

# The Re-emergence of Customary Authority and its Relation with Local Democratic Government

## **Responsive Forest Governance Initiative (RFGI) Research Programme**

The Responsive Forest Governance Initiative (RFGI) is a research and training program, focusing on environmental governance in Africa. It is jointly managed by the Council for the Development of Social Sciences Research in Africa (CODESRIA), the International Union for the Conservation of Nature (IUCN) and the University of Illinois at Urbana Champaign (UIUC). It is funded by the Swedish International Development Agency (SIDA). The RFGI activities are focused on 12 countries: Burkina Faso, Cameroon, DR Congo, Ghana, Kenya, Mozambique, Nigeria, Senegal, South Africa, South Sudan, Tanzania, and Uganda. The initiative is also training young, in-country policy researchers in order to build an Africa-wide network of environmental governance analysts.

Nations worldwide have introduced decentralization reforms aspiring to make local government responsive and accountable to the needs and aspirations of citizens so as to improve equity, service delivery and resource management. Natural resources, especially forests, play an important role in these decentralizations since they provide local governments and local people with needed revenue, wealth, and subsistence. Responsive local governments can provide forest resource-dependent populations the flexibility they need to manage, adapt to and remain resilient in their changing environment. RFGI aims to enhance and help institutionalize widespread responsive and accountable local governance processes that reduce vulnerability, enhance local wellbeing, and improve forest management with a special focus on developing safeguards and guidelines to ensure fair and equitable implementation of the Reduced Emissions from Deforestation and Forest Degradation (REDD+) and climate-adaptation interventions.

REDD+ is a global Programme for disbursing funds, primarily to pay national governments of developing countries, to reduce forest carbon emission. REDD+ will require permanent local institutions that can integrate local needs with national and international objectives. The results from RFGI Africa research will be compared with results from collaborators in Asia and South America in order to enhance RFGI comparative scope, and to broaden its geographic policy relevance.

**RFGI Working Paper No. 6**

**Responsive Forest Governance Initiative (RFGI)**  
Supporting Resilient Forest Livelihoods  
through Local Representation

**The Re-emergence of Customary  
Authority and its Relation with Local  
Democratic Government**

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The Council for the Development of Social Science Research in Africa (CODESRIA) is an independent organisation whose principal objectives are to facilitate research, promote research-based publishing and create multiple forums geared towards the exchange of views and information among African researchers. All these are aimed at reducing the fragmentation of research in the continent through the creation of thematic research networks that cut across linguistic and regional boundaries.

CODESRIA publishes *Africa Development*, the longest standing Africa based social science journal; *Afrika Zamani*, a journal of history; the *African Sociological Review*; the *African Journal of International Affairs*; *Africa Review of Books* and the *Journal of Higher Education in Africa*. The Council also co-publishes the *Africa Media Review*; *Identity, Culture and Politics: An Afro-Asian Dialogue*; *The African Anthropologist* and the *Afro-Arab Selections for Social Sciences*. The results of its research and other activities are also disseminated through its Working Paper Series, Green Book Series, Monograph Series, Book Series, Policy Briefs and the CODESRIA Bulletin. Select CODESRIA publications are also accessible online at [www.codesria.org](http://www.codesria.org).

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# Preface

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James Murombedzi, Jesse Ribot  
and Gretchen Walters

Struggles for control over and access to nature and natural resources; struggles over land, forests, pastures and fisheries, are struggles for survival, self determination, and meaning. Natural resources are central to rural lives and livelihoods: they provide the material resources for survival, security, and freedom. To engage in the world requires assets that enable individuals, households, and communities to act in and on the world around them. The ability to accumulate assets and the ability to access government and market services depends partly on such resources along with the political-economic infrastructure – rights, recourse, representation, markets, and social services – that are the domain of government. Democracy, which both enables and requires the freedom to act, is predicated on these assets and infrastructures. Since the 1980s, African governments have been implementing local government decentralization reforms aimed at making local government more democratic by making them responsive and accountable to citizen needs and aspirations; in many places this has been done through a decentralisation of natural resource governance to local administrations. In order to be responsive to individual, household and community demands, local governments, too, need resources and decision-making powers. There must be a public domain – a set of public resources, such as forests or fisheries, which constitute this domain of democracy, the domain of decisions and services that citizens can demand of government. Natural resources, when decentralized into the domain of local authority, form an important part of the resources of individuals, households, communities and governments, making possible this move toward local democracy.

Natural resources provide local governments and people with wealth and subsistence. While nature is not the only source of rural income, the decentralization of natural resources governance is a core component of local government reform. However, governance reforms have been implemented in a context broadly characterized by an enduring crisis of the Western economic and financial systems, which in turn has stimulated privatization and liberalization in every sphere of life, including nature. The process has deprived local governments of public resources – depriving individuals and communities of a reason to engage, as a powerless government is not worth trying to influence. Privatization is depriving forest-dependent peoples of their access to formerly ‘public’ or traditionally managed resources. National governments, as well as international bodies such as the United Nations programme, titled the Reducing Emissions from Deforestation and forest Degradation (REDD), further this trend as they collaborate with private interests to promote the privatization of natural resources. The resulting enclosures threaten the wellbeing of resource-dependent populations and the viability of democratic reforms.

The specter of climate change is deepening the crisis of enclosure. A key response to climate change has been the attempt to mitigate greenhouse gas emissions through enhancing the capacity of forests in the developing world to store carbon, ostensibly for the benefit of the atmosphere as well as the communities who use these forests. UN REDD seeks to pay communities, through their national governments, to conserve their forests as carbon storage. A plus ‘+’ was added to REDD, forming REDD +, to call for improved ecosystems services, forest management, conservation, forest restoration and afforestation to enhance the capacity for carbon storage. Designed on the basis of similar payments for environmental services (PES) schemes, REDD+ has the potential to inject vast new sums of money into local resource use and governance. In the context of fragile local governments, nascent democracies and powerful private interests, such cash inflows result in the commercialization and privatization of forests and natural resources and the dispossession of local resource users. This financialization of natural resources grossly diminishes the scope for democratic natural resource governance schemes. To be sure, the implementation of REDD+ can also learn from and avoid the pitfalls experienced in these PES schemes, especially if they represent local interests in natural resource governance decision making.



The Responsive Forest Governance Initiative (RFGI) is an Africa-wide environmental-governance research and training program focusing on enabling responsive and accountable decentralization to strengthen the representation of forest-based rural people in local-government decision making. Since January 2012, the programme has carried out 33 case studies in 12 African countries, with comparative cases Nepal and Peru, to assess the conditions under which central authorities devolve forest management and use decisions to local government, and the conditions that enable local government to engage in sound, equitable and pro-poor forest management. Aimed at enabling local government to play an integrative role in rural development and natural resource management, these case studies are now being finalized and published to elicit public discourse and debate on local government and local democracy. This Working Paper series will publish the RFGI case studies as well as other comparative studies of decentralized natural resources governance in Africa and elsewhere that focus on the intersection between local democracy and natural resource management schemes. Using the concepts of institutional choice and recognition, the cases deal with a comprehensive range of issues in decentralized forest management in the context of REDD+, including the institutional choices of intervening agencies; the effects of such choices on accountability and representation; and the relationships between local government and other local institutions. The series will also include syntheses discussing the main findings of the RFGI research programme.

Based at CODESRIA, and funded by the Swedish International Development Agency (SIDA), the RFGI is a three year collaborative initiative of CODESRIA, the University of Illinois at Urbana-Champaign (UIUC) and the International Union for Conservation of Nature (IUCN). RFGI working papers and documents, including the background papers, the RFGI programme description, and the RFGI Methods Handbook, can be found online at <http://www.codesria.org/spip.php>, IUCN [http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/paco\\_forest/thematiques\\_et\\_projets/gouvernance\\_and\\_iucn\\_tools/projets\\_en\\_cours/\\_programme\\_de\\_recherche\\_initiative\\_pour\\_la\\_gouvernance\\_democratique\\_des\\_forets/](http://www.iucn.org/fr/propos/union/secretariat/bureaux/paco/programmes/paco_forest/thematiques_et_projets/gouvernance_and_iucn_tools/projets_en_cours/_programme_de_recherche_initiative_pour_la_gouvernance_democratique_des_forets/) and UIUC <http://sdep.beckman.illinois.edu/programs/democracynvironment.aspx#RFGI>



# 1

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## Introduction

In 1999, when the King of the Asante in Ghana, Asantehene<sup>1</sup> Otumfuo Opoku Ware II, passed away after 29 years of rule, the news was carried in the pages of *The New York Times*<sup>2</sup> and *The Independent*<sup>3</sup> newspaper of London. The Asantehene, a trained lawyer, saw the restoration of the prestige of his throne in the eyes of the Ghanaian people and other observers around the world. In February 1981, the king was invited to open a cultural exhibition about the Asante titled, 'The Kingdom of Gold' at the Museum of Mankind in Piccadilly, London (Kwarteng and Holden 1981). In October 1984, he was also invited to open the same exhibition at the Museum of Natural History in New York City. It was reported by *The New York Times* which stated that, 'If the Asante people no longer wield the power that once enabled them to dominate the so-called Gold Coast of West Africa, it was not apparent in the greeting accorded their tribal King ... the Asantehene, as he is titled, was hailed by thousands of followers, mostly Ghanaian-Americans, as he arrived ...'<sup>4</sup> During the twenty-fifth anniversary celebration of his reign in August 1995, the CNN beamed the public festivities to a global audience (Rathbone 2000). In a Ghanaian tribute to the king just after his passing, a supportive commentary had this to say:

The peaceful co-existence of the various ethnic communities in Kumasi must, at least for me, be the pinnacle of the many achievements of Otumfuo Opoku Ware II. It was thoroughly deserving that he was crowned 'The Rainbow King' by the Anglican Church on the occasion of the celebration of the Silver Jubilee of his reign. From holding together of his own, Otumfuo has offered himself time and time again as the focal point for the resolution of conflicts

in this country. When all seemed to break at the helm after the 1992 elections, Otumfuo displayed remarkable courage and statesmanship to avoid the almost certain outbreak of a civil war. His wise counsel facilitated the initial breakthrough in the negotiations to resolve the ethnic conflicts of [sic] in Northern Region of Ghana.<sup>5</sup>

The coverage the Asantehene received at his death, his activities while he was alive, and the passionate following he enjoyed at home and abroad, is a testament to the powerful re-emergence of customary authority in Africa. It is noteworthy that the most democratic countries in Africa, including Botswana, Ghana and South Africa, have constitutional provisions recognizing customary authority. Why are African countries that at independence considered traditional authority a colonial relic to be done away with, now thinking differently? This working paper examines this question through a literature review on the re-emergence of customary authority and its relation to elected local government in Sub-Saharan Africa (see terms of reference in the appendix). The paper will help the Responsive Forest Governance Initiative (RFGI) researchers to study the relationship between representation and forest governance. The RFGI is a forest governance research and training programme of the Council for the Development of Social Research in Africa (CODESRIA), the International Union for the Conservation of Nature (IUCN) and the University of Illinois Urbana-Champaign (UIUC).

The programme is being carried out in Africa by teams of researchers in six 'core countries': Senegal, Burkina Faso, Ghana, Cameroon, Democratic Republic of Congo and Uganda. Results will be compared with single case study research in six other 'comparative countries': South Sudan, Nigeria, Tanzania, Kenya, Mozambique and South Africa. The RFGI focuses on enabling responsive and accountable decentralization in forestry, to strengthen representation of forest-based rural populations within local government decision making. RFGI has a special focus on developing safeguards and guidelines to ensure fair and equitable implementation of the Reduced Emissions from Deforestation and Forest Degradation (REDD+) and other climate-adaptation interventions.

