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TRIBALISM, GOVERNANCE AND DEVELOPMENT

SEPTEMBER 27, 2010

This publication was produced for the United States Agency for International Development with support from the United States Institute of Peace. This report was edited by Phyllis Dininio, Jennifer Murtazshvili, and Lynn Carter of Management Systems International and Mary Hope Schwoebel of the United States Institute of Peace. It draws material from two workshops and research conducted for this project by Jefferson Gray, Elham Manea, Chris Mason, Ken Menkhaus, Jennifer Murtazashvili, and Mary Hope Schwoebel. The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

Tribalism, Governance and Development

Working Paper



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600 Water Street, SW
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Contracted under DFD-I-20-04-00228-00

AME DG Peace and Security Task Order, #20

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EXECUTIVE SUMMARY

Development assistance has faced many challenges and achieved limited impact in heavily tribalized, Muslim societies. This paper suggests ways that development assistance can better support effective governance and dampen conflict in these societies. Our principal focus is on three highly tribalized countries that are facing notable governance challenges and high levels of conflict: Afghanistan, Somalia, and Yemen. We examine the role of tribes in governance at the village, urban, regional, and national level in each country to identify how tribes factor into governance problems or possible solutions.

In all three countries, tribes are most active and easily mobilized as political, social, and economic entities at the village level. That is where the development community must be most acutely tuned into tribal dynamics. In urban areas, state authority is more prominent and often usurps tribal ties, but with notable exceptions. At the regional and national level, commonalities across the cases falter. Tribal or clan influence is strong at the regional and national level in Somalia and Yemen, but less so in Afghanistan. The research also points to competition over jurisdiction among three justice and conflict resolution systems—customary tribal law, Islamic or *shari'a* law, and the legal-rational system of the state—as a fundamental governance problem in each of the three countries.

This research suggests a number of tentative strategic and programmatic recommendations. These include:

Work with existing structures. Given the instability and fragility confronting these societies, it is important to maintain the sources of authority, dispute resolution, and security that work rather than creating alternative structures that have little legitimacy in local contexts. Setting up parallel organizations may consume resources that are better used elsewhere, and may also contribute to instability if they erode the ability of village elders to maintain order and administer justice.

Focus at the district level in Afghanistan. In Afghanistan, development assistance has focused on villages and established community development councils to distribute resources. However, Afghans need formal governance and intervention to help build the state at the margins of communities where tribal or customary forms of self-organization are least effective.

Involve traditional authorities in aid programs. Traditional authorities have a keen understanding of local dynamics and needs, and play a role in resolving disputes that may arise from aid programs, such as contracts and rents. These leaders have legitimacy. Donors should consult with them through the life of a project -- not just at the beginning -- and should not seek to undermine them.

Do not alter the balance of power between tribes. Development must be conflict-sensitive. New resources can and sometimes do provoke conflict, especially if they are perceived as benefiting some groups more than others. The distribution of development resources must therefore be equitable across tribes as well as regions, districts, and sub-districts.

Examine assumptions about state reach. In Afghanistan, extending the reach of central government could be one cause of the expansion in the insurgency, not its cure. Particularly if the state is corrupt, weak, and ineffective, a limited government may be a better approach to stability.

Support business. The business community has been an important avenue for improved clan relations in Somalia. This has required businesspeople to seek out partners across clan lines. Fostering business helps create jobs and dampen conflict as business leaders have an incentive to work with other

clans. This approach is unlikely to have traction in Yemen, however, due to the creation of a new class of crony shaykh businessmen, who have near monopolies or preferential access to the state.

Do not undermine customary law. Customary law is what works in these countries. Its norms are understood, and it has legitimacy. Governments need to maintain or at least strive not to undermine what exists in order to have some form of functioning justice. The formal justice system is often corrupt, inaccessible, unfair, costly and slow, and is not likely to replace traditional dispute resolution mechanisms anytime soon. The donor community should not support formal systems as a total replacement for traditional ones.

Do not provide funding for traditional conflict resolution mechanisms.

Financial incentives for participation or cooperation with international organizations or governments undercut the legitimacy of traditional leaders, who generally work without compensation for the good of the community and to enhance their personal and familial reputation and influence. Providing payments for their services threatens to undermine their legitimacy because they are then suspected of making decisions that are based on those financial incentives. Reasonable stipends to cover basic expenses for participation in events such as dialogues and training are acceptable as long as they are provided with transparency and accountability.

Foster discussion of human rights among customary authorities. Dialogue on customary practices that are discriminatory or abuse rights (especially gender-related practices) may help to change attitudes. Efforts to improve traditional dispute resolution systems have borne fruit in some Muslim societies such as Bangladesh.

Clarify the jurisdiction between state and traditional justice. One of the most effective ways to strengthen both the state justice sector and traditional conflict resolution mechanisms is to expand opportunities for communication between them. This would significantly enhance their ability to negotiate their respective jurisdictions.

Support traditional authority at the national level as a transitional strategy. The role of customary authority in Somaliland can serve as a possible transitional strategy for countries emerging from state failure or civil war. Clan authorities can have many drawbacks, but they are a known quantity among their communities and generally enjoy legitimacy as leaders. Their primary role traditionally has been as conflict mediators. This can matter greatly in a context of high levels of communal distrust following civil war. Their formal role can help build trust and confidence in the short-term.

...Or as a long-term governance strategy. Traditional authorities can complement modern formal government with the prime example being a House of Elders, such as the *Guurti* in Somaliland, which can prevent escalation of and solve political conflicts in government.

Limit foreign expectations for help in combating terrorism. As a source of combating terrorism, Somali clans have both potential and limits. Clans have excellent capacity to gather information about activities and movements in their clan home territory, but they are susceptible to penetration by al-Shabaab and vulnerable to al-Shabaab assassinations.

I. INTRODUCTION

International donors' efforts to build stable states, strengthen governance systems, and mitigate conflict have foundered in the heavily tribalized and fragmented societies of the Muslim Middle East, South Asia and Horn of Africa. From Afghanistan to Yemen, Somalia, and beyond, tribal values and allegiances have weakened states, undermined formal governance institutions, and fueled conflict. Tribes in these states are locked in ambivalent and uneasy relationships with their respective states: they constitute rival, conflicting, and often overlapping structures of political authority that are not easily integrated into the state.¹ They are capable of blocking and often do block the state's centralizing tendencies. At the same time, states may function less as legal-rational entities and more as an expression of particular interests. Elaborate patronage networks and gross corruption are hallmarks of states functioning in these severely fragmented societies. Ruling coalitions are inherently unstable and membership can shift rapidly; the distribution of patronage is key to maintaining some kind of stability. Those outside the patronage networks have good reason to resist state penetration.

Because states in these environments do not have a monopoly on violence, they may share power with and allocate significant government largesse to locally powerful families or tribes in order to maintain the peace and their own power. Yet there are often too many groups to accommodate; there is seldom enough largesse to go around. Inequitable distribution changes the local balance of power between competing tribes or clans and thus produces conflict.

Development assistance programming has faced many challenges and achieved limited impact in these states with strongly tribalized cultures. Due to their geostrategic importance and their links with local and transnational Salafi jihadist terrorism, a suspension or reduction of assistance in the face of suboptimal programming results is not possible. US national interests demand a search for more effective governance and development assistance models. This paper suggests how development assistance can be better structured to support effective governance and dampen conflict in these societies. Our principal focus is on three countries with socially fragmented, fractious, and highly tribalized societies that are facing notable governance challenges and high levels of conflict: Afghanistan, Somalia, and Yemen.

We examine the role of tribes in governance at the village, urban, regional, and national level in each country to identify how tribes factor into governance problems or possible solutions. We acknowledge that there are four interpretations of the long-term significance of informal local governance arrangements (see textbox on Interpreting the Significance). We identify some general principles that are applicable to other countries as well as some that are specific to the case studies.

II. COMMONALITIES ACROSS COUNTRIES

Tribal forms and characteristics vary, but Afghanistan, Somalia and Yemen have several features in common. First, the three societies are characterized by tribal structures that are acephalous (headless), and as a result, fairly egalitarian in terms of tribal leadership. In such societies, kinship and patrilineal descent are the basis for political organization and allegiance. Tribes are then composed of nested segments or lineages with those at the lowest levels having the closest relations and the easiest time organizing collective action. While some tribes are very large, organizing collective action at higher levels

¹ A good basic primer is still Philip S. Khoury and Joseph Kostiner, eds., *Tribes and State Formation in the Middle East*, Berkeley, CA: University of California Press, 1990.

is infrequent. It is not unusual for segments to maintain hostile relations with neighbors, and alliances with neighbors' neighbors.

In such tribal societies, an egalitarian ethos prevails—the principle of equality among tribes and individual adult males is deeply held. According to tribal codes, there is a commitment to personal autonomy and leadership operates by consent and not generally by inheritance. Leaders often have limited power over followers; they operate by persuasion and establish credibility through mediation skills.

INTERPRETING THE SIGNIFICANCE OF INFORMAL GOVERNANCE ORDERS

Whether one has a normative preference for or against tribes as a possible source of authority to deal with the challenges of conflict management, state-building, and security, most analysts agree that tribes play a visible governance role in failed states. Where they disagree is over their interpretation of the long-term significance of informal local governance arrangements. These differing interpretations fall into four broad categories. *Customary authorities and informal governance are of no significance.* Informal governance and security arrangements, according to this argument, reflect short-term coping mechanisms that will evaporate as soon as the central government is strengthened. Most state-building programs operate on this assumption, and as a result devote little attention to mapping and understanding informal governance. Since local governance systems are seen to be of little consequence, this approach is not unduly concerned about adhering to a “do not harm” principle as it promotes state revival.

Tribe-based informal governance is actively harmful. Some observers worry that communities in some failed states have adapted too well, drawing heavily on tribes and customary law to cope. In the process, they have reduced their incentives to support a revived state. Moreover, stakeholders in the informal governance systems will feel threatened by and will resist state-building. From this vantage point, informal governance arrangements form a dangerous source of potential spoilers to state-building, even as they enshrine illiberal and tribal forms of rule of law. They are, from this perspective, a step backward. Weak central governments often (though not always) view local non-state actors in this vein, seeing them as potential rivals and rejecting external discussions about engaging them directly.

Tribe-based authority is a transitional source of security and governance during the long period of state revival or state formation. State-building takes many years, and it is unreasonable and unwise to expect that local communities and the international community will be willing to tolerate extremely high levels of security threats and “ungoverned space” in the interim. Tribe-based authority is a potential bridge, a key element of a strategy to deal with the specific security and governance problems during the long transitional period of state revival. Tribe-based representation is also essential in building trust and political “rules of the game” during post-conflict transitions. As formal state authorities gradually strengthen and gain legitimacy, they will overlap with and then replace these informal polities. Somaliland’s evolution from clan-based to multi-party democracy is cited as an example of how clan can be a vital part of a transition and confidence-building strategy.

Tribal authority is an enduring source of legitimate and effective governance and should be formally incorporated into the state system. Where the government has the “competence to know the limits of its own competence” and where tribal authority is legitimate and effective, governments can seek to formalize the informal and bring tribal authority and customary law into the state structure. This has been done in a number of places, such as south Sudan (where local government and judiciary consist of traditional “Boma” courts), Botswana (where customary courts have long co-existed with and played a key role in the formal judiciary), and Somaliland (where the upper house of parliament consists of the *Guurti* or assembly of top clan elders).

Source: Ken Menkhaus.

Although tribal leadership is decentralized and diffuse, tribal identities can still be mobilized by charismatic leaders. It is often the case, however, that those individuals who are able to mobilize tribes into cohesive political movements gain positions in strictly non-tribal organizations. Such leaders emerge as heads of political parties, business groups, or armed factions. Once established in such positions, they are able to mobilize others in their kinship group. The rise of such leaders is often idiosyncratic and has

little to do with the nature of the tribes themselves, but instead reflects the entrepreneurial capacity of a single individual. For example, Mullah Omar has been able to mobilize many of his fellow Hotak Ghilzai Pashtuns behind the cause of the Taliban. He is able to do this not because of his position within a tribe, but because he gained prominence in a political movement outside the tribe. Once in this position, he was able to use patronage and other rewards to mobilize fellow kin in pursuit of his political objectives.

Although these groups have no natural hereditary leaders, leadership within tribes often does emerge among a class of elders or higher status families, who accede to positions of prominence due to their ability to honestly and fairly broker disputes. In most cases, these elders are men. While all men have the right to involve themselves in tribal affairs, in practice, elders tend to speak on behalf of the extended families that are embedded in tribal structures. As a result, women and youth tend to be unrepresented in formal tribal procedures. This does not mean that women are unrepresented. Male elders speak on behalf of the interest of their family at gatherings of other tribal representatives.

