

“OUR COURTS, OUR CASES AND WE ARE THE JUDGES”: CHIEFS AS JUDGES IN THE HOUSES OF CHIEFS IN GHANA

Alhassan Sulemana Anamzoya*

Abstract

Besides the Supreme Court, the Traditional Councils and the Houses of Chiefs are the official courts mandated by Ghana's 1992 Republican Constitution and the Chieftaincy Act, 2008 (Act 759) to adjudicate and determine the substance of chieftaincy succession disputes. The Houses of Chiefs serve as customary courts but have over the years incorporated certain practices of the English law into their proceedings. Through the historical method, interviews and observations, this paper explores the role of chiefs as judges in Ghana's Houses of Chiefs. The paper first takes a historical view of the Houses of Chiefs, starting from chieftaincy courts (native courts in colonial Ghana), and then after Ghana's independence in 1957, when the Houses of Chiefs system was formed. The second part of the paper deals mainly with the structure and the judicial processes in the contemporary Houses of Chiefs. The key finding of this study is that the Houses of Chiefs in Ghana are courts adjudicating on chieftaincy disputes with the chiefs sitting as the judges in these courts. However, the dependency of these courts on the state for funds and support personnel has implications on the judicial processes, and possibly, the rulings of the courts.

Introduction

In spite of the numerous scholarly works on institutionalized chieftaincy during the colonial¹ and the post-colonial period in Ghana, the Houses of Chiefs, where chiefs are the judges in their own courts and over their own cases, have largely been neglected by academics. Similarly, despite the many

*A. S. Anamzoya is a Lecturer at the Department of Sociology, University of Ghana, Legon. This article is based on an ongoing doctoral dissertation research at the Department of Sociology, University of Ghana, Legon. I would like to express my gratitude to the Volkswagen (VW) Foundation for sponsoring this study. I also thank the School of Research and Graduate Studies, University of Ghana, Legon for supporting this study as part of the University's staff development effort. The comments of two anonymous reviewers of this article were very helpful and much appreciated.

¹ These studies include those by Thomas (1944); Allott (1957); Sinitina (1987); Gocking (1993; 1994); and Rathbone (2000a, 2000b, 2000c).

scholarly works on chieftaincy disputes in Ghana,² the Houses of Chiefs which are the official courts for the resolution of these disputes have suffered serious academic neglect. In this paper I intend to show that the Houses of Chiefs in Ghana are in a unique position; whilst retaining the customary nature of the courts and making chiefs (the supposed custodians of customary law on chieftaincy disputes) the judges in these courts, these courts have incorporated some of the judicial practices of the common law courts into their judicial processes, transforming them into a kind of hybrid which combines aspects of the formal, state courts with those of a customary court. This paper focuses on the judicial process as described by the court officers of these judicial institutions (the ideal), and as observed by the author (the real), and some of the major difficulties that emerge with chiefs as judges in their own courts, over their own cases. The study is limited to only the Houses of Chiefs and thus, excludes the judicial process in the Traditional Councils.

Methodology

The author has since May, 2006 collected primary data from all the ten Regional Houses of Chiefs in Ghana, as well as from the National House of Chiefs. In all these Houses of Chiefs,

interviews were conducted with court officers, judicial committee (panel) members, disputants, and their counsels, as well as the counsels attached to these Houses. Observations of judicial proceedings were also undertaken at judicial committee sittings of the Houses of Chiefs, alongside interactions and informal conversation with court officers before and after judicial proceedings. In the Northern Regional House of Chiefs, the views of 26 disputing parties and their witnesses were sought as to whether the Houses of Chiefs should continue to have exclusive jurisdiction on chieftaincy matters. From these interviews, interactions and observations, insights were gained into the structure of the Houses of Chiefs in Ghana, the state actors, and the judicial processes in these Houses. The historical method was adopted in understanding the contemporary Ghanaian Houses of Chiefs. This was made possible by the use of secondary documents. The following sections trace the changing trajectories of chieftaincy in Ghana since the colonial period. These historical and contemporary analyses are followed by discussions on the judicial processes and the challenges facing the Houses of Chiefs.

² See Agyekum 2002; Anamzoya 2004, 2008a; Awedoba 2006; Bako 2006; Bofo-Arthur 2006; Bombande 2007; Brukum 2000-2001, 2001, 2005, 2007; Drucker-Brown 1995; Julia 2006; Ladouceur 1972; Lentz 1993; Lund 2003; MacGaffey 2006; Mahama 1987, 2003; Mumuni 1975; Sibidow 1969; Skalnik 1983, 1986, 1994; Sustainable Peace Initiative-SPI-2007; Staniland 1975; Tonah 2004, 2005.

