the family and the group. This holds regardless of status or religion in ways that strengthen the togetherness of the 'bundles'.

The impact of *Kwanjula* became more evident in post-conflict experiences within families in Buganda. As a result of civil wars that characterised changes in political regimes in Uganda after independence, a number of families lost family heads or were left without direct help, and orphaned children were forced to live with their extended families. Land also became increasingly scarce as the traditional source of family income in Buganda because many people from other regions moved into the central, more developed and secure region. During these times, connections and contacts with extended families often established through *Kwanjula* ceremonies frequently produced living and work arrangements that helped support the welfare of affected members. Resources like land or capital to start a business were shared, the most common being financial support for medical treatment of the extended family members, and the schooling of orphaned children. Therefore the bond that *Kwanjula* produces expands opportunities for members to mitigate kinship conflicts, and creates a support network that serves as a safety valve for members experiencing the effects of violence. Even when partners divorce, family members continue to benefit from this bond and treat each other with the same respect.

Traditionally, to be a Muganda is to belong to any one of the 52 kinship groups by birth. However this strict qualification for membership in a kinship group was later reformed to include assimilation, mostly as a result of post-conflict experiences in Buganda. A number of non-Baganda migrated and settled in Buganda to access business opportunities, health, education and other social services, or to work in government departments in Kampala City. Assimilation helped to mitigate conflicts that would come from resistance by non-Baganda to the strict cultural norms of the Baganda that guide family relationships or land ownership in the region. Many non-Baganda and foreigners born in Uganda became full members of Baganda kinship groups, 'after they learned the language, practiced the culture and acquired Baganda names' (Sathyamurthy, 1986:77).

Dykstra (2006:3) states that 'family relationships are among the few relationships capable of being sustained across spatial and social divides.' Among the Baganda, family includes members from multiple kinship groups and tribes who marry or decided to adopt Baganda culture and language. A husband and wife from

two different kinship groups or tribes consider their immediate and distant relatives as one family, often formalised during *Kwanjula*. For example, former President Milton Obote of the Acholi tribe in Northern Uganda was formally introduced and accepted into the family of his wife Miria Kalule Obote of the Ngeye kinship group.[4] Although Obote later ordered the military to attack the Buganda Kingdom Palace in 1966, Miria Obote remained married to Obote and maintains she was not consulted and condemns the attack.

A number of non-African people were also assimilated into Baganda families and kinship groups. For example, many people of Indian ancestry who were born in Buganda decided to take on Baganda culture and identity and enjoy the full rights and privileges accorded to all Baganda. Ugandan-born people with Indian ancestry who returned to Uganda in the 1990s after Idi Amin expelled them in 1972, declared their allegiance to the monarchy and many of them practiced Baganda culture and speak the *Luganda* language. When the National Resistance Movement (NRM) government allowed them to return to Uganda after it came to power in 1986, a number of them repossessed their land and other properties that were confiscated by Idi Amin. Among them is *O'wekitiibwa* (Honorable) Tylor Rajan, who is currently a minister in the Buganda kingdom government. Professor Mahmood Mamdani (cited in this paper) also declares himself as a Muganda (Sunday Vision, 2011a). Similarly in the modern state, traditional introduction ceremonies by partners are accepted as a form of customary marriage, and non-Baganda who become assimilated are recognised and protected by the monarchy and laws of the country.

Kisaakaate

Kisaakaate (enclosure) is a village place enclosed in a perimeter wall that was traditionally managed by the *Omutaka* and/or *Omutongole* (village chief appointed by the King). Each village was required to have a *Kisaakaate* as a

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4   Reported by Sheik Abdu Obed Kamulegeya, a long-time associate and friend of President Milton Obote in an interview with one of the authors on 6 August 2011. Sheik Kamulegeya also stated that he was the driver of a Mini car that took Milton Obote to Kawempe to meet Miria's parents on the day of the introduction.

physical or symbolic place to promote peaceful coexistence, among other services, through which Baganda maintained their unity and made peace with non-Baganda. Participants included both adults and children from different kinship groups and learned about Baganda culture and history. They received training in leadership and acquired skills necessary to serve their families, groups and the kingdom. Chiefs also conducted mock trials to learn and become more effective as judges.[5]

The practice provided a system of merit where all members of kinship groups had access to services provided in the *Kisaakaate*. Abilities demonstrated during training determined the role a participant would play in society upon completion. It served to mitigate conflicts over exclusion from access to opportunities for the personal development of individual members, whose success or failure was shared by all members of the group. Any participant who demonstrated excellent abilities in the handling of public affairs was recommended by the *Omutongole* or *Omutaka* to the *Kabaka* for appointment to a position of responsibility. The prospect of recognition and appointment to serve the *Kabaka* based on one's ability regardless of kinship group, religion or status was a strong incentive that 'promoted moderation and cooperation' (Horowitz, 1985:598) among participants. These were considered strong and necessary qualities for leaders to have and to be able to keep the 'bundles' together.

As a method of resolving conflicts, the practice was prominent during the pre-colonial and colonial periods as the Buganda Kingdom's armies fought other kingdoms and captured land to expand its territories. Non-Baganda from areas that were captured e.g. from the Bunyoro Kingdom, attended *Kisaakaate* sessions to orient them into Buganda culture and to learn the *Luganda* language. The practice therefore served to mitigate conflicts that would arise from cultural differences, preserve and promote Baganda culture and norms, prepare group

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5   Sheik Abdu Kamulegeya reported in an interview with one of the authors on 6 August 2011 that his father Sheik Obed Lutale attended Kisaakaate with other elders at Prince Badru Kakungulu's home. He was appointed by the colonial government as the first Muslim Judge at Mengo Court, and was part of the team that negotiated the alliance between KY and UPC during the 1962 elections.

members for various roles in society, as well as peacefully integrate non-Baganda into local communities in the region.

It is not a condition in Buganda to be rich, prominent or a member of the royal family to be appointed a leader. Many *Bakopi* (commoners) were appointed by the *Kabaka* as *Bakungu* (chiefs) based on their skills and abilities. For example Stanslus Mugwanya who was appointed by King Chwa and became a prominent chief and then later a judge, was a commoner (Chwa, 2008). He was recommended to attend *Kisaakaate* by his brother Pio Mbelenge. King Kimera, the third King of Buganda, also went through *Kisaakaate* under his uncle Katumba. Kimera later appointed Katumba as a special chief with a title of '*Mugema*', which means 'to prevent'. Kimera had prevented the death of King Kimera when his own father left him in the bush to die. To date, the head of the *Nkima* kinship group is called *Mugema*, and the role of the *Nkima* kinship group in the Buganda Kingdom Palace is to dress a new king with a bark cloth during installation in remembrance of this act.

After the overthrow of Idi Amin in 1979, Milton Obote, who became president for the second time in 1980, attempted to revive a modified version of the *Kisaakaate* system to fit the structure of the state. Obote had abolished kingdoms in 1966 but realised that *Kisaakaate* was an institution that contributed greatly to the strength of the Kingdom and the unity of the Baganda. The invention of the *Mayumba Kkumi* (ten houses) system resembled the *Kisaakaate* system. Here, instead of a *Kisaakaate* for a whole parish, each ten homesteads elected a committee to manage their affairs. In Buganda, the new system was resisted and later collapsed nationwide, largely because Obote was still hated in Buganda for ordering the 1966 attack on the *Kabaka's* palace at Mengo. The *Mayumba Kkumi* system was thus viewed as an extended assault on the Baganda. An inquiry into why the system failed also noted that it 'mainly played a security function… and solicitous behaviour of officials at the local level involved entrenchment of the patronage system in support of the ruling party' (Bazaara, 2003) which was unpopular.

The *Kisaakaate* has been revived by *Kabaka* Ronald Mutebi II. In January 2008, he donated land to construct a permanent facility to serve as an informal

place for children's use (New Vision, 2008). Since then, a number of Baganda have established symbolic places including special programmes on Internet radios (AbabaKa.com, 2011), to conduct *Kisaakaate* programmes. The aim is to teach, especially Baganda communities in the diaspora and their children, about their culture and history, and to discuss ways to solve social, political and economic problems affecting Buganda. In June 2011, the *Nabagereka* (Queen) of Buganda launched an 'International *Kisaakaate'* at Vienna College in Uganda (In2EastAfrica, 2011), under the theme 'Culture nurtures good leadership' to educate Baganda children in international schools in Uganda about culture and leadership. This revival is a recognition of the social and political roles *Kisaakaate* played before the modern state, in building social relationships and leadership capacities to mitigate and resolve conflicts, which helped to keep the 'bundles' in peace and united against threats. This challenge is evident in the current hostilities between the monarchy and central government, as both parties struggle to arrive at constructive solutions to grievances articulated by the monarchy against the state.

Mukago

The *Mukago* (blood pact) is a traditional practice where individuals from different families or kinship groups create a family bond between them irrespective of their religion or status. The practice symbolises a binding lifetime assurance of mutual support, commitment to non-aggression and openness, all based on love and trust between parties. To enter into a *Mukago* parties break a coffee cherry. Each one takes a bean and puts some of their blood on it from a small cut on their navels. Next, each party eats the bean with the blood of the other person on it to seal the pact. This pact is considered 'semi-divine and unbreakable' (Kasozi et. al., 1994) and it is not recorded in written form since trust is deemed most important. Once concluded, all future generations of descendants inherit the *Mukago*. Children of individuals or families that made *Mukago* subsequently remain obliged to fulfil all associated responsibilities.

The practice of *Mukago* acquired a political function between political parties and the monarchy during independence and post-independence struggles in

Uganda. Buganda has always considered itself a state within a state, and groups seeking to control state power at national level often treat the Baganda as an entity whose collective support is critical to achieve electoral victory or stability in the country. The *Kabaka*, the *Bataka* and other leaders within the monarchy negotiated with successive political groups and governments to mobilise co-operation and support of the Baganda in exchange for meeting Buganda's interests. Since independence in 1962, Buganda's interests have included, among others, a federal status as was granted by the British in 1900, as well as the return of all the land that the monarchy claims was confiscated by the colonial state and continues to be occupied by the central government. Negotiations have often produced alliances between the monarchy and different political groups. These are described as *Mikago (*plural of *Mukago)*, where Buganda seeks to promote and protect its own interests in the modern state.

The *Kabaka Yekka* (King Only - KY) party supported mostly by the *Bataka*, was formed in 1961 to protect Buganda's interests as the country moved towards independence. KY entered into *Mukago* with the Uganda People's Congress (UPC) party and defeated the Democratic Party (DP) during the 1962 elections. The *Kabaka* of Buganda, Mutesa II, was elected by parliament as a titular head of state, and the leader of UPC, Milton Obote, became the Prime Minister. KY continued to campaign for Buganda's interests in the new independent state and sought to neutralise the split among Baganda elites between Protestant and Catholic blocs. To hold true to the principles of trust and commitment as central tenets of *Mukago,* the agreement between KY and UPC was not written. Korostelina (2007:149) has argued that conflicts of interest typically arise between two or more groups that share or have intentions to share a resources or power. Similarly, the *Mukago* collapsed when the UPC-led government failed to honour the 1900 agreement between Buganda and the British. Instead, UPC ordered a referendum on the return of three countries (Buyaga, Buwekula and Bugangaizi), which the Buganda Kingdom captured from the Bunyoro Kingdom before independence. Buwekula opted to remain part of Buganda, while Buyaga and Bugangaizi chose to return to Bunyoro. For the Baganda, the trust and binding commitment to non-aggression between Buganda and UPC had been broken. The monarchy demanded that the seat of government be moved from

the Buganda region. This sparked the 1966 violent overthrow of the first elected government in a military coup orchestrated by Milton Obote. He declared himself president, suspended the 1966 constitution and abolished kingdoms.

In 1985 the current *Kabaka* of Buganda, while still living in exile in Britain, entered *Mukago* with President Yoweri Museveni, leader of the National Resistance Movement/Army (NRM/A) (Daily Monitor, 2011). He mobilised Baganda's support and participation in the 1980-6 civil war, in exchange for the restoration of the kingdom and the return of properties the monarchy claimed were occupied by the central government. In fulfilment of their role as custodians of Buganda, the *Bataka* wrote to the president requesting that he keep the promise he made during the civil war (Kasfir, 2000). The kingdoms were restored through an Act of Parliament (1993) (Government of Uganda, 1993) after which Prince Ronald Muwenda Mutebi II was crowned the *Kabaka* of Buganda on 31 July 1993 (Sunday Vision, 2011b). However, for the second time the *Mukago* collapsed after the government refused to honour a federal status for Buganda and return all properties to the Buganda Kingdom. Broken trust and lack of commitment from the NRM government underlie the recent communal riots and hostilities between the monarchy and the central government.

In January 2011, while addressing his subjects in Mpigi District the *Kabaka* warned the central government to 'stop persecution of the Baganda' (New Vision, 2010). A mysterious fire that destroyed a mausoleum (Walusimbi, 2010) with four royal tombs of deceased Buganda kings on 16 March 2010 preceded the *Kabaka's* statement. A number of Baganda alleged that the president ordered the fire, and five people were killed and others injured as mourners blocked the president's convoy to access the site of the tombs. This happened at a time when the government had closed the Buganda Kingdom's radio station (Politics of Growth and Governance Worldwide 2009). It alleged that the station was partly responsible for inciting the September 2009 riots in the region, and the April 2007 riots in Kampala city against the government's sale of Mabira Forest land located in Buganda region (Tenywa et al., 2007).

On efforts towards *Omukago gwa East Africa* (East African Community), the *Bataka* of Buganda opposed the political and economic union of East African

states. The monarchy has argued that the proposed arrangements between Uganda and member states are silent on the position of the Buganda Kingdom within the community. This opposition to transform East African States into a single federation dates back to 1929 and 1953 when similar suggestions were made by the colonial government. Both Kings Chwa and King Muteesa II refused to allow Buganda to join the rest of East Africa. As a consequence, both were forced into exile by colonial governments as punishment.

Kutawulula

Kutawulula (disentanglement) is a practice conducted in a *Kitawuluzi* (physical or symbolic space) where issues causing conflict are analysed and parties to a dispute reconciled. The practice draws meaning from two people involved in a fight. It is a custom in Buganda that anyone near to two people who are fighting must not only intervene to separate them and stop the physical violence, but must also go further and ask questions and engage the adversaries in a conversation to find a solution. *Kitawuluzi* is very specific in dealing with conflicts and discussing the dispute to find a solution at the level where it occurs.

Individuals, families or groups of people involved in a dispute approach the chief, or are invited to the *Kitawuluzi* for a single or a series of sessions to discuss the issues affecting them and their relationships. Acceptance to participate indicates a willingness by the parties to stay in the process for as long as it takes, and to talk to each other until a solution is found. From this perspective, the process resembles Sustained Dialogue explained by Saunders (1995:65), as 'a process of change' where 'people regularly keep coming back to the table to talk and listen to each other deeply enough about their perceptions, the conflict, and to explore complexities in their relationship'. In both processes, resolution of the conflict lies largely in the operational flexibility of the process to allow for enough time, space, listening and communication between the parties to transform their relationship and perceptions.

In Buganda, each *Muluka* (parish) in all eighteen *Masaza* (plural for counties) of the Buganda Kingdom had a *Kitawuluzi*, presided over by *Owomuluka*

(country chief). Some writers refer to it as 'the chiefs' court' (De Coninck and Drani, 2009:14). In the context of the kinship group system, *Kisekwa* is the highest court of the *Bataka* and handles kinship group disputes only. *Katikiro* (Prime Minister of the Buganda government) is the highest political office of the kingdom that handles political affairs and conflicts. This distinction is critical in maintaining and protecting the 'bundles' together, although political views and affiliations of their members may differ. Kingship in Buganda draws its authority from kinship groups, and conflicts involving kinship groups and their leaders are handled exclusively and in private under *Kisekwa*. This is unlike everyday conflicts that are traditionally handled through *Kitawuluzi* as the first court at local level.

Kutawulula occurs when each party gets a chance to make a case about the dispute and is listened to by all parties without interruption. Witnesses are allowed to intervene, but only to add to the analysis, clarify issues or suggest solutions, and not to make judgements. The *Omutongole* regulates this interaction as a transparent public process where parties not only declare their grievances and suggest options for resolution, but also declare forgiveness to one another and commitment to a resolution when it is reached. The gathering has also been referred to as a peacemaking circle (allafrica.com, 2006) that employs alternative justice mechanisms to resolve conflicts in local communities. The *Batongole* (plural for *Omutongole*) respond to and address conflicts in each village through this process. A number of physical structures known to have served as *Kitawuluzi* still exist as a traditional symbol of local peace. In the Makindye Division in the Kampala District one of the local council divisions is called the '*Kitawuluzi* Zone', named after a court house that once served as a *Kitawuluzi*. In the Kisenyi I parish in the Kampala district, local council leaders collected funds for 'construction of a new parish office, which is traditionally known as *ekitawuluzi*…to serve as a hall or meeting point by residents and their leaders' (Kato, 2008).

The practice is similar to *Ekyoto* (fire place) among the Ankore ethnic group in the western region of Uganda. Village elders select a neutral venue, usually a home that they all respect, and light a fire in the compound to symbolise a problem affecting the community that must be addressed. Parties to the dispute

are invited and together with the elders sit around the fire to discuss the dispute. It usually starts in the evening and may go on through the night until a solution is found. In both cases, the resolve by leaders to find a solution, readiness of the parties to talk, and commitment by all to stay in the process for as long as it takes to find a solution makes it difficult for parties to revert to the same conflict once a solution is reached.

Under the modern state this practice has been overtaken by the introduction and institutionalisation of western-type legal systems and judicial processes. Suffice to note however that, as part of the concessions to gain a federal status in 1900, the Buganda Kingdom allowed the colonial government to use most of its *Bitawuluzi* (plural for *kitawuluzi*) structures as local courts and administrative centres. Since independence, the same structures in the Buganda region have been used by the state as local government offices. To date, some have been handed over to the monarchy, although it continues to demand the return of the remaining structures and that the state should pay rent for the time the facilities were used without their consent.

The kinship group system and political conflicts

The social structure of the Baganda kinship group system produced political structures of the kingdom. This highlights the fact that in Buganda it is culture that keeps the 'bundles' together, and the above methods function to ensure that Baganda culture remains intact. This is so despite differences in political choices of group members in a modern state. Increase in conflicts especially over land seems to have forced this approach to maintaining unity of the Baganda as kinship groups expanded and their members increased in number (Kimala, 1995:32). Some 400 years ago, the *Bataka* from the original five kinship groups, namely the *Nyonyi, Ffumbe, Njaza, Lugave* and *Ngonge*, opted to preserve the common language, culture and ancestry of their ancestors. They agreed to appoint a *Saabataka* (Supreme custodian of land) as their *Kabaka*, to adjudicate over disputes and protect both the people and their land (Wrigley, 1996). Legend has it that at Magonga in Busujju country on Nnono Hill, the *Bataka* '…defined a form of governance for Buganda Kingdom, and the relationship between the

kinship groups and the King was formally agreed upon. The agreement was not written down, but it constituted an understanding between kinship groups that has been followed ever since. In essence, it set down Buganda's Constitution' (Buganda Kingdom, 2012). This marked the beginning of *Bataka's Lukiiko* (Council of Kinship Group Leaders), which remains the supreme legislative and advisory body to the *Saabataka* of Buganda.

Saabataka's responsibilities included the appointment of leaders, the levying of taxes, judgement of cases, the declaration of war, and the control and distribution of land (Cathrine, 2006). This continued until colonialists introduced the Second *Lukiiko* composed of appointed officers who assumed many of these responsibilities as ministers, heads of departments and elected county chiefs in the Buganda Government. However, even with the emergence of this very influential political structure led by a *Katikkiro* (Prime Minister), known as *Kabaka w'ebweru* (the King outside the palace), the social structure led by *Bataka* remains the supreme source of authority. However, two important points must be noted. First, based on the original *Bataka* meeting as explained above the *Kabaka* draws his authority from their *asse* and does not always make the final decision especially on matters that affect culture in Buganda. Second, for this reason the social structure of kinship groups supervises the political structure of the monarchy, each with clear but complementary social and political functions that influence how conflicts are managed to ensure that all 'bundles' remain together.

There are two traditional methods which stand out in dealing with political conflicts in Buganda. The first is the rotation of the centralised authority of kingship across kinship groups. Rotation mitigates conflicts over access to power because no single kinship group can dominate kingship in Buganda. Each kinship group has a chance to have a king from amongst its members. Buganda is a patrilineal society where one takes on the father's kinship group and totem and is named accordingly at birth. However, only a king is allowed to take on the mothers' totem and kinship group. Because of this condition, he can only marry from other families and groups since it is taboo for one to marry within his own kinship group. So each time a succeeding king marries into a different kinship group, the heir to the throne will come from that group. In

that way kingship rotates depending on how different kings choose their wives. This tradition has persisted for centuries until the present time. Therefore, 'royal family' in Buganda refers to many people from different kinship groups with blood ties to kingship, but all cannot claim any right to ascend to the throne because kings of Buganda change depending on their mothers' kinship groups. For example, King Edward Mutesa II was of the *Nte* (Cow) kinship group and married into the *Nkima* (Monkey) kinship group. His son, the current king, is from the *Nkima* kinship group as was his mother. He married into the *Musu* (Edible rat) kinship group, which automatically indicates that the next King will be from the *Musu* kinship group. Kiwanuka (1993) observed that 'the absence of a royal kinship group, a permanent aristocracy and the equality of kinship groups facilitated the building up of a system whereby a young man of humble birth could enter the civil service at court and sometimes rise to a position of considerable importance.' This method has functioned to effectively maintain a number of cultural and political processes within the centrally organised monarchy and ensure the continuity of the kingship system. Between 1966-1993, when kingdoms remained banned and Buganda was without a king, *Abataka* tapped into the symbolic role of kingship to mobilise their members, especially the youth, to preserve culture and history and thus keep the 'bundles' united.

The rotation of kingship in Buganda resembles the alternation of kingship among the Dagomba ethnic group in Northern Ghana. Two brothers, Andani and Abudu, from different mothers agreed to alternate power between their families after the death of their father, Chief Yakubu Nantoo I in 1849. Andani the eldest ruled first, then Abudu followed, and this was extended to their descendants. As in Buganda, such informal rules managed to generate consensus and underscored interdependence among members, thus mitigating conflict that could have emerged over access to the throne. However, the 1884 Berlin conference divided the Dagbon Kingdom. The east was designated as German Togoland and the west as the British Gold Coast (Ghana). Yendi, the seat of the royal chief called *Ya-na*, was located in Togo, yet half of the subjects were located in the Gold Coast. Trouble started when Chief Naa Alhassan of the Abudu family died in 1917. The next king was supposed to be from the Gold Coast, but colonial laws barred him from crossing into Togoland to rule. Although

the boundaries were later removed and the two regions reunited, the system had already been disrupted, causing intra-ethnic wars and hostilities that have continued until present time. The latest round of violence occurred on 17 March 2002, when King Ya-naa Yakubu Andani II and more than 40 others were killed in renewed violence, allegedly by members of the Adubu family. In this case an endogenous method functioned to preserve peace among the Dagomba until efforts to establish a modern state interrupted the system.

The second traditional Bugandan method for dealing with political conflict involved the decentralisation of authority through the distribution of roles and responsibilities between kinship groups. Chiefs appointed to lower political structures of the monarchy provide sufficient space for all members to participate in decision-making. Easton (1990:34) has argued that the 'functioning of a state can only be derived from its relationship not to a class but the whole society.' After the *Bataka* reached a consensus to appoint King Kintu as the first *Sabataka,* subsequent kings distributed responsibilities to kinship groups for the kingdom to remain united and strong. In this way kinship group identities were reinforced with role identities (Korostelina, 2007:21) as political and organisational responsibilities to the kingdom. These have remained the same ever since. There is no seniority between kinship groups to access positions of power, local resources or to serve the king. Traditionally, each of the 52 kinship groups has clear but complementary political and organisational roles which underscore the interdependence between them. Failure by one group to fulfil its role means the monarchy will not function effectively.

Under the *Kisaakaate,* kinship groups and family members were mentored and acquired skills to fulfil these roles. For this reason there are no reported disputes between kinship groups over positions and roles within the monarchy. For example, the *Omusu* (Cane rat) kinship group is in charge of health and sanitation, and the *Emamba* (Lungfish) kinship group is in charge of the Navy as part of the king's army. The roles of the *Njaza* (Reedbuck) kinship group include hunting, transport, construction and customs officers on landing sites around Lake Victoria. The *Mpologoma* (Lion) kinship group is also responsible for construction, and entertaining the king by playing a special drum called *Mujaguzo.* The *Nte* kinship group is responsible for the king's iron works. Other

kinship groups were assigned to be in charge of agriculture, farming, security, and education.

Bates (1983:48) asserts that 'ethnic groups are coalitions formed to extract benefits from others or to defend possessions, and violence occurs when these are threatened.' To this end, the Baganda kinship group system also functions to ensure that at all times there is sufficient unity and participation to promote Buganda's interests and defend the kingdom against threats. To achieve this kinship groups employ the methods explained above to ensure that intra-group conflicts are prevented or resolved, with the aim to achieve total reconciliation between parties as a necessary condition to ensure that all 'bundles' remain united against external enemies.

The political structure of the monarchy also functions to achieve this aim. From top to bottom, the *Abataka* vest their political authority in the *Kabaka*. He then appoints (i) the *Katikkiro*, Cabinet Ministers, and Chiefs at (ii) *Ssaza* (County), (iii) *Gombolola* (Sub-county), (iv) *Muluka* (Parish), and (v) *Kyalo* (Village) levels. All appointed officials act on behalf of the king and are subject to his authority. From this level of organisation, Hastings (1997:156) observes that:

> If there existed one nation-state in Nineteenth-Century Black Africa, Buganda would have a good claim to be it. It had grown over centuries; it had a strong sense of its own history, centralized government, an effective territorial division in counties (*Ssaza*), and possessed, in its kinship group organization, a horizontality of social consciousness to balance the verticality of royal and bureaucratic rule.

