

Tradition, State, and Justice: Rethinking Statehood through Hybrid Governance in Nigeria and Pakistan

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Preface

It sometimes takes a bit of serendipity to arrive at something truly good. In our case, two fellows at the Academy, Ifedayo Grace Malachi and Summar Iqbal Babar, came together to collaborate on organizing a panel for the 2025 Summer Academy on Subnational Diplomacy, mainly for practical and pragmatic reasons. With their work on conflicts and translocal governance in Nigeria and Pakistan, two large, complex countries, they already shared an interest in non-traditional forms of leadership but did not know of each other's research. The in-depth knowledge about two such cases allowed them to compare, identify similarities and patterns, to challenge each other and to push their understanding of actorhood and different trajectories for sovereignty and authority. The discussion at the Summer Academy already reflected keen public interest in a structured comparison, not least because there was general consensus that the focus was novel and particularly promising. This AIA Discussion Paper is the next step in a joint analysis that does justice to each case but also brings together insights that identify patterns and shed light on generalizable insights. This paper is thus an important, highly innovative contribution to the Academy's 2025 focus on Subnational Diplomacy and Translocalism.

Manchmal braucht es ein wenig Glück, um zu etwas wirklich Gutem zu gelangen. In unserem Fall kamen zwei Fellows der Akademie, Ifedayo Grace Malachi und Summar Iqbal Babar, zusammen, um gemeinsam ein Panel für die Sommerakademie 2025 zum Thema „Subnational Diplomacy“ zu organisieren, hauptsächlich aus praktischen und pragmatischen Gründen. Durch ihre Arbeit zu Konflikten und translokaler Governance in Nigeria und Pakistan, zwei großen, komplexen Ländern, teilten sie bereits ein Interesse an nicht-traditionellen Formen der Führung, kannten jedoch die Forschungsarbeiten des jeweils anderen nicht. Das fundierte Wissen über zwei solche Fälle ermöglichte es ihnen, Vergleiche anzustellen, Gemeinsamkeiten und Muster zu identifizieren, sich gegenseitig herauszufordern und ihr Verständnis von Akteuren und unterschiedlichen Entwicklungswegen für Souveränität und Autorität zu vertiefen. Die Diskussion auf der Sommerakademie spiegelte bereits das große öffentliche Interesse an einem strukturierten Vergleich – nicht zuletzt, weil allgemeiner Konsens darüber bestand, dass der Schwerpunkt innovativ und besonders vielversprechend war. Dieses AIA Discussion Paper ist der nächste Schritt in einer gemeinsamen Analyse, die den Einzelfällen gerecht wird, aber in vergleichender Perspektive auch Erkenntnisse zusammenführt, Muster identifiziert und verallgemeinerbare Erkenntnisse herausarbeitet. Dieses Papier ist somit ein wichtiger, hochinnovativer Beitrag zum Schwerpunkt der Akademie für 2025: subnationale Diplomatie und Translokalismus.

Katja Freistein

Academic Coordinator Fellowship Programme, Academy of International Affairs NRW

Abstract: *Hybrid governance in Nigeria and Pakistan has not only persisted as a legacy of colonial state formation but has also evolved into a complex system of shared authority between state institutions and traditional, religious, and community actors. This evolution reflects a qualitative shift toward negotiated governance, where Emirs, Obas, vigilante groups and jirgas play central roles in justice and security delivery amid weak state capacity. However, these systems also generate new risks, fragmented recognition, weak accountability, and exclusion of marginalized groups, exacerbating parallel sovereignties and state fragility. To respond effectively to this governance reality, policymakers must pursue a threefold strategy: institutionalization to harmonize hybrid institutions within formal systems; inclusion to expand participation for women and youth; and accountability to align local legitimacy with rights protection. Only by reforming rather than erasing hybridity can plural societies transform it into a foundation for stability, legitimacy, and inclusive statehood.*

Abstract: *Die hybride Regierungsführung in Nigeria und Pakistan hat sich nicht nur als Erbe der kolonialen Staatsbildung fortgesetzt, sondern hat sich auch zu einem komplexen System der geteilten Autorität zwischen staatlichen Institutionen und traditionellen, religiösen und kommunalen Akteuren entwickelt. Diese Entwicklung spiegelt einen qualitativen Wandel hin zu einer Regierungsführung wider, bei der Emire, Obas, Bürgerwehren und Jirgas angesichts schwacher staatlicher Kapazitäten eine zentrale Rolle bei der Gewährleistung von Gerechtigkeit und Sicherheit spielen. Diese Systeme bringen jedoch auch neue Risiken, fragmentierte Anerkennung, unterentwickelte Rechenschaftspflicht und den Ausschluss marginalisierter Gruppen mit sich, was zur Bildung von Parallelsouveränitäten führt und die Fragilität des Staates verschärft. Um effektiv auf diese Realität zu reagieren, müssen politische Entscheidungsträger eine dreiteilige Strategie verfolgen: Institutionalisierung zur Harmonisierung hybrider Institutionen innerhalb formeller Systeme; Inklusion zur Ausweitung der Teilhabe von Frauen und Jugendlichen; und Rechenschaftspflicht zur Angleichung der lokalen Legitimität an den Schutz von Rechten. Nur durch Reformen statt durch die Beseitigung von Hybridität können pluralistische Gesellschaften diese in eine Grundlage für Stabilität, Legitimität und inklusive Staatlichkeit verwandeln.*

