Allocation of Governmental Authority and Responsibility in Tiered Governance Regimes: The Case of the Chivi Rural District Council Landuse Planning and Conservation By-Laws

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Abstract: The proper alignment of authority and responsibility within and between various levels of social organization is a fundamental governance problem. This study uses a review approach to critically interrogate the political economy of the allocation of environmental jurisdictions between the state, local communities and Rural District Councils in Zimbabwe. Rural District Councils have the authority to enact conservation and landuse planning by-laws. A subsidiary aim is to investigate the practical operation of these by-laws in everyday social life through analysis that situates the effectiveness of by-laws within the theme of proximity to citizens. Several flaws and contradictions are evident in the political economy of the allocation of authority and responsibility among these actors. Assignment of responsibilities is framed by a top-down structure in which entrustments are transferred solely to Rural District Councils at the expense of other levels of social organization, particularly those close to the citizens. Governance arrangements fostered through the by-laws punish citizens for not respecting arrangements that they do not effectively participate in crafting. Revenues accruing from fines imposed on people violating such arrangements accrue to the Rural District Councils, not to the communities from which they are extracted. The study argues for innovative governance approaches that entail fundamental changes in by-law articulation.

Introduction

Although decentralization is in vogue, the centralization-decentralization dichotomy appears to be of limited analytical value in understanding operational aspects of the assignment of jurisdiction in tiered regimes. The dichotomy is implicitly based on a source-sink model. Such a model assumes a one-off allocation process in which entrustments are permanently abstracted from one level and retired into another level. A related assumption of the model is that the purposes of such transfers are automatically met once the transfer is done, or that conditions elsewhere are static such that, once assigned, jurisdictions will always remain secure and effective. But this rarely happens in a complex and dynamic world where policy intent seldom translates into intended outcomes.[1] Moreover, the goals of governance may be expected

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to vary from time to time, and from one governance system to another. This implies that there can never be a universal governance goal that will be satisfied in perpetuity by a particular centralization or decentralization arrangement. Studies on the assignment of governance need to move beyond the appropriateness of centralization or decentralization and away from static notions of one-off assignments of jurisdiction to utilize dynamic and process-based analytical approaches.[2] Particular governance arrangements may result in unintended outcomes, and changes in related socio-political and other environments may supercede the goals for which given governance systems were originally crafted.

Coglianese and Nicolaidis (1996) argue that governance arrangements and outcomes are best seen as dynamic, characterized by a "pendulum effect" in which power flows within and between levels.[3] They argue that it is important to understand the allocation mechanisms of any governance context, including how these are crafted, combined and traded off against each other. Using principal-agent theory, they propose four mechanisms through which jurisdiction can be allocated within tiered governance regimes: delineation, monitoring, sharing and reversibility mechanisms. Principal-agent relationships develop when authority is shifted from one set of players (representing the principal) to another set (representing the agent), with mechanisms to ensure that authority is utilized for purposes underlying the delegation, and not usurped or abused for other uses.[4]

Delineation provides a clear specification of the scope of delegation, as well as standards and guidelines for the exercise of that authority.[5] Among other things, monitoring helps determine whether the agent is operating within the confines of the scope of delegation; whether the assignment is achieving the goal for which it was intended; or whether set standards and guidelines are being followed. The principal may also reduce the agent's discretionary powers by sharing in the activities of the delegated unit. Sharing mechanisms include: separation of powers (e.g. between legislative, judiciary and executive arms of a jurisdiction); representation of lower units in higher units; and decision-making arrangements within sharing arenas (i.e. whether by majority or unanimity). Reversibility provides for a corrective measure to help ensure the re-alignment of other allocative mechanisms so that governance arrangements meet the goals for which they are intended. Examples of reversibility arrangements include provisions specifying the expiry date of a particular delegation to allow for scrutiny and review or revocability arrangements that allow the endowed level to step in to revoke the delegation under certain circumstances.