The societies examined here are also governed by tribal codes. These codes are based in custom and are not written down. The nature of such codes varies significantly within each society, although may follow general principles such as equality of each tribe or the importance of maintaining honor. In Afghanistan, the code of the *Pashtunwali* governs Pashtun tribal life, *urf* governs tribal conduct in Yemen, and *xeer* on specific issues functions as a customary code among Somali clans. Rulings are made by consensus, not by majoritarian-based procedures. Reaching consensus on a particular case takes time. Agreements are negotiated over the course of several days, if not weeks, or even months

All three societies are predominantly Muslim. While tribes may be associated with different sects or schools of Shi'a or Sunni Islam, tribes themselves derive from family relations and geography. As such their legitimacy does not flow from religious tenets, but instead from the power of families and blood relations. In all three societies, there is often significant contradiction between Islamic law and customary or tribal law. In some cases, however, tribal law is derived in part from Islamic principles. Notions of collective responsibility for the bad behavior of members pertain, which provides a mechanism to ensure the good behavior of members within a tribal segment. Strong concepts of honor, revenge and blood feud incline these societies to significant violence. Large numbers of males typically engage in or are prepared for organized violence as there is no separation between "military" and "civil" society. They are formidable fighters and in these regions, which have long been awash in arms, they are well-equipped ones.

The three countries, which these tribes inhabit, are characterized by difficult terrain, comprised mostly of desert and mountains that limit the ability of families to generate surplus (with the partial exception of Yemen, whose oil has secured it a quarter century of some surplus). Difficult terrain has not only presented challenges for colonial powers and other outsiders who have sought to influence or rule these societies, but has also presented a serious challenge for the leaders of these countries as they have sought to extend the writ of the state into the countryside. In two of the countries, the more mountainous and arid terrain tends to correspond with the more tribalized parts of each country: Pashtun areas in the south and east of Afghanistan, and the north in Yemen.

These cases also have in common weak central governments that are entwined in a deep struggle with a religion-based insurgency. With the exception of Yemen, where there is some history of confederating, tribes in these countries have generally only united in a political movement under the influence of a charismatic religious-political leader. Thus, Islam has played an important role in establishing an overarching identity that can be mobilized for political purposes that can supersede the narrower tribal loyalty.

Tribes remain the most resilient sources of collective action in rural areas among both sedentary agriculturalists and nomadic pastoralists. Traditional authorities regulate village life, control access to

land, and maintain security through customary conflict resolution mechanisms. While one must be careful to generalize when speaking about tribes, it is safe to say that they play a more prominent role in directing village life, as tribal codes of conduct are most often applied in these contexts, and where there is often less competition from the institutions and norms of the state. In urban areas, tribes may play a role (Somalia), but generally the writ of the state is less contested given the multiplicity of groups sharing geographic space.

Finally, in all three of these cases, tribes play a far from predictable role in regional or national levels. At these higher levels of association, institutions of the state (albeit very weak institutions) are the source of contestation and competition. Tribes may at times mobilize under charismatic leaders, religious figures, or political groups for control of the state apparatus. They may influence politics and shape formal institutions, as in Somaliland, but do not directly control the state.

Before discussing the role of tribes at the rural, urban, regional or national levels in each of these cases, it is important to first define what we mean by tribe in each of the three cases considered in this study.

Tribe Definition: Afghanistan

Pashtun society has been dubbed the world's largest tribal society. Such a description is misleading, however, as Pashtun tribes are so segmentary that the tribes and sub-tribes do not easily aggregate into cohesive social or political entities beyond the local level. A fundamental difficulty with tribes as a form of political or social organization at the regional or national level is that Pashtun tribal affiliations do not have a bottom-up or a top-down hierarchical structure.

There are five major descent groups in Pashtun tribes: the Durrani, Ghilzai, Ghurghusht, and Karlanri (known as the "Hill Tribes"), and the Sarbani. A sixth group, the Kuchi, is ethnically composed of Ghilzai and Durrani, but are nomadic and quite distinct socially and culturally from the sedentary groups. For most of its history, Afghanistan has been led by members of the Durrani confederation. The royal family was of Durrani descent; so too is President Hamid Karzai. In recent years, the most serious challenges to Durrani rule have been fueled by largely Ghilzai-led opposition movements. Most of the leaders of the People's Democratic Party of Afghanistan (PDPA) which toppled centuries of Durrani rule were largely Ghilzai. Notably, many leaders of the early Taliban movement were also Ghilzai (including Mullah Omar). In recent years, it is difficult to characterize the Taliban insurgency as a Ghilzai movement as it contains significant members from all tribal confederations.

The 400 major Pashtun tribes are sub-divided into roughly 3,000 clans, or *khels*. These affiliations lie at the heart of understanding many of the dynamics of local politics in the south and east of Afghanistan where a vast majority of the Pashtun society within Afghanistan reside. Beneath this level of segmentation are the 30,000 to 40,000 extended families, or *kahols*. The *kahol* is the primary level of Pashtun social organization, and the largest social group to which the vast majority of Pashtuns ever perceive allegiance and identity. Only on rare occasions, such as war or a major land dispute, does the *khel*-level identity ever coalesce. This is unlikely to happen even once in a Pashtun's lifetime.

While generalizations can be made at the *khel* level, and even at the descent group level (i.e., Durrani vs. Ghilzai conflicts), it is at the *kahol* level that the questions posed by this project need to be answered. In terms of extent and geography, the *kahols* predominate at the district and sub-district levels, and are important factors in the social groupings of the roughly 80 percent of Pashtun who are rural residents.

Tribe Definition: Somalia

Somalis are all of the same tribe. In fact, Somalia was held up as Africa's only genuine nation-state during the African independence movements of the 1960s, because its population was of one tribe, one religion, and one language. Within this tribe, most scholars identify six major Somali clan families believed to have sprung from a legendary Arabian ancestor: Darod, Hawiye, Isaq, Dir, Rahanweyn and Digil. The first four are primarily camel, sheep, and goat herding pastoralists. They have traditionally occupied the semi-arid far-southern, central, and northern regions of the country and Djibouti. The latter two are primarily agropastoralists, who practice the rain-fed cultivation of sorghum, maize, and cowpeas, and who herd cattle in addition to camels, sheep, and goats. The Rahanweyn and Digil have inhabited the fertile, interriverine regions between the Juba and Shebelle Rivers, from western Ethiopia to the southern Somali coast.

Since independence, political and economic power and resources have alternated between two of these clan families—the Darod and the Hawiye. The Darod clan family consists of a number of clans, the main ones being the Mijerteen, Marehan, Ogaden, Dolbahante, and Warsengeli. The Mijerteen clan controlled the parliamentary democracy from independence in 1960 until the coup of 1969. From the coup of 1969 until the collapse of the state in 1991, the military government was controlled by the Marehan clan. Power in post-civil war Mogadishu, however, rested mainly in the hands of the Hawiye clan, which also consists of a number of clans, including the Abgal, Habergidir, Hawadle, and Murusade. While al-Shabaab, the violent Islamist extremist group, began as a Hawiye, particularly Habergider, movement, it has since become dominated by other clans, and the Habergider have turned against it, refashioning themselves into anti-Wahabist “Sufis”.

Clan affiliations were the basis for survival, security, and identity in traditional Somali society and continue to be so today for most Somalis. Clan also continues to provide the moral framework that shapes Somalis' attitudes and behaviors. It is a moral responsibility to assist one's clan members, whether politically, economically, or logistically. Therefore, what westerners would consider immoral practices in the context of governance—corruption, nepotism, and even the deployment of violence—are moral practices in the Somali context. In this setting, the appropriation of resources for the promotion of clan interests and the well-being of clan members is both logical and ethical.

Tribe Definition: Yemen

While a unified state and a common Muslim identity in theory unite Yemen, the country is divided along sectarian, tribal, regional, ideological, and economic lines. The north is dominated by Zaydi Shia Muslims (sometimes called a sixth school of Sunni Islam), while the south and the coastal parts of the country are dominated by Sunni (Shafi'i) Muslims. There are many tribal groupings in Yemen; the most relevant are the Hashid and Bakil confederations in the arid, northern steppe. Fertile lands in the south encouraged farming, which helped to dissolve to a certain degree the tribal roots of these groups and led to the creation of semi-feudal separate entities in the region. Moreover, access to ports created opportunities for economic growth in the southern part of the country. Consequently, most of the interior has remained quite isolated and underdeveloped in comparison to the south.

In the Yemeni context, tribes can be understood as kin-ordered, self-protection, and welfare associations that may agglomerate into confederations of political significance. Extended families are not necessarily the same thing as a tribe. Extended families exist nearly everywhere in Yemen, but only some extended families manifest themselves for political purposes to demand things from the state or from other tribes. In some places, like the highland steppes of central- northern Yemen, tribal confederations have always existed. These central highland tribes have generally maintained a higher degree of autonomy than Yemenis living to the south, east, and west, whose experience as tribal peoples has

waxed and waned under the influence of Yemeni states and foreign powers. It is the largest tribal confederations from the north, the Hashid and Bakil, who are at the fore of politics today.

Tribal relations are constructed along themes of reciprocity, responsibility, and status. Men hold higher public status than women; middle-aged adults over children and the elderly; and Muslims over non-Muslims. The highest status of all is accorded to those adult males familiar with customs, history, and religion capable of organizing family groups into units of self-defense that can extend protection to weaker people. A man who acquires this status at head of a larger family group is called a *shaykh*. Tribes are not democracies but leadership in a tribe does require the “word of all,” or widespread respect and consensus from tribal members.

III. VILLAGE LEVEL

In all three country cases, tribes are most active and easily mobilized as political, social, and economic entities at the local level. Mostly, this is at the village level as all three countries have relatively small urban populations. The rural population represents approximately 85 percent of the population in Afghanistan, 75 percent in Yemen, and 65 percent in Somalia.

In large part, tribal codes operating in villages remain unchallenged by rule of the central government (although there are notable exceptions to this). In times of warfare and chaos, individuals have used the social safety net that is provided through norms of reciprocity in tribal life, further solidifying their prominence in rural society. At the same time, however, warfare has damaged village governance as tribal elders have been assassinated or fled for the anonymity and comfort of urban centers.

It is at the village level where development initiatives are most likely to come into direct contact with tribal structures. In many cases, development agencies employ facilitated participatory community-based self-assessments such as “Participatory Rural Appraisals” or “Community-Based Planning Assessments”. Norms and reporting targets of such programs emphasize participation of all members of society, including groups that development agencies perceive to be marginalized, including women and youth. As a result, the norms of development initiatives that seek to promote community development and tribal norms may contradict one another. It is at the village level or in rural areas where the development community must be most acutely tuned into tribal dynamics.

Village: Afghanistan

Pashtun society is famously egalitarian and, in principle, no Pashtun male may ever tell another Pashtun male what to do. Decisions must be unanimous, because no one has the right to impose the potential communal consequences of a decision on a man who does not agree with it. There are no tribal “chiefs” among the Pashtun,² though there are forms of social importance such as the *khan* (family patriarch) and *malik* (appointed spokesperson). In general, *spingar* (literally, “white beards” or elders) have more respected and influential voices in their communities than younger men, but all adult males have a right to attend and speak at the *jirgas* where decisions are made.

² There are exceptions. If, for example, a tribe is so weakened that it is on the verge of becoming extinct, the tribe may seek *nanawatey*, or surrender, to a more powerful tribe in exchange for its protection. This tribe then becomes *hamsaya*, or subservient to the stronger tribe. This is not a permanent condition, however, as tribal demographics and strengths vary over time. Traditional *hamsaya* relationships often break down when tribal strengths fluctuate over protracted periods (i.e., centuries). In contrast, the Baluch recognize chieftains and the patriarchs of Brahui society exert considerably more influence over community decisions than do Pashtun *khans*.

At the village level, tribes tend to be most effective at providing collective defense and dispute resolution. Security and defense are provided, when necessary, by *ad hoc* war parties known as *lashkars* or *arbakai*. Justice has been reliably provided for a millennium by a process known as the *jirga*, which resolves over 95 percent of all disputes in Pashtun communities. A *jirga* is not a fixed structure, but a series of meetings convened to resolve a dispute and led by an appointed council of elders without a direct interest in the matter at hand. Face-to-face interactions reduce the costs of both organizing such councils and enable individuals within a community to police those who transgress rulings of the village councils. The small size of villages—nearly 70 percent of the rural population lives in villages with fewer than 500 people—enables tribal councils to provide law and order within the confines of their communities. *Jirgas* often mediate disputes between communities, and in some cases, the disputes involve more than one tribe. However, warfare has undermined tribes' ability to resolve inter-tribal disputes.

In the past 20 years, the Taliban have introduced religion-based forms of dispute resolution in many parts of Afghanistan. *Shuras*, or religiously-led councils, have replaced the traditional elder-led *jirgas* in many areas. The Taliban have also established Taliban courts based on Islamic law and adjudicated by Taliban *mullahs*. *Mullahs* in traditional communities are spiritual guides whose role is to ensure the conformity of the *jirga's* decisions with *sharia*, and often serve as mediators in particularly thorny disputes. Part of the process of Talibanization of the south and east, however, has been the elevation of these mullahs to positions of authority in their communities via enforcement of the Taliban's religious laws over tribal laws.

