CHIEFTAINCY CONFLICTS IN NORTHERN GHANA: THE CASE OF THE BIMBILLA SKIN SUCCESSION DISPUTE

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Abstract

The ongoing chieftaincy dispute in Bimbilla, in Northern Ghana, is between two princes from the same gate, each claiming to have been enskinned by the appropriate authorities, as a Bimbilla Naa, overlord of the Nanumba people. This dispute is unique in two ways: it is an intra-gate dispute, and, reveals an inherent power struggle between two powerful kingmakers in the making of the Bimbilla chief. Between May and November 2007, data was collected in Tamale, and in Bimbilla, and some of its surrounding settlements. Data was gathered from primary documents such as archival material and court documents, and, through informal conversations and in-depth interviews with the disputing parties, and some of the kingmakers.

Introduction

In the Northern parts of Ghana, chiefs and kings sit on skins. This explains why disputes involving skins are expressed in forms like the Yendi (Dagbon) Skin Affairs, Bimbilla Skin Affairs, the Wa Skin Dispute, the Buipe Skin Affairs, or the Nandom Skin Dispute. These skins are symbols of office. In Oti-Volta languages, Naum is the office or title represented by a skin, and Naa, is the office holder. Writing about the Mamprusi in Northern Ghana, Drucker-Brown says, “Chiefly office is called “skins” (Drucker-Brown 1975:101).

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These are piles of skins used by past rulers and every new ruler adds a new skin to the pile. These skins range from that of a cow, leopard, and lion according to the strength of the office. The skins are considered sacred; past rulers become ancestors, and current occupants, their descendants. Today most chiefs sit on leather pillows placed on these skins. Thus, whilst chiefs in Northern Ghana sit on skins and are enskinned, their counterparts in Southern Ghana sit on stools and are enstooled. This explains why disputes involving chieftaincy titles in Ghana are disputes over skins and stools.
of 15 members. These 15 members comprised eight ex-officio members, four elected members, and three specially elected members. Its role was and has been purely advisory as against the legislative authority the chiefs had demanded in the 1960s. The House of Chiefs received much tolerance from the country's first Prime Minister. Since its establishment in the 1960s, the Botswana House of Chiefs has largely remained an advisory body to parliament and government. Nevertheless, as late as 2005, the Botswana House of Chiefs was still considered an influential body advising parliament, and with many tribal and other organizations fighting to have representation therein. In 2005 the Botswana Parliament passed a constitutional amendment bill dealing with membership of the House of Chiefs. But as early as February 2007, of the 47 tribes in Botswana, 20 still remained unrepresentative but who are still fighting for inclusion.

It is not in every country that institutionalized chieftaincy is called House of chiefs. In South Africa, writing almost around the same time, both Ineka Van Kessel and Barbara Oomen (1997) and Leslie Bank and Roger Southall (1996) examined the fight of traditional leaders for inclusion in the post-independent legislature of South Africa. The Congress of Traditional Leaders in South Africa (CONTRALESA) represents their House of Chiefs. CONTRALESA was launched in September 1987 in Johannesburg, South Africa, to represent the interest of chiefs. Towards the end of the 1980s, Chiefs were re-orienting themselves toward the African National Congress when it was perceived as the new ruling party in waiting. Like their counterparts in Botswana, the South African chiefs campaigned for the establishment of House of Traditional Leaders based on the model of the British House of Lords and demanded simultaneously that their representation in this house ought to be based on democratic principles of one man one vote. The new (independent) constitution has provided constitutional safeguards for traditional rulers. There are constitutional provisions for the establishment of Houses of Traditional Leaders at the provincial level, and a 20-member Council of Chiefs at the national level. Under Article 183 of the 1993 South African Constitution, a Provincial house of traditional leaders shall be entitled to advise and make proposals to the provincial legislature or governments in respect of matters relating to traditional authorities, indigenous law or the traditions and customs of traditional communities within the province. The constitution also specifies that any provincial bill pertaining to

Postcolonial Africa, political fragmentation is a common phenomenon. Whilst in Africa "[P]olitical fragmentation is a widely lamented legacy of colonial rule...the implications of political fragmentation are not entirely negative." On the positive side, these "domains of authority are readily identifiable as the realm of state sovereignty and the realm of traditional government; both systems effectively govern the same citizens-subjects overlapping each other but not parallel or in opposition to each other. A key state which he used in the following sense:

The idea of dual authority implies a systematic relationship between two coexistent dimensions of government. I use the term "incorporation" to connote the inclusion of elements of one dimension within structures of the other.

