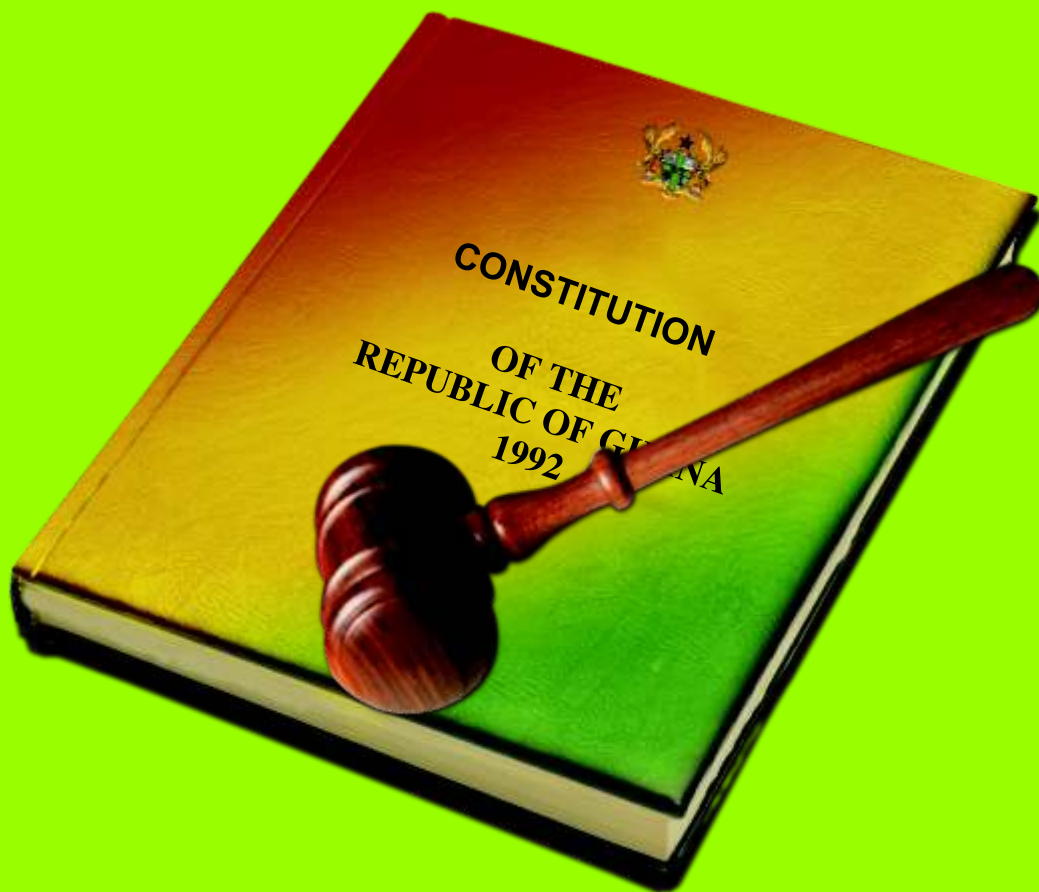

Constitutional Review Series 9

CHIEFS AND TRADITIONAL AUTHORITIES AND THEIR ROLE IN THE DEMOCRATIC ORDER AND GOVERNANCE



IEA
Ghana

THE INSTITUTE OF ECONOMIC AFFAIRS



THE INSTITUTE OF ECONOMIC AFFAIRS

**CHIEFS AND TRADITIONAL AUTHORITIES
AND THEIR ROLE IN THE DEMOCRATIC
ORDER AND GOVERNANCE**

*HM Osagyefo Amoatia Ofori Panyin
the Okyenhene*

This work was carried out with the aid of a grant from
The United Nations Democracy Fund (UNDEF).

© 2010 **Copyright by The Institute of Economic Affairs**

Printed in Ghana. All rights reserved. No part of this work may be published, used or reproduced in any manner without written permission of the publisher except in the case of quotations in critical articles and reviews.