When rural Pashtun areas are at peace, the elders lead governance via the *jirga* process. The greater the extent to which this still applies, the more stable and peaceful the community; the more it has broken down and the greater the intrusion of the Taliban and government, the more anarchic and unstable the community is. In many places, thirty years of continuous warfare, which has targeted elders for assassination and driven them into hiding in major urban areas, has badly damaged traditional governance.

Village: Somalia

The basic political and judicial unit in Somali villages is the *diya*-paying group, which is constituted by a lineage or coalition of lineages within the clan. The *diya*-paying group is collectively responsible for the payment of compensation in the event of the death or injury of a member of another group at the hands of one of the *diya*-paying groups' members. It is also collectively entitled to the receipt of compensation in the event of the death or injury of one of its members at the hands of a member of another group. The group is sufficiently large, ranging from a few hundred to a few thousand men, to be able to pay the *diya*.

The primacy of the *diya*-paying group is mitigated somewhat by the practice of *xeer* which is sometimes complementary to and sometimes contrary to genealogical relationships. *Xeer* is an agreement or contract between clans or sub-clans such as resource sharing or settling a dispute.

A council of elders comprised of lineage heads negotiates *xeer* for a village, forging collective decisions in active consultation with their constituencies. The council of elders applies customary law in these decisions setting out agreements on compensation for deaths and injuries. Importantly in this rural society, *xeer* also delineates agreements on land and water use. Elders assign members of their lineage for a specific military expedition, but do not serve themselves as military leaders. Elders also serve as the main interlocutor between rural communities and the district, regional and government authorities, especially in cases of conflict, need of drought relief, and other environmental disaster issues.

The designation of elder is earned by any adult male who has demonstrated good judgment and leadership (though some elders can be corrupt and venal). An elder's status also derives from the lineage level he represents and the influence of members of the lineage in other realms, including top businesspeople, professionals, civic leaders, clerics, and militia leaders. Thus, an elder's status can wax or wane as circumstances and reputation dictate. The government of Siyad Barre paid the heads of lineages to serve as liaisons, but vested formal authority in village administrations in order to safeguard the interests of the state. The village council continues to be viewed by the village residents as the most important source of political and judicial authority.

Village: Yemen

In Yemen, tribal *shaykhs* play a prominent role in collective defense, dispute resolution, and risk-sharing. *Shaykhs* serve as warlords in times of conflict, adjudicators in the case of tribal disputes, and negotiators of risk-sharing arrangements such as financial borrowing, sharing of labor during periods of cultivation, artisanal activities, and investment in energy generation. While a head of house typically hears simple cases involving small losses, a *shaykh* who heads a larger tribal grouping will deal with appeals from a tribal house or serious issues involving assault, homicide, or boundary disputes between smaller groups. A *shaykh* also oversees transactions and guarantees the safety of market participants. In case of a great dispute between tribes, such as damages or bloodshed caused by wars between tribes, a *maragha* is consulted. The highest tribal authority, a *maragha* is a recognized expert in customary law who has the authority to create new rules and set new precedents.

Since the late 1970s, tribal *shaykhs* have played a formal role in governance in the countryside. The Department of Tribal Affairs has formalized state relationships with nearly 6,000 *shaykhs* through direct payments for their cooperation. The Yemeni government considers these payments support for traditional social forms in Yemen, but in fact they undermine the customary relationship between tribesfolk and their *shaykhs*. Instead of attaining their positions of leadership through the confidence of extended kinfolk, *shaykhs* derive their authority from the Yemeni government. As the relationship between the state and *shaykhs* has become more intimate, cooperative tribes receive preferential access to employment in the civil service and promotions in the military. This system of patronage has also created a new business class of tribal origins that relies almost exclusively on state contracts for its business.

Tribal *shaykhs* have also secured their hold on local governance through control of local elections. In 2001, decentralization reform created elected local councils designed to increase local budgetary control and oversight of centrally-funded development activities including education, sanitation, medical, taxation, and security systems. However, *shaykhs* were able to engineer their desired electoral outcomes as they designed the boundaries of the electoral constituencies, had the exclusive right to disqualify potential candidates, and were actively involved in both voter fraud and intimidation. As a result, they are able to influence decisions on state resource allocation and service delivery at the local level.

CUSTOMARY SOCIAL ORGANIZATIONS AND STATE SUPPORT: EVIDENCE FROM RURAL AFGHANISTAN

In societies with strong customary social organizations, development assistance and state-building support are guided by three key assumptions. First, customary social organizations such as tribes and clans inhibit support for the state. In other words, there is a zero-sum relationship between customary social organizations and the state in societies where such organizations are pervasive. Second, customary social organizations are antithetical to democratic values such as equality. Third, aid programs can help strengthen or project the legitimacy of the state through provision of large-scale infrastructure as well as small-scale community development program. By this logic, when individuals see the state in action and benefit from increased access to public goods and services, they will be more likely to trust and support their government.

But are these assumptions accurate? Does participation in or allegiance to customary organizations impede support for a new central government built on the rule of state law rather than religious or customary law? Does membership in customary organizations undermine democratic values? Is the availability of public goods and an influx of foreign assistance associated with central government legitimacy, as state builders believe?

Analysis of the 2007 Survey of the Afghan People commissioned by the Asia Foundation and USAID enables us to systematically explore these propositions in the Afghan context. The survey is a nationally representative sample of over 6,200 respondents. The purpose of the survey is to provide insight into public perceptions of the government, security, development, democracy, media and other issues in the country (Asia Foundation 2007). The analysis here focuses solely on the rural subpopulation of 5,209 households in 566 villages and thus excludes urban populations.

Applying survey data to these three questions renders surprising conclusions. First, membership in customary political organizations in Afghanistan does not block support for the state and thus hinder development of a cohesive national administration. **Villagers in Afghanistan exhibit stronger support for the state in the presence of strong customary organizations.**

Careful analysis found that the presence of the three most important customary organizations at the village level, *mullahs* (religious leader), *maliks* (customary village representative), and *shuras/jirgas* (village council), was generally associated with individual support of the state. For example, **individuals who receive information from their mullah or malik are more likely to assess central government performance as positive.** The effectiveness of customary organizations also matters. **Respondents who trust their shura or jirga are more likely to give their national government high marks for performance.**

The analysis also demonstrates that customary organizations are strongly associated with democratic values. According to the data, when individual have access to *shuras* or *jirgas*, they are more likely to believe their votes are influential, tolerate friends who support opposing political parties, and believe political opposition is good for the future of Afghanistan. Most surprisingly, access to village councils is strongly associated with support for equal rights for women. The quality of village councils also matters: when *shuras* or *jirgas* are perceived as fair and are trusted, individuals are also more likely to believe that political opposition benefits the public good and to support equal rights for women.

Finally, the analysis shows that only certain kinds of public goods elicit support for the state. Improvements in the availability of jobs, the security situation, education availability, and freedom of movement increased support for the state whereas small scale infrastructure projects such as provision of clean drinking water, irrigation water, and medical assistance did not. A common feature of the first list of public goods is they represent the kinds of public goods that communities have difficulty providing on their own. Given the small size of Afghan villages and their generally low levels of income, for example, it is difficult for most villages to build a school, train teachers, and invest in textbooks on their own.

Explaining the results:

There are several reasons why customary organizations may enhance support of the state. First, customary organizations in Afghanistan have historically played a central role in state building and constitution-making in many Afghan governments. Successful rulers throughout Afghan history have used the authority of customary leaders embodied in a national *Loya Jirga*, or “grand council” of customary leaders to endorse their policies. In previous centuries, a *Loya Jirga* was a national or regional meeting of tribal leaders and other notables called together by the king to discuss a new policy or new Constitution. In the 20th century, rulers used the *Loya Jirga* mechanism with varying degrees of success to gain support for new policies. In 2003, the Transitional Government of the Islamic Republic of Afghanistan called a *Loya Jirga* to ratify the new Constitution. In this particular instance, membership in the *Loya Jirga* was more diverse than it had been historically by including women and representatives of warlord factions and political parties. The interim government used this customary-based system to ratify the Constitution not only because the physical and organizational infrastructure were not adequate to hold a national referendum, but because this known customary approach conveyed greater legitimacy on the constitution than voting might have done. Thus, customary organizations underpin even the formal constitutional system.

Second, customary organizations embody values and norms that are consistent with those values espoused by representative democracy. The central ruling body of the village is the *shuraljirga*. Decisions in these settings are based on consensus and involve norms that are typically found in countries characterized by the rule of law. Citizens regularly participate in these bodies, although the nature of public participation may not perfectly mirror representative democracy. The term *shura* is derived directly from the Qu’ran and literally translates as “consultation.” The concept of *shura* has legitimacy in Afghan customary law, but also in Islamic law and practice, as laid out in Sura 42 of the Qu’ran which calls upon all Muslims to engage in consultation (*shura*) with other members of the community in matters of local affairs. The Prophet Mohammad is also instructed to engage in regular consultation (*shura*) with his followers in Sura 3.

Third, customary organizations facilitate regular interactions with the government through the institutionally-defined role of the *maliks*. One of the primary functions of the *maliks* is to serve as a bridge between the people and the government, thus regularizing interactions with the state as they represent village interests to the lowest level of formal government. In interviews with scores of local government officials throughout rural Afghanistan, they expressed a belief that *maliks* are their partners in governance.¹

As the foregoing suggests, customary organizations can be a source of state capacity, not an obstacle to it. These organizations allow individuals to learn to govern. Customary organizations have features that support consensus building, if not actual democracy. Customary organizations within Afghanistan help integrate local actors into the state. These norms of local governance are far from inconsistent with the demands of a modern state. Efforts to replace or undermine customary authorities during periods of uncertainty may actually undermine the state rather than increase support for it. Moreover, efforts to build state support through public good provision only seem to be effective when they provide national-level public goods, particularly security, that individual communities are unable to provide on their own.

Several policy implications follow from these findings. First, efforts to replace or weaken customary organizations through the construction of parallel government organizations may not have the desired effect of increasing positive attitudes toward the central government. On the contrary, the government may be more stable when customary organizations are healthy. Second, the provision of aid is not a panacea. Aid programs on their own, with a few notable exceptions, do not seem to have a significant effect on assessments of the central government. What matters are outcomes—not the presence of aid. The kinds of public goods most valued by individuals are not those that NGOs or other donors can provide at the village level. Building support for the state actually requires government participation and assistance.

Rudolph and Rudolph once argued that “the misunderstanding of modern society that excludes its traditional features is paralleled by a misdiagnosis of traditional society that underestimates its modern potentialities” (1967, 5). In their perspective, customary law and traditional systems of governance can exist alongside state law, in contrast to many of the predictions of modernization theory. The evidence presented here finds strong support of this neglected hypothesis. Once we understand the institutional features of customary organizations, we can understand why they might intrinsically produce support for a central government that is aligned with their interests.

Source: Jennifer Brick Murtazashvili.

IV. URBAN LEVEL

All of these countries are urbanizing at a fairly rapid pace. As a result, most urban residents are actually from villages and so are recently removed from their rural communities and its associated tribal structure.

Cities tend to detribalize politics in a way that is often unimaginable in rural settings. In the urban environment, tribal ties are often usurped by ties to the formal government, whose authority is more pronounced. The extremely small scale and intimacy of rural communities makes monitoring and enforcement of tribal codes a fairly easy activity. Yet this intimacy, which provides the glue for tribal societies, is not present in urban areas to the same extent. While members of villages and regions may migrate to the same neighborhoods in urban areas, the ability of tribes and tribal codes to arbitrate disputes tends to break down. As a result, in all of these cases, there may be tension between tribal codes and the formal law of the state in urban areas, or tribal law may be completely absent in these settings.

Urban: Afghanistan

Tribes as a form of social organization are notably absent in the towns and cities of Afghanistan. In their place, however, is a form of social organization that mimics that of tribes. These social organizations are often informal, although in some cases (such as in Kabul city) they have been formally recognized by municipal authorities. Social organization in the towns and cities of Afghanistan is based on neighborhoods. In most cases, neighborhoods are not tribally homogenous. As a result, the code of one tribe cannot be used as the basis for adjudicating disputes between parties. Cities are also religiously diverse, with many Shia and Sunni living together in most cities across the country—so no single school of Islamic thought (*madhab*) can dominate social relations. Instead, neighborhoods rely on informal councils that feature a neighborhood representative (*wakil-i gozar*), who represents neighborhood interests to the formal municipal government.

Wakils are found in most large cities across the country. While *wakils* are not tribal, this mode of decision making bears remarkable resemblance to the form of consensual decision-making used in *jirgas* or *shuras* in villages across the country. In many ways, *wakils* serve as a mechanism that holds mayors accountable to citizens, as they serve as the bridge between the citizens and the municipality. While formal city councils do not yet exist, citizen and neighborhood interests are regularly represented to municipal governments through such customary forms of representation as the *wakil-i gozars* (neighborhood representatives), as well as *kalantars* (bazaar sector managers or community elders) and *maliqs/arbabs/khans* (village leaders) that articulate community interests in the smaller, more rural municipalities. The *wakil* system of governance exists not only in remote areas, but even in Kabul where the mayor regularly consults with these leaders.

