The inclusion of traditional authorities in democratic state structures

A comparative case study of Botswana and Zambia

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Abstract

The relationship between traditional authorities and the state in Africa has fluctuated between contestation and cooperation. While traditional leaders were marginalized during the post-independence period, they have been increasingly incorporated in government with the introduction of bottom-up development in the 1990s. However, chieftaincies are often characterized by stratification, hereditary succession and personalism, which raises questions regarding their compatibility with democratic systems of governance. Indeed, these characteristics may undermine accountability and human rights protection. Based on a comparative case study of the role and functioning of traditional authorities in Botswana and Zambia, in this paper I argue that such doubts are well-founded. In Botswana, one of Africa's most robust democracies, traditional authorities perform important development functions, but the state imposes checks and balances on their authority, hence preventing excesses. In Zambia, on the other hand, traditional authorities have recently gained more authority, but are largely left unchecked by the only partially democratic regime. While the case of Botswana suggests that traditional authority inclusion is not incompatible with democracy as such, the Zambian case shows that traditional authorities may rather undermine than strengthen good governance in new democratic systems. Unfortunately, most of African's current multiparty democracies belong to this latter fragile category. This implies that the current trend of retraditionalization requires careful scrutiny by both African governments and international donor organizations.

1 Introduction

Throughout history, the relationship between traditional authorities and the state has been a reoccurring theme in African politics. After independence, the debate between traditional leaders and politicians mainly focused on traditional leaders' non-democratic nature. In the words of a young Nelson Mandela during the 1950s (1994, p. 160): "The people want democracy and political leadership based on merit, not birth". However, with the recent introduction of bottom-up development and grassroots governance, traditional leaders have increasingly been incorporated in democratic state structures (Englebert, 2002). Interestingly, members of the governments who opposed the inclusion of chiefs during the independence period have actively improved the position of traditional leaders during their countries' transitions to democracy (Baldwin, 2015).

The recent inclusion of traditional leaders has led to many questions about the desirability and legitimacy of chiefs in modern forms of government. The promotors of traditional leadership argue that the non-democratic institution of chieftainship can claim special legitimacy within democratic governments because it is inherent to African culture. Traditional leaders are therefore seen as the embodiments and true representatives of (rural) African communities (Buur & Kyed, 2007; Skalník, 1996). Critics, on the other hand, emphasize that the absence of voting rights, the hereditary succession and the non-inclusive nature of chieftaincies are untenable in modern democratic government systems (Logan, 2009; Van Kessel & Oomen, 1997). What does this mean for the current recognition of traditional leaders that is done in the name of efficient and localized governance? Does this really ensure the inclusion of marginalized communities, or does it actually endanger the quality of democracy and the gains, such as accountability and the protection of human rights, associated with it? These are important questions as there has been a steady increase of national government policies and international development projects aimed at the inclusion of traditional leaders in the name of bottom-up development (UNDP, 2005; Van Rooij, 2012).

Accordingly, by comparing the cases of Botswana and Zambia, the current study will focus on the question whether traditional authorities strengthen or undermine democratic governance in a country. While Botswana has been Africa's most stable and robust democracy, Zambia has only made the transition from a one-party state to a multiparty democracy in the early 1990s (Acemoglu & Robinson, 2013). Moreover, democratic governance in Zambia remains fragile and weak. Botswana and Zambia have, however, both formalized the position of chiefs. Besides, citizens in both countries regard traditional leaders as influential (Afrobarometer, 2016). It is important to take this broader societal context into account when discussing the behavior of traditional leaders on the local level. Indeed, while the debate on their role has taken the form of defenders versus critics, there may be important variation

in their role and functioning based on their relationship with official state structures. By analyzing a democratic and less democratic context, I take this potential variation into account. For both countries I analyze how traditional authorities have been included in state governance processes, what their powers are, and the risks associated with these powers in terms of accountability and human rights protection. The comparative case study relies on secondary data analysis based on academic literature, legal texts and news reports.

Through in-depth analysis of the history, formal inclusion and actual position of traditional leaders in Botswana and Zambia, the current study finds that we cannot a priori criticize or defend the inclusion of traditional leaders, but that their behavior and their potential to contribute to or undermine democratic governance is dependent on their relationship with the state. This relationships in turn varies depending on the democratic nature of the regime. Specifically, I find that traditional leaders' level of independence from the government has considerable effects on their role and functioning. The formal inclusion of traditional leaders is more likely to pose threats for accountability and human rights protection when chieftaincy has developed outside the spheres of government. When traditional authorities are closely encapsulated within the state, in particular a democratic state, their functioning is constrained by checks and balances conducive to democratic governance.

The Botswana case shows that, in order to control traditional leaders, the post-independence government immediately made traditional leaders agents of government. Because traditional leaders got subjected and more adjusted to democratic norms and practices over time and because the Botswana government simultaneously steered them in a more democratic direction, chieftaincy in Botswana functions in a relatively democratic and accountable manner. In Zambia, the government let the institution of chieftaincy develop outside the spheres of government. As a result, today, Zambian traditional leaders are more independent from the democratic government and it seems that they have been able to hold on to their non-democratic and non-inclusive traditions.

In the following section, I will first give a more detailed overview of the historical position of traditional leaders in Africa. In this section, I also describe their resurgence since the 1990s and the debate on the advantages and disadvantages of traditional authority inclusion that followed. After this, I will motivate my choice for Botswana and Zambia in the methodology section. I will then turn to my analysis of traditional authorities in both countries.

