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# Engaging customary authority in community-driven development to reduce corruption risks

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Customary authority can provide a source of resistance to corruption and capture of resources in community-driven development – but it can also be part of those problems. How to know whether a customary organisation is likely to help or hinder? Practitioners can analyse the conditions under which customary authority can be an effective partner in community-driven development projects.

## Main points

- Most development agencies, especially in the areas of democracy promotion and governance, have been uncomfortable working with customary authority to address corruption in community-driven development. Yet customary authority can provide voice and representation, monitor project implementation, and promote integrity norms – roles that can provide a source of resistance to corruption and capture.
- By nature, customary authority is neither homogenous nor formal. The degree of legitimacy and the capacity of customary organisations vary from community to community. Some customary forms of organisation are highly reactionary and should be avoided. Others, however, can play an anti-corruption role, and practitioners should be aware of their potential.
- By exploring the institutional dimensions of customary authority, policymakers can assess whether or not a given customary organisation is likely to be a source of resistance to corruption and capture. It is important for practitioners to consider whether customary authorities have:
  - a) A relatively autonomous space in which to operate, free from heavy-handed interference or co-optation by governments or other external actors;
  - b) Constraints on the authority and power of key decision makers and leaders;
  - c) Broadly inclusive decision-making structures that have ways to consider the roles of women and minority voices;
  - d) The ability to enforce rules and sanction those who violate rules that community members have agreed upon.
- Generally, practitioners should gather information about customary authority as they embark on community-driven development efforts; be wary of prioritising the creation of new forms of organisation that ignore customary authority; and be open to alternative frameworks of project management that facilitate engagement with customary authority.

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## Abbreviations

### **CDD**

community-driven development

### **NGO**

non-governmental organisation

### **CBO**

community-based organisation

### **PRA**

participatory rural appraisal

### **USAID**

United States Agency for International Development

## Corruption in community-driven development and the comparative advantage of customary authority

Increasingly, development projects, programmes, and strategies are carried out through modalities that emphasise local participation. Two basic approaches are used to encourage local participation in governance decisions. On the supply side, decentralisation devolves decision making over resources to local governments, which in many cases are elected by citizens. This paper focuses on the demand side of governance by examining the ways in which international donors *work with communities* – through community-driven development (CDD) schemes – to supply public goods and services through local channels.

Local participation in CDD projects can involve different activities, including deliberation, the contribution of goods and resources, and the provision of information. CDD programmes typically seek to sustain or create governmental organisations (NGOs) or community-based organisations (CBOs) at the local level to manage and implement projects. Such a strategy is meant to lead to more efficient distribution of goods, less afflicted by opportunities for corruption.

*Community-driven projects are subject to manipulation of processes to benefit private interests.*

Nonetheless, CDD projects are beset by risks of corrupt practices, such as embezzlement and nepotism, and are also subject to manipulation of processes to benefit private interests. One extensive review identified corruption and capture as the largest threat to the efficacy of the local participation paradigm (Mansuri and Rao 2013). In many development settings, the ability of either the state or donor agencies to provide oversight is heavily circumscribed, creating a difficult but common policy dilemma: how can development practitioners ensure more resilience against risks of corruption and capture in community-driven development? Finding an answer to this question is likely to lead to more effective local participation and better development outcomes.

In light of this dilemma, we suggest that development practitioners consider an alternative organisation often present in communities where development

projects take place: customary authority. Under conditions of limited oversight, customary forms of organisation may have a comparative advantage, because they have long-term time horizons and a ‘staying quality’ that donor-created organisations may lack. They are centred on common knowledge and are often regarded as legitimate, trusted, and responsive. These attributes explain how they can – in certain contexts – be more resistant to corruption and capture than alternative social actors, such as NGOs or CBOs.

This paper illustrates the possible ways in which customary authority can provide a source of resilience to corruption and capture. It challenges the assumption that customary authority is only a source of capture in local development and that donors and their implementing partners are therefore better off looking for alternative organisations through which to implement CDD projects. Still, equivalent risks of corruption and capture also apply to customary authority. Mitigating these risks requires a different kind of analysis and assessment than is applied to alternative social actors, such as donor-created CBOs and NGOs. The question of whether to involve customary authority in a programme is an empirical question, one that requires a diagnosis of the institutional characteristics of a specific customary authority in a specific context.

It is important to clarify that in many situations, customary authority would not be a desirable partner, as it can be a source of illiberal norms that can threaten stability and limit the participation of women and young people. On the other hand, this type of authority is not monolithic. That is why it is important to explore under what conditions customary authority might be a good partner for CDD implementation at the community level. We do this by providing a comparative framework that can help donors and their implementers assess the nature of customary authority in the regions where they are working and make predictions about the usefulness of specific customary organisations in promoting accountable project implementation. Such a framework seems necessary, for while research has been done on informal justice systems, few attempts have been made to assess the potential role of customary authority in community-driven development and anti-corruption programming. We put the rules that govern these organisations at the centre of our analysis, which draws on a wide-ranging literature review.

After discussing the risks of corruption and capture in CDD, we offer three contributions to the policy debate:

1. We dispel some common assumptions about customary authority and demonstrate why, for policy purposes, it is essential to understand the structure of a specific customary authority in a specific setting.
2. We demonstrate why customary authority may sometimes be more resistant to corruption and capture than other organisations, especially in contexts where CBO/NGO failure is possible.
3. We turn to the vast literature that engages customary authority and questions of governance and draw on these studies to develop a set of variables that help clarify the conditions under which customary authority is likely to be resilient against corruption and capture.

## Corruption and capture risks within the local participation paradigm

### The turn to local participation

Several decades ago, development practitioners began to realise that aid channelled through governments often struggled to meet the demands of citizens. Service delivery regularly became tangled in webs of government corruption and inefficiency. When services did reach citizens, they were often not those most demanded by communities. A proposed solution to these problems was the local participation paradigm, which called for more development assistance to be directed and channelled by communities themselves through community-driven or locally driven development projects.

The local participation paradigm became part of development policy discourse in the 1980s, when academics and practitioners began to search for alternatives to state-led development planning (e.g., Chambers 1983, 1994; Hirschman 1984). According to this vision, when communities oversee resources and make decisions about which projects will be implemented, the projects will be more likely to help the neediest community members and alleviate problems of local concern. This is because individuals at the local level have better information about community needs than do donors or planners in central or provincial governments.<sup>1</sup>

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1. This new participatory approach to local development was initially embodied in the rapid rural appraisal (RRA) and its relatives – participatory rural appraisal (PRA), rapid appraisal, participatory community appraisal. Such models were adopted by a host of non-governmental organisations. By the 1990s, PRAs became common among development organisations seeking to implement projects at the local level. PRAs



The local participation paradigm has become an integral part of donor approaches to diverse issues such as health, education, sanitation, agriculture, and other aspects of rural development. The World Bank has incorporated local participation methodologies into its community-driven development approach. In 2017, the World Bank estimated that there were 187 active CDD projects in 77 countries, with \$19.1 billion in total World Bank support, plus an additional \$13.4 billion provided by borrowers and other donors (World Bank 2017). Other large donors such as the United States Agency for International Development (USAID), the UK Department for International Development (DFID), and the Japanese International Cooperation Agency (JICA) fund hundreds of programmes using similar tools.

