

Politics, Chieftaincy and Customary Law in Ghana's Fourth Republic

by

Isaac Owusu-Mensah
iowusumensah@yahoo.com
Department of Political Science
University of Ghana

Abstract

Ghana's political system is a duality of traditional and modern systems of government. Thus, the Constitution of Ghana recognizes the institution of Chieftaincy within its statutory democratic governance. This recognition of chieftaincy emanates from the role played during three phases of Ghana's political history (pre-colonial, colonial and post-colonial). Chieftaincy has been the bedrock of Ghanaian society over the years. This paper examines the relationship between politics and chieftaincy in Ghana in the context of customary law by tracing the position of chiefs throughout the history of Ghana. Furthermore, the paper argues that Chieftaincy in Ghana is the custodian of customary values and norms, one of the few resilient institutions that have survived all the three phases of Ghana's political history; and that it occupies the vacuum created by the modern partisan politics.

Introduction

Ghana over the last twenty years has earned recognition internationally as the beacon of democracy in Africa south of the Sahara and indeed in most of Africa. The nation has also earned a "democratic dividend" as evidenced by greater international recognition, significant inflow of direct foreign investment, improvement in social-economic conditions of the populace, a free and vibrant media, and through transparency in the governance space. The nation however, continues to cherish and maintain ancient traditional values as exemplified by the institution of chieftaincy based on custom and usage. Thus, chieftaincy is the custodian of the customary values and norms of the nation; it is customary laws that regulate civil behavior in traditional governance with judicial, legislative and executive powers. As a result, this paper seeks to assess how politics has longitudinally influenced the institution of chieftaincy and customary law.

The Chieftaincy Institution in Ghana

Chieftaincy is one of the few resilient institutions that have survived all the three phases of Ghana's political history during pre-colonial, colonial and post-colonial eras irrespective of the general attitude towards chiefs, and the institution. Chieftaincy is therefore the bedrock of Ghanaian society; and consequently the political leadership cannot undermine its credibility without aggressive political, social and repercussions. According to the Centre for Indigenous Knowledge and Organizational Development (CIKOD), a local non-governmental organization that focuses on the development of indigenous institutions in Ghana, 80% of Ghanaians claim allegiance to one chief or another¹. Hence, the people consider chieftaincy as the repository of the history and tradition of Ghana; and the custodian of indigenous traditions, customs and usage. Furthermore, the institution is considered as the bond between the dead, the living and the yet unborn that occupies the vacuum created, by the modern partisan political structures, in terms of customary arbitration and the enforcement of laws at the communal level.

A unique feature of chieftaincy in Ghana is gender. The responsibilities and positions of male and females are well defined in the institution in accordance with tradition and custom. In northern Ghana, especially among the *Dagomba* three skins, namely, *Kukulogu*, *Kpatuya* and *Gundogu* is purposely reserved for women, hence, the modes of succession are particularized. For example, among the matrilineal *Akans*, the top leadership positions and the responsibilities are divided between males and females; and the heir to the stool is normally a male, but a female ought to nominate him.

Furthermore, positions on the Traditional Councils in southern Ghana, with the exception of executioners, have male and female equivalents that complement each other in traditional governance. With this background, it would be appropriate to explain who is a chief in Ghana. The title "chief" has a long historical trajectory: various colonial and post-independence constitutions and military regimes have provided various definitions to suit the exigency of the regime, and the time. These changes and re-definitions are key elements permeating through in the recognition of the custom and tradition.

The Chieftaincy Act, 2008 Act 759, defines a chief as "a person who hailing from appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage". The Act further sets minimum qualification for a chief; the candidate must be a person who has never been convicted of high treason, treason, and high crime or for an offence dealing with the security of the State, fraud, dishonesty or moral turpitude². In addition, section 58 of the Act stipulates a hierarchical structure of chiefs recognized in the nation as:

- Asantehene and Paramount Chiefs
- Divisional Chiefs
- Sub-Divisional Chiefs
- Adikrofo
- Others Chiefs reorganized by the National House³

Hence, any person holding up as a chief must belong to one of these categories outlined by the Act to ensure that appropriate privileges and responsibilities are accorded him or her in accordance with the Chieftaincy Act.