2 Theoretical Framework

2.1 Traditional authorities in pre-colonial, colonial and post-colonial times

Traditional authorities are leaders of traditional communities who derive their position of authority from their historic roots. The word 'traditional' has a historic meaning and refers to something that originated in the past (Lutz & Linder, 2004). In Africa, traditional leadership is often traced back to pre-colonial times (Ray, 2003). However, as we will see in the following paragraphs, not all traditional leaders in contemporary Africa have pre-colonial roots. In the interest of the day to day management of their colonies, colonial powers have at times 'invented' new traditional leaders who did previously not enjoy any right to rule. Moreover, the powers and legitimacy of traditional leaders who did derive their authority from pre-colonial times has also been subjected to and shaped by colonial and post-colonial policies (Buur & Kyed, 2007; Crowder, 1978; Herbst, 2015; Lutz & Linder, 2004).

Pre-colonization

In pre-colonial times, the African continent existed of many forms of social and political organization which were in constant transformation and development. These forms depended on differences in physical and economic settings (Herbst, 2015) and ranged from hierarchical, militarized forms of kinship or chieftaincy to loosely linked lineage systems (Ubink, 2008). Pre-colonial authorities derived their power from various sources such as "rights of conquest, control over land, direct descent from great ruling ancestors, or membership in a particular ruling family" (Lutz & Linder, 2004, p. 14). Due to large plots of land and relatively low population density, traditional leaders were prevented from establishing fixed borders and controlling territory effectively (Cappelen & Sorens, 2018). As a result, the costs of expanding authority were high and their power did not extend further than one political core (Herbst, 2015).

Colonization

As a result of colonization, many traditional communities saw their political leadership being turned into instruments of colonial rule for the benefit of geographically bounded empires (Lutz & Linder, 2004). Leaders with different titles – ranging from 'king' to 'village head' – suddenly all fell under the same colonial term 'chief' (Crowder, 1978). Moreover, through a combination of direct and indirect forms of rule, the colonial government incorporated these chiefs into their administrative systems in order to use them as gateway to human and natural resources (Buur & Kyed, 2007; Cappelen & Sorens, 2018; Crowder, 1978; Herbst, 2015; Ubink, 2008).

The extent of this incorporation depended on the colonizer. For example, compared to the British, the French colonial government took a much more pragmatic approach during the appointment process.

The ability to follow the modern administration systems and the proficiency in the French language was considered to be more important than the leaders' traditional claim to chieftaincy (Crowder, 1978). Even though the British colonial government sometimes also 'invented' new chiefs, particularly in areas without chiefs or with chiefs that did not suit them, they were generally more concerned with appointing chiefs who were recognized by the traditional communities. Additionally, British chiefs were assigned more extensive tasks than the French ones (Crowder, 1978).

Notwithstanding the differences regarding the integration of traditional leaders, in the long run, all colonial powers tried to alter traditional structures in order to use them for control over the local population (Lutz & Linder, 2004). This had substantial implications. First, chiefs lost their independence to the colonizers. Second, especially in French colonies, people were suddenly represented by a chief they did not recognize. Third, due to colonial manpower, the construction of infrastructure and the centralization of the political system driven by the colonizers, it became possible to control land without needing the approval of the people living on it (Herbst, 2015). Therefore, the power of chiefs was not defined by the people occupying their lands anymore, and many communities consequently lost their leading card in holding their chief accountable.

Post-colonialism
Although many of the incorporated traditional leaders supported independence movements, postcolonial governments mainly saw them as "repressive collaborators of the colonial masters and as impediments to the modernization and nation-building projects of the 1960s and 1970s" (Buur & Kyed, 2007, p. 1). Therefore, traditional leaders were generally excluded from legal and political decision-making processes and their powers were limited to cultural and spiritual activities (Buur & Kyed, 2007; Cappelen & Sorens, 2018; Lutz & Linder, 2004; Ubink, 2008). Yet, chieftaincy did not disappear and remained important, particularly on the local level (Skalník, 2004). Consequently, most African countries continued to experience an informal "dualism of structures of power" (Buur & Kyed, 2007; Englebert, 2002; Ekeh, 1975).

2.2 Resurgence of Traditional Authorities since the 1990s
Since the beginning of the 1990s, a wave of 'retraditionalization' seems to have turned around the postcolonial policy of containing traditional leaders as unfavorable (political) actors (Englebert, 2002; Skalník, 2004; Ubink, 2008). In mainly all African countries, this wave has been characterized by formal recognition and the "gradual resurgence and enlargement of the role of traditional authority in local governance, development, and national politics" (Buur & Kyed, 2007, p. 2).

Retraditionalization explained

One explanation for the resurgence of chieftaincy is the idea that, over time, traditional leaders have filled the 'gap' left by incompetent governments (Herbst, 2015; Skalník, 2004). According to this failed-state thesis, unsuccessful nation building, internal armed conflicts and economic crises caused traditional leaders to be the "only remaining and functioning form of social organization" (Lutz & Linder, 2004, p. 4). Economic declines and the lack of state intervention promoted by structural adjustment programs have for instance led to the development of informal economic activity by grass-root organizations and traditional authorities (Englebert, 2002).

However, failed states alone cannot explain retraditionalization. While analyzing state legislation on traditional leadership, Englebert (2002) found that countries with a relatively well-functioning state apparatus have been most consistent in enlarging the status of traditional leaders. For that reason, he argues that the resurgence of traditional leaders is "only one dimension of the ongoing reconfiguration of power across the [African] continent" (Englebert, 2002, p. 51).

One of these other dimensions is the wave of democratization that rolled over the African continent since the 1990s. In the first half of the 1990s, almost all African countries moved away from one-party and military regimes towards more democratic forms of government characterized by competitive elections (Bratton & Van de Walle, 1997). Although generally the current African regimes are far from perfect, the trend is towards the institutionalization of democratic rules and practices (Baldwin, 2015). As a result, since 1990 onwards, elections are becoming the most important mechanism for selecting leaders in Africa (Posner & Young, 2007). Furthermore, the opening up of public spaces and the need for decentralization, inclusion and cultural diversity became important objectives of the newly democratic African states.

