

**Helpdesk Research Report: Governance Systems in Tribal Environments**  
**14.12.07**

**Query:** Please conduct a review of the literature of examples of alternative localised governance systems in relatively tribal environments that have delivered effective, consent-based rule of law.

**Enquirer:** DFID South Asia Division

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**1. Overview**

*“...Cultural rights legislation will always amount to an imperfect mirroring of fluid realities, the strengthening of some voices and the exclusion of others.”*

- Barbara Oomen, 2000

This query has been able to identify very few resources that focus specifically on governance systems within tribal societies. However there is a wider body of literature which discusses traditional structures of authority and leadership. Even this, however, focusses mainly on democratisation and decentralisation processes. These sources agree that in many countries, the legitimacy of these structures has endured amongst communities and in some cases, they have provided superior governance and conflict resolution than the state. Unlike modern structures, the legitimacy of traditional leaders is not rooted in constitutions and electoral processes, but in inheritance or other historical mechanisms of leadership selection. The functions of these traditional structures can include security; dispute resolution; justice; regulation of social life and norms; small-scale community development projects; natural resource management; and social protection of the most vulnerable. Some of the mechanisms include tribal chieftains or leaders, customary courts, and participatory decision-making bodies. A key area of debate in relation to traditional and informal justice systems is whether justice can be made more accessible by encouraging such systems, by adopting or transforming some of their processes, or by facilitating a more collaborative approach between such systems and formal justice systems.

The research for this query has been unable to identify many examples of successful alternative governance systems – one commentator characterises current efforts as ‘experiments’, the success of which remains to be evaluated through greater scholarly attention to various important issues relating to traditional governance, such as people’s perceptions of traditional leadership and their motivations for these views, and the relations between local political systems. As a result many of the materials included in this query take a more critical approach to various case studies. It is hoped that their recommendations may prove useful. The query also includes documents which offer a more general theoretical analysis of traditional structures in local governance.

## 2. Key documents

### *Case Studies*

**Cornell, S., 2002, 'The Importance and Power of Indigenous Self-Governance: Evidence from the United States', Paper presented at the Indigenous Governance Conference, Canberra, 2-5 April**

[http://www.reconciliation.org.au/i-cms.jsp?file=156/02\\_stephen\\_cornell.doc](http://www.reconciliation.org.au/i-cms.jsp?file=156/02_stephen_cornell.doc)

This paper reports on the role that self-governance has played in the changing fortunes of American Indian nations in the United States. The author explores the concept of self-governance and makes the following conclusions:

- The key feature of self-governance is decision-making power over all areas: indigenous control over indigenous affairs, including everything from membership to governmental design to resource use to regulatory functions to dispute resolution to law-making and law-enforcement
- Self-governance may be wide or narrow in scope: In the United States, American Indian nations currently enjoy wide self-governing powers, but those powers are not unlimited. For example, they have significant civil jurisdiction on their lands but much more limited criminal jurisdiction.
- Self-governing powers can be shared: Tribal sovereignty mean secession. This does not have to be solely by consultation agreements but can also be government-to-government partnerships in which decisions are jointly made.

The study also found that self-rule appears to be a necessary but not sufficient condition for sustained economic development on American Indian reservations. There are several reasons for this:

- It puts the development agenda in Indian hands.
- Putting tribes in control links decision-making with accountability.
- In the US, the chances of sustainable development rose as Indian nations put in place institutions that can effectively solve core governance problems.
- The more successful Indian nations adopted or invented institutions that matched their own contemporary political cultures and that were capable of governing well.
- A critical element is leadership, i.e. persons who envision a different future, recognize the need for foundational change, and can communicate their vision to other members of the community. Such leadership is sometimes found among elected tribal officials, but it can come from anywhere.