Publication of this work signifies that The Institute of Economic Affairs regards it as a competent treatment worthy of public consideration. The findings, interpretations and conclusions of this paper are entirely those of the author and should not be attributed to The Institute of Economic Affairs or any organizations that support it.

The Institute of Economic Affairs (IEA) Ghana was founded in October 1989 as an independent public policy institute dedicated to the establishment and strengthening of a market economy and a democratic, free and open society. It considers improvements in the legal, social and political institutions as necessary conditions for sustained economic growth and human development.

The IEA supports research and promotes and publishes studies on important economic, socio-political and legal issues in order to enhance understanding of public policy.

Further information may be obtained from:

The Institute of Economic Affairs,
P.O. Box OS1936, Osu, Accra, Ghana.

Tel: +233-302244716 / 307010714

Fax: +233-302222313

Email: iea@ieagh.org

Website: www.ieagh.org

ISBN: 988-584-14-8

ISSN: 0855-3238

Preface

The writer, the Okyenhene, Osagyefo Amoatia Ofori Panyin, makes a vigorous case for the chieftancy institution's unchallenged and inherently democratic role, its structure and stabilizing role in Ghanaian societies prior to the imposition of colonial rule in 1874. He traces the beginnings of the erosion of hitherto undisputed traditional authority, the birth and growth of corruption among chiefs and other traditional authorities, and the subsequent dependence of chiefs on the colonial government as a source of power. The role of education in replacing chieftancy as the repository of wisdom, influence and reverence and the subsequent marginalization and resentment of the institution by natives is well argued.

The paper makes a strong defence for the relevance of the chieftancy institution in modern democratic Ghana, and argues the need to integrate our cultural and traditional values into modern government and society.

The forced acquisition of stool and family lands by government through pernicious legislation and unjust “moribund socialist legislation” which seizes and vests stool lands which contain minerals and other natural resources in the state, receives scathing opposition, and a specific demand for the restoration of Akyem Abuakwa land rights prior to 1957.

Concluding, the writer advocates the fusion of traditional and modern forms of justice and the adoption of a decentralized system of government, noting that it will strengthen the chieftancy institution.

We look forward to receiving your feedback and hope you find this publication useful.

Thank you.

Jean Mensa
Executive Director

Introduction

I want to specially commend the Institute of Economic Affairs (IEA) for its invaluable intellectual interventions in the governance and socio-economic wellbeing of our dear country. Some of us still recall, with great admiration, the positions this Institute assumed during the early days of the 4th Republic when opposing the government of the day, which despite constitutional protection, was still dangerous. By defiance and sheer gusto, the IEA has built a reputation on the back of its critically-acclaimed annual commentary on the nation's budget which has become the people's unofficial audit on their government's planning and handling of the economy. As a contemporary organization with apparent concern for matters economic, I least expected you to be interested in chieftaincy; a bedrock institution much maligned by governments and wanton ideologues intent on consigning it to history. To both I have a simple word: ***“unhappy are the people who cut themselves from their past”***¹ for, in spite of slavery, colonial onslaught, and misguided attempts by successive governments to emasculate it, the institution of chieftaincy has stayed vibrant and is still revered highly today by the people.

Historical Significance of Chieftaincy

Chieftaincy, Ghana's most enduring socio-cultural institution, has borne and will continue to bear the thankless task of providing cohesion to underpin the nation-state. Many, including me, sincerely believe that without the deep-rooted traditional values and norms of the collective nationalities, the *Constitution* alone would be unable to sustain the state. The point is well underscored in Edward Blyden's warning that the soul of every race ***“finds expression in its [traditional] institutions”*** and that ***“no people can profit by or be helped under institutions which are not the outcome of their own***

¹ Gladstone

character”.²

Traditional governance in our country³ dates back at least five hundred years and the typical pre-colonial state or kingdom was deliberately organized into a decentralized political system for efficient administration. The state [*Oman* in Akan⁴] structure was, as elsewhere, pyramidal comprising communities categorized according to size – hamlets, villages, towns and cities – and at the helm was the king or sovereign, called *Omanhene* in Akan. Each community had their own overlord or overseer, called *Odikro* or simply *Ohene* in Akan depending on size and influence. The election or selection of a ruler, *enstoolment* was by a well-acknowledged hereditary process accepted and respected by all citizens. The ruler, once in office, was supported by a court of servers and a council to advise, to make and interpret laws, to impose taxes, and to wage wars. The above-described governance system has not changed for centuries and is still observed today.

