

Reconciling Africa's fragmented institutions of governance: a new approach to institution building

Report on the First Planning Workshop

Human Sciences Research Council and Pennsylvania State University

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Executive Summary

Institutional systems in Africa remain fragmented, despite over four decades of institution building, resulting in de-linking the state from society, failure to coordinate resources with broad social interests and exclusionary policies and practices. The current project 'Reconciling Africa's fragmented institutions of governance' aims to explain such fragmentations and their sources, analyse their impact on state building and democratization, and to determine attributes of both traditional institutions and modern ones. Ultimately the project will examine how traditional institutions and modern ones can be reconciled or fused in order to promote democratic governance and improve the plight of vulnerable segments of society. In this way the project aims to contribute to existing studies on the limitations of informal institutions, legitimacy of chieftainship in democratic states, and legal pluralism in African countries.

Conceptually the investigation will address issues that deal with the nature of the state, citizenship and power; legitimacy among citizens and in the global context; traditionality in its historical development and recent revival; democracy in its various historical and contemporary forms, the concept of good governance, and the potential of this type of research to make a difference in real life of communities.

Realising that African countries should always be studied in their socio-historical and economic context, the study will address rural and urban situations, recent institutional developments in relation to civil society and the state; the current relationship between traditional leadership and modern governments; and the forces driving the resurgence of traditional institutions.

Institutions can only operate if adequately resourced. As traditional institutions often depend on the state, their interrelationship can become compromised, and the effectiveness of traditional institutions undermined. In such situations citizens may use both systems of governance, 'shopping for good personal value'. The study hopes to find rationals for such behaviour under specific circumstances.

The project applies a case study format involving Somaliland, Ethiopia, Kenya and South Africa, with 2-3 research sites each. Data collection will be done through an extensive literature survey, and first phase field research involving key informant interviews and focus group interviews. The South African workshop provided for an in-depth discussion of interview methods in order to create coherence between the four country cases and specific research sites, while retaining attention to the local contexts. The interviews should deliver data on the nature of traditional institutions, people's adherence to these institutions and the relationship between the two institutional systems in specific localities. Analysis of the first fieldwork phase will form the basis for an extensive survey involving about 100

respondents per research site. The final quantitative and qualitative analysis will be used to determine the nature of traditional institutions, applying a participation activity index, a measurement index and an index for estimating conflict resolution activities.

The workshop offered representatives from the four case study countries to present their national context and offer their selection of research sites for scrutiny by participants in the workshop. In all cases localities were selected which offer a variety of interactions between traditional institutions of governance and modern ones, with varying dominance of any of the two categories.

The project makes provision for the dissemination of the research findings through reports in print and on the internet, report backs through forums in which policy makers, academics, civil society and communities will participate. It is envisaged that the project will empower local stakeholders that were involved in the research (organizations and communities), as well as officials, policy makers and students through the provision of workshops, seminars, training courses and reading material.

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Table of Content

Background	6
Objectives of the South African planning workshop	6
Day one: Introduction to the project and methodology	7
Overview of the nature of the project	7
Implications of institutional incoherence	8
Working proposition underlying the project	9
Uniqueness of the project	10
Discussion	11
General discussion on the nature of the project and its relevance	12
General approach and methodology of project	16
Data collection	17
Data analysis of first phase	17
2 nd phase of field research	18
Dissemination of project results	19
Day two: Planning the first phase fieldwork	22
Country presentations	
Ethiopia	22
Somaliland	27
Kenya	32
South Africa	35
Discussion	37
Overview and operationalization of field methods for 1 st phase of project	39
Task 1: Literature and archival survey	39
Task 2: Data collection on the nature of TIs	40
Task 3: Data collection on existing TIMG models	40
Task 4: Collection of data on community use of modern sector services	41
Task 5: Collection of data on the reliance of communities on TIs	41
Conceptual and methodological considerations of data collection approaches	42
Discussion of fieldwork methodology	43

Day three: Finalisation of planning and co-operation	46
Cooperation opportunities	46
Funding opportunities	47
Fieldwork plans for case study countries	47
Time frame	48
Closure	50
Addendum A: Workshop programme	51
Addendum B: List of participants	53
Addendum C: Fieldwork methodology	55

Background

In response to calls for proposals by the Canadian International Development Research Programme (IDRC) in 2007, the Center for Land and Community Development Studies at the Pennsylvania State University (PSU) submitted a project dealing with the relationship between traditional institutions of governance and modern ones in African countries. With the Human Sciences Research Council (HSRC) of South Africa as the South partner, the proposal was selected for funding in 2008. Four countries were selected as case studies, being Somaliland, Ethiopia, Kenya and South Africa. The HSRC is responsible for the South African case study and PSU for Ethiopia, Somaliland and Kenya. The project includes workshops dealing with fieldwork planning, data analysis and final report writing

This report on the First Planning Workshop includes an overview of the project, presentations on the methodology and case studies, and relevant discussions.

Objectives of the South African planning workshop

The objectives of the planning workshop were to

- discuss the project methodology and applications to specific country contexts;
- formulate a framework for desk research of localities in the project;
- design a detailed fieldwork plan for the first phase, including questionnaires, analytical issues, organisational aspects;
- finalise contractual and organisational issues; and
- discuss opportunities for collaboration with local organisations.

The workshop programme is attached as Addendum A. The workshop was attended by representatives from the four case study countries and from relevant sectors and institutions, as critical friends and potential partners (Addendum B)

Day one: Introduction to the project and methodology

Welcome and introduction of participants

On behalf of project team Dr. Gerard Hagg from the Democracy & Governance Research Programme (D&G) in the HSRC welcomed all participants and provided a short background to the project.

Dr. Werner Böhler, Resident Representative of the Konrad Adenauer Foundation (KAS) in South Africa, welcomed the participants on behalf of KAS. He highlighted the mission and interests of KAS in the promotion of democracy with special attention to diverse types of democratization. KAS was particularly interested in the relationship between traditional institutions, such as the chieftainship in Africa, and the basic human rights of individual residents that are essential in democracies. KAS promotes the role of the state in facilitating the participation of citizens and civil society, yet with respect for the special characteristics of traditional authorities. The KAS consistently aims to support initiatives that promote democracy, and particularly the issues of communication and dissemination of research findings (www.kas.de).

Dr. Kwandiwe Kondlo, Executive Director, Democracy & Governance Research Programme (D&G) in the HSRC welcomed all participants on behalf of the HSRC. D&G is an important research unit that deals with issues of democratization, governance, justice and culture. He expressed his appreciation for the commitment of the US and African partners in the research, and invited other participants to become involved.

The participants introduced themselves and their work background, and indicated their interest in this specific project.

Overview of the nature of the project

Dr Mengisteab highlighted the following aspects of the project as an introduction to the discussions:

An *institution* is defined as an enduring collection of formal laws and informal rules, norms, customs, codes of conduct, and organized practices that shape and govern human interaction. Institutional

compatibility exists when formal and informal institutions complement each other and when they promote stability and consistency in collective life. When formal and informal institutions are incompatible with each other, social instability is likely to increase.,

In part due to the manner in which the African state was formed, formal and informal institutions have not evolved in a coherent manner. Three types of institutional systems can be identified in Africa. *Formal institutions* which are state-sponsored institutions, mostly inherited from colonialism and imported. Such institutions may also include informal state institutions. e.g. evolved from corrupt relationships and integrated into the formal institutions. *Traditional* (formerly formal) *institutions* are pre-colonial forms of governance with different forms of traditional authority systems. Such traditional institutions may be centralized or decentralized systems. *Informal institutions* are societal norms that vary by religion, ethnic identity, mode of production etc.

A number of sources of institutional fragmentation have been identified in earlier research. Different *pre-colonial governance systems* have been in existence for long, some being hierarchical, others more decentralized, being village, kinship or age-group systems. Many of these pre-colonial systems have been either destroyed or incorporated by colonial systems of governance. Referred to as *colonial legacies* they often are a mixture of European and African systems, designed according to the needs and aspirations of colonial powers and socially embedded through the Western dominated *educational systems*. Political fragmentation has often been increased by particular *modes of production and economic fragmentation*, such as the incompatible relationship between nomadic lifestyles, peasantry and modern systems. *Religious and ethnic differences* contributed to fragmentation, particularly when specific belief systems were excluded in identity politics. Similarly, the promotion of specific institutions of governance was often based on specific *ideologies* which were adhered to due to the material benefits for those who were in power. Lastly, different institutions developed without taking into account other institutions in society, resulting in *incoherence of institutions*: Regardless of the sources, institutional systems in Africa remain fragmented and incoherent, despite over four decades of effort at institution building.

Implications of institutional incoherence

Incompatible institutions lead to the simultaneous existence of different property rights laws and customs, which during contestations may lead to conflict. Incoherence usually results in different

notions of rights and obligations, or the interpretation thereof, which may lead again to discrimination, exclusionary practices and conflict. Furthermore, incoherence often creates different socioeconomic spaces and citizenships, characterized by exclusion, corruption and patronage. Incoherent systems, again, result in the application of different ways of conflict resolution and decision-making, which may waste costly resources and deepen conflictual relationships rather than sustainable peace.

Institutional fragmentation directly impacts on the nature and behaviour of the state, often de-linking the state from society. Such states fail to coordinate resources with broad social interests, leading to exclusionary allocation of resources and competitive attitudes among sections of society. The state then loses legitimacy among the latter groups and society becomes difficult to govern.

Institutional fragmentation has dire implications for the state itself. State-building (nation-building), which entails creating a community of citizens governed by a shared system of institutions, is easily hampered by institutional clashes. Institutional fragmentation could indeed be viewed as a manifestation of low levels of state building. Resulting institutional fragmentation and clashes usually lead to social conflicts, undermining democracy.

Deterioration of institutional coherence usually leads to a vicious circle, in which institutional fragmentation and incoherence lead to institutional clashes and social conflicts, which lead to the hindrance of state-building and democratization, which in turn lead to continued institutional fragmentation.

Working proposition underlying the project

The project is partly based on a working proposition that the reconciliation of institutions can serve as a venue towards reconciling the divided political spaces and divided citizenships, thereby mitigating conflicts, promoting institutional trust and legitimacy, and facilitating democratization of governance.

Taking this starting point, the broad goals of the project are to

- explain the fragmentation of Africa's institutions,
- explain the sources of the fragmentation,
- explain how institutional fragmentation hinders the processes of state-building and democratization

- explore the characteristics and dynamics of traditional institutions (TI), their resilience, how widely and deeply they are utilized;
- determine their attributes, especially in the areas of (a) property rights and allocation of resources, (b) prevention and resolution of conflicts, and (c) participation in the process of decision making in general and participation of women in particular.
- To examine if the attributes of TIs (a) overlap with and strengthen the principles and practice of democratic governance; (b) can contribute to the development of mechanisms for prevention and resolution of conflicts; and thereby (c) enhance a peaceful process of state building.
- To explore how the attributes of TIs can be reconciled/fused with modern institutions in order to create a coherent system of institutions; Somaliland is an excellent example of such a fusion;
- To examine how the fused institutions can (a) enhance democratic governance and peaceful state building, and (b) how it can be used to improve the plight of vulnerable segments of society, including peasant farmers, pastoralists, and women.