1. Introduction

During a historic address to the British Parliament on July 11, 1996, Nelson Mandela said that a government's legitimacy is found not only in its power, but also in the meaningful engagement and trust of the people. He spoke in the context of South Africa's democratic transition and with the imperative of building political institutions rooted in public trust rather than coercive authority. His words resonate far beyond South Africa, capturing a universal truth about governance in multiple societies, where the question of legitimacy often extends beyond the reach of state institutions but must nevertheless be grounded in the lived realities and consent of citizens.

Indeed, across much of Africa and Asia, governance does not flow solely from the structures of the modern nation-state. Instead, it is shared, negotiated, and often contested by a range of local and customary actors whose authority predates, and in many cases outlives, state bureaucracies. Scholars have long recognized this reality. Migdal (2001) describes how "weak states" rarely monopolize authority, coexisting instead with enduring social actors. Lund (2006) highlights the concept of "twilight institutions", showing how public authority is negotiated where state and customary institutions coexist. Boone (2014) advances the notion of "hybrid governance," where authority is layered and distributed across multiple sites of power. Together, these perspectives challenge the assumption of a purely top-down state, highlighting instead the negotiated and polycentric character of governance.

This theoretical debate carries pressing policy implications in countries like Nigeria and Pakistan, where plural societies fractured along ethnic, religious, and regional lines confront the persistent limits of state bureaucracies. In Nigeria, despite decades of state-building, Emirs, Obas, and vigilante associations remain central to everyday governance, often commanding more legitimacy than state courts or police (Mustapha, 2006; Suberu, 2010). Similarly, in Pakistan, jirgas, qaumi councils, and tribal security forces such as the Levies and Khasadars continue to arbitrate justice and order, persisting even after the 2018 merger of the Federally Administered Tribal Areas (FATA) into Khyber Pakhtunkhwa (Ahmed, 1980; Yousaf, 2019). Both contexts demonstrate how state-centered accounts of governance fail to capture the layered, contested, and negotiated nature of authority on the ground.

For policymakers, the importance of this issue is threefold. First, hybrid governance shapes how citizens perceive and experience justice, authority, and the state itself. In contexts where formal institutions are absent, distrusted, or overburdened, people often turn to customary and religious forums as their first, and sometimes only, avenue for resolving disputes or seeking redress. This reliance reinforces the everyday legitimacy of traditional leaders and institutions in citizens' eyes, fostering a sense of accessibility and moral familiarity that formal bureaucracies often lack. However, it also raises complex questions about rights protection, procedural fairness, and inclusivity, especially for women and marginalized groups, since these forums operate according to local norms rather than codified legal standards.

Second, hybrid institutions operate not only as justice providers but also as key mediators in conflict prevention and peacebuilding. Their embeddedness within local communities allows them to intervene early in disputes before they escalate into large-scale violence. In rural Nigeria, palace courts and vigilante associations have brokered peace between farmers and herders, averting clashes that might otherwise spiral into communal violence. Similarly, in Pakistan, jirgas have been instrumental in mediating tribal land conflicts and, in some cases, organizing community dialogues that hold state actors accountable during military or development operations. Third, global stabilization frameworks often privilege central state institutions, assuming that bureaucratic capacity-building will marginalize customary governance. The persistence of these hybrid systems suggests such assumptions are unrealistic and potentially counterproductive.

The purpose of this discussion paper is to reposition hybrid governance not as a transitional or peripheral phenomenon, but as a central feature of political life in plural societies. Specifically, it asks how hybrid governance systems in Nigeria and Pakistan mediate conflict and extend authority in contexts of weak statehood, and what challenges they pose for democratic accountability and inclusion.

Guiding questions

1. In what ways do subnational mechanisms, such as palace courts, vigilante groups, and jirgas, mediate conflict and sustain authority in contexts of weak statehood?
2. What risks of exclusion, gender inequality, and elite capture arise within these hybrid forums, and how do these risks affect their legitimacy?
3. What policy options can strengthen accountability and inclusivity within hybrid governance systems without undermining their local legitimacy?

In addressing these questions, the goal is neither to romanticize customary authority nor to dismiss the importance of state institutions. Rather, it is to recognize that governance in plural societies is always negotiated, and that durable peace and inclusive democratization depend on engaging seriously with hybrid realities.