Chieftaincy in Colonial Ghana

Formal rule of the British in the Gold Coast colony began in 1874. In 1896, Ashanti was added to the colony after its defeat in 1874. The Northern Territories of the Gold Coast was last on the annexation list and came under British rule in 1901 after Ekem Ferguson had successfully concluded treaties with some Northern Chiefs. Thus, to Nukunya (1992), the year 1900 should be regarded as the baseline of change in Africa (and for that matter Ghana) since that was just about the time that effective colonial rule started influencing Ghanaian traditional institutions, and the "British Government assumed the power to do all that traditional rulers had been doing" (Arhin 1985: 89). The establishment of the colonial regime in the Gold Coast meant the abrogation of the political sovereignty of the traditional states and the establishment of British rule over the then Gold Coast. In the Gold Coast, the British initially wanted to rule the people directly by neglecting chiefs and their courts. But later they "grudgingly had to recognize that the customary courts were an integral component of chiefly order"

(Gocking 1993: 94). Most traditional authority holders³ were thus incorporated into the British colonial political administration through the system of indirect rule.⁴ Chiefs, therefore, became the main agents of indirect rule and the Native Courts were to be the extension of this administration (Acquah 2006). Traditional authority proved so useful to the colonial policy of indirect rule that where colonial authorities found no chiefs, they created them.⁵ Therefore, during the period of colonial rule in Ghana, and long into post-colonial rule, the colonial government and the post-colonial leaders have been interested in controlling the chiefs but have not acted to completely eliminate them (Arhin Brempong 2001: 20; Ray 2003: 247).

Relations between the colonial power and the chiefs in the Gold Coast on how power was to be exercised were regulated by Native Jurisdiction Ordinances (Harvey 1966: 71), which also facilitated the official incorporation of chiefs into the general British colonial administration. The object of the 1878 Native Jurisdiction Ordinance, the first of these ordinances, for instance "was to give statutory

recognition of the existing indigenous courts" (Acquah 2006: 67). It, however, did not come to force and was replaced by the 1883 Ordinance. The 1883 Ordinance granted the Governor-General the power to depose and deport recalcitrant chiefs (Simensen 1975: 39; Rathbone 2000a; 2000b: 62). This was followed by the 1904 Chieftaincy Ordinance which made the Governor the final arbiter of the validity of an election or destoolment of a chief. The Native Jurisdiction Ordinance of 1910 made local chiefs' courts the first compulsory step in the judicial system (Sutton 1984: 42). In 1924 the Native Jurisdiction Ordinance was passed recognizing the positions of chiefs and their state councils and subsequently empowering them to make bye-laws and to establish state treasuries (Shiffer 1970: 63). These were called Native Authorities. The recognition as a chief, and the legitimacy of a chief's traditional council to exercise judicial functions came to be dependent on the Governor, just as today the promotion of a chief to paramountcy level, and the creation of a Traditional Council depends on the President of Ghana. The passage of the 1927 Native Administration Ordinance (No.23) changed colonial policy towards native

tribunals. According to Acquah (2006: 68), this Ordinance "constituted certain traditional Councils into native tribunals as distinct from the recognition accorded to traditional councils as tribunals." Thereafter, aboriginal judicial tribunals ceased to exist, and every tribunal which should exercise judicial functions as distinct from arbitral functions, had to be one which derived its jurisdiction from an enactment (Ibid). By and large, because a chief's selection was often influenced by the British and the scope of his powers largely defined by them, "the chief became increasingly a civil administrator" (Harvey 1966: 70), by virtue of which he could also be destooled, dismissed and deported. A committee of enquiry⁶ appointed by the Gold Coasts' Legislative Council in 1942 carried out reforms in the Native Administration in the 1940s. This led to the passage of the 1944 Native Authorities Ordinance which "served to reduce the abuses, corruption, and inefficiency which had characterized the scheme of native administration" (Harvey 1966: 75). Its preamble stressed that "it is expedient... provision be now made whereby ...chiefs may be allowed to take an effective part in the administration of

³ Traditional Authority holders in Ghana, according to Boafo-Arthur (2006), could be categorized into kings/paramount chiefs, chiefs and headmen. However, tindanas (chief priests) also wield traditional religious authority, especially in societies where political authority is not concentrated in one person or few persons.

⁴ According to Sutton (1984: 46) the theory of indirect rule "argued that African societies should be governed insofar as possible, by their traditional rulers and legal systems." See Simensen (1975: 38) for some of the compelling reasons for the adoption of indirect rule by the British

⁵ Arhin Brempong 2001, 2006: 28; Fortes and Evans-Pritchard 1940: 15; also see Musa 1985: 141; Geischeire 1993: 151, Lentz 1993, 2000, 2006; Tignor 1971.