Across Africa, customary authority has re-emerged as a political force over the past two decades. This may be partly in response to the insecurities that now plague the state in Africa due to factors including economic deregulation, privatization of public enterprises, civil disturbances and natural disasters. It may

also be a result of such factors as state patronage, international interventions that favour customary authority, or privatization. Customary authority has re-emerged as an actor amongst the plethora of actors that mediate access to forestry resources that local people depend on for livelihoods. Thus the literature review should provide knowledge on the changing role of customary authority in mediating access to forest resources in Africa. In keeping with the overall theme of the RFGI, the review should highlight the relationship between customary authority and other authorities mediating access to forest resources at the local level. Furthermore, the review should have a special focus on the relationship between customary authority and elected local government. Is the relationship confrontational, manifesting domination/subjugation, exploitative or convivial? How do both parties relate when they work with local forest users? How do they compete for resources and for authority? How are they supported by government, larger-scale NGOs, and international agencies? Guided by the 'invention of tradition' theses (Hobsbawm and Ranger 1992), the review should outline the historical evolution of the role of customary authority in struggles over natural resources.

The RFGI researchers are expected to be able to identify the actors, individuals and organizations, shaping the role of customary authorities in the struggle over natural resources, the source(s) of the powers they manifest (populist, constitutional or esoteric/cultic) and their accountability mechanisms. The review will therefore be attentive to these specifics, and to the following set of questions:

- 1) Do chiefs have power?
  - a. Which powers – executive, legislative, judicial?
  - b. How do we characterize them?
  - c. How do we measure them?
- 2) Is this legitimate power – do people accept it?
  - a. How do we measure legitimacy?
  - b. Do people accept their legitimacy (as in their assumed right to rule) because they appreciate and like them or because they have no alternative or no image of an alternative?
- 3) How is this power changing – is it emerging or waning?  
Why is it changing? What shapes this re-emergence or decline?

- 4) What is the relation between elected authority, chiefs, NGOs and other authorities? How are the roles and powers of elected authorities shaped by these other competing or collaborating entities?
- 5) What is the role of donors, governments and NGOs in constructing these authorities?
- 6) How should RFGI study these questions?

The Africanist literature argues that customary authorities have re-emerged because the state and donor organizations need their cooperation for effective execution of wide-ranging land tenure reforms taking place across Africa (Lund and Hesselting 1999; Ntsebeza 2003; Hughes 2006; Cousins 2009). Their re-emergence is therefore due to increased state and donor patronage. Nyamnjoh (2004) argues that chiefs have agency and are thus able to renew the structures of customary authority to meet up with the times. A third hypothesis is that the rapid pace of social change brought about by globalization has stirred up strong desires in people everywhere to redefine their identity and reinforce their sense of belonging (Page 2007; Geschiere 2009; Kleist 2011).

This paper will test the above hypotheses, and the following additional ones:

- i. Greater competition for natural resources threatens the right of access historically enjoyed by customary authorities, and this by extension threatens their livelihoods. Therefore the drive towards self-preservation has motivated the leadership, often former elites in the public and private sectors, to be more astute at negotiating a niche in the political space.
- ii. The opening up of political space in Africa has led to elites at home and abroad to patronize customary authorities in order to win political capital at the local level. Therefore, customary authorities are re-emerging because of their instrumental role in political competition.
- iii. As the social contract between the state and the citizenry in Africa weakens due to the state being unable to fulfil its obligations, customary authorities are amongst the plethora of actors tolerated by the state, stepping up to fill the gap. Therefore, customary authorities have re-emerged because the developmental state is in retreat.

- iv. The availability and direct access to donor funds that civil society groups in Africa enjoy has made it possible for customary authorities to evolve as actors in the provision of social services at the local level. Therefore, customary authorities have re-emerged because they now enjoy greater donor patronage.

The paper proceeds in section 2 by first defining what is customary or traditional authority.<sup>6</sup> It makes clear that traditional does not imply static and or unchanging. Its dynamic nature has led to the use of the term neo-traditional authority to emphasize that what we are observing today has gone through several innovative and sometimes forced changes from the colonial era to date. The section continues with a discussion of the sources of power that traditional leaders or chiefs in Africa exhibit and how this has changed from the pre-colonial era to the present. It shows that there are three sources from which traditional leaders obtain their power: these can be grouped into populist, state and esoteric (religious, cultic or ritualistic). The section shows through reviews of case studies from west, central, east and southern Africa that, though African governments tried to silence traditional authority, it has found new strength in this era of democratic transition in Africa. Section 3 reviews the theoretical literature that explains the why of the resilience and re-emergence of customary authority in Africa. The section argues that state and regime legitimacy accounts for the resilience of traditional authority in Africa, while global forces promoting a human rights discourse on identity and democratic transitions are also inadvertently responsible for the re-emergence of customary authority.

Section 4 examines the question of the relationship between traditional authority and elected local government. It argues that there is no intrinsic characteristic in local government that makes it a space for social emancipation, but it is its characteristic to be a space for the aggregation of local needs that makes it important as a site for responsive social change. The section further argues that the resurgence of traditional authority will lead to greater conflict between traditional authority and local government. Section 5 considers the relationship between the state and chiefs, and their struggles over land rights. The section argues that while customary authority's hold on land has local ideological roots, its contemporary strategies and objective of holding on to its role in land distribution is informed by its relation to the state and its need for personal accumula-

tion of wealth. Section 6 discusses the findings of this paper; this discussion is informed and tailored to respond to the questions and hypotheses in section 1 of this paper. It provides proxy measures that could guide RFGI researchers as they study the questions posed in section 1 of this paper. Section 7 concludes this paper with a discussion of customary authority and future of democracy in Africa. The section provides novel ideas on how to democratize customary authority and bring it under elected local government authority.



## 2

# Evolution of Customary Authority from the Pre-colonial Era to Date

Customary or traditional authorities are leadership structures indigenous to Africa and have historical roots that pre-date the colonial conquest of Africa. This does not imply that socio-organizational processes in ethnic groups presided over by traditional authorities have remained static or unchanged during the pre-colonial, colonial and post-colonial eras. The term customary or traditional is used to emphasize the rootedness of these leadership institutions in the social history of the African peoples over whom they preside. Furthermore, the terms customary and or traditional are used to differentiate the ethnic governance logic behind these structures when compared to the governance logic behind 'modern' state systems (Lutz and Linder 2004) – see Table 1 for these differences:

Table 1: Difference between traditional and modern society

Social Function	Mechanism for Execution	
	Traditional Society	Modern Society
Production	Family	Market (Public and Private)
Distribution	Family and Tribal Structures	Market (Public and Private)
Collective Security	Family, Tribe, Traditional Law, Esoteric Rules (Secret Societies)	Constitutional Law, State (Military/ Police)
Reproduction	Family and Tribes	Family, Tribe, Market (Public and Private)

**Source:** Adapted from Lutz and Linder (2004)

Customary authority leadership relies on family and kinship ties in exercising its functions, while modern states rely on the public service and markets to deliver services. The state has assumed roles played by the family and kinsfolk under customary authority. Succession in customary and traditional systems is kin and lineage based; succession in modern states is through electoral systems – especially in democratic states. The roles of individuals are framed differently under customary and modern systems of governance. Under customary authority, women, youths, low-caste and non-indigenes are often excluded from decision-making. In modern states, roles are determined more by profession, education and individual skills; the constitution also recognizes citizens as having equal rights. While these differences might present customary authority as an anachronistic, anti-modern type of structure, it has shown itself as dynamic and resilient (van Binsbergen 2003; Ray 2003; Brempong and Pavanello 2006). While it has not become an all-inclusive electoral-based structure, more and more customary leaders like the immediate past Asantehene referred to in the introduction, are well educated and have sometimes played a role in state government before assuming leadership roles in customary authority structures. The most important influences that have impacted customary structures are the colonial encounter of the nineteenth and twentieth centuries, and the post-colonial state.

Prior to the colonial encounter, there were clear hierarchies of traditional leaders amongst the groups which had them. There were influential and regal monarchs amongst populous groups like the Oyo in present-day Nigeria (Atanda 1970), the Asante in Ghana (Rathbone 2000), and the Baganda in Uganda (Okoth 2006). These had lesser chiefs to whom they delegated authority to do their bidding. These governed large centralized state-like polities with powers differentiated between the king, the king-makers, the priest, secret societies and the warriors (Crowder and Ikime 1970a; Chem-Langhee 1983; Skalnik 1996; Fanthorpe 2007). While these subsidiary authorities did not always stop the kings from being tyrannical, the kings required an elite consensus to govern. In the many acephalous non-centralized groups across Africa, the power of local elders over the everyday lives of the people was weak; consequently people had high levels of personal freedom (Ruel 2004; Nwaubani 1994).

Colonialism changed the standing of pre-colonial traditional leaders in strong centralized states from kings with some accountability to the king-makers and other elites, to chiefs appointed by the colonial authority with no mechanism

of accountability to their subjects (Abwa 1989). The colonial powers in Africa, principally Britain and France, after gaining control of African states and peoples through treaties and forceful conquest, took away some of the prestige associated with the position of kingship in the conquered states. Thus the word 'chief' rather than 'king' became their preferred reference used for African rulers both those who governed strong states and those who were appointed in acephalous groups (Crowder and Ikime 1970b; Rathbone 2000). Customary leaders who refused to cooperate with the colonialist were deposed and their replacements selected by the colonial powers saw their powers reduced, while those who cooperated saw their powers over people and land enhanced (Atanda 1970; Abwa 1989; Ntsebeza 2005; Mamdani 2006; Okoth 2006).

### **Evolution of Customary Authority in West and Central Africa**

In British colonies, the practical difficulty and financial cost of managing large expanse of territory with a multiplicity of ethnic groups persuaded the colonial administration to govern their subjects through indigenous leadership structures (Geschiere 1993). The system of rule, which was termed indirect rule, was strongly promoted by Lord Lugard, the governor-general of Nigeria from 1914 to 1918 (Lugard 1965). In Northern Nigeria, the British after militarily defeating the Fulani oligarch's who ruled the region, allowed cooperative members of the monarchies to continue ruling over the people. As long as the monarchs collected the colonial tax, and fulfilled administrative, legislative and judicial functions required by the colonial government, they were allowed to continue their dictatorial regimes over their subjects. Colonialism strengthened the coercive powers of monarchs and tax collection made them rich; patronage relationships developed between the monarchical families and the British administrators ensured that they were at the forefront of political leadership in Northern Nigeria at independence (Paden 1970; Egwurube 1988; Nolte 2003). In Eastern Nigeria, the people did not have centralized systems of governance headed by a king or strong ruler, but the British went ahead to appoint cooperative individuals as 'warrant chiefs'. These were often despotic, depended fully on the colonial government to prop them up and their authority to collect taxes and adjudicate disputes in the native courts was regularly challenged (Nwaubani 1993; Harneit-Sievers 1998; Adegbulu 2011).