Donors engaged in local development through participatory processes have frequently faced a dilemma: what kind of organisational forms are needed to work with communities? Most CDD projects have created their own organisations as the main mode for implementation; yet new organisational modes, combined with an influx of resources, have all too often created new opportunities for corruption and capture.

## **Corruption and capture risks within community-driven development**

Broadly speaking, two different types of corruption risks may occur when resources are managed and decisions are taken locally: corrupt practices and capture. Their respective magnitude will vary from context to context, but they are closely related, feeding into and fuelling one another. Capture increases the risks of corruption and predation, while corrupt practices may be utilised to ensure the capture and control of projects.

The first set of risks consists of the ‘usual suspects’ of corruption, such as bribery, embezzlement, and fraud, that can often be found within the distribution of aid (Johnsøn 2015). Jean Ensminger, for example, has documented these types of practices within the context of a CDD project in Kenya. Examining the Arid Lands Resource Management Project, sponsored by

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utilised community organisers (usually NGO employees) who would travel to communities to help them implement self-appraisals, which often took place over the course of several days. The approach brings together community members (frequently segregating them by gender and/or age) in a community mapping process. A skilled facilitator engages with the participants in order to elicit the most serious challenges to local development. Once a community has come to consensus about a concrete problem, grants are awarded to tackle the issues identified.

the World Bank, she found widespread corruption problems, such as “over-invoicing in procurement, training and travel; nepotism and bribery in hiring; kickbacks from contracting; and fake groups being formed to obtain micro financing. Villagers in [the project] stole from their own communities” (Ensminger 2017, 47). Similar malpractices have been documented in other settings (Platteau and Gaspart 2003). Beyond the general illegality, these corrupt practices hinder the effectiveness and raise the costs of CDD.

The second kind of risk, which relates to power and control within CDD, consists of the capture of resources and processes of local participation so that they can be channelled for private interests (Bardhan 2002; Bardhan and Mookherjee 2006). Platteau and Gaspart sum up how elites “by virtue of their dominant position ... can thus manipulate participatory methods by subtly representing their own interests as community concerns expressed in the light of project deliverables” (2003, 1688). As a consequence of power relations that exist on the ground, there is an ever-present risk that elites – politicians, the educated, those well connected to international donors, the wealthy, and those at the apex of a traditional social order, including tribal chiefs and clans – will use “their dominant economic, social, and political position to appropriate for themselves whatever portion of the resources they need and to let the poor have the leftovers only” (2003, 1688). Arcand and Fafchamps (2012) find that donor-created CBOs may be “elitist” vis-à-vis indigenous organisations. Specifically, they find that individuals who have more land and those who are older are more likely to join donor-supported CBOs than other kinds of local organisations. Capture undermines the rationale of this modality – that it will be sensitive to those most in need.<sup>2</sup>

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2. The involvement of elites is not the same as capture by elites. Looking at corruption in CDD projects in Bangladesh, Dasgupta and Beard (2007) point to the difference between “elite capture” and “elite control,” noting that not all elites engage in corruption. Elite involvement in local projects is not always malevolent, as altruistic leaders are often willing to spend time on issues of community governance to facilitate local projects that address the poorest in their communities, even if the most disadvantaged do not propose those projects (Mansuri and Rao 2013, 129–31). Customary leaders are often selected because they are literate and can serve as effective intermediaries to the outside world, including to donors and local government officials. These individuals are chosen or remain in power because they are able to lobby the state on behalf of community interests (Murtazashvili 2014).

## Challenges in implementation of community-driven programmes

Development practitioners employ various tactics to reduce risks of corruption and capture. Measures may include the institution of rules on procurement and hiring, check and balances, greater transparency, monitoring systems, and complaint management (Ensminger 2017). Despite these measures, corruption and capture still occur, in part because of the structural constraints faced by CDD projects.

In many development settings, the capacity of donor agencies to provide oversight is heavily circumscribed. Moreover, the central state may lack capacity to monitor what occurs during these processes at the local level, or may even be engaged in collusion.<sup>3</sup> Involving a complex chain of implementers, CDD programmes are particularly challenging to manage, further exacerbating these information asymmetries.<sup>4</sup> Moral hazard dynamics – occurring when an individual or community is willing to engage in risky behaviour (like corruption or capture) because they are insured against it – are also relevant, with the donor imperative to disburse aid acting as a kind of insurance. Intermediary organisations face their own moral hazard: they often have little incentive to detect corrupt practices or capture affecting their programmes, as donors may penalise implementers for reporting poor results (Gibson et al. 2005; Martens et al. 2002).

Given these structural constraints of CDD, how can development practitioners think about lowering risks of corruption and capture in local participation? We suggest that development practitioners consider customary organisations as an alternative ‘link in the chain’ between donors and communities. These organisations cannot overcome the structural constraints, but as a presence in

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3. This problem is particularly acute in CDD because it is not clear who is the principal and who is the agent in these programmes. When resources are from an external third party, like a donor, recipients may behave as if they are the agents implementing donor programmes. CDD methodology insists that this is not the case, maintaining that programmes are intended to enable communities to act on their own behalf. This creates a sense of confusion among both donors and recipients as to who is the real owner (or ‘principal’) of a project.

4. In most instances, a donor provides funding to a host government, which then funds international NGOs to implement CDD projects on their behalf. It is unusual for CDD programmes to be implemented directly by governments. In Afghanistan, the World Bank’s signature CDD programme, known as the National Solidarity Programme, had more than 25 mostly international NGOs implementing the programme on behalf of the government and the donor. Single districts often had two or three different organisations implementing the same CDD project across communities. Each organisation had its own approach to project implementation, making it difficult to compare outcomes across communities (Brick 2008).

many development settings, they are often legitimate, trusted, and responsive to communities. Engagement with customary organisations does not mean a complete redesign of CDD programming. It simply means that as development practitioners engage communities (usually through partners such as local or international NGOs), they should carefully consider what productive role, if any, customary authority might play in strengthening project implementation against corruption and capture.

What might this approach look like, and how might it differ from current implementation strategies? In most cases, when implementing partners engage with communities through participatory processes, they seek to create or sustain organisations at the community level that will implement the project. For example, if a CDD programme is designed to solve local health issues, often the programme will create a new community health council or fund a local NGO to implement the specific projects that communities have agreed upon. Generally, community development programmes create community development councils or similar organisations, which are tasked to take on issues of monitoring, procurement, and other issues related to project implementation in communities. Donors and their implementing NGOs typically hope that these often-new entities will continue to serve an important purpose in the community after project implementation ceases, but in most cases they disintegrate at the end of the project cycle (Mansuri and Rao 2013).

