

# **Council of Traditional Authority Leaders (COTAL) Workshop**

**Organised by the Local Government Board (LGB) of the  
Government of Southern Sudan (GoSS) with the support  
of the Federal Department of Foreign Affairs of  
Switzerland (FDFA).**

## **REPORT**

**South Sudan Hotel II, Juba.**

**December 02-04, 2009**

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## ***Introduction***

In line with the implementation of the Local Government Act, the Local Government Board and its partner the Federal Department of Foreign Affairs of Switzerland have organised a three-day workshop on the Councils of Traditional Authority Leaders in Juba in December 02-04, 2009. The main objectives were: 1) to present and discuss the Local Government Act's provisions on traditional authorities; 2) to assess the proceedings in each state with regards to the legal framework and the formation of the councils; 3) to define a way forward to establish effective councils at the state level.

The participants were four Deputy Governors (Jonglei, Northern Bar El-Ghazal, Central Equatoria and Lake states), the State Ministers of Local Government, the Directors General, the Directors for Traditional Authority as well as up to three traditional leaders from each state. Representatives from UNDP, UNMIS and GTZ also participated.

Professor Kwesi Kwaa Prah, from the Centre for Advanced Studies of African Society (CASAS) in Cape Town was the guest speaker, while the Ministry of Legal Affairs and Constitutional Development (MoLACD) made a key contribution.

Looking at the final objective of establishing effective Councils of Traditional Authority Leaders (COTALs), as specified in the article 119 of the Local Government Act, this document provides a concise report of the discussions held at the workshop. It seeks to impart the most relevant and practical information to serve as a useful tool in the process of establishing the COTALs. Three days of discussion produce a considerable amount of information, hence selecting what is to be reported entails a part of subjectivity. It is therefore critical to stress that all the reporting here has been scrutinized and approved by the two main presenters, namely the Local Government Board and the Ministry of Legal Affairs and Constitutional Development, while Professor Prah provided the summary of his presentation.

## ***Recommendations & Resolutions of the Workshop***

- i) The existing Councils of Traditional Authority Leaders should be adjusted so that they are compatible with the Local Government Act and the state legislation.
- ii) State authorities must steer the consultation and legislation process to provide a legal framework for the Council of Traditional Authority Leaders at the State level.
- iii) The Local Government Board provides standards, guidelines and advice upon request by the States.
- iv) Each state has to have a focal point whose task will be to coordinate and follow up on the process at the state level, while regularly updating the Local Government Board.
- v) A follow up workshop with the States focal points will be convened by the Local Government Board in the first quarter of 2010.

## ***Position of the Local Government Board***

Traditional Authorities are recognised, notably by *ICSS art. 175*. A forum for the traditional authorities is needed in order for them to play their rightful role in the society.

The process of establishing operating Councils of Traditional Authority Leaders shall take place at the state level. *The responsibility lies with the State Minister of Local Government.*

The role of the Local Government Board is thus to provide guidelines and clarification, where necessary.

There are already five COTALs (Eastern Equatoria, Central Equatoria, Western Equatoria, Lakes, Warrap) however these councils have no legal basis since they were created before the Local Government Act came into being. Their statutes simply need to be adjusted to be compatible with the Local Government Act.

The Local Government Act is a law for the community. It shall improve governance by clarifying the situation between the traditional system and the modern system.

The Local Government Board has developed with its partners a *work plan* to implement the Local Government Act.

These COTALs should take the form of a *forum or platform*, to meet, and discuss and build consensus. COTAL shall not take the form of a parliament, that is to say that it should not legislate.

The COTALs should also not be in contradiction with the government. If issues are not clear, clarification should be sought. For example voter registration is not the role of the council but of the government.

According to the constitution you cannot sit in both the council and the government. Particular cases can be discussed.

The issue of membership needs to be discussed. For example is it only for chiefs or also spiritual leaders?

The COTALs have not as yet clear legislation to define their role, status, functions, etc. The model provided below was presented at the workshop and can serve as an initial draft. The various state legislations on the COTALs will need to be harmonised between the ten states so as to avoid major differences. For example we would advise a uniform terms of office of four years.

COTALs shall also seek ways of funding and sustaining themselves. This would help them maintain a level of independence.

Should kings sit in the COTALs? This is a hard task for states such as Upper Nile. One possibility is that kings should nominate a delegate to the COTAL.