Municipal officials and citizens claim that there is ongoing participation and representation of neighborhood interests through this system. Neighborhoods select an individual (*wakil-i gozar*) who is responsible for dealing with administrative and government matters. This person also serves as an arbiter of neighborhood disputes and liaises with municipal authority on issues of education, garbage collection, health and other services. While this system is derived from tradition, it is a system that is extremely legitimate and in fact modern in many of its practices. *Wakils* exist as the *de facto* city councils throughout Afghanistan.

Urban: Somalia

An urban setting is any town or city which possesses self-declared, locally selected, or appointed political authorities such as mayors who possess a formal level of authority that can rival that of the clan elders. Put another way, an urban area necessarily involves some degree of contested, shared, or overlapping authority between clan elders and formal political authorities. In Somalia, this is not always simply a matter of the size of a town—some remote towns of several thousand people are run entirely by clan elders, while other towns of that size, thanks to strategic location or past role as a district capital, feature mayors or district councils of some sort. Urban areas are often also home to other sources of authority such as businesspeople, local civic groups, and notable clerics. These municipal authorities vary in quality, but at their best have constituted some of the most effective forms of governance in Somalia since the collapse of the state. Finally, to be considered an urban area in Somalia, a town must be inhabited by and viewed as home by more than one clan. The quintessential feature of a Somali urban area is two or more clans sharing space and working out—with varying degrees of success—cooperation on basic functional issues like schools, roads, and markets. Towns that are mono-clan are essentially extensions of rural pastoral areas and governed as such.

Somalia's urban settings reflect enormous disparity in degree and quality of governance. At their best, cities and towns possess legitimate, responsive, functional town councils and mayors capable of running piped water systems, overseeing trash collection, allocating public market space, handling land deeds, and operating a formal police force. At their worst, urban spaces in Somalia constitute ground-zero for the violent and lawless competition by clans and militias battling over prime real estate. Kismayo and portions of Mogadishu have been unfortunate examples of the latter.

The paradox of Somali municipalities is that they are generally the most responsive, effective, and legitimate form of formal governance in the country, but they possess the weakest security forces and have little to no legal standing in the country's national and regional-level polities. Mayors and town councils tend to govern by consensus and, unless the "mayor" is also a militia leader (this does occur), have limited capacity to manage the many spoilers which surround them—criminal gangs, warlord militias, jihadists, and disgruntled or hostile clans. Unless they control a valuable seaport or customs post, most municipalities also have very limited capacity to raise taxes (mainly road-toll or "municipio" and market taxes), and so operate on very small budgets. This makes it difficult for them to fund work on major public goods such as bridge and road repair.

Because of high levels of displacement and mobility in Somalia, urban areas in most of the country face a tension over identity and rights that neither traditional nor formal authorities have been able to effectively manage. This is expressed in Somali as a debate over three principles —*U Dhasheey* (blood rights), *Ku Dhasheey* (birth rights), and *Ku Dhameey* (citizenship rights). In rural areas, this is no debate—households control access to pasture and water by dint of their clan identity (*U Dhasheey*). But in urban settings, claims to the right to live, own property, conduct business, secure portions of jobs and services, and hold political power are contentious and debated, especially in urban settings where one or two clans have historically been the sole residents but where migration, displacement, and conquest by newcomers (*galti*, literally "guests") have changed the composition and power relations in the city.

Related to this is a governance gap in Somali urban areas over land title and ownership. This is usually not a major problem in the center of larger towns and cities, where property is freely bought and sold, with elders serving as *de facto* notaries public and the larger municipalities sometimes capable of providing formal titles and verification of boundaries with GPS surveying. Elders also attempt to mediate the many land disputes arising over high-value urban plots (not always successfully—real estate is a leading cause of homicide in the otherwise peaceful city of Hargeisa, Somaliland). The problem is more acute in Somalia's peri-urban settings, where expanding towns (organized around privately owned plots)

meet communally-owned pastoral commons. Fast-growing cities have seen rampant land speculation and land-grabbing in peri-urban areas, and neither formal nor customary authorities have the tools to cope with ensuing disputes.

A final governance gap of importance in urban settings lies in the area of diplomatic relations with other towns. Each town in Somalia tends to constitute its own city-state. A variety of opportunities for inter-city cooperation exist, but to date nothing approaching a “league of city-states” has formed. Instead, towns often form the base for rival authorities. Clan elders play a growing role in managing relations between clans in nearby towns, expanding an already existing diplomatic role they play.

Relations vary enormously depending on the quality and type of local government and clan leadership. Municipal authorities and clan elders typically work closely together to fill gaps in governance. Clan elders are turned to in order to mobilize clansmen to collect resources - money, manpower, etc. Elders are unquestionably critical as part of consensus-building processes. Municipal authorities turn to clan elders as the main if not only source of judicial functions in the town, as most disputes and crimes are resolved through customary law. Local police often answer first to clan elders. Perhaps most importantly, elders are often used to try to negotiate with, manage, and contain potential spoilers. This is even the case with the jihadist group al-Shabaab, which currently controls most urban centers in south-central Somalia. Al-Shabaab has weak capacity to govern and sub-contracts out this function to local authorities, but can and does interfere when it believes policies are “un-Islamic.” Clan elders, civic leaders, and local municipal authorities run real risks when they attempt to push back on al-Shabaab edicts, and some have been assassinated. But they can and do work to create “negotiated space” in hostile environments with al-Shabaab or other armed groups.

Civic and professional groups and elders also tend to work most closely together at the municipal level, mainly because it is in urban spaces that most social service and civic organization takes place. This relationship varies from place to place, but over time these two actors have learned how best to complement one another in a division of labor. Elders face new and often perplexing issues related to new social formations, technologies, conflict patterns, and external actors that civic and professional actors can help to explain and mediate. Clan elders are often critical players in negotiating (for better or worse) allocation of resources (jobs, services, and contracts) that local non-governmental organizations channel into the community. They also play an important role in developing new customary law (*xeer*) to help govern relations between established and newcomer clans.

Urban space is the most valuable territory in Somalia, and as such tends to produce the highest levels of cooperation as well as the greatest levels of conflict. This puts considerable pressure on all forms of authority, both formal and informal, to keep the peace, contain spoilers, and maintain and develop “regimes” of routinized cooperation. All this is done in a context of political structures with weak legal mandates in the Somali national charter and very limited powers of coercion. What is accomplished by tribal and municipal authorities is usually less a matter of administration and more a case of constant negotiation.

The current arrangement of “negotiated space” with al-Shabaab, armed groups, or wider regional or national authorities has enormous implications. To the extent that clan authorities, in partnership with others, are willing to assume the risks and able to exert leverage with these outside forces, their capacity to negotiate and preserve space for local governance at the municipal level is a critical window of opportunity both for local communities and for external aid agencies.

Likewise, the existence of relatively responsive, legitimate, and autonomous “city-states” in much of Somalia points to the possibility of an alternative model of state revival. Most state-building in Somalia has sought, with little success, to impose a top-down model of the central state on the country—either assuming no local governance exists or presuming that whatever is in place can and should be replaced

by a government appointed authority. But resilience and legitimacy of municipalities suggests that a “mediated state” model may in fact be more feasible for Somalia, at least as an interim measure. In this model, a weak central government forges negotiated alliances with existing authorities (mainly municipalities) in the rest of the country where it is unable to project its authority.

Finally, the role of clan elders in helping to negotiate allocation of goods, services, and jobs in the city raises a difficult dilemma. This impulse to allocate along clan lines is meant both to ensure fairness (each clan gets its “fair share” of whatever service is introduced) and also to prevent conflict over those resources. This is a laudable goal, but one which stands in tension with the principle of merit as the basis for the awarding of jobs and the ethical imperative of need-based allocation of basic services for the poor.

Until 2006, the increasingly successful partnership of clan elders, civic leaders, municipal officials, clergy, businesspeople and others in governing Somalia’s urban areas was a trend that many thought could form the basis for an organic, bottom-up revival of national government. The debate at that time was whether these autonomous “city-states” had any incentive to be used as building blocks for a larger national government or if they simply represented temporary, local coping mechanisms. That debate has been at least temporarily suspended by the dramatic changes since 2006—the plunging of much of south-central Somalia into renewed war, and the rise of the jihadist group al-Shabaab. These changes have shattered some local governance systems and forced others into the much more constrained roles depicted as they negotiate for space to administer their communities in a much more hostile environment.

The failure of the Transitional Federal Government (TFG) has sparked renewed interest in local systems of governance on the part of external donors, a trend that is likely to increase attention to the partnerships of clan elders and other local authorities in Somalia’s urban areas.

While the long-term future of al-Shabaab, the TFG, and other political movements in the country is difficult to predict, one certainty is that the most enduring and effective form of self-governance in Somalia has been at the municipal or neighborhood level in Somali urban areas. This is a trend that is not likely to change. The growing number of assassinations of civic, municipal, and clan authorities by al-Shabaab and other armed groups will produce more caution and risk-aversion on the part of these urban-based leaders, but will not shut them down altogether.

Urban: Yemen

In Yemen, the government enticed many tribal *shaykhs* into the Yemeni government in the 1970s. As they moved into cities to take their new jobs, many tribesfolk followed them looking for opportunities unavailable in the countryside. While some tribesfolk moved as part of a *shaykhly* entourage and preferred to create neighborhoods in the shape of their original villages, others were drawn to the cities as a place of escape from the customary social order.

The legal and social pluralism created by urban migration offered opportunities and hazards for migrants and city natives alike. Rising demand for housing and services enriched urban property owners and businessmen. Urban-based labor and interest group rolls swelled with new members and the Yemeni government became increasingly interested in civil society as a source of complaints and support. Tribesfolk could find city living liberating. State-sponsored education opened up forms of work unavailable in the countryside. With these new forms of labor came other opportunities for association that did not depend on deference to a greater family, such as labor unions and professional syndicates. In cities, urbanized tribesfolk became familiar with neighbors from very different religious, class, regional, ethnic, and national backgrounds. These relationships created new forms of solidarity, which some

tribesfolk embraced at the expense of their tribal origins or, more often, as a supplement to social relationships formed or kept in the countryside.

But as tribal migration expanded, so has confusion over social roles and responsibilities in urban areas. The original migrants benefited from *shaykhly* help as tribal obligations were relatively robust, but the continued retreat of urban *shaykhs* from their tribal roles has eroded this form of assistance. Without advancement attained through patronage or solidarity, more recent migrants find the new variety of urban associational life bewildering and alienating instead of an opportunity. Absent firm solidarities, this tribal lumpenproletariat struggles to find meaning in its new circumstances and offers a ready recruiting ground for criminal or religious extremist groups.

Confusion over appropriate sources of authority has also grown. State and tribal structures offer competing sources of conflict resolution in urban areas. The Yemeni police, confused by contradictions between state law and customary law, rarely investigate assaults emanating from blood feuds. Should a case be brought to court, a state judge would try it as straight murder since the Yemeni Criminal Code makes no provision for killings emanating from blood feuds. But in case of conviction, a prescribed jail sentence plus a fixed *diyya* mandated by the court does not satisfy tribesmen, who would find the non-negotiated blood price too low to stop the blood feud. The opportunities and anonymity of urban life, however, have weakened tribal bonds and the authority of customary law.

V. REGIONAL LEVEL

At the regional level, tribal authorities play a different role in governance across the three countries. In Afghanistan, tribes do not aggregate beyond the village level, and the primary role for tribal leaders is to represent their village to district offices. In Somalia, clan families come together under a single umbrella for consultation and negotiation, and clan elders handle conflict resolution and play a significant role in the formation and legitimation of regional polities, at least in regions that are relatively homogenous; the heterogeneity of other regions has hampered the success of the predominant clan families to do so. In Yemen, tribal confederations bring together different tribes, which actively assert economic and political interests, try to fend off or secure state power, and ensure the protection of regional trade and markets.

Regional: Afghanistan

While few doubt the importance of tribal affiliations at the village level in Afghanistan, the political and social importance of tribes becomes more tenuous at higher levels of geographic analysis. In some areas, tribal groupings may coalesce at the district level, but this is not consistently the case. While some have argued that tribal structures and networks have broken down due to years of warfare, migration and assassination of elders, most scholars argue that structures linking tribes to one another never existed. Some even question the ability of individual leaders to emerge within a single sub-tribe, making tribal activity at a regional level nearly impossible.

The formal state bureaucracy in Afghanistan is organized into districts and provinces. These administrative divisions do not have significant consonance with tribal divisions or with local politics. In some cases, districts correspond to specific tribes, but such correspondence is never perfect. More significantly, administrative divisions lack local meaning because they are always in flux. In the past half century the map of Afghanistan and the administrative divisions within it have undergone profound change. For example, in 1950 there were ten provinces in Afghanistan, and in 2010, there were 34. Similarly, in 2001 there were 328 districts in the country, and in 2010, there were 398. The resultant

shifts in administrative responsibility have compounded uncertainty and weakened governance in the countryside, especially at the provincial level.