Rather than create multiple new councils, we suggest working with existing customary organisations, under certain circumstances outlined below, to implement CDD projects. The idea behind the creation of new CDD councils was to get around sources of local capture thought to be embodied in customary actors. But by bypassing or avoiding customary authorities, donors often exacerbate problems of local capture because these customary organisations may in fact have been a source of local accountability. The next section will discuss what customary authority is, why it can engage in such partnerships, and the comparative advantage it may offer. We then explore the conditions under which it may be appropriate for CDD programmes to partner with customary authority at the community level as they seek to implement projects.

## What is customary authority and why does it persist?

Defining what constitutes customary authority has always been challenging (White 1965). For the sake of concreteness, we define it as orders in which

actors are governed by rules associated with longstanding social practice, religion, or tradition. Customary organisations are collective decision-making bodies with authority relations defined by established rules whose origins lie outside the formal authority of the state. Customary authorities are the individuals who preside over these organisations – village elders, chiefs, or tribal leaders, for example.

Engaging with customary organisation does not refer to engagement over a geographic area but rather describes interaction with organisations within a community (Agrawal and Gibson 1999). Community governance (of which customary governance is a subset) is best understood as a set of rules governing individuals. Practically speaking, this means that there is not always congruence between a customary body and a single village. Instead, these organisations may exert their authority within several villages or communities. Alternatively, within a single community there may exist overlapping forms of customary authority. Engaging with customary organisations generally means engaging with a distinct governance structure that can play different roles, from exercising symbolic forms of leadership to providing public goods and maintaining order and security. ‘Customary governance’ therefore relates to procedures and processes that define how customary authorities operate – how decisions are taken, leaders selected, disputes settled, and resources allocated.

Customary authority is usually, but not always, distinct from religious authority. Religious leaders can typically plug into larger social networks than can most forms of customary organisation, whose power tends to be based in smaller communities or villages. In many contexts there is a blurring of lines between religion and custom, making them almost indistinguishable. But in other contexts, the lines between them may be quite clear because religious leaders and customary leaders usually derive their legitimacy from distinct sources.

Development scholars and practitioners have applied a range of paradigms predicting a steep decline in the relevance of customary organisation, most of which presume that modernisation will render customary governance obsolete. Lerner (1958) famously proclaimed the passing of customary authority. He argued that as societies became more educated, cosmopolitan, and urban, traditional values and the organisations that build on them would decline in importance and wither away. Despite this, scholars have recently noted a resurgence of customary authority in the developing world (Comaroff and Comaroff 2018).

From the mid-1970s, the ‘third wave’ of democratisation (Huntington 1991) similarly implied an end to meaningful roles of customary authority. Scholars theorised that as a result of this democratic wave, customary governance would no longer be needed to aggregate people’s preferences and represent their interests to the state. These theories also suggested that customary and democratic norms were in many instances incompatible. In many contexts, post-colonial elites also actively undermined customary authority, harbouring suspicion that it was a threat to fragile states, which led policymakers to stamp out these organisations rather than integrate them (Rudolph and Rudolph 1967, 64).

Yet post-colonial state building did not result in the demise of customary governance. Western-style institutions, emphasising the impersonal exercise of power, did not transplant well to many post-colonial states, where the rules of the state were not in sync with the norms of large sections of society (Berkowitz, Pistor, and Richard 2003). In many contexts, customary governance continued to enjoy considerable legitimacy (Linz 2000, 143).

*Customary authority remains an important feature of the prevailing social and political reality of many countries.*

Despite forecasts to the contrary, therefore, customary authority has not withered away but remains an important feature of the prevailing social and political reality of many countries. At least 61 countries, primarily developing ones and as diverse as Ghana, Mexico, and Indonesia, acknowledge the presence of some form of customary authority in their constitutions (Holzinger, Kern, and Kromrey 2016a). This is due in part to the continuing weakness of the state in many parts of the developing world, where state institutions nominally oversee vast territory but do not have the capacity or revenue to actively control all of that territory (Bromley and Anderson 2012; Herbst 2000). In such contexts, customary authority provides services where the bureaucracy is too weak to do so. Herbst (2000) argues that customary organisations remain vital throughout Africa because weak states cannot afford to govern vast, sparsely populated territories. Rather than make great expenditures to extend the state, governments rely on customary intermediaries to provide public goods and maintain basic order. In some countries, decentralisation has also meant the transfer of some political authority to customary organisations. For example, in 1997–98, Malawi, South Africa, and Uganda introduced forms of

decentralisation with elected local governments, and in all three countries governments have made some effort to transfer some power to traditional authorities (Muriaas 2011).

Navigating the terrain of customary authority is never easy. Customary authority is not the product of uniform law, but is shaped by social practice, tradition, and religion; accordingly, the nature of such authority varies considerably. It is even difficult to construct a typology of customary authority, so intricate and varied are the different forms. Some scholars treat customary authority as monolithic and residual, using monikers such as ‘headmen’, ‘chiefs’, or ‘elites’ – terms that are often foreign to the communities themselves. In this section, we emphasise some important aspects of customary authority in an effort to dispel common misconceptions and stereotypes that can distract policymakers from serious consideration of the roles of customary authority.

## **Customary governance is not ‘frozen’ in tradition but is generally dynamic and evolving**

Customary governance draws from tradition but evolves over time. There is rarely any ‘pure’ form of customary authority that is frozen in time and remains unchanged by external influences, such as colonialism or conflict. Customary organisations interact with the state, armed groups, and others that seek to influence their working rules or the environments in which they operate. In many contexts government and colonisers distorted customary authority or placed their own agents within it to gain control, and in some cases they even invented new forms of supposedly ‘customary’ authority to serve their own ends (Palagashvili 2018). Customary authority also adapts to modern political changes and circumstances, interacting with diverse actors ranging from the state to business organisations to NGOs to rebel groups (Hagmann 2013). As an illustration, researchers have shown how customary village councils, a form of customary authority in Karnataka State in India, have adapted to changes in formal politics, introducing new forms of decision making that reflect the broader processes of democratisation going on around them (Ananth Pur and Moore 2010).

## **Customary governance entities are no less predictable than state structures**

Customary governance is an informal order, but it nonetheless is based on well-understood rules and procedures that lend stability to the operations of customary authorities. Often customary authority has a “fairly institutionalised way of doing business” (Mohmand 2016, 6). For example, in predominantly indigenous regions of Mexico, communities rely on customary governance called *usos y costumbres*. They elect leaders under customary law and take decisions through participatory democracy, monitoring the process through an informal system of law enforcement and community justice (Díaz-Cayeros, Magaloni, and Ruiz-Euler 2014; Perreault 2008).