⁶ The Native Tribunals Committee of Enquiry was chaired by Sir Harry Blackall, hence the Blackall Committee.

the Colony" (Rathbone 2000a: 16-18). Thereafter, many committees⁷ were established to make recommendations regarding the future relations between the Ghanaian state and chiefs on one hand, and between chiefs and their native tribunals on the other. Beginning from the 1950s, Courts Acts became clearer in preventing the regular courts from determining the substance of chieftaincy matters, and making such determination the legal mandate of the native tribunals.⁸

The Houses of Chiefs in Postcolonial Ghana

Ghana's 1957 Constitution (Order-in-Council) "made provisions for a measure of devolution and for the protection of chieftaincy" (Arhin Brempong 2001: 29). As a

consequence, five regions were created.⁹ These five regions were each to establish a House 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 2003: 29; Grimal 1967: 299-300). At this time, the Houses of Chiefs were to act as appellate courts to the then State Councils¹⁰ in resolving chieftaincy disputes. One year after independence, the 1958 Local Courts Act (No. 23 of 1958) was passed.¹¹ In 1959, Nkrumah

⁷ There were many of such committees such as the Watson Commission of 1948, the Coussey Committee on Constitutional Reforms of 1949, and later the Korsah Commission of 1950, the Local Government Act of 1951. See Schram 1967: 9-17; Rathbone 2000a: 16-20; Arhin 2001:13-18; also, Acquah 2006: 67-69, Wilks 1989: 192. The first three of these writers have also analyzed extensively the erosion of chiefly powers; especially their power to hear civil and criminal cases, to impose court fines and appropriate the fines, and how Nkrumah tightened his control over chiefs in Ghana.

⁸ See Courts Acts 1951 and the 1961, 1971 and the 2008 Chieftaincy Acts, Acts 81, 370 and 759 respectively.

⁹ 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 2001:35).

¹⁰ 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 2000a, 2000b, and 2000c.

¹¹ It had a short life span but, it did strip the chiefs of their native courts, and the chiefs have since lost all their statutory powers to adjudicate on civil and criminal cases (Acquah 2006: 68; also Arhin 2001: 36-37; Wilks 1989: 192).

passed the Chiefs (Recognition) Bill.¹² Then 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.¹³ The 1971 Chieftaincy Act remained in force till 2008 when it was amended and replaced by the 2008 Chieftaincy Act, Act 759. 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, was removed. Also, from 1957 onwards the increase in the number of regions in Ghana led to a corresponding increase in the number of Houses of Chiefs and Traditional Councils.

The system of the Houses of Chiefs in Ghana, established by Ghana's 1957

Constitution, was guaranteed by the 1971 Chieftaincy Act, Act 370, and recently the 2008 Chieftaincy Act, Act 759. Structurally, there are three different categories of the Houses of Chiefs in Ghana; the Traditional Councils, the Regional Houses of Chiefs, and the National House of Chiefs. The 2008 chieftaincy Act, Act 759, section 12, (sub-sections 1 and 2), establishes the Traditional Councils in Ghana, which are at the basis of the hierarchy of the Houses of Chiefs. At each Traditional Council, the paramount chief of the Traditional Area is always the president, and all other divisional chiefs are members. It is from these Traditional Councils that chiefs are elected to represent the Traditional Areas at the Regional level in the Regional Houses of Chiefs. Each of Ghana's ten regions has a Regional House of Chiefs. All the ten Regional Houses of Chiefs were built by the state and have been maintained and expanded by the state to cater for the increasing numbers of paramount chiefs. Each House has a President and a Vice-President elected by the members amongst themselves for a four-year term. The National House of Chiefs has a membership of fifty with each Regional House of Chiefs sending five elected representatives.

¹² This bill ensured that enstoolment 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.

¹³ There is an ongoing debate whether to allow the High Courts in Ghana to have a concurrent jurisdiction with the Houses of Chiefs to adjudicate on chieftaincy disputes. See for instance Ekow Daniels C.W (1972); Kludze (1998).

A Note on Skins and Stools

"The skin is a symbol of chiefly authority in Northern Ghana, equivalent to the stool in the south" (Lund 2003:589; also Drucker Brown 1975:31, Skalnik 1983:13). When a person is enskinned he is literally put on a skin, which means a new chief or king has occupied a vacant office. In the Northern parts of Ghana, chiefs and kings sit on skins. Every new ruler comes to meet a pile of skins used by past rulers of that chieftom and every new ruler adds a new skin to the pile. The skins vary according to the power of the occupant (inextricably linked with the traditional state). Powerful kings like those of the Dagbon kingdom in Northern Ghana sit on lion skins, some sit on leopard skins, and others on cow skins. Today, most chiefs sit on leather pillows placed on these skins. The skins are considered sacred; past rulers become ancestors, and current occupants, their descendants. When there is a contest over a particular title, it is a contest over a skin or a stool as the case may be. Enstoolment is to the chiefs in Southern Ghana as enskinment is to the chiefs in Northern Ghana. The stool, usually a carved wooden chair, served as a symbol of the office of the chief, and an embodiment of the 'soul' of the community (Simensen 1975: 11). It is over these skins and stools that there are succession disputes. The disputes can

result either from a contest for the office by more than one contender, or an attempt to deskin or destool the occupant of an office. Thus, in the Houses of Chiefs (which we shall come to very soon), one comes across dockets bearing titles like the Bimbilla Skin Affairs, the Wa Skin Dispute, the Buipe Skin Affairs, the Nandom Skin Dispute, or the Ga Stool Affairs, the Anloga Stool Affairs, the Wenchi Stool affairs. As at the end of 2007, there were not less than three hundred of such disputes in Ghana.¹⁴

