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International Development Research Centre

Reconciling Africa’s Fragmented Institutions of Governance:
A New Approach to Institution Building

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by
The Center for Land and Community Development Studies
The Pennsylvania State University
And

The Democracy, Governance and Service Delivery Research Program of the
Human Sciences Research Council of South Africa

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<table>
<thead>
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Synthesis

African countries are characterized by parallel institutions of governance – one is the formal system sanctioned by the state and the other is adhered to primarily by the segments of the population in the subsistence peasant and pastoral economic systems. The fragmentation of institutions has created a number of serious socioeconomic problems and this study aimed to contribute to the search for ways of reconciling the parallel institutional systems in order to forge a coherent institutional system. The study had three specific objectives. One was to investigate the structural characteristics of traditional authority systems and to assess the extent to which African populations rely on traditional institutions. The second objective was to examine if traditional institutions overlap/diverge with democratic principles. The third objective was to explore how the relevant aspects of traditional institutions might be reconciled with relevant formal institutions in order to create a coherent and effective system of institutions on the African continent. Combining an extensive literature survey, interviews and a random household survey in four countries (Ethiopia, Kenya, Somaliland and South Africa), provided a basis for finding answers to the questions that reflected the three sets of objectives. The findings reveal that traditional institutions in all four countries — as well as many others in Africa — are resilient despite efforts in many states to remove or ignore them. Traditional institutions persist because members of the communities in which they exist, adhere to them for a number of reasons, such as shared cultural and historical roots, low transaction costs in their usage, inaccessibility of weak state institutions, such as judicial services and the success rate of traditional institutions. Traditional institutions have a high trust level among communities, in part because their decision-making systems are participatory and their conflict resolution mechanisms are primarily geared at reconciling parties in conflict rather than merely to punish guilty parties. Traditional institutions are challenged or contested by liberal democratic representatives for their perceived lack of gender equality and patriarchal despotism. The research found that indeed traditional institutions tend to be unequal towards women. Yet, many female respondents perceived the traditional institutions as more effective in addressing community problems than modern state institutions.
The research revealed a number of reasons for reconciliation, ranging from global and continental trends towards the retention of traditional institutions to the deplorable negative effects of the continued existence of parallel systems. African charters and national Constitutions recognize both the need for democratization and human rights, and for respect for African cultural values and institutions of governance. Reconciliation can take many forms, from integration at national and sub-national level to cooperative relationships with agreed protocols. The research found both variety and commonalities in the traditional institutions, which suggest that initiatives towards reconciliation should take community-level institutions as a starting point. Evolving institutional relationships should be based on comprehensive consultation of communities, policy makers, scholars and organizations that represent the interests of traditional and modern institutions.

Four countries do not allow theoretical generalization. The current study is first a contribution to the emerging debates on the relationship between traditional and modern institutions of governance, and second, hopefully a starting point for continued research in other African countries, particularly West and North Africa. Shorter versions of the Outcomes Report will be prepared for distribution to policy makers, intergovernmental organizations such as the UN Economic Commission, the African Union, the African Peer Review Mechanism and various academic institutions and advocacy organisations.

Research problem

Many African countries suffer from fragmented, incoherent or incompatible institutions of governance. This problem is manifested in the adherence of rural populations primarily to traditional institutions while the post-colonial state operates on imported institutions of governance, which are transplanted outside their cultural and socioeconomic milieus and often at odds with traditional African cultural values. As a result, modern institutions have been rather ineffective at preventing and managing sectarian conflicts, at promoting synergy in state-society relations and the provision of resources and services to the rural population. The incoherence and clashes between the traditional and modern systems have contributed significantly to Africa’s crisis of state building and governance. This crisis led to conflicting property rights along with
differences in the rationale that governs allocation of resources; and marginalization in access to decision-making mechanisms, resources and formal justice services for traditional communities, particularly women and minority groups. As the project evolved, it appeared that the problems are augmented by the different characteristics of the two types of institutions — the flexible and participatory, but often hierarchical, nature of traditional institutions vis-à-vis the formal, codified and representative nature of formal ones — as well as the complexity and variety between geographical locations, even within a single country. Even in countries, where the state has made serious attempts to reconcile the two types of institutions, such processes are riddled with contestations and problems. Examples are the unresolved conflicts between local government and amaKhosi (chiefs) in South Africa due to ambiguous government policies, and the competitive behaviour among an increasing number of traditional leaders in Somaliland. The research shows that citizens often develop ways to alternate between the two types of institutions for their personal advantage. In some cases civil society organizations challenge the institutions in court, particularly when the state develops policies that discriminate against rural communities. Despite a growing interest in African types of governance in some countries, the acute need for reconciling Africa’s fragmented institutions of governance has not received the attention it deserves.

Research findings: General Literature Survey

One of the main reasons why this study was undertaken is that although there is a significant body of literature on African institutions, it is riddled with many serious gaps. One gap relates to the lack of clarity with respect to what constitutes informal institutions in the African context. Another gap relates to the absence of comprehensive analyses of the nature, dynamics, relevance and limitations of African traditional institutional systems, and their compatibility with the formal systems. There is very little work that examines the implications of fragmented institutions to Africa’s governance and socioeconomic transformation. There is also hardly any work that explores how the traditional institutions might be reconciled with the formal institutions to bring about institutional coherence, besides an acceptance of parallel institutional co-existence. Such
gaps undermine our understanding of Africa’s development problems in general and the challenges many countries face in their nation-building and democratization processes.

With respect to the first gap, the literature study shows that scholars who examine African informal institutions within the context of governance, tend to limit their analyses to issues of clientelism, corruption, and patrimony. These illicit activities are said to be common practices among the functionaries of the post-colonial African state (Bratton, 2007; Hyden, 2006; Lindberg, 2003; Lemarchand, 1972). Traditional institutions, including customary law, are essentially absent from this strand of literature.

With some exceptions — such as the work of Legesse (1973), Comaroff and Roberts (1981), Hofmeisters and Scholz (1997), Bennett (2004), Penal Reform International (2000) and IDEA (2008) as well as a number of gender studies — the literature that deals with traditional institutions concentrates on a particular authority system, chieftaincy, neglecting the institutions within the decentralized communal systems. The works of Busia (1968), Ray and van Nieuwaal (1996), van Nieuwaal and van Rouveroy (1987), and RathBone (2000), for example, provide highly informative analyses of traditional authorities. Unfortunately, they only deal with chieftaincy systems. Several publications dealing with the constitutional context of chieftainship in South Africa have contributed to the debate about other community governance systems (Beall, Mkhize & Vawda. 2004; Claassens & Cousins 2008; Budlender e.a. 2010).

Four strands can be identified in the discourse on chieftaincy systems. One pessimistic strand contends that chieftaincy is anachronistic, a hindrance to the development and transformation of the continent, undemocratic, divisive, and costly. The arguments advanced by this view include the following: (1) chieftaincy has been corrupted by the colonial state and by the clientelism of the despotic post-colonial state and is, thus, no longer subject to accountability to the populace (Zack-Williams, 2002; Kilson, 1966); (2) the populations under traditional authorities, as in South Africa, live as “subjects” rather than as citizens of the state, and democratic governance would not be

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1 The definition of institutions implies that the laws and norms are accepted as guide to human behavior and interaction. It is questionable if activities, such as corruption, can be viewed as acceptable guide to behavior and social interaction. Just because they occur frequently may not be enough to view such crimes as informal institutions.

2 The International Development Resource Centre funded over 20 studies on gender and resources (personal communication IDRC programme manager)
achieved while such systems continue to exist (Mamdani, 1996; Ntsebeza, 2005); (3) chieftaincy heightens primordial loyalties as chiefs constitute foci of ethnic identities (Simwinga quoted in van Binsbergen, 1987:156); (4) chieftaincy impedes the pace of development as it reduces the relevance of the state in the areas of social services (Tom Mboya, in Osaghae, 1987); and (5) that the hereditary nature of chieftaincy renders it incompatible with democratic governance, which requires competitive elections as one of its cornerstones (Ntsebeza, 2005).

In the aftermath of independence many African leaders also viewed chieftaincy as an anachronistic institution and tried either to strip chiefs of their authority or to abolish chieftaincy altogether. These efforts have, however, proved largely unsuccessful, given the entrenchment of the system. Chiefs have been reinstated in most of the countries that attempted to abolish the institution. This research project confirms a number of factors that explain the resilience of chieftaincy and the ability of chiefs to command the allegiance of large segments of the population in the four countries under investigation. Among the reasons are that (1) they provide a variety of services at much lower transaction costs than the state does; (2) the services they provide are more compatible with the socioeconomic and cultural realities of the communities; (3) in some cases, the service that chiefs provide is the only service available to the communities; and (4) their service allows participation of the community. No doubt, chieftaincy has been modified by colonialism and some chiefs misbehave, but in many cases, the institution has mechanisms for removing chiefs. The community can simply ignore or abandon bad chiefs with relative impunity. Traditional leaders can in such cases hardly be despotic since decisions emerge from the consensus of the assembly of elderly members of the community.

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3 For example, during the democratization process in South Africa (1987-93) a number of ANC-aligned chiefs organized themselves through the Congress of Traditional Leaders of South Africa (CONTRALESA) and ensured that their future role be enshrined in the Constitution, despite general resistance to traditional institutions among leaders of the democratic movement (Ntsebeza 2004).

4 According to an Afro-Barometer study, chiefs and other traditional leaders score very highly relative to current presidents, parliament, local government, political parties, the police, and formal courts on trust of their communities, interest (concern about) on the affairs of their communities and effectiveness in resolving local conflicts (Logan 2010).

5 In South Africa this opportunity was restricted by the apartheid legislation, while the Traditional Leadership and Governance Framework Act (2003) and the Traditional Courts Bill (2008) seem to close the door for opting out of the system or ignoring the chiefs completely (Gasa 2011).
A more balanced view of chieftaincy acknowledges its limitations. It notes that the colonial state largely transformed chieftaincy into its intermediate administrative institution, and that the post-colonial state often co-opts chiefs to facilitate the extension of despotic control over citizens. Yet, this view contends that chieftaincy constitute a crucial resource that has the potential to promote democratic governance and to facilitate access of rural communities to public service. This perspective makes the following arguments: (1) chieftaincy can provide the bedrock upon which to construct new mixed governance structures since chiefs serve as custodians of the interests of local communities (Sklar, 1994; Skalnik, 2004; Sithole and Mbele 2009); (2) the conception of traditional institutions as representatives of the collective good and shared cultural roots, provides a strong philosophical basis for their accountable governance, (Osaghae, 1989); and (3) given that over-centralization of power in the hands of predatory states often obfuscates democratic practices at the grassroots, good governance can materialize only through the articulation of indigenous political values and practices and their harmonization with modern democratic practices (AJID, 1996; Ayittey, 1992; Ake, 1987).

