Structuring traditional institutions for forest governance

Legitimacy, customary law and change
Overview

• Outline problems associated with Traditional Governance in south-central Africa
• Briefly outline problems with Forest Governance in Zambia
• Present results of a case study from south-western Zambia
• Outline inadequacies in our approach to researching traditional institutions and the lack of a theoretical framework
Forests in Zambia

- 60% of the country is forested
- Mostly Miombo Woodland
- Forestry sector used to be 2\textsuperscript{nd} largest employer after copper mines – Zambezi Teak forests
- Deforestation rate of \(~300,000\text{ha per year}\)
Forest Governance in Zambia

- Inadequate legal framework for participatory forest governance
- Unclear resource tenure system
- Highly centralised forest governance system
- Inconsistent policy frameworks at both local and national level

  – Gumbo & Mfune (2013)
The wider problem

- Significant problems around Traditional Governance Structures
  - Corruption, Elite Capture, legitimacy problems associated with colonial-era indirect rule, poor governance, accountability
  - Representation seems to be the biggest objection

- Many simplistic assumptions about power relationships – not a sovereign model of power – power relationships are complex

- “Nkosi ya inkosi ngwebantu” : a chief is a chief by the people
The wider problem

• Traditional institutions are the *de facto* rural local government in many African countries

• Research focuses on Zambia but a similar situation applies in DRC, Moçambique, Angola and Malawi

• Current research (anthropology, environmental governance e.g. CBNRM, forest conservation) and Political Theory almost completely dismisses traditional governance
The wider problem

• No consistent conceptual framework through which to assess legitimacy of the institutions
• Ignore scale – making comparisons between a state and traditional governance of a local forest resource
• Ignoring the failure of local government in many African countries – or – success is always just around the corner
Problems?

• Development community are strong critics of traditional institutions
• Western democratic practice – or nothing
• Liberation movements in Africa, academics have been critical of Chiefs
• But things are changing
• Systems of legal pluralism (customary and common law), governance and representation
Contradictions

• We recognise traditional shrines, religious practices that preserve forest groves, but not the institutions that underpin this practice. There is no separation of church and state!
• We map traditional boundaries but invalidate the institutions that underpin the territorial claim.
• We have no conceptual framework for evaluating the legitimacy/accountability of traditional institutions other than to point to inadequacies in representation.
A glaring contradiction

- Example Rainforest Foundation maps of traditional boundaries = statement of power
- If you are mapping traditional boundaries – what next? Ignore traditional institutions?
- What are the governance implications?
- It seems inevitable that forest governance will need to interface with traditional governance institutions
- But – there are problems: Elite capture, corruption, poor governance, human rights violations, position of women, democratic representation and accountability
Solutions?

- Rising popularity of traditional institutions as some Africans search for a postcolonial identity
  - Koelble & Lipuma (2011);
    *Oomen*, (2000), (2005);
    Williams, (2004)

HRH Chief Moomba of Mulobezi, Zambia
Institutional Problems

• Traditional leaders have to negotiate a delicate balance:
  – Maintain social-ecological balance, prevent conflict, punish wrongdoers, fair allocation of land and resources
  – ALSO, work with NGO’s and Govt to deliver development
  – And be condemned as undemocratic despots, while local elected councils do not have the resources to govern, but claim moral and legal authority over everything, especially natural resources
Institutions

- **de jure government**
- **de facto government**

- Government
- NGO
- Traditional
Institutions

Conflict

Traditional systems more concerned with sustainable use

Rules in FORM vs. Rules in USE

NGO/Government more concerned with sustainable development via CBNRM
Institutional Structure, Function

Key-Informant Interviews

Triangulation

Ethnography

Semi-Structured Interviews
Access to Natural Resources

- People
  - Agricultural land, Forest resources (e.g. construction materials), NTFP’s
  - Munokalya Mukuni
    - Bedyango
      - Bana Bedyango (Regional Matriarch)
      - Basimusso (Village Matriarch)
      - Female Traditional Representatives
      - Male Traditional Representatives
    - Mwendumbeili (Prime Minister)
      - Senior Village Headman (Zone Level)
    - Village Headman
    - Village Trustee
    - Development Trust Representatives
    - Election Representatives
    - Government Representatives
    - Debate and Consensus

- Investors
  - Hydro Power
  - Dam Construction
    - Tourism concessions
      - Poles, thatch, building stones
      - Timber, Land
    - Schools
    - Clinics
  - GRZ - Other partners and Development Agencies
    - GRZ Area Development Committee
    - GRZ Village Development Committee

- Disputes
  - Female Population
  - Male Population
Access to Natural Resources
Representation on Mukuni Development Trust

Combines legitimacy, expertise and community representatives across the full spectrum of the management structure.
Governance

• A sophisticated hierarchical governance structure
• Customary Law regulates decision making – all aspects of village life
• Why don’t we study it?
• Legal Pluralism is a fact of governance in every African country
• BUT – scale is important – it’s local, not national
Very little research on customary law – almost no research around how customary law regulates access to natural resources. We mention in passing but no detail.
Differences in Governance
Local Context is important

Centrally governed
- Zulu (South Africa), Lozi, Toka-Leya (Zambia)

No central governance
- Tonga (Zambia, Zimbabwe), Nuer (Sudan)
Misconceptions

• Chieftainship - not a simple sovereign model
  – Male and Female
  – No simple hereditary system – heredity descends from a very wide kinship group
  – Consensus is used to select the chief on the basis of lineage, seniority, wisdom, civic responsibility, logical persuasiveness
  – Succession disputes can run for years
  – The Chieftainship is always “coming into being”
Conclusions

• Study the institutional structure of traditional governance systems, develop the theory – TI’s are not going away

• Make change a central part of governance in order to increase accountability

• Problems of representation are not going to be solved by applying Western models of democratic participation

• We are leaving out an important part of the puzzle of forest governance for the sake of ideology which does not, necessarily guarantee good governance