Chieftaincy in Pre-colonial Ghana

The present political map of Ghana, with clearly established administrative structures and boundaries, where an Executive President governs with the support of 10 regional ministers and 216 district chief executives, represents a significant evolution from pre-colonial Ghana. Thus, Ghanaians were organized into ethnic states during the pre-colonial era, and the paramount chiefs served as the executive head with the support of a council of elders. Some of these states were the Asante; the Dagomba; the Gonja; the Anlo, and many others with boundaries geographically different from their current regional demarcations. For example, the Asante state spanned four different regions of contemporary Ghana.

Chieftaincy in the pre-colonial era was the main system of government that combined legislative, executive, judicial, religious and military responsibilities; and these functions were replicated at the appropriate level of the traditional governance structure, i.e., at the level of the community and up to the paramount chief.

The lower-level chiefs received instructions from the higher chiefs in all aspects of administration. The communities and divisional chiefs had responsibility to report on the state of affairs of the community to the paramount chiefs during annual durbars. Nonetheless, these types of institutions were not the same as the Western institutions in terms of structure and administrative procedures, however, the substance of their responsibilities as well as the privileges attached, created the same social and political cohesion similar to the actions done in the Western countries at the time.

According to Frempong (2006), the political and social systems of pre-colonial Africa did not represent “a golden age” and was hesitant to implement the pre-colonial social and political system wholly to modern Ghana. The system however exhibited high tenets of democracy and the protection of human rights ideals and freedoms of expression within the context of their traditional values and cultures⁴. Frempong (2006) further asserts that the newly found Alternative Dispute Resolution (ADR) is a recast of time-tested pre-colonial conflict resolution mechanism administered through the chieftaincy institution which sought to reconcile individuals and communities as well as improve social relations beyond mere settlement of disputes of conflicting parties⁵. The chieftaincy institution during the pre-colonial period was not regulated by external legislation beyond the respective traditional councils (the Traditional Areas were considered as independent entities with apposite sovereignty).

Chieftaincy in the Colonial Era

Over the long period of colonial rule, the chieftaincy institution was refined, restructured and integrated into the British Colonial administrative system. This was an efficient means of facilitating control and effectively reducing the cost of governance, and thus, marked the genesis of the legal framework to regulate the institution. Prior to this period, chiefs with the support and recommendation of their council of elders enacted laws to regulate their jurisdictions⁶.

Hence, three main considerations determined legislation regarding chieftaincy. First, the institution was tailor-modeled to suit the British Colonial requirement at the time, second attempts were instituted to practice a colonial policy before ordinances were introduced to legalize such practices, and third, chiefs who resisted the laws of the colonial administration were deposed or deported⁷.

Furthermore, the colonial legislations on chieftaincy were driven by the need to comprehend the growing discontent that increasingly threatening the position of the chief. Social discontentment emanated from the agitations of the educated elite and the youth against colonial policies meant to exploit the indigenous people and pilfer the mineral wealth of communities as some chiefs acted as colonial agents. Chiefs in these communities consequently lost their long-held community reverence, because they were considered betrayers, and consequently the stability of the social order with the chiefs as the foremost constituents became a concern for the colonial regime⁸.

The Gold Coast (now Ghana), became an official British colony in 1874 with the Order in Council of 1856 which defined local norms, customary law, practices and usages. In this backdrop, amongst the first major legalization of the chieftaincy institution was the Chiefs Ordinance in 1904, an instrument meant to support the evidence of the election, installation and deposition of chiefs in accordance with local custom. The preamble of the Ordinance reads, “An Ordinance to facilitate the proof of the election and installation and the deposition of chiefs according to native custom⁹”

A major inroad made into the authority of the local chieftaincy institution was the requirement to align their position and make it dependent upon the recognition through notices issued by the colonial government. Hence, the colonial regime set out to modernize indigenous institutions and redesign them to suit the British models of monarchy¹⁰. However, the British had promulgated the appropriate legislative instruments meant to give legal legitimacy to colonial activities, native custom was highly respected and recognized, and this appreciation of customary law in Ghana was further enhanced with the enactment of Native Authority Ordinance in 1932.