A third view asserts that traditional institutions are indispensable for political transformation in Africa, as they represent a major part of the continent’s history, culture, and political and governance systems. This view attributes the ineffectiveness of the African state in bringing about sustained socioeconomic development to its neglect of traditional institutions and its failure to restore Africa’s own history (Basil Davidson, 1992). Englebert (2000) also makes a forceful argument that institutional dichotomy has undermined the legitimacy of the African state.

A fourth view on the relevance of traditional institutions is provided by legal pluralists. This view acknowledges that African traditional legal systems are an empirical reality and need to be recognized and respected (McAuslan, 1998). However, there are challenges with regard to the seemingly incompatibility of customary law and

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6 In many cases the colonial state was able to significantly modify the role of chiefs and their relations with their communities. In other cases, it created its own chiefs. In Somaliland, for example, it created chiefs (Aqils) who were paid by the state, while the Sultans remained isolated from the state. In Kenya chiefs are not part of the traditional system of governance but the lowest level of state-paid civil servants. In South Africa the apartheid state appointed chiefs who were compliant with apartheid policy, and deposed uncooperative ones, thereby enforcing alien authorities in many bantustan communities.
statutory law. The first one is a ‘living law’ which is continuously amended to adapt to changing situations, the second one is based on codification and precedence. The current debates on the Traditional Courts Bill in South Africa show the complexities of aligning the two sets of laws within a national system (Bennett 2004). Both third and fourth views fail to provide mechanisms for integrating the two sets of institutional systems to correct the problems of institutional conflicts. Where submissions by legal and other fora to government for integration of the existing participatory mechanisms have been made in South Africa, the state largely ignored them in new integrative legislation (Claassens 2010; Weeks 2010).

Another critical issue, which is absent in the literature, is the relationship between institutions and modes of production. It is highly likely that institutions are reflections of the underlying mode of production and may not be easily replaceable by institutions developed under a different mode of production. If institutions are dependent on modes of production, as this study suggests, then the debate surrounding African traditional institutions needs to undergo major reorientation. The new focus would have to be how to transform the modes of production and reconcile the fragmented institutions during the transition since traditional institutions cannot be replaced as long as the traditional modes of production persist.

Some recent literature points to directions that need to be taken in policy making. The South African Law Reform Commission (1999, 2003) made far-reaching recommendations with regard to the integration of traditional courts into the formal system. In South Africa Weeks (2011) refers to the need for a bottom-up approach, where existing ‘living customary law’ and other sub-national institutions are taken as pointers for new policy in the areas of justice, resource allocation and development, gender and decision making.

**Research findings: fieldwork**

**Principal Objective**

The research substantively achieved the principal objective of this project to investigate the nature of traditional institutions and their relationship to formal ones, and adjusts common perceptions about traditional institutions as despotic and erratic. The
conclusions, which will be discussed below, contribute to the search for ways of fusing or at least reconciling the dual institutions in order to overcome Africa’s institutional crisis.

The empirical part of the investigation was based on fieldwork in eleven locations in four African countries: Somaliland, Ethiopia, Kenya and South Africa (see section on Methodology below). Table 1 shows the research sites in each country.

**Table 1. The Research Sites in the Four Countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Research Site</th>
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<tbody>
<tr>
<td>Somaliland</td>
<td>• Cadaadley and Gadhka Warsame Xaad eissa</td>
</tr>
<tr>
<td></td>
<td>• Borama</td>
</tr>
<tr>
<td></td>
<td>• Hargeisa</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>• Borana-Gujii</td>
</tr>
<tr>
<td></td>
<td>• Gambela region</td>
</tr>
<tr>
<td></td>
<td>• Gurages</td>
</tr>
<tr>
<td>Kenya</td>
<td>• Njuri Ncheke (Meru)</td>
</tr>
<tr>
<td></td>
<td>• Luo Council of Elders</td>
</tr>
<tr>
<td></td>
<td>• Kaya Elders of Mijikenda</td>
</tr>
<tr>
<td>South Africa</td>
<td>• Giyani</td>
</tr>
<tr>
<td></td>
<td>• Matatiele</td>
</tr>
</tbody>
</table>

Although the number of sites does not allow theoretical generalization, the eleven sites presented at least cases on a continuum from insulated parallel institutions of governance (Ethiopia) through various developments towards reconciliation (Kenya and South Africa) to full integration (Somaliland). This continuum enabled a comparative view, and led to the formulation of some general trends and opportunities. The size of the samples also precludes general conclusions on the communities, as the number of respondents in each case had to be limited to 100. Yet, it was striking how often the household survey findings confirmed the findings from the key informant interviews and focus group interviews. Furthermore, the findings suggest that the governance structures of traditional institutions are far more diverse than portrayed in most of the existing literature. This diversity is reflected in the terminology used in the various locations: terms are often *linguistic markers* that have to be unpacked, due to their embeddedness into local cultural history and practices. A typical example is the generally-used term ‘chief’, while the
social reality shows far more complex structures and power relationships. It became clear during the investigation that the issue of intra-institutional relationships needs anthropological studies as much as political analysis. The same need applies to the institutions’ relationship to their communities and state institutions. In reality the institutions of governance are tightly woven into the historical, cultural and political fabric of the studied communities. This is one reason why the institutions are so resilient. Whereas literature often portrays traditional institutions as imposed in a distorted form by colonial powers, it was generally found that communities experience these institutions as part of their communal life. Both literature and the surveys revealed that traditional institutions are not uncontested, particularly within the democratization processes that are slowly maturing on the continent.

The first objective was to study the nature of traditional institutions and their leadership structures with emphasis on those that deal with

1. property rights and allocation of resources,
2. prevention and resolution of conflicts, and
3. participation in the process of decision making in general and participation of women in particular

The literature generally classifies traditional institutions into centralized authority (chieftaincy) systems and decentralized (acephalous) systems. However, as the fieldwork showed, there is notable diversity within the centralized systems and centralization does not necessarily indicate concentration of power. Rather it refers to the systems that have hereditary individual leaders, regardless of the amount of power they command. The decentralized systems also have a leadership structure that often is not any less centralized than some of the chieftaincy systems. However, the leadership in the decentralized systems is group based (council of elders), although the group invariably has a senior leader (principal elder), who chairs the council’s deliberations and announces

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7 The issue of terminology was extensively discussed during the planning workshop and the report-back workshop on phase 1 of the research. Other examples were ‘community’, ‘ownership’, ‘democracy’, and formal-informal structures/systems (Hagg 2010). During some interviews respondents rejected the word ‘chief’ as derogatory.
Perhaps because of this focus of traditional institutions, most intra-community conflicts go to them for settlement. According to our key informants and survey respondents,
traditional institutions adjudicate high proportions of both intra-community and inter-community disputes; although the proportion of intra-community conflicts that they adjudicate is higher (see Table 3).

### Table 3. Proportion of Conflicts That Are Taken to Traditional Institutions for Settlement (according to survey results)

<table>
<thead>
<tr>
<th>Country</th>
<th>Intra-Community Conflicts</th>
<th>Inter-Community Conflicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>65.6%</td>
<td>60%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>78.7%</td>
<td>52%</td>
</tr>
<tr>
<td>South Africa</td>
<td>71.2%</td>
<td>-*</td>
</tr>
<tr>
<td>Somaliland</td>
<td>59.2%</td>
<td>37.8%</td>
</tr>
</tbody>
</table>

* No overt inter-community conflicts are reported in South Africa, although there are disputes around land ownership and between farmers and farm workers. The state provides comprehensive mediation legislation and mechanisms for these ‘conflicts’.

**Why Adherence to Traditional Institutions Remains High?**

The literature survey revealed multiple reasons why traditional institutions continue to have strong adherence among rural communities. Often African countries lack the capacity to extend judicial and other services to rural communities. Often the formal courts are congested, slow, inaccessible, and corrupt. In contrast, the traditional institutions are more accessible and provide judicial service at lower transaction cost. Traditional institutions are also more knowledgeable about local conditions and their deliberations are open to members of the community, which helps in the rendering of fairer rulings. These suggestions have been confirmed in phase 1 of the research in all four case countries.

More importantly, the effort of traditional institutions is to bring about reconciliation and not merely to punish the guilty party in disputes. Even when disputes are taken to the formal institutions and rulings are rendered, the cases often go back to the traditional system for reconciliation of the disputing parties for reconciliation. The traditional system brings closure to the conflict by reconciling the two sides, often through a system of compensations. The survey results show that the respondents rank

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8 The Gacaca system of community-based justice after the Rwanda genocide is an good example although
the traditional institutions as more effective than the state’s institutions in resolving conflicts, especially the intra-community ones (Table 4).

Table 4. Effectiveness of Traditional Institutions Relative to Formal Institutions in Conflict Resolution

<table>
<thead>
<tr>
<th>Country</th>
<th>Intra-Community Conflicts</th>
<th>Inter-Community Conflicts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>More Effective</td>
<td>Less Effective</td>
</tr>
<tr>
<td>Kenya</td>
<td>63.6%</td>
<td>37%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>74.8%</td>
<td>24.7%</td>
</tr>
<tr>
<td>South Africa</td>
<td>54.3%</td>
<td>31.7%</td>
</tr>
<tr>
<td>Somaliland</td>
<td>59.2%</td>
<td>6.1%</td>
</tr>
</tbody>
</table>

There also seems to be a higher level of trust of traditional institutions relative to formal institutions among rural communities (Table 5). A number of factors help to explain the differential level of trust, such as the participatory nature of traditional courts and familiarity of communities with procedures, in contrast to statutory courts. Our findings in this regard are corroborated by the findings of an Afro-Barometer study, according to which, chiefs and other traditional leaders score very highly relative to current state (Logan, 2010). However, the project interviews showed that in practice community members appear comfortable to negotiate the co-existence of the two types of institutions, and often ‘shop’ between the two depending on which one gives the most advantageous results. The relationship between residents and their traditional institutions is also impacted by the trend towards urbanisation. Within urban contexts residents tend to accept local government as their governance institution (Hagg 2010).

Table 5. “Are Traditional Authorities More Effectiveness or Less Effective than Government Authorities in Addressing Community Concerns?”

