Interactions Between The Local Government And The Traditional Authorities

Tara Boulton

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INTERACTIONS BETWEEN THE LOCAL GOVERNMENT AND THE TRADITIONAL AUTHORITIES

MANIFESTATIONS OF JUSTICE, ORDER AND DEVELOPMENT IN GHANA

TARA BOUTON
COLBY COLGGE
SCHOOL FOR INTERNATIONAL TRAINING
GHANA: AFRICAN DIASPORA STUDIES
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ABSTRACT

This study looks at the interactions between the traditional authorities and the local government in Ghana. By first approaching the interface from the historical context, a foundation is created for better understanding current perceptions. Members of the two systems were interviewed on their roles in development and maintenance of law and order at the local level. These interviews identified present areas of conflict, enabling the prescription of more efficient interactions in the future. The study concludes that stress on the local government could be effectively alleviated through increased conversation with the traditional authorities, specifically by defining representation of the traditional authority in the district assemblies and at the local council level, as well as promoting adjudication by the traditional authority as a viable option for alternative conflict resolution in the district courts.
INTRODUCTION

The traditional authorities of Ghana have had a long history with the central government in its many forms. From the time that the first Europeans build forts along the Gold Coast, their role has been in question. As Ghana has undergone transition from colony to country, so has the role of the traditional authorities been amended and revalued time and again as the nation seeks to define itself. Today, those struggles continue as the systems of traditional governance attempt to evolve and find the place in the system for themselves.

The traditional authority as it exists in present day Ghana is a system of hierarchy not unlike the system of local governance. Both are essentially equally decentralized. The term traditional authority refers to what remains of the pre-colonial government at the local level. The executive authority of the local government is vested in the District Chief Executive, while under the traditional system this authority is given to the Paramount Chief of a traditional area. The Traditional Council, made up of the paramount chief, his divisional chiefs and some other representatives, can be compared to the District Assembly, consisting of the district chief executive and the elected and appointed members of the assembly. In the same way that under the district assembly member are the members of the unit committee, serving as representation of the people, so under the chief are the elders, often consisting of the heads of clans in his area, who also serve as representatives of the people.

Chieftaincy is a bone of great contention in contemporary Ghana. Have the traditional authorities become purely symbolic or are they the true custodians of Ghanaian culture, administrators and custodians of justice as well? First, we must look at how these questions were answered as the country developed into what it is today. Then it is possible to explain the current perceptions relating to the traditional authorities and how the fit into a larger system of governance in the country. By looking specifically at perceptions of members of both forms of local governance on the role of the traditional authorities, first, in administration and then, in justice, we can better understand the nature of these interactions so as to suggest methods of improvement.

1 Theresa Kwakye, current member of the KEEA District Assembly, interviewed by the author, Komenda, Ghana 17 November 2004, tape in possession of the author.
METHODOLOGY

Data for this project consists primarily of first hand information supplemented by secondary sources. Therefore, the first portion of the allotted time was spent in the library attending to get some background on the topic I had set myself. This proved both frustrating and not particularly fruitful, as the library at the University of Cape Coast does not possess an extensive collection on the subject at the hand and the limited resources are in quite a state of disorganization. Had I decided that secondary sources would play a larger role in the project, a trip to the library of University of Ghana, Legon, would have been necessary.

When I had exhausted the resources at the library, I turned to the faculty at the University. The Center for Development Studies was particularly welcoming and supplied me with two of the papers I have cited. Beyond this, Professor Agyeman of the Department of Religious Studies directed me to Supi Minnah, Supi of the No.6 Asafo Company, Cape Coast. He proved an invaluable source of documents from recent conferences involves members of both academia and the traditional authorities, and therefore helping to fill the void of recent scholarly works in the area. He also was good enough to allow me to interview him.

Beyond the connections at University of Cape Coast and what I was able to find in the library, I also was able to flush out the research with sources I had either brought with me form the United States or purchased here in Ghana. I also raided the bookshelves of the Opoku-Agyemang household and collected relevant newspapers articles. As interviews and primary sources were of much greater interest, I was able to deem this sufficient.

During the month, I conducted fourteen formal interviews. Eight of the interviews I taped and then later transcribed, while for the rest I took extensive notes during the interview. The latter was a much more efficient process due to the fact that the three solid days it took me to transcribe all the interviews were significant given the time restraints of the project. The interviewees were determined primarily by whom I had access to. Having decided to study traditional authority, Komenda and the surrounding villages seemed like the most obvious location for the bulk of the interviews, considering the support system and connections already in existence there for SIT students. These interviews were supplemented both before and after my stay there, with interviews in Cape Coast.

From the beginning, I set out to collect data equally from members of the traditional authority and members of the local government. This balance was reached rather naturally and in the end I conducted interviews with eight members of the traditional authority and six current or past members of local government. The program’s connections gave me great success, so I was not limited, despite the lofty expectations I had for the project. I was able to interview two
Queenmothers, three Chiefs, the registrar of the Central Region House of Chiefs, the registrar for the Komenda Council of Elders, and a Supi of an Asafo company. The members of the government system that I interviewed consisted of two District Assembly members, one past and one present, an official in the Department of Social Welfare, the registrar of the High Court of Cape Coast, a practicing lawyer and the former Chairman of the Komenda Town Council.

All thirteen were one-on-one interviews. Though third party translation was used for two of them to clarify some of the questions, all were conducted primarily in English. I insisted on using English, rather than a translator, so as to have absolute control both of the questions and as to receive unaltered responses. This decision did hinder the collection of data, since in several interviews, questions had to be omitted due to the language barrier and misinterpretation was frequent. Because of this, I was often forced to vary from the wording of the pre-scripted questions in attempts to elaborate and make the meaning more comprehensive to the interviewee. From the start, I tried to be aware of the tendency to bias responses by adlibbing in this way, and so by being conscious, I hope that I was successful in not altering the results.

Certain questions, or variants on the questions, I asked all of the interviewees, while some were omitted or substituted depending on the position of the person I was interviewing. I have included them here, though I should note that some interviews extended informally beyond the scripted questions.

- What do the interactions between the traditional and conventional government look like? Where do they take place?
- Are traditional authorities given copies of district byelaws?
- I understand that \( \frac{1}{3} \) of the members of the District Assembly are to be appointed by the government in consultation with the traditional authorities. Does this happen?
- What is the view of the chieftaincy in urban areas?
- What is the view of the chieftaincy in rural areas?
- What is the role of traditional religion in chieftaincy today?
- What kind of cases are seen by the traditional courts? And what kind of cases are seen by the western-style courts?
- What is the legal jurisdiction of the traditional courts?
- Are certain groups in society educated in using one system or the other?
- Are the western-style courts readily accessible to people in the rural areas?
- What kind of issues do people take to lawyers?
- What do you see as the root of the traditional court’s power? And of the western-style court’s power?
- What are the characteristics of a good chief? How are these different from the characteristics of a good judge?

The third form of data collection I used was observation. I was fortunate to see the traditional justice system in action in Komenda, as I spent six hours at the Chief’s Palace watching various adjudications. During this time, I was able to record detailed observations and was aided by sporadic translation by Nana Kwesi Awotwe I, the head of the panel. Though I did not have formal translation, I was able to gain a good sense of the process. I was also able to observe proceedings at the Cape Coast courthouse and was given a tour of the meeting room at the Central Regional House of Chiefs.

The greatest hindrances in the project were language and time. I had initially wanted to conduct a survey of the residents of Komenda to get some sense of the lay position of these issues, but was limited by language and by time. Fortunately, for the most part, I was able to work around both these issues.
Section I: Historical Administrative Functions Of The Two Systems

The Gold Coast became an official colony of the English in 1885, after 400 years of contact with European traders. The British had already experienced the power of the Ghanaian chiefs, having been to war with the mighty Asanti kingdom many times, most notably after the murder of the British governor in 1824. Attempting to destroy the Asanti threat, the British burned the kingdom’s capital at Kumasi in 1874 and then promptly declared the southern part of present day Ghana, the Gold Coast Colony and Protectorate, the colony consisting of the forts and the protectorate of the neighboring chief.²

Modeled after the system implemented in Nigeria by Lord Lugard, Britain official adopted the doctrine of Indirect Rule in Ghana, which was formulated in 1927. Prior to this, the British imposed a series of variations on the theme, effectively ruling the Gold Coast through its traditional authorities. Under indirect rule, the chiefs were said to have retained much of their autonomy, though their job was to implement the laws enacted by their British overlords. Lugard says, “[The British resident’s] advice on matters of general policy must be followed, but the native ruler issues his own instructions to his subordinate chiefs and district heads – not as the orders of the Resident but as his own.”³ In this way paramount chiefs retained control over traditional laws and were fused into the governance of the colony. This point is elaborated on in Lugard’s treatise, when he ways, “There are not two sets of rulers – British and native – working either separately or in cooperation, but a single Government in which the native chiefs have well-defined duties and an acknowledged status equally with British officials.”⁴ They were given a salary out of the tax collected in the region, the remaining portion was set aside for development projects. The salary, however, was reported to have varied proportionately with the favor of the British government.⁵

The traditional authorities were therefore given administrative power over their area, or as one scholar puts it, “Subject to the approval of the Governor it may make rules ‘providing for the peace, good order, and welfare of the natives within the area of its authority.’”⁶ They were encouraged to form treasuries from the money created by letting of the stool lands, market and slaughterhouse fees or any other imposed taxation and a biannual audit of these funds was required by the District Commissioner.⁷ One scholar gave the example of how in Larteh, “The British D.C.