Appointments to positions of leadership at all these levels depend largely on the ability to resolve disputes and keep the 'bundles' together, in addition to preserving the culture and the courage to defend the kingdom. As third parties to any dispute, each leader also strives to resolve conflicts at the level they occur to avoid any escalation that may require higher authorities becoming involved. A stalemate produces disgrace to the chief and is discredited if his seniors or the king became involved, especially in a local issue. Therefore, chiefs make sure to keep good relationships and maintain the trust of the people they serve. This

is not only as a sign of respect to the appointed authority but also for their judgments in disputes.

Separation between social and political conflicts is more structured and evident at the top than at the local level within the monarchy. Politically, failed cases are handled at the *Kyaalo, Muluka, Gombolola, Ssaza* and through the highest political office of the *Katikkiro*. Under the kinship group system, the king may be the last person to speak on a number of issues, but is not always final. The *Batakas'* court, from which the king draws his authority as *Sabataka,* can reverse a decision taken by the king or his prime minister. For example, it is reported[6] that Buganda's Prime Minister Mulwanyamuli Semogerere and his cabinet accepted a proposal by the central government to establish a regional tier system of government, instead of the 1900 federal system demanded by the monarchy. However, the *Batakas' Lukiiko* called upon their *Bazukulu* to reject the Bill and the *Kabaka* communicated the decision to the President.[7] The contentious issues included appointment of the prime minister, control of land in Buganda and powers of the office of the president to take over regional governments.

Challenges to the Baganda kinship group system in a modern state

Through more than 49 years of building a nation-state in Uganda, the kinship system has struggled to remain relevant and to have its tenets practiced by members to keep the 'bundles' together. However, more formal and well-resourced structures and systems of the modern state have replaced or tended to overshadow most traditional practices the Baganda use to mitigate and resolve conflicts among members and between the group and the state. This is most evident in the realm of political conflicts. It is much less in the realm of social conflict where practices like *Kwanjula* figure strongly in preserving the culture and identity of the Baganda.

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6   Mr Kisaka Robinson, Buganda Kingdom Government - Department of Education, also in the Department of Tourism, during an interview with one of the authors on 12 August 2011.

7   Kabaka Mutebi's letter dated December 29, 2007 in response to President Museveni's letter on land Ref. PO/8 of 18 December 2007.

Three aspects in the political history of Uganda help explain the diminishing role of the kinship group system in dealing with political conflicts. First, all political regimes have changed by military means, and the influence of the military remains a major character of the modern state and governance in Uganda. The military and dominant ethnic groups in government tend to emphasise state-based processes to resolve conflicts without integrating traditional methods. For example, Idi Amin appointed over 700 soldiers, mostly from northern Uganda, as local governors in the public service to administer projects and programmes around the country including at the village level. Such state officials paid little attention to endogenous methods of resolving conflicts and ensured that systems of government always prevailed to achieve state interests. The monarchy also claims that each government sought to frustrate its entitlements and undermine the status of Buganda. There has been little room for the monarchy and the state to interact on policy and other aspects of governance where such methods could be integrated more formally in structures of the modern state.

Second, each political regime acquired an ethnic character, where the ethnic identity of a group had political consequences including differential treatment (Gurr, 1968). Uganda has experienced three civil wars and four military coup d'états. In all cases, elites of ethnic groups that claimed their members were excluded from state power and access to national resources mobilised to fight government. This is based on 'the belief that having people from one's region in positions of power facilitates access to resources' (Posen, 2005:2). In Uganda, this situation is partly a consequence of 'deadly ethnic distinctions' (Volkan, 1997:14) that 'were enforced by divide-and-rule policies of the colonial government' (Mamdani, 1996:18). Attempts by Buganda to make alliances with such groups, like the *Mukago* between KY and UPC, have not yielded much success in addressing Buganda's interests and priorities. These, the monarchy believes, will preserve the status, culture and identity of Buganda better in a modern state.

Third, militarisation and ethnicity were reinforced by a 'fusion of power' (Mamdani, 1996:31), whereby during each regime all state powers centred on the president, who also had 'tribal loyalties that produced nepotism and discrimination' (Oloka-Onyango, 1997:22). In the case of Buganda, out of

eight presidents since independence, three were from Buganda but all of them combined ruled for less than three out of 49 years. Yet, they were all removed by the military. Failure by Buganda to hold on to state power has made it difficult for such traditional methods to be integrated into systems and structures of the modern state. The monarchy claims that governments led by non-Bagandans continue to marginalise Buganda by refusing to meet its demands. According to Horowitz (1985), it is such putative ascription that accounts for the special difficulties ethnic conflict poses for democratic politics, and makes compromise so difficult in divided societies.

These factors suggest that the influence of the kinship group system to deal with political conflicts diminished with the rise of a militarised but ethnically divided modern state. The system was unable to deal with the demands of such a state, thus its influence was reduced to preserving the culture and identity of the Baganda. However, even with such a reduced role in the political affairs of Buganda, the system still poses formidable challenges to the stability of the state. Whenever threats against the culture, identity or interests of Buganda have emerged in the region, elites from the monarchy or political groups exploited the system to mobilise Baganda resistance especially to government actions.

The *Mukago* involving President Museveni is often referred to and narrated by Baganda elites whenever hostilities between the monarchy and central government escalate. It is viewed as a violation of a 'symbolic and rational traditional practice' (LeBaron, 2003) by the *Kabaka*. Mamdani (1996), while analysing Uganda's political history, attributed the impasse in democratisation to a persistent contest between civil and customary systems and elements of the society, where this provides a good example. He argues that 'de-ethnocisation' of civil society and de-tribalisation of native communities would be the starting point to break the impasse. From experiences in the Buganda region, however, it remains unclear how de-tribalisation can be achieved without dismantling the kinship group system.

Efforts towards democratisation, state stability and viability in Uganda, as with many states in Africa, remain inattentive to traditional practices of dealing with local conflicts and how they can contribute to improved governance. On the other hand, traditional practices remain the lens through which a number of

local communities conceptualise and understand how local conflicts could be resolved. The Baganda continue to argue that the best way to de-escalate hostilities between the central government and the monarchy is for President Museveni to honour the *Mukago* he made with the *Kabaka* in 1980-86 (The Independent, 2010). Many elites also continue to exploit such claims to create 'ethnic differentiation and mobilize members to gain political power' (Rothchild, 1997:6). Yet they suppress these very traditional methods of dealing with conflict when they succeed in assuming power.

Conclusion

States are in constant flux. Political representation and justice require a discursive capacity that only an authentic conversation between traditional groups and the modern structures can truly satisfy. Indeed, state and traditional systems can work together cooperatively, complementing one another. However, this would require a fundamental re-orientation towards mutual respect and understanding, away from hostility and neglect. To pave the way to this re-orientation it might be advisable to consider focusing on synergy, on what each system could contribute to the constructive evolution of the other. Traditions and states are never static. They change over time. Engaging respectfully they can strengthen one another through legitimacy, effectiveness, and capacity to support all citizens in resolving their conflicts. A successful example in this area could also contribute tremendously to the evolution of political structures worldwide. Local traditions must be able to interact with and contribute to the state formation process. A shared focus on conflict resolution strategies and patterns might provide a very fertile and promising ground for this to take place.

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Local conflict resolution in Rwanda: The case of *abunzi* mediators

Martha Mutisi

Introduction

When it comes to endogenous mechanisms of conflict resolution in Rwanda, the *gacaca* courts dominate extant literature and policy analyses. However, *gacaca* courts concluded their hearing of genocide cases in 2010 and what is left now is the finalisation of the reports of the *gacaca* process.[1] As Rwanda continues with its post-conflict reconstruction and quest for sustainable peace, the country has to grapple with the reality that conflict is an inevitable and permanent feature of social reality. Carrying the agenda of local ownership of conflict resolution, the Rwandan government passed Organic Law No. 31/2006 which recognises the role of *abunzi*[2] or local mediators in conflict resolution of disputes and crimes.[3] The *abunzi* deal with civil and penal cases that occur in present-day Rwanda, hence genocide cases are outside their jurisdiction. Like *gacaca*, the *abunzi* is inspired by Rwandan traditional dispute resolution systems which encourage local capacity in the resolution of conflicts.

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1   *Gacaca* courts officially ended their genocide trials in 2010. However, in selected communities, some gacaca hearings continue especially when new evidence and new witnesses are identified. The government is developing mechanisms to handle outstanding genocide cases and to adjudicate alleged miscarriages of justice by *gacaca* jurisdictions.

2   Literally translated *abunzi* means 'those who reconcile'. The *abunzi* are local mediators in Rwanda who are mandated by the state to use mediation as an approach to resolve disputes with the aim to find a mutually acceptable solution to both parties to the conflict.

3   For details see Republic of Rwanda (2006) Organic Law No.31/2006 on the organisation, competence and function of the Committee of Mediators.

Historically in Rwanda the community and particularly the family have played a central role in resolving conflicts, hence institutions such as the *inama y'umuryango*[4] and *nyumba kumi*.[5] However, there is a great deal of state involvement and control in the operation of *abunzi* as evidenced by the laws and government committees that oversee *abunzi* operations. In a way, *abunzi* can be seen as a hybrid between state-sponsored justice and traditional methods of conflict resolution. The popularisation of the *abunzi* system by the Government of Rwanda in the post-2000 era was based on the objective to decentralise justice, making it affordable and accessible. This chapter analyses how the *abunzi* mediators are part of the Rwandan local governance and conflict resolution system. It further conceives of this institution as a restorative mechanism that helps Rwandese people to address their conflicts without resorting to litigation and other retributive approaches. The chapter also demonstrates a synergy between the *abunzi* and the modern formal court system given that *abunzi* have helped reduce the backlog of cases. Despite these benefits from the *abunzi* system, this chapter is wary of excessive state oversight in the *abunzi* processes. There is always the possibility of *abunzi* becoming just another state-mandated mediation where local Rwandans participate not out of will or choice, but out of need. The ultimate result could be a dramaturgical representation of reconciliation and community building while deep seated reservations, divisions and frustrations remain latent.

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4   *Inama y'umuryango* is a term in the Kinyarwanda language which literally translates as 'family meetings' or 'family gatherings'.

5   *Nyumba kumi* literally means 'ten households'. In the political administrative realm, *nyumba kumi* is another arm of governance which refers to non-salaried community leaders who were mandated to represent a group of ten households. These individuals were trusted and respected by their fellow community members. If the family cannot resolve a dispute, in most cases the next step would be to consult *nyumba kumi*. *Nyumba kumi* leaders have the mandate to impose fines on disputants who are found guilty of the charges against them.

Rwanda: A contextual background

Located in East Africa, Rwanda has a population of some 10 million people and comprises of three ethnic groups: the Hutu (84%), the Tutsi (15%) and the Twa (1%) (Sheehan, 2009:2; CIA World Factbook, 2012). Formerly part of the Belgian trusteeship territory of Ruanda-Urundi, Rwanda gained its independence in July 1962. In terms of administration and governance, Rwanda follows the decentralisation model of development which allows local governance structures to implement development, conflict resolution and justice processes. The country is divided into villages or *umudugudu*,[6] cells, sectors, districts and provinces. There are approximately 2 150 cells across the country which exist within 416 sectors, 30 districts and five provinces (USAID, 2012).

Rwanda gained independence from the Belgians in 1962. Post-independence Rwanda was governed by the Hutu majority and Gregoire Kayibanda, Rwanda's first democratically elected leader who replaced the Tutsi monarchy. Kayibanda founded the Party for the Emancipation of Hutus (Parmehutu), which carried an emancipatory agenda for the Hutus. During his reign from 1962-1975, President Kayibanda introduced quotas for Tutsis, limiting their numbers in education, employment and other opportunities. Subsequently, the Kayibanda regime was characterised by the emergence of the Hutu hegemony, a situation which reflected a reversal of roles. Previously, the Tutsi minority had long been considered the aristocracy of Rwanda during the period of Belgian colonial rule. However, Kayibanda's tenure was interrupted when in 1975, General Juvenal Habyarimana, who was then serving as an Chief of Staff in the national army, seized power from Kayibanda and the Parmehutu party, ultimately placing Kayibanda under house arrest (Peter and Kibalama, 2006). To relinquish branding as a military rule, in 1975, Habiyarimana formed the Revolutionary Movement for Development (MRND), and immediately decreed that it would be the only legal political party in Rwanda. Rwanda essentially became a *de facto* one-party state under Habiyarimana, who ruled from 1974-1993. Initially, President Habiyarimana restrained himself and catered for both Hutus and

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6   *Umudugudu* is the village level institution of governance and conflict resolution in Rwanda.

Tutsis. However, eventually Habiyarimana's regime began to mirror the same policies adopted by President Kayibanda, as evidenced by the continuance with quota systems which limited educational and employment opportunities for Tutsis.

Growing dissent from the Tutsis who were disadvantaged by the Habiyarimana regime led to burgeoning emigration of Tutsis into neighbouring Uganda. The Tutsi refugees formed the bulk of the Rwanda Patriotic Front (RPF), which in 1990 invaded Rwanda from Uganda, thus beginning a three year long civil war between RPF and the Government of Rwanda's armed forces. Following the civil war a number of ceasefire agreements were reached including the Arusha Accord which was signed on 22 July 1992 (United Nations, 1999). The Arusha Accord provided for the presence in Rwanda of a 50-member Neutral Military Observer Group I (NMOG I) which was supported by the Organisation of African Unity (OAU). In June 1993, the United Nations (UN) began its active involvement in Rwanda. Based on a request from Rwanda and the UN, it deployed the United Nations Observer Mission in Uganda-Rwanda (UNOMUR) along the Rwanda-Uganda border to prevent the military use of the area by the RPF (United Nations, 1999).

The Arusha Accord called for a democratically elected government, establishment of an inclusive transitional government as well as for the repatriation of refugees and the integration of the armed forces of the RPF and the Rwanda government. The Arusha Accord lasted for a brief period until the assassination of the Hutu leader, President Habyarimana, in a plane crash on 6 April 1994. The assassination of President Habyarimana is often described as a trigger or catalyst to the 1994 genocide. Immediately after the plane was shot down Hutu extremists began an extraordinary orgy of killings of Tutsi and moderate Hutus, including Prime Minister Uwilingimana (Peter and Kibalama, 2006).

The Rwanda genocide was sadly accompanied by a lack of significant and concerted international reaction, especially from the UN. Although there was already a United Nations presence in Rwanda prior to the massacres, namely the United Nations Assistance Mission to Rwanda (UNAMIR), the UN evidently could not stop the massacres. UNAMIR was established in October 1993 to

assist the parties implement the Arusha agreement, monitor its implementation and support the transitional government (United Nations, 1999). However, the massacres continued despite the UN presence largely because most of the UN troops had been withdrawn from Rwanda following the shooting of ten Belgian peacekeepers in April 1994 (Sheenan, 2009:4). Using Security Council Resolution 912 of 21 April 1994, the United Nations reduced UNAMIR's strength from 2 548 to 270 personnel (United Nations, 1999). According to the "Report of an independent inquiry into the acts of the United Nations during the genocide in Rwanda" (United Nations, 1999), the UN had increased UNAMIR's strength to up to 5 500 troops through a resolution passed on 17 May 1994, but it took six months for the UN to get these troops from member states.

The same report also mentions that as a result the UN had to rely on a very weak UNAMIR force and a multi-national humanitarian operation and concludes that, '[t]he overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or to stop the genocide' (United Nations, 1999:1). This view is similarly expressed in a report by the African Union's International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and Surrounding Events, which is entitled 'Rwanda: The Preventable Genocide' (African Union, 2003). Subsequently the UN has often been blamed for the genocide which resulted in the death of the almost 800 000 Rwandans. The genocide ended in July 1994 with the RPF taking over, creating a government of national unity and subsequently declaring commitment to the 1993 Arusha Agreement. The genocide left many scars on Rwandan society, including displacement as many Rwandans were forced to live as refugees in neighbouring countries and outside the African continent (Forges, 1999).

Post-conflict reconstruction and peacebuilding in Rwanda

In the 18 years since the genocide in 1994, Rwanda can be considered as having embarked on a largely grandiose post-conflict reconstruction and healing process. In 2003, a new constitution was adopted, while development plans were

further laid out. The efforts have paid off as Rwanda's economy is said to be growing[7] and the rule of law has been restored while efforts towards healing and reconciliation are ongoing. Rwanda is a much highlighted case study of post-conflict reconstruction in the scholarly, policy and practice community (Dunne, 2006; Clark and Kaufman, 2009). Efforts towards rebuilding peace in Rwanda have been geared to addressing the deep-seated origins of the conflict, reconciling communities and building trust among Rwandans. The *gacaca* courts were set up to pave way for accountability by trying approximately 1.5 million cases of genocide (Article of the Organic Law, 2010). The *gacaca* courts tried cases of crimes of genocide and crimes against humanity which were committed from October 1990 to 31 December 1994. With the conclusion of the *gacaca* court hearings in 2010, and the positive review of this mechanism, the Rwandan government has had to institutionalise traditional methods of conflict resolution in its legal system. The rationale provided by the government in institutionalising traditional methods of conflict resolution was that this would ensure that communities remain empowered to address their problems before resorting to the formal court system. This has been made possible through the promotion of various endogenous systems including the *abunzi*, which is a mechanism for mediation.

Anatomy of the *abunzi*

Literally translated, *abunzi* means 'those who reconcile'. In Rwanda, the *abunzi* are not necessarily either the first or the last institution to attempt to resolve disputes between parties. In some cases, parties go to the *abunzi* when resolution at the family level through the *inama y'umuryango* or at the village level, namely the *umudugudu*, has failed to adequately resolve the dispute. However, of the institutions that resolve disputes locally, the *abunzi* is the only one whose formal statutory mandate is dispute resolution through mediation.

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7   However, according to the Human Development Report (2011), Rwanda still ranks lowly on the Human Development Index compared to other countries (166 out of 187 countries) with 76% of the population living below the poverty line. For details, see United Nations Development Programme. (2011) Human Development Report 2011: Sustainability and Equity: A Better Future for All. New York: United Nations Development Programme.

Mandated by Article 159 of the Constitution, and the Organic Law No. 31/2006 and further by Organic Law No. 02/2010/OL on the Jurisdiction, Functioning and Competence of Abunzi Mediation Committees, the *abunzi* is defined as 'an organ meant for providing a framework of obligatory mediation prior to submission of a case before the first degree courts'. In essence, the provisions of the Organic Law are such that the formal courts act as an appellate court and will not consider a dispute unless the *abunzi* has first considered and ruled on the dispute, especially if the disputed property value is below 3 million Rwandese francs.

The *abunzi* mediators exist mainly at cell level although the mediation appellate is found at sector level. Article 2 of the Organic Law (2010) spells out two types of *abunzi* Mediation Committees, namely the Mediation Committee whose jurisdiction is at the cell level and the *abunzi* Appeal Mediation Committee whose jurisdiction is the sector level. Formally situated under the Ministry of Justice (MINIJUST) with the Ministry of Local Government (MINALOC) providing administrative oversight, the *abunzi* comprises 12 volunteers (plus three substitutes), all of whom must be residents of the cell. The Organic Laws (2006, 2008 and 2010) spell out that *abunzi* mediation committee members must not hold any other government administrative position in the community at the time they serve as mediators. The *abunzi* committee is headed by a 'bureau' comprising a president, vice-president and secretary. The president and vice-president are elected by the *abunzi* committees and the secretary of the *abunzi* is also the secretary of the cell.

In addition, the Rwandan constitution underscores that any institution of governance, including the *abunzi* must comprise at least 30% women. *Abunzi* mediation committee members, like their counterparts the *inyangamugayo*[8] in the *gacaca* courts, are expected to be persons of integrity who are acknowledged for their mediation skills. This expectation emerges from the laws governing abunzi operations, but it was also revealed during interviews with *abunzi* mediators and community members. The cell council elects the *abunzi* whose members serve a two-year term which is renewable. The system of re-election

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8   *Inyangamugayo* is the Kinyarwanda word for *gacaca* court judges.

is designed to give all qualifying members of the community an opportunity to serve on the *abunzi* as well as prevent complacence, bias and corruption. When it comes to the process of conducting the actual mediation, three *abunzi* mediators hear and resolve the dispute. At the beginning of the first session each party is requested to choose one mediator from the twelve available at the cell level. The third mediator is mutually chosen by the two selected *abunzi* and thus the panel is established.

Before assuming their responsibilities, each *abunzi* mediator must take an oath of office in front of the local population and the cell coordinator. This includes swearing to 'observe the constitution and other laws' and to 'consciously fulfil my duties of representing the Rwandan people without any discrimination whatsoever,' and 'promote respect for the freedoms and fundamental rights of the human being and safeguard the interests of the Rwandan people'. In the oath, the mediator acknowledges that for failure to honour the oath 'may I face the rigors of the law' (Organic Law 02/20/2010/0l).[9]

The 2010 Organic Law mandates that the *abunzi* makes decisions consistent with the law and also underscores the need for abunzi mediators to settle disputes using conciliation and mediation as the mandated approaches. Chapter 4 of Organic Law (2010), Article 21, states that:

> To settle the conflict submitted to them, Mediators shall seek first to conciliate the two parties. In case of non-conciliation, they take decision consciousness in all honesty and in accordance with the laws and place's customs, provided it is not contrary to the written law. In criminal matters, Mediators shall not pronounce penalties provided by penal law.

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9   Those being sworn in promise to 'diligently fulfil the responsibilities entrusted to me; remain loyal to the Republic of Rwanda, observe the Constitution and the other laws; work for the consolidation of national unity; conscientiously fulfil my duties of representing the Rwandan people without any discrimination whatsoever; never use the powers conferred on me for personal ends; promote respect for the freedoms and fundamental rights of the human being and safeguard the interests of the Rwandan people' The oath taken by *abunzi* mediators when they are being sworn in is the same oath that is taken by the President, members of parliament and other public officials. This oath can be found in the Constitution of Rwanda, Chapter 1, Article 61, Sections1-7.

In its Strategy and Budgeting Framework (January 2009- June 2012), the Republic of Rwanda: Justice, Reconciliation, Law & Order Sector defends the focus on mediation, asserting that it has the potential to resolve conflicts and improve relationships, which the more formal court system is less suited to do. Although *abunzi* mediation committees are local just like the *gacaca* courts, the *abunzi* function according to codified laws and established procedures although their decisions often remain inspired by custom. They encourage disputing parties to reach a mutually satisfying agreement but if necessary they will issue a binding decision.

According to the Rwanda Governance Advisory Council (RGAC), more than 30 000 *abunzi* mediators operate in Rwanda at the cell level. This statistic is confirmed by the Ministry of Justice whose website[10] mentions that Rwanda has a total of 32 400 Abunzi Committee members across 2 150 cells, and within 30 districts. The *abunzi* have broad jurisdiction which ranges from civil disputes to criminal cases. They mediate over civil disputes related to land and other immovable assets whose value does not exceed three million Rwandan francs. The *abunzi* also settle cases involving movable property and assets such as cattle, whose value does not exceed one million Rwandan francs. Other cases they are mandated to deal with include civil cases involving breach of contract where the value of the matter at issue does not exceed one million Rwanda francs. In addition, *abunzi* mediate in family cases, including paternity, matrimonial inheritance and succession issues when the matter at issue does not exceed three million Rwandan francs. Article 8 of the Organic Law (2010), which deals with competence in civil cases, states that *abunzi* mediation committees can deal with business and labour cases, including breaches of commercial and labour contracts as well as insurance and commercial contractual obligations where the maximum amount is 100 000 Rwandan francs.

Article 9 of the Organic Law (2010), which addresses competence of *abunzi* mediation committees, indicated that the *abunzi* mediators also have jurisdiction over some criminal cases, as long as the matter at issue is less than three million Rwandan francs. Such cases include some land-related matters such as boundary

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10   See http://www.minijust.gov.rw/moj/mediationcommittees.aspx

disputes, cases of damage to crops and theft, larceny and extortion committed between members of the same family and killing or wounding without intent.

However, in terms of geographical jurisdiction, the *abunzi* can only mediate disputes that involve persons from their sector. Currently, the Organic Law (2010) prevents cross-sector mediation. Sessions of the *abunzi* mediation are conducted onsite; in the area the dispute took place and where the affected reside. Additionally, *abunzi* mediation sessions are conducted in public, which means that other community members are free to participate. While community participation is encouraged, the compulsory attendance of sessions is reserved for disputants and witnesses, while community members are not compelled to take part.
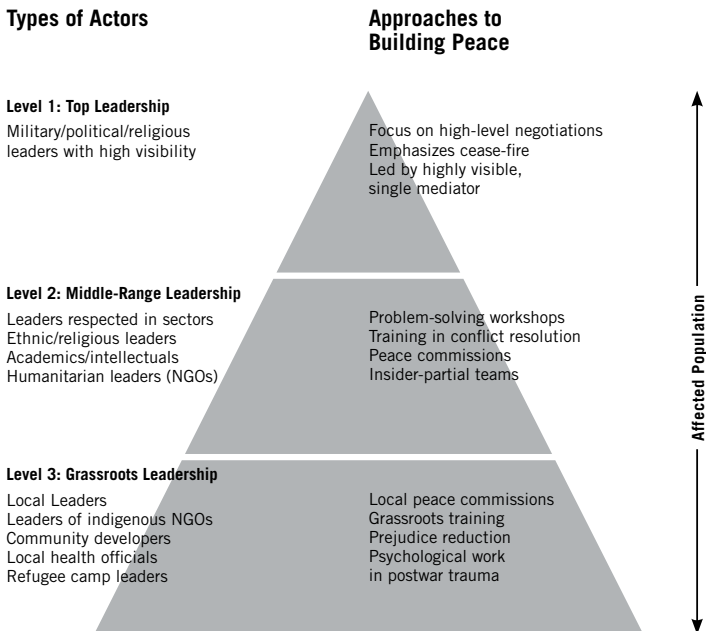
A theoretical perspective for comprehending the *abunzi* peacebuilding theory

The *abunzi* mediators in Rwanda can best be understood in the context of ongoing peacebuilding initiatives. Peacebuilding theory becomes a useful lens with which to analyse the *abunzi* mandate and its contribution towards conflict resolution. Peacebuilding theory can be traced back to the early 1990s when the then United Nations Secretary-General, Boutros Boutros-Ghali, popularised the concept of peacebuilding. Boutros-Ghali (1992) outlined the concept of peacebuilding in his renowned publication, 'Agenda for Peace'. Lederach (2000) conceives of peacebuilding as a transformative process which seeks to eliminate violence by transforming relationships and supporting conditions for peace. Overall, peacebuilding is therefore a comprehensive, multifaceted and intricate task which requires working along political, economic, structural, cultural and psychosocial processes to promote a culture of peace and remove conditions that support violence.