Allocation mechanisms may, from time to time or from place to place, vary in their extent, intensity or explicitness. For instance, delineation could be narrow or broad, monitoring may range from loose to tight or from regularized to ad hoc, whilst reversibility may be explicit or implicit. Permutations of sharing mechanisms can therefore be variously traded-off against each other to ensure cost-effective governance (e.g. broad delineation may be complemented by tight monitoring and explicit sharing arrangements might be matched with less reversibility). Decisions made within a cost-effective governance system also need to be as efficient as possible. In general, these conditions are better optimized if jurisdictions remain close to the citizens. This theme of closeness of jurisdictions is enshrined in the principle of subsidiarity, which holds that problems are best solved within the subsystem where they arise. Alternatively

phrased, in order to protect basic justice, upper level actors should undertake only those initiatives that exceed the capacity of lower level actors.[6]

The main aim of this study is to critically interrogate the political economy of the allocation of environmental jurisdictions between the state, local communities and Rural District Councils in Zimbabwe. Rural District Councils have the authority to enact conservation and landuse planning by-laws. This paper goes beyond principal-agent ties of how the state holds local governments accountable to include the implications of such transfers on how local government can be held accountable to local populations, since the transfers are ostensibly done to create local autonomy. A subsidiary aim of the study is to relate practical aspects of the formulation and operation of the by-laws to the theme of their proximity to citizens and how this impinges on the effectiveness of the by-laws.[7] By-laws are treated within a generic frame of reference for the main aim, since aspects of the allocation of jurisdictions by way of by-laws apply in similar fashion throughout the country's fifty-five districts. The study relies on review of secondary material, including relevant legislation, for the main aim. The subsidiary aim relies on fieldwork conducted in Chivi District where informal interviews were held with Rural District Council officials, councilors, council resource monitors, headmen, village heads and other ordinary men and women.

LEGAL INSTRUMENTS FOR CONFERMENT OF AUTHORITY TO ENACT BY-LAWS

The Rural District Council is where effective decentralization ends, at least in terms of the legal framework. Enacted in 1982, the Communal Lands Act vests control over land to the president, but devolves its administration to the Rural District Councils. The act therefore designates Rural District Councils as de jure land authorities. The Rural District Councils Act (enacted in 1988) reinforces the powers that a variety of other laws vested in the councils:

- Communal Lands Act defines them as land authorities (with powers to allocate land under their jurisdiction, in conjunction with district administrators);
- Parks and Wildlife Act designates them as appropriate authorities over wildlife resources in their areas;
- Communal Lands Forest Produce Act vests them with the power to grant licenses for timber concessions in communal areas;
- Natural Resources Act designated them as authorities for the conservation of resources within their districts;
- Environmental Management Act seeks to grant them appropriate authority status over a broad range of resources.

The Rural District Councils Act additionally vested councils with the following powers: raising revenues through taxes, levies and tariffs from their areas; acting as local planning and development authorities; and enacting legally-binding landuse planning/conservation by-laws

that apply for areas under their jurisdiction. The next section will consider how the Rural District Councils' legal personality and organizational structures have impinged or impinge on grassroots participation.

RURAL DISTRICT COUNCILS AS UNITS ENJOYING DESIGNATION AS LEGAL PERSONS

Rural District Councils are vested with legal personality through a variety of acts. In terms of membership, the Rural District Councils consist of elected councilors representing the interests of their constituent wards, district heads of line ministries, council executives, chiefs as ex officio members, and, in some districts, co-opted NGOs. Thus, far from being homogenous, the Rural District Councils potentially represent a complex mix of grassroots, customary, bureaucratic and technocratic interests. In principle, the composition of RDCs should not entail any contradiction since it potentially provides for a sharing forum that blends the top-down visions of sectoral and bureaucratic experts with the bottom-up visions of elected community representatives. In practice, such sharing does not necessarily imply that the councils are accountable and responsive to the needs of the citizens. The councils largely remain unresponsive to the needs of citizens because of the poor structuring of certain accountability relations.

For instance, during the postcolonial period, elite political interests in Zimbabwe have patronized the process resulting in the election of politicized councilors. They owe allegiance and are upwardly accountable to the major political party that endorses their candidature.[8] In addition, the councils operate through a system of committees, each tasked with a specific mandate. In principle these committees are supposed to report and be accountable to the full council containing elected community representatives. In practice, however, some such committees actually override council. For instance, the Chivi Rural District Council has the following committees: finance and staffing; planning; social services; natural resources; licensing; and an "advisory" Rural District Development Committee (RDDC). The Rural District Development committee is a powerful arm of council, consisting of district heads of government ministries, chairpersons of the Rural District Council's other committees, and district heads of national security organs. It is presided over by the District Administrator, a bureaucrat representing the Minister of Local Government and National Housing. Council representatives of grassroots communities are thus under-represented in the Rural District Development Committee. Yet the RDDC is the district's supreme planning body charged with consolidating various grassroots plans from the wards into the district's annual and five-year plans. The RDDC is supposed to discharge its mandate within an advisory context but in practice the body normally operates in a directive mode. The RDDC simply reports unilateral resolutions without being effectively accountable to council.