Causes or Matters Affecting Chieftaincy

In practice, the subject matter of chieftaincy litigation that is pursued in a judicial committee or the courts is encapsulated by the expression "cause or matter affecting chieftaincy." (Brobbeey 2008: 227). According to Brobbeey, the expression "cause or matter affecting chieftaincy" is directly related to cases involving chiefs and chieftaincy that are filed in the Houses of Chiefs and the Supreme Court. A "cause or matter affecting chieftaincy" means any cause, matter, question or dispute relating to any of the following: (a) the nomination, election, appointment or installation of any person as a chief. It is these causes or matters affecting chieftaincy that the Houses of Chiefs and the Traditional Councils determine.

The Judicial Processes in the Houses of Chiefs

The 1992 Constitution of Ghana has stipulated the functions of the House of Chiefs and has granted the original¹⁵ and the appellate¹⁶ jurisdictions to both the Regional Houses of Chiefs and the National House of Chiefs. The judicial functions of the National House of Chiefs are outlined in Section 22 of the 1971 Chieftaincy Act (Act 370), articles 154, 178, and 271 of the 1969, 1979, and 1992 Constitutions, respectively. Thus, all Regional Houses of Chiefs and the National House of Chiefs can hear cases originally emerging from their areas of jurisdiction, and those appealed from the lower judicial bodies such as the Traditional Councils. The judicial process starts the moment a person files a petition in a House of Chiefs and ends when a judicial committee makes a judicial decision on it.

A person who wants to bring a cause or matter affecting chieftaincy to the notice of a House of Chiefs does so through a counsel, by filing a petition before the house. This petition has to contain the full name of the petitioner, the capacity in which he is making the claim or filing the petition, the facts and particulars upon which the petitioner

seeks to rely, and the particulars including the addresses and locations of the person or persons to be served the petition.¹⁷ If the court officer is satisfied with the number of copies of the petition, then the petitioner pays the filing fee to the accountant or the cashier. The filing fees depend on the charge being brought to the court; a petition, a motion, an affidavit, or a response, and also the distance of the parties to be served. When the filing fee is paid, the accountant issues out a receipt to the petitioner which the court officer adds to the petition and files it.

When the filing is done, the petitioner is given a date to come back to the House (or the Traditional Council as the case may be), to direct service. Directing service is when the petitioner who is supposed to know the residences of the defendants mentioned in his petition, goes with the bailiff to show him the residences of the defendants in order that they be served the summon. This becomes necessary when the addresses of the people to be served are not indicated in the petition. The time spent to direct service depends upon the distance, access to the location of defendants, and access to defendants. After serving the summon on the parties, the bailiff goes back to the

¹⁵ See Article 274 Clause 3 (sub-section d) of Ghana's 1992 Constitution. Also see the 1971 Chieftaincy Act, Act 370, sections 22, and 26 of the 2008 Chieftaincy Act, Act 759.

¹⁶ The 2008 Chieftaincy Act, Act 759, 27 (1 and 2), and 23 (1 and 2).

¹⁷ Before filing the petition, the court officer cross-checks the number of copies to ensure that it corresponds with the number of people the petitioner wants to serve. Those to be served are; the panel members, the counsel to the House, the petitioner himself, all the parties indicated in the petition as defendants and the docket to be opened immediately for the case.

¹⁴ The Statesman, Saturday, December 7, 2007.

office and proves service. To prove service, the bailiff prepares a certificate of service at the office to prove that he has served the parties. According to all the bailiffs interviewed, serving parties in chieftaincy disputes is a daunting task. All the bailiffs interviewed recounted some of the unpleasant experiences they have been through in the course of duty. Sometimes the defending parties refuse to take the summon or they constantly absent themselves from home. Other times, the parties to be served the summon strip the bailiff's naked and/or beat them up.

When the defendants are served and the certificate of service is prepared, the defendants have to also respond to the issues raised in summon through a counsel in a written form called the "statement of defense" within fourteen days after service.¹⁸ Thereafter, a judicial committee is put in place to sit for the first hearing of the case. The Registrar of the House usually prepares a hearing notice fixing a date for the first hearing of the case, and the bailiff serves it to all the contending parties,

¹⁸ The moment the bailiff proves service after having personally served the parties or pasted the summon at a public place where it is assumed that the defendants would see it, then the court rules regarding the time frame within which a defendant has to respond to a petition is enforced.