Various authors conceptualise peacebuilding differently. Cousens and Kumar (2001) perceive peacebuilding as a process in which political processes are imperative and critical. Employing a neo-liberal peacebuilding agenda, Cousens (2001) proposes the idea 'opening up political space' as one of the major imperatives of peacebuilding. Greener (2011) contends that activities

of peacebuilding would be meaningless if the broader political context is not considered. Similarly, Reychler (2006) emphasises that sustainable peacebuilding is characterised by the capacity to transform conflicts constructively. This can be done by different actors at various levels. Similarly, Barnes (2006) emphasises that peacebuilding processes and initiatives must be embedded in local communities. In the same vein, Lederach (1997) underscores that peacebuilding should have space for diverse actors, from the state to civil society and ultimately to local community members who are faced daily with the impact of conflict. Lederach advocates grassroots peacebuilding instead of state-centric peacebuilding, hence his conception of the peacebuilding pyramid model which categorises actors in peacebuilding into top, middle and grassroots ranks.

Figure 1: Lederach's Peacebuilding Pyramid

Types of Actors

Approaches to Building Peace

Level 1: Top Leadership
Military/political/religious leaders with high visibility

Focus on high-level negotiations
Emphasizes cease-fire
Led by highly visible,
single mediator

Level 2: Middle-Range Leadership
Leaders respected in sectors
Ethnic/religious leaders
Academics/intellectuals
Humanitarian leaders (NGOs)

Problem-solving workshops
Training in conflict resolution
Peace commissions
Insider-partial teams

Level 3: Grassroots Leadership
Local Leaders
Leaders of indigenous NGOs
Community developers
Local health officials
Refugee camp leaders

Local peace commissions
Grassroots training
Prejudice reduction
Psychological work
in postwar trauma

Affected Population

Derived from John Paul Lederach, Building Peace: Sustainable Reconciliation in Divided Societies Washington, D.C.: United States Institute of Peace Press, 1997, 39.

At the top level there are government institutions, political elites and the military leaders who are not only powerful but also have the mandate to engage in peacebuilding from their constituencies. The middle-level actors include non-governmental organisations, other civil society actors and local leaders who are capable of influencing both top leaders and grassroots actors. At the bottom level of the pyramid are grassroots actors and members of local communities who not only experience the day-to-day impact of conflict but are also best positioned to resolve that conflict because they are aware of their environment and the needs of the community. Lederach emphasises that it is usually the grassroots actors who are effective in peacebuilding because of their intimate interaction with conflict and disputing parties. Using this line of thinking, one could conceive of the *abunzi* as grassroots actors in peacebuilding as they actively play prominent roles in resolving conflicts at the local level. The attempt by the Rwandese government to include grassroots actors in the transitional justice equation reflects a leaning towards this peacebuilding pyramid espoused by Lederach.

Restoration and reconciliation perspective

The government of Rwanda has been promoting local institutions of conflict transformation as part of a broader agenda for reconciliation. Post-1994 institutions of justice such as *gacaca* and *abunzi* are a response to the 1994 genocide as the government solidifies its concerted strategies to restore peace and promote reconciliation. Reconciliation has emerged as a strong narrative for Rwandans from the government to civil society and ultimately to grassroots communities. Given the country's shattered past in the wake of the genocide it comes as no surprise that any attempts towards state-building, institution building and reconstruction is juxtaposed with the reconciliation agenda. The government of Rwanda acknowledges the social, psychological and emotional toll of the genocide on Rwandan society, including the destruction of social bonds, hence the stated objectives of 'bridging the rifts within society and healing the wounds of those afflicted by genocide' (Ndangiza, 2007:1).

In the case of Rwanda, decentralised legal forums and state mandate dispute resolution rituals are considered as 'sites for social healing' due to their repetitive, symbolic and stylized nature (Doughty, 2011). Comaroff and Comaroff (1999) argue that such localised legal forums have the capacity to foster creative tension and transformative practice thereby allowing for Rwanda to reshape its future towards a more stable peace. For example, the *gacaca* and *abunzi* processes have been conducted over a long period of time in communities, even prior to the colonial era. As a result of their long-evolving nature, traditional methods of conflict resolution in Rwanda have ended up shaping communicative practice and influencing social interactions resulting in mending of broken relations, establishment of new bonds, bridging of social divisions, and ultimately restoring the decimated social fabric. This is made possible because through *abunzi* mediation, for example, it is the community members who lead such processes, determine the approach, negotiate outcomes, and ultimately determine responses. As a result, such processes eventually pave the way for reconciliation.

Against such a background, the Government of Rwanda established not only the *gacaca* and *abunzi* as vehicles for restoration of relations but also created other state institutions such as the National Unity and Reconciliation Commission (NURC) in 1999 which was mandated to fully operationalise the notion of reconciliation. Since its inception the NURC has organised meetings, consultations, training programmes and studies on the themes of unity and reconciliation in various communities. The creation of the NURC and its subsequent widespread outreach processes in Rwanda are a clear demonstration of the eminence attached to the theme of reconciliation by the Government of Rwanda. The government also tries to prevent any repetition of the 1994 genocide, hence the slogan 'never again'. In 2007, a national commission to fight against genocide was established through Law No.09/2009, and article 179 of the constitution commits to fight against what the government labelled the 'genocide ideology'. In addition, schools in Rwanda have been instructed to teach a curriculum that is in line with the narrative of unity and reconciliation. It emphasises the notion of *abanyarwanda*, which essentially means that Rwandans are one people who have a shared past as opposed to being Hutu,

Tutsi or Twa. The *abanyarwanda* concept facilitates a sense of an 'imagined community' (Anderson, 1983) or a sense of 'imagined belonging' (Appandurai, 1989) and 'imagined worlds' (Appandurai, 1989). Essentially, *abanyarwanda* aims to replace ethnicity and other potentially 'divisive' sub-state loyalties with an undifferentiating concept of 'Rwandan-ness' (Purdeková, 2008).

Despite its stated objective of unifying Rwandans, the concept of *abanyarwanda* has been given different labels by various scholars. Critics (Reyntjens, 2004; Zorbas, 2004) have labelled *abanyarwanda* as an 'abolitionist attempt that attempts to delete identity', *abanyarwanda* is also categorised as a form of 'de-ethnicisation' in the new nation-building project in Rwanda. Some observers (Reyntjens, 2004; Zorbas, 2004; Purdeková 2008, Lemarchand, 2009; Thomson and Nagry, 2009) have expressed numerous reservations about the concept and practice of *abanyarwanda*. The present author adds that by hesitating to discuss ethnicity Rwandan society is ultimately avoiding important candid dialogues on ethnic differences, inequality and privileges. Despite these concerns, the concept of *abanyarwanda* is still heavily advocated by the RPF government. The narrative of reconciliation has become a daily narrative for Rwandan people. It is exhibited everywhere including in sports, the arts and entertainment.

The decentralisation thesis

Decentralisation refers to the transfer of public authority, resources, and personnel from the national level to sub-national jurisdictions (Ndengwa, 2002). Decentralisation is often discussed alongside devolution, which is the transfer of political power from central government to local authorities and communities (Kauzya, 2007). Decentralisation as a concept and practice is informed by dependency theory as well as the centre-periphery thesis which both argue that too much power in the centre is detrimental to the development of the periphery. However, the nature and strategies of decentralisation are often guided by the history and socio-political needs of a particular country. In Rwanda, the decentralisation project was informed by the need to 'provide a structural arrangement for the government and people of Rwanda to fight poverty at close-range and to enhance their reconciliation via empowerment

of local populations' (Government of Rwanda 2000). Through the National Decentralisation Policy, the government of Rwanda has engaged in efforts that seek to bring development and devolution of responsibilities to local communities by enabling their participation in critical processes. Various policy documents developed by the Government of Rwanda epitomise the decentralisation thesis, and these documents include the Decentralisation Policy, Decentralisation Implementation Strategy of 2000, the Community Development Policy of 2001 and the Decentralised Government Reform Policy of 2005.

The *abunzi* can be labelled as 'grassroots justice,' as they are part of the Rwandan government's repertoire of initiatives designed to make justice available to citizens at every level. In 2003, the Constitution of Rwanda adopted a broader nationwide project of decentralisation, hence the setting up of the MINALOC. The objective of decentralisation was to allow citizens to 'participate in the planning and management of their development process' (Ministry of Local Government 2008). Decentralisation is a central theme in Rwanda's broader development goals and it is embraced by several government departments including the Ministry of Local Government, the Ministry of Finance and the Ministry of Justice (MINIJUST). Rwanda's Vision 2020 strategic plan is entitled 'Community Driven Development' in pursuit of the decentralisation theme. Furthermore, the government of Rwanda advances the decentralisation of justice thesis based on the assumption that this will enhance good governance in Rwanda through the emphasis on local autonomy, collective action, and bottom-up decision making. In the quest for decentralisation and dispersion of the government's administrative functions to the local level, the government of Rwanda created five provinces (North, East, West, South and Kigali Province). These are further divided into 30 administrative districts which are sub-divided into 416 sectors, which are further sub-divided into 2 150 cells (Peter and Kibalama, 2006). These structures are meant to enhance service delivery as well as to facilitate the involvement of communities in development and decision making and are envisaged to ultimately improve governance.

The *abunzi* is not the only local institution that has been mandated by the Rwandan government to decentralise justice and other public goods. Rather,

the *abunzi* system exists amidst a myriad of other decentralisation initiatives of governance, community development and justice including the *gacaca, umudugudu* (villages), *ingandos* (solidarity camps) as well as other fairly modern systems of justice. *Ingandos* were set up by the Rwandan government to teach participants the concept of 'oneness' and ultimately promote a sense of community building. The government's major initiative to decentralise the justice system and to provide advice and support at the community level involves the establishment of an Access to Justice Office (MAJ) in every district throughout the country. MAJ is an institution that offers legal aid to the public and raises awareness about the law. Although the local institution of *abunzi* can be explained by the decentralisation thesis, it is inevitable to recognise that the Rwandan government still wields significant power. While the government of Rwanda has decentralised administrative and governance structures at the local level, the reality is that the government has not fully devolved political power to the local level, as activities of the *abunzi* are very much controlled by MINIJUST. Critics posit that the decentralisation of the law is simply a means used by the Rwandan government to extend its authoritarian control to grassroots locales, hence the concept of 'lawfare' (Chakravarty, 2009; Thomson and Nagy, 2010). Through decentralised structures the government is able to be vigilant to everyday activities, looking for signs of dissent. Indeed, the government in Kigali remains powerful and uses its local intelligence sources to retain control of the processes, activities, mindsets and interactions of the ordinary citizenry.

Restoration of security and the rule of law

Abunzi can be analysed using the lens of the law. There is a growing focus on the promotion of the rule of law in post-conflict societies as a prerequisite for sustainable reconstruction and peacebuilding. This focus is based on the assumption of an intricate nexus between conflict and the absence of the rule of law. As examples from South Sudan, Sierra Leone and Liberia demonstrate, many countries emerging from conflict focus on legal reform as an approach to restoring order and promoting security. Reforming the legal system is perceived as a strategy of addressing the litany of post-conflict challenges which include

burgeoning levels of crime and upsurge of cases of sexual violence, among others. Increasingly, global institutions and development partners such as the United Nations and the World Bank now underscore the need for the prevalence of the rule of law for sustainable peace.

It is this view that could have facilitated Rwanda's concerted efforts at legal reform and the rule of law. The genocide in Rwanda left a message relating to the importance of security and the rule of law in a country. The creation of the *gacaca, abunzi* and other institutions of justice in post-genocide Rwanda can also be interpreted as indications from the government that the law is an enabler and promoter of security. The enhancement and institutionalisation of traditional forms of justice is also an attempt by the Rwandan government to ensure that disputes are settled at the local level thereby preventing their escalation into national level conflicts. In an analysis of the DRC, Autesserre (2010) posits that settlement of disputes at a local level ultimately supports the larger national peace agenda. The perception of law as a form of social control dates back to the period when scholars such as Foucault (1992) wrote about law as an instrument to regulate citizens. Following the end of genocide, the Rwanda government embraced many justice reform initiatives. The belief was that an accountable, transparent and effective justice system would restore order and enhance security in the country. Institutions such as *gacaca* and *abunzi* were used by the Rwandan government to 'go deep into the areas where crimes are committed' (Karamera, 2008). The law has been effectively applied in Rwanda to shape citizens' behaviour in several realms including economic life, social interactions as well as in the maintenance of the country's infrastructure. Residents of Kigali and other cities in Rwanda rigorously follow laws on the environment and keeping the city clean hence the indelible measure of cleanliness in Rwanda.[11] The law has been used in Rwanda to regularise public life and association. It is a common feature to see the police and military wielding guns and standing in the street as an overt reminder to the public of the perils of breaking the law.

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11 Since new laws were established in Rwanda banning the use of plastic bags, preventing ad-hoc vendors from the streets and removing street beggars, Kigali has been the pride of African cities in terms of its orderliness and cleanliness. Indeed, the author's trip to Rwanda attests to the cleanliness of Kigali.

For example, the Rwanda Bar Association was created in 1997 with 30 members initially, and now its membership runs into thousands (Kimenyi, 2010). Similarly, an Institute for Legal Policy and Development was established in 2008. Since law is central to Rwandese life, legal aid clinics have sprouted in the country with the intention to assist citizens to understand the law and navigate through the legal system. In essence, the post-genocide Rwandan government identified the law as central for the reconstruction of the country. It is seen as enabling Rwandans to deal with the past as well as shaping their mindsets and relationships towards one another. From the author's observations, the government envisages that law will transform the genocide ideology into a situation where Rwandans will interact with each other as one nation group instead of as members of disparate ethnic groups.

Insight into *abunzi* justice: Opportunities for sustainable conflict resolution and justice

Delivery of responsive justice

In the post-genocide era, the Government of Rwanda has sought to strengthen unity and reconciliation among the citizenry by reforming the justice system and institutionalising local institutions of conflict resolution such as *gacaca* courts and *abunzi*. The *abunzi* are part of the institutional architecture being created to ensure prompt, accessible, affordable and universal access to quality justice. The *abunzi* system is in accordance with one of the goals of the MINIJUST, which is to promote transparency, accountability, mediation, unity and reinforcing reconciliation mechanisms as well as the maintenance of law and order. The *abunzi* are lay mediators who live in the community where they work and hence are proximate with the impact of the conflict. They are accessible to the people and understand the conflict dynamics better. The *abunzi* are well perceived by the Rwandan population. According to the 2010 Citizen Report Cards (CRC) survey conducted by the RGAC, the *abunzi* mediation committees are the most appreciated dispute resolution instruments in comparison with other mechanisms. Citizens felt that the *abunzi* process allows for easy access to justice. The survey by RGAC reveals that 81.6% of the respondents were

satisfied with the service delivery of the mediation committees in resolving their disputes, compared to the 63.4% satisfaction rate with formal courts and 18.4% satisfaction rate with the Access Justice Bureaus.

The *abunzi* is also a context-responsive institution which addresses the justice needs of many Rwandan people. Land disputes are the most common cases that are brought before the *abunzi*, which clearly reflects how important land is to Rwandan people. Close to 90% of Rwandans depend on agriculture for their livelihoods (USAID, 2008). Land disputes break out when different types of land rights clash in relation to the land. In addition, land disputes in Rwanda are compounded by the political changes that occurred after the 1994 genocide, especially in the light of past Tutsi refugees coming back to Rwanda following the RPF victory. Conflicts between returnees and old inhabitants of land are common. The conflicts can be have an ethnic dimension since returnees are usually Tutsis while old inhabitants are usually Hutus. However, the government has instituted a policy that obligates land sharing with returnees, although this does not necessarily prevent outbreaks of conflict over land. The Government of Rwanda instituted the *umudugudu* policy on land, which essentially means 'clustered settlement'. *Umudugudu* is a resettlement programme which has been implemented since 1996 by the government to consolidate land and ultimately address land conflicts (Government of Rwanda, 2010).

In addition, Mamdani (2001) posits that certain verdicts of *gacaca* courts somewhat affected the distribution of land. The author observes that some of the people who committed crimes against property during the genocide were ordered by *gacaca* courts to pay reparations to victims of genocide and they often did this by selling off pieces of their land. A report by the United States Agency for International Development (2008) observed that the sale of land frequently triggered conflicts among family members with claims to that land. The same report notes however that, the overwhelming majority of cases of land disputes that are presented to the *abunzi* involve women's claims to land (USAID, 2008). These are often complicated by intricate issues such as poverty, patriarchy, polygamy, inheritance, divorce and unofficial marriages. In addition, the introduction of new laws protecting women's right to land seem to have increased the number of land conflicts among families. As spelt out under the

section on the competence of the *abunzi,* these mediators can also hear cases of sexual violence. While crimes such as sexual violence and rape are supposed to be reported to the police, mediators have been allowed to play a role in this sensitive matter. The Organic Law of 2010 allows the *abunzi* to investigate such cases when the victims are afraid to report their attackers. Nonetheless, the *abunzi* are mandated to report the matter to the relevant authorities.

Local ownership and consensus building

The *abunzi*, like the *gacaca* courts, is designed to enable the restoration of relationships and ultimately facilitate a sense of community. The *abunzi* institution uses mediation as an approach to resolving conflict. Both the process and outcome of the *abunzi* mediation are expected to reflect conciliation and restoration rather than retribution. The Organic Law (2010) prevents *abunzi* mediators from handing down punitive sentences. As a result of the emphasis on non-adversarial techniques, this approach has been credited with promoting reconciliation among disputants. Reports on the RCN Justice & Démocratie website conclude that the majority of cases heard by the *abunzi* are resolved through a compromise arrangement although the majority of disputants in *abunzi* cases rarely go further into reconciliation.

In addition, the Organic Law (2010) requires that *abunzi* mediators conduct information gathering before they hear the case in the actual mediation process. Interviews with *abunzi* mediators revealed that the process of information gathering is quite extensive as it involves investigations and consultations with fellow community members about the dispute at hand. Based on the author's observations, since *abunzi* mediators can only resolve disputes within their community the processes of information gathering and investigation are made easier.

Reduction of costs

Like the *gacaca* courts, *abunzi* mediations have contributed to reducing the congestion of the formal courts as most civil suits and crimes that fall under 3

million Rwandan francs are resolved at the local level. First, some disputes are too trivial for the formal courts' attention, hence the *abunzi* are mandated to deal with such disputes. Statistical reports which were accessed in July 2011 from the Ministry of Justice website indicate that before the *abunzi* system, 80% of civil cases pending before courts involved less than 1 million Rwandan francs. However, following the establishment of the *abunzi* in 2006, approximately 70% of all civil cases now fall under the competence of the *abunzi*. This reality has ultimately freed the formal courts to focus on bigger and more demanding cases. The MINIJUST also conducted a survey in 2005 to ascertain *abunzi* effectiveness. The results concluded that 73% of cases tried by *abunzi* were not later referred to the formal court system. This could be reflective of the high levels of satisfaction with the *abunzi* system or the lack of desire to appeal because the Organic Law on the *abunzi* provides for appeals of outcomes of the *abunzi* mediation. When a case that was once before the *abunzi* is brought to the formal court as an appeal, the *abunzi* mediators are allowed to submit their investigations, discussions and decision which would be used by the formal appellate courts as official documents for the case.

Second, the litigation approach is often associated with protracted court battles. These not only polarise relations between disputants also clog up the formal court system due to their enduring nature. A 2008 USAID report on land and conflict revealed that the *abunzi* mediators have played a prominent role in resolving land disputes thereby relieving the over-burdened court system. An AllAfrica.com report quotes a representative from the Ministry of Justice, Mary Saba, on the advantages of using the *abunzi* approach to justice: 'The mediation committee is a strong pillar of conflict resolution which will deal with social conflicts regarding land, gender violence and abuse of child rights in rural communities'(AllAfrica.com, 24 January 2011).

In addition, the local mediation approach by the *abunzi* encourages positive-sum thinking and ultimately the peaceful resolution of disputes. The quest for a win-win solution often means that the cases are resolved in a shorter period as there is limited room for the conflict to become intractable. Even in cases where the mediator decisions are appealed by disputants, the formal courts mostly follow the recommendations of the *abunzi* since they are considered

to be credible. Ultimately, reliance on local mediation reduces costs associated with the formal justice system. Even though the *abunzi* mediation is framed as beneficial and less costly, Nader (2008) cautions that alternative forms of dispute resolution are actually marginalising to the poor, especially if they are mandatory. The author argues that Alternative Dispute Resolution (ADR) makes it difficult for poor rural people to access the formal courts as some cases are deemed too unimportant to feature in the litigation system. However, considering the pressure on the country's modern courts it is perhaps not far-fetched to conclude that the institution of *abunzi* mediation, although not perfect, at least allows people to access justice timeously. If the modern courts were operating alone without the assistance of these decentralised legal forums it is highly likely that many Rwandans would have been completely marginalised and disenfranchised from the formal justice system.

Abunzi: Challenges to justice

Limited mediation skills and legal knowledge

Although the *abunzi* is mandated by the Organic Law (2006), which was amended in 2008 and 2010, there is procedural dissonance which is caused by a lack of knowledge about the law and dispute resolution methods by *abunzi* members. Knowledge of the substantive law, aptitude for mediation, skills in evaluating evidence and respect of procedures are important attributes of any mediator. However, many *abunzi* mediators are elected to their positions not on the basis of these attributes but mainly because they are 'persons of integrity' and are willing to offer their services to the state and their community. Analysis of the Organic Law governing the operation of the *abunzi* reveals that the legal instruments do not go further to outline the modalities of mediation. In fact, the current author concludes that personal integrity of the *abunzi* is emphasised as a key attribute more than the knowledge of mediation. In reality, however, the *abunzi* mediators need to be knowledgeable in other laws apart from the Organic Law for effective dispute resolution. Such laws relevant to the *abunzi* tasks include the land law, family law and inheritance law since these are the most emergent cases for the *abunzi*. Nonetheless, observations during the

author's fieldwork revealed that, with few exceptions, these *abunzi* mediation committees and individuals have limited access to copies of applicable laws. The few that are available for some *abunzi* are untranslated technical documents written in 'legalese' instead of the accessible, summarised and simplified versions.

Since most *abunzi* mediators lack the knowledge of applicable laws, the danger is that the result of their mediation may be deemed unsatisfactory and illegitimate in the eyes of disputants. The limited mediation skills significantly reduce the effectiveness of their efforts. This has resulted in numerous cases of appeal that have affected areas such as the Nyarugenge sector. While appeals can signify the fairness of the process, too many such appeals can also be attributed to the incompetence of the mediators as perceived by parties to the dispute. According to a study conducted by RCN Justice & Démocratie (2010), 55% of the *abunzi* decisions which were annulled by the primary courts were due to errors in assessing facts, while 26% related to procedural errors and 19% were due to the misapplication of substantive laws. In an effort to counter the challenge of a lack of awareness of the law, the Rwandan government has initiated some kind of capacity building programme for *abunzi*. The government, through its relevant ministries, MINIJUST and MINALOC, organises various forms of training and information exchanges for the *abunzi*. Online and fieldwork in Rwanda revealed that, non-governmental organisations such as the RCN Justice & Démocratie and Access to Justice Centre (AJC) offer mediation skills training as well as training on substantive law to the *abunzi*. Organisations outside Rwanda such as the University of Pepperdine's Straus Institute for Dispute Resolution and Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics have been training religious leaders in laws on domestic violence and inheritance.

Inadequate institutional support

The *abunzi* institution also suffers from the lack of adequate and effective institutional support. Although some organisations offer the *abunzi* support in terms of training and skills development, this support is often scarce and inadequate. Training in mediation and substantive support is often voluntarily conducted by organisations such as RCN Justice & Démocratie, AJC and NURC.

However, the ratio of attorney-*abunzi* mediator at AJC is 1:1 000 which is hardly adequate or effective. Support from government is equally limited. A USAID study of 2008 assessed the local resolution of land disputes in the Kabushinge and Nyamugali cells and concluded that the *abunzi* do not receive support on basic necessities such as cellular phone airtime and even transportation costs. The same issue was revealed during the interviews with *abunzi* mediators conducted by the author in Gacuriro in July 2011, wherein the mediators verified that they use their own personal funds to travel to meetings and hearings. Unlike their counterparts in the *gacaca* courts, the *inyangamugayo,* who received support with costs such as transportation, stationery, cellular phone airtime and school fees for their children, the *abunzi* mediator is essentially a volunteer. However, there have been calls for the government to pay health insurance for the *abunzi* members in the same manner these benefits were accorded to *gacaca* court judges. Information on the Ministry of Justice website which was accessed in March 2012 indicates that although the Ministry acknowledges that *abunzi* are volunteers, there is need to incentivise their operations. The website mentions that MINIJUST now pays for *abunzi* families' health insurance which is worth 5 000 Rwandan francs (US$5) per year. Additionally, the website also reports that MINIJUST also supplies one bicycle per cell to help *abunzi* access all parts of their jurisdiction.