Thus, although the Rural District Development Committee is potentially a forum for melding community and sectoral plans, in practice it attenuates the spirit of popular participation and sidelines community plans and visions. The dominance of technocrats at the district level partly underlies the technicist content and orientation of the by-laws adopted by the Chivi Rural District Council. The issue of the content of by-laws is considered in later sections of this article. It is important to note at this point that Rural District Councils (as legal

persons with minor legislative competence over by-law formulation in areas under their jurisdiction) do not effectively represent the visions and aspirations of grassroots communities, nor are they effectively accountable to them.

EXTENT OF POWERS CONFERRED UPON RDCS IN BY-LAW FORMULATION

The legislative authority of Rural District Councils is subsidiary to national statutes, and it has to be consistent with such statutes. The Rural District Councils Act includes a schedule that clearly specifies the areas in which the Rural District Councils enjoy privileges to enact legally binding by-laws. The schedule lists 116 areas which fall under a fourteen-part category of issues (see Appendix 1). Part two of the schedule circumscribes the range of issues over which council can enact by-laws relating to property, including natural resources held under common property arrangements in communal areas. Additional sections of the schedule that are directly linked to other aspects of the environment include: part six, relating to water resources; part seven, which relates to sewage reticulation and waste disposal; part eight, relating to wildlife; and, part thirteen relating to fire management. By-laws are therefore meant to provide more regulation of these and other issues. The next section considers the by-law formulation process and examines the extent to which the process allows for downward accountability to local communities, for whom the by-laws are ostensibly created.

REPRESENTATION AND ACCOUNTABILITY RELATIONS IN BY-LAW FORMULATION

Rural District Councils have the option of formulating by-laws with the participation of local communities or adopting model by-laws from the Communal Lands.[9] Model by-laws provide for the preparation of landuse plans in council areas, and they are similar to those promoted by the state in the 1930s.[10] They are based on a landuse planning system that makes use of aerial photographs to divide landscapes into an 8-class system of land units, with a matching portfolio of suitable uses for each unit. Model by-laws are prescriptive and they do not embody a spirit of community participation. Their top-down orientation often does not accord with the priorities and coping strategies of peasant communities.[11]

The process of formulating by-laws with the "participation" of communities does not turn out to be genuinely participatory or democratic either. In principle, by-law formulation should be preceded by a preparatory stage during which the need for formulating any set of by-laws is identified, ideally by communities, who can then notify council through their representative.[12] A relevant standing committee of council (e.g. the Natural Resources Committee) then examines the need for such by-laws, consulting expert opinion, and then making recommendations to council.[13] On face value, this is a potentially democratic process by which local communities can demand by-laws through their "democratically" elected representatives. In practice, by-laws are formulated at the district level, without effective participation from communities. This occurs in most of the districts that opt not to adopt the model by-laws.[14] Although councilors sit as elected representatives, the actual formulation of by-laws overlays the contours of power within council structures, whereby council bureaucrats/technocrats have a much stronger voice. "Community" remains a constituency of subordinate and weakened forms of power within local

governance structures. It reflects fragmentary memberships or interests and represents a marginalized voice in key local government decision making fora, such as the RDDCs.[15]

Despite recognizing the need for local participation in the authorship of by-laws, the legislative framework does not provide authoritative guidelines on participation. The framework neither specifies minimum acceptable thresholds of participation nor the ways and means of achieving such participation. Existing legislation, therefore, does not fully embrace the principles of greater public participation as a way to increase democratic involvement in local government at the community level. It leaves Rural District Councils with considerable discretionary power over the extent and scope of local involvement in by-law formulation.