Uniqueness of the project

A number of research initiatives have investigated issues dealing with traditional institutions in Africa, some in relation to democratization, primarily within the disciplines of ethnography, anthropology and law. This project fills a gap in the reality that there is very little comprehensive study of (1) the fragmentation of Africa's institutional systems, (2) the repercussions of the fragmentation, (3) the potential implications of institutional reconciliation, and (4) how reconciliation may be achieved. Existing studies can essentially be classified into three groups.

One group of literature studies Africa's informal institutions in a very narrow sense, limiting its scope to issues of state corruption and ignoring the informal institutions of traditional governance that are widespread in Africa. Traditional systems of property rights, especially land ownership, exist side by side with the modern system of ownership. African traditional systems of dispute adjudication and traditional courts co-exist with modern legal systems and courts. Traditional decision-making systems, especially at the level communities, also differ notably from the modern systems of decision-making. These traditional systems are largely informal since they are rarely sanctioned by the state but they govern the lives of large segments of the African population and can hardly be ignored, due to the

implications of their existence. This project aims to explore the dynamics and potential contributions of these institutions and explore how they might be reconciled with the modern institutions of democratic governance.

A second group of the existing literature deals with traditional authority systems with heavy concentration on the merits/worthlessness of chieftaincy systems in modern states. This strand of the literature rarely deals with the non-chieftaincy (decentralized) systems that are common in many African countries. More importantly, it does rarely address the broader institutional mechanisms of traditional systems and how they might be reconciled with the modern systems if they are found to be relevant.

A third group of the literature examines legal pluralism in African countries. This literature debates whether traditional legal systems and customary property rights should be recognized or not. It rarely examines the political and economic implications of legal pluralism and what its implications are on state-building and the process of democratization. It also hardly deals with how the two systems can be reconciled. Recognition of legal plurality is not enough for promoting social stability unless the recognition leads to reconciliation of the parallel systems.

Unlike many existing studies, this project aims to explore the problems associated with institutional fragmentation and the dynamics and relevance of the traditional institutional systems, which are often neglected by governments. It also explores how the relevant aspects of the traditional institutional systems can be reconciled with the modern systems in order to create a coherent system of institutions, which can promote democratic governance and stability.

Discussion

Prof. Mwesiga Laurent Baregu, discussant for this session, highlighted a number of underlying issues that need to be addressed. The first one is the *conceptual framework* that clarifies meaning and application from the outset. Issues of institutions and governance are directly related to the issues of the state, citizenship and political power. There is a need to theorize the state and political power, e.g. in relation to class theory or power structural relationships. In addition, the project needs to explicitly discuss the notion of institutions, differentiating between the organization and operationalisation of institutions.

The project should also pay attention to literature on the failed state and its relation to society. Similarly, the concept of liberal democracy as inclusive and participatory needs to be clarified. An important issue in this regard is legitimacy, which is generally ambivalent, e.g. presidents trying to achieve legitimacy by being appointed as a tribal chief. Democracy is not the same as legitimacy. Legitimacy through electoral systems and representative democracy, is but one type, as against participatory democracy. The state may also have long lost its legitimacy among its citizens while international recognition persists. For example, the post-2007 With regard to justice, particularly transitional justice, one should differentiate between *retributinal* and *restorative* justice. Discussions around governance should take into account issues such as political authority, accountability, distribution of power, devolution and deconcentration. Socio-economic systems, in which institutions are embedded, are value-laden, with regard to control of critical resources (water, land), mobilization of people, loss of vitality, coercion, colonial models, and permanent clashes between government appointed leaders and elected leaders.

General discussion on the nature of the project and its relevance

The presentations were followed by a general discussion on the nature of the project and its relevance. In an attempt to map the complexity of institutions and their contexts, a list of key issues in the conceptualization of this type of project was drafted and then discussed under three main categories: conceptual clarification, contextual clarification and functionality or implementation

The need for conceptual clarification:

The first issue that requires conceptual clarification was the nature of the state. What is the state? Is there an agreed typology that the project could use to differentiate between the various case study countries? D&G is currently investigating this matter from a theoretical point of view. Furthermore, each state has a unique history that should be unpacked, if the role of TIs be properly understood. How does the project provide for diversity in Africa, for example, the local-specific type of colonial and post-colonial government? Is it possible to talk of ‘African’ institutions, while Africa is not a homogenous entity (“Africa is not a country”). With the increasing acknowledgement of legal pluralism in Africa, and the view of law making as a socio-cultural local-contextual process, is it possible to generalize and formulate a coherent theory for the continent?

In order to understand concepts such as ‘traditional institutions’, the concept of traditionality must be unpacked. Hobsbawn and Ranger’s analyses of invented traditions are still relevant. Yet, pre-colonial institutions of governance did exist, and often had democratic characteristics. Taking into consideration the complexities around traditionality, such as their evolving nature and the impact of post-colonial ideologies, the relationship between traditionality and indigeneity, homogeneity and diversity, and form and dynamics should be taken into account when analyzing countries.

In a similar way there is a need for the clarification of the concept *democracy*. For example, what does democratization mean in terms of state building? Democratization, in terms of the project, could be defined as the increasing capacity of people to control the state. The concept of hereditary leadership (rather than elected ones) should be questioned, conceptually and in practice. For example, many chiefs struggle to function as leaders in modern society. Participation and control in decision making would be a key aspect in democracy. Project team members emphasized that the project does not assume a single type of democracy, as TIs often show valid examples.

The question was raised whether the promotion of democracy could be equaled with the search for good governance, i.e. respecting citizen rights? If there is a relationship, then what is good governance? History shows that good governance is not only found with democracy, for example, in Japan and Malaysia which developed into modern states while retaining traditional institutions. Democracy can be a type of good governance, but research in Ghana, Botswana and South Africa seems to point to the need for a strong state to allow for decentralization and inclusion of TIs. A related concept is the one of legitimacy, particularly in relation to the functioning of institutions of governance. Legitimacy deals with acceptance and consent by stakeholders, in this case the citizenry. The problem is that legitimacy in Africa is often established as interpreted by those in power, e.g. Haile-Selassie or Mengistu. For example, governments may be legitimized in international institutions, while local legitimacy is challenged. Legitimacy of both the state and traditional institutions is often challenged or resisted. Such situations usually relate to views on justice and fairness among citizens.

There is also a need to define and unpack the nature of society in relation to the state and institutions. Societies can be defined in terms of race, ethnicity or class. Often those in power decide on the nature

of society when it refers to policy making. Question is what are society's self-definitions? What about stereotyping, exclusion, xenophobia, etc. among members of society?

Institutions of governance deal with citizenship. Mamdani's differentiation between subject and citizen is not necessarily valid anymore. Increasingly we find multiple citizenships, at least between rural and urban locations. The miner in the city may be a community leader in his hometown. Who defines the subject when relationships between the state and citizen are multi-faceted? In addition, subjects are often not passive victims of other people's authority, but usually negotiate or manipulate their subordinate position to ensure advantage over the authority.

Because TIs and (liberal) democracy exist, must they be reconciled? If so, reasons for reconciliation should be provided, as there are other relational characteristics (competition, coincidence). In this regard the researchers should be aware of the difference between concept, policy and reality. Even when concepts are clear, there is no automatic acceptance by policy makers or politicians. For example, even if the research indicates the need for reconciliation, the state may refuse to implement. Furthermore, if reconciled, how does this relationship affect the reconstitution of the state? What systems emerge when the two types of institutions are reconciled, and what is the influence of context in this regard?

The need for contextual clarity:

Literature points to the importance to study African states in their context, not as isolated entities or stereotypes. The project seems to address mainly rural contexts (land?). What about urban and metropolitan areas where there are mixtures of the two types of institutions, and perhaps some hybrids? This is particularly relevant to situations where citizens live in more than one location due to migrant labour, etc. Increasingly rural institutions have evolved into hybrid organizations in urban settings, e.g. adherence to tribal customs in the Durban metropolis. In addition, situations exist where the traditional chief lives in an urban area, outside his traditional community, yet he retains his authority over local issues.

Citizens' views of institutions are often determined by the knowledge that is available. The project must take into consideration the production of knowledge, and the way leaders may use Western knowledge

production systems to promote their modern ideas, which are then often characterised by Western ideologies.

In view of the historical development of institutions, and their ongoing evolution, the question can be raised whether it is important that modern institutions of governance have been 'imported'. Should the question be: if they have been Africanised, are they workable and appropriate for current challenges in governance? Similarly, the question is whether TIs are workable, even if based on colonial forms of governance or nostalgia. Societies tend to find pragmatic solutions to governance challenges. On the other hand, as was mentioned above, leaders may have an interest in manipulating and retaining TIs for their own purposes. It is therefore questionable whether one will find the political power and will to initiate institutional reform. Indeed, many states are too weak to control their geographical and political space. In other states, the political leadership benefits from a disorganized system of governance.

TIs and state institutions do not function outside the reality of socio-economic systems, which impact on institutions and their ability to function. For example, lack of resources impedes the functioning of both types of institutions. The state may ensure its dominance by preventing TIs from benefiting from the socio-economic system or by making TIs dependent on the state, e.g. by remunerating chiefs. The context is even more pertinent taking into account global phenomena, like the financial crisis of 2008-9, which has major impacts on the fiscal situation in all African countries, and thus on their ability to reform. On the other hand, the deterioration of state capacity may lead to a resurgence of TIs in order to stabilize society. An important factor in this regard is the high prevalence of spiritual or religious drive of TIs. For example, chiefs are often the mediators between ancestors and the community. Yet, it must be acknowledged that Western liberal democracy has a strong Judaeo-Christian foundation which is shared with many African societies through churches that originated from Western ones, and often remain part of them, e.g. Roman Catholic Church, evangelical churches.

Clarity on functionality and implementation:

Even when conceptual and contextual issues have been clarified, there is no guarantee that reconciliation of the two types of institutions is implemented. A number of reasons for dysfunctionality of the state and TIs were mentioned.

In economic terms, institutions can only function when they have the necessary resources. Where do TIs obtain their resources, e.g. the chiefs whose land was expropriated under apartheid in South Africa? Strong states can allow TIs to operate while keeping them subordinate to centralist policies. For example, the South African traditional leaders are protected in the Constitution, but their authority largely made subordinate to the elected leadership.

