Sub-National Diplomacy: Alternative Pathways to Stability and Conflict Transformation in Nigeria and Pakistan

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Abstract

The traditional rulers in Nigeria and customary forums such as Jirgas in Pakistan function as hybrid governance institutions that mediate between state authority, local communities, and constitutional norms, asking how they sustain legitimacy and accountability in fragile democracies while delivering justice and managing conflict. The research uses a comparative qualitative approach that analyses policy documents, judicial rulings, and institutional reports (2015-2025), within the frameworks of legal pluralism as constitutional architecture, subsidiarity as a circuit rule, and the state-in-society perspective. The study finds that both countries exhibit functional equivalence but divergent trajectories; Nigeria advances adaptive decentralisation through Alternative Dispute Resolution centers and statutory oversight, while Pakistan consolidated codified integration through the Federally Administered Tribal Agencies' (FATA) merger and provincial legislation. This shows that sustainable legitimacy in hybrid systems depends on four policy variables: institutionalised interfaces linking local rulings to appellate review, documentation and traceability, inclusion of women and youth, and vertical accountability through judicial and administrative oversight. Thus, hybrid

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governance enhances democratic resilience only when cultural authority is disciplined by constitutional safeguards, transforming customary legitimacy into a renewable source of participatory statecraft rather than a residual form of informal power.

Keywords: Hybrid Governance, Legal Pluralism, Subsidiarity, Constitutional Accountability, Traditional Authority, Subnational Diplomacy.

Introduction

The 21st century is marked by overlapping crises, violent conflict, climate change, pandemics, resource competition, and the rise of illiberal populism, that expose the limits of state-centric governance and the fragility of multilateral institutions.[1,2] In many regions, legitimacy and state capacity are unevenly distributed, making new forms of cooperation and adaptive governance not optional but necessary.

Two interrelated innovations, hybrid governance and subnational diplomacy, have emerged as pragmatic responses to these challenges. Hybrid governance refers to institutional arrangements where formal state authorities coexist and interact with customary, religious, or community-based actors in delivering justice and public goods.[3] It highlights the negotiated nature of power in plural societies, where legitimacy is dispersed rather than monopolised by the state. Subnational diplomacy captures how cities, provinces, and traditional authorities engage in cross-border or intergovernmental relations to mediate conflicts, negotiate resources, and

[1] Amitav Acharya, *The End of American World Order*, 2nd ed. (Cambridge: Polity Press, 2018).
[2] Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 2005).
[3] Volker Boege, Anne Brown, Kevin Clements, and Anna Nolan, *Building Peace and Political Order: Hybrid Political Orders, Peacebuilding, and State Formation* (Berlin: Berghof Research Center for Constructive Conflict Management, 2008).; Volker Boege, M. Anne Brown, Kevin P. Clements, and Anna Nolan, "Hybrid Political Orders, Not Fragile States," *Peace Review: A Journal of Social Justice* 21, no. 1 (2009): 13–21.; and Deborah Isser, *Customary Justice and the Rule of Law in War-Torn Societies* (Washington, DC: United States Institute of Peace Press, 2011).

localise global norms.[4] Together, they reveal how governance and diplomacy are increasingly practiced through multi-level, culturally embedded networks instead of through centralised command.

These practices are not nostalgic returns to "tradition" but adaptive innovations that fill governance vacuums where bureaucratic reach or social trust is weak. When constitutionally accommodated, they extend justice, representation, and service delivery to peripheral or conflict-affected zones, converting cultural legitimacy into enforceable order.[5]

In Nigeria, despite the consolidation of constitutional democracy, traditional rulers, Obas, Emirs, and Igwes, continue to perform vital governance functions that transcend ceremony. They mediate disputes, maintain moral authority, and bridge state-society divides.[6] Their legitimacy derives from social embeddedness, spiritual capital, and historical continuity rather than statutory delegation.[7] As a result, palace

[4] Michele Acuto, *Global Cities, Governance and Diplomacy: The Urban Link* (London: Routledge, 2013); and Rodrigo Tavares, *Paradiplomacy: Cities and States as Global Players* (Oxford: Oxford University Press, 2016).

[5] Elinor Ostrom, *Understanding Institutional Diversity* (Princeton, NJ: Princeton University Press, 2009).; Joel S. Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another* (Cambridge: Cambridge University Press, 2001).; and Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–896.

[6] Ifedayo G. Malachi and F. O. Ajibade, "Traditional Leaders' Participation in Peacebuilding and Nigerian Farmers–Herders Post-Conflict Assessment," *Journal of Economic, Social and Educational Issues* 2, no. 1 (2022): 85–92.; Richard L. Sklar, *Nigerian Political Parties: Power in an Emergent African Nation* (Princeton: Princeton University Press, 1963).; Peter P. Ekeh, "Colonialism and the Two Publics in Africa: A Theoretical Statement," *Comparative Studies in Society and History* 17, no. 1 (1975): 91–112.; Peter P. Ekeh, *Social Exchange Theory: The Two Traditions* (Cambridge, MA: Harvard University Press, 2004).; and Olufemi Vaughan, *Nigerian Chiefs: Traditional Power in Modern Politics, 1890s–1990s* (Rochester: University of Rochester Press, 2006).

