

LEGAL ASPECTS OF DECENTRALISATION OF GOVERNMENT IN THE SUDAN

Richard M. Mulla

LLB Makerere (Kampala)

LLM London

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ABSTRACT

The Sudan is afflicted by continuous and increasing problems of nation-building arising from the significant cultural, linguistic, religious and historical diversity of its citizens. Decentralisation of government has, of late, been identified as a possible solution.

The thesis examines the legal aspects of the policies of decentralisation of government in the Sudan from the colonial period to the present time. After an historical survey of the earlier period, the thesis concentrates upon decentralisation policies and programmes implemented after the May revolution of 1969. The constitutional provisions for decentralisation of government in the constitutions of 1968 and 1973 are examined, with reference to the earlier constitutional arrangements, including those made for independence in 1956, which contained no such provisions.

The concept, objectives and history of decentralisation of government in the Sudan are also examined. At the theoretical level, the types and forms of decentralisation generally, are considered. The distinction between "delegation" and "devolution" as forms of decentralisation are examined. An attempt is made to identify the principal motives for policies of decentralisation. These include the achievement of national unity and the promotion of popular participation in government. Some comparative references are made in

order to illuminate the important aspects of decentralisation. Particular attention is given to the problems of implementing decentralisation policies between 1971 and 1985. The discussion focusses upon: the organization of decentralised governments; the scheme of power-sharing between central, regional and local governments; the relationship between central and regional governments and between regional and local governments.

The financial arrangements for the decentralised governments especially their ability to budget and raise revenue, and their capacity for effective financial management are among the problems discussed. Other topics considered include the staffing of decentralised governments, problems of physical infrastructure and the constant questions of the extent of the central government intervention and the role of traditional rulers. The character and quality of political support for decentralised policies is analysed. The prospects of decentralisation in the Sudan are considered in the light of these problems and in the context of the latest developments. In conclusion, it is submitted that an appropriate form of decentralisation of government which must involve substantial devolution of powers to the regional governments is an essential condition for the stability and security in the Sudan. However, recognition of this fact accompanied by political compromises are the vital conditions without which decentralisation will remain incomplete.

PREFACE

This study was inspired by the writer's experience as a Regional State Attorney to the Southern Regional Government of the Sudan from 1977 to 1983.

Being the first of its kind, the operation of the Southern Regional Government proved most difficult in the circumstances of the Sudan where everything was practically lacking, ranging from commitment, funds, skilled manpower, books and documentary materials. There were even no decided cases to be used as precedents.

In view of these shortcomings and the absence of any internationally adopted model for decentralisation of government, the writer thought it appropriate to undertake the research under difficult conditions of little funds and political instability.

Nevertheless, it is hoped that the lessons drawn from decentralisation of government in the Sudan will be of assistance to the future politicians, administrators, lawyers and academicians within or outside the country preoccupied with the implementation, or intending to embark on, decentralisation along similar lines.

Many people have contributed to the completion of this work but their names cannot all be mentioned here. I cannot, however, help to express my deeply felt gratitude to Professor James Read for his undoubtedly able supervision

and fatherly attitude. I am also thankful to Dr. Peter Slinn who has been very friendly and ready to assist at any time.

It will be noted that the study has heavily relied on the works of the Administrative Group at the University of Birmingham who undertook field studies and organized seminars and colloquiums and published many materials on these activities. I am much indebted to them, especially Dr. Malcom Norries who kindly gave me a lot of documents free of charge.

Finally, I thank my father, Elisapana K. Mulla for his untiring moral support and driving force to see this work through.

I, however, assume responsibility for all mistakes, omissions and critical views expressed.

Richard M. Mulla

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ABBREVIATIONS USED

- SSU Sudan Socialist Union
- SSLM Southern Sudan Liberation Movement
- SPLA Sudan People's Liberation Army
- SPLM Sudan People's Liberation Movement
- UNIP United National Independence Party [Zambia]

CHAPTER 1INTRODUCTION

"Deep seated political problems cannot be cured or transformed by constitutions, although they can be accommodated or at least contained."¹

Decentralisation has, since the 1970s, become of increasing importance in third world countries wishing to accommodate or contain secessionist tendencies and/or promote participatory democracy. Among these countries are the Sudan, Papua New Guinea, Iraq, Tanzania and Zambia, to mention a few. The tremendous resurgence of decentralisation in the last decade or so raises concern for a wider investigation into the concept, objectives, conditions and problems of implementation of the policies and programmes thereof. This study, however, confines itself to those aspects of the subject which are of direct legal concern.

I. DEFINITION, OBJECTIVES AND CONDITIONS FOR
DECENTRALISATION

The questions addressed here are: what is the definition of decentralisation of government? How can it

be distinguished from other similar forms of arrangements? What are the objectives for decentralising governments and how do they relate to the Sudan? What are the conditions necessary for the successful implementation of the same and how do they affect the Sudan? What are the problems faced by developing countries in the process of implementing decentralisation policies and programmes in the light of Sudan experience.

A. Definitions

So far, no statutory definition has been assigned to decentralisation of government by any country. One is therefore obliged to consider other definitions offered by academicians, politicians and administrators. Not surprisingly these definitions have differed in several ways, possibly intended to suit their purposes.

1. David K. Hart, in "Theories of Government Related to Decentralization and Citizen Participation (1972) wrote: "... decentralization entails the delegation of authority to subnational entities".²

This definition is too limited in scope because it omits the other essential aspect of decentralisation - that is "devolution". Moreover, it fails to explain the nature of the delegation, its relationship with

deconcentration and how they can be distinguished from other forms of decentralisation.

2. Lord Kilbrandon's Royal Commission on the Constitution (1973) defined devolution after considering the various forms thereof. It concluded that devolution was the transfer of power to the regions to determine policy on a selected range of subjects, to enact legislation to give effect to that and to provide the administrative machinery for its execution, while reserving to Parliament the ultimate power to legislate for the regions on all matters.³ However, this definition omits decentralisation by "delegation" where the inferior governments execute policies only. Nevertheless the definition is far-reaching.

3. In his book, Democracy, Decentralisation and Development (1963), Professor Henry Maddick views decentralisation as embracing "both the process of deconcentration and devolution".⁴ For him, the distinction between the two is that devolution is a non-hierarchical concept and is essentially an autonomous or separate system involving "the legal conferring of powers to discharge specified or residual functions upon formally constituted local authority".⁵ Apart from this foregoing general description, Maddick did not elaborate on delegation. However, in his report compiled for the UN on Decentralisation for National and Local Development (1962) Maddick defined decentralisation as, "the transfer of authority away from the national capital whether by

deconcentration (i.e. delegation) to field officers or by devolution to local authorities or local bodies".⁶

Maddick has therefore drawn an interesting distinction between "devolution" and "delegation". Whereas the former involves the exercise of residual powers by locally constituted bodies, the latter confers powers on field officers of the same government. However, the implications of this distinction are not clear.

4. Mukhtar Allassam also defined decentralisation along Maddick's lines when he said it is "the legal transfer of powers irrevocable by any other law, to persons elected or selected as representatives of the local authority".⁷ However, it was wrong to say that legally decentralised powers are irrevocable by any other law. Parliament can make laws revoking the same.

5. As for Phillip Mawhood, the introduction of the term 'devolution' by Maddick and others was totally irrelevant and confusing. His definition is related to that of Talcott Parson's levels of social control as given here:

"... The sharing of part of governmental power by a central ruling group with other groups, each having authority within a specific area of the State. At the level of 'norms' it indicates the existence of formal political structures, each covering a defined area, representing local interests as well as the interests of the central rulers; the local share of allocating power is protected by the formal as well as by the normative rules which are accepted by the centre. At the level of 'collectivities and roles' it means unit of local government in which formal decision-making is primarily exercised by

locally representative councillors or officials." 8

However, this definition appears very philosophical and too complex. It is thus clear from the examination of the above definitions that there is no generally accepted definition of decentralisation. A definition depends on the purpose which it is meant to serve. We must therefore offer a simple operational definition in the case of our study.

6. Generally, decentralisation is regarded as the process by which functions and decision-making authority are transferred from the national government to sub-national governments or from one sub-national government to yet lower one, depending on the tiers of government established in a particular country.

Thus decentralisation of government is quite distinct from other forms of decentralisation which are:

- (i) The establishment of relatively autonomous local organizations in specific functional areas such as parastatal bodies like Development Corporations or Service Boards.
- (ii) The transfer of Public Service enterprises to privately-owned and controlled companies - a process often called "de-bureaucratization" or "privatisation".
- (iii) The establishment of public organizations for rural development such as farmers associations, youth clubs, women's organisations, cooperative

societies, etc.

The main distinction with these other forms of decentralisation is that they are established for specific purposes while decentralised governments perform a wide variety of functions which are discussed in various parts of the thesis.

7. Theoretical Classifications of Decentralisation

"Deconcentration" and "devolution" are more theoretical sub-divisions of decentralisation. In practice they often co-exist. We shall consider each one in turn.

(i) Deconcentration (or delegation)

Deconcentration (or delegation) is the transfer of power or functions to local representatives of the central government. The concept is hierarchical in that the central government delegates authority for the discharge of specific functions to its staff who are located in the Departments situated outside the Headquarters.

These powers do not involve decision-making but only the execution of policies already laid down. They can be withdrawn at any time at the will of the central government. The field officers must implement decisions

taken from the above as they are without altering or amending them; they being mere agents of those above. This is the category of decentralisation found in Tanzania, Zambia and other countries. As Mawhood concluded on the Tanzanian experiment:

"... although decentralisation this was, of course, the well-known formula of deconcentration plus advisory committees; a reform with little political content."⁹

Invariably this form of decentralisation strengthens the grip of central government control over the inferior governments which is contrary to the objectives of decentralisation as we shall see.

(ii) Devolution

From the definitions quoted above, devolution accords to the inferior government a semi-autonomous existence and status independent of the central government. According to Phillip Mawhood, a government exercising devolved powers can be distinguished by the following features:

- (a) It is autonomous or has a corporate status at law, with all the legal incidents flowing therefrom.
- (b) It has a budgetary capacity, often accompanied by its own sources of revenue.
- (c) It has a wide range of functions to perform.
- (d) It can appoint, recruit, train and discipline its own staff, or obtain them on secondment.
- (e) It has a decision-making body (appointed or elected representatives).¹⁰

The obvious examples of such governments are the Regional Governments in the Sudan, the Provincial Governments in Papua New Guinea, the Kurdish Region in Iraq and so forth. Yet these characteristics are not watertight because the Tanzanian deconcentrated system had for example a budgetary capacity, wide variety of functions to perform and could make decisions.

8. Classifications of Decentralised Governments

Decentralisation by devolution, however, can be broadened to include confederations, federations and unitary governments with decentralised system of administration.

(i) A Confederation:

A confederation is the union of states whereby the legislative and administrative authority of the central government is subordinate to that of the confederal states. For example in Switzerland, the Central Government is subordinate to the "Cantons" (states).¹¹

(ii) A Federation:

In a federation, on the other hand, the legislative and administrative authority of the central government and

state governments are both subordinate to the constitution but coordinate to one another. For according to Professor Wheare, the federal principle is "the method of dividing powers so that the general government and the regional government are each within a sphere coordinate and independent".¹² In such a situation, the government of the region and that of the whole country are "mutually exclusive and reciprocally limiting"¹³ in the fields of power.

However, this study is not concerned with confederal or federal governments. It is primarily aimed at unitary governments with decentralised systems of administration as found in the Sudan, Papua New Guinea, Tanzania, etc.

(iii) A Unitary Government with Decentralised System of Administration

A unitary government with decentralised administration exists where the central government is legislatively supreme while the regional governments are subordinate to them as already stated. However, two patterns of decentralised governments are identifiable under this category. Those with mere decentralised systems of administration as found in Tanzania, Zambia, Ghana and Others; and those with quasi-federal systems of government, as the present Regional and Provincial Governments in the Sudan, Iraq and Papua New Guinea. As already stated, whereas the former exercise deconcentrated

powers, the latter enjoy devolved powers which are comparably less than those of fully-fledged federal governments as we shall see.

(iv) Local Government

Local governments could also be classified as decentralised governments. According to Harold F. Alderfer, Local Government consists of "all units of government under the national level in unitary states and under national and state levels in federal systems".¹⁴

With the development of quasi-federal systems this definition could be modified to read, "and under national ... regional and provincial levels, in quasi-federal systems". However, the general understanding is that ordinarily, local governments include provinces, districts, sub-districts, municipalities and villages.

But for the definition of decentralisation to be comprehensive, it should cover the exercise of authority by the traditional rulers as established by their respective local systems of administration. Such a definition would not therefore be confined to the exercise of powers transferred from above only but would also include those existing at the lower level too. It would eliminate the limitation so far imposed on the definition of the concept.

B. The Objectives of Decentralisation

Decentralisation has several objectives which may not all be applicable to a country. So the objectives for decentralisation vary from one country to the other although some are similar. Furthermore the importance of these objectives has varied from the colonial past to the post-independence period.

During the colonial era, decentralisation had two objectives, maintaining the status quo and providing limited essential services to the rural community.

The status quo was to be maintained through the "indirect rule" system or "Native Administration" as was the case in the Sudan. 'Indirect rule' was clearly intended by the colonial authorities not only to save costs and achieve administrative convenience but also to maintain the status quos in the colonial societies. Hence the general limitation of the powers of the traditional rulers to the adjudication of customary law cases.

In response to nationalist movements and widespread dissatisfaction with the indirect rule policy, particularly among the growing intelligensia, native administration was replaced by local administration. This limited change in the late 1930s and 1940s established local councils intended to provide more services

than the former authorities did, as well as to accommodate the educated class in government - so that "the sons of sheikhs and the sons of effendia (educated Sudanese civil servants) [could] lie down happily together".¹⁵

However, with the issue of the celebrated Colonial Office Despatch of 1947 directing the establishment of "efficient and democratic system of local government"¹⁶ in each dependency, decentralisation was reconceived to achieve several additional objectives, which included the promotion of democracy and efficiency, as stated by the Secretary of State Creech Jones:

"I use these words because they seem to me to contain the kernel of the whole matter. Local because the system of local government must be close to the common people and their problems; efficient because they must be capable of managing the local services in a way which will help raise the standard of living; and democratic because it must not only find a place for the growing class of educated men, but at the same time command the respect and support of the masses of the people."¹

By the 1960s, the objectives had been widened further to include the achievement or preservation of national unity. This was obvious from the statement of the Cambridge Summer Conference on African Local Government in 1961.

"... Most African countries are not homogeneous and contain within them potentially disruptive minorities. This threat to unity is greatly diminished, if not entirely removed, by the institution of local government in that it provides lawful outlet for local interests."⁸₁

Though an accurate observation, the prescription of local government proved to be totally inadequate in certain cases. As time passed, local governments could no longer

sustain unity in diversity in sharply divided societies like the Sudan, Papua New Guinea, Iraq and others. Hence, the introduction of Regional or Provincial Governments in these countries. Whether such arrangements are successful is the subject of this study.

However, we must examine in detail the current and most important objectives of decentralisation. Since the 1970s, as already stated, decentralisation has aimed at defusing the secessionist tendencies and promoting popular participation in government. What do these objectives mean?

1. The Accommodation of Secessionist Pressures

For some time countries like the Sudan, Papua New Guinea and Iraq have been threatened by secessionist movements. Whereas the Southern Sudanese attempted to secede between 1955 and 1972, the islands of Bougainville and New East Brittan declared themselves separate from Papua New Guinea at the time of independence in 1975. Iraq still continues to face a secessionist struggle from the Kurds. In view of these secessionist struggles, the granting of autonomy to the relevant regions was intended to permit diversity in the interests of maintaining the unity of the country. However, decentralisation in such situations could also be risky if its effect were to increase the capacity and will of the secessionist groups to achieve their ultimate goal. It is therefore crucial

to make a careful choice of the powers to be decentralised: the allocation of powers between the general and regional governments must be well-balanced.

Sometimes it might be more appropriate to decentralise powers to smaller regional groupings, so as to weaken their combined pressure - a policy of "divide and rule" which seeks to preserve national unity by cultivating competitive interests arising from the divisions. This was the justification for the break-up of the Nigerian States from 4 into 12 in 1967, and further to 19 in 1976. It was also the main reason for the division of the Southern Region of the Sudan in 1983. The rescuing of Regional minorities from majority domination through this device accounted only as a secondary objective in the case of the Sudan.

Other issues to consider are whether powers should be decentralised only to those regions which demand autonomy, or to all parts of the country, and, if the latter, whether the same form of decentralisation should be applied to all the regions.

The Sudan had started with the Southern Region only in 1972 but this imbalanced situation was remedied in 1980 following the establishment of 5 more regions in the North. Iraq continues to have only the Kurdish Region and the secessionist war is still being fought. Papua New Guinea had uniform decentralisation all over the country from the start and stability is being maintained. This is

perhaps an indication of what governments ought to do when considering decentralisation.

2. The Promotion of Popular Participation

The promotion of popular participation is derived from the notion of participatory democracy. Every country tries, or pretends, to be as democratic as possible, including third world countries. It was not therefore surprising that the promotion of popular participation was equally an important objective for decentralisation.

As stated by Prime Minister Michael Somare of Papua New Guinea (1970s):

"My government's policy is generally in favour of decentralising power and stimulating initiative and a sense of participation in the decision-making process at all levels in the country."¹⁹

Thus the promotion of popular participation was an important objective of decentralisation to the containment of secessionist pressures in Papua New Guinea.

When launching the most extensive programme of decentralisation in Tanzanian history in 1972, President Julius Nyerere declared:

"... in order to make reality of our policies of socialism and self-reliance, the planning and control of development in this country must be controlled at local level to a much greater extent than at present ...".²⁰

Similar statements were made by President Kenneth Kaunda

of Zambia with regard to decentralisation in his country.

"Having attained political independence, the people through their party, have proclaimed participatory democracy as the only political system that could safeguard it." 21

He defined participatory democracy as:

"... the type of democracy in which the citizens participate not only through their freely-elected representatives but by their own direct involvement in the decision-making process." 22

The above quotations show how widely participatory democracy is regarded as an objective for decentralisation; in fact it is one of universal application. However, for participation to be popular, it must include the urban and rural dwellers, the rich and the poor, the majority and the minority groups without any discrimination. It must also amount to actual control and decision-making by all and not the mere consultation of some of the people. Whether this is really possible in the general social, political and economic circumstances of the third world countries is highly doubtful, as this study shows.

3. The underlying factor behind the above objectives for decentralisation is the promotion of rapid and equitable economic development. In this regard, development theorists and the International Aid Agencies like the World Bank and the USAID have become increasingly interested in decentralisation and in particular the decentralisation of planning. In 1975 Robert S. McNamara, President of the World Bank, said:

"if governments are serious about distributing the benefits of development more equitably then experience shows that there is a greater chance of success if institutions provide for popular participation, local leadership and decentralization of authority."²³

Furthermore, some policy analysis contend that

"decentralization is necessary to accelerate economic growth and to spread its benefits to those groups traditionally bypassed by economic progress".²⁴ This is so because it is thought that proper and coordinated planning for national and sectoral development is the basis upon which the sound development of a country depends. In order to do this accurately and rally support for the successful implementation, the people who best know their needs must be involved in the planning process. For, central planning has, over the years, proved to be quite ineffective in developing the rural areas of the country. It leads to over-concentration of powers, authority and resources in the centre, and to the neglect of diverse regions. Moreover, it is neither flexible nor responsive to the changing needs of the community.

In theory, however, decentralised planning cuts through bureaucratic red tape, reduces delays in decision-making, is innovative, creative and capable of improving coordination between various levels of governments. But in order for decentralisation to be successful, certain conditions must exist or be made to prevail.

C. Conditions Necessary for the Successful Implementation of Decentralisation of Government

What are the conditions which are likely to support the successful implementation of decentralisation of government? From the following points it will be seen that the most important factors involve the striking of an appropriate balance between relevant extremes.

1. Political Accord to Decentralisation

The successful implementation of decentralisation requires the political concensus of the community to be affected by it. So political factors favouring decentralisation are vitally important without which the operation of a well-designed decentralised system can remain stagnant. There has to be widespread political commitment to support the policy and programmes of decentralisation among both the politicians and the masses.

(i) Political Commitment Among the National Leaders

However, the cases of Sudan and Tanzania indicated that there was very limited political support to decentralisation among the national leaders in both countries.

Local political support for decentralisation in the Sudan was only obvious in the South. The Western and

Eastern parts of the country were less committed while the entire central region was hostile to it. Generally, political support for decentralisation was lacking among the high level leadership as observed by Rondinelli:

"Despite strong pressure exerted by President Numeiri for more than 10 years, support for decentralisation remains very weak among some military leaders and politicians outside his faction of the Sudan Socialist Union. Central bureaucrats and local elites have either resisted the new regulations, or attempted to reassert control over the decentralised structures."²⁵

Resistance to decentralisation came from the traditional political parties (the Umma and the National Unionist Party), which try to maintain as much control as possible over power. It is the loss of power to the rural areas that they feared because they would ultimately lose control over the entire country.

Those of extreme views even suspected that decentralisation was a secessionist device intended to divide the country. For example, when President Numeiri proposed the regionalisation of Northern Sudan in March 1979, the critics contended that it would "jeopardize national unity". A puzzled participant strongly commented:

"Decentralisation [that is, the 1971 decentralisation arrangement] has not yet been consolidated and still you talk about Regional Government?"²⁶

As already stated, Tanzania faced similar problems to that of the Sudan. According to Rondinelli, throughout the period of decentralisation, intense political pressure had to be applied by President Nyerere who "pushed, prodded,

cajoled, persuaded and led the people"²⁷ towards socialism and decentralisation. In conclusion on both countries (Sudan and Tanzania), Rondinelli said:

"Both leaders [Numeiri and Nyerere] had to resort to coercion - Numeiri by constantly manipulating his Cabinet and abolishing those Ministries that opposed decentralisation and Nyerere by imposing the control of a single political party, TANU over both the bureaucracy and local units of administration."²⁸

Papua New Guinea, however, managed to overcome the problem of lack of political support for decentralisation soon after the start of its implementation. Hence the relative success of decentralisation in that country.

(ii) Finding a Suitable Role for the Traditional Rulers

Another important aspect of cultivating support for decentralisation is to find a suitable role for the traditional rulers. In some countries of Africa, traditional rulers still play an important role in the administrative system. Tanzania was a rare example of the countries which successfully abolished Native Administration at the period of Independence - 1963.

Nigeria has accommodated the traditional rulers in the local government system but as separate sub-units. The 1976 guidelines on Local Government in Nigeria read:

"Nothing in these reforms could be construed to mean an attempt at reducing or abolishing the traditional functions of our Emirs, Obas and Chiefs. On the

contrary, the reforms recognise the crucial nature of the position of traditional authorities and care has been taken to preserve the organic unity of our traditional institutions and societies."²⁹

However, the establishment of separate councils for traditional rulers at parallel levels with local government councils has created competition and clashes between the two not to mention the excessive expenditure involved. Nevertheless, the Nigerian government maintains the same policy.

In Zambia, traditional rulers theoretically appear to play an important role in State matters. The Zambian constitution, 1975, provided for the establishment of "A House of Chiefs" for the Republic composed of eleven elected chiefs.³⁰ Their function is to discuss any bills referred to them or any other matter referred to them by the President or with his approval. Their resolutions are submitted to the President who causes them to be laid before the National Assembly.³¹ Since 1983, the paramount chiefs of Bemba and Lozi tribes have been appointed to the Central Committee of the Party [UNIP].

Traditional rulers have also been ex officio members of the Zambian National Council, the second important organ of the United National Independence Party (UNIP), which meet every year to debate major government policies. In the field of local politics, chiefs are required to mobilize the masses by organizing meetings, participating during the census periods and campaigning on public

issues, for example by persuading the farmers to use fertilizers. Traditional rulers in Zambia are therefore involved in most organs of the government.

In spite of its importance due to its deeprooted role in the affairs of the local government councils, the Revolutionary Government in the Sudan tried to abolish the role of the traditional rulers in 1971. However, the attempt was never successful. Assessing the changes in the local administration shortly after the establishment of the new councils in 1971, John Howell wrote:

"The picture that emerges is of an informed leadership group at the village level based on respected familiar loyalties ... this group is likely to fill any institutional roles that are required by visiting government or party officials." ³²

The administrative survey team on Southern Darfur Province reached a similar conclusion in 1976:

"The Ugada or elders who help maintain peace by informal consensus among smaller groups within the tribe ... selected for their diplomacy and detailed historical knowledge of the causes of disputes ... should be given formal authority ... to continue performing their traditional functions." ³³

Impliedly, they operated informally.

The position of traditional rulers in the south was similar to those in the North. Malcom Norris of Birmingham University wrote as late as 1983 that:

"In the South there is a widespread acceptance among administrators that the influence of traditional authorities and chiefs continues to be an indispensable element in orderly government." ³⁴

However, despite the failure of the Sudan Government to isolate traditional rulers from the local councils, their partial exclusion seriously affected the collection of revenues as discussed in Chapter 9. Furthermore, the general standard of performance of the councils deteriorated as people lost confidence in the new rulers.

2. Resource Capacity

The availability of financial and skilled manpower resources are crucial prerequisites to the success of decentralisation. The decentralisation governments must not only receive grants from the central government but must also have their own productive sources of revenue. In addition, they must be free to budget, spend and manage their own financial affairs according to the normal financial practices and controls. An available supply of skilled manpower for the management of the decentralised systems is just as important as the financial resources, yet so far no third world country has got adequate supplies of both. The situation of the Sudan in these respects is examined in Chapters 9 and 10.

3. The Structure of Decentralised Governments

The decentralised governments must be suitably structured to achieve stability, effectiveness and

efficiency. Whereas the units of state or regional governments must not be too limited to avoid constant competition between each or amongst them, multiplicity of regions and uniformity of powers are most appropriate. The regions should have democratically elected assemblies with executives responsible to the legislatures.

Local government councils on their part must neither be too small nor too large to be viable units. Whereas large councils guarantee sufficient population (and local resources) and more representation, they may exclude the minority from effective participation and may themselves be less efficient.

Too small a council on the other hand, is less effective for want of adequate population although they may more readily provide adequate representation.

The establishment of appropriate machineries for coordination, consultation and dispute settlements would promote the smooth operation of decentralisation. Moreover, decentralisation should not be antiquated in structure. It was, however, not until 1980 that Sudan began to evolve suitable structures (see Chapters 5 and 6).

Furthermore, in defining the powers decentralised to regional or local governments, efforts should be made to match the needs of the areas concerned with the abilities of the respective governments to exercise powers

effectively. While inadequacy of powers can lead to frustration, over-loading can incapacitate. The capacity of the governments can be measured through the geographical size, population density and resource availability of the area concerned.

The definition of the powers of the various governments and the relationship between them must be detailed and precise to avoid confusion, overlappings, conflicts and loopholes. Whereas the central government must maintain some degree of control over the lower governments, excessive control, giving a dominant position to the central government, may frustrate the purposes of decentralisation. There must be some constitutionally guaranteed machinery for the resolution of inter-governmental conflicts. As will be seen in Chapters 7 and 8 the Sudan has not yet adopted an appropriate design of decentralisation of government due to lack of well-balanced and precisely defined powers and absence of certain institutions.

4. Administrative Factors

Initial, administrative assistance from the central government to the inferior government is important, particularly in terms of directives, advice, training and so forth.

In his studies on Kenya in 1977, David Leonard found

that:

"In a decentralised administrative structure the centre needs to be every bit as strong as a centralized one, but the orientation required is one of technical services rather than a hierarchical control."³⁵

In the Sudan, however, administrative assistance from the central government to the lower governments existed in theory but not in practice. This can be confirmed by the ILO report on Growth, Employment and Equity in the South in 1976.

"The South will not get far if central, regional and local governments are weak and ineffective and do little more than provide employment for unimaginative officials who cannot give the South the service it needs and deserves."³⁶

On the contrary the Central Government was an obstacle to the lower governments. For example the Central Government was most unwilling to implement Decree 39 which assigned revenues to the Southern Region. Consequently, the region mobilized negligible amounts under the Decree as examined in Chapter 9.

In 1979 the President abolished seven Central Government Ministries - Education, Interior, Religious Affairs, Youth and Sports Cooperation, Social Affairs, Health and Construction in order to enable the People's Province Executive Councils to operate properly because those Ministries stood in the way of the councils. For example, dealings between the councils and the Central Government had to go through the said "parent" ministries regarding various affairs of the councils. The Provincial Commissioners had to be promoted to the status of the

Central Government Ministers to enable them to discuss matters affecting the provinces as equals with the Ministers.

Taking the central Ministry of Health as a typical example, it maintained only one central store for all drugs in the country. It had absolute rights over the distribution of the drugs to the extent that some medicines remained undistributed for several years, with their period of validity often expiring. Conditions in the hospitals deteriorated so badly that citizens had to resort to private pharmacies and clinics for treatment.³⁷

Furthermore, the attitude of the Central Government officials were too centrist. Since they were employees of the Central Government, their loyalty and expectations for better prospects in terms of promotions and training remained with the central government. They under-rated and undermined the role of the local government councils. For example, following the dissolution of the Social Affairs Ministry in 1979, as mentioned earlier, a technical officer was quoted to have said:

"I don't know how I'm going to work in the Provinces away from home. The Province Commissioners do not understand the work of social workers, our efforts will be undermined."³⁸

The capacity for administrative assistance by the central ministries and agencies to the regions was weak in Tanzania too. Although most central ministries were over-staffed, technical and managerial skills were not well-developed in the lower levels of administration. The

bureaucracy was unwilling or unable to provide the technical personnel and other assistance needed by the lower levels. However, the weakness in public administration was not as pronounced in Tanzania as in the Sudan.

Owing to the effective system of secondment of personnel from the Central Government to the Provincial Governments in Papua New Guinea, the problem of administrative assistance was not so conspicuous.

5. Environmental Factors

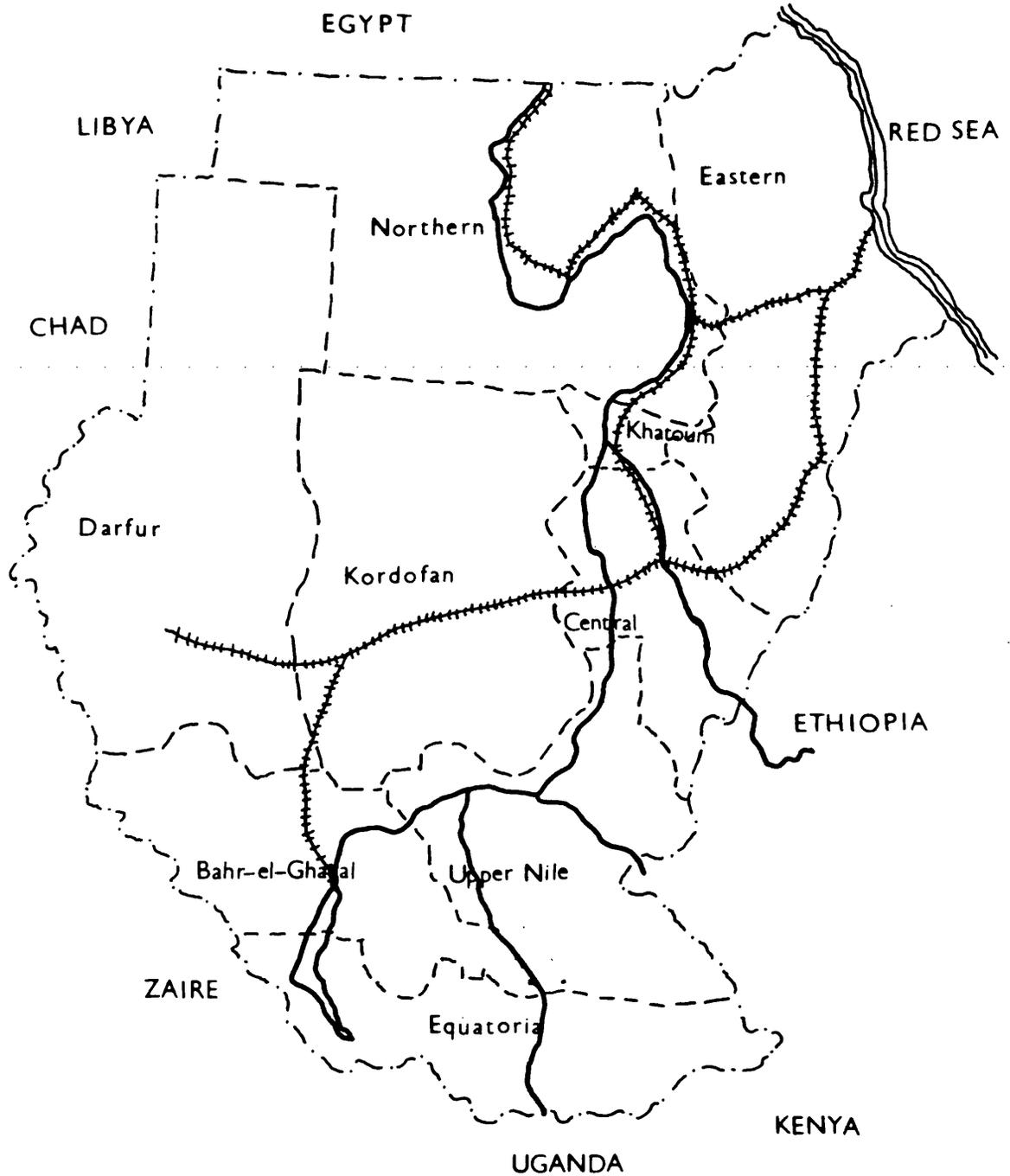
Finally, certain geographical and physical conditions, like the adequate communication networks and organized patterns of settlement, may be valuable factors to promote the success of decentralisation. However, of all the countries examined, Sudan, Papua New Guinea and Tanzania had poor systems of communications. (For details see Chapter 10.)

II. THE APPLICATION OF DECENTRALISATION IN THE SUDAN

A. The Size of the Country

Map 1.

THE SUDAN: REGIONAL ADMINISTRATIVE BOUNDARIES AND PHYSICAL INFRASTRUCTURE.



Key

- International boundary
- Regional Administrative boundary
- + + + + + Railways
- River Nile

The Sudan is the largest country in Africa; it is about one million square miles which is roughly the size of Western Europe. Its internal administrative boundaries, physical infrastructure and neighbouring countries are shown in Map I.

Administratively, the Sudan is divided into nine regions including Khartoum, the national capital. Details of the regions are as follows:

<u>Region</u>	<u>Area</u> (1,000 sq. miles)	<u>Population</u> (' 000)
Northern	477	1,083
Eastern	341	2,208
Khartoum	21	1,082
Central	142	4,013
Kordofan	381	3,093
Darfur	496	3,094
Upper Nile	236	1,600
Baher El Ghazal	214	2,266
Equatoria	198	1,406

Source: B. Yongo-Bure, Background to the Current Economic Conditions in the Southern Sudan (Halifax: Dalhousie University, 1983), pp. 4 and 31 and Bank of Sudan Annual Report - 1983, p. 19.

In spite of its large size, Sudan's population is relatively low with a total of 21 million people. That is about 4 people to the square mile; of these, two-thirds live in the North and the other third in the South. The sharp differences between the North and the South are adequately presented by Fadlal Ali Fadlal, and Dunstan Wai Mogga. Fadlal, a Northern Sudanese, wrote:

"The Sudan is a country of wide

diversity. There are about 115 languages, 26 major ones, 56 ethnic groups subdivided into 597 sub-groups, 43 non-Arabic tribes, more than 10 Islamic religious sects, numerous non-Islamic religious sects and 2 major regions (an Arab-dominated, largely Muslim North and the Non-Arabic, non-Muslim, physically, linguistically and culturally different South)."³⁹

Although Fadlal has accurately described the diversities, he has not vividly portrayed the sharp contrast between the South and the North which has led to the world wide case of the regionalisation of the country. The position is better explained by Mogga:

"The Sudan is a wide country in its physical and environmental setting, and ethnic groups, variety of life and competitive religious and ideological relationship ... The Northern Sudanese consider themselves Arabs; the Southern Sudanese consider themselves as Africans ... The sharp Afro-Arab schism negates the notion of one Sudan and one people."⁴⁰

Considering the natural divisions - both in the terrain as well as among the people - and also its sheer size, it has often been suggested that the Sudan should have been two countries. However, the colonial authorities precipitately annexed the South to the North on the unconvincing argument that the South would not be viable on its own. To ignore the tremendous difference between the North and the South or treat it as imaginary was a serious misjudgement of the situation. Since independence in 1956, the Sudan has never enjoyed real unity due to constant clashes and wars between the two parts. The problems are not only based on the racial, ethnical, religious and linguistic differences. They are also deeply rooted in the history, geography and economy of the

country.

Historically, the relationship between the North and the South has been one of extreme hostility since the North used to plunder the South for slaves and ivory before the arrival of the colonialists. Though both practices have long stopped, the North has consistently exhibited feelings and practices of religious and cultural superiority under the banner of Islam. The imposition of an Islamic constitution over the whole country has failed four times since independence in 1956. On the other hand, the South has continued to view some Northern Sudanese as Arabs, or their descendants, who migrated from the Middle East or Saudi Arabia in particular during the 14th century. The exhibition of superiority complex and lack of moral and political understanding on the part of the North make them less acceptable in the South.

One indirect solution to this North-South antagonism seems to be emerging following the sharpening of tribal differences within the South itself. The South is not homogeneous but has struggled as one people due to the Northern threat until 1980. However, later years have shown that the regional majorities could even be very dangerous to the interests of the minorities. Hence the call for the division of the South in the 1980s. Indeed problems of regional minorities are not unique to the Southern Sudan, they have been experienced in other countries like Nigeria where the Hausa and the other majority tribes dominated the minority communities

surrounding them. It would appear that the restoration of the South would only depend on adequate guarantees of protection of the interests of regional minorities by the majorities which seems to be difficult in the case of the South.

B. The Economy

The economic profile of the Sudan is not very encouraging. It is classic of an under-developed country. In 1982, its GNP was 440 million US dollars.⁴¹ The position has deteriorated rather than improved. Inflation has continued to rise reaching 45% in 1985.⁴² Official sources indicate a steep debt rise too, from 272.5 million US dollars in 1970 to 3,772.8⁴³ in 1982 and about 9 billion in 1985.⁴⁴

The country is generally composed of flat featureless plains with the Imatong mountains in the far South and Nuba mountains in the middle. The Red Sea Hills are in the extreme East. The North is a complete desert, the central part consists of grasslands while the South is mainly a tropical jungle with swamp. Vegetation closely follows the rainfall pattern.

The river Nile and its tributaries are the main physical features of the country and so far they provide economic activity through irrigated agriculture. On the

whole, the economy is still imbalanced - it is predominantly agrarian, dependent on 80% of the population living in the rural areas. Agriculture provides 95% of the total export earnings. The main cash crops are cotton (48.8%), Gum Arabic (9.1%), oil seeds (8.6%) and groundnuts (2.0%).⁴⁵ Since 1981/82, however, dura (a variety of sorghum) has moved swiftly from the main staple food of the people to being an important export crop, second only to cotton.

Cotton production on the other hand has declined. It is chiefly grown in irrigated lands like Gezira, which is the largest irrigation scheme in the world, covering almost 900,000 hectares between the Blue and White Nile rivers. There are several causes for the downturn in the cotton field, including poor incentive system for the small holder producers, substantial delays in payments, poor maintenance of the irrigation system and frequent shortages of supplies of agricultural inputs.

Other crops like Gum arabic, sesame and groundnuts are produced in the irrigated as well as the rain-fed sectors, but they have been exposed to the vagaries of climate. Their production has been seriously curtailed by the current drought.

Sudan's mineral sector is relatively unimportant. However, numerous mineral deposits are known to exist in quantities insufficiently determined to warrant commercial extraction. So far chromite is the most important

mineral, found in the Ingressna Hills area, in the South East of the country. The Red Sea Hills are also known to contain a wide range of minerals which include zinc, chromite, lead and gold. A pilot tungsten is being built in the area. More exploration for gold continues with encouraging results. The greatest hope for the future, however, lies in the oil discoveries in the South (Bentiu) and the South-West (Muglad). Oil exploitation had been commenced by the White Nile Petroleum corporation but the first production, scheduled to begin in 1985/86, has stopped due to war in the Southern Sudan.

Modern industry is still young and limited to the processing of agricultural products like cotton, sugar manufacture, oil and seed processing (such as floor milling) together with the production of light consumer goods such as soap and textiles.

Sudan's economic development is also hampered by the inadequacy and unevenness of the transportation system and facilities as well as other types of infrastructure like power, water supply and technical education which are all examined in Chapter 10. Despite these constraints the agricultural potential in the Sudan remains high. So far only 10% of the estimated cultivable land is being used. The rainfall in the South is quite sufficient from April to November every year, measuring between 8,000 and 1,600 MM. Additional water can be harnessed from the Nile, the Sobat and Baher El Ghazal rivers. The huge Jonglei Canal Project (in the South) was intended to supply additional

water to the Northern Sudan and Egypt for irrigation. In this connection Sudan was to become the breakbasket of the Middle East but unfortunately work on the project has also been stopped due to war. The semi-arid areas support abundant livestock, much of which is still used for subsistence purposes. The country's fishing resources are equally encouraging. The potential output for the Nile alone is about 60,000 tons a year, although so far only a third of this quantity is being utilized. This amount could also be supplemented by the great marine fishing potential that exists about 700 km of coastline bordering the Red Sea. The huge forest reserves at Imatong, the Baher El Ghazal Region and other places have not yet been exploited. Given peace and stability, Sudan's economy could support any decentralised system of government.

However, as already stated, the present problems are partly due to imbalanced economic development in the country. In particular, the gap between the North and the South, in terms of economic development, has been far too wide. The South has, on the whole, been neglected for too long. The first development plan for the South was made in 1938 by Dr. J.D. Todhill, the Director of Agriculture. It was a 10-year plan but its implementation was prevented by the Second World War. The Zande Scheme, approved in 1945, was intended to encourage peasant farmers to grow cotton for conversion into cloth at Nzara to meet the local needs.

The Equatorial Agricultural Project Board was also

established in the same period to plant coffee, cotton and palm oil while some private entrepreneurs planted coffee, tea and tobacco. Some sawmills were also launched, together with the construction of road links to the principal towns but due to severe financial constraints, the economic achievements were "too little and too late" for Southerners to catch up with their Northern brothers when independence came.

The post-independence period was also followed by another period of total neglect. Although some schemes like the Mongalla Sugar Factory, the Malakal Paper Factory and fish-canning, the Kapoeta Cement Factory and a few others were considered suitable for the South, they never got off the ground.

So the real problem for any Sudanese government is to accommodate the interests of the various communal groups in a united Sudan without discriminating against any of them and at the same time bridge the gaps in the levels of economic development. This is only feasible under an appropriately decentralised system of government, the establishment of which is long overdue.

C. History of Decentralisation in the Sudan

Unfortunately, the colonial period paid very little attention to decentralisation of government. All powers

were centralised in the Governor-General (see Chapter 2). When decentralisation was first considered in 1920, the Milner Commission reported that "a centralised bureaucracy [was] wholly unsuitable for the Sudan". However, the remedy recommended and adopted was applied only on the most basic level of Native Administration. Native administration or indirect rule was established and gradually developed into local government over a period of 30 years. However, up to 1969, decentralisation had been limited to local government which, in the circumstances of the Sudan, was quite inadequate.

Successive Sudanese governments in the Sudan were preoccupied with inter-Party rivalry and formation of weak coalition short-lived governments. Besides they never looked beyond their bigotic religious programmes of Islamisation. The 1968 Islamic constitution, the only constitution forcefully adopted by the civilian government was the historical example. Expectedly, it was rapidly overtaken by political events before implementation.

President Numeiri, who came to power in a military coup on May 25th 1969, was the first Sudanese leader to implement a far-reaching decentralisation of government in the Sudan. This was initially intended to accommodate the secessionist pressure in the southern part of the country.

"The revolutionary government ... recognises the historical and cultural differences between the North and the South ... [and so it] resolved to recognize the right of the Southern people to a Regional autonomy." 46

However, this objective has not been achieved up to the moment, although for well over 11 years there was peace and stability in the Sudan during the period of regional government in the Southern Sudan (1972-1982).

The objectives for decentralisation were, however, extended in 1980 following the government's decision to establish more regions in the Northern part of the country. They have been summed up by M. Alassam then controller of the National Assembly, as follows:-

- " (a) The sheer size of the country, its heterogeneous nature and its varied population and means of earning a living necessitated decentralisation of decision.
- (b) Decentralisation provides for democracy and participation of the people in the government of their areas.
- (c) Regional government can provide for closer supervision of local authorities.
- (d) The grouping of provinces into regions makes better use of economic and manpower resources.
- (e) By devolving powers to the Regional Governments, national authorities and ministries will have more time for planning and follow up.
- (f) The establishment of Regional governments will give the Central government opportunity for shedding more power to the people and thus bringing the government closer to them.
- (g) Successful experience of Regional government in the South encourages the application of a similar provision in the Northern Sudan.
- (h) Regional government can help in the advancement of national unity by recognizing regional differences and thus acting as a safety-valve for regional pressures.
- (i) Rural development and the expected modernization in the regional capitals and the other big towns may help in reducing immigration from the countryside to Khartoum.
- (j) Regional Government can encourage

the provisions and development of socio-economic regions of the country." 47

The objectives listed above were quite comprehensive because they took into account the large size of the country, the ethnic and other differences of the people and the need to promote unity among them including their participation in government, the need to introduce equitable development as well as enhance administrative efficiency in the government by bringing it nearer to the people, making the best use of its manpower resources and leaving more time for the top administrators to plan. Thus, they encourage all the objectives that exist for decentralisation generally. However, as the study shows, these objectives were never realised due to the weakness in the design of the decentralisation, resource availability and political commitment to the policy.

The permanent constitution and the Southern Provinces Self-Government Act were different in nature. Whereas the former was Presidential, the latter was Parliamentary. Moreover, the Self-Government Act did not envisage dissolution of the region and the participation of the SSU in the election of the Members of Parliament like the speaker and his deputy. So there were constant clashes between the central and the regional government in the South. Issues like Islamisation of laws kept recurring, not to mention the inadequate solutions for language policy and sources of legislation.

The question which, however, remains unanswered is

why the Sudan has not become a Federal Republic in the light of its characteristics?

So far no Sudanese government has made an official statement on the question of federation since independence. The only reference made to it was in 1957 when Prime Minister Abdulla Khalil announced to Parliament that federation was "unworkable", without further substantiation. Later, the National Commission on Decentralisation in the Sudan (1980) reported that the Nigerian federal system would be too expensive for the Sudan. It would also seem that the North considers federation in the Sudan with much suspicion, that once federated, national unity would be jeopardised because the South would ultimately break away and form a separate independent state. Such a view is supported by writings like that of Rafia Hassan Ahmed:

"Granting federal constitutional powers which are not easily revocable, and in most cases cannot be controlled except by military force, may lead to serious political problems between the federal government and the unit government and this may worsen the situation in the South rather than solve the problem."⁴⁸

However, this view is totally unjustified considering the joint statement of the Southern Members of Parliament to the House in 1957:

"... the South has no ill-intention what soever towards the North; the South simply claims to run its local affairs in a united Sudan."⁴⁹

The financial argument against federation is also weak because the Sudan is potentially rich as already

discussed. As early as 1954 the Jonglei investigation team had already reported that the South was economically viable in terms of agricultural and animal and fish resources. Prospects for mineral extraction also existed.⁵⁰ Objectively considered, the Sudan could qualify for a federal form of government which would constitutionally guarantee the autonomy of the regions and thereby bring peace and stability. The short-lived peace between 1972 and 1982 during the period of the regional government in the Southern Sudan suggests so.

III. THE PRESENT STUDY

The purposes of the study are to examine from the legal aspects the design and application of decentralisation in the Sudan and to evaluate its success.

The study starts by examining the history and practice of decentralisation of government in the Sudan from the time of the establishment of colonial administration in 1899 to the overthrow of the May Revolutionary Government in April, 1985. Special emphasis, however, is laid on the period from 1969 to 1985 when the "May regime" was in power and undertook to decentralise considerable powers. The study falls into four broad parts.

1. Part One examines the colonial and post-colonial period prior to the assumption of power by the May Revolutionary Government in 1969.
2. Part Two analyses the process of the implementation of decentralisation of government by the May regime from 1969 to 1985.
3. Part Three makes a detailed examination of the problems raised by the implementation of decentralisation within the said period (1969-1985).
4. Part Four evaluates Sudan's experience in decentralisation within the internal context of decentralisation of governments, draws conclusions and makes recommendations for the future.

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CHAPTER 2CONSTITUTIONAL EVOLUTION IN THE SUDANTO INDEPENDENCE: 1899-1956

The Sudan was conquered by combined Egyptian and British Forces led by Lord Kitchener in January 1899, about 14 years after the death of General Gordon at Khartoum. The Nile waters and the valley have always been of economic and strategic importance to Egypt. At first Britain had no interest because it did not seem feasible. However, the conquest of this vast territory was followed surprisingly by the immediate signing of a joint Agreement between Britain and Egypt for the future administration of the country. It then became clear that Britain was actually interested in the Sudan. This point was confirmed by the despatch from the Marquess of Salisbury to Lord Cromer in August 1899:

"In view of the substantial military and financial cooperation which has recently been afforded by Her Majesty to the Government of the Khedive, Her Majesty's Government has decided that at Khartoum and all places South of the spot the British and Egyptian flags should be hoisted side by side. It is not at present necessary to lay down with any great precision the political status of the occupied countries, and the manner in which they will in future be administered. These matters will be considered at a later period. You will, however, explain to the Khedive and his Ministers that the use of the British co-jointly with the Egyptian flag is intended to emphasise the fact that Her Majesty's Government consider that they have a predominant voice in all matters connected with the Sudan, and that they will expect that any advice which they may think fit to tender to the Egyptian Government in respect of Soudan affairs will be followed."¹

This British interest was based on the right of conquest and was imposed on Egypt. As we shall see it was the route to India through the Suez Canal that Britain wanted to protect.

Although the Agreement lacked most essential components of a modern constitution, it did provide a Charter for the administration of the country from 1899 to independence in 1956. Its validity was reaffirmed by the Anglo-Egyptian treaty concluded in July 1936.² Article 11 of the same reasserted the rights which the 1899 Agreement gave to the contracting parties, as well as the powers of the Governor-General. It also defined in categorical terms the aims of the parties in administering the Sudan as being for "the welfare of the Sudanese".³ Subsequent attempts were made to abrogate the Agreement but all were very unsuccessful. The first was done by Egypt in 1946 but Britain decided to ignore it. Eden, the British Foreign Secretary at the time, made a statement in the House of Commons declaring that the sole aim of the British Government in the Sudan was to administer it for the welfare of the Sudanese people. ^tAtlee, the Prime Minister, also made it clear that no change in the status of the Sudan was to be made. The Sudanese had to be consulted through constitutional channels. However, Egypt tried to argue against the Sudanese right to self-determination by stating her demand for union with Sudan in the Security Council in 1947 but the question was set aside without resolution. By 1950 the impasse in Anglo-Egyptian negotiations had already encouraged the United States to bring pressure on the British Government to reach an agreement with Egypt which would safeguard Western interests in the Suez Canal, the outcome of which resulted in the reversal of the Southern policy in 1946.

This chapter sets out to trace and analyse the constitutional developments in the Sudan during the condominium period. It examines the highly centralized system of administration established by the Condomini powers and the subsequent limited decentralisation introduced. In particular it focuses on the following: The Governor-General's Council; The Sudan Executive Council, and Legislative Assembly, Self-Government and the achievement of independence. It also considers the recognition of Native Administrative in 1922 together with the 1937 changes. Despite efforts to deconcentrate, powers remained concentrated in the Governor-General. Finally, the controversial Southern Policy which effectively separated the administration of the South from that of the North for about four decades is examined. Considered objectively the Southern policy was neither the sole nor the initial cause of disunity in the Sudan. As has been shown in the introduction, there are other important factors like ethnicity, language, religion etc.

I. THE ESTABLISHMENT OF CENTRALISED GOVERNMENT, 1899

The over-centralisation of administration by the Mahadists (1885-1888) had already caused disruption to the system of decentralisation developed in the period of the Fung Kingdom (1505-1820). The colonial rulers perpetuated the Mahadists policy by setting up a highly centralised form of government too. The foundations of the modern Sudan Government were established by agreement for "The Administration of the Sudan"⁴

generally referred to as the Condominium Agreement. It was jointly signed by Britain and Egypt in Cairo on January 19th, 1899. The structure of government established under this agreement is shown in diagram 1.

1. The Governor-General

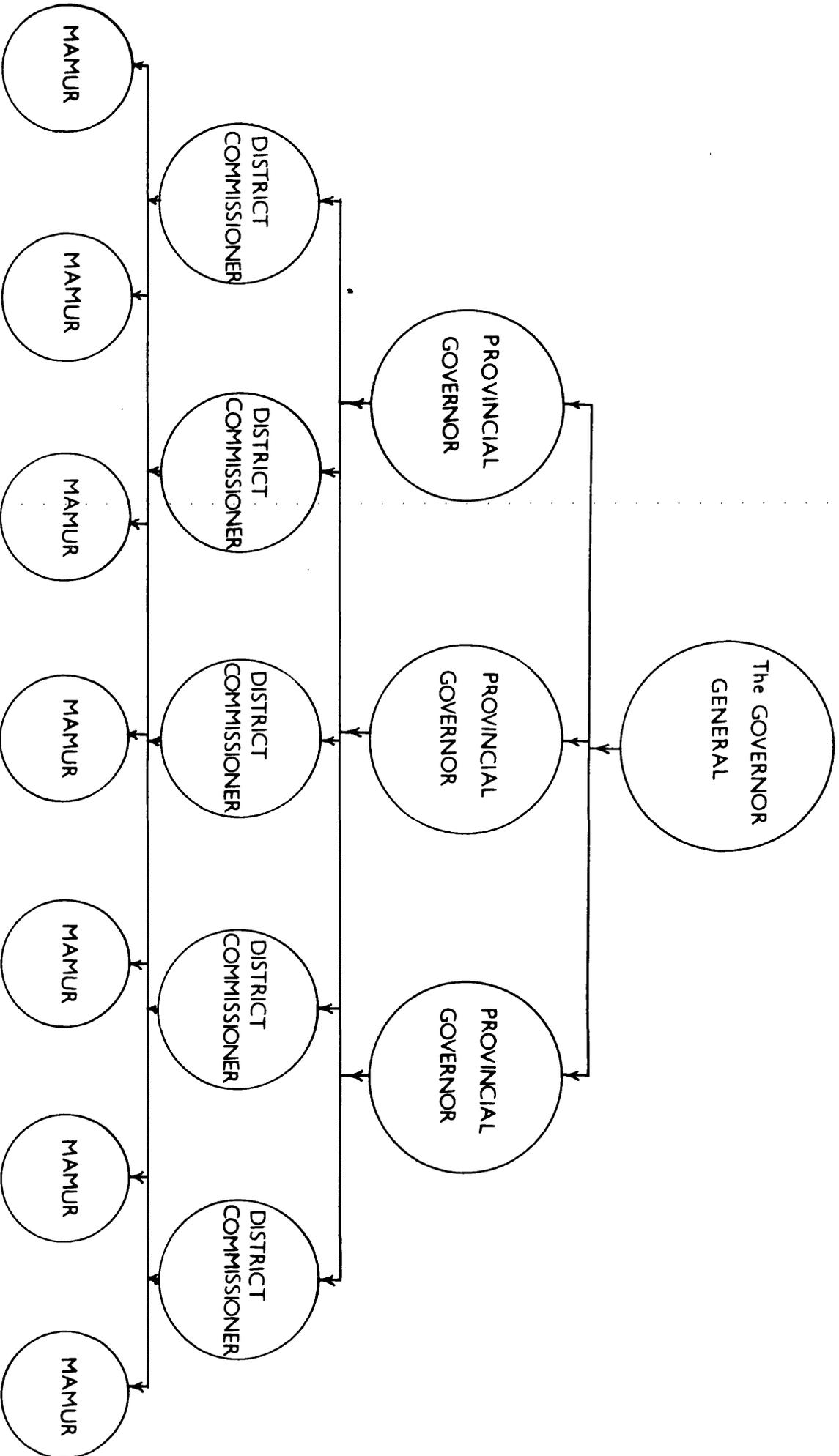
The Governor-General was the Supreme Constitutional Authority in the country but not as was the case for the equivalent of a Head of State. He was responsible to both the Foreign Office and the Egyptian Government through the British Representative, Her Britannic Majesty's Agent and Consul General in Cairo.⁵ This was so because Britain was at first unwilling to have any colonial interest there. So unlike other colonies, the Sudan did not come under the Colonial Office.

The Agreement stipulated that the Governor-General was to be jointly appointed and removed by Britain and Egypt according to the following procedure:

"He shall be appointed by Decree on the recommendation of Her Britannic Majesty's Government, and shall be removed only by Khedivial Decree, with the consent of Her Britannic Majesty's Government."⁶

Expectedly, the mandatory requirement for the recommendation of the British Government concerning the appointment and removal of the Governor-General ensured British predominance in the administration of the Sudan. It is thus not surprising that all Governor-General's who served in the Sudan (as shown in the Appendix) during the colonial period were British. Professor

Diagram I
THE STRUCTURE OF GOVERNMENT IN THE SUDAN 1899 - 1956.



Holt also confirmed this point by writing:

"Although the Agreement was silent on the point of Nationality, all Governor-Generals from 1899 to 1955 were British subjects from the United Kingdom."⁷

Furthermore, all legislative and Executive powers were vested in the Governor-General by the Agreement.

"The Supreme Military and Civil Command in the Sudan shall be vested in one officer, termed the Governor-General of the Sudan ... Laws as well as orders and Regulations with the full force of law, for the good government of the Sudan ... may from time to time be made, altered or abrogated by the Proclamation of the Governor-General."⁸

In theory, his proclamations were to be "forthwith notified to Her Britannic Agent and Consul-General in Cairo, and to the President of the Council of Ministers of His Highness the Khedive"⁹ but in practice there were no restrictions on his authority, his legislations being considered binding as long as the condominium governments did not disagree.

The Governor-General was assisted by three Secretaries (Civil, Financial and Legal) plus Khaid (Commandant of the Army). The duties of these personalities speak for themselves. The Civil Secretary was in charge of general administration and since all correspondence went to the Governor-General through his office, he effectively provided the liaison between the central and provincial governmental units.

2. The Provincial Governors (the Mudirs)

Governors (Mudirs) were appointed by the Governor-General to be in charge of each Province (Muduriya). The Sudan had been

divided into 15 provinces since 1871 under the directives of Khedive Ismail of Egypt but the number and boundaries have been altered throughout the years.

The Governors represented the Governor-General in the Provinces and were responsible to him through the Civil Secretary. They had supreme authority in the provinces. The Provincial Governors were exclusively British and up to 1908, they were all Military Officers in order to contain threats to political stability. Thereafter Civilian Governors were gradually appointed.

The Governor's functions included the supervision and control of the finances of the Province as defined by the financial regulations; taking charge of all public animals, arms, equipment and stores; being responsible for the observance of all ordinance orders and regulations and administer justice by hearing appeals against the decisions of District Commissioners. The Governors could also issue local orders with force of law.

3. The District Commissioners (The Mufatish)

The District Commissioners (Mufatish) or Senior Inspectors were appointed by the Governor-General from among the British to be in charge of districts (Merkaz). They acted as Governors whenever the Supreme authorities were absent. Their main responsibility was to ensure the uniformity of administration. The District Commissioners also ranked as first-class

magistrates and administered both civil and criminal justice and were assisted by Assistant District Commissioners.

4. The Executive Officers (The Mamurs)

The Governor-General appointed Executive Officers (Mamurs) to assist with administration in the Sub-districts. The Mamurs were responsible for carrying out all orders and regulations emanating from the office of the District Commissioner. They also assisted in the collection of revenue; acted as magistrates and were responsible for the efficiency and discipline of the police force. They were assisted by Sub-Mamurs. Mamurs were usually Egyptians or Syrians although sometimes Northern Sudanese were appointed.

The above hierarchy demonstrates the high degree of centralisation of government in the Sudan during the colonial period. Whereas other colonies had Governors, Governor-Generals ruled in the Sudan, Nigeria and India. The difference was mainly due to the vastness of these countries and the consequent strain placed on the administration.

We shall now proceed to examine subsequent changes that were made to the colonial administration.

B. THE GOVERNOR GENERAL'S COUNCIL, 1910

In 1910, the Governor-General's Council was created "to assist the Governor-General ... in the discharge of his executive and legislative powers" under the Governor-General's ordinance, 1910.¹⁰ However, the Promulgation of this law was a mere formality as according to Sir Harold MacMichael:

"Technical questions assumed an ever increasing importance, and the machinery of civil government evolved along professional lines, it became the practice of the Governor-General with greater frequency to assemble those upon whose advice he placed reliance for informal consultation."¹¹

The Council was composed entirely of ex officio and appointed members. The ex officio included the civil, financial and legal secretaries together with the Khaid. The Governor-General was empowered to appoint "not less than two or more than five additional Members ... for a period of three years".¹² These members were eligible for re-appointment. Undoubtedly, the Council was wholly composed of British officers.

The Governor-General presided over the meetings of the Council or a senior Member acted in his absence. The Council considered various matters including loans, ordinances, regulations to be proclaimed, the annual budgets and all matters of administrative importance or those referred to it by the Governor-General. All appointments and military questions were, however, excluded from the jurisdiction of the Council. Moreover, the Governor-General could veto decisions of the Council "for reasons to be recorded in the records of the proceedings of the Council or suspend the same pending reference to the condominium authorities".¹³

According to Eldon Gorst, the decision to establish the Governor-General's Council meant:

"To go a step further and create a duly constituted Council to associate with the Governor-General in the discharge of his executive and legislative powers [because] such body would conduct its deliberations with a greater sense of responsibility than would be expected under the informal condition which had hitherto prevailed, and prove a valuable safeguard against precipitate action on the part of the executive or the adoption of insufficiently considered measures."¹⁴

The placing of legislative powers in the the Governor-General's Council though amounted to statutory practice of consultation among senior British officials only; it made no contribution in terms of decentralisation of powers.

II. THE 'ESTABLISHMENT' AND DEVELOPMENT OF NATIVE ADMINISTRATION IN THE SUDAN, 1922-1936

'Native Administration' or 'indirect rule' as it was also known was restated by Mergary Perham in 1934 as:

"A system by which the tutelary power recognises existing African societies, and assists them to adapt themselves to functions of local government. This recognition is a legal one ... the system gives the native institutions the fixity and status that only detailed statutory recognition can give ..."¹⁵

Proceeding from the above definition it can be seen that Native Administration was officially introduced into the Sudan with the Promulgation of Nomad Sheiks Ordinance, 1922.¹⁶ The reasons for doing so will be explained in due process. One was that as

early as 1871, Sir Charles Brook, Rajah of Serawak, had already sounded a warning beneficial to the British authorities by writing:

"The common mistake Europeans make in the East to exalt Western civilization almost to the exclusion of the Native System, instead of using them as mutually corrective."¹⁷

This warning, however, was not heeded until the 19th century when indirect rule was applied in Northern Nigeria by Lord Lugard. After being established there, it was extended to the Cameroons, Uganda and Tanganyika.

The colonial government in the Sudan at first pretended to ignore indirect rule paying it little attention until 1919 when the Milner Commission recommended that

"Having regard to its [Sudan's] vast extent and varied character of its inhabitants, the administration of its varied parts should be left, as far as possible, in the hands of native authorities, wherever they exist, under British supervision ... decentralization and employment wherever possible of native agencies for the simple administrative needs of the country, in its present stage of development, would make both for economy and efficiency."¹⁸

This was then the first time decentralisation of government was ever officially conceived of in the Sudan. It was purely to save on the costs of the administration since efficiency could hardly be attained by the involvement of traditional rulers in the government.

From 1922 to 1932, the colonial government embarked on the formalisation of the powers of traditional rulers by promulgating a series of legislation to that effect. The pace followed was gradual and sometimes the process depended on the

personal commitment of the Governor-General in power. The series of legislations promulgated were started in the Northern Sudan. The Southern Sudan had not been brought completely under control in 1931.

A. The 'Establishment' and Development of Native Administration in the Northern Sudan, 1922-1932

Native Administration in the Northern Sudan was established and developed through the promulgation of four important ordinances as listed below.

1. The Nomad Sheikhs Ordinance, 1922

The Nomad Sheikhs ordinance, 1922 was the first law to establish Native Administration over the Nomadic tribes in the Northern Sudan. "Nomadic tribes"¹⁹ included semi-nomadic ones as well. Surprisingly, nomadic tribes in the Sudan, unlike those elsewhere, had an established system of traditional government under the Nazirs, omdas and Sheikhs (details of which are fully examined in Chapter 4]. It was then for this reason that they were chosen first.

The ordinance empowered the Governor-General to apply its provisions "to such provinces and such nomadic tribes or sections thereof"²⁰ as he would direct from time to time. In areas where the ordinance applied, the Sheikhs had powers to

administer limited justice in accordance with the customary laws of the people [for more details see Chapter 4]. A shortcoming of the ordinance was that it purported to "regularize" and "delegate" powers which the Sheikhs already possessed under their traditional system. According to the Governor-General's report of 1923, the experiment in establishing statutory Native Administration was successful in that a total of 300 Sheikhs then exercised powers under the ordinance with the full support of the government.²¹

2. The Village Courts Ordinance, 1925.

The village courts ordinance, 1925²² extended Native Administration to those sedentary tribes which had no organized tribal machinery of government. In those areas, powers similar to those under the 1922 Sheikhs ordinance were delegated to councils of elders "with considerable traditional reverence and esteem in the village".²³

3. The Sheikh's Ordinance, 1927

The Sheikh's Ordinance of 1927²⁴ had two important consequences in both extending and consolidating the powers of the Sheikhs. The powers of the Sheikhs were enhanced by allowing them to try any offence except that of homicide and a few others which are examined in Chapter 4. Their position was consolidated by making them appointees of the Governor-General with salaries for their services paid out of Public funds

thereby boosting their status and dignity in the community.

The Promulgation of the 1927 ordinance followed the appointment of John Maffey as Governor-General of the Sudan in 1926. Maffey was personally interested in Native Administration, having been influenced by his experience of it in India. This was clear from his writing only six months after completing his stay in the Sudan:

"I have become convinced that of the large issues facing the government of this country, few, if any, are comparable in importance with that of placing upon a more clearly defined basis our policy with regard to Native Administration."²⁵

4. The Sheikh's Ordinance, 1928.

The Sheikh's Ordinance, 1928,²⁶ was the re-enactment of the 1927 ordinance intended to include smaller tribes which had been hitherto omitted from the previous legislations. Those were the tribes living in the neighbourhood of the nomadic and sedentary tribes. The preamble to the ordinance was self-explanatory.

"And WHEREAS it has been customary to use inter-tribal and inter-regional councils for settlement of inter-tribal disputes ...".

By 1929, seventy-two Native Courts were working under the reenacted law, having heard over 10,000 cases in the course of that year alone.²⁷ When the Native Courts ordinance was promulgated in 1931,²⁸ it replaced all the various laws on Native Administration and unified the Native Courts system in the Northern Sudan. This ordinance was, however, soon itself replaced by the Native Courts ordinance, 1932²⁹, which widened

the powers of the courts to suit the needs of a growing society. The 1932 ordinance provided for the establishment of five classes of courts [details of these are given below in Chapter 4). Thus by 1932 the Native Court system in the Northern Sudan had been totally integrated.

B. Native Administration in the Southern Sudan

Until the 1930s Native Administration had hardly any impact in the Southern Sudan. The Shilluk Kingdom, the only known tribe that had an established system of native government under the "Reth" (King), only had a half-hearted application of the Nomad Shilluk ordinance, 1922. Courts were established for Shilluk chiefs "to deal with cases of minor importance".

Experimental chiefs courts were established in Baher El Ghazal in 1923 under the name of "Lukiikos" (a name probably borrowed from the Baganda in Uganda) but those courts had functioned without statutory authority. They were only legitimated by the Chiefs Courts ordinance, 1931,³⁰ which provided for the establishment of three classes of courts (for details see Chapter 4).

III. THE SOUTHERN POLICY, 1930-1946

The introduction of Native Administration in the South coincided with the implementation of the Southern policy between 1930 and 1946 which seriously affected the development of a uniform system of administration in the country. The part which this policy played in the later constitutional evolution of the Sudan was enormous. We shall examine at this stage, the nature of the Southern policy and its impact.

The Southern policy was formally stated by MacMichael, the civil secretary, in 1930 as follows:

"The Policy of the Government in the Southern Sudan is to build up a series of self-contained racial and tribal units with the structure and organization based, to whatever extent the requirements of equity and good government permit, upon indigeneous customs, traditional usage and beliefs."³¹

It was thus a protectionist policy against Northern infiltration, domination, Islamisation and Arabisation of the South as the way in which it was implemented will demonstrate.

The Protection of the South was deemed necessary due to its distinct cultural character and other unique features outlined in Chapter 1. Not only were a "series of self-contained racial and tribal units with structure and organization based on traditional structure and beliefs" to be built, in practice all Northern administrators and technicians were to be gradually eliminated and replaced with Southerners. English was to be the medium of communication when use of the vernacular proved impossible. This obviously implied that Arabic was to be discouraged.

The impact of the policy with regard to immigration, trade

and education was considerable and deserves a detailed examination.

In 1922, the Passports and Permits ordinance³² was promulgated. It, inter alia, stipulated:

"The Governor-General may by order published in the Sudan Government Gazette declare any part of the Sudan to be a closed district."³³

A person entering "a closed district" had to obtain a permit on conditions and for purposes specified. The order could apply to any person or class of persons as the Governor-General deemed fit. Section 23 thereof also empowered the Governor-General to close any part of the Sudan to external trade "or declare that in any part of the Sudan trading other than by the natives of such parts shall be permitted only under permit". Persons already trading there and to whom the order applied had to cease from doing so within a month. In exercise of these powers, the Governor-General declared the provinces of Darfur, Equatoria, upper Nile and parts of Kordofan, Gezira and Kassala to be "closed districts".

In 1925, the Governor-General also issued "the Permit to Trade order" which required Northern Sudanese among others to obtain a permit to conduct business in the South. The cumulative effect of these orders was to seal the South off from the North for reasons which were stated by MacMichael in 1930.

"It has been the aim of the Government, to encourage as far as possible (Christian) Greek, Syrian traders rather than the Gallaba (Muslim Arab traders from the Northern Sudan) type. Permits to the latter should be decreased unobtrusively but progressively, and only the best type of Gallaba, whose interests are commercial and pursued in a legitimate manner, should be admitted. The limitation of Gallaba trade to towns or established routes

is essential."³⁴

It was left entirely to the Christian Missionaries to establish a system of education in the South. The Governor-General's report in 1921 had already clearly stated the aim of the Government as:

"... not to substitute a government system of education for the missionary schools but rather to attempt the regulation of some of the missionary societies along lines likely to be of more immediate benefit to the Government."³⁵

At the Rejaf Language Conference of 1928 it was resolved that six language groups, namely Dinka, Bari, Nuer, Lotuka, Shilluk and Zande, were to be the media of instruction in the lower stages of education. English would replace these in the higher stages. Arabic was rejected on the grounds that "it would open the door for the spread of Islam, Arabize the South, and introduce the Northern Sudanese outlook".³⁶ Certainly the Southern policy had implications for the South, the question remains whether it could be held to be solely or largely responsible for the political rift between the Northern and Southern Sudanese. Before attempting to answer this question the fate of the policy itself should be looked at.

In 1946, the Southern policy was finally abandoned partly because of its negative effects but mainly because of the changing political conditions. The negative results of the policy were observed in the low educational standards achieved. The educational system produced only low grade personnel to serve as clerks and book keepers. Northern Sudanese politicians were tireless in pointing out this defect which had also been noted by some Southerners and British administrators. One of

the latter, for example, the District Commissioner of Western District wrote in 1941 to the Governor of Equatoria Province

"... the most disappointing aspect of the working of the Southern policy is the failure to produce in ten years any Southern staff trained in executive work."³⁷

Oliver Albino, a Southern politician and writer also stated with disappointment that "not ... until 1942 was the Southerner ... allowed to sit for the civil (now the public) examination ... it is difficult to understand why progress towards localising the staff was so gradual."³⁸ As stated earlier, however, political considerations had to take into account the interest of the British. They were expected to live longer in the South.

Unfortunately, as Sudanese nationalism developed, pressure was brought to bear on the British. They were continuously accused of dividing the Sudan, coupled with the British and American interest in the Suez Canal as stated earlier, and their preoccupation with the world depression, the British abandoned the Southern policy in 1946.

"The policy of the Sudan Government regarding the Southern Sudan is to act upon the facts that the peoples of the Southern Sudan are distinctively Africans and Negroid, but that geography and economics combine (so far as can be foreseen at the present time) to render them inextricably bound for future development to the Middle Eastern and Arabicised Northern Sudan; and therefore ensure they shall, by educational and economic development, be equipped to stand up for themselves in the future as socially and economically the equals of their partners of the Northern Sudan in the Sudan of the future."³⁹

The statement was a distortion of facts. The geographical and economic arguments are untenable. Geographically, the South is tropical and too distant from Khartoum. It can never be classified as part of the North or the Middle East which are of

course desert areas. Economically the South could have survived on its agricultural potential without both the Northern Sudan and the Middle East. So the issue of the inextricability of the South from the North did not arise. If the South were to be developed economically and educationally to catch up with the North, how long would this take and how would that be guaranteed now that the British were preparing to leave.

The change of policy did not only surprise the Southerners but was taken with misgivings because the British had all along vouchsafed to protect them. The complexities of international politics surrounding the protection of British interests in the Suez Canal, examined earlier, could not be appreciated by them. However, Arnold ^Tyn bee rightly argued:

"If the South was to be re-united with the North eventually, the re-union would have been least painful for the South if the North had been given a free hand to assimilate the South while the British were still in power in both parts of the country. If re-union was the objective the British ought to have encouraged the spread, in the South, of Islam and Arabic language. However, re-union did not become the British regime's policy till the eleventh hour ...".⁴⁰

In reflecting on the question of how much the Southern policy contributed to the political instability of the country, views have differed between the North and the South. While Northern Sudanese regard the policy as the main source of disunity in the country, Southerners regard the policy as a redundant one. As Bandal put it "the Nilotics did alright by themselves to put out the alien cultures".⁴¹ Certainly the disregard and resistance to Islam and Arabisation in the South had been quite marked. Up to today the Southerners continue to

maintain their cultural distinctness and traditional practices inspite of Arab attempts to impose their values on them through education (such as the opening of Mahad and Koranic schools) and the preference accorded to Muslims in obtaining jobs, promotions, accommodation, etc. However, beyond dispute is the fact that the Southern policy widened the historical gap between the South and the North. That this gap could have been bridged is the concern of this thesis.

Having examined the controversial Southern policy, we now go back to trace the constitutional and administrative development from the mid-1930s.

IV. FURTHER DEVELOPMENT IN THE ADMINISTRATION, 1937-1951

The appointment of Steward Symes as the Governor-General of the Sudan in 1933 was to bring more positive changes in the system of local administration in the country. The Native Administration that had been established in the 1920s was already under heavy criticism for being too inadequate to meet the needs of the changing society. The powers delegated to the traditional rulers were less and limited to adjudication of cases only. Moreover, it discriminated against the elite by isolating them from participating in the government. All courts were composed of traditional rulers alone. Thus some change was seen to be appropriate. In his note on the relations between the educated Sudanese and the tribal leaders Symes' suggestion

for solving the problem was to:

"replace as soon as possible, the name of native administration by Local Government. Native Administration had become a slogan. All slogans are perilous and ambiguous slogans most of all. To its more old-fashioned and rabid disciples "native administration" has acquired the vague sanctity of a Delphic Oracle; to its detractors, it is anathema. Local Government is a more intelligible term and arouses more passions. It embraces the Sultanate of Masalit (one of the backward areas of the Sudan) and the port Sudan Municipal Council. It will absorb some nationalist ambitions and under the ample folds of its respectable cloak, the sons of Sheikhs and the sons of effendia (the educated Sudanese civil servants) can lie down happily together." 42

In the meantime, however, Symes adopted the policy of confining native authorities to areas that were predominantly rural with low social and economic development potential. The replacement of Native Administration was finally introduced by the enactment of three local Councils ordinances in 1937 which are here briefly examined in turn.

A. Municipal Councils, 1937

The Municipal Council ordinance, 1937⁴³ provided for the creation of Municipal Councils in urban areas. By urban areas was meant the large towns with a high proportion of European inhabitants, as for example Khartoum, Port Sudan, etc.

B. Town Councils, 1937

The Town Councils Ordinance, 1937⁴⁴, provided for the establishment of Town Councils in urban areas which had few or no Europeans such as Kassala, El Obeid, etc.

C. Rural Councils, 1937

The Rural Councils Ordinance, 1937⁴⁵, provided for the establishment of Rural Councils in the rest of the country. (For further details of the ordinances see Chapter 4.)

Generally, the 1937 ordinances provided the statutory basis for the establishment of local government councils categorized as Municipalities, Townships and Rural Councils which were based on the Model of English local councils. Three ordinances were passed because it was believed that no single or rigidly prescribed system of local government would meet the needs of the country.

D. Province Councils, 1943

Province Councils were established in the existing councils of Baher El Ghazal, Blue Nile, Equatoria, Darfur, Kassala, Khartoum, Kordofan, Northern and Upper Nile under the Province Councils Ordinance, 1943.⁴⁶

The Province Councils were introduced as it was:

"deemed expedient to associate a Council with the Governor-General in the discharge of his executive and legislative powers, so ... with recent growth of local government it [was] deemed expedient to associate Councils ... with Governors of provinces in the exercise of their local government powers."⁴⁷

Clearly the Councils were meant to advise and assist the Governor. They were also intended to serve as electoral colleges from which members of the Advisory Council(s) would be elected.

V. TOWARDS SELF-GOVERNMENT IN THE SUDAN, 1942-1948

The struggle for self-rule could be said to have started during the 1920s when in 1924 Ali Abdel Latif (a Dinka officer from the South) led a rebellion against the colonialists, through the organization of the white flag union. Lee Stack, the Governor-General of the Sudan was also assassinated in Cairo in the same year. These incidents led to the effective suppression of the association.

1936, however, saw the resurfacing of Sudanese nationalism following the signing of the Anglo-Egyptian treaty of friendship in that year. The agreement confirmed the earlier position of the 1899 Agreement among other things, as already mentioned. However, it totally excluded Sudanese participation. The disappointment felt by the Sudanese resulted in the formation of the "Graduates Congress" in 1938. "Graduates" included any

Sudanese who had completed a post-primary school institution. Initially, the objectives of the Congress were philanthropic but it was soon extended to cover political ambitions as well. In April 1942, the Congress submitted a Memorandum to the government demanding, inter alia, the right of the Sudanese people to self-determination. However, the government was quick to reject the demand on the grounds that the issue of self-determination was "the duty and business of the Sudanese government alone". Nevertheless the government felt compelled to act.

The Governor-General appointed a high powered committee of the three ex-officio members of the Governor-General's Council (the three Secretaries) plus two provincial Governors in order to:

"Investigate the expediency of forming a Central Advisory Council for the Northern Sudan."⁴⁹

It was upon the recommendations of this committee (submitted in March 1943) that the enactment of the Advisory Council ordinance, 1943⁵⁰ was based.

A. The Advisory Council for the Northern Sudan, 1943

The foregoing ordinance provided for the establishment of Advisory Council(s) in Section 3 thereof:

"It shall be lawful for the Governor-General in Council by an order published in the ... gazette to establish one or more councils in the Sudan advisory to the General-Governor in respect of good government either of the whole Sudan or any specific part thereof ..."

In conformity with the foregoing provision the Governor-General issued an order in the same year establishing an advisory council for the Northern Sudan.⁵¹ It comprised the Blue Nile, Darfur, Kassala, Khartoum, Kordofan and the Northern Provinces. The South was excluded on the sound grounds that:

"Firstly the general conditions, social, cultural, economic and linguistic of the Northern Sudan are ... sharply distinguished from those of the Southern Sudan. Secondly, the ethnic diversity and comparative backwardness of the Southern tribes preclude indigeneous representatives."⁵²

The Advisory Council was composed of 30 members made up as follows:-

1. The President (the Governor-General)
2. The Vice-President
3. 18 ordinary members drawn equally from the 6 Provincial Councils established under the 1943 ordinance (as stated earlier)
4. 2 representatives of Chamber of Commerce (at least one of whom was required to be of Sudanese origin)
5. 8 nominees of the Governor-General representing "the more important social and economic interest including Agriculture, Education and Health as he may think desirable".⁵³

Provision was also made for the appointment of "honorary" and "extraordinary" members by the Governor-General. While the "honorary" members were distinguished Sudanese notables like Sayyid Ali al Mirghani (Patron of the Khatmiyya sect) and Abdal Rahim-al Mahdi (leader of the Ansar sect), the "extraordinary" ones were professionals and senior civil servants coopted from

time to time. In practice, all those appointed in this latter category were British. Both the "honorary" and the "extraordinary" members could give their views on the agenda but they had no voting rights.

Although the formation of the Council was an attempt to come to terms with the growing Sudanese nationalism, it fell under heavy criticism, spearheaded by the Ashigga party which boycotted it altogether. The Ashigga (meaning blood brothers in Arabic) were an extremist group of the Graduates Congress who had broken away in 1943. They advocated unity with Egypt on the basis of the unity of the Nile valley. Led by Ismail El Mirghani, the Ashigga refused to cooperate with the government. Their power base was of course derived from the Khatmiyya religious sect. Owing to the extreme views of the Ashigga and their objective of unity with Egypt, the moderates of the Graduates Congress also regrouped themselves into the Umma party (meaning nationalists in Arabic). The Umma, as already stated, were led by Abdel Rahman El Mahdi, the grandson of El Mahdi who defeated the British in 1885. The Umma, on the other hand, had their power base in the Ansar religious sect. The Umma stood for an independent Sudan with the hope of re-establishing a monarchy - an idea much cherished by the British.

When the Ashigga boycotted the Advisory Council, it accused the British of several malpractices. For example, in an article in El Nil (daily newspaper) of November 8th, 1943, the following questions were raised:

- "1. Why should not the North represent the South?

2. How can the government deprive the South of the rights and privileges now granted to (Northern Sudanese)?
3. Is the Advisory Council competent to examine matters such as budget, which concerns the whole country, while one third of the population is not represented."