## **Customary authority is not always hierarchical, but can be egalitarian**

Customary organisations that are hierarchical often have a clear leader. Frequently groups and subgroups nest in a ranked fashion, a larger group or kingdom being followed by subgroups and chiefdoms. In Malawi, for example, customary leaders operate in a hierarchical structure, beginning at the village level with headmen and proceeding upward through groups of village heads, sub-traditional authorities, traditional authorities, senior traditional authorities, and paramount chiefs. On the other hand, some customary organisations are relatively egalitarian. These groups have no well-defined leader and rarely agglomerate upward into a coherent organisational chart. The Pashtun tribes in Afghanistan are an example of an ‘acephalous’ structure, meaning there is no single leader or hereditary head. Similarly, most forms of customary authority in Somalia and Yemen are also egalitarian and acephalous (Dresch 1994; Menkhous 2007). Implementers should appreciate the wide diversity of leadership models at the community level.

## **Customary authority is not always related to kinship but can be based on broader social groupings**

Some customary authorities in the developing world are not based on kinship networks or lineages, but instead are place- or community-based organisations. In Central Asia, the *mahalla* (‘neighbourhood’) is a customary organisation based on neighbourhood identity; it predates the Russian colonial and Soviet



interventions (Cielewska 2015; Dadabaev 2013; Kamp 2003; Sievers 2002). Individuals in mahallas frequently organise communal labour (*hashar*) around their mahalla (Reeves 2017). ‘White beards’ within mahallas are responsible for dispute resolution. In post-conflict Tajikistan, mahallas are often led by women (Murtazashvili 2016a). In parts of sub-Saharan Africa, customary authority is embodied in community-wide gatherings that provide opportunity for community members to participate in decision making and voice their opinions on a wide range of issues. These councils are variously known as *pitso* (Lesotho), *kgotla* (Botswana), *shir* (Somalia), *baraza* (Kenya), and other names (Logan 2009, 105).

## Customary authority is not always in tension with the state but has various and complex relationships

A state’s relationship with customary authority can range from exclusion and reorientation to integration, subordination, and harmonisation (Ubink 2008). In some places, forms of customary authority are officially recognised by the state and included within constitutional provisions. Customary governing institutions can co-exist with formal government in a variety of ways. For example, in North America some customary groups are given sizeable autonomy in some federal arrangements; in Ghana and Namibia they are formally represented in parliamentary Houses of Chiefs; and in Latin America they often are simply guaranteed ‘rights’ (Holzinger, Kern, and Kromrey 2016b, 1). In other cases, customary authority is not *formally* recognised at all, for example in Afghanistan. Even in such settings, however, customary authority can have a close-knit relationship with state officials in practice, working with state agents to provide public goods (Murtazashvili 2016b). Indeed, there is some evidence that customary authorities sometimes co-opt public officials and elected councillors into their own systems of power (Clayton, Noveck, and Levi 2015)

### **Why understanding the structure of customary authority matters: How important lessons from Iraq did not apply to Afghanistan**

The structure of each form of customary authority should be analysed on a case-by-case basis, as unfounded assumptions about its nature can have detrimental effects on policy. This risk is well illustrated by the US military’s attempts to engage with tribal structures in Afghanistan.

The US military surge that began in Afghanistan in 2008 was influenced by models of 'tribal engagement' that military and development planners thought had been successful in the US military surge in Iraq (Kilcullen 2009). The US military had found Iraqi tribes to be an important partner in fighting insurgents. The Anbar Awakening resulted in several Iraqi tribes, often repelled by the brutality of insurgents, joining forces with the United States to fight al-Qaeda. During the Awakening, US military leaders could quickly identify and call upon leaders of major Iraqi tribes, who in turn could call upon support from fellow tribe members. The hierarchical nature of tribes in Iraq facilitated the success of counterinsurgency strategy in Iraq (Lynch 2011).

Many troops who served tours in Afghanistan had also served in Iraq. They came to Afghanistan during the Afghan surge expecting to be able to quickly identify 'tribal chiefs' and other local leaders with whom they could partner in the surge, just as they had in Baghdad. Indeed, like Iraq, much of Afghanistan is organized along tribal lines.

Yet, crucially, the Pashtun tribes in Afghanistan, which are egalitarian and acephalous, are quite different from the hierarchically organised tribes in Iraq (Glatzer 2002). In Afghanistan, there are few hereditary tribal leaders or chiefs based on kinship alone. Because of the acephalous nature of tribes, it is more difficult for a single leader to aggregate group interests in a hierarchical fashion. Without strong leadership, Pashtun tribes in Afghanistan were not well suited as partners in military engagement. Despite this, the US military supported the creation of 'tribal militias,' which they believed would offer locally organised solutions to the problem of defence (Schmeidl and Karokhail 2009).

The problem was that without hierarchy and a chain of command, these tribal militias in Afghanistan were much less effective. For example, in Iraq, the hierarchy of the tribal structure provided a modicum of accountability over disbursement of weapons and aid. In Afghanistan this was not the case, and attempts to create tribal militias generated new groups that were often outside the purview of local accountability mechanisms. This is why there has been significant public distrust in Afghanistan of efforts to create tribal militias (Baczko 2016). It was impossible to gain the support of an entire population based on the agreement of a tribal leader. Thus, a tribal engagement strategy that succeeded in Iraq did not succeed in Afghanistan because the underlying nature of the tribal structures in the two countries was very different.

## The roles of customary governance in reducing corruption and capture

While there are examples of donor agencies engaging with customary authority, these experiences are few and far between. Recent reviews on development policy suggest that as donors focus on building state capacity, they often overlook or cast aside problem-solving capacity that exists outside of the state (Denney, Mallett, and Benson 2017). In assessing the potential of this capacity, we should recognise that customary authority is not merely a feature of the social environment to be engaged for the sake of an inclusive process. Rather, its capacity to play a substantive role in development is rooted in two essential elements of its organisational ecology: trust and long-term time horizons. These elements provide customary organisations with their ‘staying power’, allowing them to persist over time in various forms and settings. And it is these qualities that can distinguish customary authority from alternatives, such as CBOs, as potential partners in CDD.

Of course, customary authority in specific settings may lack trust and long-term horizons, and there is no guarantee that individual customary actors will be less corrupt than individual personnel in NGOs or the state. In some situations, customary leaders are part of the problem. They may be out of touch with the people they claim to represent, or bent on capturing aid projects or other government benefits that are intended to serve a broader population (Platteau 2009; Dasgupta and Beard 2007; Fritzen 2007). Women are often completely excluded from decision making in customary bodies, and human rights abuses can also occur.<sup>5</sup> Even so, when they are present, trust and long-term time horizons can give customary authority a distinct organisational ecology that makes them more resilient to corruption and capture.

