



Second Interim Technical Report to the IDRC

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

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by

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

And

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

Countries where research is being carried out and research teams:

Country	Team members	Institution
Overall management	Dr Kidane Mengisteab Dr Gerard Hagg Dr Ikubolajeh Logan	PSU HSRC PSU
South Africa	Dr Gerard Hagg Dr Pearl Sithole Thamsanqa Mbele	HSRC HSRC HSRC
Ethiopia	Dr Merera Gudina Dr Tesema Ta'a Woyessa	Univ of Addis Ababa Univ of Addis Ababa
Kenya	Dr Joe Kieyah David Khaoya	KIPPRA KIPPRA
Somaliland	Ms Sadia Musse Ahmed	PENHA

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Synthesis

Many African countries suffer from fragmented institutions of governance. This problem is manifested in the adherence of rural populations primarily to traditional institutions while the post-colonial state operates on imported institutions of governance, which are transplanted outside their cultural and socioeconomic milieus and often at odds with traditional African cultural values. As a result, modern institutions have been rather ineffective at preventing and managing sectarian conflicts and at promoting synergy in state-society relations. The incoherence and clashes between the traditional and modern systems have contributed significantly to Africa's crisis of state building and governance. Unfortunately, the acute need for reconciling Africa's fragmented institutions of governance has not received the attention it deserves. The proposed research aims to contribute to this important area of scholarship and policy.

The project has the following three specific objectives. The first objective is to document carefully the characteristics and attributes of traditional institutions, with emphasis on those that deal with (1) property rights and allocation of resources, (2) prevention and resolution of conflicts, and (3) participation in the process of decision making in general and participation of women in particular. The second objective is to examine carefully the documented characteristics under objective one to assess attributes that (a) overlap with and strengthen the principles and practice of democratic governance; and (b) that can contribute to the development of mechanisms for prevention and resolution of conflicts and thereby enhance a peaceful process of state building. The third objective is to explore how the attributes identified under objective two can be fused with modern institutions in order to create a coherent system of institutions, to examine how the fused institutions can enhance democratic governance and peaceful state building, and how it can be used to improve the plight of vulnerable segments of society, including peasant farmers, pastoralists, and women.

This second progress report covers the research conducted during the second half of the first phase of the project up to the end of the HSRC financial year (1 July 2009-31 March 2010) in order to include the January 2010 workshop findings and to facilitate alignment between the HSRC financial system and the report structure. This report covers the fieldwork (key informant interviews and focus group discussions), literature reviews in the four countries, and a workshop in South Africa for the first phase fieldwork report-back and planning for the second phase, and dissemination activities (Annexure A: workshop report).

Interviews in nine case study communities in Ethiopia, Somaliland and Kenya have been completed. The initial feedback from the fieldwork indicates that local stakeholders consider the research highly relevant and that it addresses key governance issues in the communities. A number of policy makers, traditional leaders and academics attended the workshop in South Africa (Jan 2010).

Research problem

Despite the fact that African countries have exerted much effort over the past four or so decades at crafting viable institutions of governance, most of them are still confronted with institutional crisis. Three different types of institutions can be identified. One type consists of the formal institutions of the post-colonial state, which are largely inherited from the colonial state or imported thereafter. The second type of institutions comprises of those inherited from the pre-colonial era of governance. These ‘traditional’ systems vary along the existed political systems (i.e. the centralized chieftaincy systems and decentralized village or kinship systems). A third type of institutions consists of the societal informal institutions (norms, customs, value systems and practices, which vary along ethnic or religious lines and modes of production (e.g., pastoralists and peasant farmers). This fragmentation of institutions, which represents separate socioeconomic spaces, has created a number of problems, one of which is that the different sets of institutions often clash with each other. Although broadly three types of institutions exist and the research team’s understanding has not vastly changed, the literature surveys and

initial fieldwork highlight the variation and complexities of the institutions and their relationships. The country and case studies show subtle to significant variations in the relationship between traditional institutions to modern ones. Clearly attributes and dynamics show a richness which is the result of varying national histories, their regional policy and legislative contexts, as well as tensions between the two systems, even where legislators intended to reconcile them.