⁴ Ibid, 231.
⁷ Ibid. 146.
could be regarded as a continuation of other outsiders, including the Akwamu leaders, the Ashanti tribute-collector, and the capricious Danes, all of whom could be tiresome at times.\(^8\) Obviously the extent of the British influence varied greatly by location.

The Gold Coast or Guggisberg Constitution of 1925 confirmed the doctrine of indirect rule. The membership of the legislative council, which had its first African member in 1888, was at this point expanded allowing for more elected members rather than just the previous governor appointees. However, “The practice whereby people were elected into the Legislative Council through the Provincial Councils tended not only to confer under prerogatives on the Chiefs but also exaggerated the importance of Chief as instruments of government.”\(^9\) The policy created tension between the chiefs and an ever increasing class of western-educated Africans, who had no outlet for their views and no means of asserting power in the system. The chiefs felt that the educated class, the intelligentsia, was only interested in gaining power, while the intelligentsia felt that the chiefs were pawns of the colonial abusers.

There is evidence of this in the plethora of documentation of unsympathetic chiefs replaced by the British administration. One source says, “Generally, for British tried to leave the selection process alone, but were often forced to intervene in order to resolve an impasse.”\(^10\) Another deviation from the traditional institution was the superposition of a hierarchical system of paramount chiefs where it had previously not existed or even the imposition of chieftaincy in area of the Gold Coast where it was not common.

At independence, Kwame Nkrumah decided that neither the intelligentsia, nor the chiefs had the good of the people in mind.\(^11\) Owing to his political views, it was the people that he saw as his champions and the source of liberation from the Colonial powers. After Nkrumah announced his doctrine of “Positive Action” in 1950, as a means of liberation from the British, the chiefs affirmed their loyalty to the Colonial government. Nkrumah then responded and, “Aroused the hostility of the chiefs to his party with his statement that, should the chiefs refuse to support the people’s ‘just’ struggle for freedom, the time would come when they would run away and leave behind their sandals,”\(^12\) as it is a great taboo in Ghanaian traditional culture for a chief to be seen barefoot. Swiftly, with the advent of what became the transitional government, came the Local

\(^12\) Ibid, 31.
Government Ordinance of 1951, signifying the end of Indirect Rule and the start of restriction of powers of administration of the traditional authorities.

The Ghana Constitution of 1957 limited the scope of the regional houses of chiefs to an advisory role in national and customary matters and they were to be strictly nonpartisan. “The constitutional provisions were clearly a compromise solution that could only have been imposed by Her Majesty’s Secretary of State, and accepted by Nkrumah at the risk of delaying the attainment of independent nationhood.”\(^\text{13}\) This being said, with independence, Nkrumah continued to impose limitations on the power that the traditional authorities had held under the British. The Chieftaincy Act of 1961 redefined a chief, mandating recognition by the local minister of governance, recognition which could then be removed if the minister saw fit. In this act, Traditional States were changed to Traditional Area, and “The Minister would determine the time and place of meetings of traditional councils and appoint auditors of their accounts,” even going so far in some areas as to seize the gong-gong, the chief’s means of summoning the people in local communities.\(^\text{14}\) The general effect of the transfer of power from the British to the Nkrumah regime, was that the chiefs went officially from local administrators to being purely cultural custodians, with no means of enforcing their power.

This change was seen by some as positive, that in order to create an effective democracy, it had to be implemented from the grassroots level up. Others felt, “That the controversy was significant for it exposed chieftaincy as the embodiment of a complex of rights which impinge intimately on the citizenship of the people of the country.”\(^\text{15}\) The opposition to the Nkrumah regime used the chiefs as a levying point, calling them the only ones with legitimate grounds for rule in independent Ghana.\(^\text{16}\) Thus, it was in this climate of criticism, at the precarious point of independence that the Nkrumah regime sought to curb the traditional authorities. Kwame Nkrumah however, could not deny their cultural significance and even adopted many of the traditional symbol of chieftaincy in his appearances to help solidify his rule.

A military coup in 1966 overthrew Nkrumah while he was on a diplomatic mission in Vietnam. After military rule, some administrative representation was returned to the traditional authorities by the Second Ghana Republic. The constitution of 1969 gave limited legitimacy to the Local Councils and one third of the membership of the District Councils, a system similar to the one in place today. In addition to council membership at the local and district level, a minimum of two chiefs from the House of Chief of the Region were guaranteed representation on the Regional Council. Similar patterns of representation have continued through various recreations of

\(^\text{13}\) Ibid, 40.

\(^\text{14}\) Ibid, 42-44.


\(^\text{16}\) Ibid.
parliamentary democracy, amid various coups, to the current system in the fourth republic of Ghana.
Section II: Current Administrative Function Of The Two Systems

The administrative functions of the chief in Ghana today are generally expected to fall under the auspices of development along, but what role exactly is he supposed to play? It is often said “One of the unresolved and therefore outstanding issues in decentralization in Ghana since independence is how to integrate chieftaincy into decentralized democratic local government structures.”

Representation of the traditional authority in the local government is currently restricted to a vague allusion to some consultation on the appointment of one third of the District Assembly, a far cry from the guaranteed one-third representation of past constitutions.

The 1992 constitution of the Republic of Ghana states, “A District Assembly shall consist of the following members…other members not being more than thirty per cent of all the members of the District Assembly, appointed by the President in consultation with the traditional authorities and other interest groups in the district.”

This leaves the exact representation of the traditional authority uncertain. When we look at Komenda-Edina-Eguafo-Abrem (KEEA) District Assembly, we see that the implementation of this law leads to limited membership at best. There are 52 total members of the KEEA District Assembly, so one-third of the membership is 17, however there are only 4 representatives of the traditional authority, one from each traditional area in the district. Therefore, not even a quarter of the one-third appointed membership is given to the traditional authorities.

In his paper entitled “New Models and Implications for Integrating Chieftaincy into Decentralized Democratic Local Government Structures for Good Governance,” Joseph Atsu Ayee looks at the reason for limit in the role of chieftaincy in local government. The arguments are much the same as they were during independence. People feel that due to the hereditary nature of the institution, it is undemocratic and there is always the threat of chiefs becoming involved in partisan politics. Ayee puts it quite succinctly that, though they have not been given authority, traditional rulers “have been turned to in the post-colonial period by their people and even the central government in most areas in Ghana as arbitrators and allocators of values because of the incapacity of the central government to provide such administration beyond the city limited.” He suggests extension of the current representation of the traditional authority in the District Assemblies to enable better modes of the development, since the traditional authorities hold power to mobilize their people and local resources in ways that the local government cannot.

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18 Article 242.

19 William Batch-Kwofie, Member of KEEA District Assembly from 1997 to 2001, interview by author, 15 November 2004, Komenda, Ghana, Notes in possession of the author.
Attempts to facilitate communication and create a more cohesive system are being made. One such example is the two day workshop on “Local Government Collaborating with Traditional Authorities for improved livelihood at the District Level,” held in Busua in December of 2003. Here 40 members of the local government met with the traditional authorities to discuss better methods of cooperation. The majority of conclusions on topics, ranging from revenue mobilization to law and order to land use management involved increased conversation and pooling of resources between the two systems.  

Some of the most interesting conclusions came out of the discussion on power relations, especially the first two: “1. All Stakeholders should be involved in policy formulation and implementation. 2. 1/3 of the 1/3 of government appointees in the District Assembly and various Sub-structures should be given to traditional councils for them to appoint/nominate their own representatives.”

The keynote address by the Deputy Regional Minister, Ms. Sophia Horner-Sam also expressed a clear idea of what the integration between the two systems of governance should look like. She said, “What is expected is a properly and carefully developed local government system with the chief at the center, fully involved in planning, implementing and monitoring local development processes.” This is a tall order when even the extent of the representation of the traditional authorities in the District Assembly is up for debate.

To better understand the current situation of cooperation between the traditional authorities and the local government, the interactions in Komenda will be used as a case study. Komenda is the seat of the paramount stool for Komenda Traditional Area, so the chief is in high demand. Interface between the two systems of governance exists her on three levels.

The first of these is the interaction between the paramountcy and high ranking official of the central government. These interactions occur rarely at best, mostly during the festivals, and even members of parliament are rarely seen by their constituents. However, being an election year, the president of the Republic of Ghana paid a visit to Komenda on the afternoon of November 9th, 2004. A large Durbar was held in his honor and most of the chiefs in the traditional area were in attendance. Speeches were given by both the president and the paramount chief of Komenda. Due to time limitations, the speeches served as their only means discussion, so before hand, the chief met with the traditional council and asked them what were the most pressing issues

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21 Ibid, 8.
22 Ibid, Appendix I.
in the area that should be included in his welcome speech.\textsuperscript{24} The president responded to pleas about the state of the roads in his response, saying that he had noticed their poor shape himself on his journey into town, and promised to bring it to the attention of the head of the District Assembly.