Most interaction between citizens and the government occurs at the district level. In many districts, village representatives (who are sometimes but not always tribal leaders) meet weekly with district government officials. Such meetings often take place on Saturdays—the first day of the Afghan work week. At these meetings, village representatives share information about security conditions with government officials. In return, village representatives expect that the government will share information about aid projects, security, or other services the state might provide.

Such interactions between local or tribal officials do not occur with any regularity at the provincial level. As recent creations with little administrative or legal teeth, provinces are merely distant structures that have little resonance with local politics. The highly segmentary nature of Pashtun tribes does not allow them to network well with structures at such a large scale.

The egalitarian tribal system does not generate tribal chiefs, but tribal leadership at the regional level may emerge. During the decades of fighting, for example, leaders of armed groups emerged who have been able to mobilize others in their tribe and claim strong positions among their communities. These “tribal entrepreneurs” included Gul Agha Shirzai as nominal leader of the Barakzai in Kandahar (and subsequently Nangarhar), Abdul Kadir of the Arsalai in Eastern Afghanistan, Sher Mohammed Akundzada in Helmand, and Jan Mohamamed leading the Popalzai in Uruzagan. The strength of many of these tribal entrepreneurs was solidified with backing from the international coalitions (Rashid 2008). These leaders emerged to leadership positions in armed groups independent of their position within their tribe.

Regional: Somalia

Regional polities are multi-district polities typically governed by a governor or regional president. To date, Somalia has produced only a few functional regional authorities, most notably Puntland in the northeast. Benadir region (Greater Mogadishu) has intermittently formed a modest administration, as has Galmudug, Bay and Bakool regions, Hiran, and Jubbaland. With the notable exception of Puntland, regional authorities have tended to be contested and have rarely provided much by way of actual administration. This is of real consequence since Somalia has committed itself to a federal system.

Self-declared regional administrations in Somalia, from Puntland in the north to Jubbaland in the south, have consistently aspired to assume expansive government roles that they are never in a position to execute. Puntland’s ambitions are betrayed by the fact that its leader is titled “president” (other regional leaders have opted for “governor”), and the structure of its administration partially mirrors that of a sovereign state, with ministries of the interior, defense, and finance. In reality, these regional administrations focus most of their energy on a few core activities: (1) customs revenues from ports and airports under their control; (2) relations with international donors and aid agencies, with the aim of maximizing control over resource allocation; (3) maintenance of security forces, to protect against outside threats, neutralize or defeat internal threats, and provide basic police functions to the public. Only Puntland has expanded its activities to include modest levels of wider government services such as a national highway authority.

At the regional level, a dual legal system operates with state judiciaries paramount on paper, but customary law paramount in practice. Regional authorities support the traditional leaders in handling crime issues and conflict resolution. They support them with fuel, vehicles and security forces. When the government cannot cover the needs of the traditional authorities, the government or the elders seek resources from the businessmen.

Regional polities in Somalia often seek to bring together large clan families under a single administrative umbrella—the entire Harti clan in Puntland, the Rahaneyn clan family in Bay and Bakool Regions, the Darood clan-family in Jubbaland. These are very wide alliances, strained greatly by the fact that most armed conflict in Somalia in the past twenty years has occurred within, not between, the major clan-families. As a result, these efforts to build regional administrations have often produced rather than reduced conflict, forcing clan elders to devote time and energy to addressing the conflicts. Because nearly all regional administrations in Somalia have either explicitly or implicitly been formed on the basis of clan identity, or ethno-federalism, clans and clan elders usually play a role in their formation and legitimation.

The initial creation of Puntland was done through a series of meetings in which clan elders played a lead role. Subsequent selection of the first President, Abdullahi Yusuf, was done by the clan elders, as was selection of the first members of Parliament. Clan elders met to select a new president when Yusuf refused to hold scheduled elections, leading to a political crisis in Puntland in 2003. These roles—as “founding fathers” of a new regional polity, as selectors of political officials, and as a sort of “supreme court” ruling on constitutional crises—gave the clan elders impressive power in Puntland, at least on paper. In reality, they were subject to pressure, manipulation, and purchase by the very political leaders they were supposed to be regulating. Regional political authorities have had to pay serious attention to the clan elders in order to maintain essential support and legitimacy within the wider lineage, but they can and do find ways to manipulate them to their advantage.

Somalis are deeply divided over the pros and cons of federalism, often along clan lines—autonomous regional states serve some clans well while marginalizing others. But in the short to medium term there is little prospect of a strong central state emerging which could challenge the emergence of regional states, so for the time being this form of governance is likely to endure or even expand in the country. Prompted by prominent politicians with clan ties to Jubbaland, the Government of Kenya is actively supporting efforts to revive a Jubbaland polity along its border.. As long as these regional states derive at least part of their identity and legitimacy from clan, clan authorities will continue to play an important role.

Regional: Yemen

The administration of Yemen is divided into twenty governorates and one municipality. The governorates are subdivided into 333 districts, which are then subdivided into more than 38,000 villages. While villages and sometimes districts tend to correspond with one tribe, the same is not the case with governorates.

District and governorate councils and government bureaucracy suffer from low capacity. Services, such as education, health, electricity roads, water, and sanitation, are often of poor quality or not supplied at all. For example, only 25 percent of rural areas are covered by health services. The state’s inability to deliver services to its population is highlighted by the demands of tribesmen, who kidnap foreign tourists in order to exert pressure on the government to build roads, hospitals, and schools in their tribal areas. The state’s lack of capability means that tribes continue to assume roles, which would normally be undertaken by the state. Tribes provide defense of people, livestock and land; resolve conflicts; protect trade routes and markets; maintain environmental resources like wilderness land and water wells; and provide a safety net to its members. At the regional level, tribes tend to provide these services through tribal confederations.

VI. NATIONAL LEVEL

At the national level, tribal authorities also play a different role in governance across the three countries. In Afghanistan, tribal affiliations have shaped alliances in national politics, but not given a direct role to tribal leaders. In Somalia, one national polity (Somaliland) has institutionalized the role of clan authorities, while the other (TFG) has institutionalized “clan” as the basis of proportional representation while largely undercutting clan “authorities.” In Yemen, the regime has relied on the President’s Sanhan tribe and allied tribes for its power, and has supported or undercut tribal leaders in a shifting pattern of manipulation.

National: Afghanistan

In Afghanistan, tribes are not sufficiently organized in a vertical manner to sustain large-scale political or social organization. However, when they face an external threat, tribes are able to mobilize for purposes of collective defense. At various periods in Afghan history, tribes have come to together to fight the looming tentacles of monarchical power, and more recently, have fought together against the Soviet invasion. Once the common threat dissipates, however, the larger tribal organization breaks up.

Yet since the birth of the country, tribal affiliations have shaped national politics. Leaders have staffed their government with fellow tribesmen, and charismatic opposition figures have utilized tribal allegiances to build political parties, such as the *tanzim* system of political parties opposed to Soviet occupation, or to recruit armed insurgents. Rather than representing a mixture of tribal affiliations, Afghan governments have been dominated by particular tribes, mostly the Durrani Pashtuns. The Durrani confederation dominated the government under the rule of the royal family from 1747 to 1973, and in the government of President Hamid Karzai. There have been only four (very brief) non-Durrani periods of governance at the national level. The first was for a brief eight month period in 1929 during a Tajik-led uprising, which was quickly put down by a Durrani faction. The second instance was the rise of the Soviet-sponsored People’s Democratic Party of Afghanistan (PDPA), who was led almost exclusively by rival Ghilzai Pashtun groups. The third instance was the Rabbani-led Northern Alliance that marginally governed Kabul in the wake of the collapse of the PDPA government in 1992. Although the ruling alliance did include Pashtuns (and indeed some Durrani), it was led largely by non-Pashtuns. Finally, the Taliban government in the mid-1990 was led by Mullah Omar, a Ghilzai.

While a division between Durrani and Ghilzai may have characterized the original Taliban movement, the current insurgency does not neatly follow tribal lines. The post-2001 Taliban leadership includes Ghilzais as well as Durannis, with significant participation by Karlanis (particularly the Zadran). It is unclear whether the increased diversity among Taliban ranks was a concerted effort on the part of Taliban leadership to reach out to a broader cross-section of Afghan society or was merely a result of disaffection with the Karzai government. Many important Durrani factions have not supported their fellow Durrani President Karzai in part because he did not deliver the voluminous subsidies and other forms of political patronage the government had bestowed in previous generations.

National: Somalia

Somalia currently possesses two quasi-national polities, the self-declared secessionist state of Somaliland³ and the Transitional Federal Government (TFG). The two governments face similar problems—very small budgets, contested authority, limited human resource capacity, and powerful armed non-state actors within the polity. Yet Somaliland has fared far better in every category—

³ Because Somaliland has structured itself as a national government, it will be treated as such in this paper.

performance, legitimacy, stability, democracy, rule of law, and facilitation of economic recovery—than has the TFG. Much of this is due to factors beyond the TFG’s control, but it is worth noting that Somaliland has actively embraced and even institutionalized the role of clan authorities as a way of securing its own of legitimacy, while the TFG has institutionalized “clan,” while largely ignoring the “authorities.”

In Somaliland, relations between the government and clan elders constitute an important experiment in formalization of the role of customary authorities. The relationship of the elders to the government has evolved over time. In 1991, clan elders played the role of creator not only of the government but of the very concept of an independent Somaliland. The elders met in a grand assembly or *guurti*, brokered peace among the clans, declared Somaliland secession, and negotiated the selection of the first President as well as members of the lower house of parliament. The lower house was selected on the basis of explicit clan proportional representation, and elders of each clan thus controlled the choice of individuals in the parliament.

The top elders were also formally brought into the government as an upper house of parliament, the *Guurti*, assuming authorities roughly equivalent to the House of Lords in the UK. This had advantages and disadvantages. The benefits included routinizing the valuable role of conflict mediation played by the elders, reassuring all clans of their formal voice in government, and earning the government legitimacy in the eyes of Somaliland society. The drawbacks included the fact that clan elders did not always possess adequate skills and background to understand complex public policy legislation; became “captured” by the executive as paid representatives and were prone to patronage politics and payoffs for votes; and perhaps most importantly, risked losing their ability to play a mediating role when conflicts involved the government versus an opposition, as the elders were now viewed as having “taken sides” with the government.

Since 1999, the elders have lost their control over selection of lower house members of parliament as Somaliland has transitioned to multi-party democracy. But they retain their place in the upper house, though this has been under active discussion for reform as well. At the same time, it appears clans are taking turns in leading the country. One clan led the government from 1991 to 2002, then a minority clan ruled from 2002 to 2010, and a third powerful subclan is the clan of the new president.

In south-central Somalia, the government has not yet been able to build a minimally effective administration. It performs none of the basic governance services that the Somali people expect of it, and in fact controls only a few districts in the capital Mogadishu. Public security—always the top demand voiced by Somalis of their government—is either in very scarce supply or is provided by other, non-state actors, including the jihadist group al-Shabaab.

Relations between the TFG and customary authorities have been weak. The TFG has generally been populated by top officials who view any alternative source of authority—elders, clerics, civil society, businesspeople—as a potential threat rather than partner. Elders have been caught up in the highly polarizing and divisive war between the TFG and al-Shabaab, and have been vulnerable to threats, bribes, and manipulation by both. The single most visible role played by elders in the TFG was in 2007, when the United Nations made an attempt to convene Hawiye clan elders to broker a peace in the fighting; the effort failed. Clan elders were marginalized in the initial selection of the transitional federal government in 2004, a fact which some claim contributed to the low legitimacy of the government once formed. This stood in contrast to an earlier effort to form a transitional government, the ill-fated Transitional National Government (TNG) of 2000-02, which convened government officials, civil society leaders, and clan elders in Djibouti to broker the formation of the government.

While clan elders have been largely marginalized, clan representation has been institutionalized through the allocation of top positions in the executive branch and seats in parliament according to clan size.

This “4.5 formula” accords proportional representation to each of four main clan families (Dir, Darod, Hawiye and Rahanweyn) as well as five minority clans. This formula is an attempt to balance and share representation and power in Somalia.

National: Yemen

The political regime is an expression of the dominance of one tribal group. To compensate for its lack of legitimacy and consolidate its power, the ruling elite in Yemen has depended on its traditional base of power, which is the ruler’s tribal group. This group is the President’s Sanhan tribe, located at the southeast corner of Sana’a, which is a member of the Zaydi Qahtani Hashid tribal confederation. When Salih came to power in North Yemen in 1978, he systematically appointed close relatives and members of his tribe to key command positions, thus ensuring the loyalty of the army and the security apparatus. His tribe’s grip on those two institutions continued after the civil war of 1994, which resolved the power struggle in unified Yemen in his favor. This grip on key military and security position continues today.