For that reason, governments started to incorporate traditional leaders – who are seen as 'the guardians and spokespersons for their community's members, local culture, tradition, identity and religion (Ubink, 2008, p. 15) – in (local) state structures. Thus, the adaptation of multiparty democracy is the second explanation for the resurgence of traditional leaders in Africa. This is supported by Baldwin's (2015) analysis that demonstrates a positive relationship between the presence of a multiparty democracy and increases in the power of traditional leaders. The third explanation for retraditionalization since the 1990s is an external development, i.e. the bottom-up approach in development cooperation. This bottom-up trend in international development aid has put an increased emphasis on the inclusion of local stakeholders (UNDP, 2005; Van Rooij, 2012). Consequently, strengthening traditional leaders has been a reoccurring theme amongst recent donor-sponsored conferences on development and conflict resolution (Englebert, 2002).

Debate traditionalists-modernists

Retraditionalization has led to a debate about the desirability and legitimacy of traditional authorities in modern, democratic state structures. Although the resurgence and inclusion of traditional leaders is partly driven by government policy directed at democratization, decentralization and inclusion, this does not imply that there is no cause for concern. Today, there are still fundamental disagreements about whether the institution of chieftaincy is compatible with democratic governance (Logan, 2009).

The promoters of chieftaincy within the modern state (traditionalists) argue that traditional authorities are the 'bedrock of society' and exercise authentic forms of governance (Buur & Kyed, 2007; Lehman, 2007; Skalník, 1996; Skalník, 2004). Additionally, traditional leaders are considered to be the embodiments and true representatives of (rural) African communities and their "history, culture, laws and values, religion, and even remnants of [their] pre-colonial sovereignty" (Ray, 2003, p. 5). According to traditionalists, the recognition of traditional leaders in any form of government is inevitable since traditional leadership and custom are inherent to African culture (Buur & Kyed, 2007). For that reason, traditionalists believe that even though the institution of chieftaincy is not fully democratic, traditional leaders can claim special legitimacy within democratic governments (Ray, 2000).

Modernists, on the other hand, do not agree with the idea that traditional leaders and what they stand for can be used to justify the incorporation of non-democratic, traditional institutions into a democratic state system (Mamdani, 1996). They emphasize that the absence of voting rights is "an insurmountable flaw of institutions of traditional rule" (Logan, 2009, p. 105). The institution of chieftaincy is a closed system characterized by "stratification, heredity, legitimacy and personalism. These features are untenable in open, modern, local government systems involving local initiative, universalism, equality, and change" (Olowu & Wunsch, 2004, p. 170). Besides, traditional leadership is generally patriarchal and it is not socially, ethnically or gender inclusive (Van Kessel & Oomen, 1997). Leadership is for instance often restricted to members of one ethnic or tribal group and others are therefore excluded. Additionally, women can usually not inherit titles and are excluded from decision-making processes (Lutz & Linder, 2004).

2.3 Retraditionalization and democratization

The debate between modernists and traditionalists highlights the fact that by incorporating traditional leaders, a paradox emerges. The fact that traditional leaders are seen as the local embodiment of their community and its tradition presents fundamental problems to the universal and democratic nature of African modern states. Although the current recognition of traditional leaders is done in the name of efficient and localized governance, their non-democratic and non-inclusive nature can potentially endanger the quality of democracy and the gains such as human rights, gender equality, access to justice

and land ownership associated with it.

To contribute to this debate, this paper focuses on the following research question: *To what extent does the inclusion of traditional authorities strengthen or undermine democratic governance?* To address this question, I focus on the role and functioning of traditional leaders in two countries which are very similar in many respects, but have different democratic credentials. I specifically focus on a democratic country with a less robust democracy. The selection of countries with different levels of democracy is important because the inclusion of only one or the other may bias the findings of the research as the behavior of traditional authorities may in itself be dependent on the wider democratic context of a country.

3   Methodology

In order to determine whether the inclusion of traditional authorities threatens or contributes to democratic governance, a comparative case study is conducted. For the comparison, I aim to select two countries that have included traditional authorities in their governance structures, but at the same time have different levels of democracy.

3.1 Case selection

The selection of the two cases is first determined by the formal recognition of traditional authorities in the country's governance structure. However, formal recognition alone does not account for the actual role traditional authorities play in their communities. Chiefs can have a strong, but also only a marginal position in society, which may affect their societal impact. For that reason, I also aim to select countries where traditional authorities are regarded as influential by the general population. To determine this, I make use of survey data collected by the Afrobarometer project.

There is substantial variation in Africa with regard to the way citizens view traditional leaders. In Table 1, I have compared how citizens respond to the two questions[1] about traditional leaders in Round 6 of the survey, which was conducted between 2014 and 2015. The results show that in a considerable amount of countries, traditional leaders enjoy widespread popular legitimacy, play an important role in the daily life of African citizens and most importantly, that this is desirable too.

The Afrobarometer data show that several countries appear to have high scores on the trust and legitimacy of traditional leaders. In my analysis, I will focus on Botswana and Zambia since besides the fact that respondents from both countries identify their traditional leaders as trustworthy and legitimate, both countries also recognize traditional leaders in their constitution and additional legislation. For instance, Botswana as well as Zambia included an advisory body consisting of traditional leaders, a 'House of Chiefs', in their governance structure (Constitution of Botswana, 1966; Constitution of Zambia, 1996).