The second type of interaction has already been discussed, that is, the representatives of the traditional authority in the KEEA District Assembly, Komenda Traditional Area is represented by the Queenmother of Kissi.

The third interaction is that which takes place at the grassroots level of the town council. The council consists of the unit committee members, the district assembly members, and representatives from various community organizations including the traditional authority. In this setting, the unit committee members are supposed to serve as the voice of the people, therefore the town meeting is a venue for problems in community development to be raised. The problems are then taken simultaneously to the traditional authorities and the District Assembly through their respective representatives at the meeting.\textsuperscript{25}

In an attempt to evaluate the success and exact nature of the exchanges between the traditional and local governments we must now focus on the perceptions of those involved in these communications in the areas around Cape Coast and Komenda. One of the most definitely answered questions, in relation to these communications, was whether or not copies of the district byelaws are given to the traditional authorities. All five of the traditional authorities that answered the questions responded in the affirmative, as well as all three of the current or past representatives of the local government. Even though responses regarding the method of the transfer varied from the idea that it was passed through the traditional representation in the district assembly to the concept that it was given to the paramount chiefs by the regional executives, it at least seems that they are receiving the laws. This was a good indication that some basic communication exists between the two systems, especially since two of the traditional authorities went on to say that it was then the chief’s responsibility to beat the gong-gong and inform his people of the new law.

Turning to the perceptions of where the interactions between the two systems take place, the results were more varied. Questioning on this subject tended to yield more about people’s opinions on the role of traditional authority rather than giving concrete examples of the interface. However, four of the five traditional persons questioned on this subject cited the representation of the traditional authority in the District Assemblies. A much greater return than that citing either of

\textsuperscript{24} Nana Kwesi Awotwe I, Sanahene of Komenda Traditional Area, Chairman of the Council of Elders, Interviewed by the author, 10 November 2004, Komenda, Ghana, tape in possession of the author.

\textsuperscript{25} Kwadwo Mbir, former Chairman of the Komenda Town Council, Council member from 1985-1995, interviewed by the author, Komenda, Ghana, 17 November 2004, tape in possession of the author.
the two other previously identified levels of interaction. It is possible then to infer that exchange at the district level is especially important. One reason for this might be that, despite the focus of the central government on decentralization, the District Assembly controls the funds for all development projects. Since the role of the traditional authority has evolved in the direction of development, even without the stipend previously allotted to them by the colonial government, this focus on exchange with the Assembly is understandable. The Queenmother of Komenda expressed these feelings, saying, “You should meet and cooperate and have a good relationship with the District assembly, through this people will love you. If it didn’t go forward, then the town won’t know what you are doing for them.”

She obviously sees development as being uniquely connected with the District Assembly.

All interviewees asked about the representation of traditional authorities in the district assemblies were aware of its constitutional mandate and confirmed that it did in fact occur. Unfortunately, due to the language barrier and an effort not to get skewed responses, data was not collected on whether or not the members of the traditional authority felt that the current representation in the assembly was adequate, while the data from past and present members of the local government on this subject yielded expected results. One district assembly member stated that, “I feel it is fair, we are all from traditional areas...every place is being represented by an assembly member, so just a fair chance for the traditional institution to be represented.”

This idea that we are all from traditional areas and therefore the traditional institution is sufficiently represented, holds at its roots the old concept that democracy must be have a firm foundation at the grassroots level. It implies that if you have elected representatives that are evenly distributed throughout the area, then you have true representation of the people and therefore have no need for representation of one stake holding group. The least surprising was the opinion that current traditional representation is sufficient, because as one Cape Coast lawyer puts it, “if you give them a formalized role, the danger is that you might encourage chiefs to be involved in partisan politics, something that the constitution is against...because the thinking is that the Chief, being a custodian of the tradition, must be partial and must be above partisan politics.”

This quote only serves to support the conclusion that this view, as previously discussed, is significant in causing reticence to endow traditional authorities with a larger voice. These two opinions against extend representation of the traditional authorities exemplify the two main arguments of the opposition.

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26 Nana Asowa Baidu II, Queenmother of Komenda, interviewed by the author, 14 November 2003, Komenda, Ghana, notes in possession of the author.
27 Theresa Kwakye, current member of the KEEA District Assembly, interviewed by the author, Komenda, Ghana, 17 November 2004, tape in possession of the author.
28 Kwabena Owusu, lawyer at the University of Cape Coast, interviewed by the author, Cape Coast, Ghana, 4 November 2004, tape in possession of the author.
To get some sense of the general perceptions on chieftaincy from the players in Komenda and Cape Coast, we turn to their responses to the questions regarding current views on chieftaincy in the rural and urban area. Four of the interviewees said that people’s perceptions on chieftaincy were lower in the urban areas, with the respondents evenly split between members of the traditional authority and the past and present members of the local governance system. Four interviewees answered that the influence of the institution of chieftaincy was relatively equally felt in the urban and rural communities, and one, a former District Assembly member, answered that the influence was greater in the urban communities because, in the areas, most chiefs are poor therefore they are not as respected.”

From these results, it is clear that people’s perceptions of chieftaincy are not determined by which system they are a member of.

One reason people gave for the lower influence of chieftaincy in urban areas, were the greater presence of institutions of local governance in the cities, for example, police. People also responded that due to the cosmopolitan nature of the cities, with high immigrant populations, people might be loyal to their own chiefs, but not necessarily to the chiefs in the given city. It is clear then that people, regardless of association, do not feel that chieftaincy is dead. One Queenmother in Cape Coat cited concrete data to this effect, “a recent survey that the Institute of African Studies, University of Ghana, Legon, conducted in “Perceptions of Chieftaincy,” majority of the people would want chieftaincy to say.” It is also clear from these responses that people, whether the reasons they give, feel the effects of chieftaincy are increasingly diminishing. This being said, what ways are the traditional authorities to evolve beyond custodianship of culture?

Looking at the interactions between the local government and the traditional authority in the realm of development, we look to the responses given when questioned about projects carried out as collaboration between the two. Eight of the nine responders confirmed that they do work in collaboration with the other governance system on projects. Some examples frequently cited were those of clinic and school building. From the responses it is possible to say funds and material for projects are expected to be provided by the District Assembly or NGOs, while the labor and technical skills are expected to be provided by the District Assembly or NGOs, while the labor and technical skills are expected to come from the community, facilitated and mobilized by the traditional authorities. Grassroots involved was repeatedly said to be as an important way of keeping down costs. One example provides a comprehensive picture of the interaction. The Registrar of the Komenda Council of Elders says, “The committee will decide they have to put up a clinic. When it starts, then they inform the District Assembly to come in and help them, so we

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30 Nana Eyiaba I, Queenmother of Efutu Traditional Area, interviewed by the author, 5 November 2004, Cape Coast, Ghana, tape in possession of author.
are doing that…in terms of manpower, communal labor. They supply the materials, then the people also use their technical knowledge.”

In this way, we can see that the roles in development project implementation are clearly declined, but roles in the formation of the projects and the evolution of needs in the community to tangible plans do not seem to be as distinct.

Though the local government has representation of the people, in the form of the ten unit committee members nominated by the electorates from each of the wards, this representation is lacking. The Unit Committee members are expected to play important administrative roles at the grassroots level. In Komenda, they are expected to keep records of birth within their ward and also keep track of local businesses for the purposes of taxation, for example one man said, “I do poultry. It is their duty to know how many birds I own, because I have to pay something to the town council or the District Assembly.”

In this way they serve as minor law enforcement officials in regards to communal labor requirements and registration of businesses, births and deaths. Despite these important grassroots responsibilities, the positions on the Unit Committee are unpaid, and as a result often go unfilled. This is the case in Kissi, a neighboring town to Komenda, where the chief says,

Friday is the chief’s day, set aside for development including sanitation projects. Human nature being what it is, people break the law, therefore, Unite Committee members and spokesmen of the chief go to vintage points and watch the farm roads to see if people go instead of coming for communal labor. They will face a penalty, but how do you get people to come to the palace, therefore, there is the enforcing groups, the Unit Committee, they are not given money. The people need supervision when working on dumping grounds for communal labor, and with only two members of the Unit Committee out of eight wards, Chief day is not fully utilized.

This example clearly illustrates the inadequacy of the Unit Committee. The Unit Committees are supposed to be the manifestation of the decentralization at the local level. They are supposed to have a voice in policy through the town, rural and municipal councils, but they are uncompensated and therefore not respected, causing the position to often go unfilled, as with Kissi. This in turns effects the traditional authorities, because if the local councils loose their base, then this is one less mode of communication between the two systems. In Komenda, the town council seems, from the interviews to be the place of most frequent exchange, so it is especially important.