Our traditional authorities are part and parcel of the local government. They are the custodians of our customs and traditions. Yet we need a limitation. Not everyone can call himself/herself a chief.

Once the formation of all the COTALs is completed, there will be the final formation of the council at the GoSS level.

The Local Government Board can help with a *model of a bill* to support the drafting process. This model should however not simply be copied but rather serve as a basis for further adjustment and detailing at the state level. Finally a *consensus between the State authorities and the Traditional Authorities* should be reached on the draft.

Thorough *consultations on the draft bill with representatives of Traditional Authorities* are paramount.

Rules and regulations will be done by the Local Government Board and distributed to relevant parties.

Each state shall nominate a *focal person* who will be the key contact person in the drafting process. This person will come to *the follow up workshop in Juba* to clarify and harmonise the drafts.

The States and Traditional Authorities should not hesitate to contact the Local Government Board for any question. For legal matters, the first person to contact is *the legal adviser at the state level*.

Immunity of commissioners can be lifted. The boundaries of work between the commissioners and the traditional authorities need to be further clarified. If there is an issue with a commissioner, it shall be raised to the SMoLG and then to the Governor. *The Traditional Authority Bill shall pronounce on this.*

There shall be a conference between the LGB and the judiciary in order to clarify the differences between judges and traditional authorities.

Customary law councils are provided for in the LGA. They did not exist before. They will be at the county level. They shall regulate traditional authorities in each county and supervise their work in the courts.

It is the *right of women to be part of the COTALs*.

According to the tradition, *no-one can dismiss a chief but his/her people*. However when he/she commits a crime like murder, he/she needs to be brought to justice. If people believe the case against the chief is genuine, they will remove him/her. If they want to keep him, they will vote for this. If people so decide, the decision of commissioners will be null and void.

### ***Presentation by MOLACD***

*Mrs. Mary Ajith*

Duties of MOLACD:

- Drafting of government legislation.
- Overseeing the progress of the legislation.
- Printing and publishing of laws.

The process begins when an institution or ministry considers that the existing legislation is unacceptable and there is a need to introduce changes or amendments or to initiate new policy.

Drafting stages:

Once the draft bill is received with a soft copy by the MoLACD, it is forwarded to the Department of Legislation for study. The latter carries out the certification process whereby it checks 1) if the Bill complies with the constitution and the existing laws, 2) if it is in line with legal principles and if the government policy is correctly captured, 3) if it is integrated within the existing legal framework, 4) if the legislative drafting style and formatting are captured. Once the conditions are fulfilled, a document referred to as the *draft legislative proposal* is created.

This draft legislative proposal is then introduced by the minister to the cluster. The cluster must approve it. Henceforth the cluster will study, amend and present it to the cabinet, together with an explanatory note.

At the assembly (specialised committee), the process is 1) first reading, 2) second reading, 3) third reading, 4) adoption, 5) signature by president, 6) gazetted.

Once the bill is in the assembly the executive is no longer in control of the process.

Subsidiary legislation: art. 92 ICSS gives power to do 1. regulations; 2. rules, 3. orders, 4. directives.

## Challenges:

- There is very little control on bills drafted by consultants hired by some development partners. Most of them don't comply with the Southern Sudan drafting code and form.
- Most drafters import laws from other jurisdictions without seeking to know whether they are compatible with the Southern Sudan perspective.
- Most laws are drafted without rules for their operationalisation. It would be better to draft a bill and rules together instead of drafting several legislations which cannot be made operational due to lack of relevant rules.
- Members of clusters are busy attending cluster meetings. Minister of MoLACD suggested a way to make members of clusters sit.
- Most foreign drafters are working without incorporating Sudanese lawyers in their work. This goes against the policy of skills transfer.

## Recommendations:

- You must consult schedule C for state legislative power.
- Working with the state legal administrations
- Development partners, consultant work on the model or template for traditional authorities in the states.

## Conclusion

- the process of enactment of laws in Southern Sudan is very complex.
- MoLACD welcomes all the bills initiated by concerned institutions and ministries.
- The legal administrations of the ten states have personnel to advise the state governments.

MOLACD can draft a model if required. This should only specify principles. It is then the task of the state to consult with the traditional authorities and to come up with a comprehensive Bill.