Legalised and state-mandated mediation

Although the *abunzi* existed in pre-colonial Rwanda, the *abunzi* institution in its current form is a somewhat adulterated version in the sense that it is top-down mediation. In pre-colonial Rwanda, *abunzi* were ordinary community members who would be called upon to resolve the disputes among fellow community members. They were given this role on the basis of their possession of integrity. *Abunzi,* like its counterpart the *gacaca*, is what Hobsbawn and Ranger (1983) would describe as a 'reinvention of tradition for particular uses in the present'. Thomson and Nagy (2010) posit that the general assumption about community-led conflict resolution processes is that citizens are willing participants when the reality is that such processes are controlled by the

government. In Rwanda for example, citizens might be compelled to participate in *abunzi* due to their social situation and powerlessness as well as the lack of credible alternatives for justice. Since the current form of *abunzi* mediation is mandated by law, there is debate as to whether this institution is yet another form of legalised mediation rather than a community-centred justice mechanism. Doughty (2011) almost dismisses such processes, arguing that legal rituals and decentralised legal forums have a tendency of creating politicised healing.

However, it must be noted that Rwanda is not the only country employing legalised mediation processes. This practice is also common in other countries including the United States of America. Legalised mediation is often classified as a form of ADR. However, state-mandated mediation distorts the entire manner in which proper mediation is supposed to be experienced by actors. The Government of Rwanda has made it explicit in its laws on the *abunzi* that it expects a mediation process from *abunzi* members. In other words, the culture of mediation is communicated by the law. Crimes and disputes of a particular nature are by law required to go to the *abunzi* for a hearing before the primary courts can deliberate on the issue. The Government of Rwanda's preoccupation with the creation of decentralised legal forums where people can access justice has resulted in the *abunzi* mediation filling a void in the justice arena. However, the mandatory nature of such institutions makes the resultant reconciliation questionable. Citizens are obligated to use the *abunzi* mediation approach while they are reminded of the punishment that will follow from the formal courts should the mediation efforts fail. The author observed that the *abunzi* system is an apt demonstration of the tangled relationship between law, power and justice and how these cumulatively impact on the lives of ordinary Rwandans brought into contact with the state.

The *abunzi* mediation is promoted by the government as an avenue for promoting community restoration and unity. However, Reyntjens (2004) cautions that politicised notions of community healing and unity often have dangers of negating dissent and promoting a culture of fear. Lemarchand (2009) posits that the culture of fear emanates from subtle sanctions on what can and cannot be said publicly. Reyntjens (2004) observes closure of public social space thus diminishing civic liberties in contemporary Rwanda. In this environment

it is difficult for Rwandans to express an opinion that differs with government policy and logic because it could be interpreted as fuelling division (Reyntjens, 2004). Doughty (2011) further asserts that the government narrative on unity does not invite contestation.

Given the foregoing, the *abunzi* are an illustrative demonstration of the dual impact of state-initiated systems of restorative justice. Participants in the *abunzi* mediation process are often explicitly told about the danger of non-compliance with the *abunzi* process and outcomes, including payment of fines as well as incarceration. When the state is involved in issuing incentives and disincentives with regard to a person's participation in local legal forums, the process in essence becomes coercive. People end up participating in the mediation process not because they are convinced it works or because they subscribe to its tenets. Rather, they do so because they are obliged to. In addition, people participate in the mediation process because of the entire narrative of the *abunzi* being cultural and locally owned. The combination of state-backed threats and cultural romanticism makes the *abunzi* an institution that is replete with compulsion, hence the term 'voluntary-yet-mandatory control' (Doughty, 2011). Because of these overt and covert threats in the *abunzi* mediation process, there is a danger of people sacrificing their individual rights in order to uphold community rights and collective interests. Gahamanyi (2003) is sceptical of cultural practices that are often touted as being beneficial to the community. Instead he cautions that these can be disempowering to individuals. In essence, people end up participating in the *abunzi* process to be seen to be participating in community activities and they accept the outcomes for the good of the community. Although the threat of punishment by the *abunzi* system is less overt than in the *gacaca* courts, the imposition of mediation undermines elements of choice, freedom and individual will to decide on a course of action to take. In addition, the fact that some people do not take cases which would have been dealt with by the *abunzi* to the primary court might not reflect satisfaction with the mediation outcome. Rather, this might be due to fatigue or lack of funds to confront the clogged formal court system. It would be interesting to analyse the long-term impact of the *abunzi* system on social relations and on ownership of the outcomes of the *abunzi* process. On the one hand, the *abunzi* mediation

can be perceived as a system that guarantees access to justice which does not necessarily have to be purely mediation. On the other hand, the same system can be interpreted as a highly politicised institution of state-mandated local justice which curtails citizens' right to choose their vehicles of justice.

Elements of retribution

The *abunzi* system demonstrates a level of ambivalence when it comes to pursuance of the restorative and retributive approaches to justice. This is because the *abunzi* is a traditional system of conflict resolution which was simply transplanted into the formal legal system and is still expected to exhibit a conciliatory approach. However, the attempt to merge the adversarial and conciliatory processes has not always been easy for the *abunzi*. Although the Organic Law states that the *abunzi* are supposed to use restorative approaches instead of a retributive approach, the reality is such that this institution can also exhibit adversarial tendencies. In some instances of observing the *abunzi* institution, there seem to be problems in distinguishing between the mediation and adjudication processes both in comprehension and in action. Some members of the Rwandan community refer to the *abunzi* as arbitrators. For example, an RCN Justice & Démocratie report of 2007 referred to the *abunzi* as 'arbitrators' and the same case was found in many other online reports. Furthermore, in instances where a disputant refuses to compromise and conciliate, the *abunzi* switch to an adversarial approach. Where disputants are refusing to follow positive-sum procedures, the law empowers the *abunzi* mediators to request the police to arrest a person pending an investigation. In some complex cases *abunzi* mediators end up applying the adversarial process. For example, in instances where disputing parties cannot be reconciled the *abunzi* will adopt a decision applying the laws of the state. This is a typical combination of sanctions and incentives in conflict resolution. Although the use of 'carrot and stick' strategies is common in adversarial approaches, in Rwanda this has been used by *abunzi* to deter delays in handling cases.

Social legal forums and sustainable peace

Abunzi, like *gacaca,* is an elaborate process by communities trying to own the justice and conflict resolution space. While the symbolism in these processes is evident, what cannot be ascertained is how far they have gone in facilitating social cohesion, group unity, reconciliation and healing. It is even more difficult to ascertain these issues by directly asking Rwandans at the grassroots level and in civil society because of the limited social and political space in post-genocide Rwanda. The level of political freedom in Rwanda is quite low. The country has been consistently ranked as 'not free' by the think tank, Freedom House every year since its annual survey was launched in 2002 (Freedom House, 2011).

Given this reality, Zorbas (2010) asserts that certain 'silences' are being imposed on the Rwandan population when it comes to the reconciliation and unity project. Such 'silences', Zorbas argues, are evidenced by the lack of debate on Rwanda's conflicted 'histories' especially on accountability for past massacres. The government has extensive control on what is said within Rwanda. Zorbas (2010) adds that the fear of being labelled a 'divisionist' may prevent people from sharing their real thoughts about their experiences of cohesion and inter-ethnic interaction. However, what can be directly observed is how people religiously participate in these forums as called for by the government. This is akin to a situation labelled 'dramaturgical representation' by sociologist Erving Goffman (1959) in his seminal work, 'The presentation of self in everyday life'. It is arguable that their participation is out of fear of the repercussions of non-participation. The image of ordinary Rwandans participating in *abunzi* and *gacaca* processes may portray too much tranquillity. This begs the question of how authentic such unison and harmony is. These concerns have led some scholars to label the current situation in Rwanda as 'pretending peace' (Buckley-Zistel, 2006). Buckley-Zistel's conclusion is that there is still ethnic antagonism among Hutus and Tutsis, but that the government does not allow its expression because any such exhibition of differences would be labelled 'genocide ideology'.

Abunzi and international legal standards

Although the *abunzi* mediation is guided by the law and the selection of mediators by disputants is transparent and the process is regarded largely as fair and as important in filling the justice gap, concerns remain. These relate especially to its compliance with international norms and standards. However, even if there is dissatisfaction with the process, outsiders like human rights defenders and civil society organisations have not been afforded an opportunity to critique the process mostly because of reluctance to criticise state processes. Additionally, the cultural narrative and mysticism surrounding processes such as *abunzi* and *gacaca* compels people to utilise this institution because people are culturally responsive beings. Although *abunzi* is a state-backed legal initiative the nomenclature of traditional, cultural, local and Rwandese often accompanies descriptions of this process, hence their protection from lashing by observers. The culturalisation of local dispute resolution processes can be seen as a strategic move by the Rwandan government to protect the process from being criticised for not meeting international legal and human rights standards such as the right to have legal representation. However, this is not to dismiss the notion of unique 'Rwandan-ness' in these processes because there is nowhere else in the world that the *abunzi* exists in its nature, form and dynamic.

Conclusion

The evidence from the field research and document analysis supports the conclusion that the *abunzi* have filled a void left by the formal court system by ensuring that local people have access to prompt and universal justice. Like their counterparts, the *gacaca* courts, *abunzi* mediation committees have brought justice to the grassroots level and enabled community members to participate in the dispensation of justice both symbolically and practically. Although *abunzi* mediation functions and jurisdiction are spelt out by law, the institution, process and rituals associated with *abunzi* are uniquely Rwandan and existed long before colonialism. Additionally, a*bunzi* processes embrace the notion of restorative justice as they emphasise mediation and conciliation as methods of resolving the dispute in question. This makes *abunzi* mediation a huge departure

from competitive and punitive approaches common in formal courts. However, despite their restorative dimension, *abunzi* processes are not free from fault. *Abunzi* mediation committees can resort to punitive tactics in their operation. For example, the failure of disputants to cooperate with the *abunzi* mediators can be followed by adversarial processes and applications of the punitive laws of the land. In its current form, the *abunzi* mediation process in Rwanda risks being one of those state-mandated programmes, addressing disputes at the superficial 'make-believe' level without effectively restoring broken relationships and trust. The mixture of the pseudo-adversarial approach and the conciliatory approach, coupled with the combination of culture and western justice are some of the inherent contradictions within the *abunzi*. These contradictions not only affect how *abunzi* mediation is perceived by parties and observers, but also impacts on the outcomes of such approaches to dispute resolution.

Without painting a pessimistic picture of the contemporary traditional justice forums in Rwanda, it is important to acknowledge the potential of the *abunzi* system if it is delivered well. Despite being a state-backed mediation process, the *abunzi* system has become embedded in Rwandan daily life and character. This approach to mediation and local justice has the capacity to promote social rebuilding, bonding and negotiation of communities in contemporary Rwanda – a nation that is focusing on addressing the trauma of the 1994 genocide. Ultimately, the synergy between the *abunzi* mediation committees and the formal system beckons the possibilities that lie ahead when traditional institutions of conflict resolution are institutionalised and acknowledged by law, yet de-politicised and left to operate independently. Given the foregoing, Rwanda could well be cited as a *sui generis* case study reflecting the hybridisation of state and traditional approaches to conflict resolution, in the context of a post-conflict society.

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Traditional authority and modern hegemony: Peacemaking in the Afar region of Ethiopia

Kwesi Sansculotte-Greenidge and Demessie Fantaye[1]

Introduction

The Afar Regional State in Ethiopia is currently undergoing a slow, but nonetheless radical transformation. Although it remains a somewhat peripheral region of the Ethiopian state, the Afar and their leadership are being incorporated into the Ethiopian state. This incorporation has brought about changes not only for the Afar but also in the Ethiopian state structures as they brush up against Afar institutions. As power structures are remoulded and reinterpreted to fit within the political geography of the Afar Regional State, a 'creolisation' of power has occurred. That is, state power has been localised and altered to fit the local power paradigm.

Under the Ethiopian Constitution of 1991 and the Constitution of the Afar National Regional State (ANRS), the role, functions and legal status of traditional institutions are vague to say the least. The Ethiopian Constitution recognises traditional law but only under Article 34, Sub Article 5 where it allows citizens to resort to religious or customary laws in cases of personal and marital disputes. The constitution of the ANRS in Article 33, Sub Article 5, using almost identical language, allows individuals to resort to religious or customary law. Under Article 63, the ANRS constitution also allows for the establishment of

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councils of elders to be associated with each tier of the regional administration. Additionally, the ANRS constitution under Article 65 formally recognises religious and customary courts which were in existence and functioning prior to the formal issuance of the constitution. While the vague legal standing of these institutions might give rise to the impression that their existence and legal basis is precarious, this is not actually borne out by the realities at the local level. Thus, traditional conflict resolution mechanisms in Ethiopia enjoy a vitality and relevance that makes them indispensable in some regions.

Post-conflict Ethiopia: A background

Ethiopia as a unitary state has had a long and at times tumultuous history. The state has oscillated between periods of firm central control from the capital Addis Ababa to periods of extremely weak central authority and a high degree of internal autonomy. In 1974, Ethiopia's students and military rose up and overthrew Haile Selassie, the last in a long line of Emperors. The lack of political parties and independent institutions (and/or of political elites) meant that the anti-monarchy revolution was usurped by the only functioning institution in the Empire, namely the military. The military junta known as the *Derg*[2] which overthrew the Emperor was an exclusionary regime that allowed almost no competition politically. Thus, the old patronage networks were destroyed and in a weak state with little administrative capacity. This meant that the military's only option was to control the state by repression. Repression alone, however, was not enough to stop all opposition. As a result large-scale military action was taken against regionally based insurgents in Eritrea, Tigray, Ogaden, Sidamo, Bale and Wello provinces, who were seeking either autonomy or independence. As it became more apparent that the military was unable to fulfil many of its promises, the masses became less and less tolerant of its repressive rule.

In 1991, the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of various ethnically-based rebel groups headed by the Tigray Peoples Liberation Front (TPLF), entered Addis Ababa. Like many quasi-Marxist

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2   Amharic for 'Council'.

movements of the time, the TPLF sought to remould the nation it had inherited. A key part of this transformation was dealing with the so-called ethnic question (Ottaway, 1999:66). More specifically, the issue was how to construct a multi-ethnic state that ensured the rights of all ethno-linguistic groups and reduced the influence of the Amhara – the traditionally dominant group.

In keeping with its socialist slant, the TPLF's solution to the ethnic question borrowed heavily from Lenin's approach to 'the problem of the nationalities' (Krenidler, 1977). Thus, like the Soviet Union, each Ethiopian nationality was allowed to reaffirm its right of self-determination to the point of secession. Soon after taking power a conference was held which resulted in the division of the country into nine ethnic regions and two autonomous cities with substantial administrative and fiscal powers. Four of these new regions were multi-ethnic and five had only one main ethnicity, while Addis Ababa and Dire Dawa both formed multi-ethnic chartered cities.[3]

Today the Federal Democratic state of Ethiopia operates under a four tiered system of government: at the top is the federal government, under which lies the regional government, the zonal administration and lastly the *woreda* administrations. Thus the state is divided into some nine regions, and now has three chartered cities (with the addition of Awassa in 2002), 66 zones, and 550 *woredas.*[4]

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3   The Amhara, Afar, Oromiya, Somali and Tigray regions are home to not only the titular groups but also to small regionally concentrated minorities like the Agau in Amhara, the Saho and Kunama in Tigray, and the Argobba in Afar. The regions of Beni Shangul-Gumuz, SNNPR, Gambella, Harar are multi-ethnic states with no dominant group.

4   Interview with TNRS Government Official Mekkele: 5 August 2002.

Administrative boundaries of Ethiopia
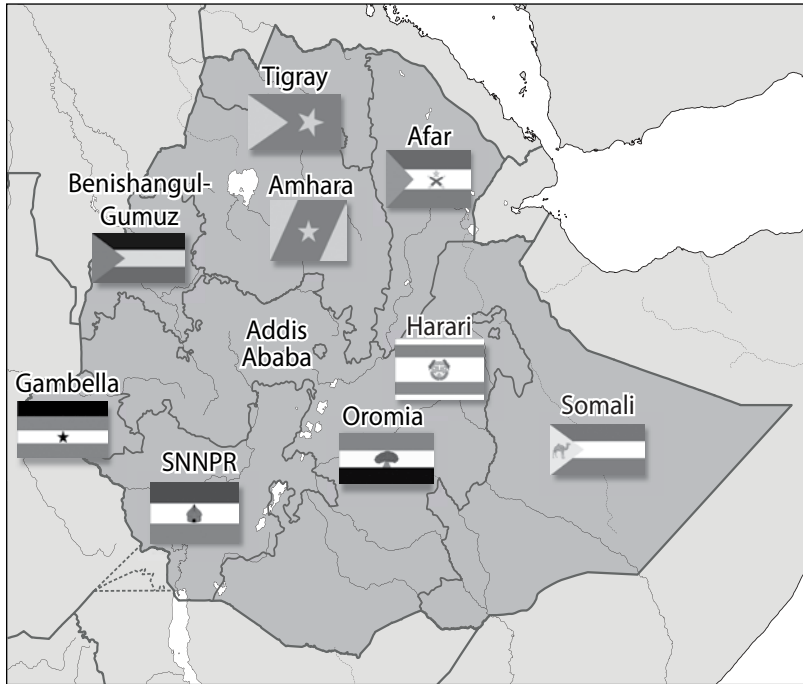
Source: ACCORD, adapted from <http://abagond.files.wordpress.com/2009/05/regional_map_fdre.gif?w=500&h=386> [Accessed 1 October 2011].

All tiers of the post-1991 government have essentially the same structure, namely a legislative body, a court and an executive. The federal legislative branch consists of two bodies: the House of the Federation and the House of Peoples' Representatives. Members of the latter are directly elected while the members of the former are either nominated by the governing bodies of the various regions or directly elected by the inhabitants of the different regional states. The federal executive consists of a ceremonial President and a Prime Minister who is the head of the Council of Ministers. It is this council that carries out the main functions of the central government such as defence, fiscal policy, and foreign relations. Along with the above tasks it is the Council of Ministers that formulates national policy to be implemented by lower levels of government. The Federal Supreme

Court has the highest judicial power on all federal matters and acts as a final appeal court for regional cases.

Each regional state has a Regional Council which is elected through universal suffrage. This council creates region-specific legislation and approves the regional budget and development strategy. Members of the Regional Council appoint the Executive Committee which oversees the day-to-day administration of the region. The Regional Council also appoints a President to fulfil the executive functions, as well as appointing the bureau heads, the regional equivalents of ministers. Although the number and the responsibilities of bureaus may vary from region to region, all regions generally have bureaus of agriculture, education, finance and planning, health and roads. All regions also have their own civil service organs but these are aligned with the federal civil service. This is essentially the structure of the Ethiopian state, of which the Afar National Regional State is a constituent part. However, in the Afar region as in other peripheral areas of the state, central government structures compete with, co-opt and are co-opted by older less formal structures.

The Afar

Chifra

The ANRS region is one of the ethnic units of the Federal Democratic Republic of Ethiopia. The ANRS is located in the north eastern corner of Ethiopia, sharing international boundaries with Djibouti and Eritrea and regional boundaries with Tigray, Amhara, Oromiya and the Somali regional states. The ANRS comprises five zones and thirty *woredas* and a number of *kebeles*. According to the 2007 census, the population of the region is estimated to be 1 390 273 in total (FDRE CSA, 2010:7). The *woreda* of Chifra is found in Zone 1, the most populous zone of the ANRS. Chifra itself has a population of 91 080 which makes it the most populous of the ANRS (FDRE CSA, 2010:7). Chifra is divided into 18 rural *kebeles* and one urban *kebele*.

Zones and *woredas* of the Afar National Regional State

Source: ACCORD, adapted from <http://idp-uk.org/Resources/Maps/Administrative%20
Regions/Afar-Region2.gif> [Accessed 1 October 2011].

The Afar, who refer to themselves as *Cafara Umata* (the Afar nation), are a Cushitic-speaking people closely related to the Saho/Irob, and more distantly to the Somali and Oromo. The vast majority are pastoralists, keeping herds of sheep, goats and camels. The imposition of colonial borders has left the Afar people fragmented between the states of Ethiopia, Eritrea and Djibouti.

Areas inhabited by the Afar

Source: ACCORD, adapted from <http://llmap.org/languages/aar.png>
[Accessed 1 September 2011].

Today the Afar have four surviving indigenous polities that compete with post-colonial states for the allegiance of the Afar people. These are:

• The Tajurah Sultanate centred in Djibouti

• The Rahayto Sultanate along the border of Ethiopia and Djibouti

- The Aussa Sultanate centred at Assaita

- The Grifo Sultanate centred at Bilu along the border of Ethiopia and Eritrea

Like the Somali and Oromo, the basic unit of the Afar is the clan. The largest clans in Chifra *woreda* are the *Arapta* and *Doda*. Afar trace the ancestry of clans and sub-clans to individual ancestors. The ancestor of the *Arapta* is held to be Arapta Ibrahim Bini Moday, who is also the ancestor of the *Arapta, Kara, Harbesa, Geharto* clans and sub-clans. The *Doda* are descendants of Hussein Gura, who is also the patriarch of the *Hamed Sera, Ilades, Harbesa Sera, Gesera Sera* clans and sub-clans (Gamaluddin and Hashim, 2007:651-652). The *Arapta* form a plurality in Chifra and as a result dominate the *woreda*, both politically and administratively. Both clans are largely found towards the southern and south eastern region of the ANRS.

The seat of the *woreda* administration and the capital of the *woreda* is Chifra town, with a population of 91 320 people according to the 2007 CSA figures (FDRE, 1994:8). In common with most towns in the ANRS, the majority of Chifra's inhabitants are not Afar, but rather Muslim Amhara.[5] These urban dwellers mainly come from the neighbouring *woredas* of the Amhara Regional State, namely Habru, Werebabo and Bati.[6] Additionally, Chifra is also home to a smaller number of Tigrayans. Relations between the Afar and the other groups are cordial and friendly, with the few business enterprises in the town (a few restaurants and rooms for rent) run either by the Amhara and/or Tigrayans. There are several cases of intermarriage between the Afar and the Muslim Amhara inhabitants of the town.

The Afar and Ethiopia

The imperial era

During the imperial era, the lowland Afar region, while enjoying close proximity and intensive socio-economic and political interactions with the neighbouring

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5   Most Amhara are however Christians.

6   The former lie across the border in the South Wello Zone of the Amhara Region, while the latter is located in the Oromiyya special Zone of the same region.

Ethiopian state and communities, was never an integral component of the Ethiopian entity. Afar Sultanates, clan and sub-clan chiefs at different points in time intermittently engaged in conflict with or acknowledged the suzerainty of the Abyssinian Emperors.[7] However, the trade routes through the Afar region grew in importance as the centre of gravity of the Ethiopian state shifted south from Axum in Tigray to Addis Ababa in the Shewa region.

Ethiopia's imperial provinces

Source: ACCORD, adapted from <http://www.geographicguide.net/africa/images/ethiopia-map.gif> [Accessed 10 September 2011].

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7   A useful source on the history of the Afar from an Afar perspective is the Amharic text, 'Ye Afar/Danakil tarik mereja arki minch/almanhal l' authored by Gamaluddin Ibrahim Khalil A-Shami and Hashim Gamaluddin Ibrahim Al-Shami (2007). It also contains the most comprehensive breakdown of the clan and sub-clan lineage system of the Afar in a written text.

The Afar region was home to a succession of states that proved to be more than competent competitors with the Ethiopian Empire. These included the Sultanate of Ifat based in Zeila from the late 13th to the early 15th century, Adal (early 15th to mid-16th century) and finally the Sultanate of Aussa founded in the late 16th century after a split in the ruling elite of the Adal Sultanate based in Harar (Trimingham, 1952:260-265). The final decades of the 19th century CE saw the Afar region becoming a key area of competition between the Turko-Egyptian and European colonial powers on the one hand, and a reinvigorated Ethiopian Empire on the other. During this period, the Afar-inhabited Danakil section of the Eritrean coast came under Italian rule, while the Gulf of Tadjoura came under French control. Emperor Yohannes IV of Ethiopia also began enforcing tribute payments and acknowledgement of Ethiopia suzerainty from Afar lineages and sultanates bordering the Ethiopian provinces of Tigray and Wello (Gamaluddin and Hashim, 2007:416-419).

It should be stated that Ethiopian control of the Afar regions was weak at the best of times and nonexistent at others. During much of the imperial era Ethiopian rule consisted mainly of intermittent raids by the Emperor or feudal lords from the highland provinces to exact tribute or more specifically to loot Afar communities. This state of affairs continued until the Italian invasion of Ethiopia in 1935. The aftermath of liberation from Italian occupation in 1941 led to a transformation in the relations between the Afar and the Ethiopian state. Upon his return from exile, the Emperor set about centralising the Ethiopian state. In 1944, there was an armed expedition by the imperial government that brought down the previous Sultan, Muhammad Yago of Aussa, who had proved obdurate in acknowledging the authority of the central government and had openly sided with the Italian regime. Thus Ali-Mirah Hanfere, from another faction of the Aydahiso ruling lineage, was elevated to the position of Sultan (Trimingham, 1952:170-173).