2. Hybridity as a Governance System

Governance in Nigeria and Pakistan is best described as hybrid, comprising overlapping systems of state institutions and deeply entrenched customary and religious forums. Although both countries inherited constitutions and bureaucracies modelled on the modern nation-state, their formal systems often fail to provide justice, security, and welfare for all citizens. Weak enforcement, corruption, judicial delays, and political capture undermine public trust in the state. This governance vacuum is filled by traditional rulers, religious leaders, and community councils that retain deep legitimacy in local contexts (Ubink, 2011; Yousaf, 2019). Although the Supreme Court of Pakistan declared jirgas unconstitutional for criminal acts in 2019, they continue to operate informally due to their cultural legitimacy and absence of effective alternatives.

In Nigeria, Emirs in the north, Obas in the southwest, and chiefs across the south continue to act as active arbiters of disputes rather than symbolic relics. Their authority extends to

mediating land conflicts, reconciling communities after violence, and mobilizing responses to crises. In rural areas, statutory courts remain scarce or prohibitively expensive, making chiefs' palaces and customary courts the primary forums of justice (Mustapha, 2006). In urban centers such as Lagos and Kano, Alternative Dispute Resolution (ADR) centers increasingly collaborate with traditional leaders, who refer local disputes to mediators or participate in joint arbitration panels, creating hybrid models where formal and customary practices intersect to ease court congestion (Malachi & Ajibade, 2022; Obi, 2021).

Pakistan demonstrates similar dynamics. In tribal and peripheral regions, jirgas and qaumi councils adjudicate disputes ranging from land conflicts to family disagreements. Despite the formal abolition of the Frontier Crimes Regulation (FCR) in 2018 and the merger of the Federally Administered Tribal Areas (FATA) into Khyber Pakhtunkhwa, these forums remain central to local dispute resolution (International Crisis Group, 2019). Their legitimacy persists even in provinces such as Sindh and Balochistan, where jirga-style mechanisms continue to be convened to resolve disputes ranging from land conflicts to family disagreements. These forums, often chaired by respected tribal or community elders, rely on collective deliberation and reconciliation rather than adversarial litigation. For many communities, particularly where courts are absent or distrusted, such forums offer more immediate, affordable, and culturally resonant avenues for justice (Ahmed, 1980; Yousaf, 2019). Recent initiatives, such as women-led jirgas in Swabi (Bari, 2015) and the continuing reliance on Levies and Khusdars before their absorption into the KP police in 2019, show how Pakistan's hybrid justice system blends cultural elements with modern reforms.

This reliance on local institutions reflects enduring colonial legacies of indirect rule. In Nigeria, the British system entrenched Emirs and chiefs as intermediaries for taxation, policing, and dispute settlement. Post-independence reforms centralized power but failed to erode traditional legitimacy, leading to constitutional recognition of plural legal systems. Nigeria's 1999 Constitution explicitly acknowledges Sharia Courts of Appeal (Sections 275-279) and Customary Courts of Appeal (Sections 280-284), institutionalizing legal pluralism within its governance structure (Federal Republic of Nigeria, 1999).

Pakistan's trajectory was different but parallel. Under the 1901 FCR, tribal elders and jirgas were empowered to govern FATA with limited state oversight. This entrenched a culture of semi-autonomous governance insulated from constitutional accountability. The repeal of the FCR in 2018 sought to mainstream FATA into Pakistan's legal system, but jirgas and qaumi councils remain embedded in everyday life. Thus, while Nigeria codified pluralism into law, Pakistan oscillates between integrationist reforms and persistent informal authority (Hussain, 2019).

In both contexts, hybrid governance reflects a pragmatic accommodation of authority, yet it also generates tensions. Modern states seek to extend sovereignty, while communities continue to rely on institutions that predate the state and, in many cases, outperform it in accessibility and legitimacy. The stakes are especially high given ongoing insurgencies - Boko Haram in Nigeria and the Tehrik-i-Taliban Pakistan (TTP) in Pakistan -, combined with ethnic polarization, sectarian conflict, and rural-urban inequality. Ignoring hybrid institutions risks deepening alienation and conflict, while uncritical acceptance raises dilemmas of accountability, gender exclusion, and constitutional supremacy (International Crisis Group, 2014; Okeke, 2013).

3. Theoretical and Conceptual Perspectives on Hybrid Governance

3.1 Legal pluralism and normative orders

The concept of legal pluralism highlights how statutory, religious, and customary systems coexist within the same polity (Griffiths, 1986; Merry, 1988), and in such contexts, legal certainty becomes essential for maintaining coherence and predictability across these overlapping orders. It clarifies which laws apply, through which institutions disputes are resolved, and under what conditions authority is exercised—thereby preventing jurisdictional confusion and conflicting judgments. In Nigeria, this is codified: The 1999 Constitution explicitly recognizes Sharia and customary courts, granting formal legal standing to multiple normative orders. In practice, customary institutions frequently resolve family, land, and inheritance disputes, especially in rural areas (Malachi & Ajibade, 2022). The Emir of Kano’s palace court, for instance, is a crucial site for resolving disputes among traders, exemplifying the efficiency and legitimacy of customary justice (Ubink, 2011).