In the French colonies, the chiefs did not have the autonomy of their counterparts in British colonies. The French claimed not to subscribe to indirect rule, promoting a policy of assimilation where their colonies were considered a part of France, the motherland (Geschiere 1982; Geschiere 1993). Colonial subjects were encouraged to adopt French language and culture, as this would enable them to enjoy the rights of French citizenship as those residing in France. French colonial officers therefore favoured persons who were cooperative and could speak French when deciding who to appoint as chiefs in highly centralized societies such as the Mossi in Burkina Faso (Skinner 1970). In those societies where they did not have chiefs, like the Maka in Cameroon, the French went ahead to appoint chiefs of villages, chiefs overseeing the activities of chiefs in a sub-region, and paramount chiefs overseeing the activities of all other appointed chiefs in their administrative region (Geschiere 1982). Like the warrant chiefs of Eastern Nigeria, these appointed chiefs became dictatorial despots over the people they governed. Chiefs in the French colonies were considered as auxiliaries of the colonial administration rather than independent power structures. Thus there was greater oversight over their activities by the colonial district administrator, who often placed the chief under tremendous pressure to meet administrative targets with respect to tax collection, supply of labour for the plantations, public works and the colonial army (Abwa 1989; Geschiere 1997; Mbapndah 2008).

Given the mistrust between the local people and the French administrators, elders from leading families were not willing to serve the colonial authority. This had the effect where local groups often put forward junior men or those considered as outcasts to work with the colonial administration; and these ended up being appointed as chiefs over the people. Furthermore, the preference for local persons who spoke French meant that men who worked as cooks, junior clerks, soldiers and interpreters were also easily appointed as chiefs. This had the effect that these invented chiefs lacked the legitimacy to rule in the eyes of the local people. This made their jobs harder and they had to rely heavily on the use of coercive force to get their way (Geschiere 1982). Despite the rhetoric of assimilation by the French colonial administration, the African people in their colonies, including the educated classes, did not enjoy the rights of citizenship of the Europeans. The French even tried to exclude the educated class in their colonies from the governance of the colony.

It should be noted though that when it suited the French, as in Senegal and Northern Cameroon, they embraced the principles of indirect rule (Abwa 1989; Boone 1995). In Senegal, after French conquests of the Wolof, they vested leadership authority on the Mouride and Tidjane Muslim religious leaders (the *marabouts*). The *grand marabouts* had highly centralized powers over the people's religious beliefs, landholding and agricultural production. The *grand marabouts* were relied upon by the French to govern the colony for the benefit of France. Compliant *grand marabouts* grew very wealthy and important, and could count on colonial administrative support if they aspired to the position of Grand Khalif of the Mourides. An observer of the relationship between the *marabouts* and the people commented that the people had become 'slaves' of the *marabouts* (Boone 1995).

Why were the Senegalese *marabouts* able to exert such autocratic control over their subjects yet the warrant chiefs of Eastern Nigeria could not? The answer lies in the sources of power of the customary authority and its legitimacy in the eyes of the local people. Strong pre-colonial states such as the Ashante of Ghana or the Oyo of Nigeria had rulers whose legitimacy or assumed right to rule was based on the historic socio-organizational evolution of their society, and their intercessory status in the traditional religious beliefs of their society (Atanda 1970; Rathbone 2000). Their power base was sacred, though maintained through their military strength. In states under Islamic rule, the legitimacy of the rulers was tied to their religious position not only as divinely selected regents, but as mediators who had a say in the fate of the governed in the afterlife (Sanneh 1987).

Once the colonial authorities saw how convenient it was to rule through indigenous leadership structures, they decided to create these in those societies that did not have them. These invented chiefs enjoyed the recognition of the colonial state but lacked the right to rule in the eyes of the people. While the customary authorities with pre-colonial roots were not done away with by the colonial authority, their mandates now included serving the economic and political interests of the colonial authority. Chiefs who cooperated too closely with the colonial authority were considered traitors by their people; those who opposed the colonial authority were considered as subversives by the colonial state, deposed and sometimes exiled (Oomen 2005; Terretta 2010). By the time the African independence movement gathered steam at the end of World War II in 1945, coercion and manipulation by the colonial authorities had produced a largely

compliant class of African chiefs – both in centralized and acephalous societies (Mamdani 1996). Given that these chiefs owed their position mainly to recognition bestowed upon them by the colonial state, and were now less dependent on their traditional bases of legitimacy, their decision-making became more and more autocratic in the eyes of their subjects (Mamdani 1996). At the same time, their frontline status in the colonial extractive economy enabled chiefs with business acumen to become very wealthy (Mbapndah 2008).

The compliant chiefs in both British and French colonial Africa enjoyed so much privilege, they were very concerned about a loss of status during the struggle for independence after 1945 (Chem-Langhee 1983; Rathbone 2000). This was because nationalist political parties like the Convention Peoples' Party (CPP) in Ghana, and to a lesser extent the Union des Populations du Cameroun (UPC), made it clear that chiefs who had cooperated with the colonial authorities would be sidelined in the newly independent nation if they were to assume leadership (Rathbone 2000; Terretta 2010). However, in countries such as Botswana and Nigeria, at independence, chiefs were able to use their influence with the colonial authorities and sympathetic political parties, to negotiate for the establishment of a house of chiefs alongside an elected legislature (Harneit-Sievers 1998; Sharma 2003).

In Ghana, the CPP led by Kwame Nkrumah had bitter conflicts with chiefs who did not support their cause during the campaign for independence. The conflict intensified after the CPP won the general election of 1951 and was asked to form a government alongside the colonial administration. As the Nkrumah-led government embarked upon the task of restructuring local government authority in Ghana from being led by the chiefs to being led by elected representatives, the chiefs saw their material power bases being taken away from them. The new local government laws created by the CPP removed control over land from chiefs to elected local councils. The effect of this was that 'revenue from these lands, derived from local taxes on farmers, land and concession sales as well as from royalties on timber forests, auriferous and diamondiferous tracts...was to be collected by the newly created democratic local councils as one element of local revenue' (Rathbone 2000:31). In fighting back, powerful customary authority leaders such as those from the Ashante region threw their weight behind the National Liberation Movement (NLM) which was willing to preserve their status quo. However, the CPP had the overwhelming support of the Ghanaian people

at independence in 1957, and was able to curtail the power of chiefs in Ghana between 1957 to when it was militarily overthrown in 1966.

In French administered East Cameroon, chiefs who sympathized with nationalist political parties like the UPC were dismissed, imprisoned and or exiled. In the transition from governance through local native authorities headed by chiefs, to local administration run by elected representatives, the colonial administration encouraged chiefs to stand for elections. In the Bamileke region, with strong centralized chieftaincies, two-thirds of the councillors elected during the first general election in 1955 for newly-created local councils were chiefs (Terretta 2010). While chiefs in centralized societies in East Cameroon were successful in electoral politics, chiefs from acephalous societies such as Maka did not fare as well, and were completely replaced by the educated elites (Geschiere 1982).

It is clear that while uncooperative customary leaders were dismissed, customary authority structures survived the colonial era. The bases of chiefly power during the colonial period lay more with the colonial administration that sanctioned their appointment rather than with their pre-colonial roots. Nevertheless, the legitimacy of chiefs in the eyes of their subjects was based on their pre-colonial ancestry. The colonially-appointed chiefs who had no pre-colonial and cultural bases to their appointment found it much more difficult to govern – they had recognition from the state but no local legitimacy. At independence, elected local governments in areas with strong customary authority had to fulfil their mandates, with the shadow of the chief ever present in their midst (Egwurube 1988). Given that customary authority did not fade away into oblivion after independence, African governments had to enact legislation to define their powers and scope of activities within the state. While some states (Botswana, Nigeria) created a house of chiefs at independence, others sought to marginalize the chiefs (Ghana, Burkina Faso, Zimbabwe), but some (Cameroon, Senegal) had a more nuanced response given the wide variety in the powers of chiefs in their territory.

In the case of Cameroon, the territory was of interest to Britain, France and Germany (Nghoh 1996). In 1879 a group of coastal chiefs fearful of French or German annexation, wrote a letter to Queen Victoria of England asking her to annex Cameroon. The Germans beat the English and the French to it, and declared Cameroon a colony in 1884. The Germans were harsh and brutal (Geschiere 1982; Geschiere 1993); they lost the colony 30 years later after World War I. In 1916, the colony was declared a League of Nations mandate and divided

into French East Cameroon and British West Cameroon. Like the Germans before them, the British and the French governed their subjects through customary authority. Where there were no chiefs, cooperative subjects were appointed as chiefs.

Chiefs in West Cameroon had administrative, legislative and judicial functions, which included tax collection, and the provision of labour for the plantations and public works. Their traditional judicial function was strengthened through the codification of customary norms into customary law and the setting up of customary courts. In East Cameroon, the chiefs had the same administrative tasks but did not have the same judicial powers of their counterparts in West Cameroon. The chiefs' main task was the ruthless enforcement of colonial decrees (Geschiere 1982). While the British allowed some distance between the colonial administrator and the chiefs, the French saw the chiefs as the lowest rung of an unbroken administrative ladder that stretched back to Paris, so the colonial administrator had very tight control over the chiefs. In West Cameroon, chiefs were often elderly men from leading families; in East Cameroon, the French sometimes appointed young men and persons from non-leading families to chieftaincy positions. This meant that in East Cameroon, chiefs resorted more to the use of ruthless force to obtain allegiance from their subjects. In the hinterland areas of West and East Cameroon, particularly the present North-West and Western regions respectively, the people had strong centralized chieftaincies before colonialism. These were strengthened by colonialism, and were able to use their position to establish their own plantations and amass small fortunes (Mbapndah 2008).

In the run up to independence in Anglophone West Cameroon, elected local government replaced the native administrations headed by chiefs. The chiefs, fearful that the educated elites were about to knock them off their privileged positions, made strong petitions to the colonial administration for a house of chiefs with equivalent powers to the elected parliament (Chem-Langhee 1983). The chiefs also worked to influence the decisions of the political parties. Once they felt that the Kamerun National Union (KNU), the first independence era political party, was not committed to their cause, it lost their support. They then supported the Kamerun National Democratic Party (KNDP), which went on to oust the KNU from power. Eventually, a house of chiefs was created in 1961 with an advisory role to the house of assembly. In East Cameroon, the chiefs did



not have a national platform to conceive and a demand house of chiefs; they were rather encouraged to stand for territorial elections.

In 1961, West Cameroon joined East Cameroon to form a centralized two state federation,<sup>7</sup> with West Cameroon as the minority partner (Le Vine 1964; Stark 1976). There was no consideration about the role of chiefs in this structure. In 1972, after President Ahmadu Ahidjo had turned Cameroon into a one-party state, he dissolved the federation including the West Cameroon House of Chiefs (Chem-Lamghee 1983). He then enacted the land tenure Decree No. 74/1 of 6 July 1974 that vested ownership of all lands in the hands of the unitary state he created (AfDB 2009). This repealed the 1927 Land and Native Rights Ordinance (LNRO) which vested lands in the hands of the native authority in West Cameroon, and also repealed Law No. 59-47 of 17 June 1959 which recognized customary ownership of non-public and non-private lands in East Cameroon. In 1976, the government tacitly recognized the *de facto* role of chiefs in land management by including them in the national land commission set up by Decree No. 76-166 of 27 April 1976 (Egbe 1997; Nguiffo et al, 2009; Wily 2011). Furthermore, the government promulgated Decree No. 77/245 of 15 July 1977, giving it the power to appoint and to dismiss chiefs.<sup>8</sup> The decree categorizes chiefs into first-class or paramount, second and third-class. First-class chiefs receive a government salary but second and third-class chiefs do not. However, chiefs often receive gratuities from land rents and sales, and from resolving land disputes. The 1977 decree made it clear that chiefs are auxiliaries of the government (Adama 2006; Cheka 2008).

