

Customary mediation in resource scarcities and conflicts in Sudan: Making a case for the *Judiyya*

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Introduction

Many rural-based Africans, especially those dependent on natural resources for their livelihoods, are experiencing two related and mutually reinforcing challenges that contribute to conflicts.¹

First, the challenge of climate change adaptation² or how to address the predicted effects of climate change (IPCC, 2007). It is expected that the effects of climate change (such as changes in rainfall and temperatures, floods and droughts, and rises in sea levels) may act as triggers of latent conflicts, or contribute to new conflicts (Burke et al., 2009; Hendrix and Glaser, 2007; Hendrix and Salehyan, 2012). Rarely will climate change be the direct singular cause of conflicts (German Advisory Council on Global Change, 2007; Gleditsch, 2011) but it is likely to amplify existing political, economic and social fault lines, which could lead to conflicts.

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- 1 This chapter focuses on social conflicts, which are separate from armed conflicts. 'The former is the broader category, which includes various forms of contentious behaviour. Social conflict includes peaceful protests, rioting, strikes, mutinies, and communal violence. Armed conflict is a subset of social conflict, requiring organized, armed violence against the government or between governments, in the case of international war' (Hendrix and Salehyan, 2012: 39). This chapter will largely focus on communal conflict.
 - 2 Adaptation is defined as an adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities (IPCC, 2001).

The second challenge is how African natural resources and resource scarcities are managed (Leach et al., 2007; IPCC, 2007) in order to prevent conflicts. Environmental or climate change lead to resource scarcity which in turn has a series of social consequences that contribute to or cause conflicts (Baechler, 1999; Peluso and Watts, 2001:18). Social consequences can be ‘social breakdown and violence’ through the effects on food production, the further impoverishment of the already poor and effects on migration (Raleigh and Urdal, 2007:691). Elites can capture scarce resources for themselves and ‘undermine a state’s moral authority and capacity to govern. These long-term, tectonic stresses can slowly tear apart a poor society’s social fabric, causing chronic popular unrest and violence by boosting grievances and changing the balance of power among contending social groups and the state’ (Homer-Dixon, 1998:207).

With these challenges in mind, this chapter focuses on a form of traditional conflict resolution (TCR) in Sudan, namely *judiyya*³ or customary mediation. The objective is to examine the use of *judiyya* in managing natural resources, resource scarcities and conflicts between and within pastoral⁴ and farmer groups in Sudan, and to examine challenges facing this form of customary mediation. This chapter documents the practice in more detail, as literature in English on *judiyya* is limited and dispersed.⁵ This chapter contributes to the emerging literature on conflict-sensitive climate change adaptation – i.e. *judiyya* may be one way for pastoral and farmer communities in Sudan to manage natural resources, resource scarcities and conflicts that arise as a result of the present and future impacts of climate change.

3 The English spelling of the term varies widely - *judiya*, *joediya* or *goodiya* or for Darfur *ahleeya*, or *suluh* are terms used.

4 Pastoralism is a form of livelihood production based on raising livestock.

5 The literature available in English does not report on where and by whom the practice of *judiyya* is used, not least to resolve environmental conflicts. No systematic, overall study to document the exact practice, location and use patterns of *judiyya* across Sudan seems to have been undertaken. It is likely that the Arabic literature, which the researcher is not able to access, would contain a wealth of relevant data. However, the literature in English produced by Sudanese scholars, which the writer was able to locate, also seems to have access to only the same limited data.

Part one provides a general overview and the context of resource scarcities, competition and conflicts between and within pastoral and farmer groups in Sudan. Part two describes the practice of *judiyya* in some detail with particular focus on a) the role of native administrators⁶ as mediators (or *ajaweed*), and b) the use of *judiyya* in resolving larger-scale conflicts through peace conferences. Part three examines present challenges to *judiyya*. The concluding discussion assesses the future of *judiyya* in general terms and for managing scarce natural resources and conflicts.

This chapter is the result of desk research, semi-structured interviews, and draws on primary research materials collected from civil society actors in Sudan during a fieldwork visit to Southern Kordofan in July 2010. Although the paper largely focuses on the country of Sudan, perspectives from South Sudan are brought into the discussion, given that the secession of South Sudan took place only in July 2011. Much of the research and the literature on *judiyya* on which this chapter draws were based on the unified Sudan.

Overview and context: Resource scarcities and pastoral-farmer conflicts in Sudan









Resource scarcities do not only arise because of a decline in the total amount of natural resources (such as water and land for grazing and farming) available to users. In the literature on resource scarcity, scholars focus on a set of ‘critical resources’ on which a person or community depends for economic wellbeing and to make a living.

According to Homer-Dixon (1998) and McLeman (2011) a critical resource can become scarce in a number of ways. First, the total availability of a critical resource can decline, for example a water resource as a result of a lack of rain. Second, the amount of the resource available to a person or user can decline. This means that while the total resource is the same as before, there is less of

6 The native administration (NA) is ‘the customary institution of traditional leaders, including *Sheikhs*, *Oumdas* and *Emirs*, who are responsible for maintaining customary law, including the allocation and management of land’ (Egeimi et al., 2003:22).

it because of a greater number of users – for instance, in the case of increases in population. Third, some groups or individuals could benefit more from a resource than others, or it could be less accessible to some people as a result of particular characteristics they may have. This latter is called structural scarcity, coined by Homer Dixon in 1998, and often means the act by one group or person to intentionally exclude another from a resource.