However, the motives for depriving the South of the right of representation were doubtful. As Professor Holt put it:

"Just as the Egyptians suspected the British of intending to separate the Sudan from Egypt, the Northern Sudanese feared that the Sudan government meant to amputate the three Southern provinces and cede them to Uganda." 54

For its part, however, the government viewed the formation of the Advisory Council as a great constitutional development in trying to associate the Sudanese with the government. Such a view was evident in the address of the Governor-General to the opening session of the Council in May, 1944:

"It can be said without exaggeration that we see today the first concrete expression of the Sudanese people." 55

K.D.D. Henderson also noted that the advisory council was, "the most far-reaching step yet taken in the government's declared policy of associating the Sudanese with the administration of their own". 56

Although the Advisory Council was meant to be a more formal machinery for consultation, its advisory powers were seriously curtailed. Strict rules in the order dictated that the determination of the agenda was the complete monopoly of the President; any other subject could only be included if requested by five members "by notice in writing delivered to the Secretary to the Council at least two clear months before the opening date

of any session".⁵⁷ The President at his discretion could accept or reject such a request. Even if it were accepted, the matter would not be debated by the Council, but the government's policy on it would be explained.

Debates were firmly controlled by the Chairman of the Council. He could close debates or discussions at any time. The manner of tendering the conclusions of the debate were pre-determined and stated in the agenda. Sessions of the Council were seriously circumscribed. The order provided for the holding of at least two sessions per year; in practice that number was never exceeded. Each session was to last for 4 to 5 days but the president could terminate it at any stage. Clearly, under these circumstances, the Advisory Council involved no decentralisation of powers.

Further important developments were to follow in 1946, 1947 and 1948.

B. The Sudan Administrative Conference, 1946

This Administrative Conference met in Khartoum in April 1946 under the close supervision of the Civil Secretary, James Robertson. The participants were:-

1. 8 British civil servants
2. 7 Sudanese officials (plus Sayyid al Siddiq and the son of Sayyid 'Abd al-Rahman al Mahdi)

3. 8 Representatives of the Advisory Council
4. 5 Representatives of the Independent Front

The Graduates Congress, the Ashigga and the other unionist parties had 6 seats but they boycotted the conference. The South was not represented. Presumably these developments were intended to affect the North only as had been the case with the Advisory Council.

After two days the Conference split into two sub-committees (A and B), to work separately on central and local governments respectively. The recommendations of sub-committee B on local government will be examined in the next chapter. Sub-Committee A was chaired by Mekki Abbas, a Sudanese from the North. It had 6 members (4 Sudanese and 2 British).

The relevant terms of reference of this sub-committee for our purposes were:-

"(a) To consider the next steps for associating the Sudanese more closely with the Central Government and in particular to work out and recommend to the main conference methods for developing the present Advisory Council so as to give them greater and more responsible functions"⁵⁸

The sub-committees recommendation as adopted by the conference was:

"... that the best method of developing the present Advisory Council so as to give it greater representative character and more responsible functions was by the constitution of a general assembly of elected Sudanese members for the whole Sudan exercising legislative, financial and general administrative functions in associating with a newly constituted Executive Council which would replace the present Governor-General's Council. It was the unanimous opinion of the Committee that the future of the Sudan depends

on welding together the people of the whole country into one. The Southern Provinces, though not Arab in origin .. must now look to the rest of the Sudan for economic and social development. By representing the Southern Provinces on a general assembly for the whole country the realisation of the existence of one Sudanese people will more quickly be achieved and it is on this achievement that the welfare of the Sudanese depends ...".⁵⁹

The inclusion of the South was obviously crucial, particularly when it had not been presented at the conference. For, it goes without saying that any decision taken on its behalf was done without its participation. Had it not been for some of the British administrators serving there, the South would have been joined to the North without even having been informed.

On the publication of the minutes of the conference, 15 British administrators in the South signed a protest letter to the Civil Secretary expressing their dissatisfaction with the recommendation. In their view the future of the South was being "discussed by the wrong men in the wrong milieu".⁶⁰ This was rightly so considering the composition of Sub-Committee A and the participants at the conference as detailed above. The letter of protest suggested that "institution of an administrative conference for the Southern Sudan, to meet in the South".⁶¹ On the strength of this letter, the Civil Secretary called a hasty conference at Juba in 1947.

C. The Juba Conference, 1947

The Juba Conference was held on the 12th and 13th of June

1947. It was attended by the following 27 members:-

1. The Civil Secretary - James Robertson, Chairman and Secretary
2. The Governors of the Southern Provinces
3. The Director of Establishments
4. 6 Northern Sudanese, including 2 distinguished lawyers with Mohamed Shingetti being the most dominant and powerful
5. 17 Southerners, appointed from amongst tribal chiefs, clergymen, and local council clerks. Clement Mboro, then a junior clerk, was the most educated.

Certainly the Conference was not one of equals. The notice was too short and the Southern Participants were handpicked. As Chief Lado Lobik rightly pointed out "he was not ready for these discussions as he had not been able to consult his people before coming to Juba".⁶² It was not even the traditional practice among the decentralised tribes of the Southern Sudan that they were normally represented by chiefs or clergymen.

The agenda was not specified. The discussion encompassed in general terms the representation of the South in the forthcoming Legislative Assembly due to be convened in Khartoum in 1948. The legal and constitutional implications of the proposal were very obscure especially for the semi-literate Southerners. Moreover, attempts by some of the Southerners to obtain more explanation about the proposal from the Secretary were obstructed by the Northern Sudanese, especially Mohamed Shingetti. For example, when the Secretary tried to put matters in black and white by asking "whether anybody present had any

objections to the unity of the Sudan", Shingetti complained that "this was outside the meeting's terms of reference".⁶³ But that point was in fact very crucial. In this way Shingetti controlled and dominated the conference. If the conference was intended for Southern Sudanese, one wondered why Northern Sudanese had to attend or participate too.

No formal resolution was adopted, the chairman simply assumed that the South had agreed to join the North in the forthcoming Legislative Assembly - which unknown to the Southerners implied unity of the Sudan as pre-determined in 1946.

In his book, Transition in Africa (1974), Robertson confessed:

"The only decision resulting from the conference was taken by myself. I decided that I could, after what I had seen of Southerners who attended, endorse the recommendation of the Administrative Conference, and ask the Governor-General-in-Council to accept its proposal that the new Legislative Assembly should be representative of the whole Sudan".⁶⁴

No excuse could justify Robertson's partiality since the abolition of the Southern policy in 1946.

The consequences of the decision taken at Juba Conference seriously affect the Sudan up to this day in that the unity between the North and the South has involved more conflict than cooperation. Moreover, the decision of the conference could be hardly said to amount to the exercise of the right of self-determination by the Southerners. Yet the claims of the

Northern Sudanese for unity with the South are based on that decision. A few quotations will illustrate these claims.

Ismail El Azhari, Sudan's first Prime Minister, told the Committee of Enquiry into the Disturbances in the Southern Sudan in 1955 that:

"The Sudan should be one unit on the basis of the decisions arrived at during the Juba Conference in June, 1947." ⁶⁵

In 1961, Ali Baldo, the Governor of Equatoria province, declared to the Morning Star newspaper on his visit to Khartoum that:

"... After the Juba conference of 1947, in which it was firmly held that for its interests, the South should be unified with the North forever." ⁶⁶

These views are still current among Northerners as Ali Suleiman Fadlal, lecturer at Khartoum University, stated in his study on "Some Issues of Freedom under the Penal and the Criminal Procedure Codes of the Sudan" (1984 PhD thesis), that, "it was the wish of Southerners to be united together with the Northerners in a united Sudan." ⁶⁷

Southerners, on the other hand, have always held a contrary opinion. Writing on The Problem of Southern Sudan (1963), Joseph Oduho and William Deng argued:

"Throughout the night of the twelfth, Arab politicians made individual approaches to the Southern members using all possible means and arguments - bribery not excluded - to explain to them that the unity was unity of administration as opposed to the hitherto followed separatist policy in which the South was left lagging behind the North. They made it clear that unity, in the constitutional sense, was to be freely decided upon by both North and South at the time of self-determination that was still out of sight." ⁶⁸

Unfortunately, this time never came as we shall see. Dr. Raphael Bandal of Khartoum University, rightly dismissed the deliberations of the Conference as "an official arms twisting".⁶⁹

In fact Robertson's view was similar to that of Southerners:

"I looked upon the conference solely as a means of finding out the capabilities of the Southerners, and it was therefore quite inaccurate for some people to say later that at the Juba Conference the Southern representatives agreed to come in with the North. No decision could be made by the Conference, since members had received no Mandate from their peoples."⁷⁰

One therefore wonders on what basis the Northerners maintain their claims for unity with the South. Again, one could hardly conclude that the Southerners had exercised their right to self-determination as defined by Article 1(1) of the International Covenant on Economic and Cultural Rights, 1966:

"All peoples have a right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The importance of this element of freedom must be stressed. For the normal procedure for the exercise of the right of self-determination is either expressed through the votes of elected representatives or by allowing the people themselves to choose through a referendum under some neutral auspices. The referendum was never held although the Southern representatives were manipulated in 1955 as we shall see.

Going back to the deliberations of the Juba conference, we find many shortcomings. We have already seen that the Southern

participants had no mandate to take any decisions. In addition to this the atmosphere surrounding the Conference was not conducive to free choice due to bribery, undue influence and even coercion. For example, when Chief Lapponya suggested that the Principle of Unity could only be decided when Southerners were grown up, by which time they would be in a position to decide whether they would be able to join the North or go to Belgian Congo or Uganda", the Chairman shouted at him that "People could not get up and go where they like just like that".⁷¹ When asked why they had changed their minds the second day, Chief Tembura's reply was that, "judge Shingetti had said if they did not do so, they would have no say in the future government of the Sudan".⁷²

The deliberations of Juba Conference should have been dismissed as null and void on the legal grounds stated above. Yet this was the conference which paved the way for the Legislative Assembly for the whole country.

D. The Executive Council and the Legislative Assembly, 1948

The outcome of the Administrative Conference 1946 and the Juba Conference 1947 was the Promulgation of "The Executive Council Legislative Assembly ordinance, 1948".⁷³

The 1948 ordinance repealed and replaced both the Governor-General's ordinance 1910 and the Advisory Council ordinance, 1943. As stated above, it established a new

Executive Council and Legislative Assembly for the whole Sudan. We shall briefly examined the organs of government found thereunder.

1. The Executive Council

Section 9 of the Executive Council and Legislative Assembly ordinance stipulated:

"There shall be constituted an Executive Council for the Sudan, which shall be responsible to the Governor-General for the executive and administrative functions of government".

The composition of the Council was prescribed as follows:-

- "(1) The council shall consist of not less than 12 and not more than 18 members.
- (2) The council shall be composed of:-
 - (a) The leader of the Assembly and the other Ministers if any.
 - (b) Not more than four ex officio members, appointed by the Governor-General by office from amongst the Civil Secretary, the Financial Secretary, the Legal Secretary and the Khaid.
 - (c) Not more than three councillors without portfolio, appointed by the Governor-General at his discretion ...
 - (d) Such Under-Secretaries as shall be appointed for the purpose by the Governor-General after taking into consideration the views of the Leader of the Assembly.

Provided always that not less than half of the members of the council at any one time shall be Sudanese ... "74

Normally, there were seven Sudanese and five British on the Council to conform with the above provisions.

2. The Legislative Assembly

As already stated, the ordinance also provided for the constitution of a Legislative Assembly:

"The Assembly shall compose of ex officio, elected and nominated members."⁷⁵

The number of nominated members was not to exceed twenty.

The Assembly had a total of eighty-seven members constituted as follows:-

- (i) Fifty-two members elected either by direct or secret ballots in the urban areas or through electoral colleges in the rural areas.
- (ii) Thirteen Southerners appointed on the recommendation of the provincial Governors.
- (iii) Ten members nominated by the Governor-General at his own discretion.
- (iv) Twelve ex officio members of the Executive Council.

The Assembly was "entitled to debate and pass resolutions on any subject matter",⁷⁶ except matters reserved for the Governor-General.

According to Section 54 of the ordinance,

"The following shall be reserved matters in respect of which the Assembly shall have no legislative powers:-

- (a) The provisions of this ordinance.
- (b) The resolutions between the Sudan Government and His Majesty's Government in the United Kingdom and the Royal Egyptian Government.
- (c) The relations between the Sudan Government and the foreign governments.
- (d) The nationality of the Sudanese."

In fact the most important matters remained vested in the Governor-General. According to Mayal, R.C., the Public Relations consultant,

"the aim of the framers of this constitution was to provide for the gradual development within the framework of the condominium agreement of all the necessary political machinery of democratic self-government."⁷⁷

However, the ordinance was not welcomed by a large section of the Sudanese community. The Graduates Congress and the National Unionist parties organized demonstrations against it. Criticisms levelled against the ordinance were based on the fact that it had failed to give the Sudanese an effective share of government.

The Council discussed the budget and formulated legislations but all these fell short of the expectations of the Sudanese. Moreover, the Council was not responsible to the Assembly but to the Governor-General. The Governor-General had limitless powers which included interference with the decision of the Assembly. He could veto⁷⁸ decisions of the Assembly or in the extreme, dissolve it.⁷⁹ Other undesirable aspects of the Assembly were the presence of ex officio members; insufficient representation of intelligentsia; and the insignificant role played by the nominated members.

Nevertheless, the creation of the Assembly indirectly paved the way for self-determination. For, two years later, the Assembly adopted the following important resolution:

"We, Members of the Legislative Assembly of the Sudan, do request your Excellency [the Governor-General] to appoint a commission of whose members at least half should be Sudanese, to re-examine the Legislative

Assembly and Executive Council Ordinance of 1948 and, in respect of any of its provisions ... to make such representations to your Excellency for its amendment as they may consider will increase the value and enhance the efficiency of the Assembly and Council as practical instrument of democratic government with a full measure of Parliamentary control within the framework of the existing constitutional agreements." 80

Consequently, the Governor-General appointed the Constitution Amendment Commission in 1951 under the chairmanship of Stanley Baker, a British Judge of the High Court. During the same period developments in local government had reached the stage whereby Dr. A. H. Marshall, a city Treasurer of Coventry and an Expert in local government, had been invited to the Sudan in 1949 to study and report on the situation there. The examination of this development is deferred for the next chapter.

VI. SELF-GOVERNMENT AND INDEPENDENCE: 1951-1956

The process of self-government started with the appointment of the said Baker Commission.

A. The Constitution Amendment Commission, 1951⁸¹

The Constitution Amendment Commission consisted of thirteen Sudanese representing all political parties except the Ashigga.

There were three British and one Southern Sudanese (Buth Dieu). The Commission was to recommend to His Excellency the Governor-General "the next steps to be taken in the constitutional advance to full self-government".⁸² However, the Commission's work was incomplete. It was dissolved by the Governor-General on the recommendation of the Chairman because the members could not agree on where the sovereignty of the Sudan was to be temporarily vested during the preparations and negotiations for self-government. Views were divided between vesting it in the Governor-General or in some neutral body. Nevertheless, the Commission submitted an informal report that was substantive enough and was used by the Governor-General for drafting the Self-Government Statute, 1953, details of which will be examined later.

Decentralisation of government by "devolution" was never discussed. It was shelved in favour of safeguards or protection for the South.

"... such safeguards would therefore be necessary until such a time as the South itself was in a position to promote its interests by the normal process of democratic representation, whether under a unitary or a federal system"⁸³

The inclusion of safeguards for the South gave rise to balanced and interesting opposite views. The arguments for both sides merit consideration. Those in favour argued:

"Without protection the Southerners will not be able to develop along indigeneous lines, will be overwhelmed and swamped away by the North and deteriorate into a servile community hewing wood and drawing water. To pretend that there are no fundamental differences between them is like covering up a crack in a tree trunk with moss. Such process, like any other obscuring of the truth is unsound."⁸⁴

On the other hand those opposed to the inclusion of a protection provision contended that:

"To include a specific safeguard will only arouse old suspicion in the North and intensify a wound that is beginning to heal. It will also increase the feeling of inferiority possessed by many Southerners. As long as the Governor-General can intervene, then perhaps it is alright. But once British influence wanes and becomes impotent it will not matter what safeguards or charters have been created. They will make no difference." 85

It is not the logic behind the inclusion or non-inclusion of a safeguard provision that balanced the argument. What emerged was the crucial question of who would enforce the provision. What after all would be the use of inserting a provision that would not be enforced after the departure of the British?

Eventually those in favour of the provision including the Southern representative Buth Dieu succeeded at the stage of the Commission. The recommendation read:

Recommendation 9

The Council shall consist of the Prime Minister and the other Ministers and should include a Minister for Southern Affairs who should himself be a Southerner selected by the Prime Minister in consultation with the Governor-General and with the Southern Members of Parliament." 86

The Minister for Southern Affairs was to be responsible for promoting in the council and introducing in Parliament measures for the economic and social betterment of the people of Southern Sudan. He was to be advised by a board appointed for that purpose. In other words, the recommendation had proposed decentralisation by "delegation". This would have placed the Southern Sudan in a position comparable to that obtaining in Northern Ireland, Scotland and Wales. However, the

recommendation was deleted during the final self-Government negotiations in Cairo in 1953 examined below.

B. The Cairo Agreement, 1953

The Cairo Agreement was signed on February the 12th, 1953 by the Northern Sudanese political parties and ratified by the condominium powers. The South was not represented on the grounds that it had no political party. The Southern Liberal Party which had been formed by Buth Dieu and others in 1951 was ignored together with the Southern protests sent by a letter to the meeting.⁸⁷ The Agreement covered self-determination in the Sudan, in particular it laid down the procedures to be followed in bringing about self-determination. Egypt, for the first time, recognised the right of the Sudanese to self-determination. This unexpected good gesture has been explained in terms of changes in Egypt. It was to some extent due to the coming to power of General Neguib through the Military Coup of 1952. Neguib could be expected to be sympathetic to Sudanese aspirations since his mother was Sudanese and he had completed part of his education in the Sudan.

The terms of the Agreement, inter alia, included:-

1. That a free and neutral atmosphere be provided in the Sudan in order for the Sudanese to exercise their right of self-determination. To achieve this a three-year transitional period was agreed on, during which sovereignty over the Sudan

was to be kept in a reserve. The dual administration of the Sudan had to be liquidated and it had to be administered by the Governor-General and his Commission during that period.

2. Sudanese parliament was to pass a resolution expressing their desire that arrangements for self-determination would be put in motion and the Governor-General was to notify the Condominium of the resolution.

3. The Sudanese Parliament was also to enact a Statute for the election of a Constituent Assembly which would:-

- (i) decide the future of the Sudan by choosing either complete independence or some future relationship with Egypt or Britain;
- (ii) draw up a constitution for the Sudan compatible with the decision on self-determination and draw up an electoral law for a permanent Sudanese parliament.

4. Three international commissions (the Governor-General's Commission; the electoral Commission; the Sudanisation Commission) were to be set up to prepare the detailed process of self-determination ensuring safeguards, impartiality of elections and guarantee a generally neutral atmosphere. The condominium powers were to accept recommendations made by any of the international bodies. The composition and functions of these commissions are summarised below:-

(i) The Governor-General's Commission

This Commission had a Pakistani Chairman, one Egyptian and two Sudanese as members. It replaced the Executive Council and

assisted the Governor-General in the execution of his duties to general satisfaction.

(ii) The Sudanisation Commission

This Commission was also made up of mixed membership, one British, one Egyptian and three Sudanese. Unlike the other commissions it had a Sudanese chairman on the basis of rotation of one month each (to safeguard against personal interests), plus three non-voting members who included the chairman of the public service commission (a Sudanese) and two other members of the same Commission (one Sudanese and one British). They were to advise the Chairman of the Sudanisation Commission.

The Commission was "to complete the Sudanisation of the Administration, the police, the Sudan Defence Force, and any other post that may affect the freedom of the Sudanese at the time of self-determination ... within a period of not exceeding three years".⁸⁸

The Commission was appointed on April the 20th, 1954 but surprisingly enough it completed its work on March the 7th 1955 which was much earlier than expected. However, shortcomings in the Commission's work had serious consequences. In the first place, due to the lack of any better alternative, most senior positions were filled by Sudanese who were both inexperienced and insufficiently trained. Secondly, the number of posts allotted by the Commission to the South, was a major grievance. The total was only 6 junior posts (4 Assistant District Commissioners and 2 Mamcurs) out of 800 posts Sudanised.

"... the results of Sudanisation have come out with a very disappointing results, i.e. ... well as it appears our fellow Northerners want to colonise us for another hundred years."89

On the question of Sudanisation of posts, Mohamed Omer Beshir argues:

"The Sudanization Committee, in the best traditions of the British civil service, allocated jobs and made promotions in accordance with seniority, experience and qualifications. As posts held by Southerners, at the time, were far fewer and more junior than those held by the Northerners, and as the Southerners lacked seniority, experience and qualifications, they were not much affected by the Sudanization."90

Beshir is being too fussy since all Sudanese, Northern or Southern were not qualified for the posts.

(iii) The Electoral Commission

This Commission was composed of seven members (three Sudanese, one Egyptian, one British, one American and its Chairman, Sukuma Sen). The Commission reviewed the electoral laws and supervised elections to the Sudanese parliament with notable success, generally attributed to the efforts of the Chairman.

5. Finally the Agreement provided for full Self-Government for the Sudan during the transitional period and authorised the enforcement of the Self-Government Statute, 1953.

Thus Self-Government was worked out behind the back of Southerners. The provision for the appointment of the Minister for Southern Affairs was deleted on the grounds that the South was no different from the poor areas of the Eastern and Western

Sudan.

If self-determination really means (which it does) the future of a group of people, how just was it to deny the Southerners' participation at the Cairo negotiations? How binding should decisions taken by unauthorised people on behalf of others be? It should be remembered that the Northern political parties had no mandate from the South. Certainly no norm of justice would support such an idea. Yet astonishing as it may seem the agreement was effected inspite of all its shortcomings.

Commenting on the agreement in his book, The Southern Sudan, Background to Conflict", Beshir said in his characteristic understatement:

"The absence of Southerners from this discussion was seen as a proof of a desire to belittle the South and ignore its demands."⁹¹

The problem is not that of merely "belittling" or "ignoring" the demands of the South. It was a fundamental issue of denying the right of self-determination, a right recognised by international law.

C. Self-Government, 1953

As already stated, the Sudanese obtained self-government under the provisions of the Self-Government Statute, 1953. This Statute resembled the Westminster Model. It provided for the establishment of both the Executive and the bicameral

legislature which are examined below.

1. The Executive

The Executive consisted of the Governor-General, a Prime Minister and a Council of Ministers appointed by the Governor-General on the recommendation of the Prime Minister. Whereas the Governor-General continued to be the "supreme constitutional authority within the Sudan",⁹² the Council of Ministers was "responsive to parliament for the executive and administrative functions of the government". Thus a "Responsible Government" had been established, which was an improvement on the provisions of the 1948 ordinance. This last had made the Executive responsible to the Governor-General and not the Assembly.

2. The Legislature

A bicameral legislature replaced the unicameral one. The Senate and a House of Representatives⁹³ were established. Justification for the bicameral system was based on the grounds that parliament should contain a proportion of men of mature experience and judgment, elder statesmen, tribal leaders, retired public servants, persons with professional and academic qualifications who might not be closely associated with any political party or doctrine but whose wisdom and practical experience would be of great value to the legislature.

(i) The Senate

The Senate consisted of fifty members, of whom twenty were nominated by the Governor-General at his discretion. The remaining thirty were elected from provincial constituencies acting as electoral colleges.⁹⁴ Membership of the Senate was restricted to the Sudanese of forty years and above, except for the South where the minimum age of 30 years was specified.

(ii) The House of Representatives

The House of Representatives was made up of ninety-seven members, of whom sixty-eight were directly elected by secret ballot while twenty-four were indirectly elected.⁹⁵

Elections to Parliament were held in October 1953 with the following results as shown in Tables 1.1 and 1.2.

Table 1.1 THE SENATE

POLITICAL PARTIES	BY ELECTION	BY NOMINATION	TOTAL
National Unionist Party	22	10	32
Socialist Republican Party	3	4	7
Southern Party	-	1	1
Independent (North)	1	2	3
Independent (South)	1	2	3

Source: Ibid..

Table 1.2 THE HOUSE OF REPRESENTATIVES

The National Unionist Party	51
Umma	22
Independents (North)	4
Socialist Republican Party	3

Independents (South)	4
Southern Party	10
Southern Political Association	2
Socialist Republican Party	3
Front Against Colonialism	<u>1</u>
TOTAL	<u>97</u>

Source: Great Britain: Foreign Office Self-Determination in the Sudan, Resume of Developments, p.7.

Thus the National Unionist Party won by a large majority. Ismail El Azhari was elected Prime Minister on June 1st 1954, by fifty-seven votes to thirty-seven. He appointed fifteen Ministers of whom three were Southerners. The Governor-General issued a proclamation in accordance with Article 2 of the Self-Government Statute certifying that "the Self-Government institutions intended to be created under the Statute" had been duly constituted in accordance with the provisions of the Statute. Thus in theory independence had been attained.

D. The Achievement of Independence

However, in practical terms the road to independence remained as daunting as ever. It was preceded by the mutiny of the Equatorial corps in the South on August the 18th, 1955. Southern soldiers rebelled against being transferred to the North under the suspicious circumstances which are examined below. Unity of the Sudan had to be asserted with the help of the British. The outgoing Governor-General, Sir Knox Helm, made a deceitful appeal to the Southern mutineers to put down their arms, promising that they would not be tried. In spite of the

promise made, a good number of the mutineers were executed secretly. The majority, however, managed to flee to the forest of the neighbouring countries of East Africa. These were to form the nucleus of the Anyanya movement in 1963. The word Anyanya meant snake poison in Moru, Madi and Lotuk languages. It brought about the Addis Ababa Agreement which will be dealt with in the next chapter.

The many causes of the mutiny were enumerated as follows by the commission of enquiry into the disturbances in the South:-

1. There is little in common between the South and the North in terms of race, religion, language, geography, history and culture.
2. Historically, North and South have been traditional enemies.
3. The British administrative policy of closed districts treated the two parts of the country as separate entities.
4. There was lack of Sudanese nationalism in the whole country.
5. In terms of social and economic development, the South was lagging behind, and so it felt cheated.
6. Promotions in the Civil Service were unfair to the South.
7. When Southerners demonstrated for a federal status in 1954 the government threatened that "they shall use force of iron in dealing with any Southerner who will dare attempt to divide the 'nation'."⁹⁶
8. A Southern Member of Parliament, Elia Kuze, was arrested and charged with criminal intimidation after addressing a political rally at Yambio in 1954. He was tried by chiefs and sentenced to 20 years imprisonment. The courts had no

jurisdiction and the sentence was far too excessive under the laws of the country. The commission described the trial as "farcical".

9. When Southerners organized demonstrations against the mass dismissal of 300 of their colleagues from the Nzara cotton scheme in July 1955, (they were supposed to be replaced by Northerners), the Government ordered the Army and the police to open fire. Northern merchants also joined in the shooting and three Southerners were killed on the spot.
10. The most provocative matter, however, was the telegram which the committee found to have been forged. The telegram was allegedly written by the Prime Minister, reading:

"To all my administrators in the three Southern Provinces. I have just signed a document for self-determination. Do not listen to the childish complaints of Southerners. Persecute them, oppress them, ill-treat them according to my orders. Any administrator who fails to comply will be liable for prosecution. In three months time all of you will come round and enjoy the work you have done."⁹⁷

The telegram was widely circulated. The forgery could not, however, be detected due to the low level of development and understanding in the South.

After overcoming the major problem of the mutiny in 1955, independence was now close at hand. The Southern Liberal party moved the first independence motion demanding a federal form of government. The Northern politicians, fearing to commit themselves to the motion amended it to read that the claim of Southerners for "federation will be fully considered"⁹⁸ by the constituent Assembly that would be formed to make a permanent

constitution for the Sudan. On this basis the Southerners agreed to pass the independence motion - it was unanimous reading:

"We, the Members of the House of Representatives in Parliament Assembled, declare in the name of the Sudanese People that the Sudan is to become a fully independent sovereign state, and request your excellency to ask the two condominium powers to recognize this declaration forthwith."99

That was on December the 19th, 1955 and the motion was approved by both Britain and Egypt. On December the 31st, the "Transitional Constitution 1956" was adopted by Parliament as a temporary constitution for the Sudan. Except for minor modifications, the Constitution was the entire Self-Government Act, 1953. A full examination of the constitution is undertaken in the next chapter.

January 1st 1956 was fixed as the official day for independence celebrations. However, one major issue remained unresolved.

E. The 'Southern Problem'

The 'Southern Problem' has been clearly exposed in nature of the above analysis. It arises from the ethical, cultural, linguistic, religious, historical and geographical differences between the North and the South. The situation is aggravated by unequal development between the two parts of the country, the South having suffered constant neglect in terms of lack of social and economic development. Initially British colonial policy gave the South the false hope that it would one day be an

independent state but this hope was rapidly destroyed in 1946. Thereafter the South was prematurely rushed into unity with the North on the terms of the North alone. The South considers itself to have been denied the inalienable right of self-determination. Even if it had been seen by some people to have exercised that right, however unconsciously, on December 19th, 1955, the anticipation had been of a federal and not a unitary Sudan. Under a federal system the South would have expected the devolution of considerable legislative and administrative powers. The failure of the Sudan Government to effectively address itself to this issue has resulted in a serious constitutional problem for the nation.

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AppendixGOVERNORS-GENERAL OF THE ANGLO-EGYPTIAN SUDAN, 1899-1955

1. Horatio Herbert (Lord) Kitchener: January-December 1899.
2. Sir Francis Reginald Wingate: 1899-1916.
3. Sir Lee Stack: 1917-24 ('acting', 1917-19).
4. Sir Geoffrey Archer: 1924-6.
5. Sir John Maffey (later Lord Rugby): 1926-33.
6. Sir George Stewart Symes: 1934-40.
7. Sir Hubert Huddleston: 1940-47.
8. Sir Robert Howe: 1947-55.
9. Sir Alexander Knox Helm, 1955.

CHAPTER 3CONSTITUTIONAL DEVELOPMENTS IN THE SUDANSINCE INDEPENDENCE TO 1969

The Sudan did not, like other former British possessions, inherit a constitutional package from Westminster at independence. She simply adopted the Self-Government Statute, 1953 as "The Transitional Constitution, 1956" with minor modifications as stated at the end of the last chapter. The term "transitional" was used because it was meant to be replaced as soon as the Constituent Assembly (formed thereafter) could afford to pass a new one. Despite this fact the Transitional Constitution was to remain in force until 1969 with the exception of the period between 1958 and 1964 when it was temporarily suspended by Ibrahim Abboud's military junta. It was clear that the impossibility of passing a new constitution arose from the differing political views in the country. Whereas the Southern Sudanese had hoped at the very least for a federal and secular constitution, the Northern Sudanese aspired to a Unitary and Islamic Constitution with some limited form of decentralisation of powers. This was obviously unacceptable to the Southerners.

Disagreements also featured in the relations between the Northern political parties running the successive coalition governments. Apart from the bickerings over

power, the Umma party advocated a constitution along the Washington Model while the National Unionist Party (NUP) preferred the French model in which the President was elected by the Assembly. Under these circumstances it was not possible to formulate a generally acceptable constitution. Even when some measure of success had been achieved in 1968 with the forced passage of the Republican Islamic constitution backed by the Umma and the NUP; it was seriously opposed by the other parties. It was immediately overthrown by the military coup in 1969. This chapter attempts to examine the successive failures of the Sudanese governments to decentralise powers to subordinate governments from 1956 to 1969 together with the objectives behind the changes. In doing so, special consideration is given to the establishment of modern local government in 1956; The Provincial Administration in 1960; and the search for an autonomous status for the South through the Khartoum Round Table Conference (1965); The Report of the Twelve Man Committee (1966); The Resolutions of the All Political Parties Conference (1966); and the Promulgation of the 1968 Constitution.

Firstly, however, we shall examine some of the main provisions of the Transitional Constitution.

I. THE TRANSITIONAL CONSTITUTION, 1956

The most important difference between the Self-Government Statute, 1953, and the Transitional Constitution, 1956, was the replacement of the Governor-General with the Supreme Commission which acted as the Head of State. The Central Government was composed of the Supreme Commission, the Prime Minister, the Council of Ministers and Parliament (the Senate and House of Representatives). Far below this organisation were the local government councils established under the Local Government Act 1951. The Provincial Governors were in between as agents of the central government. The structure of government is shown in diagram 2.

A. The Supreme Commission

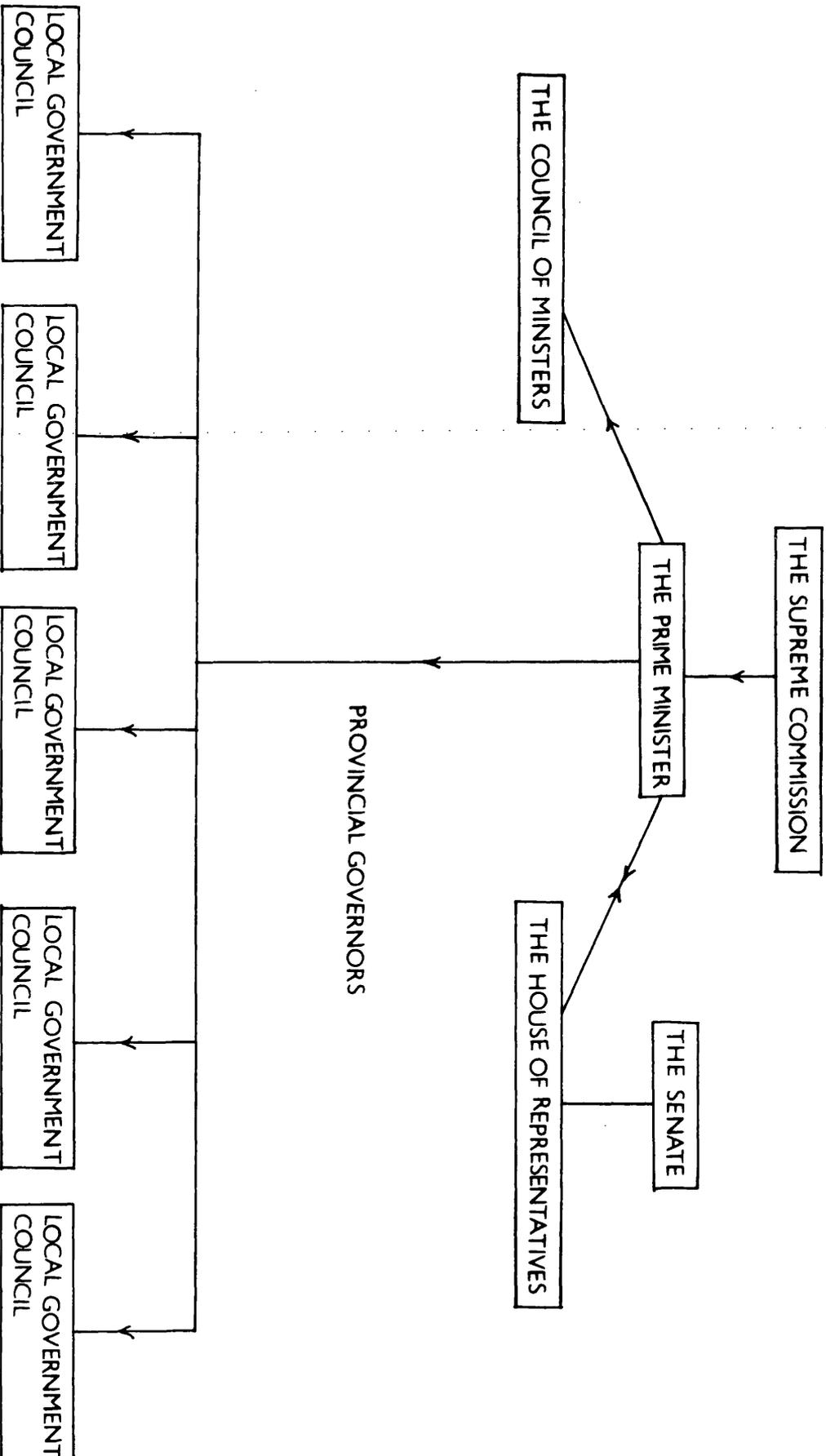
The Transitional Constitution stipulated:

"Parliament shall elect five persons who shall, together constitute the Supreme Commission. ... The Supreme Commission shall be the highest constitutional authority in the Sudan and in it shall vest the Supreme Command of the Armed Forces of the Sudan."¹

However, the Supreme Commission was to discharge its functions "on the advice of the Council of Ministers".² This implied that the Commission was a ceremonial Head of State only, similar to the President in an Export Westminster type of constitution, where executive power is exercised by the Prime Minister.

Diagram 2

THE STRUCTURE OF THE SUDANESE GOVERNMENT 1956 - 1958



Other responsibilities of the Commission included the appointment of the Prime Minister, and the Ministers "on the advice of the Prime Minister", "grant of a free or conditional pardon to any convicted person" and participation in legislation.

There was invariably only one Southern Sudanese included among the appointees of the Members of the Commission.

B. The Executive

As already stated, the Executive consisted of the Prime Minister and the Council of Ministers all appointed by the Supreme Commission but from amongst Members of Parliament only.³ Thus the Cabinet was entirely Parliamentary as in the United Kingdom.

1. The Prime Minister

The Prime Minister presided over the meetings of the Council. He could, however, lose office in any of the following circumstances:-

"(a) If he ... [ceased] to be qualified for membership of Parliament; or

(b) on acceptance by the Supreme Commission of his resignation ...

or

(c) upon the first sitting of the first session of a new House of Representative".⁴

He was therefore unimpeachable as an individual as in the UK.

2. The Council of Ministers

Article 27 of the constitution stated:

"The Prime Minister and other Ministers shall together constitute a Council of Ministers, which shall be responsible to Parliament for the executive and administrative functions of government."

A proviso was specifically inserted for the appointment of "not less than two ministers in each council ... representing Southern Constituencies". However, this right could be withdrawn if the Commission felt that it was being abused. Although cases of abuse never arose, the number of Southerners appointed in the council remained at the minimum fixed by the constitution. Whatever the objective of the inclusion of such a proviso, it never amounted to decentralisation of powers to the South. Unlike the appointment of a Minister for Southern Affairs, whose specific duty would have been to cater for the interests of the region, the presence of a Southerner as an ordinary member of Cabinet could in no way be equated with decentralisation of Powers to the South.

C. Parliament

Parliament of course consisted of the Supreme Commission, the Senate and the House of Representatives. The Houses that functioned as Parliament under the Self-Government Statute were allowed to continue⁵. The memberships were the same as before (see Chapter 2).

We shall now proceed to consider developments at local government level.

D. Local Government, 1956-1969

Unlike the Central Government, there was significant development in local government after independence. The history of this development dates back to the Sudan Administrative Conference of 1946, which led to the invitation of Dr. A.H. Marshall to the Sudan in 1949 as mentioned in the last chapter.

Dr. Marshall was invited as an expert on local government and was given the following assignment:

"To enquire into and report on the policy and practice of the Sudan Government in respect of Local Government and make recommendations upon any matter arising from the enquiry."⁶

Marshall toured the Sudan, interviewing both government officials and the ordinary people. His recommendations were submitted six months later as follows:

"(a) Local Government should be in the hands of local bodies answerable to an electorate. They should be clearly separated from the judiciary, enjoy a corporate existence and be responsible for the making of decisions and for their execution.

(b) Local Government must not be stereotyped. Though the basic structure must be the same throughout the country, there must be sufficient flexibility to allow for the wide divergence of conditions in the Sudan, and to permit of modifications from time to time without excessive formality ...

(c) New powers should be granted piecemeal to local authorities as they show themselves capable of assuming additional responsibility.

(d) Local authorities should be given the greatest possible freedom - including the opportunity to make mistakes - which is compatible with the local interest, and in particular they should be allowed to meet all the communal needs of the area not met by other agencies. They would thus not necessarily be confined to the traditional duties of the local authorities in Europe and America, and certainly not hampered by the rigid application of the "ultra vires doctrine"

(e) Local authorities must have independent tax revenue sufficient to meet a substantial part of their expenditure and not overlapping the Central Governments' taxes ...

(f) The working of the Local Government should be supervised by Central Government departments with power to impose standards of performance and to suspend the recalcitrant or inert authority.

(g) As an inevitable concomitant of central supervision, a system of grants-in-aid should be instituted for those services for which the State demands a national minimum standard of performance, and to cater for the needs of poorer authorities.

(h) The units of Local Government should be financially stable and able to attract the best personnel whether as Members or officials.

(i) Until local authorities have been provided with proper executives, operating apart from the Merkaz, no further additions to their duties should be made." 7

Certainly, Dr. Marshall's report was far-reaching in terms of recommending the decentralisation of powers to responsible local governments. In particular, the recommendation for the decentralisation of powers to render various services, prepare budget and raise revenue locally for their own use, be autonomous and answerable to the local electorate were considerable. It was more or less similar to English local government. Suffice it to say that in accepting these proposals, decentralisation was the primary objective of the government. For, in addressing the Council on the presentation of the report, the Civil Secretary, Robertson, said:

"The main reasons for setting up Local Government authorities are:-
 (1) The need for decentralisation,
 (2) the necessity to adapt services to local conditions, (3) the wish to inculcate a sense of political responsibility, (4) the wish to train public representatives for the wider sphere of Central Government, (5) the desire for a local body whose duty is to watch over the general interests of the citizen." 8

On this note, the recommendations were accepted, presented to the Legislative Assembly and finally enacted as the Local Government ordinance, 1951. The implementation of this law is given detailed consideration in Chapter 4.

Having looked at the structure of government at independence we should proceed to examine how the post independence governments tried to grapple with the demand

of the South for a federal status.

A constitution commission was formed in December, 1956, but of the forty-six members on the Commission, only three were Southerners; of course, they were hopelessly outvoted whenever the issue of federalism cropped up. In December of the following year the Prime Minister, Abdullah Khalil, having replaced Azhari in a Censur Motion in July 1956, announced to Parliament that the constitution commission "had given the Southern claim for federation very serious consideration, and found that it would not work in this country."⁹

The statement was never substantiated. Naturally the Southern Members of Parliament were disappointed. They walked out together in protest after delivering the following speech:

"Mr. President, Sir, the South has no ill-intention whatsoever towards the North; the South simply claims to run its local affairs in a united Sudan. The South has no intention of separating from the North for had that been the case nothing on earth would have prevented the demand for separation. The South claims to federate with the North, the right that the South undoubtedly possesses as a consequence of the principle of free self-determination which reason and democracy grant to a free people. The South will at any moment separate from the North if and when the North so desires, directly or indirectly, through political, social and economic subjugation of the South."¹⁰

Clearly the South had sought for decentralisation of powers in the form of federation.

It could in no way be misconstrued that the South had wanted to separate from the North. To summarily dismiss the demand was to underestimate the seriousness of the problem and the factors underlying it. In their book entitled, The Problem of the Southern Sudan (1963) Oduho and Deng said:

"Full consideration can have several interpretations, but what the South considered important was good faith, and this they found lacking in the North."¹¹

To rely on good faith when all along there had been none from the beginning was an admission of their naivety on the part of Southerners. Parliament was dissolved and elections were held for the second Parliament in February 1958 without passing a permanent constitution for the Sudan. The constitution commission found it difficult to decide on the form of government to be adopted for the country as stated earlier. The government of Khalil which succeeded Azhari's in the censor motion in 1956 was, however, a coalition of the two parties.

The elections held in February 1957 were direct from single member geographical constituencies. The voters were required to be at least 21 years old. Women did not, however, participate because "it was not considered they [were] sufficiently conscious^{ness} politically".¹²

The results of the 1958 elections were as shown in Table 3.1

1. Umma Party	63 seats
2. National Unionist Party	45 seats
3. Peoples Democratic Party	27 seats
4. Liberal Party	20 seats
5. Southern Independents	16 seats
6. Others	2 seats

Source: African World, May 1958, p. 23.

Abdullah was returned as Prime Minister and a similar coalition was formed as before. But before the new government could settle down to thrash out the outstanding problems, the Army seized power in a military coup d'etat in November, 1958.

II. THE FIRST MILITARY GOVERNMENT IN THE SUDAN, 1958-1964

The nation was taken by surprise by the news of the military takeover on November 17th 1958, when General Ibrahim Abboud made the following announcement:

"You are no doubt aware of the state of degeneration, chaos and instability which threatened the individual as well as the community, and which extended to the Machinery of Government and the Public Utilities without exception. The suffering of the country is solely due to the bitter strife between the parties vying to secure personal gain by all ways and means, irrespective of whether these means are legitimate or not ... We have been patiently watching the successive governments, hoping that the state of affairs will change for the better ... Unfortunately, the situation continued to deteriorate ... As a natural reaction to

the Army and the Security Forces had no alternative but to takeover ... to put an end to the chaos."¹³

In spite of the explanation given by Abboud, there were good reasons to believe that the coup was a sell out by the civilian government to the army. This was evident from the statement of the ousted Prime Minister, Khalil, to the three ex-Members of Parliament from the South.

"My experience has shown me that this country is not yet ready for democracy; I have therefore decided, at the suggestion of my advisors, to hand the reigns of this country to the Army. Though political parties have now been banned I still believe that the Umma people and the people of the South will work in close cooperation."¹⁴

Furthermore, in his writing in 1978, on "The Changing Pattern of Civilian Military Relations in the Sudan", Mudathir Abdel Rahim concluded that "the military takeover was largely brought about through the agency and with the apparent approval of the Prime Minister Sayyid Abdalla Khahil".¹⁵

However, the real objectives for doing so remain a puzzle. Southerners generally believed that the coup was intended to forestall the Southern demand for a federal constitution. The demand for federalism had already appealed to the people in the Eastern and Western Sudan.¹⁶ Moreover, the election manifesto of the Southern Federal Party formed in 1957 was very articulate. English and Christianity were to be recognized on equal terms with Arabic and Islam. An independent Army was to be established for the South with a separate programme for economic development.¹⁷

Certainly these proposals entailed considerable decentralisation of powers, which was contrary to the wishes of the political leaders in the North. To some extent, the Southern suspicion could have been correct because of the statement which the Governor of Equatoria Province, Ali Baldo, made on the anniversary of the November Revolution in 1961:

"We thank God that by virtue of marvellous efforts of the Revolution Government, the country will remain forever united. You should turn a deaf ear to any evil talk which comes from politicians, as you well know what has come out of them in the past few years and you certainly don't want bloodshed again in the South. You are aware that anybody who interferes with public peace and tranquility will be dealt with severely and at once. During the days of Parliament the Southern Parliamentary Members advocated a federal form of government for the South, such ideas are gone with the politicians."¹⁸

The outside world could not really understand what had caused the coup. In the first place it was reported that the 1958 "elections were conducted in an orderly fashion".¹⁹ Secondly, a US mission had found a few months before the coup, that the Sudanese civil service, inspite of its shortcomings was the finest in the Middle East. To claim that the deterioration in the country had "reached the verge of an abyss"²⁰ is hard to believe. Finally, although the situation had deteriorated economically, due to failure to dispose of cotton (Sudan's main cash crop) in 1957 followed by a poor harvest in 1958, there were prospects for recovery. The mere fact of a takeover by the

army could not have been expected to perform any miraculous achievement in those circumstances.

Whatever the real objectives of the coup, three issues were clear. Traditionally, the Umma Party and the National Unionists Party were divided for both political and sectional differences. As seen in Chapter 2 the Umma were identified with the Ansar religious sect whose objective was to have an independent Sudan while the NUP base was from the Khatmiyya religious sect that preferred unity with Egypt; and although they had come together at independence, this was only used as a strategy for expelling the colonialists. Otherwise the series of coalitions between the two parties remained ever unstable. Their foreign policies also differed in that Umma was in favour of US aid while NUP was not. In addition, the Southern problem remained large in the background. So the government felt a military solution would resolve the problem.

A. THE SUPREME MILITARY COUNCIL

On assuming power the military junta issued a series of constitutional order which reorganized the government in the country.

Constitutional order No. 1 established a "Supreme Military Council" as the highest constitutional authority

in the Sudan - in which was vested the legislative, executive and judicial authority. All these powers were delegated by Council to the President. Constitutional order No. 3 suspended the Sudan Transitional Constitution, 1956, dissolved parliament and all political parties. The imposition of the Supreme Military Council was typical of any military government in the third world. The Supreme Council consisted of thirteen military officers headed by the President of the Supreme Council, General Ibrahim Abboud. Thus a highly centralised Governor-General's system of government which we saw in 1899 was repeated some sixty years later.

Initially the Military Government could conceive of no constitutional solution to the Southern problem, thinking the rebellion in the South could be crushed militarily. It was preoccupied with formulating programmes of "Arabisation" and "Islamisation" of the Southern Sudanese. This was the period when the South witnessed the opening of many Islamic institutions (such as "Khalwas" and "Mahdis") all over the region to provide basic and advanced Islamic studies.

Christian missionaries were expelled at short notice from the South in February 1964, under the Missionary Societies Act, 1962.²¹ The Act provided that in order for Missionaries to undertake evangelical duties in the Sudan they needed to obtain licences for doing so from the Minister of Interior. The licences were to be renewed annually.²² However, the renewal of the licences were as a

rule, refused to missionaries in the South. The government accused the missionaries of:

"Implanting in the Southern Sudanese, Christianity, the use of English and the hatred of the North and separatism."²³

The military government attempted to effect some constitutional changes at the local government level but mainly in order to promote participation in government. In December 1959 a reform commission (the Commission on the Coordination of the Central and Local Government) was appointed under the Chairmanship of the Chief Justice, Mohamed Abbu Rannat.

B. The Commission on Coordination of the Central and Local Government, 1959

Ironically, the Commission was composed of the representatives of the Ministries of Defence, Foreign Affairs, Education and Health and not the Ministries of the Interior and Local Government, who were excluded on the grounds that both were subject to enquiry. It was ironical because the Ministries most unfamiliar with matters of local government were expected to recommend suitable changes without the participation of those Ministries involved.

The Commission had broad terms of reference:-

"To carry out an extensive survey of present administrative machinery (local and central) and to submit its recommendations as to the best system from all points of view for an efficient unified administration in the Sudan whether through local government as practised now, centralized government or both." 24

According to President Abboud, with the appointment of the Commission:

"... It [was] hoped that this [would] ultimately pave the way for the constitutional framework which is suited to the Sudanese way of life and [would] avoid evils arising from the unthinking importation and mechanical application of systems from abroad." 25

However, one thing was clear when the Commission was appointed; the presence of the Ministries of Interior and local government side by side had brought about "duplication of work, undefined responsibility, delays in execution, overlapping of duties and extra expenses in the cost of administration".²⁶ Moreover, the Sudanese Government had been preoccupied with this problem since 1953.

The Commission made the following recommendations in 1960:-

1. The structure of Local Government should remain unaltered since there was nothing wrong with it. However, members would not be elected but appointed to the Council since elections produced low grade members.
2. Provincial Administration should be established in

every Province on the basis of the existing provinces. The Provincial Administration was to consist of a Government Representative; a Province Council and a Province Authority (for details see Chapter 4).

3. The Office of the District Commissioner should be abolished; the District Commissioner himself should be incorporated as Local Government Inspector in the single list with the Executive officers of the Council under the Ministry of Local Government. Certainly the presence of the District Commissioner in the local councils was a brilliant idea because it gave the Councils opportunity for wise guidance and supervision from people eminently suited to give these.

4. The Ministries of Interior and Local Government should not be amalgamated because:

"The Ministry of Interior [was] concerned with public security, while the Ministry of Local Government [was] responsible for the development of Local Government in the country and the administration and maintenance of services ... undoubtedly these two Ministries [would] increase every year in a way which [would make] the amalgamation of them in one structure highly impracticable."²⁷

If that was the case, how did problems of duplication of functions and conflicts of jurisdiction arise? It seems the Commission did not consider the relationship between the two Ministries adequately.

The Commission really did nothing other than recommend the establishment of an extra tier of local government at

the Provincial level, contradicting Dr. Marshall's recommendation that the multiplicity of tiers was inappropriate. How this worked out in practice will be fully discussed in Chapter 4.

The recommendations were promulgated by the Military Government into the Provincial Administration Act, 1960²⁸ the implementation of which is also examined in the said Chapter 4.

According to the Minister of the Interior, El Maghboul El Amin:

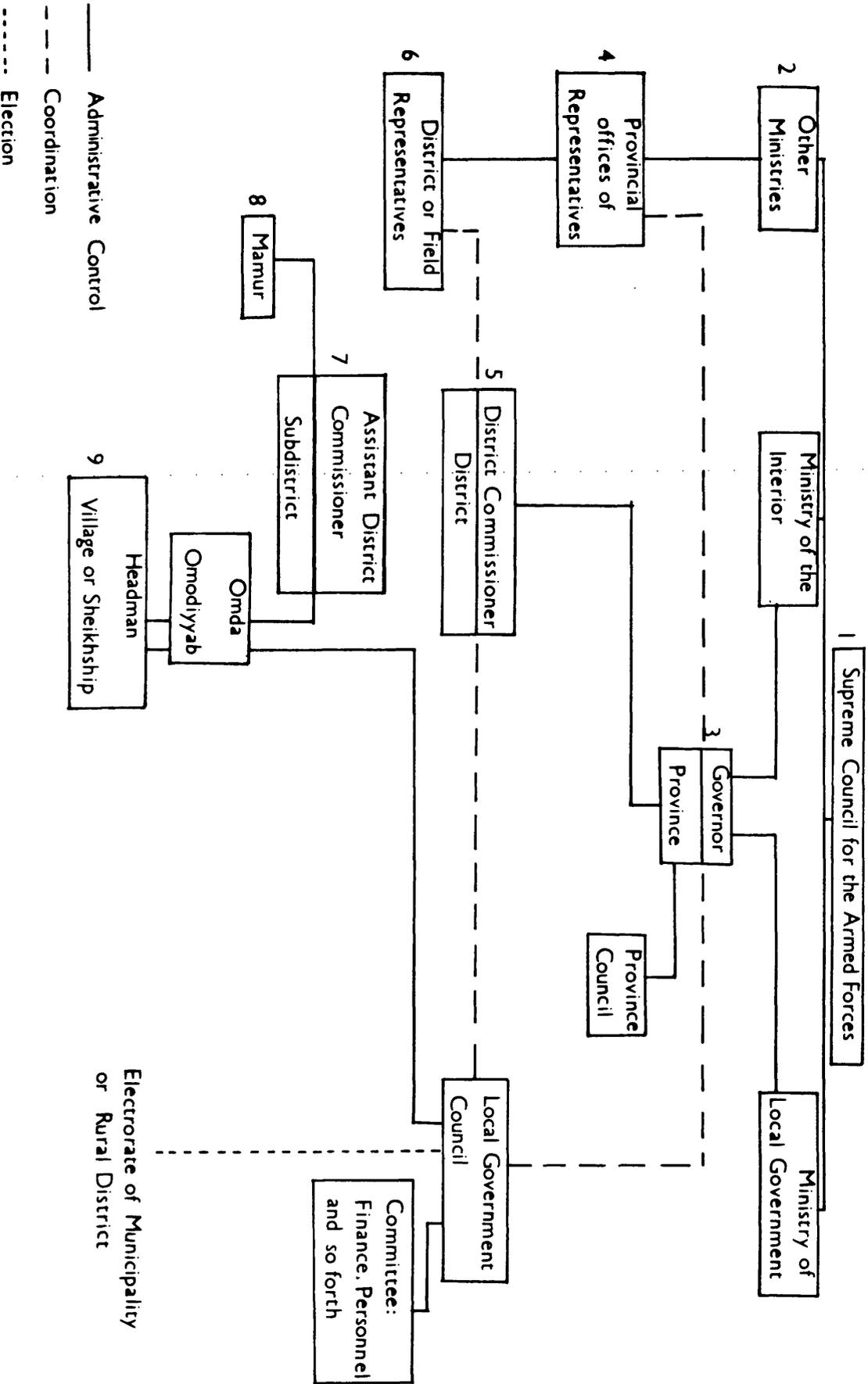
"The aims of the new system are three-fold - first decentralisation, secondly, participation of citizens in the responsibility of governments and thirdly coordination in the working of the different departments at provincial level. The centralization which vests all responsibilities in the Headquarters of the Ministries in the capital is no longer a suitable pattern of government for this age, particularly in a wide and extensive country like the Sudan. The new system has therefore catered for the devolution of a wide and varied range of powers from the Centre, to be exercised at provincial level."²⁹

Decentralisation was therefore an important objective of the 1960 reforms in local government, the success of which is assessed in Chapter 4. The structure of government established is shown in Diagram 3.

The next important step taken by the Military Government was the appointment of "The Constitution Development Commission" announced in December 1961.

Diagram 3

STRUCTURE OF GOVERNMENT 1958 - 1964.



C. The Constitution Development Commission, 1961

The Constitution Development Commission was also charied by Chief Justice Abbu Rannat and was composed of professionals, with one Southerner, Clement Mboro. The terms of reference for the Commission were as follows:-

- "(1) To examine and report on the introduction of elections in Local Government Councils and the determination of the proportion of elected members to each council thereof;
- (2) To examine and recommend proposals to set up a Central Council at a national level and to draw up legislation for a legislative body, some of the members of which to be elected by the provincial councils and the remainder to be selected;
- (3) To recommend the duration of the Central Council;
- (4) To examine any matter arising out of the above-mentioned subjects;
- (5) To have authority to, or seek advice from any competent person."³⁰

Obviously this Commission had nothing to do with decentralisation as can be seen from its terms of reference. The Commission submitted its recommendations in 1962 which led to the promulgation of the Central Council Act, 1962.

D. The Central Council Act, 1962

The Central Council Act, 1962 was used as a temporary constitution for the country. It provided for the

establishment of a Central Council to act as the legislature together with the President of the Armed Forces. The Council was to comprise:-

"Seventy-two members of whom fifty-four [were] to be elected by the province councils and eighteen to be appointed by the president."³¹

The Council was to be chaired by a speaker elected from amongst its members. It was to last for two years only from the beginning of its first session, "or for such other period as may be necessary for the enactment of a new constitution".³² However, it hardly lasted for two years because of the successful civilian coup staged in October 1964.

The Council was empowered to debate any subject matter and pass resolutions thereon. Although the President of the Supreme Armed Forces was not surprisingly empowered to veto the decisions of the Council, they were not justiciable:

"The validity of any proceedings in Council shall not be called in question before any court or other authority on the ground of any alleged irregularity of procedure."³³

According to President Abboud, the members of the Council were the "noble sons and honest servants" whose responsibilities were:-

"(1) the representation and defence of its rights and obligations; (2) preservation of its unity and solidarity; (3) formulation of legislation that coincided with the role it is destined to play and its future hopes; (4) watch and control of its resources to develop and diversify them and guard them against waste; either through oversight or negligence; and (5) last but not least the constitutional development that will

carry it to its goals."³⁴

The main differences between the Central Council Act and the Transitional Constitution or the Self-Government Statute for that matter were in the composition of the executives and the legislatures. Otherwise the rest of the provisions of the Act were similar to those of the previous constitutions. Whereas the Transitional Constitution provided for the Supreme Commission, the Prime Minister and Council of Ministers, the Central Council Act provided for the President of the Supreme Military Council and the Military Council itself. On the other hand, the Self-Government Statute provided for the Governor-General, Prime Minister and Council of Ministers (as already seen).

The composition of the Central Council was different in that it was not only smaller in size but had appointed ex officio members while there were no such members in the previous legislatures of 1953 and 1956. Moreover, whereas the Central Council legislated alone without any other body, the Senate was part and parcel of the previous legislatures.

However, in spite of these differences none of the three constitutions considered decentralisation of powers. Surprisingly, no reference was even made to the Provincial Administration Act, 1960 in the Central Council Act, 1962.

The last effort made by the Military Government was to appoint a National Commission on Southern Affairs in September 1964.

E. The National Commission on Southern Affairs 1964

The National Commission on Southern Affairs was chaired by Ahmed Mohamed Yassin. It had a total membership of twenty-six, equally appointed from the North and the South.

The terms of reference for the Commission were:-

"Without affecting the Constitutional set up and the principle of our unified government, the Commission have to look into the causes which affect the state of harmony between the Northern and Southern parts of the Sudan, and to submit the recommendations necessary to restore confidence, internal stability and national unity."³⁵

Apparently the terms of reference designed for the Commission, especially the opening phrase directing the Commission to make recommendations "without affecting the constitutional set up and the principle of our unified government", was devised in order to preclude consideration of possibilities of decentralisation of government.

The Commission started its work towards the end of the year but before long it had provoked serious controversy which led to the overthrow of the Military Government by a civilian revolution in October 1964. Matters came to a head as the Commission started to gather opinion about government policy towards the South. Not only were the policies concerning the South criticised but other policies

of the government were attacked as well, an example of which was the Nile Waters Agreement signed with Egypt in 1960. Attempts by the government to ban political rallies led to clashes between the police and the students in the University of Khartoum campus during which a student was killed. This incident was interpreted as abuse of academic freedom which offered an opportunity for the opponents of the government to capitalize on - within a week of the Supreme Military Council was dissolved due to extensive civil disobedience organized by the students, all professional groups and trade unions. Abboud resigned three weeks later. The Committee for Public Safety formed by the demonstrators appointed a caretaker government to assume power. According to Edgar O'Ballance, author of The Secret War in the Sudan (1977),

"The Northern politicians were far more interested in ending the military regime than in solving the Southern problem. However, indirectly and unexpectedly, the Southern problem caused the fall of Abboud's government."³⁷

O'Ballance's accurate observation is supported by the fact that even the successive governments were never serious in solving the problem.

III. THE CARETAKER GOVERNMENT, 1965

The caretaker government was representative of the political parties in the Sudan under the leadership of

Prime Minister Sir El Khatim El Khalifa, a moderate, and once a senior Education Officer in the South. It was hoped that his moderate views and old connections with the South would help in resolving the 'Southern Problem', for which his government was primarily formed. Elections were to be held after three months. Two veteran Southern politicians, Clement Mboro and Ezibon Mondiri, were appointed in his Cabinet to assist in the task. The step taken by the Caretaker Government was to convene a Round Table Conference in Khartoum in March, 1965.

A. The Khartoum Round Table Conference, 1965

The Khartoum Round Table conference was attended by the following:-

1. All political parties in the Northern Sudan, namely the Umma; the National Unionist Party; The Islamic Charter Front; The Peoples Democratic Party; The Professional Front; and the Sudan Communist Party.
2. Three political parties from the South which were the Southern Front; and the two wings of Sudan African National Union (the external wing led by Aggrey Jaden and the internal wing led by William Deng).
3. Representatives of the following African countries - Uganda; Kenya; Tanzania; Ghana; Nigeria; and United Arab Republic (as observers).

In his opening address to the conference the Prime

Minister said its aim was:

"To discuss the Southern Sudan question with the view of reaching an Agreement which [had to] satisfy the regional interests of the South as well as the national interests of the Sudan.:³⁷

According to M.O. Beshir, the Secretary-General to the Conference, the phrase to "satisfy the regional interests of the South as well as the national interest of the Sudan" amounted to "a rejection at once of separatism and of the status quo, without this being clearly stated".³⁸ Assuming that the status quo referred to meant the centralised system of government, then the only alternative to centralisation and separatism is some form of decentralisation. However, the conference did not seriously consider decentralisation as an alternative.

The conference began in an atmosphere of hesitancy and hostility; expectedly it was between the Northern and Southern Sudanese who are traditional enemies. The leader of the Peoples Democratic Party, Sheikh Abdel Rahman, was not so enthusiastic about the conference. Discussions almost broke down when Aggrey Jaden, leader of SANU external delivered the following speech:

"The Sudan falls sharply into two distinct areas, ethnic groups, and cultural systems. The Northern Sudan is occupied by a hybrid Arab race who were united by their common language, common culture and common religion; and they look to the Arab world for their cultural and political inspiration. The people of the Southern Sudan on the other hand, belong to the African ethnic group of East Africa. They do not only differ from the hybrid Arab race in origin, arrangement and basic system, but in all conceivable purposes - There is nothing in common between the various sections of community, nobody of shared belief, and

above all the Sudan has failed to compose a single community." 39

Gaden left the conference room in protest soon after delivering this biting statement and flew to Zaire within a couple of hours.

The Southern Front, however, was more diplomatic. It demanded that the people of the South be allowed to exercise their right for self-determination. This demand led the Northern Sudanese Political Parties to fear that the South would opt for a separate state and they signed a joint memorandum stating:

"We reject the request for Plebiscite in the South for the following reasons:
 1. Because the principle for self-determination is a right for the nation and not any section thereof ...
 2. Because the Sudanese Parliament elected in 1953 was truly representative of the Sudanese People and its election was supervised by a respectful international commission. That Parliament has determined the destiny of the Sudan and declared it a free independent sovereign state comprising all the territories of the Sudan with all its known boundaries. As such it was recognised by the international society. Self-determination therefore for the Sudanese people took place in December 1955." 40

Commenting on the issue of self-determination, Abel Alier, a Southern participant at the conference wrote:

"Those who stood for self-determination have been misunderstood, partly because many people did not understand the term "self-determination", and partly because the position taken allowed very little room for the Northern Political leaders to avoid facing the Southern problem. Many thought (wrongly, of course) that this stand meant separation. In a way those who equated separatism with self-determination might have also been right, but only because they suspected that the result of the free choice by the

Southerners might be separation." 41

Whether the meaning of self-determination was misunderstood or not, the arguments of the Northern political parties were invalid. Nowhere is it stated in the international codes that the right for self-determination is limited to a nation. It is a right exercisable by a group of people, which does not necessarily have to be a nation. Had it been limited to a nation only, then Sudan would not have even qualified to exercise it in 1953 when the Sudan was far from being a nation.

A nation is a historically evolved, stable community of language, territory, economic life, and psychological make-up manifested in a community of culture - the ingredients of which are totally lacking in the Sudan. If it is argued that what took place on December 19th, 1955, was the exercise of the right for self-determination, then as we saw at the end of the last chapter Southerners in the Assembly supported the 'independence' motion on the condition that the South would be eventually granted a federal status.

Finally, the SANU internal wing led by William Deng, proposed a federal solution to the problem but the Northern political parties were unwilling to accept anything more than local autonomy. By the time Deng was trying to come down to meet their expectations, they had already run out of patience. In the end, it was 'agreed' that more Southerners should be recruited into the Civil Service, the Police, Army, etc. A University was to be established in

the South and freedom of language and religion was to be promoted.

The real constitutional problem would have been ignored had it not been for observers from the African states who proposed the formation of a working committee. After close study of the problems appropriate recommendations were to be made to the second Round Table Conference in Khartoum to be reconvened after three months.

The acceptance of this suggestion led to the appointment of the famous Twelve-Man Committee whose deliberations are examined further on. Monsur Khalid, Numeiri's Foreign Minister correctly summed up the outcome of the conference as follows:

"... the Northern political parties were not prepared to meet the Southerners half-way. Islamists and Arabists were against the granting of autonomy. Muslim brothers saw the problem in terms of Islam versus Christianity and so continued to pay lip service to national unity."⁴²

Thus the outcome of the 1965 conference was disastrous for the South as it did not achieve any concrete solution. The proposals for decentralisation were rejected by the Northern political parties.

We shall now consider what the Twelve-Man Committee did.

B. The Twelve-Man Committee, 1965

The Twelve-Man Committee was equally representative of the North and the South. The terms of reference given to the Committee were inter alia, identical with the statement the Prime Minister made at the opening of the Conference.⁴³ Unfortunately, the Committee could not render its report within three months as previously agreed. It had a difficult task over a year but finally managed to recommend a system of decentralised government. There was to be a Central Government for the Sudan and a regional government for the South and possibly for other parts of the country as well. The powers of the Central Government as defined by the Committee included:-

- "(1) National Defence
- (2) External Affairs
- (3) Currency
- (4) Communications and Telecommunications
- (5) Foreign Trade
- (6) Nationality
- (7) Customs
- (8) Inter-Regional Trade"⁴⁴

Powers which were to be concurrent to both the Central and regional governments were:-

"i) Security Forces:

1) The National Legislature shall by enactment, organize the security forces. This will include:

- a) Recruitment and use of National Police force which carries out functions assigned to such forces.
- b) The recruitment and use of local police forces.

2) The Head of National Executive shall be the ultimate authority as regards security forces and can in certain circumstances place any of these forces under his direct command.

Subject to 1) and 2) above the region

shall recruit and use the local police force.

ii) Education:

1) The policy of education shall be national and in the hands of the Centre. Police has been defined to include at least the following: Education, Definition of Standard and Qualifications. But as there are some regional peculiarities that reflect on education this fact must be given its due consideration in formulating the policy.

2) That the administration of education up to intermediate level (between primary and secondary schools) should be the responsibility of the region.

3) And that it should be concurrent in the secondary stage so that the Centre and the region may each establish such schools and administer them.

4) That higher education (post-secondary) should be in the hands of the Centre.

iii) Public Health

The Centre should retain:

1) The general policy and planning.

2) Education and training of doctors, the registration and doctors and all the professions attached to the medical profession.

3) Control and supervision of assisted projects.

4) National policy for nutrition.

5) Control over drugs and poisons.

6) Medical research and control of epidemics.

7) Registration of births and deaths.

8) Hospitals: the licensing and supervision for maintenance of the standards is the province of the centre - but the administration is concerned, so that the Centre and the region may each administer the hospitals established by

it."

And the following to be transferred to the Region:

- "1) Control of epidemic disease.
- 2) Environmental health services.
- 3) School health services.
- 4) Health education.
- 5) Maternity and child-welfare services.
- 6) Control of markets.
- 7) Training of village midwives.
- 8) Training of medical assistants and opening of dispensaries.

iv) Antiquities:

Both the Centre and the Region may carry out its excavations.

v) Labour:

- 1) The Centre shall lay down the policy.
- 2) The execution of the policy as laid down in the legislations should be by the region." 45

The Committee recommended the transfer of the following powers to the region:

- "1) Regional and Local Government administration.
- 2) Regional public information.
- 3) Promotion of tourism.
- 4) Museums and zoos.
- 5) Exhibitions.
- 6) Projects: Establishment of local roads, maintenance of main roads - town and village planning.

- 7) Protection of parents, crops and pastures - according to national legislations.
- 8) Protection and development of animal resources - according to national legislations.
- 9) Land utilization and agricultural development in accordance with the national plan for development.
- 10) The study and development of the languages and local culture.
- 11) Commerce and industry and local industries - organization of markets - trade licences, formation of cooperative societies." 46

The Regional Government was to have a legislative assembly and an Executive Machinery. The Regional Assembly was to be directly elected on similar conditions and qualifications as those of the central parliament. Members of the Executive Council in the region were to be elected by the regional legislature. Thus the recommendation was at last in line with the general pattern of distribution of powers in decentralised governments discussed in Chapter 7.

The Committee, however, disagreed over the following points:-

1. The method for the appointment of the Chief Executive for the region. The Northern representatives proposed that the Central Government should nominate two candidates from which the regional legislature would elect one. But the Southern representatives wanted the Chief Executive to be freely elected by the Members of the regional legislature only.

2. There were three options for the number of units into which the Sudan was to be divided.

(i) That the Sudan be divided in four regions, East, West, South and North.

(ii) That the Sudan be divided between North and South only.

(iii) That the Sudan be divided into nine regions based on the existing provincial boundaries (the South would have been divided into three, Baher El Ghazal, Equatoria and Upper Nile).

The issue of financial arrangements for the regional governments was deferred.

The relationships between the Central and regional authorities were defined by stating that sovereignty is granted to parliament:

- "1) to protect the vital interests of the country; and
- 2) to guarantee the coordination of regional legislations and to provide leadership and initiative ... Before any such legislation is passed by parliament there must be free consultations with the regions concerned ... in case of public security emergency occasioned by external or internal threat the centre may either suspend any of the regional powers or dissolve the Regional Assembly provided that in the latter case, elections must take place within one month after the emergency ..."

47

The Committee's report, although detailed and thorough, was not considered by another Round Table conference. It was, however, presented to the newly-elected Government which for reasons best known to itself did not consider the reconvening of a second Round Table conference necessary.

IV. THE RETURN TO PARLIAMENTARY DEMOCRACY, 1966-1968

After the failure of the Round Table Conference, the Northern political parties, in particular the Umma and the National Unionists, pressed hard for elections to be held according to schedule on April 1965. The elections were thus held but they were boycotted by the Southern political parties and the People's Democratic Party. The Southern political parties were obviously disappointed with the outcome of the Round Table Conference. The People's Democratic Party argued that partial elections (with South excluded) would lead to the separation of the South from the North. The results of the elections are shown in Table 3.2.

Table 3.2 NATIONAL ELECTIONS RESULTS, 1965

1. Umma Party	85 seats	
2. National Unionist Party	56 seats	
3. Communist Party	11 seats	(out of 15 seats alloted to graduates)
4. Muslim Brothers	<u>21 seats</u>	
TOTAL	173 seats.	

Note: 60 seats were reserved for the South
Source: African World, July 1965, p. 19.

Mohamed Ahmed Mahgoub of the Umma Party was elected Prime Minister in another coalition government of Umma and

the National Unionists. Mahgoub's government decided to call the all political parties conference to discuss the report of the Twelve-Man Committee.

The All Political Parties Conference, 1966

The All Political Parties Conference was attended by all political parties except the People's Democratic Party, the Islamic Socialist Party and the Republican Party. They boycotted the conference on the grounds that they did not agree with the recommendations of the Twelve-Man Committee. The communists were not invited to the Conference because they were the most extreme opponents of the government in the Northern Sudan.

The terms of reference for the Conference were:

"To consider the points of difference in the Twelve-Man Committee report: the regional geography and the procedure for electing the regional governor; and - to recommend whether the Round Table Conference should be reconvened to reconsider the report of the Twelve-Man Committee, or whether the matter should be referred to the Constitution Committee." 48

At the same time, the government formed a Constitution Committee to draft a permanent constitution for the Sudan.

The Conference was chaired by Mohamed Ali Shingetti, the manipulator of the Juba Conference of 1947. His presence cast much doubt on the real intentions of this conference. The differences of views between the

Twelve-Man Committee were reported to have been resolved as follows:-

1. That the Chief Executive in a region should be chosen by the Central Government after consultation with the region. In other words, three names of candidates were to be presented by the Central Government to the Regional Assembly which would elect one for appointment as Chief Executive. If the Assembly rejected the first three candidates then another list of three would also be presented for consideration. The candidates were to come from within the Assembly itself in which case he would be responsible to both the Assembly and the Head of Government in the Centre. The justifications for this procedure were:-

(i) That the Chief Executive was to be the representative of the Head of State on whom the Central Government was to devolve its powers in addition to his obligations to the Regional Assembly.

(ii) That the appointment of the Chief Executive by the Central Government would be governed by objectivity, efficiency and qualifications necessary for carrying out his duties.

(iii) That the election of the Chief Executive by the region might subject him to political and partisan influence. These reasons do not carry much substance because decentralisation by devolution necessarily means the involvement of the people concerned in the election of their representatives and leaders. To suggest or do otherwise is to undermine or contradict that very

objective.

2. That the Sudan be divided into nine regions on the basis of the existing provinces because it was preferable to start with the existing boundaries which would facilitate the administrative activities within smaller and manageable units. The South, from the Conference's point of view was too large to be administered from one regional capital. Although the conference was right with regard to the size of the South, it had overlooked the meagre financial and skilled manpower capacity the South or even the Sudan for that matter had.

The Conference resolved that the time was "inopportune" for reconvening a Round Table Conference. No reasons were given to substantiate this point. Yet, considering the nature of the problem and the circumstances of the time, no moment could have been more opportune than that. To delay an early solution was to increase the problem. The outcome of the resolutions was apparent in the 1968 Republican constitution.

V. THE CONSTITUTION OF THE REPUBLIC OF THE SUDAN, 1968

The 1968 constitution was unique and controversial. It was Unitary, republican, Islamic and purported to decentralise powers to nine regional governments in the

Sudan allowing any other Regions to form some kind of "a regional association" at a higher level. Unfortunately, the 1969 Military Coup overtook the implementation of the Constitution. Otherwise the structure of government which would have been established under the constitution can be seen in diagram 4. The Constitution did not, however, make any mention of local governments. Presumably local government councils as established under the Local Government Act, 1951 would have continued to stay while the Provincial Administrations created by the Provincial Administration Act, 1960 would have been replaced by the regional governments.

A. The Central Government

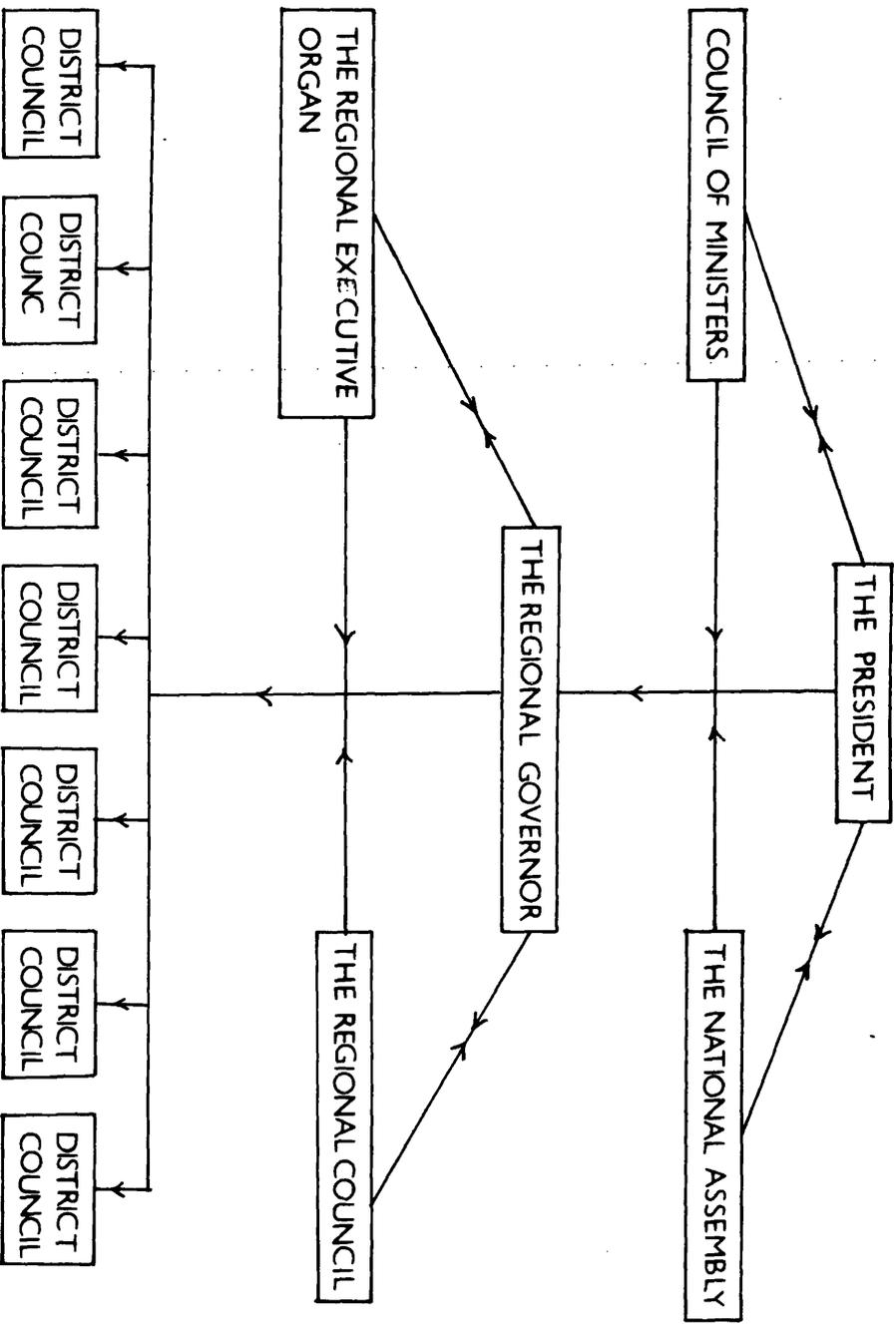
The Central Government was to be composed of the President, the Council of Ministers and the National Assembly.

(1) The President

The President was to be the Head of State elected in a nation-wide referendum for a term of five years. A person could be elected as president for two successive terms of office only. The President was impeachable by two-thirds majority vote of the Assembly. All Executive powers were vested in the president - excisable "in accordance with the

Diagram 4

PROPOSED DECENTRALISED STRUCTURE OF GOVERNMENT UNDER THE 1968 CONSTITUTION



constitution and the law".⁴⁹ The President was to be the Commander-in-Chief of the Armed Forces and he was to appoint and accredit Ambassadors and diplomatic envoys; grant special pardons or commute punishments; legislate by provisional orders and declare states of emergency. This would have been the first time for the Sudan to have a presidential constitution based on the Washington model. The President was to be assisted by a Council of Ministers in the exercise of his functions.

2. The Council of Ministers

The Council of Ministers was to consist of the Prime Minister and the Ministers appointed by the president from amongst the Members of the Assembly. The Prime Minister was to preside over meetings of the Council in the absence of the President and "coordinate the work between all the executive organs of the state".⁵⁰ The Council of Ministers was to be collectively responsible to the National Assembly. It was therefore meant to be a responsible Cabinet.

3. The National Assembly

The National Assembly (the legislative organ) was to comprise members elected by "secret and direct universal suffrage"⁵¹ in accordance with the constitution and the Election Act which was to be enacted. Presumably matters

like the total composition of the Assembly, regulations concerning qualifications of voters and delineation of constituencies were left for the Election Act to state. However, Members of the Assembly had to be Sudanese, not less than 30 years old, of sound mind, literate (without specifying the academic standard), and were not to be "persons who [held] an office of profit under the government" or had been convicted for seven years for criminal offences relating to "honour and morality" or corrupt practices or abatement thereof or offences relating to the security of the State.⁵² The period of the Assembly was fixed at five years the same as that of the President.

B. The Regional System

The regional system was to consist of the regional executive and the regional assembly too. The Judiciary remained a central government matter⁵³. With the exception of the Kingdom of Buganda considered in Chapter 5, the existence of two systems of the judiciary is not a typical feature of any decentralised form of government. Presumably the lower governments received directives from the Central Government.

Thus conflicts of jurisdiction were to be resolved by consultations, conciliations and directives but not by adjudication.

1. The Regional Executive Council

The Executive Council for the region was to consist of the Governor and the Members of the Council.