Misconceptions and False Perceptions

Perhaps, due to the absence of written procedures and documentation, many critics have strayed into mistakenly believing that democratic principles were/are nonexistent in traditional governance systems... nothing could be farther from the truth! The value of consultation and popular consensus in traditional governance was recognized and demonstrated in the practice of making public announcements or issuing orders in the name of 'king and council' [a practice continued to this day], and as indicated earlier the selection or election of a ruler was/is by a culturally-sanctioned means of popular approval. Similarly, removing or *destooling* a ruler was/is carried out with little fuss after giving the

² Quoted in Basil Davidson [1964]; *The African Past*, p.42

³ My paper will rely predominantly on the *akan* traditional system for illustrations but note that the same or similar systems obtain across the country

⁴ Refers to a people with the same linguistic and cultural identity found predominantly in Ghana

affected ruler hearing, often in open court, for his defense. A traditional ruler who persistently ignored the advice of his council violated custom and risked removal from office, *destoolment*. Brodie Cruickshank, a civil servant of the pre-colonial period [1834-52] observed: “...among none of those chiefs living under the protection of the [British] government is their authority of such consequence as to withstand the general opinion of their subjects; so that, with all the outward display of royal power the chief moved at the will of the people”.⁵ The foregoing account, though not conclusive proof that *democracy* as it is known and practiced today was and/or is inherent in traditional governance, sufficiently counters the wild assertions of those wishing to ban the institution altogether on the false ground that it is undemocratic. Certainly, there has never been and, it is safe to assume, there will never be popular elections in the selection of a ruler.

Governance by Collaboration

Notwithstanding the shortcomings inherent in traditional governance, Addo-Fenning makes the point that any possibility of the system redefining itself and transitioning to a modernized form was foreclosed when colonial rule was imposed on 24 July 1874.⁶ As a result, the political governance of the nation-state transformed overnight from a familiar customary-based one to a strange distant-controlled one. Interestingly, since the colonial power did not intend to turn the country into a geo-political extension of Great Britain beyond economic interest they devised an arrangement to delegate authority to the local power structure for effective control. Known as *indirect rule*, traditional authority was brought into state governance as an extension of central administration to implement certain

⁵ Quoted from Kwame Gyekye [1997], *Tradition and Modernity*, p. 125

⁶ Addo-Fenning, R Professor, *Relevance of Traditional Governance*, p.38 of edited book of articles

agenda of government. For illustration, the Gold Coast Ordinance of 1883, inter alia, empowered chiefs to maintain peace and order.

Indeed, between the Ordinance and the application of the policy of indirect rule, enormous power was placed in the hands of chiefs, the majority of whom at that time were illiterate and regularly indigent. Through lack of understanding, the colonial government had caused into being a potent force for abusing power and many chiefs could not restrain themselves from the temptation. Ignored by the Government and left to fend for their needs as best they could, several chiefs chose the easier option of simply turning their tribunals into 'money mints' instead of the 'justice founts' that they were meant to be. Preoccupied by instability and wars in Europe and elsewhere around the world, Great Britain took its focus off the colonies for much of the early half of the 20th century, and with chiefs and their hangers-on in control, mismanagement of public resources, judicial abuses, and political corruption, unknown in traditional governance, started. Clearly, the overwhelming circumstance brought about by the unusual collaboration between two strange systems had created a third system later called *native administration*, a sub-culture that quickly set on a direct collision course with the people and chiefs as well.