This coup was by far the most profound intervention that the Ethiopian state attempted in the region. By and large, central control and authority over the Afar people remained loose and the imperial regime had to resign itself to governing the area through intermediaries. Thus Ali-Mirah, who was recognised as the overarching imperial appointee over the Afar clans and sub-clans especially in

the south, became subordinate to the Sultan. Another important development was the federation of Ethiopia and Eritrea in 1952. This along with the later Ethiopian-Eritrean union in 1962 meant that the vast majority of Afar were now under Ethiopian rule. They were divided between the provinces of Eritrea, Tigray, Wello, Shewa and Hararghe.

In the 1960s, Somali irredentism coupled with the escalation of the war in Eritrea made control and stability in the Afar region strategically more critical for Addis Ababa. The growing economic importance of cotton plantations in the Afar-inhabited Awash valley, and expanding investment by the Ethiopian government and foreign capital in these plantations, further underlined the importance of the Afar region in economic terms. It was during this period that the imperial regime institutionalised the practice of conferring titles and stipends on clan and sub-clan chiefs in the Afar region.

The Afar region during the civil war period, 1975-1991

The pre-eminence of southern clans, with a long history of contact with the Ethiopian state in the structures of the Sultanate, meant that unlike other peripheral groups like the Somali and the Oromo, the Afar were one of the last groups to openly challenge the Ethiopian state (Gamaledin, 1993:45). Large areas of the Awash Basin were expropriated for cotton plantations by the Ethiopian state, but the Sultan and his family benefited from some of these schemes as pseudo-landlords, thus criticism was muted (Ali, 1998:110).

The 1974 Wello famine and the subsequent army-led coup had an immense impact on the Afar people and region. The 1974 revolution led to the rise to power of the *Derg*. In the aftermath of the revolution, the decree nationalising all rural lands directly affected the economic and commercial interests of the Sultan and led to resistance. The nationalisation of communal lands proved to be decisive and the Afar Liberation Front (ALF) was formed by Sultan Ali-Mirah in 1976. The ALF initiated a low intensity guerrilla war in the region which posed a threat to traffic along the Addis Ababa-Djibouti railway line and road traffic leading to Djibouti, but had a limited political impact beyond this.

An alternative vehicle for the mobilisation of opposition was established just before the collapse of the imperial regime, when a group of educated leftist Afar studying overseas set up the Afar National Liberation Movement (ANLM). The ANLM had close links to the Eritrean rebels of the Eritrean People's Liberation Front (EPLF), who were fighting for the independence of Eritrea. In spite of these early links, the ANLM later formed an alliance with the *Derg,* based on promises of autonomy to a region that would incorporate all the Afar people. The alliance between the ANLM and the *Derg* led to the formation of an Afar militia termed the *Ugugumo,* which functioned as an important auxiliary of the *Derg* in its war with the EPLF in Eritrea and the TPLF in Tigray. By 1980, these two had emerged as the strongest and most viable opposition to the junta.

It was the escalation of the war into the southern Raya, Azebo and Wajerat areas of southern Tigray that led to the initial contacts between the EPRDF and the Afar (Young, 1997:147-149). The TPLF formed a tactical alliance with the ALF and even mounted joint military operations with the ALF against the armed forces of the *Derg* (Young, 1997:150). The strategic decision by the TPLF not to launch offensive attacks against the *Ugugumo,* even when the militia continued to harass and attack TPLF controlled areas and units, went a long way to forging bonds between the Afar and the TPLF. These measures allowed the TPLF to generate a level of support and tolerance from the Afar in Tigray.

Due to the multiple conflicts it was engaged in throughout the country, the *Derg* was unable to substantially transform the relationship between the central state and the Afar. The first real attempt to alter this relationship took place in 1987 with the formal proclamation of the formation of the PDRE (People's Democratic Republic of Ethiopia) and the promulgation of a new constitution. It led to changes in the structure of power in the country with the *Derg* transforming into the Workers Party of Ethiopia (WPE).

With hindsight, the 1987 constitution was a long overdue response to the nationalities question and promises of self-determination that had been a central demand of the regionalist and ethno-nationalist movements in the aftermath of the 1974 revolution. The PDRE constitution created an administrative structure of 29 regions with five enjoying the status of autonomous regions. Specifically,

the constitution created an Afar autonomous region carved out of Afar areas in Eritrea, Tigray and Wello.

Administrative and autonomous regions of the PDRE

Source: ACCORD, adapted from 1987 PDRE Map

In spite of cartographic changes the regime was reluctant to devolve substantial powers to these regions. More concretely, due to the military situation on the ground at the time, the changes were never truly implemented by the embattled regime and less than three years later, in May 1991, the junta was overthrown by the combined efforts of the EPLF and the TPLF dominated EPRDF.

The Afar region in the post-conflict era

In the aftermath of the overthrow of the *Derg*, the Afar people and region were to undergo a fundamental transformation in terms of their relationship with the Ethiopian state. The fall of the *Derg* ushered in the arrival of the EPLF and the *de facto* independence of Eritrea, which effectively meant the separation of the Afar in Eritrea from their Afar kin in Ethiopia. This process was formalised with the independence of Eritrea in 1993.

The overthrow of the *Derg* also saw the return from exile of Sultan Ali-Mirah and the ALF. Shortly afterwards there was the establishment of a federal system based on ethno-linguistic criteria, which included the emergence of an Afar regional state (Akmel, 2006:76-77). On 8 December 1991, Sultan Ali-Mirah's son, Habib Ali-Mirah, was elected as President of the region by the Regional Council. The 1995 constitution formally established a federal republic based on nine regional states and two federal territories and institutionalised the administrative and political structure of the state. The constitution provided a broad range of executive, legislative and judicial powers to the regional states (FDRE Constitution, Article 52).

However, the relations between the ALF and the ruling party at the centre were far from smooth and tensions led to the emergence of a rift between the ALF and the TPLF-dominated EPRDF. Allegations of corruption and inefficiency on the part of the ALF-dominated regional government, along with the pre-eminent position given to the southern Afar and their region, in terms of regional positions and development spending, only served to heighten tensions. Thus, it was not surprising that soon after the overthrow of the *Derg* the EPRDF set about creating a surrogate Afar movement, the Afar Peoples Democratic

Organisation (APDO). Many Afar at the time saw the APDO as a TPLF creation since the party gained its support from Afar clans which were part of the historic province of Tigray. However, the APDO went on to gain control over the region in the 1995 elections which saw the ALF fragment due to disputes between the Sultan and his sons. The situation was also further complicated by the low level insurgency which was still being waged by the *Ugugumo*. Overtime, however, the central government was successful in stabilising conditions in the ANRS. The low level insurgency waged by the *Ugugumo* dissipated and the party competition between different sections of the Afar elite became a thing of the past with the establishment of the Afar National Democratic Party (ANDP) which has controlled the region since 2000.

In this context, it is important to point out that the federal system, and the devolution of power that it entailed, created a space which allowed traditional institutions and the traditional system of conflict resolution to be reinvigorated in the ANRS. Over time, both the federal government and the regional administration of the ANRS acknowledged the contributions of the traditional institutions and their role in conflict resolution and management in the region.

Traditional authority in the Afar region

The Mekabon and Isi

Mediators *(Isi)* are Afar elders *(Mekabon)* who play a critical and indispensable role in resolving conflicts between clans and sub-clans. They are often from neutral clans and are called upon to mediate and reconcile antagonistic clans. Clan and sub-clan elders of Zone 2 (elders of the Dahimela, Sekha and other clans) play a key role as mediators.

Har Abba

The literal meaning of the term *Har Abba* is 'father of the tree'. The lowest level in the Afar system of political authority is the *Har Abba,* a position which exists at both clan and sub-clan levels. The *Har Abba* initiates the formal process of

traditional conflict resolution by making the opening or first speech during the actual proceedings.

Dar Abba

Dar Abba literally means 'father of the *dar*'; *dar* means abode. Although a traditional Afar position, the *Dar Abba* now acts as the administrator of a *woreda*. Throughout the ANRS, scores of *Dar Abba* have been appointed to the position of *woreda* administrators, in what appears to be a blurring of the line between traditional and administrative authority.

Keddo Abba

Perhaps the most important functionary in the Afar traditional system of governance is the position of *Keddo Abba* or 'father of the clan' (Savard, 1970:226-239). Afar use the term to refer to the chiefs of clans and sub-clans, since unlike the Somali, the Afar do not distinguish between the two. The *Keddo Abba* is the official representative of a clan/sub-clan in interactions with other clans/sub-clans and also in formal or informal interactions with state structures. Additionally, the *Keddo Abba* also plays a critical role in conflict management, resolution and reconciliation. In terms of the traditional system of conflict resolution, the word of the *Keddo Abba* is final and binding.

In addition to these hierarchical positions the Afar system of governance incorporates other positions at the level of the clan and sub-clan. These offices play a further key role in the process of conflict management, resolution and reconciliation.

Fi'ema Abba

The *Fi'ema Abba* is the head of the *Fi'ema* and the term can be translated as 'first among equals'. The *Fi'ema,* which roughly translates as 'equals', is a quasi-age-set among Afar men. The *Fi'ema Abba* is a key position in the traditional system of governance. The membership of these associations may be confined to a single

clan or cut across clan boundaries. Within a clan or sub-clan the *Fi'ema Abba* is the first point of reference when interpersonal conflicts arise. The *Fi'ema Abba* can decree and/or carry out punishments decreed by the elders of the clan or sub-clan. The post of *Fi'ema Abba* is not a permanent or an inherited one and must be relinquished when the post holder reaches middle age or is replaced due to the inability to fulfil his duties.

Ma'ada

The term *Ma'ada,* or rules, is used by the Afar for their traditional system of customary law. While the corpus of written literature on *Ma'ada* only contains one work (Jamaluddin, 1973) the Afar as a community, and the *Isi* in particular, act as a repository of customary knowledge. The authors were fortunately able to interview several Afar elders and mediators.

The *Ma'ada* identifies five different types of crimes (Jamaluddin, 1973:2-4):

- *Eido* (killings)

- *Aymissiya* (injury)

- *Rado* (theft, destruction of property)

- *Samo* (adultery)

- *Dafu* (insults, affronts)

The notions of collective responsibility and intentionality are perhaps the defining features of the *Ma'ada* and have a direct bearing on the workings of the traditional system of conflict resolution. In the *Ma'ada* system it is the clan that is held responsible for the deeds of its members. Additionally, severity of the crime and also the compensation payments vary depending on whether the crime/affront committed was intentional or accidental. *Diat* and *Nefsimiklah* are the Afar terms for compensation payment for homicide and *Dekha* the term for the compensation payments for all other types of injuries/crimes.

Mable

The process of dispute resolution between different parties is referred to as *Mable* by the Afar. In cases of intra-clan disputes or conflicts (disputes between members of the same sub-clan) the dispute resolution system functions in a more immediate and relatively less formal manner. Relatives, neighbours and friends of the disputing parties may all try to mediate and reconcile the disputants. These individuals may have prior experience in these matters or may even get involved out of personal interest. Decisions and judgements in these types of disputes are also based on the *Ma'ada*. Intra-clan disputes that involve issues such as homicide and the theft or killing of camels, however, would invariably involve a more formal and elaborate procedure involving sub-clan or clan elders. It may even necessitate the involvement of *Isi*.

Since under the *Ma'ada* the notion of responsibility is not conceptualised at the level of the individual but at the level of the collective unit, the likelihood of the conflicts becoming violent is greater. As a result, dispute resolution is handled with greater care. Disputes that involve deaths, serious bodily injury, kidnapping, rape and the killing or theft of camels are extremely sensitive. Cases of inter-clan disputes invariably involve clan or sub-clan elders and also *Isi*. A panel of elders is formed *(Mekabon)* which will convene a reconciliation meeting known in Afar as *Maro*. Both sides will be given a hearing and after extensive discussion a ruling will be passed.

Dispute resolution in the case of a homicide where the victim and perpetrator come from different clans is far more formal and sombre, necessitating the involvement of the *Isi*. It is also quite common for the administrative tiers of the state to ask elders to initiate a reconciliation process before a conflict situation becomes unmanageable. One of the immediate objectives of the *Isi* involved in a case of inter-clan killing is the containment of the tension and preventing escalation through revenge killings. Therefore, one of the first steps that the elders take is the seclusion of the clan or sub-clan to which the killer belongs. The sub-clan undergoing seclusion will be supplied with guards led by a *Fi'ema Abba* from a neutral clan. This seclusion is termed *Megello*. Only the young men and middle-aged men undergo seclusion as women and children are not

legitimate targets in vendettas. The elders will also require both parties to take oaths *(Burbah)* to refrain from violence or seeking vengeance for a period of forty days *(Morotem)* (Kelemework, 2006:50-51).

A key part of the *Mable* process is the *Kusa'a*, which can be translated as either investigation or research. Both sides in the dispute are asked to present their cases and they are given a hearing. The elders strive to ascertain the causes of the dispute, the chronology of events leading up to the killing and identifying who was at fault. This period may extend from a week to a month or even longer. During this period, the elders are put up at the expense of the culprit's clan/sub-clan.

Eventually the elders arrive at a decision regarding guilt and intentionality. The system of compensation payments is initiated in several stages:

- The first stage of compensation payment is the *Bolkesegahara* which is an admission of guilt on the part of the culprits and also consent to pay. Payment in the form of a number of cattle (from one to twelve) is part of this stage.

- The second stage payment is the *Waydaalkedima* and amounts to twelve cows. Six of these are divided between the elders involved in the case and six to the victim's clan/sub-clan.

- With the initial two payments, the men of the culprit's clan/sub-clan can emerge from *Megello*/seclusion and are no longer at risk of revenge killings. This does not apply to the men of the culprit's immediate family who remain in seclusion.

- The final stage of the reconciliation process is often held in the evening. In some cases a special dwelling *(Bilu Hara)* is constructed for this stage. During this stage the family/sub-clan of the culprit is led in to exchange ritual greetings and request forgiveness from the victim's family/sub-clan that is present. The victim's family/sub-clan takes part in the process and after the ritual greetings and extension of formal forgiveness both sides will eat together and spend the night in the same spot. The details of the final compensation payment are also worked out here. Often the practice is to deduct from the payment, taking into account the expenses that the culprit's clan/sub-clan have incurred so far in terms of putting up the elders and the feasting on the final day.

It is important to point out that in this process, the state apparatus in the form of the *woreda* and *kebele* administrations play a central role. They are often the first to request the involvement of the elders and in a few cases even provide transport to enable the arrival of the elders. The state apparatus using the police force will often try to ensure that fighting/revenge killings do not occur or if they do, try to end or contain it. The police will often be used also to guard the culprit's clan/sub-clan during the seclusion period.

Inter-ethnic disputes and conflicts

The Afar continue to be engaged in conflicts with neighbouring ethnic communities such as the Issa Somali, Kereyu Oromo, Amhara and Tigrayans. The former two are pastoralists like the Afar while the latter are cultivators. These conflicts have their origins in competition over water sources, pastures, cultivable land and in some cases also political competition and administrative boundaries. However, conflict between ethnic communities is not the norm. In large parts of the Afar region mechanisms have evolved to manage inter-ethnic tension and conflicts. One such institution is the bond in the form of a 'friendship bond' or 'blood brotherhood' between some Afar lowlanders and their Tigrayan counterparts from the highlands. The bond is referred to in Afar as *Qahanoyta* or *Fikur* in Tigrinya. It puts certain obligations on the partner as the two are tied in times of peace and conflict. In effect, two bonded men become brothers in every sense of the word.

In terms of formal conflict mitigation structures, the ANRS administration relies heavily on peace committees composed of elders from the Afar and those from the *woredas* that border the Afar region. The remit of these committees is limited to conflicts with communities in neighbouring regional states. The joint peace committees are an interesting fusion of the traditional and modern. Thus, while the members of the joint peace committee are picked by the state (on the recommendation of the concerned *woreda* administration), the members are invariably elders or clan chiefs. The methodology they utilise also draws more from the traditional sphere in terms of relying on compensation payments and reconciliation and bypassing the formal justice system. Joint peace committees

have also been created in urban areas in the ANRS to deal with conflicts and disputes arising between Afar and inhabitants from other ethnic groups.

In spite of the dualism and in some cases the merging of the two systems, the legal basis for traditional institutions both under the Ethiopian and ANRS constitutions is weak. There is an overlap between the formal state apparatus and traditional institutions in the ANRS. A number of clan and sub-clan elders have also been elected into the Regional Council of the ANRS (the legislative body of the regional state) and the proportion of elders elected into the *woreda* councils is even higher. In Chifra, *woreda* from positions in the *kebele* tier all the way to the *woreda* level administration, chiefs of clans and sub-clans hold government positions. It is also the *woreda* administration that appoints members of the *woreda* peace committee.

Although according to Article 63 of the ANRS constitution, the regional administration establishes councils of elders at different tiers of the administration, so far the councils of elders have yet to become operational. At present, different tiers of the regional administration have individual elders associated with them in advisory positions. These advisors are appointed by the regional administration. Currently, the *woreda* tier is assigned one elder, at the zonal level two to three elders and finally at the regional level many more elders have been appointed as advisors. The President of the ANRS also has as an advisor an elder of the Gidinto clan.

Conclusion

Clan and sub-clan elders in Chifra do not regard the state apparatus as a competitor or source of threat but in a more prosaic sense rather as a potential and actual source of support and as an ally. For instance, elders in Chifra *woreda* want to see formal budgetary support, transport and provision of office space from the state. What is even more striking is that these elders also want the state to use the means at its disposal to enforce speedier compensation payments.

Under the current federal system in the ANRS a process of coopting and co-operation between traditional institutions and the formal state apparatus is

well under way. This is a process bearing results where traditional institutions and mechanisms of conflict resolution play an invaluable role in conflict management, resolution and reconciliation at multiple levels. At the same time, traditional figures have been co-opted into or may even have captured the formal state apparatus to the extent where the distinction between the two has become blurred.

Due to this blurring, according to Akmel (2010:18-24) the Afar and their leaders have been able to localise the state structures and impose their will on them. The central government itself has had to acquiesce and accommodate itself to this state of affairs. However, as this study in Chifra shows, the relationship between the two is more nuanced and complex than is often suggested. A basic commonality of purpose and interests exists between the formal state apparatus and traditional institutions in the ANRS, which they seek to achieve by working in tandem, and the relationship is constantly being negotiated. Elements of the traditional leadership have penetrated the regional administration but there are limits and constraints which restrict their room for manoeuvre.

Larger developments in the ANRS, it would seem, will weaken traditional institutions. The expansion of modern education in the ANRS, the growth in the numbers of educated people and their entry into the state apparatus will provide greater competition for the traditional leadership. The process of urbanisation and its attendant implications is likely to also weaken the hold of traditional institutions in the long run. An interesting recent development that maybe symptomatic of future trends is the recent law passed by the Regional Council of the ANRS, which nationalises all clan lands (Wudineh, 2011). While all land in Ethiopia is state controlled, land ownership in the Afar area tended to be an anomaly, with land in the hands of the various clans. The new law thus synchronises land ownership and administration in the ANRS with the rest of the country. The ANRS regional administration justifies this step as necessitated by the developmental needs of the region. A policy document of the regional administration (ANRS 2009a:19) identifies land policy and usage patterns in the ANRS as one of the biggest obstacles to investment in the region. The law contains contradictory provisions. Thus for instance the draft law, whilst

nationalising all clan lands, also stipulates that land registration will be carried out and that clans and sub-clans will receive titles to their lands.[8]

The law and the process of its implementation will have effects on the traditional leadership of Afar society. It may accelerate differentiation within the pastoralist society and at the same time weaken the authority and power of the traditional leadership. It may also create resentment and possibly lead to attempts to forcibly resist efforts by the state to allocate land to private investors in the future. What is clear is that the relationship between traditional institutions and the formal state apparatus in the ANRS is still evolving and will continue to be the site of negotiation and manoeuvre.

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From war to peace and reconciliation in Darfur, Sudan: Prospects for the *Judiyya*

Abdullahi Osman El-Tom

Introduction

The causes of the current Darfur problem can be justifiably reduced to one word: 'injustice'. Since the independence of Sudan in 1956, the region of Darfur has been under the oppressive hegemony of a ruling elite primarily drawn from the northern region of Sudan. Over the years, Darfur people protested their economic, cultural, ethnic and political marginalisation to no avail. In 2003, some Darfur people took up arms against the Khartoum government (El-Tom, 2009, 2011; Hassan and Ray, 2009).

It is now 10 years since the onset of Darfur atrocities. One does not have to subscribe to clichés of conflict maturity or war fatigue to realise that the Darfur crisis is approaching its end. The internal and external dynamics of recent months have ushered in an air of optimism that the crisis will soon be overcome. On the internal front, numerous processes have progressed to overshadow past obstacles. The divisions and proliferations of Darfur movements that followed the Abuja Darfur Peace Agreement (DPA, 2005) have finally led to the formation of two or three main groups. The Justice and Equality Movement (JEM) seems to have emerged as a clear winner capable of dictating future peace processes. The newly formed Liberation and Justice Movement (LJM) has also come to occupy a prominent role, at least at the political level. The spread of war to the Nuba Mountains and Blue Nile Province and the subsequent formation of the Sudanese Revolutionary Front (SRF) in February 2012 have added another

dimension to the conflict, increasing the likelihood of the collapse of the Khartoum government.

The separation of Sudan into two independent countries has further isolated President Al Bashir, thus paving the way for compromises on the way to a peaceful resolution of the Darfur conflict. The newly independent Republic of South Sudan has already signalled its readiness to play an active role in bringing the conflict to an end. But the new country did not emerge without economic implications. It now includes 80% of Sudan's oil reserves, thus robbing Khartoum of necessary funds for running the war. Khartoum simply has not enough cash to sustain its war in Darfur as can be readily deduced from the near collapse of the Sudanese pound.

The International Criminal Court's (ICC) indictment of Al Bashir on 4 March 2009 and again in July 2009 has certainly shaken the delicate Darfur peace process but has equally sent shockwaves across African and Arab leaderships. The indictment signalled a historic new era that challenges the impunity of sitting dictators against international prosecutions. Much more pertinent here is the impact of the indictment within the ranks of the ruling National Congress Party (NCP) of Sudan. While the indictment gave the hardliners cause to rally around the beleaguered president, dissent has emerged among moderate party members concerned about the future prospects of their party. As an ICC spokesperson indicated on 4 May 2009, some members of the government of Sudan intimated their desire to hand over Al Bashir to the ICC (Alwafd, 2009).

Dealing with Darfur war crimes

Whether peace in Darfur is imminent or not remains open to debate. What is certain is that the sustainability of peace in Darfur and the guarantee of harmonious post-conflict coexistence require careful handling of Darfur war crimes. Despite ample international attention being paid to atrocities committed in Darfur, there is little consensus regarding the number of fatalities, the incidence of rape, the extent of villages burnt and property destroyed or looted. Rough estimates give figures of 200 000 to 500 000 killed, 2.5 million displaced,

5 000 villages destroyed and 10 000 women raped (Suleiman, 2011; El-Tom, 2007). However, and by whatever measures, the atrocities committed involve numbers that far exceed the capacity of formal legal systems to handle. In this regard, we have a great deal to learn from other similar conflicts in the Sudan as well as in other African countries. Thus we have the war of South Sudan, the Rwandan experience, the South African experience and many others.

In approaching Darfur war crimes, Sudan must learn from mistakes committed at the Naivasha negotiations that led to the Comprehensive Peace Agreement (CPA), which paved the way for independence of the South. In Naivasha, the negotiators adopted the dictum of 'forgive and march on' and opted for a blanket amnesty for all north-south civil war criminals. Eminent Sudanese lawyer Magdi Algazouli maintains that the 'failure to probe into atrocities committed in the GoS-SPLM war encouraged a repeat of the same crimes in Darfur and a blanket amnesty in the Darfur war is simply untenable' (Algazouli, 2009). While it was difficult to account for every atrocity committed during the Sudanese north-south conflict, failing to raise the issue of justice has come with a considerable price. As Amnesty International aptly put it, 'peace depends not only on absence of war but also on the existence of both justice and truth, with both justice and truth depending on one another' (Amnesty International, 2002b). The ICC has already issued arrest warrants for seven individuals: President Al Bashir, Minister Abdel Rahim Husain, Governor Ahmed Haroun, Janjaweed leader Kushayb and three rebel leaders, one of whom was later cleared by ICC judges. This number is small compared to the unofficial list of 55 culprits whom Human Rights Watch wants investigated (HRW, 2005). The government itself has followed suit and claims it has commuted death sentences on 36 soldiers charged with committing atrocities and armed robberies in Darfur. Thus the process of accountability has already started and it is difficult and perhaps undesirable to reverse. Given the scale of crimes committed in Darfur, the ICC and Sudan's National Justice System (NJS) will not have the capacity to deal with all cases within a time frame that is fair and just for victims and culprits alike. It is here that Darfur must learn from the Rwandan experience. Needless to say, the current NJS is not fit to deliver justice. This embarrassing fact is also highlighted by the AU High-Level Panel on Darfur (AUPD), headed by Thabo Mbeki, the former President of

South Africa. The High-Level Panel Report recommends use of Hybrid Courts, a revamped NJS with the participation of foreign judges (AUPD, 2009).

In attempting to make use of the Rwandan experience in Darfur, one must pay close attention to similarities and commonalities between the two cases. To begin with, there is clear difference of scale whereby the Rwandan case dwarfs the level of crimes committed in Darfur. While the Rwandan case presents a clear case of genocide, the legal definition of Darfur atrocities as genocide is fraught with controversies and will remain so until the final ruling of the ICC. Suffice to say that Al Bashir is charged on 11 counts including genocide in the ICC rulings of 4 March and 20 July 2010.