Table 1: Visual representation of the origination of resource scarcity

	Status quo	Absolute decline in resource (a)	Decline in availability (b)	Resource no equally available (c)
Dependent population				
Size of 'pie' or resource				

Source: Author, adapted from Homer-Dixon (1998) and McLeman (2011).

In Sudan, numerous factors presently contribute to the creation and perpetuation of resource scarcities and conflicts. These include the legacy of the civil war (Saeed, 2009a), natural and human-induced changes in the climate and environment (Saeed, 2009a), and the high dependence on natural resources for livelihoods in the context of greater competition over those resources (Egeimi et al., 2003).

First, the legacy of the civil war has left significant post-conflict peacebuilding issues which contribute to resource scarcities and other (often more localised) violent and non-violent conflicts (Saeed, 2009a). The 20-year civil war ended in 2005 and led to the secession of South Sudan in 2011. However, the society

continues to be highly militarised and polarised⁷ and conflicts between and within farming and pastoral groups are often more violent and last longer because of the availability of small arms (Babiker, 2002b). High levels of mistrust and animosity between these groups further contribute to social cleavages and localised conflicts (Bronkhorst, 2011). These in turn affect how access to scarce communal resources is managed between the groups.

Related issues include widespread poverty and weak institutional and governance capacity. In particular, weaknesses in law making and enforcement, the provision of essential services and the management of resources lead to insecure land tenure and access, and to poor resource management and distribution (Mohammed, 2002; Saeed, 2009a, 2009b). Competition and claims over access to land, development policies that favour farming over pastoralism, and ambiguity in laws governing access to land are related issues (Egeimi and Pantuliano, 2003). These will be discussed in more detail in the third section of this paper.

Second, the post-civil war situation is also exacerbated by natural and human-induced changes in the climate and environment (Saeed, 2009a, 2009b; United Nations Development Programme [UNDP], 2006; United Nations Environment Programme [UNEP], 2007). Sudan has had a year-on-year decline in rainfall of 0.5% between 1941 and 2000, with declines from c.425 mm/year during 1941-1970, to c.360 mm/year in 1970-2000 periods. The desert has expanded south by between 50km and 200km since the 1930s (UNEP, 2007:9). Land degradation – the result of demographic pressure and poor resource management according to UNEP (2007) – is further contributing to vulnerability. Deforestation is occurring at a rate of 0.84% per annum nationally and 1.87% in UNEP case study locations, with 11.6% of forest cover lost between 1990 and 2005, and nearly 40% of cover since independence (UNEP, 2007:11). Deforestation across

7 For instance, in Southern Kordofan (the state immediately north of the border with now independent South Sudan), black Nuba farmers joined the opposition SPLM/A (the Sudan People's Liberation Army/Movement) against the government during the civil war, after the government armed Baggara pastoralists of Kordofan and Darfur against the Nuba with the promise of Nuba land after the war (Buckles, 1999; Suliman, 1999). At the time of writing, Southern Kordofan has seen violent clashes since July 2011 between government troops and members of the Sudan People's Liberation Movement – North (SPLM-N). The latter has a strong support base among black Nuba farmers (UNMIS, 2011).

the drylands of Africa has a devastating effect on rangeland resilience as it exacerbates desertification, creating scarcities of land for grazing for pastoralists (Berkes et al., 2000).

Third, these environmental changes would not have been so critical had nearly 80% of Sudanese not depended for their livelihoods on the agricultural and livestock sectors (Global Environment Facility [GEF], 2007). Pastoralism and rain-fed farming, or a combination of these, have traditionally been and continue to be the main forms of livelihood production for Sudanese (Fahey, 2007). Both groups are highly reliant on and respond to natural climatic changes – pastoralists travel north during the rainy season, during which farmers in the south plant crops. This is reversed in the dry season when pastoralists need to move south to wetter areas in order to secure grazing for their livestock (Siddig et al., 2007).

Traditionally, scarce resources were peacefully managed and shared between the groups through, for example, *judiyya* (Saeed, 2009a, 2009b; UNDP, 2006). Recently, however, resource competition has intensified as a result of the aforementioned changes in climate and the environment. This is coupled with post-conflict developments in the socio-economic, political, institutional, legislative and demographic landscape, resulting in higher levels of resource scarcity and conflict among and within pastoralist and farmer groups (Egeimi and Pantuliano, 2003). It is instructive to consider how conflicts over resources arise in Sudan.