¹⁹ Every House of Chiefs has 'The Hall' which is the venue for their General (Full House) and other meetings, and is usually rearranged when a judicial committee is to sit. It is 'The Hall' that the staff refer to as the court.

²⁰ The title 'Court Officer' is normally reserved for the one who keeps in custody court documents. It must be mentioned that it is not always the case that the Senior Traditional Council Registrar is the Court Officer. In both the Brong Ahafo and the Ashanti Regional Houses of Chiefs, the Assistant Traditional Council Registrar is the Court Officer. Also, officials like the bailiffs, all the registrars, court clerk, are court officers in the sense that they all work towards the success of the judicial process.

their witnesses, their counsels, the counsel to the House and the panel members who sit on the case.

On the day that the judicial committee is to sit, the panel members are always led into the Hall¹⁹ of the House by one of the support personnel, who does the customary banging of the door three times, before the panel members enter the Hall, and following it with the shout of 'court rise.' At this stage everybody gets up, as the panel members and the legal counsel to the House walk up onto the stage. They bow before all persons present, who also bow in return after which the panelists sit with the rest following suit. The Senior Traditional Council Registrar (the Court Officer)²⁰ or any of the support personnel brings plain papers and pens to the panel members (who can understand and write the proceedings) to enable them take notes on certain key issues during the judicial process. If it is in the Traditional Council, it is the Traditional Council Registrar who takes down the proceedings.²¹ If it is at a Regional House of Chiefs or in the National

House of Chiefs, it is the legal counsel who records the court proceedings. In all cases, the proceedings are taken down by hand in a book called the Record Book. The Record Book, the Things Book, the Judgment Book, dockets and various relevant judicial records are kept under lock and key by the Court Officer.²²

A person appearing before the panel members addresses them directly with the words 'my lord.'²³ Such a person must take an oath to speak the truth and nothing but the truth. Any of the court officers can administer the oath. If he is a Muslim, he swears by the Quran, if a Christian, by the Bible. A Traditionalist swears by a fetish or a god he believes in and a pagan affirms by his own conscience. After swearing, the petitioner proceeds to state his case verbally before the panel members, led in evidence by his counsel. The counsel to the defendant then cross-examines the petitioner. The witnesses (if any) of the petitioner also testify before the committee who are, in turn, cross-examined by the counsel to the defendant. After the cross examination, the counsel to the petitioner can re-examine both the petitioner and the

witnesses. Thereafter, the defendant also states his case, brings in his witnesses who also testify before the committee. The defendant and his witnesses are, in turn, cross-examined by the counsel to the petitioner. In the course of the proceedings, any of the panel members can ask questions to seek clarification on any matter being raised.

When all matters on a case are heard, and all parties and their witnesses have been examined, cross-examined and re-examined, the Registrar of the House writes a letter to all the panel members inviting them for a judgment conference during which all the three panelists would meet with the counsel to the House. In giving judgments on chieftaincy disputes, all the panel members who sat to listen to the various arguments of the parties and their witnesses now come to sit, and to evaluate every piece of evidence tendered; written or oral. Every panel member is given the opportunity to state his opinion regarding the dispute, and to state the reasons supporting his opinion. Subsequently, they all discuss the various reasons and opinions in order to come out with a common

²¹ Traditional Councils are manned by Traditional Council Registrars but in some instances you find a Senior Traditional Council Registrar or even a Regional Registrar manning a Traditional Council. In those instances, they record the judicial proceedings.

²² However, as observed in the Eastern and the Central Regional Houses of Chiefs, these court documents were kept in the offices of the principal bailiffs.

²³ Out of the seven Houses of Chiefs including the National House of Chiefs where I personally observed judicial proceedings, it is only in the Upper West Regional House of Chiefs that parties and their witnesses addressing the panel members use the phrase 'your majesty' and not the popular phrase of 'my lord.'

voice. However, it is not always the case that panel members have a unanimous judgment. If all the panel members have a common voice on an issue, then there is a unanimous judgment. If there is a disagreement, the judgment splits into a majority judgment and a minority judgment. In either case, the legal counsel has to write one judgment if it is unanimous, and two judgments if otherwise. During the judgment process, the legal counsel guides the panel members and explains the law to them. At the end of the judgment conference, the panel members take a decision and the legal counsel writes out the judgment blending the facts of the matter and the relevant laws. When the final judgment is written, they all sign it, if it is in the case of a unanimous judgment. This is then presented in an open court on a day appointed for that purpose to the hearing of all parties, their lawyers and supporters.