Research findings

Phase 1 of the research has been completed, and findings were reported to the workshop in January 2010. The following summary covers the most pertinent findings in the four countries.

In general structures of leadership consist of the following categories:

1. Centralized systems:
 - a. centralized and hereditary system with significant authority - South Africa;
 - b. Centralized and hereditary systems with limited authority – Nuer, Ethiopia;
 - c. Centralized non-hereditary with significant authority – Borona, Ethiopia
2. Decentralized Systems:
 - a. Decentralized and hereditary systems with limited power- Somaliland's sultans;
 - b. Decentralized, non-hereditary, and with limited powers (elder-based systems) Kenya's cases and Gurage in Ethiopia;
3. Chiefs that are government appointed civil servants in Kenya and in Somaliland (Aqils).

Structure of Leadership is summarized in Table 1.

Centr: chiefs	Hereditary	Notable	S Africa	Sub-chiefs; Headmen
Centr: chiefs	Hereditary	Limited	Nuer	Sub-chiefs, elders
Centr. Non-chiefs	Non-hereditary	Notable	Borona	Cabinet and elders
Decentr. Chiefs	Hereditary	Limited	Somali sultans	Elders, Sub-elders
Decentr. Elder system	Non-hereditary	Limited	Kenya cases and Gurage	Sub-elders

Table 1. Structures of leadership

Preliminary Findings - Conflict Resolution Mechanism

In most cases the conflict resolution role of TIs is deemed to be indispensable (e.g. Njuri Ncheke in Kenya and South African cases). Government administrators are often ill-equipped to deal with land disputes as they have little knowledge of boundaries of properties of various holders (claimants). Official courts are unable to handle all cases and police are not always available, especially in more remote areas. By necessity governments rely on TIs for conflict resolution and maintaining order in rural areas. Invariably, the orientation of conflict resolution of TIs is to settle disputes through reconciliation and a system of compensation and not merely to punish offenders. Inter-clan/ethnic conflicts, land disputes, inheritance problems, marriage/divorce/adultery/rape, theft, assault, and even murder cases are brought into customary courts in most cases. In South Africa serious cases, such as hijackings, murder and rape, are reported to the police and magistrate. Formal, traditional, and *Sharia* courts operate side by side in several of the case study communities. In most cases the three courts refer cases to each other and accept each other's rulings. While there are considerable variations in form and process among the research sites, the overwhelming majority of cases are said to be handled by the customary courts.

Preliminary Findings – Decision making

Decisions at various levels are essentially reached through discussions in assemblies. Chiefs, sultans, and senior elders mostly confirm and announce decisions reached by the

consensus of the assembly of the council of elders rather than make decisions on their own. Although abuse happens, the findings seem to contradict arguments about autocratic traditional leadership in many of the discourses. Women and youth are often not involved in such decisions, except in South Africa where individual human rights are protected by the national Constitution.

Gender Relations

This is an area of major weakness of Traditional Institutions. Women hardly participate (directly) in decision-making, although the level of exclusion varies from case to case, with the Nuer and South Africa being at the opposite ends. In South Africa formal laws have made inroads in enabling women to participate. Women's access to inheritance rights also varies across the cases.

Women's Participation

Type of participation	Level of participation	Limits	Reasons
Bride price	Yes	Especially among the Nuer	Factor for large herds
Inheritance from parents	No	Except in some cases	When woman is only child
Inheritance from husbands	Yes; South Africa	No, Nuer	Depends on presence of children in others
Participation in public decisions	Partly no, yes in South Africa	No in other cases	Women's associations in Ethiopia
Sharing property in divorce	Yes in South Africa	No in other cases	Situation differs if there are children

Mechanisms of Land Allocation

One of the reasons why South African chiefs have more power than their counterparts in the other cases is their custodianship of land. This power is limited, however, since the chiefs administer rather than own/control the land. There is high contestation after

submissions to courts and withdrawal of legislation in South Africa. In the other cases, leaders settle land disputes but they have little allocative power over land.