The Native Authority Ordinance of 1932, section 3, provided that: “The Chief Commissioner may by Order made with the approval of the Governor may constitute any area and define the limits thereof; assign to that area any name and description he may think fit; appoint any chief or other native or group of natives to be a native authority for any area for the purpose of this Ordinance; and may by the same or any subsequent Order similarly made declare that native authority for any area shall be subordinate to the native authority for any other area”

The Ordinance thus capacitated the colonial regime to create more chiefs and head chiefs. For example, some parts of current Upper East, Upper West and Volta Regions were considered as cephalous societies as the communities lived without any central authority system. Therefore, social controls were accomplished by communal consensus; family units were very strong in protecting and providing for the sustenance and needs of individuals; and the colonial authorities created and established “chiefs” as heads of empires, kingdoms and principalities and gave them native authority for the purposes of implementing colonial policy¹¹.

The emergence of colonial rule in the Northern Ghana coincided with the devastation and decline of the centralized states of *Mamprugu*, *Dagbon* and *Gonja* by the slave raiding and trading activities of the Samory and Babatu, which placed the three main kingdoms on the verge of disintegration¹². People were enslaved from two main sources; first, chiefs served as collaborators to sell the people and secondly, where slave masters raided communities, they also took their captives as slaves. Subsequently, these Chiefs enthusiastically signed agreements of protection with the British, and in turn, the British restored peace, order and confidence among the people as the colonial regime restructured and legitimized relations among various ethnic groups and chiefdoms within the three states.

According to Ladouceur (1974), five ethnic groups, *Mamprugu*, *Kusasi*, *Grunshi*, *Frafra* and *Builsa* were merged with *Nayiri* (Chief of Mamprugu) as the paramount chief. On the North West (present day Upper West Region) *Wala*, *Dagarti* and *Sissala* were combined under the leadership of *Wa Na*. Furthermore, several unassimilated ethnic groups such as *Nchummuru*, *Nawuri*, *Mo*, and *Vagala* were subsumed with the *Gonja* chiefs, and the *Konkombas* and *Chokosis* were made subjects of *Ya Na*¹³ of the *Dagomba* kingdom.

In spite of these compulsory amalgamations of different independent ethnic groups, each of them continued to maintain their customary laws on peripheral issues such as marriage, divorce, widowhood rites etc. However, a major issue such as access to and ownership of land continued to generate conflicts in northern Ghana.

Nevertheless, a key developmental feature during the Colonial era was the emergence and development of the modern state machinery, which created state institutions such as the Legislative Council, Judicial Council, the West Africa Frontier Force and the Gold Coast Police Force to perform functions, which hitherto were carried out by the chiefs within their respective traditional areas. Consequently, the institution of chieftaincy and its functions were gradually subsumed by the Ghanaian state within the colonial administrative structure, and chiefs who were previously vicious adversaries during the pre-colonial period, later came to appreciate the necessity of co-operation amongst traditional authorities and institutions, against the common imperial power, for mutual benefits and co-existence.

Chieftaincy in Post-colonial Ghana

The erosion of the powers of the chiefs by the British colonial administration, made the relationship between chiefs and central government after independence uncertain. The question arose whether chiefs should be allotted the same powers they possessed during the pre-colonial past or be accorded the same treatment granted them under colonial period rule.

Some schools of thought argued for the complete abolishing of the institution because of the role played by chiefs in collaborating with the colonial regime to oppress the indigenes, besides the apathy of the traditional institutions towards the nationalist movements. Also it was conceived that the movement towards statehood without any traditional or indigenous appendages will be appropriate. The political leadership at the time examined the space occupied by the institution and appreciated the need to maintain them, provided however that the State continues to exercise some form of control over it.

The 1957 and the 1960 Constitutions guaranteed the institution in accordance with custom and usage, although the nature of the relationship between the central government and the chiefs was complicated. For example, the personal idiosyncrasies of President Kwame Nkrumah as a socialist surfaced strongly; he had very little reverence for chiefs and the perception that some Asante and Abuakwa chiefs supported the opposition party during the struggle for independence fuelled the hostility. Thus, the regime passed Act 81 which defined a chief as an individual who has been nominated, elected and installed as a chief in accordance with customary law; or as a person recognized by the Minister responsible for local government¹⁴.

The Act also guaranteed powers to the Convention Peoples Party's (CPP) government to meddle in chieftaincy matters without recourse to the Regional and National Houses of Chiefs. Thus, chiefs were to conduct their affairs in a manner that suited the government. In fact, President Nkrumah once stated that "Chiefs will run away and leave their sandals¹⁵". And according to Bofo-Arthur, the CPP attempted to marginalize, control and humiliate some chiefs and that CPP President Nkrumah subjugated and suppressed the economic autonomy of chiefs through various laws which made them malleable¹⁶. Hence, the very anti-thesis of this position is borne out by history; the chiefs did not run away, but they have seen several changes in political leadership while contributing to state building; indicating the highly resilient and deeply-rooted nature of their institution (the overthrow of CPP regime was a welcome-relief to the institution).