TIs may be vehicles through which citizens opt out of the formal system when it becomes dysfunctional. Special attention is required for so-called 'institution shopping' by citizens in order to maximize their possibility of success. Such shopping is encouraged when TIs are functional, while formal institutions fail or deliver too slowly. TIs may even be used by opposition parties to undermine the state. Contestations should be investigated in order to test the legitimacy of the institutions. Civil society plays an important role in this regard, particularly in urban settings, representing views of their members. Therefore, TIs do not only relate to citizens or the state, but also to civil society. The latter is often driven by ideology, from international liberal democracy to nationalism, increasing the complexity of institutional relationships.

Lastly, TIs are not automatically functional, even if communities prefer them to formal institutions. For example, customary laws are often full of contradictions as they evolve over time, without codification. As a result residents may challenge the TI in one case, but appeal to it in the next one. The research should take note of these contradictions and how they impact on the functionality of both types of institutions, and the potential for reconciliation.

General Approach and Methodology of Project

The discussion on concepts was followed with a presentation by Dr Ikubolajeh Logan on the general approach and methodology of the project, in preparation to the detailed presentations on the second day.

The general approach to the project was based on a case study format with comparative analysis within and across the case studies. As a comprehensive study of African traditional institutions requires a large enough and representative sample of countries, the project team anticipates conducting several phases of the study in order to cover more cases. This initial phase will have four country cases: South Africa,

Ethiopia, Kenya, and Somaliland. A minimum of three localities (districts) will be selected as research sites in Ethiopia and Kenya and two sites will be selected in South Africa and Somaliland.

Data collection

The study employs several methods of data collection. The first phase will start with an extensive literature and documentary survey. This will be followed by field research methods consisting of key informant interviews, focus group discussions, a large sample survey; and direct observation. Several reasons were given for conducting an extensive literature review. Such a review gives both a broad and a focused account of various aspects of traditional institutions beyond our four cases. It will sharpen the survey instruments and provide a framework for the rest of the research phase. The documentary survey, which will cover documents, such as constitutions, investment codes and court cases provides a good picture of the relations (positive, neutral and negative) between institutional systems. Selection of key informants (KI) for interviews will include chiefs at different hierarchies, elders, government administrators, judges, chiefs of police, scholars, directors of local schools, and a small number of (purposefully) selected ordinary community members. Their selection will be based on initial visits to the sites and a snowball sampling method by asking KIs to indicate who else should be interviewed.

At each site at least two focus group discussions will take place. These group discussions will involve 6-8 people for each research site, chosen through purposeful sampling to ensure demographic and social representation. These discussions should provide more insight into the nature of traditional institutions through discussion among members of communities.

Lastly, members of the research team will observe customary courts and decision-making and resource-allocation practices in the research sites in order to gain an in-depth understanding of the way the institutions operate.

Data analysis of first phase

At the end of the first stage of field research a preliminary data analysis will be undertaken. The method of analysis will, depending on the nature of data, entail a combination of qualitative analysis, content analysis, and descriptive statistics. The information and analysis obtained from the first stage will provide the foundation for phase 2, which will be a questionnaire (interview) survey.

2nd phase of field research

The second phase of field research involves survey interviews of about 100 randomly selected people from each research site. Questionnaires will be designed to obtain information on the nature and attributes of traditional institutions, how they operate, how they allocate resources, how equitable access to resources is, how they make decisions, how dissenting voices are handled, how they prevent and settle disputes, when and why people choose the traditional institutions over those of the state, what level of institutional trust prevails, what mechanisms are available to ensure rules are followed, how accountable traditional authorities are, what inheritance rules and practices prevail, and if and how minority group rights and individual rights are respected.

The final data analysis should enable the team to define the main characteristics of TIs. The overall method of analysis is a mixed approach employing both qualitative and quantitative methods in a complementary manner. The characteristics of the various types of traditional institutions will be captured by a) the qualitative analysis comparing the information from different sources; and b) the quantitative analysis which will mostly comprise of descriptive statistics and which will supplement the qualitative analysis

The planned data analysis to determine attributes and relevance of TIs will involve three models that estimate the levels of participation and democratic attitudes, effectiveness in conflict resolution and in resource allocation. The indexes of indicators of the three variables will be carefully constructed from the data obtained from the initial field research. The participation activities index will include participation in; (1) selection of community leaders, (2) dispute adjudication, (3) allocation of land and other resources, (4) deliberations in customary courts, (5) decision making on key community issues, and (6) implementation of community decisions. The measurement index will range from zero to six (or the total number of activities). An index for estimating conflict resolution activities will be constructed from responses to questions that include how successful the community is in resolving:

- ethnic, clan, or religious conflicts;
- resource related conflicts;
- conflicts with neighboring communities;
- how often do community members participate in conflict resolution mechanisms?

- A host of control variables, including demographic (education, wealth, age) and dummy variables (gender, religion, ethnicity, and presence or absence of draught) will be utilized.

The data analysis for the potential of reconciling institutions will use two approaches to explore how the relevant aspects of traditional institutions can be effectively reconciled/fused with modern institutions to create a coherent system of institutions. It will consist of a comparison of existing models, e.g. South Africa's incorporation of traditional authorities into the provincial and local governance, and Somaliland's more comprehensive incorporation of traditional institutions from the level of parliament (the *Guurti*) to the grassroots, as well as other cases. Second, once we identify the strengths and limitations of the existing models, we will build a model that addresses the limitations of existing models using an Anticipatory approach that identifies different scenarios.

A general question was raised about entry into communities. Researchers tend to assume that such entry is obvious, while community members and leaders may resist or just comply without providing in-depth and real information. In addition, the snowball sampling based on recommendations by respondents may lead to self-selection and a skewed sample, as respondents may recommend only people who agree with their point of view. The local principal investigators will provide the necessary information about these issues.

Dissemination of Project Results,

Dr. Gerard Hagg proposed a strategy for the dissemination of the project's results, which would include the production of documentation, contributions to mechanisms for conflict resolution, and policy input. Findings would be disseminated through the HSRC and other channels, such as forums, roundtables, seminars and workshops. The IDRC had a particular interest in the dissemination and implementation of research findings.

The project team considers developing a discussion blog linked to the HSRC webpage in order to promote academic debates around research findings, and link this page to other websites. Public means for dissemination could be media releases, radio and TV interviews and opinion pieces. As the research is aimed at making concrete differences to people's lives, submissions could be made to government legislative processes (e.g. on South African traditional authorities). HSRC and KIPPRA have strong

links with their respective governments as well as with various institutions of higher learning and research. Their networks will facilitate the dissemination of the results of the proposed project.

An alternative route would be through workshops in case study countries, to which policy makers, academics and practitioners would be invited. A more academic channel would be the presentation of papers at conferences, such as the GTZ Conference in Dakar, November 2009. Lastly the team considered the publishing of a book as the provisional end result. Most of these dissemination initiatives would depend on the availability of funds.

A major challenge is to retain the collected data in preparation for subsequent research or for sharing with other research institutions. For this purpose the project would investigate the possibility of establishing a data bank.

The project aimed at the empowerment of stakeholders in two broad ways. First, through the empowerment of rural communities by promoting awareness of the values of their institutions and their stakes in democratic processes and peace-building, and through participation in the research process, fieldwork and surveys. Second, empowerment should take place through capacity building in partner institutions (in the successive phases of the project) through sustained joint research on community-based indigenous conflict resolution practices and civil-society-oriented democratic institutions.

The project made provision for contributions to education and training of stakeholders in at least three ways, depending on available resources: training of civil servants, community leaders and faculty in partner institutions through workshops, seminars, and distribution of reports: through the development of college courses; through the development of instructional material.,.

In the subsequent discussion participants emphasized the need to remain realistic about the potential of implementation of the research findings. Implementation or use of the findings could not fit the leaders' agenda. This attitude also limits the potential of training of politicians and officials.. It is well-known that African leaders refuse radical breaks with their governance approach in order to defend their privileges. Policy briefs are a normal way of entering the findings into the policy domain.

Implementation by academic institutions is also problematic, due to ideological positions and diverse interpretations of data. One way of dissemination among academics and politicians is to use forums created by local civil society and government to share findings. This would empower local role players who would have to continue the institutional reforms where relevant.

In terms of dissemination among communities revisits of the sites for report back have huge financial implications, which are not covered by the current budget. Donors would have to be approached for this purpose.

Some participants pointed to challenges in creating a depository or data bank, as they require data cleaning and curation, which is costly. There are also ethical conditions about the re-use or further mining of data where respondents could be identified. The team should focus on making data available for others to work with them, with a clear indication of the research team's own interpretation. Researchers should accept the reality that others would often interpret data for their own purposes, sometimes distorting them in the process.

There was a general agreement that the team should focus on feedback rather than implementation. Particularly, if the study is not conclusive, findings should be published through a discussion document. This could be followed by a pilot implementations process, if funding and participation by local stakeholders could be obtained. This would require cooperation by lobbyists and advocates.

Day two: Planning the first phase fieldwork

Country presentations

During the morning session representatives from the four case study countries made presentations on the local context and proposed sites.

Ethiopia

Drs. **Merera Gudina** and **Tesema Taa Woyessa**, of the Addis Ababa University, made two presentations on the Ethiopian case study environment. The three sites that were proposed are

- Borana-Gujii
- Gambela region
- Gurages

Borana-Gujii

The presentation discussed three study sites in Ethiopia. These areas represent different traditional institutional systems with diverse cultures and separate geographical zones or spatial patterns.

The first site is the region inhabited by the *Borana – Gujii*, two major branches of the Oromo people living in the southern Oromia Regional State of Ethiopia. The site consists of *Yaballo* town, about 700 kilometer from Addis Ababa, being the center for the Borana, and *Bore* about 400 kilometer from Addis Ababa, being the center for the Gujii. The Borana are predominantly pastoralists while the Gujii are predominantly agriculturalists since the end of the nineteenth century. The population size of Borana was 996,467 and that of the Gujii was 1,412,972, according to the census taken by the Central Statistical uthority of Ethiopia in 2007.

The Borana and the Gujii have administered themselves according to the traditional socio- political and economic organization known as the *Gadaa* system based on age-grade. It has essentially been an egalitarian and democratic institution which has also been practiced in a similar fashion among other Cushitic peoples, like the Sidama and the Gedeo.. Nonetheless, the Oromo *Gadaa* institution has been a complex system which governed every aspect of Oromo life. Up-to-date the *Gadaa* system has more or

less remained intact among the Borana and the Gujii as an institution capable of providing leadership, spiritual guidance, organization and other division of labor. Before the creation of the Ethiopian Empire in the last quarter of the nineteenth century *Gadaa* used to operate smoothly with a cycle of transfer of power between the incoming *Gadaa* group and the outgoing ones every 8 years. Following the creation of the empire, however, this traditional institution was officially disrupted and dismantled, but has survived the centralization systems of governance of the past Ethiopian regimes at the local level. Particularly among the Borana and the Gujii, the *Gadaa* has registered its significance in the establishment of property rights, allocation of resources as well as in the prevention and resolutions of conflicts. Although women have a special role in the *Gadaa* system, they rarely participate in decision making.