3.2 Dependent and independent variable

Interestingly, countries where the legitimacy of traditional authorities is high include democracies (e.g. Senegal, Benin), as well as more authoritarian regimes (e.g. Guinea, Uganda). This finding implies that the legitimacy of traditional authorities as such does not appear to be related to regime type. Accordingly, it resembles Logan's (2013) findings which demonstrate that the resilience of traditional

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[1] The Afrobarometer round 6 contains three questions about traditional leaders, the third question (Q24E, Contact with traditional leaders) did however not show important variation.

authorities is caused by popular legitimacy rather than state characteristics. However, the way traditional authorities are incorporated in a country's governance structure may still vary and have important implications for how traditional authorities exercise their authority. I will therefore focus on the relationship between democratic state structures (independent variable) and the role and functioning of traditional leaders (dependent variable), in particular how they are held accountable and adhere to human rights.

Regarding democratic rule, Botswana and Zambia have different scores on the Freedom House's Civil Liberties Rating. While Botswana has a score of 2, Zambia scores 4 on a scale that ranges from 1 ('Free') to 7 ('Not Free') (see Table 2). Civil liberties are a useful tool to measure the level of democracy in a country, since they allow for the freedoms of expression and belief, associational and organizational rights, rule of law, and personal autonomy without interference from the state (Freedom House, 2015).

Besides the different scores, both countries also have different experiences with regard to democratic governance. Whereas Botswana was able to maintain democratic rule after independence, Zambia quickly experienced democratic reversal. By 1972, former Zambian President Kaunda declared the country a single-party state. The country did re-introduce multiparty democracy in the early 1990s, but the democratization process is fragile and democratic governance is still under pressure. Although there have been eight competitive elections in which three parties have been alternating in office since 1991, there has also been an attempt to change the constitution in 2001 so that president Chiluba could stand for a third term (Baldwin, 2015). Botswana, on the other hand, is Africa's oldest continuous democracy. Since independence, the country is a multiparty democracy that has held eleven competitive elections (Acemoglu & Robinson, 2013; Lekalake, 2016).

3.3 Control variables

Importantly, besides the formal inclusion and actual importance of traditional leaders, Botswana and Zambia are also similar regarding several other characteristics that may be influential in an analysis concerning the relationship between traditional authority and democratic governance (see Table 2). I look specifically at the history of colonial rule, the history of ethnic conflicts and the presence of natural resources. History of colonial rule is essential because the different policies of colonial rulers are believed to have an effect on both democratic state institutions and the institution of chieftainship today (Crowder, 1978), while ethnic conflict and natural resources are commonly associated with authoritarian modes of governance (Acemoglu & Robinson, 2013; Cheeseman, 2015).

First, Botswana and Zambia were both British protectorates and gained independence within two years from one another, respectively in 1966 and 1964. In both countries, the British conducted their policy of indirect rule (Crowder, 1978). Second, although the population of both countries is made up by

various ethnic groups, there is no history of ethnic conflict in either (Central Intelligence Agency, 2019). Both countries are characterized by 'integrative ethnicity' and experience relative peaceful co-existence. Third, in both countries, natural resources make up a considerable part of their GDP (Word Bank, 2017a). Each country is mineral dependent in which one product, diamonds in Botswana and copper in Zambia, accounted for 70% of total exports from 1990 to 1999 (Crain, 2010).

However, it is worth noting that there are differences in the current GDP per capita. Yet, this is mostly related to Botswana's ability to maintain democratic rule after independence and foster institutions conductive to economic growth, while this was not the case for Zambia (Acemoglu & Robinson, 2013; Baldwin, 2015). Hence, differences in GDP per capita seem related to both country's different experiences with democracy.

Table 1: Country scores on traditional leaders' importance[1]

		Importance traditional leaders		
Freedom House Index Civil Liberties Rating (2015)		Low	Medium	High
	1			
	2	South-Africa	Ghana, Namibia	Benin, Botswana, Senegal
	3		Lesotho, Mozambique, Sierra Leone, Tanzania, Tunisia	Burkina Faso
	4	Morocco	Liberia, Madagascar, Malawi	Côte d'Ivoire, Kenya, Mali, Niger, Zambia
	5	Algeria, Egypt, Gabon	Nigeria, Swaziland	Burundi, Uganda
	6		Cameroon, Zimbabwe	
	7		Sudan	Guinea

[1] Importance measured by trust and legitimacy of traditional leaders (Afrobarometer questions 52K and 53H).

Table 2: Country scores on variables for case selection[1]

	Botswana	Zambia
Traditional leaders: formal inclusion	Yes	Yes
Traditional leaders: importance[2]	High	High
Colonizer	UK	UK
Political system	Multi-party	Multi-party
Natural resources	Yes	Yes
GDP per capita	7,595	1,513
Ethnic conflict	No	No
Civil Liberties Score	2 ('Free')	4 ('Partly Free')

[1] Data retrieved from Afrobarometer round 6, Freedom House and the World Bank.

[2] Importance measured by trust and legitimacy of traditional leaders (Afrobarometer questions 52K and 53H).

4 Traditional authorities in Botswana

4.1 Traditional authorities before independence

In pre-colonial Botswana, the chief (*kgosi)* was the center of Tswana life. Traditional leaders' most important functions were law making, law enforcement and protecting the tribe from outsiders. Within the community, the chief was undeniably the most important person and therefore enjoyed great powers and commanded immense wealth (Morapedi, 2012). However, he – all traditional leaders were exclusively men – still had to consult with his council of advisors. Besides, chiefs also had duties and obligations to their subjects (Somolekae & Lekorwe, 1998). The position of a Tswana chief was strictly hereditary and succession was patrilineal, in which the position usually passed from the father to the eldest son (Mgadla, 1998).

Botswana, 'Bechuanaland' at the time, became a British Protectorate in 1885. During colonization, the relationship between the chief and his subjects changed substantially. Due to the policy of indirect rule, traditional leaders were relatively free to influence and shape the British policy to suit their own ends (Makgala, 2010). As a result of the presence of the colonial state and its enforcement mechanisms, Tswana communities lost their checks and balances on the chief. This made the chiefs more powerful towards their subjects (Crowder, 1978). However, the British also adopted several pieces of legislation which led to a great decline in the traditional leaders' actual powers. The Order in Council of 1891 (section 4) for instance established that customary law was subordinate to the British law. Moreover, the Native Administration and Tribunal Proclamation Act of 1934 (section 8) deprived traditional leaders from their powers to judge serious cases and gave the High Commissioner substantial powers with regard to the appointment and recognition of chiefs.