[7] Eghosa E. Osaghae, "Democratization in Sub-Saharan Africa: Faltering Prospects, New Hopes," *Journal of Contemporary African Studies* 17, no. 1 (1999): 5–28.; Jacob K. Olupona, *African Traditional Religions and Governance* (New York: Routledge, 2014).; and Wale Adebanwi, *Authority Stealing: Anti-Corruption War and Democratic Politics in Post-Military Nigeria* (Durham, NC: Carolina Academic Press, 2010).

councils and emirate courts remain indispensable to local order, operating as de facto nodes of Nigeria's hybrid political architecture.[8]

In Pakistan, a parallel structure exists in the *Jirga* of Khyber Pakhtunkhwa and the former FATA, as well as the *Faislo* (or *sulah*) in Sindh.[9] These customary forums convene respected elders (*Naikmards* or *Musheers*) to resolve disputes through *Rewaj* or *Pashtunwali*, systems that emphasise reconciliation and communal repair over punitive sanction.[10] Their authority rests on moral reputation and collective sanction, yet they remain effective in ensuring compliance and managing shared resources. Post-FATA reforms and judicial oversight now seeks to integrate these mechanisms within the constitutional and rights-based frameworks.[11]
Both contexts demonstrate that customary and religious institutions function as subnational diplomatic infrastructures, translating national policies and global norms into culturally resonant practices. Their deliberative traditions foster reconciliation and participatory accountability,

[8] Janine M. Ubink, *Traditional Authorities in Contemporary Africa: Forms, Functions, and Challenges* (Leiden: Brill, 2008).; T. Olukayode, *Traditional Rulers and the Limits of Authority in Nigeria* (Ibadan: Spectrum Books, 2007).; and Chinedu Ubaka, *Customary Law and Human Rights in Nigeria* (Enugu: University of Nigeria Press, 2020).

[9] I. Hashim, M. Ali, and S. Khan, *Informal Justice Systems in Pakistan: Jirgas and Faislos* (Karachi: Oxford University Press, 2013).; Government of Pakistan, *FATA Merger Implementation Reports* (2018).; Government of Pakistan, *FATA Interim Governance Regulation (FIGR)* (2018).; and Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2015).

[10] Asad Hashim, Asifa Jahangir, and Madiha Tahseen, "Pashtunwali—Law for the Lawless: Informal Justice and Conflict Resolution among the Pashtuns," *South Asian Journal of Peacebuilding* 3, no. 2 (2010): 45–67.; and Government of Sindh, *Sindh Rewaj Act: Report on Customary Practices in Sindh* (Karachi: Law Department, Government of Sindh, 2011).

[11] Peshawar High Court, *Judgments on Collective Punishments and Gender-Discriminatory Rulings in Merged Districts* (2019–2022).; and ConstitutionNet, "Pakistan: Supreme Court Rules on Jirgas and Panchayats," 2019, https://constitutionnet.org/news/pakistan-supreme-court-rules-Jirgas-and-panchayats.

capacities crucial for democratic deepening and conflict transformation.[12] When inclusion and oversight are institutionalised, hybrid forums can move beyond expedient dispute settlement to become durable instruments of peacebuilding and legitimacy.[13]

This study, therefore, situates Nigeria's traditional authorities and Pakistan's customary forums within a unified analytical frame of hybrid governance and subnational diplomacy. It compares how both systems perform equivalent governance functions, translation, mediation, and norm-enforcement, through divergent institutional trajectories. By examining their mechanisms of integration, inclusion, vertical accountability, and sustainable legitimacy, the study shows how hybrid justice can evolve from pragmatic adaptation into a constitutional infrastructure for peace and democratic renewal.

Contextual Framing

African scholarship has long debated the place of traditional rulers in modern governance, oscillating between portraying them as authoritarian residues incompatible with democratic consolidation,[14] and recognising them as adaptive institutions central to hybrid orders and community cohesion.[15] In South Asia, scholarship on *Jirgas* and *Faislo* have largely

[12] Malachi and Ajibade, "Traditional Leaders' Participation in Peacebuilding," 87.; John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997).; Stephen P. Osborne and Kirsty Strokosch, "It Takes Two to Tango? Understanding the Co-Production of Public Services by Integrating the Services Management and Public Administration Perspectives," *British Journal of Management* 24, no. S1 (2013): S31–S47.; and Boege et al., "Hybrid Political Orders, Not Fragile States," 15.

[6] James S. Coleman, *Nigeria: Background to Nationalism* (Berkeley: University of California Press, 1958).

[13] Deborah Isser, ed., *Customary Justice and the Rule of Law in War-Torn Societies* Washington, DC: United States Institute of Peace, July 1 2011.; and World Bank, *Nigeria: Justice and Governance Review* (Washington, DC: World Bank, 2025).

[14] Coleman, James S. *Nigeria: Background to Nationalism.* Berkeley: University of California Press, 1958.; and Sklar, Richard L. *Nigerian Political Parties.*

[15] Ekeh, "Colonialism and the Two Publics in Africa.; Vaughan, *Nigerian Chiefs: Traditional Power in Modern Politics.; and* Ubink, Janine M. *Traditional Authorities in Contemporary Africa: Forms, Functions, and Challenges.* Leiden: Brill, 2008.

emphasised their persistence as informal justice systems.[16] Their broader governance or diplomatic roles have been less interrogated. Comparative work across Africa and South Asia remains rare, leaving under-theorised how these institutions can be understood not only as dispute-resolution bodies but also as subnational diplomatic actors that mediate between state authority, local communities, and international norms.