President Salih has also depended on the Zaydi Qahtani Hashid tribal confederation for his survival during critical political upheavals. Most recently, the Hashid tribesmen were a pivotal part of the coalition that ensured Salih’s victory in the civil war of 1994. The fact that interdependence and shared interests bring Salih and the tribal strongmen together does not indicate that their relationship is harmonious. Their relationship features ups and downs and sometimes bitter rivalry that can border on open confrontation. One example is the simmering power struggle in the relationship between Salih and al-Ahmar, the head of the Hashid, over the past decade. The continuous push-and-pull between the two culminated in a ‘car accident’ that almost cost al-Ahmar his life in 2007, after which he went to Riyadh for “medical treatment.”

Alliances with other tribes have shifted over time. Although the Hashid and Bakil confederations have historically been at odds, Salih initially extended his patronage network to the Bakil and showered its leaders with money and prestigious positions on the Northern consultative council. In return, Bakil’s leaders supported Salih in such issues as Yemeni unification. Over time, though, Bakil’s strongmen have expressed independence in their positions and have shifted farther away from Salih’s camp.

The northern Shafi’i of the middle regions of the country are largely de-tribalized; they have also had a shifting relationship with the ruling Hashid elite. Members of the Shafi’i once dominated the business sector. When they received technocratic positions in the cabinet, they became allied with the Salih regime. However, this alliance has been tested, as Hashid strongmen have started to compete with the Shafi’i businessmen in an attempt to dominate of the business sector.

The leadership’s constant engagement in creating alliances with social groups within the wider circle of the traditional base of power has led to political appointments in government positions that are not based on merit. The main criterion for these appointments has been loyalty to the regime. For instance, to win their support against the southern secessionist movement, the Yemeni leadership has appointed several members of the Awaliq tribes of the southern regions Shabawa and Abyan in important key government and military positions. Some of the officials from Awaliq tribes include: the Prime Minister, Minister of Migrants Affairs, Commander of the Navy and Coastal Defense, Deputy Commander of the Air Force, Military Adviser to the President, and Deputy Chief of Staff. Given the logic of the politics of survival, their appointments do not indicate trust in them; this lack of trust, in turn, leads to measures intended to check their power.

Tribal/regional affiliation has also shaped to a great extent the composition of the southern secessionist movement. The movement’s stronghold is Ad Dali, which is populated by the Al Sha’ari tribe. The

people of this governorate had much to resent especially as thousands of their kinsmen and neighbors were disbanded from the army at the end of the 1994 civil war. Two of the main leaders of the movement in Ad Dali province are members of Al Sha'ari tribe. By contrast, the Awaliq tribes, who are spread across the Shabwa and Abien provinces, have mostly remained quiet and did not join forces with the secessionist movement. The same can be said about the Yafa tribes, which for the most part have taken a neutral position during this crisis. This tribal/regional composition of the movement started to change in mid-2009 as former southern allies of President Salih, such as Tariq al Fadhli of Abien, joined rank with the movement.

VI. JUSTICE AND RECONCILIATION

A challenge to governance in the three tribal Muslim societies examined in this study is the simultaneous existence of three justice and conflict resolution systems – customary tribal law, Islamic or *shari'a* law, and the legal-rational system of the state. Where the international community has been concerned with building states with central governments, such as in Somalia and Afghanistan, the disconnect between the customary and Islamic systems and the newer state justice institutions has been viewed by the international community as undermining the stability and the legitimacy of the state and deterring foreign investment. Perhaps because Islamic law first emerged in a tribal culture, members of these societies see customary and Islamic law as complementary and indeed tend to conflate the two. However, during periods of Islamist extremism, as currently under al-Shabaab in Somalia and the Taliban in Afghanistan, the strict literal interpretation of *shari'a* has come into conflict with customary law.

One of the commonalities across the three societies' customary laws is that they do not distinguish between civil and criminal law. Furthermore, the aim is not on preserving individual rights or punishing the guilty, but on preserving community harmony. For this reason, customary law in these societies is generally focused on restitution and on making the community whole, rather than retribution. There is a preference for payments of blood money in cases involving grievous harm, such as death or bodily injury. Despite this preference, the exaction of blood revenge is also an option in such cases. Blood revenge tends to escalate and expand the conflict, sometimes over several generations. Unlike in western courts of law, both the perpetrator and their family or clan, and the victim and their family or clan, are involved in choosing the outcome. Whatever the course chosen, restoration of both individual and group honor is imperative since both forms of honor are inextricably linked. Once the decision is made, the remedy is imposed and delivered collectively, rather than individually.

In these societies, religious figures may have special roles in conflict resolution and there are particular families that are designated to serve this function. They are the descendants of the Prophet Mohammed, called Asharaf by Somalis and Sayyeds by Yemenis and Pashtuns. The Asharaf and the Sayyeds serve as third parties in conflicts. Men from these lineages may or may not be actual religious leaders. Rather, they enjoy respect in their societies because they are descendants of the Prophet Mohamed. They are thus employed as mediators in the conflict because neither of the parties would show disrespect to a descendant of the Prophet Mohamed—for example, by killing his opponent during the negotiation.

Competition for jurisdiction over different types of conflicts is a fundamental problem in these countries. In Afghanistan, Somalia and Yemen, the state has generally ceded family disputes and local disputes over land, water, and other civil disputes to customary law and/or *shari'a* courts. However, the state has generally not ceded prosecution and punishment for serious crimes. While this may serve as a satisfactory distribution of jurisdiction in some contexts, customary law also satisfies social needs that state justice sector cannot in the case of serious crimes. For example, in Pashtun society, individuals sometimes pay for their crimes twice, once by serving prison time and again through compensation to the victims and their families or by being on the receiving end of revenge meted out by the victims or

their families. This is because retributive justice does not address the issues that restitutive justice does, including the restoration of individual and familial honor and community harmony.

Conflict Resolution: Afghanistan

Most people in rural Afghanistan turn to customary norms to resolve conflicts and settle legal claims. In most of the country, they turn to community elders, religious leaders, and other respected individuals whom all the parties trust. Beyond this, there exists considerable diversity of customary law. Customary rule-making bodies include *shuras* (councils) as well as *jirgas*, a Pashto word for circle, connoting a local deliberative process. These informal councils are not fixed bodies. They consist of community leaders, who meet to resolve conflicts and make decisions. Membership in these bodies changes depending on the nature and scope of the conflict as well as the parties involved. The legitimacy of these individuals and their practices is not derived from the state.

Yet the interaction between the state justice system and customary law tends to vary from location to location and from case to case. Cases may pass back and forth between the district governor, local courts, other government offices, and local elders. Among Afghans, the ultimate goal of conflict resolution processes is to promote group harmony rather than focusing on individual rights or individual punishments. Such mechanisms frequently recognize that both parties in a dispute are at fault and frequently determine that both sides must compensate for the wrong done. In Afghan customary law and especially prevalent in the Pashtun tribal code, *Pashtunwali*, is the notion that all crimes can be rectified between individual parties. Thus, all conflicts are treated as civil matters where punishment is in the form of compensation. These mechanisms tend to be voluntary and they allow members of both parties to walk away if they cannot resolve the conflict. Traditional mechanisms focus on the political, economic, criminal, and social issues of the community. Conflicts over land and water are the most common in rural areas, however traditional mechanisms also address minor and major crimes and restitution, especially in areas where the state has a limited presence. Civil disputes, including commercial and contract-related disputes as well as family disputes over such issues as marriage, divorce, and inheritance claims, are also resolved using traditional mechanisms.

At the same time that the Afghan state lacks the capacity (or the inclination, due to corruption and vested interests) to provide justice and security for the majority of its population, organized criminal networks, powerful commanders not bound by state or tribal law, and the Taliban insurgency, combine to contribute to the pervasive insecurity that undermines the state. The Taliban have taken advantage of the lack of justice and security in large swathes of the country, and have provided a predictable system of justice, security, and law and order, as they did in the mid-1990s. Meanwhile, the international community has spent the last decade attempting to reform, expand, and build the competence of the formal state judicial system by concentrating its efforts on strengthening justice sector institutions, including the Supreme Court, the Ministry of Justice, and the Attorney General's Office. The results have been disappointing.

One, although not necessarily the primary, reason has been peoples' unfamiliarity with, distrust of, and resistance to state institutions in general, and state justice institutions in particular. Eighty percent of the population resides in rural areas where the only state institutions they might approach to assist with conflict resolution are the police or the district sub-governors. However these officials are often corrupt and/or lack the capacity and resources to provide effective assistance. At the same time, political interference from the executive branch or other power-brokers often results in the resolution of conflict by means that are seen as illegitimate by the community. When this happens, it can fuel violence.

In many parts of Afghanistan, tribal elders have been vocal in their dislike of the Taliban. Both tribal elders as well as religious leaders who do not subscribe to the Deobandi form of Islam have been deliberate targets of Taliban attacks. For the Taliban, customary law and *Pashtunwali* are incompatible with their vision of Islamic law. In the past ten years, Taliban leaders have systematically executed tribal elders because they represent a source of legitimate authority that could challenge Taliban leadership.

Increasingly, international actors engaged in Afghanistan, be they the U.S. military or NGOs, recognize the efficacy and legitimacy of customary law throughout the country, especially in rural areas, and its potential to deliver an effective and speedy justice, not just in the short term, but in the long term. They further recognize that traditional mechanisms are able to resolve conflicts peacefully and fairly and prevent small conflicts from escalating into large ones. Afghans throughout the country often cite the fact that traditional mechanisms are cheaper, speedier, fairer, and more legitimate than state justice systems.

The Afghan government is also increasingly focusing on traditional mechanisms. Both the National Justice Sector Strategy (NJSS) of 2008 and the National Development Strategy (ANDS) of 2008, require the government to adopt a policy on the state's relations with traditional conflict resolution mechanisms. This policy aims at:

- better management of relations between the state justice sector and customary law;
- delineation of jurisdictional issues building on the strengths of traditional mechanisms; and
- improved customary systems, in particular with respect to human rights and women's rights.

The draft policy, which came out in November 2009, includes general principles, goals and directives for the operation of traditional conflict resolution mechanisms and their relationship to the state. There is a risk, however, that state initiatives to regulate traditional mechanisms could have the effect of undermining them and the reasons that they are effective, popular, and legitimate.

While they are separate systems, in practice the lines between the state justice sector and traditional mechanisms are sometimes blurred. There are judges and prosecutors who routinely refer cases to traditional mechanisms, there are those who certify decisions made by traditional mechanisms so that an actionable legal document exists, and there are individuals who are both tribal leaders and state officials.

In areas controlled by the Taliban, local populations are often forced to accept their strict interpretation of *shari'a*. Some Afghans are willing to do so because it offers a measure of effectiveness in a context in which neither the state justice system nor traditional mechanisms (particularly in areas where the Taliban have successfully undermined traditional tribal authorities) are always able to provide them. Taliban justice is harsh, but it is quick, predictable, and enforced.

Conflict Resolution: Somalia

In the pre-colonial period, relations between individuals and groups were regulated by a synthesis of customary laws and Islamic law or *shari'a*. Colonial administrations imposed their own judicial and legal systems over Somali customary laws and *shari'a*. The British imposed the British common legal system in Somaliland, and the Italians imposed the Italian civil legal system in Somalia. Upon unification of the north and the south in 1961, the government faced the challenge of integrating the British common and Italian civil law systems, *shari'a*, and customary laws. The complex task of integrating the common and civil law systems took two years to complete. A hybrid common and civil law system was developed leaving *shari'a* and customary laws to cover civil cases and certain types of disputes. Institutionally there was a dual court system comprised of the government courts and the *shari'a* courts. Initially, *shari'a* courts

became the courts of first instance in all civil cases. However, Barre's socialist government extended state law into areas previously under the jurisdiction of *shari'a* and customary systems. This resulted in considerable conflict between Barre and the *shari'a* court judges.

Since 1990, southern Somalia has been without a functioning central state. This has resulted in a gradual return to traditional conflict resolution mechanisms. In the decade that followed the collapse of the state, *shari'a* courts were established at different times in different neighborhoods of Mogadishu and in other southern Somali cities as a way of coping with rampant insecurity and criminality. These courts tended to be clan-based because their jurisdictions were at the local community level. The local community courts eventually formed the Union of Islamic Courts (UIC), spurred by a combination of Somali Islamist ideologues with national level ambitions and support from foreign Islamist groups. In the areas where the UIC functioned, it seemed to have administered justice effectively, which improved security considerably. They expanded from dealing with disputes to controlling much of southern Somalia. However, the UIC was routed in late 2006 by a combination of rival Somali clans, many aligned with the Transitional Federal Government (a Western backed alternative) and the U.S.-backed Ethiopian forces.

The vacuum was filled by the al-Shabaab, which is currently in control of most of southern Somalia. In areas controlled by the al-Shabaab, local populations are often forced to accept their strict interpretation of *shari'a*. As in Afghanistan under the Taliban, some Somalis are willing to do so because it offers a measure of security and predictability in a context in which there is no state to provide them justice and security, and in which traditional mechanisms cannot deal with armed youth for whom the only type of justice they know is the gun.