Then he adds: "My discussion of incorporation ... is limited to the assimilation of traditional institutions by the organs of sovereign governments." Sklar's position is that contending domains of political authority are nurtured as legitimate mediums of governance and administration, and does not lead to marked, dual and competing authority. It is through incorporation that traditional institutions like chieftaincy become part of modern state structures.

Chieftaincy and State Relations in Selected African Countries

In Botswana, traditional institutions tolerated by the state are called Houses of Chiefs. One of the scholarly works which gives us insight into the Botswana House of Chiefs is Proctor's (1968) study of The Houses of Chiefs and Political Development of Botswana (1968). Proctor traces the inception of the Botswana House of Chiefs to the early 1960s. In 1960 before the coming into force of the Botswana Constitution, the chiefs had demanded for a second chamber to be called House of Lords. After much negotiation and consultation with the British, a compromise was reached resulting in the establishment of the House of Chiefs. The 1966 Constitution of Botswana established a House of Chiefs to serve as a consultative body in respect to 'tribal matters.' Article 77 (2) of the constitution outlined the composition of the House of Chiefs to consist
traditional authorities, indigenous law, or such traditions and customs shall be referred to the provincial house of traditional leaders before the bill is passed by the provincial legislature. At the national level, the Constitution, under Article 184, provides for a Council of Traditional Leaders, which is mandated to advise the government on indigenous law, traditions and customs and other issues that affect chieftainship. In addition, the Council may at the request of the president, advice him or her on any matter of national interest. However, as late as the 1990s, South African Constitution did not have a single body responsible for deciding on chieftaincy issues. CONTRALESA has called for an independent commission of inquiry to sort out the issue once and for all. But the Constitutional Assembly, when dealing with calls to establish the authenticity of chiefs decided that this was the responsibility of the Department of Justice. The Department of Constitutional Affairs handles chieftaincy issues with the President having the final say over who is appointed a traditional leader. Similarly, the President can define the duties, powers, privileges, and conditions of service of traditional leaders, and can appoint and depose them when he deems it necessary. Throughout 1994 and 1995, CONTRALESA regularly rejected the terms of reference set out in the interim constitution, saying, “chiefs are fit to rule not only to advise.”

In the West African sub-region, Ghana aside, Nigeria is a country whose constitutions have continuously provided for the House of Chiefs. In Nigeria, the House of Chiefs for Northern Nigeria established by the 1945 Richards Constitution was the first in the country. This House of Chiefs was to be a legislative assembly. The McPherson Constitution which succeeded the Richards Constitution in 1951 extended the idea of a chiefs’ legislative assembly to the Western Region by creating a Western House of Chiefs. Thus, under the McPherson Constitution, two out of the three regions in the country had legislative assemblies for chiefs. Continuing the trend begun by the 1945 constitution, the 1963 Republican Constitution gave constitutional status to traditional rulers by retaining the Houses of Chiefs for the North and West and creating one for the Eastern Region. When the Mid-Western Region was created from the Western Region in 1964, its own House of Chiefs was created. These Houses of Chiefs were the upper chambers in the bicameral legislative system of the regions. They did not have any formal judicial roles. The 1979, 1989 and the 1995 Constitutions of Nigeria did not provide any meaningful political roles for traditional authority holders. The 1999 Constitution however, does not make any provision for traditional rulers to exercise any political power. Under the 1999 Constitution, traditional rulers are not even represented in the Council of State. Thus, as Agbese (2004) observes, with respect to traditional rulership, the 1999 Constitution is the most radical in completely eschewing chiefs from exercising any formal political power.