Therefore, during colonial times, chiefs were deprived from effectively practicing their main functions in society. Nevertheless, Tswana chiefs often stood their ground and expressed their dissatisfaction with these pieces of legislation. From the 1930s onwards, the British realized that without the traditional leaders' support, it was hard to get access to the community's human and natural resources (Morapedi, 2012). Accordingly, the British increased traditional leaders' power over the population, for instance through the African Administration Proclamation of 1954 which highlighted the legislative, political and social power of chiefs over their subjects (Mamdani, 1996).

After independence, Botswana adopted a liberal democratic system of government (Somolekae & Lekorwe, 1998). Former Tswana chiefs were not treated with hostility (Morapedi, 2012), but the new political leaders did further curtail the powers of traditional authorities. Until today, traditional chiefs

in Botswana are placed under state control.

4.2 Traditional authorities under democratic state control

In the independence period, defining the role of traditional leaders became a long political struggle. Most chiefs preferred to be included in politics by means of a house with law-making authority, which Proctor (1968, p. 62) calls the 'House of Lords' solution. Yet, this was completely unacceptable to a large section of the new political elite.

With the implementation of the constitution in 1966, it became clear that the politicians won the struggle about the role of chiefs in the new democratic governance structure (Molutsi, 1998). From 1966 onwards, the Botswana government gradually included traditional leaders in the country's government systems, but without giving them too much power. Traditional leaders were for instance placed in an advisory house without legislative powers, the *Ntlo ya Dikgosi* ('House of Chiefs'). In this house, their main role is to advise government on matters concerning traditional leaders, customary law and tribal organization (Botswana Constitution, 1966, s 85). The government is, however, not compelled to accept this advice. This was particularly visible when the government, despite strong objections from the House of Chiefs, enacted the Abortion and Tribal Land (Amendment) Bills (Somolekae & Lekorwe, 1998).

Because their powers got curtailed, many chiefs joined politics relatively early on (Molutsi, 1998; Somolekae & Lekorwe, 1998). They joined both the party in power[2] and the opposition parties. According to Botswana law, chiefs have to resign their chieftainship when they join politics (Botswana Constitution, 1966, s 82). Nevertheless, Botswana chiefs often combine a position in politics with their chieftainship, which is generally tolerated by the majority of the country (Morapedi, 2010). Thus, besides governments' policy to include chiefs in government, chiefs voluntarily joined politics and became part of the democratic system as such.

When the 1996 constitution was implemented, the House of Chiefs consisted of twelve chiefs. With the Bogosi Act of 2008 this number was increased to thirty-five. This was a result of many requests from traditional leaders and their tribes who were previously underrepresented in the house. The state has substantial control over who is elected into the house. Twelve chiefs are selected based on local customary norms, but eighteen others are selected by regional electoral colleges, which are headed by a senior government official appointed by the Minister of Local Government and consist of paid

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[2] Sir Seretse Khama's Botswana Democratic Party (BDP). Khama himself was a chief of one of the biggest tribes, but he relinquished his chieftainship and became a leader of the independence movement (Sharma, 2003, p. 253)

government officials and one chief (Bogosi Act, 2008, s 5). The chiefs holding the five remaining positions are chosen by the president.

Besides the House of Chiefs, the Chieftainship Act of 1965 and its amendments of 1970 and 1987 further recognized traditional leaders as part of Botswana's national government. The act determined that traditional leaders can be "designated as a Chief in accordance with customary law by his tribe", but have to be "recognized as Chief by the minister" as well (Chieftainship Act, 1987, s 4). Accordingly, the succession of chieftainship is besides the dictates of customary procedure also based on whether the selected heir is acceptable to government (Lekorwe & Somolekae, 1998; Morapedi, 2012). The Bogosi Act of 2008 added another requirement, i.e. that for a chief to be recognized, he has to possess "such minimum educational qualifications as may be prescribed from time to time" (Bogosi Act, 2008, s 4). The appointment of Botswana chiefs is therefore also based on ability, behavior and work experience rather than birthright alone.

Additionally, the Minister can withdraw recognition when he considers this to be in 'public interest' and any chief who fails to comply with the instructions given to him by the minister, can be suspended or deposed (Chieftainship Act, 1987, s 18). In practice, this has happened once (Lekorwe & Somolekae, 1998). Moreover, the government set up a task force to review the House of Chiefs' functioning (Englebert, 2002). This increases chiefs' accountability. Chiefs' succession might be hereditary, but if they do not perform well, the government can decide to suspend them. The fact that their actions are monitored by higher-level authorities, might provide chiefs with an incentive to perform accordingly. Although the government rarely makes use of its power to suspend a chief, the Chieftainship Acts as well as the constitutional provisions regarding the House of Chiefs do put chiefs under government control. Thus, the Botswana government made chiefs a part of the government system, but simultaneously made sure that they could control their power and influence on the system.

4.3 Traditional authorities as civil servants: checks and balances

Despite that the large part of the powers, functions and privileges of chiefs have continued to diminish in relation to those of politicians and senior civil servants, traditional leaders have become a "core pillar in the administrative and judicial spheres" of Botswana (Morapedi, 2012, p. 258). Besides their advisory position on the national level, Botswana chiefs also perform other important functions within local governance. These functions are mainly in dispute resolution, land allocation and local development (Lutz & Linder, 2004).