<table>
<thead>
<tr>
<th>Country</th>
<th>Traditional Authorities Are More Effective</th>
<th>Government Authorities Are More Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>49%</td>
<td>51%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>50.7%</td>
<td>49.3%</td>
</tr>
<tr>
<td>South Africa</td>
<td>39.4%</td>
<td>46.2%</td>
</tr>
<tr>
<td>Somaliland</td>
<td>77.6%</td>
<td>15.3%</td>
</tr>
</tbody>
</table>

the huge number of cases seems to raise doubts about long-term effectiveness of the process.
Different levels of Adherence to Traditional Institutions by Different Demographic Groups with regard to Conflict Resolution

There are in some cases differences in the degree of reliance on traditional judicial system by different population groups. The demographic characteristics that show significant differences at least in some of the cases are age, gender, and level of education. The impact of these population characteristic differs between countries.

As Table 6 shows, female respondents in Kenya believe that the formal institutions adjudicate more cases effectively than the traditional institutions. In contrast, in Ethiopia, South Africa and Somaliland female respondents view traditional institutions to be more effective than the government’s institutions in resolving intra-community conflicts, although their level of confidence on traditional institutions is lower than the male respondents, except in South Africa.

Table 6. Impact of Gender: “Are Conflicts within Your Community More Effectively Resolved by Traditional Institutions or by Government?”

<table>
<thead>
<tr>
<th></th>
<th>Kenya</th>
<th>Ethiopia</th>
<th>South Africa</th>
<th>Somaliland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional Institutions</td>
<td>M 39.2%</td>
<td>M 78.0%</td>
<td>M 63.0%</td>
<td>M 80.0%</td>
</tr>
<tr>
<td></td>
<td>F 31.7%</td>
<td>F 72.0%</td>
<td>F 66.0%</td>
<td>F 51.0%</td>
</tr>
<tr>
<td>Governmental Institutions</td>
<td>M 30.0%</td>
<td>M 18.7%</td>
<td>M 34.3%</td>
<td>M 7.7%</td>
</tr>
<tr>
<td></td>
<td>F 40.0%</td>
<td>F 23.4%</td>
<td>F 30.4%</td>
<td>F 7.1%</td>
</tr>
</tbody>
</table>

Impacts of Age on Level of Trust in Traditional Institutions

With respect to age the data suggests that (1) all age groups, except the 18-28 year old group in Kenya, have more confidence in traditional institutions than in the institutions of the government in resolving conflicts, (2) the youngest age group has, except in South Africa, a lower level of confidence than the other age groups that traditional institutions are more effective than the government in resolving intra-community conflicts. In all cases, except in Somaliland, the oldest age group (51 and over) has the highest confidence in the effectiveness of traditional institutions in resolving conflicts. The lower trust in traditional institutions in South African as
reflected in the household survey may be explained by three factors: almost 30% of the respondents in the survey live in a semi-urban location with immediate access to state institutions; higher educational levels of youth under the new democracy and youth’s exposure to trends in and debates about democratization through the mass media.

Table 7. Impact of Age: “Are Conflicts within your Community More Effectively Resolved by Traditional Institutions or by Government?”

<table>
<thead>
<tr>
<th>Country</th>
<th>18-28 yrs</th>
<th>29-39 Yrs</th>
<th>40-50 yrs</th>
<th>51 yrs +</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>TIs</td>
<td>45.9%</td>
<td>65.3%</td>
<td>62.5%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>54.1%</td>
<td>32.0%</td>
<td>35.7%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>TIs</td>
<td>77.4%</td>
<td>74.3%</td>
<td>89.8%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>19.8%</td>
<td>20.0%</td>
<td>8.5%</td>
</tr>
<tr>
<td>So. Africa</td>
<td>TIs</td>
<td>59.1%</td>
<td>50.1%</td>
<td>70.6%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>36.4%</td>
<td>48.0%</td>
<td>25.5%</td>
</tr>
<tr>
<td>Somaliland</td>
<td>TIs</td>
<td>48.0%</td>
<td>77.4%</td>
<td>87.5%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>12.0%</td>
<td>6.5%</td>
<td>4.2%</td>
</tr>
</tbody>
</table>

Impact of Education on Trust in Traditional Institutions

Table 8 shows that educational level appears to have an impact on trust in traditional institutions. Overall the less-educated respondents seem to have more confidence on the effectiveness of traditional institutions, while the younger and more educated tend to have less trust in traditional institutions than the older and less educated respondents.

Table 8. Impact of Education: “Are Conflicts within your Community More Effectively Resolved by Traditional Institutions or by Government?”

<table>
<thead>
<tr>
<th>Country</th>
<th>Illiterate</th>
<th>Literate</th>
<th>Elem. School</th>
<th>High School</th>
<th>Post High School</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>TIs</td>
<td>70%</td>
<td>45.5%</td>
<td>58.6%</td>
<td>35.7%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>15%</td>
<td>45.5%</td>
<td>33.9%</td>
<td>54.8%</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>TIs</td>
<td>75.7%</td>
<td>88.9%</td>
<td>75.4%</td>
<td>70.9%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>21.7%</td>
<td>11.1%</td>
<td>14.1%</td>
<td>27.3%</td>
</tr>
<tr>
<td>So. Africa</td>
<td>Tis</td>
<td>94.7%</td>
<td>87.5%</td>
<td>81.4%</td>
<td>58.9%</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>5.3%</td>
<td>12.5%</td>
<td>18.7%</td>
<td>38.4%</td>
</tr>
<tr>
<td>Somaliland</td>
<td>Tis</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>MIs</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Interaction between the Traditional and Formal Institutions

Traditional institutions are key players in keeping social order in rural areas, as evident from the proportion of conflicts they adjudicate. However their effectiveness in resolving conflicts, especially the inter-community conflicts, increasingly relies a great deal on the institutions of the state, particularly with regard to armed conflict. After stopping the violence, however, the governments turn to the traditional leaders for reconciliation and peace-building processes.

Even with intra-community conflicts the effectiveness of traditional institutions is enhanced by their cooperation with the institutions of the state. The traditional system relies on the police, courts, and prison systems to deal with criminals while they engage in the reconciliation process. The institutions of the state, such as the police and prison systems have become more effective alternatives in areas where these institutions have become readily accessible. Yet, the role of traditional institutions in conflict resolution has remained indispensable. The perception that the community is the provider of security to its members and that any offenses against its members are its responsibility to settle remains entrenched among traditional communities.

Resource Allocation and Management of Community Assets

The most important asset of communities in the traditional economic systems (subsistence peasants and pastoralists) is land, which traditionally was under communal control in most of the cases (Table 9). Land tenure systems have continued to evolve in the post-colonial era and the changes in most cases have undermined control and access to land by traditional communities. In Ethiopia’s three cases ownership of land is vested in the state and communities only have usufructuary rights. In Somaliland also officially all land is common property administered by the government. Traditionally land was controlled by clans (Degaan ownership) which enter into agreements (xeer) with each other to allow the flexibility of mobility of pastoralists. Both contentions seem to coexist with the later arrangement predominating in pastoral areas. In South Africa the chiefs still serve as custodians of land. However, the land issue still remains rather thorny in the country after the Constitutional Court declared the Communal Land Rights Act of 2003
unconstitutional in its entirety (Claassens 2010). Different land ownership systems operate in the three cases in Kenya. In Meru, land is essentially in private hands, while in the Coast communal ownership remains significant. In West Pokot both private ownership and communal ownership coexist.

In all the cases, except South Africa, the traditional system seems to have essentially lost control of land ownership. In South Africa the traditional system controls much less land given the appropriations of land by the apartheid state and the slow progress of land reform by the post-apartheid state. As Budlender (2011) and Cousins & Claassens (2008) indicate, access to land by women has changed significantly over the past decade, mainly due to increasing democratization processes and court cases. Access to land remains a complex aspect of women’s livelihoods. With rapid population growth and rapid environmental changes and degradation of land most of the communities we studied have faced severe land shortage problems.

### Table 9. Land Ownership Patterns and Land-Based inter-Communal Conflicts

<table>
<thead>
<tr>
<th></th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>Somaliland</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inter-community conflicts have occurred</td>
<td>59.3%</td>
<td>48.0%</td>
<td>44.4%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Conflicts over land and livestock theft</td>
<td>95.0%</td>
<td>87.5%</td>
<td>39.8%</td>
<td>-</td>
</tr>
<tr>
<td>Guns were used in the conflict</td>
<td>37.7%</td>
<td>38%</td>
<td>20.4%</td>
<td>-</td>
</tr>
<tr>
<td>Government controls land</td>
<td>68.0%</td>
<td>12.8%</td>
<td>69.4%</td>
<td>32.3%</td>
</tr>
<tr>
<td>Community Controls land</td>
<td>16.0%</td>
<td>19.2%</td>
<td>18.4%</td>
<td>66.4%⁹</td>
</tr>
<tr>
<td>Land Privately controlled</td>
<td>3.7%</td>
<td>65.6%</td>
<td>-</td>
<td>1.4%</td>
</tr>
<tr>
<td>Government allocates land</td>
<td>49.0%</td>
<td>11.2%</td>
<td>45.9%</td>
<td>24.0%</td>
</tr>
<tr>
<td>Community Allocates land</td>
<td>39.3%</td>
<td>22.8%</td>
<td>17.3%</td>
<td>63.2%</td>
</tr>
<tr>
<td>Land is inherited</td>
<td>7.0%</td>
<td>51.2%</td>
<td>20.4%</td>
<td>4.9%</td>
</tr>
</tbody>
</table>

The second objective of the study was to assess attributes of traditional institutions that

1. overlap with and strengthen the principles and practice of democratic governance;
2. that can contribute to the development of mechanisms for prevention and resolution of conflicts and thereby enhance a peaceful process of state building;
3. this objective would also address any negative aspects that exclude or subordinate any segments of society, especially in the area of gender relations.