Furthermore, the 1969 Constitution recognized the institution with the Traditional Councils, Regional and National Houses of Chiefs to be an integral part of the state machinery; and all chieftaincy matters were to be handled by the respective constituent bodies of the institution. The recognition was further enhanced with the passage of the Chieftaincy Act, 370 in September 1971, which remained as the main and substantive legal instrument for the institution until the 2008 Chieftaincy Act was passed. And most interestingly, the respective military regimes of Ghana also embraced the institution and accorded it the required dignity it deserved, in spite of the initial skirmishes that infrequently ensued between them. The military accepted and supported the institution as a means of acquiring political legitimacy.

The 1992 Constitution of the Fourth Republic (born after presidential and parliamentary elections in December 1992, taking effect in January 1993) affirms the relevance of the institution of chieftaincy, with Article 270(1) stating:

- The institution of Chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed.
- Parliament shall have no power to enact any law which confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purposes whatsoever; or in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.
- Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of clause (1) or (2) of this article if the law makes provision for: the determination, in accordance with the appropriate customary law and usage, by a Traditional Council, Regional Houses of Chiefs or National House of Chiefs or chieftaincy Committee of any them, of the validity of nomination, election, selection, installation or deposition of a person as chief; and a Traditional Council or Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana¹⁷.

Articles 271 to 274 of the 1992 Constitution outline the establishment, functions, and jurisdiction of the Regional and National Houses of Chiefs. However, Article 276 departs from the previous Constitutions with legal frameworks on chieftaincy which debars chiefs from “active” engagement in party politics. Consequently any chief who wishes to participate in “active” party politics must abdicate his or her stool or skin. The objective of this provision is to uphold the sanctity of the traditional values inherent in Ghanaian culture and vested in the chieftaincy institution. This, it is hoped, would absolve the institution from the rancor and wrangling associated with partisan politics.

The Constitution however makes provision for Chiefs to be involved in the management of the state on issues that protect the custom and tradition of the people. Hence, mandatory constitutional provisions have been made for their representation on the following:

- Article 89 (2b) states “The President of the National House of Chiefs to be a member of the Council of State¹⁸” this is the singular institutional representation on the Council of State.
- Article 153(m) “ A representative of National House of Chiefs to be a member a member of the Prisons Council¹⁹”
- Article 233 b(1) “A representative of Regional Houses of Chiefs on the Regional Coordinating Councils²⁰”
- Article 256 b (i) “A representative of the National House of Chiefs on the Land Commission²¹”
- Article 261 (b) “A Representative of the Regional House of Chiefs on the Regional Land Commission²²”

Consequently, chiefs are appointed to serve on various statutory boards and commissions, such as, the Forestry Commission, National Aids Commission, Constitutional Review Commission, Ghana National Petroleum Corporation Board, and many more. Chiefs are also appointed on emerging situations to serve as on disasters, planning committees, etc.

The Chieftaincy institution has regularly received budgetary support from the central government to meet its recurrent expenditure-requirements, payment of sitting allowances and a monthly stipend of 80 Euros per paramount chief and 60 Euros per paramount queen mother. And every Traditional Council, Regional or National House of Chiefs is provided with administrative and a technical staff, who also are employees of the Civil Service of Ghana.

The staff are also responsible for: the management of the respective secretariats of the chiefs, the provision of technical guidance to the chiefs in respect to customs and traditions, the law and various instruments that may impact on the work of the chiefs, conducting research to help in conflict resolution (settlement of disputes), and they also serve as the public relation officers of the chiefs. In addition, the Ministry of Chieftaincy and Culture was set up in 2006 (via influence of the African Peer Review Mechanism) to demonstrate government's commitment to the institution. The relationship between the chiefs and government of Ghana has been cordial with the inception of the Fourth Republic. However, the creation of the Ministry of Chieftaincy and Culture has afforded the chiefs direct representation at the cabinet meetings to bring issues that obstructs the development of the institution to the attention of the government.