Although not democratic in the liberal-electoral sense, traditional courts and forums such as Nigeria's Palace Councils or Pakistan's *Jirga* and *Faislo* embed proto-democratic practices of deliberation, consensus-building, and public reasoning.[17] These mechanisms typically involve public hearings where parties present claims, witnesses testify, and elders deliberate before rendering judgments in shared moral language of honour, reciprocity, and proportionality. Such practices cultivate community buy-in and legitimacy, producing outcomes often more accessible and enforceable than distant state courts.[18] Importantly, when reformed to include women, youth, or marginalised voices, these forums can extend accountability and participation below the state, operating as training grounds for democratic capacity.[19] Moreover, elders frequently translate constitutional norms, such as due process or non-discrimination, into culturally resonant idioms, bridging the gap between abstract law and lived practice.[20] This points to their potential to evolve into rule-bound, precedent-sensitive institutions approximating localised self-government.
At the same time, the ambivalence of customary institutions must be confronted. Their legitimacy and accessibility are offset by risks of elite capture, patriarchal bias, and rights violations. In Pakistan, human-rights monitoring has documented abuses ranging from coerced settlements to

[16] Hashim, I., M. Ali, and S. Khan. *Informal Justice Systems in Pakistan: Jirgas and Faislos.* Karachi: Oxford University Press, 2013.; and Government of Sindh, *Sindh Rewaj Act.*
[17] Ginsburg, "An Economic Interpretation of the Pashtunwali.; and Hashim, et.al *Informal Justice Systems in Pakistan.*
[18] M. A. Mashori, "Customary Justice and Local Governance in Sindh: Between Tradition and Transformation," *Pakistan Journal of Legal Studies* 5, no. 1 (2022): 55–78.
[19] Idrus, et.al, *Customary Institutions and Democratic Pathways in Pakistan*
[20] Ginsburg, "An Economic Interpretation of the Pashtunwali,

honour killings and forced marriages.[21] Pakistan's Supreme Court's landmark ruling in *NCSW v/s KP & others*[22] declared that *Jirgas* and *panchayats*, as they currently function, often contravene constitutional rights and international obligations under the UDHR, ICCPR, and CEDAW.[23] While not banning community mediation outright, the apex court prohibited extra-legal bodies from exercising judicial authority or imposing punishments. Similar concerns have been raised in Nigeria, *Anekwe v/s Nweke* (2014)[24] wherein the Nigerian Supreme Court struck down the Igbo custom that excluded female children from inheriting their father's estate, declaring it a violation of constitutional guarantees of non-discrimination under Section 42 of the 1999 Constitution.[25] Likewise, the practice of banishment and ostracism imposed by some Emirate councils has been criticised as unconstitutional, as seen in the case of *Alhaji Abdulkareem v/s Inakoju* (2006),[26] where the court held that traditional rulers cannot exercise punitive powers beyond what is sanctioned by law.[27] This duality underscores the central paradox: customary forums can democratise governance and expand access to justice, but only when reformed to align with constitutional safeguards and human rights.

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[21] Syed Idrus, Rahimullah Khan, and Zahra Noreen, *Customary Institutions and Democratic Pathways in Pakistan's Tribal Belt* (Islamabad: National Institute of Historical and Cultural Research, 2025).; Amnesty International, *Pakistan: Violations of Women's Rights in Customary Justice Systems* (London: Amnesty International, 2002).; and Paradigm Shift, *Monitoring Human Rights Abuses in Pakistan's Informal Justice Systems* (Islamabad: Paradigm Shift, 2025).

[22] *NCSW v. KP & Others*, PLD 2019 SC 218 (Supreme Court of Pakistan, 2019).

[23] "SC Declares Jirgas Unconstitutional," *Dawn*, March 14, 2019, https://www.dawn.com/news/1456789.; and "Pakistan: Supreme Court Rules on Jirgas and Panchayats," ConstitutionNet, 2019, https://constitutionnet.org/news/pakistan-supreme-court-rules-Jirgas-and-panchayats.

[24] *Anekwe v. Nweke*, Supreme Court of Nigeria, Suit No. SC/154/2014 (2014).

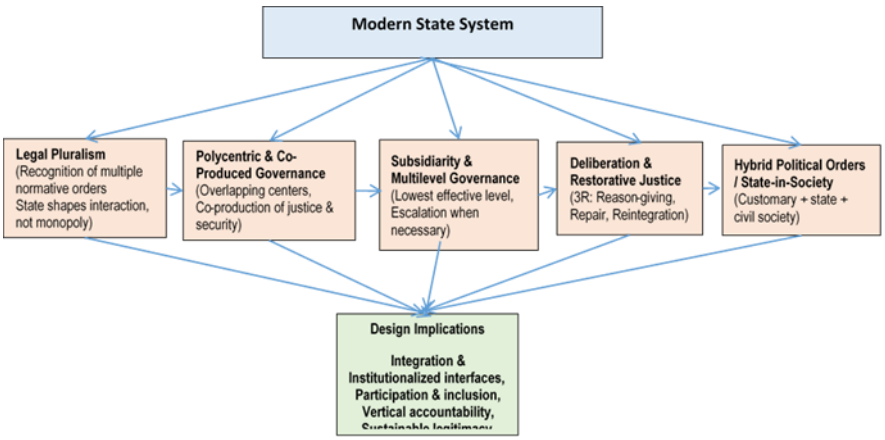
[25] *Nweke*, Supreme Court of Nigeria.; and Ezeilo, Joy, *Women's Rights and Customary Law in Nigeria* (Lagos: University of Lagos Press, 2015).