However, the government recognizes that there is political capital to be gained from nurturing a positive relationship with chiefs. In February 1983, shortly after being handpicked by President Ahidjo as his successor, Paul Biya accepted the title of 'Fon of Fons' (Chiefs of Chiefs or King of Kings) from the chiefs of the North West Region (Awasom 2003). In 1990, at the return to multi-party politics, Fon Angwafo III of Mankon in the North West Region was selected as the first national vice-president of the ruling party, the Cameroon People's Democratic Movement (CPDM) (Awasom 2003). The CPDM hoped this would erode the huge support for the main opposition party, the Social Democratic Front (SDF), which has its core support in the North West Region. Instead, the Fon has experienced fierce and violent attacks from subjects unhappy with his politics (Awasom 2003).

If the Cameroon government felt the 1977 decree had made chiefs completely subservient to the state, an event in the mid-1990s provided a rude reminder of the power of chiefs. On 15 July 1994, the government announced that it was privatizing the Cameroon Development Corporation (CDC). This parastatal is the largest agro-industrial enterprise in Cameroon and second largest employer next to the government. Its plantations are mainly around the volcanic Mt. Cameroon, home to the Bakweri ethnic group, in the anglophone South-West Region of the country. The plantations were established by German entrepreneurs a century ago after forcefully appropriating Bakweri lands (Konings 2003). The ownership of the CDC passed on to the British colonial administration after World War II, then to the West Cameroon Government in 1961, and to the unitary Cameroon government in 1972.

On 23 July 1994, Bakweri chiefs and leading elites met and decided to form the Bakweri Land Claims Committee (BLCC) to oppose the privatization plan. On 4 August 1994, the Bakweri produced a memorandum stating that they were opposed to privatizing the CDC, and sent this to the government, donors and the United Nations. The Bakweri chiefs were at the forefront of this firm negative response to the privatization plan and the government was stunned. The chiefs received broad-based support from Bakweri and other anglophone elites in Cameroon and the diaspora. The strength of the opposition forced the government to halt the CDC privatization plan (Konings 2003).

The chiefs were able to band together and articulate their grievances through the BLCC under the cover of Law No. 90/053 of 19 December 1990, which provides for the freedom of association. The 1990 law was part of the legal changes that accompanied the re-introduction of multi-party politics. The Bakweri chiefs were also emboldened because at this time the Paul Biya regime was increasingly seeking the political support of chiefs all across Cameroon in order to boost their electoral fortune (see Eyoh 1998). This new space for voice from traditional rulers has seen the formation of traditional authority associations including the South-West Chiefs Conference (SWECC), the North-West Fons Union (NOWEFU), and the Cameroon National Council of Traditional Rulers (CNCTR). In March 2011, the CNCTR signed an agreement with the Pan-African Parliamentarians' Network on Climate Change (PAPNCC) to work as partners towards mitigating the impact of climate change.<sup>9</sup>

The Cameroon case reviewed above shows how the government has tried to control traditional authority in the country, but they have found new strength since the institutionalization of democratic politics. Their capacity to exploit contemporary opportunities for public relevance is shaped by their memories and learning from the colonial era when chiefs were at the helm of public decision making (van Dijk and van Rouveroy van Nieuwaal 1999). The discussion thus far has provided a lengthy overview of the evolution of customary authority from the pre-colonial era to date. The Cameroon case shows that chiefs have weathered the efforts to reduce their power (especially over land) and make them subservient to the states. Today, they are exploiting new avenues to make themselves present in public policy discourses including efforts to mitigate the impact of climate change.

### **Evolution of Customary Authority in East and Southern Africa**

Thus far, this review has paid more attention to the evolution of customary authority in West and Central African countries. Are the experiences of traditional leaders similar or different in East and Southern Africa? Muriaas (2009) has done a comparative study of the political role of customary authority in Malawi, Uganda and South Africa. Muriaas (2009) shows the different strategies that the colonial authorities used in the three countries to co-opt traditional leaders into serving the interests of the colonial government. He then compares this to how the post-independent state presently relates with traditional leaders, showing the continuities and discontinuities with the past.

In Malawi, the colonial authorities, on declaring the territory (then known as Nyasaland) a British protectorate in 1891, chose to govern the people directly, thus by-passing traditional authority. This changed in 1912 with the promulgation of the *District Administration (Native) Ordinance Act*. This ordinance made chiefs auxiliaries of the colonial government with functions including tax collection, public security and public works such as road construction. Cammack et al (2009) note that the Native Ordinance Act of 1912 created new hierarchies of chiefs, which were filled by the appointment of persons who had faithfully served the colonial authorities in other capacities. The colonial authorities were therefore careful to appoint persons who would serve their interests, inventing new titles on and new roles for customary authority. Cammack *et al.* (2009)

show how the colonial authorities worked to strengthen the power and roles of chiefs through the creation of Native Authorities (NAs) headed by chiefs, bestowed with powers of local governments, including judicial powers.

However, at independence in 1964, the NAs had been replaced by elected local government with chiefs playing an advisory rather than leading role as had happened in other British colonies. In 1967, the government enacted the Chiefs Act, which emphasized that their function was to be limited to that of custodians of culture with regular salary from the government and neutrality in political affairs (Cammack *et al.* 2009). While President Banda's one-party rule in Malawi from independence in 1964 to 1994 saw him continually seek for legitimacy from customary authority, he nevertheless made sure that chiefs could not make decisions independent of the state (Cammack *et al.* 2009; Muriaas 2009). In exchange, the chiefs did not only receive a salary from the state, but their role in managing rural land allocation remained unchallenged, thus maintaining their relevance to rural life in Malawi.

Since the introduction of multi-party democracy with the defeat of President Banda in 1994, chiefs in Malawi have been enjoying greater local autonomy (Cammack *et al.* 2009). This is because state officials at the local level who constituted the oppressive machinery of the state in the one-party era do not have the same coercive powers over local chiefs. The chiefs have not only maintained their local powers over land but find themselves being courted by political office seekers and holders for local votes (Cammack *et al.* 2009). The chiefs have become so adept at enriching themselves at the expense of political candidates, and there is concern that some are neglecting their governance functions and focusing more on their role as political middlemen at the local level (Muriaas 2009).

In Uganda, colonial rule began in 1894 with the subjection of the Kingdom of Buganda to British rule (Golooba-Mutebi 2008). Buganda was the largest self-governing group in Ugandan territory at the time; others included Busoga to the east of Buganda, Bunyoro in the west, Ankole in the south, and Acholi in the north. Baganda foot soldiers participated in the colonial military conquest and subjugation of these other groups (Golooba-Mutebi 2008). The cooperation and involvement of the Baganda in the colonial subjection of these other groups have had a long-lasting negative impact on the political relationship between the Baganda and other tribal entities in Uganda from the colonial era till date (Golooba-Mutebi 2008). In 1900, the British signed a cooperative agreement

with Buganda which ensured that at least half of the arable land in Buganda<sup>10</sup> was distributed to the king and sub-chiefs in what has become known as the Mailo system (Muriaas 2009).

Traditional leaders in other parts of Ugandan territory were not able to obtain similar concessions from the British. Thus Buganda traditional leaders could develop independent sources of income, while those in other tribal groups had to depend on salaries from the colonial administration for their livelihood (Muriaas 2009). Nevertheless, the indirect rule system meant that traditional leaders across the colonial territory were all involved in the allocation of land to their subjects in the rural areas, tax collection and organization of labour for public works (Fallers 1955). Those who were able to manipulate the system for their personal benefit were always able to augment their salaries (Muriaas 2009). Fallers (1955:298) based on his research amongst the Basoga states that:

... the indigenous political structure was simply taken over intact, given new tasks, and allowed to continue functioning under the supervision of administrative officers... rulers of the various kingdoms continued to hold hereditary office and to recruit their administrative staffs through personal clientship... judicial and administrative powers of rulers and chiefs were recognized, and even enhanced, by Protectorate legislation which made them statutory judges and gave them the authority to issue administrative orders having the force of law. They continued to be supported by tribute paid by the commoner population... they were required to collect taxes, to assist in public works, and to submit their judicial decisions to review by administrative officers.

At independence in 1962, the chiefs were administratively replaced by elected leaders at the local level. However, the Buganda monarchy was once again able to negotiate a semi-autonomous status for the Buganda kingdom within the independent Ugandan state.

In this arrangement, the Buganda king was appointed the ceremonial president of the Ugandan state while executive power was bestowed on the elected prime minister of the republic (Englebert 2002a). In a bid to consolidate his political power, Prime Minister Milton Obote harnessed long-held grievances against the Buganda monarchy by other tribal groups like the Banyoro. First, he held a referendum in 1964 on the issue of Bunyoro's ancestral lands in Buganda territory,

which culminated with the land in question being returned to Bunyoro. In return the Buganda kingdom parliament asked the Ugandan government to vacate Buganda land, given that Uganda's capital city of Kampala is built on Buganda's ancestral land (Golooba-Mutebi 2008). This conflict eventually led to a military assault in 1966 led by General Idi Amin on the palace of the king of Buganda, Kabaka Edward Mutesa II, who was also forced into exile in England (Englebert 2002a; Golooba-Mutebi 2008; Mariaas 2009). Obote went on to abolish all kingdoms in Uganda, severely curtailing the powers of traditional leaders.

Obote's bloody confrontation with Buganda and militarization of Ugandan politics set the stage for the social and economic ruin of Ugandan society by the Obote and Idi Amin regimes from 1966 to 1986 when Yoweri Museveni's rebel movement came to power. Museveni received significant support from Buganda traditional leaders in his military campaign to power (Englebert 2002a; Golooba-Mutebi 2008; Mariaas 2009). In return, on 13 July 1993, Museveni amended the Ugandan constitution to provide for the reinstatement of traditional monarchies, and on 31 July Prince Ronald Mutebi was crowned Kabaka of Buganda replacing his father Kabaka Mutesa II who died in exile (Englebert 2002a). In the years following his coronation, Mutebi has worked conscientiously to restore the prestige of his throne and the Buganda kingdom. He has reinstated the traditional parliament and appointed influential Baganda as members of his ministerial cabinet – including Apolo Nsibambi, Prime Minister of Uganda from 1999 to 2011. He has also appointed representatives in countries with large Buganda diaspora, including Kenya, United Kingdom and Sweden (Englebert 2002a).

Golooba-Mutebi (2011) argues that Museveni restored the monarchy in 1993 not only as a payback for Baganda support of his military campaign to power but also as a means of securing Buganda votes in scheduled elections. These were the constituent assembly elections of 1994 for delegates to the national constituent assembly mandated to debate and promulgate a new constitution in 1994-95, and the subsequent parliamentary and first presidential elections of 1996 contested by Museveni. Buganda with 16 per cent of Uganda's population is the largest single electoral block; their loyalty to their Kabaka makes the Kabaka the single most influential vote bank in Uganda. However, in the 2001 presidential elections, despite the Kabaka's support for the opposition presidential candidate, Kizza Besigye, Museveni still won most of the Buganda vote from the rural areas (Englebert 2002a).