In an age when trust in public institutions is withering around the world, the trust many individuals place in customary authorities should not be overlooked. Data from Afrobarometer reveals that across 36 countries in 2014–15, Africans expressed more trust in informal institutions such as traditional leaders (61%) than in the formal executive agencies of the state (54% on average) (Bratton and

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5. At this point, we emphasise the importance of avoiding the “nirvana fallacy” of development policy, which compares existing institutions to a hypothetical – and unattainable – ideal (Demsetz 1969). Set against the ideal forms of good governance that imply a teleology within development processes, customary authority may be imperfect. However, often the most realistic choice in development settings is not the straightforward implementation of best practices and ideal types, but rather a choice between sub-optimal alternatives.

Gyimah-Boadi 2016). In many communities in many parts of the developing world, the state is construed as external and distant, and legitimacy resides with local leaders.

Based on close bonds, customary organisations are akin to what Charles Tilly (2005) describes as a “trust network”, that is, a social grouping based on mutuality and cohesion. Some trust networks involve coercion or the exchange of capital, but many forms of customary authority are grounded in the idea of commitment: a sense of solidarity rooted in shared tradition, religion, language, or social customs. In this way, trust networks can be important as repositories for people’s beliefs, norms, and values, and as expressions of longer-term commitments to mutual aid and solidarity. These networks of trust can serve as a source of resilience that helps communities cope in the absence of effective government service delivery or mediation.

Long-term time horizons are the second essential element of customary authority. Ties within trust networks tend to be thick and to last longer than the connections fostered by other forms of organisation (Tilly 2005, 44). Long-term horizons matter for the sustainability of organisations and shape the likely incentives that actors face. As Mansuri and Rao point out (2013), interventions with long-term horizons fundamentally improve the incentives of citizens to confront local elites and fight for their own interests, as well as to enter into credible long-term arrangements. Short-term horizons, by contrast, incentivise individuals to extract all the rents that they can from a project during its tenure (Mansuri and Rao 2013, 40). Moreover, when leaders have short time horizons, they are less likely to follow through on promises made (Olson 1993). NGO activities are typically bound by shorter donor time frames and project cycles.

There are three main mechanisms that translate trust and long-term time horizons into greater resilience against corruption and capture:

1. Aggregation of voice
2. Internal monitoring
3. Changing norms

## **Aggregating ‘voices’ to constrain capture**

Development practitioners generally assume that policies that encourage local participation will provide more people more of a say in the design and operation

of projects. But in practice, people have highly differentiated access to CDD projects, with many citizens unable to express preferences. This is problematic as it can often result in the capture of CDD, with overrepresented groups co-opting resources for their own particular interests (Bardhan and Mookherjee 2001).<sup>6</sup>

Preventing capture means ensuring that community interests are channelled to the locus of decision making within a given CDD project. Effective brokerage relies on trust. Aid-driven associational models, especially the creation of new community-based development councils and NGOs, have been criticised as being less representative than they are intended to be. One reason is that they tend to favour individuals who possess the education and skills needed to comply with donors' accounting requirements. This can result in interest aggregation being provided by 'briefcase' NGOs that organise themselves according to norms imported from the outside rather than based on the interests of a particular community (Booth 2012, 78; Olivier de Sardan 2008).

Although CDD projects may seek to bolster local participation, they do not always do so. Indeed, by sidestepping or ignoring customary authorities and building parallel development councils, they may negate or dilute important voices inside the community. Such an approach may also ignore the fact that customary authorities have long been trusted with the role of providing citizen representation before other forms of authority. Research in sub-Saharan Africa also shows that customary authorities play an essential role in aggregating voices because of their accessibility (Logan 2009). In many instances, the endurance of customary authority can be attributed to its responsiveness to citizens' concerns (Murtazashvili 2016b). In India, citizens developed different kind of informal or customary brokers for separate segments of society (Krishna 2011), with some relying heavily on informal *panchayats* (customary village councils) to fulfil this role (Ananth Pur 2007).

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6. Ensuring that all interests and forms of agency are represented is an essential condition for the effectiveness of CDD. This is well illustrated in a World Bank study of how the creation of donor-backed elected councils affected the way in which donor-provided wheat was distributed across 500 villages in Afghanistan (Beath, Christia, and Enikolopov 2013). The study demonstrated that the creation of elected councils did improve the targeting of this aid, but only under a key condition, namely when the role of the elected council in relation to customary governance had been clarified. When elected councils did not engage customary leaders to reach an agreement as to who had responsibility for the distribution of the wheat, the likelihood of embezzlement actually increased, as uncoordinated activity led to more competition over these development aid rents.

### **Engaging customary authority in authoritarian settings: USAID's Mahalla Initiative Program in Uzbekistan**

The United States Agency for International Development (USAID) developed an innovative bridging programme that attempted to link customary authority in the form of urban mahallas (neighbourhood associations) with emerging local non-governmental organisations. The project sought to help build nascent civil society in newly independent post-Soviet Uzbekistan. It provided trainings and small grants to NGOs to implement small-scale projects in mahallas, working with customary leaders and citizens.

The project sought to ensure that mahallas, which were incorporated into government under the new law on local self-governance, remained a source of vibrant civic advocacy that could link citizens to one another as well as to local service providers (Stevens 2005). USAID gave grants to mahallas that partnered with local NGOs after going through a participatory community appraisal that required community members, both men and women, to collectively discuss issues of common concern. The participatory approach in mahallas was novel, as citizens had never been exposed to these kinds of project implementation methods. Initially, this partnership with customary governance appeared to be a success.

After only a few years of implementation, however, USAID closed the programme. The problem was that the government eventually co-opted the mahallas – not only for purposes of welfare provision, but also for social control. Government appointed mahalla leaders, and individuals within the mahallas were tasked to coordinate with local security services and spy on citizens (Human Rights Watch 2003). The Mahalla Initiative Program had been designed at a time when donors anticipated that Uzbekistan would transition to democracy, but Uzbekistan soon became one of the world's most authoritarian regimes. Rather than allow the mahallas to perform legitimate functions, the government sought to use them to extend its authoritarian reach in very brutal ways. In many communities, parallel, informal mahallas emerged alongside the state-controlled ones (Rasanayagam 2011). Overall, however, government control undermined social trust within the mahallas and weakened their ability to provide communities with social capital (Sievers 2002).

This case illustrates one way in which the development community can engage with customary authority. When mahallas were relatively autonomous, the project was successful. But when the government sought to formalise mahallas and limit their scope of activity, donor projects ceased, as these bodies were no longer part

of civil society but instead became an arm of a coercive state. This example illustrates the risks of engaging customary authority in authoritarian environments.

## Monitoring capacity

CDD programmes are more resilient to corruption and capture if there is potential for the internal monitoring of community behaviour. In many development settings, the ability of either the state or donor agencies to provide this oversight is restricted. In contrast, as the heart of their communities, customary authorities have the capacity to gather information by mobilising people and organising meetings (Eggen 2011, 320). Compared to NGOs, their long-term time horizons can make them a more credible source of oversight, and they are often better aware than outsiders of the immediate issues facing communities. This monitoring role can be historically embedded. Throughout Central Asia and Iran, communities long relied on community-appointed individuals, called *mirabs*, a form of customary authority responsible for monitoring water usage among communities. Mirabs are still active in parts of Afghanistan and Tajikistan. They receive incentives, such as a portion of each household's harvest, in return for equitable monitoring of water resources (Thomas and Ahmad 2009).