(i) The Governor

The Governor was to be appointed by the President from "amongst three persons nominated by the President from the region"⁵⁴ and selected by the Regional Council. Presumably in order of priority as recommended by the All Political Parties Conference. If the Regional Council did not support any of the three candidates, the President would have to nominate three others and if the Council still failed to select one within a month, then the President could "appoint one of them to be the Governor of the region".⁵⁵ The exercise of this power by the President would have seriously curbed the autonomy of the regions. The Governor was to be the Chairman of the Executive Council. He was to be "responsible for the distribution of the tasks of the Council and the coordination of its executive policy".⁵⁶ He was to be responsible to the President for the good administration of the region. However, there was no mention as to whether or not he was answerable to the regional legislature. There was even no provision for his impeachment by the legislature. Therefore once elected, a Governor would have to stay in office until a new one was appointed. It would have been impossible to remove a dictatorial or weak Governor which

would have been an abnormal practice.

(ii) The Members of the Executive Council

The Members of the Executive Council were to be selected and removed by the Regional Council, presumably by a simple majority.

"The Regional Council shall select Members of the Executive Council. It May remove any one of them by a resolution passed by the majority of all its Members." 57

The reading of this provision is very strange in that the appointment of Ministers which is usually the duty of the Head of Government, was shifted to the legislature. Where concessions have been made for legislatures to participate in the appointment of the Cabinet, its role has been limited to the confirmation of the nominees of the Head of Government but not otherwise. Such was the practice for example under the Nigerian constitution of 1979.

The Executive Council was empowered to exercise the following powers:-

"(a) The execution of Regional laws passed by the Regional Council within its powers.

(b) To carry out the following matters in accordance with the national laws:-

(i) Protection of forests, crops and pastures,

(ii) The development and protection of animal resources.

(c) To carry out the following matters in accordance with the national laws and national policies:-

(i) Recruitment of the local police and its use in such way that it shall not be in contradiction with the work of the national police, and the national authorities have the right to place all the police force under its direct control.

(ii) The implementation of the educational policy drawn by the national authorities for the regional educational institutions.

(iii) The establishment and administration of regional hospitals with the permission and under the supervision of the National Authorities.

(iv) The development of agriculture and the utilization of land in accordance with the development plan drawn by the National Authorities;.

(v) The execution of the labour policy drawn by the national authorities.

(vi) To carry out the executive matters delegated to it by law passed by the National Assembly or by order of the president of the Republic." 58

Clearly the foregoing provision authorized the regional executive to execute laws passed by both the Regional and national assemblies. The Central Government therefore did not need to have its own regional Offices for matters listed therein; probably the Executive would be directly answerable to the national assembly or the President of the Republic through the Governor of the region for them.

It was difficult from the reading of the law to ascertain whether the Governor or the Regional Executive were responsible to the Regional Council. The relevant section read:

"The Governor shall be responsible before the President of the Republic or the person acting on his behalf for the supervision over the National Services

and he shall be collectively responsible together with the other Members of the Executive Council for the execution of laws and policies drawn by the Regional Council within its powers".⁵⁹

It is clear that the Governor or a person acting on his behalf shall be responsible to the President of the Republic for the national services but then the provision failed to mention to which authority or body the Governor and the Executive Council were collectively responsible.

Was it to the President or the Regional Council?

Logically, it should have been the Regional Council ^{to which} the Regional Executive ~~was~~ to be responsible, but this was not stated. This uncertainty represents a definite loophole in the law.

2. The Regional Council

The Constitution stipulated:

"A Council to be called the Regional Council shall be set up in each Region and shall exercise the legislative power within the Region in accordance with the provisions of this constitution ..."⁶⁰

Members of the Council were to be elected by "direct suffrage with such qualifications as those of the Members of the National Assembly".⁶¹ The composition, status and qualification of the members were to be defined by separate legislation.

The powers of the Council included:-

- "(1)
- (a) Regional and local administration.
- (b) The establishment and administration

of educational institutions up to the secondary level, in accordance with the educational policy drawn by the National Authority covering the syllabuses, planning and the definition of qualifications and standards, and without prejudice to the right of the national authority to establish institutions for secondary education.

(c) The conduct of environmental health services, school health services, maternity and child-welfare services, public health education, the supervision of markets, the control of epidemic diseases, the training of medical auxiliaries and village mid-wives and the establishment of dispensaries.

(d) The organization of local industries, markets, trade licences and the formation of cooperative societies.

(e) Regional public information services.

(f) The promotion of tourism, the organization of exhibitions, museums and zoos.

(g) The carrying out of excavation without prejudice to the right of the National Authority in this field.

(h) Establishment of local roads, maintenance of roads and town and village planning.

(i) The development of local languages and local cultures.

(2) The Regional Council shall have legislative power on any matter delegated to it by the National Assembly ..."⁶²

Thus the powers of the Regional Council were similar to those recommended by the Twelve-Man Committee except that the 1968 Constitution did not contain a list of concurrent powers. Moreover, the powers were defined in greater detail by the Committee rather than under the Constitution. The former would have reduced the chances of conflict of jurisdiction between the central and regional authorities.

The Council could be dissolved by the President in cases of emergency. Thus the regional system was fragile subject to the will of the President.

3. The Relationship Between the National and Regional Authorities

Although the relationship between the central and regional authorities was not precisely defined, it was certain that the regional system would have been completely subordinate to the central government because of the provisions of Section 177.

- "(1) The National Assembly shall have full legislative supremacy for the following reasons:
- (a) To protect the national interests of the country.
 - (b) To guarantee co-ordination between Regional laws.
 - (c) To provide leadership and initiative.
- (2) (Omitted)
- (3) Any regional law which contravenes a previous or subsequent national law, shall be made void to the extent necessary to remove that contravention."

There was a provision for consultation but its wording lacked clarity.

"The National Bills, which repeal a Regional Law or which falls within the jurisdiction of the Regional authorities are submitted, consultations shall be made with the concerned Regions." 63

Matters deferred

The financial and civil service arrangements for the regional systems were deferred for separate legislations which never saw the light of day.

4. Other Important Provisions

In addition to the establishment of central and regional systems of administration, the constitution made other important provisions which would have in one way or the other affected the smooth-running of government and stability of the country. These provisions were in connection with state religion, official language and "source of law".

(i) State Religion and Official Language

Article one of the Constitution stipulated:

"The Sudan is a Democratic Socialist Republic founded on Islamic faith."

Furthermore, Article Three stated:

"Islam is the official religion of the state and Arabic language is its official language."

Thus, Arabic was not only to be the official language for religious use but for the state as well.

The declaration of the Sudan as an Islamic state was probably based on Sadiq El Mahdis' argument in the Constituent Assembly of 1967 that:

"The dominant feature of our nation is an

Islamic one and its overwhelming expression is Arab, and this nation will not have its identity identified and its prestige and pride preserved except under an Islamic revival." 64

This argument chooses to ignore the fact that 40% of the population are non-Muslims vehemently opposed to the imposition of Islam. Furthermore, one wonders how the Sudan could ever claim to become Islamic when the Muslims do not constitute an overwhelming majority of the population as is the case in the Middle Eastern countries.

Moreover, to specify Islam as the State religion was to contradict Section 28 of the very constitution which stated:

"Citizens are equal in rights and duties, chances of earning and work within the qualification based on efficiency and without qualification merely for difference in race, sex or religion."
(Emphasis)

This discrimination in favour of Arabic was also contrary to the interests of the South where English is widely used for educational purposes and the operation of the governmental machinery.

(ii) Sources of Law

According to Articles 113, 114 and 115 of that constitution:

"Islamic Sharia shall be the main source of laws in the State.

... All provisions in any law passed after adoption of this constitution which

contravenes the provisions of the "Kitab and Sura" (Meaning Koran and its chapters) shall be void ...

... The State shall make legislations which shall amend all laws that contravene the provisions of the "Kitab and Sura" and which shall carry into force those provisions of "Sharia" (Islamic) which were not under application ...".

The implementation of the foregoing provisions would clearly have subjected non-Muslims to Islamic law without their consent. It was not therefore surprising that the Southern members walked out of the Constitution Commission in 1968. Abel Alier, spokesman for the Southerners explained:

"Because of the over-riding racial components of the constitution, Christian, Moslem and Pagan, Afro-Negro Southerners appeared unanimous in their rejection of the document. In this situation the Southern representatives ... left the constitution commission at the end of December 1968. We did not wish to be party to a document that emphasized the Arab race, Islamic religion and Arabic culture to the exclusion of other existing races, religion and culture. It would have made a nonsense of the regional autonomy anyway ..." 69

Indeed it would have done so since autonomy necessarily implies the preservation of the uniqueness of the characteristics of the people who are to enjoy the autonomous status. The purpose of autonomy is to enable the people of some particular area whose characteristics be it religious, linguistic, ethnic or cultural to have separate jurisdiction within which they can practice those rights without affecting the unity of the country or being interfered with by the central government. Declaring the

whole Sudan an Islamic state was to directly place Islamic religion and culture as well as Arabic language over and above the other cultures, languages, religions and customs the authority over which the constitution had purported to have decentralised to the regions.

It is therefore clear from the events contained in this chapter that all the successive Sudanese Governments after independence in 1956 failed totally to find any solution to the Southern problem for lack of seriousness on their part. The attempt by Abboud's Military Government to promote popular participation in government in the 1960s was also not successful.

NOTES

1. The Transitional Constitution, 1956, Articles 10 and 11.
2. Ibid., Art. 12.
3. Ibid., Art. 25.
4. Ibid., Art. 32.
5. Ibid., Art. 111.
6. A.H. Marshall, Report on Local Government in the Sudan (April 1949), p. 3.
7. Ibid., pp. 14-15.
8. Sudan Government, Comments on Dr. Marshall's Report on Local Government, p. 13.
9. Quoted by Oliver Albino, The Sudan: A Southern Viewpoint, p. 41.
10. Quoted by Joseph Oduho and William Deng, The Problem of the Southern Sudan, p. 36.
11. Ibid., p. 33.
12. African World, April 1958, p. 27.
13. Ibid., January 1959, p. 25.
14. Oduho and Deng, op. cit., p. 37.
15. Mudathir Abdalla Rahim, The Changing Patterns of Civilian Military Relations in the Sudan, Research Report No. 46, Uppsala, 1978, p. 16.
16. Before the coup, the local leaders in the Eastern and Western Sudan had invited the Prime Minister, Abdullah Khalil, with members of his Cabinet, to their respective regions and told them that they wanted self-government similar to that demanded by the South.
17. See Edgar O'Ballance, The Secret War in the Sudan, p. 47.
18. Quoted by O. Albino, op. cit., pp. 45-46.
19. African World, January 1959, Editorial Page (not numbered).
20. Ibid.
21. Art. No. 10 of 1962.
22. The Missionary Societies Act, 1962, Section 6(1).

23. Godfrey Morrison, Minority Rights Group, Report No. 5 on The Southern Sudan and Eritrea, 1971, p. 14.
24. Sudan Government, Report of the Commission on Coordination between the Central and Local Government, p. 9.
25. Ibid., p. 7.
26. Quoted by Alassam, M., Decentralisation in the Sudan, 1979, p. 21.
27. Sudan Government, Report of the Commission on Coordination, op. cit., p. 23.
28. Art. No. 46 of 1960.
29. Quoted by Henry Maddick, "Decentralisation in the Sudan 1", Journal of Administration Overseas, Vol. 1, No. 2, April 1962, p. 72.
30. Sudan Government, Report of the Constitutional Development's Commission, 1962.
31. The Central Council Act, 1962, Section 4.
32. Ibid., Section 13.
33. Ibid., Section 23.
34. African World, November 1964, p. 19.
35. Op. cit., p. 64.
36. Edgar O'Ballance, op. cit., p. 64.
37. Quoted by Beshir, M.O., The Southern Sudan from Conflict to Peace, p. 12.
38. Ibid.
39. Quoted by Wai Dunstan M., "Political Trends in the Sudan and the Future of the South", in Wai Dunstan M. (ed.), The Southern Sudan: The Problem of National Integration (1973), p. 146.
40. Resolutions of the Round Table Conference on the South, Khartoum, March 16-19, 1965.
41. Abel Alier, "The Southern Sudan Question", in Wai Dunstan (ed.), op. cit., p. 22.
42. Khalid Monsur, Numeiri and the Revolution of Dismay (1985), p. 8.
43. Op. cit., Note 37.
44. Report of the Twelve-Man Committee, 1965, p. 2.
45. Ibid.

46. Ibid.
47. Report of the Twelve-Man Committee 1965, p. 3.
48. Quoted by Beshir, M.O., op. cit., p. 30.
49. The 1968 Constitution Article 59.
50. Ibid., Art. 73 (2).
51. Ibid., Art. 80.
52. Ibid., Art. 81.
53. Ibid., Part VI.
54. Ibid., Art. 170(1).
55. Ibid., Art. 170(2).
56. Ibid., Art. 172.
57. Ibid., Art. 171.
58. Ibid., Art. 175.
59. Ibid., Art. 173.
60. Ibid., Art. 163.
61. Ibid., Art. 164.
62. Ibid., Art. 168.
63. Ibid., Art. 177(2).
64. Quoted by Abel Alier, op. cit., p. 24.

CHAPTER 4THE PRACTICE OF THE EARLIER ATTEMPTS AT DECENTRALISATION,
1922-1969

The establishment and development of Native Administration, local administration, local government, and provincial administrations between 1922 and 1969 have already been analysed in Chapters 2 and 3. This chapter examines the practical operation of these forms of government, placing special emphasis on their structures, compositions, powers and functions, and financial arrangements as well as their relationship with the central government. They will be considered in the order noted above.

I NATIVE ADMINISTRATION

The structure of Native Administration was characterised by the establishment of classes of courts which differed between the North and the South. We shall consider Native Administration in the North before that in the South.

A. Native Administration in the North

The five classes of courts established in the North were as follows:-

1. A Sheikh's court with a Sheikh as president sitting with members.
2. A court of Sheikhs sitting with elders in a Majlis (council).
3. A village court.
4. A court of Sheikhs sitting alone.
5. A Special Court.¹

All courts were established by warrant of the Governor-General except the Special Court which needed the approval of the Chief Justice. The approval was readily available if he thought it would serve the ends of justice. It was therefore dependent on his entire discretion. A "Sheikh" was defined to include "a Nazir, an Omdas or a Shartai".² Shartais assisted the sheikhs.

A Sheikh was otherwise the lowest in the administrative hierarchy. He was informally selected by the Mutual Consent of the village elders. His most important function was to collect taxes, for which he was paid. He also maintained public security, served summonses and rendered reports on health services; impounded cattle; rallied the villages for cooperative labour and was responsible for cattle immunization.

The Omdas was the next man to the Sheikh in the hierarchy. He came to office through elections organized in such a way that the less popular candidates were dropped in turn until he was left alone. He would then be formally appointed by the government. The functions of the omdas included the supervision of the work of the Sheikhs plus such minor judicial work like the settlement of disputes and the service of summonses.

The Nazir was the paramount leader in a district. Unlike the Sheikh and the Omdas, the Nazir's office was hereditary and limited to the sons of the preceding Nazir. The appointment of the Nazir was subject to confirmation by the government after the District Commissioner had ascertained the wishes of the people. Nazirs were people of eminence and were paid salaries by the central government. A Nazir's duty was mainly judicial. He sat in the court of first instance or on appeal or both. However, at the appellate stage the District Commissioner presided over the proceedings. The District Commissioner sat with Nazirs and elders at the appeal court so as to obtain some guidance from the members of the community concerning the customary laws and practices with which he might not be familiar. Nazirs also supervised the observance of tribal customs and tribal movements and settled tribal disputes not formally brought before the courts. Nazirs were directly responsible to the District Commissioner for the working of the tribal machinery of government.

Offences triable by the Sheikh's courts

The offences triable by these courts increased from 1922 to 1928 and 1930s. According to the Schedule of the 1922 Sheikhs Ordinance the list of triable offences were to be divided into "major" and "minor" offences, the gravity of the offence and the area in question. The divisions were left to the entire discretion of the Governor. In doing so he was presumably expected to take into account the social and economic conditions of the areas. Whereas "major" offences were triable by Sheikhs in council with elders empowered to impose a maximum penalty of £25 as fine, "minor" offences were triable by a Sheikh alone on obtaining the consent of the Governor. He could only impose a maximum penalty of £10 as fine. As a rule the Sheikhs had no powers to imprison but the execution of their judgments could be enforced by the District Commissioner or Governor "as if it were the judgment of an ordinary court of law".³

The 1927 and 1928 Sheikh's Ordinances enhanced powers of the Sheikh's by making them competent to try any offence except homicide and offences against the state or relating to the military forces. The excepted offences included kidnapping, abduction, wrongful restraint, offences relating to compulsory unlawful labour, robbery, brigandage, screening thereof, offences against Government Ordinances, and offences involving government servants. The exemption of civil servants from the traditional courts introduced an

element of positive discrimination into the machinery of justice. The Sheikhs could now impose a maximum fine of £100 and imprisonment for 2 years. Two sets of courts, "major" and "minor" were also established under these ordinances. The warrant creating a "Major Court" specified the President, the Vice-President (if any) and the Members, from whom a quorum might be formed, and defined its jurisdiction and powers of punishments. The "minor courts" were also established by warrants but they could only impose a maximum fine of £20. Both courts tried civil and criminal cases.

Appeals from judgment of a Sheikh's court lay to the District Commissioner or the Governor, who could affirm the decision or "cancel or modify the judgment".⁴ If cancelled the judgment could be directed to the ordinary criminal or civil courts. The District Commissioner or Governor could revise or review the decision of a Sheikh's court on his own motion.

As stated earlier, the 1932 ordinance amalgamated all the courts but provided for the establishment of special courts in addition to the Sheikhs courts. This is examined below.

Composition of special courts

The members of the courts were nominated by the

Governor from amongst Sheikhs appointed in the Sheikhs Courts.

A special court was convened by the Governor with the consent of the Chief Justice in any of the following circumstances:-

- (a) Where the accused or defendant and the complainant or plaintiff are subject to the jurisdiction of different native courts.
- (b) Where the accused himself is a Sheikh.
- (c) Where the gravity of the offence exceeded the jurisdiction of native courts.
- (d) When the offence committed was culpable homicide not amounting to murder committed in a tribal fight.⁵

This was a special case presumably due to the frequent practice of tribal fights in Africa.

Penalties imposable by a special court

The penalties imposable depended on the nature of the offence:-

- (i) Offences for which penalties have been defined, the court imposed the stated penalties.
- (ii) If a Sheikh was found guilty, then a fixed penalty of 7 years' imprisonment and a fine of £200 would be imposed.
- (iii) For other offences fixed penalties of 10 years' imprisonment and a fine of £250 was imposed.

However, the sentence of a special court in criminal cases was never final until it was confirmed by the Chief Justice.⁶

The law applicable

The courts were empowered to administer:

"Native law and custom prevailing in the area or in the tribe over which the court exercises its jurisdiction provided that such native law and custom is not contrary to justice, morality or order."⁷

Decisions were arrived at by a special majority of three-quarters of the members agreeing to it or if it was approved by the District Commissioner.

An appeal under the 1932 Ordinance would lie as of right from the decision of native court to another higher native court if so specified in the regulations. However, where there was no such provision an appeal would only lie to another court with the consent of the Governor or the District Commissioner.⁸ On appeal the court of appeal was not allowed to enhance sentence in a criminal appeal unless the appellant had been heard. In any case the sentence was not to be enhanced beyond the maximum limit of the sentence defined. In other words powers of the courts of appeal were the same as those courts of the first instance.

The Chief Justice could authorise the revision of a case at any time on the application of either party.

Revisions were done by a Governor or a magistrate of the first or second class. On revision, the finding or sentence could be altered, cancelled or suspended except:-

- (i) A finding of guilty could not be substituted for one of not guilty.
- (ii) A sentence could not be enhanced before hearing the accused - and only to the maximum limit defined.

The proceedings could also be cancelled and rehearing ordered on revision before the same court or another court provided that if provisions of the code of criminal procedure or the Civil Justice Ordinance were to be invoked then such powers were not to be exercised six months after the judgment.⁹

The execution of judgment depended on the manner defined in the regulations or it could be sent to the civil courts for execution under Section 206 of the Civil Justice Ordinance.¹⁰

B. Native Administration in the South

In the South, three classes of courts were established as follows:-

1. The court of a Chief sitting alone.
2. The court of a Chief sitting with members.
3. A special court.¹¹

Except for the special court, which required the consent of the Governor-General, all other courts were established by the Governor. The Governor-General's consent was readily available "if the ends of justice would thereby be served". In any case circumstances under which ends of justice would be served were laid down as follows:

- (i) Where the accused and the complainant were not subject to the jurisdiction of one Chief.
- (ii) Where the accused was himself a Chief.
- (iii) Where the offence committed was so serious as to exceed the powers of any other court established under the Ordinance.¹²

These circumstances were defined possibly to guide the Governor, who was a layman, in the exercise of his discretion. Presumably the Governor was authorised to establish courts in the South because the Chief Justice sat in Khartoum which is extremely distant from the South. There were two categories of Chiefs appointed by the government on grounds of "good character" and ability.

"Paramount Chiefs" were appointed by the colonial government to supervise and coordinate the work of other Chiefs. Below the Chiefs were the Wakil (sub-chief) and the Mukungu (sub-sub-chief).

The ordinary Chiefs were responsible for peace, order and security in the tribal areas. They were also responsible for the trial of cases in accordance with

customary laws and the registration of marriages.

The Wakil was the second in line and was appointed by the Chief alone; he was usually selected for his ability to control a tribal clan. He forwarded taxes collected by the Mukungus to the Chief. He also helped to maintain peace and order in the community, tried minor cases of theft, fornication and libel according to customary laws. He forwarded other serious cases to the Chief.

The Mukungu was the lowest officer, and was normally appointed by the Chief in consultation with the Wakil. He collected taxes for nominal remuneration.

Thus the functions of Native Administration were primarily judicial. They tried all minor offences in accordance with customary laws. In addition they also tried criminal cases except cases tried by major courts as seen in the case of Sheikhs. They could impose penalties of imprisonment not exceeding 5 years and a fine of £150.¹³

Lately, they rendered very limited social services such as village school education, sanitary and medical services, which were extended to include notification and control of cattle diseases, enforcement of quarantine measures, agricultural development, forestry protection, assessment and collection of taxes, maintenance of minor roads, upkeep of and wells and other sources of water supply, and the supervision and control of local markets.

A case study of Native Administration in the Eastern Nuer District (Eastern Jekaing-Jatjok Section in August 1940)¹⁴ revealed in greater detail how justice was administered by the Chiefs' courts.

The organisation of Chiefs Courts in Eastern Nuer District

The government imposed 19 unpopular Chiefs in the district. They were unpopular because the Nuer preferred a multitude of little independent gut-twats (Headmen) with no Chiefs at all. Each Chief was responsible to the District Commissioner for "preservation of order and administration of justice and the law in his section".

The procedure for raising suits and conducting trials

The theoretical procedure for raising suits was as follows:- The plaintiff was to apply to the Chief of the defendant who would summon the latter, either sitting alone or with such of his Headmen as he wished to call. The case would be heard and judgment delivered. The judgment was to be recorded by the Clerk in the book. If cattle were awarded or any were available, the Chief's police would take them and hand them to the plaintiff. If the defendant resisted execution by force, the Chief would send his police with his badge (a red sash) to the nearest government police post in the district with a demand for government police. The government police would then go and

act under order of the Chief.

The cases varied in gravity but in some the Chiefs arrested the ring leaders of resistance to Native Administration. Severe penalties were imposable on resisting Native Administration police.

The right of appeal to the District Commissioner was known to almost everyone. In practice, however, many cases were side-tracked by the Chiefs. They neglected to summon the defendant by finding other means to cause delay until the plaintiff got tired of waiting and went away. Nonetheless, as reported by the District Commissioner, "on the whole, a good number of cases got settled"¹⁵ and some Chiefs were fairly reasonable.

Appeals

The right of appeal was available to either party. The Court of Appeal consisted of the District Commissioner with selected panel of chiefs. The court sat at three different places.

- (i) Makak (annually).
- (ii) Ajungmir (in April).
- (iii) Ulang (in May).

The appeal fee was P.T. 50 (Sudanese piasties equal to half of a pound) or a Roth. The fee was returned if the appeal was allowed but it would be forefeited if it was not.

Other aspects

The average number of tax payers per Chief was 350. The salary of the Chief was also P.T. 50 per month but this could be reduced if the work was unsatisfactory.

There were two types of native police, the Chief's police and the Head man's police called "Bolisini Luk" and "Bolisini Jal" respectively, although they were integrated on an equal footing. Everyone was paid a salary of P.T. 5 per month (about 1/20th of a pound).

Each Headman had one or two police. The Chief could use any police in his section if he thought fit. The Headmen were allowed to select their own policeman but the opinion of the Chief had to be sought first in case of doubt about the appointment or dismissal of the policeman. The police were used for carrying out execution of judgments, collection of tribute and any other purposes. They were wisely chosen and were usually the close relatives of the Headman.

Every court was to have Clerks and Court Registrars. But there were six Clerks in the district only; so several Chiefs had to share the services of one Clerk.

C. Finances of Native Administration

Financially, Native Administration was initially dependent on subsidies from the central government only. However, some financial powers were delegated to them through stages. At first they were made responsible for tax assessment with the approval of the District Commissioner, then for payment of salaries to the employees out of taxes collected. They were finally allowed to keep the monthly collections in their catchment areas, fix the salaries of the junior staff, make payments, keep accounts and pay the surplus to the central treasury. The revenues were collected from various sources which were grouped as:-

(1) Direct Taxes

These included taxes on land, usur tax, poll-tax, animal tax, tribute and date tax.

(2) Licences

Fees were charged on licences for native liquor, traders business, sale of food and drink, keeping of dogs, market vocations¹⁴, etc.

Court Fees and Fines

These were the fees and fines collected from the Native and Chiefs courts.

Local Dues and Fees

Dues and fees were collected from activities like slaughtering. Public weighing machines, market fees on arrivals, produce, contracts, parking and tethering places, moradas (shows), public landing places, pounds (fees), town rate and conservancy rate.

Elementary Education

School fees were also levied for elementary education.

Miscellaneous

Miscellaneous collections were made from rents and various other activities.

From the collections shown in Table 4.1, it could be said that Native Administration performed fairly well in the collection of local taxes or fees and even if they did face some problems then those were not as much as experienced in the latter years as we shall see. Such a conclusion can be reached because of the fact that the native authorities had surplus funds from their collections.

D. Conclusion

From the above examination, it can therefore be concluded that Native Administration was a limited form of

Table 4:1
REVENUES OF NATIVE AUTHORITIES FOR
THE PERIOD 1913-1919

Classification	Receipts						
	1913	1914	1915	1916	1917	1918	1919
Land Tax	Ls	Ls	Ls	Ls	Ls	Ls	Ls
(a) Taxed Land	45,078	30,447	29,219	46,564	59,000	63,247	42,650
(b) Usur (tithe)	122,430	104,922	123,321	99,930	131,087	183,362	170,100
Date Tax	16,380	17,692	12,361	22,718	25,706	22,703	21,300
Animal Tax	81,599	92,335	79,108	105,774	116,619	141,848	148,950
Tribute from Nomad tribes	30,059	24,147	22,918	36,918	39,167	42,667	36,100
Traders' Tax	7,906	7,622	6,258	8,086	10,292	26,911	36,250
Royalties	89,897	70,733	68,252	82,093	104,126	144,442	128,300
Timber and fire wood	31,273	30,295	24,686	17,314	19,464	66,973	79,100
Rent from government lands and properties	31,273	20,918	33,077	22,843	61,540	41,259	32,000
Miscellaneous	54,805	60,923	56,821	57,616	64,850	80,630	76,000
Total	511,128	460,034	456,021	499,856	631,851	814,042	770,750

Source: Handbook of Anglo-Egyptian Sudan, Naval Staff Intelligence Division 1922, p. 296.

decentralisation of powers because:-

1. Its powers were severely confined to adjudication of cases only.
2. It had no general representative responsibility - the members were appointed but not elected. The practice even discriminated against the elite.
3. It did not have unfettered taxing powers. Its budget was liable to approval by the central government.
4. It was subject to central administrative direction.
5. It had no independent expert staff.

For these reasons the educated class viewed Native Administration as an imperialistic device intended to keep the illiterate in power and isolate the intelligentsia from participation in government. This was more so following the assassination of Lee Stack in 1924 (see Chapter 2), when the colonial authorities did their level best to entrench the position of Native Administration in order to counter the national elites.

II LOCAL ADMINISTRATION, 1937-1950

As we saw in Chapter 2, Local Administration was introduced to overcome the shortcomings of Native Administration. How far was this successfully done?

Local Administration consisted, of course, of four

local councils - the Province Councils; the Municipal Councils; the Town Councils; and the Rural Councils. We shall consider them in turn.

A. The Province Councils, 1943

The total composition of the Province Councils was not fixed. It was left for the Governor-General to decide what number was sufficient to ensure adequate representation. However, not less than half of the members were to be appointed from amongst persons who were government authorities or councils associated with local government authorities. The rest were "representatives of the more important social and economic interests in the province".¹⁶ Whereas the minimum age requirement for the first category of members was fixed at 25 years, that of the latter category was 30 years. This was probably intended to have more matured members on the council. The Governor presided over meetings of the council.

The councils had triple functions as already stated.

1. To act as electoral colleges for elections to the Legislative Assembly for the Northern Sudan. This role was successfully played in practice.
2. To advise the Governor-General in the performance of his duties. However, the impact of the councils in this respect were not noticed. Apparently, they had little or no influence on the Governors.

3. To assist the Governor in the performance of his duties and coordinate the activities of the lower councils. But as Abdel El Rahim Muthathir pointed out, "it was an open secret that the Governors were not enthusiastic in delegating their powers to the Province Councils".¹⁷

Therefore the Councils were stillborn.

B. The Municipal and the Town Councils

The Municipal Councils and Town Councils were similar in structure and organization although different in the degree of urbanisation. Municipal Councils were established in the larger towns, notably Khartoum, Khartoum North, Omndurman and Port Sudan.

Town Councils were, on the other hand, established over smaller towns like Elobeid, Kassala, Wadmedain, Berber, Juba, Wau and Malakal.

Both the Municipal and Town Councils (urban councils) were organized along the British model of local government in that each had a majority of elected members. Though the total membership was not fixed, the smallest council had at least 16 councillors. Local administration ceased to be based upon the tribe to which a person belonged but according to the place he lived, a healthy development.

Voters were required to be at least 25 years old and in occupation of some premises valuing between £3.600 to £6.00. They were also required to have resided in the area for not less than six months. The qualifications for voting appear English in orientation.

1. Meetings

The councils met monthly under the chairmanship of the District Commissioner or some body acting on his behalf. Decisions of the Council were passed by a simple majority vote.

2. Committees of the council

Every council had the following committees:

- i. Finance Committee
- ii. General Purpose Committee
- iii. Works Committee
- iv. Planning Committee
- v. Education Committee

The committees were charged with, of course, detailed planning and submission of proposals to the council for consideration.

3. Powers and functions of the councils

The powers of those councils were comparatively wider than those of the Native Authorities (examined earlier). They were responsible for the provision of services which included the erection and maintenance of minor buildings, sanitation, health, sub-grade schools, maintenance of roads, ferries, water supplies and similar local services.

C. Rural Councils

Rural Councils were established in the non-urban areas with rural population. Examples are the Rural Districts of Gedaref, Eastern Kordofan, Merowe and Dongola. Incidentally, most of Southern Sudan had Rural Councils due to the low level of economic and social development. The composition of these councils differed from one to the other depending on whether the majority of the council members were nominees of the Governor or not. The District Commissioners also acted as ex officio chairmen in them. They met regularly four times a year, conducted in the form of a tribal gathering. Rural Councils had committees too but those were fewer in number compared to the committees of the urban councils.

1. Powers and functions

Rural councils acted^{as} both legislative and executive bodies. They passed more bye-laws than the urban councils did with or without the consent of the Governor. Understandably they were often very far from the Provincial Headquarters where the government was stationed and means of communication were difficult.

2. The staff

The Assistant District Commissioner or the Executive Officer (Mamur) acted as Chairman for these councils. All officers worked on a part-time basis. The rest of the work was done by the members of the tribal hierarchy. As Mukhtar Alassam put it, the councils were "little more than traditional authorities with warrants".¹⁸

D. Finances of Local Administration

Like the Native Administration authorities, the local councils derived their revenue from the same local sources detailed earlier. Those earmarked for the urban councils included:-

- (i) Rates from occupied council property.
- (ii) Market dues.
- (iii) Miscellaneous sources.

They were also entitled to grants from the central government but only for specified purposes which were:-

- (a) Subgrade education; and
- (b) Salaries of seconded officials.

On the whole no regular financial assistance came from the central government. All proposed expenditure was subject to central government scrutiny done by the District Commissioner, the Provincial Governor and the Financial Secretary.

Rural Council finances were entirely dependent on the additional rates to the direct taxes, which were paid to them as remuneration for collecting the taxes. However, certain of their expenses were ear-marked as central government expenditure. These included the administration of justice and the salaries of the tribal hierarchy. The financial supervision over Rural Councils was more stringent than had existed in the case of urban councils. Apparently, the local councils collected sufficient revenue out of which they were able to contribute to the central government in addition to meeting their normal expenses, as can be seen in Table 4.2.

In spite of the improvement in the functions of local administrations and the assignment of more financial responsibilities to them (by enabling them to have independent budgets), the councils were still weak due to lack of corporate personality. They were therefore not autonomous, self-governing councils. They were entirely dependent on powers delegated to them by the Governor. The provision for the Rural Councils, for example, read that the Governor-General could

Table 4:2
THE TOTALS OF BUDGETS OF LOCAL ADMINISTRATIONS 1941-1950

	Revenue		Expenditure	
	Ls	Normal Expenditure Ls	Contribution to Central Government Ls	Total Ls
1941	254,799	153,073	68,149	221,222
1942	270,916	173,785	65,765	239,550
1943	356,149	200,063	110,536	310,599
1944	492,733	283,407	146,712	430,119
1945	646,914	369,937	218,244	588,181
1946	780,145	442,896	241,009	683,905
1947	1,038,319	556,152	325,349	881,501
1948	744,170	423,154	229,714	642,868
1949	838,815	493,360	238,162	131,522
1950	1,433,915	1,120,789	277,739	1,348,528

Source: Sudan Almanac, 1962, p. 77.

"appoint by warrant any person either by name or by office and either singly or associated with the council or anybody of persons as the local authority for any area specified in such an appointment." 19

The local authority so appointed could also delegate its powers to any person or body of persons. Commenting on the Local Administration system, Zarough, K. from the Ministry of Local Government, wrote:

"To dispell the prejudice of the small but growing educated class for whom Native Administration provided little scope, the term "Native Administration" was changed and replaced by Local Administration." 20

The comment implies that the change from Native Administration to local administration was a mere change of name without substance. The comment was too inconsiderate concerning the changes that took place in the urban councils whereby the majority of councillors were elected regardless of their tribal background. Moreover, they functioned according to laid down regulations and not traditional practices.

III LOCAL GOVERNMENT, 1951-1959 .

As we saw in Chapter 3, Local Government Councils established under the 1951 Local Government Ordinance were at different stages. However, those which had reached the fifth stage were responsible local government councils with corporate status. They were therefore autonomous as

required by Section 6 of the Ordinance.

A. The Composition

The composition of every council was to be fixed by the warrant of its establishment. So, the number varied from one council to the other. Usually the total membership ranged from ten to forty, consisting of both elected and appointed members. The Governor was authorised to appoint up to one-third of the total membership. These were normally appointed from retired government officials or persons whose education and experience would ensure success.

Elections were both direct and indirect depending on the level of development in the area where the council was situated. Whereas elections in urban areas were direct from single member constituency wards, those in rural areas were indirect. In case of indirect elections, the Governor nominated the members who could then elect their representatives to the councils.

Generally, the Rural Councils consisted predominantly of traditional leaders elected through the indirect method. This point was also confirmed by Gallobawi Mohamed Sallih:

"In Shukriya Rural Council where I worked as an Executive Officer for more than three years, more than half of the Councillors came from the tribal chiefs, the nazirs, the omdas and the sheikhs. This is not taking place in Shukriya

alone. It is happening in most Rural Councils." 21

Moreover, those in Shukriya Council were entirely from members of the Abu Sin family.

There were also qualification requirements attached to the elected members - which were similar to those of the voters. The qualifications of a voter included being a male, aged 25 years old, of sound mind, and resident in an electoral ward for not less than one year prior to the election. He must have also paid his taxes in the area. The elections were therefore rigid and discriminatory against women. The following categories of people were disqualified from the elections. These included servants of the council except with an order of the Minister, Ministers, members of the judiciary, civil servants, members of the Armed Forces, and undischarged bankrupts.²²

B. Meetings of the Councils

Council meetings were presided over by an elected chairman or his vice or an appointed councillor in the absence of both. The council chairman was selected annually either by appointment or election amongst the members and in accordance with the specific provision of the council's warrant. However, no person was to be eligible for re-election as council chairman for more than three successive elections, unless the warrant so

prescribed.²³ Invariably, Municipal Councils had elected chairmen while local government Inspectors were appointed as chairmen for less developed areas. An appointed chairman usually had an elected vice-chairman. Tribal chiefs or Nazirs were appointed as chairmen in the more rural areas. The quorum was constituted by simple majority and decisions were also passed by simple majority of the members present. The chairman and the vice-chairman had original but not casting votes. A matter was deemed lost if the votes were equally divided.

C. Committees of the Council

Committees are a cardinal aspect of the English system of local government. The appointment of committees was provided for by Section 26(1) of the Local Government Ordinance, 1951.

"A council shall appoint a Finance Committee and a Personnel Committee and may from time to time appoint other committees of general and special nature, consisting of three or more persons for the purpose of examining and reporting on any matter or for performing any act which in the judgment of the council would more conveniently be examined or performed by a committee ...".

Other committees were appointed according to the needs of the council. Those appointed included:-

1. Committee for Planning.
2. Committee for Education.
3. Committee for Public Health.

4. Committee for General Purpose.

Joint Committees could also be convened on agreed conditions in matters of common interest. Co-option of members was allowed in the case of other committees except the Finance Committee. However, the total number of coopted members was not to exceed one third of the total membership. The provision for coopted members was to enable the councils to make use of specialised technical men who were not necessarily members of the council.

D. The Powers and Functions of the Councils

The powers and functions of the councils were listed generally in the schedule to the Act. The councils could also be granted more powers pursuant to subsequent legislations. For example, the Rates Act, 1954 empowered the councils to assess and collect local rates. However, the powers of a particular council were specified in its warrant of establishment which depended on the ability and level of the council.

In the field of public order (not public security) the councils were responsible for the cleanliness, tidiness and public morality in their districts and the ordinary functioning of civil life therein. These included the reduction of juvenile delinquency; eradication of begging and prostitution; the establishment and regulation of markets, slaughtering places, bathing, washing and watering

places; supervision of places of public resort; the construction and upkeep of local roads and bridges; the regulation or prohibition of the carrying of fire-arms and other dangerous weapons. In the sphere of public health the duties of the councils involved the supervision of food and water supplies, the removal and destruction of rubbish, the provision of public lavatories and sewage and sanitary services, the control and assistance of midwifery, the maintenance of dispensaries, clinics, public health centres and ambulance services. In the field of education, the councils had to provide and maintain village schools - and in some councils - elementary schools plus boarding houses for them, clubs and adult education courses, reading rooms and libraries. Concerning agriculture the councils were responsible for the control of agriculture, grazing areas and watering places, the organization of soil conservation measures and measures against agricultural and other pests and granting of loans for agricultural purposes to small farmers and cooperative societies. Finally, the councils also participated in planning for towns and villages - in particular for the provision of public utilities such as water and electricity supplies, public transport, flour mills, oil mills, etc.

In order to carry out these duties effectively, the councils were empowered to make local orders having the force of law in their areas. However, these orders had to be confirmed by the Governor or some other authority appointed by the Minister of Interior.

The conferment of these functions were based on Dr. Marshall's recommendation that:

"Upon all local government authorities should be placed some responsibility for all local government services, except those which [were] so highly technical that the state must administer them direct."²⁴

In other words, no services were to be allotted to a local government authority "unless there [was] likelihood of operating the services effectively".²⁵ As for trade and commerce, Dr. Marshall recommended that a council was "only to engage in business activities when the private sector failed to offer a reasonable service".²⁶ This was a special feature for the Sudan not found in the UK.

E. The Finances

Regarding finances, Dr. Marshall had raised the following caution:

"... one aspect of Local Government which never reaches finality, is the financial relation of the local and central government; the centre thinks that the local authorities expect too much, whilst the local authorities believe themselves to be robbed of their deserts ... a universally accepted relationship is impossible of attainment."²⁷

With this caution in mind, we proceed to examine the financial position of the local councils under the 1951 Ordinance. According to Section 42 of the Ordinance a Council was to:

"[Obtain] its revenue by grant from the government, which may be by assignment of the produce of a tax or rates subject to

a fixed contribution to the government ... and from local rates under the Local Taxation Ordinance, and from any other charge, due, or fee which [was] lawfully payable to the council."

Thus the councils were entitled to grants, taxes, rates, fees, dues and other charges. These will be considered in turn under the general headings of taxes, rates, fees, licences and grants in aid.

1. Taxes

Taxes were provided for by the Local Government (Appropriation of Taxes) Ordinance 1954,²⁸ and the Entertainment Tax Act, 1956.²⁹ The taxes which the 1954 Ordinance authorised the councils to levy and collect were Animal tax, Land tax, Usur tax, Date tax, Tribute tax, Poll tax, House or Hut tax. We shall also consider them in turn.

(i) Animal tax

This tax was levied on animals like camels, cows, sheep, goats, horses and donkeys according to the provisions of Animal Tax Ordinance, 1925.³⁰ The rates varied from one animal to the other. The problem with the collection of these taxes was that the traditional rulers could not obtain the exact statistics of the animals and the individuals who owned them. This was particularly difficult in the case of the nomadic tribes who kept moving

from one place to another with their animals. So the Sheikhs and Omdas had to guess how many animals an individual in the community had. Therefore the taxes collected were not so realistic.

(ii) Land tax (usur tax)

This usur tax was levied on crops grown on rainlands as provided by the Rainlands (Usur) Tax Act 1925. Rainlands included "lands watered periodically by rain or river on which no land tax or rent in lieu of tax leviable".³² The problem with this tax was that its yield depended on the success of the crops. It was profitable before the inflation of the 1970s.

(iii) Date tax

Date tax was levied on "every male date tree which [had] reached the flowering stage and every female date tree which [had] begun to bear fruit."³³ It was the most predominant form of revenue in the Northern Province which was the greatest grower of palm trees. The tax revenues also depended on the yields.

(iv) Tribute tax

Tribute tax was imposed on tribes or sections of

tribes within a province in accordance with the provisions of Tribute Ordinance, 1925.³⁴ The amount was assessed by the Governor from time to time. He also made regulations for the collections by the Sheikhs or Chiefs.

(v) Poll tax

Poll tax was imposed under Hut and Poll Tax Ordinance, 1925,³⁵ on all adult males at a fixed rate of one Sudanese pound per annum. It was easier to collect this tax in the countryside through the traditional rulers than in the towns. Whereas the traditional rulers knew all the adult males in their jurisdictions, no effort was made to round up the adult males who lived in the towns. So some adults managed to evade taxes by migrating to the towns.

(vi) House tax

House tax was imposed under the House Tax Ordinance 1918³⁶ at a rate equal to one-twelfth of the annual rental value of the house. It was immaterial whether the house was occupied or vacant.

(vii) Entertainment tax

As from 1956, the Entertainment Tax Act, 1956, authorised that taxes be "levied and paid to the government

on all payments for admission to any entertainment"³⁷ and "on every complementary ticket issued by the proprietor".³⁸ Exemptions were only allowed for entertainments, the proceeds of which were wholly devoted to purposes of education, charity, religion, science or any other purpose of which notification was given by the Minister.

2. Rates, fees and licences

Rates were imposed under the Rates Act, 1954 on buildings in the relatively developed areas calculated on the basis of the annual rental value of the property. Latrine rates were also collected in addition to those rates. The problem with the rates was the technical difficulty in assessing the value of the property. It needed more technical and experienced personnel.

Fees were collected from many activities such as fees on sale of livestock, manufacture of driving licences, possession of arms, slaughtering and taking goods to the market in general.

Furthermore, the Traders Licence and Taxation of Business Profits Act, 1930³⁹, and the Native Liquor Ordinance, authorised the councils to collect taxes from profits made out of business and fees on sale of native liquor respectively. Table 4.3 shows that the collection from the local sources of revenue were fairly adequate since they could contribute some to the central government

Table 4:3
BUDGETS OF LOCAL GOVERNMENT 1955/56 - 1960/61

Expenditure				
Year	Revenue in Ls	Normal Expend- iture in Ls	Contribution to Central Government in Ls	Total in Ls
1955/56	4,025,868	4,437,628	270,600	3,707,228
1956/57	4,405,899	3,644,388	259,420	3,903,808
1957/58	5,295,245	4,037,439	238,339	4,275,778
1958/59	4,235,746	4,410,189	238,339	4,048,520
1959/60	4,956,022	9,935,385	238,339	5,173,724
1960/61	5,483,549	5,425,823	238,339	5,664,162

Source: Sudan Almanac, 1962, p. 77.

too.

3. Grant in Aid

The Local Government Ordinance, 1951, also entitled the councils to grants from the central government (as seen earlier). The central government gave two types of grants to the councils. These were percentage and deficit grants.

(i) Percentage grants

Percentage grants were meant to cater for the salaries of the senior officials and for services in the field of agriculture, education, health, roads and police in the following proportions.

- (a) 50% for the maintenance of roads outside the boundaries of local council areas and within the responsibility of the central government.
- (b) 75% and 33½% for the salaries of the judiciary and Native Administration respectively.
- (c) 40% and 75% of the cost of Subgrade and Primary education respectively.

(ii) Deficit Grants

Deficit grants were given to "proper areas" or councils in order to bridge the gap between income and

expenditure. (For more details on types of grants, see Chapter 9.) In this connection an agreement was entered into between the Financial Secretary and the Ministry of Local Government whereby the grant system was revised periodically so that actual stages of development in the different areas and the financial resources of those areas could be taken into account. The relatively richer areas had to contribute to the central government according to a formula based on "average revenue minus expenditure - plus - surplus", relying on the figures of the previous four years - a formula whose contradictory nature was described by Buchanan:

"Paradoxically, financial flexibility is maintained in this way; sufficient water is kept in the council bath by having the tap running full on and the plug removed at the same time."⁴⁰

According to Mukhtar Alassam, the total contribution of the rich councils to the central government amounted to £240,000 in the fiscal year 1957/58. It was over and above the total deficit grant given to the poorer councils in the same year.⁴¹ Though paradoxical, the formula was rational in that it enabled an equitable system for the distribution of revenue.

4. Loans

A Local Government Council could with the consent of the Minister of the Interior "raise a loan ... by mortgage, overdraft, issue of stock or any other method ..." ⁴² for approved purposes and according to prescribed conditions.

However, few loans were obtained in practice because the success of an application depended on the availability of funds, the merits of the case, and the ability to repay. Priority was accorded to councils which had insufficient revenues to meet the cost of capital projects that were essential to the well-being of the community. Loans were repayable within a 30-year period at an annual interest rate of 4%, as directed by the Civil Secretary. In fact, the Civil Secretary and the Governor were responsible for the approval of loans which were initially at the disposal of the Civil Secretary. After the creation of the Ministry of Local Government in 1954, an Advisory Board for Loans and Grants was established also in the same Ministry.

5. Financial management

The councils were empowered to prepare their own budgets for approval by the Ministry of Interior and they could spend freely within that budget as long as the expenses were incurred in the proper performance of its assigned duties except in the case of capital expenditure which needed the approval of the Minister of Interior. Understandably capital expenditure requires large sums of money since it is investment-oriented; so closer supervision and control was necessary as will be shown further on. In order to meet certain specific purposes, Dr. Marshall's recommendation requiring each council to open security or equalisation account, renewal accounts and capital account was adopted.

(i) Security or equalisation account

This account was financed from initial grants from the central government "to meet an annual deficiency due to acts of God in tax collection in rural areas".

(ii) Renewal account

The funds for renewal accounts were derived from annual appropriation in the budget. This fund was meant for replacing buildings, plants and machinery.

(iii) Capital account

The sources of revenue for capital account depended on specific appropriations in the budget transfers of surplus money from security account. Other sources included Premia on lease of government lands, proceeds of local assets and items of capital expenditure which were too large to be met out of current revenue but for which the local authority was not allowed to borrow. Strict financial control was maintained through the requirement imposed on the councils to keep proper accounts showing all financial transactions maintained by every council and an annual balanced sheet audited annually by the Auditor General appointed by Minister of the Interior. Apparently no cases of financial

mismanagement or misappropriations were recorded thus showing a high standard of financial management.

F. Staff of the Councils

Section 31 of the Ordinance stipulated that:

"The Minister may make regulations providing for the grading of certain posts under the council or for an establishment of such posts, and governing the employment, status, pay, recruitment, training and conditions of the service of the holders of such posts ... such regulations may regulate secondment between the government and a council, and may provide for the creation of a Local Government Service."

Clearly the Minister had the power to establish a separate local government service with different conditions of service or depend on seconded staff from the central government. In the second case he could prescribe specific conditions which were suitable to those officers too.

In practice the Minister did not create any separate personnel system for Local Government. Staff of the councils were either seconded from the central government or recruited locally. The Ministry of Local Government was responsible for the recruitment, training, posting, transfer and promotion of the senior personnel. Personnel of local government were categorized as officers, officials and employees.

1. Officers

The Ministry recruited officers from amongst university and college graduates after which they were sent for post-graduate studies and training at the School of Administration and Law run by Khartoum University. The school also offered a short summer course for the older Executive Officers who had been recruited earlier with secondary school certificates or less. It was this school which was developed into the Institute of Public Administration in 1960 to offer Diplomas in Public Administration.

2. Officials

The officials were locally recruited by the councils subject to rules and regulations prescribed and approved by the Under-Secretary of the Ministry. This category had a chronic lack of officials to run the various local government services. There were shortages of accounts, public health officials, education officials, etc. There were, however, accountants and bookkeepers recruited as apprentices who were occasionally given courses of instruction at the Ministry Headquarters in Khartoum.

3. Employees

The employees were recruited under the provisions of

The Employers and Employed Persons Ordinance, 1948. They were the unskilled and semi-skilled personnel. Their conditions of service depended on the local conditions, details of which were specified by local government circulars which are not readily available. The Local Government Ordinance, however, made the appointment of two officers mandatory. These were the Executive Officer (E.O.) and the Treasurer.

(i) The Executive Officer

Section 32(1) of the Ordinance stated that "Every Council shall have an Executive Officer ...". The Executive Officer was the Chief Officer of the council. He was responsible for all council matters not specifically assigned to others.

Owing to the importance of his position, it was compulsory for him to participate, but without voting, in every council, committee, and subcommittee meetings unless he had been excused by the chairman. He also kept custody of the council's warrants, all deeds and other council documents. As chief administrator of the Council, he was also its ex-officio Secretary. He was, therefore, the council's "keyman". An Executive Officer had to be well qualified and efficient to guarantee the success of a council. But it was impossible to find enough people at local level for the post. So Executive Officers were seconded from the central government.

(ii) The Treasurer

The appointment of the Treasurer was provided for by Section 33(1) of the Ordinance which stated that "every Council shall have a Treasurer ..." appointed in accordance with the terms of the warrant. He was the financial officer "responsible through the Executive Officer to the Council for the supervision, conduct and carrying out of financial functions and responsibility of the Council".

Like the Executive Officer, he was required to attend all council, committee and sub-committee meetings but also without voting rights. The requirement was deemed necessary to enable him to render advice in the proceedings of the council. Although Executive Officers were allowed to appoint their own Treasurers, the Executive Officer in many cases became the Treasurer himself. This was so because the councils were still too weak to afford this extra post. Incidentally, this practice was encouraged by Dr. Marshall:

"I should prefer to see the continuance of the present practice of allowing the Executive Officer to give financial advice and supervise collections until the authorities' activities are extensive enough to warrant the appointment of a separate highly trained officer."⁴³

Having examined the internal operation of the councils, we shall proceed to consider the relationship of the councils and the central government.

G. Central-local relations

Although the local government councils were corporate and autonomous under the 1951 Ordinance, they were not completely independent. For they remained under the control of the central government in various ways.

Theoretically, the central government was to control the councils through supervision, inspection, approval, direction and suspension. These were broad powers exercised by employees of the central government, specific examples are as follows:-

The Minister had powers to approve local government budgeting estimates and tax rates⁴⁴; confirm local orders⁴⁵, and indemnify executed local government officials.⁴⁶ The Governor had powers to confirm local orders made by the council⁴⁷, and suspend local councils temporarily. The Minister of Finance could make conditions for local councils contribution to central government,⁴⁸ and make loan funds to local councils. The Attorney General had authority to approve local government legal notices. However, most of the powers were excisable by the Minister for local government. But the practice was rather different, most of the powers were never used for two reasons. In the first place, being a large country with inadequate communications facilities, it was difficult to travel. Secondly, although many councils exceeded their

powers, they could not be suspended because that would have led to the political unpopularity of the individuals involved as well as their political parties in the local areas.

So effective control was only maintained through:-

- A. Financial control; and
- B. The role of Ministry of Local Government.

We shall consider them in turn.

A. Financial Control

There were five forms of financial control which can be listed as follows:-

1. Control over revenue and financial resources.
2. Control over expenditure on current account.
3. Control over expenditure of capital accounts.
4. Control through the accounting system and procedure.
5. Control through auditing.

These measures were exercised through several ways. For example in all tax laws the central government determined the rates, assessed and collected the levies. Powers of collections exercised by the councils were delegated by the central government which were limited to the ability of each council. Where opportunity was given for local councils to propose the amounts as in the cases of Dates, Hut, Poll, Animal, Taxes, etc., the Minister of local government had to approve the proposals.

Furthermore all grants and loans had to be determined and approved by the central government.

Expenditure was centrally controlled through the budget. Although a council was empowered by Section 43 to:

"expend monies in the proper exercise of its powers and any matters necessarily incidental thereto, and arising therefrom and to meet its lawful debts or obligations",

this was strictly done within the council's approved budget. For, the vetting was very meticulous and had to be endorsed by the Province authority and finally approved by the Minister of Local Government. Even after the approval of the budget, the council had no authority to expend money appropriated for any item on another item within the budget without the approval of the Minister of Local Government.

In the field of capital account, the councils were obliged to keep "such capital, equalization, renewals, and such other special accounts" as discussed earlier. They were not to incur any capital expenditure without the approval of the Minister of Local Government.

Accounts of the councils were to be regulated. Every council had to:

"Cause proper accounts to be kept in such a manner as shall show all financial transactions of the council in appropriate detail."⁴⁹

The accounting forms, books, receipts etc. were to be specified by the Minister.

Auditing had to be done annually by the Auditor-General as stated earlier.

B. The Role of the Ministry of Local Government

The Ministry of Local Government was established in May 1954 to act, of course, as agent of the Central Government and provide clearing house for local governments and provincial administrations' affairs. It directed, coordinated, supervised and guided the local councils subject to logistical limitations like inadequacy of skilled personnel and so forth. It also acted as a liaison between the local governments and the central government, ministries, departments and other agencies. The experienced and professional senior administrators made special efforts through written circulars and directives which were widely used to explain, comment and elaborate on the way statutory provisions should be applied. According to Galobawi Mohamed Salih, Director of the Institute of Public Administration (1970):

"over 700 administrative local government circulars [were] ... issued from the Ministry of Local Government to the councils and provinces since 1951."⁵⁰

IV PROVINCIAL ADMINISTRATION

As stated earlier, the organisation of Provincial Administration consisted of:-

- A. The Government Representative
 - B. The Province Council
 - C. The Province Authority
- We shall consider them in turn.

A. The Government Representative

The Government Representative was appointed in accordance with the provisions of Section 6 of the Provincial Administration Act, 1960.

"The Supreme Council shall by written order appoint in every province a fit person to be the representative of the Government in that Province."

He was directly answerable to the Supreme Council for "good government in the province". He, too, was responsible for:-

1. The supervision of all government officials in the province.
2. The coordination and reporting of the activities of the government units.⁵¹

Invariably all government representatives were military personnel as recommended by the Commission (see Chapter 3). So competition for the post was limited to the army.

B. The Province Council

The Province Councils were established by warrants issued by the Council of Ministers. Every Province Council

was a body corporate. Their compositions were specified by the warrants. Although they differed from one council to the other, their maximum limit was fixed at 40 members except for Blue Nile Province which had up to 50 due to its extremely large population. The members were comprised of:-

1. All elected chairmen of local government councils in the province.
2. All Heads of Government Units, except the judiciary, in the province.
3. Elected members.
4. Appointed members, who were selected on the basis of their prominence in the area or for their technical and professional experience or for their general experience.

Wallis described the principles for the selection as follows:-

"A list of 'possibles' [would] be prepared by the Province Authority and submitted to the Ministry of Local Government. Thence it [would] go to the Council of Ministers and then to the Supreme Council of the Armed Forces for final approval."⁵²

As for the elected members, they were required to be males, aged 25 years old or above, of sound mind and must have resided in the province for at least 6 months.⁵³

In deciding the compositional arrangements for the councils, the Commission had intended to achieve maximum representation and participation of the different categories of people in the province. Whereas elected

members would speak for the people, the appointed ones would do so for the Supreme Military Council. As for the prominent technical and professional cadre and those with practical experience, their duty was to make available to the Council all necessary information, data and facts based on the knowledge of the laws and regulations.

Unfortunately, however, no provision was specifically inserted for the representation of the tribal leaders, despite their influential role in the society [as seen earlier].

The Commission preferred the appointment of the Government Representative as the ex officio chairman for the councils allegedly on the basis of a Proclamation issued by the President of the Supreme Military Council in February 1959 vesting responsibility for Public Security in the various provinces in the Military Governors. The Commission added that the Chairman of the Council should not be from amongst the members of the Province Authorities in order to ensure the separation of legislative and executive powers.

In spite of these arrangements, the situation was capable of causing friction in that the former civilian governor, who was head of the administration, became subordinate to his military counterpart; a change difficult to accept.

1. Committees

There was no provision for the appointment of any committee, general or specific, which is very uncommon with local government authorities supposed to be modelled along British lines.

2. Council meetings

The council was required by the Act to meet at least four times in a year⁵⁴ at an interval of not more than three months. However, it could convene extraordinary meetings at any time. The quorum would be valid by simple majority and so would decisions be.

3. Powers and functions of the councils

The councils had fairly wide powers and functions which included:-

- (i) The promotion and suspension of local government in the province (tutelage);
- (ii) The approval of annual budget for the local councils and for themselves;
- (iii) Deciding on the amounts and types of taxes and rates to be levied;
- (iv) Passing votes of censure on Province Authority in case of mal or non-execution of council decisions.

In such a case either the chairman of the council in his capacity as the Government Representative or Minister to whose function the default is related could exercise his supervisory powers over the authority.

- (v) Making formal recommendations of important development schemes in the province to the appropriate Minister.
- (vi) Suggesting improvements in all branches of administration.
- (vii) Advising the government on legislation and other matters referred to them by the government through their chairmen.
- (viii) Their powers of first instance as those of local councils ranged from education below secondary school level to culture, social welfare, economic welfare, public health and public works.

Clearly, this was a duplication of functions of the local government councils. However, to avoid any conflict of jurisdiction between the Provincial Administration and the Local Government Councils, the following provision was inserted into the Act:

"... action by the province council shall be limited to instances where the local government authority is unable or incapable of rendering the service, or up to the standard required by the province council."⁵⁵

Although a local council had priority in performing the relevant functions, it could refrain from rendering a particular service for several reasons: it could be due to shortage of funds, lack of competent staff to carry out the

service, the unimportance of the service to the council, low priority or lack of urgency on any other reasonable consideration. As it transpired, financial inability inhibited the local councils from undertaking most of the functions. Conflicts, therefore, either did not arise or were minimal and negligible.

Intervention by the council in cases of default or failure depended on the urgency of the matter. In normal matters, consultation was necessary but if the need for the service was one of great urgency and further delay could have caused some public danger, immediate intervention was necessary.

Generally, the council was empowered to pass bye-laws which were not contrary to the general laws of the country. However, in cases of urgency, the Province Authority could pass them as provisional byelaws as we shall see later. All bye-laws were required to be confirmed by the authorized Minister.⁵⁶

C. The Province Authority

The Province Authority was by itself a body corporate established by the Council of Ministers by a separate warrant from that of the Province Council.

The Authority was composed of the Provincial Governor

as Chairman, and the government officials in the province as ex officio members. The Deputy Governor was the ex officio Secretary. In fact the former civilian Governor and his Deputy occupied these positions. They became representatives of the Ministry of Local Government but not the Ministry of Interior. No Head of Department was to delegate his responsibilities to any of his assistants except during his absence, whereby he was required to be represented by the next senior officer. This was meant to accord importance to the work of the Authority. The members of the Authority were individually responsible to their own Ministries for matters falling outside the jurisdiction of the council. This provision undermined the Authority's collective responsibility to the council.

Powers and functions of the Authority

Unlike those of the council, the functions of the Authority were purely administrative. It executed policies decided by the Council. In addition to that it was empowered to:-

- (i) Study development projects and submit proposals to the council.
- (ii) Prepare the budget estimates for the approval of the council.
- (iii) Submit the proposed laws and regulations to be passed by the council or pass bye-laws of urgent nature as stated earlier.

According to Section 32 of the Act:

"If certain bye-laws are certified by the chairman of the Province Authority as urgent and should not await the next meeting of the Province council, the Province Authority may pass such bye-laws as provisional bye-laws."

Provisional^{al} bye-laws would, however, cease to have force if not confirmed by the Province Council within three months. Provisional bye-laws were normally passed during the lapse period between council meetings.

D. Provincial Finance

On the question of finances for the Provincial Administration, the Commission had stated:

"No doubt the performance of such functions requires some permanent sources of revenue for benefits of these councils and necessitates the conferment of financial powers which would grow as the council themselves develop and prove their ability to carry out their duties and such other functions as may be entrusted to them by the central government." 57

This statement was undoubtedly intended to persuade the government to assign specific sources of revenue to the Provincial Administration in addition to whatever grants they would receive from the central government. In fulfilment of the above suggestion section 37 of the Act assigned the following sources of revenue to the provincial governments:-

- (i) Business Profit Tax, assessed on traders whose profits exceeded £1000 per annum.

- (ii) Royalties on firewood, charcoal, melon seeds and ivory.
- (iii) Excise duty on beer and mineral water.
- (iv) Sugar tax on government profits on monopoly of sugar sales.
- (v) Licences on liquor, firearms, pump schemes, motor vehicles.
- (vi) Fees and charges on ferries and gardens.
- (vii) Rents on government lands, public buildings, electricity and water undertakings.
- (viii) Contributions from (rich) councils.

Almost all sources mentioned above were not different from those of the local councils except for tax on government, on monopoly of sugar sales and excise duty on beer, mineral water, and so forth. It must also be added that a revenue source like rents on government and public buildings was a source of friction between the Provincial and local councils.

In spite of the numerous sources of revenues assigned to the provincial council, the grants in aid, formed the greatest contribution for the finances of a Province. For example, Table 4.4 shows that central government grants to the local government councils constituted 80% of their total revenue between 1966/67 and 1970/71.

Table 4:4
SUMMARY BUDGETS OF THE LOCAL
GOVERNMENT COUNCILS 1966/67 - 1970/71

Financial Year	Total Revenue Ls (a)	Central Financial Aid Ls (b)	Local Revenue Ls (c)	(b) as % of (a)
1966/67	18,385,300	14,249,290	4,136,010	
1967/68	20,645,154	16,237,266	4,407,888	
1968/69	23,882,299	19,466,283	4,416,016	
1969/70	23,865,631	19,271,213	4,594,418	
1970/71	27,870,214	22,821,320	5,048,894	

Source: Kamal Abdel Gadir, "The Development of Local Government Revenues", in Local Government and Development in the Sudan (1976), p. 61.

Predictably, the establishment of Provincial Councils altered the chain of relationship that existed between the local government and the central government. The local government councils became answerable to the Province councils instead of the central government. The chain of the new relationship was explained by the Commission as follows:-

"... the local council is free to exercise its powers, but at the same time is subject to the directives of the province council, which in its turn exercises its powers within the framework of the directives and the general policy drawn up by the Central Government for the whole country an unseparable unit." 58

The introduction of Provincial Administration thus brought in the problems of multiplicity of tiers and in particular the conflict of loyalty of the field officials to the various levels of government. Although every Minister had the power to supervise and inspect over province administration in matters pertaining to his ministerial functions, such a provision only served to clarify the powers of the Ministers but not the loyalty of the officials. A Minister could suspend the decision of a province council subject to reference to the Council of Ministers but that was of course done on the advice of the Departmental Head in the council.

CONCLUSION

The period between 1922 and 1969 revealed the implementation of three patterns of decentralisation. The Native Administration period (1922-1936); the Local Administration era (1937-1950), and that of Local Government as from 1951 onwards. Although Provincial Administrations were established in 1960, they never altered the system of government at the local level.

Native Administration did not only help the colonialists to maintain the status quo but became so deeply entrenched into the politics and administration at local level that they are a force to be reckoned with. In spite of efforts by the 'May regime' to isolate traditional rulers from local government their role and influence has remained quite predominant in tax assessment and collections, settlement of traditional disputes and allocation of land in the rural areas. This will become clearer when we come to Chapters 5 and 6.

The period of local administration was a transitional stage between indirect rule and local government. It shows how Native Administration was gradually transformed into responsible local government councils. The elected and autonomous local government councils which finally superseded the former administrative systems have remained the basis of local government in the Sudan today. Although temporarily abolished in 1971, a retreat was found necessary ten years later - when the idea of Area councils had to be introduced. The establishment of the people's

Province Executive Councils in 1971 were most likely based on the dissolved Provincial Administrations. The sources of revenue assigned to them have since remained with local government too. It remains to be seen in the next chapters how far the 'May regime' revolutionized the system of government in the Sudan.

NOTES

- 1 The Native Courts Ordinance, 1932, Section 5.
- 2 The Powers of Nomad Sheikh's Ordinance, 1922, Section 2.
- 3 Ibid., Section 9.
- 4 Ibid., Section 22.
- 5 The Native Courts Ordinance, Section 13.
- 6 Ibid., Section 13(5).
- 7 Ibid., Section 9.
- 8 Ibid., Section 12.
- 9 Ibid., Section 14.
- 10 Ibid., Section 16(A).
- 11 The Chief's Court Ordinance, 1931, Section 4.
- 12 Ibid., Section 3(1).
- 13 Ibid., Section 8(4).
- 14 See Notes on the Administration of the Eastern Jekaing (Jatjok - section - August 1940) in CRD, UNP/1/8/56, National Archives, Khartoum.
- 15 Ibid., p. 3.
- 16 Province Councils Ordinance, 1943, Section 5(2).
- 17 Mudathir, A.R., Imperialism and Nationalism in the Sudan, p. 208.
- 18 Allasam, M. Decentralisation in the Sudan (1979), p. 11.
- 19 Rural Councils Ordinance, 1937, Section 5.
- 20 See K. Zarough K, "Landmarks in the Development of the Sudan Local Government", in The People's Local Government Journal, Khartoum, Vol. 3, No. 2, December 1973, p. 6; a similar view was also stated by El Tereifi in "Origin and Development of Native Administration in the Sudan" in Sudan Journal of Economic and Social Studies, Khartoum, Vol. 4, No. 1, 1982, p. 16.
- 21 Quoted by John Howell, "Councils and Councillors 1969-1972", in John Howell (ed.), Local Government and Politics in the Sudan, p. 89.
- 22 The Local Government Ordinance, 1951, see the

Schedule.

- 23 Ibid., Section 5.
- 24 Marshall, A.H., Report on Local Government in the Sudan (1949), p. 51.
- 25 Maddick, H., Democracy, Development, Decentralisation (1963), p. 114.
- 26 Marshall, Report on Local Government, op. cit., p. 59.
- 27 Marshall, op. cit., p.
- 28 Ordinance No. 25 of 1954.
- 29 Ordinance No. 51 of 1956.
- 30 Ordinance No. 9 of 1924.
- 31 Ordinance No. 15 of 1924.
- 32 Taxation of Rainlands (Ushur) Tax Ordinance, Section 3.
- 33 See Taxation of Land and Date Trees Ordinance, 1925 (Ord. No. 24 of 1925), Section 4.
- 34 Ordinance No. 10 of 1925.
- 35 Ordinance No. 18 of 1925.
- 36 Laws of the Sudan. Revised edition, Vol. 1, Title VII, sub-title 2, pp. 413-416.
- 37 The Entertainment Tax Act, 1956, Section 3.
- 38 Ibid., Section 6.
- 39 Laws of the Sudan, Revised edition, Title VII, sub-title 5, pp. 427-454.
- 40 See Alassam, Decentralisation in the Sudan, op. cit., p. 17.
- 41 Mukhtar Alassam, "Local Administration in the Sudan 1974", M.Soc.Sc. thesis, University of Birmingham, p. 31.
- 42 Local Government Ordinance, 1951, Section 48.
- 43 Marshall, The Report, op. cit., p. 71.
- 44 Local Government Ordinance, 1951, Section 45.
- 45 Ibid., Section 57(1).
- 46 Ibid., Section 37(2).
- 47 Ibid., Section 57.

- 48 Ibid., Section 42.
- 49 Ibid., Section 49(1).
- 50 Salih, G.M., Central Tutelage over Local Government in the Sudan (1970), p. 12.

CHAPTER 5THE ESTABLISHMENT OF DECENTRALISED GOVERNMENTSBY THE 'MAY REGIME': 1969-85

The 'May regime' came to power with a clear-cut and concrete policy of decentralising powers to the regional and local governments. This was the first time the Sudan was to have three tiers of government - central, regional and local.

Regionalism was initially perceived as the necessary solution to the chronic and endemic Southern problem and through it, the achievement of unity in diversity. When regionalization appeared capable of solving several other problems, the principle was later extended to the whole country with the establishment of five more regions in the Northern Sudan in 1980. Following the 'redivision' of the South in 1983, the number of regions was increased to nine.

The regime also introduced considerable reforms at the local level. The District Councils were abolished and replaced with nine People's Province Executive Councils, established over the then existing provinces but this number was doubled to eighteen by 1976. More reforms came in 1981 following the replacement of the Executive Councils with Area Councils. The intention of doing so was to promote popular participation in government and

isolate the traditional rulers at the same time.

According to the regime, the success of these programmes could only be guaranteed under a socialist system. Hence the establishment of a one-party state democracy run and supervised by the Sudan Socialist Union. The scene had therefore changed drastically from a centralised government in a multi-party system to a highly decentralised administration in a one-party state.

This chapter analyses the establishment of the various tiers of government and the party between 1969 and 1985 as a prelude to more detailed examination and assessment of the implementation of decentralisation during the same period. Where they can illuminate matters appropriate parallels from Tanzania, Uganda, Papua New Guinea and Iraq have been drawn and discussed. It is proposed to consider the establishment of the central government before those of the regional and local governments.

I THE ESTABLISHMENT OF THE CENTRAL GOVERNMENT

On seizing power in a military coup d'etat supported by left-wing politicians the May Revolutionary Government announced on May 25th, 1969:

"... the People's Armed Forces in alliance with other patriotic forces has

seized power ... for the benefit of the people, thereby leading our country into a new era, building its unity, formulating its social life along the lines of socialist development."¹

Phrases like "new era" and "socialist development" were illustrative of the revolutionary changes proposed. The nature of these changes will become clearer as we proceed.

Republican order No. 1 suspended the Transitional Constitution, 1956. Consequently, the Supreme Commission, the Council of Ministers, the Constituent Assembly, the Public Service and all political parties were dissolved. However, no mention was made of the 1968 constitution. Surely it was considered to have been overthrown by the coup. The same order vested sovereignty over the Sudan in the people, but it had to be "exercised on their behalf by the Council of the Revolution".² A Council of Ministers was appointed "to exercise executive and legislative powers" but it was also made responsible to the Council of the Revolution. Numeiri was appointed Chairman of the Council with Babikir Awadallah (former Chief Justice and a Communist) as Prime Minister.

The country was renamed the Democratic Republic of the Sudan to emphasise the intention of the government to "place power in the hands of the people by every means".³ We shall see further below how this was achieved.

Unfortunately, the relationship between the communists and non-communist members of the Council deteriorated very rapidly due to their ideological

differences. After only five months, Awadallah was demoted to Deputy Prime Minister and Republican Order No. 4 was swiftly issued empowering the government to deal firmly with members of the opposition. Hence the new democracy had started with a bad omen!

A. The Establishment of the Sudan Socialist Union

Diagram 5 shows the structure of the Sudan Socialist Union (SSU). Clearly it permeated all hierarchy of government in the country. It was responsible for policy formulation at the local, district, regional and national levels of government as the diagram demonstrates.

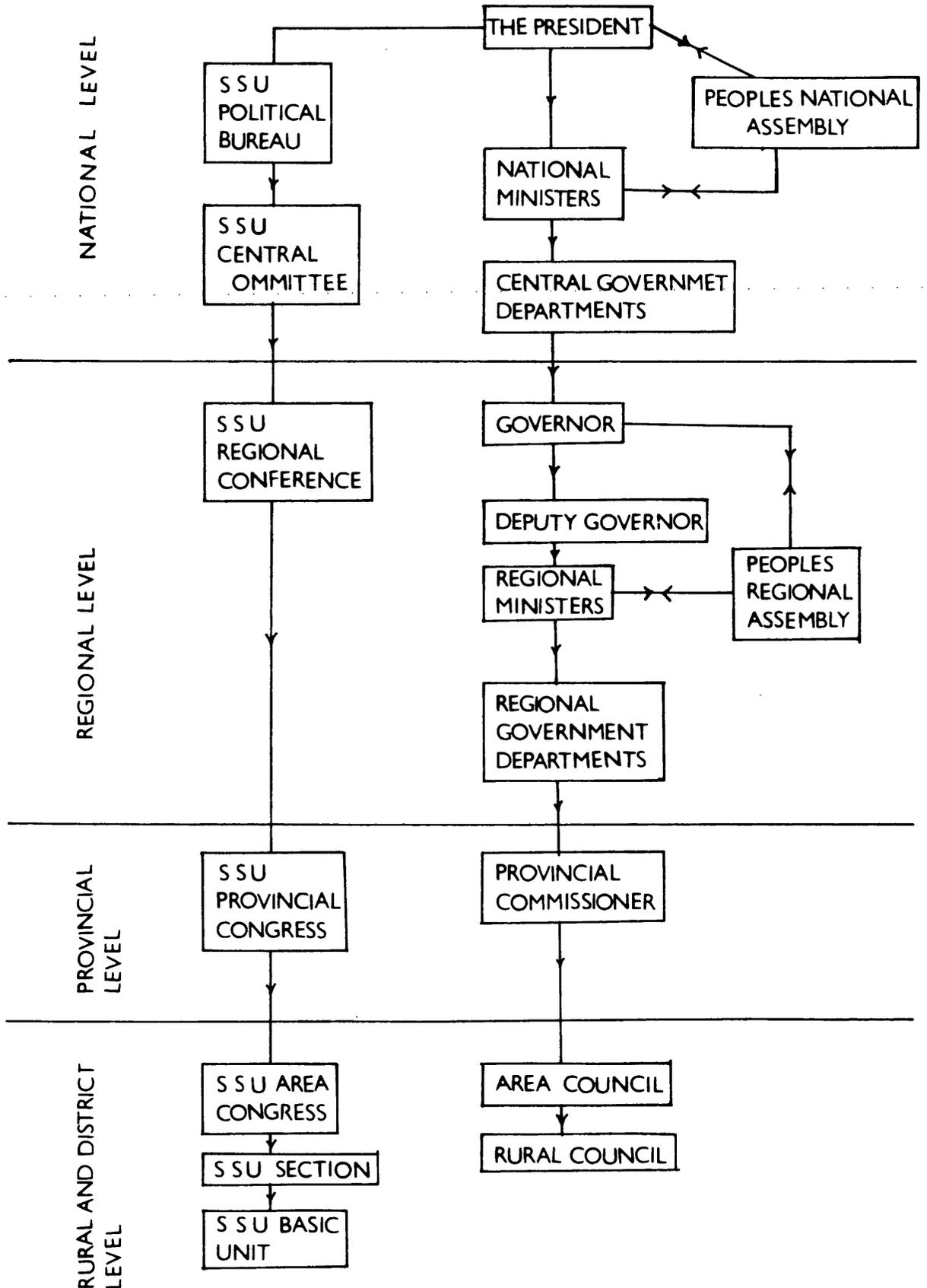
The SSU, the sole political organization in the country was to replace all political parties in the search for a new political system. Its formation was announced by Numeiri in January 1970 and was preceded by a national political organization called the "National Democratic Front". Composed of an alliance of workers, peasants, intellectuals, soldiers, free officers and national capitalists, this was the fore-runner of the SSU.

In January 1972, the government's draft National Charter was adopted by the National Congress of the SSU.

The Charter emphasized the regime's decision "to break free of capitalism". It rejected parliamentary

Diagram 5

GOVERNMENT AND PARTY HIERARCHY IN THE SUDAN. 1969-1985.



democracy in favour of scientific socialism" which would transform the poverty of the masses into prosperity". The Charter also promised to put "power on all its levels in the hands of the people through the application of new democracy"⁴ based on the principle of "enabling the people to exercise their will on all levels, political, social and administrative, in a sober and responsible way".⁵ The Charter stressed the Government's policy of "realizing national unity by ... application of regional self-government within the framework of one Sudan in the Southern part of our country".⁶ This was to be reinforced by the establishment of "popular local government bodies ..." side by side with self-government in the South. Native administration was to be abolished like the sectarian political parties because they denied the people "their basic legitimate rights as the makers of the political life of our country".⁷ It must be emphasised that most importantly, however, the Charter made the SSU primarily responsible for the political, economic and social leadership from the local level in the village to national level in the capital as stated above.

Meanwhile, Republic Order No. 5 was promulgated to act as the temporary constitution.

B. Republican Order No. 5

Republican Order No. 5 contained three important

points relevant to this study.

1. It declared the SSU "the only political organization in the Sudan".⁸ Thus the Sudan, like Tanzania, had become a de jure one-party state.
2. It empowered the president to "issue a decree determining the number of the members of the People's Assembly and the method of their election". Ministers were to be ex officio members of the Assembly. The Assembly was to "prepare the draft of the permanent constitution and approve it by a two-thirds majority during the period to be specified by the president".⁹ The Assembly was to dissolve automatically upon the approval of the constitution as directed by the president. The members of the Assembly were required to be Sudanese, at least 25 years old, literate, of sound mind and enjoying political rights.
3. It vested legislative power in the president and the People's Assembly but the president could "unilaterally carry out the duties of the legislative authority, except the power to amend [this] order until the People's Assembly [was] formed."¹⁰ This provision enabled the president to decree the People's Local Government Act, 1971 and the Southern Provinces Self-Government Act, 1972 which decentralised powers to the People's Province Executive Councils and the Southern Regional

Government respectively, even before the permanent constitution could come into being.

C. The Adoption of the Permanent Constitution, 1973

The adoption of the permanent constitution was preceded by the formation of the People's Assembly. In August 1972, the president issued a decree forming the People's Assembly consisting of 207 members to adopt a draft permanent constitution within six months.

The Assembly consisted of appointed and elected members representing multi-seat constituencies, the revolution's popular organizations, group organizations, skills necessary for drawing up the constitution, people's armed forces and graduate cadres. Seats for regional and popular organizations were based on population distribution in the provinces. Details of the composition of the Assembly are shown in table 5.

According to Collin Legum, the process "produced an undistinguished Assembly in which conservative, middle-class townsmen and traditional rural leaders were strongly represented".¹¹ Although Muslim brothers were included, all pro-Egyptian elements had been removed. Observers felt that the Council "offered no dangers to the regime, even though elements associated with the banned National Unionist Party and the Umma Parties had done

Table 5:
DISTRIBUTION OF PROVINCIAL SEATS

Province	Population	No. of Regional Constitutions	Seats of popular organisations	Appointed Members
Khartoum	945,000	5	3	
Northern	1,220,000	7	3	
Kassala	1,347,000	9	5	
Kordofan	3,027,000	17	7	
Darfur	1,825,000	9	5	
Blue Nile	3,398,000	18	9	
Baker El Ghazal	1,527,000	9	4	
Upper Nile	1,380,000	8	4	
Equatoria	1,403,000	8	4	
Total		90	44	32

DISTRIBUTION OF PROFESSIONAL SEATS

Tenants Association	9
Trade Unions	7
Private Sector	5
Medical Services	1
Agricultural vocations	1
Engineers	1
Veterinary graduates	1
Law vocation	1
Economists	1
Academic researchers	1
Semi Technical employees	2
Teachers of non university higher institutes	1
Secondary Schools and higher secondary schools	3
Elementary school teachers	3
Total	<u>41</u>

Grand total 166 + 41 = 207 members

Source: Voice, Special Issue, vol. no. 15, March 16th to April 1st, 1973, p. 11.

well."¹² The draft constitution was therefore expected to pass without much challenge. The Council held its first meeting in October 1971 but the constitution was not adopted until April 1973 due to disagreements over issues of nationality, the official language, religion and sources of law which were also discussed in Chapter 3. This time these issues were resolved as follows:-

1. Nationality

The Sudan was defined as "a unitary, democratic, socialist and sovereign Republic, and is part of both the Arab and African entities" (emphasis added).

The phrase "part of both Arab and African entities" is ambiguous. How can it be part of both Arab and African entities when the Sudan is politically and geographically an African state. Moreover, the name "Sudan" originated from the Arabic words "Bilād al Sudan" meaning the country of the blacks. There could be no solution to the problem by failing to state the exact identity of the country and its 'peoples'.

2. Official Language

Article 10 of the Permanent Constitution stated that Arabic was the official language of the Sudan, without any concessions for the use of other languages. However,

sections of the Self-Government Act modified this provision by adding that "and English the principal language for the Southern Region without prejudice to the use of any other language or languages ...". The word "principal" has no special meaning in law. Ordinarily it means "the highest in the order of importance. Therefore the status of English could not be equated with that of Arabic. Thus the language problem still remains unresolved.