Dispute resolution

In Botswana, traditional leaders administer justice through officially recognized customary courts. By implementing the Customary Courts Act in 1966, the government divided the country's court system

into ordinary and customary courts. Predominantly all cases regarding customary law are settled in the customary courts over which traditional leaders have supervisory powers (Customary Courts Act, 1966, s 40). Nevertheless, the act also empowers district commissioners and magistrates to revoke the chiefs' decisions that are made with reference to customary law, which has a considerable effect on the traditional leaders' independence (Customary Courts Act, 1966, s 39). Additionally, people can choose whether they want to be represented by a state court or a customary court, which undermines the role of chiefs in today's legal system (Morapedi, 2012).

Additional controls on the powers of traditional leaders made Botswana's legal system more transparent. By making the customary courts a part of the state system, all its cases and decisions are documented. Moreover, the state provides secretaries and local police officers for the courts (Morapedi, 2012). As a result, the customary courts largely operate as modern state courts. Because people have the option to make use of the state court, the ones that generally find less protection under customary law (for instance women and ethnic minorities), also have the possibility to go to the state courts that apply state law in which their rights are generally better protected.

Land allocation

With the implementation of the Tribal Land Act in 1970, chiefs lost their exclusive authority to allocate customary land. The act handed over all the powers previously vested in chiefs under customary law to the newly established land boards that act in accordance with state law (Tribal Land Act, 1970, s 13). Early on chiefs were included in the land boards, but after some years of operation, traditional leaders were removed from the membership (Sharma, 2003). Even though the land boards do recognize the importance of a good relationship with traditional leaders, they operate fully independently. The allocation of land is therefore the full responsibility of the state. This increased the accountability of the land boards, as the government officials can be penalized for bad performance by either the minister of Local Government or the constituency.

Relationship chiefs and government officials

Although the Botswana government made sure to curtail traditional leaders' power over time, they have always remained an integral part of local government. They are for instance important members of Village Development Committees that implement development projects on a local level (Sharma, 2010). Particularly, they have become local agents of the public service, and are therefore increasingly seen as civil servants (Jones, 1983). Accordingly, traditional leaders are dependent on the state, as the government has assured them "life positions in office, satisfactory salaries, and services of the secretaries, and local polices officers in their courts" (Morapedi, 2010, p. 226). Consequently, their (financial) dependence on the state gave the state an advantage in making them comply with the rules

(Morapedi, 2012).

4.5 Conclusion

Analysis of traditional authorities in Botswana's government on both national and local level shows that the government has included the traditional leaders in government from day one. This is in line with Englebert (2002) and Baldwin (2015) who explain traditional authority inclusion as a consequence of multi-party democracy. Due to the inclusion and the requirements for chiefs that wished to be recognized by the state, Botswana chiefs essentially became civil servants. Traditional leaders' appointment and behavior is controlled and monitored by the state, which increases the checks and balances on the traditional leaders. Besides, traditional leaders chose to make use of the democratic arena by entering politics themselves. Accordingly, they have been subjected to democratic norms and practices, and it seems that this made them more accustomed to a democratic system of government as well. Thus, instead of preserving or developing a new traditional system outside the spheres of government, Botswana traditional leaders became part of the state system itself. This provided the state with considerable powers and advantages over traditional leaders.

Therefore, the behavior of Botswana chiefs and their effect on democratic governance is dependent on their relationship with the state. Because Botswana is an established democracy, traditional authority inclusion and the functions they perform are subjected to democratic checks and balances, which consequently suppressed chieftaincies' non-democratic and non-inclusive nature and increased traditional leaders' accountability as well as the protection of human rights on both the national and local level. As a result, the Botswana case shows that traditional authority inclusion is not incompatible with democracy. Rather, when incorporated in a consolidated democracy that has the capacity to control them though adequate checks and balances, traditional authorities are less likely to undermine good governance.

5   Traditional authorities in Zambia

5.1 Traditional authorities before independence

Before colonization, the people of what is now the state of Zambia lived in small, autonomous chieftainships. There was no central state organization to ensure security, and the people depended on each other for the protection of life and property (Chanock, 1985). In this system, the chief had a central position. In return for the goods and labor he received from his subjects, the chief redistributed parts of the goods and performed services of justice, physical protection and religious and spiritual security.

When the British South Africa Company (BSAC) arrived in 1890, they divided the country[3] into 286 geographically designated chieftaincies in which the chiefs had comparable administrative powers. Consequently, in the more centralized groups, political power was not compromised as dramatically as in the groups that previously enjoyed a more decentralized form of political organization (Baldwin, 2010). Besides this, the British government[4] increased the chiefs' power over their people, but simultaneously subjected them to the colonial government. For instance, the Native Authorities Legislation in 1929 determined that traditional leaders' behavior could not undermine British supremacy (Frederiksen, 2014). Moreover, the colonial government established Native Reserves. These reserves were headed by traditional leaders and the institution of chieftainship was established as a petty monarchy, including territorial limits, courts, and advisory councils (Chanock, 1985). Therefore, chiefs in colonial Zambia enjoyed substantial powers over their subjects.

The 1964 independence constitution established Zambia as a multiparty democracy. The pluralist political system quickly resolved into competition between two parties, the United National Independence Party (UNIP) and the African National Congress (ANC). However, by the 1964 elections it became clear that UNIP dominated parliament which made serious competition from the ANC unlikely (Baylies & Szeftel, 1992). Partly due to their alliances with the colonizers, most chiefs were viewed as enemies of the independence movement. Kenneth Kaunda's[5] tactic was to "subordinate Zambia's traditional rulers to absolute Party disciple" (Baldwin, 2015, p. 89). Overall, the post-independence government tried to curtail the powers of chiefs as much as possible (Chanock, 1985).

