• The thesis in chapter II focuses on tribal rule in the Sudan, its philosophy and foundation. It also provides a historical exposition of five stages of native administration system. The thesis also examines the tribal system of *judia* (conciliation) as an important mechanism of dispute resolution. In this respect the author looks at the *judia* as an institution which has its own well-established traditions and procedures. The author further addresses the application of substantive customary laws by the institution of *judia* as an effective mechanism of conflict resolution. She argues that tribal leaders do not apply statutory laws and are not aware of its existence. They are only familiar with customary laws which are derived from their heritage and cultures.

• The author argues also that tribal rule assumes important role and is necessary in the Sudan context for many factors. One of such factors is the vast land of Sudan and its cultural diversity. Also, the lack of transportation and communication has led to the adoption of tribal rule or system as one of the ways or means of local governance. Also, subsequent governments have maintained the tribal system for economic, geographical and social factors in addition to the lack of resources to appoint huge numbers of Judges, administration personnel, security officers, clerks and accountants.

• The author has highlighted five different stages of traditional rule in Sudan: (1) before 1922 (2) between 1922 and 1937 (3) between 1937 and 1969 (4) between 1969 and 1989 (5) post 1989. During the first stage Chiefs or traditional leaders have enjoyed wide powers and applied customary laws and local traditions without relying on the formal justice system and acted independently from the central government. At that time Chiefs have only nominal connections with the central government and relations restricted only to showing obedience, payment of taxes and keeping law and order. This was the case in the kingdoms of Phonge and Fur Kingdom. The Ottoman Turkish Rule recognized this reality when ruled Sudan but
tried to make a link between state organs in order to strengthen the relationship between the central government and traditional or tribal rule. In order to realize this policy, the country was divvied into several provinces, each province governed by a governor aided by officials in charge of the tribal rule system headed by Nazirs, then Sheiks Khat and Omdas at the lower end of the tribal system hierarchy. A national tribal council was also established in Medani (the capital of Sudan at the time) to seek their views on national issues.

- The author argues that the Mahadi state not only relied on the tribal system but set up its military might on the tribal basis as the army constituted on three 'tribal brigades'. Thus, at that stage that the tribal system was given full recognition and it was a necessity through which Sudan as a vast country will be governed. Furthermore, tribal native system was respected and derived from peoples' culture, customs and traditions.

- The second stage of the tribal rule was between 1922 to 1937. This is the stage when the powers of tribal leaders were regulated. Rather than making the legal system completely based on customary laws native rule was subjected to statutory laws. As a result, traditional institutions were integrated as part of the administrative system of governance in addition to introduction of modern laws. This resulted in radical change as customary laws are in conflict or not in harmony with statutory laws. For example, in 1922 the Arab Sheikhs Act was enacted to regulate the powers of judges of third instance to litigate on tribal conflicts and cases pertaining to law and order. During this period the colonial rule relied on traditional justice and tribal leaders in the 'steering judicial affairs' and native administration.

- In 1932 a new law enacted and four types of native courts were set up in northern Sudan: (1) Sheikhs court of multiple purposes; (2) Sheiks Council; (3) village court; (4) private court. All

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1 The Arabic name of this court implies that the court may have multiple jurisdiction and rule on civil, criminal and personal laws.
these courts apply (in terms of substantive laws) customary law and local traditions. In 1937 Local Government Council Law was issued which allocates tribal administrative powers to tribal Chiefs (i.e. tax collection, renovation of native courts). Tribal institutions, in terms of their structure or hierarchy consist of three levels: (1) Sheikh (at the bottom of the pyramid and elected or chosen by the tribe dignitaries) (2) Omda (presides over a number of Sheikhs and nominated but not elected (3) Nazirs (at the top of the pyramid and appointed by the colonial government).

- As in the case of northern Sudan, the author argues that tribal chiefs in southern Sudan have enjoyed judicial, legislative and executive powers in accordance with customary laws and traditions. The colonial government set up four courts called 'Al-Lokikoz' in Mangala and Upper Nile Provinces in 1922. Two years later, the Chiefs Courts Act was issued and applied in all parts of southern Sudan. Three courts were established: (1) the Chief court consists of only one member (2) the Chief Court consists of other members and (3) private court.