### Institutionalized Chieftaincy in Ghana Since Independence

The collective result of the constitutional agitations in the Gold Coast between Nkrumah’s Convention People’s Party and the opposition, spearheaded by the National Liberation Movement on chieftaincy, was that the institution of chieftaincy was given an apparently secure position in Ghana’s Independent Constitution (Order-in-Council), 1957. Ghana’s Independence Constitution (Order-in-Council) 1957, “made provisions for a measure of devolution and for the protection of chieftaincy” (Arhin Brempong 29). As a consequence, five regions were created. These five regions were each to establish a Houses of Chiefs. The Houses of Chiefs were established as one of the many compromises made in the 1957 Constitution between the demands of the two major parties; the Convention Peoples Party-CPP, and the National Liberation movement-NLM. The NLM for instance “wanted a constitutional settlement that would safeguard the position of traditional rulers” (Arhin Brempong 29; Grimal (299-300). At this time, the Houses of Chiefs were to act as appellate courts to the then state councils in resolving chieftaincy disputes. One year after independence, the 1958 Local Courts Act (No. 23 of 1958) was passed. In 1959, Nkrumah passed the Chiefs (Recognition) Bill. Chieftaincy Act of 1961 (81) succeeded the 1958 Local Courts Act. This act gave the Minister of Local Government power to appoint Judicial Commissioners to determine all matters concerning chieftaincy. From the time of independence to 1966 when Nkrumah was toppled from power, Nkrumah, the Minister of Local Government, the various Regional Commissioners, town and village party chairmen, chairmen of village and town development committees usurped the roles of chiefs. The only traditional role left the chief was the religious one of pouring libation in the stool house. Neither the local CPP chairman nor the chairman of the village/town development committee could perform
The Chieftaincy Act of 1961 (Act. 81) which repealed the 1958 Local Courts Act, established chieftaincy tribunals to deal with chieftaincy disputes. The 1971 Chieftaincy Act (Act 370) repealed the 1961 Act and conferred on the Houses of Chiefs the mandate as the only official courts (save the Supreme Court of Ghana) to determine the substance of chieftaincy disputes. All these acts were attempts by the postcolonial government to streamline the jurisdiction of chieftaincy, and also to control the activities of chiefs. More importantly, these acts were part of the general political history of Ghana which cannot ignore the role of chiefs and chieftaincy in the process of this political formation and transformation of the Ghanaian state. Finally came the Chieftaincy Act of 1961 which repealed the 1958 Local Courts Act. The 1961 Act established chieftaincy tribunals to deal with chieftaincy disputes. The 1971 Chieftaincy Act (Act 370) repealed the 1961 Act and conferred onto the Houses of Chiefs the mandate as the only official courts (save the Supreme Court of Ghana) to determine the substance of chieftaincy disputes. The 1971 Chieftaincy Act remained in force till 2008 when it was amended and replaced by the 2008 Chieftaincy Act, Act 759 which was gazetted on 20th June 2008.

The 1969 Constitution of Ghana for the first time provided for the creation of the National House of Chiefs whilst maintaining the Regional Houses of Chiefs. The Houses of Chiefs system was maintained in the 1979 and in the 1992 Constitutions without any significant alteration. In the 1992 Constitution, the state recognition of chiefs, which was part of the previous constitutions, had been removed. Also, from 1957 onwards the increase in the number of regions in Ghana has led to a corresponding increase in the number of the Houses of Chiefs and Traditional Councils.

