

# Traditional ways of dealing with controversies

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Traditional societies have a variety of ways of dealing with latent controversies, as well as with overt conflict situations. The formal systems that have disregarded the traditional systems of dealing with these controversies have often worsened the amount and extent of overt conflicts. Changed circumstances have often resulted in partial disintegration of these systems, which could not adapt quickly enough to outside pressures. Increasing urbanisation and westernisation have seriously affected the influence of traditional structures, as well as the role of traditional leaders. A major challenge is to build on traditional ways of dealing with controversies, improving their effectiveness and complementing them with appropriate modern ways.

## Latent controversies

The violent expressions of wars, displacements, and destruction in Africa are only the tail end of a long protracted conflict. The majority of controversies are covert or latent, a part of every day life in every community. They are managed in such a way that they are not often seen in the open. The notion of not 'washing one's dirty linen in public' is a major determinant of how most conflicts are managed in rural communities, for example in Ghana. Spiritual concepts, such as cultural identity and collectivity, stand at the root of managing latent controversies. Clan, lineage and totems are important aspects of cultural identity that join people. The spiritual bondage between people of the same totem prevents them from entering into open disagreements. The concept of 'being one another's keeper' also limits the number of controversies over the use of natural resources. The 'we' is emphasised above the 'I'.

Other regulatory mechanisms that serve as preventive measures to prevent a controversy from becoming overt include the concept of tolerance and consensus building. Anticipated favours and other acts of reciprocity lead to the postponement of the resolution of controversies. It is only when the positive triggers are not met, that these controversies manifest themselves in the open. Traditional ways of regulating controversial feelings also include conciliatory postures such as splitting ash, drinking or sprinkling water, filling the mouth with water and spitting it out, splitting a kola nut, sharing drink or tobacco (snuff), or eating together. There are also various sacrifices and performances that nip controversy in the bud. Still, many disagreements, power differences, and struggles over dwindling natural resources do result in open conflicts. Traditional regulatory

mechanisms are not enough to prevent open conflicts, but could be used more creatively. Also traditional methods for reconciliation are important in dealing with relations after conflicts.

## Open controversies

Many of the above-mentioned concepts are still apparent in the traditional ways of dealing with open controversies and conflicts, both in Africa and in other continents. The Maya Quiché juridical system in Guatemala called the *Pixab*, for example, is based on the notion of the necessity to maintain good relationships with all levels of existence. Problems in human society, such as disease and misfortune in life, are related to taking the wrong steps in life or not listening to the advice of the elders and ancestors. In box 4, basic elements of traditional ways of dealing with controversy are highlighted, with examples from Guatemala, India and Africa.

## Western juridical systems

It is good to understand the profound differences between the western and the non-western traditional juridical systems. For example, the concept 'rule of law' is central in the western legal system. It includes the absolute supremacy and the predominance of (written) regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness. This means equality before the law and administration by the law courts. The law should be fair, and reasonable. There is little room for flexibility. Another central element of the western legal system is the 'separation of powers'. The three kinds of powers – judicial, legislative and executive – cannot reside in the same person or body of persons. The basic premise of this concept is that it prevents power abuse against individuals, due to too much

power being held in the hands of the same individual or group.

In India today, as in other developing countries, the traditional legal system has been rendered ineffective by the new legal system, though not replaced by it. The indigenous juridical system is no doubt frequently resorted to, but does not seem to be strong or flourishing. At present it seems to have been reduced to a few small areas where the legal and administrative machinery of the government has not yet encroached. Also in northern Sudan, the traditional system is rapidly changing due to the overlapping modern and traditional juridical systems. The existence of two legal systems opens the way for 'institutional shopping': persons may choose to address either the traditional or the legal formal system depending on the expected outcome.

## The challenge

The causal roots of present day controversies are not altogether new: poverty, power, marginalisation and struggle over natural resources. These have existed as long as people have. The formal systems that have disregarded the traditional systems of dealing with these controversies have often worsened both the amount and extent of overt conflicts. Changed circumstances have often resulted in partial disintegration of these systems, which could not adapt quickly enough to these outside pressures. Apart from the domination of formal juridical systems, the process of increasing urbanisation and westernisation has seriously affected the influence of traditional structures, as well as the role of traditional leaders. Other elements include failing national policies, the growing pressure on natural resources, and the growing influence of modern religions. A striking example is Guatemala, where the traditional Maya juridical system was

### Search for harmony

Traditional ways of dealing with controversy and conflict are often based on the search for harmony between the opponents, as well as amongst the three spheres of life: the human world, the natural world and the spiritual world. The modalities used are typical for each culture. The principle of reciprocity and complementarity, for example, provides the basis for conflict mediation in indigenous cultures in Latin America and Africa.