The Rwandan case involved a massacre of close to one million victims out of a population of 10 million (Hansen, 2005:1). In Darfur, confusion still reigns regarding the number of casualties, with fatalities falling anywhere between 200 000 and 500 000 out of a population of 7.5 million (Suleiman, 2011). The government of Sudan reduces this estimate even further to no more than 10 000. Needless to say, few outside government circles take this last estimate with any degree of seriousness.[1]

In the Rwandan case, killing and other atrocities were predominantly executed by community members known to their victims. In sharp contrast, Darfur war crimes are predominantly perpetuated by the official army aided by militia allies locally known as Janjaweed. While many of the Janjaweed are local and hence known to their victims, some are imported from outside Sudan and cannot be easily identified by survivors. Army soldiers implicated in Darfur war crimes are much more difficult to identify as they are imported from outside the region. The government of Sudan has also used intensive aerial bombardment carried out by pilots who cannot be easily identified.

At a different level, both the Rwandan case and its Darfur counterpart have been driven by the motive of effecting a population reshuffle, involving varying degrees of ethnic cleansing. The Hutu *génocidaires* of Rwanda, alluding to their so-called Hutu Ten Commandments, declared their Tutsi fellow citizens as

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1   For the Rwandan genocide see: Gourevitch, 1998; Dallaire, 2004; Prunier, 1995.

inyenzi, meaning 'cockroaches', 'which could only be cured by extermination'. Darfur gangsters declared their victims as slaves, mercenaries and agents of Christian crusaders. Dehumanisation of would-be victims has been central to genocides, ethnic cleansing and massacres across the world. In Brazil, street children destined for killing are referred to as vermin. In other countries from Asia to Europe and Latin America, those who are destined for annihilation are referred to variously as infidels, enemies of the nation, nits, garbage, beasts, vagabonds, or subhumans (Jones, 2006:334). These terms are used in an effort to reduce the assailants' guilt, galvanise support, 'humanise' and 'glamorise' killings of people and deprive victims of any chance for sympathy and humane treatment.

We must therefore readily admit that dealing with Darfur war crimes presents a daunting problem that requires an unconventional response at the post-conflict phase of crisis. The Rwandan case provides a template that can be followed in Darfur in the near future. Like Rwanda, and if the wise option of prosecution is to be pursued, Darfur culprits will far exceed the capacity of Sudan's NJS and the ICC put together. The UN Security Council's trials formed for Rwanda came to be known as the International Criminal Tribunal of Rwanda (ICTR). In the case of Rwanda, and with nearly one million killed, it was estimated that the country had 125 000 suspected killers, forming 6% of its population. That number computes at eight to nine victims per killer. Other crimes like rape, looting, injuries and the burning of property also entered into the equation. Thus, when the genocide ended, Rwanda had 130 000 prisoners awaiting trial for alleged serious crimes only, but the options were limited.

The ICTR concerned itself with what has come to be referred to as Category One criminals, namely those who were allegedly implicated at the organisational level of the genocide. Altogether, 400 suspected *génocidaires* were identified. Many of them fled and remained in western countries with little or no chance of repatriation. The dubiously slow pace of ICTR trials provided another problem. By 2012, the ICTR listed 69 cases completed with 10 acquittals (ICTR, 2012). Different sources credit the ICTR with a mere 33 cases after 14 years of investigation, ending in 2008. However, the restricted mandate of the ICC relegates the institution to a limited role in the overall post-conflict justice

system (Lawson, 2005; Gusongoirye, 2008). According to some critics, the ICTR was plagued with corruption, nepotism, mismanagement and malfunctioning (Power, 2003:495; Shawn, 2006).

As for the Rwandan national legal system, it is certainly more efficient in comparison to the ICTR but equally hopeless in the face of the genocide. From 1996 to 2006, the national courts were able to handle a mere 10 000 trials. With that rate, the national courts would require over 100 years to prosecute all prisoners (Gusongoirye, 2008; Kasaija, 2009). Rwanda has been most unfortunate with regard to near decimation of its legal system during the genocide. It experienced a loss of over 80% of its legal officials and many legal facilities were damaged during the genocide. For example, only 244 judges survived the genocide from a total number of 750 (Hansen, 2005:2). Darfur fares much better in this regard. There is no summary execution of judges in Darfur and the region can, if necessary, draw on legal officials from outside Darfur. But the Rwandan case was different. The country simply had no choice but search in its traditional system for a solution. *Gacaca* seemed to be a logical path for the country to follow.

Gacaca, meaning 'sitting on grass' or also 'lawn-justice' is a quintessential traditional Rwandese institution for conflict resolution. By its very nature, a *Gacaca* court can be formed in any community to mediate and impose penalties on wrongdoers. *Gacaca* depends on moral force to implement its rulings. However, these are heavily backed by the threat of the much harsher national legal system. This often remains open for the plaintiff in cases where the *Gacaca* rulings are rejected. Recognising the vastness of the number of prisoners awaiting trial following the 1994 genocide, the Government of Rwanda adapted the *Gacaca*, with some modification, to serve as an alternative legal system. *Gacaca* was to deal with the milder but more numerous crimes committed during the genocide. Four categories of crimes were identified, with *Gacaca* restricted to categories 2-4:

Table 1: Genocide Crime Categories

Category One	Planning, organisation, instigation, supervision of genocide
Category Two	Physical attacks resulting in death
Category Three	Physical attacks not resulting in death
Category Four	Looting, theft, property damage

Source: Adapted from Musoni (2009).

Gacaca is constituted of four hierarchical levels. Starting from the lowest, *Gacaca* has cell, sector, district and provincial tribunals. Cell tribunals deal with property offences, sector tribunals with injuries, and district tribunals with killing but not its organisation. Provincial tribunals are reserved to act as final appeal courts for *Gacaca* cases.

The power of *Gacaca* resides in its capacity for speedy constitution. This is demonstrated by the appointment of 266 000 *Gacaca* judges in 2001, the same year the *Gacaca* Act was issued (Amnesty International, 2002a). By the time *Gacaca* heard its last case in July 2010, it had examined over 1.5 million cases. Some estimated 5 000 remaining prisoners who were too old or sick to stand trial and were implicated in minor offences were pardoned (Musoni, 2009; Vesperini, 2010).

Despite its limitations, some of which are outlined later in this article, the achievements of *Gacaca* courts have been impressive. A pertinent question here is how can Darfur replicate its success while at the same time avoid its limitations?[2] Like Rwanda, Darfur has traditional systems of conflict settlement which can be activated in its post-conflict work. In the following paragraphs, I will draw on the experience of the Berti, my own ethnic group, and use it as a convenient model for Darfur. The reader must allow for minor variations among other ethnic groups (for the Berti see Holy, 1974, 1991; El-Tom, 2008).

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2   For a critique of *Gacaca* see Amnesty International, 2002a, 2002b; Haile, 2008.

Darfur's legal system of traditional administration

Across the Sudan, local administration operates a sophisticated judicial system premised on traditional wisdom but equally informed by a modern state's legal ethos. Courts of local administration are structured around their administrative role. The village sheikh constitutes the lowest level of local administration presiding over 10 to 40 households. The village sheikh has no physical court but is mandated to settle minor disputes. In addition, the village sheikh combines assisting traditional courts run by his superiors in the local administration and government legal courts.

Above the village sheikh is the *Omda* (Mayor) who presides over up to 100 sheikhs. Depending on the size of the territory under his administration, the *Omda* may or may not have a physical court. Like the village sheikh, the *Omda* settles minor disputes among sheikhs as well as individuals. The absence of a court also means the absence of a mandate to impose prison sentences. Minor fines and compensation may be imposed during arbitration although implementation of the ruling depends on the disposition of the conflicting parties.

Above the *Omda* is the *Shartay* who presides over three to six *Omdas*. The *Shartay* has a court and mandate to impose jail sentences to be served in government prisons. He receives a salary from the government and maintains court records for future examination by the government if required. Above the *Shartay* is the *Nazir* or king in some areas. Both the *Nazir* and king run courts that are endorsed and supervised by the government.

Despite its history and experience, the traditional administration is unlikely to be suitable for post-crisis trials in Darfur. To begin with, this system is ethnically based and always headed by a chief of the dominant ethnic group in the area. Although the court might include juries drawn from ethnic minorities in the area, the position of the chief belongs to the dominant ethnic group. This makes adapting such a court to run trials of Darfur war criminals a risky affair. Moreover, many of these chiefs have also been politicised and above all implicated in one way or another in the Darfur dispute. Removing them in favour of other judges might create a dilemma regarding other functions for which they have been

appointed in the first place. For these reasons, it would be unwise to solicit their involvement in post-crisis trials.

Collective compensation (*Diya*)

Diya is a traditional system of collective compensation employed across Sudan and other African countries such as Somalia and Chad. In Darfur, it is restricted with some flexibility to unintentional homicide, injuries and damage to property. In order to seek the assistance of the kinship group to pay *Diya*, the compensation required must be too large for a single household to muster. In effect, this is a collective responsibility for individual offences. Nonetheless, and like many other traditional systems of conflict resolution, *Diya* constitutes a process for collective action and periodic consolidation of group solidarity.

A network of permanent officers is elected to administer *Diya*. They form hierarchical lines of personnel chosen on a hereditary basis with the sole role of operating the *Diya*. Ethnic groups are divided into lineages (*Khashim biout*) and sub-lineages (*Warrayat*) with a person in charge of the collection of contributions for each division or sub-division.

The Berti, whose system is described below, is a good example. It is a system common in Darfur but not without some variations. At the apex of the structure of *Diya* sits the *Farsha* who covers a large territory for the group. Below the *Farsha* is the *Duwana* who is responsible for the mobilisation and collection of contributions of several lineages. Up to 50 lineages could come under a *Duwana* consisting of more than 10 000 households. Each lineage is under a *Dimlig* who is appointed for the same purpose. The *Farsha, Duwana* and *Dimlig* have deputies spread across all areas where they have relatives, including in the capital Khartoum. *Diya* representatives may seek assistance from the local administration to execute their work as the latter recognises and fully supports the *Diya* system as a legitimate course of conflict settlement.

Payment of *Diya* is worked out by dividing the amount of imposed compensation by the number of contributing households. Due to the spread of population, the collection of money is an arduous and inefficient task requiring several years to

complete. Payments are relatively small due to the large number of contributors. For example, homicide triggers a levy of as a low as LS100 (Sudanese Pound), approximately 0.30 Euro per household, with only married people eligible for contribution. Payment of *Diya* is seen as an honourable deed, symbolic of belonging to the group. Few are prepared to endure the shame of not meeting the obligation.

Although the *Diya* is theoretically restricted to unintentional offences, it is often extended to cater for crimes of collective aims that are deliberately committed. Crimes committed to advance the cause of a group constitute a breach of national legal codes but there are always ways around these. In ethnic disputes where intentional killings are committed, the government itself ignores national justice codes and resorts to *Diya* to settle conflicts. The sophisticated outreach of the *Diya* institution coupled with sanctioned flexibility makes it a perfect candidate for use in the post-Darfur conflict.

Traditional councils of mediation (The *Judiyya*)

When thinking of *Gacaca*, nothing comes to mind in Darfur other than its traditional mediation council, locally referred to as the *Judiyya*. It is a grassroots system of arbitration that focuses on reconciliation and resurrection of social relationships in the community. Unlike other judicial systems such as government and *Shartay* courts, the *Judiyya* is distinguished by the impermanency of its membership, informality and accessibility to all in the community.

The *Judiyya* session can be initiated by a plaintiff, a defendant or their concerned neighbours and relatives. The meeting is open to all including passing guests and is not restricted to any defined number of mediators. In general, a *Judiyya* session attracts a minimum of five jurors who join and depart at will to carry out other activities. The disputants have the right to veto participation of potential mediators but only prior to commencement of the *Judiyya*.

The *Judiyya* has no overt power to enforce its ruling. Its power over disputants is moral. A disputant who defies the ruling of the *Judiyya* is castigated as a *Kassar Khawatir* (consensus breaker) who is anti-social, uncooperative and a threat

to community harmony. The opposite of that is *Jabbar Khawatir* (consensus builder), reflecting civility and ideal citizenship in the community. In a social environment where survival requires cooperation, the label of 'consensus breaker' is hard to sustain. Furthermore, the ruling of the *Judiyya* is often endorsed by the much harsher *Shartay* court should the case go further. What is important here is the consensual nature of *Judiyya* ruling. In effect, it is a community attempt to combine individual interests with community ideals.

The *Judiyya* is free and no penalties are imposed other than compensation for loss or damage incurred in the conflict. An oath on the Koran may be employed to prevent further offences between the disputants.

The *Judiyya* versus the *Shartay* court

As mentioned above, the *Shartay* runs a court that is endorsed by the state. The *Shartay* court deals with intermediary conflicts and is subordinate to government courts. The *Judiyya* then occupies the lower level of jurisprudence and is confined to lower level crimes that may not require intervention by the *Shartay* court. In contrast to the *Judiyya*, the *Shartay* court mimics its superior government courts. It is informed by a modern ethos, literate and with permanent members. It is also punitive and dependent on external tools like bailiffs, police and prisons to enforce its verdicts. Its sessions are formally planned and held in modern buildings in the form of mud rooms as distinct from grass cottages.

The *Judiyya* contrasts sharply with this. It is grassroots-based, spontaneous, with an open jury and focussed on reconciliation. Its meetings are convened in any suitable place, like the shade of a tree, and it relies on the goodwill of the parties involved to enforce its rulings (see Tables 2 and 3).

Table 2: The Judiyya and the Shartay Court

Judiyya	*Shartay* Court
Tree	Mud room
Oral/traditional-based	Literate/modern-based
Spontaneous	Formally arranged
Open jury	Restricted jury
Restitutive	Punitive
Moral enforcement	External enforcement
Ruling consensual	Ruling imposed by judges

Table 3: Traditional System of Conflict Resolution

	Domain	Mandate/Powers	Election/Appointment
Judiyya	Neighbourhood conflicts	Restitution and reconciliation	Spontaneous
Sheikh	Single village or residential quarter	Small fines, communal work, tax	Locally elected
Omda	Several sheikhs, up to 100	Small fines, tax	Elected/appointed
Shartay	Several *Omdas*	Up to two years jail sentence; extension of official legal system, tax	Elected/appointed
Farsha	An area or sub-tribe; *Duwanas*	Collection of compensation fund only	Elected

From *Gacaca* of Rwanda to the *Judiyya* of Darfur

Like pre-genocide *Gacaca*, the *Judiyya* is a quintessential institution and a repository of a traditional system evolved for tackling day-to-day conflicts during peaceful times. As in post-genocide Rwanda, the Darfur crisis introduced fresh nuances and new realities that transcend the traditional competence of the *Judiyya*. Hence, there is a need for some modification to *Judiyya* with the aim of its transformation into an institution capable of contributing to justice and reconciliation in post-war Darfur. Fortunately *Gacaca* provides an impeccable template whereby a basically similar institution has been called upon to play a role analogous to what is demanded of the *Judiyya*. In revising the *Judiyya* to suit the new context of post-war Darfur, caution is necessary to avoid the pitfalls of the *Gacaca*. The new *Judiyya* will undoubtedly be a hybrid, defying purists of traditional customs and disappointing those who aspire to an unadulterated modern judicial system.

Navigating through the complexities of the number of perpetrators of Darfur atrocities represents a major challenge. Even if we are able to gauge a reasonable margin of error, the number of those implicated in the atrocities will still be affected by local considerations peculiar to Darfur. By June 2009, *Gacaca* had already delivered over 1.5 million cases (Musoni, 2009). Roughly speaking, and assuming that many of Darfur offenders cannot be identified, the *Judiyya* will still probably have to deal with a fourth to fifth of that number (200 000 to 375 000). This number is further reduced by removing those involved in homicide/fatal injuries, as will be proposed later. The challenge is formidable but not insurmountable.

In the *Gacaca* case, 266 000 judges were appointed to sit in 10 000 courts. While this number may seem vast, the courts had to deal with a colossal amount of work with an adverse effect on performance, enthusiasm and availability for economic activities. The *Judiyya* must avoid this pitfall. If the number of *Gacaca* courts is used as a template, Darfur will require 2 000 to 2 500 courts. The problem of excessive work experienced in *Gacaca* can be eliminated by doubling the number of *Judiyya* courts to 4 000 to 5 000. This will also speed up

the work, fast-track the reduction of the number of detainees and lead to a more efficient reconciliation and reconstruction of communities.

The poor training of judges that accompanied the work of the *Gacaca* courts must not be repeated in Darfur. As reported, *Gacaca* judges received an average of 36 hours of training each (Haile, 2008:20; Hansen, 2005:2; Amnesty International, 2002b:6). Moreover, judges sitting on *Gacaca* Appeal Tribunals did not receive better or longer training than other trainees. This deficiency must be overcome in Darfur. The quality of training must not be sacrificed for expediency.

Amnesty International was justified in raising the issue of the failure of *Gacaca* to adhere to the principle of a fair trial in its proceedings (Amnesty International, 2002a). Like many traditional legal systems, *Gacaca* lacked what is akin to the modern principle of 'presumption of innocence'. This principle must be enshrined into the revamped *Judiyya* if it is to deliver justice that is worthy of pursuit.

The *Judiyya* also lacks a space for lawyers, a pitfall experienced in *Gacaca*. While it may not be feasible to include lawyers in the *Judiyya*, this shortcoming can be addressed by boosting the role of counter witnesses. Defendants should be allowed to commission relatives who are more articulate and with a better command of the intricacies of local jurisprudence to represent them in courts. It is perhaps unrealistic and albeit unnecessary to replicate Rwanda's employment of 'judicial defenders' in trials. Judicial defenders are pseudo-lawyers with six months of training. Nonetheless, some form of training for 'traditional judicial defenders' with the aim of improving their sense of justice should be considered (Amnesty International, 2002b).

Many experts including Hansen (2005), Haile (2008) and Emmanuel (2007) have raised concerns about the low, if not totally defective, standard of evidence employed in *Gacaca*. The result was that many defendants were convicted on the basis of hearsay and circumstantial proof. Care must be given to this issue in the training of *Judiyya* judges. *Judiyya* appeal tribunals in particular must be empowered and perhaps augmented with modern judges to attenuate this tendency in the *Judiyya*. Alternatively, a supreme appeal tribunal can be created

within a reorganised national justice system to act as a final stop for contested *Judiyya* verdicts. Variations in standards of the law of evidence are not peculiar to traditional legal systems. As the trials of O. J. Simpson have shown, modern courts are also inconsistent in their application of the law of evidence. Simpson was pronounced 'not guilty' in a criminal court but later convicted in a civil court. Simpson's case is said to have inspired relatives of the 29 victims of the Omagh bombing in Northern Ireland by the Real IRA in 1998. Having failed to secure a conviction in a criminal court in 2001, the plaintiffs renewed their case under a civil court, leading to a successful conclusion on 8 June 2009. Four of the five defendants were found responsible for the Omagh atrocities. The civil court prosecution highlights the marked differences where 'in a civil case, the burden of proof is on the balance of probabilities rather than the higher burden of a criminal case of beyond reasonable doubt' (Coulter and Keenan, 2009; Coulter 2009a, 2009b).

Improving the justice potential of the *Judiyya* presupposes some degree of modernisation, bringing the institution closer to international justice system. In so doing, efforts must be made to avoid converting the *Judiyya* into a retributive system akin to modern courts. The value of the *Judiyya* lies in its drive for restitution and reconciliation. Pushing the *Judiyya* too much into the realm of modern courts with their emphasis on punishment would be imprudent and counterproductive (Shema, 2009). The challenge is how to improve the justice delivery of *Judiyya* while maintaining at least some of its traditional ethos.

Despite the scale of atrocities in Darfur, it is anticipated that the *Judiyya* will face less work as compared to *Gacaca*. Hence, overseers of the *Judiyya* can afford to limit its deliberations to relatively minor offences. All crimes leading to fatalities can be removed from *Judiyya* jurisdiction and be transferred to the NJS. Cases of rape should also be taken out of the *Judiyya*. The gravity of war rape is demonstrated by its historic classification as a war crime in the ICTR. As such, the *Judiyya* will then be mandated to deal with damage to property including theft and looting, non-fatal injuries, and the terrorising and intimidation of civilians.

There is no doubt that the Darfur crisis represents a conflict between the centre and the periphery. Nonetheless, the crisis manifested itself in the region pitting one broad coalition of groups against another. This division is bound to resonate in the constitution of the *Judiyya* tribunals. More often than not, an administrative territory which constitutes a base for *a Judiyya* court may coincide with a single dominant ethnic group. *Judiyya* courts must be prevented from acting as mechanisms for forwarding the narrow interests of a dominant ethnic group to the detriment of others. Hence, modalities guaranteeing a fair ethnic mix of *Judiyya* courts must be envisaged prior to the constitution of these courts. This will increase fairness and pre-empt the possibility of the *Judiyya* falling into what Hansen (2005:4) refers to as 'victor's justice'.

Blatant interference by the post-genocide Rwandan government is widely reported. The government intervened in the mandate of *Gacaca*, its deliberation process, in the availability and release of detainees to be tried and intimidation of its judges (Hansen, 2005; Amnesty International, 2002b:6-7). This scenario is likely to be attempted by the post-war government in Darfur. Insulation of the *Judiyya* from negative government interference must be ensured and clearly embedded in *Judiyya* rules.

As alluded to before, the *Judiyya* has evolved to deal with conflicts of peacetime. The war in Darfur creates a new context that presents the *Judiyya* with new challenges. One of those is the challenge of having to deal with unconventional clients including minors, rape victims and sufferers of post-war trauma. *Judiyya* judges must be trained to isolate these cases and accommodate them in their deliberations. But the mere sensitivity of judges to these cases alone is not sufficient. A mechanism whereby the *Judiyya* can make use of trained personnel in the areas of post-war trauma, rape problems and minors must be provided.

Like many traditional settings in Africa, the *Judiyya* has always been a male battlefield. Women feature in it as victims, defendants and witnesses but rarely as judges. This patriarchal aspect of the *Judiyya* must be remedied. The war in Darfur did not spare women and there is no reason why they should not make a prominent presence in its justice process. *Gacaca* provides a good template in that the participation of women was as high as 30%.

Concluding remarks

The use of the *Judiyya* in post-war Darfur is dictated by necessity. The *Judiyya* constitutes the best avenue for generating ownership of justice, achieving reconciliation and avoiding the undesirable dilemma of keeping detainees, many of whom are innocent, in jail for prolonged periods. Supporters of the South African rival 'Truth and Reconciliation' model may be content with the fact that the main principles of that model are already enshrined in the *Judiyya*. These include the establishment of truth, bringing contenders to face-to-face dialogues, the airing of grievances, forgiveness, the moral punishment of wrongdoers and above all social rehabilitation (Emmanuel, 2007; Graybill, 2004).

No matter how the *Judiyya* is improved, it will not match the fairness of 'best practice' in modern courts. It is perhaps neither logical nor desirable to adopt different processes and expect the same result. Limitations of the *Judiyya* can, however, be compensated for by what the *Judiyya* delivers for peace and reconciliation. I hasten to add here that we have little choice in this regard. Replication of the modern justice system under the mantle of the *Judiyya* serves no purpose. Among the other problems that it may create is that it transforms the *Judiyya* into another punitive system with little or no contribution to community restitution. Moreover, one should not assume that alternative justice systems, in the form of either the national justice system or the international justice system, are perfect. Both of these systems have demonstrated their limitations across the globe. However, this is not a ground for deciding not to use them (Jones, 2006).

This chapter glosses over several theoretical issues in the study of conflict and peacebuilding. Chief amongst these is the legitimacy of armed conflicts instigated by both the state and rebel groups. International conventions abhor armed conflicts but do not criminalise them as long as they stay clear of non-combatants, observe the rules of engagement and refrain from the use of excessive force. At a theoretical level in anthropology and related disciplines, armed conflicts are not seen as inherently negative or positive. In the structural-functionalist approach, armed conflicts can be interpreted as negative only if they do not reinforce the status quo. In the Marxist perspective, physical violence

is seen as positive if it leads to progressive change. To this, one may cite Fanon and others who take armed violence aimed at decolonisation as necessarily positive (Sluka, 1992:30).

The armed conflict which is the subject of this article is aimed at changing the status quo and not at upholding it. As the rebels claim, raising arms is by far not their preferred choice and has come only after prolonged failures of peaceful means of addressing their grievances. Tragically, as Sluka puts it, 'the rich and the powerful are almost never persuaded to change through reasoned argument or moral persuasion' (Sluka, 1992:31). Surprisingly, Al Bashir himself declared publicly that he would 'only negotiate with those with a gun in hand, for that was how he took over power in Khartoum' (El-Tom, 2009:99; Suleiman, 2011).

There can be no doubt that the current armed conflicts in Darfur resulted in a colossal loss of life. However, armed conflicts, including Darfur's, come as a desperate attempt to put an end to structural violence. In Darfur as well as in other marginalised regions of Sudan, structural violence perpetrated by the Khartoum government since independence has been responsible for millions of deaths. People there continue to die due to poverty, disease, famine and neglect (Nordstrom and Martin, 2006:8). It is no wonder that Cramer emphasises this point by employing the phrase 'Civil war is not a stupid thing' as the title of his book. He rightly calls for taking wars as central to the process of modernisation and away from viewing them as indicative of 'development in reverse' (Cramer, 2006).