The Transition

The despicable conduct of native administration resulted in popular disillusionment across much of the Gold Coast. The colonial government, determined to bolster chiefs at all cost for the sake of indirect rule, tasked the chiefs to draft legislation, called the Native Administration Ordinance of 1927, to restore order and confidence in the nascent civil and political structure that was being nurtured into place, but it proved ineffectual in only a short while. By 1930 the Government could no longer condone the 'rot' in the native administration and so it engaged in a rethink of policy concerning

local governance. The result was the introduction of executive control over native administration via treasury oversight by authorizing the payment of salaries and expenses to personnel from an account into which fees and fines were to be paid, unlike before when they simply pocketed what they had squeezed from citizens through draconian impositions. This was the precursor to ordinances that later established native treasuries, direct local taxes, and finally *local government administration*.

The Native Treasury benefitted immensely from these interventions and it provided an opportunity for education of a new generation of chiefs who then became catalysts themselves for economic and social development. Foremost among this rising cadre of enlightened chiefs was (my great-grandfather) Nana Sir Ofori Atta, who considered the provision of facilities for education as a solemn duty of chiefs toward the community, and from the 1920's he continually appropriated personal and treasury resources to educate both at home and abroad numerous sons and daughters of Akyem Abuakwa. From 1937, when the Abuakwa State Treasury was established, he applied treasury funds to building schools, the most famous being the Abuakwa State College. In 1943, he guaranteed funds from the State Treasury for setting up the Abuakwa District Education to promote and supervise education in Akyem Abuakwa. A special tax 'education rate' was collected from all adult citizens and paid into the central treasury at Kyebi to meet the needs of education.

Similar efforts were pursued in other traditional communities around the country; for example the celebrated luminary, Dr. K.A. Busia benefitted from a scholarship to Great Britain from the Asanteman Council. It is fair to conclude from the dramatic transformations that were taking place in the colony, as a direct consequence of the newfound interest in education, that it became the main catalyst by which the transition from traditional to modern

governance took root and seamlessly became entrenched in the Gold Coast. All of a sudden education became the cynosure for both royalty and ordinary people, rather than the trappings of chieftaincy. By the end of World War II, the centuries-old institution of chieftaincy as a governing power had yielded to a modern civil, police, and military administration run by the colonial government. The journey to becoming a glorified ceremonial institution with little role in overall governance of the country had begun.

Marginalization

The disaffection and open opposition to chieftaincy had hardened already by the mid 1930s when the introduction of native treasuries sought to reclaim their lost respect and political credibility. Western-style education did for the British what guns could not have done in a hundred years, as educated youth 'in European garb', confessing Christianity, and employed as clerks in the civil service and companies, begun showing resentment towards their illiterate chiefs whom they deemed 'ignorant and stupid'. At this time, the Government was also coming to the conclusion that the State Councils⁷ were not truly representative of the people, hence the palpable absence of the confidence and support of their subjects. In 1947, the Government decided, notwithstanding the growing opposition, to retain and include *chieftaincy* in the democratization process which was well underway.

The Government's position came under severe pressure following the birth of the Convention People's Party CPP two years later. The Party saw chiefs as collaborators with the imperialists and threatened that those in league with the British will "*one day run away and leave their stools*".⁸ To fulfill this threat, the first year of

⁷ Of Chiefs selected to help governance

⁸ Richard Rathbone [2000] *Nkrumah and the Chiefs: the Politics of Chieftaincy in Ghana 1951-66* p.23

CPP rule was marked by a spate of destoolments which prompted a colonial official, in answer to a question in the House of Commons, to say that Britain had “*abandoned the chiefs to the wolves*”, adding “*there was probably no alternative*”. The Local Government Ordinance of 1951 transferred to Councils created under the ordinance all functions and general administration formerly performed by the native authorities and native treasuries.