**Williams, J. M., 2004, 'Leading from Behind: Democratic Consolidation and the Chieftaincy in South Africa', *Journal of Modern African Studies*, Vol.42, No.1, pp.113-136**

This article is available for purchase from Cambridge Journals:

<http://journals.cambridge.org/action/displayAbstract.jsessionid=3CC22605B01B4AC9FF3A990916EB5092.tomcat1?fromPage=online&aid=209596>

This article argues that in South Africa chieftaincy remains an important political institution that continues to exercise authority. While it has been given official recognition and protection in the constitution, where chieftaincy–societal relations take place on a daily basis, chiefs rely more upon informal powers that reflect the ideas, rules, and institutions rooted in pre-existing community norms and practices, or so-called 'traditions'. For example, most local communities expect the chieftaincy to maintain order, resolve conflicts, provide spiritual guidance, and promote the well-being of the community. However chiefs have also attempted

to become more involved in activities such as development, local government, and elections. This article explores the ways in which the chieftaincy has responded to the introduction of democratic electoral practices at the local level. Detailed examples from the field show how the chieftaincy is not only involved in the implementation and coordination of elections, but also, how this institution has adopted more participatory rules and practices for its own local structures. These observations, combined with survey data, suggest that the vast majority of people living under the chiefs do not expect democratic consolidation to proceed without the chieftaincy. This also demonstrates that while the chieftaincy has been affected by new democratic rules and practices, it has also influenced how local communities practice and understand these same rules and practices. The author also highlights that there has been little analysis of chieftaincy institutions in South African politics.

**Sharma, K. G., n.d., 'Role of Traditional Structures in Local Governance for Local Development: The Case of Botswana', World Bank, Washington D.C.**

<http://info.worldbank.org/etools/docs/library/153055/BOTSWANA.pdf>

The government of Botswana has retained and given formal recognition by law to the traditional institution of chieftainship and its associated traditional structures by. Chieftainship and traditional tribal administration structure is one of the four main organisations of public administration machinery and local government at decentralised local (district) level. The traditional leaders derive their authority partly from tradition and partly from the laws of Botswana. A chief is identified by the *Kgotla* in a customary manner and is appointed by the government which can at any time withdraw recognition from a chief. The chief exercises traditional authority after consultation with the tribe and the functions of a chief include promoting the welfare of the members of his tribe; carrying out ministerial instructions; ensuring that the tribe is informed of development projects in the area; convening *Kgotla* meetings to obtain advice as to the exercise of his functions; and preventing commission of any offense within his tribal territory. The chiefs play a significant role in presiding over the customary courts, which handle about eighty to ninety per cent of civil and criminal cases handled in the country. The author argues that traditional structures have contributed to:

- Political stability: integrating traditional structures into the public administration machinery after independence meant that the chiefs did not a threat.
- Promoting political and administrative legitimacy: traditional structures
- to enhance the legitimacy of public policies, development plans and decisions. Traditional institution of *Kgotla* is used for consultation, communication and public participation and for enhancing the legitimacy of public policies and plans formulated at higher levels.
- Bridging the gap between urban centres and rural societies: rural migrants to the cities have maintained their allegiance to the tribal structures of the areas from where they originate.
- Protecting cultural diversity and resisting homegenising approaches to nation building
- Planning, implementation and monitoring of local development initiatives and consolidating a grass-roots process.

The report also highlights various challenges include: increasing citizen participation in decision-making, especially women, youth, the disabled and migrants; and improving responsiveness, accountability and transparency

**El Amin, K. A., 2004, 'Eastern Sudan Indigenous Conflict Prevention, Management and Resolution Mechanisms: Effective, Continuity and Change', Institute for Security Studies, South Africa**

<http://www.iss.org.za/pubs/ASR/13No2/F1.pdf>

This paper deals with the conflict prevention, management and resolution mechanisms the Beja tribe have adopted to resolve different forms of disputes and conflicts. The main argument is that, despite socioeconomic and political changes, traditional mechanisms of conflict management among the Beja people of Eastern Sudan have not only shown resilience but have also proved more effective than those provided by the modern state. The author argues that the persistence of norms and values that support indigenous conflict prevention, management and conflict resolution mechanisms in eastern Sudan provides an example of how indigenous African cultures and institutions may be more effective than, and even superior to, modern state institutions. In order to support this grass-roots system, the paper suggests the following recommendations:

- support must be given to tribal traditional leadership at all levels, even if this leadership is not officially retained within formal state administrative structures;
- the state should continue allowing tribes in the eastern region to resolve their disputes by themselves according to tradition and employ state bodies only as observers and guarantors;
- if the state must intervene, intervention needs to be bottom-up to be effective in restoring peace rather disrupting it.