There are legal administrations in each state to assist in the drafting of the laws. MOLACD can assist only as a second resort. States should consult MOLACD through the legal adviser at the state level.

The judiciary should take part in the next workshops since they are an important stakeholders in the process.

We know that most legal advisor at the state level are Arab speakers. This is major challenge. MOLACD is setting up a program for training on English legal language.

## *Summary of the Presentation of Professor Prah*

I have met many of you during the *Familiarization and Study Tour of Sudanese Traditional Leaders to 3 African Countries (Botswana, Ghana and South Africa)* from 17th August – 4th September 2006. The tour was very useful because it provided scope for us all to compare and contrast the experiences and practices of different African countries with respect to the role of traditional authorities in the administration of societies. For example, we noticed distinctly that especially in Botswana, kings and chiefs have fairly entrenched and articulated positions and roles in the administrative structures of local government in the society. In Ghana, although the kings and chiefs have some defined administrative positions and roles in the society, these are not as prominent as is the case in Botswana. The tour helped us all therefore to gain some insights into possible ways we could introduce new ideas and innovations into local government theory and practice in South Sudan. We have inherited broadly two typologically contrastive types of traditional societies in Africa. Some are traditional societies with clearly structured centralized systems of rule dominated by kings and chiefs, and others are social formations which are more segmentary, with units based on lineages and clans with more or less equal influence and power. The latter have relatively little stratification on the basis of political power and economic influence. The Azande, Shilluk and Anyuak have had very centralised structures. The other societies are more prominently constructed along lineage and clan lines. For these, there are many lineages of equal size along-side each other. The centralised polities have politically pyramidal structures with the *Reth* or the *Nye* at the top. These patterns of traditional polities have been

identified across Africa. For the centralised structures, this means that essentially, as the colonialists did; you take control of the top and then you can control what's below. It's the opposite with the Nuers and Dinka. With segmentary political structures it was harder to capture the top because there have been many groups and numerous tops; there is no one single top. This posed problems for colonial administration. For example, in the 1920s, there were riots in Iboland – Nigeria, caused by the fact that, (Ibos are in the above senses, similar to the Dinkas/Nuers in their structure), the British imposed “warrant chiefs” on them. This in effect meant imposing structures alien to them. The colonial administration looked for “influential people” and appointed them as chiefs. Such “chiefs” who were then beholden to the British were more malleable to colonial intentions and were more readily and easily used for colonial purposes. The method of colonial power was indeed to use limited power to get maximum results. For example in the Bahr el Ghazal only 8 UK administrators were used in this vast territory, because they had an effective grasp on traditional political nodal points. They with little inhibition used force or the threat of force to suppress popular restiveness and resistance to colonial rule. During the first civil war in Sudan (1955-72) the traditional structures were very badly shaken. The second civil war (1983-2005) equally affected the integrity of the surviving structures of traditional authority. Today, the fabric of the traditional structures remains weakened and not very stable. We need to remember that given the eminently rural and traditional character of African societies, it's hard to reach out to the communities without using institutions they have trust in; institutions they have known and which have sustained them from time immemorial. In effect we are saying that, any government from Juba or Khartoum would need to work with institutions which have won the hearts of the people. We are suggesting that partnership and integration of LG and TAs is under current historical and social circumstances ideal. Let us put the TAs to good use. There are no other effective ways presently of achieving local government in rural Africa. As Africans, most of our cultural habits are closely tied to our sense of identity, mode of livelihood, customary laws, languages, ritual, religion and other usages. These institutions maintain powerful symbolism for the moral order and are crucial for the maintenance of the social fabric of the society. We should keep TAs, however, we can and must also modernise such institutions as need arises. For example we cannot maintain today attitudes and institutions which suppress the rights of women. We must as we modernise, adapt institutions and adjust them judiciously. A responsible TA is one which allows itself to modernise, embrace what is new, fresh and rationalized, in order to face the future better. The promulgation of the LGA is an important milestone for South Sudan. It has created the framework for potentially effective local government and has located traditional authority at the centre of this process. There are limitations in our circumstances that we must realize. Seriously, the problem of illiteracy will definitely hamper the modernization and implementation of local government. Also, we cannot carry forward with TAs which cannot read or write. We must do something about this. I am referring here to literacy, not in English or Arabic, but in your own languages. Another important point is that, we also need workable rules, guidelines, codes of conduct, so that chiefs do not have different sanctions for different crimes; so that practices in the administration of justice at the rural level and local government in general are not haphazard, unfair or unbalanced. One major problem in Africa is the over-centralisation of power in the capital and in the hands of societally narrowly-based ruling groups.