The actual formulation of by-laws can be a tortuous and extended process, with much time allocated to allow for higher-level provincial officials and the relevant cabinet minister to scrutinize by-laws before endorsing them. Local communities are only given thirty days to inspect the by-laws and, if necessary, lodge objections. To facilitate the inspection of by-laws by local communities, the framework legislation obliges Rural District Councils to display the by-laws at Council offices for a specified period and to publish them in a newspaper. Communities rarely inspect the by-laws, partly because they are left out of the formulation process, but mainly because the by-laws themselves can only be inspected at the district office, or in obscure sections of newspapers that peasants cannot easily access. Objections from the community, if any are raised, are unilaterally deliberated within the council, which can adopt them in whole or in part, without further dialogue with the communities. The legislation bestowing Rural District Councils with the power to enact by-laws, therefore, gives the councils wide discretionary powers and denies communities a sound basis on which to actively participate in the formulation of by-laws. Fast-tracking inspection of the by-laws by communities also undermines the spirit of popular participation in by-law formulation.

Endorsement of by-laws is therefore not done with the involvement of the communities. It remains the exclusive preserve of the relevant minister, to whom the Rural District Councils are accountable. Whilst by-law inspection is fast-tracked at the community-level, with no "set pauses," Ministers and the Attorney General enjoy a set pause of up to six months in which to thoroughly scrutinize the by-laws before approval.[16] Rural District Councils submit the following documentation for ministerial scrutiny: the proposed set of by-laws, proof of consultation in the form of a notice in the press, list of all objections received, minutes of the council meetings where the by-laws were discussed, and the final council resolution. The minister enjoys the discretion to modify or amend the by-laws or to recommend that council adopt model by-laws if those submitted are not substantially different from the model by-laws. Ministerial amendments to by-laws are not subject to negotiation and contestation by the Rural District Councils or the community.

Effective legal systems are best founded on beliefs and values of the societies whose behavior they govern.[17] But the Rural District Councils Act provides for a process in which Councils are only upwardly accountable to a minister in the formulation and approval of by-laws and not downwardly accountable to local communities. The minister is far removed from the resource-use setting and is thus not well placed to ensure that the by-laws embody the values and beliefs of the community. Although vesting the minister with wide discretionary powers over endorsement may be well-intentioned (e.g. to ensure that the by-laws are

consistent with parent legislation), there is no system of checks and balances to ensure that such powers are exercised in the interests of the grassroots communities. Vesting the minister with the prerogative to replace council by-laws with a model template of by-laws also defeats the purpose of local participation in the first place. It becomes a waste of time and resources, since vesting councils with by-law formulation privileges is ostensibly done to deal with context specificity.[18]

CHIVI RURAL DISTRICT COUNCIL BY-LAWS: CONTENT

Although the framework legislation confers very broad delineations, the Chivi Rural District Council's by-laws only provide in detail for landuse planning. The by-laws are rather silent with regards to the use and management of natural resources in communal and resettlement areas. They include just a few oblique restrictions on: owning, using and possessing a sleigh; cutting of trees and collection of firewood and timber; and damage/destruction of fences and conservation works. The council's schedule of fines, however, reveals that it imposes control over areas that are not clearly provided for in the by-laws, including: causing veld fires, poaching game and fish, pulling ploughs on the ground, and cutting down protected tree species. Although findings from the field study indicate that various forms of illegal land allocation/utilization and tree felling were amongst the major natural resource management problems, other important issues are provided for in neither the council's set of by-laws nor the schedule of fines. Natural resource management issues not covered in the by-laws, but now increasingly important include those widely associated with the advent of the Economic Structural Adjustment Programme. Prominent among these were sand extraction for the construction industry, alluvial gold panning along the Runde and the Tugwi rivers, and extraction of soapstone (munyaka) and timber for the craft industry.

The current Chivi Rural District Council by-laws, gazetted in February 1996, repealed model by-laws that had been adopted in 1987. In addition to their top-down orientations and their failure to comprehensively provide for all the important natural resource management issues, the by-laws also appear somewhat static. Although the framework legislation provides scope for review and amendments, the extended and tortuous nature of the process imposes disincentives for councils to regularly undertake such reviews and amendments.[19]

In spite of their "participatory" formulation, the Chivi Rural District Council by-laws have a strong technicist content and are based on patronizing, command and control approaches to natural resource governance. They treat users of natural resources in peasant communities as passive objects requiring assertive guidance from a more “rational” outside. For instance, provisions relating to grazing areas empower council to prescribe stocking rates, grazing rights across owners, grazing/rest periods, and appropriate conservation measures. Provisions relating to planning of cultivated areas allow council to specify cultivation rights, means or implements to be used, types of crops, crop rotation, contour ridging/land protection measures, and fallow periods. This means that decisions are effectively made outside the subsystems in which related problems occur, with resultant implications for the relevance and effectiveness of the by-laws.