While the Kabaka is constitutionally supposed to remain politically neutral, but pragmatically expected to support the president, he has supported Kizza Besigye because this candidate has spoken in favour of semi-autonomy for Buganda in a federated Ugandan state (Naluwairo and Bakayana 2007). The issue of autonomy, or *federo* as it is locally referred to, for Buganda, is not only about self-rule but is linked to Buganda demands for restoration of about 9,000 square miles of land seized from the Buganda monarch in 1966 by the Obote regime (Englebert 2002a; Naluwairo and Bakayana 2007). The *federo* issue is also important to the Kabaka because the 1995 constitution bars the monarchy from raising funds through local taxation and sets a limit to the amount of rent that can be collected from landholdings. While this is a very emotive issue in Buganda, it is reported that only 24 per cent of Buganda supports autonomous traditional rule in Buganda (Englebert 2002a).

While the Baganda have mainly pitched their political tent with Museveni, the call for *federo* with fiscal autonomy for Buganda has strained the political relationship between Kabaka Mutebi and Museveni (*The Economist* 2009; Muriaas 2009; Golooba-Mutebi 2011). Observers believe that the way Museveni manages his relationship with Buganda has far-reaching consequences for his political survival and the future of the Ugandan state (Englebert 2002a; Naluwairo and Bakayana 2007; *The Economist* 2009; Muriaas 2009; Golooba-Mutebi 2009, 2011). Traditional authority is thus forcefully re-asserting its power in Uganda. Similar dynamics have also been observed in South Africa.

Colonialism and later apartheid corralled the black population of South Africa into ten native homelands, or Bantustans, governed authoritatively under a state-appointed chief operating under state codified customary law (Ntsebeza 2005; Oomen 2005). These sometimes state-created and state-controlled chiefs were often despotic and unpopular, as they were considered a front for the oppressive state (Maloka 1996; Mamdani 1996). Thus some expected that the end of apartheid and transition to democratic government in South Africa in 1994 would bring an end to the rule of chiefs (Ntsebeza 2005), which was not to be the case. Oomen (2005) shows how the chiefs have successfully returned as principal actors in rural governance. During talks leading up to South Africa's first democratic election in 1994, and the promulgation of a new constitution in 1996, traditional leaders led by the Zulu king Zwelithini and the Zulu-based Inkatha Freedom Party (IFP) were successful in ensuring that the new constitution had

clauses that recognized customary authorities as legitimate public servants (Ntsebeza 2005; Oomen 2005; Beall and Ngonyama 2009). The constitution also allows for rural areas to be governed by customary law codified in the apartheid era. The chiefs used violent protest, and the threat of secession in the case of the Zulu-dominated KwaZulu homeland, to get their way.

The constitution allows traditional leaders to keep their administrative apparatus from the apartheid era, with chiefs receiving a stipend of about \$9,000 p.a. (Oomen 2005). Chiefs maintain their power to make local rules, adjudicate disputes and allocate land. In comparison, newly-created local municipalities are short of staff and elected representatives are poorly remunerated for their work, receiving a stipend of about \$2000 p.a. (Oomen 2005). This condition where newly created and elected local municipality authorities are struggling for resources, while unelected traditional authorities receive substantial support from government has created a tense working relationship between both local authority actors (Ntsebeza 2005; Oomen 2005). While some in South Africa hoped that with the end of apartheid 'chiefs will melt away like ice in the sun' (local civic leader quoted in Maloka 1996:173), Nelson Mandela and the leadership of the African National Congress (ANC) backed the efforts of the Congress of Traditional Leaders of South Africa (CONTRALESAs) to be involved in talks determining the future of a democratic South Africa (Maloka 1996; Ntsebeza 2005; Oomen 2005).

The ANC supported a role for chiefs in the new South Africa for several reasons. The ANC from its formation to the collapse of apartheid have always had a relationship with traditional leaders. While the relationship went through cycles of cooperation and conflict, just prior to the collapse of apartheid, through the efforts of CONTRALESAs, the relationship was one of supportive cooperation (Maloka 1996). In addition, the ANC needed the support of CONTRALESAs to check the power and influence of Chief Buthelezi's party, the IFP, in constitutional talks. Furthermore, the ANC felt it needed the support of traditional leaders in order to capture the votes of South Africans in rural areas who still viewed traditional leaders as legitimate local representatives based on culture and tradition (Oomen 2005). Ntsebeza (2005) strongly criticizes the ANC for compromising its democratic ideals and betraying the hopes of South Africans who had looked forward to the end of the unelected, unaccountable, oppressive and anachronistic chieftaincy institution.



As in West and Central Africa, colonialism in East and Southern Africa transformed customary authority from one organically tied to its indigenous subjects, to one answerable to colonial interest. At independence in the 1960s governments worked to bring traditional leaders under their political control like the colonial administrators they replaced. However, the government's need for political legitimacy at the local level meant it had to tolerate traditional leaders who did not challenge its political authority, while deposing those who were considered political threat. This was also the case with the apartheid government in South Africa. While traditional leaders no longer had to serve external colonial interest after independence, they found themselves serving a new 'master', the elites who had inherited the colonial state. The demand for multi-party democracy in the 1990s, and consequential courting of traditional leaders for local votes have given them a new platform for re-invention and greater room for manoeuvre to achieve their self-interests. Is this also the case for the Lusophone countries?

### **Evolution of Customary Authority in the Lusophone Countries**

There are five Portugal colonized countries in Africa – these are the West African states of Sao Tome and Principe, Cape Verde, and Guinea Bissau; and the Southern African states of Angola and Mozambique. As in British and French-colonized territories, there has been significant movement of ideas, people, and goods between the Lusophone countries from the colonial era to date. The Portuguese commenced the slave trade between Angola and Brazil in the sixteenth century and took Angolans to work the plantations in Sao Tome and Principe in the nineteenth century; Cape Verdeans settled and influenced the political history of Guinea Bissau; Indians from the Portuguese colony of Goa (now the smallest state in India) settled in Mozambique as merchants (Chabal 2002). As in the Anglophone and Francophone colonies, the Portuguese had to co-opt customary authority before they could establish territory-wide administrative control in the late nineteenth century (Chabal 2002).

A feature of Portuguese colonialism was that its administrators and settlers were often from poor peasant backgrounds, nevertheless, they just as easily resorted to using crude force to achieve their objectives as their more elitist peers in British and French colonies (Chabal 2002; 2007). This accounts for the fact that

it is only in the Portuguese colonies of Sub-Saharan Africa that the anti-colonial forces had to undertake full military campaigns to achieve independence -- what Chabal (2002:8) has referred to as 'effective armed action'. In addition, in their largest territories of Angola and Mozambique, the effective administrative influence of the colonial administration was centred on the coastal capitals of Luanda and Maputo respectively (Chabal 2002). While customary authority was left in place in the hinterlands, their authority was subject to that of colonial merchants and entrepreneurs with concessional rights to exploit the resources and people (used as forced labour) of the interior as they saw fit (Chabal 2002; Chabal and Vidal 2008; Hughes 2006).

Chiefs in Mozambique saw their rights over people enhanced by colonialism as they were responsible for providing forced labour to Portuguese entrepreneurs and the state based on the labour laws of 1899 and 1928 (Hughes 2006; O'Laughlin 2000). The colonial land law of 1918, divided land in Mozambique into private land, state land and native reserves (O'Laughlin 2000). Natives or '*indigenato*' could not own private land but could be provided land in the native reserves by the chief or '*regulo*'. Chiefs were answerable to the district administrators; they could be appointed and dismissed by the colonial authorities based on their level of cooperation with the administration (O'Laughlin 2000). In some instances, persons with no claim to customary leadership were appointed as chiefs. It was common for chiefs to use their position for personal enrichment.

At independence in 1975, the Frente de Libertação de Moçambique (FRELIMO: Liberation Front of Mozambique) that came to power after armed conflict with the Portuguese from 1964 to 1974, abolished the institution of chiefs. FRELIMO replaced chiefs with party cadres appointed as change agents in the task to transform Mozambique to a more equitable society as envisioned by FRELIMO (O'Laughlin 2000; West and Kloeck-Jenson 1999). As with other parts of Africa where governments tried to sideline chiefs after independence and it did not work, the same happened in Mozambique. Despite the presence of these party cadres or '*grupos dinamizadores*' (dynamizing groups), local people still depended on local chiefs for obtaining land, settling local conflict, and dealings with local government (Hughes 2006; O'Laughlin 2000; West and Kloeck-Jenson 1999).

Mozambique fought a civil war from 1977 to 1992 between FRELIMO and the Resistência Nacional Moçambicana (RENAMO: The Mozambican Nation-

al Resistance). RENAMO had support from apartheid South Africa wanting to destabilize FRELIMO for their support to anti-apartheid forces, but also had internal support from groups unhappy with FRELIMO policies including the abolishing of chieftaincy (Newitt 2002; O'Laughlin 2000). RENAMO reinstated chiefs in territory under its control and at the end of the war FRELIMO changed its policy on chiefs (O'Laughlin 2000; West and Kloeck-Jenson 1999). FRELIMO needed chiefs to help it win rural votes in the 1994 first multiparty presidential elections, and was also pressured by donors to decentralize power to the local level with advisory roles for chiefs (Newitt 2002; O'Laughlin 2000; West and Kloeck-Jenson 1999).



# 3

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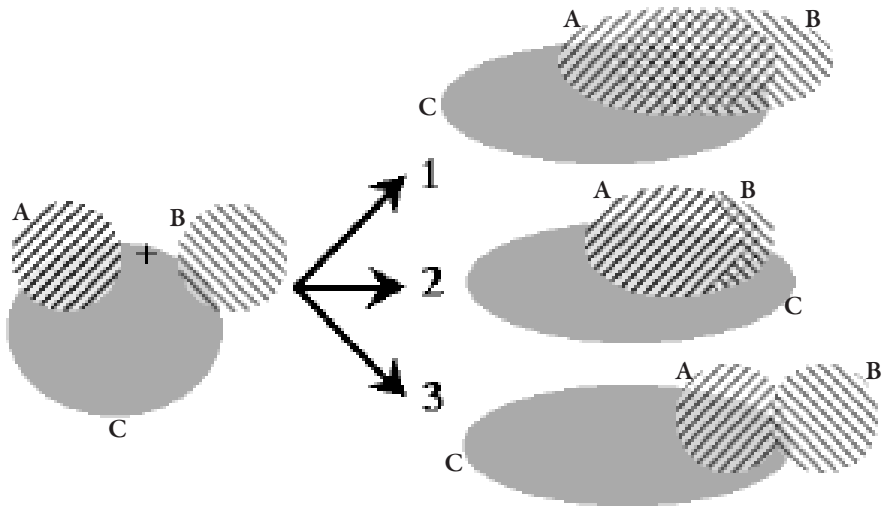
## The Chief is Dead, Long Live the Chief: Theories on the Resilience and Resurgence of Chiefs

In *The Dynamics of Power and the Rule of Law*, Wim van Binsbergen (2003) briefly touches on the question of the resilience of traditional authority in Africa. His insight in this edited volume of essays in honor of E. A. B. van Rouveroy van Nieuwaal, draws from a lifetime of research on chiefs by E. A. B. van Rouveroy van Nieuwaal, on van Binsbergen's own research, and on the insights of the authors that contributed to the edited volume. Wim van Binsbergen focuses on the issue of legitimacy, that is the right to rule (Gilley 2009), as the central explanatory variable that accounts for the resilience of traditional authority in post-colonial Africa (see also Logan 2011). In his thesis, the continued interest of the political class in acquiring traditional legitimacy ensures the continued relevance of traditional authority in Africa. He argues that the rootedness of traditional authority in Africa's pre-colonial past gives it legitimacy that is more respected by Africans compared with state power (see also Logan 2011). Given that the modern elites and political class in Africa enjoy legitimacy based on western logics of power, their legitimacy is viewed through the painful memory of colonial rule.