Meanwhile, urbanization has modified the customary practice of *xeer* (contract or agreement). In smaller towns and villages, individuals generally had contact with only a handful of lineages, sometimes from the same clan family (as in Hargeisa or Borama in Somaliland). But in urban areas, clans that had not had previous contact, and which had quite different traditions of *xeer*, came to live side by side. When a conflict arose among urban residents who were members of different clans, the elders of each clan would meet and discuss the *xeer*. They forged their own *xeer* that was agreeable to both and that made sense in the urban context, since it was understood that other conflicts of a similar nature would arise in the future. In this way, clan elders modified many customary practices during the transition from rural to urban settings in ways that enabled them to continue to be effective for resolving conflicts. For example, they substituted the cash equivalent of camels for payments that used to be made in camels.

Conflict Resolution: Yemen

Similarly, the tribal areas of Yemen endure a condition of legal pluralism whereby customary law (*'urf*), Islamic law (*shari'a*), and the law of the Yemeni state coexist and a variety of venues are available for complaints to be heard or ignored. The code of behavior among Yemeni tribal peoples is called *'urf qabali*. It is as much a code of conduct as it is a guideline for settling disputes concerned with the maintenance of honor, the inviolability of a promise, and protection of the people who are considered weak. Violations of customary law are solved through mediation or arbitration.

Several different kinds of authorities are available to hear disputes between tribesfolk. The head of a tribal grouping of many houses typically hears simple cases like family disputes and disputes related to property rights that involve small material or immaterial losses. A *shaykh* who heads a larger tribal grouping will deal with serious issues involving assault, homicide, or boundary disputes between smaller groups. A *shaykh* also hears *'urf* cases related to transactions and safety in public markets. In case of a

serious conflict between tribes, a *maragha* is consulted. As an expert in customary law, a *maragha* has the authority to create new rules and set new precedents.

The state has given Islamic law priority over customary law. The current Constitution of the Unified Yemen specifies roles for *shari'a*, first as the “principal source” in 1990 and then amended as the “basis of all laws” in 1994, but makes no mention of *urf*. Only in the Civil Code of Yemen is there guidance for considering the role of customary law; even there, it may only be considered if it is “long-established, and does not conflict with the public order and public morality.” Likewise, the Yemeni Criminal Code and Arbitration Law only declare *urf* acceptable where it does not conflict with *shari'a*. At the same time, the state has brought *shaykhs* into its patronage network, which has led many to retreat from their responsibilities as arbiters of *urf*. With payment, positions, and deals from the government for their cooperation, many *shaykhs* have migrated to cities and abdicating their tribal roles.

The Yemeni government has offered in its place an impromptu hybrid of customary, Islamic, and state rules and forms that *shari'a* and state court judges and government officials apply as political needs dictate. Rather than parties to a dispute jointly choosing which form of legal process they would find most trustworthy to address a grievance, the Yemeni government selects the venue irrespective of the wishes of the aggrieved. In practice, this leaves city folk expecting state law finding themselves facing semi-tribal/Islamic formulas for justice while tribes folk, expecting *urf* proceedings, instead get their grievances adjudicated by a state official instead of a tribal leader. The irony of the Yemeni government bringing customary laws into the city while finding a new-found urgency for law and order in the countryside is not lost in either place.

VII. POLICY MODELS FOR DEALING WITH TRIBES

How can formal state institutions be designed to best deal with and account for the complex reality of tribal systems? This question has concerned nascent governments, aid organizations, and donors in recent years as the model of the centralized state has failed to bring about effective governance in many tribalized societies. High levels of state centralization have not only been inefficient, but have stimulated regional, tribal, and ethnic tensions.⁴ One of the primary reasons for this failure is that institutions constructed from the top-down—either by governments or by the international community—have not been able to successfully harness positive and constructive forms of collective action generated by tribal structures into the machinery of the state. Too often, central government authorities have viewed tribes and other forms of customary social organization as a threat to attempts to project power at and extract resources from local levels. Centralizing authorities tend to view tribes as a threat to their own rule because they have a claim to legitimacy that is independent of the state.

There are several policy choices that governments and the international community could examine as potential solutions to the crisis of the state that face many societies ruled along tribal lines. These policy choices could restructure governing arrangements to increase incentives of tribes and other non-state actors to cooperate with the formal government.⁵ Some choices, such as adopting a confederal or federal system of government entail a change in a country's constitution, but decentralization, limited government, and hybrid governance provide options for weak states in tribalized societies that do not require constitutional revisions and that could improve governance.

⁴ James Stevenson Wunsch and Dele Olowu, eds., *The Failure of the Centralized State* (Boulder, CO: Westview Press, 1990); James S. Wunsch, “Refounding the African State and Local Self-Governance: The Neglected Foundation,” *The Journal of Modern African Studies* 38, no. 3 (2000): 487-509.

⁵ Elinor Ostrom, *Understanding Institutional Diversity* (Princeton, NJ: Princeton University Press, 2005).

1. Confederation

A confederation is a system of government that consists of a voluntary union of states or sub-states. A confederal system is most likely to emerge when no tribal or ethnic group dominates the country, but tribal or ethnic groups are concentrated in relatively homogeneous regions of the country. Confederation is usually not a constitutional choice, but often a *de facto* situation that emerges when the formal system of authority breaks down. Once a formal system has devolved into an effective confederation, however, formal recognition of confederal sub-units by the formal state could ultimately lead to a more effective form of government. Contemporary Somalia is akin to a *de facto* confederal system with former regions of the country now carved into independent or nearly independent statelets that operate independently (i.e., Puntland and Somaliland). Due to the inherent weakness of the Somali state, any cooperation that exists between these statelets and the shell of a central government in Mogadishu is strictly voluntary, as the central government has no ability to enforce its will upon the sub-units.

Historically, confederal systems have been unstable. The relationship between Serbia and Montenegro between 2003 and 2006 represented a confederal arrangement where neither unit of government had veto over another, but ended when the two entities declared independence from each other. A confederal system also existed in the U.S. from 1781 to 1789, but broke down due to the unwillingness of individual states to contribute to the national budget.

2. Federalism

A federal system is similar to a confederation in that individual sub-units are effectively delineated within the state. A federal system is unique, however, because it is characterized by a central government authority that has veto authority over the sub-units, limiting their local autonomy. Local sub-units also have veto authority over certain kinds of central government policies.

At first glance, federal solutions may seem ideal for socially fragmented or highly tribal societies. Implementing federalism, however, is a challenging endeavor because in order to maintain itself and not be “hijacked” by its constituent parts, a federal system must maintain a strong central government. The fundamental dilemma for a federal system is therefore maintaining a central government that is strong enough to police its constituent states, while at the same time ensuring that the central government does not erode the powers of its states.⁶ Ensuring parity between the states, which may not be endowed with equal resources or equally good governance, is also a challenge. We might think for example of the gap between the Indian states of Karnataka, whose capital Bangalore symbolizes its progressiveness and modernity, and the desperately poor and badly governed Uttar Pradesh.

Somalia is comprised of *de facto* ethno-federal states, but the legitimacy of this arrangement is the subject of much debate among Somalis. The establishment of these states creates winners and losers over resources such as seaports and real estate. Those who have the most military power (in Mogadishu) come from the arid central part of the state; they are not interested in federalism and will play the role of spoiler where they can do so.

⁶ Barry R Weingast, “The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development,” *Journal of Law, Economics and Organization* 11, no. 1, *Journal of Law, Economics and Organization* (1995): 1-31.

3. Decentralization

Decentralization under existing constitutional systems may be appealing for a number of reasons. First and foremost, it is appealing because devolving significant authority to local units does not require constitutional change. It entails incremental change that can exist within the confines of an established order. Decentralization is also appealing because of its potential to make government more efficient and responsive to citizen needs. It is believed to reduce the role of ineffective central governments, establish more effective forms of government authority, inject competition between units of government for resources, and introduce more checks and balances within the government. Additionally, many view decentralization as a means to appease cultural, ethnic and social tensions by increasing levels of local autonomy.⁷

Decentralization allows the central government to maintain a modicum of control over local governments, but allows local governments to set their own priorities. In this model, local sub-units maintain their own priorities for the provision of public goods and services. Most revenue is retained locally and not remitted back to the central government. Systems can be even further decentralized if local governments are allowed to select their own systems of representation and accountability based on local conditions rather than having to respond to a central government mandate. For instance, in areas characterized by strong tribal presence, systems of representation and accountability may take the form of consensus-based tribal councils rather than elected or appointed councils. Local government may assume a modern democratic form or, perhaps more effectively in some settings, a traditional, customary one.

A limitation with decentralized governance in the context of particularly weak states is that local units may have little incentives to cooperate with the central government, especially if there is pervasive corruption at the national level or if the central government has no resources to share with local governments. If the national government is excessively weak or corrupt, then the promise of cooperation between localities and the central government may not emerge, thus further feeding the cycle of mistrust and fragmentation.

4. Limited Government

Another model, which could work in tandem with any of the other policy choices discussed here, is to reorient the government to reflect the reality that is present in many of these tribalized societies: a government with limited reach. States characterized by limited government are intentionally designed to provide very few public goods and services, but instead focus on the provision of a few key public goods such as internal security, defense of national borders, basic infrastructure, and perhaps basic education. In many ways, this model recognizes the *de facto* situation of governance in many highly tribalized societies. Instead of seeking to extend the writ of the state and compete with tribal groups for authority and legitimacy, in the limited government model, the state is purposefully limited. A state that may be adept at achieving a few things may be more legitimate to its people than one that attempts a little bit of everything with unacceptable levels of cronyism, inefficiency, and corruption.

In this model, the central state would limit its scope of activities to a select few. The central government would not aim to gain significant capacity, thus it would not extract significant resources from localities. Instead, local authorities would provide most of the public goods in their area on their own and would decide priorities for spending and the means for gathering revenue without central government

⁷ Pranab Bardhan, *Scarcity, Conflicts, and Cooperation: Essays in the Political and Institutional Economics of Development* (Cambridge: MIT Press, 2005), 105; See also Pranab Bardhan, *Decentralization and Local Governance in Developing Countries: a Comparative Perspective* (Cambridge, MA: MIT Press, 2006).

involvement. Local authorities could include formal government representatives, tribal groups or other customary social organizations, or self-organized insurgent groups that have gained significant territory from the central government.

A model of limited governance contradicts current trends in development that push states to achieve a large number of objectives. For example, one casualty of such a form of government would be the United Nations' Millennium Development Goals (MDGs). The MDGs set a long list of priorities and benchmarks for governments throughout the developing world in order to improve the livelihood of citizens. International donor assistance aims to improve livelihoods through improved state capacity and service delivery. In a state where limited government prevails, however, achieving MDGs through the state may not be possible. For this reason, development organizations have not promulgated the model, despite the fact that achieving MDGs via the state appears unlikely.

Despite such drawbacks, the model of limited government may offer a pragmatic approach to limited capacity. It may contribute to state legitimacy by helping to maintain realistic expectations of government services. In the case of Afghanistan, for example, ambitious development assistance programs aimed at expanding government service delivery persuaded many Afghans that they were entitled to much more from their government than had ever been the case previously. The government's inability to provide the expected level of services, however, helped to delegitimize the government with unfortunate consequences.⁸

5. Hybrid Governance

Many states where tribal and customary organizations remain pervasive rely on *ad hoc* alliances and agreements with these groups to govern. Weak state authorities do not replace informal systems of governance, but enter into negotiated relationships with them. These partnerships provide core functions of public security, justice, and conflict management. Such hybrid arrangements are intrinsically messy, contradictory, illiberal, and constantly renegotiated deals—not ideal choices for governments but often the best of bad options for weak states. They are a common if unspoken practice in most weak states today. As discussed further in the textbox on the league of city-states model, it is in the larger settlements where multiple tribes reside, valuable property and markets are contested, businesses are based, and the greatest concentration of civic, business, and political leadership exists. This provides an environment from which these hybrid security and governance arrangements can emerge.

⁸ Personal communication, Andrew Wilder, 2008.

IT TAKES A (LOT OF) VILLAGES: REVIVAL OF GOVERNANCE AND THE “LEAGUE OF CITY-STATES” MODEL IN SOMALIA

Somali society constitutes an unwilling patient in what amounts to an enormous, accidental social science experiment in human response to protracted state collapse. Over a 20 year period, we have been able to observe how households and communities adapt to and attempt to shape an environment of protracted state collapse in order to provide for themselves essential services normally considered the task of a functional state. What we have learned can be summarized as follows:

- Communities are not passive victims in the face of state collapse, but actively forge informal systems of governance in an effort to provide basic security, rule of law, predictability, and basic services;
- This “governance with a small g” manifests itself in a wide range of hybrid arrangements, combining elements of customary law and clan elders, *sharia* courts, neighborhood watch groups, women’s market associations, civic organizations, business security forces, municipalities, and others;
- Collectively, these polities constitute a “messy” fluid mosaic of authorities of varying degrees of effectiveness across the countryside;
- Many of these informal systems of governance reflect a strong desire for rule of law and security, but not necessarily an enthusiasm for revival of a formal state authority, and in fact in some instances can serve as a form of local resistance to state revival;
- The legitimacy of these local polities varies from places to place. Some are little more than warlord or jihadist fiefdoms; others enjoy broad-based popular support;
- Local interests in governance and security have evolved over time, with some past spoilers and merchants of war investing in legitimate commerce and fixed assets. This move “from warlord to landlord” was an important factor in creating new constituencies for governance arrangements.