Pastoralist-farmer conflicts in Sudan

A typology of pastoralist versus farmer conflict is emerging from studies of such conflicts in Sudan (Siddig, 2007; summarised by Bronkhorst, 2012) that clearly demonstrates the role played by resource scarcities. The types of conflict recorded range from competition through disputes to instances of collective violence in Kordofan and in Darfur.⁸

8 For specific cases, see Bronkhorst, 2011; Egeimi and Pantuliano, 2003; Egeimi et al., 2003; El Hassan and Birch, 2008; Large and Suleiman El-Basha, 2010; Saeed, 2009a, 2009b; Suliman, 1999.

Conflicts typically happen near or along pastoral migration routes, especially where pastoralists' livestock encroach on farmland or where agriculturalists started to farm on land that is traditionally meant for livestock routes or for grazing. Encroachment is usually the result of traditional migration routes that have shifted or are being blocked. These shifts or blockages are often the result of droughts and desertification, the civil war and insecure land tenure and access. This last is due particularly to the Government of Sudan's (GoS) introduction of private mechanised farming projects in fertile areas of Sudan which prevents the use of traditional or favourable livestock routes (Siddig, 2007).

In terms of water, one result of new mechanised farms is that life-giving water resources along livestock routes are in parts no longer legally available to pastoralists. When pastoralists access this water they come into conflict with private land owners and when they seek alternative water sources they often come into conflict with farmers. Drought and desertification also lead to a lack of water along livestock routes, with the same effects. Conflicts over water occur near *hafirs* (man-made water holes dug out to capture surface run-off) or in cases where farmers, because of drought or water scarcity, are becoming protective over water sources previously shared with pastoralists and their animals (Siddig et al., 2007; Bradbury et al., 2006). Rainfall variability (for example rains not arriving when they should) forces pastoralists to leave grazing areas earlier. They often thus reach farming areas before farmers have had a chance to harvest. Livestock then damage and graze on crops, leading to conflict.

***Judiyya* or customary mediation**

Judiyya is a sophisticated form of customary, citizen-based third-party mediation (Flint, 2010; Birech, 2009). In Sudan it is an important social institution for resolving conflicts at different levels, ranging from personal disputes between individuals to conflicts between ethnic or tribal groups (Babiker, 2002a, 2011). Researchers report on *judiyya* processes being followed in Darfur (Mohammed, 2002; Flint, 2010; Birech, 2009), Southern Kordofan (Bronkhorst, 2011), North Kordofan (Wadi et al., 2005), parts of northern Sudan (Mohammed, 2002), eastern Sudan and South Sudan (Mohammed, 2002; Wassara, 2007).

Mediators (or *ajaweed*, plural; *ajwadi*, singular) are usually selected from traditional leaders (or native administrators) who are respected elders and ‘men of good deed and men of respect’ (Egeimi et al., 2003:20). They are often figures known for their knowledge of customary law (Flint, 2010) and for their understanding of the ecology and history of tribal areas (Babiker, 2011). *Judiyya* is relatively easy to set up for minor conflicts as *ajaweed* are freely available (despite their high standing in the community), approachable by communities and not protected by any support staff (such as secretaries). Depending on the seriousness of a matter, it is first received by the *Imams* or *Sheikhs*, who are religious and village leaders and who take decisions according to Shari’a Law. If this fails, the case is passed to *Omdas*, or local administrative chiefs, who tend to inherit their positions from their fathers. In some cases, conflicts will be referred to the *Nazir* - the official tribal leader (Larsen, 2007; Flint, 2010).⁹ Only when *judiyya* fails would legal channels be sought (Egeimi et al., 2003).

Judiyya is particularly suitable and successful for smaller scale conflicts (Babiker, 2002a, 2011) where meetings are held communally. However, *judiyya* can take different forms and operate at different scales. It can be led by the community, government or facilitated by other actors (such as local or international NGOs and international organisations) and operate at communal level or even at state level (Mohamed, 2009). *Judiyya* therefore differs between locations and different groups, and seems to depend greatly on the approach of the *ajaweed* (Birech, 2009). Abdul-Jalil (2005) argues that while people share a common acceptance of *judiyya* and despite its widespread acceptance as a form of TCR, the beauty of the institution lies in the fact that it is not standardised. *Ajaweed* are thus able to respond to a wide range of conflict situations.

Judiyya plays a critical role in the management of natural resources, especially in a country that faces scarcities of water and fertile land for grazing and farming. It therefore performs an important function, especially at village level, to settle disputes between individuals over water and land. During colonial times it was the key institution that regulated land and grazing rights between groups

9 Al-Hardullu and El Tayeb (2005:15) explain that the *Nazir* is the political head of the *dar* (homeland), ‘territory that is controlled by members of a single ethnic group. *Dar* ownership implies rights over land and political and administrative power.’

(Babiker, 2011). For example, pastoralists would approach traditional leaders or native administrators and arrange for compensation to be paid if damages happened during their passage (El Hassan and Birch, 2008).

Native administrators, through *judiyya* and acting as *ajaweed*, were also responsible for managing and protecting common pool resources, for resource conservation and determining their sustainable and peaceful use and for keeping the peace vis-à-vis natural and other resources. This extended further to other activities such as pest and fire control (Nile Basin Initiative [NBI] and Eastern Nile Technical Regional Office [ENTRO] 2006; El Hassan and Birch, 2008:7). The NA managed livestock movements and ensured the separation of grazing and farming areas, issuing orders regarding the timing, direction and location of livestock migration, when water points would be available, and the timing for the arrival of pastoralists in farming areas (El Hassan and Birch, 2008).