Pakistan illustrates a more ambiguous form of pluralism. The repeal of the FCR was followed by transitional regulations that retained jirgas to preserve local legitimacy during the merger of FATA into Khyber Pakhtunkhwa. Even beyond the tribal belt, pluralism persists through overlapping Islamic law, tribal customs, and statutory courts. Citizens often return to jirgas when formal courts prove corrupt, expensive, or inaccessible. The revival of jirgas in Torghar District in July 2025 exemplifies how citizens adaptively reinvest in customary forums (Yousaf, 2019). In both cases, the durability of plural orders rests on cultural embeddedness and social trust. Efforts to enforce strict state monopolies risk alienating citizens and undermining legitimacy. Conversely, regulated pluralism, blending rights protections with culturally resonant mechanisms, offers a pathway for embedding law in lived realities (Meagher, 2012).

3.2 Polycentric and co-produced governance

The framework of polycentric governance (Ostrom, 2010) describes systems where multiple centres of authority coexist and sometimes collaborate. Polycentricity reduces enforcement costs and enhances local legitimacy.

Nigeria illustrates this dynamic vividly in the security sector. The creation of the Amotekun Corps in south-western states demonstrates how local institutions can complement formal policing. By 2025, states such as Ogun, Ekiti, Osun, and Oyo had recruited thousands of operatives to enforce anti-grazing laws, patrol rural areas, and support farmers. These corps operate alongside the police and civil groups like the Oodua People’s Congress, enhancing coverage while retaining community trust (Akinyemi, 2022).

Pakistan, by contrast, has leaned toward centralization. In 2025, the Frontier Constabulary was restructured into a Federal Constabulary with nationwide responsibilities, prioritizing professionalism but eroding local roots. Critics argue that this reform may weaken

trust and embeddedness, undermining resilience in tribal areas (Hussain, 2019). Together, these cases demonstrate the tension between co-production (state-society collaboration) and centralization, with Nigeria favoring polycentricity while Pakistan risks alienating communities through consolidation.

3.3 Subsidiarity and restorative justice

The principle of subsidiarity holds that decisions should be taken at the lowest competent level. In Nigeria, chiefs' courts embody subsidiarity by mediating land and family disputes swiftly and cheaply. However, the Land Use Act of 1978, which centralized land ownership under governors, undermined subsidiarity and exacerbated conflict (Mustapha, 2006).

In Pakistan, subsidiarity is visible in security provision. Local Levies and Khasadar forces address grassroots disputes, escalating serious crimes to provincial courts. Despite integration efforts, these local forces remain first responders, underscoring subsidiarity's enduring relevance.

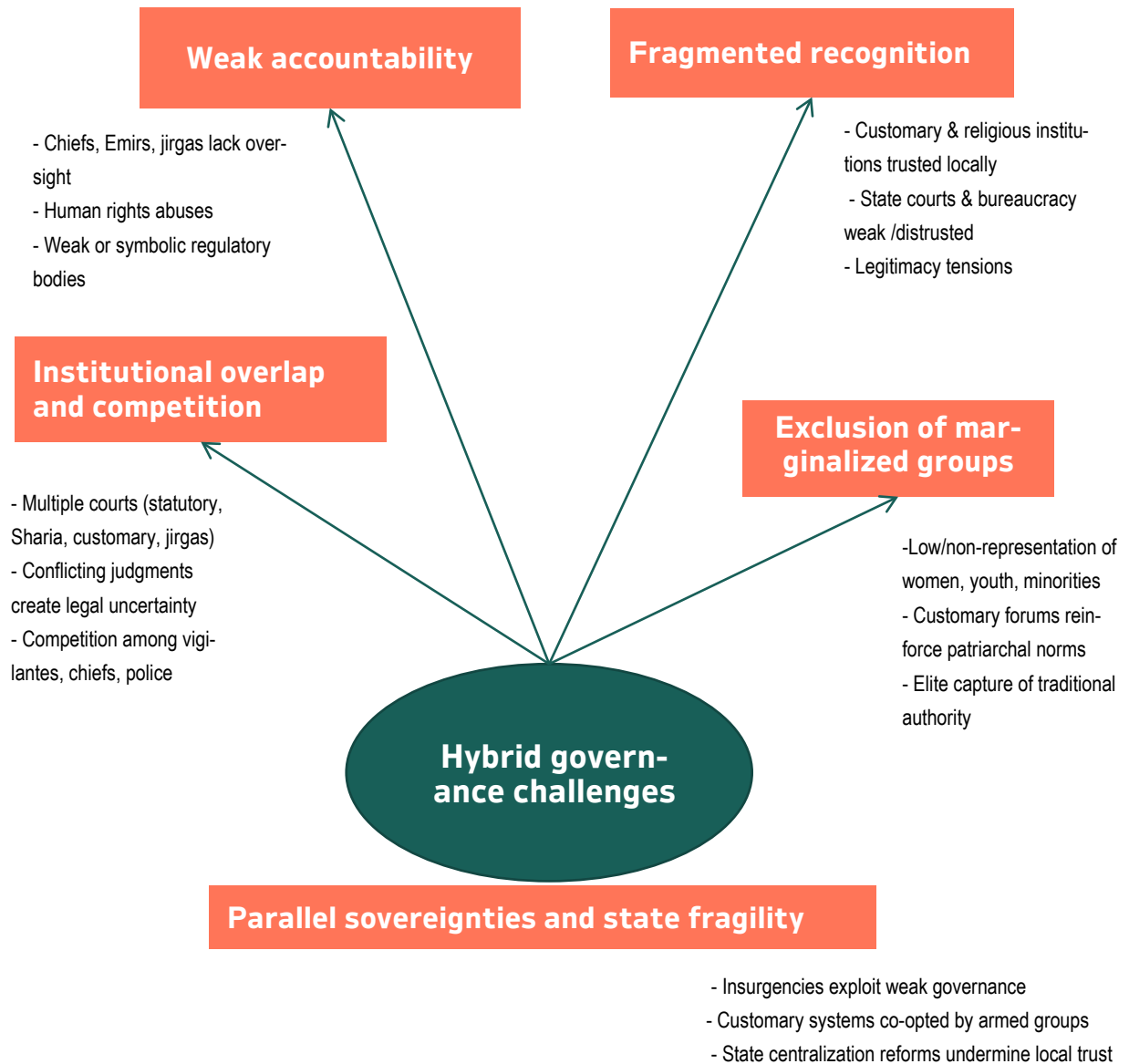
Customary forums in both countries also embody restorative justice, emphasizing reconciliation and reintegration rather than punitive exclusion. Chiefs in Nigeria use proverbs and communal dialogue to resolve disputes, while jirgas in Pakistan stress apology and compensation. These processes act as sites of "norm translation" (Shapiro, 2017), embedding universal rights into culturally resonant moral worlds. For example, Pakistan's Federal Shariat Court ruling in 2021 against the practice of *swara*, also known as *Vanni: the customary practice in which girls are given in marriage to settle blood feuds or disputes between families*, reinforced dignity and women's rights within an Islamic framework.