3. State Religion

The constitution attempted to accommodate the competitive religions of Islam and Christianity in the Sudan in Article 16 thereof:

- "(a) In the Democratic Republic of the Sudan Islam is the religion and the society shall be guided by Islam being the religion of the majority of its people and the state shall endeavour to express its values.
- (b) Christianity is the religion in the Democratic Republic of the Sudan, being professed by a large number of its citizens who are guided by Christianity and the State shall express its values." (emphasis added).

Certainly Islam was meant to enjoy a superior status according to the wording of the provision. This is clear from phrases like "Islam is the religion" and "being the religion of the majority of its people". These religions could have been at par had the the provision stated that both Islam and Christianity are recognized religions in the Sudan without laying more emphasis on one or the other.

4. Sources of Law

Article 9 stated that there were to be two sources of law - "Islamic law and custom". Such a provision was not only extraordinary but contradicted the doctrine of Parliamentary sovereignty which dictates that Parliament is free to legislate on any matter as it deems fit.

II. THE CONSTITUTIONAL BASIS FOR DECENTRALISATION OF GOVERNMENT

In addition to the establishment of the Central Government as already stated, the permanent constitution provided for the decentralisation of government as contained in the Charter for National Action. Firstly, it directed that the Sudan be administered under a decentralised form of government:

"The Democratic Republic of the Sudan shall be administered in accordance with the system of decentralisation as prescribed by law."¹³

To make this possible, it further directed that the Sudan be "divided into administrative units, the numbers, boundaries and names of which shall be prescribed below."¹⁴ Thus the policy of decentralisation was constitutionally enshrined as a directive principle of state policy.

Secondly, it specifically provided for the establishment of the Southern Regional Government:

"Within the Unitary Sudan, there shall be established in the Southern Region a Regional Self-Government in accordance with the provisions of the Southern Provinces Self-Government Act, 1972, which shall be an organic law, and shall not be amended except in accordance with the provisions thereof."¹⁵

The complication in this provision was the reference made to the amendment procedure of the Self-Government Act, 1972, which was to be followed in case of its amendment.

That provision read:

"This Act shall only be amended by a majority of three-quarters of the People's National Assembly and the approval of a majority of two-thirds of the citizens of the Southern Region in a referendum to be carried out in that Region."¹⁶

Three important points are worth noting at this stage:

- (i) Article 8 quoted above, indirectly entrenched the provisions of the Self-Government Act into the permanent constitution.
- (ii) The same article, ipso facto, acknowledged the formation of the Southern Regional Government with retrospective effect.
- (iii) The amendment provision of the Self-Government Act was too rigid. It was even more rigid than that of the constitution which stated:

"... the amendment [of the Constitution] shall come into force if ... passed by the People's Assembly by two-thirds majority and assented to by the President of the Republic."¹⁷

The amendment would only be put to referendum if there was disagreement between the President and the People's Assembly. This raised the issue of whether the Self-Government Act (an organic law) could be regarded as superior to the constitution because of the latter's less rigid amendment provision and the fact that it had omitted to expressly state that it was the supreme law of the land. Although this is still a grey area of the law, no degree of rigidity in any organic law would be expected to elevate it to the level of the constitution even if the constitution failed to expressly declare its supremacy. Organic laws are usually subject to amendment by Parliament but constitutions are amended by a constituent Assembly. Although organic laws are superior to ordinary laws they are by no means equal to status to the constitution. To insert an amendment provision in the Self-Government Act which was more rigid than that of the constitution was quite absurd but the absurdity explains the underlying problem - the deep mistrust between the Northern and Southern Sudanese.

According to Alier, the principal architect of the law:

"... it was of ... ingrained history of mistrust that in 1972 [they] worked out this document so that certain elements would not have the chance to bring discord to the country. There [were] strict provisions about amendments to the Act; this [was] not accidental but based on past experience and foresight."¹⁸

Alier and others were genuinely afraid that due to the long mistrust between Northerners and Southerners, the Act

would be easily eroded if not adequately protected. Hence, the extreme rigidity of its amendment provision. However, the absurdity would have been avoided if the Act had been incorporated into the body of the constitution itself and the amendment thereof entrenched as stated above.

Thirdly, the constitution provided for the establishment of local governments as a third tier of government in the country.

"... the Executive shall by warrant establish, in each province, a People's Province Executive Council having a corporate personality. The law shall prescribe ... their financial legislative and executive powers and functions ... subject to the provisions of Article 8 of the constitution."¹⁹

Despite the fact that local governments had been in existence in the Sudan since 1922 (see Chapters 2, 3 and 4), this was the first time constitutional recognition had been accorded to local governments. Presumably this explains the importance attached by the 'May regime' to the decentralisation of powers to all levels of government.

Following the second constitutional amendment in 1980, certain provisions of the permanent constitution were modified to suit the establishment of regional governments in the Northern Sudan and creation of a government for the national capital. The changes were as follows:-

(i) Article 182 was amended to read:

"A.182(A):

Subject to the provisions of Article 8 hereof; there shall be established in the Democratic Republic of the Sudan the following regions:-

- (a) The Northern Region.
- (b) The Eastern Region.
- (c) The Central Region.
- (d) Kordofan Region.
- (e) Darfur Region."

Their boundaries and capitals were to be defined by a separate law.

Article 13 was also amended to read

"A13(b). The administrative position of Khartoum province shall be prescribed by law."

Thus with the insertion of the 1980 amendments, the constitutional basis for the decentralisation of government in the whole Sudan was complete.

We now proceed to examine how the regional and local governments in the Sudan were established. We shall consider the establishment of regional governments before that of the local governments.

III THE ESTABLISHMENT OF REGIONAL GOVERNMENTS

Regional governments in the Sudan were established at the following different times:-

- A. The Southern Regional Government, 1972
- B. The Regional Governments in the Northern Sudan, 1980
- C. Redivision of the Southern Region into three Regional Governments, 1983
- D. The conversion of the administration of the National Capital into a Quasi-Regional Government, 1984.

We shall examine each of these according to the above sequence.

A. The Southern Regional Government

The Southern Region was defined as:

"The Provinces of Baher El Ghazal, Equatoria and Upper Nile in accordance with their boundaries as they stood on January 1st 1956 and any other areas that were culturally and geographically a part of the Southern Complex as may be decided by a referendum."²⁰

The boundaries of the Southern Region as given above are shown in Map 2.

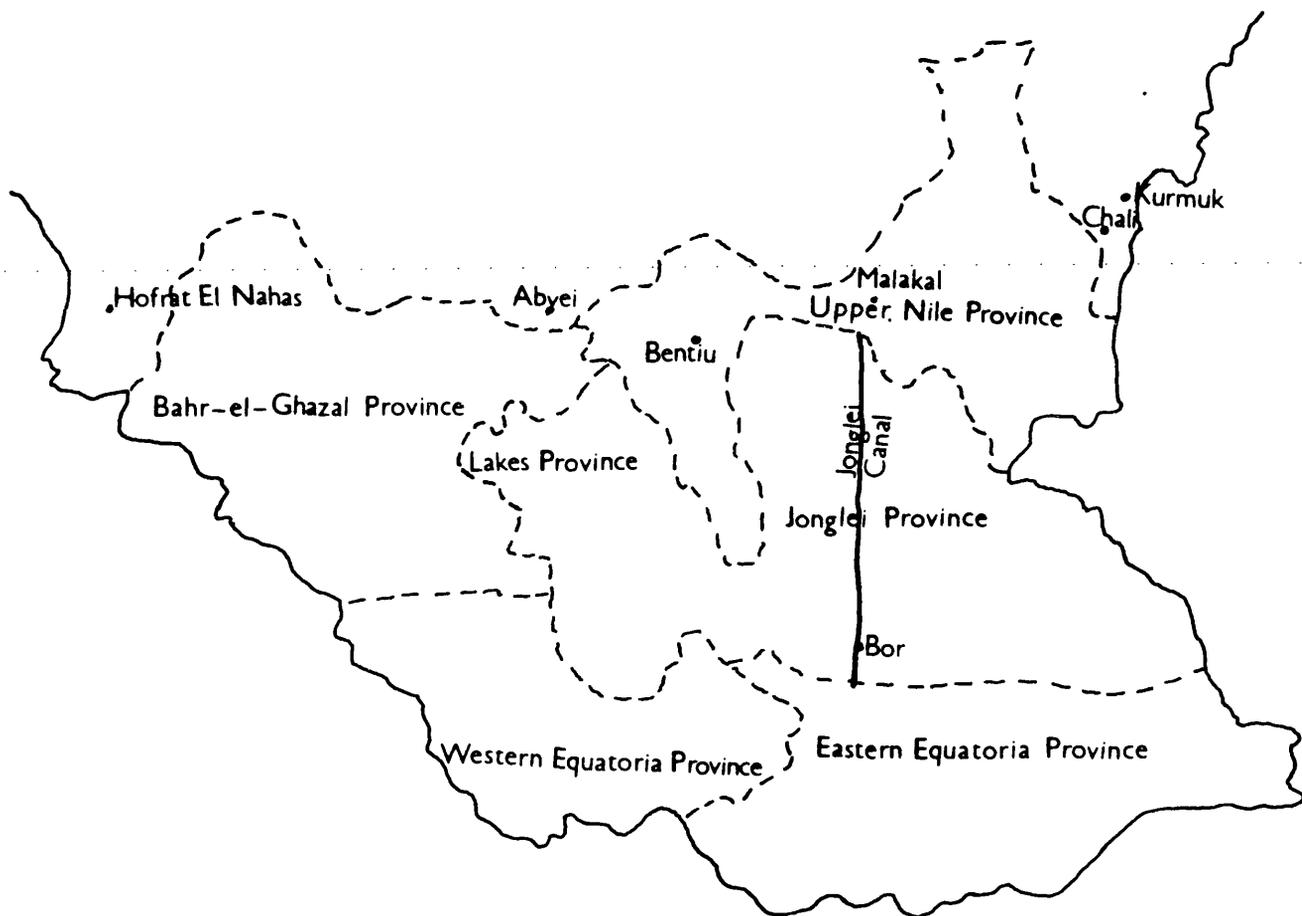
Map 2

Map of the Southern Region

The map shows the new provinces of the South after the redivision of the old provinces in 1976 discussed later. According to the 1956 boundaries, Equatoria included Eastern and Western Equatoria; Baher El Ghazal was composed of Baher El Ghazal and Lakes Provinces; and

Map 2.

THE SOUTHERN REGION



Upper Nile was made up of Upper Nile and Jonglei provinces.

The problem was that the areas regarded as "culturally and geographically part of the Southern Complex" remained in the North. They included Abyei, Kurmuk, Chali El Fil and Kofia Kingi which were transferred to the North either during the colonial period or by Abboud's Military Government. The fact that the promised referendum was never held due to the unwillingness of the central government constituted a serious boundary issue between the North and the South. Therefore a solution to the Southern problem in disregard of an appropriate decision on the future of these areas would still be incomplete.

The South was accorded constitutional status by the memorable 9th June declaration when, two weeks after the coup President Numeiri announced that:

"The Revolutionary Government is confident and competent enough to face existing realities. It recognizes the historical and cultural differences between the North and the South and firmly believes that the unity of our country must be built upon these objective realities. The Southern People have the right to develop in their respective cultures and traditions within a united socialist Sudan. In furtherance of the objectives, the Revolutionary Council and Council of Ministers held joint meetings and after careful discussion of the matter, resolved to recognize the right of the Southern People to a Regional autonomy²¹." (Emphasis added.)

Obviously this declaration was a restatement of the

historical, ethnic, religious, linguistic and other differences between the North and the South mentioned in the introduction to the study. This was the crux of the Southern problem. Yet as we have shown, none of the independent governments in the Sudan had been prepared to admit the facts as the May Revolutionary Government had. The fact that this government accepted to build the unity between the North and the South on these differences constituted one of the most important attempts at decentralisation in the Sudan in the 1970s. The aim was to achieve unity in diversity - diversity of cultures, religions, languages, customary laws and so forth but at the same time remaining one on national matters like foreign affairs, defence, currency and others.

Local autonomy was decided as the form of decentralisation for the South but this was without the prior consent of the Southerners. It will be called that during the period of self-determination in 1955 (see Chapter 2) the Southern Members of Parliament had demanded federation and not local autonomy. Thus, to propose the latter was a substitute solution not likely to prove satisfactory. However, the promised local autonomy was not implemented before the Addis Ababa Agreement in 1972 whereby the Southerners, albeit half-heartedly, accepted the local autonomy. For their bargaining strength was too weak to achieve something greater.

The next day, June 10th 1969, the government announced the Regional autonomy programme as follows:

"(1) The continuation and further extension of amnesty law.

(2) Economic, social and cultural development of the South.

(3) The appointment of a Minister for Southern Affairs.

(4) The training of personnel."²²

The amnesty law was understandably extended to persuade the Anyanya fighting forces to surrender to the government. However, nobody responded to the law until the signing of the Addis Ababa Agreement in March 1972.

An economic planning board and a special budget were created for the South to bring about "rapid socio-economic development". Joseph Garang, a communist, was appointed Minister for Southern Affairs but was executed for participation in the abortive communist coup in 1971. He was succeeded by Alier soon to become the first Southerner ever to be appointed to the post of Vice President. Three Southern Commissioners, Toby Madut, Hillary Logali and Luigi Adwok were appointed to administer the provinces of Baher El Ghazal, Equatoria and Upper Nile respectively. This was also the first time for Southerners to hold commissionerships.

All these arrangements were preliminary to the establishment of the Regional Government in the South which was finally agreed upon in Addis Ababa.

Sudan, 1972

The Addis Ababa Agreement provided a temporary peace formula in the Sudan from 1972 to 1983 between the Sudan Government and the Southern Sudan Liberation Movement (SSLM). The gist of it was to offer the Southern Region local autonomy within a United Sudan as embodied in the Southern Provinces Self-Government Act, 1972.

The circumstances which surrounded the Agreement merit some detail. Though popular, the Revolutionary Government's position was still shaky due to opposition from the Ansar and the communists. The government's response was to suppress both groups, the first in March 1970 and the latter in July 1971. However, these actions alone could not guarantee adequate security for prolonged existence of the regime. Desperate attempts were also made in January 1971 to crush the Anyanya in the South but the government's military ventures were disappointingly unsuccessful. The appropriate alternative was to come to terms with the Anyanya through political rapprochement.

There were political weaknesses on the part of the Anyanya too. They had fought for a long time as divided groups and due to the lack of strong projected image, they were little known outside the Sudan. The unity among Southerners which Lagu had started to build in 1969 was still too weak when pressures started to be exerted for a settlement by negotiations. The pressures which came mainly from church organizations which were also

sympathetic to the movement could not be withstood as there were no other supporters to replace them. A further blow to the SSLM was the loss of Israeli aid which wholly came through Uganda, as a result of Uganda's breaking off of relations with Israel in 1971. So it became apparent to both sides that there was no other option than to reach a negotiated settlement. This led to the signing of the Addis Ababa Agreement which constituted the corpus of the Self-Government Act. The proposed federation between Egypt, Libya and the Sudan when Numeiri came to power had to be abandoned as the South did not want to see the Sudan very closely associated to any Arab countries so as to project the country's own identity. Thus Numeiri emerged as a heroic African leader for settling communal violence through peaceful machinery and thereby set a precedent for other countries afflicted with similar problems. The success of this achievement remains to be evaluated in the following chapters.

Through the Southern Provinces Self-Government Act, 1972, a Regional Government was established in the Southern Sudan. It had an executive and legislative organ called the High Executive Council and the People's Regional Assembly respectively. The judiciary was regarded as wholly a central government organ and thereby omitted from the provisions thereof. But before examining the details of the Self-Government Act we should consider the amendments which were proposed to the Agreement by the SSLM but these were never effected. It is believed that President Numeiri manipulated Joseph Lagu, leader of SSLM

to abandon the idea.

For the sake of comparison with the provisions of the Act some of these crucial amendments proposed were as follows:-

(i) The Agreement was to be "incorporated in letter and spirit into the future constitution of the Sudan".³³ In other words, the Agreement would have become part and parcel of the constitutional document instead of being referred to as an organic law. Thus the Agreement and the constitution would have had equal status at law.

(ii) The Head of the Regional Executive organ was to be called the Prime Minister instead of the President of the High Executive Council. It was not, however, certain whether he would by virtue of that assume premiership of the country but such a possibility could not be ruled out.

(iii) Both English and Arabic were to be the official languages for the Sudan without prejudice to the use of other languages. Making English and Arabic at par would have resolved the language problem in the Sudan.

(iv) The list of national matters was limited to:

1. National Defence.
2. External Affairs.
3. Currency and Coinage.
4. Nationality and Immigration."²⁴

Obviously the Southern Region would have had enormous powers devolved to it compared to what existed under the 1972 Act. (For details see Chapter 7.)

- (v) It was to be mandatory for the President to accede to any request of the People's Regional Assembly so long as it was not adverse to the welfare and interests of the citizens in the South. Such requirement would have guaranteed adequate protection to the interest of the South rather than leaving it wholly to the discretion of the President as was the case in the 1972 Act. (For more details see Chapter 8.)
- (vi) The Regional Executive was to be answerable to the Regional Assembly only. Thus it would not have become a mere agent of the president of the Republic as it later transpired.
- (vii) The central government was to be obliged to transfer a minimum grant of 35% of the total national revenue to the Southern Region for its administration and development projects. This figure would have been probably very irrational considering the fact that the region had also been assigned its own sources of revenue.
- (viii) The region was expressly empowered to borrow from

abroad and receive foreign aid which would have saved the South from having to seek funds through the central government. This would have been a solid achievement.

- (ix) The South was to have its own military command composed of not less than one third of the Sudanese Armed Forces. The Commander was to be the Deputy Commander-in-chief of the Sudan Army. It was to be controlled by the Regional premier. This would have safeguarded the South from unwanted Northern interference.

These amendments which were suggested by the SSLM revealed that the degree of decentralisation favoured by the south resembled more of a confederal government than local autonomy. However, failure of the Sudan government to accept these amendments left the problem inadequately resolved.

According to the Self-Government Act, the southern Region was responsible for:

"The preservation of public order, internal security, efficient administration and the development of the region in cultural, economic and social fields."

These included the development of regional financial resources, organization of regional and local governments, legislation on traditional law and customs, establishment of social services, schools, hospitals, internal security forces, promotion of trade and industry, etc.

By the same Act the region was expressly prohibited from participating in the following matters regarded as of a national nature; such as national defence, external affairs, currency, telecommunications, customs, immigrations, development planning, educational planning, public audit and foreign trade (with the exception of border trade). (For details see Chapter 7.)

The region was empowered to impose local duties and taxes in addition to the grants in aid it was entitled to from the central government. These powers of the regional government were, however, so generally and imprecisely defined that serious contradictions resulted. These problems are examined in Chapter 7.

Comparative Development

2. The Kurdish Region in Iraq

The problem between the Arabs and Kurds in Iraq is very similar to that of Arabs and Africans in the Sudan. Iraq is a fairly large country measuring 169,240 square miles with a population of 14.7 million in 1983.²⁵ The people are of two races (as stated), Arabs and Kurds (indo-Chinese by origin). They are in the ratio of 2 to 1 similar to that between Northern and Southern Sudanese.

The origins of the problem are also traceable to the

colonial period. Iraq became a British dependency in about 1915. A highly centralised system of government was established in Iraq too. As in the case of the Sudan, the British favoured the Arabs and Emir Faisal son of Hussein was proclaimed king in 1921 with the support of the British. That was the beginning of Kurdist discontent which did not explode until 1932. Since then the Kurds have fought continuously for self-government through guerrilla wars and their political party (The Kurdish Democrats) but the Iraqi government made very limited concessions for the Kurds. However, in 1970, President El Baker announced the conclusion of a fifteen-point agreement with the Kurds. The Agreement, inter alia, granted the Kurds more far-reaching concessions than Southern Sudan ever obtained from the Northern government. Examples of some of the concessions incorporated into the "Interim Constitution of the Republic of Iraq, 1970" are given as follows:-

1. The Kurds were to have an autonomous government within the Iraqi Arab socialist state.
2. There was to be a Kurdish Vice-President.
3. There were to be two nationalities in Iraq:

"Iraqi people are composed of two principal nationalisms: The Arab nationalism and the Kurdish nationalism. This constitution acknowledges the national rights of the Kurdish people and the legitimate rights of all minorities within the Iraqi unity."²⁶

4. The Kurds were to establish a legislature and an executive under the said Kurdish Vice-President.
5. The Iraqi National Assembly (the National Council), is composed of people's representatives from the various political, economic and social sectors.
6. The constitution recognises Arabic as the official language but "the Kurdish language is official besides Arabic in the Kurdish Region."²⁷
7. Kurdish culture was recognized and a complete amnesty was granted to those who had been in rebellion.
8. The Kurds were granted proportional representation in the Revolutionary Command Council, the Cabinet, Civil Service and Armed Forces.

Obviously the recognition of two nationalities, two official languages, porportional representation in the National Assembly, the Revolutionary Command Council, the Cabinet, the Civil Service and the Armed Forces could be a useful model for solving the Southern problem in the Sudan.

B. The Regional Governments in the Northern Sudan, 1980

In his keynote address to the Central Committee

Meeting of the SSU in March 1979, President Numeiri proposed the division of the Northern Sudan into three regions - the Western, the Eastern and the Northern. The Southern region was to remain as it was, thereby constituting the fourth region. Certainly the extension of decentralisation to the whole country was seen as a step forward. For to have confined it to the South would have been, as Professor Nuwabueze put it, to place the South and the North in such a way as to pitch them against each other "in a continuous battle for ascendancy".²⁸

Several important criticisms were levelled against the proposal, namely: that it was ill-timed in view of the instabilities of the neighbouring countries (Ethiopia and Chad where secessionist wars were being fought); that the skilled manpower in the Sudan was too scarce to manage more decentralised systems; and that the experience with devolution of powers to the Provinces under the People's Local Government Act, 1971 had proved to be a failure. Though the criticisms were sound, they were disregarded and dismissed as "teething problems". The proposal was adopted and two committees were appointed "to make comprehensive studies and specific recommendations on the proposal for regional government."²⁹

1. The Technical Committee on Regional Government, 1979

The Technical Committee was chaired by Abel Alier, Vice-President of the Republic. It was commissioned to:

"undertake the study of the basic aspects of the Regional Government according to the recommendations and resolutions of the [SSU] Central Committee ..."³⁰

The Committee submitted its recommendations within the year. These were briefly:

- (i) That the powers of the regions should be similar to those of the Southern Region.
- (ii) That the regional governments should have independent sources of revenue in addition to grants received from the central government similar to that of the Southern Region.
- (iii) That there should be four regions in the Sudan, the Eastern, the Central, the Western and the Southern.

The committee thus merely confirmed the President's proposals with minor modification of preferring the Central Region to the Northern Region.

2. The National Committee on Consolidation of Decentralisation, 1980

The National Committee worked under the close supervision of the President of the Republic. Surprisingly the committee did not confine its studies to countries with decentralised systems of government. It looked at the unitary system in the UK, the various federal systems of the USA, the Federal Republic of Germany and Nigeria, as well as the communist system in Russia and the Socialist one in China. It recommended that the federal system in Nigeria was unsuitable for the Sudan

because:-

- (i) The first federal experience in Nigeria had led to devastating civil war.
- (ii) During the military period the State Governors acted as agents of the Federal military governments.
- (iii) That the federal scheme under the 1979 constitution was too recent for any sound judgement regarding its operation.
- (iv) That a federal system, anyway, requires a strong economy which the Sudan did not have.
- (v) That the systems of government in the other countries were alien.

These recommendations would indicate that the committee was finding excuses to stifle any argument for the establishment of a federal system of government in the Sudan.

So, both committees were in favour of regional governments more or less on similar terms with that of the South. Those minor differences between the committee's draft which was adopted as the Regional Government Act, 1980, and the Southern Provinces Self-Government Act are examined and discussed in Chapter 7. In light of these recommendations, the National Assembly enacted the said Regional Government Act of 1980, details of which are considered in Chapters 6, 7, 8 and 9.

Briefly, the Regional Government Act provided for the establishment of five regional governments in the Northern

Sudan instead of three. These included the Northern, Eastern, Central, Kordofau and Darfur Regions. Historical differences and competitive interests between the Eastern and Northern Regions and between Kordofan and Darfur led to their desire for separate regions. The legislative and executive powers including financial ones as stated earlier were similar to those of the Southern Region except for the said differences. Thus the Sudan had a total of 6 regions by 1980.

Comparative Development

3. The Baganda Kingdom in Uganda

Unlike the Sudan, Uganda is a very small country of about 236,000 square kilometres with a population of 13 million people in 1981.³¹ The Baganda are a tribe occupying the central part of the country around Kampala, the capital.

At the time of its occupation, the British made an agreement with the King of the Baganda (the Buganda Agreement, 1900) whereby the Baganda enjoyed a special constitutional status in the whole country. The autonomous status of the Baganda are in some ways similar to the local autonomy granted to the South in 1972. At the time of independence in 1962, the Agreement was incorporated into the Uganda Constitution 1962 as a schedule. Other kingdoms were also established for

Ankole, Bunyoro Toro, and Busoga but their powers were inferior to those of the Buganda Kingdom, especially in terms of financial responsibilities and range of activities assigned. Their relative inferior status was similar to that of the regions established in the Northern Sudan in 1980 when compared to the South.

The Buganda constitution provided, inter alia, for:-

- (i) The establishment of Buganda Government within Uganda under the Kabaka (King).
- (ii) There was to be a Lukiiko (Legislative Assembly) composed of appointed, elected and ex officio members. The Kabaka was to appoint six members and the saza chiefs (not exceeding twenty) Members of the Kabaka Council of Ministers were to be ex officio members of the Lukiiko.
- (iii) The Kabaka was to be elected by a majority vote in the Lukiiko. However, the range of candidacy was to be limited to members of the royal family, and in particular the descendants of Kabaka Mutesa I.
- (iv) The "Council of Ministers"³² (the executive organ), commonly referred to as the "Ministry for Buganda" consisted of the Katikiro (Prime Minister), other Ministers and the Attorney General for Buganda.
- (v) Kabaka's Government also had a Public Service Commission.

- (vi) Powers of the Buganda Government included provision of health services, education, works, internal security etc.
- (vii) The government had a separate budget with its own sources of local revenue. However, customs, import duties and major sources of revenue which normally accrue to central governments were excluded.

In spite of the difference between the Buganda Kingdom and the Southern Region due to the monarchical status of the former, the Prime Minister and the Attorney General, the rest of the provisions were similar to those of the Self-Government Act. What emerges from the comparison is that the Buganda Kingdom had more impact on national politics of Uganda than did the Southern Region on the Sudan as a whole. There were three obvious reasons for this difference. The first was that the Kabaka was the President of Uganda more or less by virtue of his position as King, and acted as the (ceremonial) Head of State.

Secondly, members of the Lukiiko were elected to represent the Baganda in the National Parliament. So they behaved as delegates of the Buganda rather than as representatives of the people. Finally, the location of Buganda in a rich fertile area offered a bouyant financial base for the autonomous region. Accordingly, it was financially more powerful than the Southern Region which had a very poor tax base (for details see Chapter 9).

This privileged position of Buganda led to the 1966 constitutional crisis in Uganda whereby the kingdom was destroyed. It therefore exposes the dangers inherent in imbalanced administrative arrangements.

C. The 'Redivision' of the Southern Region, 1983

The 'redivision' of the South was and still is a controversial and explosive issue. Basically, three important reasons are identifiable for the 'redivision' of the Southern Region in 1983. The first two were internal, namely tribal conflicts over land use and the domination of the political machinery by the Dinkas being the majority tribe in the South. The third was an external factor from the North. Clearly political division of the South would guarantee the Northern superiority in the Sudan above challenge.

In his opening address to the SSU in March 1981, President Numeiri suggested:

"The South has led the Sudan successfully on the path of regionalisation. Now that the devolution of powers has become a reality in the North, which has now five regions ... is it not time that we consider the possibility of devolving administration in the South itself? ... the proposal would bring administration nearer to the people and make government more efficient, given the vastness of the region. This would be in keeping with the resolutions to hand power to the people ... it might be a good way of avoiding Southern Region's administration by a single ethnic group."³³

Numeiri's provocative arguments were however very general. We shall examine the main reasons for the division in turn.

1. Domination of the Regional Minority 'Peoples'

The practice of the domination of regional minorities by the regional majorities is not strange in Africa. It was the case in Nigeria for several years when the minority tribes surrounding the Hausas and the Fulaunis were ever dominated by those major tribes. This problem has, however, been finally resolved by the division of Nigeria from 4 to 12 states in 1967 and 19 states in 1976.

The Sudan did not, however, learn any lessons from Nigeria. The Southern Provinces Self-Government Act did not offer adequate protection to the regional minorities either. Apart from a few "Human Rights" provisions offering guarantees of "equal opportunity of education, employment, commerce and practice of lawful profession" and the prohibition of discrimination on grounds of "race, tribal, origin, religion, place of birth or sex",³⁴ the Act went no further on this matter. Considering the heterogeneous nature of the South (see Introduction), adequate protection for the regional minorities was necessary.

These "Human Rights" provisions moreover proved to be inadequate. The minority tribes in Equatoria and Baher El

Ghazal Provinces felt aggrieved by the over-representation of the Dinka tribe in the government. The ex-President of the High Executive Council, Joseph Lagu, in an interview with Sudan in 1980 said:

"Tribalism and partisanism is a threat to stability and maybe even peace in the Southern Sudan ... today ten out of twenty ministers in the Regional Government, including the President of the High Executive Council come from one tribe. This is over-emphasising tribalism. ... The Dinka may not even be a quarter of the population of the South; how can they be represented as half of the Cabinet? They can meet alone and their meeting can be valid." 35

However, no comprehensive statistics were produced to show Dinka domination in the Public Service and other public institutions. This argument proved to be partially incorrect when after 'redivision', about 65% of the employees of the former Southern Region were left in Equatoria because of being Equatorians by origin (see Chapter 10).

Other criticisms were focussed more specifically on certain individuals, as a Dinka Regional Police Commissioner, ^{who} was most unpopular among the minority tribes for his tribalistic tendencies and partiality in the recruitment of the Regional Police Force. Once again no figures were produced to substantiate this point although it contained much truth. This tribal police force was also unofficially accused of mistreating members of the minority groups of people through unlawful arrests, detention and torture.

2. Tribal Conflicts Over Land

The conflicts over land were between Baris living around Juba and the Dinkas migrating in large numbers from Bor due to floods. The settlement pattern of the Baris as agriculturists and the Dinka as cattle-owning pastoralists could be expected to lead to conflicts over use of land resulting in disputes of a serious nature. Complaints raised by the Baris to the Regional Government got passive response, and since both the President of the High Executive Council and the Regional Police Commissioner were Dinkas from Bor, it appeared as if they condoned the atrocities of their tribesmen when their cattle destroyed the crops of the Baris. Even if the Self-Government Act had omitted to assign the responsibility over internal migration to the Regional Government the logical interpretation was that it was incidental to keeping peace and order, which squarely lay within the jurisdiction of the region.

The passive attitude of the Regional Government towards resolving communal problems over land was therefore one of the critical reasons for 'redivision' as expressed by Lagu in his pamphlet, Decentralisation a Necessity for the Southern Provinces of the Sudan. He said:

"Unfortunately people now responsible for the Southern Sudan Government ... show no respect for political sentiments of those whose destiny they guide. Some areas

such as Mongalla, Luri and Logo and Koyla and Rejaf (to mention a few) have been forced to living in a state of uncertainty because of unplanned Dinka settlements and movements. No decision taken by any council at any level in those areas would have any weight since the Regional Government apparently connives at the activities of the Dinka tribesman." 36

The proponents of 'redivision' also argued that the South was too large to be ruled from Juba. That in order to promote rapid economic development further decentralisation was a necessity. They added that having more regions would increase the share of the South in the national financial allocation; an argument based on simple logic.

Unfortunately, not all the arguments raised above were very convincing. Apart from the argument against unplanned settlements and Dinka domination in the High Executive Council which carry some weight, the rest were very light. It is true that the South was large enough to be divided but the financial and skilled manpower resources were too inadequate to maintain the new regions. The argument about getting more share of the national cake was too shallow because the distribution of national revenue did not depend on the number of regional units established. As we shall see in Chapter 9, it was based on the formula of deficit financing. It later transpired that the three new regions in the South received no more funds than what the Southern Region had been entitled to before the division.

Those opposed to the division put their argument more strongly. Apart from the lack of resources as already mentioned, they pointed out that the division would weaken the South politically especially in its ability to withstand Northern interference through the central government. However, they overlooked to propose any concrete solutions to the above problems. They were overoccupied with the question of Northern intention to divide the South politically.

3. Northern Interest in the Division of the South

Northern interest in the division of the South was seen to be based on the policy of "divide and rule". Such a policy was seen in terms of the North's secret plans of expansionism, Islamisation and Arabization of the peoples of the South and the Nile valley as a whole. Southern resistance to the spread of Islam and Arabisation has been explained above (see Chapter 1). Since 1965, the North had wanted the South to exist as three regional entities and not one. (See recommendations of the twelve-man committee in Chapter 3.) However, the South had successfully resisted attempts to divide it.

Southern unity was seen to be dangerous to the North and its political aspirations as illustrated for example in 1980 during the boundary crisis and at the refinery trauma period in 1981 (see Chapter 8 for details of both incidents) when the South had stood as one. Therefore,

the only alternative for the North to pursue its objectives was to destroy the unity of the South by exploiting their tribal, internal and personal differences. If this plan succeeded then it would be possible to implement Islamic Sharia laws already in the pipeline but bitterly opposed in the South. On balance, it would seem that the division of the South politically to weaken it to withstand Northern plans was the most crucial reason for the division of the South compared to the complaints raised by Equatoria examined earlier.

The division came as a gradual process. After the President's proposal of the issue to the SSU Central Committee Meeting, the motion was adjourned at the request of some Southern Members on the grounds that it had not been debated in the South. The debates held in the Regional Assembly and SSU Congress were very emotional. Following the defeat of the issue in the People's Regional Assembly in 1981 the Regional Government declared further discussion of the matter illegal. President Numeiri, however, interpreted this as obstructive on the part of the Regional Government and so dissolved it in October 1981.

A caretaker government was appointed under Major General Gismala Abdalla Rasas to, among other things, conduct a referendum in the South on the issue of 'redivision' in accordance with the amendment provision of the self-government which as we have seen stated that any amendment to the Act required a special majority of

"three-quarters of the People's Assembly and the approval of the majority of two-thirds of the citizens of the Southern region in a referendum to be carried in that region". The referendum was to be conducted within six months but the President changed his mind and called it off. Presumably he had foreseen the futility in holding the referendum which would have failed the question of 'redivision'.

However, 'redivision' remained a burning issue even after the formation of a new Regional Government under the presidency of James Tombura in 1982 - a proponent of 'redivision'. This time the president decided to decree the division of the South allegedly on the recommendation of the President of the High Executive Council which read:

"... The Regional Congress after lengthy discussion of the matter resolved to endorse the policy of decentralisation as highlighted in the policy statement of the Regional Government; while the matter of re-division or no-division was left in the protective hands of the President of the SSU and the Republic."³⁷

The procedure used was clearly unconstitutional and illegal but it was not challenged in court as no one would dare to question the President's decision.

4. Presidential Order No. 1, 1983 on the Organization of Regional Government in the Southern Provinces

Presidential Order No. 1 of 1983 on the organization of Regional Government in the Southern Provinces

(hereinafter referred to as Order No. 1 of 1983) divided the former Southern Region into the three regions of Baher El Ghazal, Equatoria and Upper Nile along their provincial boundaries in 1956 (see Map 2). Every region had an executive and a legislature, composed of the former members of the Regional Assembly for the South plus a few presidential appointees. An MP had to go back to his region of origin. So did the Public Servants.

The Powers (legislative, executive and financial) were identical with those of the Northern Regions established under the Regional Government Act, 1980. Thus the Sudan acquired nine regions with uniform powers and more or less equal geographical sizes. Hence regional imbalances had been drastically eliminated.

Comparative Development

5. Papua New Guinea

Papua New Guinea is a conglomeration of 19 islands (provinces) measuring 462,000 square kilometres with a population of 3.1 million.³⁸ It has a uniform decentralised system of government similar to that of the Sudan in 1983. The 19 Provincial Governments of Papua New Guinea were established under the Papua New Guinea Constitution, 1975 (as amended in 1976).

Decentralisation in Papua New Guinea as already

stated in Chapter 1, was introduced on two grounds - to accommodate secessionist pressures and promote popular participation in government.

The threat to secession was born on the eve of Papua New Guinea's independence from Australia in 1975. After the granting of full internal self-government in 1973, a constitutional commission was set up to draft a new constitution. In the political debates that followed devolution was discussed at length. The constitutional Planning Commission advocated more substantial political and administrative decentralisation within a unitary framework than the government was willing to concede. Decentralisation was seen as a compromise solution that would unite the fragmented society living in the 19 islands. Islands like Papua and Bougainville meanwhile had opted for separate statehood. Papua declared unilateral independence in March 1976 under Mrs. Josep-hine Abaija on the grounds that Papuans were more advanced economically and socially than the new Guineans, so there was no reason for unification. Two weeks prior to that the copper-rich island of Bougainville had also declared unilateral independence under Dr. Alexis Serei, as chairman, and had named itself the Republican Government of North Solomons.

However, through the persistence and diplomacy of the Minister for Provincial Affairs, Bougainville and Papua agreed to remain part of Papua New Guinea under the arrangement of a decentralised government. Hence the

constitutional amendment of 1976 to provide for the establishment of Provincial governments. The relevant constitutional amendment read:

"There shall be a system of Provincial Government for Papua New Guinea in accordance with this part ... An organic law shall provide for, or make provision in respect of, the granting of a province of a Provincial Government after consultation, as prescribed by an organic law, with the Province."³⁹

The organic law on provincial government (the constitution for the provincial governments) came into force in March 1977. It established the provincial governments and defined their legislative and executive authority. Section 16 provided that "the legislative power of province shall be vested in the provincial legislature" composed of not less than fifteen elected members" and "each member of the National Parliament representing the electorate in the province" plus other members locally nominated by the community.

The provincial governments were responsible for the keeping of "peace, order and good government of the province". In particular, they were responsible for:-

- "(a) the control by licensing of mobile traders (other than mobile banks); and
- (b) primary schools (including community schools and village self-help schools) and primary education other than curriculum; and
- (c) the sale and distribution of alcoholic liquor; and
- (d) the control by licensing of public entertainments and places of public entertainment; and
- (e) housing (other than housing owned or to be owned by the state); and
- (f) libraries, museums, cultural centres and cultural councils; and
- (i) ... local and village governments

... "40

Certain matters were concurrent between the Provincial Assembly and the National Assembly. These included:-

- " (a) community development and rural development;
- (b) primary school (including community school and village self-help school) curriculum;
- (c) agriculture and stock;
- (d) fishing and fisheries;
- (e) health;
- (f) public works;
- (g) trade and business, and commercial and industrial investment and development;
- (h) high schools, and vocational and technical schools;
- (i) gambling, lotteries and games of chance;
- (j) tourism;
- (k) transportation and transportation facilities;
- (l) town planning;
- (m) land and land development;
- (n) forestry;
- (o) wild life protection;
- (p) parks and reserves;
- (q) family and marriage laws (including laws relating to divorce and other matrimonial proceedings;
- (r) courts and tribunals (other than village courts), and their jurisdiction;
- (s) communications and mass media; and
- (t) wharves and harbours;
- (u) aviation;
- (v) labour and employment;
- (w) research and training institutions;
- (x) marketing;
- (y) renewable and non-renewable natural resources ... "41

The executive powers of a provincial government are vested in the provincial executive. The provincial executive consists of:-

- " (a) a head of the provincial executive (Governor)
- (b) such other members as are provided by or under the constitution of the province (Ministers); and
- (c) two members of the National Parliament who represent electorates in the Province ... "42

The Provincial Governments have very limited judicial powers. They can only establish and administer village courts and other minor courts.

The Provincial Governments also have their own sources of revenue from taxes on entertainments and produce sales and fees on various licences in addition to the grants in aid from the Central Government.

Thus Papua New Guinea's decentralisation of powers through devolution is very similar to that of the Sudan. Both are quasi-federal systems of government intended to promote popular participation and accommodate secessionist pressures.

IV THE ESTABLISHMENT OF LOCAL GOVERNMENTS IN THE SUDAN: 1971-1985

As stated in the Charter for National Action, the government intended to put "power on all its levels in the hands of the people" by establishing "popular local government bodies ... side by side with Self-Government".⁴³ Dr. Gaafar Ali Bakheit of the University of Khartoum and a former Minister of Local Government, influenced the ideas for the reform of local government in the Sudan during this period. He criticised Dr. Marshall's model of local government on the grounds of

its foreign inspiration, apparent ineffectiveness and for inadequate political conception. He said that it had "failed even in its functional roles in the limited framework of Dr. Marshall and the condominium rule, philology, aiming at rejecting the people's aspirations and the national movement of rural and municipal services with their limited local character".⁴⁴

He advocated an administrative revolution:

"We in the Sudan ... should pay more attention to administrative revolution, one being able to bring about the desired administrative effectiveness."⁴⁵

The desired administrative effectiveness according to his proposals was to be brought about by reconstructing the local government system. He challenged the concept of the so-called "two governments" central and "local" on the grounds that he did not see any reason for distinguishing between them. He argued that in less developed countries like the Sudan, the practice was never one of partnership because the central government enjoyed full control over resources, responsibility for major services, attracted more able and ambitious people while local government suffered from inadequate finance, responsibility (over minor services only) and attracted neither good councillors nor skilled personnel. He therefore advocated the implementation of full-fledged autonomous local government suitable for developing countries where civil servants would be politically active instead of maintaining dormant neutrality. Bakheit's ideas were to dominate the Khartoum National Conference on local

government held in April 1971.

A. The National Conference on Local Government

The National Conference on local government was attended by political dignitaries and experts on local government. These included members of the Revolutionary Council, Ministers, Senior Civil Servants, Local Government staff, Lecturers from the University of Khartoum and representatives of various organizations.

In his opening speech, President Numeiri reiterated the government's commitment to decentralisation:

"The administration of the Sudan from Khartoum is politically impossible and if it were even possible it is never desirable. We are all for decentralisation whether by delegation or devolution."⁴⁶

Clearly, the government was committed to further decentralisation of powers in the Sudan. The changes suggested were compiled by Dr. Bakheit into two documents and were all adopted by the conference. They were later embodied in the People's Local Government Act, 1971.

After the conference, the government appointed a working committee on the reform of local government consisting of local government experts, practitioners, public administrators and political scientists including Dr. Bakheit. The terms of reference were broad and

included, inter alia,

"Revision of Local Government system with the purpose of orienting and reorganizing it on the basis and principles of the May Revolution, especially those of People's democracy and socialism."⁴⁷

The words "revolution, people's democracy and socialism" deserve serious attention since a totally new socialist system was anticipated to replace the British model of local government. As already mentioned, the changes were contained in the People's Local Government Act, 1971, promulgated by the President in the same year.

B. The People's Government Act, 1971

The People's Local Government Act, 1971,⁴⁸ repealed and replaced, as expected, all the previous laws on local government - notably The Local Government Ordinance, 1951, and the Provincial Administration Act, 1960. It provided for the establishment of People's Province Executive Councils with corporate bodies in the then existing provinces of the Sudan by warrants issued by the Council of Ministers. The People's Province Executive Council consisted of the Commissioner and the Executive Council composed of the alliance of the working forces, youth, women and government officers in the Province. The Executive Councils were also empowered to establish subordinate councils "regions, towns, rural areas and villages" as it thought fit "to achieve the most that [could] be achieved in the actual decentralisation and

rendering of social services.⁴⁹ Their powers were to be delegated by the Executive Councils and were to work under its supervision.

The functions of the Councils included rendering of social services such as lower level education, public health, public works, agriculture, animal health, general culture and internal security. The councils were also empowered to participate in economic development as well as mobilise the masses politically. Details of the functions of the Councils are examined in Chapter 7. The councils could also raise local revenue from local fees on land, crops, and rates and licence fees on minor activities in addition to grants-in-aid given by the Central Government. Thus the establishment of nine provincial administrations.

C. The Reform of the People's Local Government

The period between 1974 and 1980 was one of reform and reconstruction of the People's Local Government.

The first of these reforms was made in 1974 with the enactment of "The Provinces Redivision Act, 1974".⁵⁰

This Act redivided the provinces in the North Sudan as follows:-

- "(a) Blue Nile Province ...
- (i) White Nile Province;

- (ii) Gezira Province;
- (iii) Blue Nile Province;
- (b) Northern Province ...
 - (i) Northern Province;
 - (ii) Nile Province.
- (c) Kordofan Province
 - (i) North Kordofan Province;
 - (ii) South Kordofan Province.
- (d) Darfur Province
 - (i) North Darfur Province,
 - (ii) South Darfur Province." 51

The boundaries of Khartoum Province and Kassala Province were amended. Red Sea Province was, however, left intact. Provision was made for the High Executive Council to consider the redivision of the Southern Provinces. This was done by the Reorganization of Provinces (Amendment) Act, 1976.

1. The Reorganization of Provinces (Amendment) Act, 1976⁵²

This Act provided for the redivision of the three Southern Provinces as follows:-

- "(e) The Equatoria Province ...
 - ... Eastern Equatoria Province
 - ... Western Equatoria Province.
- (f) Baher El Ghazal Province
 - ... Baher El Ghazal Province
 - ... The Lakes Province.
- (g) The Upper Nile Province
 - ... The Upper Nile Province
 - ... The Jonglei Province." 53

(See Map 2 for details.)

The redivision of the Provinces was necessitated by the non-viability of the sizes of the former nine provinces of

the Sudan. Being a large country of about one million square miles (as stated earlier), each of the nine provinces in the Sudan was approximately 100,000 square miles, which was obviously too large for a viable local government council. Moreover, lack of adequate infra-structure coupled with insufficient transport facilities rendered meetings of the Council practically impossible. Yet the redivision of the Provinces left the Councils far too large, each Council being approximately 50,000 square miles. Southern Darfur as an example was 70,000 square miles. The second major reform of the People's local government came in 1979 when the President issued a series of decrees which brought about changes.

2. The 1979 Reforms in the People's Local Government

The 1979 Decrees on local government did four important things:

- (i) Ministries of Education, Interior, Religious Affairs, Youth and Sports, Cooperation, Social Affairs, Commerce and Supply were abolished. Their functions were transferred to the People's Province Executive Councils.
- (ii) The Ministries of Finance, Agriculture, Health and Construction had their powers drastically reduced and devolved to the People's Province Executive Councils.

- (iii) New Ministries of Education, Guidance and Cooperation; Commerce and Supply were created to perform functions which had not been transferred to the People's Province Executive Councils. Basically, the functions of the reorganized central government ministries are limited to policy-making and personnel administration.
- (iv) The Ministry of Local Government was suppressed into a unit for local government affairs in the president's office. Later the President assumed the Patronage of Local Government Affairs.

The reforms were apparently influenced by the recommendations of the Select Committee of the People's National Assembly, 1976; the study on Local Government in Southern Darfur 1976; and the deliberations of the first local government conference held in Nyala in the same year. However, most of the recommendations of the Committee were not implemented by the reform. In 1981, the People's Province Executive Councils were finally abolished and replaced by Area Councils⁵⁴ under the People's Local Government Act, 1981.

D. The People's Local Government Act, 1981

The enactment of the People's Local Government Act, 1981 was based on two grounds:-

1. Following the introduction of regional governments in the Northern Sudan in 1980, it was necessary to redefine the relationship between local governments and the regional governments since the responsibility for local government had been shifted from the Central Government to the regional governments. This was not seen as necessary when there was only one regional government in the Sudan before 1980. That time the People's Province Executive Councils in the South were answerable to the Central Government through the High Executive Council.

"The People's Local Councils in the Provinces of the Southern Region shall be the basis of organization of Regional Self-Government provided by the constitution for these Provinces." 55

Though this provision did not specifically define the relationship between the People's Province Executive Council and the Southern Regional Government, it implied the subordination of the former to the latter.

Furthermore, Section 28 of the Distribution of Legal Powers between the Central Ministries and the Ministries of the Southern Region of the Sudan Act, 1977 vested powers of the Minister of the People's Local Government in the Regional Minister of Administration, Police and Prisons and powers of the president with regard to local government in the High Executive Council.

2. The recommendations of the Select Committee of the People's National Assembly which had not been implemented,

had to be reconsidered and adopted. The People's Local Government Act, 1981 repealed and replaced the People's Local Government Act, 1971.

It provided for the establishment of Area Councils in the place of People's Province Executive Councils.

"There shall be established in each Province a number of Area councils by warrants of establishment issued by the Regional Executive Authority."⁵⁶

By definition as contained in Section 2 of the Act, the Regional Executive Authority was the Governor of the Region. This clearly shows the shift of the responsibility already mentioned.

An area council was empowered to establish

"People's Local Councils for towns, rural areas, quarters, villages, camps, industrial areas and markets."⁵⁷

The Area Council was to delegate "such powers and limited financial resources as it [deemed] necessary for the performance of services".⁵⁸ The establishment of a single tier of local government under the 1981 Act was a return to the recommendations of Dr. A.H. Marshall discussed in Chapter 3 so as to overcome the problems of confusion caused by the presence of several tiers discussed in Chapter 6.

Considering the confusion that arose from the multiplicity of tiers of local councils, which had been established under the 1971 Act, this change was a step in the right direction.

The composition of the Council was considerably modified. Although the representation of the alliance of working forces was maintained, the ex officio members were excluded from the Council and the number of appointed members was drastically reduced. The Regional Executive Authority was empowered to "on the recommendation of the commissioner" appoint experienced members who were interested in public work up to 10% of the total membership.⁵⁹

The provision for women was modified from a fixed percentage of 25 to read "a reasonable number of seats for women".⁶⁰ It was necessary to do so because women very rarely took up their seats due to social inhibition against participation by women in public affairs.

Every Council was to elect its own chairman from amongst the councillors instead of the provincial commissioner. The functions of the Councils remained the same as under the 1971 Act except the role of the Council to act as political mobilizer of the masses was deleted. In this connection the select committee had recommended:

"The removal of political enlightenment since the political system through its organizations undertakes this responsibility."⁶¹

The sources of revenue for the Area Councils also remained the same as those of the People's Province Executive Councils except that the Regional Executive was to decide the financial support to be given to the Area Councils.

This provision was not clear because it did not specify whether or not this support was to come from the regional government itself. It did not even state what percentage of the grants accruing from the central or regional government would go to the Area Councils. In this case the central government could not guarantee how much of the national revenue was made available by the regional governments to the local government. It would therefore be impossible to maintain some degree of national standards. However, the reforms introduced by the 1981 Act very much appears a retreat to Dr. Marshall's model of 1951 and is welcome.

Comparative Development

E. Tanzania, 1972-1982

Government reforms in the Sudan since 1971 have their parallels in developments in Tanzania since 1972. Tanzania, like the Sudan, is a fairly large country with an area of 945,000 square kilometres and population of 19.1 million (in 1983).⁶² It became a de jure one-party democracy in 1965.

"There shall be one political party in Tanzania ... All political activity in Tanzania ... shall be conducted by or undertaken under the auspices of the party."⁶³

The Party was at first called Tanganyika National African Union (TANU) but has since 1977 been renamed Chama Chama

Pinduizi (no translation), following its amalgamation with the Afro-Shirazi party in Zanzibar.

The administrative reforms in 1970s were primarily influenced in Tanzania by the need to promote popular participation in government (as already mentioned in Chapter 1). After the Arusha declaration of 1967, the Tanzanian Government appointed the Pratt Commission on Decentralisation. This commission in turn invited McKinsey and company (an American consultancy firm). Announcing the 1972 changes to the Nation President Julius Nyerere said:

"It is proposed that, in general, Regions and Districts should plan and implement local development activities as well administer local affairs with the very minimum of interference from Dar Es Salaam ... Therefore it is proposed that single strong Regional and District organization will be set up to cover all rural areas ... The present system of rural local government will be abolished as will the present practice of each Ministry having its own offices working in Regions and Districts ..."⁶⁴

The announcement was followed by the enactment of the "Decentralisation of Government Administration (Interim Provisions) Act, 1972"⁶⁵ in the month of July. Although this law should have expired on the first day of July 1973, the system of government established under it remained operative until the 1982 reforms dealt with further below. According to that law, Tanzania had 20 regions and 64 districts. Section 4 of the Interim Law, empowered the President to appoint "in respect of each region, a Regional Development Director", and "in respect of each District, a District Development Director".

The President had also to appoint or post in every region and every District:

- "(a) Staff officers,
- (b) functional officers, as may be necessary to assist the Development Directors in the performance of their functions."

Furthermore, the Act established a Regional Development Committee in every region and empowered the Prime Minister to establish a District Development Council in an area which he chose to be declared a district by publishing an order to that effect in the gazette.

"Every District Development Council shall establish a District Development and Planning Committee which shall be vested with the functions of formulating projects and programmes for consideration by the Council and supervising implementation of the projects and programmes approved by the Council."⁶⁶

The functions of the Regional Development Committee were:

- "(a) To consider, advise upon, formulate and implement development projects affecting the whole of the region;
- (b) to advise upon and assist in the implementation of development projects undertaken in respect of any district within the region by District Development Council of that District;
- (c) to do all such acts and things as may be directed to do by the Minister or which in its opinion are necessary for the efficient performance of its functions."⁶⁷

Similarly, functions of the District Councils were to:

- "(a) be responsible for planning and implementation of projects and programmes affecting agriculture, public health, education, commerce, industry, promotion and development of Ujamaa and cooperative movements, natural resources, public works, water and land development within the district for which it is established; ...

- (c) perform such other functions as may be conferred upon it by the Minister ..."⁶⁸

Unfortunately, the decentralised governments in Tanzania did not have independent sources of revenue:-

"Parliament may, in an appropriate Act, provide for allocation of funds to every region to meet the estimated expenditure of the Regional Directorate and for the implementation of development projects and programmes in the region and in every district in the region."⁶⁹

Furthermore, the Tanzanian governments below the Central Government had no corporate status and were directly responsible to the Prime Minister's office. Thus although there was considerable decentralisation of powers in Tanzania, it differed from that of the Sudan in that the decentralisation was one through "deconcentration" and not "devolution" as was the case in the Sudan. Moreover, decentralisation in the Sudan was quasi-federal in character.

After a decade of futile experiment in decentralisation, Tanzania abandoned the McKinsey model and retreated to the local government system as inherited at independence, although with some modifications. Tanzania enacted the "Local Government (District Authorities) Act, 1982; Local Government (Negotiating Machinery) Act, 1982; Local Government Service Act, 1982; The Decentralisation of Government Administration (Interim Provisions) (Amendment) Act, 1982". Under these new laws, the Regional Development Committee played the role of coordination and consultation only, similar to that of the Commission in the Sudan under the 1981 Act.

All powers and functions of rendering services and development are transferred and vested in the local government now at the district level. In other words, the District Councils and not the District Development Committees are the focus of local government established in accordance with Section 5 of the Local Government (District Authorities) Act, 1982 which empowers the Prime Minister to establish with the consultation of the President:

"Such number of District Councils as may deem necessary, expedient or desirable for the purpose of establishing, promoting, developing and maintaining an effective and efficient system of local government."

The Minister could, in addition to that, establish Township Authorities in the urban areas.

Village councils from the lowest tiers of government, but unlike those in the Sudan, enjoy corporate status.

This time the Tanzanian District Councils like the Area Councils in the Sudan have independent sources of revenue which include local taxes, fees, rates and rents. They are also entitled to grants in aid from the Central Government and may obtain loans with the approval of the Minister in consultation with the Minister of Finance from the revived Local Government Loans Board.

Having analysed the establishment of decentralised governments in Sudan from 1969 to 1985 in detail, we shall proceed to examine how successfully they operated in

practice. This will be the primary objective of the following chapters 6, 7, 8 9 and 10.

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14. Ibid., Art. 7.
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43. Sudan Government, Charter for National Action, Khartoum, 1971, p. 13.
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CHAPTER 6THE STRUCTURE OF DECENTRALISED GOVERNMENTS IN THE SUDAN1969-1985

The general structure of decentralised governments in the Sudan between 1969 and 1985 was similar to that of a federal government. However, the second tier of government was called regional rather than state government.

This chapter examines in detail the structure of decentral^aised governments in the Sudan during the said period. It starts by briefly looking at the organization of the Central Government before descending downwards. This is followed by the examination of the regional governments which, initially, had two different structures; the structure of the Southern Regional Government and that of the Regional Governments in the Northern Sudan. These two structures were made uniform after the division of the Southern Sudan in 1983.

The structure of the local governments also differed during this period between the People's Province Executive Councils and the Area Councils. The various structures of governments are shown by diagrams 6, 7 and 8.

Diagram 6 shows:

- (i) The Central Government (1969-1985)
- (ii) The Southern Regional Government (1972-1982)

(iii) The People's Province Executive Councils (1971-1980)

Diagram 7 shows:

- (i) The Central Government (remains the same)
- (ii) The Regional Governments in the Northern plus the Regional Governments in the Southern Sudan after redivision (1980-1985)
- (iii) The Area Councils (1981-1985)

Diagram 8 shows:

The National capital.

These structures will be examined in the following order.

- I. The Central Government
- II. The Regional Governments
- III. The Local Governments
- IV. The National Capital

I. THE CENTRAL GOVERNMENT

The Central Government comprised:

- A. The Central Executive organ (or the Council of Ministers)
- B. The People's National Assembly (the central legislature)
- C. The judiciary.

DECENTRALISED STRUCTURE IN THE SUDAN 1: THE SOUTHERN REGION 1972-1982

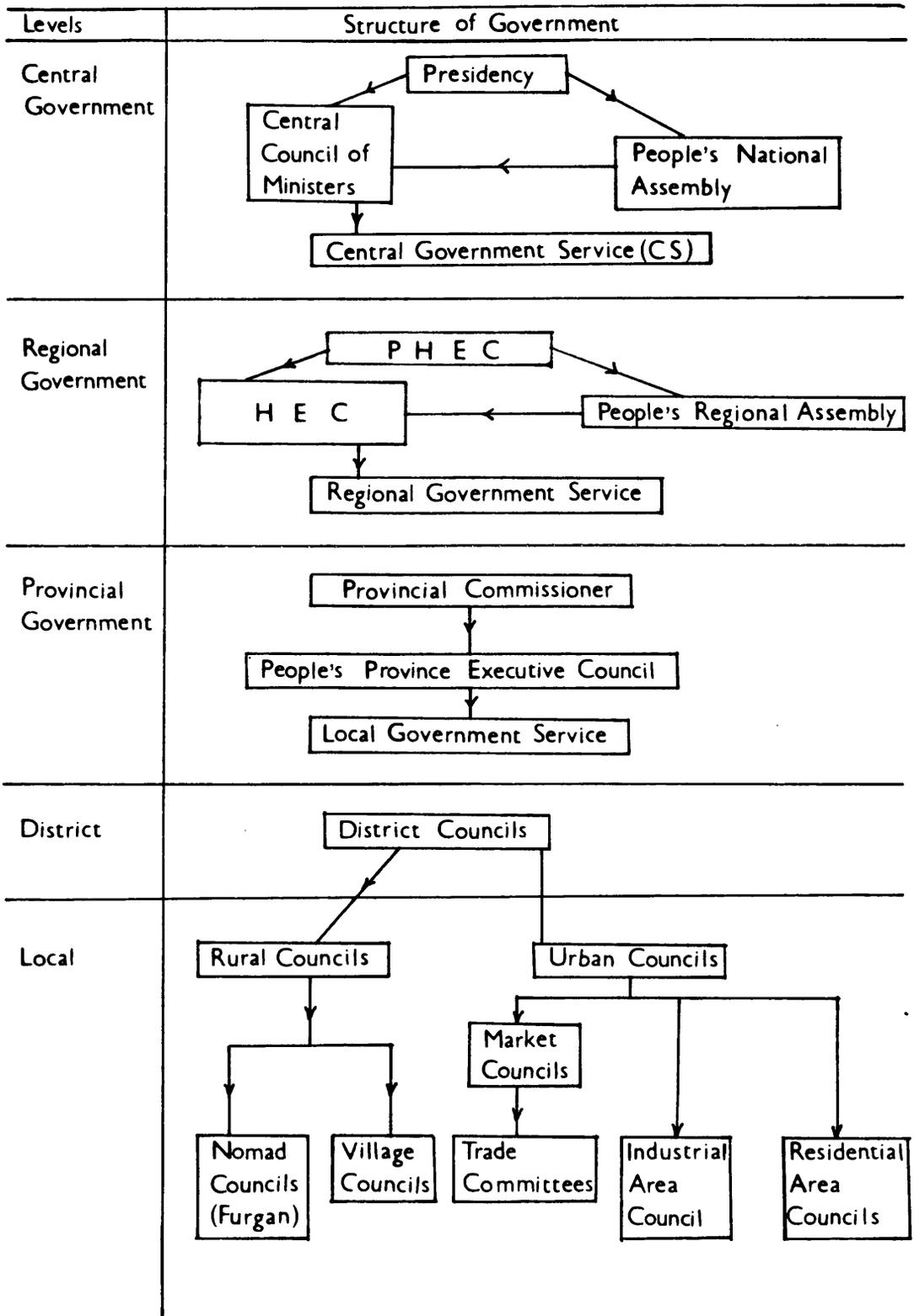


Diagram 6

PHEC = PRESIDENT HIGH EXECUTIVE COUNCIL
 HEC = HIGH EXECUTIVE COUNCIL

A. The Central Executive

The Central Executive organ was composed of the President, the Vice-Presidents, the Prime Minister and the Council of Ministers.

1. The President

The Sudanese President like those of other one-party presidential systems in Africa, (e.g. Tanzania, Zambia, Malawi, Sierra Leone), was the the Head of State, President of the political party, Head of the Executive and Commander-in-Chief of the Armed Forces. He also participated in law-making together with the National Assembly.

The President was elected through plebiscite for a 6-year term of office and was eligible for re-election without limit. He was to be nominated by the SSU in accordance with its Basic Rules which stipulated, "the President of the Sudanese Socialist Union will become the nominee of the President of the Republic". Thus no other person was eligible to compete with him.

The powers of the President were enormous and overriding. We have already seen that he is the head of the

Executive of the political party and commander in chief of the Armed Forces. So all executive powers were vested in him. He was responsible for the appointment of vice-presidents, the Prime Minister, Ministers, Commissioners, Ambassadors and Members of the Diplomatic Mission, senior officials in the Public Service, public corporations, members of the security forces and so forth.

His legislative powers included issuing of provisional orders, consenting to national bills and bills of the People's Regional Assembly for the South, dissolution of all Assemblies, vetoing of Bills and declaration of states of emergency. Finally, he was also the protector of the constitution, the independence of the country, its territory, people and victories of the May Revolution.

2. The Vice-Presidents

The constitution provided for the appointment and removal of vice-presidents by the president of the Republic. He was to determine their number and responsibilities. In practice there were normally two vice presidents, one called the First Vice President and the other a Vice President. The First Vice President was invariably a Northern Sudanese who assisted the President directly in the discharge of his functions and acted as Head of State in the absence of the President. All Vice Presidents were Southern Sudanese, Abel Abli from 1971 to 1981, and Joseph Lagu from 1982 to 1985. They were less effective, had no definite assignments and

usually received foreign visitors or chaired meetings like those of charitable organizations.

3. The Prime Minister

According to the Constitution, the Prime Minister was "to assist" the President "in the discharge of any functions assigned to him by a presidential order".² He was to be appointed and removed by the President like the Vice Presidents. In practice, however, the role of the Prime Minister was insignificant because none of them remained for long in the office. Awadallah, as we have seen, was the first Prime Minister but was soon removed and replaced by Rashid El Tahir who did not last in the office too. Thereafter Numeiri combined both posts of Presidency and Prime Minister and all functions were performed in the name of the President.

4. The Council of Ministers

As in the case of the Vice Presidents, and Prime Minister, the President could appoint and remove Ministers either from amongst or outside the members of the Assembly. The number varied considerably between 1969 and 1985. However, the Prime Minister and Ministers were all answerable to the President and the Assembly for the performance of their duties.

B. The National Assembly

The National Assembly was composed of 250 members, appointed and elected. The elected members were the majority representing geographical constituencies and the alliance of the working forces as stated by the Permanent Constitutions. The Democratic Republic of the Sudan "is founded on the alliance of working forces of the people as represented by the farmers, workers, intellectuals, national capitalists and soldiers".³

The President was empowered to appoint some members "not exceeding one tenth" of the total membership "to represent different talents" but they were not to be from among Ministers.⁴ This method of having an Assembly of both appointed and elected members is typical of one-party State democracies like Tanzania, Zambia and others. In addition to their other qualities, they are essentially loyal to the Heads of State.

C. The Judiciary

The administration of justice was vested in the judiciary which was independent and directly answerable to the President of the Republic for the proper performance of their duties.

The President appointed and removed "the president and judges of the Supreme Court, the judges of the Courts of Appeal and judges of other courts".⁵ Surprisingly, no members of the judiciary enjoyed security of tenure in the Sudan. Thus the President could dismiss them at will as he did in 1983⁶ when he dismissed 41 judges when they went on strike.

Justice was administered by:

- "(a) The Supreme Court.
- (b) Courts of Appeal.
- (c) The Other Courts."⁷

There was one Supreme Court for the Sudan and Regional Courts of Appeal. The government intended to establish a Court of Appeal for every region.

II. THE REGIONAL GOVERNMENTS

The structure of the Southern Regional Government will be examined before that of the regional governments in the Northern Sudan (which were similar to the Regional Governments in the South after redivision.

A. The Southern Regional Government

The Southern Regional Government consisted of:-

- (1) The High Executive Council; and
- (2) The People's Regional Assembly.

The judiciary remained a Central Government organ of government for no given reason. It was simply omitted from the provisions of the Self-Government Act. Presumably this was intended to comply with the practice in other decentralised governments like Tanzania and Zambia where the judiciary is entirely also a central government matter.

1. The High Executive Council

The High Executive Council was composed of:-

- (i) The President of the High Executive Council.
- (ii) The Vice-President of the High Executive Council.
- (iii) The Members of the High Executive Council.

Table 6.1 shows the list of Presidents and Vice Presidents of the High Executive Council from 1972 to June 1983 (that is, before the dissolution of the Southern region).

(i) The President of High Executive Council

The President of the High Executive Council was the Chief Executive in the region. He was "to lead the executive organs responsible for the administration of the

Table 6:1Presidents of the High Executive Council 1972-1983

President	Vice-President	Period
1. Abel Alier (interim)	-	April 1972 - Dec. 1973
2. Abel Alier (substantive)	-	1974 - 1977
3. Joseph Lagu (substantive)	Samuel Aru Bol & Peter Gatkouth	1978 - 1979 Feb. 1980 - July 1980
4. Abel Alier (substantive)	Peter Gatkouth	June 1980 - 1981
5. Mag. Gen. Gis alla Abdalla Rasas (interim)	Andrew Makur Thau	Oct. 1981 - June 1982
6. Joseph James Tombura	Hugho Dhol Accul	1982 - June 1983

Southern provinces".⁸

(a) The Appointment of the President of the High Executive Council

The appointment of the President of the High Executive Council depended on whether he was an interim or substantive President.

The Self-Government Act specified no procedure for the appointment of an Interim President of the High Executive Council. However, according to Appendix 1 of the Addis Ababa Agreement, the Interim President of the High Executive Council was to be appointed by the President of the Republic in consultation with the SSU organs in the region. This was the case in Abel Alier's appointment as Interim President of the High Executive Council in 1972. Whereas Alier was appointed to establish the provisional Regional Government for the South, Rasas was appointed, among other things, to conduct a referendum on the burning issue of whether or not the South should be "redivided". But, as discussed in Chapter 5, the referendum was abandoned.

The appointment of a substantive President was provided for in Section 18 of the Self-Government Act: "The President of the High Executive Council shall be appointed ... by the president on the recommendation of the People's Regional Assembly".

The recommendation was by way of electing a candidate for the presidency in the Regional Assembly for confirmation into office by the President of the Republic.

Invariably, all candidates elected by the People's Regional Assembly for Presidency of the High Executive Council were automatically confirmed into office. The appointment of the President of the Republic was therefore a mere act of formality. Presumably, the election of the presidential candidate by the Assembly for appointment by the President of the Republic was meant to guarantee the electorate their democratic rights in electing their leader, as well as to safeguard the inherent rights of the Head of State over the appointment of important office bearers in his government. Therefore the problem of accommodating both regional and national interests in the appointment of the regional Chief Executive which arrested the progress of the members of the Twelve Man Committee in 1965 (see Chapter 3), had been adequately overcome.

Theoretically, the qualifications for the President of the High Executive appeared very simple. Like the president of the Republic, he had to be a Sudanese, aged at least 35 years, of sound mind and enjoying his political rights.⁹ He did not have to be a member of the People's Regional Assembly; he was not even a sole nominee of the SSU as in the case in other one-party State democracies like Tanzania, Zambia, Malawi and Sierra Leone.

Practically, the role of the SSU was very minimal in

the election of the president of the High Executive Council. It was only that the nomination of a presidential candidate was determined in a meeting of the SSU Assembly body (the functions of which are explained later) before it could formally be adopted by a meeting of the Assembly proper.

The issue was whether the SSU could impose its candidate for the presidency?

Though such a possibility existed, SSU intervention was seriously curbed. For example in 1973, the President of the Republic and the SSU nominated Alier as the sole presidential candidate. The nomination was seriously challenged by Clement-Mboro and Joseph Oduho on the grounds of illegality. Unlike Article 80 of the constitution which provided for the nomination of the presidential candidate for the Republic by the SSU, there was no similar provision in the Self-Government Act. Alier was eventually elected as President but it was purely in the interest of peace and national unity as was obvious from the comments of Joseph Oduho, a veteran Southern politician and Member of Parliament"

"In the interest of national and Regional unity, no other candidate would be proposed as would have been the case. But we hope the issue of the method used to suggest the nomination of a given candidate by the President of the Sudanese Socialist Union will be clarified to the Assembly at a later date."¹⁰

However, no explanation was given. The procedure was quietly abandoned, because the SSU never nominated a presidential candidate thereafter. So this procedure

remained an exception to the rule.

The lack of effective control by the SSU in the conduct of elections preempted the politics of tribalism in the Southern region. Clearly, in order to win elections one had to rally tribal support. The incipient Southern nationalism which had brought Alier and Lagu to power before 1979 was rapidly overtaken by tribalism in 1980. Undoubtedly, the return of Alier to power in the same year was backed by the call for "Dinka unity" (the Dinkas being the majority tribe in the region). Likewise Tombura surprisingly rose to power because of the Kokora (redivision) slogan. Admittedly tribalism had emerged to dominate events of the day quite overwhelmingly. This was clear from the appointment of Ministers, Commissioners, Managers of Parastatal bodies and Directors of Ministries and Departments. For example, the 1980 Members of the High Executive Council had 50% from the Dinka and about the same number as Directors. An incumbent President was obliged to reward his tribal supporters by appointing their members to the above posts. Had it not been for "redivision" a loose and informal alliance of the major tribes (Dinka, Nuer and Azande) already in formation would have prevented members of the minority tribes from coming to power.

(b) Functions of the President of the High Executive Council

As stated earlier, the President of the High Executive

Council was the Chief Executive in the region. He was, therefore, in charge of the administration, good order and security in the region together with legislative responsibilities as well. He was to participate in law making by initiating a Bill in the Assembly.¹¹ No Member of the Assembly was to present a Bill without sufficient notice having been given to the President of the High Executive Council.¹² The exact period for sufficient notice, however, remained uncertain since no problem arose over it.

All petitions to the Regional Assembly requesting the President of the Republic "to postpone the coming into force of any law or withdraw any Bill before the People's National Assembly" had to be presented through the President of the High Executive Council".¹³ Therefore, he was also a liaison officer between the People's Regional Assembly and the President of the Republic in matters to do with the postponement or withdrawal of legislation.

(c) Removal of the President of the High Executive Council

The President of the High Executive Council could be removed in two ways, either by dissolution of the Assembly or by impeachment of the Assembly. The procedure through dissolution is considered in Chapter 7.

The procedure for impeachment was contained in Section 12(1) of the Self-Government Act:

"The People's Regional Assembly may by a three-quarter s majority and for specified

reasons relating to public interest, request the president ^{to remove} any member of the High Executive Council from office. The President shall accede to such request."

The impeachment of the President of the High Executive Council was therefore mandatory on the recommendation of the three-quarters special majority of the members of the Assembly. However, to obtain that high percentage was totally impossible in the history of the South due to the loyalty of the Members of Parliament who formed the government to the President of the High Executive Council. Although there was only one attempt to impeach the President of the High Executive Council any other attempts would have been equally unsuccessful for the same reasons. This was shown by the futile attempt to remove Lagu in 1979.

In May 1979 the People's Regional Assembly attempted to impeach Joseph Lagu from presidency of the High Executive Council by invoking the provisions of Section 12(1) quoted above. The charges raised against him included "corruption ... nepotism ... factionalism ... and massive acquisition of large amounts of property".¹⁴ A cheque worth 2.1 million American dollars was alleged to have been deposited by his wife in a Nairobi bank but there were no documents to support this accusation.

A request for the removal of the President of the High Executive Council had to be presented by way of a motion to the Speaker signed by at least twenty members. Thereafter the Assembly would either recommend his removal or refer the motion "to any committee, standing or select, to investigate

the petition of the High Executive Council".¹⁵ It was discretionary to the Assembly to adopt either of the alternative procedures. Apparently, there was a general consensus to appoint a committee to probe further into the matter but government supporters demanded the production of some documentary evidence before such a committee could be appointed. Although this was not a stipulated requirement it accorded with the tenets of natural justice.

The question of whether or not documentary evidence should be produced before the appointment of a committee led to the adjournment of the Assembly each day for two days. Finally, there was a deadlock. On the third day the President convened a meeting of the SSU Assembly body which empowered him to convene and chair an extraordinary meeting of the Assembly. All allegations against the President were dismissed as "baseless and unfounded". After renewing its confidence in the President, the Assembly dismissed the speaker, his Deputy and the Controller. (Further details are recorded in Chapter 8.)

(ii) The Vice-President of the High Executive Council

The Self-Government Act made no provision for the post of the Vice-President of the High Executive Council. Although the post was introduced in 1978 with the appointment of Samuel Aru Bol as Vice President of the High Executive Council. He was to assist the president of the High Executive Council and act as President in his absence.

Before that, the President of High Executive Council used to delegate any member of the High Executive Council to act in his absence as he had no assistant or deputy. The appointment of Vice-Presidents became an established practice after the appointment of Aru Bol. Although Peter Gatkouth acted as President for three months following the removal of Lagu in 1980, it was not automatic that the Vice-President for the High Executive Council would act in the place of the President if he were removed, or he died or resigned for the post of Vice President was presumed to terminate with that of the President.

(iii) The Members of the High Executive Council

The size of the High Executive Council varied from time to time. The Provisional High Executive Council appointed in 1972 comprised:

- (a) Financial and Development
- (b) Education
- (c) Information, Culture and Tourism
- (d) Transport, Roads and Communications
- (e) Agriculture and Animal Production
- (f) Public Health
- (g) Regional Administration [Local Government, Legal Affairs, Police and Prisons]
- (h) Housing and Public Utilities
- (i) Natural Resources and Rural Development [included Land Use, Rural Waters, Forests and Cooperatives]
- (j) Public Service and Labour

(k) Mining, Industry, Trade and Supply

The following additional ministries were created in subsequent years.

(l) Cabinet Affairs (in 1973)

(m) Trade and Industry - separated from commerce in 1978

(n) Legal Affairs - separated from Regional Administration in 1978

(o) Wildlife

(p) Youth and Sports, 1978

(q) Cooperatives and Rural Development, 1978

(l) Appointment of the Members of the High Executive Council

The Self-Government Act provided that members of the High Executive Council were to be "appointed by the President on the recommendation of the President of the High Executive Council".¹⁶ The total number depended on the needs of the region and the regional government's ability to meet their salaries and allowances. As shown above, the total varied between eleven in 1972 and 17 in 1980 and 1982 but these only amounted in amalgamations and creation of new ministries which never exceeded the total number of seventeen.

Like the president of the High Executive Council, no specific qualifications requirement was attached to their appointments. Thus members of the Executive Council were selected from within or outside the People's Regional Assembly. Presumably the intention was to enable the

President of the High Executive Council to choose the most able men and women. Executive authority was collectively vested in the High Executive Council "which [acted] on behalf of the President". The duties of the High Executive Council were therefore primarily administrative.

(2) Legislative Powers of the High Executive Council

It was not certain from the reading of the Self-Government Act whether the High Executive Council could also legislate. The relevant section read:

"Neither the People's Regional Assembly nor the High Executive Council shall legislate or exercise any powers on matters of national nature which are ..."¹⁸

Thereafter the section proceeded to list those matters as national defence, foreign affairs, currency and coinage, etc. The issue was what about the other matters which were not mentioned in the list. Could the High Executive Council therefore legislate on them? If so, why did the Act not expressly say so?

Incidentally, legislation through provisional orders had been a normal practice since the colonial days. If that was even the practice in the Central Government, then why was this not so in the Regional Government too? Views differed as to whether or not the regional government could pass provisional orders. One view was that it could not, because omission to expressly empower the regional government, to do so implied denial of that authority. So

any provisional order passed by the High Executive Council was null and void. However, it was also arguable that the Council could legislate on matters not enlisted in the section quoted above. These matters were regarded as being of regional nature. After all, the conduct of Business Regulations 1973 provided:

"Every provisional order enacted by the High Executive Council when the Assembly was not in session shall be presented to the Assembly within 15 days."¹⁹

This regulation implied that the High Executive Council could legislate through provisional orders which would then be confirmed by the Regional Assembly. According to this argument, provisional orders like the Wildlife Conservation and Parks Act, 1975²⁰, the Registration of Business Names Act 1976²¹ and several others, were valid law. Furthermore, it was also arguable that since the High Executive Council acted on behalf of the President of the Republic in the Southern Region [see Section 16 of the Self-Government Act, 1972], then it could exercise the powers of the President authorising him to legislate by provisions/orders. In this case the provisional orders passed by the High Executive Council would be as valid as if they had been passed by the President of the Republic as authorised by the constitution. It would therefore seem that whether the High Executive Council was acting on behalf of the President or using its implied powers as argued above, all provisional orders passed by it were valid in law.

We now proceed to consider the removal of the members of the High Executive Council.

(3) Removal of the Members of the High Executive Council

Members of the High Executive Council could either be removed on the recommendation of the President of the High Executive Council or impeached by the Assembly in the same manner as the President of the High Executive Council (discussed earlier). But for several reasons, the impeachment of a member of the Council by the Assembly was impossible.

The People's Regional Assembly, for example, attempted to impeach Samuel Aru Bol as Vice President of the High Executive Council and Regional Minister for Administration, Police and Prisons in 1979. Aru Bol had deposited a sum of £s 30,000 belonging to the government into his personal accounts. Aru Bol was therefore impeachable for "reasons relating to public interest".²² He was also liable to prosecution for Criminal Breach of Trust under Sections 351 and 349 of the Sudan Penal Code Act, 1974.²³ If sentenced to imprisonment, his membership would have been withdrawn for committing an offence "against the political system or affecting the dignity of the Assembly". However, the Assembly failed to remove him and he was not even brought to a court of justice. The Assembly deliberations were so unnecessarily delayed that Aru was removed from the Ministerial post only through a government reshuffle in the same year; and having refunded the money, the intended prosecution against him was dropped. Though this was

blatantly unlawful, it was never challenged. During the same period, cases of corruption, nepotism and others were framed against Lawrence Wol Wol and Samuel Gaitut (both Ministers of the Regional Government) respectively but the Assembly never disposed of any for similar reasons as those of Aru Bol.

2. The People's Regional Assembly for the South

As already stated, the Self-Government Act provided for the establishment of a Regional Assembly for the South.

(1) The Composition of the Regional Assembly

The Assembly was composed of 110 Members constituted as follows:

- (a) Seats for geographical constituencies 60.
- (b) Seats for the alliance of working forces 44.
- (c) Administrative seats 6.²⁴

Whereas the distribution of geographical constituencies was based on population, those for the alliance of working forces were categorized as farmers, workers, intellectuals, national capitalists and soldiers as stated in the Charter for National Action and the permanent constitution. Everyone of the six provinces had an administrative seat and any person including administrative officers competed for the seats.

The qualifications for candidates and voters as laid down by "The People's Assembly and Regional Assembly Elections Act, 1973"²⁵ were similar for the whole country. A candidate had to be a Sudanese, aged at least 21 years old, of sound mind, literate and without record of convictions for offences connected with "honour, morals or security of the state".²⁶ However, the degree of literacy was never specified, so any Sudanese who could read or write (in English or Arabic) qualified as a candidate. This lowered and degraded the calibre of the Members of the Assembly since semi-illiterates found their way to the Regional Assembly in considerable numbers. Furthermore, the Electoral Act did not fix the period for which a convicted person would be barred from contesting. This meant that once convicted, a citizen would remain disqualified from becoming a candidate indefinitely and was therefore contrary to the notion of natural justice according to which convicts are released after serving their sentences.

A voter was also required to have the same qualifications as a candidate except that he could be illiterate and aged 18 years at the minimum. He or she was needed to have resided in the constituency in question for at least three years before the closing date of registration unless he or she was a nomad.²⁷

Elections to the first People's Regional Assembly were held in November and December 1973, filling 97 of the 110 seats. The remaining three were appointed in accordance with Section 9(1) of the Self-Government Act, which stated:

"For the first Assembly the President may appoint members to the Regional Assembly to represent areas where conditions were not conducive to such elections."

It goes without saying that, having just emerged from war then, the whole South could not be ready for elections. It should, however, be noted that the appointed members were not to exceed a quarter of the total membership. Probably the underlying objective of having no appointed members in the Assembly was to promote popular participation in government as far as possible.

A person could nominate himself as a candidate but contrary to the practice in Tanzania and Zambia, there was no limit to the number of candidates in a constituency. In this regard the Sudanese practice was comparable with that of Sierra Leone. Whereas the maximum number of candidates was fixed at two and three per constituency in Tanzania and Zambia respectively, Sierra Leone had no limits. Both Tanzania and Zambia disqualify their additional candidates at the primary elections held in the districts.

The Sudanese practice also differed from those in Tanzania and Zambia in that the candidate and not the party met his electoral expenses. All the party did was to scrutinize the application of a candidates and grant "a certificate of no objection" to his nomination. According to the SSU Basic Rules, certificates of no objections were to be issued by the SSU Provincial Secretaries.²⁸ However, it seemed that the implementation of this provision was not strictly adhered to. For example, in the 1980 elections, the SSU Provincial Secretariat at Malakal (Upper Nile

Province) refused to "issue a certificate of no objection"²⁹ to Othwan Dak because his application was late. But through his political connections and influence Dak obtained a certificate from the SSU Headquarters in Khartoum.