ENFORCEMENT, LEGITIMACY AND EFFECTIVENESS OF BY-LAWS

In addition to their technicist content and external origin, the by-laws further criminalize local use of resources. They impose fines in order to restrict the use of natural resources instead of creating voluntary systems of local regulation with incentives to ensure sustainable use. Local communities are expected to cooperate with council monitors who impose fines for various violations. This revenue accrues to the Rural District Council. The arrangement therefore places the costs of an imposed governance system close to the people but the benefits remain close to the Rural District Council. This income may be used for any purpose and not necessarily to address the environmental problems for which the fines were exacted.

Council employs two resource monitors per ward. The monitors assume duty after being elected with the "participation" of local communities and subsequent vetting by the police. Most local people, however, denied having participated in the election of monitors because the process was not widely publicized. Others claimed to have ignored the exercise because of alternate overriding priorities on their time. Some even stated that they saw the by-laws as being "oppressive". For instance, a headman remarked that many of the by-laws prevented people from using trees, “but no-one ever became pregnant to give birth to a tree...the trees are there for us all to use and care for… and the fact that we use the trees does not necessarily mean that we do not care for them.” Thus, in spite of a veneer of local involvement in the election of resource monitors, they are largely seen as enforcing externally imposed regulations. This clearly impinges on the effectiveness of enforcement of the by-laws.

The process of by-law enforcement involves the issue of tickets which impose fines based on a schedule given to the monitors by the council. Personal details of the violator, including the postal address, are entered onto two tickets - one of which is to be retained by the violator after signing, and the other sent to the Rural District Council. The person issued with a ticket is supposed to deposit the stipulated fine at the council offices within a set period. Council officers are supposed to follow-up and ensure that people deposit their fines on time. Those who do not pay the fines risk being handed over to the police or courts. In practice, most of these arrangements seldom work. People issued tickets often quietly ignore them without paying the fines. Council officials rarely make follow-ups, mainly because of logistical constraints. Not surprisingly, three council monitors interviewed estimated high default rates (with one estimating over 60%). Council records, from October 1996 to July 1998, also suggest low payment levels (see Table 1). Meanwhile, the study found no evidence of anyone handed over to police for flouting by-laws, and only one case of someone who opted to pay after being threatened with a court case. The allocation of enforcement responsibilities to monitors by the council without effective involvement by the communities implies that monitors are upwardly accountable to the council instead of the communities to whom the by-laws apply.

Table [1]. Schedule of fines and records of payment of the fines for flouting the Chivi Rural District Council landuse planning and conservation by-laws between October 1996 and July 1998. Collated from twenty-nine communal areas and resettlement wards.

Offences	Penalties in Z$	Number	% of total Apprehended
Damage to roadside establishments	300	7	2.1
Causing veld fires	500	30	9.2
Stream-bank cultivation	100	5	1.5
Settlement, illegal homestead	100	61	18.7
Poaching, game and fish	100	1	0.3
Cutting down of trees, protected species	102-213	0	0
Cutting down of trees, not protected	40	85	26.0
Possession of sleighs, pulling plough	100	17	5.2
Unauthorized gardens	100	68	20.8
Unauthorized extension of land	100	44	13.4
Raising wire/fence to go throug	25	9	2.7
Unauthorized grazing	100	0	0

The enforcement picture is further worsened by the fact that most people, including monitors, felt that the proportion of undetected cases was far higher than those apprehended. This is underlain by several factors, not least of which is low morale among monitors. Low morale arises both from the failure of council officials to effectively follow up on tickets and poor levels of remuneration to the monitors. Each resource monitor earns a basic fee of Z$100 per month plus 10% commission on the amount of fines they caused to accrue to council. Monitoring is therefore largely ad hoc and not intensive or regularized. Resource monitors often invest their time and effort in other gainful activities. In general, there was greater evidence of monitors relying on indirect methods of accounting for violators (reliance on tip-offs from third parties and historical evidence of violations) as compared to direct red-handed apprehension. The over-reliance of monitors on indirect evidence often results in disputes between monitors and suspected violators.