### Influence of the spiritual world

In the process of dealing with controversies, there may be permanent communication with the spiritual world. Rituals and ritual confessions play an important role, which can be combined with elements of the formal religions. For example, in the Gawamaa tribal group in northern Sudan, the religious or communal leader will often use examples of the Old Testament and events in the life of the Prophet Mohammed, in order to provide historical examples of how things can be resolved. In the Maya K'eqchi' system in Guatemala, before passing sentence, the elders consult other elders, as well as the ancestral spirits, the mountain-spirits and the pleyades. Consensus has to be reached both in the human and in the spiritual realm.

### Forgiveness and consensus

In many traditional systems, forgiveness and consensus, transformation and reconstruction of lost harmony play an important role. According to Mayan traditional practice, when a controversial issue has to be resolved, the elders forgive the person involved following a process of agreement and consensus with the affected person, when he or she shows a change of attitude and a willingness to settle the damage done to others. In the African situation, resolution of controversies is built on reparation, which does not require proof of who is right and who is wrong. Usually fines are given to both the complainant and the culprit, and a sharing arrangement is agreed upon. Defiance of this order, it is believed, will lead to a postponed punishment system that permeates generations of lineages and clans. Also in traditional Indian society the main purpose is to 'harmonise' the situation in such a way that all parties are able to emerge from the encounter with honour and dignity. The conflict then ends not with a victor and loser, but with consensus being reached between the two parties on a different plane. This search for consensus is often combined with a policy of avoiding digging too much into the roots of the problem. As one traditional leader in northern Sudan put it, 'peeling back the layers of the onion brings tears'.

### Intermediaries and respect for elders

In most traditional systems respected leaders within the communities, usually an aged male or group of males, act as intermediaries and pass sentence. In his description of the traditional system of mediation amongst the Gawamaa tribal group in northern Sudan, Egeimi indicates the important role of the mediator in the encounter between groups in resolving a conflict over their natural resources. Similarly, the traditional systems in India are based on the role of traditional leaders and other institutions, who in their own villages, guilds or castes combine three kinds of power: juridical, legislative or political, and executive.

### Flexibility

In contrast to the formalised western 'rule of law', in traditional conflict resolution mechanisms there is a high degree of flexibility and discretion in the judicial procedure. In Guatemala the elders study a case carefully before passing sentence, taking into account the context of the situation involved. A notion that is very central to Indian thought is *Dharma*, literally 'that which sustains', which includes a code that regulates all types of conduct, and that is both flexible and dynamic. The Dharma of normal times can vary in times of stress or danger, or in unusual circumstances. An 'act' can never be viewed in isolation, and its 'meaning' can be arrived at only in the light of the circumstances involved.

### Mission in life

According to Maya cosmovision each person has a special 'mission in life to serve others', called *Nawal*, based on the spiritual energy given on the day of birth. When one lives according to this mission, one can prevent problems and illness. Moreover, the example of 'good practice' is essential in building up humility, respect and human sensibility in young people, which forms the basis of the traditional juridical system.

severely affected by the 30-year civil war. The violence under the military regime and the corruption of the formal juridical system, has resulted in the loss of influence of the traditional authorities. Over the past few years, however, the role of the traditional authorities in dealing with controversial issues in the rural communities in Guatemala has increased again.

The challenge for the endogenous development process involves an understanding of the traditional systems of dealing with controversies, analysing their strong and weak points, and looking for ways to build on them and combine them with modern ways.

Stimulating internal debate within the rural communities on controversial issues, as suggested by the African philosopher Paulin Hountondji (p.9), is by no means an easy task. This requires insight into the principle that every intervention is a potential source of conflict, and that conflicts are a natural and sometimes necessary part of community life. We can learn, however, from the experiences of organisations that have been active in this field. In this issue of the magazine van Kessel (p.13) indicates the need to adapt to the local concepts of frequently used words, such as economy, technology and labour. Newport (p.20), Egeimi et

al. (p.22), Kahandawa (p.31), Tengeza (p.29), Gurung (p.40), and Asaah (p.43) present their experiences with enhancing the effects of traditional controversy mechanisms, and combining them with modern practices and insights.

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