(ii) Loss of Membership of the Regional Assembly

Membership of the Assembly could be lost under any of the following circumstances:-

- (a) Where a member could not participate in the deliberations of the Assembly due to physical disability.
- (b) Where a member was absent from the Assembly sittings for eighteen or more times without the permission of the Speaker.
- (c) Where a member was imprisoned for an offence against the political system or affecting the dignity of the Assembly.
- (d) If his membership was annulled by two-thirds of the Assembly "for any reasonable cause".³⁰ Reasonable cause in this case depended on the judgement of the Assembly.

In the case of Debora Agok, the Assembly annulled her membership after the allegation that she had rigged

elections in the Gogrial Women's Constituency seat in 1978. Precisely women who were not registered to vote were alleged to have also voted.

Although the Electoral Commission was empowered to cancel results of elections improperly conducted, it never did so in the case of Debora and no reason was given either. Debora was successfully unseated by the Assembly because her opponents were the majority in the House and had formed the government. It was therefore possible to victimise her even if she had not rigged the elections. However, Debora's failure to pursue the matter further coupled with her disastrous failure in the following by-elections indicated that the decision of the Assembly was probably right in those particular circumstances.

- (e) Membership could also be lost on the dissolution of the Assembly by the President of the Republic. This is considered in detail in Chapter 8.

3. The Officers of the Assembly

The officers of the Assembly in this context include the Speaker Deputy, the Controller, the Leader and the Chairman of the SSU Assembly body.

(i) The Speaker

The Self-Government Act provided that "The People's Regional Assembly shall elect one of its members as a Speaker ...".³¹ The Speaker was elected in the first sitting of the Assembly usually chaired by the interim or outgoing president of the High Executive Council. Two deputy speakers were normally elected to assist him in chairing the Meetings of Assembly.

However, the Self-Government Act omitted to provide for the removal of the Speaker and his deputy. Presumably the Speaker was regarded as being impartial and therefore immovable as found in the liberal democracies like that of the UK. This practice was, however, contrary to that of one-Party state democracies where every officer of the Assembly including the Speaker is supposedly a supporter of the government. So the role of the Speaker in the South and the method of his removal became very controversial.

(a) The Attempted Removal of Lubari Ramba

The first incident arose over the removal of Lubari Ramba from the speakership in 1975. The Assembly resolved to remove Ramba for alleged obstruction of the investigative process of a committee it had appointed to probe into the affairs of the regional government. Three important matters had been brought to the attention of the Assembly. They included the loss of a large number of school books belonging to the Regional Ministry of Education, the loss of

tea worth one million Tanzanian shillings donated to the regional government by the Government of Tanzania in 1972, and the conclusion of an illegal contract between the regional government and Techma Ltd (a "fictitious" British firm). The proprietor of Techma Ltd disappeared immediately on receiving the first instalment of £s 90,000.

The Committee's accusation against the Speaker was that he had obstructed them from investigating the documents of the Regional Ministry of Education where he, (the Speaker), had been the Director in charge before assuming his new office. Apparently, the Committee was of the opinion that the Speaker was not only a right-hand man of the government of the day, but was also involved in corrupt practices. The decision to remove the Speaker was not based on any law but presumably on the logical argument that the right to elect implied the right to remove. However, Alier refused to endorse the resolution on the sound argument that there was no law authorizing the removal of the Speaker. He wrote:

"I am ... unable to find any law, substantive or otherwise to support this resolution ... that the act of the Honourable People's Regional Assembly in so far as it attempted to remove the Honourable Speaker was, in the absence of any implicit provisions of any law, null and void."³²

Meaning to avoid humiliation of the Assembly Ramba was asked to resign by the President of the High Executive Council who reappointed him as Regional Minister for Public Service.

The second incident occurred in 1979 which included the removal of the Speaker Clement Mboro, his deputy Zakaria Bol and the Controller Phillip Akot. Some light will be shed on the role of the Controller later.

The background to the removal of the above three officers can be traced to the time when the Assembly unsuccessfully attempted to impeach President Lagu as already discussed. After renewing its confidence in Lagu, the Assembly proceeded to impeach these officers for charges read by Phillip Yona, Leader of the Assembly:

"In the past few months during the committee of the business of the Assembly important government Bills have not been passed through ... [because they] ... have been impeded and obstructed ... [by the above officers] ... the President of the High Executive Council has nominated people whom he can work with as leaders of the Assembly and he has withdrawn confidence from those who were there before." 33

It was rather extraordinary to say that the President had lost confidence in the Speaker and some members of the Assembly and for him to choose people with whom he could work. The doctrine of responsible government has it that members of the executive are there because of the confidence members of the legislative have in them. If this confidence is lost then they ought to automatically resign. It should therefore be the members of the Assembly who lose confidence in the President rather than the other way around. Nevertheless the two Speakers and the Controller were removed by a simple majority of seventy-two votes out 110. Like the case of Lubari Ramba, the removal of these officers

had no legal basis and should have been declared null and void.

Furthermore, seventy-two out of one hundred and ten was a simple majority, how could important officers like the Speaker and Controller be removed by this majority when, as we have seen, the annulment of the membership of Debora required a special majority of two-thirds. By analogy the deprivation of the Speaker and the Controller of their offices should have required much more. The decision was also illegal on the ground that even the convening of the extraordinary meeting by the President under his chairmanship were unauthorised and illegal. The Self-Government Act authorised the Interim President of the High Executive Council to chair the first meeting of the Assembly for the election of the Speaker only and no more.

This matter was not, however, pursued in a court of law. The Speakers and the Controller raised their complaints to the President of the Republic, who after conducting his own investigations³⁴ into the matter decided to dissolve both the Regional and National Assemblies. By then the High Executive Council and People's Regional Assembly Act, had been promulgated as a provisional empowering the President to dissolve the Regional Assembly as discussed in Chapter 8.

(ii) The Controller

There was no provision for the appointment of a Controller in the Self-Government Act. However, regulations of the Assembly provided that the Controller and the Deputy Speaker were to be elected immediately following the election of the Speaker, and in the same manner but the setting for their election had to be chaired by the Speaker.³⁵

In the Sudan the Controller of the Assembly was regarded as the leader of the opposition but he was also a prominent official in the Party. His duty was to lead commentary and present "alternative views" to that of the government in the Assembly, so as to facilitate discussion and appropriate conclusion on any matter. He was not, however, meant to oppose the government. As long as criticisms came from individuals they were not regarded as opposition but they would be considered so if they appeared to have been supported by an organized group. Therefore the demarcation between criticism and opposition was very thin.

Reliable sources hold that the removal of Akot arose from the fact that he had rallied supporters against the government within the Assembly which amounted to an opposition. However, the problem which remained was that there was no law for the removal of the Controller which was similar to that of the Speaker. As already stated, the decision should have been null and void.

The presence of the Controller in the Sudanese Socialist one-party system was an innovation which offered a

new departure from the practice obtaining in other one-party states in Africa. His role as a moderator was a healthy innovation but could be a dangerous one as well as seen in the case of Akot.

(iii) The Leader

Conventionally, the Leader was appointed by the government to present her views in the Assembly. He could be regarded as the equivalent of the Chief Whip in the UK.

(iv) The Chairman of the SSU Assembly Body

The Chairman of the SSU Assembly body was the person appointed by the government to chair meetings of the body. In practice members of the SSU Assembly body were identical with that of the Assembly except that their sittings were not regarded as those of the Assembly.

Their function was to ensure that the Assembly was observing "the principles of May Revolution" in all its actions so as to secure party supremacy and a voice in all matters of the Assembly.³⁶ In order to do so the body was required to debate all major issues before the sitting of the Assembly with the view of reaching prior appropriate decisions³⁷ to be rubber-stamped by the Assembly. The body had to comply on all issues with the resolutions of the central organs of the party.³⁸ The debates were

confidential and the decisions reached had to be defended by the members in the meeting of the Assembly proper.³⁹ It was also to lay down a general framework for the control of the executive of the Assembly. It therefore operated as an instrument of coercion.

(v) Functions of the Assembly

The People's Regional Assembly was obviously assigned the traditional functions of a legislature which include law making; utilization and control of financial resources; criticism and control of the executive and the general involvement of the people in politics.

In the field of law-making, Section 7 of the Self-Government Act stipulated:

"Regional legislation in the Southern Region shall be exercised by ... People's Regional Assembly elected by citizens resident in the Southern Region."

The People's Regional Assembly did of course make some laws such as the Public Service Act 1975,⁴⁰ The Registration of Business Names Act 1976,⁴¹ Land Acquisition Act 1976⁴² and several others but unfortunately this vital role of the Assembly was not sufficiently carried out. For most of the time the Assembly was either on recess or dissolved. There were three dissolutions in 1980, 1981 and 1983. This was so because the Members of the Assembly were constantly bickering over leadership, as seen above, for example in the removal of the President and the Speakers. Therefore many

important fields like traditional law and custom, land law remained uncovered. Most of the legislation was enacted by the First People's Regional Assembly only.

On the subject of economic development, the Self-Government Act stated that the People's Regional Assembly was responsible for:

"Promotion and utilization of regional financial resources for the development and administration of the Southern Region."⁴³

It was empowered to "levy regional duties and taxes in addition to the national and local duties and taxes".⁴⁴

This was the area where the regional assembly was most active. From 1972 to 1983 the regional government enacted the Finance Act, 1974,⁴⁵ the Excise and Consumption Duties Act, 1977,⁴⁶ and the Surcharge Tax Act, 1980.⁴⁷ These laws imposed various categories of taxes on people, goods and commodities in the region. (For more details, see Chapter 9.) In doing so, the region was pressed ^{hard} by the desperate need for funds to run the government concerning the control of the Executive by the Assembly through criticisms and impeachment of the members of the Executive was too relaxed. Section 20 of the Self-Government Act expressly made the High Executive Council responsible to the People's Regional Assembly.

"The President of the High Executive Council and its members are responsible to the President and the People's Regional Assembly for the efficient administration of the Southern Region."

But, as we have already seen, from the cases of Lubari Rumba, Joseph Lagu, Samuel Aru Bol and others, the Regional

Assembly failed disastrously to control the High Executive Council. On the contrary it was being controlled by the High Executive Council - note especially the removal of Clement Mboro and others.

All in all, the Southern Regional Assembly was very weak, ineffective, and incompetent. The members never involved people in politics and made only a few laws which were inappropriately considered or researched into. They never pulled up the strings of development and totally failed to control the Executive. Being mainly composed of people with little education, they were preoccupied in squabbles for leadership and issues of tribal balance in the Executive. It was largely a worthless Assembly.

B. Other Regional Governments

A Regional Government established under the provisions of the Regional Government Act 1980 or Presidential Order No. 1 of 1983 consisted of two organs.

1. A Regional Executive Authority
2. Other People's Regional Assembly.

"The Judiciary, Public Prosecution and Advocacy" were expressly excluded from the jurisdiction of the regional governments.⁴⁸

1. The Regional Executive Authority

THE STRUCTURE OF DECENTRALISED GOVERNMENTS IN THE SUDAN II 1980 – 1985

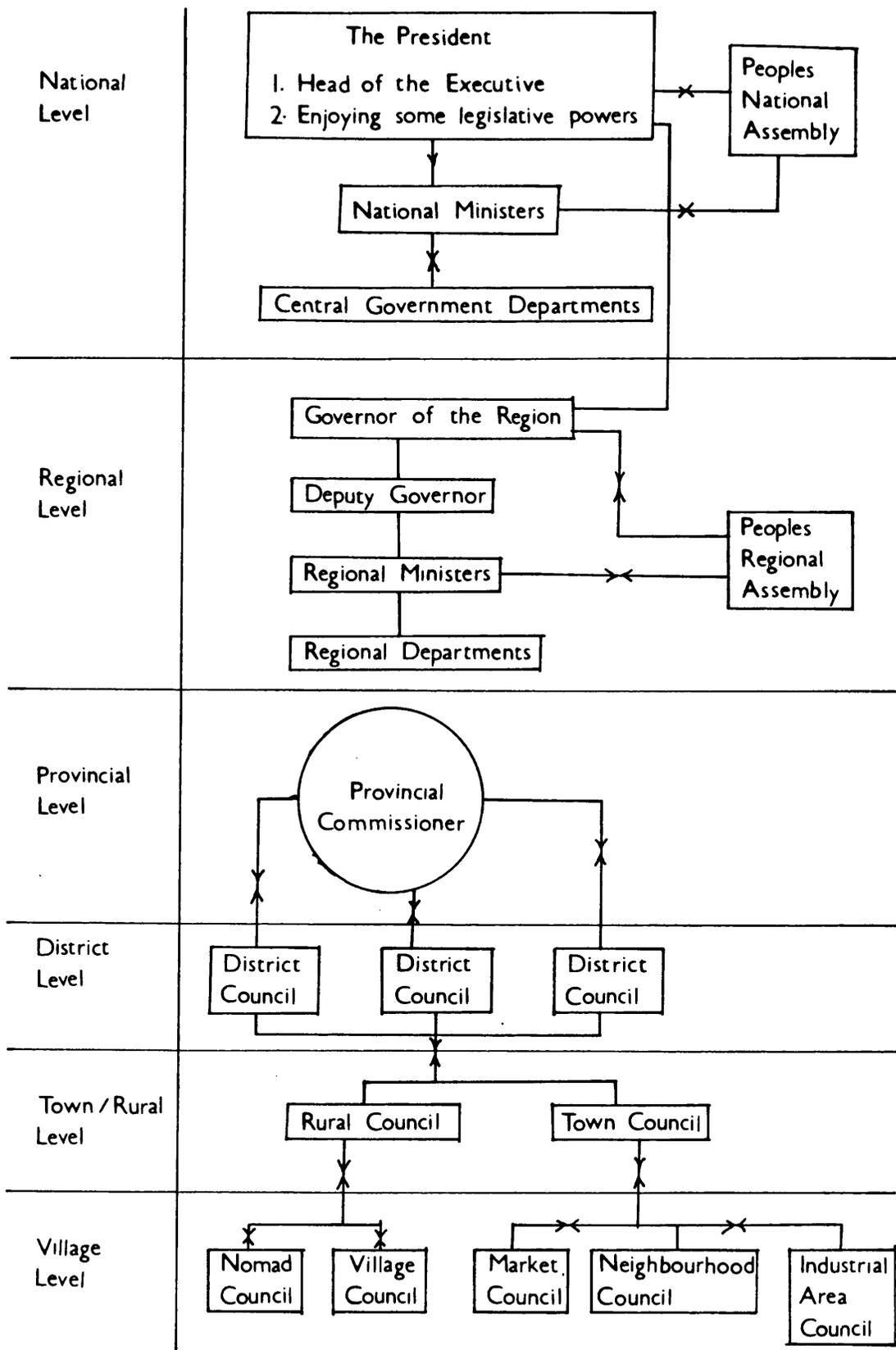


Diagram 7

The Regional Executive Authority was comparable to the High Executive Council in the South. It was composed of:-

- (i) The Governor
- (ii) The Deputy Governor
- (iii) Members of the Authority (or Regional Ministers).

(i) The Governor

The Governor was the Chief Executive in the region comparable to the President of the High Executive Council in the South. However, his appointment differed from that of the President of the High Executive Council. There were express provisions for the appointment of both the Interim or Substantive Governor.

(a) Appointment of Governor

The provision for the appointment of the Interim Governor read:

"The President of the Republic shall appoint the first Governor of the Region for a transitional period not to exceed eighteen months from the date of the appointment. 49

Since the President also appointed the interim Governor in his absolute discretion as the interim president of the High Executive Council, the difference rested entirely on the omission of the provision for the appointment of the latter. From the case of Omer El Mardi, it would, however, appear

that the discretion of the president in the appointment of the Interim Governor was never absolute in practice. Omer El Mardi was appointed as Interim Governor for Darfur Region in 1980 but his appointment was rejected by the people of Darfur on the ground that he was not born and bred in the area. The bitter opposition to El Mardi's appointment compelled the President to remove and replace him with Ahmed Ibrahim Direig.

The provision for the appointment of a substantive Governor stated:

"... The President of the Republic shall appoint the Governor of the Region from three candidates selected by a common meeting between the Regional People's Assembly and the Regional conference of the Sudanese Socialist Union."⁵⁰

The President was supposed to prescribe regulations for such a meeting⁵¹ no such regulations were ever made. In practice, the president continued to appoint the Governors in disregard of the law. There was therefore a drastic difference between the appointment of the Governor and that of the President of the High Executive Council. The people hardly participated in the appointment of the Governor which was not democratic.

The procedure for the appointment of the Governor appeared to have been partly borrowed from the recommendations of the All Political Parties Conference in 1966 [see Chapter 3 for more details].

The qualifications of the Governor also differed from

that of the President of the High Executive Council in certain respects. He was required to be a Member of Parliament, which, as we have seen, was not the case with the President of the High Executive Council.

(b) Functions of a Governor

Executive powers in the region were vested in the Governor personally.

"... Executive power in each Region shall be vested in the Governor of the Region who shall be assisted by a Deputy and an adequate number of Regional Ministers."⁵²

Therefore compared to the President of the High Executive Council, the Governor was more powerful within his region.

(c) Removal of a Governor

There were two procedures for the removal of the Governor.

- (1) On the recommendation of a three-quarters majority of the members of the Regional Assembly and the conference of the Sudanese Socialist Union in a joint meeting for loss of confidence in him.⁵³
- (2) The President could remove him at his own motion if he thought the Governor no longer had the ability for good leadership.⁵⁴
- (3) Upon dissolution of the Assembly⁵⁵ as in the case of the President of the High Executive Council.

Inspite of the enormous powers of the President for the removal of a Governor, no Governor except El Mardi was dismissed, the implication being all Governors were loyal to the President.

(ii) The Deputy Governor

Section 14 of the Regional Government Act stipulated:

"The President of the Republic shall appoint a Deputy for the Governor of the Region and may remove him on the recommendation of the Governor."

This provision appears badly drafted. It is absurd that the President could appoint a deputy for the Governor without the recommendation or consultation of the latter if the working relationship between the Governor and his deputy is to be convenient. What would happen if the governor of a region recommended the removal of his deputy but the President refused to remove him?

The implementation of a similar provision in order No.; 1 of 1983 caused a problem in 1983 over the appointment of Francis Wajo as the Deputy Governor for Equatoria. James Tombura, the Governor, had recommended Wajo for the post but President Numeiri and his Vice-President Joseph Lagu preferred Oliver Albino. According to the above-quoted provisions, the President did not need the recommendation of a Governor for the appointment of his deputy. Tombura was prepared to resign rather than work with Albino and the

matter was resolved in his favour. The appointment of Wajo was legally unprocedural though politically appropriate and logically sound if there is to be some meaningful relationship between the Governor and his Deputy. providing for the President to appoint a Deputy for the Governor without the latter's consent was quite illogical.

(iii) Members of the Regional Executive Authority

Regional Ministers who formed the Regional Executive Authority were fewer than the Regional Ministers of the High Executive Council. They held the following portfolios:-

- (a) The Regional Minister for Finance and Planning.
- (b) The Regional Minister for Regional Administration and Regional Affairs.
- (c) The Regional Minister for Agriculture and Natural Resources.
- (d) The Regional Minister for Regional Services (Health, Education and Information).
- (e) The Regional Minister for Communications Works and Housing.

Like the members of the High Executive Council, they did not have to be members of the Assembly.

They assisted the Governor and his Deputy generally and were "responsible for the framing and directing the policy of his Ministry within the limits of the general policy and the policy of the region".⁵⁶ They were appointed and removed from office by the President on the recommendation

of the Governor. It was not, however, certain whether the President could relieve a Regional Minister before the recommendation of the Governor, in cases of emergency.

For example, in June 1984, the President relieved Ceasar Baya from his post as Regional Minister for Agriculture in Equatoria. Baya was involved in a motor accident while driving under the influence of alcohol at the time when Sharia law which forbade drinking was in force. Baya was instantly removed in Khartoum, where the accident took place but his Governor was isolated in Juba over one thousand miles away. It was alleged that the Governor's recommendation had been obtained but doubt remained as to whether the recommendation was obtained before or after his removal.

2. The Regional Assemblies in the Other Regions

Table 6.2 shows the composition of the other Regional Assemblies compared to the Area and total population of the respective regions. The difference between the other Assemblies and the Regional Assembly in the South was that they had appointed members.

It would seem that the seats were distributed according to the population of the regions in that regions with larger ~~Population~~ had more seats. However, there was no justification for equalizing the number of seats between the Eastern and Northern regions. If population was the criteria used, then

Region	Area in 000s of Km	Total population 000	Total no of seats	Geographical seats	Peoples Alliance	Administrative seats	Appointed members
Eastern	341	2,208	50	22	20	3	5
Northern	477	1,083	50	22	20	3	5
Kordofan	381	3,093	55	24	22	4	5
Darfur	496	3,094	55	24	22	4	5
Central	142	4,013	70	30	28	5	7
Khartoum	21	1,802					
<u>The South</u>							
Baher El Ghazal)	214	2,266)					
Upper Nile)	236	1,600)	110	60	44	6	-
Equatoria)	198	1,406)					
	<u>2,506</u>	<u>20,564</u>					

Table 6:2

the Eastern Region should have had nearly twice the number of seats allotted to the Northern Region. Moreover, the population of the Central Region was over-represented in the Assembly.

III. LOCAL GOVERNMENTS

Diagrams 6 and 7 show the two structures of Local Governments established.

- A. The structure of the People's Province Executive
- B. The structure of Area Councils.

A. The Structure of People's Province Executive Councils

The People's Province Executive Councils consisted of the Commissioner and the Province Executive Council at the apex.

1. The Commissioner

Section 6 of the People's Local Government Act, 1971 provided:

"The President of the Republic shall appoint for every province a Commissioner who shall be qualified and experienced person of high administrative ability and

of political consciousness and who is also an ardent supporter of the aims of the Revolution."

It was, however, by no means certain that the appointment of Commissioners followed these criteria. Experienced public administrators as well as inexperienced school graduates, semi-illiterate people as well as Members of the Armed Forces were appointed Commissioners. Therefore the appointment of Commissioners fell below the expectations of the law.

The responsibilities of the Commissioner were very wide. The Commissioner was the Chief government representative in the province, the SSU Provincial Secretary and the person in charge of civil servants in the province. He was also to maintain security in the province, chair council meetings and act as Treasurer for the Council. The implications of these functions will be analysed separately.

(i) The Commissioner as Chief Government Representative

The People's Local Government Act 1971 stated:

"The Commissioner shall be the Chief Representative of the Government in the province and shall be responsible for the execution of the general policy of the government and for fostering and consolidating the revolutionary socialist regime of the May Revolution and for the functional organizations." 57

He was therefore the key figure in the province responsible for government policies and functions. He was the Central Government Agent in the province.

(ii) The Commissioner as SSU Provincial Secretary

According to the SSU practice, the Commissioner by virtue of his office was the SSU Provincial Secretary responsible for the propagation of SSU objectives in the province. He chaired meetings of the SSU Provincial Secretariat as well.

(iii) The Commissioner as the Administrative Supervisor in the Province

The Act provided:

"The Commissioner shall be responsible for the general supervision, coordination and control of the government units in the province and he shall exercise control over civil servants working in the province and shall render reports on the effective discharge of their duties to their respective Ministries ..."⁵⁸

He was also empowered to discipline any employee under the Employees Discipline Act, 1976.

In this respect he was assisted by the Executive Director who was the Chief Professional Administrator and by virtue of his office the Deputy Commissioner and Secretary to the Council. (The performance of these functions are considered in greater detail in Chapter 8.)

(iv) The Responsibility for Order and Security

The Act also stated that the Commissioner was "responsible for the maintenance of order and security in the province".⁵⁹ He was answerable to the Minister of Interior or to the High Executive Council in the case of the South.

However, this provision was too general to distinguish the exact limits of the powers of the Commissioner. In 1979 Presidential Decree No. 475 transferred the administration of police forces to the Province Executive Councils. In this respect the Decree was contrary to the provisions of the Police Act, 1979 which also transferred responsibility over the police to the President of the Republic except for the Khartoum Province police. (For more details see Chapter 7.)

(v) The Commissioner as Treasurer

Section 6(7) of the 1971 Act stated:

"The Commissioner shall be the Treasurer of the People's Executive Council and responsible for the control and carrying into effect of all duties of the Council and execution of its resolutions."

As the Treasurer, the Commissioner was supposed to:-

- (a) advise the Executive Council on financial matters;
- (b) prepare the annual recurrent budget as required by the Act;
- (c) establish safe and efficient machinery for collection of monies due to the Council and the disbursement of

- the expenditure thereof;
- (d) maintain proper records in accordance with the provisions of the Financial Regulations of Monies received and payments made;
 - (e) keep proper records of Council assets and liabilities;
 - (f) discharge any other functions for efficient management of public funds.

However, due to lack of professional knowledge of accountancy, the Provincial Commissioners were incapable of performing the above functions. There was also bad financial management on the part of the junior staff. There were no proper records of money received and disbursed. In Baher El Ghazal Province development money for example was used for paying salaries, the sum of £s 29,109,477 m/ms was misappropriated in 1976.

The irony of the situation was that almost all the powers that were decentralised to the local government councils remained in fact centralised in the Commissioner. As we shall soon see, the Executive Councils and the Local Councils had almost no powers or functions.

2. The People's Executive Councils

(i) Composition of the Councils

The details of the composition of every Executive Council were contained in the Council's warrant of

establishment. The warrants were more or less based on the requirements of the Act. Every council had representatives of the functional organizations (alliance of working forces) and the government units in the province.⁶⁰ Surprisingly, there was no specific mention of women, inspite of the importance attached to participation by women in the lower councils. Invariably, all Executive Councils had a total membership of 150 people, of whom a third were ex officio members. The ex officio members included the Heads of the Provincial Departmental Units like the Assistant Commissioners for Health, Education, Agriculture, Works etc. Plus some government officials in the Province. The rest of the Members were indirectly elected from the lower councils.

The Councils were broadly responsible for:-

"... Political enlightenment, people's mobilization, economic and social development and consolidation of the national unity in accordance with the Revolution ... Promotion of new ideas of the People's Local Government and for the consolidation of the People's and official activities and combatting the defunct political parties, sectarianism, racialism and tribalism."⁶¹

(ii) Meetings of the Council

The Councils were required to meet regularly but not to exceed six times a year under the Chairmanship of the Commissioner or the Executive Director in his absence. In practice, however, meetings of the councils were rarely held due to long distances and the unavailability of transport

facilities. Southern Darfur was for example, about 70,000 square miles yet 50 to 60% of the vehicles in the Province had outrun their useful life.

(iii) Committees of the People's Executive Council

It was mandatory for the People's Executive Council to appoint "a Central Committee" to assist in the discharge of its duties. But it could also appoint other specialised committees. Their roles will be examined separately.

(a) The Central Committee

The Central Committee was established under Section 10 of the Act:

"The People's Province Executive Council shall appoint a central committee to be presided over by the Commissioner and with the Deputy Commissioner acting as Secretary."

The Deputy Commissioner was the Executive Director who also acted as Secretary for the Executive Council. Originally, the Central Committee was composed of seven members, of whom five represented the usual functional organizations. However, following the recommendation of the Select Committee of the People's National Assembly in 1976, the number was doubled in order to make it more representative of the people in the Province. But adequate representation was never achieved due to the smallness of the number. The Committee was to deal with important and urgent matters

assigned to it by the People's Province Executive Council. Since a full meeting of the Council could never take place as stated earlier, every matter was treated as urgent.

(b) Specialized Committees

Section 18(1) of the Act empowered the People's Executive Council to:

"Set up specialized committees which shall be responsible for the discharge of several activities assigned thereto or for the purpose of making a report respecting any matter or the performance of any work deemed by the Council more suitable to be inspected or discharged by any such Committee."

The Executive Council was to decide on the total membership of such committees which were not to be less than five members. These types of committees were presided over by the members of the Executive Councils, while the Secretaries were the professionals in the Council.

3. The People's Rural Councils and the People's Town Councils

Powers of the Executive Councils to establish lower councils have been examined in Chapter 5. The People's Rural Councils and the People's Town Councils were the immediate councils below the People's Province Executive Councils (following the abolition of the District Councils). The difference between the two councils depended on the area

of location of the council.

(i) The People's Rural Councils (PRC)

In 1971 the Ministry of Local Government issued a circular concerning the establishment of Rural Councils.

"It is extremely important that these divisions shall be based on aspects such as local geography, the type of economy prevalent in the area, and the common interests of the local population. In particular there should not be any natural barriers within any proposed council ..."⁶²

Commenting on this circular M. Allasam wrote that "its aim was to create smaller and more homogeneous administrative and public units"⁶³, which was in the best traditions of forming local councils.

The Rural Councils were composed of the representatives of the lower councils (the Furgan and village councils) as well as governments in the area such as health, education, public works and so on. However, the membership of the ex officio members (the government officials) was limited to one third of the total. As specified in the Act, a quarter of the seats were reserved for women. A study of the infra-structure of Gebel Marra by the Huntington Technical Services in December 1977 (in Western Sudan) revealed the typical composition of a Rural Council, as shown in Table 6.3.

As can be seen from Table 6.3, the study covered the

Table 6:3
THE COMPOSITION OF RURAL COUNCILS

Council	Total Membership	Seats for Women Members	Seats for Official Members	Seats for Elected Members
Zalingei	24	6	8	10
Garsila	24	6	8	10
Nyertete	24	6	4	14

Source: Study on Infra Structure of Jebel Marra Area by Huntington Technical Services Ltd., December 1977, Annex VI, p. 39.

Rural Councils of Zalingei, Garsila and Nyertete. The difference between the seats for official members in Nyertete and the other two councils was due to the fewer number of officials in Nyertete. All other seats were filled except those reserved for women who failed to turn up. It is to be recalled that the social behaviour of Sudanese people inhibits women from participation in public life.

The elected members consisted of illiterate traders, farmers, primary school teachers and religious leaders, all of who commanded little respect or popularity in the community. The May revolution's policy of isolating traditional leaders and sectarian party influence from the councils affected the councils in that the traditional leaders and other leading figures boycotted the Rural Council elections. The overall impact was that the councils remained very weak. The chairman of Nyertete was the only effective leader of the three councils. This was because he was a trained teacher, the president of a local farmers and tobacco growers association and had, paradoxically, been qndamda (see Chapter 4). Probably his experience in the Omdaship made the greatest contribution to his effectiveness. On the other hand, the chairman of Garsila was a merchant, while that of Zalingei was a sub-grade teacher and both were weak.

(ii) The People's Town Councils (PTC)

Town Councils were treated on similar lines with Rural Councils. Their compositions, however, consisted of representatives from the residential councils, Suk (market) councils, and industrial area councils. As usual, the working government officials formed a third of the total membership while a quarter was reserved for women. Once again, all rules issued by the Ministry of Local Government to Rural Councils also applied to Town Councils.

4. The Village, Furgan, Residential, Market and Industrial Area Councils

The Village, Furgan, Residential, Market and Industrial Area Councils were the lowest councils in the Sudan established under the People's Local Government Act, 1971. Their names were indicative of their areas of location.

(i) The Village Councils and the Furgan Councils

The word Furgan stands for a nomadic village. Both the Furgan and village councils were governed by the same rules. Their sizes were normally determined by a population of about one thousand people. Every council had been 20 and 24 members, (rather similar to that of the Rural and Town Councils).

The elected members were informally elected in an open-air meeting of the electorate called by the chairman of

the village committee. Every Sudanese aged 18 years and above^v was eligible to vote. Reports of such elections are not readily available. As usual, ex officio members were added to the elected members. They came from amongst government officials working in the village as midwives, nurses, dressers, school teachers^c, headmasters and so forth. Their number was also limited to one third of the total membership. The normal quota of one quarter of the total seats were reserved for women.

(ii) The Residential, Market and Industrial Area Councils

Under the Local Government Act 1971, every town in the Sudan was divided up into residential, market and industrial areas for the purpose of establishing local government councils. Although all these councils were in urban areas, they were treated on equal terms with Furgan and Village Councils for administrative purposes. Their compositions and rules of elections were also similar to those of the Furgan and Village Councils.

(iii) The Residential Area Council

The elected members in the Residential Area Councils elected a chairman to represent them in the Town Council. If the number of the residential area councils exceeded the prescribed seats of 20 to 24, the electoral college system was applied to get the required number. A group constituted

of the chairmen of the residential councils was sent as delegates to the Town Council.

(b) The Market Councils

Market areas in the towns constituted separate councils. Every business group such as butchers, vegetable dealers, shop-keepers and so on elected a trade committee. The elected chairman for these committees constituted a market council (Suk Council), which was represented on the Town Council by at least one member each. Commenting on this arrangement in 1972, J. Howell wrote:

"It is an experiment worth watching for political as well as administrative reasons. The merchants in the Sudan have always been in party politics and are not the natural allies of President Numeiri's professedly socialist government. But the government in its three and a half years in office has come to appreciate the importance of the merchants to the economic wealth of the land, and henceforth, they are more likely to be courted than harrassed."⁶⁴

It is interesting to see how socialism yielded to capitalism within only three years in the Sudan. This shows that the community is not prepared to receive imposed ideology.

There was no provision for the preservation of seats for women in the Market Councils, probably because women were not found in significant numbers in the field of trade.

(c) Industrial Area Councils

Industrial Area Councils were formed in the same way as the Market Councils but were limited to the towns with factories. They were few and were also represented in the Town Councils.

5. Functions of the Lower Councils

According to the 1971 People's Local Government Act, the People's Province Executive Councils were to, after the establishment of these councils, "delegate some of [their] powers and functions to the People's Local Councils"⁶⁵ to be exercised under their supervision.

In practice, the People's Province Executive Councils never delegated their powers to the lower councils. It was even very difficult for the lower councils to obtain funds from the Executive Councils. For example, in Aweil and Gogrial Districts in Baher El Ghazal Province some Rural Councils never functioned due to lack of powers and funds. In Southern Darfur Province, the Administrative Survey Team of 1976 found that individual consent had to be obtained from the Provincial Headquarters for spending as small an amount as £20.⁶⁶ It was a very frustrating and demoralising experience.

Nevertheless, Southern Darfur was an exceptional case when it attempted to delegate powers to the lower council through a circular as follows:-

(i) People's Province Executive Councils

The People's Province Executive Councils were responsible for town planning, making building regulations and allocation of land for mechanized agricultural scheme.

(ii) District Councils (abolished)

The District Councils were to be the link between People's Province Executive Councils and Town Councils. They were also responsible for airports, agricultural exhibitions, receiving recommendation from Rural Councils and Town Councils and passing them to the People's Province Executive Councils. In addition to those they were in charge of the supervision of work of Rural Councils and Town Councils.

(iii) Rural Councils and Town Councils

The Rural and Town Councils were responsible for data collection, drawing up plans and carrying out research studies. But the power to decide on plans and studies were reserved to the People's Province Executive Councils. They were also to take charge of maintenance of schools, roads, public health facilities, control of births and deaths, rest houses, and animal movement in disease areas, and enlightenment and mobilisation of citizens politically.

(iv) Village Councils

Inexplicably the Village Councils received no mention. The circular also failed to decentralise financial powers. Presumably they were to receive grants from the Province Councils. Though this was a progressive development, it was never implemented - no reason was given here either.

This brings us to the structure of the Area Councils.

B. The Area Councils

The composition of Area Councils varied, being governed by different principles in different parts of the Sudan. In the Northern part of the country the composition was determined according to the local population. For example, Omndurman Area Council had 60 members and was the largest in the country. However, in the southern part of the country the size of every Area Council was standardised: each one had 30 members only. Table 6.4 shows the composition of a typical Area Council in the South: Malakal Area Council is used as an example.

Table 6.4 reveals the following points.

1. The majority of the members in an Area Council were elected from single member constituency wards.

Table 6:4
THE COMPOSITION OF MALAKAL AREA COUNCIL

Electors/Ward	Geographical Seats	Alliance of Working Forces	Women	Appointed Members
1. Official Quart-ers	3		1	
2. Hai Jalaba	3		1	
3. Hai Malakia	4		2	
4. Bom and Denger Shufu	4		1	
5. Market Area	1		-	
Total	15	7	5	3
Grand total: 30				

Source: Instruction No. UNP/I.A.I. By Acting Commissioner Elisapano K. Mulla - Commissioner's Office, Upper Nile Province, Malakal, November 30th, 1981.

Incidentally the elections were conducted by direct secret ballot, as opposed to indirect elections used for the People's Province Executive Councils.

2. There were no representatives of government departments in the membership of the Councils, as there was in the People's Province Executive Councils.
3. The representation of the different categories of people, like the alliance of working forces, was maintained but women were no longer reserved a quarter of the seats. This was so because the 1981 Act authorised the Regional Executive Authority to prescribe "a reasonable number of seats for women",⁶⁷ as had already been pointed out.
4. A few members (usually three in the South) were appointed by the Regional Executive Authority on the recommendation of the Commissioner. They were regarded as experienced people interested in public works, as already mentioned.
5. It should be added that the chairman of the councils were now elected.

"The Council shall, in the first sitting, elect a chairman from amongst its members; provided that such sitting shall be chaired by the Commissioner for the said purpose."⁶⁸

(i) The Commissioner

According to Section 10 of the Local Government Act 1981:

"The Commissioner shall assume the following powers:-

- (a) He shall be responsible to the People's Executive Authority for the Province Security.
- (b) He shall supervise the police, the prisons and the fire brigade forces in the Province.
- (c) He shall be responsible for the Heads of the Executive organs in the Councils and procedure secondment of all employees in the Public Service organs to the Councils. He shall confirm and render reports on them.
- (d) He shall revise the works of the Councils and raise reports thereon to the Regional Executive Authority.
- (e) He shall exercise any other powers delegated to him by the Regional Executive Authority."

Thus the enormous functions of the Commissioner under the 1971 Act had been drastically reduced to that of supervision, review and reporting. He was no longer the Chairman or the Treasurer. However, he remained the government representative in the province as well as the SSU Secretary there. His powers of supervision over security forces in the province and his responsibility for the secondment of officials left him in a fairly strong position. Commissioners in the South were still able to coerce the Councils through the powers. He could label an individual as security danger and have him detained and influence the transfer of Chief Executives. Interventions by Commissioners into the functions of Councils were frequent. Moreover, he had to endorse resolutions of the Councils before they could be confirmed by the Regional Assembly.

If a person was aggrieved by a local order, he would petition the Commissioner who would recommend to the Regional Executive Authority the suspension, amendment or

repeal of the order.⁶⁹

(ii) Committees of the Area Council

Like the People's Province Executive Councils, the Area Councils were also empowered to "set up committees from amongst its members to assume the responsibility of supervising the basic business assigned thereto".⁷⁰ In compliance with this provision every Area Council (at least those in the South) appointed committees for:-

- (a) Public Order and Social Affairs;
- (b) Education and Culture;
- (c) Public Health;
- (d) Public Works;
- (e) Agriculture and Animal Wealth; and
- (f) Trade and Supply.

The Committees were required to make detailed recommendations based on expert knowledge and studies for submission to the Council for policy decision-making. Expectedly, the Committees were bound to be more effective than the Central Committee of the People's Province Executive Council, which attempted to do everything on behalf of the Executive Council.

(iii) The Rural Councils

The Rural Councils were established by the Area

Councils as stated earlier. Their composition was similar to that of the Area Councils. They exercised delegated powers from the Area Councils, which involved the rendering of minor services similar to those of the Area Councils in their localities.

IV. THE NATIONAL CAPITAL

The National Capital comprised:

- A. The Commissioner General
- B. The Commissioners
- C. The Council for the National Capital.

Below these were the District Councils and the Rural Councils. These will be examined in turn.

A. The Commissioner General

The Commissioner General was the Chief Executive of the National Capital comparable to the Governor of a region. According to Sections 6 and 9 of the National Capital Act 1983, his appointment and removal were also similar to those of regional Governors.

All executive powers for the administration of the National Capital vested in him and was directly answerable to the President of the Republic only by the said Section 6.

THE STRUCTURE OF THE NATIONAL CAPITAL

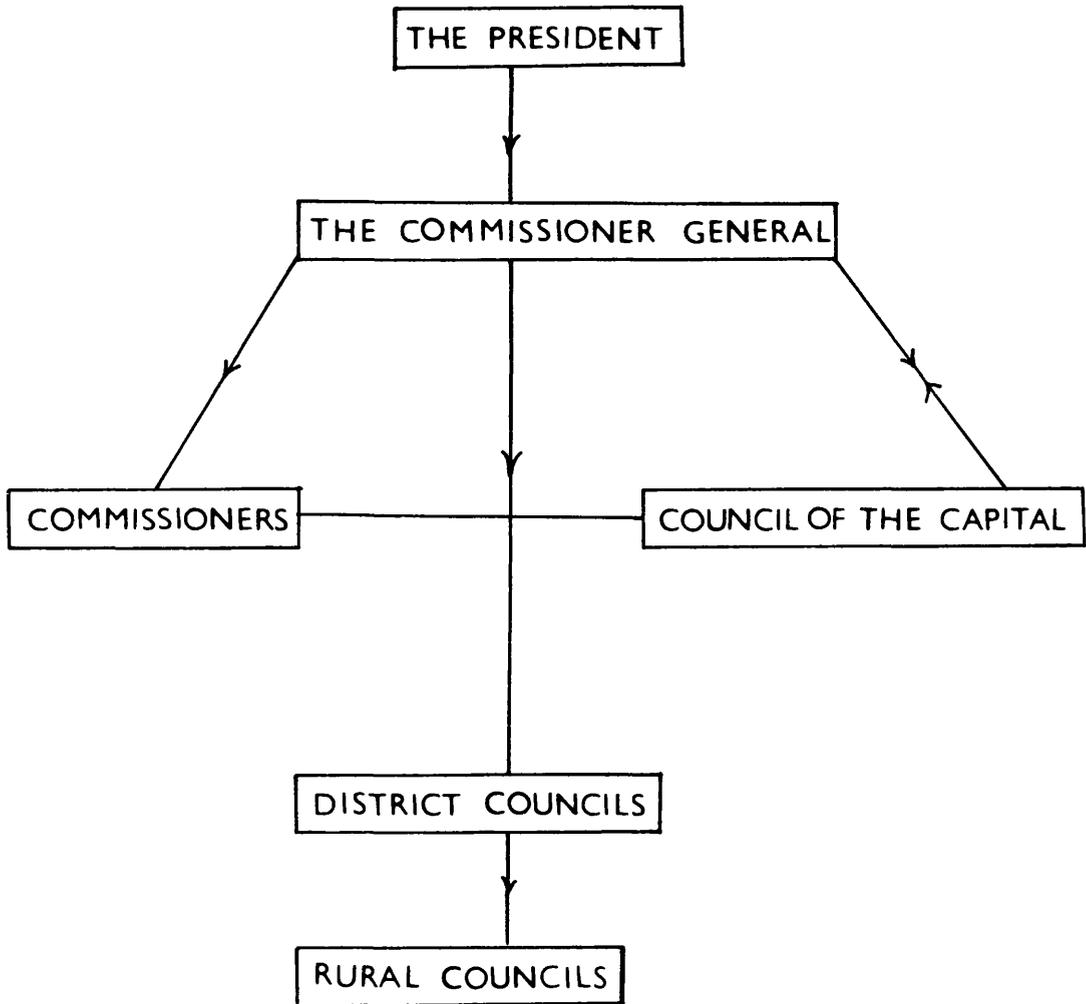


Diagram 8

B. The Commissioners

The Commissioners were appointed by the President on the recommendations of the Commissioner General under the provisions of the same Section 6. Their number was not specified. However, the Commissioner General had the discretion to decide on the appropriate number which he was to recommend to the President for appointment. They were responsible to the Commissioner General and the Council for the National Capital for the proper performance of their duties.

The duties were not also defined by the Act but the President of the Republic in consultation with the Commissioner General was to distinguish the functions of the Commissioners as opposed to those of the Commissioner General. This seemed not to have been done by the time the Numeiri government was overthrown in 1985. However, the Commissioner could more or less be compared to the members of the Regional Executive Authority in a region.

National Public Service Organ

Like the Regional Governments in the Northern Sudan, the National Capital had no public service organs. Officers for the National Capital were also seconded from the Central

Government. The Secretary General was the highest civil servant in the administrative hierarchy.

C. The Council for the National Capital

The total membership for the National Capital was fixed at sixty. The composition and methods of elections and appointments were similar to those of a Regional Assembly in the North.

Its functions were similar to those of a Regional Assembly - legislation, economic development and control of the executive organ for the National Capital. Unlike the Governor, the Commissioner General chaired meetings of the Council.

District Councils

The National Capital was made up of four District Councils which were similar to the Area Councils in terms of compositions and functions. These Councils were:-

- (1) Khartoum District Council.
- (2) Omudurman District Council.
- (3) Khartoum North District Council.
- (4) East of the Nile District Council.

Local Councils

The Commissioner General was empowered to establish Local Councils on the recommendation of the Commissioners below the District Councils. These were the equivalent of Rural Councils established under the People's Local Government Act, 1981.

The difference here was the provision was also made for the establishment of Village Councils separate from the Rural Councils. They were even assigned separate functions and sources of revenue. The functions were listed in Schedule 5 of the Act (see Schedule)

Their sources of revenue included,

"self help, gifts and donations and grants in aid determined by the District Councils."

According to National Capital Act, "revenues and functions for the District and People's Local Councils were also separately defined". Details of these can be seen in Schedules 3 and 4 of the National Capital Act 1983.

It could seem as if the draftsman of this law to some extent followed the provisions of the People's Local Government Act 1971 with regard to the provisions concerning Rural and Village Councils. It is to be recalled that the Local Government Act 1981 had already replaced the provisions of the 1971 Act. This could cause confusion in the local administration of the National Capital when compared to other Area Councils.

The organization of the National Capital was, however, different from that of the Federal Capital territory at Lagos. A comparison between the two will be made to illuminate the differences.

According to the Nigerian 1979 Constitution, its provisions were to apply to the Federal Capital Territory as if it were one of the States of the Federation. This means the Federal Capital Territory applied the same laws as the States which was not the case with the Sudanese National Capital.⁷¹

In Nigeria too, the National Assembly, the President of the Federation and the Federal Courts constituted the necessary organs for the Federal Capital territory. The constitutional provisions were to be read with modifications and adaptations to conform with such ideas. The Federal Capital territory was ~~treated~~ as a Senatorial District, a Federal Constituency and the President regarded as the Governor, the Vice President as the Deputy Governor, and the Chief Justice as the Chief Judge. Thus organs of the Federal Government were inseparable from those of the federal capital territory. But in the Sudan as we have seen, the National Capital had separate legislative and Executive organs from those of the Central Government. The Commissioner General was only directly responsible to the President of the Republic. Moreover, the relationship in the Sudan between the Government of the National Capital and the Central Government were not well-defined. Conflicts

could therefore have been expected to arise although no cases came up probably due to the one-party system and Numeiri's dictatorial regime.

NOTES

1. The Permanent Constitution, Art. 80 and The Basic Statute of the Sudanese Socialist Union, 1983, Reg. 48(g).
2. The Permanent Constitution of the Sudan, 1973, A. 89.
3. Ibid., Art. 4.
4. Ibid., Art. 120.
5. Ibid., Art. 188.
6. Personal knowledge.
7. Permanent Constitution, Art. 189.
8. The Southern Provinces Self Government Act, 1972, 5.2 (vi).
9. The High Executive Council and People's Regional Assembly Act, 1980, Section 3.
10. See Summary of the Proceedings of the People's Regional Assembly, Juba, First Session, Sitting No. 2, December 15th 1973.
11. The Self Government Act, Section 28.
12. Ibid., Section 29.
13. Conduct of Business Regulations, 1973, Reg. 41.
14. Proceedings of the Second People's Regional Assembly, Juba, 5th Session, Sitting No. 86, June 27th, 1979.
15. Conduct of Business Regulations, Reg. 40.
16. The Self-Government Act, Section 19.
17. Ibid., Section 16.
18. Ibid., Section 6.
19. Conduct of Business Regulation, Reg. 77.
20. Provisional Order No. 2 of 1975.
21. Provisional Order No. 5 of 1976.
22. Self-Government Act, Section 12(1).
23. Laws of the Sudan, Volume 9, 5th edition, pp. 2-149.
24. The People's Assembly and the People's Regional Assembly Elections Act, Sections 8 and 9.
25. Art. No. 42 of 1973.

26. The Assembly Elections Act, Section 17.
27. Ibid., Section 15.
28. Basic Rules of the SSU, R.28.
29. The Assembly Elections Act, Section 17.
30. Conduct of Business Regulations, Reg. 11.
31. Self-Government Act, Section 9(3).
32. Letter No. SG/HEC/SCR/1.E.3B dated June 30th, 1975.
33. Proceedings of an extraordinary meeting of the People's Regional Assembly, July, 1979.
34. Informed by reliable sources who do not want their names to be disclosed.
35. Conduct of Business Regulations, Reg. 7.
36. The Body of Members Regulations, 1974, Reg. 5.
37. Ibid., Regulation 6.
38. Ibid.
39. Ibid., Reg. 11.
40. Act No. 1 of 1975.
41. Act. No. 5 of 1975.
42. Act No. 11 of 1976.
43. The Self-Government Act, Section 10(a).
44. Ibid., Section 24.
45. Act No. 9 of 1974.
46. Act No. 6 of 1977.
47. Act No. 4 of 1980.
48. The Regional Government Act, 1980, Section 6(e).
49. Ibid., Section 11(1).
50. Ibid., Section 11(2).
51. Ibid.
52. Ibid., Section 9.
53. Ibid., Section 13(1).
54. Ibid., Section 13(2).

55. Ibid., Section 62.
56. Ibid., Section 17.
57. The People's Local Government Act, 1971, Section 6(3).
58. Ibid., Section 6(4).
59. Ibid., Section 6(5).
60. Ibid., Section 9(2).
61. Ibid., 11.
62. Ibid., Section 16.
63. Ibid., Section 18.
64. Quoted by John Howell, Local Government Reform in the Sudan, Journal of Administration Overseas, Vol. XII, No. 1 (January 1973), p. 30.
65. The People's Local Government Act, 1971, Section .
66. Garth Glentworth and Mahdi Idris (eds.), Local Government and Development in the Sudan, The Experience Southern Dufur Province (1976), p.
67. The People's Local Government Act, 1981, Section 11(2).
68. Ibid., Section 11(5).
69. Ibid., Section 30.
70. Ibid., Section 20.
71. The Nigerian Constitution 1979, Section 263.

CHAPTER 7THE SCHEME OF POWER-SHARING BETWEEN THE CENTRAL,
REGIONAL AND LOCAL GOVERNMENTS

Appropriate distribution of powers and functions between the central, regional and local governments in a decentralised system of administration is imperative. The scheme of power-sharing should aim at balancing the interests of the respective governments vis-a-vis each other. Ideally, regional and local governments ought to be as autonomous as possible but they must at the same time come under the control of the central government - for they are not sovereign entities by themselves. Moreover, in the case of decentralised governments, the inferior governments must be subordinate and not coordinate to the superior government, as would have been the case in a federation. It is therefore difficult to strike an appropriate balance between the scope and limits of jurisdictions of these respective governments.

This chapter attempts to analyse the power-sharing scheme in the decentralised system of government in the Sudan between 1971 and 1985. In particular it focuses on the powers of the regional and local governments. It also examines the problems experienced by these governments in the process of exercising these powers. Specific problematic areas identified for discussion include powers to plan for social and economic development, educational planning, the control of natural resources, participation in commercial and industrial activities, control of

security, legislation on traditional law, and the promotion of local languages.

The question of financial powers is considered in a separate chapter, Chapter 9, due to its additional importance and complexity.

I THE GENERAL PRINCIPLES FOR THE DISTRIBUTION OF POWERS IN A DECENTRALIZED SYSTEM OF GOVERNMENT

As already stated, the question of how much power should be decentralised to the regional and local governments and how much should be left for the central government is a dominant problem facing all decentralised governments. Certain general principles which are usually followed deserve some detailed consideration. The overriding principle is to consider which matters are of national nature and which are of regional and common interest. Ordinarily matters of regional interest (or concern) are vested in the regional governments, leaving matters of a national nature to the central governments. Experience has generally shown that matters of national interest include external affairs, defence, control of the armed forces, currency, foreign exchange, foreign and international trade, maritime shipping and inter-regional communications. The justifications seem to be obvious. The central government must have the appropriate powers to

defend itself against external aggression as well as be able to restrain any centrifugal forces capable of splitting the country. Moreover, it represents interests of the nation as a whole.

Matters usually categorized as of regional interest or concern relate to agriculture and land, many aspects of education, public health, social services, administration of local government, public order and public works. Understandably the regions must have appropriate powers for each unit to develop as fast as possible, especially those which have been lagging behind; they should be enabled to catch up with the "head starters" in fields of political, social and economic development. A workable division of powers must also necessarily recognize the cultural, political, social and economic history of the country and the aspirations of its people.

National and regional interests, however, do coincide in certain fields such as civil, personal and criminal law, trade, commerce and industry, as well as trade unions and industrial disputes. Such matters are normally assigned concurrently to both the national and regional governments. In any case powers of a regional government should be adequate to justify not only its existence but also its ability to delegate or devolve some of the powers to the local governments.

Secondary to the principle of "interest", "concern" or "nature" are the principles that responsibilities

should be assigned to the government best able to administer them and that functions related to one another should be entrusted, as far as possible, to the same authority. This means the powers decentralised should correspond to the financial and skilled manpower, resources of the region. However, the exact limits of decentralisation are finally determined by the forces which bring it about. Decentralisation as generally known occurs either due to political decisions from above or pressure from below or a combination of both.

In countries where decentralisation has come primarily due to pressure from below, such as the Sudan, Papua New Guinea and Iraq, the decentralised governments have relatively extensive powers compared with those of the central governments. In fact even if they have not managed to achieve federal status, their constitutions are invariably quasi-federal in nature. But in countries where decentralisation was decided from above, like Tanzania and Zambia, insignificant plenary powers were deconcentrated to the regional and local administrative units. Even then the position is far from being uniform, particularly in the quasi-federal systems, because the forces of the central and regional governments are always competitive. Whereas the regional governments aspire for as much power as they could get, the central governments try to retain control over as many matters as possible. It is therefore not surprising to find that in Cyprus responsibility for, and authority over, national defence and foreign relations are not vested in the central

government but with the autonomous regions.

Entities with greater autonomy tend to control their own natural resources, as for example in Eritrea and the United Arab Emirates. In these countries the autonomous entities control the use of water, forests and other non-mining resources within their territorial jurisdiction. But where there is a strong central government, natural resources are undoubtedly central government matters - such as is the case in Tanzania and Zambia. Financial matters usually fall under the control of the central government but the imposition of local taxes generally come within the jurisdiction of autonomous entities. Control of customs and excise duties are vested in the central government but the actual collection may be delegated to the autonomous units like that of Eritrea. The danger is that in countries where there are secessionist movements the utmost care must be taken in choosing which powers have to be decentralised to the regions; else the secessionist areas are only strengthened to break away finally.

The question of independent local judiciary has not been so significant in decentralised governments. Presumably intergovernmental conflicts are resolved by consultations and conciliations since decentralised governments are unitary in nature. This is the case in Papua New Guinea.

Concerning the distribution of powers and functions

between regional and local governments, similar issues arise as mentioned before. The issues which face central and regional governments over the division of functions more or less apply to regional and local governments. However, an important question that must be posed at this stage is - why is it necessary to provide functions and services through local governments when there are regional governments? Why should the regional governments not perform all the functions below the jurisdiction of the central government?

In large countries like the Sudan, Nigeria and India, where the distances are long from the regional capital, where there are wide varieties of local communities with a firmly rooted sense of ethnic and cultural consciousness, local governments are a necessity. Regional governments would be totally unable to cope with all the numerous services and the multiplicity of interests involved.

This brings us back to the issue of which responsibilities should be decentralised to the local governments and the limitations which should be imposed on them; also of concern is what minimum standards can be ensured and what sort of policies should be framed so that the activities of the regional and local governments complement each other, rather than over-lapping. Possibly areas of friction would thus be reduced to a minimum.

In assigning functions to local governments the general trend adopted has been to make local governments

responsible for the provision of local services, such as local roads, water supplies, housing for low income, primary health facilities, primary and junior secondary school (intermediate) education, agriculture, public works, animal husbandry, community development, self-help, fire brigade services and forestry, but as agents for the regional governments.

Having examined the general trend for distribution of power between central, regional and local governments we now proceed to consider the scheme for distribution of power in the Sudan.

II THE DISTRIBUTION OF LEGISLATIVE AND EXECUTIVE POWERS IN THE SUDAN

The issue to consider here is what were the theoretical limits of the powers and functions of the regional and local governments in the Sudan. It is proposed to consider powers of the regional governments before those of the local governments. Furthermore, powers of the regional governments will be separated under the subheadings of the powers of the Southern Regional Government and those of other regional governments because of the differences that existed between them.

A. Powers of Regional Governments

1. Powers of the Southern Regional Government

Powers of the Southern Regional Government were defined and enumerated in section 10 of the Self-Government Act, 1972. (For details of the powers, see Appendix 1 to this chapter.) However, the most controversial features of the powers are reproduced below:

"... Preservation of order, internal security, development of the southern region in cultural, economic and social fields and in particular in the following:-

- (c) Legislation on traditional law and custom within the framework of national laws.
- (e) Establishment, administration and maintenance of public schools at all levels in accordance with national plans for education and economic and social development.
- (f) Promotion of languages and cultures.
- (g) Village and town planning and the construction of roads in accordance with national plans and programmes.
- (h) Mining and quarrying, without prejudice to the rights of the central government on the discovery of natural gas and minerals.
- (o) Recruitment, organization and administration of the services of the police and prisons in accordance with national policies and levels.
- (p) Land use according to national laws and plans.
- (r) Development, use and protection of forests products and pastures according to national law.
- (t) All other matters respecting which the President may authorize the peoples Regional Assembly to legislate."

However, Section 6 of the same Act denied certain powers

to the Southern Regional Government. It stated:

"Neither the peoples Regional Assembly nor the High Executive Council shall legislate or exercise any powers on matters of national nature which are:-

- (i) National defence.
- (ii) External affairs.
- (iii) Currency and coinage.
- (iv) Air and inter-regional/river transport.
- (v) Communications and telecommunications.
- (vi) Customs and foreign trade except for border trade and certain commodities which the regional government may specify with the approval of the central government.
- (vii) Nationality and immigration (emigration).
- (viii) Planning for social and economic development.
- (ix) Educational planning.
- (x) Public audit."

2. Powers of Other Regional Governments

The powers of the other regional governments were enumerated in Section 8 of the Regional Government Act, 1980. (For details of the powers see Appendix 2 to this chapter.)

Powers of the other regional governments were similar to those of the Southern Regional Government except for the following:

- "(d) Supervision of police, prisons and fire brigade forces ...
- (h) Utilization of water in the region."

Some powers itemised as national matters were also excluded from their jurisdiction. There were:-

- "(e) The judiciary, public prosecution

- and advocacy
- (i) Export and import trade
- (k) The national natural mining resources and the wealths under the ground.
- (l) Institutions of national and regional elections."

All other matters excluded from the jurisdictions of the other regions not mentioned above were similar to those excluded from the jurisdiction of the Southern Region.

(For details see Appendix 3 to this chapter.)

3. Comments

The distribution of powers between the central and regional governments followed the general pattern of distribution of powers in decentralised governments, as explained above. Thus matters considered as of national nature were expressly denied to the regional governments but matters of regional interest were assigned to them including responsibility for local governments.

The powers of the regional governments, however, were not uniform in the Sudan. Whereas similarities existed in the fields of general administration, maintenance of order and security, development and utilization of local financial resources, local government, public services, agriculture, animal husbandry, general economic activities and tourism, wide differences prevailed in some important matters.

For example, the other regions had no powers over the

following:-

- (i) Traditional law and custom.
- (ii) Promotion of languages and culture.
- (iii) Mining and quarrying.
- (iv) Border trade.
- (v) Recruitment of police and prison officers.

The Southern Regional Government had no powers over:-

- (i) Control of water.
- (ii) Planning for social and economic development.

Certainly, the powers of the Southern Regional Government exceeded those of the other regional governments quite considerably despite its lack of power to control use of water in the region and plan for social and economic development. Internal migration was unfortunately omitted from the jurisdiction of all regional governments.

The differences which emerge between the schemes of distribution of powers in a federal government and a decentralised government are minimal. Firstly, powers assigned to decentralised governments are invariably contained in separate legislation or organic laws as usually called. For example, the Self-Government Act, 1972 and the Regional Government Act, 1980 contain powers of the regional governments in the Sudan. Similarly, powers of the provincial governments in Papua New Guinea are found in the organic law on provincial government; in Tanzania and Zambia the powers are stated in the respective laws decentralising powers to the regional and district governments or units. In a federation, however,

the powers of the federal and state governments are guaranteed in the constitution. Guaranteeing all powers in the constitution is advantageous in that they are superior and any proposed amendment would have to be affected by the constituent assembly in accordance with the amendment provisions thereof. But where powers are not constitutionally guaranteed, the national legislature can amend powers of the regional or provincial governments at any time. So powers of decentralised governments enjoy less protection.

Secondly, the forms for the distribution of legislative and executive powers in a federation adopt one of the established patterns. The single list pattern is where powers are exclusively assigned to either the federal or state government leaving the residue to the other. For example, the Malaya constitution (1948-1957); and the Pakistan constitution, 1962. The two list pattern is where there is an exclusive list to either government and a concurrent list to both. Examples of these include the Buganda constitution 1962; and the Nigerian constitution, 1979. The three list pattern is where there is an exclusive list of matters assigned to the federal government and another exclusive list assigned to the state governments plus a third concurrent list assigned to both. This was the case with the Indian constitution, 1950, the Pakistan Constitution 1956 and the Malaya Constitution, 1957.

The advantages of a single list arises from its

simplicity and certainty, making it easier to avoid conflicts. However, a concurrent list would also have important advantages as succinctly put by R.L. Watts:

"First [a concurrent] list enhances flexibility. In a new federalism it permits the central government to postpone exercising its authority in a field until such time as the matter has assumed national importance, while not preventing any region which is forward looking from going ahead and legislating in the meantime on its own account. Secondly, it provides a means whereby, in certain spheres, especially the social services, the central government may legislate to secure a basic national uniformity and to guide regional legislation, while leaving with the regional legislatures the initiatives for details and for adoption to local circumstances. Thirdly, a concurrent subject allows the general government to step into what is normally a regional field of activity, in order to provide remedies to particularly backward regions or for difficulties arising from regional legislation which affects other regions. Fourthly, concurrent list may facilitate comparative federalism, by encouraging cooperative rather than independent action in these fields. Fifthly such a list may reduce the necessity for complicated, minute subdivisions of individual functions assigned exclusively to one government or another."¹

In the event of conflict, the authority of the central government prevails based on the reasoning that where the government with over-riding power has enacted exhaustive laws on a matter of concurrent jurisdiction "the other government is ipso facto excluded from entering it in the first place".²

However, there is no established form or pattern for the distribution of powers in a decentralised system of government. The Sudan, for example, has adopted a single

list pattern but with qualifications as we have seen. Whereas the powers are enumerated in Sections 10 and 8 of the Self-Government Act and Regional Government Act respectively, the qualifications are stated in the respective Sections 6 of both laws.

Papua New Guinea, on the other hand, has an exclusive list for matters regarded as primarily provincial but it at the same time has another list of subjects concurrent to both the national and provincial governments. Obviously it has adopted a two list pattern found in some federal systems like Nigeria. Tanzania and Zambia simply define powers of the decentralised governments without listing them.

Thirdly, the extent of powers decentralised to state government in a federal constitution is considerably greater than those assigned to regional or provincial governments in a decentralised administration. As we have seen, those of the regional and local units in Tanzania and Zambia were mainly plenary. The Sudan and Papua New Guinea had comparatively more powers assigned to the regional and provincial governments but they could never make up to half of the 66 items assigned to the state governments in Nigeria for example.

Finally, in a federal constitution, the residual powers are usually assigned to either government. There is no mention of residual powers in decentralised systems. Presumably it remains vested in the central government

which could delegate some of it to the regional government from time to time. This was certain from the provisions of Section 10(t) of the Self-Government Act, 1972, which stated:

"All other matters respecting which the president may authorize the peoples Regional Assembly to legislate";

after listing powers of the Southern Regional Government. However, the president never did so.

Having examined the powers of the regional governments in the Sudan, we proceed to consider which powers were also assigned to the local governments.

B. Powers and Functions of Local Governments

The powers and functions of the peoples Province Executive Councils and the Area Councils were practically identical.

Their powers were listed generally in the Schedules to the Peoples Local Government Acts, 1971 and 1981. They included the right to provide services like education (primary and intermediate), public health, public works, agriculture, animal welfare, general culture, social affairs, labour, trade and supply, public order plus some limited economic and industrial activities.

Surprisingly, they were authorised to participate in

the "Preparation of economic and social development plans"³, while the Southern Region which was more able was expressly prohibited from doing so as we have seen. On the whole, the type of functions assigned to the local governments conformed with the general international practice.

We should now examine which of the problems the regional and local governments in the Sudan experienced from the exercise of their powers.

III PROBLEMS OF IMPLEMENTATION

A. Planning

1. Social and Economic Planning

The decentralisation of planning is an important element in the decentralisation of government because it should enable:

"Regional and local level ... officials to disaggregate and tailor development plans and programmes to the needs of heterogeneous regions and groups."⁴

Unfortunately, the legal provisions with regards to planning have not been consistent in the Sudan as we have seen. It must be reiterated that whereas other regional

and local governments in the Sudan were authorised to plan, the Southern Region was expressly prohibited from doing so. It was therefore inevitable that such a blanket prohibition would be ignored by the regional government in practice; and so it was. It is difficult to see how it would have been otherwise?

Planning as broadly defined by W. Demas, is "the formulation and execution of a consistent set of inter-related measures desired to achieve certain economic and social goals."⁵ From a review of various expert views it can be suggested that an ideal planning process usually undergoes five distinctive stages.

(i) Plan formulation is the stage when the objectives of the plan are defined, the priorities and targets set, the resources are determined, surveys and research are undertaken, data analysed and draft prepared.

(ii) Plan programming is the stage when the plan is translated and broken down into identifiable programmes and projects.

(iii) Plan testing comes at the stage when the overall objectives of the plan are tested against the priorities, whether they are political, administrative or managerial, to ensure the administrative and executive capacity or the political will to see it through.

(iv) Plan implementation is when the plan is executed.

(v) Plan review is the final stage when the plan is evaluated.

However, not all stages are followed since some plans are never implemented. Many examples of the Southern Regional Governments plans could be cited, but a few will do. These included the special development budget, the six-year economic and social development plan for the Southern Region, 1977/78 - 1982/83, manpower training programme, agricultural extension and rehabilitation schemes, Juba University, the Juba-Kapoeta road project, the Hydroelectric Project at Baden Falls and many others. However, the success of the plans were seriously curtailed by financial constraints, lack of skilled manpower, lack of appropriate planning and coordinating machinery, as illustrated with the examples of the special development budget and the six years development plan.

(a) The Special Development Budget

The Special Development Budget was a medium plan for the South inherited from the defunct Ministry of State for Southern Affairs (see Chapter 5).

The plan consisted of development projects formulated by Ministries and Departments of the Central Government for the South, requiring an investment of approximately £s 36 million.⁶ It catered for the immediate tasks of

government as well as its long-term objectives. The immediate tasks were the repatriation, rehabilitation and resettlement of returnees from refuge in neighbouring countries and the Southern forests, including the revitalization, renovation and reconstruction of projects destroyed during the war.

The long-term objectives were:-

- (1) To increase food production in the region with a view to achieving self-sufficiency;
- (2) To encourage the cultivation of cash crops in order to commercialise the traditional agricultural sector;
- (3) To develop, on a priority basis, the maximum network of communication links with developing and development potential areas;
- (4) To bring to the maximum member of people opportunities for functional and general education;
- (5) To encourage productive skills and initiatives, particularly in industry;
- (6) To encourage the importance of rural development as the basis as sustained development through self-help.

The Special Development Plan was approved for implementation from 1972/73 fiscal year with an aggregate amount of £s 38,362. 633 m/ms. But, as illustrated by the Table 7.1, the actual results were much below expectation.

Several factors contributed to the poor performance of the plan shown above.

Table 7:1

THE SPECIAL DEVELOPMENT BUDGET

Year	Budget Allocation (Ls. 000)	Actual Expenditure (Ls.000)	Actual Expenditure as % of Allocation
1972/73	1,400	560	40.0
1973/74	7,300	730	10.0
1974/75	7,100	1,150	16.2
1975/76	7,200	1,630	22.7
1976/77	15,300	3,610	23.6
Total	38,300	7,680	20.1

Source: Regional Ministry of Finance and Economic Affairs, Proceedings of the Conference on Development in the Southern Region of the Sudan Juba, 5th Session, April 8th, 1983, p. 13.

Table 7:2

PLANNED AND REALISED INVESTMENT

Fiscal Year	Annual Plan Allocation (Ls millions)	Annual Plan Actual Expenditure (Ls millions)	Actual as % of Plan Allocation
1977/78	32.49	6.13	18.9
1978/79	39.45	7.82	19.8
1979/80	41.59	10.31	24.8
1980/81	38.4	12.80	33.6
1981/82	36.60	13.40	36.6
1982/83	43.04	8.13	18.9
Total	231.31	58.59	25.3

Source: Regional Ministry of Finance and Economic Affairs, Proceedings of the Conference on Development in the Southern Region of the Sudan, Juba, 5th to 8th April, 1983, p. 19.

- (1) The actual receipts of funds from the central government were far less than expected;
- (2) shortages of technical personnel (for details see Chapter 10);
- (3) scarcity of building materials, machinery, equipment, vehicles and spare parts;
- (4) shortages of fuel;
- (5) difficulties in inter-regional and international transformation and communication facilities.

(b) The Six Year Economic and Social Development Plan for the Southern Region 1977/78 - 1982/83

The Six-Year Economic and Social Development Plan for the Southern Region was based on the national objectives which aimed at creating balanced development by means of:-

"... spatial distribution of economic activities, the promotion of increased national output and incomes, the equitable distribution of resources and services between regions with special treatment being accorded to the depressed regions or regions possessing unique economic characteristics or social conditions."⁷

It was an integral part of the Six-Year Plan for National Economic Development but was made in the South. The estimated investment was about £s 286.7 million. The sources expected to finance the Plan were:-

- (1) Regional sources, £s. 231.3 million;
- (2) Direct contribution from the central government, £s 35.9 million; and
- (3) External assistance £s. 19.5 million.

Hence, there was an overall growth rate of 4.5 and 7.0 per cent per annum. But as can be seen from Table 7.2 the levels of investment were very low compared to the expectation.

In view of the poor levels of performance, the national and regional plans were both discontinued in 1978/79 and were replaced by rolling plans. But even then, the revised regional investment expenditure was drastically reduced, as shown in the Table 7.3.

The implementation of the six-year development plan faced similar constraints as the special development plan. In particular, the lack of financial resources was the greatest constraint. The expected £s. 51.3 million surplus from the central government, and the anticipated external assistance were never realised.

(c) Planning by the local governments

There were two notable points concerning planning by the local governments. One was that the theoretical assumptions differed from the practice. The other was that planning by the people's Executive Councils in the North differed from planning by those in the South.

Ideally, suggestions were to come from the lowest councils at the village level to the rural councils (then district councils before their abolition) and finally to

Table 7:3
REVISED INVESTMENT

Fiscal Year	Revised Plan Allocation (Ls millions)	Actual Expenditure (Ls millions)	Actual Expenditure as % of Revised Plan Allocation (%)
1977/78	32.49	6.13	18.9
1978/79	22.50	7.82	34.8
1979/80	20.50	10.31	50.0
1980/81	20.50	12.80	62.0
1981/82	16.00	13.40	83.7
1982/83	16.00	8.13	50.6
Total	127.99	58.59	45.8

Source: Regional Ministry of Finance and Economic Affairs, Proceedings of the Conference on Development in the Southern Region of the Sudan, 5th - 8th April, 1983 - Juba, p. 20.

the Peoples Province Executive Councils where they would be coordinated.

The practice, however, was quite different. In the North, the developmental plans were prepared by the central government (or the National Planning Committee), based on the submissions made by the central ministries and the public corporations. However, plans for recurrent expenditure were prepared by the People's Province Executive Councils themselves but in a haphazard manner. The local government officers disregarded plans made by the lowest levels and proposed their own budgets. The Departmental Heads in the provinces also prepared their own budgets covering expenditure for the whole province, disregarding the council boundaries. The Finance Committees of the People's Province Executive Councils made a few cuts in the proposals, particularly where new expenditures were envisaged. Finally, the Ministry of Local Government on the instructions of the Ministry of Finance, made arbitrary cuts in the whole budget in Khartoum. For the Minister of Finance was empowered by the provisions of the Financial Regulations and Proceedings Act, 1978, to:

"check all expenditure and revenue of all Executive Councils in relation to annual budget and financial regulations thereto."⁸

So the People's Province Executive councils were required to forward their budget proposals to the central Ministry of Finance for consideration not later than December of every year. This exercise, therefore, seriously

undermined the objective of decentralisation of planning which is an essential component of decentralisation of government.

In the South, planning for the People's Province Executive Councils was at first done by the Regional Ministry of Finance and Economic Affairs on the misconceived belief that planning was to be undertaken from above. However, in response to Presidential Decree No. 52 of 1979, which made provincial budgets the basis for the country's budget, the idea of provincial planning was started in 1979/80 fiscal year. In that year the Directorate of Planning in the Regional Ministry of Finance and Economic Affairs concentrated its efforts on the establishment of planning units at every provincial headquarters. Assistant Commissioners for Planning were appointed, with the help of the Regional Ministry for Administration, to assist in the formulation and preparation of the provincial development plans.

Two events aimed at strengthening the planning machinery of these units were organized in 1980. Firstly, a course was arranged early in the year for senior administrators to be trained in planning. However, the attempt was unsuccessful because only two administrators turned up. Most provincial commissioners were uncooperative in allowing the Assistant Commissioners to attend the courses.

Secondly, the Directorates of Planning and

Administration made two visits to every provincial headquarters to assist in the planning process but the preparation of the 1980/81 provincial plans coincided with unexpected elections announced by the President of the Republic which preoccupied the people concerned. The Southern Region Provinces, however, succeeded in producing their own plans for the year 1981/82 but as pointed out by Fred Wessels, the UN Technical Advisor in the Directorate of Planning, much was left to be "desired from the point of view of participation of provincial headquarters in identification, formulation and implementation".⁹

Moreover, there were additional problems which faced provincial planning.

- (1) Some provincial commissioners refused to accept Assistant Commissioners for Planning in their provinces.
- (2) The Assistant Commissioners for Planning had a dual role to play - that of routine administration and planning. Obviously, it was most inconvenient because the administrative burden preoccupied him leaving insufficient time for the satisfactory execution of the planning function. This problem was aggravated by a lack of technical support staff as discussed in Chapter 10.
- (3) There was lack of reliable data.
- (4) Instructions for proper filing were ineffective due to frequent changes of stations and the lack of an effective system of hand-over notes, which could be followed up by successors to the office, indicating

what their predecessors had requested or done.

- (5) The total lack of effective control over development funds (discussed in Chapter 9) often led to the diversion of funds meant for specific development projects to meet shortages in development expenditure such as security or the feeding of school children.
- (6) Finally, the serious lack of coordination (discussed below) among the substantive offices at the provincial level left project design, implementation and evaluation to be carried out in isolation. No efforts were made to integrate plans or even to consult one another by the different officers.

(d) The Planning Machinery

A decentralised system of government would require the establishment of planning institutions at every level of government, each authority having a basic planning unit. This would therefore require in the Sudan planning units at national, regional and local levels.

The national planning unit was already in existence by 1969. It was, however, slightly modified to consist of the National Planning Commission, (part of Ministry of Finance), the Council of Ministers; and the National Planning Organization of the SSU - all had different roles to play. The Planning Commission prepared the plans which were submitted for approval by the Council of Ministers guided by the broad strategy laid down by the SSU planning

organization. Prior to the establishment of the Southern Regional Government, Regional Planning and Coordination Councils had been set up in 1976 following the creation of the Ministry of State for Southern Affairs (mentioned earlier). The Planning Council was made up of the representatives of "economic" government units in the South, representatives from outside the public sector and two representatives from the central Ministry of Treasury and Planning. The Planning Council formulated the integrated development plans for the region, consistent with central government policy.

The Regional Coordination Council comprised senior representatives of major government units in the South. It was responsible for assisting the Ministry in the general supervision and implementation of government policy in the South, as well as in the preparation of the budget and the fiscal control of the budgeted funds.

However, following the establishment of the Southern Regional Government in 1972, the Regional Ministry of Finance and Planning assumed the responsibility of preparing the development plans for the Southern Region. Likewise all regional governments established planning departments in their respective Ministries of Finance, the effectiveness of which it is too early to assess. Regional plans were normally submitted to the planning unit of the central government through the president of the republic and the central government for approval.

2. The Coordination of Plans

For plans to be effective, their successful coordination at the national, regional and local levels is essential.

Proper coordination can only be achieved through an appropriate organizational framework both vertically and horizontally. That is to say, there must be coordination at every level of government. Local and regional coordination machineries must exist side by side with the central ones so that the local and regional plans form an integral part of the national plan. However, the only coordination council formed was that of 1970 mentioned above. It was, of course, responsible for assisting the Ministry of State for Southern Affairs as explained. The coordination council disappeared after the establishment of the High Executive Council. A Department of Coordination was created in the Regional Ministry of Coordination and Legal Affairs in 1976, but it had neither specified functions nor staff. Its budget allocations were being used by the Department of Legal Affairs, whose functions of litigation, prosecution and legal counsel were totally irrelevant to that of coordination.

According to Bona Thiang, Deputy Director for Planning in the Southern Region:

"The integration of national and regional plans is based on the fact that the regional economy is a component of the national economy and the objectives,

strategy, policies and priorities of the development policy declarations of the Sudanese Socialist Union."¹⁰

However, it is submitted that the integration of national and regional plans as stated by Thiang was largely a myth.

3. Educational Planning

Considering the ethnic, cultural, historical, linguistic and religious differences in the Sudan (see Chapter 1), decentralisation of educational planning should have been accorded some priority in the government policy on education. On the contrary, however, educational planning was expressly denied to the regional governments. For example, Section 6 of the Self-Government Act quoted above stated:

"Neither the People's Regional Assembly nor the High Executive Council shall legislate or exercise any powers ... [on] ... Educational Planning."

A similar provision was also inserted in the Regional Government Act, 1980 (see Section 8). According to the Permanent Constitution,

"The State shall plan, supervise and direct education to serve the national objectives."¹¹

Such complete centralisation was questionable in that it did not conform with the objectives of educational planning as stated by R.H. Coombes, the great educationist; it is:

"The application of rational, systematic analysis of the process of educational development with the aim of making

education more effective and more efficient in responding to the needs and goals of its students and society."¹²

If educational planning must respond to the "needs" and goals of its students and society", then it was contradictory to centralize educational planning as stated above.

What role then did the decentralised governments play in the field of education? Were they able to influence any changes?

Certainly the role played by the regional and local governments was that of educational administration. That is to say, they were responsible for building, maintaining and supervising of schools below institutions of higher education.

The educational hierarchy in the Sudan is shown in diagram 1 below.

Diagram 9: The Educational Hierarchy in the Sudan

- | | |
|------------|---|
| Category A | Institutions of Higher Education
- The universities, colleges, higher institutions (duration 3-5 years). |
| Category B | Secondary Education
- Senior secondary schools
- Training colleges for primary school leavers (3 years). |
| Category C | Primary Education
- Junior secondary schools (intermediate schools) (3 years)
- Primary schools (6 years) |

Institutes of Higher Education - Category A.

Institutes of Higher Education were the responsibility of the central government (both administration and planning).

Secondary Education - Category B.

The Regional Governments were responsible for the administration of secondary schools only. In the Southern Region for example, the Regional Minister of Education was a Member of the High Executive Council responsible for policy matters. These mainly involved the construction and staffing of schools. All responsibility for services with respect to secondary and intermediate schools were delegated to the provincial councils under the leadership of the Commissioner.

Primary Education - Category C.

Primary education was the responsibility of the local government councils. Every province had an Assistant Commissioner for Education and Education Officers, some of whom were Members of the Council. They were responsible for all educational matters in the province (in as far as administration of education was concerned). They were

helped by technical inspectors and supervisors from the regional government. In the lower councils District Education Officers were attached to supervise educational matters therein.

However, major issues like school curriculum, syllabuses, examinations and examination standards, age of entry and so forth were the responsibility of the central government, as stated earlier. The regional governments could only modify the school calendar because of financial and infrastructural constraints.

A regional institute of education has been opened at Meridi (in the South) intended to develop local curriculum for education to be integrated into the general curriculum so as to suit local circumstances. However, due to unavailability of skilled staff and funds, the institute has not made any impact so far.¹³

The Southern Regional Government has also attempted to reintroduce vernacular languages¹⁴ in the primary schools to be taught together with English and Arabic languages which is likely to become too burdensome in terms of student workload.

The centralisation of educational planning in the Sudan is similar to the practice obtaining in Tanzania and Zambia where education is essentially the responsibility of the central government. In fact in Tanzania Kiswahili is the only official language taught in schools in

addition to English. The government's language policy is very strict.

We find in Papua New Guinea, however, some limited decentralisation of powers over education. According to the organic law on provincial government as we have already seen, the provincial governments were responsible for "primary schools (including community schools and village self-help schools) and primary education other than curriculum."¹⁵ What does this entail?

The distribution of powers under the Education Act, 1970 show that the provincial (then District) authorities were responsible for the approval of primary school enrolments, selection of entrants to secondary and technical schools, determination of appeals on suspension or expulsion, determination of fees; provision and maintenance of school buildings, ensuring the availability of adequate teachers' housing; appointment, promotion and suspension of teachers; approval of membership and functions of boards of management of primary, secondary and technical schools.

Otherwise, the rest of the responsibilities were vested in the central government. These included the establishment of national criteria for selection, determination of limits and conditions of school fees; supervision of the implementation of approved plans like drawing up plans for the establishment and development of schools, supervision of the implementation of approved

plans, provision of facilities for adult education; allotment of quotas of teachers to provinces and of students to colleges, appointment, transfers, promotion and suspension of teachers; advising administrators on achieving the objects and purposes of tertiary education system; and approving membership and functions of teachers' colleges governing councils, hearing appeals of other authorities, measuring and checking the economical and efficient working of the education system.¹⁶

B. The Control of Natural Resources

The principal forms of natural resources considered here include land, water, forests and minerals.