The Borana - Gujii Council of Elders called the *Hayyu* together with the *Gadaa* officials play a very important role in settling inter-ethnic and intra-ethnic conflicts and disputes over resources or otherwise. For example, in the case of an individual murder case the elders get together and discuss the matter in detail and settle it through payment of money to the family of the victim, which payment they call *Gumaa Basuu*. In the case of group conflict between two ethnic entities the council of Oromo elders and *Gadaa* officials get together with the elders and chiefs of the non-Oromo ethnic groups at an open field agreed upon by both parties and deliberate on the matter for days and decide on compensation usually paid in cattle to the victimized group.

The appropriate mode of transport to the Borana and Gujii is a car (four wheel drive).

The Gambela Region

The Gambela region, which is located about 770 km west of Addis Ababa on the Ethio-Sudanese border is one of the smallest – in terms of landmass and population size – and the poorest in the country. It covers a total area of about 34,580 km². Its population is about 256,000. The major ethnic groups in Gambela are the Nuer, Anuak, Majanjir, Opuo and Goma/Komo. Their languages belong to the Eastern Sudanic branch of the Nilo-Saharan super-family. Besides the indigenous groups, about 15% of the population is constituted by highland Ethiopians, including the Amhara, Oromo, Keffa, Kambata, Mocha, Tigre and Gurage ethnic elements. Almost all of the indigenous ethnic groups are agro-pastoralists but the Nuer, whose population figure is 147,672 (C.S.A.,2007), constitute about 40%

of the total population, are more of pastoralists for they value cattle so much. The Anuak, Opuo and Komo are more of sedentary agriculturalists supplementing their livelihood by fishing, gathering and hunting. The total population of the Anuak is 85,909, according to the 2007 census.

Ethnic conflicts, which mainly involve cattle raids, sometimes grow into an all-out war that jeopardizes the stability of the region. Lack of peace and security not only discourages private investment but also disrupts socio- economic and political activities.

While raids and counter raids had been a historical feature of the Ethio-Sudanese frontier population of Gambela this does not, however, mean a total chaos in the region. Through centuries of contacts and interactions the various groups have developed a *modus vivendi* that enabled them to live in relative peace. Traditional pacts and alliances were vital in maintaining inter-ethnic accord and providing protection and support to each other. The fact that the different groups shared a number of cultural and environmental experiences had facilitated the process of inter-ethnic assimilation and integration. A very significant practice shared by all Nilotic peoples in the region is the manner of forming marriage relations by which migrant and host communities blended, the former always being allowed to take wives from the latter.

Nevertheless, the fragmentation of the social structure of the different ethnic groups, despite its economic rationality, has been a crucial factor in the proliferation of inter- and intra-ethnic conflicts. For instance, the Majanjir and Nuer are more decentralized than the Anuak. A number of anthropologists hypothesize that this decentralized and limited form of political leadership is due to the constant movement involving slash-and-burn cultivation, and to the mobility associated with pastoralism. In such segmented societies each unit becomes independent and autonomous thereby multiplying the chance of multilateral conflicts with other units.

Both the Anuak and the Nuer are warlike people whose life is dominated by internal and external conflicts. Fighting may be ignited for sundry reasons such as disputes on cattle, dowry, grazing land, fishing grounds, adultery and others. A simple drunken brawl may also turn out to be a very destructive affair involving the entire village. These are closely-knit communities which seldom forgive or forget

unaddressed revenges, even personal grudges. Dishonor to a member is taken up as dishonor to the group and fighting for a redress is a bounded duty of each member and a demonstration of manliness.

Historically, the Anuak and the Nuer mediated disputes and conflicts through the office of the chiefs and elders. The Nuer, in particular, have a system of preventing a devastating blood revenge between different groups by which an individual known as the *leopard skin chief* sometimes provides sanctuary to a murderer and attempts to negotiate compensation with the victim's lineage. Most controversial matters were handled by joint councils of chiefs and elders of disputant lineages. The Anuak likewise solved disputes or conflicts through the mediation of elders. The *Kuarri* or *Niyeya* maintained only power of mediation. It is only indirectly by throwing their weight in favor of one party or the other that the Anuak nobles exercised their influence. This mechanism worked best in the intra-ethnic affairs.

Although the political situation in Ethiopia is fluid, and there is resistance to the centrist domination, it is unlikely that it will influence the research. It is not necessary to obtain permission for the research as both country representatives are already involved in research in various parts of the country. However, both HSRC and PSU will officially apply for permission, citing cooperation with the country representatives. It is important to have a local research assistant in each site to ensure entry into the community and a solution to language problems.

The appropriate mode of transportation to Gambela is a plane and also a four wheel drive.

A preliminary survey of the existing information shows that women and minorities (small ethnos) are the most vulnerable segments in the suggested study areas.

The Gurages Traditional Institutions

The Gurages are the fifth largest ethnic group in Ethiopia. They are a multi-religious society, and linguistically part of the larger Semitic cultural group. The Gurages are one of the most mobile groups in the county, who are found almost in every urban centre across the country. Yet in the Gurage home land they have maintained traditional institutions better than any of their Semitic brothers.

Historically speaking, the Gurages were brought into the expanding Shewan state in the last quarter of the 19th century, where the Christian Gurages submitted peacefully to the Christian Shewan state, while the Muslim Gurages resisted heroically before their resistance was crushed by a superior force.

Geographically, they are located 155 km South West of Addis Ababa, the capital city of Ethiopia and they are neighbors of the Oromos, the country's largest ethnic group and other Cushitic speaking Ethiopians such as the Hadiyas. For much of the 20th century, the Gurages had been part of the central Shewan province of Ethiopia. However, following the remaking of Ethiopia in the post-1991 period, they have been lumped together with the Southern Nations, Nationalities and Peoples Region (SNNPR), which constitute about 56 ethnic groups of the country — truly a museum of peoples in Ethiopia.

In the Ethiopian setting, the Gurages are known for their acumen for business — sometimes locally referred to as “Ethiopian Japanese” — for their being industrious and their readiness to take up any kind of job as far as it is rewarding. Furthermore, an important marking for the Gurages is that they are less sensitive to identity politics because of their life situation. Consequently, the Gurage elite are overly pro-Ethiopian unity, which sometimes angers the current Ethiopian regime, whose political philosophy as well as *modus operandi* is highly influenced by identity politics, which is very often used as an instrument of divide and rule.

The Gurages are sub-divided into several clans or sub-groups. Surprisingly, one of these sub-groups, the Selte, has assumed a new identity separate from the historically-known Gurage ethnic group, following the new political dispensation in the post-1991 period. In fact, the Ethiopian ruling party, which appeared to have an interest of its own, organized a referendum a few years back and after the Selte voted to take up a separate identity apart from the Gurages, it has allowed them to form an administration unit of their own.

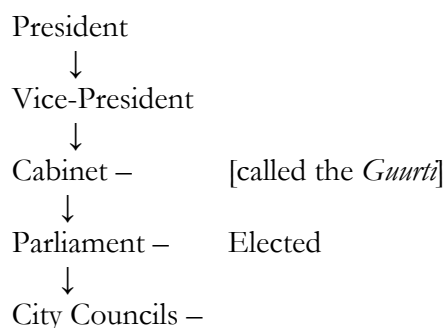
The two best-known Gurages' traditional conflict resolution mechanisms are: *Yajoka* and *Gordanna* (Shengo council), which have been in existence for centuries and are still widely used by the local population. According to Bahiru Zewde, a prominent Gurage historian, the Gurage traditional institutions combine civil and criminal codes with provisions for several types of sanctions. The cases to be settled can be as serious as murder. Furthermore, the Gurage traditional institutions rely on both oral and written customary laws.

The Gurage site is chosen for two basic reasons - the Gurages are multi-religious, divided between Christianity and Islam, while they are also the Semitic out-post in the expanded Ethiopian Empire state since the second half of the 19th century and in which the Semitic cultural ethos have been dominating the country's political landscape for centuries.



Somaliland

Ms. Sadia Musse Ahmed, representative of the Pastoralist and Environmental Network in the Horn of Africa (PENHA) made the presentation on Somaliland. She started with outlining the structure of the Traditional Institutions in Somaliland.



Guurti

The *Guurti* is composed of elders of higher standing among communities at different localities. It is the second highest governance structure and its chair can take over the presidency if the president dies/resigns in the first three years of tenancy, in order to prepare elections. They also have the power to extend tenancy of the president/vice president in case of national security. The *Guurti* is an Institution of Governance by design, including traditional and modern aspects, very similar to the US Senate. The *Guurti* pass laws and policies after the Parliament has discussed and prepared them. They can intervene in situations in times of conflict and disputes both at the political arena or in traditional context. The *Guurti* in Somaliland can reject laws passed by the elected House of Representatives, though the representatives can override the *Guurti* with a two-thirds vote. It is a mix of tradition and modernity, Western-style democracy meets Somali-style politics, though some people feel it is time to renovate the system. (J. Gettleman. *The Other Somalia*, 2007)

City councils

The Mayor and his council are elected and are in charge of districts. In most cases they endorse the village chairs and their committees, who govern at a local level. The Mayor and his councilors are usually not traditional leaders, and their appointment is often subject to contestation. The councils are responsible of the development and security at the district level.

Political parties

The country can have three political parties at any given time. At the moment the Udub Party is the ruling party, while the Kulmiye is the main opposition. The Somaliland Justice and Welfare Party (UCID) is the third party. A party must have 500 signatories in each region to register, in order to minimize divisions in clan lines. Political parties have elected parliamentarians and city council members, and work closely with *Guurti* in times crisis and seek their assistance in difficult situations

Other Traditional Institutions

Besides the above formal institutions, there are other Traditional Institutions. The first category consists of the *Sultans* – senior leaders drawn from major clans. Under them we find *Boqor* and *Garaad*

for the major clans. They are the highest authority within a clan, and mobilize and chair meetings, and are the custodians of the *Xeer* (customary law). The three categories are the ultimate mediators among groups and they represent clans in bigger community meetings. As traditional institutions they are not affiliated with the government, but their appointment is decided on consensus (Pastoral Democracy). When necessary they mobilize resources for their functions. They work with *Caaqils* and other elders in sub clan issues.

At a sub-clan level we find the *Caaqils*, or chiefs, with a Chief *Caaqil* as head of a clan. The *Caaqils* represent sub-clans, and are paid by the government. They function as a link between government and local communities. While working with *Sultans*, *Boqor* and *Garaad*, they always organize themselves through the Chief *Caaqil*. Decisions are made through consensus. Due to their alignment to both government and community, they are usually subject to manipulation. This system was introduced by the British colonial powers.