[26] *Alhaji Abdulkareem v. Inakoju*, Supreme Court of Nigeria, Suit No. SC/45/2006 (2006).

[27] Michael T. Ndemanu, *"Traditional African Religions and Their Influences on the Worldviews of Bangwa People of Cameroon: Expanding the Cultural Horizons of Study Abroad Students and Professionals,"* Frontiers: The Interdisciplinary Journal of Study Abroad 30, no. 1 (January 2018): 70-84.

Taken together, these dynamics call for a re-theorisation of traditional and customary institutions as subnational diplomatic actors within hybrid governance systems. Rather than treating them as relics of premodern authority or merely informal justice mechanisms, they can be understood as mediators who translate state norms into culturally legible practices, sustain order in zones of limited statehood, and nurture proto-democratic habits of participation and accountability. Their role is thus contingent: inclusive reforms can transform them into platforms of participatory governance and conflict transformation. Otherwise unaddressed patriarchal or elitist practices risk reproducing domination. Situating Nigeria's traditional rulers and Pakistan's *Jirga/Faislo* within the broader literature on subnational diplomacy opens new comparative questions: How do these institutions function as diplomatic actors in fragile democracies? To what extent do they cultivate democratic practices at the local level? And how might their restorative and mediatory roles be reconciled with human-rights imperatives and democratic consolidation?

Theoretical Pathways:
Accommodating Traditional Governance in the Modern State System



Legal Pluralism as Constitutional Architecture

Constitutions do not monopolise law; they define the minimum guarantees of rights, due process, and non-discrimination, beneath which socially embedded normative orders continue to function[28] (Merry 1988). Nigeria and Pakistan transform this reality into deliberate design, embedding legal pluralism within constitutional frameworks rather than treating it as a mark of disorder.

In Nigeria, pluralism is formalised through the *Sharia* and Customary Courts of Appeal, which integrate non-state jurisprudence into the federal judicial hierarchy. This design turns local legal traditions into assets that enrich national coherence and extend judicial accessibility. In Pakistan, the 2018 merger of the FATA into Khyber Pakhtunkhwa reversed this process: constitutional authority was first asserted, then local *Jirgas* were provisionally incorporated under the Interim Governance Regulation to align custom with constitutional oversight.

Despite differing sequences, both systems achieve the same goal: transforming pluralism into a structured mechanism of constitutional translation. In Nigeria, integration produces consistency and predictable precedent. In Pakistan, gradual incorporation sustains local legitimacy while deepening constitutional reach. In both contexts, pluralism functions not as a deviation but as a deliberate framework that converts cultural authority into enforceable law.

Polycentric Co-Production as Scalable Sovereignty

In fragile democracies, the central question is not merely who governs, but at what scale enforcement occurs. Both Nigeria and Pakistan illustrate the emergence of polycentric sovereignty, multi-tiered systems that align authority and accountability across micro, meso, and macro levels.

[28] Merry, Sally Engle. "Legal Pluralism." *Law & Society Review* 22, no. 5 (1988): 869-896.

At the micro level, moral authority is exercised through *Jirgas*, *Oba* councils, and hunters' guilds that mediate everyday disputes. The meso level consolidates this authority through community policing structures such as Amotekun in southwestern Nigeria and the absorbed *Khasadar* forces in Pakistan's Khyber Pakhtunkhwa. At the macro level, constitutional oversight is maintained by the judiciary and national rights commissions, ensuring that local justice remains anchored within the framework of due process and rights protection.

Co-production occurs at the junctions between these levels, when local actors transfer suspects, case files, or evidence to state agencies. In these moments, communal intelligence becomes part of the formal justice chain. The absorption rate, which tracks how many locally initiated disputes are formally registered within a set time frame, offers a proxy for vertical accountability. Rising absorption rates since the 2019 KP reforms and 2020 Amotekun rollout signal an increasingly integrated system where enforcement and rights oversight circulate through nested, mutually reinforcing tiers.[29]

Subsidiarity as Jurisdictional Circuitry

Subsidiarity[30] is not a slogan that "local is better," but a circuit rule: disputes should be resolved at the lowest competent level and escalated only when issues of rights, scale, or coercion exceed local capacity.

[29] Elinor Ostrom, *Understanding Institutional Diversity* (Princeton, NJ: Princeton University Press, 2009).; Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, 2nd ed. (Cambridge: Cambridge University Press, 2010).; Falk. *Law as Process: An Anthropological Approach.* London: Routledge & Kegan Paul, 1973.; and Engle. *Legal Pluralism.* Law & Society Review 22, no. 5 (1988): 869–896.

[30] EUR-Lex, "The Principle of Subsidiarity," summary of EU law (Article 5 TEU), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum%3Aai0017; EUR-Lex glossary entry, https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-subsidiarity.html. For multilevel allocation logics, see "Division of Competences," EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum%3Acompetences

Nigeria and Pakistan operationalise this principle through tiered escalation. Local disputes, such as those involving land, inheritance, or minor assault, are typically resolved by *Oba* councils or *Jirgas*, whose legitimacy derives from community trust. More serious crimes trigger district-level policing and formal prosecution, while cases involving constitutional rights or inter-ethnic tensions move upward to superior courts.

