Abstract:
This entry discusses the continued relevance of traditional authorities whose positions and power are constantly restructured and recreated in dialogue between chiefs, local communities, state actors, donors and international organizations

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TRADITIONAL AUTHORITIES
With a focus on sub-Saharan Africa

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Traditional authorities, traditional leaders, chiefs, are all terms that refer to leaders whose legitimacy is rooted in history and culture, often combined with religious, divine or sacred references. Despite the term 'traditional', these leaders should not be seen a residual of something authentic, as some traditional leadership positions resulted from colonial era acts of 'imagination' – a term denoting that the creation of new leadership positions and structures was done in dialogue, albeit often an unequal one, between colonial rulers and local society, particularly male elderly elites. Such acts of imagination later often became lost to memory and the imagined institutions part of new constellations of power and authority.

Diversity marks the world of traditional authorities. Pre-colonial societies ranged on a continuum from largely acephalous societies with loosely linked segmentary lineage systems to extremely hierarchical societies with militarized forms of kinship or chieftaincy. Colonial and postcolonial histories, including modes and structures of governance and their relations with traditional authorities, were also highly varied. Under indirect rule policies, existing chiefs or new chiefs were integrated into the colonial administrative apparatuses by placing them between the local colonial administrators and the population. In direct rule policies, colonial governments preferred local administration to be done by civil servants selected for their skills, language proficiency, and compliant attitude towards the colonial endeavor. In practice, the differences between direct and indirect rule policies were much less stark, with both colonial powers making use of chiefs where these were available and cooperative, and imposing others as chiefs or civil servants elsewhere. The main difference between chiefs in French and British colonies lay in the fact that the former were not allowed any autonomy or initiative as continuation of local self-government, whereas the latter were. This difference denotes the formal structure, though, and not necessarily the full reality on the ground.

Colonial governance had a profound impact on the balance of power in traditional governance. In pre-colonial societies, chiefs' powers were circumscribed by their council of elders, who represented the major factions of the community, and who could dismiss a chief and have him replaced by a rival. Abundance of land furthermore allowed people and groups who were dissatisfied with the way their chief ruled to move elsewhere. Under colonial rule, chiefs became dependent on colonial recognition, which transformed the downward accountability of chiefs towards their communities into upward accountability towards the colonial government. Chiefs were also given new, often unpopular tasks, such as tax collection, and organizing compulsory labor and compulsory crop cultivation, which decreased the legitimacy of chiefs and increased their dependence on the colonial state.

Traditional authorities and their customary justice systems were expected to disappear with modernity, but are undergoing a resurgence in various regions of the world, such as in Indonesia, the Pacific, and Canada and Australia. Sub-Saharan Africa is a prime example. While in the first decades of independence a possible role for chiefs in processes of development and democracy in contemporary African states was largely overlooked, from the 1990s many African states have enhanced the position of traditional leaders and customary courts in constitutions and legislation, often alongside democratic local government institutions. Scholars link the 'resurgence of tradition' – itself a contested notion due to its suggestion of a return of the past, dehistoricizing the process and ignoring the continual development and agency of the institution – and the concomitant rise of identity politics, to processes of democratization, decentralization and liberalization. Liberalist policies, strongly connected to conditionality in foreign aid, debt relief and loan provisioning, placed many functions of the state with the private sector and the chiefs gained ascendancy as the representatives of such private actors, namely rural communities. The distancing of the state from the people also furthered tradition as an alternative mode of identification.

Around the same time as African states, the international community also started demonstrating a renewed interest in traditional leadership institutions. Prompted by developments in international law towards recognition of indigenous peoples' rights, 'group rights' and 'rights to culture', they increasingly saw 'traditional communities' as semi-autonomous development agents and their leaders as suitable, legitimate counterparts with the capacity to mobilize their population. As a result, international organizations and donor agencies started to pay more attention to traditional leaders at their conferences and in their development programming. In some instances, development aid was directly deposited into traditional leaders' funds, bypassing the central government.

This recognition of traditional communities and traditional leaders as actors in the development field also led to a growing donor attention to customary justice systems and an increasing engagement with these systems in donor programming in the field of rule of law building as well as transitional justice. This engagement was not unproblematic. Donors were not particularly well-versed in customary justice and often did not put in the amount of research needed to decode an unwritten, flexible system with much local diversity. They often approached projects as technical undertakings with limited eye for local power dynamics. Their often uncritical acceptance of traditional authorities as community representatives and custodians of customary law tended to overlook contested versions of customary law in the locality and lead to the adoption of a male-elderly elite representation of customary law. As such, donor engagement often profoundly affected the nature and functioning of customary justice systems.