***Judiyya* to address resource-related conflicts**

Egeimi et al. (2003:20) documented in some detail the process and considerations of *judiyya* in their study of resource-related conflicts in the state of Northern Kordofan. In short, *judiyya* involves:

- a. Securing commitment from conflicting parties for mediation;
- b. Fact-finding and analysis to establish the root causes of conflict;
- c. Listening to both sides and reaching some sort of consensus on the root causes of the conflict;
- d. Reaching a solution.

In some cases mediation is followed by the signing of an official agreement by both parties but this seems to be a more recent development (Egeimi et al., 2003).

Even before the start of a mediation meeting, *ajaweed* play an active conflict resolution role by offering to be mediators or being approached to do so. Often securing commitment to *judiyya* from conflicting parties means a cessation of hostilities (if any). In Northern Kordofan, *ajaweed* are responsible for gauging

the amount of tension between conflicting parties, often threatening to leave or not undertake the mediation if the parties are unable to productively engage in the mediation. This threat is taken very seriously – custom and respect for *ajaweed* ensure that most community members would not want to see mediators leave unhappy. *Ajaweed* may also visit each party individually beforehand to facilitate reconciliation later on (Egeimi et al., 2003).

Egeimi et al. (2003) also highlight the importance of the *ajaweed's* knowledge of the ecology of an area and the history of similar conflicts or even the history of that particular conflict. These are essential to provide the context for preparations for the *judiyya* meeting itself and to be able to show examples of how a conflict can be resolved.

The actual mediation meeting to resolve a resource-related conflict itself usually involves a number of steps:

1. The expression of mutual forgiveness by both parties;
2. Examples of conflict resolution from the perspective of the Koran are highlighted by the *ajaweed*;
3. A presentation by each of the parties of their analysis of the conflict or issue (in other words where both parties are able to state their case, and outline what they see as the facts and contributing factors to the conflict);
4. A way forward is proposed by the *ajaweed* and discussed (while the mediator may already have a solution to the conflict, it is customary to respect the parties to the conflict, to let them both state their case, which helps to make them feel that the solution has come from them);
5. A conclusion of *judiyya* with a reading from the Koran (Egeimi et al., 2003).

The questions of compensation and restorative justice appear to depend on the case at hand. According to Egeimi et al. (2003), *judiyya* may or may not (depending on the case) involve a discussion of 'punishments and fines or rewards' in the form of compensation for losses suffered. In other cases, restorative justice and compensation are important objectives in *judiyya*. For instance, according

to Wadi et al. (2005:15) important objectives in *judiyya* include determining ‘casualties, destruction and damages’ (such as to life, buildings, crops) and to determine blood money (or *diya*) and any compensation. Mohammed (2002) however argues that objectives to compensate for resource damages are secondary to the broader objective of maintaining social cohesion and facilitate reconciliation between conflicting groups.

There is surprisingly little literature that focuses explicitly on the use of *judiyya* to resolve conflicts over scarce resources. This does not mean that resource conflicts are rarely resolved through *judiyya*. Rather it highlights the general applicability of the mechanism, to deal with all conflicts on a communal level, be it about the environment or not. As Swift (1996 cited by Swiss Peace, 2009) argues, the management of natural resources is thus a daily affair that forms part of the ‘everyday management of pastoral affairs’. This perhaps explains why the specifics of environmental discussions that take place under *judiyya* are not recorded in more detail. Also, the inter-connectedness of issues on a communal level, the underlying structural issues that often underpin conflict (such as poverty and underdevelopment) and the importance of resources for livelihoods, mean that it might not be possible to distinguish resources as a discreet issue in *judiyya*.

***Judiyya* in peace conferences**

It has been argued that climate change is likely to exacerbate existing tensions and create new conflict fault lines. For this reason it is important to consider the use of *judiyya* in resolving larger-scale and tribal conflicts in Sudan. For larger-scale conflicts, *judiyya* can take the form of an open conflict resolution conference or a peace conference (Birech, 2009; Wadi et al., 2005). Peace conferences usually involve a wide range of stakeholders from government officials, to traditional leaders of other tribes, pastoral and farmer unions, NGOs and other institutions. In recent years, the donor community and international NGOs in particular have also been promoting the use of peace conferences to resolve tribal conflicts (Mohamed, 2009).

In the state of Southern Kordofan and its neighbouring states where resource-related conflicts between and within pastoralist and farmer groups are widespread (Balandia, 2010; El Tom, 2010; Mohammed, 2002), the use of *judiyya* in the form of government-sponsored peace conferences is prevalent and promoted. Conferences are often sponsored or supported by the state government, NGOs, international organisations such as the UN and its then peacekeeping arm in Sudan, UNMIS (Bronkhorst, 2011), often in collaboration with state and local authorities. In the state, the government body to strengthen peace – the Reconciliation and Peaceful Coexistence Mechanism (RPCM) – works closely with international institutions such as the UN and other funders, which finance programmes and projects and provide technical support for *judiyya*.