The paper further suggests that the point is that preventive mechanisms are effective because popular culture, norms and values support them. The cultural conceptions of *gullad* (word of honour), *wagab* (truce and waiting until the situation calms down and sufficient consultations and negotiations are conducted) and *taiweg* (commitment) all help to keep conflict at manageable proportions and prevent escalation. Respect for and adherence to these values facilitate the role of wise men and tribal leaders to prevent, manage and resolve conflicts and reinforce the effective functioning of conflict prevention, management and resolution mechanisms.

**Jackson, P., 2003, 'Warlords as Alternative Forms of Governance Systems', *Small Wars and Insurgencies*, vol. 14, no. 2**

This article is available for purchase from Ingenta Connect:

<http://www.ingentaconnect.com/content/routledg/swi/2003/00000014/00000002/art00006>

This paper argues that warlords are primarily responses to instability. Where there is collapse of state control, warlords represent an attempt to re-establish stability. The use of violence is a necessary element of establishing control and enforcing contracts, and therefore maintaining stability. This has profound implications for international organisations working to establish peace in areas dominated by warlords. The author argues: "The tendency to revert to labels such as 'tribalism' and 'ethnicity', characterising warlords as being outside formal international relations systems, has led to an unsophisticated discussion of the dynamics of these conflicts and their importance...Development practitioners usually see conflict as a disruption in the normal process of 'development', viewing it as temporary and a universally bad thing for all involved...Warlords force us to re-examine the structure and the nature of states that could provide long-term stability both economically and politically. Warlords offer security, rewards and stability (at least in the short term) at a local level, but may not (indeed, historically do not) offer long-term stability beyond the life of the individual warlord. The current set of national boundaries, based on colonial settlements and ideas of nation-states, contain states that are invariably bankrupt and frequently corrupt. Furthermore, they provide little economic hope for their inhabitants, certainly in Africa. Warlords offer a logical alternative way out. Whether they are motivated by greed or by grievance, or by both, is irrelevant. For many people living in these areas, there are currently no alternatives."

**Ananth Pur, K., 2007, 'Rivalry or Synergy? Formal and Informal Local Governance in Rural India', *Development and Change*, Vol. 38, No. 3, pp.401-421**

This article is available for purchase from Ingenta Connect:

<http://www.ingentaconnect.com/content/bpl/dech/2007/00000038/00000003/art00002>

This article discusses the prevalence of informal local governance institutions (ILGIs) at the village level in rural India. The author highlights that while these are generally perceived by urban Indians to be 'oppressive', ILGIs also have progressive features and often perform a range of useful collective functions at the village level. ILGIs have also found ways to interact positively, with the *Grama Panchayats* – newer, elected local government institutions. Based on field research in Karnataka state, this article aims to present a more holistic picture of ILGIs, including their role in village governance and service delivery; the ways in which they interact with *Grama Panchayats*, and the implications of their existence and role for local democracy. It also presents a tentative theoretical framework towards explaining why ILGIs in Karnataka particularly, and in India generally, seem to be less repressive, more functional and more likely to survive than in some other countries of the South.

**Ghosh, B., 'Local Democracy in India: An Overview' in Bennett, J. (ed.), 2007, 'Scratching the Surface: Democracy, Traditions, Gender', Heinrich Boll Foundation, Pakistan**

[http://www.boell.de/downloads/nahost/scratching\\_the\\_surface\\_commentary.pdf](http://www.boell.de/downloads/nahost/scratching_the_surface_commentary.pdf)

This chapter describes the *panchayat* system in India which is enshrined in the Constitution. This provides for a three tier system of *panchayats* for the rural areas in a district - a *panchayat* for one or a group of villages at the lowest tier, a *panchayat* for the district, and a *Panchayat* at the intermediate level. *Panchayats* have been defined as institutions of self-government, which implies that they should enjoy autonomous jurisdictions. Constituting *panchayats* is mandatory for the States and as a result, they have become integral parts of the country's governance system. The Constitution also introduces the concept of direct democracy in the form of the *gram sabha*. The *gram sabha* is an assembly of all the adult citizens of a village *panchayat*, registered as voters. The seats of members and the positions of chairpersons of *panchayats* of all the three tiers have also been reserved for the marginalised groups persons. One-third members and chairperson positions of all *panchayat* bodies are reserved for women. Additionally, seats are also reserved for people belonging to the scheduled castes tribes, in proportion to their population. The general jurisdiction of *panchayats* is "economic development and social justice". The author finds that three important developments have taken place since the establishment of this structure: the certainty of the *panchayats* has been ensured; as has their continuity; and through them, vulnerable groups such as women have entered in the public sphere in large numbers. However, *panchayats* do not enjoy exclusive functional jurisdiction, nor are they fiscally strong. The author argues that the Kerala model, which devolves up to 35-40% of the State budget in untied funds to local organisations is an important one for the rest of the country