1. We need decentralisation; more and more of this. Let people control their lives in their own areas. That is power to the people. TAs can be crucial in this matter.
2. There are 5 COTALs working towards the realization of their definitive structures, we need to help effect the emergence of these structures in line with the LGA. This has to be done fairly quickly.
3. We need to be careful, how we select our councillors. They need to be capable, forward-looking people who want to open up their communities to progress.
4. The principle of inclusivity is important. In our theory and practice it is important to be seen to be embracing everybody in the community.
5. The inclusion of women is cardinal for the success of our work.
6. If we want our societies to develop, then we need all hands on board. Everyone must have a role (i.e. there is work expected from everyone) in order to have the whole functioning effectively. There is often a danger in Africa for authorities and governments to create structures which only feed on public resources and deliver little by way of services. When this happens, these structures lose their meaning and rationality and become mere feeding machines. Such conditions kill the institutions and they lose not only money, but also respect and legitimacy. They prey on the communities they are supposed to cater for. Very pertinently our tasks here include the need to put up a skeleton, a template, a legal framework for the COTALs which will permit their service amongst others as platforms for dialogue and consensus building. We must be careful not to create councils that are sealed off from each other. Possibly, we may want to consider putting forward the idea of observers in proximate councils. So that, what one council does is known to adjacent councils. This will make it easier to share matters of

common interest. We need to make reports available to all. I will like to stress that the councils should ultimately be platforms for dialogue and consensus-building. All modern organizations live by records and the transfer and circulation of information and knowledge. For this and other reasons, we should produce literature in our languages which help the implementation of local government and which generally help us to keep a collective memory. Part of the work we want to see almost immediately is the drafting of the Traditional Authority Bills. If we have a template for this, the production of these Bills will be easy. In this and other work, we must demonstrate transparency, making principles clear so that we are not accused of choosing favourites or selecting policies which favour a few. A number of relevancies which require emphasis may be stated at this point. We need to remember that;

- Even customary law can be changed, progress can be made therewith.

- Capacity-building in the current period, and in our present circumstances, implies making the LGA available, readable to chiefs (issue of language). If you give the chiefs the knowledge of what is in the Act, they will be more powerful, perceptive and more effective.

- The rules for the dismissal of a chief need to be clarified by precepts that are clearly written, so that no-one can place him/herself outside these rules. Chiefs must know these rules. This issue is also linked to questions of modernity.

- Regarding salaries, we must remember that once we put chiefs on a government salary roll, they become effectively civil servants. This means that if they are partners of the government and receive salaries this may in certain circumstances create role conflicts for them. This matter needs to be carefully considered. We must make sure that chiefs and kings perform their duties to the full benefit of the people.

### *Comments by the participants*

- Ø Question of women (25%): we know this is in the constitution and human rights. But in our case, we have just brought a woman in our council but she is not a chief. There are complaints from chiefs because she is not a chief. All chiefs are men in our state, what are we going to do?
- Ø Commissioners should have participated in this workshop so that they can learn. Commissioners should not interfere in the courts and with the traditional authorities. People support more traditional authorities than the commissioners.
- Ø There are no regulations or procedures to guide us, for example on conditions for membership. We could not go ahead. There is a need to disseminate the Local Government Act through intensive workshops.
- Ø We need to organise workshops to sensitise people on the need to form a forum. The attendance should be: paramount chiefs, head-chiefs, chiefs, sub-chiefs, women and youth, administrative officers, CBOs, NGOs and church leaders.
- Ø The State should form a technical committee which should include paramount chiefs to discuss the issues.
- Ø The composition of the COTALs should be 25 members including 5 women. Budget should include office equipment, construction of offices, transport, medical treatment, workers of the council.
- Ø The Local Government Board's task is to disseminate the Local Government Act and to raise awareness on the important issues. This would enable people to know the benefit of the Local Government Act and what is expected from them. The Local Government Board should provide guidance and a timetable for the implementation of the Local Government Act.
- Ø Art 120 specifies the composition of the council at GoSS level however it is left open at the state level. There should be references and guidelines.
- Ø The existing COTALs have been formed with no legal basis. We need a budget to conduct a workshop so that we can find a way forward. We need to know about the composition, especially regarding ethnicity.
- Ø Delegates to the COTALs should fulfil the conditions of 1) qualification and experience, 2) age, 3) be popular, 4) be sound in mind, 5) not convicted, 6) 30+ years, 7) not involved in political activities