Factors in Resilience of Traditional Institutions

Penetration of state institutions in rural areas is in some of the cases rather limited. Traditional institutions, thus, continue to exist by default. TIs are more suitable to the mode of production in rural areas, especially the conflict resolution and land allocation mechanisms. TIs provide service at lower transaction costs and within shorter time.

Interaction between TIs and Modern Institutions

Interaction between the two institutional systems is largely informal. Government administrators use TIs because they cannot operate without their cooperation. With growing availability of firearms, TIs also require state support to maintain order. However, the interaction varies from cooperation to conflicts. Necessity and practicality make it imperative that the parallel institutions are reconciled, e.g. the *guurti* and the parliament in Somaliland. Communities generally prefer the TIs, especially the older generation and those in traditional modes of production but they also recognize the benefits of some aspects of the formal system, such as service delivery in South Africa. The communities negotiate the parallel institutions by choosing different institutions for different services, e.g., formal courts for divorce and rape.

Planning of phase two

The last two days in the workshop were used to develop the survey plan and questionnaire for the second phase of the research, based on the findings of the first phase fieldwork.

Project implementation and management

Activity 1: Fieldwork (see workshop report for detailed reports)

Dr. Kidane Mengisteab of PSU participated in the fieldwork in two sites in Ethiopia, two sites in Kenya and in the one site in Somaliland.

This research project is financed by Canada's International Development Research Centre (www.idrc.ca).

South Africa: Two rural communities were selected: a) Giyani in Limpopo province in the north: in Giyani 27 key informant interviews and four focus group interviews were conducted in two communities. The interviews included traditional leaders, local politicians, officials from government and traditional authorities, women, youth and individuals. The three focus group interviews dealt with three categories: women, administrators, and traditional leaders and politicians. A separate meeting was held with representatives from the youth council. One court case was attended. b) Matatiele in the Eastern Cape province: In Matatiele 11 key informants and eight focus group interviews were held in four communities, with four different languages. The interviews involved individuals, clan leaders, government officials, and civil society representatives. One court case was attended.

Ethiopia: Three communities were investigated: a) The Gurage, one of the major ethnic groups in Ethiopia and relatively speaking the most urbanized; b) the Booranaa, one of the major Oromo branches who are predominantly pastoralists and live in the Southern Oromia Regional State of Ethiopia on the frontiers of the Northern District of Kenya; and c) the Nuer, who are predominately pastoralists and are one of the Ethio-Sudanese frontier populations living in the Gambella Regional State, as well as in the Sudan. Interviews involved traditional leaders and local government officials.

Kenya: Three communities were selected in Kenya for the field survey. They included: a) the Miji Kenda community in the Coast province, which has a system of community leadership called the Kaya Council of elders which exists alongside the government system of governance. This council is made up of representatives from all the nine tribes of the Miji Kenda. b) the Meru community in Eastern province, which has a traditional institution called the Njuri Ncheke which is a council of elders that has structures right from the grassroots; and c) Pokot community in the Rift Valley, which has a council of elders called Kokwo Poi. This council is drawn from the clan elders. Each clan has a leader chosen based on his competence and wisdom but by consensus.

Somaliland: Interviews were held in the communities around Hergeisa, which are typical of the rest of Somaliland with regard to the dominant traditional institutions, such as the national-level *Xeer*, the regional Sultans and the clan-located Aquils.

Activity 2: Literature Review

All four teams have been involved in literature reviews, together with the research assistants who have conducted the fieldwork. During the first stage, the literature surveys focused on legislation and policy environment in the case study countries, as well as a historical background and general information on traditional institutions in the research communities. The literature surveys informed the discussions at focus group interviews, and often formed the backdrop to the arguments for retaining the traditional institutions. The literature survey continues throughout the project and will be included in the final report.

Activity 3: Report-back and planning workshop

The research management team, seven representatives of the four country research teams, seven experts from Southern Africa, the chair of the South African National House of Traditional Leaders, and four officials from the SA government and three members of the Konrad Adenauer Foundation (KAS) participated in a four-day workshop from 25-29 January 2010 in South Africa. The change of venue from Nairobi was due to the opportunity for funding by KAS South Africa. Dr Njeri Karuru (IDRC Nairobi), Dr Fredrick Kisekka (Makerere University, Uganda), Hajo Junge of GTZ, and Prof. Reinhart Koessler (Arnold Bergstraesser Institut in Germany) attended the workshop as well.