The Contemporary Ghanaian Houses of Chiefs

Today the Houses of Chiefs in Ghana constitute the site for the performance of litigation on chieftaincy disputes by playing a complementary role to the judiciary. Structurally, there are three different categories of the Houses of Chiefs in Ghana. There are the Traditional Councils, the Regional Houses of Chiefs, and the National House of Chiefs. Though they are called the Houses of Chiefs, the chiefs did not build them, they are state establishments. Among the changes brought about by the Chieftaincy Act, 1961 (Act 81) was the substitutions of Traditional Councils for State Council, where a traditional area represented the term "state." The provisions on Traditional Councils in both Chieftaincy Acts, 1971 (Act 370) and 2008 (Act 759) do not differ significantly. Both Acts (370 and 759) have also made provisions for the establishment of Divisional Councils. However, apart from the statutory provision, there is no Divisional Traditional Council on the ground yet, as established by the state. Traditional Councils are at the basis of the hierarchy of the Houses of Chiefs. Every Traditional Area is supposed to have a Traditional Council but not all Traditional Areas have Traditional Councils. As at the end of 2007, there were 255 Paramount Chiefs in Ghana, with only 193 Traditional Councils in the country. This goes to emphasize the fact that Traditional Councils are given, by the state. When a Traditional Council is established in an area that did not earlier have one, the paramount chief of that traditional area becomes the automatic President of the Council, and his sub-chiefs whose names appear at the Registry of the National House of Chiefs, form the membership. Where a Traditional Council already existed, the paramount chief of that Traditional Area would become the President. In theory, all divisional chiefs whose jurisdictions fall within the Traditional Area become automatic members of the Traditional Council. It is not however the case that all these members can perform statutory functions such as sitting as judicial committee members to adjudicate on chieftaincy disputes. In order to be able to partake in the statutory functions of the Traditional Council, and to receive the monthly maintenance allowance every member must ensure that his name is entered in the Registry of Chiefs at the National House of Chiefs. Thus, any alteration in membership of the Traditional Council resulting from death, or a fresh enstoolment or destoolment, enskinment or deskinment, or abdication, the Traditional Council has the responsibility of informing the National Registrar of the National House of Chiefs who will cause the records in the Registry of Chiefs to be amended as such. It is from the various Traditional Councils that members are elected to represent the Traditional Councils at the Regional level in the various Regional Houses of Chiefs. Every paramount chief who is the automatic president of the Traditional Council is also an automatic member to the Regional House of Chiefs in the region. Other divisional chiefs whose names have appeared in the National Register of Chiefs at the National House of Chiefs are also members of the
Traditional Council who are elected to represent the Traditional Council at the Regional House of Chiefs. There are ten Regional Houses of Chiefs in Ghana provided by the state to the traditional authority holders to conduct their business and to serve as courts in chieftaincy matters. From the Regional Houses of Chiefs, five chiefs are elected to represent the House at the National House of Chiefs, given the House a membership of 50.

The Houses of Chiefs: Bureaucratizing a non-Bureaucratic Institution

Transforming Ghanaian chieftaincy institutions into bureaucratic institutions is facilitated by three things; The Ghanaian Parliament passing a Legislative Instrument (LI) allocating a Traditional Council to a particular paramount chief and his Traditional Area, the state putting up the structures and facilities in the that particular traditional area, and also recruiting support personnel to man the Traditional Council. With these three things in place, a paramount chief and his council of elders is suddenly transformed into a state institution. In Weber’s sociology of institutions, chieftaincy fit into categories of what he calls non-rational institutions as against the legal-rational type which is bureaucratic. In the case of Ghana the chieftaincy institution has not withered away but is rather transformed into a bureaucratic institution in the face of continuous modernization, democratization and bureaucratization of the state. Developments such as this create avenues for a rethinking of the chieftaincy institution, and the role it can play in state construction and administration. The state, instead of doing away with chieftaincy by constitutional and legislative or even military decrees as happened in some other African countries, has rather entered into a mutual cooperation with chiefs in the judicial administration of chieftaincy disputes.

The Houses of Chiefs represent an example of non-state institutions to which the status of statehood has been extended, one of the attempts to harmonize customary law and received English law into one state institution, which though operate side by side in dealing with certain issues, yet complement each other, in the same court in resolving chieftaincy disputes. It can be described as a hybrid of the English law and Ghanaian customary law in which attempts have been made to bring English law and practices closer to customary courts. From the moment a person files a case in a House of Chiefs till when a judicial decision is made on it, some bureaucratic principles are observed. Court practices such as the sitting arrangement of court officers, representation of parties by counsels trained in the English law, presentation of cases, examination of evidence, the recording of proceedings by hand, are observed in the Houses of Chiefs in the pursuit of their judicial functions.