The participation of regional and local governments in the exploitation of natural resources has to be examined in the broad context of the national economy because the permanent constitution stipulated:

"Natural wealth and resources under or above the ground or within the territorial waters shall be the property of the state and the state shall secure their appropriate exploitation."¹⁷

Furthermore, the state was to own and manage "all the fundamental means of production in the economy".¹⁸ This was evidently based on the socialist philosophy. However, as we have already seen, the Southern Regional Government was specially authorised to participate in the control and exploitation of some of the resources.

1. Control of Land

All regional and local governments were empowered to dispose of land. The provision for the Southern Region, however, expressly stated that it had to be undertaken "within the national laws". Presumably this was meant to apply to all regional and local governments. However, the national laws made no reference to the exact powers of the decentralised governments.

Although radical title to land was vested in the state, land could be allotted to individuals and organizations in leaseholds for different periods, say 30 years, 35 years or 50 years depending on whether it is for residence, agriculture or mining.¹⁹ Since 1970 all unregistered land was brought under the control of the Central Government but subject to allocation on leaseholds by the Unregistered Land Act, 1970.²⁰

"Notwithstanding anything contained in the Land Settlement and Registration Ordinance, or any other law in force, all land of any kind whatsoever, whether waste, forest, occupied or unoccupied, which is not registered before the commencement of this Act shall, on such commencement, be the property of the Government, and shall be deemed to have been registered as such."²¹

There is no express prohibition on the granting of freeholds but this omission from the laws suggests that the allocation of freeholds has been abolished. In practice freeholds have never been allotted since 1970.

The decentralisation of powers to the regional and local governments through separate legislations and at different periods has created a lack of uniformity in the procedures for land control and disposition in the Sudan. We shall consider disposition of land in the North and the South separately.

(i) Disposition of Land in the Northern Sudan

The position of land control and disposition in the Northern Sudan was not yet clear, following the establishment of the regional governments in 1980. However, it would appear that the old procedures were still being followed. Those procedures were contained in various land schemes. The schemes depended on the purpose for which the land was needed and whether the land was located in a town or a village.

The People's Province Executive Councils were responsible for the disposition of commercial land (land for shops, grinding mills and so forth) as well as residential land in towns. They would allot land in rural areas only on the recommendation of the appropriate rural council. The Town and Land Scheme 1947 contained a model of a master plan for every town. It prescribed the use of land in a town on the basis of recreational, residential and commercial use.

Residential land in a third class area was disposed of on a preferential basis to enable low income citizens to obtain land. However, land in the second class, first class residential areas and commercial land were disposed of in open auction, to the highest bidder.

The People's Rural Councils were responsible for the disposition of residential land in the villages and land for traditional agriculture on given directives. Application for such land was required to pass through the village council where the applicant was resident.

More rigorous conditions were introduced to regulate the allotment of agricultural land because of its economic importance. For example, the applicant had to be a Sudanese and a cultivator, and there had to be no conflicting claims over the land to be allotted.

Certainly new legislation is needed to define the scope and limits of the Regional and Area Councils over the control and disposition of land in the Northern Sudan.

(ii) Land Control and Disposition in the Southern Sudan

There was lack of adequate legal provision and control of land in the Southern Region, despite the fact that the region enacted three Acts in the field of land control and disposition. The Regional Demarcation and Survey Act, 1976²² provided for the demarcation of

boundaries and making of surveys in the Southern Region by the regional authorities only.

The Regional Land Acquisition Act, 1976²³ empowered the High Executive Council to acquire any land registered or unregistered for public purpose on compensation. However, the terms of the compensation were not qualified.

The Regional Town and Village Planning Act, 1976²⁴ made the Regional Minister of Housing and Public Utilities "responsible for the direction and control of all town and village planning". He was also to ensure "effective cooperation between regional and local planning authorities", and to secure "as high a degree of initiative as is consistent with development on sound and uniform principles of planning".²⁵ However, the Minister was to carry out his functions through regulations approved by the High Executive Council.²⁶ Unfortunately, however, no such regulations were ever made. So the powers and functions exercisable under the Act remained undefined.

A Regional Town Planning board was appointed under the Act, composed of the following ex officio members:-

- (a) Director of Housing
- (b) Director of Administration
- (c) Director of Finance and Planning
- (d) Director of Health and Social Welfare
- (e) Director of Communications
- (f) The Chief Survey Officer Regional Ministry of Housing

(g) Senior Town Planner Regional Ministry of Housing

The functions of the Board were to act "as a consultative body to the Minister and assist the Minister in the discharge of his functions under this Act".²⁷

A Standing Committee was also set up under the Act to which the Board would delegate its functions in accordance with the provisions of the Act. But ironically enough different people were appointed on the Committee.

However, the duties of the board as stated above still remained too general.

In the light of this gap, the Regional Ministry of Housing and Public Utilities issued guidelines²⁸ to be followed by all sectors of the Town Planning system for Regional, Provincial and local levels. The guidelines were to direct them in controlling and imposing limitations on the activities of the public agencies or private individuals. But the guidelines had no statutory force. Their validity could thus be successfully challenged at law.

Despite this shortcoming the Local Town Planning Board granted all planning approvals on behalf of the Minister, because the Regional Planning Board rarely met. Paradoxically, however, there was no mention of the Local Planning Board in the Act. Its existence probably preceded the establishment of the Southern Regional

Government.

The Relationship between the Regional Town Planning Board
and the Local Town Planning Board

As already stated, the Act required the Minister to "ensure effective cooperation between regional and local planning committees". However, the Minister was unable to do so, so the relationship between the Regional Town Planning Board and the Local Town Planning Board differed as between Juba (the capital) and the other five provincial headquarters in the South.

In Juba applications were made either through the Local Town Planning Board for onward submission to the Regional Town Planning Board (when approved by it) or direct to the Regional Town Planning Board. The channel used varied according to the authority to which the applicant made his initial approach. If it was to an officer of the provincial authorities, the application had to follow the first channel but if it was made to the Ministry, it took the second direct channel.

In the other provinces, applications were first submitted through the local Town Planning board for onward submission to the Regional Town Planning Board. But as already mentioned, the Local Town Planning Boards had no statutory status. So they functioned as ad hoc bodies to provided local scrutiny of applications prior to their

submission to Regional Town Planning Board. Hence decisions made by the Local Town Planning Board were not legally binding if unconfirmed by the Regional Town Planning Board.

In spite of the said legislations, most of the land in the Sudan found in the rural areas was enjoyed and disposed of according to the customary laws of occupancy. The customary ~~laws~~ of land tenure varied from one tribe to the other and although information in this field is terribly lacking, it can be assumed to be similar to the customary laws of other African countries. Thus title to land is vested either in the family head, village elders, the chief or king depending on whether the tribe is decentralised or centralised.

2. Control Over Water

As stated earlier, the right to control the use of water within the region was omitted from the powers of the Southern Region but included among the powers of the other regions. The omission was probably deliberate owing to the political conflicts between the Southern and Northern Sudanese. In order to safeguard Northern Sudanese and Egyptian interests in the waters of the white Nile which runs through the South, it was presumably thought wise by Northern Sudanese politicians that it would be safer to omit the jurisdiction of the Southern Region from the control of use of water. However, the omission did not

save the situation.

The first crisis arose in 1975 over the digging of Jongolei canal to drain the waters in the Sudd area of the South for use in the Northern Sudan and Egypt. This scheme was to have expanded irrigation schemes in the North and Egypt and Sudan would have become the bread basket of the Arab world. However, the digging of the canal was vehemently opposed in the South. Government defiance of Regional Assembly deliberations was criticised by mass demonstrations and destructions to property. A student lost his life. For a while arrests of opposition leaders gave room for the inauguration of the canal project. However, work on the canal has been stopped since 1983 when the Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Army (SPLA) kidnapped foreign workers on the canal thereby halting the work.

Although the canal would have shortened the distance between the South and the North by about 300 miles as well as drained off the swamps of Jongolei area it would have deprived the surrounding area of conventional rainfall, fish and wildlife not to mention the displacement of people from their homes without adequate compensation. Moreover, there was no provision for water reservoirs. Furthermore, the life style of the surrounding people would have been drastically changed. It is presumably for these reasons that the digging of the canal has been obstructed in the South.

Therefore inspite of the absence of a provision for the control of use of water by the Southern Region, the people of the region managed to physically assert their rights over the waters of the Nile.

3. Exploitation of Forests

We also saw that control over forests was assigned to all regional and local governments. This was the only natural resource exploited with no difficulty. For example, according to the distribution of legal powers between central ministries and the regional ministries of the southern region of the Sudan Act, 1977, responsibility over "central forests" was delegated to the Regional Government in the South (the Ministry of Agriculture and Natural Resources in particular), while forests marked as "provincial forests: were the concern of the People's Province Executive Councils".²⁹

Royalties were collected by the nearest local authority or according to the directives of the Minister of Finance³⁰.

3. Mining and Quarrying

Clearly, except for the Southern Region, control over minerals was expressly denied to the other regions.

However, the scope and limits of control over minerals between the central government and the Southern Regional Government was not clearly drawn out. As we have seen, constitutionally all "natural wealth and resources under or above the ground ..." was the property of the state. But according to the Self-Government Act, the People's Regional Assembly for the South could also legislate on "mining and quarrying without prejudice to the rights of the central government on the discovery of natural gas and minerals".³¹ The words "without prejudice" were ambiguous. It was difficult to judge when the rights of the central government would be prejudiced. Would it be due to the geographical location of the minerals or the economic importance of the same?

The distribution of legal powers between central ministries and ministries of the Southern Region of the Sudan Act, 1977 provided that:

"The High Executive Council shall exercise within the Southern Region of the Sudan the powers vested in the President of the Republic,"³²

Similarly, the Mines and Quarries Act, 1972 stated that the Regional Minister of Commerce and Industry was to "exercise within the Southern Region powers vested in the Minister of Industry".³³ The powers of the President as defined by the Mines and Quarries Act, 1972³⁴ included, laying down "the policy to be followed in prospecting, extraction and utilization of mineral resources and quarried materials, constitution of mines"³⁵ and Quarries Board. On the other hand, the Minister was responsible

for the recommendation of the members of the Board and issue of all kinds of licences for prospecting of minerals and quarries, mining, quarrying and granting of leaseholds for the same. He could hear complaints against decisions of the Board and grant special concessions.³⁶

Certainly, the provisions of the Distribution and Legal Powers Act made it plain that the Southern Region had control over minerals within the Southern Region but that could not completely resolve the ambiguity of the words "without prejudice" as raised earlier. The nature of minerals or the economic importance of the minerals remained in doubt. Did minerals include petroleum?

Minerals were defined by the Mines and Quarries Act, 1972 as:

"All mineral and natural substance (other than the agricultural surface of land) and the mineral waters lying in, upon or underland which are capable for use of manufacturing or commercial purposes."³⁷

Yet the Petroleum Resources Act, 1972³⁸ defined petroleum as "all natural hydro carbons, liquid, gaseous or solid material extracted or capable of extraction from the ground."³⁹ Ironically, however, the Distribution of Legal Powers Act made no reference to the powers of the regional government in relation to the powers exercisable by the President under the Petroleum Resources Act. It was obvious that this could not adequately exclude the rights of control by the regional government over petroleum in the Southern Region.

Therefore legally speaking the rights of control over minerals between the central government and the regional government for the South were immensely confused. In practice, all the important minerals like gold and oil were mined by the central government to the exclusion of the regional government. Prospecting and mining licences were issued by the central government authorities under the Mines and Quarries Act 1972 and the Petroleum Resources Act 1972 to the multinational companies.

The Southern Region enacted the Regional Mines and Quarries Act, 1977⁴⁰ conferring similar powers to the Regional Minister for Industry to issue prospecting and mining licences as contained in the above legislation but up to the time of its dissolution in 1983 the region never issued any licence concerning an important mineral. Hence the rights of the regional government were practically limited to quarrying of stones.

C. Commercial and Industrial Activities

It has been shown that both the Self-Government Act and the Regional Government Act authorised the regions to promote tourism and trade, establish industries and markets, issue traders licences and form cooperative societies. However these powers were so broadly defined that they lacked the necessary precision. For example, it was not certain which of the governments (central or

regional) was responsible for matters like inter-regional trade, the incorporation and dissolution of companies, bankruptcy, insolvency, bills of lading, promissory notes, commercial and industrial monopolies, trusts, copyrights, patents, trade marks, insurance and weights and measures. Presumably they would be regarded as "incidental" matters. So the responsibility of the regional governments would depend on whether the items listed would be interpreted to be "reasonably incidental" to their powers listed above. If so, then they would be within the jurisdiction of the regional governments, if not then they would be that of the central government.

However, the problems that were experienced by the Southern Region in the exercise of its commercial and industrial powers surrounded two matters - border trade and the incorporation of companies.

1. Border Trade

As we have seen, Section 6 of the Self-Government Act expressly prohibited the Southern Region from engaging in foreign trade "except for border trade and certain commodities which the regional government may specify with the approval of the central government".

However, this proviso was not happily worded. It remained a source of uncertainty and contention. On the one hand, border trade was clearly excepted from the

general prohibition; but on the other hand it appeared as if the approval of the central government was needed. It could also mean that approval of the central government was needed for certain commodities not falling under border trade but foreign trade. That is to say the requirement for approval was separate from the provision for exception. Hence there would have been two exceptions.

Although the later interpretation appeared more reasonable, the implementation of the provision was very confusing. The central government did not concede to the later interpretation. For it passed a resolution in December 1974⁴¹ empowering the Southern Region to issue import and export licences for commodities like coffee, tea, soap and others which should have been unnecessary in the case of the neighbouring countries. The Regional Government on her part, also passed the Border Trade Importers Registration Act, 1977⁴² to regulate the conduct of border trade in the region. Consequently many traders were registered as importers of beverages like whisky, brandy, beer, crude materials like fertilizers, and spare parts as well as chemicals and manufactured goods. However, when border trade was in full swing, the President suddenly issued a presidential order in June 1982⁴³ withdrawing the power of the regional government to participate in border trade on the grounds of the abuse of power. Was the presidential order valid?

This would depend on whether the authority to conduct

border trade had been merely delegated or actually devolved. Whereas obtaining the consent of the central government from time to time for dealing in specified commodities would amount to exercise of delegated power, the exception proviso for conduct of border trade was exercise of devolved powers. To amend or alter the devolved power would have required amendment of the Self-Government Act in accordance with its provisions and not just issuing a contrary presidential order. However, delegated power could have been withdrawn by the order. It was more likely that the right to conduct border trade was devolved and not delegated, therefore the presidential order should have been null and void.

In 1984, the Equatoria People's Regional Assembly attempted to recover powers of controlling border trade⁴⁴ but it was unsuccessful. However, according to presidential order no. 1 of 1983, Equatoria Region was never assigned the power to control border trade from the start. Thus the scope of the application of central government approval was unclear.

2. Incorporation of Companies

It was not certain from the reading of commercial and industrial provisions whether the regional governments could incorporate companies because the powers were too general. For example "promotion of trade, establishment of local industries and markets, issue of traders'

licences and formation of cooperative societies".⁴⁵

So the issue was whether locally incorporated companies like Fulla Rapids Ltd and Upper Talanga Tea Company had any legal status. This depended on whether incorporation was incidental to promotion of trade and industry by reasonable inference.

If incorporation were reasonably "incidental" to promotion of trade and industry then the region could incorporate companies. However, the incorporation of companies had to be in accordance with the provisions of the Companies Act but not under the Registration of Business Names Act 1976⁴⁶ as was the case for Fulla Rapids Ltd and Upper Talanga Ltd. Registering a company under the Registration of Business Names Act does not have the same effect as incorporating it under the Companies Act. Whereas incorporation gives birth to a new entity, registration does not. Registration is a formality whereby names of all business enterprises are kept on record, which includes sole trading and partnerships. Therefore, even if the region had powers to incorporate companies the incorporation of Fulla Rapids Ltd and Upper Talanga Ltd were not valid in law because they were not incorporated under any Companies Act.

The Sudan Companies Act, 1925⁴⁷ provided for the incorporation of all companies in the Sudan, in accordance with its provisions. The responsibility for incorporating companies were assigned to the Attorney General.⁴⁸ The

Head Office of the Registrar of Companies (the Attorney General himself) was in Khartoum but provision was made for the establishment of branch offices in other parts of the country.⁴⁹ However, no branch office was every established. So the Regional Ministry of Commerce in the South was not even acting as the agent of the Registrar of Companies when it incorporated Fulla Ltd and Talanga Ltd. For a regional government to validly incorporate a company, every region would have to enact its own Regional Companies Act under which it could exercise its powers.

On the other hand, if "incorporation" was not reasonably incidental to promotion of trade and industry then the regions had no authority to incorporate any company. Hence the incorporation of Fulla Ltd. and Talanga Ltd would still be invalid.

D. Security

National defence was clearly a matter for the central government but the Self-Government Act provided:

"Citizens of the Southern Region shall constitute a sizeable proportion for the People's Armed Forces in such reasonable number as will correspond to the population of the region. The use of the armed forces within the region and outside the framework of national defence shall be controlled by the president on the advice of the High Executive Council."⁵⁰

So the Southern Regional Government had at least a

consultative role over the control of the People's Armed Forces.

On the other hand, the regional governments had control over internal security but in varying degrees (as we have seen). For example, the Southern Region could recruit, supervise and maintain police and prison forces but the other regions could only supervise and inspect their work. However, subsequent legislations introduced several changes.

The Police Act, 1979⁵¹ stated that all "police forces shall be constituted by an order of the President of the Republic, after consultation with the national defence council".⁵² The reserve forces were to be constituted by order or approval of the President whether for temporary or special duties.⁵³ The promotion of officers needed the approval of the President and the appointment of officers in other ranks were also regulated by him.⁵⁴ Likewise all security committees for the provinces, except that of Khartoum province, were to be constituted by the President.⁵⁵ Although powers of the Southern Regional Government, were to be exercised "in accordance with national policies and levels", the provision of the Police Act 1979 amounted to recentralization of powers over the police into the President of the Republic.

The Prisons Act, 1975,⁵⁶ on the other hand, transferred the responsibility for the recruitment of prison forces to the commissioner of the province. He

could also subdelegate those powers to the Director of Prisons or his assistant.⁵⁷ Whereas the Director was charged with the responsibility of the administration, organisation and formulation of the policy of prison forces, as well as its financial affairs, the commissioner was to "assume the technical and administrative supervision of the prison forces in his province".⁵⁸ The role of the President was limited to the appointment of prison officers and consenting to the resignation of those officers regarded to be in leadership rank.⁵⁹ Hence the Prisons Act, 1975 further transferred powers over prisons from the regional governments to the local governments.

The fire brigade was not within the jurisdiction of the Southern Regional Government but the People's Province Executive Councils whereas other regional governments had powers over it. Thus the position was not uniform from the beginning.

The Fire Brigade Act, 1978⁶⁰ placed the constitution, command and administration of fire brigade in various officials. Those in the provinces fell under the Commissioner or a person appointed by him.⁶¹ However, those in the Ministries, Departments and Public Corporations came under the Head of the Unit or the person authorized by him. The President was only required to give approval for the promotions to the rank of Fire Brigade Brigadier and upwards.⁶² Those below the stated rank remained under the ultimate control of the commissioners and the Head of Government units. As can be

seen, responsibility for Internal Security in the Sudan was largely confused.

E. Legislation on Traditional Law

From the reading of Article 9 of the constitution it is clear that traditional law was to be applied all over the Sudan.

"The Islamic law and custom shall be the main sources of legislation. Personal matters of non-muslims shall be governed by their personal law."

Section 10 of the Self-Government Act expressly authorised the Southern Regional Government to legislate "on traditional law and custom within the framework of national laws". Hence the region could legislate on the various customary laws of marriage, divorce, succession and so forth in so far as they were not contrary to the national laws. However, the demarcation between national laws and regional legislation in traditional matters was very delicate in the special circumstances of the Sudan where Islamic traditions are often regarded as national matters.

The promulgation of Islamic penalties and laws in 1983 afford a suitable example. According to the new laws any laws which were contrary to them were to be null and void. A conflict between traditional law and "national"

law occurred in Renk in the Southern Region in 1984 in an unreported case.

A muslim man (Arab) had sexual intercourse with a Dinka widow which, according to the Dinka customary laws, constituted the offence of adultery. It is to be recalled that the practice of widow inheritance is prevalent among the Dinkas like other tribes of the South and Africa in general. In other words, the death of a Dinka husband does not annul the marriage because the wife was married to the family of the deceased and could thereafter be inherited by the deceased's brother or relative. Legally, she was therefore still a wife. However, widow inheritance is not recognised by Islamic laws. In his defence, the Arab adulterer pleaded that the widow was not married because the husband was dead. Since all other laws which were contrary to the laws and principles of Islamic Sharia law were to be null and void, the magistrates court at Renk had no option but to dismiss the case. It was a very regrettable incident but it explains the absurdity of the application of traditional law, when the Sudan is Islamised.

F. Promotion of Languages and Culture

Surprisingly, inspite of the fact that there were numerous languages and cultures in the Sudan (see Chapter 1), it was only the Southern Region which was empowered to

promote "local languages and culture".

If decentralisation meant unity in diversity, then there was no justification for the prohibition of other ethnic communities for example the Nuba, Engessena, Funj and Beja in other parts of the Sudan from promoting their local languages and cultures.

Unfortunately, the lack of skilled manpower and facilities for the promotion of languages handicapped all efforts to do so in the South. A Directorate for Languages was created in the Regional Ministry of Education in 1977 but it aborted. The Director joined politics and no replacement was found.

IV CONCLUSION

Several lessons can therefore be drawn from this chapter. In the first place powers devolved to the regional governments were not uniform. Those of the Southern Regional Government exceeded the powers of the rest, although all powers were based on the general practice of decentralisation. Powers of the Southern Region, like those of the other regions, were ill-defined in many aspects, particularly those to do with the control of natural resources and participation in trade and commerce. The idea of prohibiting the region from

planning was totally out of place, that was why it was overlooked by the government in practice. Phrases like "within" national plans and policies, or in accordance with "national laws" seriously curbed the jurisdiction of the regions.

Towards the end of the 1970s, the central government returned to recentralising powers previously decentralised. This was especially obvious as regards police powers.

For decentralisation to be successful, the powers have to be redefined very precisely to eliminate ambiguities, contradictions, fill loopholes and remove unnecessary limitations.

NOTES

1. R.L. Watts, New Federations; Experiment in the Commonwealth (1966), pp. 174-5.
2. See B.O. Nuwabueze, The Presidential Constitution of Nigeria (1982), p. 46.
3. See Part I of the Schedule to the People's Local Government Act, 1971 or 1981.
4. Rondinelli, "Implementing Decentralisation Policies" in G.S. Cheema and D.A. Rondinelli (eds.), Decentralisation and Development (1983), p. 14.
5. W. Demas, (1965), pp. 120-121, quoted by Ali, M.A.H., "Planning Development in the Sudan, with Special Reference to Regional Development", MPhil Thesis, Nottingham University 1977/78, p. 7.
6. See B. Yongo-Bure, "The First Decade of Development in the Southern Sudan", Paper presented to the Conference on North-South Relations Since the Addis Ababa Agreement; Khartoum, March 6th-9th, 1985, p. 10.
7. Ibid., p. 14.
8. Financial Regulations and Proceedings Act, 1978, Section 12(1).
9. Fred Wessel, "Local Planning Issues", in Issues on Management in the Southern Region of the Democratic Republic of the Sudan, Juba (December 1961), p. 61.
10. Bona Thiang, "Coordination between National and Regional Planning", Paper presented to SSU Conference on Problems of Development in the Southern Region, Juba, January 1979, p. 3.
11. Permanent Constitution, A. 20.
12. P.H. Coombes, What is Educational Planning?, UNESCO, HEP (163), p. 14.
13. Interview with Jack Ngalamu of Juba University, who did his fieldwork on Integrated Rural Education (IREC) at Meridi in 1985 - London, October 1985.
14. See High Executive Council Resolution Nos. 247 and 273 of 1975.
15. Laws of Papua New Guinea - Organic Law on Provincial Government, 1980, Section 24.
16. Mark Bray, Educational Planning in a Decentralised System (1984), p. 45.
17. The Permanent Constitution, A. 37.

18. Ibid., A. 31.
19. Unlike other African countries like Uganda and Zambia which lease all lands for a fixed period - 99 years - leases in the Sudan have different periods. For example the period for a leasehold for petroleum exploration is not fixed but Section 10 of the Petroleum Resources Act, 1972 provides that it should not exceed 60 years.
20. Act No. 23 of 1970.
21. Unregistered Land Act, 1970, Section 4.
22. Act No. 10 of 1976.
23. Act No. 11 of 1976.
24. Act. No. 12 of 1976.
25. The Regional Town and Village Planning Act, 1976, Section 3.
26. Ibid, Section 4.
27. Ibid, Section 7.
28. Democratic Republic of the Sudan, Southern Region, Juba Guidelines for the Development of Land. Directorate of Public Works, Regional Ministry of Public Works, Transport and Communications, Juba.
29. Distribution of Legal Powers between Central Ministries and the Ministries of the Southern Region of the Sudan Act, 1977 - item 12 of the Schedule.
30. See The Royalties Act, Laws of the Sudan, Vol. 3, 5th edition, pp. 323-325.
31. The Self-Government Act, 1972 Section 10(u).
32. The Distribution of Legal Powers Act, op. cit., item 30 of the Schedule.
33. Ibid.
34. Act No. 60 of 1972.
35. Mines and Quarries Act, 1972, Section 5.
36. Ibid, Section 9.
37. Ibid, Section 3.
38. Act No. 59 of 1972.
39. Petroleum Resources Act, 1972, Section 3.
40. The Regional Mines and Quarries Act, 1982 (not

numbered).

41. Resolution No. 953 of 1974 (dated December 16th).
42. Act No. 1 of 1977.
43. Order No. 347 of 1982 (dated June 13th).
44. Proceedings of Equatoria People's Regional Assembly, Juba, Resolution No. 6 of 1984.
45. The Southern Provinces Self-Government Act, 1972, Section 10(h); see also The Regional Government Act, 1980, Section 8(g).
46. Act No. 5 of 1976.
47. Laws of the Sudan, vol. 1, 5th ed., pp. 240-395.
48. The Companies Act, 1925, Section 239.
49. Ibid.
50. The Self-Government Act, 1972, Section 26(2).
51. Act No. 85 of 1979.
52. The Police Act 1979, Section 8.
53. Ibid, Section 9.
54. Ibid, Section 20.
55. Ibid, Section 62.
56. Act No. 5 of 1975.
57. The Prisons Act, 1975, Section 5.
58. Ibid, Section 8.
59. Ibid, Section 39.
60. Act No. 12 of 1978.
61. The Fire Brigade Act, 1978, Section 5.
62. Ibid, Section 12.

APPENDIX 1THE SELF GOVERNMENT ACT, 1972SECTION 10:

"The People's Regional Assembly shall legislate for the preservation of public order, internal security, efficient administration and the development of the Southern Region in cultural, economic and social fields and in particular in the following:-

- (a) Promotion and utilization of regional financial resources for the development and administration of the Southern Region.
- (b) Organization of the machinery for regional and local administration.
- (c) Legislation on traditional law and custom within the framework of national laws.
- (d) Establishment and maintenance and administration of prisons and reformatory institutions.
- (e) Establishment, maintenance and administration of public schools at all levels in accordance with national plans for education and economic social development.
- (f) Promotion of languages and cultures.
- (g) Town and village planning and the construction of roads in accordance with national plans and programmes.
- (h) Promotion of trade, establishment of local industries and markets; issue of traders' licences and formation of cooperative societies.
- (i) Establishment, maintenance and administration of public hospitals.
- (j) Administration of environmental health services; maternity care, child welfare; supervision of markets, combat of epidemic diseases; training of medical assistants and rural midwives, establishment of health centres, dispensaries and dressing stations.

- (k) Promotion of animal health, control of epidemics and improvement of animal production and trade.
- (l) Promotion of tourism.
- (m) Establishment of zoological gardens, museums, organization of trade and cultural exhibitions.
- (n) Mining and quarrying, without prejudice to the rights of the central government on the discovery of natural gas and minerals.
- (o) Recruitment, organization and administration of services of the police and prisons in accordance with national policies and levels.
- (p) Land use according to national laws and plans.
- (q) Control of pests and plant diseases.
- (r) Development, use and production of forest products and pastures according to national law.
- (s) Development and promotion of self-help schemes.
- (t) All other matters respecting which the president may authorize the People's Regional Assembly to legislate."

APPENDIX 2THE REGIONAL GOVERNMENT ACT, 1980

Powers of the other regional governments were listed in Section 8 of the Regional Government Act, 1980 as follows:

"... The regional legislative and executive organs shall exercise the following powers:-

- (a) The Government of the Region, good administration thereof, keeping order therein, development, promotion, taking care of interest and public order thereof.
- (b) Development and utilization of the financial resources established by law or approved by the national power.
- (c) Development of the People's Local Government in the Region and supervision of the establishment of its institutions and carrying out of its duties.
- (d) Supervision of the police, prisons and fire brigade forces and administration of punishment institutions in the Region.
- (e) Regulation and administration of educational, health and cultural service in the Region.
- (f) Provision of care for social, charitable institutions and religious affairs in the region.
- (g) Organization of trade, commodities, cooperation and industries in the Region.
- (h) Utilization of water in the Region.
- (i) Organization and provision of care for agriculture, pastures and animal welfare in the Region.
- (j) Organization and establishment of means of communication and transport and their units in their Region.
- (k) Administration of employment and manpower, planning in the Region.
- (l) Planning of towns and villages and

the disposition of land in the
Region.

(m) Promotion of tourism in the Region."

APPENDIX 3

Powers excluded from the jurisdiction of the other regional governments (for example, Section 6 of the Regional Government Act, 1980).

National Matters

Section 6:

"Subject to the provisions of the constitution, the regional organs shall not, when exercising the powers conferred on them, encroach on any of the following matters:-

- (a) National defence and national security.
- (b) Foreign affairs and international representation.
- (c) Nationality, immigration passports and aliens affairs.
- (d) Public audit.
- (e) The judiciary, public prosecution and advocacy.
- (f) Transit means of communication and transport.
- (g) Inter-regional water supply and the national electricity net.
- (h) Currency and coinage.
- (i) Export and import trade.
- (j) Institutions of national economic dealings.
- (k) The national natural and mining resources and the wealths under the ground.
- (l) Institutions of national and regional elections.
- (m) Educational planning.
- (n) Any other matters regulated by national legislation."

INTER-GOVERNMENTAL RELATIONSHIPS: 1971-1985INTRODUCTION

The maintenance of a harmonious relationship between the central and regional governments on the one hand, and the regional and local governments on the other, is a crucial requirement for the successful operation of the decentralised system as a whole. However, this type of ideal relationship is not easy to achieve because it calls for balancing the needs of the respective inferior governments vis-a-vis the overall authority of the central government. In other words, appropriate balance has to be struck between the autonomy of the inferior governments and the sovereignty of the central government.

Principally, the inferior governments for important political and economic reasons have to be autonomous over certain matters assigned to them as detailed in Chapter 7, without any interference from above. However, the fact that they are not sovereign entities by themselves, necessitates the central government's overseeing of their activities in the interest of the whole nation. Thus the need for control arises.

This chapter makes a critical analysis of the relationship between the central and regional governments and between regional and local governments in the Sudan from 1971 to 1985. It identifies and examines the

procedures through which the central government controlled the activities of the regional governments and how the latter could protect or safeguard her interests from undue interference by the former. It also considers the methods by which regional governments controlled activities of the local councils. The vital issue of financial control is, however, deferred for detailed consideration in the next chapter. It is really astonishing that very elaborate methods of control had to be necessarily devised for use in one party state democracy as the Sudan was. But we shall first examine the objectives for control before proceeding to consider how the powers of control were applied in practice.

I. THE OBJECTIVES AND METHODS FOR CONTROL

The objectives for control shall be considered before the methods.

A. The Objectives for Control

There are five broad objectives for control which are briefly stated below. The first is that it is the constitutional and political prerogative of the central government to control the activities of the lower level

governments. The justifications are that since the central government enacts the principal laws of the country, control is necessary to ensure conformity with these laws. However, the degree of control would depend on the system of government established - that is, whether it is totally unitary, highly decentralised or federal. Certainly in countries where considerable devolution of powers exist, control becomes unnecessary over matters which have been completely devolved to the lower level governments. Politically, control is the prerogative of the central government to ensure that the lower level governments conform with the political guidelines of the ruling party.

The second broad reason for control is a macro-economic one. It is the inherent duty of the central government to control inflation; and in order to do so effectively, it has to impose a ceiling over areas like budgeting, taxation, borrowing, formulation of new development projects, foreign trade and production activities as well as foreign exchange. Thus it has to issue macro-economic guidelines for the lower governments to follow. Once again the degree of control might vary from unitary states to highly decentralised ones and from developed countries to under-developed ones. For example, ceilings on foreign trade and foreign exchange might not be of much relevance to developing countries because the inferior governments hardly participate in them. Thirdly, as we have already seen in Chapter 7, the central government distributes functions to the lower level

governments thereby making it also responsible to control the application of the functions. Functional control is deemed necessary to guarantee operation of the various governments within limits of their jurisdiction, avoid conflicts as well as further contribution by the central government to the lower level governments towards the costs of projects which might be beyond the capability of the inferior governments. Fourthly, the feeling of paternalistic relationship usually adopted by the central government, makes the object of control a necessity in that the central government feels duty-bound to direct and guide the lower level governments because it is much more mature in all fields. This is especially the case with local governments. For instance, control over local governments by central or regional governments are necessary for several important reasons. Here the object of control in the early stages is to develop the local government itself. Thus, the central or regional government tries to secure implementation of her policies in the administration of local services where these impinge on national interest. Although it is theoretically possible to divide services into central, regional, local or joint concerns, it is rare to do so in practice. The national interest normally predominates at one stage or another. But the need to control should be kept to the minimum so as to preserve local interests and maintain consistency with efficacy. One of the most important and generally accepted objects of central or regional control is the preservation of minimum standards in the national interest. That is to say, there should be

some standard against which the achievement of local authorities in the performance of purely local services should be measured. However, the impossibility of finding the criteria which will operate effectively in local authorities of different sizes and diverse patterns should be recognised. Moreover, maintenance of local standards should not operate against local enterprise; it should not weaken the sense of responsibility of the local people for proper handling of local affairs. Related to minimum standards is the need for uniformity. Though uniformity among local councils is desirable, it is not necessary if uniformity per se is to discourage local initiative. For, local initiative demands marginal scope of independence. Control also checks against non-performance or neglect by the local councils. A council that is not sufficiently active in performing the duties assigned to it will be compelled into doing so by acts of supervision, inspection or review of a higher authority.

Finally, it is quite necessary for the central government to control the attitude of the lower level governments by restraining them from indulging into activities or behaving in ways which are prejudicial to the interest of the nation as discussed in Chapter 7.

B. Methods of Control

There are numerous established methods of control.

These include the power to disallow, approve, direct, advise, inspect, investigate, regulate or issue circulars, review, revise, veto and dissolve.

Those that exist between the central and regional governments are, however, much fewer than those found between regional and local governments. Controls are even comparably more minimal between a federal government and a state government because of their coordinate relationship. The usual arrangement in a federal government is to include a provision stating that where there is concurrent jurisdiction, the central legislation will prevail. In this way, the state legislatures are bound by the laws of the federal legislature. Sometimes provision is made for obtaining consent of the other government in case of delegation of authority by one government to the other. However, the power to disallow the legislations of the state or provincial governments do also exist as is the case in Canada. The Canadian Federal Government can disallow a provincial legislation. But by far the most typical methods of control in federations is through the exercise of powers of emergency or judicial review of administrative action.

Decentralised governments in unitary systems also employ powers of disallowance, emergency and obtaining consents, but there are many others. For example, there are provisions for consultations and the appointment of special commissions for resolution of disputes or to offer advice like the Premiers Council in Papua New Guinea.

Additional to the above, the superior government invokes several administrative methods for control which are equally applicable to local government councils. They can be categorized under the broad headings of approval controls; directory controls; and financial controls.

(a) Approval controls take the form of a consent or approval that has to be obtained from the superior government before the act of the inferior authorities is complete or legally effective. These may take various forms like:-

(i) Ministerial sanction for draft order or byelaw to become effective.

(ii) Exercise of discretionary powers, say by a Minister in cases where the Statute states "subject to the approval of the Minister".

(iii) Appointments and dismissals of officers, where there is provision for the Minister to approve the appointment or dismissal of senior officers.

(b) Directory or advisory controls take place where the superior government gives directions and or advice to local authorities. This is also done in several ways:-

(i) By passing regulations which prescribe the administrative procedure to be followed in the course of putting the policy of a statute into effect. It may also set out some of the forms for use.

(ii) By inspection, whereby a body of inspectors is maintained to visit local authorities throughout the country.

(iii) By directives where, say, a Minister is empowered to direct a particular authority. Here, it is different from issuing regulations.

(iv) By circulars whereby general advice is given through circulars to show changes in government policy or advice on particular difficulties and information as to technical developments and results of research.

(v) By default powers to penalise, etc.

(c) Financial control is also available in several ways but these are considered in Chapter 9.

II. THE RELATIONS BETWEEN THE CENTRAL GOVERNMENT AND THE REGIONAL GOVERNMENTS

There were four methods of control available to the central government for maintaining control over the Regional Governments in the Sudan. These included approval and directory control methods, the power to veto, the powers of emergency and the power to dissolve the Regional Assemblies. The most effective method of the four was the authority to dissolve the Regional Assemblies. We shall consider these powers in turn.

A. Control of Regional Governments

1. Approval Control

Approvals or consents were required from the Central Government by the Regional Governments for the performance of several activities. For example, in specifying the various duties of the departments in the Southern Region, the High Executive Council was required to "act with the approval of the President"¹ if these were matters related to the Ministries and Departments of the central government.

Approval of the central government was also required for activities like the conduct of border trade² or use of funds in the budget etc. Approval for border trade was obtained once only in 1974 (see Chapter 7 for details). Consent, on the other hand, was very rare. The consent of the president of the Republic was necessary only if a request had been made to him for the withdrawal of a Bill or a postponement³ of a law from coming into force, as examined later.

2. Directory Control

The Self-Government Act provided that "The President shall from time to time regulate the relationship between the High Executive Council and the central Ministries".⁴

However, it was not specified as to how this was to be done. He could in practice therefore issue directives to the respective governments. In spite of this power, the president, however, never resolved the problem for the provision of legal services in the region.

Provision of Legal Services

The problem of provision of legal services arose over the reconciliation of the powers of the Attorney General with that of the Department of Legal Affairs in the Southern Region. The Department was established in accordance with the provisions of the Addis Ababa Agreement⁵ and Presidential Order No. 40 of 1972.⁶

The functions of the Department as defined by the Department of Legal Affairs Regulations, 1977, included prosecution, litigation, drafting of contracts, legislative drafting and legal counselling in the Southern Region supposedly on behalf of the Southern Regional Government. However, these regulations were defective in that they were not properly authenticated. They were signed by Natale Olwak Akolawin, Regional Minister for High Executive Council Affairs as acting president of the High Executive Council, on behalf of the latter. Nowhere was it provided that an acting president could do so. Apart from the defect in the said regulations, the issue was whether the Department could exercise the powers mentioned above in the Southern Region in view of the

constitutional provision which stated:

"The President of the Republic shall appoint an Attorney General for the Democratic Republic of the Sudan ... The law shall determine his duties, jurisdiction and responsibilities."⁷

One interpretation given to the phrase "an Attorney General for the Democratic Republic of the Sudan" was that no other Attorney General could be appointed in the country. This reasoning was reinforced by the provisions of other laws which defined powers of the Attorney General. They vested all powers of prosecution, litigation etc. on behalf of the Sudan Government in the Attorney General. For example, the Attorney General's Chambers Act 1973,⁸ authorised the Attorney General to be the legal adviser of the State.⁹ The Civil Procedure Act, 1974¹⁰ stated that all suits for or instituted in the name of the Sudan Government were to be instructed in the name of the Attorney General.¹¹ The code of Criminal Procedure Act, 1974¹² also empowered the Attorney General to conduct criminal investigations and prosecute on behalf of the Sudan Government¹³. He could also stay proceedings (or exercise powers of nolle prosequi) under the same Act.¹⁴ Nowhere was it mentioned in any of these laws that the Department of Legal Affairs could exercise any of the powers vested in the Attorney General in the Southern Region. Unfortunately, this was the interpretation adopted by the courts.¹⁵

The other interpretation was by reasonable inference that the phrase "an Attorney General for the Democratic Republic of the Sudan" did not preclude the Regional

Government from appointing a Regional Attorney General of her own. There would have been no necessary contradiction in doing so because they would be representing different governments in the country.

In view of this problem, however, the Attorney General delegated his powers of prosecution to individual members of the Department¹⁶ - but this was not an adequate solution to the problem. The Department continued to have no powers devolved to it. Finally Presidential Order No. 1 of 1983 on the redivision of the South expressly prohibited the new regions in the South from exercising any powers over "The Judiciary, Public Prosecution and Advocacy".¹⁷ Subsequently, Presidential Order No. 35 of 1984 transferred Members of the Department of Legal Affairs to the Attorney General's Chambers. Thus the controversy was resolved in a most unexpected manner - by recentralisation instead of decentralisation of powers for rendering legal services.

3. The Power of Veto

Under the Self-Government Act, the President could "veto any Bill which he [deemed] contrary to the provisions of the constitution".¹⁸ This power was, however, never invoked. So it remained redundant since no occasion warranted its application.

4. Assent to a Bill

Initially the Self-Government Act did not require presidential Assent for a Bill to become law. The necessity of obtaining presidential assent¹⁹ to a Bill was introduced by the High Executive Council and People's Regional Assembly Act, 1980 which purported to amend the Self-Government Act. It should have been null and void for not having complied with the Amendment Procedure of the Self-Government Act discussed later but surprisingly enough it was effective.

On the other hand, Presidential Assent was not directly required under the Regional Government Act, 1980. According to that law a Bill in any Regional Assembly in the Northern Sudan could become law on the signature of the Governor alone. If the Governor of a region objected to the passage of a Bill, he was required to send it back to the Assembly with reasons for his objection within thirty days, else it would become law. It would also become law even if it were sent back within the said period but it was passed again by two-thirds majority members of the Assembly.²⁰

The powers of assent of the Governor were not only similar to those of the president of the Republic²¹ but also to the powers of other presidents in Africa. For example under the Interim Constitution of Tanzania, 1965, Presidential Assent was also necessary for a Bill to become law. If the president withheld his assent he was

also required to send the Bill back to the Assembly with reasons to that effect. The Bill could likewise be presented for his assent for the second time within six months if supported by two-thirds of the Members of the Assembly. This time, however, the president was required to "assent to the Bill within twenty-one days of its presentation" unless he dissolved the Parliament.²²

The fundamental difference between presidential assent in Tanzania and that of the Sudan was that, whereas the Sudanese Bill automatically became law if supported for the second time by two-thirds of the members of the Assembly, that of Tanzania still required presidential assent. The rationale of requiring Presidential assent is obviously based on the fact that the President participates in law-making under the Presidential constitution.

5. Powers of Emergency

Until 1980, emergency powers were entirely the prerogative of the President of the Republic exercisable at his own absolute discretion.

"... if the President of the Republic is satisfied that an imminent danger is threatening the independence of the country or the integrity and safety of its territory, or its economy, or the public organs of the state and its constitutional institutions, or the achievement of its international obligations, or the achievement of its people, he shall declare a state of emergency and take necessary measures to prevent the danger ...".²³

Clearly, no other authority could declare or request for the declaration of a state of emergency. Contary to this provision, however, the Regional Minister of Administration in the South, Moses Chol, declared a State of Emergency over the region following an attempted coup in July 1977. Obviously that state of emergency was ultra vires and should have been treated as null and void. Yet it was not declared so. However, the powers of emergency were modified in 1980 as follows:

"If the President on the advice of the High Executive Council is satisfied that imminent danger threatens the unity, integrity and safety of the Southern Region or its economy, the organs of the Regional Self-Government or the achievement of the people in the Region, he shall declare a state of emergency and take necessary measures to prevent the danger ...".²⁴

Certainly, this provision was intended to enable the regional government to initiate the process for the declaration of emergency if it sensed some danger in the region. Nevertheless, the regional government never invoked this power. The State of Emergency declared by the President all over the country in April 1984²⁵ was in the exercise of his powers under the constitution (already quoted). It was, however, astonishing that similar powers of emergency were not granted to the regional governments in the North.

Generally, emergency powers are an exclusive prerogative of the national government even in federal countries like Nigeria, for fear of abuse of powers by the inferior governments. But the Governor of a state in

Nigeria may request the application of emergency powers with the approval of a resolution supported by two-thirds majority of the House of the Assembly of the State.²⁶

6. Dissolution of Regional Governments

Dissolution was the most powerful instrument for the control of regional governments in the Sudan. It was a prerogative power of the President of the Republic.

According to the Regional Government Act, 1980:

"When the President of the Republic considers that the public interest and the circumstances necessitate new elections he may after consultation with the Governor of the Region and the speaker of the People's Regional Assembly, dissolve the Regional People's Assembly."²⁷

However, it was not the same case with the Regional Assembly for the Southern Region from the start.

Initially, dissolution of the Regional Assembly in the South was not anticipated. Hence the omission of a similar provision from the Self-Government Act.

Presumably the Regional Assembly in the South was expected to stand dissolved at the expiry of its four years term of office as found in the export Westminster model of constitutions.

However, political developments in the Southern Region, as seen in the attempted removals of Lubari Ramba from speakership in 1975, and that of Lagu from the presidency of the High Executive Council by impeachment,

in 1979, and the unlawful dismissal of Mboro, Bol and Akot from Speakership, Deputy Speakership and Controller of the Assembly respectively in the same year (see Chapter 6) led to the promulgation of the controversial High Executive Council and People's Regional Assembly Act, 1980. The law was controversial because it provided for the dissolution of the Regional People's Assembly by the President, which was contrary to the spirit of the Self-Government Act; yet the special conditions prescribed for the amendment of that Act were not satisfied by the passage of the 1980 Act because it was neither approved by a three-quarters vote in the National Assembly nor by a two-thirds vote of the Southern masses in a referendum.

The relevant section read:

"When the President [considered] that the public interest and the circumstances [necessitated] new elections, he [could] after consultation with the president of the High Executive Council (and the Speaker of the Assembly) dissolve the Assembly."²⁸

The dissolution of the Regional Assembly automatically terminated the existence of the High Executive Council too.

"Subject to the provisions of Section 12(1) and 18 of the Regional Self-Government Act, the term of office of the President of the High Executive Council shall expire on the date of expiry of the duration of the People's Assembly or the dissolution thereof."²⁹

Thus the President could dissolve the Regional Government at will. It was not mandatory for him to consult the president of the High Executive Council or the speaker thereby seriously undermining the autonomy of the region

as happened in 1980, 1981 and 1983. The circumstances of each episode will be considered separately.

(i) The Dissolution of the Southern Regional Government in 1980

We are already familiar with the facts of the struggle between the president of the High Executive Council, Lagu, and the Speakers of the Assembly, Mboro and Bol, as well as the Controller, Akot.

That the Assembly unlawfully decided to impeach the three officers and not the president of the High Executive Council has also been established. Admittedly, there was a constitutional deadlock because the Regional Assembly could never meet for lack of a quorum. In the event, the issue was brought to the notice of the President of the Republic by the aggrieved parties. In the exercise of his discretionary powers of dissolution detailed above, the President dissolved the Regional Government in March 1980 after considering the recommendations of the fact-finding committee under the chairmanship of Dr. Aun Sheif Gasim which reported that "there [were] loopholes in the Regional Self-Government Act, 1972 that led to the disagreement".³⁰ The President of the High Executive Council was never consulted but was asked to resign.³¹

(ii) The Dissolution of the Southern Regional Government,

1981

This time, the dispute arose over the burning issue of whether or not the South should be divided into two or more regions. It was the demand of Eastern and Western Equatoria provinces to have an Equatoria Region separate from the rest of the South as seen in Chapter 5. However, the motion was withdrawn from the central committee meeting of the SSU in Khartoum in March 1981 for consideration by the SSU lower units in the South as well as the Regional Assembly there. Subsequently, the motion was overwhelmingly defeated in the Regional Assembly³² after which the regional government seized the opportunity to ban any further discussion of the matter. However, the struggle for "redivision" went underground between its proponents in Equatoria and the president of the Republic. Consequently, the president, to the surprise of the majority of the people in the South, announced the dissolution of the regional government in October 1981.³³ It was alleged that regional government was being obstructive to the cause of democracy in the region. Disturbingly, neither the President nor the Speaker of the Southern Region were consulted.

(iii) The Dissolution of the Southern Regional Government, 1983

The final dissolution of the regional government in the South occurred in June 1983, which was intended to

pave the way for the "redivision" of the region. In spite of the gravity of the matter, the "redivision" issue was never considered by the National Assembly, and as already stated, the proposed referendum to be held in the South was called off.

The authority for the "redivision" was apparently based on the recommendation of the President of the High Executive Council that the "controversial issue of re-division or no re-division [had been] left in the protective hands of the President of SSU and of the Republic".³⁴ However, such a requirement did not exist in any of the laws in the Sudan. Moreover, it was doubtful whether the President's recommendation quoted above could be regarded as being in favour of "redivision". The speaker was, however, not consulted as he had been detained in Khartoum Kober Prison much earlier for expressing contrary views to that of the president of the Republic on the issue.³⁵

Having examined the powers of control, we now proceed to consider how the regional government could protect its autonomy from unwarranted interference by the central government under the Sudanese decentralised system.

B. Protection of Regional Autonomy

We have already stated that there were only two ways

through which the Southern Regional Government could protect or safeguard interests. The Assembly could either request a Bill prejudicial to the interest of the region to be withdrawn or have it suspended if already passed as law. In fact it was worse for the regions in the Northern part of the country because they could only resort to the first method.³⁶ Yet, the presence of these powers could by no means guarantee protection for the regions as shown by the boundary crisis in 1980, the refinery trauma of 1981 and the enforcement of Islamic Sharia laws in 1983. We shall consider how successfully or unsuccessfully the Southern Regional Assembly invoked the two powers in the above incidents.

The request for withdrawal of Bills was provided in Section 14 of the Self-Government as follows:-

"The Peoples Regional Assembly may, by a majority of its members, request the President to withdraw any Bill presented to the People's National Assembly which in their views affects adversely the welfare, rights or interests of the citizens in the Southern Region, pending communication of the views of the People's Regional Assembly. If the president accedes to such request, the People's Regional Assembly shall present its views within 15 days from the date of the accession to the request. The president shall communicate any such views to the People's National Assembly together with his own observations if he deems necessary."

That of postponing a law from coming into force stated:

"The People's Regional Assembly may, by a two-thirds majority request the President to postpone the coming into force of any law which, in the view of the members adversely affects the welfare and interests of the citizens of the Southern Region. The President may if he thinks fit accede to such request."³⁷

The reference to the citizens of the Southern Region was a typographical error. According to Section 2(viii) of the Self-Government Act Sudanese citizens refer to citizens of the Sudan as defined by the Sudanese Nationality Act, 1957³⁸, which has no provision for citizens of the Southern Region.

What is important, however, is that under both provisions quoted above, the protection of the interests of the people in the South was left at the whim of the president. He could accept or reject any request, forward it to the National Assembly or refuse to do so. We shall now proceed to examine how the President used these powers.

1. The Boundary Crisis 1980

The boundary crisis was caused by the Regionalisation of the Northern Sudan in 1980. As we have seen, the Southern Sudan was defined as "the provinces of Baher El Ghazal, Equatoria and Upper Nile in accordance with their boundaries as they stood on January 1st 1956 and any other areas that were culturally and geographically a part of the Southern complex as may be decided by a referendum".³⁹

Admittedly, this provision had remained dormant until 1980 when the Regional Government Bill 1980 came up for discussion in the National Assembly. Section 4 of the

Bill was controversial because it stated that the boundaries of the new regions in the Northern Sudan were shown in a map attached as schedule to the law:

"Each region shall have a boundary in accordance with the map set out in schedule 1 hereto."⁴⁰

In fact, no schedule was attached to the Bill. Yet it had already been approved by the SSU Politbureau, the Council of Ministers and the Legal Affairs Committee of the Assembly. After insistence by the Members of the Southern Region for the production of the map, the Survey Department produced it showing boundaries which were contrary to those of the Southern Region. The map had cut off and annexed rich areas of the South to the North. In particular the oil fields of Bentiu, the Dura area of Renk and the copper belt of Hufirat El Nahas had been annexed to the new regions in the North. In light of these circumstances an extraordinary meeting of the People's Regional Assembly was convened promptly to discuss the intrusion and petition the President for the withdrawal of the Bill.

Presenting the Southern case in the Assembly, Ambrose Ring Thick, chairman of the SSU Assembly body stated:

"Section 4 of the same bill is seeking to redraw or demarcate the borders of the regions of the Democratic Republic of the Sudan in such a manner as is clearly violating the provisions of the Southern Provinces Self-Government Act of 1972 and therefore of the permanent constitution of the Sudan ... This attempt will undoubtedly affect the rights and interests of the Sudanese people."⁴¹

The above statements speak for themselves. Accordingly,

the Assembly presented the following petition to the President.

"... We members of the ... Assembly have observed with great concern that the proposed map determining the boundaries of the new regions as provided by Section 4 of the said Bill adversely affects the boundaries of the Southern Region contrary to the provisions of article 2(3) of the Regional Self-Government Act, 1972 and therefore contrary to article 8 of the Permanent Constitution of the Sudan. In view of the foregoing we ... hereby present this petition to your Excellency requesting the following:-
 (a) Refusal to sign the Regional Government Bill 1980 as law and return the same to the National Assembly to debate Section (4) or amend it ...".⁴²

The petition was submitted under the provisions of Section 14 of the Self-Government Act quoted above. The President reacted by appointing a National Committee to study the request which presumably endorsed it. Thereafter the president issued a Decree confirming the boundaries of the Southern Region as at 1.1.1956. Section 4 of the Bill was amended to re-read:

"Subject to the provisions of Article 8 of the constitution and Section 2(3) of the Southern Provinces Self-Government Act, 1972 ... the boundaries of the Province provided for in subsection (1) shall be the same as provided in the Reorganisation of the Provinces Act, 1974, with the exception of the parts of the provinces adjacent to the Southern Region which boundaries shall remain as existed in the first day of January 1956."⁴³

Unfortunately, this was the only occasion when the interests of the region were successfully protected.

2. The Refinery Trauma, 1981

We have already shown in the last chapter that the powers of the Central and Regional Government in the South over the control and exploitation of mineral resources ~~were~~ confused. In 1974, the Central Government had issued oil prospecting licences to Chevron (an American company) covering various parts of the Sudan including the Southern Region, but without consulting or informing the Southern Regional authorities.

Subsequently, in 1977, Chevron struck larger quantities of oil in Bentiu in the South at the flow rate of 2,800 barrels per day, which was greater than anywhere in the western or central region of the country.⁴⁴ Thereafter some crisis ensued on the issue of the location of the refinery. There were two sites for consideration. Kosti in the North or Bentiu in the South. Both the Central Government and Chevron were in favour of Kosti arguably for technical reasons which were enumerated as follows:-

1. It was too costly to construct a refinery at Bentiu.
2. The refinery at Kosti would be constructed in two years only whereas that at Bentiu would require 3 to 5 years - which was too long for the shape of the economy of the country to withstand.
3. Products of the crude oil were needed by major industries in the North such as Hajar Assalaya and Kenena which were nearer to Kosti than Bentiu which had no railway connection.
4. Bentiu was not served by any modern means of

communication like air, roads or railways.⁴⁵

However, the Southern Sudanese opposed the location of the refinery at Kosti. They preferred Bentiu so as to give an opportunity to develop the area. Besides that, it was the main source of the raw material. Their view was summarised by Salwa Kamil Dallalah of Khartoum University - as follows:

"Precisely because Bentiu is so underdeveloped, the refinery should be located there. The refinery would serve as a catalyst for development. Chevron would be required to build roads, schools, hospitals, employment would be granted in a depressed area, and the royalties and taxes would help free the South on dependence on Northern budgetary support. The Southern Region is poorly connected to the North as regard transportation so why take oil from Bentin and refine it in Kosti and then try to send it back to the South."⁴⁶

For these reasons the People's Regional Assembly passed a resolution⁴⁷ calling for the installation of the refinery at Bentiu under the provisions of Section 13 of the Self-Government Act quoted earlier to protect the interest of the people of the Southern Region. Nevertheless the President issued a Decree confirming Kosti as the site for the refinery.⁴⁸ Obviously the Decree was not welcomed in the South as a Southern official commented: "Our place is like a cow which is being milked without being fed."⁴⁹

In fact, no Southerner was even appointed on the Board of the White Nile Company Ltd., which undertook the business of the oil. There was also no high ranking Southern officials in the company, nor among those

undergoing training abroad. No taxes or royalties arising from the oil were assigned to the region with the exception of a sum of one million pounds allotted for Bentiu Development Project decided on an arbitrary basis. Not surprisingly, Southern grievance led to the attack and killing of three foreigners and inquiring of seven others at Rubkona near Bentiu in February 1984 which resulted into the indefinite closure of the oil operations.

3. The Enforcement of Sharia Law, 1983-84

Sharia Islamic law was introduced after the "redivision" of the South, and although the Southern Regional Government stood dissolved, the new regions, in particular Equatoria Region, invoked the powers of protection available to the former Southern Region to suspend the Sharia laws.⁵⁰ Under the Sharia Penal Code Act, 1983, theft became punishable by amputation of limbs, adultery by decapitation, drinking of alcohol by flogging and murder by death or payment of blood money (dia) as compensation.⁵¹

As non-Muslims, people in the South opposed the implementation of this law. The resolution which was unanimously adopted by the Equatoria People's Regional Assembly read:

"We ... Members of ... Equatoria Regional Assembly ... having learnt with great concern the passing of Sharia law in the Sudan by the People's National Assembly ... and having exhaustively discussed the matter ... [And] believing in the unity

of the entire Sudanese masses and the 9th of June 1969 Declaration which basically was the recognition of the cultural differences of the Sudanese People ... And whereas the permanent constitution of the Democratic Republic of the Sudan 1973, A. 16(b), (c), (d), (e) guarantee the rights of non-Muslims; which rights are not respected by Sharia laws Sections 321(2) and 449 ... request Your Excellency ... to give constitutional guarantees by the restoration of the Sudan Penal Code 1974, and the Criminal Procedure Act 1974 to govern non-Muslims in Equatoria Region and the Sudan at large."⁵²

Although Equatoria Regional Assembly had no powers under Presidential Order No. 1 of 1983 to request the postponement of a law, this petition was clearly based on the provisions of Section 13 of the Self-Government Act. Despite the illegality of the petition, the reaction of the President was highly significant. Regrettably the President did not respond to this vital request. He simply kept silent and the law remained in force.

Equatoria Regional Assembly also made another petition seeking the withdrawal of the Promulgation of an Islamic constitution in 1984. Reliable sources quote the president's comment as: "Who told them that they had the right to discuss the matter?"⁵³ The National Assembly did not, however, succeed in passing the constitution - but this was not due to the request of Equatoria Regional Assembly; it was defeated by an overwhelming majority wish of the members of the National Assembly itself.⁵⁴

Considering the behaviour of the President in the exercise of his powers of protection as seen in the cases

of the boundary crisis in 1980, the oil refinery in 1981, the enforcement of Sharia law in 1983 and the promulgation of the Islamic constitution in 1984, it was obvious that these powers were not very useful. For their success depended on the attitude of the President. He could decide to protect or not to, as he wished. There was no obligation on him under given circumstances.

Alternatively, the successful implementation of the powers depended on extra-legal circumstances. For example the boundary issue of 1980 was successful because the Southerners were politically united. However, they soon got divided over the issue of the "redivision" of the South. So the successful application of the powers for the protection of autonomy became impossible. Therefore, in order to invoke the powers successfully, political unity of the Southerners was of paramount importance.

When compared with Papua New Guinea, the weakness of the Sudan is sharply revealed.

4. Comparative Development: Suspension of Provincial Governments in Papua New Guinea

Under Papua New Guinea's Independence Constitution 1975, and the organic law on Provincial Government 1980, the grounds and procedure for the suspension of a Provincial Government were firmly laid down.

These were set out in Article 187(E) of the

constitution; if:-

- " (a) There is widespread corruption in the administration of the Province; or
- (b) There has been gross mismanagement of the financial affairs of the Province; or
- (c) There has been a breakdown in the administration of the Province; or
- (d) There has been deliberate or persistent frustration of, or failure to comply with, lawful directions of the National Government; or
- (e) The Provincial Government has deliberately and persistently disobeyed applicable laws, including the National Constitution, an organic law, the Provincial Constitution or any national legislation applicable to the Province."

Suspension is also possible in cases of emergency due to war.

The National Executive could suspend a Provincial Government provisionally pending confirmation of Parliament by simple majority. However, the motion for the suspension has to follow a particular procedure as prescribed in Section 90 thereof, which states that a provincial government:

- " (a) Shall not be removed unless the Head of State, acting with, and in accordance with, the advice of the National Executive Council, has made a report to the speaker of the National Parliament, for Presentation to the Parliament, that, after consultation or attempted consultation with the Provincial Executive, the National Executive Council is satisfied that
 - (i) a ground for suspension set out in Section 187(E)1 of the National Constitution exists; and
 - (ii) the matter cannot be corrected unless the Provincial Government is suspended; and

- (iii) the Provincial Government ought, in the national interest or in the interests of the people of the province, be suspended accordingly, giving reasons for the opinion; and
- (b) Maybe moved only by a Minister."

Furthermore the motion has to be studied and the matter investigated by the Commission for suspension of Provincial Governments before it is debated. The Commission consists of four permanent members of whom at least two must be members of the National Parliament other than Ministers, a representative of the Provincial Government and an ad hoc member. It reports to the Speaker of the National Assembly.

Under these circumstances, abuse of power as in the case of the Sudan is very unlikely.

III. THE RELATIONS BETWEEN THE REGIONAL AND LOCAL GOVERNMENTS

Before 1981, local governments in the Sudan were answerable to both the Central and regional governments. Whereas the People's Province Executive Councils in the Northern Sudan were answerable to the central government, those in the South were answerable to the regional government.

"The People's Local Councils in the Provinces of the Southern region shall be the basis for the organization of the

Regional Self-Government provided by the Constitution for these provinces."⁵⁵

The foregoing provision was also reinforced by Section 10(b) of the Self-Government Act which made the regional government responsible for the "organization of the machinery for ... local administration". The Distribution of Legal Powers between the Central Ministries and the Ministries of the Southern Region of the Sudan Act, 1977, directed that all the powers under the People's Local Government Act, 1971, exercisable by the Minister of Local Government and the President of the Republic were to vest in the Regional Minister for Public Administration and the High Executive Council respectively in the Southern Region.⁵⁶ However, whether the local governments were answerable to the central government or the regional governments, the powers of control under the Acts were similar. We shall consider control over local governments under the People's Local Government Acts 1971 and 1981 separately.

A. Powers of Control Under the 1971 Act

The powers used for the control of People's Province Executive Councils under the People's Local Government Act, 1971, were:-

1. Regulatory powers.
2. Confirmatory powers.
3. Powers of supervision.

4. Powers of inspection.
5. Powers of investigation.
6. Powers of disallowance.
7. Powers of veto.
8. Powers of dissolution.

We shall consider each power in turn.

1. Regulatory Powers

Invariably local government acts provide for the minister or some other authority to make regulations for the proper implementation of a local government law. This is so because parliament does not normally have time to go into the minute details concerning the running of local government councils. Moreover, it enables Ministers to act speedily so as to fill any gaps or cure any defects. In terms of control, however, it enables the Minister to lay down rules which will guide the local government councils all over the country so as to achieve some minimum standards and uniformity.

Accordingly, the People's Local Government Act, 1971, provided that:

"The Minister may, with the consent of the Council of Ministers, make any necessary regulations for the implementation of the purposes of this Act ...".⁵⁷

Several regulations were made by the Minister in the exercise of these powers. For examples, regulations were

made in 1971 defining the conditions of local government officers; regulations for elections to the councils; and regulations which defined the relationship between the SSU political organ of the Council and the Members of the Council. In essence the last regulations stated that it was the duty of the SSU organ to lay down the policies of the government while the Councils enacted them into bye-laws. Unfortunately, copies of all the regulations are not readily available.

2. Powers of Confirmation

Local government councils are also authorised to issue local orders or byelaws to enable them to enforce the exercise of powers conferred on them by the local government laws. However, the normal practice is to have their orders or byelaws confirmed by some higher authority before they can have the force of law. The idea is to give the higher authority who is normally the Minister, Commissioner or Regional Assembly the opportunity to scrutinize the orders of the councils before they are validated. This method usually enables the higher authority to prevent a council from issuing orders which are prejudicial to some public or private interest.

It was, however, extraordinary in the case of the 1971 Act that the orders of the Councils were not required to be confirmed. The relevant section read:

"The Council may, when exercising its powers issue local orders leaving the

force of law." 58

However, the Minister was authorised to suspend any local order or part of it for three months if he was of the opinion that public interest so required. But he had to submit his report to the Council of Ministers to that effect. The Council could revoke or amend the order. This implied that if an order was not suspended by the Minister or even if suspended but was not revoked or amended by the Council of Ministers, then it was confirmed. Powers of confirmation under the 1971 Act were therefore indirect rather than direct.

This power was rarely applied. The only example which can be given was the confirmation of a local order issued by the Council in Juba in 1974. It was intended to force the idle population in Juba to go back to the rural areas. Since it was not suspended, it was assumed to have been confirmed.

3. Powers of Supervision

Supervision guarantees a constant check on the activities of local government and their officers. By and large the role of supervision was the duty of the Commissioner.

"The Commissioner shall be responsible for the general supervision, ... and control of the government units in the province and he shall exercise control over civil servants working in the province and shall render reports on the effective discharge of their duties to their respective Ministries." 59

The Commissioner maintained general supervision and control over the councils through two broad mechanisms. These were the political and administrative machineries.

Politically the Commissioner, as we saw in Chapter 6, was the SSU Provincial Secretary. So all SSU secretaries in the districts and sub-districts were his representatives. They rendered monthly reports to him on the administration of the various parts of the province. Furthermore the SSU Basic Rules and Regulations provided for the holding of SSU annual conferences from the grassroots to the province. These conferences discussed all aspects of government policies and their application to the provinces. They also adopted resolutions for implementation by the various councils. Reports of these conferences were to be made available to the Commissioner for perusal and necessary directives.

Administratively, three things were done in relation to supervision. The Executive Officers in the sub-districts had to write monthly reports to the Assistant Commissioners in the districts who in turn compiled reports on the districts and sent them to the Commissioner. The reports covered every aspect of administration. The Commissioner then made the final report to the President of the Republic; those in the South did so through the High Executive Council. Apparently, this regular practice died in the 1980s when the administrative officers were subjected to political

frustrations such as frequent transfers. They became disenchanted and lost enthusiasm in their work.

The Commissioner could also summon the Assistant Commissioners for personal meetings and discuss problems affecting their districts. This proved to be the most effective method of supervision.

Finally, the Commissioners made unscheduled tours of the provinces especially if the reports of the SSU and those of the Assistant Commissioners contradicted each other or on receiving complaints. This method was very effective too.

4. Inspection

Inspection on the other hand, was a duty of the Ministries.

"Any Minister may inspect any activity of the People's Executive Council respecting matters relating to activities of his Ministry; or he may depute any technical inspector to carry out any such inspection ...".60

It goes without saying that inspection gives an opportunity to detect weaknesses or any shortcomings in the performance of any duty which is a necessary administrative procedure. Inspections are usually done by technical officers on a regular basis. The designated public servants who carry out inspections normally have the necessary qualifications and experience for the

particular task. Inspection is therefore an appropriate method of control of an inferior authority to make it comply with certain requirements laid down by the superior authority.

The greatest problem with inspection was how a minister or a person deputed by him could inspect the work of a Commissioner; the Commissioner was of course part of the Council as shown in Chapter 6, and he enjoyed Ministerial status as well. In practice, this power was quite redundant. Copies of the monthly reports were instead served to the respective ministries to enable them to follow the progress of work in their field departments in the provinces.

As for the public servants on secondment to the Councils, annual confidential reports were rendered on them by respective officers. The Heads of the units rendered reports on their officials under their supervision while the Assistant Commissioners did the same on the Heads. The Commissioner reported on the Assistant Commissioners. Special promotion reports could also be made on request by the parent Ministry.

5. Investigation

Powers of investigation were to serve as a channel for receiving complaints against a council. The right of investigation existed under the 1971 Act only:

"If a complaint or report is presented to the Minister that any People's Executive Council has failed to perform anything which it is obliged to perform by its warrant of establishment or by this Act or any other law, or that council performed any act which it ought not to have performed, or otherwise if the Minister is of the opinion that it is necessary to carry out an investigation into the affairs of the People's Executive Council, the Minister may order that a local investigation be held by a person or persons appointed by him."⁶¹

Investigations could therefore also be used as alternative procedure for correcting errors. However, there was no incident of official complaint recorded in the South although there were informal ones. The problem was even if there had been any it would have been difficult to handle the situation because the Commissioner would be a party. As in the case of inspections, the power to investigate was also redundant. Presumably the same position obtained in the North.

6. The Power of Veto

As we saw in Chapter 6, the Commissioner had the authority to veto any decision of the Council if "public interest or the general interest of the state ... or the rights of the citizens or the principles of equality"⁶² necessitated doing so. Had this power been exercised frequently, it would have seriously undermined the autonomy of the Councils. However, the only incident which took place in the South was in 1982 when the Headquarters of Eastern Equatoria province was to be

transferred from Juba to Torit about 84 miles apart. What happened was that the People's Province Executive Council of Eastern Equatoria decided that accommodation facilities (buildings), were to be made available at Torit before the Headquarters could be transferred. This was so because Torit had few buildings which could not house all the offices of the Executive Council. However, the Commissioner, Brigadier Saturlino Arika, was of the opinion that the decision was delayful. Being a native of Torit he wanted to see the Headquarters transferred as soon as possible. Thus his reason was more political in nature than administrative. He vetoed the decision of the council and ordered for the immediate transfer despite the shortage of buildings at Torit. The government officers in the Council refused to move but they were all served with letters of explanation which was a disciplinary procedure. Realising dangers involved in the confrontation between the Commissioner and his officers, members of the regional government decided to frustrate the proceedings by approving applications for transfers by the officers involved away from the province. Therefore, the power to veto was either never used or was unsuccessfully invoked as shown above.

7. Power of Disallowance

The power of disallowance was very important under the 1971 Act.

"... The Council of Ministers may in consultation with the Minister, disallow

partly or wholly, as it deems fit, any resolution passed by the People's Executive Council ..."⁶³

Thereafter the Council of Ministers may direct the People's Executive Council to revoke or amend the resolution or local order within a specified period. If the Executive Council failed to do so then the Council of Ministers could suspend, revoke or amend any warrant or suspend any powers of the People's Executive Council and transfer the powers thereof to any person or other body. The power of disallowance was therefore a very powerful instrument of control under the 1971 Act. It could eventually lead to dissolution. Once more this power was rarely invoked.

The only incident in the South took place in 1979 between Juba Town Council and Juba Rural Council. The issues were, which Council had the right to gibana (taxes on goods entering or leaving a council), collected at the bridge in Juba as well as the bridge tolls which were also raised at the same spot. The argument of Juba Town Council was that since the bridge was in Juba it had the right to both taxes. So it resolved to evict the representative of Juba Rural from the bridge.

Juba Rural, however, contended that the goods entered her jurisdiction before they reached that of Juba Town. Moreover the boundaries between Juba Town and Juba Rural were not clearly demarcated. Since the colonial days Captain Cook used to be in charge of both councils whose boundaries were not properly defined. Then it caused no

problems. Furthermore, the offices of Juba Rural and Juba Town were located in separate wings of the same building. Legally both councils were entitled to levy gibana on the goods because they passed through them but it was feared that that would amount to double taxation and cause inflation. In the event the dispute was referred to the People's Province Executive Council which decided in favour of Juba Town Council on both issues. Being aggrieved, Juba Rural appealed to the Minister for Regional Administrations who exercised powers of the Council of Ministers in the region.

At this stage gibana was separated from the bridge tolls. It was decided that the bridge tolls should go to Juba Town because the bridge was clearly within Juba. But the issue of gibana was difficult to resolve so it was referred to a committee of investigation, the outcome of which remained unknown. Thus, the decision of the Executive Council was partly disallowed.

B. Controls Under the 1981 Act

Powers of control under the 1981 Act were in many respects similar to those provided by the 1971 Act. For example, the powers to issue regulations⁶⁴, confirm local orders or byelaws⁶⁵, supervise⁶⁶ and inspect⁶⁷ were similar. However, the powers of revision, reporting and dissolution differed. They existed under the 1981 Act but

not under the 1971 Act. On the other hand, the powers of vetoing and disallowance were deleted from the 1981 Act. No explanations have been given for these variations. Here we shall only consider the powers of revision, reporting and dissolution as they were not examined under the 1971 Act. We shall also consider the method for the resolution of conflicts between the Regional Executive Authority and the Area Councils which did not exist under the 1971 Act.

1. Revision

It is the inherent duty of a superior government like the Regional Government to check and annul, or refuse to render valid, decisions made by a local council if the decision was improper or illegal. The regional government must see to it that decisions taken by the local councils are not contrary to public interest or any law.

Although this vital power was omitted from the 1971 Act, it was catered for by the 1981 Act:

"The Commissioner shall assume the following powers:-
(d) He shall revise the works of the Councils and raise reports thereon to the Regional Executive Authority."⁶⁸

This section, however, contradicted a latter one which provided:

"The Commissioner may revise the work of the Council and of the People's Local Council; or he may depute any qualified person to carry out such revision."⁶⁹

Whereas the first provision made it mandatory for the Commissioner to revise the work of the Area Council, the second one made it discretionary. The change in emphasis was a very important difference in that if the Commissioner chose not to revise the work of the Council as contained in the second provision then the degree of control over the Councils of local government under the 1981 Act would be seriously reduced.

Moreover the first provision required the Commissioner to do the revision by himself whereas the second authorised him to employ a deputy to do so. Certainly the provisions of the latter section were more far-reaching as most Commissioners were loyal politicians to the system and not real experts or technicians capable of revising the works of the Councils. Furthermore the second provision authorised the Commissioner or a person deputed by him to also revise the works of rural councils whereas the first provision did not.

2. Reporting

The method of reporting was intended to be an important instrument of control under the 1981 Act. Reporting was to be done by both the Ministers and the Commissioner.

Any Regional Minister was required to present "a report on results of the inspection together with any

recommendation [that was] appropriate to the Regional Executive Authority".⁷⁰ This requirement was complementary to the powers of any Regional Minister to "inspect the work of the Council or of the People's Local Council respecting matters relating to activities of his Regional Ministry."⁷¹

As for the Commissioner, he was required to render reports on various occasions, for example after revising the works of the Councils to the Regional Executive Authority. He was also to report on the performance of the employees of the regional government seconded to the Councils, he being responsible for the heads of the executive organs in the Councils.⁷²

Finally, he was to render periodical reports on the performance of the Councils to the Regional Executive Authority. However, the frequency of the period was not specified. The implementation of this power was similar to the reporting systems discussed under the 1971 Act.

3. Dissolution

According to the 1981 Act:

"... The Regional Executive Authority may, for reasons of public interest, order dissolution of a Council and assign its powers to the Authority it may specify until a new council is formed."⁷⁴

Since conditions for dissolution were not laid down, it

was possible to dissolve councils for political reasons. In Equatoria Region, for example, four Area Councils - Juba Central and Rural, Yei and Torit were dissolved in 1983 because the Members of the Regional Executive Authority at the time felt that the Councils were full of political opponents. They were charged with election irregularities. Similarly, all the Area Councils in Equatoria Region were dissolved after the overthrow of President Numeiri because the new administration of Equatoria, feared political opposition from the Area Councils which were then in existence. Thus, dissolution in the South was in practice used for crushing political opponents only.

4. Resolution of Conflicts

The provisions of Section 9 of the People's Local Government Act, 1981 were an innovation in the laws of local government in the Sudan. It expressly stated:

"In case of overlap of the powers of the council with those of the Regional Executive Authority, the powers of the council shall be exercised in accordance with the arrangements of the Regional Executive Authority."

The fact that powers of the Area Councils were not void ab initio for conflicting with those of the Regional Executive authorities was interesting. It gave the possibility for a compromise solution between the powers of the Council and those of the Regional Executive

Authority.

This provision was reinforced by those of Section 8(1) of the same Act which required the Area Councils to exercise their powers "within the limits" of the general policy, plans and programmes made by the Regional Executive Authority.

Policies of the Regional Executive Authority were normally communicated to the Councils by means of directives which constituted another method of control.

CONCLUSION

This chapter clearly reveals that control powers are vital in any system of government, including decentralised ones. However, the degree of control differs from a totally unitary government to a fully decentralised one; with the necessity for control lessening as there is increase in the amounts of powers decentralised.

The administrative methods of control which existed during the colonial period such as supervision, inspection, reporting and so forth still continue in force today. However, political control has assumed more importance and effectiveness in one-party states like the Sudan than, say, in multi-party systems as found in Papua

New Guinea. On the whole, control through the courts in decentralised systems within unitary constitutions is uncommon. In the Sudan it has indeed been non-existent. Conflicts and disputes are resolved through conciliations and issuance of directives by the higher authorities.

NOTES

1. The Southern Provinces Self-Government Act, 1972, S.17.
2. Ibid., S.6.
3. Ibid., SS.13 and 14.
4. Ibid., S.22.
5. Addis Ababa Agreement on the Problem of South Sudan: Interim Administrative Arrangements (Political, Local Government and Civil Service). A 2(g).
6. Provisional Order No. 40 - Provisional Measures Preceding the Election of the People's Regional Assembly.
7. The Permanent Constitution, A. 197.
8. Act. No. 26 of 1973.
9. The Attorney Generals Chambers Act, 1973, S.5.
10. Laws of the Sudan, Volume 9, 5th edition.
11. The Civil Procedure Code Act, 1974, S.33.
12. Laws of the Sudan, Volume 8, 5th edition, pp. 1-217.
13. The Code of Criminal Procedure Act, 1974, S.122(E).
14. Ibid., S.231(A).
15. For example, Justice Wilson Ariyamba of the Court of Appeal of Juba was said to have summarily dismissed Gordon Abyei, representative of the Department of Legal Affairs, from court in 1977 on the ground that the Department had locus standi in court - the case was unreported.
16. The writer was one of the individuals to whom powers of prosecution were delegated in 1978.
17. Presidential Order (No. 1) 1983 on the Organization of Regional Government in the Southern Provinces, Section 82(e).
18. The Self-Government Act, 1972, S.27.
19. The High Executive Council and People's Regional Assembly Act, 1980, Section 13.
20. The Regional Government Act, 1980, S.69.
21. See The Permanent Constitution, A.107.
22. The Interim Constitution of Tanzania, 1965, A. 50.

23. The Permanent Constitution, A.111.
24. The High Executive Council and People's Regional Assembly Act, 1980, S.15.
25. See The Times, April 28th 1984.
26. The Constitution of the Federal Republic of Nigeria, 1979, S.265(4).
27. The Regional Government Act, 1980, S.62.
28. The High Executive Council Act, 1980, S.14.
29. Ibid., S.4.
30. Regional Ministry of Culture and Information: Southern Sudan Magazine, March 1980, p. 3.
31. Interview with Joseph Lagu, London, October 1985.
32. See Proceedings of the People's Regional Assembly, Juba, June 1981.
33. See Presidential Decree Nos. 698 and 699 of 1981 dissolving the Regional Assembly and the High Executive Council Respectively.
34. Sudanese Socialist Union, Report of the SSU Secretary S. Region, op. cit., p. 12.
35. The Speaker Mathew Obur was said to have told a Seminar in Khartoum University that there would be war if the South were "redivided" whereby both John and Mohamed would be victims. John and Mohamed therefore represented the Southern and Northern Sudanese.
36. Under the Regional Government Act, 1980, the Assembly could only petition for the withdrawal of a Bill prejudicial to the interests of the region - section 90. Impliedly a Bill could no longer be challenged once it became law.
37. The Self-Government Act, 1972, S.13.
38. See Laws of the Sudan, Volume 4, 5th edition, pp. 134-143.
39. The Self-Government Act, 1972, S.2(3)."
40. The Regional Government Bill, 1980, Section 4.
41. See Proceedings of the extraordinary session of the People's Regional Assembly, Juba, November 1980.
42. Ibid.
43. Ibid.

44. See Gordon Mourtat, Report No. 6 on Southern Sudan Political Situation, London, 1985, p. 49.
45. See Salwa Kamil Dallalah Oil and Politics in the Southern Sudan, Paper presented at the Conference on North-South Relations since the Addis Ababa Agreement; Khartoum, March 6-9th 1985, pp. 11-12.
46. Ibid., p. 12.
47. Resolution No. 14, of the People's Regional Assembly, Juba, March 31st 1981.
48. Salwa, op. cit., p. 12.
49. Ibid.
50. See the Self-Government Act, 1972, Section 13.
51. The Penal Code Act, 1983, SS. 246, 247, 251-255, 316-353, 443-449.
52. Proceedings of Equatoria People's Regional Assembly, Juba, Resolution No. 4 of 1983.
53. The source objected to his name being revealed.
54. That time 98 of the 110 Members of the Assembly had registered to vote against the motion. So the Speaker withdrew it before the voting could be carried.
55. The Permanent Constitution, A.184.
56. See Schedule to the Distribution of Legal Powers Act 1977, item 28.
57. The People's Local Government Act, 1971, S.33.
58. Ibid., S.30(1).
59. Ibid., S.6(4).
60. Ibid., S.34(1).
61. Ibid., S.35.
62. Ibid., S.6(6) as amended by Miscellaneous Amendment Act, 1977 - Act No. 13 of 1977.
63. Ibid., S.34(2).
64. The People's Local Government Act, 1981, S.30(1).
65. Ibid., S.30(5)(6).
66. Ibid., S.10(6).
67. Ibid., S.33(1).