Several committees may exist at a village level, such as the *Gudida Tuulada* (Village Development Committee) and other development subcommittees. These committees are chaired by a local head man/woman, and are composed of the residents of the village and surroundings. The VDCs deal with security and development issues, and they organize communities for development projects. For any research these committees would be the entry points of villages and rural settlements. The VDCs organize sub committees for specific projects or along resource lines like water committee

There are a number of other important persons in the village. The first one is the *Beeldaajiye*, Head *Tuulo* or an elder known for his influence among the community. These high integrity individuals contribute to governance at a community level. Furthermore, the Heads of women and youth associations are influential. Others are poets, good orators, wealthy people, teachers, health staff, vets and para-vets, as well as Traditional Birth Attendants and professional people.

At independence in 1960 the Somaliland (British protectorate) and Somalia (Italian colony) were united. In 1964 the military led a coup attempt, which failed, but resulted in many years of political turbulence. Somaliland seceded from Somalia in 1991.

Somalis have always been predominantly pastoralists, although there have been farming practices in certain parts of Somaliland. The country is well-endowed with natural resources, but lacks infrastructure and capacity to interact within the global context.

Proposed research sites

Three possible sites were proposed:

- Hargeisa, which is the oldest Sultanate and the location of the Somaliland government. Here the interaction between TIs and the modern state are experienced on a daily basis
- Erigavo, in the Eastern part of Somaliland. This site is still governed by local structures of elders.
- The Isa group, in the Western part near Djibouti, which is very traditional, and customary law is still in a French version.



Discussion on Somaliland

Ms Ahmed added some cautionary notes about understanding the relationship and dynamics in TIs and modern institutions in Somaliland. Somali traditional systems have been tempered since colonial times and have been subject for a lot of upheavals since then. Scientific socialism, wars, internal strife of all sorts, a failed state and globalization are among the many factors that left their scars on the traditional

system. And yet it is still dominant in the Somali cultural/modern spectrum of governance and was the denominator on the peace prevailing in Somaliland and other parts of the Somali state.

However the confusion of how you define traditional systems might create difficulty in demonstrating what really constitutes traditional or customary as the traditional culture is adaptive and is subject to internal and external transformations. As urbanization increases and traditional productive systems are commercialized with market demands, economic dynamics in the nation changed with many compounded challenges to cope with increased desertification and evidence of climate change causing negative effects in the new emerging nation state.

Customary laws that govern land tenure and its utilization are changing and there are evident clashes between customary law of access to resources and so-called modern governance with its formal institutions and laws. That situation is due to the complexity of defining territorial ownership, contradictory laws from too many ministries and local authorities which add to the confusion, and the question about appropriateness and enforcement of such laws.

Traditional customary laws are also clashing with interpretations of Islamic religion, education of women and the demand of equal rights on issues of inheritance for women, ownership of resources, decision-making issues or even taking over traditional male roles, like judges and lawyers and top jobs like the presidency.

Changing lifestyles are another set of factors that are adding to the socio-economic dynamics of power brokerage into already confused systems of governance. Increasing poverty due to lack of investments, recurrent droughts, erratic rains, a drastic decrease in production systems, influx to urban areas creating more shanty towns around the major cities, and the failure of good governance are among parameters that are defining new modes of politics that are prevailing today in the Somali nation.

The existence of the current House of Elders as one legislative body and as the legitimate mediators of conflicts undermines to some extent the role of traditional leaders, who represent clans and sub-clans within the governance system, and adds a challenge to the new political formations of the nation.

Transparency, corruption, lack of recognition, human right issues, and the tension between civil society roles and centralized government as wells as the increasingly strong private sector are among other issues that influence the current governance systems and political maneuvers that shape our society

today. Multiple party systems that define democratic parameters of the nation, function against a backdrop of pastoral democracy that shapes the traditional system of the Somali people.

It is against this background that the project wants to investigate the interactions and transformations of traditional systems, with their customary law and formal governance, and modern governance with its legislative bodies and formal courts. The project also looks at the consequences of these confusions on people's lives and hence the possibility of creating a modern inclusive government that caters for the needs of its people but also accommodates the dynamics of the rest of the world.

Security is not a crucial issue for research in Somaliland. More of a hindrance may be the heat, e.g. near Djibouti, where summers are very hot.

Kenya

Dr Joseph Kieyah from the Kenya Institute of Public Policy Research and Analysis (KIPPRA) presented the three proposed case studies in Kenya:

- Nchuri Ncheke (Eastern)
- Luo Council of Elders (Nyanza)
- Kaya Elders of Mijikenda (Coastal)

Prior to colonialism all 42 resident tribes in Kenya had some form of traditional institutions. It was the only country on the African continent other than South Africa, where there was a systematic effort to create a British settlement during colonialism. The educational, political and legal system created by the British still exists and is formidable. The British favoured separate development, and local populations were pushed further out as British settlements grew. Within these communities traditional institutions tended to persist.

The following Traditional Institutions were highlighted:

- ***Nchuri Ncheke***

These communities are located in Meru, 200 miles north of Nairobi. These community institutions are strong with regard to dispute resolution and land allocation, as they represent powerful interest groups and have a high level of legitimacy. Their weakness is that these interest groups tend to lead

to unequal distribution of resources and easy manipulation by their leadership, e.g. Kibaki is supported in these areas.

- ***Kaya Elders of Mijikeda***

These communities live near Mombasa. The strengths of this institution lies in their allocation of land, the management of resources (e.g. the Kaya forests), dispute resolution, as they represent strong interest groups through voting blocks and have political legitimacy.

- ***Luo Council of Elders*** (Luo is the third largest tribe)

Their strength lies in the provision of public goods and services, resource allocation and dispute resolution, as they represent strong interest groups. The Luo Council is very powerful. For example, when Raila Odinga, who is from the Luo tribe, proposed the introduction of circumcision among the Luo as a way to stem the spread of HIV/AIDS, it was only when the Council also took a stand to support the effort, that there was a phenomenal response on the part of the Luo community.

A number of challenges remain in Kenya. First, there are signs of weakening of the system of traditional governance as they show an increasing inability to protect community interests. Second, because TIs can be powerful, there are constant attempts by politicians to manipulate the members of TIs, leading to leadership rivalries. Third, due to a shortage of land, TIs find it difficult to fulfill their function as land managers and allocators.

The discussion of the Kenya presentation started with problematising the proposed sites. Government has a deep reach into the proposed sites, which inhibits the functioning of the TIs. This is partly due to the constitutional arrangements that make: customary law subsidiary to formal law/common law. Official state policy is to move away from ethnic tribalism, a trend that is strengthened by the reaction to post-2007 election violence. Yet, the diversity of Kenya population remains pertinent, e.g. the Nilotic vs Bantu, the Kikuyu and the Luo. In addition, a number of modern organizations have emerged in response to state identity policies and persisting patronage systems, such as the Mugigi. Although they are not the same as TIs, their influence is growing in opposition to the state, and the question is whether they should not be reconciled with the modern institutions of governance. The role of TIs and modern civil society institutions was also complicated by their involvement in land issues, and the

question was raised whether the Kenyan government would feel threatened by projects that raised land issues.

The question was raised what unit of analysis would be used, geographical or ethnic? The challenge is to find communities where elders and other TIs were still functional, and these were often related to ethnic characteristics. Such sites could have different ethnic TIs, a situation which complicates the relationships between TIs and the state, and TIs themselves. Selection of the sites would be geographical within such ethnic boundaries, but small enough to be manageable as a research site with the selected methodologies. The advice was to select two communities that are typical of a specific tribe. Even the selection of urban sites would require limitations in geographical scale.

It was proposed to revisit the selection of sites. The Nchuri Ncheke and Luo Council of Elders are still strongly influenced by the state, and particularly political parties. In North-Eastern and North-West Kenya one finds more independent traditional institutions, e.g. among the Turkana.

TIs in Kenya have been undermined in the process of modern democratization over the past 25 years after being abolished under colonialism. How can one revitalize such institutions, and is it desirable to do so? It is important to focus on active TIs rather than on some people's promotion of the concept for the purpose of politics.



South Africa

Dr. Mpilo Pearl Sithole, of the HSRC presented the possible selections in South Africa. There are TIs in seven of the nine provinces: Gauteng, North West, Eastern Cape, Mpumalanga, Northern Cape, Limpopo, KwaZulu-Natal. Since British colonialism and the subsequent apartheid, TIs were modified to suit colonialism's requirement of 'indirect rule'. There are varied systems of succession, and customary law, largely along patriarchal lineage.

There are at least two issues in the South African context. First, there is a need to establish the pre-colonial assumptions and facts, in order to determine to what extent the TIs were centralized or not.

The apartheid South Africa had structured cultural diversity into an artificial, reified race-ethnic division and separation, leading to homelands and traditional leaders being appointed by government. HSRC is involved in some of these studies. Second, there are contesting views on traditional leadership in South Africa, among communities, civil society, academics, and government, due to the predominance of the Constitution which is based on individual human rights over TIs, while the latter are still promoted through legislation. Few provinces work together with Traditional Leaders, KwaZulu-Natal and North West Province being exceptions. On the other hand TIs were constitutionally and legislatively enshrined (Traditional Leadership and Governance Framework Act; Communal Land Rights Act), which formalized the TIs and undermined the local democratic dynamics. The law itself is vague, as all legislation is subjugated to the human rights clauses in the Constitution.

The following potential cases were suggested:

- *Mzimkhulu*, in the Eastern Cape Province near the border of KwaZulu-Natal, where the community wants to be integrated into KZN, but the chiefs are reluctant.
- *Matatiele*
In both area Mzimkhulu and Matatiele the Eastern Cape province pays the chiefs and indunas (local headmen), in contrast to KwaZulu-Natal where only chiefs are paid.
- *Bafokeng* tribal area in North West Province. This is a rather unique location, as the Tribal Authorities have successfully challenged the Impala Platinum Mining Company for a share of the profits. This has brought major income into the tribal coffers, but the question is whether the whole community benefits or just the elite?
- The *Balobedu* tribe, which is ruled by a queen and has a strong historical base to its customs.

Dr Sithole proposed that all provincial chairpersons of Provincial Houses of Traditional Leadership should be interviewed to obtain a balanced view on their role in South Africa; but to focus on two cases in the research: Mzimkhulu and Matatiele. Both communities lie on the boundaries of the Eastern Cape and KwaZulu-Natal, and their relationship to the strong KZN TIs is in dispute. Eastern Cape supporters tend to resist government efforts to strengthen TIs, while in KZN communities tend to support TIs.