**World Bank, (undated) 'Traditional Structures in Local Governance for Local Development: A Case Study of Pakhtun Residing in NWFP and FATA, Pakistan', World Bank, Washington D.C.**

<http://info.worldbank.org/etools/docs/library/153053/Pakistan.pdf>

This paper argues that the strength of traditional structures in Pakistan varies by area and ethnic groups but all have been weakened to various degrees due several factors including migration, globalization, emergence of new elites and modern political and administrative institutions. The author highlights that the system of justice prevailing in the FATA is based on customs and traditions. The paper discusses the role of the *Pushtunwali* code, and *jirga* (council), in settling disputes. The paper also highlights that although traditional structures are still consider important in the tribal areas, no provision is made for them in the district government administrative structure. This has resulted in parallel modern structure in some areas. However, the administration continues to turn to tribal leadership both in times of crisis and in the field of development. The author argues that at the local level, both modern state

and the traditional structure need to be synthesised in a way that allows effective participation in decisions about resource allocation and distribution. Coordinating and advisory functions should remain with the state institutions, but decision making and implementation and control of various plans and policies should be exercised by the community itself through representative institutions.

**Gohar, A., 'Indigenous Institutions for Decision-Making in Pakistan', in Section III of Bennett, J. (ed.), 2007, 'Scratching the Surface: Democracy, Traditions, Gender', Heinrich Boll Foundation, Pakistan**

[http://www.boell.de/downloads/nahost/scratching\\_the\\_surface\\_commentary.pdf](http://www.boell.de/downloads/nahost/scratching_the_surface_commentary.pdf)

In this chapter, the author accepts that the jirga system has been criticised for its inability to protect the most vulnerable groups, its openness to manipulation and corruption. However, within the tribal belt of Pakistan, the jirga also undertakes three key functions:

- Peacekeeping: tribal elders receive arms and money from the conflicting parties as security against a ceasefire. Should either party violate the ceasefire, their deposit is confiscated.
- Peacemaking: *Jirga* members intervene on the request of the parties in conflict, through the use of shuttle diplomacy or their own power. Peace is brought about by first listening to the parties and convincing them to accept the solution to the problem. The role of the *Jirga* members changes from a diplomat, to a mediator and an arbitrator.
- Peacebuilding: Jirgas work closely with government institutions on development activities and ensure distribution of resources amongst tribes according to their population, land and other resources.

**Hlawning, F., 2006, 'Contribution to an International Expert Group Meeting on the Millennium Development Goals, Indigenous Participation and Good Governance', United Nations, New York**

[http://www.un.org/esa/socdev/unpfii/documents/workshop\\_MDG\\_hlawning.doc](http://www.un.org/esa/socdev/unpfii/documents/workshop_MDG_hlawning.doc)

This paper is based on work on the indigenous peoples of Sabah, Malaysia and offers a useful overview of governance, democracy, participatory decision-making, human development principles amongst indigenous communities in Asia. The paper also discusses indigenous belief, social, cultural and judicial and offers some examples from Malaysia on the rebuilding of traditional structures.

**Jackson, P. and Marquette, H., 2003, 'The Interaction between Traditional Systems and Local Government Systems in Sub-Saharan Africa: Annotated Bibliography', International Development Department, University of Birmingham, Birmingham**

<http://info.worldbank.org/etools/docs/library/136160/tslg/pdf/interaction.pdf>

The executive summary of this document includes some of the key points from the materials included in the bibliography. These are:

- A starting point should be finding out how local people feel about traditional leadership in general and their leaders in particular. If they are supportive of both, it is important to include leaders in plans for local government. If local people do not support their traditional leaders, they should not be forced upon them.
- Traditional authorities and local government claim legitimacy and authority based on entirely different factors. Local government authority is based on colonially inherited democracy and constitutional legality. Traditional leaders claim legitimacy based on history and religion. They are seen to represent 'indigenous, truly African values and authority'. Religiously, they can claim links to the divine, whether a god, a spirit or the ancestors.