Challenges arise as a result of the involvement of external actors in *judiyya*. One of these relates to concerns about government meddling in *judiyya*, with some *ajaweed* appointed with clear political affiliations (Mohammed, 2002). Another is that government involvement often means that only the symptoms of conflicts are addressed with little focus on underlying issues (Wadi et al., 2005). An important challenge is one of legitimacy, which arises from the involvement of foreign actors and local civil society in local affairs. If processes are not accepted as belonging to the communities themselves, and *judiyya* is seen to be externally facilitated, what are their chances of success? International and local NGOs aim to ensure that processes are acceptable both locally and by the state governments, as such high profile initiatives would not proceed without government support (Badawi, 2010; Badawi, 2010; Balandia, 2010).

Greater government involvement ensures that when agreements are reached there is arguably a greater chance that decisions would be implemented. This may also apply to NGO involvement, given that NGOs often have funds available to assist with implementation. With greater government involvement it is more likely that increased government awareness of resource scarcities as a result of structural factors may lead to policy changes. Where structural scarcities could be managed without the possibility of policy changes, a case exists for the involvement of state and local government. This would ensure that, should NGOs wish to act to assist communities or communities wish to take steps to address scarcities, there would be the appropriate legal, administrative

and other institutions. At the very least these could approve of steps being taken and provide the necessary support.

***Judiyya*, environmental scarcities and conflicts: Challenges**

It is also instructive to examine some factors which facilitate or constrain the legitimacy and functioning of *judiyya* and *ajaweed* and affect the implementation of agreements reached. Challenges include:

- a. the role and decline of traditional authorities and the NA in Sudan;
- b. broader issues of legitimacy and power vis-à-vis traditional authorities;
- c. governance issues in Sudan.

Traditional leadership, the Native Administration (NA) and *Judiyya*

Native administration, through tribal leaders, has been part of Sudanese society since the 1500s (Elhussein, 1989). While the role of traditional leaders was eroded by the Mahdi regime (between 1885 and 1898), the NA was reintroduced by the British colonial administration in order to ensure pacification at a local level (Elhussein, 1989). Where previously tribal leaders led conflicts as warriors, their role was transformed by the British to that of peacemakers (or *ajaweed*). They were entrusted to ensure law and order in their communities and with other groups (Mohammed, 2002).

It is evident that the role of native administrators was essential in the functioning of *judiyya* and to secure law and order on the communal level. In addition, acceptance by conflicting parties of *ajaweed* as legitimate third parties in mediation and *judiyya* as a legitimate mechanism for conflict resolution, are key aspects ensuring the survival of *judiyya*. However, government policies instituted since the 1960s have systematically undermined the role of tribal structures, processes and values, and the NA which has affected the legitimacy of *ajaweed* and functioning of *judiyya* (Mohammed, 2002; Babiker, 2011).

For instance, with the abolishment of the NA in 1970, followed by the Unregistered Land Act of 1971, the government effectively took over the responsibility for resource management from the NA. While this move was largely the result of commercial agricultural development plans, it nonetheless led to a loss of power and privilege for the native administrators at the time (Al-Hardullu and El Tayeb, 2005). The abolishment of the NA effectively removed *Nazirs*, *Sheiks* and *Omdas* from power, which had a crippling effect on conflict resolution and resource management at the communal level (El Hassan and Birch, 2008).

The NA was reintroduced in the 1980s but had been severely undermined as a result of its absence. For instance, some argue that communities value the NA less, while native administrators themselves have lost interest in their traditional responsibilities (Mohammed, 2002:3). The latter may well be because the government appears hesitant to allow the native administrators the full power and status of the past. Al-Hardullu and El Tayeb (2005:72) argue that the government could fear losing control locally and fear losing support for its Islamising policies (also see Shouk, 2011). Thus, while the less powerful positions of *Omda* and *Sheikh* were re-established, the highest and most influential title of *Nazir* was not (it was replaced by *Amir*). According to Elhussein (1989) this was as a result of ‘political complications’.

Efforts to promote the legitimacy of the NA¹⁰ after the fall of the Nimeiri regime in 1985 were ‘limited, uncoordinated, and lacked proper and legal institutionalization’ (Elhussein, 1989:444). This is perhaps not surprising, given that after abolishing the NA, the government introduced new systems which created an overlap of authority and mandate with regard to resource management in particular (Table 2 illustrates the overlap of formal and traditional structures).

10 For instance, local people’s government councils were dissolved (these councils were introduced by the Nimeiri regime to replace the function of NAs at local levels, after the latter’s abolition) (Elhussein, 1989). Also, nomadic leaders in the then Kordofan region were reinstated as administrative assistants (*Muawin Idari*). In Darfur, similar measures were taken, where leading tribal families were represented in administrative bodies at provincial level (Elhussein, 1989:443).