In van Binsbergen's (2003) postulation, the quest for traditional legitimacy by the modern elites is a means to exorcise the ghost of colonialism associated with their positions in the eyes of the people, and receive the blessings of the ancestors. This resonates positively with African peoples, especially those in the rural areas. He goes on to argue that the interaction between traditional authority and the state is not a zero-sum game, as the bases of their power are different, and

both can co-exist independently or reinforce one another as shown in Figure 1 below. In the figure, 'A' is state power, 'B' is chieftaincy power and 'C' the various outcomes from the interaction between 'A' and 'B'. These include option 1 – both thrive and expand; option 2 – the state eclipses the chief; and option 3 – little overlap where both authorities subscribe to an avoidance strategy.

**Figure 1:** Outcomes from Relationship Between the State and Traditional Authority



A= the post-colonial state (///) and its legitimate power on the basis of legal authority. B = the chiefs (\\) and their legitimate power on the basis of traditional authority. Continuous grey: various other sources of economic, media religious, domestic, parental, etc. power in society. C = the inherently heterogeneous, perspectival, kaleidoscopic complex of power in society.

Englebert (2000) theorizes that legitimacy is at the root of political and economic under-performance of African states. State legitimacy, a higher order variable compared to regime legitimacy, is defined as when a state 'has evolved endogenously to local social relations of power and authority or when, having originally been imported, it is then absorbed by such preexisting endogenous institutions' (Englebert 2000:72). He argues that traditional authority in Africa considered the independent states as illegitimate and cites the antagonistic reactions of some powerful monarchs to the new independent states, to support his arguments. This included the refusal of the Asante king to attend Ghana's independence ceremonies in 1957; the attempted coup by the Mogho Naaba, king of the Mossi of Burkina Faso, against the country's elected government in 1958; and the proclamation of independent self-rule by the Buganda king in the run-up to Uganda's independence in 1960.

This state legitimacy and development theory is supported by an analysis showing that 'legitimate states grow 2 per cent faster, than their non-legitimate counterparts' (Englebert 2000:175). In Englebert's theory, one of the more legitimate states in Africa is Botswana, because the modern state and traditional authority was fused in the person of Seretse Khama, the first president of Botswana and heir to the Ngwato kingship, the most powerful traditional authority in Botswana. He compares Botswana to the Democratic Republic of Congo (DRC), which he considers an illegitimate state. He argues that the strong ethnic fragmentation of the DRC at independence led to a plurality of power centres interested in capturing the state, or preventing it from being captured by a rival ethnic group. While Seretse Khama could pursue a nationalist project in Botswana knowing that he had the support of the traditional authorities and their subjects, Mobutu Sese Seko in the DRC needed to pacify the many fiercely competing ethnic-based power centres in the state. Thus the quest for regime and state legitimacy makes African governments both patrons and clients of traditional authority. This in turn assures the continued relevance and resilience of traditional authority in Africa.

Williams (2010) examines political legitimacy in the Republic of South Africa. He maintains that South Africans view both the government and traditional rulers as legitimate authorities. While the people accept that the government and traditional rulers operate on different bases of moral legitimacy, they base their level of support for either of these authorities on their performance legitimacy.

Moral legitimacy is defined as 'the underlying norms, values, myths, and symbols of the society that are used to define and evaluate "appropriate" political action' (Williams 2010:21). Performance legitimacy is defined as 'the actual implementation of rules, institutions, and policies and refers to the manner in which power is used and how those in society evaluate this process' (Williams 2010:28).

While government's moral legitimacy is associated with the norms and values associated with representative democracy, traditional authorities 'have rooted their moral legitimacy in a set of norms and values that they claim predate the establishment of the colonial state' (Williams 2010:25). Government and traditional authority call upon their moral legitimacy as the basis of their right to rule, and call upon their performance legitimacy as the basis of their relevance in the everyday lives of local people. Thus traditional authority in South Africa makes the claim that their continued relevance in the lives of the people, especially in the rural areas, legitimates their rule. Being aware of this fact, chiefs in South Africa have fought and continue to fight for spaces and resources where they can continue to show their worth to their subjects (see also Ntsebeza 2003; Ntsebeza 2005; Oomen 2005).

The legitimacy thesis provides an explanation for the resilience of customary authority, but it does not explain their resurgence. While subscribing to the legitimacy thesis in explaining resilience of chieftaincy, van Rouveroy van Nieuwaal (1996) adds that their resurgence is related to the democratic transition in Africa in the early 1990s. This reduced the stranglehold of the state, providing space for other social actors to express themselves (see also Ubink 2008; Baldwin 2011a). He notes that the democratic transition coincided with the global recognition of the rights of indigenous people. This gave rise to identity politics that chiefs in Africa exploited to their advantage as representatives of their cultural groups (see also Oomen 2005). According to van Rouveroy van Nieuwaal (1996), the stringent and painful economic restructuring that African states undertook on the advice of the Bretton Woods institution alongside the democratic transition, have enabled kin-based support groups to flourish. In turn, their dependence on cultural norms inevitably strengthens traditional authority.

Furthermore, van Rouveroy van Nieuwaal (1996) asserts that the constraining structures of the colonial and post-colonial state in Africa did not succeed in making chiefs irrelevant. He makes reference to the long-standing judicial role of chiefs as an invaluable service to local people, which the state has not been able



to replace. He notes that this is part of the reason why the Zimbabwean government went back on its decision not to recognize chiefs. He then argues strongly that chiefs have agency, while some have been stooges and despots, some have had to walk a tightrope in a bid to protect their interest, serve their subjects and the state (see also van Rouveroy van Nieuwaal 1991).

Boone's (1992; 1995; 2003) brilliant work on the political topographies of the African state draws our attention to the various ways that local power centres including traditional authorities have asserted their strength and won concessions from the state over local governance arrangements. She theorizes that where local elites have a lot of power over local people but are economically dependent on the state, they will end up in a power-sharing arrangement that she terms 'devolution'; where powerful local elites are economically independent of the state, they will be viewed as a threat and subjected to state repression – an outcome she terms as 'usurpation'; where local elites are weak but the area is of economic interest, the state will put in place an effective tax regime while avoiding to establish structures that could politically strengthen the local elites – an outcome she terms as 'administrative occupation'; lastly, where local elites are weak and the area is of no economic interest, it would be neglected – an outcome Boone terms as 'non-incorporation'.

Boone (2003) tested her theory by studying central-local governance relationships in Senegal, Ivory Coast and Ghana from 1940 to 1980. She found that the colonial and post-colonial Senegalese state governed the Wolof groundnut basin in a power-sharing arrangement with the Mouride *marabouts*. In contrast the independence era Ghanaian state was continually suspicious of the Asante, and Kwame Nkrumah was determined to crush the Asante traditional leaders. In Ivory Coast, the absence of strong traditional elites in the cocoa producing Southern forest zone, allowed Felix Houphouët-Boigny to govern without sharing power with local elites. Boone (2003) shows that local power structures influence the decisions made by the central state (see also Bierschenk and Olivier de Sardan 2003; Lund 2006; Fanthorpe 2007; Mbah 2009; Sikor and Lund 2009). She therefore argues that the democratic transition and resurgence of traditional authority in Africa will produce results dependent on the strength of local elites and their powers of negotiation with the central state. Boone's work helps explain why strong traditional authority such as Buganda of Uganda and the Zulu of South Africa, have seen their political influence strengthened in this

era democratic transformation. This section has focused on theories explaining the resilience and resurgence of customary authority in Africa. The theories reviewed have focused on issues of state and regime legitimacy; the agency of traditional authority as they negotiate a space for action between the state and their subjects; the impact of exogenous donor-prescribed democratic transition; the rise of identity politics linked to the global cultural discourse on the protection of indigenous people; and an empirical understanding that the local is not a powerless *tabula rasa* or blank slate. The paper will now turn its attention to issues of the relationship between customary authority, elected local government, land rights, and the implication for the strengthening of representative democracy at the local level.

## 4

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# The Relationship Between Customary Authority and Local Government

Local government authorities are the smallest units of government, and their domains of authority are referred to variously as local government area, municipality, council, and commune. Their source of legitimacy is the constitution and other statutes that specify the extent and limits of their powers. Local governments are often involved in the provision of basic services including primary education, health, sanitation, and rural roads (Campbell 1988). In some countries they are given additional responsibilities including public security, land use and management. Local governments fund their activities through financial allocations from the central government and, in some cases, taxes from local entrepreneurs in the formal and informal sectors. Other sources include development aid from international donors and cultural groups in the diaspora. While decentralization has increased the responsibilities of local governments, it has not always increased their financial resources.

Local government is viewed as the space for democracy to take root (Laleye 1988; Ola 1988; Wunsch 2000) because it is closer to the people compared with central government. Laleye (1988) argues that, on the downside, local governments could also be instruments that relieve the central government of functions it wants to do away with, and could also be an instrument through which the state exercises a coercive agenda in oppressive regimes. They are able to do this because they have the ability to suppress the emergence of alternative power centres challenging the hegemony of the state. Thus local government has no intrinsic value that makes it an emancipatory social space. Nevertheless, Laleye (1988)

maintain that local government can be a venue for aggregating local demands and extracting a response from the state. He however flags up the fact that local government can only function within the national governance framework and not independent of it. Two dangers to be guarded against is the tendency that local government might easily become an instrument of social control and or an instrument to simply relieve the state of unwanted responsibilities. Elected local government avoids these dangers because they are accountable to the electorate.

What is the relationship between local government and traditional authority? This question is pertinent because 'it is at the local government level that the conflict between "tradition" and "modernity" is more pronounced' (Egwurube 1988). In northern Nigeria the relationship is that of conflict as the powerful traditional authorities in the region have no formal role in the local government administration, though they still command great reverence amongst the people (Egwurube 1988). In Cameroon, the Lamido of Rey Bouba sub-division in the Mayo Rey Division in the North Region of the country is a law unto himself. This traditional ruler is a strong supporter of the ruling party, the Cameroon Peoples Democratic Party (CPDM). He does not tolerate any political opposition in Rey Bouba, he determines the result of any political election in Rey Bouba, making sure the CPDM is victorious. The Lamido has his own police force, runs his own jails and has been accused of ordering the summary execution of perceived opponents. Despite complaints from those bold enough to do so, and human rights groups, the government has failed to take any action against the Lamido, instead he was bestowed with a national award for good services rendered to the country (Article 19 1995; Takougang and Krieger 1998; Englebert 2002b; Hansen 2003; ICG 2010).

In Ghana, traditional authorities are recognized by the constitution and have a formal state structure – the house of chiefs organized at the national and regional levels. Traditional authorities also have control over land and land resources in their domain of authority, given economic power to those who have valuable mineral resources in their region like the Asante. Belden (2010) carried out an empirical study of the relationship between traditional authority and government (mainly local government) using a modified form of the Institutional Analysis and Development (IAD) framework designed by Ostrom (1999). Belden's (2010) modified framework is shown in Figure 2 below.