The workshop programme included a general overview of the project, reports on the findings of the first phase fieldwork, planning of the second phase fieldwork (household survey) and general discussions. A workshop report is attached hereto.

The HSRC team has agreed with the case study communities to do report back meetings in April (Matatiele) and June (Giyani). This will also be an opportunity to brief the leaders about the planned household survey in July-August. Both report-back meetings have been concluded, and have strengthened the relationship with the local traditional authorities.

Activity 4: Networking and fundraising

Negotiations were continued with the German development funder Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) in order to obtain funds for extending the project in the four countries, and possibly adding Ghana and Southern Sudan. Although GTZ has expressed interest in the project, this may only realize in the next GTZ programme phase. Possibilities of cooperation with the Arnold Bergstraesser Institut are investigated.

Negotiations with the Department of Co-operative Governance and Traditional Affairs in South Africa, for support have continued although no formal cooperation could be established. This Department is in the process of a sub-division into two Departments, of which one will be Department of Traditional Affairs. This development offers opportunities for further cooperation, although officials are also very busy in internal planning. The South African Department of Justice and Constitutional Development have expressed an interest in using some of the results of the IDRC funded project for its own planning of a research project on the Traditional Courts Bill. The latter was submitted in 2008, but withdrawn after concerns from the legal NGO sector on the inadequate consultation process. The Department intends to establish a research and consultation team, in which the HSRC-IDRC project will be represented. The South African National House of Traditional Leaders is formally supporting the project.

The initial sensitivity among leaders about the research has changed to support, and in some cases anticipation of the second survey. In some cases leaders ask that more interviews and surveys be done, but limited funding prohibits it.

Management

The project is managed by the HSRC involving the project manager Dr Gerard Hagg, project administrator Zama Koba, with support from administration units in the HSRC. Dr Hagg has been responsible for overall management and the case study in Giyani, South Africa and Dr Pearl Sithole has managed the fieldwork in Matatiele.

In the PSU the project is managed by Dr Kidane Mengisteab, with involvement of administrator Jennifer Hillebrand and several sections in PSU. Dr Mengisteab was responsible for overall management of research in Somaliland, Ethiopia and Kenya.

In view of the retirement of Dr Hagg from the employ of the HSRC as of 1 May 2010, the HSRC is engaged in ongoing discussions with Dr Hagg with a view to retain his expertise and institutional memory in the management of the project going forward. We are looking to a speedy resolution of the outstanding issues. The HSRC will remain the project's institutional home in order to comply with the IDRC Grant Conditions and HSRC-PSU MoA, thereby honouring the contract with the IDRC and the achievement of the agreed-to deliverables.

Second Phase activities

For the third term and fourth term of the project (1 April – 1 Dec 2010), the following activities have been scheduled:

1. Report back meetings to Giyani and Matatiele communities (completed).
2. Household survey July-Sept, involving 100 households each in 9 communities
3. Writing of fieldwork reports, Sept-Oct 2010.
4. Finalisation of the literature review.
5. Report back workshop in Nairobi, early November 2010, funded by KAS Nairobi, which will form the basis of the final report
6. Negotiations with the German development funder Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) in order to obtain funds for extending the project in the four countries, and possibly adding Ghana and Southern Sudan.

7. Negotiations with KAS Nairobi have started for a round table meeting in March 2011, to which policy makers, traditional leaders, academics and civil society leaders will be invited. A similar round table is planned for South Africa, hopefully funded by KAS South Africa.
8. Presentations to the South African National House of Traditional Leaders and Provincial Houses of Traditional Leaders in Limpopo and Easter Cape provinces.
9. Negotiations with the South African Department of Co-operative Governance and Traditional Affairs in South Africa, for support and additional funding.
10. Negotiations with South African Department of Justice and Constitutional Development for application of the project to the challenge of 'Africanisation' of the legal system (traditional court system as part of common law system).

