Striking a **balance** between the **old** and the **new**

Most African countries are governed by two systems: formal state-sanctioned (modern) institutions of governance; and traditional institutions that mostly govern rural populations. The fragmentation of institutions has created a number of serious socioeconomic problems. How can this be solved? **KIDANE MENGISTEAB** and **GERARD HAGG** report on a study that tries to do exactly that.

The study – a partnership between the HSRC and Pennsylvania State University – was conducted by a consortium of researchers from South Africa, Ethiopia, Kenya and Somaliland.

It investigated the following: firstly, the structure of traditional authority systems and the extent to which African populations rely on these; secondly, how traditional institutions overlap with or deviate from democratic principles; and thirdly, how aspects of traditional institutions might be reconciled with formal institutions to create coherent and effective systems of institutions in Africa.

Why is fragmentation a problem? African countries have been operating under fragmented institutional and socioeconomic systems since colonisation, with no clear vision of how to bridge this divide. The political economies of many of them seem to be dysfunctional. The most serious socioeconomic problems associated with lasting institutional fragmentation are the following:

POLICY INCOHERENCE

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 neglect the plight and interests of the populations in the traditional sector, condemning that segment of the population to deprivation and poverty. By so doing, they fail to facilitate the transition which would harmonise the fragmented economic and institutional systems. Under these circumstances the transitional fragmentation is transformed into a permanent condition.

WEAK STATE LEGITIMACY

A critical outcome of institutional fragmentation and the consequent neglect of the traditional sector is the institutional detachment of the state from the overwhelming majority of the population and the loss of legitimacy,

placing the state at risk. 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 because the popular foundation of the state is weak.
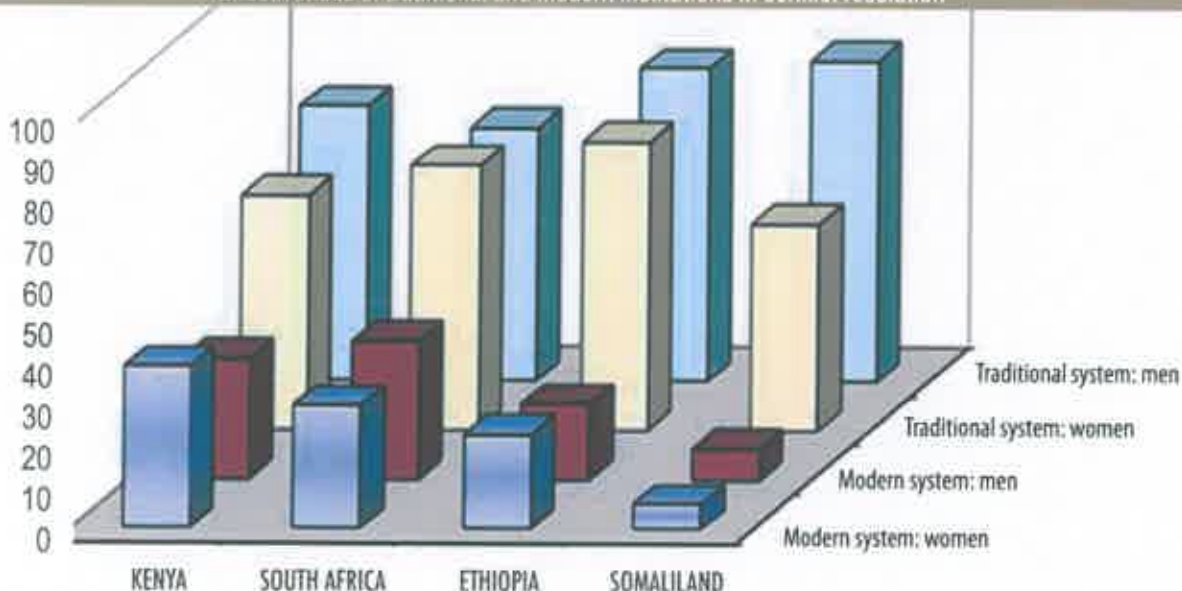
GENDER RELATIONS

Marginalisation of the traditional sector tends to disproportionately hurt women and other vulnerable segments of society. Women's rights are hard to safeguard without transforming their position in the labour sector, since their marginalisation in that sector is largely determined by the socioeconomic system.