Discussion

In response to the presentation on South Africa, the discussion started around the issue of legitimacy of traditional institutions, and particularly the chieftainship. In South Africa traditional authorities are constitutionally accepted as legitimate authorities. However, there are a number of ambiguities. The first one is in the relationship between the chiefs and government structures. This relationship is structured through institutions at all levels of government, starting with local government, such as the District Municipalities and Local Municipalities. At this level, chiefs are recognized as cultural authorities in designated areas, where communities adhere to traditional customs and lifestyles, dealing with communal land, local conflict and development. However, all of these traditional areas fall within municipal areas, which are governed by municipal councils and their administration. In many cases the traditional area stretches across municipal boundaries. Relationships with municipal administrations,

which are responsible for local development, are often strained, as chiefs do not have the resources which municipalities have. In addition, legislation makes provision for local traditional councils, provincial and national councils. At this stage the National House of Traditional Leaders plays a strong role, although mainly in an advocacy role as their authority is limited by general clauses in the Constitution that promote individual human rights. The current ANC government contemplates the establishment of a National Department of Traditional Leaders in South Africa.

The attempt to integrate traditional leaders into government has created at least one conflict of interests, involving the payment of chiefs' salaries by the state. The question is whether the citizens whose cultural citizenship is served by the traditional authorities, should not take care of the costs. For example, should the Zulu kingdom not take care of the king's costs? Why should all tax payers in the country share these costs? Furthermore, the question of loyalty was raised in the discussion. The government-appointed Nhlapo Commission declared Zwelethini King of Zulus, not only those within the KwaZulu-Natal province. His universal kingdom has implications for the Eastern Cape, where there are at least two paramount chiefs who want to be recognized as Kings. The problem then arises in how far such formal appointments are artificial and not part of the local governance culture. In a similar way the Southern Sotho Royal House of the Free State, mainly situated in QuaQua, has a cross-border identity with Lesotho, and considers itself the legitimate TI for all Southern Sothos in the Free State.

A question was raised about the risks of government commissions being involved in the recognition of kings. Literature emphasizes the dynamic nature of hereditary lineage, in which competence and support by citizens is involved. For this reason both hereditary chiefs and elected chiefs adopted legitimate ways of hereditary recognition after apartheid, and citizens seem to accept this dynamic.

The issue of resourcing chiefs to ensure their sustainability was raised through the question how chiefs survived without land during apartheid, after their land had been appropriated? Does the current state's land reform programme provide them with the necessary resources now? Can traditional leaders claim land on behalf of their community? From the court case against the Communal Land Rights Act it seems that many people want individual tenure as well. How are individual human rights, and particularly of women, protected?

From a methodological point of view the question was raised in how far it is possible to establish what the pre-colonial situation was. How do you know when little writing is available? The team responded that this requires intensive archival work, for which at least two months has been set aside. On the other hand, the dynamic nature of TIs does not allow for the re-establishment of old TI systems. The main purpose is to determine whether specific characteristics of pre-colonial TIs can contribute to the effectiveness of TIs in current times.

With regard to the selection of sites, participants asked about the possibility of selecting an urban area, such as eThekweni (Durban) in which many residents live in peri-urban and urban contexts, yet recognize the traditional authorities in their place of origin. This double-identity is an increasing phenomenon in Africa, where urbanization rates are high. In view of the gender sub-text, the question was raised whether the case studies should not include the Balobedu as a site? Dr Sitole responded that although the appointment of the queen is through matriarchal lineage, the rest of the traditional authority system is patriarchal. Thus gender issues are not really resolved at a local level. In addition, the Balobedu system has a number of other problems and contestations.

Overview and operationalizing of Field Methods for 1st phase of Project

The second part of day two was used for a step-by-step discussion of the adopted methodology for the first phase. Prof. **Ikubolajeh Logan** of PSU presented the proposed methodology by means of a number of tasks for the research team in order to achieve the project's main objective:

To develop a governance model that fuses together traditional and modern principles and institutions into a **Traditional Institution-Modern Governance model (TIMG)**

The methods were divided into a sequence of tasks, which were discussed in details (see Addendum C)

Task 1: Literature and archival survey

The first task was identified as a literature review, which should cover a variety of documents, such as scholarly literature in TIs and TIMG models, Constitutions, policy and court records, school records, and NGO reports that are relevant to the case study countries and the research sites. The archival research could include summaries of the main theoretical, conceptual and empirical discourses on

African traditional institutions and post-colonial constitutions for role of chiefs in governance. Particular attention should be paid to legal codes on the rights of traditional institutions and government right of taking, such as land allocation, often in combination with investment codes on state leases of land for FDI in resource exploitation. Research should examine court cases, if any, on state-traditional institution conflicts over resources, as well as newspapers reports on governance issues, state-communal rights conflicts over resources. NGO reports and reports of bilateral and multilateral agencies on governance issues, state-communal rights conflicts were useful in so far as they consolidate information

Task 2: Data collection on the nature of TIs

The second task was the investigation of issues that related to the functioning of TIs, such as levels of transparency and inclusivity in decision-making, conflict avoidance and resolution, gender equity, resource management and allocation, and general governance principles and institutions.

Data collection for task 2 would occur through fieldwork in the form of Key Informants' interviews (**KIIs**) and focus group interviews (**FGIs**) at the community level. A number of potential KIs were identified, such as chiefs, elders, and a variety of community members. In each case the KI's opinion would be sought on the operation and relevance of TIs in view of their local and national context.

Task 3: Data collection on existing TIMG models

The third task involved the role of existing TIMGs, which are often in the position of parliamentary chiefs. Issues that could be investigated include the Constitutional role of parliamentary chiefs, the system of electing/selecting/nominating parliamentary chiefs, and their role and legitimacy at the community level.

The main field methods for this task would be through KIIs, raising issues such as the strengths and weaknesses of mechanisms for choosing parliamentary chiefs, the role of parliamentary chiefs in governance, the relevance of parliamentary chiefs to the state and to their communities, and mechanisms for strengthening the role of parliamentary chiefs in governance. Typical KIs would be scholars, Parliamentary chiefs, Non-parliamentary chiefs, and NGOs on governance issues.

Task 4: Collection of Data on Community Use of Modern Sector Services:

The fourth task deals with the use of modern governance institutions by rural or urban communities. Examples are courts, police, schools, clinics and state departments.

The main field methods for Task 4 would again be KIIs that are involved in such processes. The research will obtain views of *judges* on the use of the formal court system by rural households and communities; *policemen's* views on number and types of cases reported to police by communities; *Government Regional Administrators'* views on the use of government services by rural communities; *School officials'* opinions on gender dimensions of school enrolment, etc; and *community members'* views on their use of modern sector services versus traditional institution services (which services they trust to traditional versus modern institutions and why).

Task 5: Collection of Data on the reliance of Communities on TIs

The fifth task involves the collection of data on the reliance of communities on TIs, such as Village Courts, and community institutions and principles for mass participation in decision-making, resource management and adjudication, and gender equity.

Again the main Field Methods for Task 5 centres around KIIs and FGIs. Typical KIs will be *Traditional Leaders*, Traditional elders and community members, whose views will be tested on the strengths of TIs in avoiding conflicts within and between rural communities, conflict resolution over land/property rights, resource allocation, marital disputes, theft and gender equity.

Focus Group Interviews for Task 5 could involve community leaders, men, women, youths, of various educational levels and with various roles in the community. The focus groups will employ the same guideline questions as the community KII for task 5

Conceptual and methodological considerations of data collection approaches

During the second session on data collection, Prof Logan presented a conceptual overview of data collection approaches to KIIs and Focus Group Interviews (FGI). Generally the purposes of KIIs are to collect qualitative data, to conduct pilot studies in order to set baseline parameters for a larger, more comprehensive study; to understand the attitudes, interpretations, motives of a target group/groups, and to give 'voice' to people as an integral part of community-based, grass-roots development

There are several advantages of KIIs over other methods of data collection, such as to obtain the views of knowledgeable people, discover new directions, often at relatively low costs and constraints. Limitations are the possibility of manipulation, and the specificity of data to the location

Some general guidelines for selecting KIs include the need for the key informant to be knowledgeable about the issues involved in the project, and the need to have socioeconomic representation in the selection of respondents.

A number of pre-interview preparations should be considered, such as the introduction to the project to different KIs, obtaining permission to conduct the interview and set up appointments. At the beginning of the interview researchers should request permission to audio or video record through a consent form, thank respondents for participating and remind the respondent of the purpose of the research. Informants should be identified, as well as the date and time of the interview.

Dr Logan discussed the most important interview procedures, explaining the nature of interviews as open-ended discussions guided by a 'questionnaire'. Researchers should follow-through answers to deepen the discussion, without interrupting respondents. The duration and number of sessions is determined primarily by the interest of the KI.

Dr Logan provided a number of guidelines on the type of questions that could be asked. Generally the number should be kept to a minimum to avoid KI fatigue. Questions should be divided into **key** questions and **secondary** or **follow-up** questions, and into **factual** and **opinion** questions. Examples of typical questions were presented for some key informant categories, such as chiefs and elders,

government and NGO members, parliamentary/non-parliamentary chiefs, judges, police officials, school officials, government administrators, and communities.

The United States Agency for International Development's (USAID) '*Performance Monitoring and Evaluation: Conducting Focus Group Interviews*' http://www.usaid.gov/pubs/usaaid_eval/pdf provides a number of practical guidelines for using focus group surveys in the field, e.g. on number of participants, identity of the group and the type of questions. In general, FGIs are similar to KII in approach, strengths and weaknesses.

The need for proper briefing the community was emphasized, in order to obtain permission and legitimacy of the process. In conducting FGIs the interviewer should follow a snowball approach, prompting for more depth and inter-participant discussions. Focus should be on deepening information, knowledge and clarity on issues. FGI dynamics require appropriate facilitation, ensuring that one or a few 'dominant' participants do not monopolize the discussions, and noting non-verbal communications

Discussion of fieldwork methodology

The participants enriched the presentation in a number of suggestions following the structure of the presentation.

With regard to the first task it was emphasized that the aim is to collect data that is relevant to the case study. Therefore, the fieldwork is largely determined by the local partners/country study managers. Archival work/desk studies could consist of archives, District Court trials, minutes of meetings, submissions by communities. Constitutions and the statutory side of institutions should receive critical attention. In many cases only records of oral information could exist, which should not immediately be taken at face value. Court/police records are sensitive issues and often not accessible. Not all cases are reported to police, and not all go to court. It would be wise first to interview officials and then ask for relevant archival material, documents, etc. As in all interviews it is important to build trust with the respondent. Newspaper reports often provide deeper insight into people's opinions and experiences. Other publications on the case studies should be consulted, e.g. for South Africa: Barbara Oomen

2005, *Chiefs in South Africa: law, power and culture in post-apartheid era*. James Currey/University of KwaZulu-Natal Press.

Each TI has its own characteristics, and researchers should be sensitive to local forms and structures. With reference to the three sub-texts, it was emphasized that surveys should keep in mind TI's role in conflict resolution, land and resource allocation and gender. For example, earlier and recent legislation on gender equity or inheritance customs should be considered.

KIs could also include local government and administrators, local religious leaders, educators, teachers, principals, health officers and staff from NGOs, CBOs and associations.