Customary Law in Africa

Before the advent of European (British, Portuguese and French) colonial rule in Africa, each ethnic group had devised and designed their own mechanism for resolving disputes and administrating justice across the continent in accordance with the customs and laws which were recognized and accepted by the people. Although these customs varied from one traditional area to another, they served the purpose of protecting and safeguarding the fundamental human rights of people, without compromising the security of the community.

The invasion of Africa by the Europeans brought in a new legal regime based on a European legal system that worked to eliminate or suppress indigenous African systems through critical analysis and interpretation, and thus, the purpose was to understand and integrate it or to completely wipe it out and subsequently impose a European system as a replacement.

According to Olawale, African laws and customs faced a very strong opposition from various groups associated with the colonial regimes; the Christian missionaries regarded "African law and custom as merely detestable aspects of paganism which must be wiped in the name of Christian civilization"²³ and subjected to the higher law. They contended that African customary laws consisted of an "undifferentiated mass of customs, rituals and inhuman practices", a perspective that persisted because the missionaries interpreted African laws from a Western stand-point, and through Euro-Christian religious lenses.

Colonial District Officers, also adopted a "policy of sublimation of the native law" to ensure that it approximated to a European standard. The District Officers were of the perspective that many of the interpretations provided for native laws were incorrect and their experiences in Africa made them very skeptical of anthropological theories that existed to postulate any form of credence of African custom²⁴,

However, some anthropologists such as Gluckman offered a different interpretation of African customary law. According to Gluckman, the two fundamental principles of law, that is, the preservation of personal liberty and the protection of private property are fully enshrined in African customary law. Hence, he asserts that,

I have studied the work of African courts in Zululand and Rhodesia, and I found that they use the same basic doctrines as our courts do. African legal systems, like all legal systems, are founded on principles of the reasonable man, responsibility, negligence, direct and circumstantial and hear-say evidence, etc. African judges and laymen apply these principles skillfully and logically to a variety of situations in order to achieve justice²⁵

This form of objectivity and intellectual analysis about African customary law provides a good platform for assessing the roots, as well as, the basis of African legal systems that serve as the foundation of justice for people in Africa.

Sir James Marshall, former Chief Justices of the Gold Coast and Nigeria, asserted that the indigenous people have their own laws and customs which are better adapted to their conditions than the complicated English jurisprudence which is considered as universally applicable²⁶. And furthermore, the acceptance of African custom in any court in Africa will usually follow the same procedure as practiced in English courts, that is, in the absence of previous decisions and authoritative textbooks to guide the court, the custom must satisfy the following test, it must: have continued without interruption for as long a period as living testimony can cover; be certain and definite in its incidence; be limited either to a locality or in respect of the class of persons affected or in its nature, and it must be reasonable²⁷.

Customary Law and the Law in Ghana

Customary law is considered as a set of established norms, practices and usages derived from the lives of people²⁸. Native law or custom was not authoritatively defined in any general statute in Ghana until 1960, when the Interpretation Act defined it as thus;

“Customary law, as comprised in the laws of Ghana, consists of rules of law which by custom are applicable to particular communities in Ghana, being rules included in common law under any enactment providing for the assimilation of such rules of customary law suitable for general application.²⁹”

In general, customary law has traits that distinguish it from other forms of law, such as the common law. Amongst these are adaptability, popularity, flexibility and communal focus³⁰. The scope of customary law in Ghana is broad; these include but are not limited to: chieftaincy, access to and ownership of lands, marriage rites, spousal rights, succession rights etc. Each traditional area in Ghana has forms of customary laws which are applicable to their particular communities. Furthermore, customary laws are generally unwritten and its judicial system procedures are informal with emphasis placed on negotiations and reconciliation by the disputing parties. However, some elements in the customary laws are well defined and cast in stone, to the extent that leadership of communities cannot compromise on their application wherein leaders are compelled to implement appropriate punishment irrespective of the status of offending parties.

Verhelst (1968) maintains that two main approaches have been used by various African countries to retain and adapt their customary laws to their legal systems, they are reliance on the processes of judicial interpretation and judicial development, that is, common law; and to resort to legislation or codification, including restatement of the customary law³¹. However, the complexity of application of customary laws has given prominence to judicial interpretation of these laws within a particular context, especially when there is contention of a custom. Woodman (1996) argues that the most trustworthy evidence of customary law, as defined, consist of previous decisions of the court³². Hence, to ascertain the validity of a customary law, witnesses, such as chiefs, linguists, and other elders learned in custom, are called to testify in court on the contents of a particular custom subject at stake³³. Local customs, which are not repugnant to natural justice, equity and good conscience, are thus considered part of the customary law. And for a custom to be in consonance with natural justice, equity and good conscience it must not be incompatible either directly or by implication with any law for the time being in force; and it must not be contrary to public policy³⁴.