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31 Frank Essah, Registrar of the Komenda Council of Elders, interviewed by the author, 11 November 2004, Komenda, Ghana, tape in possession of the author.
32 Kwadwo Mbir, for Chairman of the Komenda Town Council, Council member from 1985 to 1995, interviewed by the author, Komenda, Ghana, 17 November 2004, tape in possession of the author.
33 Nana J.J. Amaning, Acting Chief of the township of Kissi, interviewed by the author, 15 November 200, Kissi, Ghana, notes in possession of the author.
Another interesting aspects of the grassroots governance is that the local governments rely solely on the Unit Committees as the voice of the people and as the outlet for them to voice the problems and concerns. This means that the Unit Committee members are also the sole resource available at the grassroots level to disseminate information from the councils both locally and at the district level back into the community. Perhaps because the system is unable to function, as it should, due to inadequate funds or maybe because of custom, the local government often turns to the traditional authorities for distribution of decisions or laws to the public. The way to gather the people of a community in Ghana is to use the gong-gong and the owner of the instrument is the chief. Whatever message one would like pass on to the community must first be passed through the chief. One Queenmother describes the situation saying, “If you are the president and you are coming you just cannot go and stand there in the village and start saying, ‘I am so so so.’ It is that you have to go and see the chief, or send message and the chief will beat the gong-gong to gather the people before you come.”

In this way, the traditional authorities are also a link between the people and the local government. The problem is that whether the information is coming from the people or going to the people this role, as liaison, is not defined. It is these inconsistencies that cause the inefficiency in the system and lead to conflict. Since there is no defined role for the traditional authorities in this area, it leaves room for great variation in perceived notions of their exact responsibility.

With the traditional authorities serving unofficially in development and in the general interface between their people and the local government, the system is not what it could be. Resources are left untapped in areas where they are lacking, because there is no defined place for the traditional authorities in grassroots government. From the interviews in Komenda, it was clear that chieftaincy remains at integral part of government at the local level, but the capabilities for success are not realized because no one has any idea where the specific collaborations should take place.

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34 Nana Eyiaba I, Queenmother of Efutu Traditional Area, interviewed by the author, 3 November 2004, Cape Coast, Ghana, tape in possession of the author.
Section III: Historical Judicial Functions Of The Two Systems

In pre-colonial times, the Chief had ultimate jurisdiction in all matters of administration and justice. As one Queenmother puts it, “They exercised political, religious, socioeconomic, military responsibility over the people and the areas they governed and even judicial, because they adjudicated cases that came before them.”

The process that the traditional judicial system has undergone since colonization has been one of increasing restrictions.

Even before the Gold Coast officially became a colony in 1885, the British were in control of much of southern Ghana. As early as 1844, the Fante Bond “confirmed British jurisdiction over criminal and civil cases and promised to ‘mould the customs of the country to the general principles of British law.’” This system gave ultimate jurisdiction to the British officials, but granted the traditional courts control over most local cases. Due to the system of indirect rule, the British did not have the manpower to adjudicate all cases. The theory was that, “In these advanced communities the judges of the native courts administer native law and custom, and exercise their jurisdiction independently of the native executive, but under the supervision of the British staff, and subject to the general control of the Emir.” In this way, the traditional judicial system did not function parallel to a British imposed system, but was rather a working part of the colonial judicial structure.

In his book, The position of the Chief in the Modern Political System of the Ashanti, K. A. Busia goes into great detail about the role and specifics of the traditional judicial system under the colonial government. He describes four levels of traditional courts as set forth in the Native Courts Ordinance, 1935, each level with jurisdiction to civil cases involving a specific monetary amount and criminal cases where the severity of crime could incur fines to no more than the given amount. The traditional authorities could “inflict penalties (fines and imprisonment) on those who disobey[ed] or [did] not carry out its orders and rules,” though these courts were limited to only exercising their power over “natives.” They were also restricted from seeing cases that were constitutional in nature and all employees of the Native Authority, as the courts were called, were appointed by the British and were subject to review. Appeal to cases seen by the traditional authorities went to the native court of appeal if there was one in the area and from there to the District Commissioner in the form of a magistrate’s court, then to the Chief Commissioner’s court.

35 Nana Eyiaba I, Queenmother of Efutu Traditional Area, interviewed by the author, 3 November 2004, Cape Coast, Ghana, tape in possession of the author.
and finally to the West African Court of Appeal.\textsuperscript{39} The Native Authority was therefore the local manifestation of the colonial judicial system

Though the traditional authorities functioned as a part of the colonial system, the laws and customs enforced by their courts, remained true to tradition. The exception was that, “the Council was obliged to safeguard traditional customs which were not repugnant to natural justice, equity and good conscience.”\textsuperscript{40} As far as Busia document the implementation among the Asanti, at the local level, the system remained mush as it had been before the interface of the colonial overlords. There were two categories of offense:

‘Private’ offenses concerned the living only, and were deemed to affect only the social relations of persons or groups living in the community. ‘Public’ offenses affected the relationships between the community on the one hand and the relationship between the community on the one hand and the chief’s ancestors or the tribal gods on the other. Such offenses were religious offenses deemed to affect the weal of the whole tribe.\textsuperscript{41}

The distinction between the two was often determined by gravity of the crime, Busia goes on to describe private offenses as being minor transgressions against lay people, while public offenses were major transgressions or those committed against the chief, ancestors or gods.

Public offenses were always tried in the chief’s court due to the fact that their settlement was a necessity, determining the welfare of the whole community, while private offenses were either settled by the head of the clan in which the incident took place, or if it involved members or more than one clan, it was either sat on by a respected member of the community or the heads of the clans involved.\textsuperscript{42} This idea of common responsibility for the actions of the extended family is not unique to the Akan, for example, in traditional Ewe society, the group that effectively controls the conduct of its membership is the lineage group.\textsuperscript{43} Beyond settlement at the clan level, there was another option for the settlement of private cases. If the chief’s oath was sworn by both the parties then the case could be seen before the chief’s court, since “it was no longer an issue involving the two persons or parties only, but became one that concerned the relations between the community and the chief’s ancestors.”\textsuperscript{44} The oath was specific to the chieftaincy and involved alluding to some bad event in the history of the community, so evil that it was taboo to discuss it,

\textsuperscript{39} Ibid, 141-144.
\textsuperscript{42} Ibid, 67-9.
since it might anger the ancestors involved.\textsuperscript{45} It is clear then, that the chief’s spiritual role was also tied to his adjudication or arbitration of cases and the cases were decided in consultation with traditional law and custom.

On the other hand, the western system, manifest in the British controlled higher courts, was invasive to its minor, traditional counterparts. One scholar observes,

Even as a judge in so minor a court [the chief] has been constantly reminded that the basic sanction for his office has resided in the British government, for sitting in the court with him and his colleagues there has also been a clerk... a paid African employee of the government...he has been empowered to act as prosecutor, counsel for the defense, clerk of the court, court stenographer, and on occasion even the interpreter of the new law to the judges.\textsuperscript{46}

In addition to the presence of the British in the traditional courtroom, a constant reminder of who was controlling jurisdiction, in cases of appeal, they had a more tangible effect on the outcome. Often people, upset with the decisions of the traditional authorities and what they considered to be exorbitant fines, would go to the District Commissioner who they thought might give lesser sentences for traditional infractions.\textsuperscript{47} A fictional example of this is given in what is arguably the first Ghanaian novel. In \textit{Eighteenpence}, Re Obeng writes, “A very tumultuous noise arose in the court. Some enthusiasts admired her far-sightedness, and others reproached her for her impenetrable stubbornness...She replied that she preferred the District Commissioner’s Court.”\textsuperscript{48} The example shows that even during colonialism, there were mixed views on the traditional courts.

As Ghana moved towards independence, the role of chieftaincy became more and more uncertain. Explaining the frequency of destoolments during this period, one scholar says, “In the era of growing nationalism, the chiefs became the foci of discontent against British rule.”\textsuperscript{49} The discontent culminated in 1944, when the colonial powers, with the Native Courts Ordinance, number 22, revoked the judicial jurisdiction they had given the traditional authorities and a court jaws created to specifically deal with appeals form decisions of the traditional authorities in land cases. The trend was continued under Nkrumah, as this example illustrates, “The CPP government further diminished the chief’s judicial powers by appointing a lay magistrate at Akropong in 1960, and closing the \textit{Benkumhene’s} court. The chiefs still discussed traditional matters at the Akuapem

\textsuperscript{45} Ibid, 75.
State Council, but had no formal judicial authority. The traditional authorities went from having legal backing to hear criminal and civil cases, to having none at all.

Section IV: Current Judicial Functions Of The Two Systems

The official jurisdiction of the traditional authorities as it remains today, was the most clearly set by the second Ghana Republic in the constitution of 1969. This gave the supreme court of the republic ultimate jurisdiction, as an appeal court, over any decision of the National House of Chiefs and the High Court jurisdiction over all lesser or traditional courts or adjudications. The role of traditional authority was further clarified by Chieftaincy Act of 971, creating a three tiered system with the Traditional Councils, the Regional House of Chiefs and the National House of Chiefs all exerting power over issues relating to chieftaincy at their respective levels. The Traditional Councils therefore have official jurisdiction over cases of chieftaincy in which the paramount chief of the area is not a party, if this is the case, then the Regional House of Chiefs has jurisdiction, though the Regional and National Houses of Chiefs also served and continue to serve as appeal courts for issues from the Traditional Council level.

Currently, the process to initiate chieftaincy hearings before the traditional authorities can take one of two forms. In the first method, a “Writ to Initiate Chieftaincy Proceedings” must be filed before the Traditional Council or appropriate house, as well as “Particulars upon which Plaintiff(s) Rely.” The second way to initiate proceedings is to swear the oath of the area in front of the registrar of the Council or House, depending on jurisdiction, who will then record it and attach it to the Particulars of Claim, which must immediately be provided. Once the defendant has filed a defense, it is left only for the Council or House to appoint a judicial council to hear the case. Members of the judicial council must be members of the presiding organization, and have sworn the Judicial Oath at a High Court of law, swearing to complete the duties set before them diligently and truthfully.