Table 2: Hierarchy of formal and customary authority

Formal	Customary
Federal	-
State	-
Province (Commission)	Tribe (<i>Nazir</i> , now <i>Amir</i>)
Locality (<i>Mahalia</i>)	Section (<i>Omda</i>)
Village	Clan (<i>Sheikh</i>)

Source: UNDP 2007 cited by El Hassan and Birch 2008.

The new systems faced a number of challenges. They were not able to facilitate the linkages between communities and local government in the same way and with the same success as the NA. The NA had and, some argue, continues to have (Wadi et al., 2005) the competitive advantage for resolving conflicts. For environmental conflicts native administrators are well versed in and know the history of conflicts, the natural environment and the groups that depend on the environment for a living. For these and no doubt other reasons, despite the introduction of local councils after the abolishment of the NA, a great administrative vacuum was left. This could not be filled by formal structures. It contributed to the decline of the Nemeiri regime in certain areas, the failure to collect taxes that had been facilitated through the domination of major tribes, and the authority of *Nazirs* (Elhussein, 1989:441).

These challenges led some governors in the states of the then Kordofan, Gedarif and Darfur to re-establish some form of the NA as ‘self-administration’ to manage the overlap between formal and traditional institutions and weak government capacity locally. In two states there is evidence that the NA has been given official powers to manage natural resources and to deal with conflicts involving the environment. In Northern Kordofan, an act was instituted that gave formal authority to the NA for land, natural resource management and environmental conservation. While, since the first abolition of the NA, this is the responsibility of the local councils, the act delegated power to the NA to take on this role (Egeimi et al., 2003). There are also reports that in Sudan’s Gedarif state conflicts over land, water and grazing rights are resolved by members of the NA and rarely reach official legislative channels (Wadi et al., 2005).

Also, where there has been a lack of government involvement, traditional systems remain, even without formal delegated authority. For instance, eastern Sudan largely has not benefited from government involvement in conflicts, such as through peace conferences held in Southern Kordofan or in Darfur. This has meant that the NA, through tribal or ethnic leaders, continues to play a major role in resolving conflicts. In this case, while the native administrators' role is informal, their involvement and the power they bring to bear on conflict resolution proceedings are much greater than those of government representatives (Al-Hardullu and El Tayeb, 2005). It may well be that this model of informal governance and conflict resolution would only be effective in remote communities, where government presence is nearly absent. This is recommended by some scholars (Birech, 2009).

The upshot of renewed NA involvement (whether official or not) is that turf wars between the NA and local government are a distinct possibility which will affect the way conflicts are dealt with, if at all. One example is that of tensions arising between local government and native administrators about decisions taken by the NA on land allocation in Northern Kordofan (Egeimi et al., 2003). While state and federal governments legally retain the right to allocate land, the traditional authority granted to the NA means that land allocation in a homeland (*dar*) is done by the Nazir or the NA.

The GoS has also had a radical effect on *judiyya* and the NA. In some cases this has been by replacing native administrators with the politically faithful, thereby ensuring political loyalty rather than the appointment of objective mediators. Some argue that the government has been responsible for the Islamising of the NA (Shouk, 2011). This has affected the impartiality and therefore legitimacy and efficacy of some *ajaweed* and thus the *judiyya* process. It is telling that one author argues that 'the government has its political priorities sometimes conflicting with the interests of parties in conflict' (Mohammed, 2002:4). Egeimi et al. (2003) also report on political appointments of *Amirs* and *Omdas* in certain areas, although they argue that elsewhere the NA remains strong.

The appointment of the politically connected as native administrators may have certain benefits in that it could facilitate changes in policy and the interaction

with ruling party structures. However, it is unlikely that these individuals would have any legitimacy locally if they are not accepted by their people and if they do not perform their function fairly and without bias. For example, while the case of Darfur cannot be examined in isolation from broader political, economic and social factors that beset the state, it is interesting that repeated peace conferences have been unsuccessful. Mohammed (2002) reports that in the 40 years from 1957-1997, 30 conferences were held and all were unsuccessful. These often involved the same conflicting parties. The causes for the failure of *judiyya* are ascribed to a lack of independence and neutrality of *ajaweed* and interference by the government with political agendas, while tribal militia leaders rather than tribal elders were in charge.

Another factor highlighted by Mohammed (2002) is that the interference of government has reduced a deeply rooted and key practice of *judiyya* – seeking and identifying the root causes of a conflict. Instead, *ajaweed* are asked to address the symptoms of conflict while ignoring the underlying factors. Mohammed (2002:5) argues that government-sponsored *judiyya* tend to be mechanisms for conflict ‘postponement rather than resolution’.

Power and legitimacy of *ajaweed*

Clearly the role of traditional leaders is increasingly challenged. Government policies, post-conflict dynamics, the rise of modern aspirations and external actors have affected the legitimacy of traditional leaders. These are bringing to bear power that is eroding the legitimacy of *judiyya* (Wassara, 2007) and which may even prevent it taking place at all. Moreover, ‘new communal powers’ are arising, which to a large extent derive legitimacy and power exogenously, often in the form of weapons supplied by the government (Babiker, 2011).