Research completion

The project is on track in terms of original planning, although some bureaucratic complexities in the HSRC were experienced due to institutional restructuring since March 2010. We would, however, like to request that the project completion date of 1 December 2010 be extended to 31 March 2011 for the following reasons:

- An extra three months will allow us to have the final workshop for writing the report in early November 2010, followed by the first draft report to IDRC and stakeholders (including policy makers) early Jan 2011, with an invitation to provide critical comments before 31 January 2011, which will enable us to submit the final report on 31 March 2011.
- We are negotiating with GTZ for funding to extend the project, both in South Africa and additional African countries. If GTZ agrees to fund, it will probably only become available early 2011, and it would help if we could overlap the IDRC funded part with the GTZ one (if realised).
- There is a good chance that we will receive funding from Konrad Adenauer Foundation for one or more round tables early 2011. Closure date of 31 March will allow us to incorporate the discussions of these round tables in the final report to the IDRC.

Costs (see 2nd Financial Report)

Labour costs

Labour costs for HSRC have remained within the original budget. The HSRC has provided for the costs of one research assistant for Matatiele, Thamsanqa Mbele to a value of R100,000 for the first year. Mr Mbele will also be available for the second phase of the research at the HSRC costs.

PSU has sacrificed part of the labour costs of the project leader and graduate assistant on wages to ensure that sufficient funds are available for the fieldwork **for the first year**.

Costs of fieldwork

The costs of fieldwork were higher than anticipated, and it is calculated that the same will apply to the fieldwork in the second phase, **which is to start from 10 July 2010**. The main reason is the amount of time spent in the field, as most key informants are illiterate and communities want to be informed before the interviews start. Furthermore, travelling and accommodation costs are higher due to distance and geography (hilly areas in some cases) and absence of tarred roads in rural areas.

As a result of increased fieldwork costs during the first phase, most funds for the fieldwork in Somaliland, Ethiopia and Kenya for the full project have been used up. To ensure that the necessary funds are available for the second phase, the team has revised the budget in order to save costs. By saving on Graduate Assistant on wages, the PSU Project Manager's cost, reduction of HSRC costs, and through fundraising for all the workshops (total of ZAR 400,000 for the full project), a revised budget could be produced, which has a deficit of **ZAR 349,942** in comparison to the original budget. Losses on the forex for the first two payments were ZAR 20,227, while a further loss of ZAR 98,975 is expected on the final three payments, totaling ZAR 119,202. Total deficit is thus estimated in ZAR:

Forex losses	119,202
Deficit on fieldwork	349,942
Total deficit on project	469,144

Interest earned on the IDRC payments to an amount of R43,203, has been calculated in the forex losses.

Taking all the circumstances and calculations into consideration, the team requests that the IDRC considers an additional funding to the amount of ZAR 469,144, which would be 15% on the original budget.

Disbursements

The Second Interim Financial Report provides details of the disbursements which the HSRC has made between 1 July 2009 and 31 March 2010. These figures are based on HSRC financial year statements.

The following is a summary of disbursements and income over the 8 months period

Personnel	891,087
Consultants	134,219
Evaluation	
Equipment	
Travel	5,852
Training	115,334
Research Expenses	195,436
Indirect Costs*	271,595
Total	1,613,523
Income	
IDRC: CAD 143,450 conversion value	1,033,564
Interest	43,203
Konrad Adenauer Foundation	47,353
Total	1,124,120

Forecasted expenditures for the rest of the second year: 1 April – 1 December 2010

The forecast below makes provision for the above-mentioned rebudgeting and deficits (excluding forex). In the second financial report it appears in FR2, the last column of the spreadsheet:

Revised budget for period 1 April – 1 December 2010

Budget Item	Revised Budget
Personnel	223,311
HSRC	83,311
Gerard Hagg	
Dr D Hemson	18,587
Senior Researcher	64,724
Lungisile Ntsebeza	0
PSU salaries and benefits	140,000
Project leader	0
Graduate Assistant	0
Graduate Assistant on wages	140,000
Consultants	359,800
HSRC	
Project Management G Hagg	184,800
Local consultants	40,000
Interviewers	30,000
Survey interviews	30,000
Translators	15,000
Transport	30,000
Per diem	12,000
Accommodation	18,000
Travel staff	
HSRC	23,000
Research site visits	12,000
Nairobi workshop / South Africa	0
Addis Ababa workshop	11,000
Training PSU	0
Graduate Assistant training	0
Research expenses	748,500
HSRC	51,500
Communications	6,000
Local transportation	14,000
Accommodation	18,500
Per diem country reps	2,500
Per diem HSRC team	4,500
Translation questionnaires	6,000
PSU	697,000