⁹ This high percentage may point to perceptions among rural respondents that although the chief ‘owns’ the land, he does so as a custodian, representative of the community. Furthermore community members are elected into local land management committees that assess applications for land.
**Overlap With Democratic Principles**

Some literature claims that traditional institutions, especially chieftaincy, continue colonial oppression and are hindrances to democratic transformation. There are clearly some significant weaknesses in traditional institutions, especially with respect to gender relations. While customary law does not necessarily dictate that women be excluded from equal access to participation in decision making, their participation is often limited in practice. Tables 10 and 11 attempt to capture the areas where women face marginalization. Women hardly rise to a leadership position in any of the traditional systems we examined. They can serve as elders, although their access to this position also is much lower than men’s. They do, however, have access to participation in meetings\(^\text{10}\). A significant number of respondents doubt that women have equal access to land as men, although, as noted, traditional institutions have largely lost the power to control and allocate land. Women’s property inheritance both from parents and spouses is also lower than men’s. They also have less access to child custody, except in South Africa and Somaliland, where they seem to enjoy higher access than men\(^\text{11}\). Women also tend to be denied equal access to property as their spouses in cases of divorce, except perhaps in some of the cases in Ethiopia (Table 12).

**Table 10. Percentage of Survey Respondents Who Believe That Women Have Access to Participate in the Identified Activities**

<table>
<thead>
<tr>
<th>Participation of Women</th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>So. Africa</th>
<th>Somaliland</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes %</td>
<td>No %</td>
<td>Yes %</td>
<td>No %</td>
</tr>
<tr>
<td>As Leaders</td>
<td>14.7</td>
<td>40.7</td>
<td>20.4</td>
<td>52.9</td>
</tr>
<tr>
<td>As Elders</td>
<td>35.7</td>
<td>19.3</td>
<td>69.6</td>
<td>28.8</td>
</tr>
<tr>
<td>In Meetings</td>
<td>51</td>
<td>97.2</td>
<td>89.1</td>
<td>0.5</td>
</tr>
<tr>
<td>In Obtaining Land</td>
<td>52.7</td>
<td>43.7</td>
<td>55.2</td>
<td>43.2</td>
</tr>
</tbody>
</table>

\(^{10}\) Such access to participation is often limited by customary law which limits women’s participation, e.g. the need to present cases through male relatives in court or higher values allocated to male opinion (Claassens 2010).

\(^{11}\) In South Africa child custody in official (state-confirmed) divorces is determined by officials from the state’s Children’s Court, and allocations usually go to the mothers.
Table 11. Gender Relations

<table>
<thead>
<tr>
<th></th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>So. Africa</th>
<th>Somaliland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation of Women</td>
<td>Yes %</td>
<td>No %</td>
<td>Yes %</td>
<td>No %</td>
</tr>
<tr>
<td>Inherit Property from parents</td>
<td>34.0</td>
<td>62.0</td>
<td>59.0</td>
<td>40.5</td>
</tr>
<tr>
<td>Inherit Property from Husbands</td>
<td>71.3</td>
<td>21.3</td>
<td>94.0</td>
<td>6.0</td>
</tr>
<tr>
<td>Child Custody</td>
<td>20.3</td>
<td>-</td>
<td>20.0</td>
<td>-</td>
</tr>
<tr>
<td>Women Obtain Equitable share of property if divorced</td>
<td>51.3</td>
<td>24.3</td>
<td>28.0</td>
<td>48.0</td>
</tr>
</tbody>
</table>

Table 12. “Do Couples Divide Family Assets Equitably If They Divorce?”

<table>
<thead>
<tr>
<th></th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>Somaliland</th>
<th>So. Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>52.9%</td>
<td>28.0%</td>
<td>5.1%</td>
<td>34.9%</td>
</tr>
<tr>
<td>No</td>
<td>24.9%</td>
<td>22.8%</td>
<td>18.4%</td>
<td>39.7%</td>
</tr>
<tr>
<td>Women get nothing</td>
<td>16.8%</td>
<td>24.8%</td>
<td>2.0%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Women get something but not equal to men</td>
<td>4.4%</td>
<td>23.2%</td>
<td>70.4%</td>
<td>15.3%</td>
</tr>
<tr>
<td>Conditional</td>
<td>1.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Don't know/no answer</td>
<td>0.0%</td>
<td>1.20%</td>
<td>4.10%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

The practices of polygamy and payment of bride price may also be cultural practices that subordinate women. Many of our informants, however, suggest that the payment of bride prices elevates the status of women, since it gives them more worth than men. Polygamy is also viewed by some that given the hard work in rural areas it helps to lower the burden of women by dividing the work. Younger women and younger men, however, tend to see polygamy as a bad practice that needs to be eliminated.

Table 13. Payment of Bride Price

<table>
<thead>
<tr>
<th></th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>Somaliland</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>68.7%</td>
<td>99.6%</td>
<td>85.7%</td>
<td>96.3%</td>
</tr>
<tr>
<td>No</td>
<td>31.3%</td>
<td>0.4%</td>
<td>13.3%</td>
<td>3.3%</td>
</tr>
<tr>
<td>No answer/not applicable</td>
<td>0.0%</td>
<td>0.0%</td>
<td>1.0%</td>
<td>0.5%</td>
</tr>
</tbody>
</table>
Table 14. Practice of Polygamy

<table>
<thead>
<tr>
<th></th>
<th>Ethiopia</th>
<th>Kenya</th>
<th>Somaliland</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>73.3%</td>
<td>86.4%</td>
<td>80.6%</td>
<td>51.1%</td>
</tr>
<tr>
<td>No</td>
<td>26.7%</td>
<td>13.6%</td>
<td>15.3%</td>
<td>46.6%</td>
</tr>
<tr>
<td>No answer/not applicable</td>
<td>0.0%</td>
<td>0.0%</td>
<td>4.1%</td>
<td>2.3%</td>
</tr>
</tbody>
</table>

Democratic Strengths of Traditional Institutions

Generally, traditional institutions have strong direct and indirect democratic credentials. One area of strength is that their decision-making processes involve direct participation. As noted women do not participate as much as men but the system does not have official restriction of participation other than young people who have not attained adulthood status and people with mental health problems\(^\text{12}\). Decisions are also generally reached through a consensus, which protects minorities by enabling them to oppose decisions until their interests are addressed. Conflict resolution practices are also participatory, since they are designed to bring about reconciliation. These practices give traditional institutions democratic credentials since democracy is about the general population having control over decision-making through their representatives. Traditional institutions, however, in most cases practice direct participation, although they select through a consensual manner representatives when direct participation is not practical. Their consensual decision-making process which protects minority rights can also be a useful practice of nation-building where society is divided along ethnic and religious lines. Some of the traditional systems, the elderly-based systems as well as the centralized not-elderly system of the Borona change leadership in a rotational manner, along clan lines. This practice is also democratic in content, which perhaps can serve as a lesson to the states in post-colonial Africa.

The cases we have examined for this study did not reveal any traditional system that is incompatible with a democratic system, although the states clearly need to engage the traditional system in order to reform the system’s weakness with respect to women’s

\(^{12}\) This situation differs in many traditional communities in South Africa where chiefs have been appointed by the apartheid government under the Black Authorities Act (1951) and their rule has been continued under the Traditional Leadership and Governance Act of 2003. Although the Black Authorities Act has been repealed, engendering of chieftaincy institutions is yet very low. For example, seven years after legislation that traditional councils must have 30% female representatives, this process has not been completed in most traditional communities (Claassens 2010)
right, and in the South African case the rights of communities to determine their own type of traditional leadership system vis-à-vis the continued apartheid one. In line with global emphasis on democratization and gender equality, several traditional institutions have changed over the past decade to embrace democratic principles, particularly women’s right to inheritance or share of property after divorce.

Contrary to the claims that traditional institutions are divisive and undemocratic, our findings suggest that traditional institutions can actually be useful resources that can help in the democratization process of African countries, as we will see in the third section of the report. While our sample is too small to be representative, the surveys did not find the chiefs that control their communities as subjects or hinder democratization, as claimed with respect to South African traditional leaders, although the literature survey showed examples of chief’s abuses (Mamdani, 1996; Ntsebeza, 2001; de Souza & Jara 2010). As Weeks (2010:2) states, many women have found ways to ‘weave customs and rights together, while articulating claims and struggling for greater recognition of their rights in their communities’.

Table 15. Level of Participation in the Traditional and Formal Institutional Systems by the Communities in the Study

<table>
<thead>
<tr>
<th></th>
<th>Participated in Conflict Resolution</th>
<th>Participated in Decision-making</th>
<th>Exclusion of Some Groups Exists</th>
<th>Participated in National Elections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethiopia</td>
<td>67.3%</td>
<td>51.2%</td>
<td>45.7%</td>
<td>35%</td>
</tr>
<tr>
<td>Kenya</td>
<td>40%</td>
<td>40.8%</td>
<td>66%</td>
<td>89%</td>
</tr>
<tr>
<td>South Africa</td>
<td>26.2%</td>
<td>30.8%</td>
<td>14.5%</td>
<td>48%</td>
</tr>
<tr>
<td>Somaliland</td>
<td>56.1%</td>
<td>64.3%</td>
<td>44.9%</td>
<td>32.3%</td>
</tr>
</tbody>
</table>

Objective 3 was to determine the Potential of Reconciliation of the Fragmented Institutional Systems. The fragmentation of modes of production and institutional systems that characterize most African countries can be viewed as challenges of transitional societies. A modern (capitalist) economic system, along with its corresponding institutional systems, has taken root in the continent. However, the old

13 At the moment residents in traditional communities who do not consider themselves as members of such communities, do not have the choice to opt out of local majority traditional institutions (Claassens 2010).
modes of production and the institutional systems associated with them also remain entrenched among large segments of the population. Such fragmentation can create serious and lasting dysfunction of the entire political economy, as it already has in many African countries. Among the failures are the following:

- It is highly challenging for policy to cater to fragmented economic and institutional systems. Most African governments operate under the formal institutional system and essentially ignore the plight of the populations in the traditional sector and fail to actualize the transition, which would harmonize the fragmented economic and institutional systems. As these governments ignore the traditional sector’s interests and its institutional systems in their policy making, they transform the transitional fragmentation into a permanent condition.

- A critical outcome of this policy is that the state loses legitimacy. Loss of legitimacy for an extended duration puts the state at risk, as any insurrection by a segment of the population has the potential to bring about not only the fall of governments but also the collapse of the whole state structure.

- Often the marginalization of the traditional sector tends to disproportionately impact certain ethnic groups for a variety of reasons. Such disparities have fostered ethnic conflicts in many countries.

- The combined effect of all these conditions has also undermined the democratization effort. No doubt, rural communities participate in elections, as our findings reveal (see Table 15). Their participation in the electoral process has not enabled them to influence policy and transform their deprivation, despite their numbers. Under such conditions, the democratization effort in much of Africa has remained rather shallow limited to mere elections, which are often marred by fraud and rigging and often followed by post-election violence.