5.2 Traditional authorities outside of state control

In the years following independence, the Zambian government implemented several pieces of legislation that outlined the formal position of the country's chiefs. Contrary to the Botswana

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[3] The area of what is now Zambia was re-named Northern Rhodesia after BSAC-leader Cecil Rhodes.
[4] The British government took over from the BSAC in 1924.
[5] Zambia's first president.

government that tried to curtail traditional authorities' power by giving them formal positions on both the national and local level, Zambia's government attempted to restrict the chiefs' power by excluding them from the official spheres as much as possible.

For example, the Zambian post-independence government embraced a policy of not recognizing chiefs beyond the 286 that were recognized by the British colonizers prior to independence (Baldwin, 2010). Therefore, the Chiefs Act (1965, s 15) determined that only people from the hereditary line of the individuals recognized under the former Native Authorities Legislation were qualified for a position of chieftaincy. In order to obtain the official status of 'chief', the descendants of these 286 hereditary lines have to be recognized by the president (Chiefs Act, 1965, s 3). Moreover, the act allowed the president to withdraw recognition or suspend chiefs when he considers it to be in the "interests of peace, order and good government" (Chiefs Act, 1965, s 4). Equally to Botswana government, the Zambian government has made use of this provision once (Musambachime, 1987).

However, many Zambians acknowledge chiefs that are not officially recognized by government. In a session of parliament in 2005, the Minister of Local Government Silvia Masebo announced that besides the 286 chiefs, the government tolerates the existence of more than 900 unofficial chiefs and that "the government has resolved to leave it to the people of Zambia to judge which chief is honourable and which one is not" (Chellah, 2005). These 900 chiefs operate fully outside of the state's control, which does not subject them to democratic ways of government at all. This allows for the continuation of their traditional non-democratic and non-inclusive practices, especially compared to Botswana chiefs who are incorporated into the democratic system as much as possible. The formal position of the 286 Zambian traditional leaders improved with the re-introduction of competitive elections in 1991. After the victory of the Movement for Multiparty Democracy (MMD), the new government introduced a House of Chiefs in 1996.

Comparable to the Botswana one, the Zambian House of Chiefs has an exclusively advisory role (Zambian Constitution, 1996, s 131). Chiefs have no legislative powers and minimal influence on the laws introduced by parliament. Indeed, "there is no written record in Zambia to show that a Bill has ever been referred to the House of Chiefs for consideration" and "even if such Bills were referred to the House of Chiefs, there are grave doubts as to the contribution these gentlemen would make to the eventual passage in the National Assembly" (Chibomba, 2004, p. 26).

Unlike Botswana chiefs, Zambian chiefs have not joined party politics. The Constitution of Zambia has prevented chiefs from running for office (Zambian Constitution, 1996, s 168). The idea behind this is that Zambian chiefs cannot be active in politics in order to "safeguard their neutrality at the local level" (Bako-Afifari, 1999, p. 13). Different from Botswana, there are no records of Zambian chiefs who,

regardless of the constitutional provision, entered party politics. Thus, Zambian chiefs have not yet made use of the democratic arena in the way Botswana chiefs did.

The House of Chiefs' selection process shows that, compared to Botswana, the Zambian government has less control over who acquires a seat in the house. The constitution provides the chiefs from each province with the mandate to select five chiefs that will represent their province in the house (out of the 286 official chiefs) amongst themselves. The succession of these chiefs is subjected to the specific custom and tradition of the various tribes, which is mainly done hereditary through the patrilineal line (Baldwin, 2010). Besides the lack of control, there are still more than 900 unrecognized chiefs for which the Zambian law does not allow a place in the house. Accordingly, the House of Chiefs is not an accurate representation of the Zambian (traditional) communities. When comparing the 286 chiefs to the total population, which was 17 million in 2017 (World Bank, 2017b), it becomes clear that many people fall under one of the other 900 chiefs, as it would otherwise mean that each official chief would have 59.440 followers.

The constitution offers additional protection for the institution of chieftaincy as well. Section 165 states that the Zambian parliament cannot enact legislation which "confers on a person or authority the right to recognize or withdraw the recognition of a chief; or derogates from the honor and dignity of the institution of chieftaincy" (Zambian Constitutional Amendment, 2016). Hence, without undermining the Chiefs Act of 1965 which is still in place, the constitutional amendment of 2016 placed limits on the powers of parliament to make additional, possibly damaging, legislation regarding the institution of chieftaincy.

5.3 Functions performed by traditional authorities: lack of accountability and control

In the years following independence, the government realized that the bureaucracy and formal court system could not expand quickly enough to fully replace chiefs (Bratton, 1980). Although on the national level chiefs were for a great part excluded from performing administrative and legislative functions, chiefs still had substantial powers on the local level. As in Botswana, the functions chiefs perform for the government are mainly in dispute resolution, land allocation and local development (Lutz & Linder, 2004).

Dispute resolution

The Local Courts Act of 1966 replaced native courts[6] by official local courts. Chiefs were not included in the customary courts, as the act replaced them with state judges that were most of the time not familiar with customary law courts (Local Courts Act, 1966, s 8-13). Yet, the new court system did not expand

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[6] Native courts were the customary courts headed by chiefs.

quickly enough to meet the demand for dispute resolution. As a result, the local communities continued to take their disputes to traditional leaders (Baldwin, 2016). However, these unofficial courts are neither controlled nor administered by the state and the cases and decisions are not documented. This gives traditional leaders more freedom to practice traditional customary law without control of the state, which is unfavorable to the people less protected under customary law such as women and other (ethnic) minorities (Van Kessel & Oomen, 1997). The Zambian customary court tradition is therefore less subjected to accountability and less transparent than the Botswana one.