Article 11 of the 1992 Constitution stipulates the sources of law in Ghana as enactments made by or under the authority of the Parliament established by the Constitution; existing laws; Orders, Rules and Regulations made by any other authority under a power conferred by the Constitution and the common law of Ghana (the common laws of Ghana encapsulate customary laws).

The Constitution of Ghana defines customary law as rules of law which by custom are applicable to particular communities in Ghana³⁵. Here, the challenge emanating from the definition is “applicable to particular communities in Ghana.” Woodman contends that courts have declared a huge number of customary rules applicable throughout Ghana³⁶. For example, the process of installing a chief must conform to the established norms and customs of the people in the traditional area. Ollennu (1966) maintains that these rules of general applicability should not be considered as components of customary law, but instead, they must constitute a core part of the common laws of Ghana³⁷. Woodman (1996) contests Ollennu’s argument, that, although these customs of general applicability, they may not be appropriately integrated into the customary law, and thus their integration into the common law will be much more difficult.

The Constitution, in upholding the customary laws of Ghana has involved the National House of Chiefs. Furthermore Section 49 of the Chieftaincy Act which enjoins the National House of Chiefs to undertake a progressive study of the various Traditional Councils through the respective Regional Houses of Chiefs to interpret and codify customary laws with a view to evolving appropriate cases for a unified system of rules for customary laws in the country³⁸. The National House of Chiefs, through its Research Committee, has over the years consulted key stakeholders to undertake this constitutional mandate.

Emerging Issues

One of the main features of the institution of chieftaincy in the post-colonial era is the manifestation of inter and intra-ethnic conflicts, fuelled and perpetuated by the institution. Although there were pockets of inter-ethnic conflicts during the pre-colonial era, resulting from attempts to extend the territories of one ethnic group at the expense of another, the post-independence intra/inter-ethnic conflicts have been disquieting which as considerably affected the membership of the Regional Houses of Chiefs by creating vacancies.

Consequently, the National House of Chiefs with the support of the Konrad-Adenauer-Stiftung and the United Nations Development Program have undertaken several projects to ensure that the appropriate lines of succession are well-defined to forestall the litigations that have been bedeviling the revered institution, as the death of a chief ushers in the opportunity for a chieftaincy dispute.

Hagan (2006) elucidates three critical factors that may account for litigations and disputes with respect to stools and skins:

- Affluent personalities in society with ambiguous claims to royal stools and skins fiercely contesting the position with the poorer royals who refuse to succumb to the illegitimate contenders, thereby generating perpetual litigation in the selection of occupant to the stool or skin³⁹.
- Legitimate royals have increased in number over the years, as well. Hence the competitive-claims have become highly intense among the families and lineages. Consequently, some royal members are prepared to use fire-arms in the settling of disputes regarding election of occupants to stools and skins⁴⁰.
- The tenure of a chief terminates only at death: life-long and this generates a lot of anxiety among legitimate royals who are potential candidates to the stools and skins. This leads to frivolous and wasteful litigations and strife in the communities⁴¹.

In these causal-factors of chieftaincy conflict, the role played by customary law cannot be understated. Kingmakers, including queen mothers and learned elders in some traditional areas have sought refuge under the customary law to unduly fuel conflict; yet, the State is completely barred from interfering in the traditional succession customs of the people.

The tabulation below demonstrates the extent of disharmony that exists within the Regional Houses of Chiefs. A total of 64 vacant seats, out of 263 or 24% of the national total of chiefs as a result of litigations that require state intervention, but each traditional area seeks to protect its customary law on chieftaincy and succession and therefore, they insulate themselves from State intervention.

Table : Distribution of vacant seat in Regional Houses of Chiefs in Ghana.