Research travel for 2 (now 1)	90,000
Workshop travel for 2	37,000
Workshop participation for teams	
Organizational meeting in SA	
Translation, interviewers, data analysis	570,000
Total Direct costs	1,354,611
Indirect costs	98,365
HSRC rate 10%	45,570
PSU Rate 13%	52,795
Total (RAP)	1,452,976

Project outputs and dissemination

During the period covered in this report, the project output and dissemination consisted of:

- a workshop in January 2010 to which a number of policy makers, academics and officials have participated (see Annexure A: Workshop Report)
- Mengisteab K. *Clashes Between Formal and Informal Institutions and Instability in Africa* at the ISA Conference *Theory vs. Policy? Connecting Scholars and Practitioners*, 16-20 Mar 2010.
- Ahmed, S M. *Traditional Institutions in modern governance, with emphasis on the House of Elders* presented at the conference on Democratization and the challenges of free and fair elections, Nov. 23-24, 2009, Hargeisa, Somaliland. A discussion followed in which some contributions were made and in the group work, one of the themes was to debate on the issue traditional verses modern and recommendation were made on the national review of the House of Guurti in regards to research findings, group discussions and experience of the nation. The proceedings will be published by the institute.
- Dr Tesema Ta'a: *Consultancy services* to a group of women in Ethiopia interested in Gender Issues: a) conducting research; b) undertaking evaluations; c) designing strategic plans; d) designing project proposals: and e) preparing publication materials have been attracted in the kind of work we do. They have interviewed

me on how the traditional institutions and customary laws operate along side the modern system of governance in Ethiopia and the role of women in decision making in both cases. Based on my experience and research among the Booranaa Oromo I have highlighted a few questions for them. This shows that many people are interested in the type of project we are pursuing.

- Hagg, G. *Improving rural service delivery: can traditional institutions of governance contribute?* Presentation delivered at the TUT-HSRC-SAAPAM-G conference on Service delivery in the changing political landscape: where is the missing link. 25-26 March 2010, Pretoria.
- Presentations on the project to the SA Dept of Cooperative Governance and Traditional Affairs, and the Dept of Justice and Constitutional Development.
- Presentations of the fieldwork findings in Giyani and Matatiele

The Konrad Adenauer Foundation (KAS) South Africa, which focuses on dissemination, has funded most of the second workshop, including participation by a German researcher who deals with related issues in Namibia. KAS has also informed its stakeholders about the project through its newsletter.

Impact

Although impact based on research findings cannot be determined at this early stage, the project teams have been welcomed in all communities as well as by stakeholders at various levels in government. The National House of Traditional Leaders in South Africa has formally pledged its support for the research. The traditional leaders in Giyani and Matatiele, South Africa, highlighted the urgent need for this research in view of pending legislation and policy changes in government. Local elected government in the two South African areas also indicated that although legislation had been promulgated it seldom addresses the realities on the ground, and they hope that the project will contribute to clarify what types of legislation and policies are needed in South Africa. The South African Dept of Justice and Constitutional Development has shown an interest in the

research for its investigation into the Traditional Courts Bill of 2008. Discussions with GTZ South Africa have led to their request for generic proposals for extensions of the project into other African countries, including Southern Sudan and Ghana, as well as Francophone countries.

Recommendations

Taking into account the above report, the following recommendations are made:

- Extension of the research completion date (submission of the draft final report) to 31 March 2011
- Make provision for shortfall in amended budget to an amount of ZAR 469,144.
- Organise a workshop in Canada somewhere in March/April 2011 similar to the one before the project started, so that the projects in the specific programme can discuss their findings.