Even though, the traditional authorities are limited to official jurisdiction over issues relating to chieftaincy, at the local level, they still hold much of the power they have had to arbitrate cases. The 1992 constitution of the Republic of Ghana even says, “Citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals.” This alludes to the large role that traditional authorities continue to play in an unofficial capacity at the grassroots level, both as custodians of tradition and custodians of the peace.

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52 Ibid.
54 Article 125(2)
The traditional authority is therefore free to adjudicate whenever they are called upon to do so. The current procedure for such adjudication was, during this study, related by three traditional authorities, all from different towns around Cape Coast and Komenda and was observed in action in Komenda.\textsuperscript{55} Since all narratives contained only slight variations from one another, we can assume a general norm for the area. The complaint in the case must first go to see the chief’s spokesman or Akyeame, who will then issue a summons. Then the Akyeame or the traditional bailiff goes either to the accused or to the clan head of the accused and tells them that they will be tried on a given date at the Chief’s Palace and that they are expected to attend to answer the change. When going to issue the summons, the representative usually carries the Chief’s staff or an elephant’s tail, to signify that the authority of the chief is vested in them.

When the case is called at the Chief’s palace, the parties are ushered in front of a panel, normally consisting of the Chief, the Queenmother, in important cases, and the Chief’s advisors, sometimes sub-chiefs or elders in the community, and finally the Chief’s spokesman. The complaint is read and the parties are asked for their consent to continue with the hearing of the case. At this point, the parties are often asked to put forth a preset amount, both to show their commitment and to “refresh” the panel. In Kissi, this amount is 30,000 Cedis each.\textsuperscript{56} Both parties then stand and the accuser gives his or her statement, speaking through the spokesman to the panel. The accused questions the accused has given his or her statement. If there are witnesses, they are also questioned by all parties. At the end of the day, the panel retires and consults until reaching a consensus on their decision and then gives a judgment. The guilty party is asked to pay the summons fee and to reimburse the other party’s portion of the court fee as well as any compensation. In Komenda, in all arbitration observed, the guilty party was asked to pay a total of 150,000 Cedis, 50,000 going towards the summons fee, and the remaining 100,000 going towards two bottles of schnapps, one for the council and one for the Chief.\textsuperscript{57}

Some people argue that it is a misnomer to refer to this system as traditional. “In my view, the Judicial Committees… cannot be said to be traditional courts since they are all creatures of the Constitution of the Chieftaincy Act of 1971,” complains one scholar.\textsuperscript{58} Though the official power of adjudication is vested in the traditional authorities by the central government, they still maintain many of the traditional customs associated with this institution. One example is the use of the

\textsuperscript{55} Nana J.J. Amaning, Acting Chief of the township of Kissi, Nana Kwesi Awothe I, Sanahene of Komenda Traditional Area, Chairman of the Council of Elders, Nana Eyiaba I, Queenmother of Efutu Traditional Area, and observations recorded at a session of adjudication of the Komenda Traditional Council, 16 November 2004, Komenda, Ghana, notes in possession of the author.

\textsuperscript{56} Nana J.J. Amaning, Acting Chief of the township of Kissi, interviewed by the author, 15 November 2004, Kissi, Ghana, notes in possession of the author.

\textsuperscript{57} Observations recorded at a session of adjudication of the Komenda Traditional Council, 16 November 2004, Komenda, Ghana, notes in possession of the author.

\textsuperscript{58} Justice Seth Twum, \textit{Interpreting Traditional Courts into the Judicial System of Ghana}, Paper presented as part of the workshop on “Traditional Authority and Good Governance: Implications for Democratic Consolidation” organized by the National House of Chiefs and the National Governance Programme, Kumasi, Ghana, 27-29 October 2004, 4.
chief’s spokesman during hearing by the panel. At the Central Region House of Chief, I was given a tour of the room where arbitration on chieftaincy matters takes places. Even in this seemingly western style institution lacking in any historically traditional basis, the room is arranged so that the chief sit in a large circle in their designated chair, with the spokesman sitting on a lower level in front of their respective chief.\(^{59}\) In the local communities, tradition is also explicitly present in the use of the chief’s staff or elephant’s tail in the issuing of the summons. Also, the role of oath taking in the process of adjudication by the traditional authorities has not changed much since Busia observed it. Presently, at both the House and Council level, it remains an integral part. Even the oaths themselves have not changed since colonial times. Most oaths continue to follow the simple formula of mentioning a taboo even in the community’s history, by alluding to the day on which it occurred, for example, “Black Sunday”\(^{60}\). In their unofficial role in adjudication, the traditional authorities also enforce local custom as determined by the Traditional Councils, see Appendix I. It can then be seen that though the present incarnation of the institution is not traditional, much of the custom remains.

The role of the traditional authority is not limited to enforcing tradition since they also help in maintaining law and order. Traditional arbitration contributes significantly to this role. At the end of the arbitration, after the judgment has been given, the panel takes the opportunity to counsel the two parties. For example, in cases of argument, the parties are warned to keep the peace and to let the conflict end with the decision at hand. In this way, the focus is much more on reconciliation than seeking justice, especially since the process aims for an amicable settlement rather than being charged with a criminal offense. “If an issue is taken to the western-style court, people think you will become enemies. For example, if you take your wife to court, the family will dissolve the marriage,” says one member of the traditional authority.\(^{61}\) The role of chieftaincy today is not unlike how Busia described the role of the elders in adjudication under colonialism. He describes the offended party as choosing arbitration by a respected member of the community as the most appealing of the courses open to him if the case involves a friend and the offense was not serious.\(^{62}\) From this example, it seems that in times past, arbitration by an elder was the most likely to yield reconciliation, since they dealt with a lower class of offences, which is comparable to the role of the court of the traditional authorities today. In the words of one man, “Unless you want to tell me you want to get somewhere and damage somebody with a big fine...but if you

\(^{59}\) Visit to the Central Region House of Chiefs, Cape Coast, Ghana 26 November 2004, notes in possession of the author.

\(^{60}\) David Sogbodjor, Registrar of the Central Region House of Chiefs, interviewed by the author, 26 November 2004, notes in possession of the author.

\(^{61}\) Ibid.

want just for people to be happy with whatever has happened, then a lot of people go to the traditional authorities.”63 Under the traditional authorities, it appears reconciliation is more frequent.

The idea of the process ending in agreement instead of judgment carries over into everyday life. The police force is small in Ghana, and more than a few a towns have no police station. Therefore, at the local level, the presence of the traditional authority is more felt and plays a significant role in maintaining law and order within the community. In referring to the role of the chief in the rural areas, one lawyer says, “[the people] give them a lot of reference points.”64 By settling disputes in an amicable fashion, the traditional authority is filling a void where often no other local authority is present. This also plays into their role in the development of the community, since there can be no development without peace.

What kinds of cases does the traditional authority arbitrate in their unofficial role? Turning again to the area around Cape Coast and Komenda as an example, we return to the perceptions of members of both the traditional authority, and past and present members of the local government. Nine out of twelve interviewees on this subject said that the traditional authorities settle civil cases, while the most often cited examples were marital and land disputes. Three interviewees, one member of the traditional authority and two members of local governance, also pointed out that the traditional authorities sit on issues, beyond the jurisdiction of the conventional courts such as curses and witchcraft. Looking at Appendix 1: Byelaws of the Komenda Traditional Council, it becomes clear that the traditional authority also serves as an enforcement mechanism of clearly established custom. Being present at the local level, in a way that the conventional courts are not, the traditional authorities are in a place to adjudicate in a manner consistent with the specific moral norms of the community.

The Sanaahene of Komenda is a former magistrate in Komenda, former because currently the closest official court to Komenda and Kissi is in Elmina. To find out whether or not this has an effect on which system people take their disputes to, the question was posed, “Are the western-style courts accessible to people in the rural area?” The responses were split evenly, with four interviewees responding in the affirmative, three past or present members of the local government and one member of the traditional authority. While four responded in the negative, including three members of the traditional authority and one present member of the local government. From the responses, it can only be concluded that membership in one system or the other added in determining the perception excessive time and money as hindrances in using the conventional

64 Kwabena Owusu, Lawyer at the University of Cape Coast, interviewed by the author, Cape Coast, Ghana, 4 November 2004, tape in possession of the author.
system, far greater frequency than was seen in mentioning other problems with either system. One interviewee referring to the traditional system said, “It doesn’t take a lot of money. You don’t need to take a car. There is no transportation problem. You don’t need any inferiority complex at the traditional courts. You don’t need to dress in anyway: you can walk to the chief’s house as you are.”

Obviously some feel that the money it takes to use the conventional system is affects its availability. Many interviewees also had comments on the duration of the process, but one was particularly poignant: “Some people are not happy about taking cases to the conventional courts and again for the simple reason that you do not go there one day and you have is settled as you can have it in the Chief’s court. You will go, adjournment, go, adjournment, go, adjournment and sometimes four years, five years, ten years, fifteen years you will be going and coming.”