Customary authorities may also have 'monitoring power' – that is, the social standing to prevent misconduct from occurring again. Eggen (2011), for example, describes how chiefs in Malawi exercise a great deal of monitoring power, a capacity they put to use to ensure that the implementation of an agricultural subsidisation programme benefited the local community. Such monitoring power may give customary authorities an advantage in comparison to some NGOs and other civil society actors, who may not be sufficiently embedded in communities, may not be trusted, or may have weak capacity to effect changes in behaviour (Platteau and Gaspart 2003).

## Building up anti-corruption norms

Another role customary authority can play is that of persuading citizens of the negative effects of corruption – in other words, building up a normative

constraint against corruption that can raise the social and political costs of engaging in corrupt behaviour (Mungiu-Pippidi 2015). Norms are the unwritten rules and expectations that define how people should behave. They are important because they indicate what actions are approved or disapproved of, which in turn influences how people behave as members of a society and how they choose to act in different situations (Bicchieri 2016).

Norms can change, however, and theorists identify ‘trendsetters’ as important in shaping new practices in society. Trendsetters are ‘first movers,’ breaking free from established norms in a way that can inspire others to follow suit (Bicchieri 2016).

Studies have not found strong evidence that conventional anti-corruption campaigns using, for example, billboards or television advertisements have been effective in changing norms around corruption. Awareness-raising messages may even backfire, as heightening awareness that corruption is widespread may reduce citizens’ willingness to get involved in countering it (Peiffer 2017). In the absence of effective channels for persuasion, customary leaders can play a role in promoting new behaviours, though this role needs to be determined on a case-by-case basis to ensure that customary leaders are not proponents of reactionary norms.

Customary leaders are already playing a positive role in changing norms on certain other issues. They have sometimes been included in strategies to challenge cultural practices that discriminate against women and children, for example. A comparative study of child marriage reform in Sudan and Zambia found that the decision to include traditional leaders in a comprehensive campaign was an effective means of avoiding counter-mobilisation against child marriage reform. Customary leaders gained a sense of ownership over the policy and received training to increase their understanding of how child marriage contributes to school dropout rates (Muriaas, Tønnessen, and Wang forthcoming).

#### **‘It takes a female chief’ in Malawi**

A survey experiment in Malawi found that customary authorities can play a central role in persuading community members to favour protection of human rights (Muriaas, Tønnessen, and Wang forthcoming). The researchers randomly



assigned 1,381 respondents either to a control group or to one of four treatment groups that received positive messages about child marriage reform from a female or male customary leader or member of parliament. The survey allowed the research team to examine the impact of authority type (customary or elected) and authority gender (male or female) on citizens' support for human rights reforms linked to women's rights. The survey revealed that the female customary authority was the most effective endorser of child marriage laws among the four types of leaders included in the experiment. All the other endorsements produced a backfire effect – a decline in support for the law relative to the control group, which heard no endorsement at all.

The authors argue that female customary leaders' overall effectiveness is linked to the public's high level of trust in traditional authorities, coupled with women's stereotyped competence in the area of women's rights. The results suggest the potential of customary leaders to act as 'trendsetters' or 'norm entrepreneurs' in other policy advocacy areas. However, the authors emphasise that this potential should be assessed on a case-by-case basis: the effect of messengers could vary not only across cases, according to citizens' trust in state and traditional institutions, but also across policy domains, given their link to stereotypically male or female competencies.

## Assessing the quality of customary governance

Although there has been a renewed interest in customary authority in recent years, there has been little effort to explain why customary governance serves as a barrier against corruption and capture in some instances but not in others. To address this, we turned to the vast literature that engages customary authority and questions of governance to develop a set of variables that help clarify the conditions under which customary authority is associated with improved resilience against corruption and capture. These variables are:

- Degree of autonomy
- Constraints on decision makers
- Inclusive decision making
- Enforcement and sanctioning

These variables refer primarily to organisational characteristics rather than to broader contextual or structural factors.<sup>7</sup> The assumption is that customary authorities and the communities they govern are characterised less by territory or geography and much more by the rules and institutions they live by (Agrawal and Gibson 1999). To best assess the potential and risks associated with greater reliance on customary authorities, it is important to unpack the rules governing such authority to see whether they are more or less likely to foster resilience against corruption. When customary authority performs poorly across these dimensions, there may be opportunities to create new forms of governance.

When a customary authority possesses *a high value on each of these characteristics*, we argue, it is more likely to be a good partner than if the values are low, as it is the confluence of the indicators that produces customary authority with lower risks of corruption and capture. We provide guidance as to how development practitioners might go about measuring the presence of these conditions as they relate to customary governance.

## Autonomy and self-government

By ‘autonomy’ we mean the ability of customary authorities to govern themselves without interference from governments or other external societal actors, such as militias or political parties, that may seek to exert control. In practice, this means that governments recognise an autonomous space within which customary authorities can operate. Organisations that are autonomous and independent from third-party influence will be better positioned to serve the needs of their constituents (Fukuyama 2013; Evans 1995). Scholars who have examined the provision of public goods by communities emphasise the importance of government recognition of communities/customary authority as a factor that allows them to be effective in their work (Ostrom 1990; Oomen

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7. It is difficult to discern a clear correlation between most contextual variables and the quality of customary governance. For example, we cannot say for certain whether customary authorities tend to operate more effectively in democracies or non-democracies. If democratic institutions are strong, there may be little need for customary arrangements. On the other hand, customary authority can be a strong complement to democratic institutions (Logan 2009, 2013). In authoritarian regimes, customary authority may not be able to operate effectively because its leaders and citizens are repressed. Another variable, state capacity, is strongly correlated with economic development. In countries with high levels of state capacity, we anticipate a low demand and a small political space for customary authority. International donors rarely work or engage in countries with high levels of state capacity and development, so many of the issues dealt with in this paper will not apply to those contexts.

2000). When customary authorities lose this autonomy, we expect them to lose some of their capacity to govern effectively.<sup>8</sup>

Autonomy is a double-edged sword. On the one hand, it enhances the legitimacy of customary authority. On the other hand, the ability of customary organisations to make their own rules, which may contradict those of the state, can lead to conflict or undermine the very values that international donors seek to promote. For this reason, autonomy alone will not yield customary authority that is a good partner for development practitioners. It must be coupled with inclusive decision-making procedures and governed by constraints, as discussed below.

In some instances, governments can formally recognise the authority of customary governance to operate autonomously without interference from the state. In the autonomous province of Somaliland, clan elders were made part of the constitutional system because they could secure local order and facilitate development in places where the state could not. Customary authority plays a formal role in Somaliland, but its internal rules are determined from within and not by third parties.