This system's effectiveness can be observed through two indicators. First, appeal frequency reflects how aware and confident citizens are in exercising appellate rights. Second, enforcement timeline measures how quickly local authorities implement higher court rulings. When appeals increase while enforcement delays decrease, subsidiarity is functioning as intended: the constitution intervenes to correct violations without undermining local legitimacy.

In this way, subsidiarity becomes a governance circuit, a dynamic framework that balances local responsiveness with constitutional authority, ensuring justice flows upward only as needed, while preserving the social legitimacy of local dispute resolution.

Deliberative-Restorative Circuits as Norm-Translation Gateways

Customary forums function as translation engines, transforming moral, legal, and transnational norms into enforceable social peace through four interconnected processes. Deliberation occurs through public hearings that produce recorded reasoning and include women and youth to ensure representative legitimacy. Restoration follows as communities co-produce repair measures, such as compensation, apology, or land adjustment, which are formally registered at a magistrate's court within seven days. Norm translation takes place when elders reinterpret constitutional principles into familiar idioms or scriptural language, supported by a reverse translation sheet for appellate verification. Finally, a rights circuit-breaker allows

either party or a rights monitor to escalate a case to higher courts whenever fundamental rights are at risk.[31]

The effectiveness of this translation process is reflected in how many locally resolved disputes withstand appellate scrutiny, signaling the credibility of hybrid justice. Where such forums maintain consistent legitimacy, democratic deepening becomes visible in the two-way movement of norms, constitutional standards flowing downward into community practice, and local grievances moving upward into formal institutions. This circulation preserves cultural resonance while ensuring constitutional accountability, allowing justice to remain both locally grounded and legally sound.

Hybrid Orders as Negotiated Sovereignty Platforms

The "state-in-society" is not a metaphor but an architectural platform through which states share sovereignty with the non-state actor.[32] In this system, authority and responsibility, such as taxation, boundary enforcement, security, and public health, are partially outsourced to trusted intermediaries in return for compliance and information. This co-production operates through three functional interfaces.

Accreditation formalises participation by licensing chiefs, mediators, and local leaders as recognised service providers with defined mandates. Performance is maintained through continuous data uploads, settlement records, appeal outcomes, and health reports, that populate dashboards linking accountability to incentives. Indemnity offers limited protection to licensed actors, shielding them only while they operate within legal and

[31] SEP, "Habermas," edited by Thomas McCarthy, last modified 2021, https://plato.stanford.edu/entries/habermas/.; Stanford Encyclopedia of Philosophy (SEP), "Democracy," edited by Robert E. Goodin, last modified 2020, https://plato.stanford.edu/entries/democracy/.; and UNODC, *Handbook on Restorative Justice Programmes* (Vienna: United Nations Office on Drugs and Crime, 2020).

[32] Migdal, Joel S. *State in Society: Studying How States and Societies Transform and Constitute One Another*. Cambridge: Cambridge University Press, 2001.

rights-based boundaries; violations revoke that protection and transform coercive authority into enforceable compliance.

In both Nigeria and Pakistan, this hybrid model shows how sovereignty can be shared without being surrendered. The more efficiently accredited forums deliver security, justice, and welfare without rights violations, the stronger the overall legitimacy of the system. Democratic deepening, in this context, depends on how rapidly the governance platform updates its operating rules, tightening safeguards, expanding inclusion, and streamlining data flows, while preserving the social trust that keeps the network functioning.

Empirical Mechanism

Integration and Institutionalised interfaces

Nigeria and Pakistan perform remarkably similar governance work through different institutional routes. Functionally, palace councils, *Jirgas*, ADR centres, Amotekun, and *Khasadar* units all mediate three core interfaces: they translate state policy into culturally legible practice at the local level; they resolve inter-communal disputes and manage everyday order; and they channel local information and compliance back to higher authorities. Seen through the lens of legal pluralism as constitutional architecture, these forums operate as routers: they convert moral and customary capital into enforceable outcomes when linked to appeal, documentation, and rights screens. From a polycentric perspective, they occupy equivalent positions on a sovereignty staircase, micro-level dispute management, meso-level policing and coordination, and macro-level judicial oversight, so that authority and accountability are co-produced across tiers.

Their trajectories, however, diverge. Nigeria's pathway emphasises institutional assimilation from below: pluralism is embedded within the judicial architecture (*Sharia* and Customary Courts of Appeal) and supplemented by ADR centres and statutory monitoring bodies. This produces predictability and jurisprudential accumulation, local rulings are

progressively translated into national precedent, but it also exposes implementation bottlenecks when bureaucratic capacity or political resolve is weak. Pakistan's route follows state extension then conditional accommodation: the FATA merger first extended superior-court jurisdiction into customary zones and then provisionally regulated *Jirgas* under interim frameworks and sectoral statutes (e.g., KP Land Acquisition amendments).[33] This sequence preserves local legitimacy longer while gradually subjecting customary outcomes to constitutional review.

The platform metaphor clarifies the trade-offs. Nigeria's approach raises the pluralism coefficient, producing uniform precedents and faster juridical learning, yet it risks alienating local actors if enforcement is top-heavy. Pakistan's sequence preserves social trust and local autonomy initially, but risks protracted legal gray spaces unless iterative incorporation and data tracing are sustained. Across both paths, the same design variables determine success: robust documentation (the record-or-perish rule), automated circuit-breakers that escalate rights flags, financed middle-tier capacity, and politically credible sanctions. Where these elements align, hybrid forums become durable instruments of constitutional statecraft; where they falter, oversight is either cosmetic or coercive.