While the relationship between states and chiefs has sometimes been analyzed as a sort of 'zero-sum' relationship in which both are competing for [a delineated amount of] power and respect, in this new constellation it seems that both states and chiefs

hope to augment their power and authority through cooperation and association with the other – resulting in relationships of dependency as well as competition. Through enlisting chiefly support, governments may seek to enhance state governance, hope to bring in the rural vote, and aim to gain access to natural resources on customary land. Governmental recognition of chiefs at the same time serves to increase or cement the power of the state over chiefs. Recognition, also in the post-colonial period, always includes conditions or exceptions, and is intertwined with questions of political power and control.

Chiefs in their turn may attempt to use policies of state recognition to consolidate and expand their power. Opportunities to do so manifest themselves particularly when no attention is given in recognition and regulation processes to the relationship between traditional leaders and community members and to the role of councils, councilors and other customary structures at various geographical levels in decision-making and controlling the exercise of chiefly power. Summing up, interactions between traditional authority and the state lead to complicated two-way reconfigurations and to new processes of reordering and transformation, which can severely impact on local power divisions.

Traditional authorities are now to function in modern states, where their functioning is often subject to a state's constitution and its bill of rights. Constitutional or international human rights are often invoked in court against customary laws, prominently against unequal inheritance rights of men and women. Occasionally, constitutional and international human rights are also invoked to promote the evolution of the institution of traditional authority itself. A well-known example is the Shilubana case in South Africa, which concerned the question whether the chief of the Valoyi traditional community in Limpopo could be succeeded by a woman.[1]

A profound difference compared to the pre-colonial settings in which traditional authority institutions emerged, is the context of capitalism and high-value investments on the land of 'traditional communities'. This has in many places led to complex relations between states, chiefs and citizens. Changing values of land have led to struggles to redefine customary land tenure through the reimagining of chiefly authority and decision-making power. This has increasingly concentrated control of land revenues in the hands of chiefs, often in close cooperation with governmental and business elites. This sometimes involves a corporatization of traditional authority or tribal governments where for-profit native corporations are created to lay the groundwork for development schemes in the name of traditional communities, but in fact often only profiting a small elite within that community as well as outside actors from both the business and government sector.

Another much-debated question is the compatibility of traditional governance systems, structured on the hereditary devolution of male power, with democracy and gender equality. Traditional institutions commonly include direct participation of all adults or a system in which the major factions of a community are represented in

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[1] *Shilubana and Others v Nwamitwa* 2009 (2) SA 66 (CC).

the traditional council and have a say in important community matters. This is sometimes described as an African form of democracy. Recent literature, however, describes a breakdown of such mechanisms when money-making opportunities from customary land increase. This is particularly problematic if chiefly 'subjects' are denied a choice to opt out of traditional governance or customary courts. Some communities have introduced elections for traditional leaders. In other areas, however, traditional leaders are trying to do the reverse, for instance in the Eastern Cape province of South Africa, where chiefs are imposing headmen on villages with a long history of electing their own leaders.

Scholarly voices diverge in their assessment of the co-existence of traditional and elected local government structures, possibly because of their different geographical focus. Chiefs are for instance reported to improve the responsiveness of elected representatives and to facilitate the provision of public goods to the locality by the government, due their intermediary position that enables them to mobilize local communities. Others rather find that the co-existing government structures lead to ambiguity and conflicts regarding their respective roles and responsibilities. Competition for popularity has furthermore been seen to diminish chiefs' willingness to enforce and sanction governmental rules, leading to a widespread reduction in compliance with laws.

While most traditional authority structures still have an overwhelmingly male bias, among some groups there is an evolution towards more 'gender-inclusive' traditional authority, including more female traditional leaders, enhancing the role of women in traditional courts, and changing customary norms detrimental to women. Another modernization of chieftaincy lies in the increasing professionalization of the institution. Where there is a choice from various candidates for a chieftaincy position, increasingly the candidate with the best education, skills, and national and international contacts curries favor with the community. In Ghana, there is even a recent practice of electing 'development chiefs' – candidates wholly unrelated to the royal family, sometimes even foreigners, to assist the chief in brining development to the area.

All of the above reiterates what Van Rouveroy and Van Dijk (1999:7) wrote more than two decades ago: "Chieftaincy is rapidly turning itself into a perplexing new phenomenon which appears capable of negotiating and modifying modern institutional arrangements to its own ends."

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