3.4 Hybrid political orders and state-in-society

Finally, the concept of hybrid political orders captures governance systems where state, customary, religious, and international actors share authority (Boege et al., 2009). Nigeria exemplifies this through the constitutional entrenchment of plural legal orders and collaboration between chiefs, NGOs, and ADR centers. Organizations like WRAPA and the CLEEN Foundation train mediators and monitor rights compliance, embedding human-rights norms into customary practice.

Pakistan's hybrid order historically rested on the FCR, privileging stability over integration. Post-2018 reforms sought to mainstream tribal areas but still relied on elder consultation through UNDP's Merged Areas Governance Project (2018-2022). This balancing act reflects the enduring negotiation between sovereignty and cultural embeddedness.

4. Challenges, Contradictions, and Gaps in Hybrid Governance

FIG. 1: Challenges, contradictions, and gaps in hybrid governance

Source: Authors, 2025

Hybrid governance in Nigeria and Pakistan demonstrates remarkable resilience, but it is also riddled with contradictions that complicate its ability to deliver justice, security, and legitimacy. These challenges underscore why hybrid systems must be approached with caution rather than romanticism.

4.1 Fragmented recognition

One major challenge is the inconsistent statutory integration of hybrid institutions. In Nigeria, traditional rulers continue to command widespread legitimacy, yet their authority is ambiguously defined within the constitutional framework. While customary and Sharia courts are formally recognized in the 1999 Constitution, the rulings of Emirs and chiefs often lack enforcement unless backed by formal institutions. This fragmented recognition produces uncertainty, particularly when customary judgments conflict with constitutional guarantees such as women's rights or due process. In Pakistan, the problem is even more acute: jirgas and qaumi councils occupy a legal gray area. They were declared illegal by the Supreme Court in 2019 for criminal acts, yet they continue to operate due to multiple factors including the cultural legitimacy of these institutions and the reliance of people on self-served justice rather than formal channels. For instance, after the 2018 merger of the FATA into Khyber Pakhtunkhwa, jirgas continued to operate widely, but without formal state oversight, producing contested authority and legal liminality (Yousaf, 2019).

4.2 Weak accountability

Oversight mechanisms in both countries are often too weak to regulate hybrid governance effectively. Nigeria's National Human Rights Commission (NHRC), though mandated to monitor abuses, remains underfunded and subject to political interference. As a result, local courts and traditional rulers often operate without meaningful scrutiny. Similarly, in Pakistan, state courts typically intervene only in extreme cases. Human rights groups have documented jirga rulings that sanctioned forced marriages or honor killings without consequence (International Crisis Group, 2014). Such practices not only violate international conventions but also undermine citizens' confidence in state justice. The absence of robust accountability mechanisms enables arbitrariness and can perpetuate impunity.