In the framework below, the relationship between the actors (traditional authority and government) is influenced by three factors; these are 'resources', 'incentives', and 'rules in use'. Each factor has four sub-factors, implying that in a strictly rational sense there will be 64 (4x4x4 matrix) possible outcomes. However, Belden (2010) has grouped the observed outcomes from her study into four observed 'patterns of interactions' namely – 'non-interaction', 'collaboration', 'conflict within chieftaincy' and 'collusion'. While 'conflict within the chieftaincy' was not observed as resulting from the relationship between chief and government, Belden (2010) includes it as a major observed result because it was a common occurrence and it has profound effect on development outcomes. Development outcomes for Belden (2010) included community development (infrastructure), equity in the district, and community cohesion – that is an increase or decrease in community conflict.

Non-interaction was observed mainly in situations where there are disagreements or other conflict between chiefs especially over the distribution of rents. When this happens, the local and regional government representatives do not intervene because conflicts between chiefs are constitutionally resolved in the house of chiefs. So there is non-interaction in the locality between the traditional authority and the government authority leading to poor development outcome.

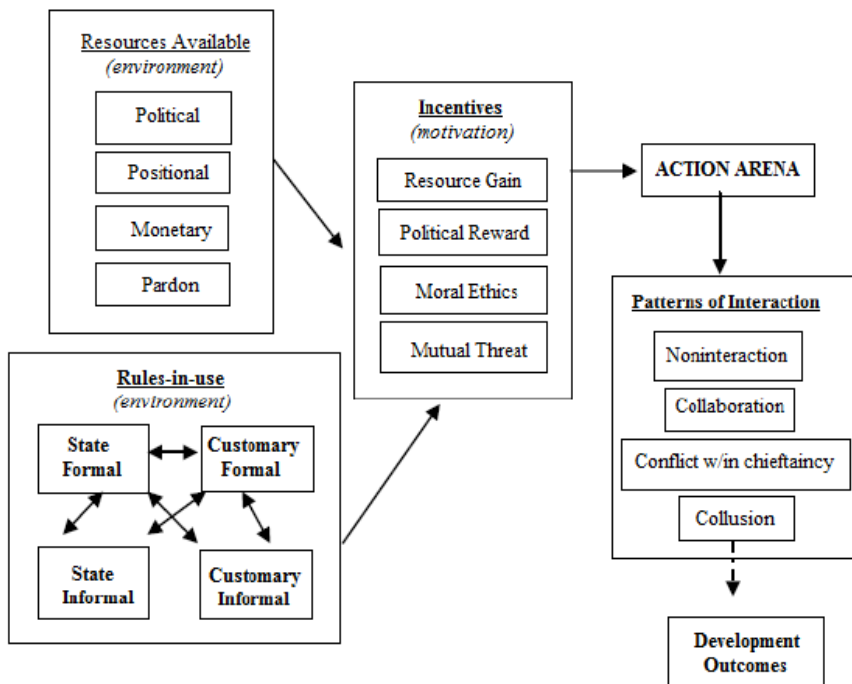
Collaboration was observed when the traditional authority and the government authority were willing to invest resources and time to achieve a community project. Collaboration was fruitful where there was regular meeting between both sets of actors and no one actor was able to subdue the other due to having much more political and or financial capital. Where there is a large power asymmetry between both set of actors, there is a tendency for one set to feel they can go it alone. Belden (2010) found that genuine collaborations for positive development outcomes were few.

Collusion occurs in situations where the traditional authority and government authority work together to achieve self-serving ends. In regions with mineral resources, some traditional authority collude with state authority to permit and or engage in illegal mining and the proceeds go to the individuals involved and there is no contribution towards community development.

It is worth noting that when there was a high resource asymmetry between traditional authority and government authority, collaboration suffered. Therefore, in regions where chiefs are very powerful due to religious and or economic reasons, local government will suffer. Conversely, where local governments are

well resourced, they should be able to stand their ground and not be pushed over by traditional leaders. Belden (2010) found that genuine collaborations were few, and non-interaction, collusion and conflicts between chiefs were more prevalent. This implies that self-serving behaviour was more prevalent than community-serving behaviour. What then are the prospects for representative democracy to take root at the local level given the increasing power of traditional authority across Africa today? The concluding section of this paper grapples with this million-dollar question.

**Figure 2:** Framework for Studying the Relationship Between Traditional Authority and Government



Source: Belden (2010)

# 5

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## The State, Chiefs and Struggles over Land Rights

In section 3, we show that the key factor mediating the relationship between the central state and customary authority is legitimacy. Customary authorities are seeking for statutory recognition and legitimacy from the state, while the state is seeking for culturally-rooted indigenous legitimacy from customary authorities. In the course of this legitimacy dance, both sides tread carefully to avoid the eruption of social conflicts when their substantive interest seems threatened by the action of the other party. The state feels threatened when customary authority offers its political allegiance to the political opposition, while customary authority is threatened when its influence over land is diminished through state legislation. Consequently, this tension between the state's statutory power over land, and customary authority's desperation to maintain its control over land, is tested to the limits of its endurance in the struggles over land rights at the local level.

The actors in the struggle over land at the local level include customary authorities, local governments, local representatives of central government departments, local and international NGOs, local and international private entrepreneurs, local farmers, pastoralist cattle herders and land-hungry local people (Cotula 2007; Baldwin 2011). Colonial administrators used land policies to appropriate land for foreign entrepreneurs and to control the economic development of local people (rewarding allies and punishing opponents), while the independent state has used land policies to empower the state by nationalizing all lands (Boone 2007). However, customary authorities have remained the *de facto* managers of land in rural Africa from the colonial era to date (Cotula 2007).

In recognition of the resilience and resurgence of customary authority since the 1990s, governments across Africa are re-writing land laws that recognize customary authority over land. These include the Mali Land Code 2002; Mozambique Land Act 1997; Namibia's Communal Land Reform Act 2002; Niger's Rural Code 1993; Tanzania's Land Act and Village Land Act 1999; and Uganda Land Act 1998 (Cotula 2007). Challenges related to customary land rights include the widespread exclusion of women and non-indigenes from inheritance, ownership and decision-making over land use (Cotula 2007). In some instances, this dual statutory system means that conflicts over land become more difficult to resolve as disputants assert their claims based on the different legal systems (Cotula 2007). In Ghana, local chiefs are selling customary land constitutionally placed under their trusteeship to private investors for personal gain (Cotula and Neves 2007; Hughes et al 2011).

Contested tenure rights by adjacent ethnic groups also make it difficult to enforce land rights. In such cases the local government and or the government department in charge of lands often keep their hands off the conflict, leaving it to higher authorities like the office of the President to make a decision. In Uganda, the issue of the absentee Buganda landlords of Bunyoro lands granted by the colonial government to Buganda (Espeland 2007), but now under Bunyoro local administrative authorities after the 1964 referendum, defies resolution as the Museveni government is concerned about the political consequences of supporting Bunyoro over Buganda ownership claims (Englebert 2002a; Naluwairo and Bakayana 2007; *The Economist* 2009; Muriaas 2009; Golooba-Mutebi 2008, 2011).

In South Africa, Ntsebeza (2003) has shown using the example of the Tshezi area in Eastern Cape, how chiefs have been able to frustrate the implementation of new land laws in South Africa. These include the Communal Property Associations (CPA) Act of 1996 and White Paper on Land of 1997. The CPA makes provision for the ownership of communal land by a legal body created by the community for that purpose. In 1998 the Department of Land Affairs (DLA) was supporting government initiatives for income-generating projects in the Tshezi area. The DLA decided to support the creation of the Tshezi Communal Property Association (TCPA) so that the people would benefit from land deals with property developers. While the chief was initially supportive, he later withdrew his support when he learnt that the land would not be transferred to



the tribal authority. Given that the chief had the support of some members of the Tshezi community and the Congress of Traditional Leaders of South Africa (CONTRALESA), the DLA terminated their work in the area.

Hughes (2006) provides a comparative account of his land mapping work in 1996 with chiefs in Vhimba, Zimbabwe, and Gogoi, Mozambique, to help inform community-based natural resource management initiatives in both communities. The communities are 30km apart across the Zimbabwe-Mozambique border and are both of the same Ndau etholinguistic group. Hughes (2006) discovered that the customary authority in Vhimba was more informed and cunning in negotiating land boundaries than its counterpart in Gogoi. He attributes this to the colonial and postcolonial history of enclosure in Vhimba that has continually displaced the local people from their best lands. In return, customary authority here has had to think up creative ways to hold on to as much limited land as possible in order to maintain its ability to distribute land and consequently its legitimacy in the eyes of the local people. In addition, its landholdings have a direct bearing on its own ability to accumulate wealth.

In Gogoi, the chief had no concept of land boundaries as there had never been a local community mapping exercise in the area. The chief knew who his subjects were and where they resided in the region but had no idea on the geographic extent of his chiefdom. The chief was therefore not as informed about land negotiation strategies with potential external partners (NGOs and entrepreneurs) as his counterpart in Vhimba. Hughes (2006) attributes this to the relative absence of the colonial state in Gogoi in terms of land alienation as Gogoi was mainly a labour reserve. So the chief is able to provide information on people but not on land. The civil war also meant that the postcolonial state had also been absent, till the post-war neoliberal transformations opened the area to environmental NGOs and private entrepreneurs. This shows that while customary authority's hold on land has local ideological roots, its contemporary strategies and objective of holding on to its role in land distribution is informed by its relation to the state and its need for personal accumulation of wealth.



# 6

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## Discussion: How Should RFGI Researchers Study the Phenomena of Chiefs?

Section 1 of this paper outlined the questions and hypotheses that the paper should examine and provide answers to. The first question is: Do chiefs have power, what type of power, how do we characterize and measure their power? Yes, chiefs have ideological and instrumental power (Logan 2011). Their ideological power stems from the shared cultural ideology with their subjects on how the world is structured. It is no exaggeration to state that rural Africa takes its ideological starting point as the world of the ancestors, and chiefs are viewed as the link to the ancestors. Chiefs also have instrumental power based on their role in the distribution of land – a role they defend using ideological rhetoric but which in reality serves the instrumental purpose of maintaining their legitimacy in the rural world and enables them to accumulate wealth. We can measure their power by measuring how much ideological following they enjoy, how much land they control, and how much wealth they possess.

The second set of questions asks if the powers of chiefs are legitimate. Do the people accept it, and how do we measure legitimacy? While chiefs' ideological power is legitimate amongst subjects who subscribe to the same cultural worldview, it is not to others who do not share this worldview. Chiefs' instrumental power over land is viewed as legitimate in rural areas where they are the trusted source for attesting to communal land claims and settling land disputes compared with the state which is still viewed as far off. This is a practical judgement made by residents in rural areas irrespective of whether they like the chief or do not like the chief, or whether they consider the individual on the throne as the

rightful heir, usurper or state crony. Is this power waning or emerging and why? It is clear that chiefs' power is re-emerging all across Africa and the principal reason for this is the transition to democracy where state actors seek for the support of chiefs as vote banks. Chiefs in turn use their new-found space within the state in creative ways to consolidate their power.

How are the roles and powers of elected authorities shaped by these other competing or collaborating entities? The relationship between chiefs and elected local authorities depends on the power of the chief. In regions with very powerful chiefs like the Ashanti in Ghana and Baganda in Uganda, the chiefs do override local government as they have the ears of the highest actors in the state including the President. In these situations the local government officials are not as well-resourced as the customary authority officials so they cannot compete. Where the chiefs are weak, common with non-centralized groups in a state, they are more liable to cooperating with local government authorities. This pragmatic decision enables the chiefs to use good relations with local government as a resource to serve their community, maintain their local relevance and legitimacy.