Discussions and Some Conclusions

The death of chieftaincy was predicted many years ago along the process of modernization. However, actual demise of the chieftaincy institution has not been realized, and today most African countries have found constitutional means to incorporate (some) chiefs into the modern state structures making them a functioning part of the state. This arrangement is what Sklar has termed mixed government. In a symbiotic relationship, chieftaincy maintains its existence and resilience, and the state benefits from the numerous less-paid services chiefs continue to render to the people.

Chiefs play an invaluable role in Ghana’s judicial administration, either in its constitutionally guaranteed form or by the remoteness of the state from some of the people. The judicial role the Ghanaian has allocated to chiefs since independence has been to help decide disputes that threaten the very existence of the chieftaincy of the chieftaincy institution. This judicial role was strengthened by the 1971 Chieftaincy Act, and recently the 2008 Chieftaincy Act, Acts 379 and 759 respectively. The Ministry of Chieftaincy and Culture established in May 2006 has given more autonomy to chiefs in Ghana. The Judicial role mandated to the Houses of Chiefs has transformed the Houses of Chiefs into bureaucratic institutions as the state supports these institutions with administrative personnel and rules of operation.

In an attempt to explain the relationship between chieftaincy and some African states, Sklar (1993, 2003) adopted the concept of mixed government. In its classical sense, the concept of mixed government was adopted as an alternative measure to restore social order after the English Revolution (1640-1660). I acknowledge Sklar’s (2003) effort to explain the relationship of traditional political institutions and African modern states. However, today in Africa the relationship between chieftaincy and the modern state is more to the convenience of the state than an attempt to reconfigure power. The state can decide against these traditional institutions (and some African states have done this already) either through
a radical action of abolishing them or through a gradual constitutional limitation of the political space and power granted them in modern administration and governance. In another light, chieftaincy in Africa, both institutionalized and non-institutionalized chieftaincy is at the mercy of the state. In the examples of institutionalized chieftaincy in South Africa, Botswana and Nigeria, the respective states uses the constitution of the state and other acts to delimit the powers of the chieftaincy institutions.

In the case of Ghana, the Houses of Chiefs which are state institutions virtually accept whatever the state grants them. In making them part of the state courts, the 1993 Courts Act has placed them among the inferior courts though the 2008 chieftaincy Act (Act 759) gives powers of the High Court to the Houses of Chiefs. There has been no official protest to this inferior status granted them by the court Act. The support personnel who assist in the administration of these houses do not exactly know their status. Whilst their colleagues in the regular state courts such as the Circuit Courts and the High Courts, are public servants, they have been given the status of civil servants. They have protested several times, but the protests have not yielded the desired effect.

As far this paper is concerned, certain things stand out clear. Firstly, unlike in Ghana where the determination of the position of the chiefs is independent of the state, the positions of chiefs in Botswana, South Africa and Nigeria, are contingent on, and sanctioned by state. Secondly, unlike in the case of Ghana, institutionalized chieftaincy in the aforementioned countries not have constitutional role to play in the judicial administration in the state. Thirdly, whereas the political space granted to chiefs in other African countries are contracting across time, chiefs in Ghana are enjoying more political leverage, and becoming more part of the state. The issues that need further investigations are whether the Houses of Chiefs in Ghana are existing merely to satisfy the quest for chiefs be part of modern day’s administration in which case the state does not really need them—, or they have become historically and contemporarily inevitability.

Endnotes
1. Ray and Van Niuwaal (7).
2. Van Binsbergen (156), Van Kessel and Oomen (561), Mzala.qdt in Van Kessel and Oomen 565, Proctor 97, Rathbone, Chieftaincy and Politics in Ghana 3).
4. Düssing (33).
5. Ibid. 6.
6. Ibid.
7. Ibid.
8. Ibid.
9. Admittedly, colonialism brought about greater political unification, and not necessarily fragmentation. Indeed, colonialism created mega-tribes. I thank an anonymous reviewer for this comment.
10. Ibid. 4-5.
12. Sklar 2003: 9
13. Ibid.
14. Vaughan (xvii)
15. See Jones (especially pages 133-139).
16. See Article 77 (1) of the 1966 Botswana Constitution which establishes the House of Chiefs. However, Gillett (184) thinks the Houses of Chiefs were established in 1965.
17. Article 78 of the constitution provides that the ex-officio members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively. The four elected members as provided in Article 79 shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively. This same article explains how the three specially elected members of the House can be obtained. The Specially Elected Members of the House of Chiefs shall be elected by the ex-officio and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics.
18. Proctor (61).
19. In 1967 for instance, during the seventh meeting of the House of Chiefs, the chiefs refused to proceed on a discussion on a bill because the Minister, instead of representing himself, sent his Permanent Secretary. The meeting was adjourned until the minister could make time himself to appear before them. When the Chiefs reassembled later, they were joined by four ministers and, for a short while, by the President himself.
52. Despite this outward display of respect by the state, the Botswana House of Chiefs never realized its dream of becoming the country’s second chamber of the legislature.