4.3 Exclusion of marginalized groups

Perhaps the most widely criticized aspect of hybrid governance is the systematic exclusion of women, youth, and minorities. In Nigeria, customary courts often uphold patriarchal norms that deny women equal inheritance or divorce rights (Okeke, 2013). Efforts to reform family law frequently clash with cultural resistance, leaving women vulnerable. In Pakistan, exclusion takes even harsher forms. Jirgas have historically ordered practices like swara, forcing girls into marriage to settle disputes. While the Prevention of Anti-Women Practices Act (2011) and a landmark 2021 Federal Shariat Court ruling declared swara un-Islamic, enforcement remains inconsistent, particularly in rural areas. Women-led jirgas in Khyber Pakhtunkhwa (like the Khwendo Jirga in Swabi) and Sindh (female-led mediation forums) represent hopeful innovations, but they remain marginal, dependent on NGO support and are not yet institutionalized in the justice system.

4.4 Institutional overlap and competition

Another contradiction arises from overlapping and competing authorities. In Nigeria, chiefs, vigilante groups and the police frequently vie for jurisdiction. In some communities, vigilantes aligned with chiefs clash with state police, creating cycles of violence rather than resolution. Similarly, in Pakistan, the coexistence of Sharia courts, state courts, and jirgas generates confusion over jurisdiction. The 2009 Nizam-e-Adl Regulation in Swat, which temporarily conceded judicial authority to militant-imposed Sharia courts, revealed how institutional overlaps can be exploited to fragment sovereignty and embolden insurgency (ICG, 2014).

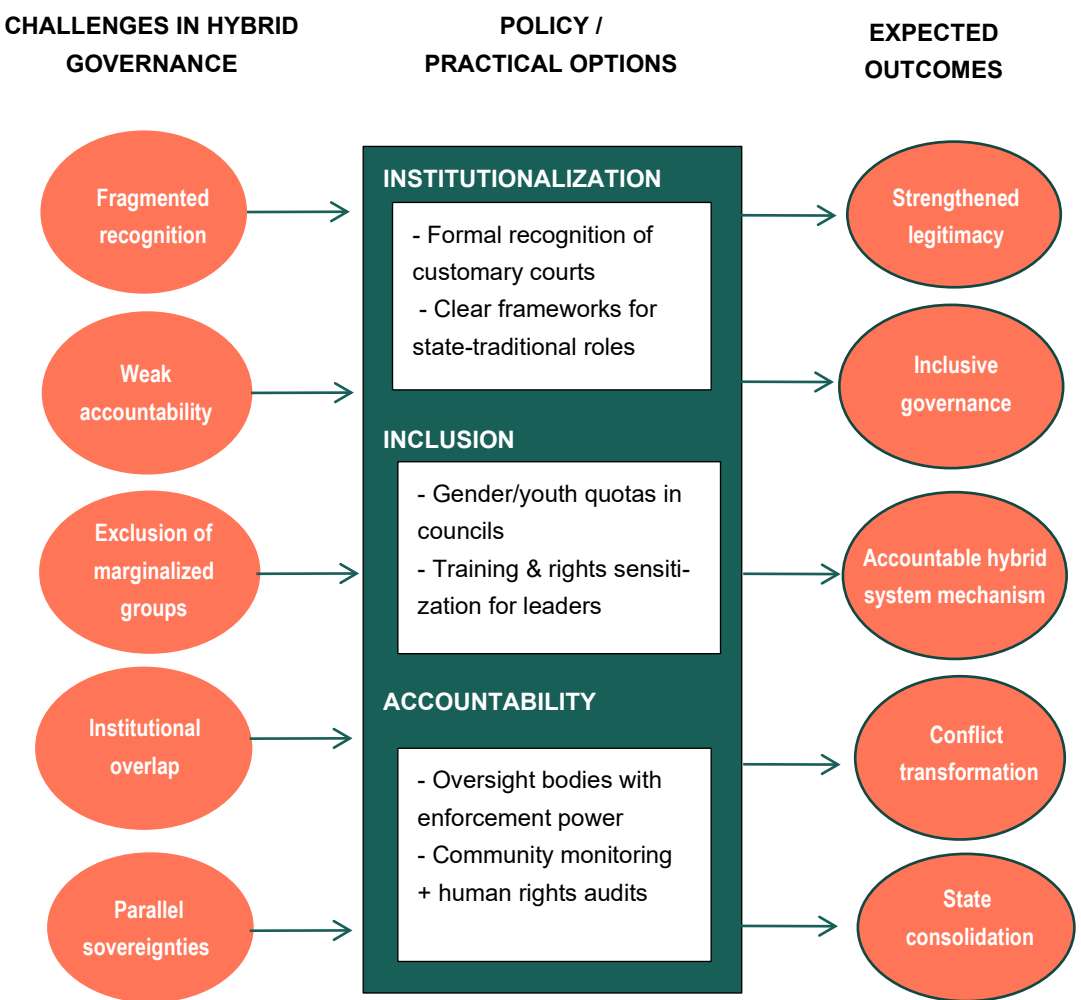
4.5 Parallel sovereignties and state fragility

Ultimately, the cumulative effect of these contradictions is the entrenchment of parallel sovereignties. When citizens turn to customary forums because they are faster and cheaper than state courts, the legitimacy of state institutions erodes further. Rather than complementing the state, hybridity can undermine its authority. If left unchecked, hybrid governance risks hardening into a dual system that legitimizes exclusionary or abusive practices while weakening constitutional supremacy.