Time is, therefore, an issue inaccessibility as well.

It then becomes of interest to look at the perceptions of what groups in society use when system. Of the seven interviewees that responded to this line of questioning, three were members of the traditional authority and four were past or present members of local governance. All three members of traditional authority responded that the choice on which system to use was made by the complainant; the decision is on an individual basis. On the other hand, the four past and present members of the local government all clearly identified groups in society who are likely to use the arbitration system of the traditional authorities. One said that it was the under privileged that use the traditional system; while the other three felt it had to do with the amount of education the parties had received. One response was, “Certainly the very simple minded people, because you see, the bottom line is that most of the matters that end up at the Chief’s court are very simple, very simple matters, not complex, so you have the average Ghanaian in the rural setting going to the chief.”

Another response was more blatant about negative views on chieftaincy, saying, “If you took somebody well educated who knows something about the law to the traditional area, he would go an insult them and get out,” and this too coming from Komenda where the head of arbitrations by the traditional council is himself a former magistrate.

To better understand where the image of the people who choose use the traditional system comes from, it is helpful to first look at what is perceived to be the power behind these mechanisms. There was almost clear consensus among the interviewees on where the power of the government-run judicial system comes from, with people either answering simply that it came

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65 Theresa Kwakye, current member of the KEEA District Assembly, interviewed by the author, Komenda, Ghana, 17 November 2004, tape in possession of the author.
66 Nana Eyiaba I, Queenmother of Efutu Traditional Area, interviewed by the author, 5 November 2004, Cape Coast, Ghana, tape in possession of the author.
67 Kwabena Owusu, lawyer at the University of Cape Coast, interviewed by the author, Cape Coast, Ghana, 4 November 2004, tape in possession of the author.
from the law, or that it was endowed on the justices from the executive of the Republic. The perceptions of the power of the traditional authority were more divided. Three interviewees responded that it was a product of convention and the longevity of the traditional authorities throughout history, while three others said that the power came from the people presently involved in the process, the chief and the elders, and one interviewee held that the power of the traditional authorities come from the oath that they swear before the high court. None of these perceptions would be sufficient to explain the negative feelings expressed on those using the system, however, it is interesting to note that five interviewees also mentioned a sacred source. Some felt that the power came specifically from the stool, while others that it came more generally from the ancestors.

From the reactions of the interviewees when questioned about traditional religion, even from just their body language, it was clear that this is a controversial topic and there resulted no clear consensus in the responses. Three responses said that the traditional religious rites associated with chieftaincy have become purely symbolic. One even likened pouring libation to the western tradition of christening a new boat by breaking a bottle of champagne on it. Six interviewees felt that the chiefs are not direct representatives of traditional religion, since in their view it is the traditional priests who actually perform the rites. Examples were cited including traditional rites for the gods at festival time are in fact performed by the priests, and even for curse reversing rites, the so-called fetish priests are brought in. Several people noted that if you were a Christian and opposed to performing the required rites then someone was there to do it for you. One interviewee exemplified this saying, “those who are near the stool, be you a Christian or not, the [traditional] laws are there.” There was however another perception as well. Three responders answered that in the words of one Queenmother, “Traditional religion and chieftaincy, they are one.” This response would signify that the stool remains for some a connection to the ancestors, hardly an easy concept for those have adopted westernized or Christian thought. “Solomon and David were chiefs who were good Christians but though they may go to church, certain rites they perform are different from the norms of Christianity. I wouldn’t be a chief if you asked me, because I would be asked to do thing against my faith,” says one man. Therefore, perhaps it is the connection to traditional religion that causes people to look down on those who accept traditional authority as having jurisdiction over their arbitrations. The role of traditional religion has however, evolved

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69 Kwabena Owusu, lawyer at the University of Cape Coast, interviewed by the author, Cape Coast, Ghana, 4 November 2004, tape in possession of the author.
70 Theresa Kwakye, current member of the KEEA District Assembly, interviewed by the author, 17 November 2004, Komenda, Ghana, tape in possession of the author.
71 Nana Asowa Baidu II, Queenmother of Komenda, interviewed by the author, 14 November 2004, Komenda, Ghana, notes in possession of the author.
72 Peter Godfred Annan, social worker, Department of Social Welfare, interviewed by the author, 14 November 2004, Komenda, Ghana, notes in possession of the author.
significantly from the role that it played in the traditional judicial system as Busia documented it. There is now no distinction, for example, between private and public offenses and there was no mention of rites to pacify the ancestors in the witnessed arbitration of disputes in Komenda. Whether the rites that remain today are purely ceremonial or if they actually hold meaning, it is clear that they add, for some, to the negative stigma surrounding the adjudication of the traditional authorities.

Government programs are evolving which target the core cases seen by the traditional authorities, and promising to further decrease their role in administering arbitration. These include special divisions of the police force to deal with issues of women and children, and at the district level, there are what are known as Family Tribunals. The Family Tribunal deals with family matters in a closed forum. Its judicial panel is made up of the magistrate and two other professional, normally a social worker and a member of the community, who is able to make decisions on the welfare of children, normally a retired civil servant with a high level of education. An official in the Department of Social Welfare describes their jurisdiction, saying, “It used to be that traditional court dealt with the maintenance and custody of children and the marriage. If it fails in traditional court, then it comes to our office…there are cases that should go to chiefs and some that should come to us. In ignorance, they sometimes go there when they should come to us.” It is his opinion that the government through institutions like the Department of Social Welfare have a better understanding of the laws concerning family and know for example how best to maintain children, because of their accessibility to comprehensive studies. Others would argue that the traditional authorities have been managing the children of Ghana since long before the central government came into being and that as custodians of traditional law, they have a better grasp on the accepted role of parents in their local communities. Also, the chief, being present in the locality, it could be argued, is more likely to know all the particulars of the case. Regardless of which view is correct, it appears the stigma of the traditional authorities remains. As one man says, “But then, here, in my part of town, you will take it to WAJU, if it’s a marriage case, women and juveniles something of the police.”

The two systems overlap in various ways, beyond family issues, and they are beginning attempts to work together. The traditional authorities will use the local government to aid in enforcement of cases, as exemplified here. “There was a time I quite remember, somebody was fined in our court, that is the traditional court and he wasn’t paying, but I realized actually that the case was a criminal case, so I handed that person straight to the police. I wrote a letter a letter and

73 Ibid.
74 Ibid.
handed it over to the bailiff to take that person to the police.”

The exchange is also beginning to work the other direction as well. For example, in referring to disputes one man said, “Even when it is taken [to the police], you are advised to seek alternative dispute resolution and they will advise you to bring it down to the traditional authorities.” Further evidence of the exchange is the story, told more than once in the interviews, of people going to the local government with issues having to do with local customs are turned away and sent to the traditional authorities. The interface is hard to find and not as effective as it could be, since both systems are so wary of one another.

The productive use of the overlap in cases of arbitration is now only beginning to be realized. “It is now that this concept of alternative disputes resolution is being encouraged. It is in very infant stages… It is quite new, because in the past we resolved disputes by the contentious way, you state your case, I state my case and then the judge gives a ruling. So now there is this concept that we can resolve a lot of disputes without contentious evidence given,” says one lawyer. Who better to oversee this new option, than the traditional authorities, who have the mechanisms for resolution and have been employing them their own way all along? If this was effectively employed, it could serve to take some of the strain off of the conventional courts, which has been leading to the long delays cited by the interviewees. One scholar writes, “But it is a fact that not many lawyers are willing to accept appointment as District Magistrates… There are currently a large number of magistrate courts without magistrates. This state of affairs is bound to have a debilitating effect on Government’s efforts at taking justice ‘to the door-step’s of every community.’” Why not then show some recognition for the traditional authorities who have experience in the system and begin referring cases to them”

**CONCLUSIONS AND SUGGESTIONS FOR FURTHER STUDY**

By looking at the history of the interface between the traditional authorities and the local government, we were able to determine the foundation of the present perceptions of the members of the two systems. Aside from being custodians of tradition, current scholarly research has identified development and maintenance of law and order as the two most significant areas of contribution of the traditional authorities today. From the perceptions of members of both

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76 Nana Kwesi Awotwe I, Sanaahene of Komenda Traditional Area, Chairman of the Council of Elders, interviewed by the author, 10 November 2004, Komenda, Ghana, tape in possession of the author.


78 Kwabena Owusu, lawyer at the University of Cape Coast, interviewed by the author, Cape Coast, Ghana, 4 November 2004, tape in possession of the author.

governance systems, in the areas around Cape Coast and Komenda, it was possible to evaluate current problems and issues of contention to prescribe better, more productive methods for the future.

The structure has proved to be one of the greatest bones of contention on chieftaincy. Opposition to an increased role of the institution in Ghana argues that it is undemocratic in nature and therefore has no place in a republic. This is a false perception since checks and balances are an integral aspect of the system. Even when we look at the nomination process, it becomes clear that though in some respects hereditary, a chief is also chosen from among the royal lineage for their specific qualities. The nominee, chosen by the Queenmother, must then be accepted by the family, elders and representatives of the community.\(^{80}\) During his time on the stool, the chief is aided by the council of elders, his advisors and the queenmother, all clear representation of the people. The judicial process of the traditional authorities is also characterized by greater community representation than the magistrate’s court, by virtue of the fact that the decision comes from a panel rather than a lone magistrate. The final check of the traditional system is that if at any point the people become disillusioned with their chief, whether it be with his capabilities of administration or his ability to administer justice, they can move to destool him. In these ways, the traditional authority has evolved the necessary checks and balances to produce a viable system. It is fair then to say that chieftaincy is a well-established institution that could be incorporated into the recognized governance of the nation without jeopardizing the principles of democracy.