68. Ibid., S.10(d).
69. Ibid., S.33(3).
70. Ibid., S.33(2).
71. Ibid., S.33(1).
72. Ibid., S.10.
73. Ibid., S.33(4).
74. Ibid., S.14(2).

CHAPTER 9FINANCIAL ARRANGEMENTS FOR THE DECENTRALISED GOVERNMENTS:1971-1985I INTRODUCTION

The problems of fiscal relations in a decentralised administration epitomise the variety of problems that exist therein. The questions raised are several and intricate.

What would be the most appropriate principle for the distribution of financial powers over revenue and expenditure between the central and regional governments, and between the latter and the local governments? Should the regional and local governments have taxing powers and be assigned independent sources of revenue or should they depend entirely on grants from the central government? If they are to have taxing powers and independent sources of revenue, how much should the powers be or which sources should those be? Should they be entitled to grants in addition to the locally raised revenue? Should the same principles of allocation of revenue between the central and regional governments also apply to regional and local governments.

What about the criteria for the allocation of grants

between the regional governments inter se or the local government councils inter se? Should the central government retain some powers of control over the inferior governments? If so, which powers - should it be power over expenditure or over general management of financial affairs?

What machinery should be employed to work out and/or control the fiscal relations between the various tiers of government in a decentralised system?

Incidentally, it should be borne in mind that regardless of certain political, administrative and financial devolution of powers, the physical supremacy of the central government under a unitary constitution is unchallengeable. Hence problems of fiscal equity in the entire governmental set up are ultimately to be resolved by the central government, as it thinks fit. It must, however, be admitted that to work out an appropriate formula which would eliminate financial imbalance in a decentralised system is very difficult. Several principles have been used generally.

The principle of independent revenue has been generally adopted by most decentralised countries, except for Tanzania between 1970 and 1982, and for Zambia to a certain degree.¹ The independent revenue principle advocates the transfer of taxing powers to the inferior governments. This means that the regions and the districts must be authorised to impose taxes on specific

independent sources of revenue. The principle is said to be desirable in the interest of local autonomy and for the inducement of the sense of local financial responsibility. It can also enhance administrative efficiency in the system of taxation.

The principle of independent revenue was introduced in Nigeria under the 1951 constitution following the recommendation of Hicks-Phillipson Commission in 1950.² It supported the principle on the justification that has been stated already. However, it stated that the regional taxes must satisfy four conditions:-

1. The taxes must be clearly localised within the regions.
2. The taxes must have stable yields.
3. The taxes must be inexpensive to administer.
4. The taxes must not hinder or endanger national interest and policy.

However conditions 2 and 3 can be very difficult to satisfy considering the poverty of the third world countries.

Looking at the case of Nigeria before 1951, the fiscal relations between the central and the three regional governments³ were entirely based on the principle of derivation. The principle of derivation arises from the idea that each region should be returned a portion of the revenue collected from it by the central government. This means the share of revenue must be proportional to the ratio of contribution to the national financial pool.

The single justification for the principle being that it inculcates a sense of political responsibility at regional level for the furtherance of political progress. However, the principle is susceptible to enriching already wealthy regions and impoverishing poor ones. It could not, therefore, reduce the regional inequalities between the richer regions in Southern Nigeria and the poor one in the North. It was a cause of constant inter-governmental misunderstanding and friction. Moreover, its operation requires up-to-date data on the relative well-being of each region, the statistics of which are difficult to maintain in a third world country. Accordingly, the Hicks-Phillipson Commission rejected the derivative principle as the sole or most important basis for allocating revenue among regions.

Apart from discussing the general principles of federal finance and their application to Nigeria, the Commission advocated a system of revenue allocation based on the adoption of not just one, but a number of criteria which together would ensure "justice, liberty, fraternity and efficiency",⁴ the attainment of which would require four general principles which the Commission also advanced. These were, the principles of independent revenue, derivation, need and national interest.

We have already examined what the principles of independent revenue and derivation stand for. What about the other two principles of need and national interest?

The principle of needs arises from the fact that the various sections of a country are inter-dependent. There should therefore be fair distribution of resources among the people irrespective of their places of birth and residence. Since population is the best available measure for human needs, and because it is also simple and easy to understand, allocation of revenue should be based on it. In other words, there should be a conscious effort to share out revenue on the basis of population which should undoubtedly reflect the need for education, food, health services, transport etc. In spite of the sound reasons for the principles, they were not adopted by the Nigerian 1951 constitution. In fact problems of fiscal relations in Nigeria continued to trouble the government until the drafting of the 1979 constitution and even up to the present time. The Technical Committee appointed in January, 1978, under the chairmanship of Professor Aboyele recommended the adoption of five new principles for revenue allocation. These were:-

1. Equality of access to development opportunities;
2. National minimum standards;
3. Absorptive capacity;
4. Independent revenue and tax effort; and
5. Physical efficiency.

For details of the principles see Report of the Technical Committee on Revenue Allocation (Lagos: December 1978). Another Commission, the Okigbo Commission, recommended in 1980, that the federal government should be entitled to 53% of the national revenue, while the States

receive 30%, the local governments 10% and the remaining 7% should go to the special fund.⁵ However, all the formulae were amended several times before a permanent solution was reached in 1981.

The allocation of revenue (Federation Account, etc.) Act, 1981 of Nigeria provided for the maintenance of a Federation Account, into which all public monies is paid. It also prescribed the formula for the allotment of revenue among the federal, state and local governments as agreed by the National Assembly. The Assembly resolved the share distribution as follows:-

- (i) Federal government, 58.5%
- (ii) State governments, 31.5%
- (iii) Local government council, 10.0%.

The share of the state governments is to be sub-divided amongst them as follows:-

- (a) 26.5% on basis of equality
- (b) 50% on basis of derivation.

Furthermore, the 26.5% is sub-divided as follows:-

- (a) Minimum responsibility of government 50%
- (b) Population, 40%
- (c) Land area, 10%

The 58.5% share of the federal government has also been sub-divided according to the responsibilities and duties of the federal government.

- (a) Responsibility of the federal government 55%.
- (b) Initial development of the Federal Capital 2.5%.

(c) Ecological problems 1%.

The share of the local government councils is also sub-divided in similar percentages for equality, population and land as those of the state governments listed above. Hence Nigeria's formula for allocation of national revenue is highly rational and comprehensive.

Furthermore, the Act provided for the maintenance of joint State Local Government Accounts under the supervision of two committees.

1. The Federal Account Allocation Committee comprising:-

- (i) The Federal Minister of Finance - Chairman.
- (ii) Commissioner of Finance of each State.
- (iii) Two persons appointed by the President.
- (iv) The Accountant General of the Federation.
- (v) The Permanent Secretary of the Federal Ministry of Finance or a person appointed by him.

The Committee ensures the prompt allocations and renders annual reports in respect of its functions.

2. A joint state Local Government Allocation Committee.

The members of this committee are:-

- (i) The Commissioner in charge of local government in the State - Chairman.
- (ii) The Chairman of local councils.
- (iii) Three Persons appointed by the Governor of the State.
- (iv) Two representatives of the Accountant General of the Federation.

State governments are expressly prohibited from

borrowing money, funds, revenue allocated to the local councils.⁶

The Nigerian experience therefore affords a good example of the difficulties that can be encountered in the distribution of revenue in a decentralised system.

Finally, the principle of national interest hinges on the fact that certain essential services are of a national nature. The national government has to maintain some minimum standards throughout the country as well as see to it that provision is made for certain matters to be of significance to the central government. Matters like the judiciary, prisons, schools, health facilities and the like.

Although the Sudan is not a signatory to International Conventions like the International Covenant on Economic, Social and Cultural Rights (ESCR) and the European Social Charter, which impose positive obligations on governments' parties to them to provide free education and medical assistance respectively, it could by no means avoid such obligations. These extraneous circumstances make it accountable to the international community for the maintenance of these minimum standards. But what does this mean in terms of finance? It means that if these functions are to be performed by a region, then the central government is under an obligation to see to it that the region has adequate resources to fulfil those functions or carry them out at the most basic or minimal

standards. There will, therefore, always be inevitable need for grants from the central government. But should the grants be earmarked so as to cater for the specified obligations? This might be necessary, considering the purposes for which grants are given and the types that exist.

Grants are intended to fulfil several purposes.

1. Grants may wholly or partly finance the cost of services or development programmes regarded as being of national significance. That is to say, they should be consistent with the level of national interests, policies and targets.
2. Grants may encourage the efforts of regional authorities to develop services and programmes which are of course in line with national policy.
3. Grants can stimulate growth in regional economies which would both contribute to national growth and reduce inter-regional disparities.
4. Grants can be used for controlling regional expenditure so as to ensure compliance with national policies and standards.
5. Grants can also help in securing an equal or more equal, standard of services or development.
6. Grants can be intended to compensate regions with a low fiscal capacity, a relatively inferior potential for raising their own revenues.
7. Finally, grants can assist regions to cope with emergencies.

The type of grants depends on the purpose or method of transfer. Types of grants identifiable are:-

1. Percentage grants, which are based upon a fixed percentage, to meet the cost of specific purposes or projects. The ratio between the governments is determined - say 100% or 50% or 25% or any suitable figure. The Swedish Government for example gives local authorities 100% for the cost of teachers' salaries. The Sri Lanka Government provides 50% of the cost of municipal construction projects, including water supplies, bridges, playgrounds and libraries.
2. Unit cost grants are based upon a fixed sum per unit of service; for example, £500 per kilometre of road maintained, £20 per primary school child, etc. In Indonesia, for instance, the central government gives fixed sums per primary school and class, for repairs, equipment, books and sports. Unit grants can therefore cater for cost variations as well.
3. Grants to match the exploitation of regional national resources. This type of grant is self-explanatory. An example is where the Tamil Nadu State in India gives village Panchayats grants to equal their collection of house tax as incentive grants.
4. Development grants may be allotted for a specified range of functions. For example, the Kenya District Development Fund and the Rural Development Grants in Papua New Guinea are intended for a variety of developmental functions.
5. Equalisation grants are intended to "top up" direct

regional incomes in areas of below average or below 'standard' of fiscal capacity. For example, the Indian State of Andhra Pradesh tops up Panchayat revenue where average land revenue liabilities fall below one rupee per capita.

6. Contributions to balance regional budgets are meant to reconcile regional revenue with expenditure. They either ^{take} the form of block grants or deficit grants. Deficit grants are based on actual budget deficits as in the Sudan. Here the grants are normally estimated to meet the gap between expenditure needs and the potential regional revenue as defined by regional and national standards as we shall see.

Having examined the criteria used for allocation of revenue generally, we now proceed to analyse those used in the Sudan from 1971 to 1985. Did the Sudan adopt any rational formula for the distribution of powers of revenue and expenditure between the central and regional governments; and between the regional and local governments? How successfully were the powers implemented in practice? Were there any problems encountered? If so, which ones?

Powers of financial control and expenditure will also be considered. The absence of a financial machinery in the country is also pointed out.

These examinations are, however, done against the

poor economic profile of the Sudan which has had low GNP and GDP over the years coupled with a high inflation rate. Precisely, Sudan's GNP per capita stood at 440 US million dollars in 1982 while the GDP was 1,160 US million dollars in the same year. The inflation rate was projected to reach 45% by 1985.⁷ Official sources, on the other hand, indicated a steep debt rise from 227.5 US million dollars in 1970 to 3,772.8 in 1982, coming to about 9 billion by 1985.⁸ [Details of the economic profile are shown in the introduction.]

II GOVERNMENT REVENUE AND EXPENDITURE

As in other countries, the Sudan depends on tax and non-tax revenues. The structure of the central government budget for the years 1978/79 - 1979/80 is shown in Table 9.1. Table 9.1 shows that the principal sources of revenue for the central government are the indirect taxes accruing from Import and Export Duties, Excise Duties and Duties on goods and services. So other forms of taxes not shown in the table have been assigned to the regional and local governments.

III REGIONAL GOVERNMENT FINANCES

Table 9:1

CENTRAL GOVERNMENT BUDGET (REVENUE
AND EXPENDITURE) (IN Ls MILLIONS)

	1978/79		1979/80	
	Actuals	Estimates	Actuals	Estimates
Revenues				
Import Duties/Duties on goods and services/ Excise tax	276	326	297	327
Other indirect taxes	82	87	77	70
Consolidated Income tax	61	66	55	89
Contribution from Agricultural, Industrial and Commercial Corporation/ Profits from Sugar Monopoly	44	92	41	34
Other (including sale of Government Property)	172	341	222	486
Other public sector operations	5		8	
Total	640	912	700	1006
Expenditures				
Recurrent	575	821	671	943
Development	169	285	137	330
Public Enterprises Deficits	74	0	43	?
Total	818	1106	851	1273 +?
Deficit	178	196	151	267 +?
Met by: External loans	68		91	
Bank Finance (net)	112		59	

Source: Bank of Sudan: Annual Reports 1979 and 1980.
Figures rounded to the nearest Million.

Regional governments in the Sudan were empowered to prepare budgets for services and development programmes and to impose taxes in addition to taxes levied by the Central Government and grants received from the same. We shall examine the financial powers of the Southern Regional Government and those of the regional governments in the Northern Sudan separately.

A. Powers of the Southern Regional Government

Section 25(2) of the Self-Government Act provided:

"The High Executive Council shall prepare a budget to meet expenditure for the services of security, administration and development of the Southern Region according to national plans and programmes and shall be presented thereby to the approval of the People's Regional Assembly."

As explained earlier, (see Chapter 7), development plans and budgets for the Southern Region were actually prepared in the region despite the prohibition for the region not to participate in planning stated in Section 6 of the Self-Government Act.

However, the budgets for the implementation of those plans had to be submitted to the central government for vetting before it could be approved by the People's Regional Assembly. This requirement was imposed by the Provisions of the Financial and Accounts Procedure Act,

1977⁹ and the Financial Regulations and Proceedings Act, 1978.¹⁰ Section 16 of the Financial and Accounts Procedure Act, 1977, stated:

"The Ministry [that is Central Ministry of Finance] shall inspect carefully the proposals of the annual budgets of the Peoples Executive District Councils and the Southern Region with a view to determining the deficit which will be met by the Central Government or the surplus." (Emphasis added.)

Clearly the aim of this provision was to authorise the central government to determine how much was to be paid to the region in terms of deficit grants. Determination in this case involved reduction of amounts regarded as too high for the central government to meet (see Chapter 7).

However, in order to enable the central government to inspect, the Financial Regulations and Proceedings Act, 1978, required the Southern Region budget proposals to be forwarded to the Central Ministry of Finance before they could be discussed by the Regional Assembly.¹¹ In practice, however, the budgets were even prepared according to guidelines issued by the same Ministry that did the inspection. Thus regional budgets and development plans were, in reality, seriously controlled by the central government. Central government control, as already mentioned, involved arbitrary cuts to reduce the estimates to fit the size of the purse of the donor government. This was the case with the 1979/80 development budget when it was reduced from £20 million to £15 million¹² and has been so on many occasions.

The Taxing Powers and Sources of Revenue for the Regional Government

The taxing powers of the Southern Regional Government were prescribed as follows:-

"The People's Regional Assembly may levy Regional duties and taxes in addition to national and local duties and taxes. It may make legislations and orders to guarantee the collection of all public monies at different levels."¹³

Different levels probably meant all Regional Government Departments plus all the tiers of the local government councils in the region since they were within the jurisdiction of the regional government. Thus the taxing powers of the regional government were separate from those of the central and local governments.

The sources of revenue assigned to the regional government were listed in Section 25(1) of the Act as follows:-

- "(i) Direct and indirect regional taxes.
- (ii) Contributions from People's local government councils.
- (iii) Revenue from commercial, industrial and agricultural projects in the region in accordance with the national Plan.
- (iv) Funds from the National Treasury for established services.
- (v) Funds voted by the National Assembly in accordance with the requirements of the region.
- (vi) Special Development Budget for the Southern Region ...
- (vii) Revenues to be determined in a special schedule attached to a finance law.
- (viii) Any other sources."

Clearly, the foregoing section did the following:

1. It authorised the regional government to raise local revenue from taxes and duties as well as investments in commercial, industrial and agricultural enterprises.
2. It authorised the regional government to receive three types of grants from the central governments.
 - (i) Grants to be voted by the National Assembly;
 - (ii) Grants for established services; (iii) Grants for special Development Budget.
3. The Local Government Councils were to contribute to the regional government. This idea was possibly carried over from the past practice when the local government councils used to contribute to the central government (see Chapter 4).
4. "Any other source" probably included loans and donations.

The revenues to be determined by a "finance law" were accordingly provided in "The Revenues of Taxes and Duties (Financial Aid and Other Revenue) for the Southern Region Act, 1972",¹⁴ which became popularly known as Decree 39, promulgated by the President soon after the Addis Ababa Agreement.

As stated in the foregoing subprovision (vii) of Section 25(1) of the Self-Government Act, the Decree was intended to supplement and consolidate the sources assigned to the regional government.

Apparently the law was not based on the recommendations of an expert body (be it an official commission or committee of technocrats). It originated instead from the terms of the Addis Ababa Agreement¹⁵ which were simply glossed over. No finance or economic committee was formed because delegates from the Southern Sudan Liberation Movement were too few and could not spare anyone to represent them on such a committee. However, the Decree did two important things. It specified or spelled out the sort of taxes referred to as direct and indirect taxes and duties in Section 25(1)(i) of the Self-Government Act. It also authorised the regional government to receive financial "aid" from the central government. "Aid" meant any financial contribution paid by the Central Government to the regional government towards the consolidation of the latter.¹⁶ However, "aid" was not clearly earmarked in the schedule to the Act. It was therefore difficult to distinguish "aid" from taxes and duties as we shall soon see. Aid was to be refunded in accordance with the terms specified jointly by the Minister for Local Government and the High Executive Council.

Taxes and Duties specified by the Decree were:-

1. Taxes on Net Income and Profit

Taxes on net income and profit included:-

- (i) Business profit tax, collected from the region.
- (ii) Personal income tax on government officials resident

in the region.

- (iii) Special development tax on adults in the region.
- (iv) Rental tax at 5% of net profits of factories, cooperative societies; agricultural enterprises and cinemas, on central government and local government installations and enterprises in the region.
- (v) Post office revenue, stamp duties.

2. Taxes on Production and Consumption

Taxes on production and consumption were:-

- (i) Sugar monopoly profits on sugar consumed in the region.
- (ii) Excise duties on alcoholic drinks and beverages sold in the region.

3. Taxes on International Trade

Taxes on international trade included:-

- (i) Export duties on goods from the South.
- (ii) Royalties on forestry products from the South.
- (iii) Royalties on cigarettes, pipe tobacco and leaf tobacco.

4. Fees and Charges

Fees and charges were levied on

- (i) Sale of land.
- (ii) Sale of farms and documents.
- (iii) Other items specified from time to time.

5. Proprietary Receipts

Proprietary receipts came from corporation tax on any factory or agricultural projects established in the region by other body other than the regional government at 5% of the initial cost.

6. Contributions from central government for the encouragement of agricultural, industrial projects and trading enterprises at 20% of the initial costs.
7. Grants from the National Treasury for new social service projects initiated in the region at the following rates.
- (i) Educational institutions 20% of the expenses.
 - (ii) Trunk and through roads and bridges, 25% of the expenses.
 - (iii) Relief and social amenities 15% of the expenses.
 - (iv) Tourist attraction projects 25% of the expenses.
 - (v) Security 15% of the expenses.
 - (vi) Grants for post-secondary and university education in the Sudan 20% of the grants.
 - (vii) Contribution for research, scientific advancement, and cultural activities 25% of the expenses.

Superficially, the powers of the Southern region were wide and flexible enough even to include new sources of revenue. As to whether these powers yielded sufficient revenue for the services and development projects in the

region will be considered after examining the powers of the regional governments in the Northern Sudan.

B. Powers of the Regional Governments in the Northern Sudan

The financial powers of the Regional Governments in the Northern Sudan were similar in many respects to those of the Southern Regional Government. They could plan and budget for the implementation of the plans which were also controlled by central government. Although the provisions of the 1977 and 1978 financial laws were not amended to cover them, in practice they were subjected to similar procedures.

Their sources of revenue were fewer and enumerated as follows:-

- "(i) Revenue obtained from the regional, commercial, industrial and agricultural projects.
- (ii) Funds approved by the national government to the benefit of the region.
- (iii) Loans and donations."

However, the regional governments could also, with the permission of the central government levy or collect taxes and fees from the following:-

- "(a) Taxes on exports and imports.
- (b) Excise duties.
- (c) Capital profit tax.
- (d) Pension deduction and after service benefits.
- (e) Any taxes and fees on any commercial dealings, national services or investments or any other services or

- any official of the national power.
 (f) Any taxes on fees or commercial dealings, services, investments or any other service or any officials of the regional government."

Although the style of drafting is very clumsy it was clear that taxes on international trade, and taxes and fees arising from the central government enterprises in the regions needed the approval of the central government which was not the case with the Southern Regional Government (as we have seen).

Moreover, certain tax sources made available to the Southern region were omitted from those of the Northern regions. These included items like contributions from the people's local councils and the grant for the Special Development Budget. But as we shall shortly see, these additional sources conferred no practical financial advantage to the South. In reality, they were obsolete. On the other hand, the Northern regions could, with the approval of the central governments (as stated above), raise revenue from pension deductions while the Southern region was not theoretically empowered to do so. Hence the differences in the sources of revenue between the Southern region and the regions in the North existed mainly in theory. In practice, there were financial imbalances between the regions but these were not primarily due to the sources quoted above, but because of the formula for the distribution of the grants and the different levels of development in the country. This point will become clearer when we examine the mobilisation of revenue by the regional governments.

C. Mobilisation of Revenue by the Regional Governments

As already stated, the powers of the regional government detailed earlier showed that they could:-

1. Obtain grants from the central government.
2. Raise revenue locally from tax rates, fees and profits on investment.
3. Obtain loans and receive donations.

We now proceed to examine how these powers were implemented. Most of our examples will be drawn from the South because of its rich experience and long existence. Consideration will be given to one item in turn.

1. Grants to the Southern Regional Government

Clearly three kinds of transfers were meant to be made by the Central Government to the Southern Regional Government. (i) Funds for established services, which were contained in Chapters I and II of the budget. Whereas Chapter I was for salaries and allowances of employees of the regional government, Chapter II was for services like office equipment, transport, spare parts, lubricants, etc.

(ii) Funds voted according to the requirements of the region. Requirements of the region were very wide and could include development budgets as well. (iii) Funds

for the Special Development Budget for the Southern region.

In spite of the clarity of the provisions, there were two kinds of transfers only. These were funds for established services and funds for development. Thus the difference between funds voted for the requirements of the region and the Special Development Budget funds were blurred after the establishment of the regional government in 1972. That means funds for the Special Development Budget for the Southern Region only existed at the time of the Ministry for Southern Affairs.

Since there was no specific fund for the Special Development Budget other than the development fund itself - there was no difference between the categories of funds transferred to the Southern region and the other regions even though the other regions had no provision entitling them to some special development budget.

Table 9.2 shows transfers made by the central government to the regional governments for the years 1980/81 to October 1981.

As can be seen from the table, the central and Northern regions received higher grants than they would have deserved if distribution was based on the principle of needs; that is to say if the populations were regarded as the criteria for assessing needs. Area was not considered either. Apparently the richer regions like the

Table 9:2
GRANTS TRANSFERRED FROM THE CENTRAL
GOVERNMENT TO THE REGIONS in Ls Sudanese

Region	Area per 000' sq. km	Population per 000' people (1983)	1980/81	1981/82	1982/83	1983/84	Oct. 1985
Northern	477	1,083	27,929,300	40,698,720	45,500,000	56,000,000	12,350,000
Eastern	341	2,208	16,390,000	27,697,730	33,500,000	37,100,000	8,810,000
Central	142	4,013	41,907,600	63,221,000	66,000,000	72,000,000	18,100,000
Kordofan	381	3,093	24,073,250	36,566,550	43,500,000	48,500,000	11,280,000
Darfur	496	3,094	21,801,580	29,796,000	34,000,000	38,000,000	9,025,000
Khartoum	21	1,802	25,522,800	36,830,000	24,500,000	21,100,000	7,385,000
Southern	648	5,272	40,000,000	48,000,000	56,000,000	58,000,000	13,770,000
Total	2,506	20,564	198,624,530	282,809,000	299,000,000	335,700,000	79,720,000

The figures given include 7% to be deducted for Personal Income and development taxes.

Source: Ministry of Finance and National Economy, Khartoum (1985).

Central region and Khartoum received higher grants than the poorer ones like the Eastern and the Southern regions. This was so because of the deficit grant system employed by the Central Government intended to meet (not entirely), the difference between estimates and expenditure only. Thus in a way, the deficit grant system worked closely to the principle of derivation in as far as widening the gap between the poorer and richer regions was concerned.

Apart from the inequitable nature of the deficit grant system explained above, it had some other major defects. For example, the amount of grants actually released by the central government did not match the budgeted amounts. This was very obvious in the case of the Southern Region for all the years from 1972/73 to 1980/81, as shown in Table 9.3.

Though the amounts released never matched the estimates, there were annual improvements in the figures as shown by Table 9.3. No reason was ever given to account for the fluctuation between the amounts released in 1973/74 and the latter years as from 1979/80. Presumably the sudden rise in 1979/80 was due to the creation of new regional governments in the Northern Sudan in 1980.

The main reason for the cause of deficit within deficit (that is releasing less amounts to meet the deficit) was the shortage of liquid money. But careful consideration of the central government general

Table 9:3GRANTS FOR THE 'SPECIAL DEVELOPMENT'
BUDGET IN (000) OF SUDANESE POUNDS

Year	Amount budgeted (a)	Amount realised (b)	(b) as % of (a)
1972/73	1,400	.560	0.4
1973/74	7,330	.676	9.2
1974/75	7,136	1,696	24
1975/76	7,164	1,624	23
1976/77	15,332	4,226	27
1977/78	32,490	6,125	18
1978/79	22,500	7,822	35
1979/80	20,500	10,305	50.3
1980/81	20,500	12,804	62.5

Source: SPs Sodhi, Financial Issues, op. cit., p. 41.

expenditure budget, casts much doubt on this explanation; as can be seen in Table 9.4, there were surpluses for the years 1981/82, 1982/83 and 1983/84.

Furthermore, the amounts of the grants were inconsistent, the transfers were irregular and the total amounts transferred were very little. They hardly amounted to 30% of the total national revenue. The sudden rise in 1983/84 after the decline in 1980/81 was explained by the Central Minister of Finance as being "in line with the increased importance accorded by President Numeiri to regionalisation".¹⁷ However, the seriousness of this statement is highly doubtful in view of the above facts.

In spite of the shortcomings in the grant system, it was the most important source of revenue for both regional and local governments in the Sudan. Table 9.5 shows the relative importance of the grants to the locally-collected revenue.

For the years 1978/79 to 1981/82, as shown by Table 9.5, the amount of grants exceeded the local revenues by about 70%. However, the grants declined progressively as the locally collected revenues showed improvements. Understandably, the nature of deficit financing is such that while local revenues appreciate, the transfers decline because the difference between estimates and expenditure is reduced.

Despite the grants transferred to the decentralised

CENTRAL GOVERNMENT FINANCE: PERCENTAGE OF DECENTRALISED
RULE EXPENDITURE OF THE TOTAL
GOVERNMENT EXPENDITURE: 1980/81 - 1983/84 (in Ls)

Table 9:4

	1980/81	1981/82	1982/83	1983/84
Central Government Revenue	1,005.6	1,310.0	1,629.5	1,336.1
Central Government Expenditure	942.6	1,239.0	1,407.9	1,236.8
Decentralised Rule	270.6	297.8	299.0	338.7
Surplus	-	63.71	221.6	99.3
% of expenditure on decentralised rule	29%	24%	21%	27%

Source: Own compilations from Sudan of July 1983 and January 1984.

Table 9:5

SUMMARY OF THE TRANSFERS FOR THE YEARS 1978/79 -
1981/82 SHOWING BUDGETED EXPENDITURE
AGAINST RECURRENT REVENUES IN
£(000) SUDANESE POUNDS

Items	1978/79	1979/80	1980/81	1981/82
<u>Expenditure</u>				
Regional	28,138	34,236	38,203	47,122
Executive Councils	13,192	29,990	32,383	46,381
Local Councils	4,050	-	5,470	9,063
Total expenditure	45,380	64,226	76,056	102,566
<u>Revenue</u>				
Tax and Non Tax Revenue				
Regional	11,412	14,371	15,054	18,114
Provincial	2,896	7,143	2,680	8,333
Local	4,523	-	4,682	9,062
Total Revenue	*18,831	*21,514	*22,416	*35,539
Deficit	26,549	42,712	53,640	67,027
<u>Grants in aid</u>				
Regional	14,200	16,200	19,293	21,963
Provincial	9,300	19,800	20,707	26,038
Total	*23,500	*36,000	*40,000	*48,000

*Note: Grants for development projects are excluded.

Source: J.R. Malik, Issues of Local Finance in the Southern Region, In issues in the Management of Local Government in the Southern Region of the Democratic Republic of the Sudan, Juba (1981), p. 25.

governments, the latter were always in deficit. Hence the position of having deficit within deficit was perpetuated in the Southern Region and indeed in the Sudan as a whole. It is difficult to explain why the Central Government was unwilling to meet the deficits when it had a surplus itself. Presumably decentralisation was not so important inspite of the political rhetoric surrounding it (see Chapter 5).

The drastic falls in 1981/82 and 1982/83 were probably due to the establishment of new regional governments in the Northern Sudan too; indicating that no extra allowances were made for them. Worse still, the grants could not meet the purposes for which they were intended as shown in Table 9.6. Clearly, the gap between the budgeted figures and the grants was widening, year by year. Although grants were a vital source of revenue for the regional governments, they were inadequate, inconsistent, irregular, irrational and imbalanced as examined above.

Regional Government Taxes and Fees

The locally collected revenues consisted of taxes, fees and duties as explained earlier. These will be examined in turn.

2. Regional Government Taxes

Table 9:6
CENTRAL GRANT DISTRIBUTION TO THE SOUTHERN REGION
 (1977-82)

Years	Total grant	Distribution		Budgeted expenditure		Chapter 1
		Reg. Min.	PPECS	Reg. Min.	PPECS	
	£(000) (a)	£(000) (b)	£(000) (c)	£(000) (d)	£(000) (e)	
1977/78	20,800	12,721	8,079	19,742	15,671	(11,577)
1978/79	23,500	14,200	9,300	22,039	17,241	(13,074)
1979/80	36,000	16,200	19,800	22,148	29,990	(25,100)
1980/81	40,000	19,293	20,707	24,714	37,853	(28,019)
1981/82	48,000	21,962	26,038	34,377	55,443	(38,626)

Source: J.R. Malik, op. cit., p. 18.

Regional Government taxes can be classified as follows:-

- (i) Taxes and fees levied and collected by the central government but assigned to the regional governments.
- (ii) Taxes levied by the central government but collected by the regional government.
- (iii) Taxes levied and collected by the regional government.

These taxes are also examined in turn.

(i) Taxes and fees levied and collected by the central government, but assigned to the regional government

These group of taxes and fees included:-

- (a) Excise Duties
- (b) Consumption Duties
- (c) Export Duties
- (d) Stamp Duties
- (e) Post and Telegraph Duties
- (f) Profits on Sugar
- (g) Corporation Tax on New Projects.

(a) Excise Duties

As we have seen, Decree 39 initially covered Excise Duties on alcoholic beverages and spirits only. The scope of these taxes was, however, widened to include

cigarettes, petroleum products, cotton, sugar, shoes, textiles, vegetable oil, soap, etc. by agreement between the regional and central government authorities.¹⁸ Table 9.6 shows the budgeted share of the regional government in the national yield.

Regrettably, the share of the regional government in the total revenue of the Excise Duties was utterly miserable. It neither corresponded to the population nor the area of the region.

The inconsistency in the regional shares shows the arbitrary nature of the decision. In spite of the extreme poverty of the regional government's share, the central government failed to recruit in full the budgeted amounts to the regional government on the grounds that statistics pertaining to the goods consumed in or originating from the region had not been obtained. Attempts to collect the statistics were unsuccessful because it was impracticable to record the flow of goods to the region. There was no elaborate system for doing so. So the accurate comprehensive records demanded by the Central Government authorities were unobtainable. This excuse was, however, extremely flimsy since other criteria like population index or some similar ones could have been used for assessing reasonable estimates. One is forced to conclude that the failure was due to lack of political will on the part of the Central Government bureaucrats.¹⁹

In view of this problem, the Southern Regional

Government enacted "The Regional Excise and Consumption Duties Act, 1977".²⁰ Under this law, the region acquired the right to collect excise duties on excisable goods manufactured in the region. A lot of revenues were expected from Wau Beer factory which was due for production in 1977/78. Increased output of cigarettes was also anticipated from the Haggar Cigarette Company. Estimates in the Six-year Development Plan showed that the Wau Beer factory would produce 20,000 bottles per annum at its maximum, which would fetch up to £s 4,800,000 as excise duty [see Table 9.7]. The Haggar Company was expected to increase its output from 9,000,000 cigarettes per annum in 1978/79 to 35,000,000 cigarettes by 1982/83, thereby increasing the amount of Excisable Duty from £s 120,000 to £s 470,000 over that period. The statistical data is shown in Table 9.8.

However, due to financial constraints and the unavailability of proper managerial skills, these expectations were not fulfilled.

(b) Consumption Duty

Consumption Duty was not based on Decree 39. It was merely agreed between the regional and central government authorities that the region should share from Duties imposed on imported beer and cigarettes.²¹ Table 9.9 shows the expected revenue on this item. However, in spite of the estimates, the region never received its share, for

Table 9:7

WAU BEER FACTORY (in Ls)

Year	Production in bottles	Excise duty in Ls
1977-78	6,000,000	1,400,000
1978-79	16,000,000	3,700,000
1979-80	20,000,000	4,800,000
1980-81	20,000,000	4,800,000
1981-82	20,000,000	4,800,000
1982-83	20,000,000	4,800,000

Source: The Democratic Republic of the Sudan, Southern Region, The Six-year Plan for Economic and Social Development, 1977/78 - 1982/83, p. 59.

Table 9:8

HAGGAR CIGARETTES COMPANY (in Ls)

Year	Production	Excise Duty
1977-78	9,000,000 cigarettes	120,000
1978-79	18,000,000 "	240,000
1979-80	35,000,000 "	466,000
1980-81	35,000,000 "	470,000
1981-82	35,000,000 "	470,000
1982-83	35,000,000 "	470,000

Source: The Democratic Republic of the Sudan, The Six-year Plan, op. cit., p. 60.

Table 9:9
CONSUMPTION DUTIES (in Ls)

Year	Central Government Budget (in Ls millions) (a)	Regional Government Budget (b)	(b) as % of (a)
1973-74	7.40	-	-
1974-75	9.00	300,000	3.3
1975-76	10.50	350,000	3.3
1976-77	11.20	400,000	4.0
1977-78	16.00	400,000	2.50

Source: Sps Sodhi, op. cit., p. 6.

similar reasons that obstructed the payment of Excise Duties. The estimated loss of the Regional Government from its share on this item was put at £s 1,450 million for the period between 1973/74 and 1977/78.

Although the said Regional Excise and Consumption Duties Act, 1977, empowered the regional government to impose Consumption Duties on goods imported directly into the region, the Customs Department had never paid any money into the account of the Regional Treasury on this item until the dissolution of the regional government in 1983. The Central Government decided to be obstinate and defy the regional law. Since this item was not covered by Decree 39 it was therefore not within the jurisdiction of the regional government. Hence the provision was ultra vires, null and void.

(c) Export Duties

It was estimated that a total amount of £s 24,000 would accrue to the regional government from Export Duties at the rate of about £s 6000 per annum for the period between 1973/74 and 1977/78 as shown in Table 9.10. However, no amount was ever transferred to the Southern Regional Government, for lack of statistics as in the case of Consumption Duty.

The region attempted to raise revenue on this item by exporting its products like cotton, tobacco, crocodile,

Table 9:10
EXPORT DUTIES (in Ls)

Year	Central Government Budget (in Ls) (a)	Regional Govt. Budget (in Ls)(b)	(b) as % of (a)
1973-74	6.25 millions	-	-
1974-75	18.51	5,000	3.0
1975-76	18.10	6,000	3.0
1976-77	12.00	6,000	5.0
1977-78	10.00	6,000	6.0

Source: Sps Sodhi, A Review of Presidential Decree, No. 39, op. cit.,
p. 6.

skin and fish. However, the tax duty on the export of crocodile skin was particularly unpopular with the exporters, resulting in great difficulties in collections. On the whole, revenues collected from Export Duties in the region were very negligible.

(d) and (e) Stamp Duties, Posts and Telegraph Revenues

Stamp duties were charged according to the rates determined by the central government. The Post Offices in the region used to obtain their supplies of stamps from the Central Ministry of Finance and National Economy and remit the sales proceeds to the same.

However, Decree 39 entitled the regional government to receive revenue from the sale of stamps and any revenues collected by the Posts and Telegraphs Department and the Telecommunications Department from their sales and services in the region but receipts from the above sources were not initially remitted to the regional government in full for no given reason. An agreement was also reached between the regional and central government in 1977/78 fiscal year whereby revenues for posts and telegraphs and telecommunications assigned to the region were to be directly remitted to the regional government, but the latter had to assume responsibility for the maintenance of all post offices in the region. Since then an annual amount of £s 100,000²² has accrued to the region under this heading. Nevertheless, the share of the regional

government was extremely poor compared to the total revenue collected by the post offices in the country. Table 9.11 shows the share estimated for the regional government.

(f) Profits on Sugar

The sale of sugar was a state monopoly from which revenue accrued to the central government. Decree 39 also entitled the regional government to profits on sugar monopoly based on the amount consumed in the region. However, until the 1976/77 fiscal year, the central government never fulfilled its obligation, for reasons best known to itself.

The following profits had been estimated to accrue from sale of sugar by the government as shown in table 9.12 .

After intensive discussions between the regional and central governments in June 1977, and detailed examination of the statistics with the Sugar Corporation, however, estimates of the region's share of sugar "consumption" was fixed at 4%.²³ The figure was unrealistically low. Moreover, the central government even failed to implement the agreement in full. The region got £s 1 million only from this yield every year.²⁴

(g) Corporation Tax on New Projects

Table 9:11
STAMP DUTIES (in Ls)

Year	Central Government Revenue (in Ls Millions)	Share of Revenue for The Regional Government (in Ls)
1973-74	2.25	-
1974-75	2.00	20,000
1975-76	2.00	30,000
1976-77	3.00	30,000
1977-78	2.50	45,000
1978-79	2.50	120,000
1979-80	2.50	125,000

Source: SPs Sodhi, op. cit., p. 7.

Table 9:12
PROFITS ON SUGAR (in Ls)

Year	Central Government Revenue (in Ls millions)
1973-74	12.33
1974-75	-
1975-76	12.00
1976-77	37.00
1977-78	28.00
1978-79	29.60
1979-80	67.00

Source: SPs Sodhi, op. cit., p. 8.

We saw that Decree 39 fixed corporation tax at 5% of the initial cost of new factories and agricultural projects set up in the region but not run by the regional government. As pointed out by Sodhi, SPS, UN technical adviser to the Regional Ministry of Finance, "although it" was "easy to determine this [amount] of tax, the regional government ... rarely received this revenue from the central government"²⁵ because projects in the region never materialised due to lack of funds and skilled manpower.

Thus taxes levied and collected by the central government but assigned to the regional government were a disastrous failure.

(ii) Taxes levied by the central government but collected by the regional government

The taxes levied by the central government but collected by the regional government were:-

- (a) Personal income tax
- (b) Land rental tax
- (c) Business profit tax.

These were direct taxes levied by the central government under the Income Tax Act, 1971.²⁶ Decree 39 obliged individuals and businessmen residing or operating in the region to pay these taxes to the regional government. Of the three taxes, the personal income tax and the business profit tax were problematical.

(a) The Personal Income Tax (PIT)

Limited success was achieved in the collection of this personal income tax. Considerable difficulties were experienced in the collection of these taxes from the employees of the central, regional and local governments in the region.

In the case of the regional and local government employees, personal income deductions were not remitted to the Department of Taxation in a regular manner, due to lack of liquidity. Financial hardships facing Regional Ministries and Provincial Executive Councils forced them to utilize the deductions to meet urgent needs. Worse still the accounts of the deductions were not passed to the Taxation Department.

The Regional Ministry of Finance tried to overcome this problem by deducting^t an ad hoc sum of 8% from funds released to various Ministries and Province Executive Councils towards disbursement of salaries.²⁷ Obviously this was not a rational solution. Finally, the Ministry decided to deduct all personal income tax before remitting the salaries to the various Ministries and Departments.

As for the employees of the Central Government working in the region, most of their deductions were also not fully remitted to the Department of Taxation on the

ground that some of their mother units in the Centre sent them only the net amounts of salaries. However, an agreement was reached in 1976 that personal income deductions in respect of those employees be remitted directly to the regional government by the central government units.²⁸ Thereafter the yield from this tax increased from £s 500,000 to £s 1,350,000 between the years 1976/77 and 1981/82.²⁹

(b) Business Profit Tax

We also saw that Decree 39 empowered the regional government to impose Business Profits Tax. According to the provisions of the "Traders Licence and Taxation of Business Profits Act, 1930"³⁰ the People's Province Executive Councils were responsible for the collection of Business Profits Tax but only from traders whose income was less than £s 1000 per annum.³¹ Therefore the regional government was entitled to Business Profits Tax on incomes above £s 1000 per annum which used to accrue to the central government. In spite of these limits, there was nevertheless some conflict of jurisdiction between the regional government and the People's Province Executive Councils which according to John Russie, resulted in "under-assessment - and considerable tax-evasion by traders".³² In addition to that, the taxation offices were too thin all over the region so as to be able to reach nearer to all tax-payers.

In view of these difficulties, the regional government decided that the collection of the entire Business Profit Tax be transferred to the Taxation Department of the Regional Ministry of Finance which would pay 60% of the yields to the People's Province Executive Councils. As from 1981/82, the entire yields were passed to the Executive Councils.

(c) Taxes Levied and Collected by the Regional Government

In the exercise of its powers provided by Section 25(1) of the Self-Government Act, the Regional Assembly enacted "The Regional Finance Act, 1974".³³ According to Isaac Makur, the Director of Finance, this law was intended to provide additional sources of revenue for meeting part of the costs of the development projects.³⁴

The Act imposed Development Tax on government officials, employees and licence-holders for various businesses and professional practices in the region.

In 1977, the regional government introduced more taxes on the following:-

- (i) Consumption taxes on sugar, dates, diesel, petrol, whisky, brandy and rum.
- (ii) Service fees on telegrams, airport embarkation, hotel bills and rest houses.
- (iii) Production fees on agricultural produce like dura, sesame, cotton, tobacco and cigarettes.
- (iv) Property tax on imported vehicle and miscellaneous

appliances.

- (v) Excise Duty on imported tea, coffee and exported crocodile skin and fish as mentioned earlier.

The total collections for the years 1974/75 - 1981/82 is shown in Table 9.13.

As can be seen from Table 9.13, the revenue from these taxes and fees registered substantial growth from year to year. Although they had formed only 27% of the total tax revenue of the region in 1975/76, this had risen to 43% of the same in the following year. They further rose to 58% in 1980/81 and 72% in 1981/82.³⁵ In spite of the steady progress, the amounts realised never reached the budgeted estimates as illustrated by Table 9.14.

Problems faced in the collection of Regional taxes were of the usual administrative nature such as lack of personnel, transport facilities, appropriate forms and dishonesty of the officials.

In the case of Development taxes, employees of the Central Government presented the same difficulties as were seen with regard to the Personal Income tax.

New Taxes

The new taxes introduced by the regional government included Sales taxes, Secondhand Motor Vehicle Purchase tax and Education tax.

Table 9:13

Year	Direct Taxes	Development Taxes	Other Taxes	Departmental Fees	Proceeds from Governmental Enterprise	Miscellaneous Receipts (1)	Total
1974-75	455	860	-	1,526	20	295	2,729
1975-76	665	2,024	-	1,578	20	340	3,156
1976-77	971	2,700	246	2,040	1,020	560	4,627
1977-78	1,319	3,610	246	5,010	1,100	127	7,537
1978-79	1,794	5,941	246	5,010	1,100	280	11,412
1979-80	1,794	5,136	246	6,498	1,100	280	14,371
1980-81	1,519	10,576	246	4,598	1,100	75	15,054
1981-82							18,114

(1) Includes interest from loans, sale of Government properties, unclassified revenues, Pension Contributions etc. (in Ls)

Source: SPS Sodhi, Financial Issues - a Perspective, op. cit., p. 47.

Table 9:14

ESTIMATES AND ACTUAL COLLECTIONS
OF LOCAL TAX REVENUES (in Ls)

Year	Budgeted Estimates	Amount Realised	Percentage of the Amount Realised
1974/75	2.73		
1975/76	3.16	1.72	54.43
1976/77	4.63	3.83	83.15
1977/78	8.43	5.22	61.92
1978/79	11.41	-	-
1979/80	-	-	-
1980/81	15.05	7.04	46.78
1981/82	18.11	7.67	42.35
1982/83	20.63	-	

Sources: compilations from: Isaac Makur Ater, "Regional Financial Resources and their Allocation" (1979) and John Russie, "Fiscal and Financial Relationship with Central and Local Governments" (1983).

Table 9:15

REGIONAL REVENUES (TAX + NON-TAX)
LS IN MILLIONS (ESTIMATED AND ACTUAL FIGURES)

Year	Non-Tax Revenue (a)		Tax Revenue (b)		Regional Revenues Total (a) + (b)	
	Estimated	Actual	Estimated	Actual (1)	Estimated	Actual (1)
1973-74	0.5	-	-	-	-0.5	-
1974-75	1.9	-	2.7	-	4.6	-
1975-76	2.6	0.519	3.2	1.133	5.8	1.652
1976-77	4.1	1.042	4.6	3.829	8.7	4.871
1977-78	5.6	0.974	8.4	5.220	14.0	6.194
1978-79	5.1	1.743	11.4	5.691	16.5	7.434
1979-80	6.2	1.889	14.4	6.538	20.6	8.427
1980-81	6.3	4.234	15.1	7.044	21.4	11.128
1981-82	7.0	-	18.1	-	25.1	-

Actuals up to May of each year.

Source: Sps Sodhi, Financial Issues - A Perspective, op. cit., p. 58.

(i) Sales Taxes

Sales taxes were expected to yield £s. 240,000 from Renk Oil Mill and Tonj Kenaf Factory, which were expected to be in production in 1978/79 and 1979/80 respectively. However, the factories never came into operation for several reasons. The machinery and other equipment were not transported to the project sites because of transport bottlenecks. Inadequate funds and skilled manpower made it difficult to complete the plants.

(ii) Education Tax

The regional government introduced Education Tax in 1978³⁶ and abolished all school fees but the Education Tax Act was soon repealed in 1980 on the grounds that it was contrary to the provisions of the constitution which advocated free universal education.³⁷ But the charging of school fees in some schools was also unconstitutional. Yet no action was taken against them. These schools were the private ones like Camboni schools and model schools.

3. Fees and charges for goods and services - rendered by the various Regional Ministries

The Regional Ministries raised revenue by charging

fees for services rendered by them or for goods sold by them to supplement the above mentioned taxes. Regional Ministries like Agriculture, Communications and Wildlife made the greatest contributions. For example, in 1978/79 the Ministry of Wildlife collected £s 750,000 Sudanese and 200,000 US dollars from the collection of fees for hunting, photography, sightseeing, Rest House fees, sale of ivory and game-scouting.³⁸ But, as shown by Table 9.15, the collections never came near the estimated amounts. The estimates were too excessive to match the yields even though the amounts increased very rapidly year by year.

IV LOCAL GOVERNMENT FINANCES

We have seen that functions of local government councils under the 1971 and 1981 People's Local Government Acts included undertaking minor development projects in addition to the provision of services. They also had the authority to plan and prepare their separate budgets to support those plans. In spite of their shortcomings in the planning and budget preparations, as seen in Chapter 7, they maintained independent budgets.

However, they were required to follow the rigorous procedures imposed by the Financial and Accounts Procedure Act, 1977 and the Financial Regulations and Proceedings

Act, 1978 as in the case of regional governments (discussed earlier).

A. Sources of Revenue for the Local Government Councils

Except for one minor difference, sources of revenue for local government councils under the 1971 and the 1981 Acts were identical. According to the People's Local Government Act, 1971, the revenues of the People's Executive Councils consisted of:-

- "(a) Revenues from the taxes referred to in the Local Government (Appropriation of Taxes) Ordinance, 1954 or in any other law, provided that the People's Executive Councils shall have the right to determine the amount of such taxes
- ...
- (b) Local fees and rates and licence fees.
- (c) Revenues of commercial business carried on by the High Executive Council.
- (d) The proceeds of any taxes assigned by the central government.
- (e) Appropriations determined by the Council of Ministers to enable the People's Executive Councils to fulfil their obligations.
- (f) Fines and fees imposed or fixed by the People's Courts".³⁹

People's Courts included Chiefs Courts and the Native Courts of 1931 and 1932 respectively (see Chapter 4); but those legislations were never amended to read so.

However, funds from this source were diverted to the central government since the judiciary was constitutionally a central government matter.⁴⁰

As we saw in Chapter 4, Revenues assigned by the Local Government (Appropriation of Taxes) Ordinance, 1954, included taxes on land and date trees, tribute tax, hut tax, poll tax, animal tax, taxation on rainlands (usur) tax and house tax. Following the tax reform of 1964, however, the hut, poll and tribute taxes were abolished for being inequitable. Taxes assigned by any other law covered rates, business profit tax (below £1000 as explained earlier), Licence on arms, fees on entertainment and any other local fees.

The difference between the Executive Councils in the Southern Region and those in the Northern Sudan was that in 1976, the regional government enacted the Social Service Tax Act, 1976⁴¹ which replaced the taxes referred to under the Local Government (Appropriation of Taxes Ordinance) 1954 with one tax - that was the Social Service Tax. The Social Service Tax was imposed only on adult males in the region.⁴² The reason for the change was that the cattle-owning community in the region considered their animals neither as property nor as commodity for trade or business. In fact they were used for social functions, marriage considerations, performance of funeral rites and other prestigious purposes.

The only difference introduced by the 1981 Act was that the amount of grants to the local government councils was to be decided by the regional governments.⁴³ Previously, grants to the local councils were determined by the Central Government though those in the Southern

region had theirs tampered with by the regional government which used to help itself out of the funds first. The appropriateness of the change is highly doubtful since it removes the central government totally out of the affairs of local government even in financial matters. As long as the regional governments remain financially badly off, they will seriously ignore the financial problems facing the local government councils.

B. Mobilisation of Revenue by the Local governments

Like the regional governments, local government councils in the Sudan were heavily dependent on the grants from the central or regional governments to supplement their locally collected revenues. We shall therefore consider grants to the councils before coming to the locally raised revenues.

1. Grants to the Local Government Councils

Grants were paid to these local government councils in accordance with the earlier quoted provision:-
 "appropriations determined by the Council of Ministers" to enable the People's Executive Councils to fulfil their obligations in Section 19 of the 1971 Act. This provision was of course substituted by that authorizing the regional governments to decide on the amount of funds to be

transferred to the Area Councils in the 1981 Act which repealed and replaced the 1971 Act.

The amount of grants transferred to the People's Province Executive Councils exceeded the locally collected revenues as shown in Table 9.16 in the case of the Northern Sudan and Table 9.5 in the case of the South. However, the grant system was defective in several ways. As in the case of regional governments, the table also shows that richer councils received more grants than the poorer ones.

The imbalance in the horizontal allocation of revenue also extended to the People's Province Executive Councils in the South as shown in Table 9.17 and the Area Councils even after the 1981 reforms as can be seen in the case of Kordofan Region illustrated by Table 9.18. Furthermore, the grants received were less than the amounts budgeted as can be seen from Table 9.19. Table 9.20 shows the drastic difference between the allocations to the Northern Councils and the Councils in the Southern part of the country. The share of the latter was too little for no given reason. Presumably this was due to the inequitable system of deficit financing discussed earlier.

2. Local Government Taxes and Fees

Taxes and fees raised locally by the Councils can be grouped as follows:-

Table 9:16
LOCAL REVENUE AND CENTRAL GOVERNMENT
GRANTS (1978/79) FISCAL YEAR (in L.S.)

Province	Local Revenue	Percentage	Central	Percentage	Total Expenditure	Percentage
E1 Gezira	5,000,000	21.8	17,058,610	78.2	22,859,310	100
Khartoum	7,958,637	28.3	16,478,513	77.7	24,437,150	100
White Nile	2,115,403	22.2	6,895,997	77.3	9,012,400	100
Blue Nile	5,729,454	53.8	4,947,116	46.2	10,676,570	100
The Nile	1,950,805	15.9	10,030,735	84.7	17,987,530	100
Northern	1,105,220	11.1	8,769,290	88.9	9,874,510	100
Kassala	5,977,247	45.7	7,102,758	57.6	13,080,005	100
N. Kordofan	4,637,919	34.0	8,825,966	66.0	13,463,885	100
S. Kordofan	2,629,070	25.7	7,547,675	74.3	10,087,345	100
N. Darfur	7,626,827	17.5	8,065,325	82.5	9,692,150	100
S. Darfur	2,827,055	35.4	5,107,950	64.6	7,929,055	100
Red Sea	7,668,195	22.4	5,992,435	79.6	7,660,630	100

Source: Ministry of Finance and National Economy, Khartoum.

Table 9:17

SUMMARY OF DISTRIBUTION OF GRANTS TO THE PEOPLES
PROVINCE EXECUTIVE COUNCILS IN THE SOUTHERN REGION
FOR THE YEAR 1980/81 FISCAL YEAR

Province	Ls (000) Sudanese
Baher El Ghazal	637,500
Eastern Equatoria	202,400
Jonglei	602,800
Lakes	505,300
Upper Nile	599,300
Western Equatoria	383,700

Source: Regional Ministry of Administration, Juba.
Review of Peoples Executive Councils Annual
Budgets for the fiscal year 1980/81, p. 46.

Table 9:18

SUMMARY OF FINANCIAL ALLOCATIONS TO THE AREA COUNCILS
IN KORDOFAN REGION FOR THE YEARS 1981/82 AND 1982/83
(ALL IN Ls SUDANESE)

Area Council	Expenditure		Revenue	
	81/82	82/83	81/82	82/83
El Obeid	669,300	875,750	800,000	9 ,000
En Nuhud	651,000	819,550	2,000,000	2,500,400
Bara	430,000	541,000	300,000	330,400
Um Ruaba	615,000	782,000	750,000	1,273,400
Sodiri	410,000	535,000	200,000	295,600
Kadugli	692,089	868,500	253,450	274,700
Dilling	873,855	1,070,500	1,176,100	1,540,600
El Fula	816,473	1,005,000	486,400	579,900
Rahad	821,227	1,001,000	885,200	1,178,700

Source: Regional Ministry of Finance El Obeid. The figures in table 9:18 confirm the fact that the reform of Local Government in 1981 did not affect the financial aspect. Hence the imbalance in the distributions as was the case with those under the 1971 Act.

Table 9:19
GRANTS TRANSFERRED TO LOCAL GOVERNMENTS
FROM 1971 TO 1980 IN Ls

1971-72	Estimate	24.6
	Actual	23.6
1972-73	Estimate	22.4
	Actual	20.7
1973-74	Estimate	54.5
	Actual	44.3
1974-75	Estimate	57.8
	Actual	56.3
1975-76	Estimate	71.4
	Actual	68.9
1976-77	Estimate	86.7
	Actual	83.8
1977-78	Estimate	109.1
	Actual	103.1
1978-79	Estimate	135.5
	Actual	127.5
1979-80	Estimate	230.0
	Actual	126.4

Source: Ministry of Finance and national Economy, Khartoum, Economic Survey, 1980, p. 196.

Table 9:20

ACTUAL TRANSFERS FOR NORTHERN AND SOUTHERN
COUNCILS COMPARED FOR PERIOD
BETWEEN 1978/79 TO 1980/81 (in Ls)

	1978/79	1979/80	1980/81	Total	Remarks
NORTHERN COUNCILS	113.500	205,500	225,800	544.800	91.7%
SOUTHERN COUNCILS	9.300	19.800	20.707	49.807	8.3%
TOTAL	122.800	225.300	246.567	594.607	100.0%

Source: Own compilations from budgets of the Central and Regional Governments for the period 1978/79 - 1980/81.

(i) Group I: Taxes

- (a) Taxes on Land and Date Trees
- (b) Animal Tax
- (c) Taxes on Rainlands (usur)
- (d) House Tax and Building Tax
- (e) Entertainment Tax; and
- (f) Social Service Tax.

(ii) Group II: Fees and Rates

- (a) Gibana
- (b) Livestock sales - on livestock
- (c) Fees on simple manufactured local goods
- (d) Fees for custody of lost animals
- (e) Tobacco royalties
- (f) Local rates

(iii) Group III: Licences

- (a) Trading Licences - general trading and petty trading
- (b) Driving Licences
- (c) Vehicle Licence (for ownership)
- (d) Liquor Licence (also for native liquor)
- (e) Fire Arms Licence (for possession)
- (f) Public Health Licences (different types relevant to different professions)

(iv) Group IV: Rent

Rent for use of:-

- (a) Government buildings (shops and stores)
- (b) Government houses (residential)

(v) Group V: Others

Commercial activities.

We now proceed to examine the mobilisation of these taxes and fees in turn.

(a) Taxes on Land and Date Trees

Taxes on land (Attiyan) and taxes on Date Trees were levied under the "Taxation of Land and Date Trees Act, 1925" [see Chapter 4]. However, the total revenues that accrued from these sources were generally low as shown in Table 9.21 due to poor tax base.

(b) Animal tax (Qotaan)

This tax was levied on animals like camels, cows, sheep, goats, horses, etc. under the Animal Tax Act, 1925 (see Chapter 4). The rates of the taxes varied from one type of animal to another and from one province to the other. For example, that of Southern Darfur Province in 1976 were as follows:-

Camel (75 p.t), cow (25 p.t), sheep (8 p.t)
goat (6 p.t), horse (40 p.t), donkey (11 p.t).⁴⁴

The main problems continued to be that of obtaining accurate statistics concerning the animals as explained in Chapter 4. The situation was moreover aggravated by the

Table 9:21SHARE OF LAND (ATTIYAN) TAX IN
PROVINCES REVENUE 1978/79 (IN Ls)

Province	Tax Yield (a)	Total on Revenue (b)	(a) as % of (b)
Gezira	52,190	5,000,000	1.04
White Nile	22,600	2,115,403	1.06
Blue Nile	129,950	5,729,454	2.27
Northern	72,840	1,105,220	6.6
Kassala	448,221	5,977,247	7.5
Red Sea	25,075	1,668,195	1.5
Nile	78,000	1,950	4.0

Source: Ministry of Finance and National Economy,
Khartoum, Budget of Peoples Province Executive Councils 1979/80.

abolition of the Native Administration system because the people brought into the Councils by the SSU were inexperienced, dishonest, opportunistic and generally not highly regarded by the community. According to Mohamed Ahmed Imam, the Local Government Inspector of Idd El Ghanam Rural Council, "in nearly all provinces arrears [were] increasing".⁴⁵

Though collections from these taxes were not very high, given accurate statistics of the animals, the figures realised would have exceeded those shown in Table 9.22 but it was not certain by what margin that would have been, and it was impossible to determine precisely anyway.

(c) Taxation of Rainlands (USUR)

Usur tax was levied on all crops grown on rainlands such as groundnuts, ... Arabic, sesame seeds etc. in accordance with the provisions of "The Taxation of Rain Lands (Usur) Act, 1925" (see Chapter 4).

Following the dissolution of the Ministry of Local Government, the People's Province Executive Councils fixed the taxes themselves. The provision for obtaining consent of the Minister of Local Government for fixing the rate of taxes became obsolete.

According to the representative of the Ministry of Finance, Usur tax had by 1978 become unprofitable. He

Table 9:22

SHARE ANIMAL (QATAAN) TAX IN
LOCAL TAX REVENUE 1978/79 (IN Ls)

Province	Tax yields (a)	own Revenues (b)	(a) as % of (b)
Gezira	170,000	5,000,000	3.40
White Nile	226,490	2,115,403	10.71
Blue Nile	170,000	5,729,454	2.92
Nile	26,000	1,950,805	1.33
Northern	17,500	1,105,220	1.58
Kassala	166,000	5,977,247	2.78
Northern Kardofan	439,941	4,637,919	9.50
Southern Kardofan	400,000	2,629,670	15.21
Northern Darfur	260,000	1,626,827	15.98
Southern Darfur	287,760	2,821,055	10.20

Source: Ministry of Finance, Budgets of Peoples Province Executive Councils, Fiscal Year 1979/80, Khartoum, p. 2.

added that "it [had] also been affected by the [then] inflationary tendencies as the price of oil, mechanics, spare parts increase[d] in the agricultural output".⁴⁶ Table 9.23 shows how the yields from these taxes varied from one province to another. Whereas taxes on crops were a bouyant source in provinces like Northern Kordofan, White Nile and Southern Kordofan, other provinces like the Red Sea and Northern Darfur had hardly any.

(d) House Tax and Building Tax

House and Building taxes were originally imposed under the House Tax Ordinance, 1918 (see Chapter 4). However, this Ordinance had been preceded by the Estates Act, 1964⁴⁷, the provisions of which are similar to those except that the President could, from time to time, decide which of the towns the Act was to apply to by specifying the towns through a notice in the gazette. All Provincial Headquarters and all major towns were affected by the Act.

This tax was burdensome in that it introduced a form of double taxation on the same source as stated earlier. The general feeling continued to be that it should be amalgamated with the rates.

(e) Entertainment Tax

Entertainment tax was collected from recreational

Table 9:23SHARE OF USUR TAX - IN LOCAL
REVENUES 1978/79 (IN Ls)

Province	Usur Tax Yields Revenue (a)	Province's own Revenue (b)	(a) as % of (b)
Northern Kordofan	1,327,931	4,637,919	28.63
Blue Nile	600,000	5,729,454	10.47
White Nile	230,000	2,115,403	10.87
Southern Kordofan	587,000	2,629,670	22.32
Southern Darfur	500,000	2,821,055	17.72
Kassala	1,307,208	5,977,247	21.87
Red Sea	12,055	1,668,195	0.72
Northern Darfur	97,600	1,626,827	6.00

Source: Ministry of Finance, Budgets For Peoples Province Executive Councils for 1979/80 fiscal year.

activities like football, cinema etc. under the "Entertainment Tax Act, 1956" (see Chapter 4). Its collection did not pose much problems except for minor dishonesties of the officials.

(f) Social Service Tax

As already stated, the Southern Regional Government replaced animal tax and usur taxes with social service tax in the Southern region. The exemption of women, however, made it discriminatory in nature. The rate varied between £s 3 and £s 6 between the 53 councils. The richer council areas obviously paid more.

Exemptions were obtainable, with the consent of the Minister for Regional Administration, for the following categories of people:-

- (a) Persons who paid land or usur tax.
- (b) Persons who paid income tax.
- (c) Persons who paid Business Profit tax.

The exemptions were undoubtedly intended to eliminate double taxation. According to Nick Devas of Birmingham University:

"This tax has contributed around 70% of the local councils budgeted revenues in recent years ..."⁴⁸

It was only in the town councils that the Social Service Tax did not generate much more revenue because the rates (property taxes) contributed 60% of the budgeted revenues.

Fees and Rates

The fees and rates which the councils imposed have been identified as Gibana, (Arabic term for extra charges on sales) livestock sales, fees on simple manufactured goods, fees for the custody of lost animals and rates. Octrai (local customs duty) was very rare indeed.⁴⁹

Rates were collected under the Rates Act, 1954 (see Chapter 4). The report of the Ministry of Finance at the Local Government Conference of 1978 showed that rates contributed up to 70% of the total Council revenues then.⁵⁰ The problem with the rates continued to be that of the difficulty experienced in the assessment. According to the representative of the Ministry, if rates were "entrusted to a trained administration besides assessment committees of experienced persons, the revenue from rates [would have] doubled".⁵¹

Table 9.24 shows the importance of rates as a source of revenue to the councils especially provinces like Khartoum, Darfur, Nile and Red Sea in 1978/79 and generally.

Licences

These included the general and petty trading

Table 9:24
SHARE OF RATES IN TAX REVENUES
1978/79 (IN Ls)

Province	Tax Yield (a)	Total Own Revenue (b)	(a) as % of (b)
Gezira	216,980	5,000,000	4.3
Khartoum	1,767,915	7,958,637	22.2
White Nile	140,000	2,115,403	6.6
Blue Nile	112,000	5,729,454	1.9
Nile Province	186,095	1,950,805	9.5
Kassala Province	242,892	5,977,247	4.1
North Kordofan	75,130	4,637,919	1.6
South Kordofan	65,000	2,629,670	2.5
North Darfur	55,790	1,626,827	3.4
South Darfur	428,000	2,821,055	15.0
Red Sea	217,780	1,668,195	13.0

Source: Ministry of Finance, Khartoum Bugets of Peoples Province Executive Councils, 1979/80.

licences, driving licences, liquor licences, fire arm licences (for possession), Public Health licences (for butchers, shops, buffets, restaurants etc.). This wide range of licences are better categorized as miscellaneous receipts. They were levied and collected under various laws and local orders (see Chapter 4 for more details).

Dues

Dues consisted of accruals and retentions from services and sales rendered by some particular departments. For example, in Southern Darfur they accrued from sale of woollen carpets made by the Department of Prisons, furniture and timber made by the Province Forestry Department.

Rents

Rents accrued from the use of government buildings such as shops, stores and residential houses.

Revenues from Commercial Enterprises

We have seen that Local Councils were authorised to trade and participate in commercial activities generally. However, only a few councils like Khartoum, Gezira, Southern Darfur, Kassala and Western Equatoria attempted

to conduct businesses, which were mainly limited to the transportation of goods and people. But as Ibrahim Mohamed Ibrahim, a senior official of the Ministry of Finance noted "the revenue from the enterprise ... indicated that they [were] all substantial losses ..."52. In spite of this, miscellaneous receipts constituted the most important source of local revenue for the local councils as can be seen from Table 9.25.

Having examined the mobilisation of the most important sources of revenue - grants and local taxes and fees, we briefly consider the mobilisation of loans.

V LOANS

Borrowing as an alternative method for raising revenue has not yet been considered. It may be undertaken by the regional and local governments for a variety of reasons.

- (a) To fund short-term cash flow deficits.
- (b) To finance deficits in annual budgets covering operating expenses and debt charges.
- (c) To purchase plant and equipment of medium short-term life.
- (d) To finance investment expected to yield income.
- (e) To pay for long-term capital development.

However, it is the short-term cash flow deficits which are

Table 9:25

SHARE OF MISCELLANEOUS RECEIPTS
IN LOCAL REVENUES 1978/79 (IN Ls)

Province	Yield of Miscellaneous Receipts (a)	Total own Revenue (b)	(a) as % of (b)
Gezira	5,146,885	7,370,000	69.8
Khartoum	2,623,192	12,293,000	21.3
White Nile	1,161,028	3,415,000	34.0
Blue Nile	3,090,673	5,894,000	52.3
Nile	1,373,694	2,270,000	60.5
Northern	666,172	1,385,000	48.0
Kassala	2,000,021	6,634,000	30.1
Northern Kordofan	2,349,825	5,255,000	44.2
Southern Kordofan	1,703,595	3,068,000	55.5
Northern Darfur	1,601,852	2,161,000	74.1
Red Sea	1,164,990	1,898,000	61.4

Source: Ministry of Finance, Khartoum Peoples Executive Council Budgets, 1979/80.

common throughout the world.

There are several sources for borrowing in most countries. These include:-

- (1) Loans from the central government (or a higher government).
- (2) Loans from International Agencies such as World Bank, African, Asian and Latin American Development Banks.
- (3) Central Banks.
- (4) Loans or overdrafts from Commercial Banks.
- (5) International borrowing from reserve fund (for example, superannuation funds for employees or renewal funds for plant and equipment, etc.

Loans are usually subject to conditions of duration and terms of repayment but in the case of governments, the approval of a higher authority like the Minister might be needed first.

As we have already seen, provisions for borrowing were specifically inserted in the Self-Government Act and the Regional Government Act, 1980. Decree 39 also reiterated the point but referred to it as "aid". However, the conditions for the repayment of the "aid" were never prescribed. In actual fact no "aid" was ever obtained.

There were similar provisions for local government councils in the People's Local Government Acts, 1971 and 1981. For example, that under the 1971 Act stated:

"The People's Executive Council shall have power to borrow whether by charge or

by overdrawing or issue of securities or any other manner, provided that the purposes of borrowing shall be stated and the Minister shall be informed of any action in this respect within a period of not less than one month." 53

So both the regional and local governments were empowered to borrow from undefined sources. It was however not certain whether the decentralised governments could borrow from the foreign sources, especially considering the poor state of the country's economy. In practice this was an impossibility.

The problem with internal loan financing in the Sudan arose from the facilities for loans and the availability of liquid money. There was no established government institution specifically for granting loans. The Local Government Loan's Board created in 1954 as a unit of the Ministry of Local Government to offer loans to local government councils had disappeared long since.

As such, the banks remained the only sources for obtaining loans. However, the commercial banks were not keen on doing so. Apparently loans were being obtained from the Bank of Sudan only and were moreover limited to the Central Government.

According to Mahamed Geili, an officer of the Central Ministry of Finance, it was highly doubtful as to "whether local authorities could make use of the borrowing facilities"⁵⁴ because the central government was ever over-borrowing from the domestic banks to finance major

parts of its development expenditure.

VI FINANCIAL CONTROL

Freedom to spend and financial control are some of the most vital aspects of decentralisation. Writing on the principles and problems of federal finance in 1933, B.P. Adarkar said:

"... full freedom of financial operations to both Federal as well as State Governments in order that they may not suffer from a feeling of cramp in the discharge of their normal activities and in the achievement of their legitimate aspirations."⁵⁵

This statement is as appropriate for state governments in a federal arrangement as it is for a local government Council. About a decade earlier (1928) a White Paper was issued by the Ministry of Health in Britain expressing the view that a proper system of government grants in local authorities should, inter alia, "... permit the greatest freedom of local administration and initiative".⁵⁶ For, as the Institute of Municipal Treasurers put it, "it is an essence of the pattern of Local Government finance that local authorities must be made to feel locally responsible and locally accountable for the expenditure which they incur ..."⁵⁷.

But were these principles applicable in the Sudan? Theoretically, the regional and local governments in the Sudan could spend freely so long as the expenses were

within their budgetary limits. For example, the provision for the local government councils as contained in the 1971 Act stipulated:

"The People's Executive Council shall spend its funds in such a manner as may be best for the exercise of its powers and in such matters as necessity may require to be carried out and in fulfilment of its loans and other legal obligations." :58

The power to spend freely was, however, seriously curtailed by the budgeting and borrowing regulations, the grant system and the requirement to have accounts audited. We shall examine these different methods of control in turn.

A. Budgeting

All regional governments and local government councils were required to prepare their own budgets according to specified standards. Usually the contents of the budgets comprised detailed analysis of the economic and financial policies of the government. They must show the proposed estimates, expenditures, revenue and proposed taxes, statement of reserve fund etc. These budgets were all submitted for inspection by the Central Ministry of Finance before obtaining the approval of the Regional Assemblies as we saw earlier. Furthermore, the Ministry could give directives for the budgets to comply with.

Control was more rigorous in the case of local government councils and especially in the case of the

People's Province Executive Councils because additional consents had to be obtained from the Commissioner, the Minister of Treasury and the Council of Ministers⁵⁹ before they could be submitted for approval by the Regional Assembly, in the case of the South. The degree of control was, however, greatly relaxed under the People's Local Government Act, 1981. The numerous requirements for consent as found under the 1971 Act were removed. An Area Council, had to only "convene a special sitting for the discussion of the budget"⁶⁰ which was expected to be passed. Practically the only approval needed was that of the Ministry of Finance.

If any additional funds were needed, supplementary budgets had to be prepared to meet them. As a general rule, no funds were to be transferred from one chapter to another unless approved by the Assembly.⁶¹ All monies spent should have been expropriated by Acts of the Regional Assembly.⁶²

B. Borrowing

The general practice internationally is to control borrowing. Though there were no regulations to control borrowing by the Southern Regional Government, it was presumed that borrowing had to comply with certain procedures. A regional government in the Northern Sudan could not "conclude any internal loan without the assent of the People's Regional Assembly".⁶³ There was no

mention of external loans as already stated.

However, there were specific provisions controlling borrowing by Local Government Councils. For example, under the People's Local Government Act, 1981, an Area Council could borrow money "provided that the purpose for the borrowing" had to be stated. It was also "subject to approval by the Regional Executive Authority".⁶⁴

Surprisingly, the People's Local Government Act, 1971 omitted to insert a provision to control borrowing by the People's Province Executive Councils. Presumably this omission must have been due to oversight and not deliberate.

C. The Grant System

As explained earlier grants are used by the superior governments to control the inferior ones with regards to their use and the amounts released. The deficit grant system in the Sudan encouraged the imposition of more control by the central government over the regional and local governments. The requirement for submission of all budgets to the Ministry of Finance for Inspection to determine the amount of deficit to be met by the central government was very obvious. Here we should recall the experience of the Southern region when its 1979/80 development budget was reduced from 20 million to 15

million pounds by the National Ministry of Planning.⁶⁵

D. Auditing

Auditing would have been by far the most effective method of financial control because any illegal expenditure could have been surcharged on the persons responsible for authorising the expenditure. Surcharge was also to be made upon persons responsible for any revenue which might have been lost due to negligence or misconduct.⁶⁶ However, due to several factors, effective auditing was seriously obstructed in the Sudan.

There was a frustrating controversy in the Southern Region as to who could audit the accounts of the regional government. An independent Auditor-General's chambers was established for the whole country, according to the provisions of the Permanent Constitution, to be:

"responsible to the President and the People's Assembly for the performance of its duties and the discharge of its administration functions according to law."⁶⁷

The Auditor-General's Chambers Act, 1970 authorised the Auditor-General to be:

"Generally responsible for auditing of ... all accounts of the public bodies and corporations established by law, notwithstanding any provision to the contrary in the Acts governing such bodies and corporations."⁶⁹

Although the Regional Government (for the South) was not mentioned in that Act because it preceded the formation of

regional governments, the Self-Government Act expressly prohibited the Southern Region from exercising powers of "public audit" as we have seen in Chapter 7.

In spite of the above-quoted legal provisions, which centralised auditing in the Sudan, the High Executive Council established a Department of Internal Audit in 1976 to audit accounts of the regional government and other public institutions in the region because of the ineffectiveness of the Auditor-General's chambers in the region. The issue was whether the reports of the Internal Auditor's Department were legally valid. Were they, for example, admissible as evidence in court?

In the criminal case of Sudan Government v Omer Okot (unreported),⁷⁰ Bullen Panchol Awal, District Judge, held that the report of the Internal Auditor was inadmissible as evidence in court because the production of the report contravened the provisions of the constitution and the Self-Government Act. The report was therefore null and void. As the prosecution evidence solely depended on the report, Omer Okot was acquitted of the charge of criminal breach of trust under Section 351 of the Sudan Penal Code Act, 1974. On revision, John Onge Kasiba, Province Judge, quashed the decision of the District Magistrate. He said:

"I wonder why the magistrate went on to base his decision on who should or should not be an auditor in the case. As I see it there was a prima facie case clearly made against this accused Omer Okot."⁷¹

Although the decision of the Province Judge might have been right in law some problem still surrounded the

implications of the interpretation of the said Provisions of the constitution, the Self-Government Act and the Auditor-General's Chambers Act. If only the Auditor-General was allowed to audit public accounts then audits by the internal auditor were ultra vires, and therefore null and void. However, justice would have been grossly misdirected had the accused been left to go free because of the legal technicality. There was need for the Auditor-General to endorse the report of the Internal Audit to make it valid but this was never done. Thus the trial of the accused proceeded on an invalid document and proved to be a frustrating experience for the work of audit in the region. Since then hardly any cases reached the court.

The constitution also required the Auditor-General to:

"Submit to the President of the Republic and the People's Assembly his reports on the accounts whose auditing is assigned to him by law, within a period not exceeding nine months after the end of each financial year."⁷²

Successful auditing requires the maintenance of proper books of accounts which must be kept up-to-date and closed annually. Although there were legal provisions to this effect, the report of the Auditor-General in 1984 indicated that these provisions were not being complied with. It stated that auditing in most cases was impossible because of financial irregularities.

"More irregularities are likely to be discovered when and if the chamber can close all accounts of the government departments and every institution in which the Government has a share ... some

province's haven't had their accounts closed since 1973, and most since 1977 ... As for the Southern region whose accounts have not been closed since 1972 ... the officials of the chambers are not sure when they will finish their work there ...73

CONCLUSION

This chapter clearly shows that no appropriate formula for the equitable distribution of revenue has been devised in the Sudan. Hence the vertical and horizontal imbalance in the distribution of national revenue in the country. Since grants from the central government constituted the most important source of revenue for the decentralised government, it follows that the inequitable distribution of grants would maintain regional and local disparities in terms of development and distribution of services. Thus rich regions would continue to get richer while poor ones would become poorer. This would all be due to the formula of deficit financing applied in the country. Moreover the deficit finding was not only inconsistent and irregular but persistently created situations of deficits within deficits.

Although revenue sources were assigned to the regional and local governments, a lot of problems surrounded their mobilisation. This was particularly very discouraging in terms of taxes.

The taxes which were levied and collected by the central government for remitting to the regional governments never reached the latter on grounds of lack of statistics of the goods and commodities consumed in the region or leaving the same. Some taxes were levied by the central government but collected by the regional governments, but difficulties were encountered in remitting them to the Regional Treasury. They neither came from employees of the central government nor were they used by the collecting units. These problems were, however, finally overcome.

Taxes levied and collected locally have been yielding considerable amounts but their base was too narrow because of the Sudan's poor state of economic development. However, revenues from miscellaneous sources such as receipts from licences, fees and services rendered by the various government departments and units have been the most promising sources of locally collected revenues for both regional and local governments. The provisions for loans have been totally obsolete for lack of credit institutions and liquid money.

The question of financial management has been interesting. Although both regional and local governments were free to spend as they wished, they could only do so within the limits of approved budgets. Other control provisions, like keeping proper and up-to-date books of accounts and auditing were seriously neglected

particularly in the Southern region, thus allowing cases of corruption to go unpunished.

It is therefore necessary to reorganize the financial arrangements for decentralised governments in the Sudan on a sound basis. This would involve the working out of an equitable formula for the distribution of national revenue as recommended in the concluding chapter and appointing a permanent body for the supervision of the operation of the system and recommending appropriate changes from time to time.

NOTES

1. The Provincial Administration Act, 1980 of Zambia assigns independent sources of revenue to District Councils but not Provincial Administration Units.
2. Report of the Commission on Revenue Allocation (Lagos: Government Printer, 1951). See also Adebayo Adedeji, Nigerian Federal Finance (1969), p. 72.
3. By then Nigeria had three regions - the Northern, Eastern and Western.
4. Adebayo Adedeji, op. cit., p. 73.
5. Report of the Technical Committee on Revenue Allocation (Lagos: December 1978 (mimeo), Vol. 1, Chapters 4 and 7).
6. Laws of Nigeria: The Allocation of Revenue Federation Accounts etc. Act, 1981, Section 7.
7. Sudan: Lloyds Bank Group Economic Report, 1985, pp. 1 and 5.
8. See Chapter 1, footnotes 41-44.
9. Laws of the Sudan, Vol. 10, 5th (ed.), pp. 427-435.
10. Act. No. 70 of 1978.
11. Financial Regulations and Proceedings Act, 1978, Section 24.
12. Southern Sudan Magazine, Juba - March 1979 - p. 15.
13. The Southern Provinces Self-Government Act, 1972, Section 24.
14. Presidential Decree No. 39 of 1972.
15. Protocols on Interim Arrangements to Addis Ababa Agreement on the Problem of the Southern Sudan, 1972.
16. Decree No. 39, Section 2.
17. Economist Intelligence Unit, Quarterly Review of Sudan, Annual Supplement, 1983, p. 9.
18. SPS, Sodhi, "A Review of Presidential Decree No. 39, Assigning Revenue to the Regional Government" (unpublished), Juba, 17th June, 1980, p. 4.
19. Although Sodhi also suggested the lack of political will on the part of the Central Government, although he did not do so in strong terms.
20. Regional Act. No. 6 of 1977.

21. SPS, Sodhi, "Review of Decree 39, op. cit., p. 6.
22. SPS, Sodhi, "Financial Issues - A Perspective", A paper presented for Seminar on Decentralisation, Juba, December 1981, p. 46.
23. Ibid.
24. Ibid.
25. Ibid.
26. Laws of the Sudan, Volume 6, 5th edition, pp. 128-195. It was formerly known as the Income Tax Act, 1967.
27. The Police and Prison Departments were an exception in that their deductions were fixed at 4% only for no given reason.
28. John Russie, "Fiscal and Financial Relationships with Central and Local Governments", Seminar Paper on Decentralisation, Juba, May 1983, p. 3.
29. Ibid.
30. Laws of the Sudan, Vol. 2, 5th edition, pp. 199-223.
31. Traders Licence and Taxation of Business Profits Act, 1930, Section 7 and Schedules 1 and 11.
32. John Russie, op. cit., p. 3.
33. Regional Act No. 9 of 1974.
34. Isaac Makur Ater, "Regional Financial Resources and their Allocations". Paper presented for Conference on Development Problems of the Southern Region - Juba - January 1979, p. 5.
35. John Russie, op. cit., p. 5.
36. Regional Act No. 3 of 1978.
37. The Permanent Constitution, Art. 53.
38. See paper without heading presented to SSU Conference on Development Problems of the Southern Region by the Regional Ministry of Wild Life, Conservation and Tourism, Juba, January 1979 at p. 1.
39. The People's Local Government Act, 1971, Section 19.
40. Musa Taha El Shayib, "The Provincial Tax System and Revenues - An assessment of Effectiveness and Some Suggestions for Reform (2)", in Local Government and Development in the Sudan - experience of Southern Darfur Province (1976), p. 74.
41. Regional Act No. 24 of 1976.