Even when suspects agree to pay fines, they frequently do so under protest, perceiving the fines to be punitive and unfair. The levels of fines are arbitrarily pegged by the council and not

indexed to levels of community outrage or to community perceptions on the legitimacy of such fines. All the monitors interviewed reported facing tremendous amounts of pressure from suspects. All of them were, at one time or another, threatened with bewitchment or physical violence. On one occasion, a monitor was extricated from a brawl in which he was about to be axed by an enraged suspect.[20] The fear of violence or bewitchment may inhibit monitors from apprehending certain suspects, although all of them would readily acknowledge this.

All the monitors indicated that it was more effective to enforce the by-laws through enlisting the support of traditional leaders as compared to relying on council officials. One monitor argued that traditional leaders were generally more respected than elected representatives "because councillorship is basically nothing beyond a show of hands, but chiefly powers are deeper since the chiefs own the land and its people." The threat of expulsion from a chief's areas was widely acknowledged as one of the most effective instruments of power that chiefs could invoke against habitual offenders. Support from traditional leaders was reported as easily forthcoming when by-laws were similar to local rules which the leaders wanted enforced (e.g. prohibitions against felling fruit trees, big trees and trees that grow in riverine areas). Enlisting the support of traditional leaders in enforcing council by-laws legally entails no contradiction since the Traditional Leaders Act (1998) confers such a role on chiefs and headmen. Two sources of contradiction are, nevertheless, apparent.

First, the Rural District Council system of enforcement exists alongside traditional systems for enforcing local rules. Traditional systems include implicit norms and mores as well as explicit rules. The chiefs' and headmen's police have the role of apprehending violators. Local enforcement also incorporates the belief that one could not evade the spirit guardians of the land, who could unleash divine visitations upon violators. Suspects accounted for by the chief's police are either warned, made to pay goat or traditional beer fines, or expelled from the community if habitual offenders. The efficacy of these mechanisms was not assessed but most people interviewed reported that such arrangements were generally better respected than council by-laws. However, no coordination exists between the two natural resource regulation systems, since suspects can find themselves being censured under either system or both. Fines in the traditional system have historically been used to mitigate the transaction costs of convening courts but some people alleged increased incidents of traditional leaders exacting fines for their own benefit.

A second contradiction arises from the fact that whilst the Traditional Leaders Act recognizes chiefs as allies in enforcing government by-laws, acts like the Communal Lands Act and the Rural District Councils Act effectively retain the land allocation powers that were taken away from chiefs in the immediate post-independence period. But chiefs have continued to allocate land on the basis of territorial, customary, and other forms of claims. The main contradiction is that chiefs are expected to uphold by-laws, yet these by-laws dilute and erode their major power base i.e. the authority to allocate land. The formal process of land allocation entails the prospective settler bear a clearance letter from the district of origin before approaching the headman and councilor for local approval. Final approval is by a council land allocation committee consisting of the relevant Village Development Committee (VIDCO), the chief, the councilor and Agritex (national agricultural extension service). There is rampant disregard of this arrangement by chiefs and headmen, borne out by the statistics in Table 1,

which show that various forms of illegal landuse were amongst the most frequently flouted by-laws in Chivi over an 18-month period. One of the councilors interviewed in this study estimated illegal land allocations to constitute 60-70% of the new settlements in communal areas close to his home.

The latest waves of illegal land allocations have assumed elements of an informal real estate brokerage, with some traditional leaders charging fees to prospective settlers. Several high profile cases of illegal land allocation were reported, including one from the Barura area and another from an area near the turn-off to Mutangi. Resolution of both of these cases involved intervention by the district administration and the Rural District Council. The Rural District Council requires traditional leaders who illegally allocate land to ensure the vacating of such land or face prosecution. If charges are preferred, settlers are made to pay fines for trees they will have felled at a rate of Z$40 per tree.

This study also recorded cross-border ambiguities in regimes of levies charged for sand extraction by the Chivi and Masvingo Rural District Councils. Both Districts have important sand extraction sites along the Tugwi River. The Chivi Rural District Council, on one side of the river was charging Z$2 for every cubic meter of sand extracted, whilst the Masvingo Rural District Council on the other side charged Z$7.50 per cubic meter. The Chivi Rural District Council employs monitors to keep records of sand extracted. Monitors receive a 10% commission. Disparities in levies means these monitors sometimes end up conniving with contractors not licensed by council, from whom they obtain kickbacks.