The incorporation of the traditional authorities in more significant way into local governance would help to relieve some of the pressure on the currently overstretched local governments. The traditional authority is clamoring for more responsibility,\(^ {81}\) and even simply increasing communication it would facilitate mobilization of much needed resources. It is irresponsible of the two systems not to work together when both development and maintenance of law and order are lacking, exemplified by vacancies both in the unit committees and in the magistrate’s courts.

The divisiveness of the issue makes complete incorporation unadvisable. One important first step would be to mandate communication between the traditional authority and the local government by legally defining the official interactions between the two systems. This would take the form of clear percentages of representation of the traditional authority in the district assemblies and prescribed methods of nomination. Also, to ensure frequent communication at the grassroots level, so that the system work at least as cohesively as they do in Komenda, there should be

\(^{80}\) Nana Eyiaba I, Queenmother of Efutu Traditional Area, “Role of the Queenmother,” lecture given, 28 August 2004, Cape Coast, Ghana, notes in possession of the author.

\(^{81}\) Nana Eyiaba I, Queenmother of Efutu Traditional Area, interviewed by the author, 4 November 2004, Cape Coast, Ghana, tape in possession of the author.
mandated representation of the traditional authorities on the rural, town and municipal councils. In a decentralized system it is effective cooperation at the local level, which is most important. This could be most easily accomplished by clarifying the exact roles of each party especially with respect to develop projects, a responsibility of great import in developing nations. Since the traditional authorities are already present in all communities and well established, they have an understanding of the needs that cannot be comprehended by the often absent central government. This knowledge would also be aptly applied in maintenance of order. The traditional systems of conflict resolution could be used to alleviate some of the strain on the conventional courts. In lieu of creating a plethora of problems by giving the traditional authority legal jurisdiction, incorporate them in an official capacity. By launching an education program for the Justice Service on the benefits of alternative conflict resolution, specifically using the traditional authorities where applicable, it would tap an unused resource. This would be much more efficient than trying to replace it.

Further study needs to be conducted into specifically what cases would be benefit from hearing by the traditional authorities, for example, whether some family disputes cold be referred to them or if the Family Tribunals should see them all. Also, one of the main conflicts unearthed by this study was the role of traditional religion in chieftaincy today, so more evaluation should be done of how this affects the authority of the traditional system of governance. Finally, limited by time, this study only looked at the perceptions of members of the two systems in a small part of Ghana. It would be worth it then to look at the feasibility of increasing the official responsibility of the traditional authorities in other areas of Ghana.
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Appendix 1: Byelaws of the Komenda Traditional Council
REVISED CUSTOMARY BYE-LAWS FOR THE PEOPLE OF KOMENDA TRADITIONAL AREA

YEAR 2000
PREAMBLE

The Komenda Traditional Council has taken a critical look at the Customary Laws of the Traditional Area and has made Modifications in the existing BYE-LAWS to reflect the provisions relating to section 41 of the Chieftaincy Act, Act 370 of 1971 in the 1992 constitution.

Therefore below are the revised Customary BYE-LAWS for the people of Komenda Traditional Area approved by the Komenda Traditional Council presided over by Nana Kwodwo Kru II, Omanhene on 31st March 2000.

REGISTRAR
(FRANK ESSAH)

NANA KODWO KRU II
(OMANHENE)
SECTION I:

**ILLITERATE MARRIAGE**

a. **Knocking Rum for the girl’s father** – One bottle schnapps.
b. **Acceptance Rum** (Anobue Nsa) - ₦10,000.00 - ₦5,000.00 should go to matrilineage and the other ₦5,000.00 to the patrilineage.
c. **Head Rum**: (Tsir Nsa) - ₦10,000.00 - ₦5,000.00 to the matrilineage and the other ₦5,000.00 to the patrilineage.
d. **Marriage Rum**: A bottle of Schnapps each for both the matrilineage and patrilineage.
e. **Sonkve Mpamu**: ₦10,000.00 to be given to the girl’s mother.
f. **Dowry or Head Money**: (Tsir Sika) - ₦30,000.00 and a bottle of Schnapps; this should go to the girl’s father.
g. **Akonta Sekan**: ₦10,000.00 to be given to the brother-in-law. The brother-in-law is supposed to settle problems or conflicts between his sister(s) and the husband.
h. **Adornment Ceremony**: (Nhyehyei) – The girl’s parents should provide two fowls. This should be used to prepare food for friends who will attend the ceremony. The girl, according to custom, should go outing for one week. The man should support the girl’s parents with ₦40,000.00 for the adornment ceremony.
i. **Domfa**: If a man impregnates an illiterate woman without the knowledge of the parents, he will pay ₦50,000.00 to the girl’s father or parents plus a bottle of schnapps.

Furthermore, the man should support the girl’s mother with an amount of ₦50,000.00 for the adornment ceremony.

The distribution of eggs and meat to people in respect of adornment ceremony is abolished.

To cut down the cost of marriage expenses further, the provision of sound system, television, video, etc. at the adornment site is banned. Offenders will pay a penalty of ₦100,000.00 plus a bottle of Schnapps.

d. The man is also responsible for the pregnant woman’s hospital and herbal expenses and other incidentals.

**l. Nuptial Money or Ehyiadze**: The man should provide the following items for the proposed wife.

1. Makola pan
2. Half pieces of cloth
3. Headkerchiefs
4. 1 Pair of shoes or a decent pair of sandals
5. Household utensils ₦30,000.00 cash must be added to the items provided.

**j. Care of the Pregnant Woman**: A salary worker or a businessman should pay not less then ₦10,000.00 per month to the pregnant woman for her feeding.

Farmers should provide food crops and fishermen fish.

This should be sufficient to cater for the feeding of the pregnant woman.

**k.** The marriage should take place three months after the pregnant woman has delivered her baby. If the man refuses to marry the woman, he will have to pay a pacification fee of ₦200,000.00 to the woman’s father or parents. If the man agrees to marry the woman, the customary rites as stated in SECTION I should be adhered to.

**m. Wedding Feast or Nkwansen Bue**: The woman or for that matter, the woman’s mother should slaughter a fowl and use it to prepare food for the husband and his friends.

A chain of women carrying such food to the husband’s house with tapes on their heads blaring sounds or music is abolished. Offenders will face penalty of ₦50,000.00.
DIVORCE: The issuance of a “Free Note to dissolve a marriage is uncustomary. To correct this anomaly, the Traditional Council decided that there should be a proper arbitration of which the husband and the wife should be present to present their cases. If the woman insists that she would no more to into the marriage, then she has to refund to the husband the DOWRY – “TSIR SIKA” and the Head Rum “TSIR NSA”. Furthermore, the wife should pay a compensation fee of €50,000.00 “SEND OFF” money to the husband.

in the same vein, if the husband insists at the arbitration on the dissolution of the marriage, the husband will forfeit the Dowry and the Head Rum (Tsir Sika and Tsir Nsa). In addition, the husband will pay a compensation fee of €50,000.00 as “Send Off” money to the wife.

It must also be noted that the dissolution of marriage must always take place at the husband’s family house.

FORNICATION OR AYEFE R: If a wife is caught in an act of fornication with another man, the husband must demand a compensation fee of €100,000.00 plus a bottle of Schnapps from the man and then continue the marriage with the wife. On the other hand, if he refuses to marry the wife then he can collect the Dowry and Head Rum fees (Tsir Sika and Tsir Nsa) and dissolve the marriage. If the marriage has not gone very far, he can collect back the Ehyiadze.

SECOND HAND ILLITERATE MARRIAGE:

This affects women who have a child, children and have dissolved their marriages. Any woman who has dissolved here marriage also becomes a second hand in marriage.

1. It was decided by the Council that the locally brewed gin (Aketeshie) should be provided for the performance of marriage rites.
2. Such a marriage should attract half the customary fees as stated in Section 1

3. There should be no Nuptial Money (Ehyiadze) nor wedding Feast (Nkwansenbue).

SECTION 2

It was decided by the Traditional Council that any girl or woman who completes Junior Secondary School, Senior Secondary School and above in classified as a literate woman. Her marriage therefore attracts the undermentioned fees:

a. Knocking Rum for the father – one bottle of Schnapps.
b. Acceptance Rum (Anobue-Nsa) - €20,000.00-€10,000.00 to the matrilineage and €10,000.00 to the patrilineage.
c. Bible and Ring for the woman.
d. Head Rum (Tsir Nsa) - €20,000.00, €10,000.00 to the matrilineage and €10,000.00 to the patrilineage.
e. Marriage Rum – One bottle of Schnapps each to the matrilineage and patrilineage.
f. SONKYE MPAMU: €20,000.00 to the woman’s mother.
g. DOWRY OR HEAD MONEY (TSIR SIKA): €60,000.00 and (2) two bottles of Schnapps. These should go to the father.
h. AKONTA SEKAN: €10,000.00. This should go to the brother-in-law.
i. ADORNMENT CEREMONY OR WEDDING: The following items should be provided by the man for the woman.
   1 Ecolac – Medium size
   4 Half pieces of cloth
   2 Pairs of shoes
   4 Headgears or Headkerchiefs
   2 Underskirts
   2 Braziers
   6 Underwears of pants
   2 Sprayers
   1 Lavendar
   An amount €100,000.00 should be added to the items.
**DOMFA:** Any man who impregnates a literate woman without the prior knowledge of her father or parents has to pay an amount of £100,000.00 and two bottles of Schnapps as “DOMFA” to the father or parents.