While successful civil wars may deliver a reprieve from structural violence, peace and the peacebuilding process may come at a high cost to their major stakeholders. In the currently interconnected world, civil wars often call for international sponsored peace initiatives, the details of which are developed from afar, away from conflict zones and behind closed doors (MacGinty, 2010:350). This is what is also referred to as 'liberal peace', a process that remains firmly in the hands of the European-North American axis. It aims at articulation of conflict zones in the sphere of the western liberal world. Invariably, such liberal peace erodes the agency of major stakeholders and weakens their self-determination. Richmond refers to this process as 'dispossession in which agency is taken away from those who receive peace' (Richmond, 2010:4). Over the past few years, Darfur rebel

groups have already signed dozens of international charters in the course of negotiations, training and consultation with diverse United Nations, INGO and civic society institutions. Issues that the rebels signalled their commitment to include liberal democracy, human rights, prisoners of war, proscribing child soldiers, the equality of women, freedom of speech, and property rights. While many of these issues conform to the ideals of the rebel groups, the charters nonetheless privilege the Eurocentric self and endorse the otherisation of the rest of the world.

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Customary mediation in resource scarcities and conflicts in Sudan: Making a case for the *Judiyya*

Salomé Bronkhorst

Introduction

Many rural-based Africans, especially those dependent on natural resources for their livelihoods, are experiencing two related and mutually reinforcing challenges that contribute to conflicts.[1]

First, the challenge of climate change adaptation[2] or how to address the predicted effects of climate change (IPCC, 2007). It is expected that the effects of climate change (such as changes in rainfall and temperatures, floods and droughts, and rises in sea levels) may act as triggers of latent conflicts, or contribute to new conflicts (Burke et al., 2009; Hendrix and Glaser, 2007; Hendrix and Salehyan, 2012). Rarely will climate change be the direct singular cause of conflicts (German Advisory Council on Global Change, 2007; Gleditsch, 2011) but it is likely to amplify existing political, economic and social fault lines, which could lead to conflicts.

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1   This chapter focuses on social conflicts, which are separate from armed conflicts. 'The former is the broader category, which includes various forms of contentious behaviour. Social conflict includes peaceful protests, rioting, strikes, mutinies, and communal violence. Armed conflict is a subset of social conflict, requiring organized, armed violence against the government or between governments, in the case of international war' (Hendrix and Salehyan, 2012: 39). This chapter will largely focus on communal conflict.

2   Adaptation is defined as an adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities (IPCC, 2001).

The second challenge is how African natural resources and resource scarcities are managed (Leach et al., 2007; IPCC, 2007) in order to prevent conflicts. Environmental or climate change lead to resource scarcity which in turn has a series of social consequences that contribute to or cause conflicts (Baechler, 1999; Peluso and Watts, 2001:18). Social consequences can be 'social breakdown and violence' through the effects on food production, the further impoverishment of the already poor and effects on migration (Raleigh and Urdal, 2007:691). Elites can capture scarce resources for themselves and 'undermine a state's moral authority and capacity to govern. These long-term, tectonic stresses can slowly tear apart a poor society's social fabric, causing chronic popular unrest and violence by boosting grievances and changing the balance of power among contending social groups and the state' (Homer-Dixon, 1998:207).

With these challenges in mind, this chapter focuses on a form of traditional conflict resolution (TCR) in Sudan, namely *judiyya*[3] or customary mediation. The objective is to examine the use of *judiyya* in managing natural resources, resource scarcities and conflicts between and within pastoral[4] and farmer groups in Sudan, and to examine challenges facing this form of customary mediation. This chapter documents the practice in more detail, as literature in English on *judiyya* is limited and dispersed.[5] This chapter contributes to the emerging literature on conflict-sensitive climate change adaptation – i.e. *judiyya* may be one way for pastoral and farmer communities in Sudan to manage natural resources, resource scarcities and conflicts that arise as a result of the present and future impacts of climate change.

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3   The English spelling of the term varies widely - *judiya, joediya* or *goodiya* or for Darfur *ahleeya*, or suluh are terms used.

4   Pastoralism is a form of livelihood production based on raising livestock.

5   The literature available in English does not report on where and by whom the practice of *judiyya* is used, not least to resolve environmental conflicts. No systematic, overall study to document the exact practice, location and use patterns of *judiyya* across Sudan seems to have been undertaken. It is likely that the Arabic literature, which the researcher is not able to access, would contain a wealth of relevant data. However, the literature in English produced by Sudanese scholars, which the writer was able to locate, also seems to have access to only the same limited data.

Part one provides a general overview and the context of resource scarcities, competition and conflicts between and within pastoral and farmer groups in Sudan. Part two describes the practice of *judiyya* in some detail with particular focus on a) the role of native administrators[6] as mediators (or *ajaweed)*, and b) the use of judiyya in resolving larger-scale conflicts through peace conferences. Part three examines present challenges to judiyya. The concluding discussion assesses the future of judiyya in general terms and for managing scarce natural resources and conflicts.

This chapter is the result of desk research, semi-structured interviews, and draws on primary research materials collected from civil society actors in Sudan during a fieldwork visit to Southern Kordofan in July 2010. Although the paper largely focuses on the country of Sudan, perspectives from South Sudan are brought into the discussion, given that the secession of South Sudan took place only in July 2011. Much of the research and the literature on *judiyya* on which this chapter draws were based on the unified Sudan.

Overview and context: Resource scarcities and pastoral-farmer conflicts in Sudan

Resource scarcities do not only arise because of a decline in the total amount of natural resources (such as water and land for grazing and farming) available to users. In the literature on resource scarcity, scholars focus on a set of 'critical resources' on which a person or community depends for economic wellbeing and to make a living.

According to Homer-Dixon (1998) and McLeman (2011) a critical resource can become scarce in a number of ways. First, the total availability of a critical resource can decline, for example a water resource as a result of a lack of rain. Second, the amount of the resource available to a person or user can decline. This means that while the total resource is the same as before, there is less of

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6   The native administration (NA) is 'the customary institution of traditional leaders, including *Sheikhs*, *Oumdas and Emirs*, who are responsible for maintaining customary law, including the allocation and management of land' (Egeimi et al., 2003:22).

it because of a greater number of users – for instance, in the case of increases in population. Third, some groups or individuals could benefit more from a resource than others, or it could be less accessible to some people as a result of particular characteristics they may have. This latter is called structural scarcity, coined by Homer Dixon in 1998, and often means the act by one group or person to intentionally exclude another from a resource.

Table 1: Visual representation of the origination of resource scarcity

	Status quo	Absolute decline in resource (a)	Decline in availability (b)	Resource no equally available (c)
Dependent population	☺ ☺ ☺ ☺ ☺	☺ ☺ ☺ ☺ ☺	☺☺ ☺☺ ☺ ☺☺☺ ☺☺ ☺ ☺☺	☺ ☺ ☺ ☺ ☺
Size of 'pie' or resource	◯	◯	◯	◯

Source: Author, adapted from Homer-Dixon (1998) and McLeman (2011).

In Sudan, numerous factors presently contribute to the creation and perpetuation of resource scarcities and conflicts. These include the legacy of the civil war (Saeed, 2009a), natural and human-induced changes in the climate and environment (Saeed, 2009a), and the high dependence on natural resources for livelihoods in the context of greater competition over those resources (Egeimi et al., 2003).

First, the legacy of the civil war has left significant post-conflict peacebuilding issues which contribute to resource scarcities and other (often more localised) violent and non-violent conflicts (Saeed, 2009a). The 20-year civil war ended in 2005 and led to the secession of South Sudan in 2011. However, the society

continues to be highly militarised and polarised[7] and conflicts between and within farming and pastoral groups are often more violent and last longer because of the availability of small arms (Babiker, 2002b). High levels of mistrust and animosity between these groups further contribute to social cleavages and localised conflicts (Bronkhorst, 2011). These in turn affect how access to scarce communal resources is managed between the groups.

Related issues include widespread poverty and weak institutional and governance capacity. In particular, weaknesses in law making and enforcement, the provision of essential services and the management of resources lead to insecure land tenure and access, and to poor resource management and distribution (Mohammed, 2002; Saeed, 2009a, 2009b). Competition and claims over access to land, development policies that favour farming over pastoralism, and ambiguity in laws governing access to land are related issues (Egeimi and Pantuliano, 2003). These will be discussed in more detail in the third section of this paper.

Second, the post-civil war situation is also exacerbated by natural and human-induced changes in the climate and environment (Saeed, 2009a, 2009b; United Nations Development Programme [UNDP], 2006; United Nations Environment Programme [UNEP], 2007). Sudan has had a year-on-year decline in rainfall of 0.5% between 1941 and 2000, with declines from c.425 mm/year during 1941-1970, to c.360 mm/year in 1970-2000 periods. The desert has expanded south by between 50km and 200km since the 1930s (UNEP, 2007:9). Land degradation – the result of demographic pressure and poor resource management according to UNEP (2007) – is further contributing to vulnerability. Deforestation is occurring at a rate of 0.84% per annum nationally and 1.87% in UNEP case study locations, with 11.6% of forest cover lost between 1990 and 2005, and nearly 40% of cover since independence (UNEP, 2007:11). Deforestation across

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7   For instance, in Southern Kordofan (the state immediately north of the border with now independent South Sudan), black Nuba farmers joined the opposition SPLM/A (the Sudan People's Liberation Army/Movement) against the government during the civil war, after the government armed Baggara pastoralists of Kordofan and Darfur against the Nuba with the promise of Nuba land after the war (Buckles, 1999; Suliman, 1999). At the time of writing, Southern Kordofan has seen violent clashes since July 2011 between government troops and members of the Sudan People's Liberation Movement – North (SPLM-N). The latter has a strong support base among black Nuba farmers (UNMIS, 2011).

the drylands of Africa has a devastating effect on rangeland resilience as it exacerbates desertification, creating scarcities of land for grazing for pastoralists (Berkes et al., 2000).

Third, these environmental changes would not have been so critical had nearly 80% of Sudanese not depended for their livelihoods on the agricultural and livestock sectors (Global Environment Facility [GEF], 2007). Pastoralism and rain-fed farming, or a combination of these, have traditionally been and continue to be the main forms of livelihood production for Sudanese (Fahey, 2007). Both groups are highly reliant on and respond to natural climatic changes – pastoralists travel north during the rainy season, during which farmers in the south plant crops. This is reversed in the dry season when pastoralists need to move south to wetter areas in order to secure grazing for their livestock (Siddig et al., 2007).

Traditionally, scarce resources were peacefully managed and shared between the groups through, for example, *judiyya* (Saeed, 2009a, 2009b; UNDP, 2006). Recently, however, resource competition has intensified as a result of the aforementioned changes in climate and the environment. This is coupled with post-conflict developments in the socio-economic, political, institutional, legislative and demographic landscape, resulting in higher levels of resource scarcity and conflict among and within pastoralist and farmer groups (Egeimi and Pantuliano, 2003). It is instructive to consider how conflicts over resources arise in Sudan.

Pastoralist-farmer conflicts in Sudan

A typology of pastoralist versus farmer conflict is emerging from studies of such conflicts in Sudan (Siddig, 2007; summarised by Bronkhorst, 2012) that clearly demonstrates the role played by resource scarcities. The types of conflict recorded range from competition through disputes to instances of collective violence in Kordofan and in Darfur.[8]

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[8] For specific cases, see Bronkhorst, 2011; Egeimi and Pantuliano, 2003; Egeimi et al., 2003; El Hassan and Birch, 2008; Large and Suleiman El-Basha, 2010; Saeed, 2009a, 2009b; Suliman, 1999.

Conflicts typically happen near or along pastoral migration routes, especially where pastoralists' livestock encroach on farmland or where agriculturalists started to farm on land that is traditionally meant for livestock routes or for grazing. Encroachment is usually the result of traditional migration routes that have shifted or are being blocked. These shifts or blockages are often the result of droughts and desertification, the civil war and insecure land tenure and access. This last is due particularly to the Government of Sudan's (GoS) introduction of private mechanised farming projects in fertile areas of Sudan which prevents the use of traditional or favourable livestock routes (Siddig, 2007).

In terms of water, one result of new mechanised farms is that life-giving water resources along livestock routes are in parts no longer legally available to pastoralists. When pastoralists access this water they come into conflict with private land owners and when they seek alternative water sources they often come into conflict with farmers. Drought and desertification also lead to a lack of water along livestock routes, with the same effects. Conflicts over water occur near *hafirs* (man-made water holes dug out to capture surface run-off) or in cases where farmers, because of drought or water scarcity, are becoming protective over water sources previously shared with pastoralists and their animals (Siddig et al., 2007; Bradbury et al., 2006). Rainfall variability (for example rains not arriving when they should) forces pastoralists to leave grazing areas earlier. They often thus reach farming areas before farmers have had a chance to harvest. Livestock then damage and graze on crops, leading to conflict.

Judiyya or customary mediation

Judiyya is a sophisticated form of customary, citizen-based third-party mediation (Flint, 2010; Birech, 2009). In Sudan it is an important social institution for resolving conflicts at different levels, ranging from personal disputes between individuals to conflicts between ethnic or tribal groups (Babiker, 2002a, 2011). Researchers report on *judiyya* processes being followed in Darfur (Mohammed, 2002; Flint, 2010; Birech, 2009), Southern Kordofan (Bronkhorst, 2011), North Kordofan (Wadi et al., 2005), parts of northern Sudan (Mohammed, 2002), eastern Sudan and South Sudan (Mohammed, 2002; Wassara, 2007).

Mediators (or *ajaweed*, plural; *ajwadi*, singular) are usually selected from traditional leaders (or native administrators) who are respected elders and 'men of good deed and men of respect' (Egeimi et al., 2003:20). They are often figures known for their knowledge of customary law (Flint, 2010) and for their understanding of the ecology and history of tribal areas (Babiker, 2011). *Judiyya* is relatively easy to set up for minor conflicts as *ajaweed* are freely available (despite their high standing in the community), approachable by communities and not protected by any support staff (such as secretaries). Depending on the seriousness of a matter, it is first received by the *Imams* or *Sheikhs*, who are religious and village leaders and who take decisions according to Shari'a Law. If this fails, the case is passed to *Omdas*, or local administrative chiefs, who tend to inherit their positions from their fathers. In some cases, conflicts will be referred to the *Nazir* - the official tribal leader (Larsen, 2007; Flint, 2010).[9] Only when *judiyya* fails would legal channels be sought (Egeimi et al., 2003).

Judiyya is particularly suitable and successful for smaller scale conflicts (Babiker, 2002a, 2011) where meetings are held communally. However, *judiyya* can take different forms and operate at different scales. It can be led by the community, government or facilitated by other actors (such as local or international NGOs and international organisations) and operate at communal level or even at state level (Mohamed, 2009). *Judiyya* therefore differs between locations and different groups, and seems to depend greatly on the approach of the *ajaweed* (Birech, 2009). Abdul-Jalil (2005) argues that while people share a common acceptance of *judiyya* and despite its widespread acceptance as a form of TCR, the beauty of the institution lies in the fact that it is not standardised. *Ajaweed* are thus able to respond to a wide range of conflict situations.

Judiyya plays a critical role in the management of natural resources, especially in a country that faces scarcities of water and fertile land for grazing and farming. It therefore performs an important function, especially at village level, to settle disputes between individuals over water and land. During colonial times it was the key institution that regulated land and grazing rights between groups

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9   Al-Hardullu and El Tayeb (2005:15) explain that the *Nazir* is the political head of the *dar* (homeland), 'territory that is controlled by members of a single ethnic group. *Dar* ownership implies rights over land and political and administrative power'.

(Babiker, 2011). For example, pastoralists would approach traditional leaders or native administrators and arrange for compensation to be paid if damages happened during their passage (El Hassan and Birch, 2008).

Native administrators, through *judiyya* and acting as *ajaweed,* were also responsible for managing and protecting common pool resources, for resource conservation and determining their sustainable and peaceful use and for keeping the peace vis-à-vis natural and other resources. This extended further to other activities such as pest and fire control (Nile Basin Initiative [NBI] and Eastern Nile Technical Regional Office [ENTRO] 2006; El Hassan and Birch, 2008:7). The NA managed livestock movements and ensured the separation of grazing and farming areas, issuing orders regarding the timing, direction and location of livestock migration, when water points would be available, and the timing for the arrival of pastoralists in farming areas (El Hassan and Birch, 2008).

Judiyya to address resource-related conflicts

Egeimi et al. (2003:20) documented in some detail the process and considerations of *judiyya* in their study of resource-related conflicts in the state of Northern Kordofan. In short, *judiyya* involves:

    a. Securing commitment from conflicting parties for mediation;

    b. Fact-finding and analysis to establish the root causes of conflict;

    c. Listening to both sides and reaching some sort of consensus on the root causes of the conflict;

    d. Reaching a solution.

In some cases mediation is followed by the signing of an official agreement by both parties but this seems to be a more recent development (Egeimi et al., 2003).

Even before the start of a mediation meeting, *ajaweed* play an active conflict resolution role by offering to be mediators or being approached to do so. Often securing commitment to *judiyya* from conflicting parties means a cessation of hostilities (if any). In Northern Kordofan, *ajaweed* are responsible for gauging

the amount of tension between conflicting parties, often threatening to leave or not undertake the mediation if the parties are unable to productively engage in the mediation. This threat is taken very seriously – custom and respect for *ajaweed* ensure that most community members would not want to see mediators leave unhappy. *Ajaweed* may also visit each party individually beforehand to facilitate reconciliation later on (Egeimi et al., 2003).

Egeimi et al. (2003) also highlight the importance of the *ajaweed's* knowledge of the ecology of an area and the history of similar conflicts or even the history of that particular conflict. These are essential to provide the context for preparations for the *judiyya* meeting itself and to be able to show examples of how a conflict can be resolved.

The actual mediation meeting to resolve a resource-related conflict itself usually involves a number of steps:

1. The expression of mutual forgiveness by both parties;

2. Examples of conflict resolution from the perspective of the Koran are highlighted by the *ajaweed;*

3. A presentation by each of the parties of their analysis of the conflict or issue (in other words where both parties are able to state their case, and outline what they see as the facts and contributing factors to the conflict);

4. A way forward is proposed by the *ajaweed* and discussed (while the mediator may already have a solution to the conflict, it is customary to respect the parties to the conflict, to let them both state their case, which helps to make them feel that the solution has come from them);

5. A conclusion of *judiyya* with a reading from the Koran (Egeimi et al., 2003).

The questions of compensation and restorative justice appear to depend on the case at hand. According to Egeimi et al. (2003), *judiyya* may or may not (depending on the case) involve a discussion of 'punishments and fines or rewards' in the form of compensation for losses suffered. In other cases, restorative justice and compensation are important objectives in *judiyya.* For instance, according

to Wadi et al. (2005:15) important objectives in *judiyya* include determining 'casualties, destruction and damages' (such as to life, buildings, crops) and to determine blood money (or *diya*) and any compensation. Mohammed (2002) however argues that objectives to compensate for resource damages are secondary to the broader objective of maintaining social cohesion and facilitate reconciliation between conflicting groups.

There is surprisingly little literature that focuses explicitly on the use of *judiyya* to resolve conflicts over scarce resources. This does not mean that resource conflicts are rarely resolved through *judiyya*. Rather it highlights the general applicability of the mechanism, to deal with all conflicts on a communal level, be it about the environment or not. As Swift (1996 cited by Swiss Peace, 2009) argues, the management of natural resources is thus a daily affair that forms part of the 'everyday management of pastoral affairs'. This perhaps explains why the specifics of environmental discussions that take place under *judiyya* are not recorded in more detail. Also, the inter-connectedness of issues on a communal level, the underlying structural issues that often underpin conflict (such as poverty and underdevelopment) and the importance of resources for livelihoods, mean that it might not be possible to distinguish resources as a discreet issue in *judiyya*.

Judiyya in peace conferences

It has been argued that climate change is likely to exacerbate existing tensions and create new conflict fault lines. For this reason it is important to consider the use of *judiyya* in resolving larger-scale and tribal conflicts in Sudan. For larger-scale conflicts, *judiyya* can take the form of an open conflict resolution conference or a peace conference (Birech, 2009; Wadi et al., 2005). Peace conferences usually involve a wide range of stakeholders from government officials, to traditional leaders of other tribes, pastoral and farmer unions, NGOs and other institutions. In recent years, the donor community and international NGOs in particular have also been promoting the use of peace conferences to resolve tribal conflicts (Mohamed, 2009).

In the state of Southern Kordofan and its neighbouring states where resource-related conflicts between and within pastoralist and farmer groups are widespread (Balandia, 2010; El Tom, 2010; Mohammed, 2002), the use of *judiyya* in the form of government-sponsored peace conferences is prevalent and promoted. Conferences are often sponsored or supported by the state government, NGOs, international organisations such as the UN and its then peacekeeping arm in Sudan, UNMIS (Bronkhorst, 2011), often in collaboration with state and local authorities. In the state, the government body to strengthen peace – the Reconciliation and Peaceful Coexistence Mechanism (RPCM) – works closely with international institutions such as the UN and other funders, which finance programmes and projects and provide technical support for *judiyya.*

Challenges arise as a result of the involvement of external actors in *judiyya.* One of these relates to concerns about government meddling in *judiyya,* with some *ajaweed* appointed with clear political affiliations (Mohammed, 2002). Another is that government involvement often means that only the symptoms of conflicts are addressed with little focus on underlying issues (Wadi et al., 2005). An important challenge is one of legitimacy, which arises from the involvement of foreign actors and local civil society in local affairs. If processes are not accepted as belonging to the communities themselves, and *judiyya* is seen to be externally facilitated, what are their chances of success? International and local NGOs aim to ensure that processes are acceptable both locally and by the state governments, as such high profile initiatives would not proceed without government support (Badawi, 2010; Badawi, 2010; Balandia, 2010).

Greater government involvement ensures that when agreements are reached there is arguably a greater chance that decisions would be implemented. This may also apply to NGO involvement, given that NGOs often have funds available to assist with implementation. With greater government involvement it is more likely that increased government awareness of resource scarcities as a result of structural factors may lead to policy changes. Where structural scarcities could be managed without the possibility of policy changes, a case exists for the involvement of state and local government. This would ensure that, should NGOs wish to act to assist communities or communities wish to take steps to address scarcities, there would be the appropriate legal, administrative

and other institutions. At the very least these could approve of steps being taken and provide the necessary support.

Judiyya, environmental scarcities and conflicts: Challenges

It is also instructive to examine some factors which facilitate or constrain the legitimacy and functioning of *judiyya* and *ajaweed* and affect the implementation of agreements reached. Challenges include:

a. the role and decline of traditional authorities and the NA in Sudan;

b. broader issues of legitimacy and power vis-à-vis traditional authorities;

c. governance issues in Sudan.

Traditional leadership, the Native Administration (NA) and *Judiyya*

Native administration, through tribal leaders, has been part of Sudanese society since the 1500s (Elhussein, 1989). While the role of traditional leaders was eroded by the Mahdi regime (between 1885 and 1898), the NA was reintroduced by the British colonial administration in order to ensure pacification at a local level (Elhussein, 1989). Where previously tribal leaders led conflicts as warriors, their role was transformed by the British to that of peacemakers (or *ajaweed*). They were entrusted to ensure law and order in their communities and with other groups (Mohammed, 2002).

It is evident that the role of native administrators was essential in the functioning of *judiyya* and to secure law and order on the communal level. In addition, acceptance by conflicting parties of *ajaweed* as legitimate third parties in mediation and *judiyya* as a legitimate mechanism for conflict resolution, are key aspects ensuring the survival of *judiyya.* However, government policies instituted since the 1960s have systematically undermined the role of tribal structures, processes and values, and the NA which has affected the legitimacy of *ajaweed* and functioning of *judiyya* (Mohammed, 2002; Babiker, 2011).

For instance, with the abolishment of the NA in 1970, followed by the Unregistered Land Act of 1971, the government effectively took over the responsibility for resource management from the NA. While this move was largely the result of commercial agricultural development plans, it nonetheless led to a loss of power and privilege for the native administrators at the time (Al-Hardullu and El Tayeb, 2005). The abolishment of the NA effectively removed *Nazirs, Sheiks* and *Omdas* from power, which had a crippling effect on conflict resolution and resource management at the communal level (El Hassan and Birch, 2008).

The NA was reintroduced in the 1980s but had been severely undermined as a result of its absence. For instance, some argue that communities value the NA less, while native administrators themselves have lost interest in their traditional responsibilities (Mohammed, 2002:3). The latter may well be because the government appears hesitant to allow the native administrators the full power and status of the past. Al-Hardullu and El Tayeb (2005:72) argue that the government could fear losing control locally and fear losing support for its Islamising policies (also see Shouk, 2011). Thus, while the less powerful positions of *Omda* and *Sheikh* were re-established, the highest and most influential title of *Nazir* was not (it was replaced by *Amir)*. According to Elhussein (1989) this was as a result of 'political complications'.

Efforts to promote the legitimacy of the NA[10] after the fall of the Nimeiri regime in 1985 were 'limited, uncoordinated, and lacked proper and legal institutionalization' (Elhussein, 1989:444). This is perhaps not surprising, given that after abolishing the NA, the government introduced new systems which created an overlap of authority and mandate with regard to resource management in particular (Table 2 illustrates the overlap of formal and traditional structures).

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10 For instance, local people's government councils were dissolved (these councils were introduced by the Nimeiri regime to replace the function of NAs at local levels, after the latter's abolition) (Elhussein, 1989). Also, nomadic leaders in the then Kordofan region were reinstated as administrative assistants (*Muawin Idari*). In Darfur, similar measures were taken, where leading tribal families were represented in administrative bodies at provincial level (Elhussein, 1989:443).

Table 2: Hierarchy of formal and customary authority

Formal	Customary
Federal	-
State	-
Province (Commission)	Tribe (*Nazir*, now *Amir*)
Locality (*Mahalia*)	Section (*Omda*)
Village	Clan (*Sheikh*)

Source: UNDP 2007 cited by El Hassan and Birch 2008.