In general, external efforts to revive the Somali central state have ignored and even eroded these informal polities. The only exception to this rule is when local governance structures emerge as either municipalities or regional states, at which point they are sufficiently recognizable for international aid agencies to liaise with them as local partners. But even then, the external preoccupation is usually with the establishment of a central government, so local polities are viewed mainly as potential “building blocks” for a revived state. To date, they have been disappointing in that role.

State-building in Somalia will always have a strong external dimension to it, notwithstanding calls in some quarters for “constructive disengagement” from Somalia. There are simply too many interested external parties in the ultimate form and direction a Somali state will take for outsiders to allow a purely organic, locally driven process of state formation to occur. The Somali people themselves are too globalized to allow for anything approaching a purely “local” process. When most of the national and local political, civic, and business leaders are diaspora members from Europe and North America, and when most of the funds used by local polities are collected from the diaspora, parsing out the difference between domestic and international factors in Somali state-building becomes difficult.

But what if Somalis were left alone to forge their own political structures, on their own terms, driven by their own interests? Would anything more than local-level arrangements emerge? Given what we know empirically about local governance patterns and trends in Somalia since 1991, we can engage in informed speculation on this question.

The patterns of informal governance in Somalia since 1991 point first to an obvious and yet often overlooked reality—namely, that the vast rural spaces in the country continue to be governed almost entirely by clan elders administering customary law. There have been important exceptions to this, when protracted pastoral clashes have drawn in urban leaders as mediators (and sometimes provocateurs). But generally speaking, the rural countryside remains the domain of customary law and authority, and by all measures will continue to be so governed.

More elaborate forms of hybrid governance have occurred almost entirely in towns and in the neighborhoods of the largest cities. It is in the larger settlements where multiple clans reside, valuable property and markets are contested, businesses are based, and unemployed young gunmen tend to concentrate. It is in the towns and neighborhoods where the greatest concentration of civic, business, and political leadership exists, providing an environment from which can emerge the kinds of partnerships that can routinize basic security and governance arrangements. It is in the towns where the most consistently legitimate and functionally effective type of formal government—the municipality—has occasionally emerged. And it is the towns which are the most insecure because they are the main prize and thus occasion the worst forms of heavy armed combat. The towns then represent both the best and the worst of Somalia in this period of state collapse.

Looked at through this lens, Somalia today is neither a land of anarchy nor a unified state, but instead a scattering of islands of city-states separated by a vast sea of pastoral rangeland where customary law is usually enough to manage local resource conflicts. Therein lies the paradox of state-building in Somalia. The single most effective source of local governance in Somalia, the municipality, has almost no place in Somalia's current transitional charter and structure of government, which privileges the federal, regional, and district levels of government.

One of the main reasons municipalities have arisen and in some cases thrived in Somalia is because urban centers require more sophisticated systems of authority to deal with more complex problems, and because powerful local interests exist at the town level in promoting and protecting basic security and governance. Towns are also typically multi-clan in composition, inviting both clan conflict but also opportunities to develop mechanisms for routinized cooperation. Put another way, governance and security arrangements are viewed locally as a positive sum game, in contrast to the zero-sum nature of state-building at the national level in Somalia.

For the most part, the energies devoted to local governance in Somali towns are precisely that—local. But most Somali towns are situated along commercial corridors and are often dependent on relations with other towns for trade and access. They can also be rivals—competing for warehouses, businesses, and aid projects, or serving as bases for rival political groups and clans. This admixture of shared and conflicting interests held by autonomous but interdependent actors is a mirror image of the way many international relations theorists view inter-state relations. Historians would point to a more specific comparison, cases where a “league of city-states” emerges in commercially active zones as a form of routinized cooperation over (more or less) shared commercial interests.

If provided adequate political space by international and national actors, could Somalia's municipalities forge regional peace as a network of city states? It is entirely possible that they could. Somalia's influential business community forms partnerships for precisely the purpose of ensuring access along corridors linking trading towns to one another. Such a system of governance would focus on issues central to Somali political concerns—rights of passage, rights of access, rights of residence, and rights of ‘citizenship’—in different areas of the country. A Somali league of city-states would combine two of the most effective sources of governance in the country—the municipalities themselves and the commercial interests of the business community. It would have the potential to serve as a building block for trans-regional governance arrangements.

In practice, much of what passes for regional governance in Somalia is in fact a league of city-states. Seen through this lens, Puntland is an alliance of towns and their dominant clans from Galkayo to Garowe to Gardo to Bosasso, linked together by a single highway. The Gedo region is a quarreling collection of towns from Bulo Hawa to Doolo to Luuq to Bardhere.

Somalia's towns already provide the most legitimate and effective form of local governance in the country, and that is a major contribution to human security to hundreds of thousands of Somalis. They are strained by difficult and sometime new challenges, especially related to displacement, population growth, the rising value of land, and disputes over peri-urban land. But they have generally coped, sometimes impressively so. Their potential as a source of regional peace and security has been underestimated and could be an important engine of governance in the future.

Source: Ken Menkhaus.

VII. TENTATIVE RECOMMENDATIONS

This preliminary research on these three heavily tribalized Muslim societies points to a number of tentative strategic and programmatic recommendations. Although donors need to adjust any recommendation to the specific realities on the ground, the following lessons should guide donors to provide assistance that advances the goal of improving governance and reducing conflict.

Work with existing structures. Often donors and the local educated elites with whom donors most frequently engage ignore traditional collective action mechanisms. They create parallel organizations at the local level to distribute aid and intersect with the state. Instead of working with customary and tribal organizations, donors seek to empower the marginalized poor and women and ensure more state-friendly structures. Believing that customary organizations led by men reinforce existing inequalities, they seek to replace traditional governance structures with more modern, democratic forms of organization.

In Afghanistan, for example, donors have established the National Solidarity Program, which introduced community development councils in villages. These councils, in principle, should be comprised of male and female community members and youth. The purpose of this program is to encourage local, democratic participation in community decisions over the disbursement of grants. The councils have become a parallel structure because they compete with traditional authorities. The Afghan Constitution also calls for elected district level councils, and while their election has been put off, these bodies could undermine traditional governance mechanisms or they could, in places, be captured by them (as was the case with local councils in Yemen).

Setting up parallel organizations may consume resources that are better used elsewhere, but may also contribute to instability. Establishing parallel lines of authority to that of village elders may further erode their ability to maintain order and administer justice, and reduce Afghans' allegiance to the state, as discussed in the textbox on Customary Social Organizations and State Support. In many parts of the Pashtun south and east, these community development councils have dramatically weakened the elders, which may have reduced communities' ability or desire to resist the Taliban.

A key recommendation from this research, therefore, is to work with existing structures. Given the instability and fragility confronting these societies, it is important to maintain the sources of authority, dispute resolution, and security that work rather than creating alternative structures that have little legitimacy in local contexts. In Afghanistan, this suggests working through *maliks* and traditional councils at the village level, and also working with the *wakil-i gozar* (neighborhood representative) system in urban areas. *Wakils* are elected by community members to represent neighborhood interests to the municipal government. In most cases, *wakils* are informal but in some instances, such as in Kabul, they have become a formal part of municipal administration.

Focus at the district level in Afghanistan. In Afghanistan, development assistance has focused on villages and established community development councils to distribute resources. However, Afghans need formal governance and intervention to help build the state at the margins of communities where tribal or customary forms of self-organization are least effective. It is at the district level where most interaction between rural Afghans and government officials takes place and where donors should target their assistance.

Do not alter the balance of power between tribes. Development must be conflict-sensitive. New resources can and sometimes do provoke conflict, especially if they are perceived as benefiting some groups more than others. As one tribesman articulated, “Afghanistan has a tradition: If you help one brother, the other one gets angry.” The distribution of development resources must therefore be equitable across tribes as well as regions, districts, and sub-districts. This implies the need for highly contextualized local knowledge.

In the Afghan context, the U.S. military has rewarded tribes for their support against the Taliban and opium cultivation. In eastern Afghanistan earlier this year, for example, the U.S. military offered the Shinwari elders the power to decide how to spend \$1 million in U.S.-funded development projects in return for their support. However, the support sparked violence between Shinwari factions, who were angered that the assistance wasn’t distributed equitably. It also angered other tribes in the area, who had received nothing, and elicited an accusation from the local governor that the U.S. was meddling in tribal politics.

The U.S. military has also provided substantial military aid to tribal militias in an effort to fight Taliban advances. The logic behind such an effort is that tribes may be more locally legitimate than Afghan National Security Forces and thus have stronger incentives to keep the Taliban from their own land. But supporting certain tribes at the expense of others for the purposes of fighting an insurgency risks destroying fragile local political and social equilibria, and may push angered tribes into the insurgency.

Involve traditional authorities in aid programs. Traditional authorities have a keen understanding of local dynamics and needs, and play a role in resolving disputes that may arise from aid programs, such as contracts and rents. They have legitimacy. Donors should therefore consult with them through the life of a project, and not just at the beginning, and should not seek to undermine them.

Examine assumptions about state reach. In Afghanistan, extending the reach of central government could be one cause of the expansion in the insurgency, not its cure. Particularly if the state is corrupt, weak, and ineffective, a limited government may be a better approach to stability.

Support business. The business community has been an important avenue for improved clan relations and win-win approaches to clannism in Somalia. This has required businesspeople to seek out partners across clan lines. Fostering business helps create jobs and dampen conflict as business leaders have an incentive to work with other clans. This is unlikely to have traction in Yemen, however, because of the creation of a new class of crony *shaykh* businessmen, who have near monopolies or preferential access to the state.

Do not undermine customary law. Customary law is what works in these countries. Its norms are understood, and it has legitimacy. Governments need to maintain or at least strive not to undermine what exists in order to have some form of functioning justice. The formal justice system is often corrupt, inaccessible, unfair, costly and slow, and is not likely to replace traditional dispute resolution mechanisms anytime soon. The donor community should not support formal systems as a total replacement for traditional ones.

Do not provide funding for traditional conflict resolution mechanisms. Financial incentives for participation or cooperation with international organizations or governments undercut the legitimacy of traditional leaders, who generally work without compensation for the good of the community and to enhance their personal and familial reputation and influence. Providing payments for their services threatens to undermine their legitimacy in the eyes of their communities because they

are then suspected of making decisions that are based on those financial incentives. Reasonable stipends to cover basic expenses for participation in events such as dialogues and training are acceptable as long as they are provided with transparency and accountability.

Foster discussion of human rights among customary authorities. Dialogue on customary practices that are discriminatory or abuse rights (especially gender-related practices) may help to change attitudes. Efforts to improve traditional dispute resolution systems have borne fruit in some Muslim societies such as Bangladesh.

Clarify the jurisdiction between state and traditional justice. One of the most effective ways to strengthen both the state justice sector and traditional conflict resolution mechanisms is to expand opportunities for communication between them. This would significantly enhance their ability to negotiate their respective jurisdictions. Regular dialogues or other fora between traditional leaders and representatives of the state judicial system can be extremely helpful in building working relationships between the two and do not require much funding to implement even on a large scale. Training on the strengths, weaknesses, structures, and processes of each others' systems would also promote cooperation between traditional leaders and state actors. While it would appear that it should not be necessary to train state actors in traditional mechanisms, in fact, not all individuals in these societies are equally knowledgeable about or experienced in traditional systems. By the same token, some traditional leaders are well versed in the state system, while others are not. Working relationships would also be enhanced by exchanges of training in which actors from both groups trained the other group.

Support traditional authority at the national level as a transitional strategy... The role of customary authority in Somaliland can serve as a possible transitional strategy for countries emerging from state failure or civil war. Clan authorities can have many drawbacks, but they are a known quantity among their communities and generally enjoy legitimacy as leaders. Their primary role traditionally is as conflict mediators. This can matter greatly in a context of high levels of communal distrust following civil war. Their formal role can help build trust and confidence in the short-term. The Somaliland case suggest that tribal authorities may be most essential not only as a fall-back authority during periods of state failure, but as part of a transitional phase in the aftermath of war.

...Or as a long-term governance strategy. Traditional authorities can complement modern formal government with the prime example being a House of Elders, such as the *Guurti* in Somaliland, which can prevent escalation of and solve political conflicts in government.

Limit foreign expectations for help in combating terrorism. As a source of combating terrorism, clans have both potential and limits. Somali clans may be best equipped to negotiate with clan members who have joined al-Shabaab, but are prone to defection. Clans also have excellent capacity to gather information about activities and movements in their clan home territory. However, Somali clans are not well-designed for foreign interests to partner with on counter-terrorism. They are susceptible to penetration by al-Shabaab and vulnerable to al-Shabaab assassinations.

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