ETHNIC CONFLICTS

Often the marginalisation of the traditional sector tends to disproportionately impact on certain ethnic groups for a variety of reasons. ►►

Effectiveness of traditional and modern institutions in conflict resolution

Traditional system: men
Traditional system: women
Modern system: men
Modern system: women

KENYA SOUTH AFRICA ETHIOPIA SOMALILAND

GIVING CONSENT A respondent from Giyani, Limpopo, completing the consent form for the household survey for the project, Reconciling Africa's fragmented institutions of governance.

The disparities have propelled ethnic conflicts in many countries. Ethiopia and Kenya are two countries in our study that are vulnerable to such conflicts.

NATION-BUILDING AND DEMOCRACY

The combined effect of the above-identified conditions has also undermined peaceful nation-building and democratisation. There is no doubt that rural communities participate in elections, albeit at low levels, as our findings reveal. However, their participation in the electoral process has not enabled them to influence policy and overcome their deprivation. Under such conditions, the democratisation

effort in much of Africa has remained rather shallow, limited to basic elections which are often marred by fraud and rigging, and often followed by violence, as in Kenya and Ethiopia.

METHODS AND FINDINGS

The study combined an extensive literature survey, interviews with key informants, focus group interviews and random household surveys in South Africa, Ethiopia, Kenya and Somaliland.

The findings revealed that traditional institutions in all four countries are resilient, despite efforts in many states to remove or

ignore them. Traditional institutions persist for a number of reasons, such as sharing the same cultural and historical roots as their communities; transaction costs to use them are low; state institutions, for example judicial services, are weak or difficult to access; and the high success rate and speed of traditional institutions.

Traditional institutions are also widely trusted by 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 punishing guilty parties. The majority of respondents (both men and women) perceived traditional institutions

to be more effective in resolving conflict than modern ones (Figure 1 on page 11).

The table below shows that traditional institutions are mostly equally effective in addressing community concerns.

On the downside, traditional institutions are challenged by liberal democratic representatives for their perceived patriarchal despotism and lack of gender equality. The research found that traditional institutions tend to treat women unequally to men. In spite of this, many female respondents perceived the traditional institutions as more effective in addressing community problems than modern state institutions.

LESSONS LEARNT

Reconciliation approaches are more likely to succeed when they take into account those grassroots approaches already underway, and reinforce them with state recognition of customary law, especially with respect to land ownership.

Here are some of the lessons learnt about approaches to reconciliation:

▶ Building bridges between the two systems and possibly integrating them implies some similarities to anchor them. But there are 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. Applying living customary law 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 organisations in court cases; high costs of contestations of state institutions; levels of literacy and education among communities; and the impact of mass media and global trends.

> African countries have been operating under fragmented institutional and socioeconomic systems since colonisation, with no clear vision of how to bridge this divide.

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, and needs to be located within the nation-state discourse within the African context. Those democratic principles that are inherent to traditional institutions should be recognised. The concepts that deal with reconciliation use specific language that has to be taken into account when reconciliation is proposed and implemented.

Traditional communities and their subgroups use language structures that deal with the complexities of their livelihoods. Often such language is lost in the more academic, legal and policy-oriented documents. This could result in generalisations which may not fit the specificities within particular communities. Language of reconciliation and terminology should thus be based on shared understanding.

The implementation of Constitutions is regularly tested through court cases, which guide the way forward. 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.

Where substantial cultural differences exist in a country, the state may need to remain flexible in the reconciliation of traditional institutions themselves in order to achieve integrated national legislation.

The development of reconciliatory institutions should thus be viewed as an ongoing process, combining practices and political constructs.

A framework for reconciliation should make provision for principles of reconciliation, consensual policy-making processes, appropriate structures and organisations, and universal participatory processes. ◄◄

Country	Traditional authorities are more effective	Government authorities are more effective
Kenya	49%	51%
Ethiopia	50,7%	49,3%
South Africa	39,4%	46,2
Somaliland	77,6	15,3

review

Our ever-expanding weight issues
Super-sizing SA?

Learning from experience
INVESTING IN OUR CHILDREN'S FUTURE

Clashing systems of authority
Modern vs traditional