

Abstract:

- This document provides a historical background about the evolution of the native administration system and approaches adopted by colonial governments towards native administration at the time. It also highlights Milner Committee Report which remains confidential. In the document it is submitted that due to 1924 nationalistic movement in Sudan the colonial government strengthened the tribal system in order to weaken the momentum of the Sudanese nationalist movement aligned with Egypt at the time. This has given the British colonial masters the opportunity to build the tribal system as well as to use tribalism as a shield from the attacks of, what Sir John Mafy called, 'the political clowns'. The colonial government at that time has serious concerns about the rise of the star of Abdel Rahman Al-Mahdi as an influential figure in rural areas and the alliance with Sudanese intellectuals who pioneered Sudanese nationalist movement. This alliance between traditional 'bigoted' forces aligned with the Mahdia and the modern nationalists will no doubt threaten or undermine the authority of the colonial government.
- Therefore, the document states that the main colloidal objective between 1927 and 1933 is to create 'a deterrent current' against the Mahadist Movement through supporting the tribal base of traditional leaders and strengthen their authority or power structure. The colonial government has also serious concerns when it later discovered that Abdelrahman Al-Mahadi managed to win the hearts and minds of traditional tribal leaders. In this context the colonial government rushed the introduction of legislations related to native administration courts both in the north and the south. These courts were considered as political and administrative institutions which operate under the supervision of the executive branches of the government including government inspectors. Despite the objection of members of the judiciary to the fact

that the judiciary is working under executive supervision they nevertheless accepted this system as an 'administrative system' rather than a judicial one.

- However, after the introduction of legislations regulating native administration courts, no real institutional progress was made and all hopes to create a viable legal system were faltered under tribal 'bigots' and artificial tribal institutions lacking solid institutional structure. The consistent endeavours and efforts to give tribal and traditional leaders judicial as well as tax levying powers as well as executive powers were all failed due to lack of independent financial resources, education and competence.
- Although the native administration system was advocated by the British colonial administration, the policy is to replace it by local government system and make it more democratic. Despite this policy some rural areas of tribal nature and native administration system were maintained. Accordingly, Sudan was divided into three main areas: Red which symbolizes big towns; burgundy which symbolises developed areas and black which symbolizes tribal areas.
- The Sudanization process pushed the British colonial administration to make some amendments to what is called the 'system of native administration judiciary' according to which the Chief Justice was given jurisdiction to supervise native courts. This power of the Chief Justice further delegated to other provinces and resident Judges assumed responsibilities. This creates, for the first time, duality or conflicts between the powers of the native courts, as administered by traditional tribal leaders, and powers of the judges representing the judiciary.
- The report concludes that native courts remained since its inception and during all stages of its evolution the executive enjoys arbitration or juridical powers. It is quite obvious during the condominium colonial Rule that there are distinction between 'State Courts' which apply criminal laws and the legal principles of civil laws and native courts. The latter courts which

apply customary laws are considered as part of the administrative or executive branches of government and hence there is no conflict of jurisdiction.