In addition, the man has to take care of the woman hospital expenses, feeding and other incidentals. Cost of feeding is £30,000.00 per month.

Three monthly after the woman has delivered her baby, the man should perform the marriage rites. If the man refuses to marry the woman, then he has to pay to the woman’s father or parents a compensation fee of £400,000.00.

**DOMFA-BASIC SCHOOL GIRL:**

a. Anyone who impregnates a girl receiving Basic Education has to pay £30,000.00 cash plus two bottles of Schnapps to the girl’s father or parents. The man in addition, has to care for the girl in her feeding, hospital expenses and other incidentals during the pregnancy.

Cost of feeding is £30,000.00 per month. Three months after the girl has delivered her baby, the man should perform the marriage rites as per Literate Marriage. If the man refuses to marry the girl, then he has to pay to the father or parents of the girl, £300,000.00 plus a bottle of Schnapps. From S.S.S. and above, the man has to pay £500,000.00 and a bottle of Schnapps.

**DIVORCE: LITERATE WOMAN:** The issuance of free not is abolished. Rather an arbitration should be held in the man’s family house to try a settlement. If the woman insists on the dissolution of the marriage (where the marriage is young) the man shall collect back all the items provided is “Elhyiadze” together with the Bible and Ring. In addition, the woman should refund to the man the Dowry and the Head Rum (Tsir Sika and Tsir Nsa).

Again, the woman will pay to the man a compensation fee (send off money) of £50,000.00.

b. In case the man refuses to marry the woman, he can collect back his Bible and Ring and compensate the woman (Send Off Money) with £50,000.00. The Dowry and Head Rum (Tsir Nsa and Tsir Sika) are forfeited.

**FORNICATION: “AYEFER” – LITERATE WOMAN:** If a wife is caught in an act of fornication with another man, the husband should collect a compensation fee of £200,000.00 and a bottle of Schnapps from that man and continue with the marriage. If he insists on the dissolution of the marriage, then he has to collect back the Bible and Ring, the Dowry and Head Rum (Tsir Sika and Tsir Nsa) and dissolve the marriage.

**LITERATE SECONDHAND MARRIAGE:**

1. The man should provide the woman with a Bible and Ring.
2. The fees or charges for second hand literate marriage should be half of what have been stipulated for a virgin literate marriage.

**SECTION 3**

**DEATH – FUNERALS**

1. Nkae Nana (Notification fee) to the chief – A bottle of Schnapps
2. Nkae Nsa (Notification fee) from the deceased’s family to his children’s family for the provision of coffin, grave, and the dressing of the deceased man’s bed - £5,000.00
3. Nkae Nsa (Notification fee) to grandchildren (Nana Sie £500.00
4. Nkae Nsa –Nsewnom (Sewurada) Notification fee - £1,000.00
5. Nkae Nsa (Notification fee) to Supi and Asafo - £5,000.00
2  Single blades
1  Pair of scissors
8  Yards of cloth
Shroud or any decent cloth for the dressing of the dead body
2  Bottles of lavender or a sprayer
2  Cakes of toilet soap
2  Tins of powder L/S
2  Tins of pomade L/L
2  Towels
2  Brodzeba ntuhu
       Sawee Bofun and Edur Huam
1  Shaving stick
1  Comb
1  Pant
1  Singlet
1  Pair of knickers
1  Jumper

7. The provision of grave, the painting of the deceased family house, hiring of chairs, sound system and the embalmment of the dead body should all be agreed upon by both the deceased’s family and the children of the deceased.

8. The provision of coffin is the responsibility of the Wife/Wives and children of the deceased. The following items should also be provided in addition:
   Adaka Nsido - ₦2,000.00
   Ekita Nsamu and pillow

9. It was firmly decided by the Traditional Council that the changing of the dressing of dead bodies in state as a sign of affluence is completely abolished. Offenders will pay a penalty of ₦200,000.00, a sheep and 2 bottles of Schnapps.

FUNERAL I:  Combined Burial and Final Funeral Rites Involving the use of the Mortuary.

FRIDAY: No Wake-Keeping
SATURDAY: Burial and family gathering. The children should provide a band or sound system. This should end at 6:30 p.m. prompt.
SUNDAY: Memorial Service for Christian Family gathering continues with the provision of a band or sound system by the bereaved family. This should end at 6:30 p.m. prompt. Penalty: As stipulated in (Death Funerals Par. 9)

FUNERAL II: Separate Burial with separate final Funeral Rites
FRIDAY: No Wake-Keeping
SATURDAY: Burial – The children can produce a band or a sound system. This should end at 6:30 p.m. Penalty: As stipulated in (Death Funerals Par. 9)

FINAL FUNERAL RITES:
FRIDAY: No Wake-Keeping
SATURDAY: No Wake-Keeping
SUNDAY: Family gathering and Memorial Service. A band or sound system must be provided by the bereaved family. This should end at 6:30 p.m. prompt. Penalty as stipulated in (Death Funerals Par. 9)

FUNERAL III: Without the use of the mortuary: Burial day- a band or a sound system can be used. It should be provided by the children and it should end at 6:30 p.m. prompt. Penalty as stipulated in (Death Funerals Par. 9)

SUNDAY: Memorial Service for Christians. Family gathering continues with the provision of a band or sound system by the bereaved family. This should end at
6:30 p.m. Penalty as stipulated in (Death Funerals Par. 9)

10. TSIR BO:
   i. Educated son or daughter - €2,000.00 and a bottle of Schnapps each.
   ii. The illiterate son or daughter - €1,000.00 and a bottle of Schnapps each.

11. PURIFICATION OF CHILDREN: (MBOFRAMBA EGURADZE); When the children’s father is alive, the wife should pay €20,000.00 to the husband and family but if the wife fails to pay the said amount and eventually the husband dies then she has to pay €40,000.00 to the deceased husband’s family.

DRESSING OF THE DECEASED: This should depend on the ability of the children to perform.

a. A woman who has no child with a deceased husband should provide a decent bed sheets, two pillows and covers.
   b. GRAVE: The digging of the grave is the responsibility of the bereaved family. The children, according to their ability to perform can build the grave with blocks, tiles, etc. if they want to honour their dead father.
   c. The painting of the room where the deceased father is to be laid in state is the responsibility of the children.
   d. Embalment at the mortuary.- The cost must be borne by the children.
   e. Carrying of assorted items e.g. cloths, sandals, beads, drinks, etc. to a bereaved wife or husband is abolished during funerals. Penalty €200,000.00, a sheep and a bottle of Schnapps.

BURIAL OF NON-RESIDENT MEMBER: Anybody who stays out of his or her hometown or village or sojourns elsewhere in Ghana and does not partake or contribute meaningfully to the development of the town or village cannot be counted as a member of that community. If such a person dies and the dead body is transported home for burial, the following penalties must be applied:

   i. The family of the deceased will pay to the Chief €20,000.00 and a bottle of Schnapps
   ii. Before the burial takes place, the bereaved family will pay €100,000.00
   iii. The funeral rites of the deceased should be performed by the family only and not the “Oman”.

13. FUNERALS OF THOSE WHO DIE IN A FOREIGN LAND, E.G. LIBERIA, LA COTE D’IVOIRE, NIGERIA, ETC. (APOYEMUYI)

   i. In Komenda town in particular, such a funeral is abolished because the Komenda citizens there normally bear all the cost of funeral expenses and so there is no need ventilating any new funeral expenses at home. It was therefore decided by the Council that the bereaved family should gather at the family house, Tuesday morning, pour libation for the departed soul and end up there. There should be no collection of funeral taxes or the use of sound system.
   ii. In the surrounding villages of Komenda, the situation is different. The Council was made aware that the citizens whether they have settled in any part of Ghana or outside Ghana have their names recorded in all the funeral books. As such, they have abounding duty to pay funeral taxes and other developmental taxes of the village. In view of this the bereaved family pay €50,000.00 to the “Oman” before the funeral rites are performed. This arrangement was accepted by the Traditional Council.
14. **WIDOWHOOD RITES:** The old system where by the widow waits until either Good Friday or Christmas time for the Widowhood rites to be performed is abolished.

It can be performed as death occurs. A week after the performance of the funeral rites of a deceased husband, the widow should meet the woman in charge of widowhood rites at Komenda, perform her rites, bathe in the sea and finish with it.

15. **COMMUNAL LABOUR**

Anybody who willfully refuses to participate in Communal Labour without seeing permission from the sectional head will pay a penalty of ₳30,000.00 to the “Oman”.

**DATED THIS 31ST MARCH, 2000**

RECORDED BY:
Mr. J.G.K. Ayemin