In both Nigeria and Pakistan, the challenge is not whether hybridity exists - it does -, but how it can be reshaped into a system that complements rather than competes with the state. Without reforms to address recognition, accountability, inclusivity, and jurisdictional clarity, hybrid governance will continue to embody contradictions that exacerbate, rather than resolve, fragility.

5. Policy and Practical Options for Engaging Hybrid Governance

FIG 2: Policy pathways linking hybrid governance challenges, interventions, and outcomes



Source: Authors, 2025

Hybrid governance presents policymakers with both opportunities and risks. On the one hand, customary, religious, and community-based institutions are indispensable for service provision, mediation, and social order in contexts where state authority is thin. On the other hand, their persistence raises dilemmas of equity, constitutional supremacy, and accountability. A forward-looking policy framework requires moving beyond simplistic

binaries of “state versus non-state” and toward a structured engagement that balances legitimacy, inclusivity, and accountability. This section outlines three key pathways, institutionalization, inclusion, and accountability, through which Nigeria, Pakistan, and other plural societies can harness hybrid governance for stability and justice.

5.1 Institutionalization: Embedding hybrid governance in state frameworks

In both Nigeria and Pakistan, hybrid institutions already operate as de facto governance systems, regardless of whether they are formally recognized. Attempting to abolish or bypass them has repeatedly failed, either deepening alienation or producing parallel sovereignties. Institutionalization is thus not about replacing the state but about designing mechanisms through which customary and religious authorities are integrated into broader governance frameworks (Lund, 2006; Boege et al., 2009). Done carefully, this approach can harmonize plural legal orders, reduce contradictions, and expand the reach of legitimate governance.

5.1.1 Nigeria: Strengthening plural legal architecture

Nigeria provides one of the clearest examples of institutionalized hybridity. The 1999 Constitution explicitly recognizes both Sharia and customary Courts of Appeal, embedding pluralism into the legal fabric. However, the system remains fragmented, with significant variation across states. For instance, while Zamfara and Kano grant Sharia Courts broad criminal jurisdiction, it is restricted in other states mainly due to personal and family law, leading to uneven rights protection across the federation (Ostien, 2007). The lack of harmonization produces contradictions, such as divergent inheritance rights between statutory and customary systems, which in turn fuel appeals and litigation backlogs.

Policy options for Nigeria include:

- **Codification and harmonization:** Creating statutory guidelines that reconcile key contradictions, particularly in family law, to ensure a baseline of rights compliance.
- **Capacity-building for customary courts:** Training customary judges in both traditional practice and statutory law, with support from judicial councils.
- **Hybrid ADR mechanisms:** Scaling up Alternative Dispute Resolution (ADR) models that combine customary mediation with enforceable statutory outcomes, as piloted in Lagos and Kano.

Such steps would consolidate pluralism while reducing the uncertainty created by fragmented practices.

5.1.2 Pakistan: Transitional pathways after FATA merger

Pakistan’s governance challenge is different: rather than codifying pluralism, the state has oscillated between formalization and suppression. The 2018 merger of FATA with Khyber Pakhtunkhwa sought to extend constitutional courts to tribal areas, but in practice, jirgas

and qaumi councils remain indispensable. This creates a dual system: formal courts exist on paper, but customary forums continue to command legitimacy (Yousaf, 2019).

Policy options for Pakistan include:

- **Hybrid judicial councils:** Establishing councils that combine tribal elders with state judges to oversee local cases, creating a bridge between traditions and statutory law.
- **Pilot integration programs:** Testing models where jirga decisions are reviewed for rights compliance before being registered in formal courts.
- **Gradual incorporation:** Phased introduction of statutory courts in tribal areas, accompanied by legal literacy campaigns to ensure citizens understand their rights.

Institutionalization here requires a cautious balance: if the state attempts abrupt replacement, legitimacy may collapse; if it ignores integration, parallel justice risks undermining sovereignty.

5.1.3 Comparative evidence

Other plural societies demonstrate feasible models of institutionalization. In South Africa, traditional courts are formally recognized under the Traditional Courts Bill, but their rulings must align with constitutional protections (Claassens, 2014). In Mozambique, community courts operate under statutory supervision while retaining cultural legitimacy (Kyed, 2007). These cases suggest that carefully structured institutionalization can preserve local legitimacy while ensuring consistency with national norms.

5.2 Inclusion: Broadening access and representation

Customary and religious institutions often derive legitimacy from cultural embeddedness, but they are also criticized for exclusionary practices, particularly against women, youth, and minority groups (Meagher, 2012). If hybrid governance is to be sustainable, it must evolve from narrow patriarchal authority towards inclusive institutions that reflect contemporary rights and norms. Policymakers thus face the dual challenge of preserving legitimacy while expanding participation.