Implication: translate functional equivalence into policy by standardising the three core drivers, licensing, data traceability, and escalation, while allowing jurisdictions to choose the sequencing that best preserves local legitimacy without compromising rights.

Inclusion and Transparency as Structural Safeguards

Applying the lens of legal pluralism as constitutional architecture and subsidiarity as circuit rule, Nigeria and Pakistan exhibit functional equivalence in how hybrid governance mediates between cultural legitimacy and constitutional accountability. In both contexts, customary forums, *Oba* councils, Emirate courts, and *Jirgas*, function as translation

[33] *National Commission on the Status of Women (NCSW) v. KP & Others*, PLD 2019 SC 218 (Supreme Court of Pakistan, 2019).

engines, converting moral authority into locally accepted settlements while keeping disputes near the communities they affect. These mechanisms preserve trust, reduce enforcement costs, and embody the subsidiarity principle: resolve at the lowest competent level, escalate only when rights or scale thresholds are breached.

Yet their trajectories diverge in the institutional sequencing of inclusion and oversight. Nigeria's reforms emerge from the bottom up, through urban ADR centres that pilot quotas for women mediators, require written records, and link community settlements to formal courts. These initiatives strengthen procedural transparency but remain uneven, as rural foras retain opaque elder rotations and undocumented rulings that perpetuate exclusion. Pakistan, by contrast, advances from the top down, embedding *Jirgas* within statutory and bureaucratic structures after the FATA merger. Legal amendments and administrative rules formalise documentation, define selection criteria, and experiment with women's participation in campaign *Jirgas*, incremental but institutionalised inclusion.

Functionally, both systems now perform the same governance task: translating legitimacy into legality through documented, reviewable, and participatory decision-making. Nigeria's trajectory demonstrates innovation through experimentation, while Pakistan has consolidation through formalisation. Their divergence lies not in purpose but in path, Nigeria's pluralism grows through adaptive decentralization; Pakistan's through calibrated legal incorporation. Together, they show that hybrid governance achieves democratic deepening when participation and transparency are designed as constitutional circuitry, not aspirational rhetoric.

Vertical Accountability: Alternative Justice Mechanisms and Democratic Pathways

Viewed through the lens of subsidiarity as a circuit rule and legal pluralism as constitutional architecture, Nigeria and Pakistan display functional equivalence in how they structure hybrid justice around vertical

accountability. Both systems seek to preserve the cultural legitimacy of local forums while embedding them within constitutional oversight. In each case, subsidiarity ensures that disputes are handled "at the lowest competent node," while pluralism transforms community-based dispute resolution into a recognised layer of state justice. Emirate councils, vigilante panels, and *Jirgas* function as translation engines, converting customary legitimacy into enforceable settlements that reflect local moral economies.

Their trajectories diverge, however, in institutional sequencing and the density of oversight mechanisms. Nigeria's pathway is bottom-up and experimental. ADR centres in Kano and Lagos integrate customary mediators through registration, documentation, and appeal linkages to state courts. The NHRC's monitoring of vigilante practices further connects community justice to national human rights frameworks, but enforcement remains weak due to limited institutional capacity and uneven geographic coverage. Pakistan's evolution is top-down and codified. Post-FATA reforms, such as the KP Land Acquisition (Amendment) Act 2020, legally formalise *Jirga* proceedings, mandate record-keeping, and establish direct appellate supervision by provincial courts and the Peshawar High Court.
Functionally, both achieve the same end, anchoring local justice in constitutional norms while retaining accessibility and trust, but through different circuits of accountability. Nigeria's model thrives on adaptive local innovation, while Pakistan's depends on statutory integration and judicial assertion. These trajectories reveal a shared constitutional logic: subsidiarity enables cultural resonance; vertical accountability safeguards rights. Where Nigeria experiments toward coherence, Pakistan legislates toward legitimacy, two paths converging on the same hybrid ideal of justice that is both locally grounded and constitutionally alive.

Sustainable Legitimacy

Sustainable legitimacy in hybrid governance depends on whether cultural authority can remain credible while being disciplined by constitutional norms. Using the lens of subsidiarity and state-in-society architecture, both Nigeria and Pakistan demonstrate functional equivalence in how they sustain legitimacy through shared design logics, local primacy, procedural

documentation, and conditional recognition. Yet they follow divergent trajectories in how these logics are institutionalised, revealing two models of endurance: adaptive pluralism in Nigeria and codified integration in Pakistan.

In Nigeria, legitimacy is sustained through iterative subsidiarity: community forums retain first-line authority in civil, land, and family disputes, but their decisions gain durability only when recorded, co-signed, and reviewable. The Lagos Citizens Mediation Centre and NHRC pilots exemplify this: legitimacy flows from local consent, but sustainability comes from traceable records and appeal pathways. However, weak clerical infrastructure and politicised traditional hierarchies limit consistent oversight, producing uneven legitimacy that thrives on proximity but falters on procedural depth.

Pakistan, by contrast, embeds legitimacy through institutional codification. The post-FATA reforms and KP Land Acquisition (Amendment) Act 2020 formalised *Jirga* outcomes within a judicially supervised framework, ensuring that legitimacy is not merely cultural but legally renewable. *Jirgas* retain symbolic authority, yet their settlements must now be documented, gender-inclusive, and reviewable by the Peshawar High Court. Here, sustainability is bureaucratically constructed rather than socially improvised.