The judicial committees do not have the mandate to enforce their own judicial decisions. A winner in such a case who wants to enforce the judgment goes to the High Court in his region. He first takes a letter from the Registrar of the House where the judgment has been given to the Registrar of the Regional High Court who will get bailiffs to go and affect the judgment including forcibly evacuating the loser out of the palace. However, if before the end of the grace period the losing party vacates the palace, there would be no

need to use force to evacuate him from the palace, or if the losing party appeals to a higher judicial body (to which he has thirty days to do after the judgment), then he still maintains his position, until the appellate court overturns or confirms the earlier judgment.

Considering the judicial process as described above, one would be tempted to believe that the Houses of Chiefs could dispose cases quite easily. This is, however, not the case. Certain difficulties arise as chiefs continue to sit in their own courts over their cases thereby prolonging the judicial process. What are these difficulties chiefs face as they continue to sit as judges over their own cases? The following section is devoted to answering this question.

Difficulties Facing the Judicial Process

As chiefs strive to fulfill the responsibility bestowed on them as the judges in chieftaincy disputes, certain difficulties emerge. The first problem is the issue of frequent adjournments in the court proceedings. Quite often, members of the panel come late or fail to attend the meetings and the committee would thus be forced to adjourn the case. Several factors account for this. The first is that chiefs are quite busy people. They are engaged in several private ventures including farming, trading, and other professional duties. They are, therefore, often busy managing their private

businesses. Besides, they often have to attend to a number of compelling issues in their traditional areas. Chiefs also have to be available in their traditional areas to receive politicians and government officials who visit the area. Those who fail to meet such government officials or attend meetings organized by members of the ruling government are often labeled as being sympathetic to the opposition party. Such chiefs often find it difficult to lobby the local and national governments for development projects for their traditional areas. In order to be in the good books of the government of the day, most chiefs would prefer to meet with government functionaries instead of attending judicial committee sittings if the two events happen to fall on the same day.

In a Regional House of Chiefs, three members are usually selected from among the chiefs to sit on a chieftaincy matter. The same number of chiefs sit on cases heard at the Traditional Council. At the National House of Chiefs three chiefs are selected in matters of original jurisdiction and five in appellate cases. The 2008 Chieftaincy Act, Act 759, stipulates that all three chiefs and the legal counsel to the house must meet before a judicial committee is considered properly constituted to sit

on a dispute. Thus, the absence of one panel member would automatically result in an adjournment. A panel member can be present at a meeting only to find out another member is absent and there is thus no quorum to carry out their task. Inability to obtain the required number of chiefs for a sitting is one of the major causes of adjournments and delays in the judicial proceedings in the Houses of Chiefs in Ghana.

Furthermore, the entire judicial process is dependent upon the state for funds to operate efficiently. It is the state that caters for the cost of transportation, boarding and lodging of chiefs who are members of the judicial committees. However, funds for the general administration of the houses and for the payment of the chiefs' judicial committee sitting allowances, their transportation, food and accommodation are provided by the state on a quarterly basis. When the funds are not forthcoming, judicial committees and other committees in the house cannot sit. There were many instances in the Houses of Chiefs where cases had to be adjourned due to lack of funds. Besides, the allowances paid the panel members are not only meagre²⁴ but not paid regularly.²⁵ Since the entire judicial process depends on these quarterly grants, any delay in the

²⁴ The sitting allowance of members of judicial committees in the Regional House of Chiefs remained 1 Ghana cedi for a long time till 2007 when it was increased to 4 cedis, and subsequently 8 cedis. The allowance is per a day's sitting, even if a judicial committee would have sat on more than one case per day.

release of funds often results in a delay in the judicial process. For example, in March 2009, most of the cases scheduled at the Regional Houses of Chiefs had to be adjourned till April and May 2009 because of the delay in the release of funds for the first quarter by the government.

Another difficulty is the fact that chiefs, most of whom have no formal training in legal matters, have to deal with legal counsels representing parties in these disputes. Admittedly, in the Traditional Councils which serve as courts of first instance, counsels do not represent disputing parties. Thus, judicial proceedings therein are not that complicated. However, as cases move up the ladder in appeals to the Regional and the National Houses of Chiefs, legal representation of disputants becomes a statutory requirement, and the chiefs are compelled to deal, not just with disputants but also their counsels trained in the English law and the English language. Added to this is the fact that, the Houses of Chiefs have incorporated some of the practices of the regular courts (which are a replica of the English courts) into their proceedings. Now, here are chiefs some of whom do not even have formal education, and thus, cannot speak the

English language, and most of whom have no formal legal training having to deal with counsels some of whom are seasoned lawyers. Surely, difficulties are bound to emerge. To help salvage chiefs from this difficulty, the state, through both constitutional and statutory requirements, has made it mandatory for a legal counsel to be present before the commencement of any judicial proceedings in a Regional or National House of Chiefs.