With regard to focus groups, participants suggested to differentiate between men and women, as the latter often shy away from participation when the men are around. No rule could be laid down, but researchers should be led by the local context. Furthermore, focus groups tend to become expensive (refreshments), and repetitive.

With regard to task 3, participants agreed that researchers should provide an introductory letter to the chiefs. To balance views on parliamentary chiefs, their communities could be questioned about chiefs joining parliament.

It was agreed that the research project should not provide a single questionnaire, but rather guidelines around critical themes. The questions provided in Addendum C should be treated as such. Questioning should follow a snowball process around the key issues and themes, with a focus on local phenomena.

With regard to Task 4 the following additional interest groups were mentioned: Religious organizations; Development agents; Health agents, taking into account the relationship between traditional leaders and modern clinics; Agricultural extension officers; Gender groups; Traditional councils; Police for detaining perpetrators towards traditional courts; Party cadres (taking into account their bias), and Party functionaries.

Researchers should check the support for TIs or lack thereof among officials, as well as the relationship between political parties and TIs. Some participants commented on the lack of documentation of court cases, where officials often depended on oral testimonies.

Several practical comments were made about key informants. Focus groups should not exceed 8-10 persons. Yet, researchers must show flexibility as many community members would like to be observers of the interview. Although not all respondents would like to be audio-recorded, this validation tool should be available to all interviewers. Not all tapes have to be transcribed, but tapes would allow for quotes. Both the HSRC and PSU require consent forms to be completed by respondents. Researchers should be sensitive to literacy levels of respondents, and limit time on the consent form. HSRC will draft a general consent form that should be translated/adapted by the country study managers.

Participants discussed the need for cleaning of data before it is released. No respondent should be identifiable from the report. In order to build coherence in the research project, country study managers should provide regular feedback to the central offices in Pennsylvania University or HSRC.

In many cases researchers will need permission from traditional authorities to conduct interviews. In some cases it may be advisable to obtain a letter of support from the King or paramount chief's office. It was suggested that researchers first approach King/paramount chief and introduce the project, building trust and trying to legitimize the process. The final interviews could be done with the King/paramount chief. Accessibility to areas may be a problem in rainy seasons. It was agreed that country study managers would submit a research plan including best dates to visit the sites.

Day three: Finalisation of planning and co-operation

The first part of the third day's discussions centred around the possibilities of co-operation, extension of the project and additional funding.

Cooperation opportunities

Several possibilities exist for cooperation. The following organizations/areas were mentioned:

- West Africa, where German and French scholars and donors were active. Prof. Reinhart Koessler would send bibliographical details of projects of which he was aware.
- Patrick Chabal, manager at the Bayreuth project in Guinea-Bissau
- USAID and TIs play an important role in the post conflict building efforts in Liberia
- IDEA International has been involved in research around reconciliation after violent conflict in five African countries (Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences; online available, http://www.idea.int/publications/traditional_justice/index.cfm)
- The Centre for Conflict Resolution is involved in work in Sudan
- The University of Halle, Germany, is involved in research on the role of constitutional models, funded by the Volkswagen Stiftung
- The IDRC has several other programmes that are related to the current one, e.g. TUFT in Boston on Truth and Reconciliation initiatives in post-transition situations
- A forum of intellectuals functioning as the Greater Horn Horizon Forum, is in operation since 2007. Newsletter available http://www.greater-horn-horizon.org/fileadmin/downloads/GHH_Newsletter_n_1.pdf
- Profs. Dan Ray and Shahid Vawda of the Democracy Development Programme, Durban South Africa, are involved in applied research on Traditional Authorities in KZN; history, migratory patterns, comparative approach
- The Taurn (?) project (Pearl Sithole to provide details)
- Reinhart Koessler's project on Namibia
- The Marcus Garvey Pan-Africa Institute and Nabudere's project in Balin, Uganda; refer to the Transitional Justice programme which reported at the Nairobi 2008 Conference on restorative

justice and the international humanitarian law:

(<http://www.africafiles.org/article.asp?ID=18867>)

- In Uganda: traditional mechanisms for conflict resolution, Southern Sudan
- University of Peace, indigenous mechanisms for Conflict Resolution
- Queen's University: Ethnicity and Democratic Governance programme (www.edg-gde.ca)
- CODESRIA

Funding opportunities

The project requires additional funding for two reasons. First, with the volatile exchange rates costs will be higher than anticipated a year ago. Second, the current four countries are viewed as a pilot study, and the team is interested in extending the research into at least Sudan and Tanzania. With regard to funding the following opportunities were mentioned:

- The German Society for Technical Co-operation (GTZ)
- Friedrich Ebert Stiftung, particularly for public meetings
- Ford Foundation Nairobi
- Open Society Foundation South Africa: call for papers were expected end of June
- Carnegie Mellon Foundation
- Trust Africa
- Southern Africa Trust
- EU funding: this is a complex process involving several levels
- Prince Claus Fund, Netherlands Embassy

Fieldwork plans for case study countries

The second part of the final day was used to discuss the requirements for the local fieldwork plans, including dates and budgets.

A number of practical issues were discussed with the country study managers.

- Scale of sites is largely determined by the local context

- Country representatives indicated that there is a need for workshops in their respective countries
- The country representatives will most probably be the Principal Investigators. They are partners in both the research and the production of the report, articles, book chapters, including editing of the work
- Translators: where relevant, interviews should be held in the local vernacular, which implies that each site requires at least one translator.
- Translators and interviewers should be trained for the survey
- The budget must provide for the following costs:
 - Translators/interpreters
 - Recorders
 - Books (but the project is not intended to build libraries!)
 - transport costs, which in several cases include air tickets or four wheel drive vehicles.
 - Accommodation
 - Per diems
 - refreshments for Focus Group Interviews
 - stationery and photocopies
 - Communication costs

Time frame

A lively discussion followed on the most appropriate time frame. On the one hand there are local constraints to fieldwork, such as climate and transport needs. On the other hand the core team, and particularly Dr Kidane Mengisteab, would like to visit the fieldwork at an early stage, in order to be able to maintain coherence between the various teams and ensure the comparability of research methods and findings. He is available from 1 June. Dr Gerard Hagg would like to visit Kenya and South Africa. He is absent from 10 June to 17 July. This situation requires coordination between the core team and the principal investigators/country study managers.

The full project period stretches over two years, from 1 December 2008 to 30 November 2010, although a winding-up period of three months will be permissible. The literature review will start from

1 March to 31 May leading to concise country reports, but the review should continue right through the project period.

It was agreed that the fieldwork of the first phase will last from 1 June to 30 August. Prof Mengisteab and Dr Hagg will visit the sites in June and July. Principal investigators should contribute to the design of a report and analysis framework by 1 September, and submit their draft reports of the fieldwork before 31 October 2009. The draft consolidated report will be written between 1 September and 30 November 2009, to be presented at the Nairobi workshop, second week in January 2010.

The outline and parameters of the fieldwork will be finalized before the fieldwork starts. Key informants should be identified before 15 May, so that they can be submitted to the HSRC Ethics Committee and PSU Ethics Committee.

Principal investigators will submit their fieldwork business plans including budgets before 15 March, so that the core team can assess, negotiate and consolidate them into a single research plan. As soon as a fieldwork business plan is agreed upon, funds will be made available to the principal investigator to start the process.

Summarised the broad schedule is as follows:

1 Mar – 31 May:	Literature Review
1 Mar – 15 Mar	Final selection of sites and preparation of country fieldwork business plans and budgets
15 April	Finalisation of fieldwork business plans
15 Apr – 15 May	Preparation of fieldwork
1 Jun – 31 Aug:	Fieldwork
1 Sept -30 Sept	Country fieldwork research reports
1 Oct – 31 Oct	Consolidated draft report
2 nd week in Jan 2010	Nairobi workshop

Closure of workshop

The final activity of the workshop was a short discussion of the administration of the workshop itself and the management of claims.

On behalf of the core team, organizers and funders, Dr. Gerard Hagg thanked all participants for their commitment to a fruitful discussion and their contribution to a well-conceived action plan for the research. He wished all participants a safe and prosperous journey back to their home countries, and expressed the team's high expectations of the fieldwork proposals from the country representatives.

**Reconciling Africa's fragmented institutions of governance:
a new approach to institution building**

Human Sciences Research Council and Pennsylvania State University

Planning workshop

17-20 February 2009, Willow Park Conference Centre, Kempton Park, Gauteng

Workshop programme

Tuesday February 17

- 14:00-19:00 Arrival of guests at Conference Centre
19:30 Dinner with guests at Willow Park
- 9:00–9:30 **Welcome and introduction of Participants**
 Dr. Gerard Hagg, Democracy & Governance, HSRC
 Dr. Kwandiwe Kondlo, Executive Director, Democracy & Governance, HSRC
 Dr. Werner Böhler, Konrad Adenauer Foundation
- 9:30–10:45 **Overview of Nature of Project & Expected Outcomes,**
 Dr. Kidane Mengisteab, Penn State University
 Chair: Dr. Hagg, Democracy & Governance, HSRC
 Discussant: Dr. Mwesiga Laurent Baregu
- 10:45–11:00 **Tea Break**
- 11:00–13:00 General Discussion on nature of project and its relevance
- 13:00–14:30 **Lunch Break**
- 14:30–15:30 **Presentation of General Approach & Methodology of Project,**
 Drs Kidane Mengisteab and I.B. Logan, Penn State University
 Chair: Dr Joseph Keiyah, KIPPRA, Kenya
- 15:30–16:45 **Presentation on Dissemination of Project's Results,**
 Dr. Hagg, Democracy & Governance, HSRC
 Chair: Dr. Lungisile Ntsebeza, University of Cape Town
- 16:45–17:00 **Tea Break**
- 17:00–17:45 Open discussion

Thursday February 19: Planning the first phase

- Morning Session: Country Presentations**
8:30–9:00 **Ethiopia,** Drs. Merera Gudina and Tesema Taa, Addis Ababa University
9:00–9:30 **Somaliland,** Ms. Sadia Musse Ahmed, PENHA, Smaliland

9: 30-10:15	Chair: Dr. Kidane Mengisteab, Penn State University Discussion
10:15-10:30	Tea Break
10:30-11:00	Kenya, Dr. Joseph Keiyah, KIPPRA
11:00-11:30	South Africa, Dr. Mpilo Pearl Sithole, Democracy & Governance, HSRC
11:30-12:15	Chair: Dr. Peter Kagwanja, Africa Policy Institute Discussion
12:15-14:00	Lunch Break
14:00–15:15	Afternoon Session: Overview of and operationalizing of Field Methods for 1st phase of Project, Dr. I. Logan, Penn State University
15:15–16:00	Chair: Dr Kidane Mengisteab, Penn State University Discussion
16:00–16:15	Tea Break
16:15–17:00	Afternoon Session: Overview of and operationalizing of Field Methods for 1st phase of Project (cont), Dr. I. Logan, Penn State University
17:00-17:30	Discussion
Friday February 20: Finalisation of planning and co-operation	
8:30–10:00	Possibilities of co-operation, extension of project and additional funding
10:00-10:30	Any Other Business, claims, administration, Dr. Gerard Hagg, HSRC
10:30	Closure and departure

ADDENDUM B

Reconciling Africa's fragmented institutions of governance workshop

Participants planning workshop 18-20 February 2009

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FIELDWORK METHODOLOGY

Task 1: literature and archival survey

The first task was identified as a literature review, which should cover the following:

- **Scholarly literature** on TIs and TI-Modern Governance Models, with a focus on the case study countries, but benefiting from similar research in other countries.
- **Constitutions**, exploring the frameworks for TI-Modern Governance Models, with special attention to the relationship between the modern state and TIs, e.g. in regard to customary rights versus government right of expropriation, and the role of TIs in resource adjudication and management.
- **Police records**, particularly those dealing with conflict resolution at a household level, and the outcome of police contributions.
- **Court records**, again with regard to the use of the court by rural households for conflict resolution, in comparison to the use and efficacy of TIs in such conflicts.
- **School records**, with special attention to the gender dimensions of enrolment, retention and areas of study, in order to identify (non)existence of local promotion of gender equality.
- **NGO Reports** on governance, both from the point of view of the state and non-state actors.
- **Other sources** that provide data on the role of TIs and the state in local development, and the relation between them in the process of delivery.