DISCUSSION

A number of contradictions are therefore evident in the political economy of allocation of authority and responsibility among the Zimbabwean state, local communities, and Rural District Councils through the conferment, to the latter, of authority to enact by-laws that apply to areas under their control. Most of these problems arise from the top-down orientations of the assignment of such authority. First, although framework legislation confers very broad delineations over authority to enact by-laws, monitoring occurs on the basis of technicist goals of environmental conservation and "rational" landuse planning, and not on the priorities and aspirations of the local communities. Second, the entrustments are transferred solely to Rural District Councils at the expense of other forms of social organization, particularly those closer to the citizens. Third, although there is scope for sharing in governance, through popular representation at the district level, effective decisions are made in bodies not accountable to the council because council is the forum in which local representatives have a greater voice.

Fourth, there is no provision for reversibility through amendments of by-laws by communities, only by the Rural District Councils and the relevant minister. Such amendments can only be made on the basis of whether governance delivers on technical goals of "rational" landuse planning and legal goals of consistency with broader legislation. There is no explicit provision for amendments on the basis of community priorities, interests, and goals. Fifth, in addition to being highly prescriptive, the governance system punishes citizens for not respecting arrangements that were put in place without their effective involvement and consent. Sixth, the revenue from fines imposed on local communities are directed to Rural District

Councils, without accruing to the communities from which they are collected or directly addressing the environmental problems for which they have been imposed. Lastly, the by-laws fail to provide for the coordination necessary to address cross-border problems and spillover effects. Such governance arrangements are not well-respected since they are widely viewed as illegitimate and oppressive. Innovative approaches to governance are required to address these flaws and contradictions.

Reversing top-down orientations in the assignment of jurisdiction through by-laws would be amongst the most radical of approaches. This would involve reversals in by-law articulation in which the formulation and operation of by-laws are effectively placed in the hands of citizens, with the council playing only monitoring and coordination roles. The Institute of Environmental Studies is pioneering with such reversals on its Department for International Development (DFID) funded Micro-catchment Management and Common Property Resources Project.[21] The research objectives of this project include: identifying a range of technical, institutional and other options for the management of micro-catchments; evaluating the impacts of the options on various biophysical, economic and institutional variables that have implications for the micro-catchments; and evaluating the poverty alleviation and environmental management tradeoffs of the various options. The development objectives include providing policy makers, extension staff, and communities with the tools to make sound management decisions and promoting the implementation of such decisions.[22]

Completed stages in the process of seeking institutional reversals through the DFID project include exercises by which study communities developed their visions on governance, at first separately, and later jointly, with their Rural District Council. The joint initiative yielded a wonderfully democratic vision of by-law articulation in which communities would: formulate the by laws with council endorsing them; harmonize the multiplicity of rules at the local level with the council endorsing; set, collect and manage fines, with council monitoring effectiveness; decide on the disposal of the revenues collected from fines with council negotiating a percentage depending on its levels of input; enforce, monitor and amend by-law with the council giving necessary support; negotiate on cross-border and spill-over effects with the council coordinating and advising. Clearance has already been secured from the Rural District Council to facilitate the crafting of such a vision, with a view to implementation and documenting the major lessons for wider uptake in other districts and related contexts. The support and interest of local communities and the Rural District Council have been, and will continue to be, key to the initiative.

Another radical approach would be to lobby for the extension of legal mandates for local natural resource governance to units that are below the district level. A question that receives scant attention in the literature, however, is the mode through which the diffuse and ever-changing forms of grassroots social organization can coalesce into resource management units than can receive legal mandate. Murphree (1997) advocates a strategy of community identification involving self-definition through the processes of dialogue and negotiation. He argues that such a process should take cognizance of long-established traditional jurisdictions and resource management aggregations in order to match social geographies with spatial resource configurations. The widespread lack of respect for imposed by-laws as well as poor enforcement and high default rates in the payment of fines all lend weight to "long established

traditional jurisdictions" as potentially appropriate units. The emphasis on these bodies also bears close resemblance to the recommendations of the Land Tenure Commission (set up in the early 1990s) to investigate appropriate agricultural and tenure systems across Zimbabwe's land tenure categories.[23] The Commission concluded that traditional villages, under village heads, were the legitimate and appropriate units for natural resource management below the district level. The Commission recommended granting legal titles to well-mapped village units with clearly defined boundaries. Most of the recommendations, except that relating to legal titles, were subsequently adopted by the government and formed the basis of the Traditional Leaders Act of 1998.