Another controversial issue is the role of the legal counsel during the judicial proceedings. According to Daniels (1973: 172), the legal counsel "advises the [judicial] committee on all matters of law including the admission of evidence, procedure and interpretation of documents and statutes." The legal counsel is thus the technical advisor to the panel members. He takes the center stage at the judicial proceedings, often eclipsing the chiefs, directing the course of the judicial proceedings, preventing the parties and/or their counsels from diverting the attention of the committee to issues unrelated to the matter at trial. During judicial meetings, it is not uncommon for an observer to think that the legal counsel is the judge and the chiefs are there to give him an expert advice on

²⁵ As at October 9, 2007, when I was observing judicial proceedings in the National House of Chiefs, the government grants for the third quarter of the year (i.e., from July to September) had not come and judicial committee members sat without allowance but with the understanding that they would be paid when funds were available. And, in the Northern Regional House of Chiefs, the Dagomba Traditional Council (situated at Yendi) which was sitting in the House for security reasons adjourned its case "until funds can be resourced" after the two parties had paid 200 Ghana cedis each to service the first sitting.

customary issues. The legal counsel mainly interacts with the counsels of the disputing parties, posing questions and seeking answers to issues earlier raised or to those which are unclear.

The legal counsel to the Greater Accra Regional House of Chiefs explained his role in the judicial process thus:

I assist the chiefs, I direct affairs, I interpret the law, record the proceedings and generally take charge of the court processes. I take charge of the court process like a judge takes charge of his court.²⁶

Similarly, the legal counsel to the Volta Regional House of Chiefs describes his functions thus:

As the chief legal advisor to the house [Volta Regional House of Chiefs], I advice the house on all matters of law. I assist the panel members in each case of deliberations. At the same time, I act as the recorder of all proceedings. After a case is concluded, I direct the panel on matters of the law and other documents that have been tended by the parties...I have to direct them to understand the import of the documents and their relevance before they retire because the final

decision is entirely with the panel.²⁷

After observing judicial proceedings at a House of Chiefs meeting, the counsel to the house informed me after the proceedings that:

If you were observant in the court, you would notice that *nananom* were confused. Those lawyers arguing are seasoned lawyers; some of them have practiced for twenty or thirty years. So when they are talking...even some of the cases they were citing I have to go and read, the judgments they were referring to, I have to refer to the law reports to find out whether, for instance, the cases [they cited] are well cited before judgment is given. As for *nananom*, after today you would not see them again until 24th October. They would go home and sleep and come on 24th October and ask "lawyer is the judgment ready?"

Undoubtedly, the role of the legal counsel in the judicial process is inevitable and paramount, and when the counsel is absent, the judicial committee is not considered properly constituted to sit on any case. A legal counsel to a House of Chiefs is, therefore, the counsel to all the judicial committees sitting on all chieftaincy disputes in the house. Generally, the

²⁶ Mr. Samuel Klayson.

²⁷ Personal interview with Mr. Kwadzo-Kuma Dzanku, legal counsel, Volta Regional House of Chiefs, February 25, 2009, in his office, at Ho.

legal counsels who sit with the chiefs in the judicial proceedings are very much respected by the chiefs and the counsels' opinions tend to prevail at different stages of the judicial process over that of the other judicial committee members thereby compromising the position of chiefs as judges in their own courts and over their own cases. There are many instances where the absence of a legal counsel has halted the entire judicial process in the House of Chiefs for several years. The Volta Regional House of Chiefs' judicial committee could not adjudicate cases for more than seven years because it did not have a legal counsel. The House only obtained a legal counsel in 2008. Similarly, the Northern Regional House of Chiefs did not have a legal counsel from 2003 to early 2006 until the State Attorney for the Northern Region decided to assist the house on contract basis. The Central Regional Houses of Chiefs does not also have a

substantive legal counsel. It is the State Attorneys in the region who are helping with the House's judicial functions. In the Upper East Regional House of Chiefs the counsel resigned on March 4, 2009 leaving the house with no counsel. The counsel to the Upper West Regional House of Chiefs is on contract. Both the Greater Accra and the Eastern Regional Houses of Chiefs share one legal counsel who shuttles between the two regions. This has very serious implications for the adjudication of cases.²⁸

Lastly, is the issue of the impartiality of the Houses of Chiefs. In order to ensure that the judicial process is fair and just, and to avoid people sitting on cases involving parties they sympathize with, and/or from their own traditional areas, judicial committees in the Houses of Chiefs are formed such that chiefs do not sit on cases coming from their traditional areas. For instance, in the Northern Regional House of Chiefs, cases coming from the