Region	Number of Seats of per Regional House	Disputed seats per Regional House	Percentage of disputed seats
Ashanti	39	4	10.3
Brong-Ahafo	49	16	32.6
Central	34	3	8.8
Eastern	11	3	27.2
Greater Accra	22	3	13.6
Northern	20	12	60
Upper East	17	4	23
Upper West	17	5	29
Volta	32	8	25
Western	22	6	27.2
Total	263	64	24

Source: National House of Chiefs, June 2013

Reflections for the Future

Chieftaincy as an institution has been integrated into the governance structures of the nation, thus it is incumbent on the institution to entrench its relevance in the midst of the Westernization of Ghanaian youth, the options offered by modern technology, and the general eroding of Ghanaian culture. In the light of these challenges the institution of Chieftaincy must prove itself beyond legal privileges and status quo to command a new reverence from urban and rural Ghanaian. And to accomplish this task,

- The institution must develop a system of peer review, which would allow a paramount chief from a different traditional area to monitor and evaluate the custodial responsibility and programmes of another traditional area with the objective of facilitating the progress of that particular traditional area. The peer review system could curtail wanton sale of stool lands to unscrupulous investors who connive with mendacious chiefs to exploit the resources of their communities.
- The chieftaincy institution is encumbered with a wide array of disputes at all levels of the institution: from the small hamlet or village head to the paramount chief across the entire ten regions of the nation. These flippant and costly chieftaincy disputes are the main sources of recurring and devastating conflicts. Although political parties occasionally trigger conflicts which heighten the societal temperature, these incessant conflicts in the spectacle of modern Ghanaian politics which compel people to brand the chieftaincy institution as outmoded and conflict-oriented. Consequently, chiefs have a responsibility to convince the people of Ghana of their relevance, and make strenuous efforts to curtail the menace of persistent and recurring conflicts.
- There is a need to establish appropriate administrative and financial frameworks for chiefs. This will empower the State to mainstream sufficient resources for the institution of chieftaincy, to insulate the institution from direct political manipulation and control. The current arrangements where the National House of Chiefs are treated similarly to any government agency is disquieting. The meager allowance of 80 Euros per month for paramount chief must be reviewed and adjusted to sustain the reverence Ghanaians have for their traditional leaders.
- Customary law is very useful source of law in Ghana; it protects traditional customs and values handed down through several centuries. It is imperative for the nation to engage in continuous education on the legal and constitutional ramifications of neglecting or undermining customary law in the respective Traditional Councils. Some traditional areas have had vacant stools for 30 years; hence, indigenes of these traditional areas are deprived of the opportunities of representation at the Regional and National House of Chiefs (it is important that the chieftaincy institution intensify their the efforts to remedy this challenge).

Conclusion

This paper has sought to examine the relationship between politics and chieftaincy in Ghana in the context of customary law. The paper has therefore traced the position of chiefs throughout the pre-colonial, colonial and post-colonial eras. The historical evidence demonstrates that each political regime, from the colonial period until the Fourth Republic has had engagement with chiefs which underscores the unique place of the institution of chieftaincy. The institution has had a very turbulent relationship with government from the early independence years, but currently the institution has attained great political, social and cultural space in the political system. Throughout the pre-colonial and colonial era to all other regimes in the Republic, the essence of customary law has been respected, recognized, and promoted as a major source of law in Ghana, especially laws with respect to land acquisition, ownership and distribution. Thus, Chieftaincy in Ghana is indeed the custodian of the customary values and norms of the nation; one of the few resilient institutions that have survived all the three phases of Ghana's political history; the bedrock of the Ghanaian society; an institution that is considered to be a link between the dead, the living and the yet unborn, and consequently, it is a revered institution that occupies the vacuum created by the modern partisan political structures in regards to customary arbitration and the enforcement of laws at the communal level.

End Notes

¹ A study conducted by Centre for Indigenous and Organizational Development in 2006.

² Chieftaincy Act, 2008 Act 756, (Accra: Assembly Press, 2008).

³ Chieftaincy Act, 2008 Act 756, (Accra: Assembly Press, 2008).

⁴ Frempong, A.K. D. Chieftaincy, Democracy and Human Rights in Pre-Colonial Africa: The Case of the Akan System in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).

⁵ Frempong, A.K. D. Chieftaincy, Democracy and Human Rights in Pre-Colonial Africa: The Case of the Akan System in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006)

⁶ Henry Saidu Daannaa, History of Chieftaincy Legislation in Ghana, a paper presented at a seminar organized by Eastern Regional House of Chiefs. 2010

⁷ Henry Saidu Daannaa, History of Chieftaincy Legislation in Ghana, a paper presented at a seminar organized by Eastern Regional House of Chiefs. 2010.