Operationalizing archival research

- Summarize the main theoretical, conceptual and empirical discourses on African traditional institutions
- Examine post-colonial constitutions for role of chiefs in governance, state versus communal property rights; provisions for compensating rural communities
- Examine legal codes on the rights of traditional institutions and government right of taking.
- Examine investment codes on state leases of land for FDI in resource exploitation;
- Examine court cases, if any, on state-traditional institution conflicts over resources.
- Examine newspapers reports on governance issues, state-communal rights conflicts over resources
- Examine NGO reports and reports of bilateral and multilateral agencies on governance issues, state-communal rights conflicts

Task 2: data collection on the nature of TIs

As a sub-text the following characteristics of TI were to be investigated in the following areas:

- Transparency and inclusivity in decision-making
- Conflict avoidance and resolution
- Gender equity
- Resource management and allocation
- General governance principles and institutions

Main field methods for task 2:

Key informant interviews (**KIIs**) and focus group interviews (**FGIs**) at the community level

- **Chiefs** – views on the operation of TIs and why they believe TIs remain relevant for rural communities. Keep in mind that in many cases the term ‘traditional authority’ is preferred as ‘chief’ has a connotation with subjugation in colonial discourse.
- **Elders** – views on the operation of TIs and why they believe TIs remain relevant for rural communities

- **Community members** (ethnicity, gender, age, educational background) – views on the operation of TIs and why their institutions, principles and services may or may not be preferred over the government's

Task 3: data collection on existing TIMG models (e.g. parliamentary chiefs)

- Constitutional role of parliamentary chiefs
- System of electing/selecting/nominating parliamentary chiefs
- Role of parliamentary chiefs at the community level
- Legitimacy of parliamentary chiefs at community level
- Others?

Main field methods for task 3:

- *Parliamentarians* – strengths and weaknesses of mechanisms for choosing parliamentary chiefs, views on the role of parliamentary chiefs in governance, relevance of parliamentary chiefs to the state and to their communities, mechanisms for strengthening the role of parliamentary chiefs in governance....
- *Scholars* - same
- *Parliamentary chiefs* - same
- *Non-parliamentary chiefs* - same
- *NGOs on governance issues* – same
- *Others?*

Task 4: Collect Data on Community Use of Modern Sector Services:

- Courts
- Police
- Schools
- Others?

Main Field Methods for Task 4

- **Key Informant interviews:**
 - *Judges:* views on the use of court system by rural households and communities, comments on cases over land/property rights, opinions on how rural communities view the court system versus traditional mechanisms
 - *Policemen:* views on number and types of cases reported to police by communities (marital disputes, disputes between neighbors, thefts etc); opinions on how rural communities view the police versus traditional mechanisms
 - *Government Regional Administrators* – views on the use of government services by rural communities; opinions on how rural communities view government services versus traditional mechanisms
 - *School officials* - opinions on gender dimensions of school enrolment, retention and areas of study
 - *Community members* (ethnicity?, gender, age, educational background) – views on their use of modern sector services versus traditional institution services (which services they trust to traditional versus modern institutions and why)

Task 5: Collect Data on Reliance of Communities on TIs

- Village Courts
- Community institutions and principles for mass participation in decision-making
- Community institutions and principles for resource management and adjudication
- Community institutions and principles for gender equity

Main Field Methods for Task 5

Key informant Interviews

- *Traditional rulers* – views on the strengths of TIs in avoiding conflicts within and between rural communities, conflict resolution over land/property rights
- *Traditional elders* - same
- *Community members* (gender, age, educational background) – views on the extent to which they use TIs for different purposes (marital disputes, land disputes, thefts, others), views on why they continue to use TIs; weave in issues surrounding the nature of TIs in governance, transparency, gender equity, resource management and allocation

Focus Group Interviews for Task 5

Focus Groups that should be considered

- Group 1: community leaders
- Group 2: men
- Group 2: women
- Group 3: youths (mixed gender)
- Group 4: Educated community members (do we need to?)
- Others?

The focus groups will employ the same guideline questions as the community KII for task 5

Conceptual overview of data collection approaches

During the second session on data collection, Prof Logan presented a conceptual overview of data collection approaches to KIIs and Focus Group Interviews (FGI):

General conceptual overview of KIIs

- Prof Logan identified the following purposes of KIIs:
To collect qualitative data – and such data are considered sufficient by themselves for a study or important complements to other types of data
- Pilot studies – to set baseline parameters for a larger, more comprehensive study
- To understand the attitudes, interpretations, motives...of a target group/groups
- To give 'voice' to people as an integral part of community-based, grass-roots development

Advantages of KIIs

- Views, opinions, interpretations of knowledgeable people, which cannot be obtained otherwise
- Ideas, knowledge and interpretations, which the researcher might not foresee otherwise are made known to him/her
- Directs the research into areas and new questions that are of value to and interest of the target people
- Inexpensive
- Flexible and few constraints

Limitations of KIIs

- Flexibility can be misused
- Data may lead to results that are not be generalizeable because they are particular to the conditions and circumstances described by the KI
- Like many other methods, there may be hidden biases both by the interviewer and the KI

Selection of KIs

The second task involves the interviewing of Key Informants (KI). Prof. Logan provided some general guidelines for selecting KIs:

- The key informant should be knowledgeable about the issues involved in the project
- There should be some effort to have socioeconomic representation whenever possible: ethnicity, (race?), gender, age, income, education etc.
- The key informants should not be too numerous
 - 11-15 for communities
 - 2-3 for government officials, NGO officials, scholars, policemen, judges etc.

Pre-interview preparations

The following pre-interview preparations should be considered:

- Introduce the project to different KIs (it may be convenient to arrange one such meeting for each KI category, if possible)
- Request permission to conduct the interview at a later date
- Set up an appointment(s) for the interview (place, date, time)
- Request permission to audio or video record ahead of interview
- Introduce yourself to the respondent; thank him/her for taking time out to talk with you;
- remind him/her of the purpose of the research.
- Take down name of informant (if s/he is willing to give it); otherwise, use a general descriptive title, example, 'Provincial Governor of ****'
- Take down date, time and length of interview

Interview procedures:

- Each key informant (KI) is interviewed separately
- The 'interview' is really a discussion
- The 'interviewer' is really a facilitator of the discussion
- The 'questionnaire' is really a short list of guideline prompts and questions
- The nature of the discussion is open-ended (the facilitator allows the KI to speak freely)
- Employ snow-ball approach in which you allow 'new' questions to emerge from the answers and comments of the respondent
- There may be more than one session per KI – if necessary
- The duration and number of sessions is determined primarily by the interest of the KI
- Do not interrupt the respondents while they are talking; let them complete their thoughts
- Ask follow-up questions even if (especially if) they are not part of the guideline
- Ask for clarifications as often as possible
- Avoid yes/no questions; try to make questions as open-ended as possible
- Thank the respondent at the end of each session

Guidelines on the type of questions that should /could be asked:

General structure of questions

- The number should be kept to a minimum (10 - 15) to avoid KI fatigue; if there are more questions, it is best to have more than one session
- Questions should be divided into **key** questions (4 or 5 main guideline prompts) and **secondary** or **follow-up** questions. Many follow-up questions come from the discussions themselves
- Questions should be divided into **factual** and **opinion**
- Questions that require **yes/no** answers are not useful

- Unlike many other types of interviews, questions pertaining to personal information (age, income, education level...) are not useful because the purpose of the KII is not to obtain personal data

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.

Task 5: Conceptual overview of focus group interviews:

The United States Agency for International Development's (USAID) *'Performance Monitoring and Evaluation: Conducting Focus Group Interviews'* http://www.usaid.gov/pubs/usaaid_eval/pdf provides a number of practical guidelines for using focus group surveys in the field

- Each focus group should comprise of 8-10 persons
- Focus groups should be homogenous in terms of age gender, status
- Key informants are useful in group construction and key some key informants can even be group members.
- The focus group discussions will be organized around a series of guideline questions.
- Each focus group will meet 3 or 4 times for approximately one hour each at a location convenient for the group and the particular situation on the ground.

In general, focus group surveys are similar to KII in approach, strengths and weaknesses.

Briefing the community

- Brief the community on the proposed project
- Seek community permission to conduct the research
- Seek permission to use electronic equipment (if refused, rely on notes)
- Explain the expected output, their intended uses and potential benefits to the community
- Establish a schedule of meetings with the community based on its convenience.

Conducting Focus Group Interviews

- The discussions will follow the snow-ball approach

- Always try to follow up with prompts like ‘anything else?’
- The ‘dual moderator’ approach is advisable - with one leading the discussions and both taking notes (if possible) and watching group dynamics. It is important to get two sets of notes, especially if we are not recording.
- Ask the questions, allow participants to talk among themselves (not necessarily to you) and record as much of the discussion as possible
- Generate further discussions on ‘heated’ topics by asking for clarifications; probing questions
- Try to ensure that one or a few ‘dominant’ participants do not monopolize the discussions by directing questions to ‘quieter’ participants.
- Personality conflicts (make notes of ‘bullies’ and limit their monopoly of discussions by asking politely if you can ‘hear from’ x, y or z)
- Take notes of body language and other non-verbal communications (if, for example, men are particularly angry about a subject, this must be noted as it may be relevant)
- Take note of random distractions during the sessions and how, if at all, they may have influenced the eventual flow of the meeting (say a baby cries and stops the flow of discussion on an issue – this must be noted because it may have some implications for how the discussion proceed subsequently)