Partial and Cosmetic Restoration

Despite the public tirade and vehement call to exclude chieftaincy from the political system, the CPP Government of 1951 strangely approved a role, albeit diminished, in the Legislative Assembly [Parliament] and in Local Government for chiefs. The dramatic turnaround may have been influenced by virulent alerts raised by the Coussey Committee to the effect that “*The whole chieftaincy institution is so closely bound up with the life of our communities that its disappearance would spell disaster. Chiefs and what they symbolize in the society are so vital that the subject of their future must be approached with the greatest caution. No African of the Gold Coast is without some admiration for the best aspects of chieftaincy and all would loathe doing violence to it ...*”.⁹ Not surprisingly, the Independence Constitution of 1957 guaranteed chieftaincy as established by customary law and usage, a precedent which has been followed by successive republican constitutions. In fact, the Fourth Republic Constitution of 1992 gave very high visibility to chieftaincy in several key national institutions including the Council of State, thereby affirming the importance of chiefs in national development. So far, though, the effort to include chieftaincy in national governance has been partial and cosmetic.

⁹ In JR Ayee “New Models and Implications for Integrating Chieftaincy into Decentralized Democratic Governance: Implications for Democratic Governance” 2003, p.3

The Changing Face of Chieftaincy

It is farcical for anyone to think, or even conjecture the thought, that chieftaincy is anachronistic and irrelevant in public affairs and, thus, must be done away with. For a start, it would take nothing less than an alien force with a mission diametrically opposite to that of the people to emasculate the potency of customary and cultural values. These values are entrenched and one is mindful of exempting themselves from their observance and coverage. Indeed, every Ghanaian is initiated into their culture at birth by customary naming and ushered into the world beyond, again, by customary farewell, never mind the increasing inclusion of contemporary religious rituals. I submit without equivocation that chieftaincy is the embodiment of the cultural and customary essence of the life of the people and that destroying one is destroying the other.

Interestingly, democratic governance in Ghana, in all ramifications, draws its strength from the traditional governance structure and it is fair to say that national politics would not be as tolerant were it not for the effective and impartial handling of the people by chiefs, especially when one considers the stabilizing role they play during elections. There is no gainsaying the fact that from community to community, the authority of chiefs continues to be more revered, not feared, and their views and directives more likely to be implemented than that of government. The question may be asked, therefore, as to the justification for the incessant and misguided ambition of some politicians to seek to muzzle the institution of chieftaincy when the evidence palpably shows that chieftaincy commands more influence and respect than political parties, which continually fail to deliver in the administration of the country. After fifty years of self-rule [a checkered period that witnessed a five-fold increase in population from 4.5m to 24+m without a corresponding change in public service], it is time to overhaul the system of governance and devolve meaningful political power and administration to localities.

Over the years, the pathetic picture of the illiterate, poor, unfair, and ill-mannered ruler has given way to one of educated, wealthy, and civil-mannered rulers dedicated to improving the living conditions of their people. This emerging crop of progressive rulers are beginning to sound the *caution*, loud and clear, that none can be more concerned with the well-being of their people than they are and the challenge is now out there. Coincidentally, the demise of socialism/communism, the most insidious form of political and governmental system to enter the world in the twentieth century, appears to justify traditional governance and strengthen the resolve of proponents not to give up.

The Future Role of Chiefs

As the search for a better constitution progresses, traditional rulers are calling, in unison, for the hands of the clock to be turned in the reverse direction to erase the humiliating impositions of draconian legislations by successive governments on the custom, culture, and lifestyle of the people of this country:

Cultural Revolution

We, as traditional rulers, will do our part; let Government do its part. The contribution that culture makes towards national unity and identity has been widely recognized and I stand here to make the case for 'a cultural revolution' to assimilate our culture into the technological age. In this assignment we as chiefs, by virtue of our close-knit relationship with the people, are uniquely placed to become the perfect vehicles for modernization. Chiefs are prepared to remove aberrations and obsessive fixation on past ways of doing things that contribute to much of the frustration and restiveness in our rural communities. The Government must be ready for a partnership of progress by working with chiefs to reach

communities, just as the colonial administration did with indirect rule.

Land and Land Resources

Foremost in the long list of complaints is the issue of land and land resources. Devised initially to deny opposition chiefs income and, thereby, socio-political influence, the cry for abrogation of land seizure laws and return of control to original owners has gained much currency lately.