Most African states have not invested much effort in developing strategies for integrating community-based institutions, such as those of customary property rights laws and conflict resolution and dispute adjudication mechanisms into the formal governance structure. Some have incorporated traditional authorities (primarily paramount chiefs) into their governance structure through a House of Chiefs, as a second chamber of
parliament or a parallel structure. However, with the possible exception of Botswana and Somaliland, the role of the House of Chiefs has remained merely advisory on a narrow range of issues. In South Africa the state policies and legislation for traditional leadership are highly contested exactly because democratic elements in traditional institutions have been ignored (Weeks 2010, 2011). The adoption of a new Constitution in Kenya, which recognizes community ownership of land and sharia courts offers new opportunities to find reconciliation. In most other African countries even the debate on how to bring about institutional coherence has been scarce.

**Lessons learnt**

In addition to the previous discussion of the research findings, this section summarizes some of the lessons learnt with regard to approaches to reconciliation.

1. **Democratic Credentials of Traditional Institutions to be recognized**

   It is clear that traditional institutions are not only resilient through the support and acceptance by their communities, but that in most cases these institutions are the only ones to provide adequate services. The majority preference for traditional institutions at a local level is the basis for their first democratic credential. A second reason for their credentials is that traditional institutions allow all members of a community to participate in decision making and court processes, usually aiming for consensus. Third, traditional institutions are by nature evolving and adaptive to demands from modern democracy, such as consenting to gender equality, although often slowly. The democratic credentials of traditional institutions are confirmed by the support from international and continental multi-national organizations, such as UNESCO and the AU.

2. **Why different Reconciliation Approaches are possible**

   The dual recognition of universal human rights and cultural diversity and customs in international and African charters makes it imperative that states find ways to reconcile the two systems. This project has revealed that support for human rights of individuals and communities among traditional leaders in South Africa and Somaliland is growing due to the involvement of international rights
groups and support organizations, and that country-specific models and conditions are emerging. The reality that communities find ways to ‘weave their human rights and traditional situations’ into a feasible condition points to the possibility to take the local community as the starting point in developing strategies and policies for reconciliation (Weeks 2010).

3. **Challenges Reconciliation faces**

Reconciliation initiatives face both intrinsic and external challenges. The research revealed some significant differences in the nature of the two systems. Modern institutions are based on codification, text, fixed structures and prescribed processes and procedures. Traditional institutions, with a number of variations, tend to be based on communal memory, often that of the elders, and the interpretation of such memories. Memories and their interpretations are influenced by personal preferences and beliefs, distortion, and the relationship between the cases that are remembered, and the case at hand. Applying living customs makes the traditional institution flexible, but also allows for manipulation. External challenges are set by constitutional and legislative frameworks that have been adopted by the state, as well as contextual factors, such as power struggles over resources; the role of human rights organizations in court cases; high costs of contestations of state and traditional institutions; levels of literacy and education among communities; and the impact of mass media and global trends.

4. **Conditions for Reconciliation**

In view of the ratification of universal declarations and conventions by most African states it is obvious that democratic principles should be the dominant guides in the reconciliation of the two types of institutions. However, liberal democracy is but one version of democracy and the discourse on democracy is an open one, which needs to be located within the African nation-state discourse. Democratic principles that are inherent to traditional institutions should be recognized. Traditional communities and their sub-groups use language
structures that deal with the complexities of their livelihoods, and set challenges for universal application. Often such language is lost in the more academic, legal and policy-oriented documents, with a result that generalizations may not fit the specificities within particular communities. Constitutions are broad documents, which are based on human rights rather than indigenous customary law. In some countries attempts have been made to codify traditional law. The success of codification depends on the uniformity of communities, and the potential of codified law to provide for all citizens in a country or state. The development of reconciliatory institutions should be viewed as an ongoing process, combining practices and political constructs. A framework for reconciliation should make provision for at least principles of reconciliation, consensual policy making processes, appropriate structures and organizations, and universal participatory processes.

**Policy Implications**

The findings have a number of policy implications. A general implication is that institutional reconciliation is critical for the socioeconomic transformation of African countries. Maintaining the existing fragmentation implies perpetuation of the fragmented modes of production and dual socioeconomic spaces in African political economies. A related implication is the continued political and economic marginalization of the segments of the population that live under the traditional modes of production (subsistence farmers and pastoralists). Continued neglect of this segment of the population, which constitutes the overwhelming majority of the population in most African countries, is likely to continue to produce widespread poverty, misery, political instability, and poor governance. Democratic governance is simply inconceivable under fragmented socioeconomic spaces, regardless of whether regular elections are conducted or not. Transforming rural communities and their institutions and modes of production has to be central to the development strategy as well as the democratization agenda of African countries.

Specific policy measures of reconciliation that are recommended include: (1) recognizing customary property rights laws to ensure that customary land holdings by
rural communities obtain legal recognition; (2) reforming existing administrative structures to ensure that traditional authorities participate in local governance; (3) reforming traditional institutions to safeguard rights of women and minorities; (4) recognizing customary courts, which already handle large proportions of rural disputes, and to provide members of the courts training so that they become agents of institutional reconciliation: (5) utilizing the conflict resolution mechanisms of the traditional system to promote diversity management and nation-building; and (6) contextualizing the institutions of democracy so that they accommodate the aspects of traditional institutions that overlap with democratic principles.

**What can be achieved by reconciling the fragmented institutional systems?**

**Reduction of marginalization:** As noted already, institutional fragmentation and incoherence foster marginalization of the traditional institutional space. Reconciliation of institutions can be expected to at least reduce the level of marginalization of rural communities. Reconciliation can also, by recognizing the property rights and political representation of rural communities, improve their access to resources and facilitate their transition out of the subsistence economic system. It can also improve state-society relations and enhance state legitimacy by connecting the state institutionally with rural communities.

Since conflict resolution is one of the strong aspects of the traditional system, the state would be more successful if it utilizes the traditional system in diversity management and in conflict resolution at the community level. Such roles of the traditional system can help not only in reducing conflicts but also in promoting a more peaceful process of nation-building by reducing inter-community conflicts. The state would also benefit from the conflict resolution and decision making mechanisms of the traditional systems if it applies such mechanisms in dealing with inter-ethnic and inter-party conflicts, which often erupt, especially during elections.
**Democracy:** Continued neglect of rural communities, their interests, and institutional systems is exclusionary and incompatible with democratic principles. The largely marginalized rural communities need to be brought into the political process for meaningful democracy to take root in Africa. This segment of the population, however, cannot engage in the political process outside of its institutional context. Institutional reconciliation is, thus, a critical component of democratization. In addition, our findings show that many aspects of traditional institutions overlap with democratic principles. Our survey results also indicate that rural communities have a higher trust level on traditional institutions, in large part because the decision-making and conflict resolution mechanisms of these institutions are participatory and consensual.

**Gender Relations:** Safeguarding women’s rights is one of the weakest aspects of traditional institutions. The formal institutions are also riddled with the same problem, although governments are more likely to have greater awareness of the need to address the problem, as happens in South Africa. Governments are not likely to succeed in advancing women’s rights while neglecting the traditional sector, however. The modes of production that prevail in rural areas dictate certain social division of labor that is detrimental to women’s rights. Reconciling institutional systems would, thus, be a critical venue for liberating women. Governments are not likely to liberate women by legislation alone.

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Project design and implementation

Phase One: 12/2008 - 01/2010

Phase One consisted of four main activities:

1. Planning

The research representatives from the four countries met from 17-20 February 2009 in South Africa. Together with 14 scholars, officials and funders the original proposal was critiqued from conceptual, theoretical, policy and practice perspectives (list of

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14 See workshop reports submitted to IDRC during the project period.
participants of all three workshops attached as Annexure A). This process enabled the research team to fine-tune the various objectives and the methodology. The relationship between traditional institutions and the problem of state-building in Africa as well as the need for conceptual and terminological clarification were highlighted. Furthermore participants pointed out that the national and sub-national contexts of each case study community should be taken into account when assessing the role of traditional institutions. This would make generalization more difficult, but would increase the usefulness of the project findings. The need for consultation of policy makers and the widest dissemination of results were also emphasised. The refinements led to improvements in the interview questions that were used for the first phase interviews. Advice was obtained on the methodological aspects of the second phase activities. During this stage contact was made with the project manager of the Ethnicity and Democratic Governance project, led by Queens University (Canada), although a partnership was not possible.

2. Literature Surveys

Each country team collated a literature survey on their specific case studies. The first drafts were presented at the first planning workshop, and follow-ups at the next workshops. Although the Outcomes Report presents a collation of these surveys, it was deemed better that the full country literature surveys be included in a book on the project.

3. Fieldwork

The fieldwork of Phase One consisted of the following:

- **Key Informant Interviews:** A Key Informant (KI) list of at least 15 people per site was compiled through a purposive snowball sampling method. The list included regional and district government officials, traditional leaders, elders, judges in formal courts, chiefs of police, religious leaders, and other individuals who are recognized to be knowledgeable on traditional institutions and judicial process. The KI list also included at least five randomly selected ordinary members of the community from each of the research sites. This group of community members was included to ensure that we capture possible differences
of perspectives between informants and community members on the nature of traditional institutional systems. The total number of KIs was 220 (11 sites x (15 + 5)). Each interview was conducted around a set of open-ended questions designed to provide information on all aspects of the three research objectives, and amended to suit specific community/respondent characteristics (Question schedule in Annexure B). The piloting of the interviews confirmed the advice during the planning workshop to take the context of each research site into consideration, and questions were adapted to suit both the social structures and the language used.

- **Focus Group Discussions:** At least two focus groups discussions (FGD) were held in each site and each focus group comprised of 6 or more people. In order to ensure demographic and social representation, members of the focus group were selected through a purposeful sampling method. In some cases a FGD for women only was arranged. Given the lengthy nature of FGDs, the number of questions was much smaller than those for KI interviews. However, FGDs were useful for cross-checking purposes and they provided deeper insights into the operations of traditional institutions, as well as perceptions of traditional leaders and state representatives on the role of traditional institutions.