What is the role of donors, governments and NGOs in constructing these authorities? While customary authority was re-invented in its relationship with the colonial state, the phenomenon is repeating itself in this contemporary democratic era. Chiefs are re-inventing the institution in the space the state has created for them due to the perception of politicians that chiefs are useful vote banks. While the democratic transition in Africa has an internal dimension based on demands for accountability, the transition has been facilitated by multilateral and bilateral donors, who have used aid and debt relief to pressure African governments to assent to internal demands for democracy. Local and international NGOs dealing with environmental and human rights issues have worked to defend the rights of customary authorities and build up their capacity to engage the democratic state.

How should RFGI study these questions? Chiefs have an impact on land relations all across Africa. Therefore chiefs have an impact on forest use and management interventions in the continent. The magnitude of this impact depends on the power and legitimacy of the chief. To understand the power and legitimacy of chiefs in their region of research, RFGI researchers have to pay attention to the colonial history of the region and the contemporary relationship between chiefs in their region of research and the state. At the local level, RFGI research-

ers investigate how much land is under the chief's *de facto* or *de jure* authority? How much land does the chief own? How much wealth has the chief accumulated? RFGI researchers should also assess the total population of the chief's subjects and how well do these subjects share a common cultural (and religious) worldview. These would provide an indication of how much power the chief has in relation to the state. Where direct answers to these questions and concerns may not be possible to obtain, proxies could be used instead.

As an illustration, no one in the local region may be able to provide information on the chief's personal landholdings, and the information may not be in the land department's office. A suitable proxy could be the size and extent of the chief's farms and plantations. A proxy of the chief's wealth is the number of his household, landed property and other material possessions in comparison to other members of the community. A proxy for shared ideology could be the ease with which subjects are able to recount folktales of their cultural origins, cultural heroes, and age-grade initiation rites. Proxies for relations with local government and the state could be the number of local government and state-funded (not NGO or donor funded) projects in the region. Proxies for relationship with the NGO and donor community would be number of NGO and donor projects in the region. Proxy observations should always be supported with documentary and interview evidence as much as possible.

In section 1, a number of theories were also put forward as to probable cause for the emergence of customary authorities. The first of these states that customary authorities have re-emerged because the state (and donor organizations) need their cooperation for effective execution of wide-ranging land tenure reforms taking place across Africa (Lund and Hesselning 1999; Ntsebeza 2003; Hughes 2006; Cousins 2009). Their re-emergence is therefore due to increased state and donor patronage. This is part of the democratic transition argument commented upon earlier in this paper (Baldwin 2011a). The state and donors patronize customary authority today as part of the democratic transition agenda which includes decentralization and privatization. Effective decentralization and privation cannot happen without significant land reforms in Africa (Boone 2007; Cotula 2007; Knight 2010).

Nyamnjoh (2004) argues that chiefs have agency and are thus very able to renew the structures of customary authority to match the times. This point was included in section 3 where it was argued that chiefs are not mere puppets but

are making creative use of new spaces of engagement with the state to enhance their power (van Rouveroy van Nieuwaal 1996). A third hypothesis is that the rapid pace of social change brought about by globalization has stirred up strong desires in people everywhere to redefine their identity and reinforce their sense of belonging (Page 2007; Geschiere 2009; Kleist 2011). While this is happening across Africa, it is not a cause of the re-emergence but a product of the re-emergence of customary authorities. Customary authorities and their subjects across Africa are using new spaces of engagement with state and non-state actors to re-invent their identity and reinforce their sense of belonging in the face of globalization.

The following additional hypotheses were also put forward in section 1 – greater competition for natural resources threatens the right of access historically enjoyed by customary authorities, and this by extension threatens their livelihoods. Therefore the drive towards self-preservation has motivated the leadership, often former elites in the public and private sectors, to be more astute at negotiating niches in the political space. Indeed, privatization and other cotemporary development initiatives in the natural resources sector sometimes threatens chiefs' control over land and they fight back as Ntsebeza (2003) does illustrate using the Tsheza community in Eastern Cape, South Africa.

The opening up of political space in Africa has led to elites at home and abroad patronizing customary authorities in order to win political capital at the local level. Therefore customary authorities are re-emerging because of their instrumental role in political competition. Chiefs are considered as vote banks by political actors at home and abroad interested in securing elected office in Africa. Baldwin (2011b) based on her research in Zambia, has shown that chiefs do not always deliver votes, but elected politicians still consider them necessary political allies. This again supports the argument that the democratic transition has been a catalyst in the re-emergence of customary authority.

As the social contract between the state and the citizenry in Africa weakens due to the state being unable to fulfil its obligations, customary authorities are amongst the plethora of actors tolerated by the state, stepping up to fill the gap. Therefore customary authorities have re-emerged because the developmental state is in retreat. In the post-independence era when the developmental state was in full bloom, there was still an 'uncaptured peasantry' (Hyden 1980) that depended on customary authority for the orderly workings of rural society. It is

this resilience by customary authority when it was an unfancied maiden that has helped put it in pole position to be the enchanting maiden for the retreating state in this democratic era (Rathbone 2000; Englebert 2002a; Maloka 1996; Logan 2011).

The availability and direct access to donor funds that civil society groups in Africa enjoy, has made it possible for customary authorities to evolve as actors in the provision of social services at the local level. Therefore customary authorities have re-emerged because they now enjoy greater donor patronage. The Asantehene of the Ashanti in Ghana, Otumfuo Osei Tutu II, presented a paper at the 2004 African Development Forum organized by the UN Economic Commission for Africa (UNECA) where he spoke of a US\$4.5million grant his office received from the World Bank. The grant was 'to build the management capacity of chiefs, rehabilitate schools and build sanitation facilities in 41 communities, develop health education modules for traditional authorities to lead in awareness creation in HIV/AIDS, and build programmes to preserve traditional values and culture' (UNECA 2004). This type of recognition from the World Bank bestows on its recipient prestige, honor and a strong voice in the public sphere. It also serves to strengthen the re-emergence of customary authority today.





## Conclusion: Customary Authority and Democracy in Africa

Customary authority is therefore a significant actor in Africa's political, economic, development and environmental governance landscape today. Its roots go back to governance systems that were in place in pre-colonial Africa; these systems were re-invented and made subject to the colonial state; they were then subjected to the scorn of the post-colonial state that wanted to do away with them but needed their recognition for purposes of legitimacy, and their help in governance of the uncaptured rural regions. The transition to democracy all across Africa in the 1990s and its twin structural adjustment tools of decentralization and privatization has made customary authorities frontline governance actors as they are viewed as vote banks by all political actors in the state. Recognition from international donors and NGOs, has provided customary authority additional resources which they have used to promote their collective and personal interest.

At the local level, elected officials sometimes find themselves playing second fiddle to these unelected actors in supposedly democratic states. This contradiction impacts on the performance of local governments in different ways along a continuum from paralysis of local government at one end to suspicious collaboration between local government and customary authority at the other end. Customary authority is not democratic where democracy is viewed as the ability of a population to hold their representatives to account, and the ability of representatives to make discretionary decisions responding to the expressed needs of the population group that is represented (Ribot 2003; 2011).

While a number of African states now adhere to the principles of representative democracy, local people are still subjected to the authority of influential but unelected men and women<sup>11</sup> ruling under the banner of traditional authority. Establishing democratic local government as the singular public decision-maker at the local level, where traditional authority is just one amongst a number of civic actors holding local government to account, is a formidable challenge. The first step towards achieving this is recognizing the weight of the challenge, followed by the articulation of initiatives aimed at restructuring the relationships between the multiple authorities at the local level so that primacy is given to elected local government as the organ for public decision making. How can this meta-structural change be brought about, by whom and in what time frame?

Executing the first step would involve a programme of research and education that would, amongst other things, dispel the notion that power within the nation state is concentrated solely at the centre; a programme of research and education that would demonstrate the need for democratic restructuring of local spaces in Africa for there to be meaningful and lasting improvement in the lives of African people. This democratic restructuring would include statutory requirement that the appointment and deposition of chiefs should be by democratic elections. This is not as far-fetched as it might sound given that the state already has the power to appoint and depose chiefs. The state could still leave the selection of candidates to the king-makers and, rather than decide who should occupy the vacant office, the state could organize an election that is open to all residents in the chiefdom.

Chiefs who fail to be accountable could be deposed through a recall election. The candidates for the recall election would be a new shortlist from the king-makers. Candidates who lost in the previous election could still be on the shortlist but the current chief being recalled would be barred from standing. In the scheme proposed herein, the chief once voted in, holds the office for life, unless there is a clamour for a recall election from the population group served by the chief. The fact that all residents of the chiefdom, both indigenes and non-indigenes, are allowed to vote means the chief has to be accountable to all residents of voting age, men, women, youths, autochthones and allochthones. The idea is for the scheme to be democratic and inclusive. Real world implementation of this proposed scheme would require much more thought and refinement to make it work.

Restructuring the relationship between elected chiefs and elected local government so that local governments have primacy over land relations is another challenging prospect. Chiefs view their control of rural land as a birthright; however, decisions made by chiefs still have to be ratified by the state government for them to be legally binding. To take away local control of land from chiefs and bestow this on local governments would be fought by the chiefs as this would undermine their legitimacy and veritable source of wealth. However, if the chiefs were to have statutory judicial functions for which they received training after their election, and a commensurate salary, this would maintain their local relevance and assure them of a regular income. Communal land would be held in a legal communal body after the South African model and land distribution would be sanctioned by elected local government authorities.

These schemes would not be possible without adequate funding, political will from the state, cooperation from customary authorities, adaptive embrace from local people, and the support of influential donors. As researchers, our place is to provide a nuanced but thick description of the local (Boone 2003),<sup>12</sup> and to disseminate this knowledge in the hope that this knowledge would inform democratic change that is responsive to the needs of African peoples.



# Notes

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1. Asantehene is the traditional title
2. 'Opoku Ware II, King of Asante, Is Dead at 89', by Michael T. Kaufman, *The New York Times*, 4 March 1999.
3. 'Obituary: King Opoku Ware II of Ashanti', by James Walker, *The Independent*, 5 March 1999.
4. See the 'Headliners' column, *The New York Times*, 21 October 1984.
5. C. W. Brobbey, 1999, *A Monarch for the times: A Tribute to His Majesty Otumfuo Opoku Ware II, Asantehene*, [online] <<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=5509>> accessed 23 May 2012
6. The paper uses the terms 'customary authority' and 'traditional authority' interchangeably.
7. A number of West Cameroon people now regret joining East Cameroon and wish to secede (Anyangwe 2008).
8. Ribot (2001), provides a comprehensive overview of how African governments have sought to legally regulate the roles and activities of chiefs, in Annex B, of his paper prepared for the International Development Research Centre.
9. See story by E.Kendemeh, in *Cameroon Tribune* newspaper of 15 March 2011.
10. Part of this was on land which is claimed by Bunyoro as their ancestral lands, unlawfully ceded to Buganda by the British colonial administration (Golooba-Mutebi 2008).

11. While the majority of traditional leaders in Africa are men, there have been female chiefs since the pre-colonial era; records as far back as 1914 show that women made up 15% of chiefs amongst the Mende of Sierra Leone, see Hoffer, (1974) and also Day (1994); in recent times female chiefs have been appointed in Botswana and South Africa.
12. Burnham's (1996) work in Northern Cameroon on the Gbaya, the Mbororo, and the Fulbe, is also another great example of research that provides a nuanced thick description of local social and political dynamics in Africa.

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