In many cases, the lands used for mining operations in Ghana have been forcibly acquired from peasant farmers under ambiguous regulations. Sometimes this acquisition occurred with no compensation. In many instances, the mines have been responsible for the dislocation and forced resettlement of communities numbering thousands.

Historically, the statutory or legal regime for managing land in Ghana is based on three (3) principal enactments. These are:

- ? The Land Registry Act, 1962 (Act 122)
- ? The Administration of Lands Act, 1962 (Act 123)
- ? The State Lands Act, 1962 (Act 125)

These laws were all passed during the First Republic and were all Socialist-oriented legislation, unjust in nature and outlook, and confiscatory of property rights. In both letter and spirit, these laws run contrary to all the ideals of the Founding Fathers of this great Republic.

Over the years, the economic development paradigm has shifted from Socialist State control to Liberal Capitalist philosophy. One cannot build a Capitalist superstructure on a Socialist legal

foundation and expect it to succeed, especially if one is promoting Golden Age of Business and Private Sector Development.

For us to be competitive in the global economic system, Chapter 21 of the Constitution of 1992, dealing with lands and natural resources has to be reviewed. Those moribund socialist legislative foundations, which unfortunately found their way into the 1992 Constitution, are denying traditional authority its rights to property ownership. To be a respected partner in this globalised world, ownership of some of these natural resources should be placed in the hands of traditional rulers, Ghanaian business men and women, industrialists, financial consortiums and entrepreneurs.

There is no economic independence or growth imaginable when the people of a particular area do not own and control their land and natural resources.

Beside special/specific purpose acquisitions, there is no just reason why a government would usurp the rights of its own citizens in their property. Akyem Abuakwa is making a demand for the restoration of their land rights before 1957. It is arrant nonsense, in this day and age, to pretend that people are incapable of managing their affairs. So, I wish to commend Government for implementing the new land management policy [Land Administration Programme, LAP].

Traditional Courts

The limitation of the traditional court is known and it is also a fact that the modern law and judicial system has failed to deliver justice in many ways to the people. I advocate for a hybrid that would see traditional courts and jurisprudence becoming an effective first port of call for civil disputes between individuals and families.

Decentralization

The unitary form of government practiced in the country may have

been a wise recommendation sixty years ago as a cost-effective and convenient way to administer a newly-independent nation with a low population and a, barely visible functional civil and public service. The country has grown beyond the capacity of the centralized system of administration and the time has come to genuinely delink local socio-economic life from the politics of the centre. The fear of politicians as far as decentralization is concerned is the prospect of losing influence vis-à-vis traditional authority since chiefs would become undisputed titular heads of the local governance system and, thereby, wield considerable control in national politics. Nothing could be farther from the truth. The truly legitimate aspiration of modern chieftaincy is to bring better living conditions to their people, and decentralization is regarded as a means by which chiefs would be empowered to pursue that goal. With decentralization, more responsibility and accountability is vested into the local district.

Conclusion

The challenge of the next fifty years is whether we have the wisdom, courage and political will to use our natural resources to create wealth to enrich and elevate our national life and to improve the quality of lives of our people. We need to consider generations yet unborn in the planning and policy making of our national development for sustainability.

Constitutional Review Series Also Available

The Hybrid Constitution and Its Attendant Difficulties

Hon. Prof. Mike Oquaye.

Constitutional Dilemmas: The Omission of Provisions on a Defecting President Or an In-operative Vice President

Dr. Vladimir Antwi-Danso

Rethinking the Size of Government: A Case For Constitutional Amendment.

Nana Ato Dadzie

To Cap or Not To Cap: The Supreme Court of Ghana.

Justice Kludze

The Panel System at the Supreme Court: Merits and Demerits.

Justice Kludze

Rethinking Decentralization and Local Government In Ghana- Proposals for Amendment

Kwamena Ahwoi

Determination of Emoluments- An Assessment of Article 71 of the 1992 Constitution

Prof. Stephen Adei

Natural Resource Management in Ghana: Arguing A Case For Constitutional Amendment

Justice Emile Short