4. **Report back workshop**

The country teams reported back through narratives at a workshop in South Africa from 25-29 January 2010. This workshop was also attended by 16 scholars, policy makers, officials, funders and traditional leaders. As the fieldwork was based on people’s perceptions, the results were confined to qualitative analysis and comparisons. In addition Dr Mengisteab presented a draft comparative analysis of the data that was available from the fieldwork to the workshop participants, dealing with the various subsections in the question schedule. The findings on the specific characteristics of the traditional institutions in the various countries showed a richness and texture that often contrasted with views in the literature. The interviews also showed how strongly the traditional institutions were supported by their communities, despite the lack of support from the state. In many cases there was a better co-existence between modern and traditional
institutions than suggested in the literature. Day-to-day practice of people living in traditional communities is clearly adapted to circumstances in order to function optimally. On the other hand the interviews showed that in many respects traditional institutions still marginalize women and youth, although several female respondents indicated that they still felt to be heard, particularly where community meetings and tribal courts were held. The input from the South African traditional leaders and officials provided a good background to the developments in this country, and reflected on how the issues could be addressed in the other countries.

From the report backs it was clear that fieldwork in Africa still remains a cumbersome task, as researchers have to take into account protocols for access to communities, permission from officials, high costs of specialized labour, the rain season and vast distances over roads that are mere tracks. As a result the costs of fieldwork in Kenya, Somaliland and Ethiopia were far above the original estimate and a request for additional funding was submitted to the IDRC, which was granted during the second phase of the project.

**Cooperation with other researchers and stakeholders**

Through the funding by the Konrad Adenauer Foundation (South Africa) for the planning and report back workshops, the German scholar Reinhardt Kössler from the Arnold Bergstraesser Institut was able to attend these workshops, which provided comparative material on traditional institutions in Namibia and Botswana. Furthermore, local scholars and state officials participated in all three project workshops. In Kenya and South Africa local political leaders and officials cooperated within the communication networks, while Houses of Traditional Leaders pledged their support of the project in South Africa and Somaliland.

**Phase Two: 02/2010 – 11/2010**

This stage involved survey interviews of a total random sample size of 870 people from all the eleven research sites, with some minor adjustments to ensure representativeness of households and communities. The survey questionnaire was designed during the second workshop in South Africa, on the basis of insights obtained
from the literature survey as well as from the first phase of the fieldwork (Annexure C). The questions were crafted to obtain from community members information on their experiences and observations with regard to how the traditional institutions operate, how they settle disputes, how equitable the justice they render is, how decisions are reached and implemented, and who, if any, are excluded from participation in decision-making. The questions also asked about when and why people choose the traditional institutions over those of the state. The surveys showed that people are comfortable with discussing and answering questions about traditional institutions, and few refusals were experienced. As the questionnaires had been translated into the local vernacular, and the interviewers trained to question the respondents in their home language, the research team believes that it obtained frank and well-informed answers. Throughout the surveys the findings showed strong confirmation of the first phase findings, particularly about the community support of traditional institutions. Report-back meetings were held in the two South African research sites, which led to lively discussions and more insight into local forms of traditional institutions and their relationship to state institutions.

Concluding Phase: 12/2010 – 05/2011

The survey findings were captured and submitted to PSU:

- All responses were captured by the teams in the various countries (except for Somaliland) and the captured data provided as raw data sets to the PennState University. In South Africa several cross-tabular analyses were done, and a survey report produced\(^\text{15}\) (Rule, S. and Hagg, G. 2011).

- The initial analyses were presented at a workshop in Nairobi in January 2011, and discussed in order to determine trends and commonalities. Dr Mengisteab presented an initial comparative analysis to the participants.

- The final data sets were analysed at PennState University.

Data analysis

Data analysis for the first objective consisted of qualitative analysis comparing the information from different sources, supplemented by descriptive statistics. Significance tests were also performed to determine if differences of views among different population characteristics, such as gender, age and levels of education were statistically significant.

The analysis aimed to determine the extent of differences and clashes between the traditional and modern institutions with respect to their respective, dispute resolution, decision making, and resource allocation mechanisms.

The data analysis with respect to the second objective focused on participation, conflict resolution, resource allocation and decision making. The results of the quantitative analyses were compared with qualitative analysis of the information obtained from archival sources, KI interviews and FGDs and direct observation by the research team.

The analysis in the third section of the project relies on theoretical analysis informed by lessons learned from different models of incorporation of traditional institutions in Africa. South Africa’s limited incorporation of traditional authorities into the provincial (regional) governance, and Somaliland’s more comprehensive incorporation of traditional institutions from the level of parliament (the Guurti) to the grassroots were compared to determine strengths and weaknesses of the models in reconciling the parallel institutional systems. Although the diversity in the data did not allow the team to build models for reconciliation, the analysis resulted in broad policy recommendations which can be applied to the specific countries.

Project outputs and dissemination

The following project outputs were produced:

1. Papers delivered at conferences and workshops
• Ahmed, S M. Traditional Institutions in modern governance, with emphasis on the House of Elders presented at the conference on Democratization and the challenges of free and fair elections, Nov. 23-24, 2009, Hargeisa, Somaliland. A discussion followed in which some contributions were made and in the group work, one of the themes was to debate on the issue traditional verses modern and recommendation were made on the national review of the House of Guurti in regards to research findings, group discussions and experience of the nation. The proceedings have been published by the institute.


• Dr Tesema Ta’a. 2010 Consultancy services to a group of women in Ethiopia interested in gender issues: a) how to conduct research; b) undertaking evaluations; c) designing strategic plans; d) designing project proposals: and e) preparing publication materials. Dr Ta’a was interviewed on how the traditional institutions and customary laws operate along side the modern system of governance in Ethiopia and the role of women in decision making in both cases.

• Hagg, G. 2010. Presentations on the project to the SA Department of Cooperative Governance and Traditional Affairs, and the Department of Justice and Constitutional Development, April 2010.


• Mengisteab, K. 2011. Concept paper on Diversity Management in Africa for the ECA. The paper was presented at the ECA in March 2011 and a large crowd of African diplomats, NGOs, and academics attended the meeting. The paper will be circulated among the members of the African Peer Review
mechanism (giving us an important outlet for dissemination of our findings). Institutional reconciliation and the potential role of traditional leaders in diversity management and conflict resolution is an important component of the paper. A copy of the paper can be provided to the IDRC.

- The ECA is planning to conduct research on the role of traditional institutions in conflict resolution in rural Africa. The Governance section of the ECA has contacted Prof Mengisteab to see if he will be interested in working in the project. This will also give us a good opportunity to disseminate the findings of our project.

2. Workshop Reports
   - Planning workshop, held in South Africa 17-20 February 2009.
   - Report back and planning meeting on Phase One, held in South Africa, 25-29 January 2010.
   - Report back meeting on Phase Two, held in Nairobi, Kenya, 29 November – 2 December 2010.

The reports have been made available to all participants in the workshops, including scholars, policy makers and officials.

3. Progress Reports to the IDRC
   Three Technical Progress Reports and three Financial Progress Reports have been submitted to the IDRC (July 2009, June 2010, March 2011). The Technical Progress Reports have been advertised on the HSRC website for wider dissemination.

4. Power-point presentations and report-back meetings for stakeholders
   - Presentation to the South African National House of Traditional Leaders, resulting in their support of the project, 2010.
   - Presentations at report-back meetings on Phase 1 in the South African case study communities Giyani and Matatiele, May and March 2010.
• Presentations to Giyani and Matatiele municipalities and traditional leaders on Phase 2, 7 and 8 July 2011 (Matatiele) and 12 August 2011 (Giyani).
• Presentations by Prof Mengisteab and Dr Hagg at the IDRC workshop, 15-16 June 2011.
• Roundtable has been organised for South African policy makers and scholars, 4 August 2011. See separate report on the Round Table. Available online: http://www.hsrc.ac.za/Research_Publication-22248.html

5. Training input

The findings of the research are being used in courses on political science (traditional institutions and conflict resolution) by Dr Merera Gudina at the University of Addis Ababa, as well as by Prof Mengisteab at the PennState University.

Capacity-building

Institutional reinforcement and sustainability of the research organization (new equipment, training, improved administrative skills, lessons learned etc.)

Building research capacity in partner institutions was one of the objectives of the project. The HSRC has used the project to involve one African researcher as an intern for the duration of the project, which provided significant information for his doctoral studies on traditional institutions in South Africa. Two smaller consultancies were contracted to do the fieldwork in Giyani and Matatiele, while a small consultancy in Giyani was contracted for all liaising with the traditional leaders. This engagement contributed to their experience and standing among local politicians and traditional leaders. The findings of the South African household survey have been shared with the Law, Gender and Race Research Institute at the University of Cape Town. This institute is one of the key role players in the promotion of human rights in traditional communities, and has contributed several publications and submissions to policy makers in this regard. The research findings were considered of significant importance by the institute’s representative. The findings of the first phase have also been presented to the National
House of Traditional Leaders, the National Department of Cooperative Governance and Traditional Affairs, and the Department of Justice and Constitutional Development, who commented favorably on their usefulness in the debates about the role of traditional institutions in society and on policy making. The findings have also been presented to policy makers, scholars, traditional leaders and consultants at a Round Table, Pretoria August 2011. The project provided the Kenya Institute for Public Policy Research and Analysis with an opportunity to manage the first phase fieldwork, involving local researchers.

The field research in Ethiopia, Kenya, and Somaliland involved training graduate students who helped in the interview process. These enumerators included both men and women.

The research teams in all three countries also gained valuable experience in conducting field research.

**Increased research or administrative skills of the researchers involved**

Although the HSRC project manager had extensive experience in project management, this four-country project considerably strengthened his management skills. Through his involvement as fieldwork organizer the South African intern has increased his knowledge and experience in empirical research in this field, which also contributes to his PhD studies. The project enabled the Kenyan partners to establish a new research institute *Strategy Centre Africa* in Nairobi.

**Any particular contribution to capacity-building of women or marginalized social groups.**

The South African research team had one senior female researcher (out of two). The intern at the HSRC is participating in an institutional capacity-building programme which aims at empowering previously disadvantaged people. All local fieldwork organization and the household survey in the two localities were outsourced to female African consultants who run their own small consultancies. In the household survey local African students were used for the interviews, including females. The report-back meetings in South Africa have been received with much appreciation by the local
traditional leaders who often lack the information to justify their role in society. The findings of the first phase have been shared with a women’s organization in Ethiopia. The findings of the research in Somaliland are being used by PENHA in their community development work.

**Project management**

*Administration by the research organization*

*Pre-implementation phase*

Although the PennState University had initiated the research project, at the advice of the IDRC the HSRC as Southern partner accepted the function of overall administrator of the project, including administration of finances, project management, publications and reports, and communications with the IDRC. A separate MoU based on the IDRC/HSRC Memorandum of Grant Conditions was concluded between the HSRC and PSU. Both the PSU and HSRC obtained permission for the research from their respective Research Ethics Committees, while the country researchers obtained permission for the research from relevant authorities. The PSU retained the supervision of the research management in Somaliland, Ethiopia and Kenya.