Considerable ambiguity still characterizes the assignment of jurisdiction across a number of Zimbabwe's environmental legislation. Uncertainty still exists, in spite of the merits of the above units as possible candidates for legal mandate.[24] Jurisdiction over mineral resources, according to the Mines and Minerals Act, remains the exclusive preserve of the state. The Rural District Councils Act assigns authority to enact by-laws between the state and the Rural District Councils. The Parks and Wildlife Act assigns jurisdiction over wildlife resources to the state, the Rural District Councils in communal areas, and the landed class in freehold areas. The draft Environmental Management Bill broadens the portfolio of "appropriate authority" to include a wider range of resources other than just wildlife. In spite of having been preceded by the Traditional Leaders Act, the draft bill does not complement the bold attempts of the former at defining potential legal units below the district level. The bill further seeks to vest such authority in Rural District Councils, without extending it to any units below the district level.

Other approaches could be incremental, with an emphasis on securing and consolidating community gains in those aspects of current governance arrangements that are potentially maneuverable. Such an approach could involve: lobbying for better community representation in the RDDC; lobbying for changes to ensure that the RDDC reports, and is effectively accountable to council; or lobbying the relevant minister to give greater attention to community empowerment when he/she endorses or seeks the amendment of the existing sets of the Rural District Council by-laws.

On a more cautionary note, the call for new approaches to governance appears based on the unstated assumption that old is undesirable “because we have seen it not working” and that new will work better “because we have not seen it failing anywhere.” Thus, placing governance powers closer to citizens should not automatically imply that new arrangements will be more egalitarian and work better. Neither should it be seen as a call for a total return to community because communities, councils and the state have become intricately interwoven. Furthermore, asymmetries of power and interest are pervasive within and between various levels of social organization. It is more pertinent to ensure:

- Clarity on what powers are given to each level;
- Higher levels do not usurp those powers lower levels can exercise on their own;
- Checks, balances, and monitoring mechanisms to ensure that such power is not abused;

- Flexibility and, if need be, reversibility to allow for adaptive changes in governance arrangements.

Such a vision can only be inspired by analytical approaches that look beyond the merits and demerits of centralization and decentralization.

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Notes

1. Ferguson 1994.
2. Coglianese and Nicolaidis 1996.
3. Power relations amongst various social groups and levels of social organizations cannot be expected to be static but to be dynamic – often swinging back and forth to reflect the contestation and negotiation of interest within and between the groups and levels.
4. Agrawal 1997.
5. Taken simply, delineation is a clear specification of the extent of delegated or devolved powers and the terms and standards on which such privileges should be exercised.
6. Schilling 1995.
7. The criteria for effectiveness are likely to depend on the goals for which a particular governance system is put in place, but in this study effectiveness is considered within the contexts of relevance, respect and observance of the by-laws by the communities - since the by-laws are ostensibly meant to ensure local autonomy.
8. Mandondo 2000.
9. Model Landuse and Conservation By-Laws 1985.
10. Scoones and Matose 1993.
11. Ibid.
12. Kundhlande 2000.
13. The Chivi Rural District Council by-laws stipulates that the council seeks advice from the following government offices in the preparation of plans for communal and resettlement areas: the provincial planning officer, the provincial Agritex officer, and the regional officer in the Ministry of Environment and Tourism.
14. SAFIRE 1999.
15. Mandondo 2000.

16. "Set pauses" relate to allocation of sufficient "lag time' during any stage of the process to give positive opportunity public reaction and participation and presentation of alternative choices (McAuslan 1993). Note, however, that it implies context of conditionality in which people are passive subjects with higher level authority in driving seat.
17. McAuslan 1993.
18. Mohamed-Katerere 1999.
19. From a transaction cost perspective.
20. A headman intervened after the suspect had refused to obey the impassioned pleas of many other people.
21. DFID is the bilateral development agency of the United Kingdom.
22. Frost and Mandondo 1999.
23. Government of Zimbabwe 1994.
24. Indigenous governance forms were co-opted into colonial governance forms, and were often remolded to advance the designs and intentions of colonial administration to the extent whereby it may be misleading to speak of "authentic indigenous forms" but "attenuated indigenous forms" (Chanock 1998).

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