One such reported power is the youth (Babiker, 2011) or tribal militia leaders (Mohammed, 2002). Their legitimacy is derived from their followers and weapons, and their world view and values are informed and motivated not by social cohesion, the community and social capital (values underpinning *judiyya*), but by economic and political power (Babiker, 2011). According to

Babiker (2011) ‘The interest of the youth is different from the *ajaweed* – youth are interested in political power and serving the party, the *ajaweed* in serving the community’.

The upshot is that whereas traditional leaders understand the ecology of their homelands (*diar*), these new sources of authority may have little appreciation or understanding of the delicate balance between people and nature, seasonal changes in the environment, and relationships between communal groups. They also have very little respect for decisions taken by traditional authorities (Babiker, 2011). As one some scholars argue ‘Hawazma young herders in para-military force uniform and carrying guns are no longer conforming to the decisions made by assessment committees on compensation for crop damage when their cattle trespass into cultivated areas of local farmers’ (Wadi et al., 2005:15).

Another issue is that *judiyya* does not take place among actors of equal authority, nor is it isolated from external influences. Therefore, it is necessary to consider the ‘wider political contingencies, power constellations and elite interests’ that bring power to bear on proceedings (Swiss Peace, 2009:38). *Ajaweed* themselves may therefore be influenced by tribal powers, for instance by tribes of status or those which have a particular position in society. There are also reports of bias against pastoralists in *judiyya* and that pastoralists have a lower chance of ‘winning’ in the process (Wadi et al., 2005:22).

Other actors that bring power to bear on traditional authorities and *judiyya* include owners of new mechanised farming projects, donors, local civil society, international organisations and charities, and even peacekeeping forces such as those deployed in the previously united Sudan, UNMIS and UNAMID (Bronkhorst, 2011). There are even cases of universities being involved in conflict resolution and training on a communal level (Bronkhorst, 2011), and it would be naïve to assume that they do not influence proceedings.

In terms of resource management and conflict resolution under *judiyya*, the crisis of legitimacy that results from these changes and power imbalances create, among others, complications in the selection of representatives to negotiate resource access and resolve conflict. As Babiker (2011) warns, not everyone will want elders to speak for them, or native administrators as *ajaweed*, and

could be spoilers during negotiations or during the implementation stage of *judiyya* agreements. In this context, with more stakeholders and new sources of authority, resource scarcity and conflicts are a lot more difficult to manage; there may be a need for the GoS to play a more significant role to restore the balance of power locally and to facilitate the implementation of agreements reached through *judiyya*.

Institutions and mechanisms of governance

Broader governance questions are crucial in the management of scarcities, resource management and processes that take place before or contribute to conflict. Arguably, government should also play a significant role, after *judiyya* has taken place, in the implementation of decisions. This is especially necessary in cases of larger conflicts and where the outcomes demand some administrative, technical or policy interventions (such as new route demarcations, or the creation of new water sources). Therefore, while government might seem distinct from *judiyya*, it forms an essential part of the mechanism by creating an enabling or disabling (or distorted, as demonstrated) environment within which the mediation mechanism and *ajaweed* function.

Government (as demonstrated) has the potential to provide power to the NA, through delegated authority, to manage resources and deal with conflicts. It stands to reason therefore that if government is weak or ineffectual it will not be able to maximise the competitive advantages inherent in areas where customary law, traditional leaders and customary conflict resolution mechanisms are better able than local government to deal with local issues. In other words, institutions and mechanisms such as route demarcation, federal policies that impact local conflicts, *judiyya* agreements that may call for policy changes, the facilitation of resource management, implementation of policies, and a myriad of others, require government support and facilitation if not leadership.

Other factors which affect *judiyya* in Sudan include weak governance locally and weak governance of natural resources more generally (Saeed, 2010). A lack of clear mandates for different resource management institutions, overlap of mandates and a lack of capacity generally are concerning, and will affect the

implementation of decisions taken under *judiyya*. For instance, some scholars report on 'institutional chaos' created as a result of the restructuring of various ministries, which have affected the management of water resources, rangeland and the protection of pastoralist interests (El Hassan and Birch, 2008; Bronkhorst 2011). In one case, the Range and Pasture Administration was removed from the Rural Water Corporation, which has affected coordination between these two bodies significantly according to the UNDP (2007, cited by El Hassan and Birch, 2008). In addition the Range and Pasture Administration is severely under-funded despite the critical contribution the livestock market makes to the Sudanese economy. In Southern Kordofan, for example, the state Rural Water Corporation is hampered by a lack of capacity in terms of tools, staff, skills, underinvestment and generally poor support from the federal government. In the context of weak government structures unable to resolve conflicts, competing mandates and poor environmental management, water scarcity has increased, contributing to conflicts between pastoralists and farmers (SECS, 2010:4; Bronkhorst, 2011).