21. Ibid.

22. Van Kessel and Oomen (562).

23. Ibid.

24. Ibid. In each of the nine provinces of South Africa, the Houses of Traditional Leaders have the right to be consulted by, and to advise and make proposals to, the provincial legislatures concerning traditional matters or indigenous law and customs. Opposition by a provincial house to any Bill concerning such matters will restrain regional legislatures from passing that Bill for 30 days. At the national level, there is a Council of Traditional leaders consisting of 19 members and a chairman. An electoral college constituted by members of the nine Provincial Houses of Chiefs chooses members of this council. The Council of Traditional Leaders is an advisory body which makes recommendations to the national parliament and likewise also posses delaying powers for 30 days. The South African president may also request for advice on any matter of national interest (Bank and Southall 409).

25. Ibid.

26. Ibid.

27. Ibid.

28. Ibid. 578.

29. Ibid. 418.

30. According to Section 63 (a-e) of the Order-in-Council, the five regions were; Eastern Region (including present day Greater Accra Region), Western Region (including the present Central Region), Ashanti Region (including today's Brong Ahafo Region), Northern Region (Including present day Upper East and Upper West Regions), and Transvolta/Togoland (the present Volta Region), (Arhin Brempong 35).

31. The State Councils were earlier established in 1951 after the coming into force of the Local Government Ordinance in August 1951. For a comprehensive discussion of these State Councils, see Rathbone (a2000, b2000).

32. It had a short life span but, it did strip the chiefs of their native courts, and up to date the chiefs lost all their statutory powers to adjudicate on civil and criminal cases (Acquah 68; also Arhin Brempong 36-37; Wilks 192).

33. This bill ensured that entstoolment or destoolment of any chief could be effective only if it was recognized by the government; the government had become the final kingmaker in all chieftaincy affairs in Ghana.


35. The debate whether or not to allow the High Court in Ghana to have concurrent jurisdiction with the Houses of Chiefs in adjudicating on chieftaincy disputes has started. See for instance Ekow Daniels (1972), Kludze (1998).

36. As established by Sections 12 (sub-section 1), 6 (sub-section 1) and 1 (sub-section 1) respectively, of the 1970 Chieftaincy Act, and section 12, (sub-sections 1 and 2 of the 2008 Chieftaincy Act, Act 759.

37. Ibid. 21.

38. Section 12, sub-section 1.

39. I thank Bernice, Research Officer, Eastern Regional House of Chiefs, and Mr. George Addo (Director Human Resource, Ministry of Chieftaincy and Culture) for this information.

40. The paramount chief of a traditional area or in the case of the Kumasi traditional area, the Asantehene, is the President of the Traditional Council. See Section 14 (1&2) of the 1971 Chieftaincy Act, Act 370 and section 13 (1) of the 2008 Chieftaincy Act, Act 759.

41. GHc 100 for every paramount chief, and GHc50 for those acting, and regents.


43. The National House of Chiefs is the highest decision making body for chiefs in Ghana. In dealing with chieftaincy disputes, it is the highest appeal court in which chiefs sit as panel members to adjudicate on chieftaincy disputes. For provisions on the National House of Chiefs, its officers, and functions, see Sections 1(1) and 1(1) of the Chieftaincy Acts, 1971 (Act 370) and 2008 (Act 759).

References