²⁸ According to both the 1992 Constitution and the Chieftaincy Act 759, the legal counsel to the House of Chiefs is to be appointed by the House and approved by the Attorney-General. However, as a result of counsels' unwillingness to take up appointments in the Houses of Chiefs, Mr. Samuel Klayson, legal counsel to the Greater Accra Regional House of Chiefs is also the legal counsel to the Eastern Regional House of Chiefs. This is, however, a risky arrangement. Commenting on the legal implications of this arrangement, the Regional Registrar of the Volta Regional House of Chiefs observed that, "a clever lawyer can wait until when judgment is given and it does not favour his client, then he would question the legality of the judicial committee. He can argue that the judicial committee that tried the case was not properly constituted because the counsel attached to the committee was not appointed by the House as required by the 1992 Constitution and the 2008 Act, Act 759." Two Houses of Chiefs cannot appoint the same legal counsel at the same time. Commenting further, the Registrar revealed that in the Brong Ahafo Regional House of Chiefs, a case which had dragged on for many years had its judgment and the entire judicial proceedings quashed on the basis of the argument of the counsel to the losing party that the counsel who sat with the judicial committee to decide the case "was a borrowed one. He was not appointed by the house. That is why we insist that government should appoint counsels to all the Houses of Chiefs."

Dagomba Traditional Area would be handled by a judicial committee whose membership would exclude all chiefs from the Dagomba Traditional Area. In the same vein, at the National House of Chiefs, cases coming from the three Northern regions (Northern, Upper East, and Upper West Regions) would be handled by a judicial committee whose membership would not include chiefs from any of the three regions. As a result, a judicial committee sits on cases they might not necessarily be familiar with, but would get to understand as parties present their cases. Sometimes, proceedings have to be put on hold as committee members engage in fact finding missions to ascertain the claims made by the disputants. This also delays the judicial process. With these challenges confronting the judicial process, should chiefs continue to be the only judges in their own cases?²⁹

Discussions and Conclusions

It is obvious from the above description that proceedings at the Houses of Chiefs are very similar to those prevailing in the formal courts. Traditional court practices such as filing of cases, the opening of dockets, serving summons, the constitution of judicial committees, and the writing of letters to parties, the sitting

arrangement of court officers, counsels for the disputants, and disputants and their witnesses, to the hearing of the case; taking oaths and the presentation of cases, examination of evidence, the recording of proceedings by hand, are observed in the Houses of Chiefs during judicial proceedings. Court practices in English law courts such as, the judge or judges being led into the court, the banging of the door three times before the judge enters, the judge bowing to the audience and they bowing in return before the judge takes his or her seat for the day's proceedings to commence are not left out in the judicial practices of the Houses of Chiefs. In Ghana, people do not normally address a chief or king directly but through a spokesperson. However, in the Houses of Chiefs, disputants, their counsels and witnesses address chiefs and kings who sit as judicial committee members directly but with the respectable phrase of 'my lord'³⁰ interspersing such an address. The chiefs are normally quick to point this out when a party or a witness addressing them does not intermittently use the phrase 'my lord.' As chiefs continue to sit on their cases in the Houses of Chiefs, certain difficulties emerge. Among these are their busy schedules, their financial dependence on the state, and their lack of legal

²⁹ The debate whether or not to allow the High Courts in Ghana to have a concurrent jurisdiction with the Houses of Chiefs to adjudicate on chieftaincy disputes has long started. See for instance Ekow Daniels (1972) and Kludze (1998).

³⁰ Except in the Upper West Regional House of Chiefs where "your majesty" is used instead.

education and subsequent dependence on the legal counsels. These have made what should have been a brief judicial process, a rather long and expensive one.

The development of institutionalized chieftaincy in Ghana has historical antecedents. In the colonial period, institutionalized chieftaincy took the forms of Native Courts, Native Tribunals and State Councils, which were very instrumental in the colonial policy of Indirect Rule. Through various ordinances, the relationship between the imposed colonial state and the various Native Courts was regulated and their jurisdictions clearly defined. The post-colonial Ghanaian state has continued this relationship with the chiefs in the form of the Houses of Chiefs and the Traditional Councils. This paper has demonstrated that the Houses of Chiefs in Ghana have come a long way to become part of Ghana's court structure, and that these are special courts dealing only with chieftaincy disputes. In these special

courts are support personnel³¹ who are constantly working behind the scenes to ensure the continuity of the judicial processes. The judicial officers and the legal counsels to these houses are state employees. The state is not supposed to interfere in chieftaincy succession disputes, and not to influence the decisions of the chiefs, but without the state actors, the judicial proceedings would grind to a halt. Thus, the neutrality of the state in chieftaincy disputes cannot be fully guaranteed. Speculations abound about how the state and its agents manipulate the judicial process at the Houses of Chiefs. However, this is yet to be proven. Further research should be directed towards examining the role of the legal counsels attached to the Houses of Chiefs, how successful the Houses of Chiefs have actually been in the management and resolution of chieftaincy disputes in Ghana and to determine the extent to which the disputants accept the judicial decisions of the House of Chiefs.

³¹ For an understanding of these support personnel, their various roles in the judicial processes, and the challenges they face, see Anamzoya (2008b).

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