Prof Mengisteab of PSU and Dr Hagg of HSRC co-managed the project; this partnership worked exceptionally well. The HSRC and PSU continuously kept the IDRC informed on progress and any problems that were encountered, of which the main one was the budget shortfall due to foreign exchange rates and unexpected higher costs of fieldwork in Somaliland, Ethiopia and Kenya.

Dr Hagg led the production of the Technical Progress Reports, while Ms Koba of the HSRC managed the financial part of the project and the production of the Financial Reports. Although the HSRC had the capacity for financial management at the required international standard, some delays were experienced due to strict governmental regulations and the duration of funding transfers from the IDRC. The challenges of these processes were largely resolved through prompt communications between all partners.

The HSRC and PSU consider the project management within the IDRC and the cooperation with programme managers in the IDRC as excellent and with great
understanding of the context of the project in Africa. IDRC programme managers provided flexible guidance throughout the project despite a change in staff in the programme. This guidance is highly appreciated by the project management team.

**Phases 1 and 2**

Prof Mengisteab participated in the fieldwork in Somaliland, Ethiopia and Kenya in both phases, and guided the development of fieldwork reports from these countries; he also summarized all findings for the three workshops. Dr Hagg managed the overall project through phases one and two, as well as the fieldwork in South Africa, with assistance by Dr Sithole and Mr Mbele. Dr Hagg managed the organization of the first two workshops (in South Africa) and the collation and publication of the workshop reports. Furthermore he organized the Round Table in Pretoria, together with Ntokoza Koba and Busiswe Mamba of the HSRC. He was also responsible for the fieldwork reports in South Africa. Dr Kieyah of the Kenya research team with the Konrad Adenauer Foundation office in Nairobi managed the third workshop in Nairobi.

The budget shortfall for the fieldwork created challenges for the management of the project, as additional funding could not be provided before the third financial and technical progress reports had been submitted, and the research institutions were asked to co-fund the shortfall. Yet, the additional funding was needed for the fieldwork that formed the basis for these reports. The PSU advanced the costs of the fieldwork in Phase Two through internal reorganization of the budget (deferring the hiring of one research assistant and absorbing the hiring of a second one) and was reimbursed in April 2011.

The HSRC contributed through cost-savings in labour and the household survey. The support in this process by the IDRC was professional and enabled the project team to conclude the research in a responsible way. Ultimately PSU could not appoint a student assistant full time, and the analysis of the fieldwork was done with a temporary assistant.

Dr Hagg negotiated additional funding to an amount of appr. ZAR190,000 from the Konrad Adenauer Stiftung (Southern Africa) for the first two workshops (some in kind) and together with the Kenya research team Euro 25,000 from the Konrad Adenauer Stiftung (Kenya).
Concluding Phase

Due to delays in the second phase fieldwork and in order to explore extensions of the project and consultations with stakeholders, the project team requested the IDRC for an extension of the project closure date, which was changed from 1 December 2010 to 30 September 2011. Prof. Mengisteab managed the production of the Outcomes Report, with support by Dr Hagg, while Dr Hagg managed the Final Technical Report with support from Prof Mengisteab.

Scientific management of the project

Project Design

Prof Mengisteab initiated the project design, with assistance by Prof Logan (PSU), during the submission phase to the IDRC and the planning phase. The Planning Workshop of 2009 was the key mechanism for discussions with partners and other stakeholders in the four countries. The HSRC directors and their delegates supervised the quality of the research output.

In both HSRC and the PSU permission for the research was obtained from the respective Research Ethics Committees.

Phases 1 and 2

Prof Mengisteab managed the scientific content and methodology of the project, in cooperation with Dr Hagg and in continuous consultation with the research teams in the four countries. Furthermore scholars and policy makers were used for the provision of scientific critique. Special thanks to Dr Debbie Budlender of the Community Agency for Social Enquiry for detailed comments on the South African fieldwork report for phase 2. By presenting the project to a number of fora, the project managers solicited comments and critique from other scholars in African studies.
Concluding Phase

Prof Mengisteab led the production of the Outcomes Report in cooperation with Dr Hagg. The first draft of this report has been submitted to IDRC in April 2011.

Technical and other support and administration by IDRC

Support on project management

The IDRC provided solid and timely support to the project managers, particularly Mr Mano Buckshi and Mss Elissar Sarrouh, Emma Naughton and Eileen Alma. Their prompt responses to enquiries and guidance on specific project problems are highly appreciated, particularly during the transition phase after the retirement of Dr Hagg and his subsequent appointment as a consultant. Furthermore Ms Njeri Karuru from the Nairobi office of the IDRC provided strong support and attended two workshops.

Support on financial management

Mr Mano Buckshi provided excellent and flexible guidance and support to the HSRC and PSU with regard to financial requirements, and the application for additional funding.

Funding support

The funding by the HSRC has enabled the research team to conclude valuable research, which in our view forms the basis for renewed interest in the role of traditional institutions in Africa. The allocation of an additional CAD35,000 to cover the shortfall in the fieldwork for Phase 2 is highly appreciated.

Impact

From the start the research project has been well-received in all four countries. Particularly traditional leaders were excited about the recognition of their value in the governance of their communities. Scholars and policy makers who attended the workshops agreed that the research was timely and important, as the issues of traditionality and Africanness in politics remain on the agenda, despite modernist trends.
in constitutional development. Both the South African and Somaliland Constitutions recognize the traditional institutions, but policy makers in both countries struggle to develop policies and models for reconciliation. Stakeholders at all levels, including those critical of traditional institutions, have expressed an interest in the Outcomes Report. Members of the Somaliland Giurti, in particular expressed their acute need for training in fine-tuning their institutional structures. Similarly South African traditional leaders have expressed a need for training. The book that is planned for publication can also make important contributions. Discussions have been initiated with the Law, Gender and Race Research Institute in South Africa for possible cooperation on follow-up research and policy input.

As the project has been introduced to stakeholders as an institutional investigation, and not a defense or critique of traditional institutions per se, both supporters and contestants of traditional institutions have expressed an interest in the findings of the research. In South Africa, the findings broadly concur with those of related project, such as the CASE study on women and land (Budlender 2011).

Traditional leaders, who often feel marginalized, have expressed strong support for the impartial nature of the project, and welcome the fact that this literature will be available for them to plan ahead. The points in the Outcomes Report that deal with gender and community-based institutions will be relevant to this group of stakeholders. Government officials in South Africa, Kenya and Somaliland have expressed an interest in the findings, and would like to continue discussions on the application of recommendations to policy making. This is particularly relevant to South Africa, where the Traditional Courts Bill has to be rewritten, and in Kenya where a new Constitution has been adopted. However, it is too early to make any statements on the impact of the project. A follow-up study of the current project with a focus on access to justice or diversity management may provide a direct entry point for including the research findings into the national debates. Dr Hagg has been requested to contribute to policy briefs on the issue of traditional institutions and traditional courts which are aimed at policy makers and parliamentarians in South Africa.
Overall assessment

As stated in the original project proposal the issue of traditional institutions of governance — beyond the narrower one of traditional leadership — has lately been recognized in the literature on post-colonial state-building in Africa, and probably outside the continent. Although the Western concept of democracy dominates the debates worldwide, African countries and multi-national African institutions such as the AU, the APRM, CODESRIA and OSSREA have expressed the need for African types of democracy. From our research it appears that communities with diverse cultures should be taken as the starting point rather than a universal interpretation of the democratic concept. At the same time such initiatives should coincide with national programmes for socioeconomic change. The project offered an opportunity to focus on traditional institutions in relation to modern ones, and the possibility of reconciliation in various forms. Millions of Africans live within traditional communities — the estimate for South Africa alone is 16 million, out of a population of 48 million. Their lives are affected by both national state institutions and traditional ones, with the latter often impacting significantly on access to justice, services and resources. As the research shows, the picture is extremely complex, but a number of trends seem to emerge in countries where the relationship between the two types of institutions is addressed in policy and practice. If only as a starting point to confront these complexities, and by analysing some of the trends, the project was more than worth its funding and the efforts of the research institutions involved.

The team believes that taking the findings into the national and continental debates may contribute to more practical and sustainable policies on traditional institutions as contributors to development in Africa. Based on the responses from stakeholders and the literature surveys, the research team strongly believes that the investigations should be continued, not only through research in more countries, but also involving policy makers and scholars in debates. A number of links are already in existence, such as the debates around the Traditional Courts Bill in South Africa, gender studies in a number of African countries, the increased role of women in post-conflict governments, debates on traditional institutions in the UN Economic Commission of
Africa and the AU, and the position of the African Union through its charters. All research team members have expressed their interest in remaining involved in possible extensions of the research, but warn about the need for resources to take this further, as African states tend to have different priorities for the limited resources and funding that are available.

**Recommendations**

Taking the findings and the above project assessment into consideration the team proposes that the research is extended and consolidated in several ways:

- Similar or related research in at least four other African countries, taking into account the need to include Francophone and Lusophone states.
- IDRC should look for institutional cooperation with other funders to extend the investigation, also in cooperation with the AU and other regional research and policy making bodies.
- IDRC should link its funded projects in Africa which have a relationship to traditional institutions, through the initiation and funding of fora in various countries between researchers who were/are involved in the research. Examples are projects on gender, post-conflict resolution, ethnicity and the promotion of democracy. Country fora should be encouraged to make concerted policy input and follow-through the discussions with the state.
## ANNEXURE A

### Workshop participation: Reconciling Africa’s fragmented institutions of governance

1. **Participants in the planning workshop 18-20 February 2009**

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ANNEXURE B

Phase One: Key Informant Interviews and Focus Group Interviews
Guidelines on the type of questions that should /could be asked

To ‘chiefs’, elders as KIs:
- Please, describe the process by which you became chief of your community.
- What do you think are the main duties and obligations of the chief to the community?
- What do you perceive to be the relationship between the chief and community members?
- How are decisions reached on matters that are important to the community?
- How are decisions made in the community on property disputes; marital disputes
- What do you perceive to be the role of men, women, youth in important decisions affecting the community?
- What are your opinions concerning the relevance of TIs (i) to rural communities, (ii) to the state?
- What types of services do TIs provide effectively and how do they go about doing this?
- In what areas of your life do you believe that you benefit more (i) from TIs (ii) from the government? Please explain.
- What do you perceive to be the relationship between the chief and the state government?