The autonomy of customary organisations is undermined when the state seeks to co-opt such authority by, for example, offering salaries, honoraria, land tenure rights, loans, and other financial incentives, mostly to customary leaders. Such state intrusion into customary matters is often a relic of colonial rule (Muriaas 2009, 2011). In South Africa, government intervention in customary relations has led to a deepening mistrust between customary leaders and citizens. In other countries, formal recognition of customary authority has damaged the internal legitimacy of these organisations, weakening democracy at the local level (Buur and Kyed 2006).

Russian colonisation and subsequent Soviet rule created Uzbekistan and Tajikistan as modern political entities. Urban and rural communities in both countries are made up of mahallas (neighbourhoods). In Uzbekistan, the post-Soviet government took effective decision making regarding mahalla leadership away from communities, giving district government officials a say in

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8. In this way, autonomy of customary authority differs from bureaucratic autonomy, which Fukuyama (2013) argues is critical to improving the ability of governments to provide public goods. He argues that some degree of bureaucratic autonomy is good, but too much can be state-destroying because when there is no accountability to the centre, officials will not implement programmes or abide by important rules established by the state.

determining who could serve as mahalla leaders (Sievers 2002, 100). In Tajikistan, these organisations have had much more autonomy and appear more involved in providing public goods and services and dealing with citizen grievances than in Uzbekistan. It is this autonomy from the state that lends them legitimacy.

**Practical indicators:** How do we know whether customary authority is autonomous or not?

- **Relationship with the government:**

Do customary authorities have obligations to the government?

Are they formalised?

Do customary leaders receive a government salary or stipend?

- **Relationship with donors:**

To what extent do customary leaders depend on donor organisations for funding and support of their initiatives?

- **Relationship with local militias:**

Have warlords or local militias tried to appoint heads of customary councils or assert their own customary leaders?

- **Community relationships:**

Do customary authorities have the ability to make decisions on their own without consulting other organisations?

## Constraints on decision makers

The most important internal characteristic that influences the quality of customary governance is constraints on decision makers. In any context, constraints on political leaders are key to improving governance outcomes (Hanson 2014; Tsebelis 2002). Just as in the formal sphere, customary authority is less likely to be corrupt when it is held in check by institutions – that is, by the rules, often unwritten, that shape how customary authority behaves.

There are many different kinds of constraints that can limit the authority of local leaders. Community-imposed limits on length of service of individual leaders are a particularly important example.

Although conventional wisdom suggests that customary leadership is hereditary and leaders serve for life, this is not always the case. There is enormous

variation in the way leaders are selected, and in whether and how they can be removed by citizens. In some instances, customary leaders come to power through community consensus. Customary leaders can also be constrained by the threat of removal if they do not perform their duties responsibly (Oomen 2000; Van Kessel and Oomen 1997). The threat of losing power is an important constraint that mediates the behaviour of leaders. Another kind of constraint can involve a separation of powers at the local level. In other words, there may be multiple customary actors in the same space who can check the power of an individual leader. This is often the case in Muslim-majority countries, where religious leaders can play an important role in mediating and limiting the ability of customary leaders to act without repudiation. In some settings, local customary councils of elders or other local leaders serve to limit the power of an individual leader. When individual customary leaders are constrained by multiple checks on their power, they will be better partners for CDD activities.

For example, customary organisations in rural Afghanistan are not monolithic actors. They are effective in governance because customary authority consists of multiple actors – customary councils, village-appointed leaders, and religious leaders. Multiple organisations operating in the same space create an informal set of checks and balances. To many Afghans, constraints on customary authority are more effective than those on formal state officials. For these reasons, these organisations “remain an important source of public goods in the countryside because they are characterised by a set of institutional constraints that yield legitimacy. This legitimacy yields capacity” (Murtazashvili 2016b, 248).

These accountability mechanisms cannot be assumed; rather, they are an important variable in the calculus of customary governance. In some situations, customary authorities behave as “despots” (Mamdani 1996) or as if they “own the people” (Muriaas 2011, 92), because they have no internal constraints on their authority. The lack of constraints gives local leaders carte blanche to engage in behaviour that is at best unpredictable and at worst, predatory.

**Practical indicators:** How do we know whether customary authorities are constrained or not?

- Are community-based criteria used to select customary leaders? If so, are these criteria based on competence or simply on status/wealth/lineage (although these two factors are often intertwined)?
- Are procedures available that allow for the removal of customary leaders?

- Does customary authority consist of one monolithic decision maker or are there multiple players and organisations that limit the power of individual customary leaders? For example, is there a local customary council that exists alongside a customary leader?
- Do religious authorities play a role in checking the authority of customary leaders?

### **Autonomy and institutional constraints influence quality of customary governance in Sierra Leone**

In Sierra Leone, customary authority has become heavily intertwined with the formal government. People living in chiefdoms have complained that politicians and bureaucrats place their own allies in positions of authority in chiefdoms in order to take advantage of local resources (Fanthorpe 2005, 40). This was especially true in the run-up to the civil war in the 1980s, when government officials tried to stack chiefdoms with their agents.

Government interference damaged the chiefdoms' internal constraints that helped produce public goods. Acemoglu, Reed, and Robinson (2014) found that reduced political competition among chiefs yields worse development outcomes across a wide range of sectors. They measure political competition among chiefs by the number of ruling families within a single constituency. Without checks on their authority, these less-constrained chiefs are emboldened to take part in predatory behaviour through control of land, taxation, regulation, and the judiciary. Not only does the lack of constraints hurt development, it also fosters patron-client relations, locking citizens into a dependency relationship with local chiefs.

The writers explain this reduction in political competition by suggesting that British-promulgated indirect rule undermined existing checks on chiefly authority, especially pre-existing norms that allowed citizens to appeal rulings. Colonial authorities empowered chiefs as local government authorities, reifying a hierarchical system of paramount chiefs, sub-chiefs, and headmen. Not only did the British formalise a hierarchical system, they also gave preference to ruling families. Prior to colonisation, the number of families that had legitimacy to rule chiefdoms was variable; after colonisation it became almost fixed.

## Inclusive decision-making procedures

Decision-making procedures also vary in inclusiveness. As with any political organisation – formal or informal – when decision-making processes within customary organisations are inclusive, they yield greater transparency. As discussed previously, structural characteristics of customary authorities will have an important bearing on their decision-making procedures. For example, organisations that are egalitarian will be more likely to have inclusive decision-making procedures than those that are hierarchically organised. However, this does not mean that hierarchically organised authorities can never have inclusive procedures; such procedures are simply more likely to be found in egalitarian systems, which by definition feature participation by most segments of society.