Both systems prove that sustainable legitimacy is neither inherited nor decreed, it is programmed through accountability loops. Nigeria's flexible pluralism and Pakistan's statutory integration achieve the same function: converting social trust into enforceable justice. Their divergence lies in tempo and texture, Nigeria evolves legitimacy through negotiated adaptation, Pakistan through legal codification. In both, sustainability endures when legitimacy is not static but renewable through transparency, inclusion, and procedural memory.

Embedding Hybrid Justice as Constitutional Infrastructure

The comparative findings from Nigeria and Pakistan reveal that hybrid justice systems, customary councils, ADR centres, *Jirgas*, and vigilante panels, already perform constitutional work at the local level. They translate authority, manage disputes, and anchor compliance in ways that formal institutions alone cannot achieve. The policy task is therefore not to replace these forums but to discipline, document, and integrate them through rule-bound pluralism. The following actionable recommendations translate the findings on integration, inclusion, vertical accountability, and sustainable legitimacy into implementable reform pathways.

A. Institutionalise Hybrid Justice through Licensing and Legal Hooks

- **Action:** Enact a *Customary Justice (Recognition and Integration) Bill* at federal or provincial levels to register and license all community dispute-resolution forums.
- **Design:** Require (1) annual licensing, (2) publication of mediator lists, (3) written records of settlements, and (4) appellate access to formal courts.
- **Outcome:** Converts informal authority into *regulated legitimacy*, ensuring transparency and constitutional linkage while preserving local trust.
- **Responsible Institutions:** Ministries of Justice, State Judicial Councils, Provincial Law Departments.
- **Timeline:** Drafting within 6 months; passage or executive regulation within 12 months.

B. Create a Digital Case Registry and Data Traceability Portal

- **Action:** Develop a low-cost, multilingual *Customary Justice Digital Registry* to record proceedings, rulings, and settlements.
- **Design:** Mobile-compatible interface allowing local clerks to upload decisions within seven days; auto-generated case IDs for cross-verification by courts and human rights bodies.
- **Outcome:** Establishes *procedural memory*, the foundation for appeals, judicial review, and policy learning.

- **Responsible Institutions:** ICT Ministries, NHRC, Judicial IT Departments, with support from UNDP or IDLO.
- **Timeline:** Pilot in two states/provinces within 9 months; national rollout within 18 months.

C. Institutionalise Inclusion through Co-Mediation and Gender Quotas

- **Action:** Mandate that every registered forum includes at least one trained woman mediator or observer for gender-sensitive cases.
- **Design:** Introduce *co-signature rules* for family, land, and inheritance disputes; require certified gender-sensitivity training for mediators.
- **Outcome:** Shifts inclusion from token representation to *procedural obligation*; ensures women's voices shape precedent in everyday justice.
- **Responsible Institutions:** Ministries of Women Affairs, Legal Aid Councils, Traditional Leaders' Associations.
- **Timeline:** Develop training curriculum within 6 months; quota enforcement after one licensing cycle (12 months).

D. Establish a Tiered Oversight and Appeals Mechanism

- **Action:** Link hybrid forums to designated *oversight nodes*, local courts, NHRC field offices, and district administrative tribunals.
- **Design:** Create a *three-step accountability circuit*:
  1. **Community Resolution Node** - local forum documents decision.
  2. **District Review Node** - clerical verification and digital entry.
  3. **Appellate Oversight Node** - judicial or NHRC review for flagged cases.
- **Outcome:** Embeds vertical accountability without bureaucratic overreach, ensuring subsidiarity and rights protection coexist.
- **Responsible Institutions:** Judiciary, NHRC, Ministry of Interior, Local Government Councils.
- **Timeline:** Integrate into digital registry rollout (within 18 months).

E. Finance Compliance through Performance-Linked Grants

- **Action:** Tie donor and government funding to measurable compliance indicators, documentation rate, gender participation, and rights review outcomes.
- **Design:** Introduce *Hybrid Justice Performance Scorecards* for each district or province, published quarterly.
- **Outcome:** Incentivises forums to meet inclusion and documentation benchmarks; links funding to demonstrated accountability.
- **Responsible Institutions:** Ministries of Finance, Planning Commissions, donor coordination units.
- **Timeline:** Pilot scorecard reporting within 12 months.

F. Professionalise Middle-Tier Capacity

- **Action:** Create a *National Mediation Service Corps* to train and deploy paralegals, record clerks, and gender mediators across hybrid forums.
- **Design:** Joint certification by universities, law schools, and ADR institutes, with annual accreditation renewal.
- **Outcome:** Builds *operational infrastructure* for consistent record-keeping and reduces dependence on untrained local elites.
- **Responsible Institutions:** Bar Associations, ADR Institutes, Ministries of Education and Justice.
- **Timeline:** Launch training within 9 months; deploy initial cohort by 18 months.

G. Codify Sanctions and Remedial Protocols

- **Action:** Introduce enforceable penalties for non-compliance, temporary suspension or revocation of forum licences for unrecorded or discriminatory decisions.
- **Design:** Empower NHRC or judicial councils to issue *compliance audits* and *rapid reversal orders* for rights violations.
- **Outcome:** Ensures accountability is not symbolic but *enforceable*, reducing impunity and strengthening rule-based pluralism.
- **Responsible Institutions:** NHRC, Attorney-General's Office, Local Government Oversight Boards.