- Ø We need to reach a consensus on this forum, then we hand over the proceedings to the head of the legal administration in one state, so that he/she can translate it into legal words, then it should be passed on to state assembly so that it can be passed into law.
- Ø Some came to us and made a workshop in three days. A council was formed under the leadership of one chief. They have never met until today.
- Ø The role of the COTALs should be to 1) look into affairs of the traditional authorities, 2) disseminate the CPA policies, 3) enlighten and mobilise communities on disarmament, cattle raiding, abduction of children, disputes, peace, food, security and elections, 4) keeping law and order, 5) judging cases according to level of authority, 6) implementation of government policies (census, elections, HIV AIDS, maintaining feeder roads, schools, health centres, preserve the environment), 7) be the custodians of customary law, 8) exercise administration and customary law, 9) be a bridge between the population and the GoSS.
- Ø There are areas where TAs cannot read and write, this is a challenge. They will not understand the rules and regulations. Also, when chiefs are old, should they go on retirement ?
- Ø TAs should have: 1) salaries, 2) a recognisable uniform, 3) training, 4) an ID.
- Ø Need to bring the TAs under the roof of the SMoLG. We are confronted with money challenges, office accommodation, etc.
- Ø In our instance, we have had 20 months without service funds, only salaries. We were supposed to distribute the LGA, but unable to do it because there were no funds. I will request our development partners to help print more copies.
- Ø The main challenges are 1) security, 2) transport , 3) lack of funds, 4) salaries, 5) lack of cooperation of commissioners, 6) lack of services, 7) lack of skilled personnel.
- Ø Need funds to be allocated in budget of GoSS, the state must also contribute, the state collects huge revenue, they need to use it to train traditional authorities.
- Ø We need capacity building for peace officers, peace building and conflict resolution and reconciliation. There are different classification of chiefs: paramount chiefs, executive chiefs, chiefs and sub chiefs. We need different training for each category.
- Ø We need the judiciary, police and senior officers to train our traditional authorities.
- Ø We need to define the roles and responsibilities of the traditional authorities, the linkages between chiefs in the counties with customary courts and the judiciary.
- Ø We need orientation courses on council work in areas such as: CPA, ICSS, state constitution, LGA, TA law, management, public administration for TA, leadership courses, criminal law, public service, peace building and conflict resolution (to bring in spirit of unity), exchange of visits among TAs, and the revival and maintenance of customs. This would lower the possibility of conflicts.
- Ø Training of TAs and support staff have to be designed by LGB and SMoLG together.

## Attachments

1. Model for the COTAL Bills
2. State of affairs for the COTALs and Traditional Authority Bills
3. Agenda of the Workshop
4. List of Participants from the State

## **Model for the COTAL Bills (as a part of the Traditional Authority Bills)**

- 1. Preliminary provisions (purpose, status, authority).**
- 2. Guiding principles**
- 3. Definition of the Council: platform or forum**
- 4. Composition:**
  - membership**
  - number**
  - eligibility of members**
  - election / selection**
  - privileges**
  - women**
  - duration of the terms of office**
- 5. Functions and powers**
- 6. Sittings**
- 7. Records of the councils**
- 8. Delegates to GOSS**
- 9. Rules and regulations.**

## State of affairs for the COTALs and Traditional Authority Bills

	COTALs (made before the LGA)	Has a draft Traditional Authority Bill
Eastern Equatoria	Y	Y
Central Equatoria	Y	Y
Western Equatoria	Y	Y
Lakes	Y	Ongoing
Warrap	Y	Ongoing
Western Bahr el Gazal	N	Ongoing
Northern Bahr el Gazal	N	N
Unity	N	N
Upper Nile	N	N
Jonglei	N	N