- If traditional authorities are to have a role in providing services alongside local government, there must be cooperation between the two. The South Africans have a saying for this – ‘two bulls in a kraal’. Both actors want to have the lead role, leading inevitably to deadlock and conflict. Roles must be well defined and agreed upon, and the public must understand this delineation of responsibilities.
- Performance matters. Support for traditional leaders tends to be higher in places where service delivery is poor and then decreases in places where the local government is seen to be doing a good job.
- In many cases, traditional authorities can be a positive force for development, providing a bridge between civil society and the government. In other cases, traditional authorities can be corrupt, violent or criminal. It is important to look at how leaders have behaved in the past to see how they are like to perform in the future.

### *General*

**Lutz, G. and Linder, W., 2004, ‘Traditional Structures in Local Governance for Local Development’, University of Berne, Switzerland**

[http://www1.worldbank.org/sp/ldconference/Materials/Parallel/PS1/PS1\\_S8\\_bm1.pdf](http://www1.worldbank.org/sp/ldconference/Materials/Parallel/PS1/PS1_S8_bm1.pdf)

This paper argues that traditional structures remain very important in organizing the life of the people at the local level despite modern state structures. Traditional authorities, for example, regulate village life, control access to land, and settle disputes. The existence of traditional authorities means that both the decentralisation and the strengthening of local governance is not taking place in a vacuum. Recent experience has shown that successful decentralisation has to take existing traditional structures into account. While the standard view has been that they are a historic burden on the road to modernity, it is now widely recognised that for many people, traditional structures are often more legitimate than the modern state. The authors argue that traditional structures do not necessarily neglect important aspects like legitimacy, responsiveness or transparency but tend to find it harder to meet requirements of social inclusion and division of power. This study aims to analyse existing literature and case studies on this topic, in order to clarify the basic concepts of their contents and identify information gaps.

**Nixon, H., 2007, ‘Some Considerations on Local Democracy and Traditional Societies’, in Bennett, J. (ed.), 2007, ‘Scratching the Surface: Democracy, Traditions, Gender’, Heinrich Boll Foundation, Pakistan**

[http://www.boell.de/downloads/nahost/scratching\\_the\\_surface\\_commentary.pdf](http://www.boell.de/downloads/nahost/scratching_the_surface_commentary.pdf)

This paper argues that some of the functions of informal or customary structures include: security; dispute resolution / justice; regulation of social life and norms; smallscale community development projects or maintenance; natural resource management; social protection of the most vulnerable. The important thing is that different functions may operate under different governance principles – for example, a local commander may provide security and dispute resolution, however illegitimately, while older structures of kinship and religious authority might regulate personal behaviour and social reproduction. The paper also argues that local governance arrangements can take a variety of forms: customary, local or traditional structures acting as local government; parallel structures; and formalisation of traditional authorities in the state system. The author discusses the case of Afghanistan’s justice system. Rather than existing as two separate systems, there is, in much of Afghanistan, some degree of integration between the courts, district governors, and traditional dispute resolution mechanisms. The main form of this integration is the referral by formal authorities of disputes to informal ones. The key point is “that one cannot consider the technical and political possibilities for integration on a “blank slate” – in many cases, forms of integration already occur that may or may not fit an ideal pattern.” (p.185)

**Fouad, F., 2006, 'Democratic Governance in a Tribal System', Open Society Institute**  
<http://www.policy.hu/asrar/020506IPFPPweb.doc>

This paper argues that western-style democracy has deliberately marginalised a functional tribal system and further weakened traditional values that could have had a strong role to play in governance. This paper examines some of the tools that can play a role in democratic governance in the Yemeni democracy in particular and in the Middle East in general. The author argues that for a better understanding of the deep resistance to western concepts carried out by authoritarian local governments. State monopoly over tribal politics is not conducive to positive social change and tribal politics need to be carefully integrated in the system in a way that is familiar to the tribes.

### 3. Additional information

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#### **Websites visited**

Asia Indigenous Peoples Pact, Chr Michelsen Institute, Commonwealth Policy Studies Unit, Eldis, Google, Google Scholar, Heinrich Boll Foundation, IDS, IDD University of Birmingham, Minority Rights Group International, Participatory Research in Asia, GSRDC, ODI

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