The new systems faced a number of challenges. They were not able to facilitate the linkages between communities and local government in the same way and with the same success as the NA. The NA had and, some argue, continues to have (Wadi et al., 2005) the competitive advantage for resolving conflicts. For environmental conflicts native administrators are well versed in and know the history of conflicts, the natural environment and the groups that depend on the environment for a living. For these and no doubt other reasons, despite the introduction of local councils after the abolishment of the NA, a great administrative vacuum was left. This could not be filled by formal structures. It contributed to the decline of the Nemeiri regime in certain areas, the failure to collect taxes that had been facilitated through the domination of major tribes, and the authority of *Nazirs* (Elhussein, 1989:441).

These challenges led some governors in the states of the then Kordofan, Gedarif and Darfur to re-establish some form of the NA as 'self-administration' to manage the overlap between formal and traditional institutions and weak government capacity locally. In two states there is evidence that the NA has been given official powers to manage natural resources and to deal with conflicts involving the environment. In Northern Kordofan, an act was instituted that gave formal authority to the NA for land, natural resource management and environmental conservation. While, since the first abolition of the NA, this is the responsibility of the local councils, the act delegated power to the NA to take on this role (Egeimi et al., 2003). There are also reports that in Sudan's Gedarif state conflicts over land, water and grazing rights are resolved by members of the NA and rarely reach official legislative channels (Wadi et al., 2005).

Also, where there has been a lack of government involvement, traditional systems remain, even without formal delegated authority. For instance, eastern Sudan largely has not benefited from government involvement in conflicts, such as through peace conferences held in Southern Kordofan or in Darfur. This has meant that the NA, through tribal or ethnic leaders, continues to play a major role in resolving conflicts. In this case, while the native administrators' role is informal, their involvement and the power they bring to bear on conflict resolution proceedings are much greater than those of government representatives (Al-Hardullu and El Tayeb, 2005). It may well be that this model of informal governance and conflict resolution would only be effective in remote communities, where government presence is nearly absent. This is recommended by some scholars (Birech, 2009).

The upshot of renewed NA involvement (whether official or not) is that turf wars between the NA and local government are a distinct possibility which will affect the way conflicts are dealt with, if at all. One example is that of tensions arising between local government and native administrators about decisions taken by the NA on land allocation in Northern Kordofan (Egeimi et al., 2003). While state and federal governments legally retain the right to allocate land, the traditional authority granted to the NA means that land allocation in a homeland (*dar*) is done by the Nazir or the NA.

The GoS has also had a radical effect on *judiyya* and the NA. In some cases this has been by replacing native administrators with the politically faithful, thereby ensuring political loyalty rather than the appointment of objective mediators. Some argue that the government has been responsible for the Islamising of the NA (Shouk, 2011). This has affected the impartiality and therefore legitimacy and efficacy of some *ajaweed* and thus the *judiyya* process. It is telling that one author argues that 'the government has its political priorities sometimes conflicting with the interests of parties in conflict' (Mohammed, 2002:4). Egeimi et al. (2003) also report on political appointments of *Amirs* and *Omdas* in certain areas, although they argue that elsewhere the NA remains strong.

The appointment of the politically connected as native administrators may have certain benefits in that it could facilitate changes in policy and the interaction

with ruling party structures. However, it is unlikely that these individuals would have any legitimacy locally if they are not accepted by their people and if they do not perform their function fairly and without bias. For example, while the case of Darfur cannot be examined in isolation from broader political, economic and social factors that beset the state, it is interesting that repeated peace conferences have been unsuccessful. Mohammed (2002) reports that in the 40 years from 1957-1997, 30 conferences were held and all were unsuccessful. These often involved the same conflicting parties. The causes for the failure of *judiyya* are ascribed to a lack of independence and neutrality of *ajaweed* and interference by the government with political agendas, while tribal militia leaders rather than tribal elders were in charge.

Another factor highlighted by Mohammed (2002) is that the interference of government has reduced a deeply rooted and key practice of *judiyya* – seeking and identifying the root causes of a conflict. Instead, *ajaweed* are asked to address the symptoms of conflict while ignoring the underlying factors. Mohammed (2002:5) argues that government-sponsored *judiyya* tend to be mechanisms for conflict 'postponement rather than resolution'.

Power and legitimacy of *ajaweed*

Clearly the role of traditional leaders is increasingly challenged. Government policies, post-conflict dynamics, the rise of modern aspirations and external actors have affected the legitimacy of traditional leaders. These are bringing to bear power that is eroding the legitimacy of *judiyya* (Wassara, 2007) and which may even prevent it taking place at all. Moreover, 'new communal powers' are arising, which to a large extent derive legitimacy and power exogenously, often in the form of weapons supplied by the government (Babiker, 2011).

One such reported power is the youth (Babiker, 2011) or tribal militia leaders (Mohammed, 2002). Their legitimacy is derived from their followers and weapons, and their world view and values are informed and motivated not by social cohesion, the community and social capital (values underpinning *judiyya*), but by economic and political power (Babiker, 2011). According to

Babiker (2011) 'The interest of the youth is different from the *ajaweed* – youth are interested in political power and serving the party, the *ajaweed* in serving the community'.

The upshot is that whereas traditional leaders understand the ecology of their homelands (*diar*), these new sources of authority may have little appreciation or understanding of the delicate balance between people and nature, seasonal changes in the environment, and relationships between communal groups. They also have very little respect for decisions taken by traditional authorities (Babiker, 2011). As one some scholars argue 'Hawazma young herders in para-military force uniform and carrying guns are no longer conforming to the decisions made by assessment committees on compensation for crop damage when their cattle trespass into cultivated areas of local farmers' (Wadi et al., 2005:15).

Another issue is that *judiyya* does not take place among actors of equal authority, nor is it isolated from external influences. Therefore, it is necessary to consider the 'wider political contingencies, power constellations and elite interests' that bring power to bear on proceedings (Swiss Peace, 2009:38). *Ajaweed* themselves may therefore be influenced by tribal powers, for instance by tribes of status or those which have a particular position in society. There are also reports of bias against pastoralists in *judiyya* and that pastoralists have a lower chance of 'winning' in the process (Wadi et al., 2005:22).

Other actors that bring power to bear on traditional authorities and *judiyya* include owners of new mechanised farming projects, donors, local civil society, international organisations and charities, and even peacekeeping forces such as those deployed in the previously united Sudan, UNMIS and UNAMID (Bronkhorst, 2011). There are even cases of universities being involved in conflict resolution and training on a communal level (Bronkhorst, 2011), and it would be naïve to assume that they do not influence proceedings.

In terms of resource management and conflict resolution under *judiyya,* the crisis of legitimacy that results from these changes and power imbalances create, among others, complications in the selection of representatives to negotiate resource access and resolve conflict. As Babiker (2011) warns, not everyone will want elders to speak for them, or native administrators as *ajaweed,* and

could be spoilers during negotiations or during the implementation stage of *judiyya* agreements. In this context, with more stakeholders and new sources of authority, resource scarcity and conflicts are a lot more difficult to manage; there may be a need for the GoS to play a more significant role to restore the balance of power locally and to facilitate the implementation of agreements reached through *judiyya*.

Institutions and mechanisms of governance

Broader governance questions are crucial in the management of scarcities, resource management and processes that take place before or contribute to conflict. Arguably, government should also play a significant role, after *judiyya* has taken place, in the implementation of decisions. This is especially necessary in cases of larger conflicts and where the outcomes demand some administrative, technical or policy interventions (such as new route demarcations, or the creation of new water sources). Therefore, while government might seem distinct from *judiyya*, it forms an essential part of the mechanism by creating an enabling or disabling (or distorted, as demonstrated) environment within which the mediation mechanism and *ajaweed* function.

Government (as demonstrated) has the potential to provide power to the NA, through delegated authority, to manage resources and deal with conflicts. It stands to reason therefore that if government is weak or ineffectual it will not be able to maximise the competitive advantages inherent in areas where customary law, traditional leaders and customary conflict resolution mechanisms are better able than local government to deal with local issues. In other words, institutions and mechanisms such as route demarcation, federal policies that impact local conflicts, judiyya agreements that may call for policy changes, the facilitation of resource management, implementation of policies, and a myriad of others, require government support and facilitation if not leadership.

Other factors which affect *judiyya* in Sudan include weak governance locally and weak governance of natural resources more generally (Saeed, 2010). A lack of clear mandates for different resource management institutions, overlap of mandates and a lack of capacity generally are concerning, and will affect the

implementation of decisions taken under *judiyya*. For instance, some scholars report on 'institutional chaos' created as a result of the restructuring of various ministries, which have affected the management of water resources, rangeland and the protection of pastoralist interests (El Hassan and Birch, 2008; Bronkhorst 2011). In one case, the Range and Pasture Administration was removed from the Rural Water Corporation, which has affected coordination between these two bodies significantly according to the UNDP (2007, cited by El Hassan and Birch, 2008). In addition the Range and Pasture Administration is severely under-funded despite the critical contribution the livestock market makes to the Sudanese economy. In Southern Kordofan, for example, the state Rural Water Corporation is hampered by a lack of capacity in terms of tools, staff, skills, underinvestment and generally poor support from the federal government. In the context of weak government structures unable to resolve conflicts, competing mandates and poor environmental management, water scarcity has increased, contributing to conflicts between pastoralists and farmers (SECS, 2010:4; Bronkhorst, 2011).

Finally, in order to manage the uncertainty and variability of the climate, the migration of people and livestock, and the management of resources in sending and receiving communities, and along livestock routes, information and a process of learning are essential. However, this process is severely undermined by a serious lack of data and information on the pastoral system, land use and land use changes, human and livestock population sizes and even project documentation on past environmental and agricultural projects (UNDP, 2006; Saeed, 2009a). Although NGOs and international organisations are compiling data they often do not talk to each other. In addition, livestock routes are not defined and are in constant flux as a result of natural environmental change and other pressures (Saeed, 2009a). According to the UNDP, this information weakness naturally undermines the work of the government and agencies to 'propose [perhaps in response to *judiyya* agreements] and implement feasible projects in areas of development and resources planning, including forestry, land use, wildlife, water development, etc.' (UNDP, 2006:3).

Concluding discussion

There is potential for customary mechanisms such as *judiyya* to manage scarce resources and conflicts that arise from climate change in Sudan. In some cases, the native administrators through *judiyya* seem to have the comparative advantage to perform this function that will be a crucial part of adaptation to climate change.

A number of factors promote or constrain the legitimacy and functioning of, and the implementation of agreements reached through, *judiyya*. *Judiyya* is highly dependent on a legitimate traditional authority, such as the NA, that operates in an environment where the daily lives of communities are embedded in customs and customary law. *Judiyya* cannot function without the NA which, while native administrators derive legitimacy from within, obtains its power to act exogenously from the government. Thus, when that power was removed, as it was in 1970, and not fully reinstated later, the NA was weakened and so was *judiyya*. Should the Sudanese government see the value in promoting the NA and *judiyya* for resource and conflict management, it is realistically the only actor that is able to truly strengthen and restore fully the NA and *judiyya*. It is clear that this decision would need to be taken with the overall peacebuilding, development, DDR and post-conflict reconstruction agenda in mind. To this end, a number of considerations emerge from this chapter.

First, as noted, the GoS is the only actor able to restore power to the NA, initially at a federal and policy level, and then feasibly through the delegated authority of local governments. There is evidence that local governments have successfully delegated authority to the NA for resource management and conflict resolution but that authority should be clearly delineated and exist with little interference by the government. That said, the NA and local government should work with state and federal governments so that the management of scarcities by the NA can take place within a broader framework of formal land and resource management.

Local, state or even federal government involvement in *judiyya* will be necessary, in some cases. This is especially so given increasing privatisation of tribal lands, mechanised farming policies, the nature of pastoralism, and where there is a need to work with non-traditional stakeholders and issues such as mechanised

farming schemes and private land owners. Also, as many structural scarcities in Sudan are the result of government weaknesses, *judiyya* requires a higher level of formal engagement to address the root causes of conflicts and not just the symptoms. Therefore, for conflicts resulting from government policy or structural scarcities, or that are larger in scale, government support and involvement may be important in order to ensure that the implementation of agreements is facilitated. Furthermore, where local government is weak or non-existent there may be a need for oversight by state governments.

Government involvement carries a number of caveats. One benefit of *judiyya* is that it is by most accounts a 'fast' form of conflict resolution, which could commence immediately and resolve conflicts quickly. But the danger is that government bureaucracy or a lack of capacity could delay processes. There is also the chance that government interference, manipulation and Islamisation of *judiyya* and *ajaweed* will continue in some cases. However, if larger-scale and tribal conflicts are to be sustainably resolved, and if *judiyya* is deemed the way forward, that is the risk which needs to be taken. Some of the weaknesses in administrative, technical and implementation capacity of the government highlighted in the chapter are likely to be issues that constrain cooperation on *judiyya* between traditional and formal authorities, and between local, state and federal governments. Nevertheless, agreements reached that are considerate of broader formal processes and policies are more likely to be sustainable than agreements that will infringe on the rights of others like private land owners, or users of other common resources.

Second, for *judiyya* to have a future in Sudan, there will be a need to strengthen legitimacy locally. In light of new powers or authority at a communal level (and while providing official authority to the NA will help this process), there is a need to manage armed tribal militias. Without the legitimacy derived from their own communities native administrators and *ajaweed* are unable to perform their function. Strengthening traditional authority will need to form part of present DDR processes. Whether the political will is there, and whether successful disarmament is immediately possible in post-conflict Sudan (in light of recent developments) is another question, which should be seen in the context of the highly complex web of factors that contribute to, among others, the continued

presence of tribal militias and the rise of modern aspirations amongst young people.

Third, weaknesses in governance, in terms of administration, legislation and resource management can create resource scarcity and conflicts. But they can also influence the functioning and implementation of *judiyya* agreements. Notwithstanding government information weaknesses and the lack of clear over-riding land and resource management policies, some development is taking place in Sudan. It stands to reason that as government capacity (especially at a local level) grows and the aforementioned challenges are addressed, there would be a natural decline in traditional authority. The question is as to whether this is why *judiyya* is facing serious present-day challenges. In other words, are we witnessing a natural decline in traditional authority and conflict resolution mechanisms resulting from development? The evidence suggests not and highlights that most changes are the result of external factors. The place for *judiyya* and traditional authorities remains in modern day Sudan. In many cases it would seem the most suitable mechanism for resolving future climate-related resource conflicts, especially in rural areas and for smaller-scale conflicts.

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Conclusion

Martha Mutisi

Given the increasing search for alternatives and answers to the African *problematique,* a critical review of the status and role of traditional institutions and their significance in conflict resolution in Africa is both timely and responsive. Even as calls for African solutions to African problems are being made at the policy level, especially from within the African Union, there is still a compelling need for corresponding calls and responses by the academic and practitioner community. This is the rationale for compiling this monograph: to examine in detail how traditional and state institutions are working together towards resolving the challenges posed by conflict in the continent. The chapters deal with Darfur, Ethiopia, Rwanda, Sudan and finally Uganda. Together they are a cumulative response to the question of how to operationalise the rhetoric on 'African ownership' of conflict resolution processes.

The various chapters in this monograph clearly demonstrate the relevance of traditional institutions in conflict resolution and peacebuilding in Africa. This collection is motivated by the reality that in the context of the post-conflict African state, conflict is inevitable and permanent. The teething African states face multiple challenges including limited capacities for providing development and security. The result has been the 'withdrawn state'. In these states, the vacuum is often filled by other forms of governance, notably traditional institutions.

The case studies presented in this work demonstrate that communities possess local capacities for promoting peaceful coexistence. The role of traditional institutions in conflict resolution continues to burgeon. This is because in many post-colonial and post-conflict African states, governmental capacities for managing conflicts are still weak. State institutions are not sufficiently capacitated to undertake conflict management at all levels.

In all of the chapters, the authors further emphasise how these traditional institutions are ingrained in the culture and values of their communities. This is important because people are often deeply committed to their cultural values. As a result, in many conflicts in Africa the notion of culture becomes both an objective and a subject for conflict resolution. Traditional structures of conflict resolution are thus also relevant in building a sense of community and facilitating ownership of peace processes by communities.

Although traditional institutions undoubtedly contribute towards conflict resolution and peacebuilding, the case studies presented here also capture certain ambiguities and paradoxes surrounding these institutions. First, there are concerns about actual and perceived clashes between traditional systems of customary law and modern jurisprudence, especially within the realm of human rights. Second, the case studies remind us that the relationship between traditional institutions and the state is a delicate one, and in some cases politicised. For example, in the case of Rwanda, although the *abunzi* fill a huge gap in the justice system by attending to smaller civil and criminal cases at the local level, the author criticises the idea of state-mandated mediation. This is not only for its coercive nature but also for the potential of the *abunzi* mediation being used as an extension of the intrusive Rwandan state.

Another weakness of traditional institutions emerging strongly across all the chapters is the limited space which exists for women to play leadership roles and to effectively benefit from the utilisation of traditional institutions. From the *Ekika* system among the Baganda in Uganda to the *judiyya* in Darfur and Sudan, the inaudible voice of women in traditional conflict resolution processes is a cause for concern. Admittedly in the case of the *abunzi* mediators in Rwanda the state, through the Rwandan Constitution, calls for 30% representation of women in public positions and institutions. However, many institutions of traditional conflict resolution remain male dominated and therefore marginalise women.

Despite these shortcomings, the authors of the case studies demonstrate that traditional institutions of governance and conflict resolution still play an important role, especially given a supportive policy and political environment.

The strengths of both the traditional and the state institutions in conflict management need to be drawn upon to promote an integrated approach to peace, security and development.

From the perspective of the 'nested paradigm' of conflict, peacebuilding efforts must connect micro-level and relational issues with the systemic and structural dimensions of conflict. Using the same argument, the connection between the traditional structures and state institutions will ensure sustainable conflict resolution. Ultimately, an effective integrated state-local approach to conflict resolution will promote the larger agenda of peace and security in Africa. Most importantly, as demonstrated by the case studies in this monograph, traditional institutions of conflict resolution in Africa depart diametrically from modern approaches. The traditional institutions are more restorative and conciliatory than the modern ones, which emphasise the establishment of guilt and execution of retribution. The case studies of the Afar in Ethiopia, *abunzi* in Rwanda, the *judiyya* in Darfur and Sudan, and the *Ekika* among the Baganda highlight the importance of compensation, restitution, reconciliation and reincorporation of the offender into the wider community following the resolution of the dispute.

This collation of case studies thus opens debate on the possibility of integrating both traditional and modern approaches to conflict resolution. Further research needs to be undertaken to examine how the state and traditional institutions can work together in building sustainable peace without undermining each another. Some of the strategies that have been suggested include the establishment of a national security policy based on a synergy of the revised traditional and modern strategies. Other suggestions include the legalisation and constitutional positioning of traditional institutions as approaches to enhance their performance as well as to guide and monitor them.

Although the case studies focus more on countries in the eastern region of Africa, the lessons to be drawn from this geographical constituency resonate with other regions of the continent. Nonetheless, a key area for the further study of this theme would be the expansion of the geographical coverage of the case studies to include central, north, west and southern Africa. Additionally, further research needs to be conducted into how to proactively prepare traditional institutions

to be vehicles of conflict prevention. This is especially relevant in the context of the prevalence of election-related violence on the continent. Apart from the *gacaca* courts in Rwanda, little is known about the potential role of traditional institutions in addressing large-scale violence occurring at the macro-level.

In conclusion, this monograph underscores how African value systems and institutions of conflict transformation remain relevant and viable towards promoting peace and security on the continent. It is hoped that the lessons to be drawn here will inform academic, policy, national and global discussions on the role of traditional institutions in dealing with conflict, justice, development, governance and security. It is anticipated that these case studies will have succeeded in underscoring the message that African people and their institutions are central to the successful resolution of their conflicts. Certainly, traditional institutions will continue to shape the African landscape of conflict transformation. Without manipulating or politicising such entities, the modern post-colonial and post-conflict African state should continue to embrace these institutions. They merit being viewed as a key feature of the African peace and security architecture.

Notes on Contributors

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Dr Andrea Bartoli is the Dean and Drucie French Cumbie Chair of the School for Conflict Analysis and Resolution (S-CAR) at George Mason University, USA. He has been at the School since 2007, working primarily on peacemaking and genocide prevention. The Founding Director of Columbia University's Center for International Conflict Resolution (CICR), a Senior Research Scholar at the School of International and Public Affairs (SIPA), a Teaching Fellow at Georgetown University, and at the University of Siena, Dr Bartoli has taught in the US since 1994. He is a member of the Dynamical Systems and Conflict Team and a Board member of Search for Common Ground. He has been involved in many conflict resolution activities as a member of the Community of Sant'Egidio, and has published books and articles on violence, migrations and conflict resolution. He was co-editor of *Somalia, Rwanda and Beyond: The Role of International Media in Wars and International Crisis.* An anthropologist from Rome, Dr Bartoli completed his Italian dottorato di ricerca (PhD equivalent) at the University of Milan and his laurea (BA-MA equivalent) at the University of Rome.

Salomé Bronkhorst

Salomé Bronkhorst is a research consultant on climate change, environment and conflict at the African Centre for the Constructive Resolution of Disputes (ACCORD). With a master's degree in Environment and Development attained from the London School of Economics, her research focus lies in the interaction of development, environment, and climate change and peacebuilding issues in sub-Saharan Africa. Previously, as Senior Researcher at ACCORD, Ms Bronkhorst's research and publications focused on issues related to climate change, environment and conflict, including human security approaches to addressing environment-related conflicts; the environmental dimensions of pastoral-farmer conflicts in Sudan; and the use of traditional mechanisms of

conflict resolution to address environment- and climate-related conflict. She has also worked and written on land mediation issues in Burundi, mediation at the African Union, environmental justice and green technology, and on broader development issues, such as HIV among domestic workers in South Africa.

Demessie Fantaye

Demessie Fantaye is a lecturer and researcher at the Department of Political Science and International Relations, Addis Ababa University. He has also served as a member of the editorial board of the Ethiopian Journal of the Social Sciences and Humanities (EJOSSAH), from 2004 to 2008. His research interests focus on mechanisms of indigenous conflict resolution in Ethiopia and the nexus of security, development and conflict in Ethiopia in particular and the Horn of Africa region in general. Mr Demessie has published several book reviews, conference articles and reports focusing on development policies of the Federal Government of Ethiopia, maritime piracy in the Horn of Africa and regional security.

Martha Mutisi

Dr Martha Mutisi currently heads the Interventions Department at ACCORD. She previously worked as a Senior Researcher in ACCORD's Knowledge Production Department. Dr Mutisi identifies and implements practice-oriented research and provides technical and substantive expertise to strengthen ACCORD's knowledge production, management and interventions. A Fulbright Scholar and recipient of the Harry Frank Guggenheim Fellowship for Young African Scholars and the French Drucie Cumbie Fellowship for Conflict Resolution, Dr Mutisi holds a PhD in Conflict Analysis and Resolution from S-CAR at George Mason University. Her research interests include peacebuilding and peacemaking, gender and development, regional institutions, democratisation, governance and transitional justice. She has authored book chapters and journal articles covering these themes.

Ashad Sentongo

Ashad Sentongo is a PhD Candidate at S-CAR, George Mason University, focusing on power-sharing and ethnic conflict in Africa, currently working with the International Conference on the Great Lakes Region in Burundi on Prevention and Punishment of Genocide and Crimes against Humanity in the region, Mr Sentongo also worked with the Sudan Group at S-CAR to reconcile rebel groups in Darfur, and Coexistence International at Brandeis University on transitional justice in West Africa. Other areas of work included National Defense University Center for Complex Operations (USA), Delta State Economic Reintegration Program (Nigeria) on sustained dialogue in oil producing communities, Mercy Corps (USA) on conflict management in Kosovo, Guatemala, Indonesia and Ethiopia, Southern Africa Dawah Network (South Africa) on education in township private schools, and Peace Education Forum (Uganda) on peace education in Northern Ugandan primary schools.

Abdullahi Osman EI-Tom

Dr Abdullahi Osman El-Tom is Head of the Department of Anthropology, National University of Ireland, Maynooth (NUIM). He was born in Darfur, Sudan and has been living in Ireland for the last two decades. His publications include the following books: *Military Strategies of an African rebel movement: the case of JEM, Sudan*, published by RSP (in print); *Darfur, JEM and the Khalil Ibrahim Story*, published by RSP, 2011, Arabic version published by Dar Merit, Cairo 2011; *Growing up in Darfur, Sudan*, published by SSC, Cairo, 2007; *Proverbs of western and Central Sudan*, jointly with A. Adam, published by SSC, Cairo, 2002; and *Globalisation: A critical study*, jointly with A. Adam, published in Arabic by Dar El Warraq, London, 1999. El-Tom is also a Sudan activist and a member of the Executive Board of the Sudanese Justice and Equality Movement (JEM).

Kwesi Sansculotte-Greenidge

Dr Kwesi Sansculotte-Greenidge is based in Juba, South Sudan where he is the Coordinator of ACCORD's South Sudan Initiative. He previously served as a Senior Researcher in ACCORD's Knowledge Production Department focusing on the Horn of Africa. He obtained a PhD in Anthropology from Durham University, UK; an MA in African Studies from Yale University, USA and a Diploma in History from the University of Guyana. Dr Sansculotte-Greenidge has previous experience as a consultant working on conflict analysis in the Horn of Africa and an analyst for a consulting firm focusing on the Caribbean Basin region. His research interests include conflict-sensitive approaches to development, traditional governance structures, ethnic conflict and conflict mitigation. Additionally, Dr Sansculotte-Greenidge has lectured in the US and UK and worked in South Sudan, South Africa, Darfur, Chad, Ethiopia and Guyana.

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