Norms underpinning customary authority also matter; they can be inclusive or exclusive. Attitudes towards gender are particularly important. Though some customary leaders are women, this is not common – and customary authorities often exclude women (Steegstra 2009; Eisenstadt 2007). Norms of customary governance sometimes also exclude significant segments of the population, such as young people and minorities (Rangan and Gilmartin 2002). The most powerful critiques of customary governance point to its inability to include these groups in decision making (see also the section on enforcement and sanctioning, below).

### **An example of inclusive decision making: *Usos* in Mexico**

In Mexico, a 2004 constitutional reform allowed communities to decide for themselves how they would select local governments. They could utilise traditional forms of governance, or they could rely on government-provided institutions and elected political parties. Analysis of this reform by Diaz-Cayeros et al. (2014) shows that provision of public goods in municipalities that chose to be governed by customary authority improved vis-à-vis those jurisdictions that relied on political parties. Specifically, they found that electricity, education, and sewerage services all improved under traditional leaders. They argue that traditional arrangements are not “authoritarian enclaves manufactured” to protect interests of political parties, as they have sometimes been depicted (2014, 83). Rather, public goods increased under traditional governance because this form of authority facilitated enhanced forms of participation in local politics. Municipalities that are governed by *usos* are more likely to hold open council meetings featuring citizen participation in decision making. Improved public goods

resulted from enhanced collective decision-making practices within customary authority.

**Practical indicators:** How do we know whether customary organisations have inclusive decision-making procedures?

- Do members of every household participate in customary decision-making processes, or is participation limited to just a few families?
- Do customary bodies hold frequent meetings? Are these meetings well known and publicised to all households in a community?
- Are rules and procedures that govern decision making common knowledge to community members, or are decisions made in an arbitrary and ad hoc fashion?

## Enforcement and sanctioning

To provide public goods effectively, customary organisations need the ability to enforce rules that community members have agreed upon and sanction those who have violated them (Cammack 2011). This ability to enforce a set of sanctions yields a kind of quasi-voluntary compliance, in which most citizens will abide by the rules (Levi 1989).

There is a vast literature detailing the role that customary authorities play in monitoring and enforcing management of natural resources (Bannon and Collier 2003; Russell and Dobson 2011). Self-governing groups, including customary authorities, that possess monitoring capacity are better able to manage common-pool and natural resources (Ostrom 1990). Using a large data set from 12 countries, Gibson, Williams, and Ostrom (2005) found that both local monitoring and rules enforcement by community groups positively correlated to the condition of forests. Customary authorities play an important role in managing natural resources throughout much of the developing world, and their ability to monitor behaviour and punish rule breakers helps explain why they are effective. When customary authorities lack these attributes, they will be less likely to provide services and less able to improve governance outcomes.



Enforcement and sanctioning are the teeth that ensure compliance with rules. Although enforcement is often necessary for rules to matter, development practitioners must be wary of the kinds of punishments supported by customary authorities. Customary norms in this area are often in violation of human rights and other international norms, and punishments meted out by these authorities have given them a reputation as not complying with human rights norms. For example, in Pakistan a village panchayat ordered the rape of a teenage girl in retaliation for her brother's rape of another girl in the same community. Both families consented to the punitive rape before it was carried out (Schmidt 2017). Such brutalising punishments are not uncommon, and they are often found in areas related to criminal activity and personal or family law. But not all customary authorities use sanctions as harsh as those in the Pakistani case. Ostrom (1990) found that the most effective local organisations have a set of graduated sanctions to punish those who violate agreed-upon rules.

**Practical indicators:** How do we know whether customary authorities have enforcement and sanctioning capacity?

- Are there well-known rules in place enforced by sanctions?
- Are sanctions graduated?
- What sanctions are used by communities (physical punishment, revenge, financial compensation, ostracism)?
- Are appeal processes available to those accused of violations?

## Advice for donors and practitioners

In sum, customary organisations that are autonomous and self-governing, possess internal constraints on decision makers, have inclusive decision-making procedures, and possess the ability to monitor and enforce rules are more likely to improve governance outcomes. Absent these characteristics, they may be predatory. So, what should donors and practitioners do?

### Gather information on customary authority

If donors first open the 'black box' of customary organisations and understand the rules that govern them before designing interventions in places where such authority is present, they may be more likely to succeed. Exploring the institutional dimensions of customary authority will allow policymakers to avoid

common pitfalls, such as assuming that customary authority is more hierarchical than it is or that it fails to represent citizen interests. Such analysis will help intervenors avoid terms often used to discuss customary leadership, such as ‘headmen’ or ‘chiefs’, which may lead to a fundamental misdiagnosis of local conditions.

*Interventions in places with customary organisations may be more likely to succeed if donors first understand the rules that govern them.*

Institutional analysis can be done by local survey firms that can undertake qualitative as well as quantitative surveys of local institutions. Donors should not hesitate to work with academics who focus on local politics in order to better understand the role these organisations play in a wide range of areas. Donors should be willing to collect diverse perspectives regarding opportunities for partnership with customary leaders.

Donors need to be cautious in how they elicit information about customary authority. With the persistence of aid programmes around the world, individuals engaging with donors are conditioned to a kind of desirability bias, often telling them what they think the donors want to hear (Fanthorpe 2005, 40). This also applies to the role of traditional authorities, which are not always in conformity with donor ideas and intentions.

It is important to work with customary governance to identify the policies that are most likely to accomplish development objectives. Development is not just an implementation problem; it is also a knowledge problem. Donors need to identify the policies that are most appropriate and most likely to succeed in each local context. Customary governance can be an important source of such information.

## **Exercise caution when introducing new organisations at the community level**

Most development agencies, especially in the areas of democracy promotion and governance, have been uncomfortable working with customary authority to address corruption. Instead, many donors prefer to establish their own

community-based organisations that are intended to work around customary authority. Donors are often keen to introduce new community-based organisations because they provide a kind of uniformity that customary organisations often lack. They are also directly accountable to donor agencies, which is important because aid agencies must account to taxpayers in their home countries for how funds are spent. Yet there is enormous risk in creating new organisations. Foremost among them are the lack of trust and short time horizons that may make these new bodies less resilient to corruption.

## **Come to terms with ‘incoherence’ and be wary of formalisation**

By its very nature, customary authority is neither homogenous nor formal. The degree of legitimacy and the capacity of customary organisations vary from community to community. Though accountability and transparency should be encouraged, standardised log frames or templates for relations with customary authorities are unlikely to provide the flexibility required to cope with diversity. Moreover, formalised administrative requirements – requiring customary organisations to register as local associations, for example – will be unlikely to enhance their legitimacy. When customary authority is governed well, it is usually because it is legitimate and accountable to citizens. Historically, indirect rule by colonial powers illustrates this point. Through stipends, benefits, and promises of political support, external control fundamentally altered political accountability structures within customary organisations.

Donors today should avoid repeating these errors by entering communities with promises of public goods and offers of support for customary leaders who agree to implement their latest community-based development project. Instead, donors should take a diagnostic approach and actively study the contours of all local organisations, including customary authority, in areas where they seek to engage.

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