Finally, in order to manage the uncertainty and variability of the climate, the migration of people and livestock, and the management of resources in sending and receiving communities, and along livestock routes, information and a process of learning are essential. However, this process is severely undermined by a serious lack of data and information on the pastoral system, land use and land use changes, human and livestock population sizes and even project documentation on past environmental and agricultural projects (UNDP, 2006; Saeed, 2009a). Although NGOs and international organisations are compiling data they often do not talk to each other. In addition, livestock routes are not defined and are in constant flux as a result of natural environmental change and other pressures (Saeed, 2009a). According to the UNDP, this information weakness naturally undermines the work of the government and agencies to 'propose [perhaps in response to *judiyya* agreements] and implement feasible projects in areas of development and resources planning, including forestry, land use, wildlife, water development, etc.' (UNDP, 2006:3).

Concluding discussion

There is potential for customary mechanisms such as *judiyya* to manage scarce resources and conflicts that arise from climate change in Sudan. In some cases, the native administrators through *judiyya* seem to have the comparative advantage to perform this function that will be a crucial part of adaptation to climate change.

A number of factors promote or constrain the legitimacy and functioning of, and the implementation of agreements reached through, *judiyya*. *Judiyya* is highly dependent on a legitimate traditional authority, such as the NA, that operates in an environment where the daily lives of communities are embedded in customs and customary law. *Judiyya* cannot function without the NA which, while native administrators derive legitimacy from within, obtains its power to act exogenously from the government. Thus, when that power was removed, as it was in 1970, and not fully reinstated later, the NA was weakened and so was *judiyya*. Should the Sudanese government see the value in promoting the NA and *judiyya* for resource and conflict management, it is realistically the only actor that is able to truly strengthen and restore fully the NA and *judiyya*. It is clear that this decision would need to be taken with the overall peacebuilding, development, DDR and post-conflict reconstruction agenda in mind. To this end, a number of considerations emerge from this chapter.

First, as noted, the GoS is the only actor able to restore power to the NA, initially at a federal and policy level, and then feasibly through the delegated authority of local governments. There is evidence that local governments have successfully delegated authority to the NA for resource management and conflict resolution but that authority should be clearly delineated and exist with little interference by the government. That said, the NA and local government should work with state and federal governments so that the management of scarcities by the NA can take place within a broader framework of formal land and resource management.

Local, state or even federal government involvement in *judiyya* will be necessary, in some cases. This is especially so given increasing privatisation of tribal lands, mechanised farming policies, the nature of pastoralism, and where there is a need to work with non-traditional stakeholders and issues such as mechanised

farming schemes and private land owners. Also, as many structural scarcities in Sudan are the result of government weaknesses, *judiyya* requires a higher level of formal engagement to address the root causes of conflicts and not just the symptoms. Therefore, for conflicts resulting from government policy or structural scarcities, or that are larger in scale, government support and involvement may be important in order to ensure that the implementation of agreements is facilitated. Furthermore, where local government is weak or non-existent there may be a need for oversight by state governments.

Government involvement carries a number of caveats. One benefit of *judiyya* is that it is by most accounts a 'fast' form of conflict resolution, which could commence immediately and resolve conflicts quickly. But the danger is that government bureaucracy or a lack of capacity could delay processes. There is also the chance that government interference, manipulation and Islamisation of *judiyya* and *ajaweed* will continue in some cases. However, if larger-scale and tribal conflicts are to be sustainably resolved, and if *judiyya* is deemed the way forward, that is the risk which needs to be taken. Some of the weaknesses in administrative, technical and implementation capacity of the government highlighted in the chapter are likely to be issues that constrain cooperation on *judiyya* between traditional and formal authorities, and between local, state and federal governments. Nevertheless, agreements reached that are considerate of broader formal processes and policies are more likely to be sustainable than agreements that will infringe on the rights of others like private land owners, or users of other common resources.

Second, for *judiyya* to have a future in Sudan, there will be a need to strengthen legitimacy locally. In light of new powers or authority at a communal level (and while providing official authority to the NA will help this process), there is a need to manage armed tribal militias. Without the legitimacy derived from their own communities native administrators and *ajaweed* are unable to perform their function. Strengthening traditional authority will need to form part of present DDR processes. Whether the political will is there, and whether successful disarmament is immediately possible in post-conflict Sudan (in light of recent developments) is another question, which should be seen in the context of the highly complex web of factors that contribute to, among others, the continued

presence of tribal militias and the rise of modern aspirations amongst young people.

Third, weaknesses in governance, in terms of administration, legislation and resource management can create resource scarcity and conflicts. But they can also influence the functioning and implementation of *judiyya* agreements. Notwithstanding government information weaknesses and the lack of clear over-riding land and resource management policies, some development is taking place in Sudan. It stands to reason that as government capacity (especially at a local level) grows and the aforementioned challenges are addressed, there would be a natural decline in traditional authority. The question is as to whether this is why *judiyya* is facing serious present-day challenges. In other words, are we witnessing a natural decline in traditional authority and conflict resolution mechanisms resulting from development? The evidence suggests not and highlights that most changes are the result of external factors. The place for *judiyya* and traditional authorities remains in modern day Sudan. In many cases it would seem the most suitable mechanism for resolving future climate-related resource conflicts, especially in rural areas and for smaller-scale conflicts.

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