42. The Social Service Tax Act, 1976, Section 3(1).
43. The People's Local Government Act, 1981, Section 23(e).
44. See Mohamed Ahmed Imam, "The Provincial Tax System and Revenues: An Assessment of Effectiveness and Some Suggestions for Reform (1)", in Local Government and Development, op. cit., p. 65.
45. M.A. Imam, in People's Local Government Journal, 1977, p. 83.
46. See "People's Local Government Taxes", paper presented to the National Congress on Local Government, Nyala, 1978, p. 7.
47. Act No. 17 of 1964.
48. Nick Devas, "Regional and Local Government Finance in the Southern Region of the Sudan, DAG Occasional Paper No. 14, Birmingham University, September 1982, p. 16.
49. Ibid, p. 14.
50. See People's Local Government Taxes, op. cit., p. 10.
51. Ibid.
52. Ibrahim Mohamed Ibrahim, "Trends and Issues in Local Government Finance in the Sudan", 1982 M.Soc.Sc. thesis, Birmingham University, p. 43.
53. The People's Local Government Act, 1971, Section 23.
54. Abdel Rahman Mohamed Geili, Local Government Finance in the Sudan, M.Soc.Sc. thesis, Birmingham University p. 31.
55. B.P. Adaukar, "The Principles and Problems of Federal Finance" (London: King and Son, 1933), p. 219, quoted by Adedefi Adebayo, op. cit., p. 11.
56. L. Rowland, Government Grants to Local Authorities: background, objectives and possible future arrangements.
57. Statement by Institute of Municipal Treasurers on the Future Framework of Local Government Finance to the Commission on Local Government in England, June 1969, p. 436.
58. The People's Local Government Act, 1971, Section 20.
59. Ibid., Section 21.
60. People's Local Government Act, 1981, Section 22.

61. Regional Government Act, 1980, Section 59.
62. Ibid., Section 74, and see also the Southern Provinces Self-Government Act, Section 25(c).
63. Regional Government Act, 1980, Section 87.
64. The People's Local Government Act, 1981, Section 22.
65. Southern Sudan Magazine, March, 1979, p. 15.
66. The Auditor General's Chambers Act, 1970, Section 26.
67. The Permanent Constitution, Art. 206.
68. The Auditor General's Chambers Act, 1970, Section 7(b).
69. Criminal Case No. 48 of 1981.
70. Criminal Case Revision No. JCC/CR/RW/48/81 dated 30.12.83, p. 1.
71. Ibid.
72. The Permanent Constitution, Art. 210.
73. Sudanow, October 1984, p. 15.

CHAPTER 10INFRASTRUCTURE FOR DECENTRALISATION

Previous chapters have examined fundamental aspects of decentralisation, including the structure of government; allocation of powers; financial arrangements and control of inter-governmental relationships. However, the problems raised by a programme of decentralisation extend also to a number of other matters which vitally affect the operation of government machinery in a decentralised system. For instance, successful infra-structure to support the regional and local system of administration. The sort of infrastructure meant here includes skilled manpower supply; communications; public and private economic/financial/commercial and social institutions. The point is that decentralisation will be weaker if the regions do not have adequate skilled manpower; if they fail to develop quickly an appropriate system of communications and an effective network of Public and Private institutions. These factors are considered in turn in this chapter.

I. MANPOWER PROBLEMS IN THE SUDAN

Decentralised governments inevitably increase the

demand for skilled manpower to operate the various governmental units established - though, of course, one argument in favour of decentralisation is that it enables more effective use to be made of the manpower which is available.

Nevertheless adequate staffing remains a prerequisite for the success of decentralisation. Yet, more often than not, developing countries lack adequate supplies of skilled manpower, as the examples of the Sudan, Tanzania and Papua New Guinea demonstrate.

A. The General Supply of Skilled Manpower in the Sudan

The general position of skilled manpower in the Sudan is shown in Table 10.1. It is difficult to establish whether or not the Sudan suffers from a general shortage of skilled manpower. An assessment by the ILO of the manpower requirement and supply in the Sudan for the period 1975-1985, showed both deficiency and surplus of skilled manpower (see Table 10.1).

Whereas the Table shows an availability of surplus manpower in the fields of agriculture, medicine, chemical and electrical engineering, law and arts subjects in general, it reveals shortages in certain specialized professions like Accountancy, Education and Mechanical Engineering. The disparity is an implication of the fact

Table 10:1 (continued)

Occupation	Requirements by Sector											Total requirement by 1985		Estimated supply by 1985	Shortage (-) or surpluses (+)		
	Agriculture	Livestock and fisheries	Industries	Construction	Trade and Commerce	Transport	Utilities (E & W)	Medical	Teachers	Services						Actual	Rounded
										University & research	Other govt. depts	Private Sector	Public enterprises				
(2) Chemists, Bio.		123	220							101	145		10	599	600	2,070(2a)	(+)
(3) Accountants	40		330		20	150	20		6		35		145	750	750	13,500(2)	(+)
(4) Administrator Managers & other Prof.	100		3,580		80	500	80		150	5,080		7	195	9,772	9,770	18,640(3)	(+)
(5) Agriculturists	2,700	96	-						14					2,796	2,800	2,600	(-)
(6) Veterinarians		551							34(a)					565	570	930	(+)
(7) Doctors														-	-	3,000(4)	(+)
(8) Pharmacists														-	-	410(4)	(+)
(9) Architects & Surv.				30							65			95	100	390(4)	(+)
(10) Economists		72							46		50		50	218	220	2,800(5)	(+)
(11) Statisticians		21									130			151	150	530	(+)

Table 10:1 (continued)

Occupation	Agriculture	Livestock & Fisheries	Industries	Construction	Trade and Commerce	Transport	Utilities (E & W)	Teachers	Univ. & Res.	Other Govt. Depts.	Private sector	Public ent.	Total requirement by 1985		Estimated supply by 1985	Shortage (-) or surpluses (+)	
													Actual	Round-ed			
Electrical			210	25	6	160				140	2	10		553	550	200	(-)
Chemical			210		3					2				215	220	-6	(-)
Textiles			240		1									240	240	260	(+)
Others (Aircraft, Architects, mining, etc)			-							119				259	260	460	-12
(2) Agriculture	4,916	172	-	110	-	30								5,132	5,130	5,590	(+)
(3) Veterinarians	-	957	-											957	960	1,540	(+)
IV. Skilled Manual Workers (Voc. training schools)																	
(1) Engineering			380	3,050	96						32			3,558	3,560	3,470 ⁸	(-)
Civil			4,610	500	72	70					16			6,878	6,880	7,470 ⁹	(+)
Mechanical	1,610		1,620	160	48						16			1,844	1,840	490	(-)
Electrical																	13

Table 10:1 (continued)

Occupation	Agriculture	Livestock & Fisheries	Industries	Construction	Trade and Commerce	Transport	Utilities (E & W)	Teachers	Univ. & Res.	Other govt. dept.	Private sector	Public ent.	Total requirement by 1985		Estimated supply by 1985	Shortage (+) or surplus (-)
													Actual	Rounded		
Chemical	-		1,600										1,600	1,600	-10	(-) ¹⁰
Textiles	-		1,862										1,860	1,860	-11	(-)
Others (Aircraft etc.)	-		-		24								24	20	- 9	(-)
(2) Agriculture	13,800		-										13,800	13,800	-	(-)
(3) Veterinarians	-		-										-	-	-	(-)
(4) Others (Aircraft con.)	-		-										-	-	-	(15)
(5) Tractor Drivers	2,000		-			150							150	150	-	-
													2,000	2,000	2,600	(+) ¹⁴

that educational planning has not been effectively linked to manpower needs, thus resulting in both surplus and scarcity with the effect of the former being felt more keenly at the national level. The statement of Mohamed El Murtada Mustafa, the Deputy Director General of Labour in 1976 illustrates the point:

"Despite the shortage of high-level manpower with certain specific skills, a feature of Sudanese manpower which is particularly disturbing is the unemployment of educated skilled persons of certain categories. This problem has been increasing during the last 4-5 years."¹

To have both unemployment in the presence of the scarcity of skilled manpower is a paradox. It would seem that the problem was largely due to lack of mobility, since most qualified officers wish to work in a big city. For that matter the scarcity of manpower was more prevalent in the regions.

B. The Supply of Skilled Manpower in the Northern Sudan

Despite the lack of comprehensive and up-to-date information to show the lack of skilled manpower in the regions of the Northern Sudan, the available evidence shows serious scarcity of personnel in those regions. It was, for example, clear from the preliminary assessment of the implementation of the Regional Government Act, 1980,² by El Teiriffi five years later. He noted the acute lack of manpower in those regions for the following reasons:-

1. The central government ministries did not take the question of transferring manpower to those regions seriously. The integrated personnel system in the Northern Sudan, (since those regions had no public service organs of their own), left the responsibility for recruiting and training all personnel in the Northern Sudan to the national Ministry of Public Service and Manpower.

2. The policy of secondment of staff originally adopted by the Central Government hampered the loyalty of the staff to the regions, which was predictable since the primary loyalty of seconded staff is owed to their mother units.

3. The qualified personnel in the administrative and technical positions were reluctant to move out of Khartoum - for understandably Khartoum had educational, health, banking, transport and other facilities which did not exist in other towns. Moreover, promotions and scholarships were easily obtainable from the national capital. Though the over-concentration around Khartoum partly accounted for the unemployment in the capital, at the same time the location of the public service in the city deprived the rural areas of personnel.

4. The policy of central recruitment did not allow the regions to institute new policies to attract better staff. A decentralised form of government that has an integrated personnel system, instead of separate systems, is likely to run into this kind of problem.

5. The migration of skilled staff to neighbouring oil-rich countries like Libya and Saudi-Arabia also contributed seriously to the shortage. But no up-to-date record of the "brain drain" to such countries is available. However, old figures in the Labour Department show that in the 1960s and 1970s substantial numbers of Sudanese migrated to Libya and the Middle East countries as contained in Table 10.2.

Table 10.2

<u>Period</u>	<u>Number of Migrants</u>
1966/67 - 1973/74	8,800*
1974	1,213

Note: * 85% of this number were skilled.

Source: Shyam Nigaru, Skilled Manpower Situation in the Sudan (1975-1985) and Policy Implications, p. 9.

Since then, migration has continued on an increased scale despite the fact that comprehensive records are not available. The number migrating escalated during the dictatorial regime of Numeiri.

Shortage of skilled manpower extended as far as the provinces and beyond. The report of the Administrative Survey of Southern Darfur Province in 1976 bears out this fact.

"... The Finance Department of the Province Headquarters were 24 Accountants short of an establishment of 30 ... Accountants are in short supply

nationally but the situation [was] very common in less extreme forms. Particular shortages are of teachers, clerks and book keepers ... The M.T.D. (Mechanical Transport Department) for example [had] 12 staff in post out of an approved establishment of 49."³

Thus manpower shortage in the Northern Sudan covered both the regional and local governments due to the ineffective policy of recruitment, transfers and losses through the migration as listed by El Teiriffi. Otherwise Table 10.1 indicates abundance of educated people as stated earlier.

C. The Supply of Skilled Manpower in the Southern Sudan

In contrast to the Northern regions, it was planned from the start that the Southern region would have its own permanent public service. However, the scarcity of skilled manpower was very acute from the initiation of the regional government in 1972. That government had to start with seconded staff from the Central government, who were eventually transferred permanently to the Southern Regional Government. The statement of Donato Jubai, the Director of Public Service in the region, in 1972 that the region "had to do with whatever staff it could lay hands on"⁴ exposed the desperation of the situation.

There was some improvement by 1976 but, as can be seen from Table 10.3, the problems were by no means over then. The vacancies were further increased by the creation of more posts in the Six-Year Plan for the socio-economic

ESTIMATED EMPLOYMENT SITUATION IN THE REGIONAL
PUBLIC SECTOR, MID-1976, SOUTHERN REGION

Table 10:3

(i) Level of Training	(ii) Total estimated posts	(iii) Posts filled	(iv) Posts vacant	(iv) Projected requirements
Post secondary and university	3,710	1,760	1,950	1,500
Senior Secondary	6,310	4,460	1,670	1,200
Junior Secondary	9,720	7,800	1,920	1,600
No schooling	21,100	18,600	2,500	?
Total	56,660	45,220	11,440	-

Total vacancies = 12,000

Source: Gravey William, F.H. and L.R. Mills, "Education in the Southern Sudan" (unpublished UN Report), Juba October 1976, p. 82.

(The projected requirements in Column (v) were estimated by Williams and Mills.)

development of the South (1977/78 - 1982/83). Details of the manpower requirements are shown in Table 10.4. By the end of the plan period, 3,030 posts were anticipated to remain vacant.

Three years later Professor Rondinelli confirmed the continuing manpower shortage, particularly in the medical field.

"The six provinces of the Southern Sudan, with a population of about 3 million, had about 54 medical doctors, 18 nursing sisters and 285 health para-professionals in 1979."⁵

An administrative group from Birmingham University worked out the detailed requirements of the support staff (typists, clerks and book keepers), as shown in Tables 10.5, 10.6, 10.7 and 10.8.

Unfortunately, the redivision of the South in 1983 exacerbated the personnel shortage, as was clear from the statement of Anthony Mogga, Acting Director General of the Public Service in Equatoria Region:

"... Each new region [was] bound to experience a real shortage of manpower in some sectors. To fill these places with competent personnel [would] require years of training and staff development."⁶

The deployment of the personnel of the former Southern region showed that Equatoria had retained 65% of the skilled manpower.⁷ Nevertheless available evidence indicated that Equatoria still remained in great need. For example, Richard Nara, former Acting Director-General of the Regional Ministry of Regional Affairs (Equatoria Region), told a Colloquium on local government in Juba in

MANPOWER AND EMPLOYMENT IN THE PUBLIC SECTOR IN THE SOUTHERN REGION
BY OCCUPATION IN 1976/77 - REGIONAL ASSEMBLY AND MINISTRIES EXCLUDING
MINISTRY OF WILDLIFE AND TOURISM

Table 10:4

Ministry	Posts Est.		Posts Filled		Posts Vacant		Posts Approved		Posts Filled		Posts Vacant		Posts Approved		Posts Filled		Posts Vacant		Posts Filled	Posts Vacant					
	Administrative & Professional	Sub-Professional																							
High Executive Council	46		28		18		89		60		29		39		24		15		174		62		65.5	34.5	
Peoples Reg. Assembly	15		8		7		22		9		13		113		83		30		150		50		66.7	33.3	
Public Service	61		29		32		61		26		35		68		20		48		190		115		39.5	60.5	
Comm. & Industry	55		28		27		56		32		24		42		23		19		153		70		54.2	45.8	
Education	465		279		186		3766		2838		928		136		71		65		4367		1179		73.0	27.0	
Cooperatives and Rural Dev.	68		29		39		189		91		98		86		34		52		343		189		44.9	55.1	
Infor T. and Culture	54		27		27		215		92		123		39		22		17		308		167		46.2	53.8	
Commun. Roads	41		14		27		78		31		47		70		34		36		189		110		42.8	57.2	
Agriculture	92		27		65		325		126		199		112		63		49		529		313		40.8	59.2	
Finance/Planning	60		29		31		27		8		19		49		17		32		136		82		39.7	60.3	
Health	174		88		86		420		247		173		308		207		101		902		360		60.1	39.9	
Regional Admin.	415		288		127		30		12		18		65		44		21		510		166		67.5	32.5	
Housing	93		11		82		106		26		80		28		23		5		227		167		24.5	75.5	
Grand Total	1639		885		754		5384		3598		1786		1155		665		490		8178		3030				
			54.1		45.9		66.8		33.2		33.2		57.6		42.4		63.0		37.0						
			Administrative & Professional																						
			Sub-Professional																						
			Technical																						
			Clerical																						
			Total																						

Source: The Six Year Plan of Economic and Social Development 1977/78 - 1982/83 for the Southern Region, p. 314.

Table 10:5TOTAL SOUTHERN REGIONAL REQUIREMENT
FOR TYPISTS, CLERKS AND BOOKKEEPERS IN 1975

Category	Total no. required
Typists	832
Clerks	1,002
Bookkeepers	1,307

Out of the above figures the requirements for the three Peoples Province Executive Councils were 381 distributed as follows:

Table 10:6TYPISTS

Province	Typists			
	Available		Required	
	English	Arabic	English	Arabic
Upper Nile	11	9	30	21
Equstoria	12	5	18	11
Baher El Ghazal	7	4	16	8
Totals	30	18	64	40

Table 10:7CLERKS

Province	Clerks	
	Available	Required
Upper Nile	23	50
Equstoria	22	42
Baher El Ghazal	20	32
Totals	65	124

Table 10:8BOOKKEEPERS

Province	Bookkeepers	
	Available	Required
Upper Nile	22	51
Equstoria	32	57
Baher El Ghazal	26	49
Totals	80	157

Source: Garth Glentworth, Outline Proposals for an Institute of Public Administration for the Southern Region of the Sudan, University of Birmingham, 1975, pp. 14 and 10.

October 1983 that:

"In Equatoria Region, much [was] left to be done as far as staffing of Area councils were concerned. The posts of medical officers, social workers and community development personnel plus their supporting staff [had] remained vacant in most councils ... according to the standard establishment of local government councils, Equatoria [was] to have a maximum number of 106 local government officers at the Area Council level, 23 at the Department of Local Government, and 18 officers in the two provinces of Eastern and Western Equatoria. Of the 147 posts only 78 [were] filled and 65 [were] vacant."⁸

However, that was too general a position. A more detailed study of the Western Area Council (also in Equatoria) by an administrative team from Birmingham University in 1985 revealed serious manpower shortage as contained in Table 10.9.

The tables overleaf indicate the general manpower shortages in the South from the inception of the Regional Government for the South in 1972 to the period after the 'redivision' of the South.

During the years of government by the "May Regime", 1969-1985, the position of skilled manpower shortage became increasingly aggravated. There were several obvious reasons for the shortage.

Since the colonial days the South had lagged behind the North in every modern development, including education as seen earlier. At independence most Southerners who had some primary education occupied Article III (Senior Clerks

Table 10:9

THE POSITION OF STAFF IN WESTERN
AREA COUNCIL - EQUATORIA REGION, 1985

Department	Budgeted Staff		Staff in post	Staff Shortfall
	1983/84	1984/85		
General Administration	104	106	49	54%
Education	1,125	1,125	694	39%
Health	140	140	86	39%
Social Welfare	3	3	1	67%
Agriculture and Veterinary	94	94	26	72%
Forestry	57	93	39	58%

Source: Democratic Republic of the Sudan, Decentralisation Policy and Practice in the Southern Region, (1985), pp. 33-37.

or Book keepers) posts. This rank was unfortunately depleted by the South to attain separate constitutional status. Consequently, schools and others institutions were disrupted.

After the granting of local autonomy to the South in 1972, skilled Northern personnel (except school teachers) had to leave the region as they were politically undesirable. Even after the establishment of the Southern Regional Government, the educational system continued to be poor and manpower planning was almost non-existent.

D. Manpower Planning in the Southern Region

In order to maintain a constant supply of adequate manpower for the public service, manpower planning is a necessity in African states. Manpower planning is the "Strategy for the acquisition, utilization, improvement and retention of human resources".⁹ However, manpower planning in the South, or indeed in the Sudan as a whole for that matter appeared to be very weak. Table 10.1 as stated earlier shows that from 1975 to 1985 scarcity existed simultaneously with surplus production of such personnel as a whole. Table 10.10 unfortunately shows that the admission of Southern Sudanese into institutions of higher education were too meagre to meet manpower requirements in the South.

Table 10:10

ADMISSION TO SUDANESE UNIVERSITIES AND POLYTECHNIC 1970-1984

Institution	Origin of Students	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Khartoum University	North	1,457	1,685	1,641	1,655	1,629	1,691	1,877	1,856	1,831	1,713	1,810	1,843	1,723	2,073	1,637
	South	43	28	35	91	25	21	14	17	9	7	63	17	16	6	9
Total		1,500	1,713	1,676	1,746	1,654	1,712	1,891	1,873	1,840	1,720	1,873	1,860	1,739	2,079	1,646
Juba University	North	-	-	-	-	-	-	-	73	153	75	107	128	160	162	154
	South	-	-	-	-	-	-	-	51	29	25	6	6	11	8	4
Total		-	-	-	-	-	-	-	124	182	100	113	134	171	170	158
Gezira University	North	-	-	-	-	-	-	-	-	217	177	202	229	197	206	196
	South	-	-	-	-	-	-	-	-	1	2	0	0	5	4	2
Total		-	-	-	-	-	-	-	-	218	179	202	229	202	210	198
Khartoum Polytechnic	North	351	N.A.	127	142	187	192	217	288	310	217	849	809	840	1,058	979
	South	4	N.A.	13	12	12	12	11	6	11	8	26	13	12	11	9
Total		355	N.A.	140	154	199	204	228	294	321	225	875	822	852	1,069	988

N.A. = Not available Note: Juba University has a special intake system outside the ammissible office formula but the intake was still negligible.

Source: Universities Admission Office, Khartoum

Although there was a surplus of qualified Sudanese in the various fields of specialisation as shown in Table 10.1, recruitment into the Southern public service was limited to Sudanese of Southern origin. This was not due to any legal prohibition or official policy of the government, it evolved out of practice mainly due to the political undesirability of the Northern Sudanese in the South as stated earlier. Northerners were seen as dominators and oppressors. On the other hand, Northern Sudanese also regarded the South as a hardship area to which they would not go unless they were paid some handsome incentives which the government could ill-afford.

In the field of Public Administration, The Institute of Public Administration which was renamed The Institute of Administrative and Professional Sciences, was the only institution for training administrators for the whole country. Yet its intake per session was 20 people only. It offered courses for induction, in-service training and refresher purposes in Public Administration and Management to newly recruited administrators and old ones as well.

Due to the limited training programme offered by the Institute, the regional government established a Multi-purpose Training Centre (MTC) at Juba in 1974, which also offered induction and Council Management courses to newly recruited administrators in the South. Those who performed well would come for a Diploma in Public Administration in the University of Birmingham. The Centre also offered courses for the support staff in the field of

typing. Regarding finance, the region established a Regional Accountancy Training Centre (RATC) in 1978 for training book keepers and accountants for the region. There was no similar college for Clerks or Office Management, however. In spite of the above arrangements the situation in the South remained particularly difficult, as stated by Mogga in 1984:

"The educational system in the Southern Region leaves a lot to be desired in terms of needs and manpower requirement planning."¹⁰

This remark in itself seriously understates the problem that has been exposed in this chapter.

A Regional Institute for Public Administration and Management (RIPAM) that was proposed for the South in 1976/77 to be financed by the EEC did not succeed. This was firstly because the Conservative Government that came to power in Britain in 1979 sought to cut public spending and the cuts in the British public spending apparently affected the proposal. Secondly, this was a Southern region venture which was frustrated by the 'redivision' of the South in 1983.

All in all, the problem of scarcity of skilled manpower remained acute in the Sudan, a problem compounded by poor manpower planning.

E. Related Manpower Problems

The availability of skilled manpower does not per se guarantee efficiency and effectiveness in administration. The degree of skill, competence, and discipline of personnel system are vital contributory factors to the success of any management.

Unfortunately, the Sudanese public service were at very poor levels of efficiency and discipline. In a way the colonial system of a narrow educational base, primarily intended to produce supporting staff and middle class civil servants then, has contributed to this weakness. Table 10.11 shows that in 1948, it was planned that by 1962 about 60% of the personnel would have been "Sudanised", but this aim was overtaken by the rapid political developments in the country.

At Independence in 1956, the Sudanisation Commission had Sudanised 1800 posts which was 100% of the posts within fifteen months (see Chapter 2). Thus the Sudanisation plan shown in Table 10.11 was rendered invalid.

Consequently, senior posts were filled by unqualified and inexperienced Sudanese, which has remained a permanent feature of the calibre of Public Service of the Sudan, as observed by one analyst.

"The vision and intellectual horizon of, and standard set by, those promoted to the top grades in 1954-55 have had continuing influence."¹¹

Moreover the government in the 1960s introduced a policy of

Table 10:11

SUDANISATION OF THE PUBLIC SERVICE
 (PERCENTAGE OF POSTS TO BE SUDANISED
 BETWEEN 1948 AND 1962)

Year	Division One	Division Two	Divison One and Two
1948	15.4%	25.2%	18.4%
1957	38.1%	58.7%	44.1%
1962	55.5%	78.9%	62.2%

Source: Sudan Government, Report of the Sudanisation Committee, 1948, Central Archives Office, Khartoum, p. 19.

employing all college graduates who could not find jobs elsewhere. This mass employment degraded the quality of public service even further.

The South still had the worst end of it when in 1972 it had to resort to appointing anyone with minimum qualifications:

"... After the Addis Ababa Agreement rapid promotions in a situation of general manpower deficiency, have led to too many top positions being filled from the rank in the absence of Professional Qualified Officers, some administrative staff have reached the senior echelons without full knowledge of the job."¹²

Certainly, 'redivision' of the South must have aggravated the situation even further.

Throughout the existence of the Southern Regional Government, promotions were a persistent problem, not only because of the manpower deficiency but also because of the malpractices involved. For example, in the Department of Legal Affairs one law officer was promoted from scale "Q" (the lowest starting grade for a university graduate) to group "V" superscale in 1980 jumping scales "DS" and "B". In this way the officer obtained an unmerited promotion and leap-frogged over his seniors in scales "DS" and "B". This practice also took place in other departments like Taxation, Commerce, Regional Administration, Agriculture and Public Service, despite public protests.

Furthermore, the system of employment was highly defective from the start due to the implementation of

inadequate provisions of the Regional Public Service Regulations, 1975. Under the Regulations, all appointments were a prerogative of the Regional Ministry of Public Service, but, in practice, every department was allowed to fill vacant posts and submit the same to the Public Service for confirmation. The Public Service only considered whether the employed officer had the minimum qualifications required for the job. It never bothered to check and determine whether the successful applicant had been assessed fairly in competition with other candidates. There was therefore little or no control over the calibre of personnel who joined the service by the Ministry. Corruption, nepotism and other sorts of discrimination prevailed over superior qualifications.

Some of these problems could have been overcome by further training but the opportunities for this were too limited. The inadequacy of training facilities internally has already been explained earlier. Since 1979, the Sudan Government stopped all training abroad on government funds. At the end of the day people resorted to the sparse and out-of-date facilities in the country.

According to Mogga, the situation was so bad because the National Training Act was only promulgated in 1976 and the translated English copy reached the Southern Region only in 1983, when it was on the verge of 'redivision'. For him, this was due to lack of commitment on the part of political leaders towards manpower training and development. What is incomprehensible is why the region

could not legislate its own training laws when it had the authority to establish a Regional Public Service.

Other factors also affected the efficiency of the Public Service. They included matters of office routine, transfers and leaves. In a report compiled in 1974 by an administrative team from Birmingham University, it stated that there were generally no job allocations and descriptions in all the government offices. It quoted the headquarters of Baher El Ghazal province as a rare example.

"18/1/1974/ Baher El Ghazal. Subject
Division of work in the Province
Headquarters ... Daily working
programme." 13

The team also found that the monthly and annual reporting systems (characteristic of good administration) were non-existent and handover notes were incomplete. Ordinarily, there were serious delays due to the bad practice of "following up" of correspondences by personal visits and the obsession with meeting the administrators face-to-face.

Since Dr. Bakheits advocacy of the Politicization of the Public Service, as seen in Chapter 5, the Sudanese public servants became largely unruly. Political loyalties or disloyalties were the order of the day. This was very obvious from the transfers, absenteeism and the prolonged holidays or leave.

No specific period for transfers was prescribed in the regulations but by convention transfers were to take place

every two or three years. Since 1969, this routine was never strictly followed. Whereas some officers were transferred twice or thrice in a year, others remained in one place for as long as a decade. El Teiriffi's observations of the Public Service in the Northern Sudan as stated earlier, affords a good example. Sometimes officials transferred on promotion "often [took] a catorie of subordinates with them to their new posts".¹⁴

The Public Service Regulations 1976¹⁵ specifically defined working hours as "not less than forty-eight hours per week" starting at 6.30 a.m. to 2.00 p.m. from Monday to Saturday. A short period of one hour was permissible between 9.00 a.m. and 10.00 a.m. for breakfast.¹⁶ However, most offices remained empty after 9.00 a.m. because a good number of the officials did not come back from breakfast "fatur", as is commonly called in Arabic. Rainy days also provided another justifiable occasion for absenteeism.

Leaves were entitlements under various headings: normal leave; local leave; sick leave; study leave; and mourning leave.¹⁷ However, the leave entitlements were over-used. For example, a person on an ordinary leave of 40 days would extend it unilaterally by another 20 days. Mourning leaves were obtainable for close and distant relatives, including friends or area mates. Study leaves were a particular favourite as Rondinelli put it:

"Middle and higher level officials consider training leaves every two or three years to be a prerequisite of their jobs, as opportunities for a long-term stay overseas are particularly valued."¹⁸

Certainly the above real practices constituted disciplinary offences punishable under the Southern Region Employees Discipline Act 1976¹⁹ but the machinery for the enforcement of the discipline was too weak.

F. The Public Service Disciplinary Machinery in the Southern Region

Section 5 of the Southern Region Employees Discipline Act, 1976, stipulated:

"Any person who neglects or refuses to comply with other regulation as applicable to him or any lawful order of his superior officer, or who refuses, neglects, retards or obstructs or fails to perform his duty, or any act or omission exhibits conduct incompatible with the proper performance of his duties or unfitting his official position ... shall be liable to be dealt with under this act."

Penalties specified for the above offences included reprimand, fine, stoppage from duty for specified period, suspension, retardation of promotion and dismissal, all imposed by a Disciplinary Board.²⁰ However, the enforcement machinery was very slack, as already stated.

An agricultural extension officer was suspended by his Ministry in 1974 for alleged "conduct incompatible with the proper performance of his duties". He went to Uganda and obtained employment there. He was tried after his return to the Sudan in 1982. Despite his long stay in the unknown foreign location, he was acquitted of the charge,

reinstated to his job and given full arrears of pay back-dated to his period of suspension. There were several similar cases.

The maximum period of suspension, according to Section 27 of the Act, was not to exceed 90 days but this time-limit was never adhered to in practice. Suspensions often exceeded the period. Moreover, another provision entitling the authorised Minister to waive the limit could not be enforced. The sections are quoted below.

"If the Head of Department considers that the interest of Public Service requires that an employee who is charged with an offence under this Act or against whom criminal proceedings which would constitute an offence under this Act or ..., he may at once suspend him from performing such duties, provided that the period of suspension of offences under this Act shall not exceed 90 days ..." ²¹
(emphasis added).

And,

"If criminal proceedings are instituted against any employee, the employee shall not, unless the Minister so concerned directs, be brought before a Board of Discipline on any ground forming part of the criminal charge while the criminal proceedings are still pending." ²²

Quite often trials by Disciplinary Boards were delayed on the ground that the criminal charge had not been disposed of. This was the more likely in the situation of scarcity of Magistrates in the region. But sometimes delays were due to some unwarranted intervention. The case of Cyprus Ndarago and others in 1979, affords a good example here.

Ndarago and others were employed as store keepers and accountants in the Regional Ministry of Communications.

They were suspended under the Disciplinary Act for alleged misappropriation of funds. They were also charged for criminal Breach of Trust under the Sudan Penal Code Act, 1974.²³ However, the police investigator delayed the legal process for two years by keeping the case diary in his possession. Obviously, he had neglected to perform his duty, but was left uncharged for the lame excuse that the case was too complex for him. At the request of the Minister of Communications two and a half years later, the Department of Legal Affairs advised the Minister to invoke his discretionary powers quoted above, to order a board to try the accused officials. In doing so, the Department of Legal Affairs had sought to circumvent the rigours of the provision which had obviously produced delay or denial of justice. However, the Ministry of Public Service unlawfully prevented the Minister of Communications from exercising those powers. The outcome was even worse; the Minister simply ordered the reinstatement of Ndarago and others without any trial, disciplinary or judicial.

Clearly, the weakness in the implementation of the disciplinary machinery had led to abuse of power.

G. Conclusion

Problems of skilled manpower shortage, efficiency and to some extent indiscipline are common in third world countries - and not just the Sudan. Decentralised

governments in Tanzania and Papua New Guinea have for example faced comparable problems in the supply of skilled manpower and efficiency.

For instance, a World Bank evaluation of the Ujamaa programme in Tanzania showed that, with the dispersal of skilled personnel to the regions and districts, the administrative capacity of the Tanzanian Central Government was severely weakened. It concluded:

"Weak leadership and management have proved, and will continue to prove [to be] very serious problems. The field staff assigned to the Ujamaa villages - agricultural field agents and cooperative and Ujamaa field assistants - cannot provide much help. They are ill-equipped to provide assistance of a technical, much less of organizational nature ... In addition to being very young and inexperienced, the vast majority of them have weak technical training ... it will be a long time before the various key positions can be filled by professionals."²⁴

Decentralisation in Papua New Guinea also started with a dearth of competent professional staff. Decentralisation reduced the efficiency with which other sectors of the economy operated. To aggravate the situation, a series of policy decisions made in the 1970s increased the severity of the shortage of personnel referred to as "a chain of manpower disasters". Moreover, simultaneous with decentralisation was the policy of localisation, whereby many experienced expatriates were replaced by younger and less experienced nationals, which exacerbated the pressures on the administrative system. Demand of the private sector further reduced the availability of talent for public service.

Thus the problems of skilled and efficient personnel, common to all developing countries, were intensified by policies of decentralisation. The Sudan has a long way to go in the accumulation, utilization and improvement of manpower resources. It is advisable for the regional and local governments to have separate public service institutions and not integrated ones as in the Northern Sudan. There is also a need to give incentives to those working outside the capital. This could be by salary increases or rapid promotions. At the moment all salary scales are the same for all employees of the central, regional and local governments and yet those who work outside the capital are deprived of social amenities, promotions and scholarships as explained earlier. Educational planning has to be tightly linked with manpower requirements and there should be no discrimination in employment on grounds of birth or origin. The weaknesses in the procedures of employment, promotions, office duties and disciplinary machinery have to be drastically improved.

II. COMMUNICATIONS

Although the absence of communications could be seen as a reason in favour of decentralisation, its presence is also of great significance in promoting the same. Availability of communications facilitate coordination and

integration.

As can be seen from Map 1, the Sudan like the other third world countries has a poor communications network. There are few surface roads from Khartoum to the Eastern and Western Sudan only. There are no all-weather roads to the rest of the country. The only railway line links part Sudan to Khartoum, Atbara, Kosti and Nyala in the Northern Sudan. The Southern extension was blown up by explosives used in the war in 1983.

The river transport to the South was impeded by several factors - the swamps of the Sudd region, the inadequate number of boats which were too old and slow anyway. Plus the war that restarted in 1983. The Jonglei canal which was intended to shorten the distance between Malakal and Bor by about 400 miles, has also been halted by the war.

Flights by Sudan Airways are few and so irregular that it has earned the unhappy reputation of "Inshalla Airways" (meaning God Willing Airways).

Telecommunication systems like telex, telegrams and telephones are restricted in extent and are often out of order due to technical faults or deficiencies.

Commenting on the communications system in the Sudan, Rondinelli wrote:

"Whatever coordination does take place between local councils and the province

Executive Councils depended on sporadic and infrequent personnel communications."²⁵

Although this was not really the position all over the country, it was certainly the case in many parts.

The Southern Regional Government had for example planned to build all-weather roads between Kosti and Malakal; Juba and Wau; Wau and El Nuhud; Wau and Nyala; Juba and Malakal and Renk; Juba and Kenya via Kapoeta; and Juba and Uganda via Nimule in the six-year development plan but the plan has not been successful for lack of funds, spare parts, oil, skilled personnel and political instability. Some £s 5,986,252 was budgeted for the establishment of Regional Airline to act as feeder lines between the Southern towns especially Wau and Malakal.²⁶ Pilots and engineers were trained in the UK but no plane was ever purchased allegedly due to obstruction from Sudan Airways which sought to retain the monopoly of all flights in the Sudan. In actual fact, the South was isolated from both the North and the neighbouring countries, Kenya, Uganda and Zaire.

Acute shortages of fuel supplies and vehicles compounded these problems. American A.I.D. analysts observed that the Government in the Southern Region could "barely conduct its normal business for lack of fuel, vehicles and power generation. Spare parts too [were] virtually non-existent."²⁷ The effects of fuel shortages were far-reaching. For example, the electricity generating system in Juba could at times be run only for two to three

hours a day. In consequence, the Juba water system went unfiltered causing unnecessary sickness and deaths. Construction of schools, hospitals, offices and other centres was often held up because material could not be transported. Medical supplies and patients could not be moved; tribal disputes could not be settled; road-building and bridge maintenance was impossible and naturally the life span of the vehicles was shortened.

The decentralisation programmes in Tanzania and Papua New Guinea also suffered from problems of communications although they strove to overcome them. Tanzania by 1979 had less than 34,000 kilometres of roads, out of which only 10% were all-weather roads, but also in a generally bad condition of maintenance. The villages were not directly connected to paved roads and were isolated much of the time. A USAID mission estimated that in Tanzania only a small percentage of farm families lived within a day's walking distance of an access road. It was therefore difficult or impossible to bring government services within their reach.²⁸

Before decentralisation, Papua New Guinea had an exceptionally difficult terrain which poses considerable difficulties to communications. However, a major road network has been developed in the Highlands, but the outlying villages remain isolated. Few provinces outside the Highlands have road links with each other and all provincial capitals are linked to the national capital by air and in a few cases by sea. Other parts of the coast

are too swampy. Apparently, Papua New Guinea had the worst problem of communications among the three countries mentioned, except that the air and other systems like telephones, telegrams, telexes are more efficient and more widely available.

III. PUBLIC AND PRIVATE ECONOMIC AND SOCIAL INSTITUTIONS

Finally, we should briefly consider the role of public and private economic and social institutions like companies, corporations, Boards, cooperative societies and voluntary associations for farmers and so forth in a decentralised system of government. These institutions are useful in the sense that their efforts may complement and bolster those of the government, or they may obstruct them. Therefore, their role should never be undermined.

Unfortunately, the Sudan has had very few enterprises or institutions of the type. Rondinelli was right in saying that:

"With the exception of some heavily financed organizations in the Gezira scheme, for example, cooperatives in most provinces are insufficiently managed, usually by non-professional local leaders who are frequently replaced at annual meetings."²⁹

Moreover the agricultural cooperatives in the Sudan suffered from chronic shortages of operating capital and lacked the mechanisms to make general savings or the

opportunities to invest any savings made. No assistance came from the national Ministries to rural cooperation and extension services.

"Headquarters people rarely get to the field [the staff of the Ministry that is]. ... Spread so thin that the impact at village level is so negligible in terms of meaningful support and extension services." 30

Cooperatives and public corporations in the South were virtually still-born. These included the Regional Development Corporation (RDC), Equatoria Trading Corporation (ETC), Nile Tourist Corporation and Upper Nile Trading Company. All were ever in need of more money from the Regional Government.

In the case of Tanzania, Leonard concluded:

"The ability of villagers to participate in development planning and management was seriously constrained by inadequate technical assistance from supporting institutions." 31

Demands placed by decentralisation on the resources of a developing country are therefore very great. Not only must decentralisation be carefully and perfectly designed in terms of structures, powers and finances plus the inter-relationships, but an adequate pool of skilled, efficient and loyal manpower has to be made available to the government.

The government must, as quickly as possible establish an adequate network of communications as well as create institutions for public and private economic and social purposes as discussed in the chapter.

NOTES

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2. See El Teiriffi, "The Regional Government Act of 1980 in the Sudan: A Preliminary Assessment (Paper prepared for publication), Khartoum, September, 1985, p. 7.
3. Garth Glentworth and Mahdi Sheikh Idris (ed.), Local Government and Development in the Sudan. The Experience of Southern Darfur Province, Volume 2 (1976), p. 96.
4. Donato Jubai, quoted by Raphael Bandal, The 1971 Local Government Act: The Case of Southern Region (1979), p. 42. S.D.A. Rondinelli, "Administrative Decentralisation and Economic Development: The Sudan's Experiment with Devolution", The Journal of Modern African Studies, Vol. 19, No. 4 (1981), p. 52.
6. Anthony L.B. Mogga, "Staff Development and Training" - Report on the Colloquium held on the 27th and 28th October 1983, on Decentralisation, Tasks Ahead, Juba, p. 52.
7. See Letter by Andrew Ben Lado, Jino Gama and John Russie (Directors of Finance) to H.E. the Regional Minister of Finance, Equatoria Region, Juba, No. RMF & EA/ER/-20-A-2 dated 7 January 1984, p.1 2.
8. Richard K. Nara, "The Local Government as an Effective Instrument of Development, Equatoria View Point" in Report on 1983 Colloquium on Local Government, op. cit., p. 30.
9. John Braham, Practical Manpower Planning, Institute of Professional Management (1975), p. 6.
10. A.L.B. Mogga, op. cit., p. 50.
11. Aluwadare Oguda, "The Sudan Civil Service, 1947-1971", quoted by D.A. Rondinelli, op. cit., p. 616.
12. A.C.B. Mogga, op. cit., p. 52.
13. Development Administration Group, Development Administration and Training in the Sudan, University of Birmingham, 1974, p. 182.
14. D.A. Rondinelli, op. cit., p. 617.
15. Regulation, no. (not available) of 1976.

16. Public Service Regulations, 1976, R. 26.
17. Ibid., R. 65.
18. D.A. Rondinelli, op. cit., p. 617.
19. Act. No. 14 of 1976.
20. The Regional Employees Discipline Act, 1976, Section 6.
21. Ibid., Section 27.
22. Ibid., Section 26.
23. See Sudan Penal Code Act, 1974, S. 350.
24. Abraham and Robinson, Rural Development in Tanzania, p. 63, quoted by D.A. Rondinelli, "Decentralization of Development Administration in East Africa", in G.S. Cheema and D.A. Rondinelli (ed.), Decentralisation and Development (1983), p. 110.
25. D.A. Rondinelli, Administrative Decentralisation and Economic Development, op. cit., p. 621.
26. The Democratic Republic of the Sudan, Southern Region, The Six-Year Plan for Economic and Social Development, 1977/78 - 1982/83 - p. 163.
27. USAID, Country Developments Strategy Statement, p. 31, quoted by Rondinelli, op. cit., p. 622.
28. D.A. Rondinelli, in G.S. Cheema and D.A. Rondinelli (eds.), op. cit., p. 114.
29. D.A. Rondinelli, op. cit., p. 623.
30. D.A. Rondinelli, in G.S.A Cheema and D.A. Rondinelli (eds.), op. cit., p. 118.
31. Ibid.

CHAPTER 11CONCLUSIONPROSPECTS AND RECOMMENDATIONS FOR DECENTRALISATION

What conclusions can be drawn from the material analysed in the previous chapters of this thesis?

This concluding chapter attempts to review the main areas of discussion earlier in the thesis, examining the objectives and the experiences of decentralised government in a comparative context (Part I), before evaluating the future prospects for decentralisation in the Sudan (Part II). Another attempt will then be made to present recommendations which would seem appropriate for the establishment of a successful system of decentralisation in the Sudan in the light of its special circumstances (Part III).

I. SUDAN'S EXPERIENCE OF DECENTRALISATION IN THE COMPARATIVE CONTEXT

A. The Concept and Objectives of Decentralisation

Theoretically, decentralisation means delegation or devolution of authority by a general government to the lower governments. Therefore, every government is strictly speaking, decentralised since no government ever transacts all its business from its headquarters in the capital - a fact also confirmed by Ronald Wraith's statements:

"... Public administration in all countries ... contains elements of both decentralisation and devolution. It is not a question of one or the other but the balance between them."¹

However, those governments usually classified as decentralised include confederations, federations and unitary governments with several patterns of decentralised systems as in Papua New Guinea, Iraq, the Sudan, Tanzania and Zambia. Even then, there are two patterns of unitary governments with decentralised systems - the quasi-federal patterns which include Papua New Guinea, Iraq and the Sudan and the integrated pattern, which is found in Tanzania, Zambia and Ghana. The difference between the two groups is that the former have similar characteristics to those of federal governments while in the latter the regional and district administrations form the same administrative hierarchy; and whereas the former exercised devolved powers, the latter had deconcentrated powers. A government exercising devolved powers can be identified from its autonomous status, budgetary and revenue-raising capacity, ability to employ staff, presence of considerable degree of powers and an elected or appointed decision-making body.

There are several objectives of decentralisation, including the effective provision of services, the accommodation or containment of secessionist tendencies, the promotion of popular participation and the acceleration of general economic development through coordinated, efficient and effective planning structures. All countries that underwent decentralisation had similar objectives except that of containing secessionist pressures which are found in Papua New Guinea, Iraq and the Sudan. As for the Sudan, the accommodation of secessionist pressures and the promotion of popular participation in government are of crucial importance. Whether these twin objectives have been achieved or not will be assessed soon.

B. The History of Decentralisation in Africa

Decentralisation in the Sudan has had a chequered history of development as found in other countries of Africa. It started as Native Administration or what was called indirect rule in Nigeria, Cameroons, Uganda and Tanganyika. This is what Alderfer referred to as traditional residues comprising Chiefs (or Kings), village headmen and other types of local leaders. Their functions were too limited to meet the changing needs of the societies. However, the traditional systems were gradually replaced by local administrations as from 1930s and 1940s. After the influential Colonial Office Despatch

of 1947,² responsible local government councils were established all over British territories. So every country inherited local government as a colonial legacy at independence but the model depended on the ex-colonial power. Whereas former British territories like the Sudan, Uganda, Kenya, Tanganyika etc. inherited the British model of local government in the form of elected, multi-purpose local authorities, - the ex-French colonies like Chad and Upper Volta had the French model. However, for the Sudan, the councils had to progress through five stages before they could become fully responsible as recommended by Dr. A.H. Marshall in 1949.³ Consequently, all councils had either appointed or elected Members. Though a little more effective than the native administrative system, the councils provided limited services too.

Unfortunately, the post-independence period was one of reaction and rejection of the colonial legacies. Thus the 1960s witnessed the general undermining or even the elimination (in some cases) of the colonial heritage. Local governments disappeared in British West Africa as there were no more local governments in any real sense with autonomous policy-making powers or control over their budgets.

However, amidst all these changes, the Sudan retained her elected local government councils established under the Local Government Ordinance, 1951, but with Provincial Administrations superimposed over them.⁴ Several reasons have been give for these drastic changes including:

- (a) The need to eliminate opponents from the political arena by centralizing powers.
- (b) The initial belief that central planning would be rational for rapid economic development in the presence of widespread poverty.
- (c) The hangover of centralisation from the colonial period was a significant influence.

However, by the 1970s centralisation was found to be unsuitable for rapid economic development coupled. It could neither accommodate or contain desires for secessionist pressures nor promote popular participation in government. Thus the Sudan had to take a leading role in establishing broad regional and local government systems to meet these objectives. Hence the establishment of the Southern Regional Government in 1972, other regional governments in 1980 and the local government councils at provincial levels in 1971 and their subsequent modification in 1981. Iraq did the same for the Kurds in 1974 and Papua New Guinea followed suit in 1976.⁵ But the systems were defective in several ways as analysed in the thesis.

C. The Design of Decentralisation

The design of decentralisation, which includes the structural set-up, the organization, the allocation of powers and the arrangement of inter-governmental

relationships are important factors which need to be properly worked out if decentralisation is to be successful bearing in mind that so far there is no generally approved model suitable for any country. Every country must therefore design its own system of decentralisation to suit its local circumstances. The quasi-federal pattern found in Iraq, Papua New Guinea and the Sudan are primarily aimed at preserving national unity in diversity; whereas the integrated multi-tier system as established by Tanzania, Zambia, and even the Sudan under the People's Local Government Act, 1971, was specifically meant to promote popular participation in government. This pattern followed the French-prefectoral model but combined with the element of one-party control similar to the communist model. It was originally intended to widen the base for the promotion of popular participation as stated, but it has been abandoned in both the Sudan and Tanzania. Whereas that of the Tanzanian system strengthened central government control over local councils after abolishing the elected District Councils inherited at independence, the one in the Sudan "recentralised" all powers decentralised from the central government onto the Provincial Commissioner in effect. Furthermore, the councils in both Tanzania and Sudan were full of ex-officio government officers and party functionaries with less elected councillors. In the Sudan for example a quarter of the seats were reserved for women who declined to take them for social reasons. The effect was to promote departicipation instead of participation. Consequently, both the Sudan and Tanzania reverted to the

models of elected councils in 1981 and 1982 respectively.⁶

The form of decentralisation can also be problematic if geographically limited to certain parts of the country or if not uniformly applied all over the country. For example, the Southern Sudan was the only area of decentralisation in "a sea of deconcentrated authority" before 1980. Even then it remained relatively more powerful than the Northern regions until 1983. Up to now the Kurdish Region in Iraq exercises decentralised powers alone; Papua New Guinea was the only exception which applied decentralisation all over the country and under a uniform system too. Hence the relative stability in Papua New Guinea as compared to the Sudan and Iraq.

Structural problems have not been common with local governments. As we have seen they normally arise where the units are either too large or too small to be viable. The Sudan experienced such problems particularly during the period of the People's Province Executive Councils (1971-1980). The main problems arose from the sizes of the councils and the number of tiers established. In the first place the councils were too large to be viable (the minimum being about 50,000 square miles). Secondly, there were not less than three tiers of local government councils: the province, the district, the rural and the village levels. While all functions and resources were assigned to the Province, the rest had undefined powers, they were to exercise powers delegated to them by the Province Council which the latter never did. So

confusions and conflicts of jurisdiction were inevitable. These problems were, however, likely to be eliminated following the establishment of smaller single-tier Area Councils in 1981.⁷

The Sudanese and Papua New Guinean examples show that the scheme of power distribution is similar to that of federal systems based on exclusive powers assigned to either the superior or inferior governments or to both concurrently. Whereas, Papua New Guinea has both exclusive and concurrent lists, the Sudan adopted a single list with qualifications. In addition to that, the distribution of powers between the regional and local governments was not well balanced. For example, the Southern Region was expressly prohibited from "planning for economic and social development" while the People's Provinces Executive Councils and Area Councils which were more inferior were not. The powers were also defined in general terms and were largely imprecise. For example, the Southern Region was authorised to mine "without prejudice to the central government"⁸ on the discovery of minerals; the region was exempted from the general prohibition in carrying foreign trade in case of border trade but yet it was required to obtain consent of the central government from time to time with regard to certain unspecified commodities; it was not certain whether the regions could also incorporate and wind up companies etc. These over-generalisations inevitably resulted in conflicts and contradictions as analysed in Chapter 7.

With regard to the intergovernmental relationship, there were those outstanding features between the central and regional governments in the Sudan.

- A. The dominance of the President of the Republic and of the SSU over the regional governments. For example, he had the right to appoint and dismiss Governors, Deputy Governors, Commissioners and Regional Ministers.⁹
- B. He was to regulate the relationship between the Central Government Ministries and the Regional Ministries as he saw fit by issuing decrees or directives to that effect.¹⁰
- C. He had the power to declare a state of emergency or dissolve the Regional Assembly, and thereby the Regional Executive without consulting the Regional authorities. He could also protect the interests of a region if they petitioned him and he felt like doing so. Incidentally, these overriding powers enabled the President to dissolve the Regional Assembly in the South very frequently.¹¹

Thus the position in Papua New Guinea was comparatively better in that provisions for consultation and in particular for the establishment of the Premier's Council, which assist in the normalisation of the relationship between the Central and Provincial governments. In Tanzania and Zambia the decentralised governments were, however, totally subordinate to the Central Governments.

D. The Financial Arrangements

Decentralised governments require adequate funds to manage them and invariably, all decentralised governments receive grants from the Central government. Whereas some, as in Tanzania, are entirely dependent on grants, those in the Sudan and Papua New Guinea have their own sources of revenue too. They can budget against these sources which are then supplemented by the grants in aid because the local taxes or fees are inadequate to meet their demands. However, the problem that arises from the sharing of revenues is to adopt an equitable and comprehensive formula which would balance the needs of the various systems. No country has been able to do this very satisfactorily. The Sudan affords one of the worst examples in this respect due to its deficit grant system. It ignored important criteria such as derivation, need, equality and so forth. Deficit financing showed serious imbalances both vertically and horizontally in the distribution of revenue in the Sudan.¹² Moreover, it did not give any incentives for the inferior governments to increase their own revenues or make best use of their resources in expectation of deficit financing. Instead it encourages the lower governments to "bid" for more than their needs, thereby inhibiting the proper allocation of national revenue. In this way it prevents proper planning of services at local level since the available resources would not be known or reasonably anticipated until after the approval of the budget. Worse still, it encourages

arbitrary cuts since national resources would not be sufficient to meet all deficits.

National revenue allocation in Papua New Guinea was, however, much more rational and balanced because there were several categories of grants available to the inferior governments. These included:-

- (a) Conditional grants.
- (b) Unconditional grants.
- (c) Unconditional shares of special tax revenues.
- (d) Unconditional shares of distributable pool derived from a combination of central taxes.
- (e) Combination of the above forms of transfer.¹³

Whereas conditional grants guaranteed minimum standards, unconditional or block grants give greater autonomy. Moreover, a provincial government could obtain extra funds by submitting a budget to that effect to the central government.

Comparatively, the financial position of the decentralised governments were weakest in Tanzania and little stronger in Zambia because in Tanzania, both the Regional and District Development Committees were entirely dependent on grants from the Central Government,¹⁴ while in Zambia the Provincial Governments obtained grants from the Central government but the Districts had their own sources of revenue.¹⁵

By far the most comprehensive and equitable though

still problematic formula for distribution of revenue in a decentralised system is found in Nigeria adopted in 1981. For it was based on several factors including needs - equality, derivation, minimum standards, and an elaborate system for its administration and adjustment.¹⁶

E. The Position of Skilled Manpower

The lack of skilled manpower worsened by inexperienced and inefficient available manpower is prevalent in all decentralised systems studied. The Sudan suffers more than most of them due to its weak manpower policy and the brain-drain to the Middle East.¹⁷

F. Political Factors

Although political commitment among national leaders is crucial for the success of decentralisation, the level of political support found in both Sudan and Tanzania was insufficient. Despite efforts made and pressures brought by Presidents Numeiri and Nyerere to encourage people to support decentralisation, their undertakings were largely unsuccessful.¹⁸ However, there was absolute support for decentralisation in the Southern Sudan reflecting the fact that it had all along fought for self-government since 1955.

In order to make decentralisation succeed it is therefore necessary, among other things, to mobilize political support for decentralisation in all countries and especially in the Sudan. Attempts were made to abolish the role of traditional rulers in the Sudan so as to widen the base for popular participation and promote political commitment for decentralisation among the masses but the efforts were unsuccessful. Instead the isolation of traditional rulers from local government in the Sudan led to mistrust of the SSU members, improper collection of taxes and left many tribal disputes unsettled, thereby increasing insecurity and instability. Though traditional rulers have been accommodated in Zambia, Nigeria and Ghana, much remains to be done in improving their role and their relationship with the local government councils.¹⁹

G. Administrative Support

Central governments in Tanzania and the Sudan did little to assist the lower governments in terms of administrative support despite the obvious need. In Papua New Guinea, however, Provincial Governments were greatly assisted by the Central Government in terms of personnel, directives, training and so on.

H. Environmental Factors

Problems of infrastructure are common in all developing countries concerned to implement decentralisation policies. The Sudan, Tanzania and Papua New Guinea are particularly faced with inadequate communication networks, given the vastness of the territory in the case of the Sudan and Tanzania and, in Papua New Guinea, an impenetrable terrain and the scattered nature of the islands.

J. Supporting Institutions

Finally, the developing countries also lack private and public institutions like companies, cooperative societies and other associations to reinforce the economic and political structures under decentralised governments. These are especially lacking in the Sudan.

II THE PROSPECTS FOR DECENTRALISATION IN THE SUDAN

What is the future for decentralisation in the Sudan?

In attempting to predict the future for decentralisation in the Sudan, the views of all the

political forces at play have to be considered. In May 1986, the most dominant political parties in the country, namely the Umma and the National Unionist Party, pledged to reintroduce the 1968 Republican Constitution which was examined in Chapter 3.²⁰ Briefly, that constitution advocated limited decentralisation of powers to regional government within a united Islamic state of the Sudan. However, as already discussed, that constitution was unacceptable to the Southern Sudanese and the pro-leftist parties. Hence its immediate overthrow in May 1969 by the army. Such a constitution might pass through parliament since the two parties command the majority of the seats but opposition to it is likely to grow stronger.

Whether the traditional political parties (the Umma and the National Unionists) like it or not the pressure for more decentralisation of government is on the increase. This is done both politically and by persistent guerrilla warfare in the South. The Rural Solidarity Group (RSG), formed in 1985, comprising fifteen political parties and associations, wrote a general manifesto in December 1985, as follows:

"The large size of the country and its diverse cultures and means of livelihood demand that it cannot be ruled in a centralised manner. The most appropriate system for governing the Sudan should clearly define the distribution of powers between the Centre and the Regions. In this context it is our considered opinion that the Sudan be ruled through a federal system."²¹

The group also advocated the "careful revision of Native Administrative System with a view to modernizing it and

rendering it more democratic".²²

In an interview with Colonel John Garang, the Chairman of the Sudan People's Liberation Movement and Army (SPLM and SPLA), he said:

"Sudan is a vast country ... it needs a decentralised form of government ... The Sudanese people will agree to what system of government or rule that best suits them in a broad based gathering, ... It is impossible to govern the whole of Sudan or even develop the whole of Sudan from Khartoum."²³

In light of the endemic conflict between the Sudan Government and the SPLA, some form of decentralisation of government appears unavoidable. Both parties have already declared the need for a national constitutional conference, which will constitute a forum for the discussion of all political and constitutional issues at stake. Preparations for this meeting had already started secretly and, according to Sadiq El Mahdi, the Prime Minister, the following six points had been discussed and almost resolved:

- First Point: The need to recognise that the issue to be settled is national not regional.
- Second: The need to lift the state of emergency.
- Third: The need to repeal the September 1983 laws (Islamic laws) which were legislated by Nimeri.
- Fourth: The need to set - in the interim period before the new constitution - the old constitution of 1956 as amended in 1964 to be the transitional constitution of the country.
- Fifth: To abrogate any military treaties that the Sudan was engaged in.
- Sixth: The need to declare and establish a ceasefire."²³

The negotiations had already gone a long way but they were called off by the Sudan Government following the shooting of a civilian airliner in August 1986 which resulted in the death of 60 passengers on board. As more lives continue to disappear due to war and hunger in the South, the negotiations are likely to be recommenced in the foreseeable future.

Meanwhile, following the overthrow of the 'May regime' in April 1985, the successive governments have continued to maintain the already established administrative set up at the regional and local levels.

Decree 14 was promulgated by the Transitional Military Council [TMC], purporting to restore the South as a region. The relevant text reads:

- "2. The Republican Order No. 1 1983 shall be annulled as from when this decree is enforced.
3. The provisions of Addis Ababa Accord 1972 shall be effective as general framework for the regional government in South Sudan, with exception to that which deals with administration during the interim period.
4. The three Southern Administrative Areas shall remain as they are now for the interim period under a military administration which ... shall be established by the Armed Forces General Command.
5. A joint High Command for the three regions shall be set up under the leadership of an Army Officer."

These provisions raise a number of comments. Section 2 of the Decree purported to repeal Order No. 1 of 1983 which established three regions in the South. This would have

meant the abolition of the regions as soon as the Decree came into force in April 1985. However, Section 4 of the same Decree authorised the continued existence of the three regions but as Administrative Areas. The differences between the regions and administrative areas were minimal. The administrative areas operated under Military Governors with the number of the Regional Authority members reduced from five to three. They have no Regional Assemblies too. There was no difference between the powers and functions of the regions and the Administrative Areas, however.

Section 5 provided for the establishment of "a joint High Command" for the three 'regions' under the leadership of any Army officer. This High Command was known as the Transitional High Executive Council supposed to be similar to the defunct High Executive Council for the Southern Region (for details see Chapter 6).²⁴ It was under the leadership of Major General James Loro as President of the council. However, the council had no defined functions. Presumably, it was intended to assume the functions of the former High Executive Council. Unfortunately, the Council was unable to move to Juba, the capital of the former Southern Region, due to opposition from Equatorians, the inhabitants of Juba. So the council remained confined to four rooms of the Central Post Office in Khartoum for the whole transitional period with no functions to perform. Had it moved to Juba, conflicts over powers and functions with the Administrative Areas in the South would have been inevitable - since it had no separate functions as stated

earlier. Consequently, the council was liquidated by the elected government of Prime Minister Sadiq El Mahdi in May 1986. There are talks of reviving the Council but much uncertainty surrounds its future.

Section 3 of the Decree reinstated the provisions of the Addis Ababa Accord 1972, (that is the Southern Provinces Self-Government Act, 1972), but after the transitional period. Although the transitional period has expired long since, the three regions still continue to exist as administrative areas. Thus Decree 14 was unsuccessful in reinstating the Southern Region practically.

III RECOMMENDATIONS

Is it possible to introduce an improved model of decentralisation which might be more successful?

An improved model of decentralisation would require a careful design in terms of the distribution of powers, the balance of inter-governmental relationships, the organization of the central government, the number and types of institutions to be established, compromises over the recognition of state religion, the official language and sources of legislation, including built-in mechanisms and established procedures for inter-governmental

cooperation and dispute settlement. We shall proceed to examine in detail what the above suggestions would entail.

A. The Scheme of Power Distribution

To work out an appropriate and acceptable scheme of power distribution between the central and regional governments in the Sudan is likely to pose much difficulty, due to the uneasy relationship of co-existence between the South and the North. For instance, the suggested amendments to the Addis Ababa Agreement shows that the South would as far as possible prefer to reduce the list of national matters to four only, which are: National Defence, External Affairs, Currency and Coinage, and Nationality and Immigration.²⁵ However, due to the greater bargaining strength of the North, the South failed to achieve those aims. Nevertheless it indicates the presence of enormous problems to be resolved in working out a suitable power sharing scheme between the two parts. This time the main problems are likely to arise between the Sudan Government and the SPLM over the following matters:

1. The control of socio-economic planning and development.
2. Educational planning.
3. The control of natural resources.
4. Border trade.
5. Internal security including Regional Armed Forces.

1. The Control of Socio-Economic Planning and Development

As shown in Chapter 7, the Self-Government Act had expressly denied the Southern Region to participate in the formulation and control of social and economic development plans, although this was never strictly adhered to in practice.²⁶ This time the regions would seek to omit any clause that would prohibit them from the effective control of socio-economic planning and development. However, all their plans must fall within the national framework of general plans and targets.

2. Educational Planning

Authority for educational planning was also expressly denied to all the regions.²⁷ It was a crucial factor which led to the great disappointment of Southerners when the majority of their children had to discontinue with education at early stages due to irrelevant and out-of-date curriculum, syllabuses, examinations and standards, which were all designed by the central government. The regions should therefore be encouraged to undertake an effective participation in the educational system and policymaking. Although the central government should bear the ultimate responsibility for the general standards of education in the country, the regions must at least be enabled to design the curriculum, syllabuses for Primary and Secondary

schools. The establishment of inter-governmental educational boards for the coordination of the plans and supervision of their implementation under the general auspices of the central government would be necessary. The responsibility for educational administration of institutions below universities and higher institutes of education should continue to be vested in the regions. Furthermore to promote educational decentralisation, the various regions should be empowered constitutionally to establish separate universities and consider admissions to high institutions, not only on basis of merit but also on some carefully worked out regional quota system. Thus, the wide educational disparities among regions would be reduced if not eliminated.

3. Control of Natural Resources

It goes without saying that the radical title to land and the natural resources should vest in the Sudan Government. However, it should be made possible for the regions to have control over certain resources. In this regard the exploitation of the most valuable resources such as oil, gold and chromite are likely to cause friction between the central government and the regions, especially the Southern Region. However, there is evidence to show that most Southern leaders, including those in the SPLM/SPLA, accept oil as a national rather than a regional resource.²⁸ This idea could be extended to include any mineral considered as most valuable. By way of

compensation, however, the regions should be entitled to share royalties on the minerals. For example, the region of production could get slightly more than the other regions. Furthermore, the processing of the crude material could be first undertaken in the region providing the source.

The control and exploitation of land, forests and water should be entirely vested in the regions except if needed by the central government for national purposes.

4. Border Trade

Although foreign trade is normally a central government matter, border trade in the special circumstances of the Sudan should be totally regional because of the vast size of the country and the distance between Port Sudan and the far regions in the South and West.

The regions should also have as many powers as possible for the establishment of industries especially light industries, promotion of trade, incorporation and liquidation of companies.

5. Internal Security Including Regional Armed Forces

The maintenance of peace and internal security is one

of the most essential responsibilities for regional governments. As shown in Chapter 7,²⁹ the Police and Prison Forces were only regional in the South. The other regions depended on the Police and Prison Forces of the central government. For the purposes of uniformity and greater decentralisation, the recruitment, promotions, discipline and dismissal of the Police and Prison Forces should be regional in the whole country. The present decentralisation of the Fire Brigade Forces discussed in Chapter 7 is considered adequate.

It would, however, appear that the establishment of Regional Armed Forces in the case of the Sudan is necessary since constitutional provisions for the protection of regional autonomy have proved to be inadequate. Southerners strongly believe that President Numeiri was able to abrogate the Addis Ababa Agreement because the absorbed Anyanya Forces were integrated into the Sudanese Army and distributed all over the country, contrary to the original intention of maintaining an equal number of 12,000 men from the Anyanya and the central government forces in the South to guarantee the safety of the autonomy for the South. As long as mistrust continues to prevail in the relationship between the North and the South, a similar provision to that of 1972 or even a more powerful one will be required.

B. Distribution of Financial Powers

The federal principle of revenue-sharing should be upheld but considerably modified based on the recommendations of a committee of experts, debated and passed by the Assembly. In particular, sources of revenue for the regional and local governments should be updated. The irrational deficit grant system should be replaced by a more comprehensive and equitable formula for sharing national allocations based on factors like need, equality and derivation. The Nigerian example, devised in 1981 (see Chapter 9 for details), could be followed. Appropriate committees should be established to administer the prompt transfer of the funds and recommend necessary changes from time to time. The Nigerian system of establishing machineries to implement the financial provisions mentioned in Chapter 9 is also advocated.³⁰

C. The Organization of the Central Government

The Central Government should be more representative of the whole Sudan than it was in the past. Seats in the National Assembly and the Central Executive should be allocated proportionately to the regions in the country. In other words, the regions should have proportional representation in the National Assembly, the Cabinet and the Civil Service.

D. Duality of Institutions

In spite of the acute shortage of skilled manpower, which favours the sharing of certain institutions such as courts, election commissions and the public service, it is recommended that every government (Central or Regional) should have its own legislature, executive, judiciary and public service. In other words the judiciary should no longer remain a central government monopoly. The idea of having an integrated public service should be abandoned. Furthermore, the regions should have proportional representation in the National Assembly, the Cabinet and the Civil Service.

E. The Question of State Religion

Since the Northern population of Sudan is persistent towards Islamising the constitution and because the population is largely divided into two major communities, 60% Muslims living in the North and a substantial 40% non-Muslims largely concentrated in the South, to impose a national religion is likely to exacerbate conflict between Muslims and non-Muslims. However, a totally secular constitutional structure would not meet the aspirations of the majority community to live under an Islamic dispensation. An acceptable compromise would involve the

regions being empowered to opt to designate a religion as the official faith of that region.

F. Duality of Language

It is appropriate for the Sudan to use two official languages, English and Arabic because the North is predominantly Arab speaking while the South has a considerable and influential English speaking elite.

G. The Machinery for Inter-governmental Cooperation

Machinery for inter-governmental cooperation and coordination should be introduced. This should include such bodies as:

- (a) a National Planning Commission;
- (b) a National Development Council;
- (c) an Inter-State Council (or Councils).

The Planning Commission should be charged with the collection of plans of various states, the drafting of national plans and advising on the implementation of the plan.

The National Development Council, on the other hand, should lay down the outline of the economic planning and

supervise the Planning Commission. It should be composed of the Central Cabinet, Members of the Planning Commission and the Executive Heads of the States.

The inter-State Council is to facilitate consultation and coordination among State governments. The States could also be grouped into zones for that matter.

In addition, a special constitutional court should be established to adjudicate on inter-governmental conflicts in the country.

H. Method of Election to the Central Assembly

Elections to the Assemblies should be wholly based on direct secret ballot from single member constituencies. The duality rule should continue to apply - that is no member should hold seats in the regional and the national assemblies simultaneously.

I. Unicameral or Bicameral Legislature

A unicameral legislature is often preferred for being less costly and much faster in legislating. But bicameral legislatures contain experienced legislators in the Senate and enables different principles of elections so as to

achieve more representative legislatures. Usually the central legislature represents both the unity and regional diversity of the country but seats in the second chamber are distributed in such a way as to represent the equality of the decentralised states. A bicameral legislature is therefore recommended for the Sudan, in the light of these advantages.

J. Locality Rule

It is recommended that seats should be restricted to the residents of the constituency or region they represent, to guarantee appropriate representation. Sudanese voting from abroad should cast their votes in the constituencies where they lived six months before leaving the country. This will curb the malpractice of all Sudanese resident in Saudi Arabia or any other country registering to vote in the Southern constituencies which they have never seen or lived in.

K. Control of Franchise and Electoral Laws

Electoral laws should remain uniform throughout the whole country. However, a permanent National Electoral Commission and a Regional Electoral Commission also on a permanent basis for every region should be established to

conduct elections, recommend the revision of electoral laws and changes in the boundaries of the constituencies. The practice of appointing ad hoc electoral commissions should be discarded because they lack continuing commitment to their tasks.

L. The Number of Regions

The question of how many regions should exist in the Sudan is likely to cause great difficulties. Sudanese are generally divided over this issue. Whereas some regions like Equatoria and Upper Nile prefer regions as in 1983, others want the Sudan to go back to five regions as in 1980. Yet some would prefer four regions, South, North, East and West, or even two, South and North. There are four reasons for the existence of the present 9 regions:-

- (1) For the protection of regional minorities, especially the minorities in Equatoria.
- (2) The East objected to unity with the North since 1980.
- (3) Darfur strongly urged that it be recognized as a region separate from Kordofan also in 1980.

The three reasons above are more associated with regional hostilities amongst the communities.

- (4) Above all, the States should be of reasonably uniform sizes, in order to promote healthy competition and rival efficiency.

However, this division ignores crucial factors like

the scarcity of financial resources and skilled manpower, prerequisites for the success of decentralisation.

To establish two regions of the South and the North only would be "to pitch them against each other in a continual battle of ascendancy" as Professor Nwabueze pointed out. Three regions would be a similar case.

Therefore, the other viable alternative left is to dismantle the 9 regions and replace them with the following four:-

- (i) The North
- (ii) The East
- (iii) The West
- (iv) The South
- (v) Plus the National Capital.

Such an arrangement would more or less conform with the recommendations of the Technical Committee on Decentralisation 1980. However, some specific provisions would have to be inserted into the constitution to guarantee the protection of regional minorities.

Below are the recommended methods for the protection of regional minorities

- (a) Inclusion of non-justiciable directive principles of state policy. These are general libertarian principles which serve as aid to interpretation. It is hoped that these changes will bring more judicial input in the Sudanese constitutional law cases.

- (b) Provisions for special seats in the regional legislatures for the representation of minorities; and the appointment of the members of the regional executive on the basis of agreed quota to ensure minority presence and prevent majority domination.
- (c) Provision for the establishment of special institutional arrangements such as the Ombudsman, the Public Service Commission, and so forth. In this connection, the provision for the appointment of Regional Ombudsman should be retained but the Regional Ministry of Public Service should be replaced by an autonomous Public Service Commission.
- (d) Provision for judicial action to enforce machinery of litigation, prosecution and constitutional review of judicial action. In particular, the Special Constitutional Court should have original jurisdiction in any dispute between the central and the regional or between regions. It should also have appellate jurisdiction from appeals arising from courts of appeal. Its decisions should be final.
- (e) Provisions designed to secure equality and fairness under the law. For example, well-trained and disciplined police forces; independent criminal prosecution departments; safeguards for the accused; plus executive action to ensure fair decision-making

such as a high standard of training for administrators, provision for appeal procedures in administration departmentally, by independent tribunal and an internal system of administration of courts.

- (f) Parliamentary control and personal law protection provisions such as application of family law, laws of succession and land law.

M. Provision for participation of regions in certain matters of foreign affairs such as international loans, border trade and consent to treaties with repercussions on the region.

- (1) Regions should be empowered to raise loans from international sources with the approval of the Ministry of Foreign Affairs and the Bank of the Sudan.
- (2) If a treaty is likely to affect the interests of a region, then it has to be endorsed by that region if the treaty is to be binding on it.

N. Creation of New Regions

Unfortunately, such a provision has never been thought of in the Sudan. It is therefore appropriate to state that a request for a new region has to be supported by two-thirds majority vote of the members representing the area and a simple majority of the National Assembly. Such a provision would enable the creation of new regions without necessarily causing the amendment of the law as provided by the Self-Government Act, 1972.

O. Political Parties

1. Although in practice the nature of Sudanese society makes it impossible to envisage a political party commanding widespread support in both the Muslim North and the Non-Muslim South, nevertheless there must be positive encouragement in the constitution for the growth of political parties based on national representation. A precedent is established by the Nigerian 1979 Constitution³¹.

This suggests that no association shall function as a political party unless:-

- (i) the names and addresses of its officers are registered with the National Electoral Commission;
- (ii) the membership of the association is open to every

citizen of the Sudan irrespective of his place of origin;

- (iii) a copy of its constitution is registered in the principal office of the Commission in such form as may be prescribed by the Commission;
- (iv) any alteration in its registered constitution is also registered in the principal office of the Commission within, say, 30 days of making such alteration;
- (v) the name of the association, its emblem or motto does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of the Sudan; and
- (vi) the Headquarters of the association is situated in the National Capital.

2. Furthermore, the rules of the political party should provide:-

- (i) for the periodic election on a democratic basis of the principal officers and members of the executive committee or other governing body of the political party; and
- (ii) ensure that the members of the executive committee or other governing body of the political party reflect the national character of the Sudan;
- (iii) this might mean that:-
 - (a) the election of the officers and the members of the executive committee of a political party shall be deemed to be periodical only if made at

regular intervals not exceeding, say, four years; and

- (b) the members of the executive committee or other governing body of the political party shall be deemed to reflect the national character of the Sudan only if the members thereof belong to different regions not being less in number than say two-thirds of the regions comprising the nation.

3. The aims and objectives of the political party should conform with the fundamental objectives and the directive principles of state policy. These would include the political, economic and social objectives of the Sudan as well as foreign policy objectives and the national ethic.

4. Control of the political parties is also necessary, so finances of the political parties should be subject to scrutiny by the National Electoral Commission which should also be entitled to detailed annual statements and analysis of the sources of funds and other assets of the parties together with a similar statement of their expenditure in such form as the Commission might require. No political party should hold or possess any funds or other assets outside the Sudan, nor should it be entitled to retain any funds or assets remitted or sent to it from outside the Sudan, and any funds or other assets remitted or sent to a party should be paid over or transferred to the Commission

within, say, 30 days of its receipt with such information as the Commission might require.

A further measure to reduce proliferation of parties would be the prescription of a minimum of the national percentage of the voters before a party could get a seat in any assembly, say, at least 5%.³²

P. The Reform of Local Government Law

On the whole, the People's Local Government Act, 1981 is appropriate law and should be retained together with the provision incorporating it into the constitution also as to accord it constitutional significance. The Councils should also retain their corporate status, exercising devolved powers. They should remain single-tier authorities based on the present boundaries of Area Councils. However, the following modifications are suggested:-

1. There should be no provision for the representation of the alliance of working forces and women. There is no harm in leaving the total sizes of the councils as at present.
2. Councillors should continue to be elected by direct secret ballot from single ward constituencies, but their standard of literacy should be specified. To guarantee effective participation, the successful

completion of junior secondary school (post-primary school) is deemed necessary.

3. Traditional rulers should participate but their role should be limited to the collection of taxes, the adjudication of customary cases and the settlement of inter-tribal disputes.
4. Council chairmen should continue to be elected but their responsibilities should be precisely defined.
5. The Chief Executive should continue to be the senior administrator in the Area and he should remain responsible for administration and the supervision of staff, as well as acting as Secretary.
6. Every Council should have its Treasurer, separate from the Chief Executive.
7. There should be express requirements for the Departmental Heads to possess and exhibit good qualities of leadership.
8. Functions of the local councils should remain as under the People's Local Government Act, 1981 - that is to say, to provide internal security, primary and junior secondary school education, health facilities, the construction of minor roads, the dissemination of information; housing, agriculture, veterinary services and to undertake minor development projects and

- councils should be required to play a more significant role in development planning and should establish relevant machineries for planning, coordination and monitoring of plans.
9. The financial arrangements should follow those of Nigeria which have already been recommended in the Constitutional Provisions (see B above). However, provision should also be made for establishing Loans Boards from which the Councils can borrow. Local Councils should continue to be free to spend but the keeping of up-to-date books of accounts and auditing must be strictly enforced.
 10. To promote loyalty and efficiency in local government services, every State should establish a Local Government Board. More Institutes for Public Administration and Management should be established. In particular, that for the South should be seriously reconsidered.
 11. Local governments must remain under the responsibility of State Governments who should also maintain the necessary controls over them.
 12. The post of the Provincial Commissioner would no longer be necessary because there would be an elected chairman for every Area Council. Moreover, the SSU has been abolished and replaced by multiparties. The Chief Executive would be a better treasurer, since he

would be a professional administrator who was a political appointee. Supervision of security and review of council work could be more efficiently performed by the staff of the Regional Ministry of Regional Administration. Hence the post of the Provincial Commissioner should be abolished. This would also remove his coercive political influence over the councils and save on the costs of administration.

Q. Finally, in the circumstances of the Sudan, where the cooperation of the central government would be difficult to obtain, it is recommended that the single list option setting out powers of the central government is used, and the residual powers are vested in the regions. This would help to reduce conflicts and confusion. However, a provision should be added enabling either government to delegate its powers to be exercised by the other if that government consents. Such an arrangement would afford some room for cooperation.

However, if all these modifications were achieved, the Sudan would have moved towards a federal structure. This does not by all means suggest that effective decentralisation inevitably leads to federalism. Such a

conclusion is only possible in the special circumstances of the Sudan; otherwise decentralised governments including successful ones as in Papua New Guinea, do not always end up in federal governments.

The next problem is how effective decentralisation could be prevented from evolving into a federal structure. The main distinction between federations and decentralised unitary governments lies, of course, in the amendment process of their laws. In federations the coordinate relationship between the federal and state governments is entrenched in the single constitutional document which defines the powers and functions of both federal and state governments. The amendment of a federal constitution is usually difficult in that the process has to be undertaken by a Constituent Assembly, often requiring some special majority of say two-thirds or three-quarters of the Assembly to pass the amendment. On the other hand, the amendment of an organic law which usually prescribes the powers of the regional governments in a decentralised unitary system would appear easier because organic laws are invariably amended by the national legislature. However, the amendment of an organic law may become as difficult as that of a constitution if a rigid amendment clause is inserted into the organic laws which may also be entrenched into the constitution itself. In such a case the prevention of a successful decentralised government from becoming a federal government is possible. Unfortunately, this was the experiment unsuccessfully tried in the Sudan through the Southern Provinces Self-Government Act, 1972.

The amendment provision of the Act as discussed in Chapter 5 had required a special majority vote of 75% of the members of the National Assembly supported by two-thirds majority vote of the Southern masses in a referendum held in that region. Owing to the rigidity of the provision, the President felt obliged to abrogate the Act each time he wanted to introduce changes in the South, (the dissolutions of the Southern Regional Assembly discussed in Chapter 8 confirm this point).

Thus, the safeguarding of an effective decentralised system from becoming a federal government is impossible in the special circumstances of the Sudan because of the flagrant violations of law by the national leaders.

In conclusion, it would seem that the Sudan is so vast and diverse in terms of its ethnic, cultural, linguistic, religious and geographical composition that it provides formidable problems for the constitutional draftsman. In order to provide a suitable framework for the necessary nation-building process on the basis of true national unity, a fully-fledged federal constitution is seen as appropriate. It must be admitted, however, that federal systems are notoriously difficult to operate because they depend upon the consensus of the federated community. As W.S. Livingstone put it:

"The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology but in forces - economic, social, political and cultural - that have made the outward forms of federalism necessary ... the essence of federalism lies not in the constitutional or institutional structure

but in the society itself." 33

As this thesis has shown, political commitment to decentralisation in the Sudan was sadly lacking at the centre. It therefore follows that the prospects for the immediate success of federalism is bleak. Further conflicts and political turmoil appear inevitable before political leaders are driven to the compromise which is necessary to avoid fragmentation.

NOTES

1. Ronald Wraith, Local Administration in West Africa (London: George Allen and Unwin (2nd edn), 1972, p. 117. See also Henry Auoko-Frim Pong, "Problems of Local Administration in Ghana Today" in A Revival of Local Government and Administration?, Collected Seminar Papers, No. 23, University of London, Institute of Commonwealth Studies, January-May 1978, p. 23.
2. See Chapter 1, p. 31
3. See Chapter 3, p. 133-134
4. See Chapter 3, p.13 and Chapter 4, p.145
4. See Chapter 5.
5. Ibid.
6. See Chapter 5 p.294 and 305.
7. See Chapter 5, p.302
8. See Chapter 7, p. 396
9. See Chapter 6, p. 318
10. See Chapter 8, p. 463
11. See Chapter 8, p. 472-474.*12.Chapter 9.pp.529-537.
13. Laws of Papua New Guinea Organic law on Provincial Government 1980, sec.63
13. Ibid.
14. See chapter 5 p.308
- 15. Laws of Zambia; Local Administration Act, 1980, sec.30
16. See Chapter 9 p. 511-513
17. See Chapter 10 p.511-513
18. See chapter I pp.37-42
19. Personal knowledge.
20. Chapter 3. pp.165-179
21. Sudan Rural Solidarity Political Declaration, Friday, 27th December, 1985, p. 3.
22. Ibid., p. 2.
23. See Africa, No. 177, May 1986, p. 20.
23. Sadiq El Mahdi, "Sudan the Challenge of Democracy",

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pp. 8-9.

24. See Chapter 6, p. 322-336
25. See Chapter 5, p. 270
26. See Chapter 7, p. 405
27. Ibid., p. 397
28. D. Johnson, "North-South Issues" in Peter Woodward (ed), Sudan since Numeiri, School of Oriental and African Studies, 1986, p. 47.
29. See p. 440-443
30. See p. 5II-5I3
31. See The Nigerian 1979 Constitution, SS 201-209.
32. A similar practice is found in West Germany.
33. W.S. Livingstone, Federalism and Constitutional Change (1956), pp. 1-2.

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