- The third stage of tribal rule is between 1937 and 1969. This period witnessed a competition between the local government and native administration although the two systems coincided. During this stage the Local Government Act 1937 was issued and as a result local councils were established in many localities and rural areas. This development was not well received or welcomed by tribal leaders of native administration as the new Act strips them from some powers. Also, this period witnessed conflict between the native administration and members of the national legislative assembly as they call for the liquidation of native administration. The Council of Ministers also decided to cancel the jobs of Nazirs and Sheikb Khat in particular their administrative duties. Traditional tribal leaders staunchly opposed the government policies and established what is called 'Tribal Leaders Union' as a national union based in Khartoum on 19 January 1969. This period also witnessed conflicting or inconsistent
policies towards native administration. In some occasions, the government dismisses judges from native administration while in other occasions establish judicial councils and gives prominence to native administration and ensures its importance. While the government is willing to modernize and energise the judicial and administrative systems it is also hesitant to abolish native administration as this may instigate anger and frustration among tribal leaders whose tribal base and support is vital to political parties during local and general elections as they have strong leverage over voters in the tribal communities.

- The fourth stage of native administration is between 1969 to 1989. The author has argued that this is the period in which native administration was completely abolished particularly in 1970. As a result, the military regime appointed and trained many administrators and created huge numbers of local councils in town and rural areas to cover the vacuum created by the absence of native administration. The abolition of native administration has serious repercussions particularly the huge increase of the cost of the judiciary and administration which makes local councils to borrow from the central government. Also, one of the advantages of native administration is its effective contribution to the maintenance of law and order with minimum cost. For example, it was regarded as a ‘costless police apparatus’ with efficiency in understanding the nature of the areas it covers as well as its ability to cover huge areas and rough terrain. As a result of the dissolution of native administration many tribal conflicts erupted, cost of security increased with huge administrative burden on the part of the government as it was involved in many tribal conferences of dispute resolution. Also, local governments failed due to lack of knowledge of customary laws and local traditions.

- The fifth stage is after 1989. During this period some efforts were made to restore the powers of native administration. A national conference for native administration was held in October 1992 which recommended the following: (1) ensure that native administration has a
role in maintaining peace and security; (2) native administration has a role in development and galvanizing public opinion for the good of the society; (3) entrust native administration with police powers; (4) appoint native administration leaders in local government councils (5) establish appeal courts in the states from native administration Chiefs to judicially review decisions a the provincial level.

- The author focuses also on *Al Judya* tribal system as a mechanism for dispute resolution. Agaweed (including presiding Chiefs, Nazirs, Omdas, Mek, Ruh, Sultan, Arab, Arro, Al-Kashif, Al-Dimingawi, Al-Manjul, Al-Magdoum, Al-Ageed) are wise people, have deep knowledge and acquainted with tribal customs and traditions, trustworthy, have good reputation, experienced in addition to their neutrality and ability to observe the vital interests of the tribe. All these qualities make tribal leaders respected and trustworthy and their decisions are binding and acceptable by the parties of the dispute as well as the tribe as a whole.

- The author further argues that the *Judya* institution has its own unique characteristics. It is neither a bureaucratic regulatory body set up in accordance with public rules and regulations nor an elected body created by special Act of Parliament. Rather, this institution is very unique in the sense that it is respected and accepted by all and its decisions are binding and can be implemented. In terms of its applicable substantive laws, this institution applies customary laws and traditions which can be applied between members of the same tribe as well as between different tribes. In terms of the Agaweed powers, they enjoy judicial powers with regard to particular disputes related to land and pasture disputes and pastoralist routes. Apart from its judicial powers, the *Judya* is an early warning institution which alerts governmental bodies of looming conflicts, disasters or epidemics and keep an open eye on foreign nationals who enter the country through irregular migration. The *Judya* institution is not a formal judicial or administrative body but participates positively with these formal institutions in
resolving 85% of tribal conflicts all of which are resolved through customary law which cannot be administered by the formal justice system or courts.