To government and NGO members KIs:
- What is the name of the organization or government agency you represent and what is your position and duties in that organization or agency?
- Please, describe what interest/stake your organization/agency has in governance issues in this Country/district (in Africa)?
- Please describe the nature and experience of your agency/organization in governance issues in this country (in Africa)?
- How would you personally, or your organization, describe/define TIs?
- Please elaborate on the factors that you consider most strongly in this description/definition.
- What different types of TIs do you personally or your organization know? Please elaborate on the factors that you consider most strongly in this differentiation.
- Please give me a brief summary of how you/your organization interpret the existing constitutional mandates of parliamentary ‘chiefs’.
- Please give me your broad impressions of the existing framework for incorporating ‘chiefs’ into parliament/government in this country. (If not relevant to country of respondent: in any other African country model with which you are familiar).
- How would you go about improving the present framework for incorporating ‘chiefs’ into parliament/government?

Parliamentary/non-parliamentary ‘chiefs’ as KIs:
- Please describe the process by which you understand ‘chiefs’ are selected/nominated to parliament/formal government.
- What do you think are the positive and negative aspects of this process?
- How would you go about improving this process?
- What do you understand to be the roles of ‘chiefs’ in parliament?
- How do you think these roles can be modified to benefit (a) the country; (b) the rural/traditional communities?
- What are your opinions about the role of ‘chiefs’ in state governance?
- How would you improve the existing framework for incorporating ‘chiefs’ in state governance?

**Judges, Police Officials, School Officials, Government Administrators**
- What is the broad mandate of your office (police, court, school) with regard to rural communities?
- Please describe the specific ways, if at all, in which your office interacts with TIs in fulfilling these mandates?
- Can you share any official records you might have pertaining to the use of your services by local communities?
- Please comment on whether you believe local communities make full use of the services you provide.
- Please comment on whether you personally believe or your records indicate that the use of your services is affected by ethnicity, gender, age, education, income.

**Rural Communities on their level of reliance on TIs versus government services (may also be used directly for the focus group survey)**
- What is your understanding of TIs?
- I am going to name an issue and I want you to explain whether you use TIs for each and why:
  - Marital dispute
  - Conflict with your neighbor
  - Property rights
  - Theft of your property
  - Destruction of your property
  - Financial problems
- Does the government provide services in these same areas? Please explain
- Please explain how and why you and your household decide use a TI versus the government
  - for the services we discussed above.
- If the government provides a service that the TI does not (school, health, water, electricity)
- Please explain whether or not you and your household use them.
- Please explain whether or not you would prefer the government to turn over all services to TIS.
ANNEXURE C

Second Phase Questionnaire

SECTION 1: Geographic Location (For enumerators to complete):

Country:______________

Name of Case:______________

Name of Interview site (village/town):___________________________

Interview site (Urban/Peri-urban/Rural):___________________________

Distance of interview site to nearest town (range?):___________________________

Type of traditional governing institution(s) in the area: Chiefs (Aqils); Sultans; elders, other

___________________________

SECTION 2: Socio-demographic attributes of respondents

1. Age range: a. 18-28 b. 29-39 c. 40-50; d. 51 and above

2. Gender: a. male b. Female

3. Marital status: a. not married b. married c. divorced d. widowed

4. Size of household: __________________

5. clan/ethnic affiliation:___________________________

6. religion:___________________________

7. House Hold’s major source of income___________________________

8. education range: a. illiterate b. literate c. elementary school
d. high school e. post-high school

9. occupation: __________________

___________________________
SECTION 3: Conflict Avoidance/Resolution: Utilization/Participation in TI and MI of Conflict Resolution

10. Has your community been involved in any violent conflict with neighboring communities or ethnic groups?
   a. Yes,  
   b. no.

11. If yes, was the conflict about
   a. land,  
   b. water,  
   c. cattle theft,  
   d. other
   Specify____________

12. If there was conflict, were weapons used?
   a. Yes,  
   b. No  
   c. If Yes what kinds________________

13. If there was conflict, was it addressed/resolved by
   a. traditional authority,  
   b. religious leaders/courts  
   c. police,  
   d. government court.  
   e. not resolved yet

14. If conflict arises within the community, do people mostly go to
   a. traditional authority/court  
   b. religious leaders  
   c. relatives,  
   d. police,  
   e. government court.

15. Have you ever been involved in a conflict within your community? /courts
   a. yes  
   b. no.

16. If you have been involved in a conflict, do you go most of the time to:
   a. traditional authority/court  
   b. religious leaders  
   c. relatives,  
   d. police,  
   e. government court.

17. Are conflicts within your community more effectively resolved by
   a. traditional authority/court  
   b. religious leaders  
   c. relatives,  
   d. police,  
   e. government court.

18. Does your community take conflicts such as rape, adultery, theft, marital problems, and murder to?
   a. traditional authority/court  
   b. religious leaders  
   c. relatives,  
   d. police,  
   e. government court.

19. Have you ever participated in resolving conflict within your community?
   a. Yes,  
   b. No.
20. In resolving conflicts between your community and other communities, would you say that the traditional system compared to the modern system is
   a. more effective,  b. less effective,  c. no difference

21. In resolving conflicts within your community would you say the traditional system compared to the modern system is
   b. more effective,  b. less effective,  c. no difference

SECTION 4: Level of utilization/Participation in TI and MI of Decision Making

22. Does your community have traditional leaders with authority?
   a. yes,  b. no

23. If yes, are traditional leaders in your community
   a. hereditary,  b. elected by the community,  c. other

24. If traditional leaders are elected, who participates in the selection process?
   a. only elders,  b. all men in the community,
   c. men and women in the community,  d. men women and youth in the community.

25. Have you ever participated in the selection/election of leaders/elders
   a. Yes,  b. No.

26. Are decisions concerning your community made by
   a. chiefs  b. elders,  c. by an assembly of all men,
   d. by an assembly that includes men and women

27. Do you participate in your community’s decision making process?
   a. Yes,  b. No.  c. occasionally

28. Does your community exclude anyone from participation in decision making?
   a. Yes,  b. No.

29. If yes, the excluded include:
   a. Women,  b. youth,  c. minorities,  d. other__________.

30. Can a chief (Aqil) be poor and still serve as leaders?
   a. yes,  b. no.

31. Can elders be poor and still serve as leaders?
   a. yes,  b. no.
32. **Does your community participate in government sponsored activities?**
   a. Yes  
   b. No

33. **In which of the following elections have you participated?**
   b. National elections,  
   b. local elections,  
   c. none

34. **Do you have any particular political party that you support?**
   a. Yes,  
   b. no.

35. **If yes, the reason you support the party is because**
   a. The leader is from your area  
   b. The leader is from your ethnic group or religion  
   c. The leader has helped your community  
   d. Other; specify____________

36. **Overall do you think government officials or traditional leaders address the problems and concerns of your community better?**
   a. traditional leaders,  
   b. government officials.

37. **Have you participated in any community development activity?**
   a. yes,  
   b. no.

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**SECTION 5: Level of utilization/Participation in TI and MI of Resource Allocation**

Resource Allocation, Property Rights and Inheritance, Services (RAPS)

38. **Are resources, such as farm land, grazing land, and water in your area allocated by**
   a. elders,  
   b. government officials,  
   c. inherited,  
   d. other;  
   Specify____________.

39. **Who owns/controls the land in your community?**
   a. the government,  
   b. the chief,  
   c. the community,  
   d. individuals.

40. **Do you own land?**
   a. yes  
   b. no

41. **If yes, how did you obtain your land?**
   a. Inherited from parents,  
   b. my chief/community allocated it to me,  
   c. I purchased it,  
   d. other; specify____________

42. **Can land be sold in your area?**
   a. yes  
   b. no.

43. **Has the government taken away any land owned by your community?**
   a. yes  
   b. no.
44. In your community is everyone who needs land able to obtain land? 
   a. yes, b. no.

45. Does the community give land to women in your area? 
   a. yes, b. no.

46. Are there land conservation measures in your community? 
   a. Yes, b. no.

47. If yes, what measures are taken for land conservation? 
   a.________________________ b.________________________ c.________________________

48. Do you think that conservation is important for the livelihood of your household and community? 
   a. Yes b. no

49. If yes, please explain why? _________________________________

50. Is tree planting practiced in your community? 
   a. yes, b. no

51. Do people in your community engage in selling charcoal? 
   a. yes b. no

52. Do people own trees and medical plants in your community? 
   a. yes, b. no.

SECTION 6: Gender Relations & Women’s Rights in TI and MI

53. In your community do women participate in decision-making? 
   a. yes, b. no.

54. If yes, can women serve as
   leaders (chiefs) a. yes b. no
   elders a. yes b. no
   Participate in meeting a. yes b. no
   Participate in distributing land a. yes b. no

55. In your community do women inherit property from their parents? 
   a. Yes, b. no.
56. In your community do women inherit property from their husbands?
   a. Yes,     b. no.

57. Is bride price paid for marriage in your community?
   a. yes,     b. no.

58. If yes, does the husband reclaim the bride price in case of divorce or death of the wife?
   a. yes, all the time     b. no, all the time
   c. yes, but not when there are no children
   d. other conditions___________

59. Is property divided up equally between the spouses if there is a divorce?
   a. yes,     b. no.     c. woman gets nothing
   b. d. women gets something but not equal to the man’s

60. Who gets custody of the children if divorce takes place?
   a. husband,     b. wife,     c. other

61. Is polygamy practiced in your community?
   a. yes,     b. no.

62. Do you think polygamy is good or bad?
   a. good,     b. bad.

SECTION 7: Level of utilization/Participation in TI and MI with respect to General Service

63. Who conducts marriage and funeral services in your community?
   a. the chief, b. elder,     c. religious leaders,     d. other

64. Are health services in your community provided by
   a. government clinic or hospital,     b. traditional healers,
   c. no service within 50 kilo meters.

65. Is there circumcision ritual in your community?
   a. yes,     b. no.

66. If there is circumcision, who provides the service?
   a. the chief, b. an elder man,     c. an elder woman,     d. other.

67. Are both boys and girls circumcised in your community?
   a. yes both, b. only boys,     c. only girls

68. As a member of the community, do you pay for any of the services you obtain from the community or traditional leaders?
   a. yes,     b. no
69. If you pay, is the payment in
   a. cash,       b. material,       c. other; specify__________

70. Does your community participate in any development programs?
   a. yes,        b. no

71. If yes, who organizes the participation?
   a. the chief,  b. elders,         c. religious leaders,  d. other