- **Timeline:** To coincide with legal framework adoption (within 12 months).

H. Build a Sustainable Legitimacy Framework

- **Action:** Embed hybrid governance in constitutional and development planning frameworks as *state capacity multipliers*.
- **Design:** Include hybrid justice indicators in national governance indices and peace-building strategies; ensure budget allocations for documentation and review.
- **Outcome:** Shifts legitimacy from charisma or custom to *renewable institutional credibility*, anchored in transparency and rights compliance.
- **Responsible Institutions:** National Planning Commissions, Ministries of Justice and Interior, donor coordination platforms.
- **Timeline:** Integration in next national development plan cycle (within 24 months).

By translating functional equivalence into standardised, enforceable systems, through licensing, data traceability, inclusion, and tiered accountability, Nigeria and Pakistan can transform hybrid forums from informal brokers of order into credible instruments of democratic statecraft and long-term conflict prevention.

Conclusion

Drawing on field experiences from Nigeria and Pakistan, the analysis deliberately avoids romanticising "tradition" or stigmatising communities, instead foregrounding constitutional and human rights obligations in the engagement with traditional governance mechanisms. Sensitive references have been anonymised, and care taken not to expose vulnerable actors, while balancing critique with recognition of local agency. The comparative discussion is not intended as an endorsement of any single model but as a reflection on how states may navigate the tensions between legitimacy, rights, and governance in fragile or transitional contexts. This comparison of Nigeria and Pakistan demonstrates that hybrid governance is neither an

anomaly nor a temporary substitute for state authority, it is the operating reality of plural societies where legitimacy, capacity, and justice circulate through overlapping institutions. The challenge, therefore, is not to eliminate hybridity but to discipline and constitutionalise it. When properly designed, hybrid orders can extend state legitimacy into peripheral regions, enhance access to justice, and transform conflict from coercion into negotiation. When left unregulated, however, they risk entrenching exclusion, arbitrariness, and elite capture.

Hence there are four interlinked insights;

Integration must be institutional, not symbolic

By situating traditional forums within constitutional frameworks, the study seeks to contribute to knowledge without reinforcing stereotypes or undermining local peace building efforts since customary forums cannot remain informal or ad-hoc. Their continued operation outside statutory frameworks perpetuates legal ambiguity and weakens accountability. Both Nigeria and Pakistan would benefit from formal registration systems that document local rulings, create appeal pathways, and ensure compliance with national and international rights standards. Integration should not mean assimilation but structured interoperability, where traditional authorities function as first-instance mediators under the supervision of judicial and human-rights oversight bodies.[34]

Participation determines legitimacy

The inclusion of women, youth, and marginalised groups must move beyond token quotas toward procedural redesign. In Nigeria, expanding urban mediation models such as the Lagos Citizens Mediation Centre to rural councils could ensure gender-balanced panels and written proceedings. In Pakistan, scaling up reforms from Khyber Pakhtunkhwa, such as rotational leadership, public selection criteria, and documentation,

[34] Isser, "*Customary Justice,"* 2011.; International Development Law Organization (IDLO), *Embedding Customary Justice within Constitutional Frameworks: Lessons from Plural Legal Systems* (Rome: IDLO, 2019).; and World Bank, *Nigeria: Justice and Governance Review*.

can help embed equality within local deliberation structures. Participation is not a symbolic gesture; it is the foundation of sustainable legitimacy.

Accountability must be vertical and reciprocal

Oversight cannot rely solely on judicial review or donor monitoring. Polycentric accountability, linking community-level reporting, human rights commissions, and digital case registries, should ensure that local rulings are traceable, reversible, and publicly reviewable. Compliance latency, as observed in both countries, should be treated as a governance metric: the shorter the time between higher-court correction and local enforcement, the stronger the state's connective tissue.

Sustainable legitimacy depends on procedural trust

Cultural resonance gives traditional forums moral authority, but procedural predictability secures enduring legitimacy. Codified rules of deliberation, transparent appointment of elders, and public reasoning of verdicts can preserve local legitimacy while meeting constitutional standards. Hybrid systems must evolve toward what Ostrom (2010)[35] calls "nested institutions," self-governing entities that operate within shared rules but retain adaptive autonomy.

Taken together, these insights suggest that conflict transformation in hybrid settings requires more than co-existence between state and customary institutions; it demands calibrated collaboration. State institutions must learn to recognise the governance value of customary forums, while customary actors must internalise constitutional safeguards as part of their legitimacy repertoire. The result is not a zero-sum trade-off between state sovereignty and cultural autonomy, but a polycentric order in which authority is shared, accountability is enforced, and justice is co-produced through multiple yet coordinated pathways.

[35] Elinor Ostrom, *Understanding Institutional Diversity*.

Ultimately, the sustainability of peace and justice in plural societies depends less on the eradication of informal authority than on its disciplined integration. By embedding participation, transparency, and oversight into the circuitry of hybrid governance, Nigeria and Pakistan can transform customary institutions from parallel sovereignties into legitimate partners in statecraft, extending the rule of law where the state alone cannot reach.

Hybrid governance becomes sustainable when constitutional safeguards are localised, participation is institutionalised, and accountability is polycentric. The path forward is not replacing traditional authority, but embedding it within a rule-bound, inclusive, and responsive constitutional ecosystem.■

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