⁸ Kwame A. Ninsin “ Land, Chieftaincy, and Political Stability in Colonial Ghana”, Research Review 2(1986): 2.

⁹ The Chiefs Ordinance, 1904

¹⁰ Kumado C.E.K. “Chieftaincy and the law in modern Ghana” University of Ghana Law Journal Vol. XVILL(1990-1992) 194-216

¹¹ Nana Arhin Brempong. “Chieftaincy An Overview” in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).

¹² N.J.K Brukum. “Chieftaincy and Ethnic Conflicts in Northern Ghana, 1980-2002” in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).

¹³ Ladouceur, P.A., Chiefs and Politicians: The Politics of Regionalism in Northern Ghana (London: Longman, 1974) 35.

¹⁴ Chieftaincy Act 1961, Act 81 (Accra: Assembly Press, 1961).

¹⁵ Nana Arhin Brempong. “Chieftaincy An Overview” in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006)

¹⁶ Kwame Boafo-Arthur “Chieftaincy in Ghana: Challenges and Prospects in the 21st Century” in Ghana Chieftaincy in Ghana: Culture, Governance and Development. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006)

¹⁷ The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)

¹⁸ The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)

-
- ¹⁹ The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)
- ²⁰ The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)
- ²¹ The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)
- ²² The Constitution of Republic of Ghana (Accra: Assembly Press, 1992)
- ²³ Olawale Elias , *The Nature of African Customary Law* (Manchester: University of Manchester Press 1956)
- ²⁴ Olawale Elias , *The Nature of African Customary Law* (Manchester: University of Manchester Press 1956)
- ²⁵ M. Gluckman, *The Observer* University of Manchester July 1951 cited from Olawale Elias “ The Nature of African Customary law”(Manchester: University of Manchester
- ²⁶ Olawale Elias , *The Nature of African Customary Law* (Manchester: University of Manchester Press 1956)
- ²⁷ Lewin Julius, “The Recognition of Native Law and Custom in British Africa” *Journal of the Royal African Society*, Vol. XXXVII March 1938, MacMillan.
- ²⁸ Julie A. Davis and Dominic N. Dagbanja “ The Role and future of Customary Tort Law in Ghana: A cross-Cultural Perspective” *Arizona Journal of International and Comparative Law*, Vol. 26. No.2 (2009) 303.
- ²⁹ Interpretation Act 1960 (Accra: Assembly Press, 1960)
- ³⁰ Gordon R. Woodman, *Customary Land Law in the Ghanaian Courts* (Accra: Ghana Universities Press,1996)
- ³¹ Verhelst Thierry, *Safeguarding African Customary Law: Judicial and Legislative Processes for its adaptation and Integration*, Occasional Paper No. 7 African Studies Center, University of California, Los Angeles, 1968.
- ³² Gordon R. Woodman, *Customary Land Law in the Ghanaian Courts* (Accra: Ghana Universities Press,1996)

³³ N.A. Ollenu and G.R. Woodman. *Ollenu's Principles of Customary Land Law in Ghana* (Birmingham: Carl Press, 1985) xxv

³⁴ Ogwurike C. "The Sources and Authority of African Customary Law" *University of Ghana Law Journal* III, No. 1 (1966) 11-20.

³⁵ *Constitution of the Fourth Republic of Ghana*, (Accra: Assembly Press, 1992).

³⁶ Gordon R. Woodman, *Customary Land Law in the Ghanaian Courts* (Accra: Ghana Universities Press, 1996)

³⁷ N.A. Ollenu, *The Law of Testate and Interstate Succession in Ghana*, (London: Sweet and Maxwell, 1966) .

³⁸ *Chieftaincy Act, 2008 Act 756*, (Accra: Assembly Press, 2008).

³⁹ George P. Hagan " Epilogue" in *Ghana Chieftaincy in Ghana: Culture, Governance and Development*. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).

⁴⁰ George P. Hagan " Epilogue" in *Ghana Chieftaincy in Ghana: Culture, Governance and Development*. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).

⁴¹ George P. Hagan " Epilogue" in *Ghana Chieftaincy in Ghana: Culture, Governance and Development*. Ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Sahara Publishers, 2006).