### Agenda of the Workshop

#### Wednesday 2 December

- 1) **8h-9h: Registration of participants**
- 2) **9h-10h: Opening speeches and presentation of the agenda**
- 3) **10h-11h: Presentation, followed by discussion: The Local Government Act and the implementation Work Plan. Particular focus on the provisions on the Traditional Authorities.**  
*By: Local Government Board*
- 4) **11h-11h30: Tea break**
- 5) **11h30-13h: Presentation, followed by discussion: Role of MoLACD and procedural aspects**  
*By: Ministry of Legal Affairs and Constitutional Development*
- 6) **14h-17h (with tea break 15h-15h30): Presentation, followed by discussion: Implementing the South Sudan Local Government Act; Councils, Traditional Authority Bills and Emergent Roles of Traditional Authorities.** *By: Prof. Kwesi Kwaa Prah*

#### Thursday 3 December

- 7) **9h-11h: Assessment and discussion: Council of Traditional Authorities at the State level.**  
Update given by the States representatives on the proceedings to draft a Traditional Authority Bill and to form a Council.
- 8) **11h-11h30: Tea Break**
- 9) **11h30-13h: Presentation: Way forward for the councils**
  - Local Government Board: Role of the LGB.
  - Support from consultancies.
- 10) **13h-14h: Lunch**
- 11) **14h-15h30: Group work (per state): Defining a way forward**
- 12) **15h30-16h: Tea break**
- 13) **16h-18h30: Plenum: Presentation of the results from each group and discussion.**

#### Friday 4 December

- 14) **9h-11h: Discussion: What are the capacity building requirement to have operating councils.**  
How to provide it.
- 15) **11h-11h30: Final remarks. Closing**
- 16) **12h-13h: Lunch**

## List of Participants from the States

### Northern Bahr el Gazal (Aweil)

1. H.E Josephine Mosses Lado
2. D.T.A Manyang Deng Dut
3. Ugo Ayuel Ayuel
4. Chief Michael Mahomet Mater
5. Chief Attar Abdulla Chakchak
6. Chief Aachen Aachen Yor

### Unity State (Bentiu)

1. H.E Sonya Salesman Wako
2. D.G Tito Lieth Kuyuy
3. D.T.A Nyanut Deng Kok DTA
4. Chief Magok Galath
5. Chief Raik Gur Ayuel
6. Chief Malual Manyiel Auel

### Central Equatoria State (Juba)

1. H.E Charles Jonga
2. D.G Apollo Gordon Loboka
3. D.T.A Christopher Sebit
4. Chief Gabriel Magga
5. Chief Christopher Tombe
6. Chief Joseph Kulang

### Eastern Equatoria (Torit)

1. H.E George Joe
2. Chief Salvatoria Odongo
3. Chief Madalia Tito
4. Chief Adam Da Drali

### Jonglei (Bor)

1. H.E Hussien Mar Nyuot
2. D.G Beshier Deng Kuar
3. D.T.A Isaac Dayar Gic
4. Chief Malek Ayen Mayel
5. Chief Michael makuach Deng
6. Chief Peterr Oballa Ojuluk

### Upper Nile (Malakal)

1. D.G Hussein Ajuong
2. D.T.A Paul Ajak Jur
3. Chief Monyruew Awen Louk
4. Chief Phillip Tang
5. Chief James Deng Kone

### Warrap State (Kuacjok)

1. H.E Andrew Kuac Mayol
2. D.G Bol Lual Kuc
3. D.T.A Atek Monydlar Atek
4. Chief Peter Mawien Mawien
5. Chief Juma Madhel Lang
6. Chief Mayar Dut Mayar

### Western Bahr el Gazal (Wau)

1. H.E Awad Juma
2. D.G Malek Adam
3. D.T.A Edward Wadi
4. Chief Gabriel Akol Tid
5. Chief Anjelo Baragi
6. Chief Esau Ramadan Dongo

### Western Equatoria (Yambio)

1. H.E Samuel Bati
2. D.G Aggrey Brown
3. D.T.A John Sebit
4. Chief Wilson Abel Rany
5. Chief James Capidio
6. Chief Lora Jacob

### Lake State (Rumbeck)

1. H.E David Nok Marial
2. D.G Enoch Manyuol
3. D.T.A Samuel Mabior
4. Chief Dut Malual Arop
5. Chief Madol Mabthok Agok
6. Chief Run Arol Kachol