5.2.1 Nigeria: Expanding participation in customary courts

In Nigeria, customary courts and traditional rulers often reinforce male-dominated hierarchies. Women's inheritance claims, for instance, are frequently dismissed under customary law, even when statutory provisions guarantee equality (Okeke, 2013). Innovations are, however, emerging. Women's Rights Advancement and Protection Alternative (WRAPA) has collaborated with chiefs to introduce female mediators into palace courts in northern Nigeria, blending cultural legitimacy with gender inclusion.

Policy options for Nigeria include:

- **Quotas for women and youth in customary institutions:** Mandating female and youth representation in customary courts and traditional councils.
- **Community mediation training:** Scaling programs that train women as mediators, equipping them with both statutory and customary legal knowledge.
- **Civic education campaigns:** Empowering citizens, especially women and youth, to assert their rights in both customary and statutory systems.

These initiatives could shift the balance of authority without undermining cultural legitimacy.

5.2.2 Pakistan: Reforming jirgas and qaumi councils

Pakistan faces sharper dilemmas. Jirgas have been repeatedly condemned by human rights organizations and women's rights activists for upholding honor killings, forced marriages, and collective punishments (International Crisis Group, 2014). At the same time, they remain deeply embedded in local dispute-resolution mechanisms, particularly in rural communities. A blanket ban risks pushing them underground, while uncritical acceptance perpetuates rights abuses.

Policy options for Pakistan include:

- **Women's jirgas:** Building on initiatives in Khyber Pakhtunkhwa where all-female jirgas have been established to adjudicate domestic disputes (Bari, 2015).
- **Community monitoring committees:** Establishing oversight bodies composed of NGOs, elders, and local officials to review jirga decisions.
- **Legal safeguards:** Requiring jirga rulings to be consistent with constitutional provisions before gaining enforceability in state courts.

Such reforms would not erase customary authority but recalibrate it to align with inclusive governance.

5.2.3 Comparative evidence

In Somaliland, women's groups have gained recognition as mediators within customary xeer courts (Hoehne, 2015). In Nepal, community mediation centers institutionalize women's and Dalits' participation to challenge caste hierarchies (Lawoti, 2010). These cases demonstrate that inclusion is possible without dismantling cultural frameworks, provided reform is gradual, negotiated, and supported by civic education.

5.3 Accountability: Oversight, rights Protection, and legitimacy checks

The greatest challenge of hybrid governance lies in accountability. Customary institutions often operate outside formal checks and balances, creating risks of abuse, arbitrariness, and rights violations (Ubink, 2011). Accountability mechanisms can, however, be designed to ensure that local legitimacy is matched by normative safeguards.

5.3.1 Nigeria: Oversight without alienation

In Nigeria, oversight mechanisms do indeed exist but they are weak. The National Human Rights Commission (NHRC) receives complaints of abuses in customary and Sharia courts but lacks enforcement power. Some states, like Lagos, have piloted Customary Court of Appeal Review Panels, where higher-level judges examine lower-court decisions for consistency with statutory law. These efforts remain imbalanced.

Policy options include:

- **Strengthening NHRC mandate:** Granting binding authority to enforce compliance in hybrid forums.
- **Rights audits:** Regular reviews of customary and Sharia court decisions for compliance with constitutional protections.
- **Public reporting systems:** Encouraging chiefs' courts to publish rulings, increasing transparency and accountability.

5.3.2 Pakistan: Rights and security in tribal justice

Pakistan's accountability challenge is compounded by security concerns. Jirgas have sometimes colluded with insurgent groups, blurring lines between mediation and coercion (Yousaf, 2019). Accountability requires both rights safeguards and security integration.

Policy options include:

- **Jirga registration systems:** Requiring jirgas to register with local courts, making their decisions reviewable.
- **Independent monitoring units:** Deploying civil society monitors in tribal districts to track abuses and rights violations.
- **Hybrid policing models:** Integrating local constabularies with statutory police to ensure enforcement is accountable to both community and state.

5.3.3 Comparative evidence

In Timor-Leste, community justice forums are recognized and monitored by Ministry of Justice officials to ensure compliance with rights norms (Hohe & Nixon, 2003). In Uganda, Local Council Courts operate under statutory oversight, with appeal mechanisms that anchor accountability in higher courts (Logan, 2013). These examples illustrate that accountability can be institutionalized without dismantling legitimacy.

6. Conclusion

The three pathways of institutionalization, inclusion, and accountability do not propose a one-size-fits-all solution to achieving a balanced policy framework, but rather a sequenced approach. First, institutionalizing hybrid governance helps to reduce fragmentation and contradictions. Expanding inclusion then ensures that marginalized voices gain

representation and legitimacy. Lastly, embedding accountability protects rights and consolidates public trust. This framework resonates with global peacebuilding literature, which underscores the centrality of “legitimate institutions” as the foundation of sustainable governance in pluralistic societies. Hence, for Nigeria and Pakistan, it is not a question of choosing between state and tradition, but rather of how to reconcile the two in ways that enhance stability, equity, and justice.

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