Land allocation

In Zambia, traditional leaders are seen as the 'custodians of the land'. Approximately 65 percent of Zambian land is held under customary tenure and regulated through traditional leaders (Metcalfe & Kepe, 2008). The Lands Act of 1995 states that traditional authorities must give their approval before tribal land can be allocated. Moreover, a chief has the final say in deciding if customary land can be converted into leasehold tenure, which gives traditional leaders considerable powers over their people (Tribal Lands Act, 1995, ss 1-4). This is potentially detrimental to the poor and marginalized in society, as Otto's (2009) research shows that local power holders such as chiefs are not always pro-poor and often keep a tight grip on the land in order to use it for their own and their families benefit. Thus, the allocation of tribal land is done by one person who cannot be held accountable through the regular democratic means such as elections. This stands in stark contrast to the Botswana case where the allocation of both state and tribal land is the sole responsibility of the state (Tribal Land Act, 1970).

Relationship chiefs and government officials

Chiefs' central role is also visible in their relationship with civil servants. In order to carry out their jobs effectively, Zambian government officials need to work closely with traditional leaders. Zambia's state bureaucracy is still mostly absent from the rural areas, and chiefs are an important ally in implementing government projects for which civil servants secure funding. This is supported by Baldwin's (2013) research which shows that government officials with stronger relationships to chiefs provide more local public goods. Although they carry out important functions, the Zambian government has still not officially included traditional leaders in their government system and there is a clear division between civil servants and traditional leaders (Baldwin, 2016).

5.4 Conclusion

The Zambian case shows that since independence, the government and traditional leaders have developed independently from one another. Unlike Botswana, Zambian traditional leaders did, in effect, not become civil servants. Instead, the majority of the Zambian chiefs still perform their functions without state supervision or control. Although traditional leaders do play an important role in instances where the state is unable or unwilling to do so, they carry out these functions outside of the state's

influence. Consequently, especially compared to Botswana, traditional leaders in Zambia are less subjected to democratic norms and practices. This is partly due to the nature of the Zambian state until the 1990s, as the one-party state did not encourage participation from people outside UNIP. Besides, today, the inclusion is mainly focused on increasing traditional leaders' power within the democratic system without making the institution more democratic, as the selection of chiefs and the land boards is for instance still based on non-democratic traditional practices.

Thus, Zambian chiefs today are given an expanded role in the name of retraditionalization and local inclusion. Nonetheless, this is done without strengthening the checks and balances of the already fragile democratic system, specifically with regard to the accountability and control concerning the relationship between the government and the more than 1000 Zambian traditional leaders. Because this causes the institution of traditional authority to be more intact and less subjected to democratic governance, it can form a challenge to partial democratic regimes, as the Zambian cases shows that traditional authorities inclusion in fragile systems is more likely to undermine democracy than to strengthen it.

7   Conclusion

The aim of the present study was to examine the compatibility of traditional leadership and democratic governance. Although traditional leaders are included in modern state structures in the name of decentralization and inclusion of traditional communities, their non-democratic and non-inclusive nature is likely to present a challenge to democratic governments (Buur & Kyed, 2007; Logan, 2009). Therefore, the research question presented in the introduction was as follows: *To what extent does the inclusion of traditional authorities strengthen or undermine democratic governance?*

The main finding of this comparative case study is that inclusion of traditional authorities is more threatening for democracy when the country has a fragile democratic system. In Botswana, traditional leaders have been subjected to the democratic state system since independence. By making them a part of the state administration, the Botswana government was able to subject traditional leaders to democratic checks and balances, causing the state to be in control. Additionally, traditional leaders entered democratic politics themselves as well. Increasing the powers of the current Botswana chiefs does therefore not pose a threat to the system. In Zambia, on the other hand, the one-party state intentionally let chiefs develop outside the spheres of government, which causes traditional leaders' experience with democracy to be marginal. Today, the position of Zambian chiefs is being strengthened while democracy is still developing, which means that the checks and balances of the state regarding traditional leaders are generally not yet developed to full potential. Because they have never been a large part of democratic government before and because the current government does not have the capacity to effectively suppress the non-democratic and non-inclusive nature of chieftaincies, strengthening their role poses more challenges for democracy.

Despite the differences with regard to traditional authority inclusion, it is important to recognize, however, that respondents in both countries still perceive traditional leaders as important (Afrobarometer, 2016). Traditional leaders in Botswana as well as Zambia have, regardless of the country's regime type, an important role in terms of dispute resolution and service delivery (Lutz & Linder, 2004). This is especially useful in the regions where the state does not necessarily have the capacity to provide these services yet. Nevertheless, it is important that democratic state institutions remain in control to check excesses and abuses of power. The current bottom-up development trend focuses on inclusion of traditional authorities in countries with little democratic experience, while, based on the findings of this study, a higher level of democracy is exactly the experience that establishes the checks and balances which make sure that traditional authority inclusion happens effectively without posing a threat to democratic governance. Therefore, before giving traditional leaders more power in an already fragile democratic system, governments and development agencies should focus

on strengthening the checks and balances of the state in its relationship with traditional leaders. By doing this, the non-democratic and non-inclusive nature of traditional leaders are less likely to pose a threat to democratic governance, including accountability and human rights protection.

This study is a first step in determining the role and functioning of traditional authorities in different state contexts. More empirical research concerning the exact effects of retraditionalization and the development of chieftaincies outside of the state's influence in a fragile democratic context is needed, particularly regarding traditional leaders' connection with corruption, human rights violations and arbitrariness. Besides this, further research could also focus on why traditional leaders that are fully incorporated in democratic government systems, still play an important role in their traditional communities. Related to this is the critique regarding the incorporation of traditional leaders in countries such as Botswana and its effects on the preservation of traditional norms and practices (Lekorwe & Somolekae, 1998; Morapedi, 2012; Sharma, 2003). To conclude, more research regarding traditional leaders in different state contexts is needed in order to establish the exact negative effects of traditional authority inclusion in fragile democratic systems.

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