TRADITIONAL LEADERSHIP IN GHANA & KENYA

1. Background

A number of studies have affirmed the resiliency, legitimacy and relevance of African traditional institutions in the socio-cultural, economic and political lives of Africans, particularly in rural areas, even when juxtaposed with the parallel 'modern state', which is vested with enormous authority in rule-making, adjudication and enforcement. As Africa seeks to build and strengthen capable states, a need arises to recognise and address this duality fully, which may require aligning and harmonising traditional governance institutions with the modern state.

The roles that traditional authorities can play in the process of governance can be separated into categories that include:

- An advisory role to government and a participatory role in the administration of regions and districts.
- A developmental role, which complements government efforts in mobilising the population for the implementation of developmental projects.
- A role in conflict resolution, where traditional leaders across Africa have already demonstrated success.

Unfortunately, the traditional and modern systems are always perceived as fighting against each other, while it would be most helpful to interrogate how to integrate the two systems more effectively in order to better serve citizens in terms of representation and participation, service delivery and access to justice, amongst others.

This paper will look at traditional leadership in Ghana and Kenya and will, in conclusion, look at key issues for consideration.

2. Traditional Leadership in Ghana

2.1. Role of traditional leaders

From colonial times traditional authorities in Ghana have always been involved in local governance and in various capacities. This institution has endured in Ghanaian society, is still a vibrant force, and is critical to sustainable development. The most important roles that traditional authorities are expected to play in local development and governance are as follows:

- Custodians of natural resources, especially land.
- Lead role in fighting for social development of their people.
- Arbitration and representational roles and facilitating accountability to the people.
Guardians of traditional heritage: being expected to guard and sustain traditional norms, values and principles

2.2. Constitutional basis for traditional authorities in Ghana

Chapter 22 of the 1992 Constitution of Ghana guarantees the institution of chieftaincy, together with its traditional councils as established by customary law and usage. Parliament is barred from enacting any law which confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever, and any that in any way detracts or derogates from the honour or dignity of the institution of chieftaincy.

The Constitution establishes a House of Chiefs system which consists of three levels, which are:

- National House of Chiefs.
- Regional House of Chiefs.
- Traditional Councils.

The National House of Chiefs consists of 50 members, which are 5 paramount chiefs elected by each Regional House of Chiefs. The functions of the National House of Chiefs are the following:

- To advise any person or authority charged with any responsibility for any matter relating to or affecting chieftaincy.
- To undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and successions applicable to each stool or skin.
- To undertake an evaluation of traditional customs and usages with a view to eliminating those customs that are outmoded and socially harmful.

The National House of Chiefs has appellate jurisdiction in any cause or matter affecting chieftaincy which has been determined by the Regional House of Chiefs, such jurisdiction being exercised by a Judicial Committee, which consists of 5 persons appointed by the House and assisted by a lawyer of not less than ten years' standing.

The Regional House of Chiefs consists of such members as Parliament may, by law, determine, with its functions being complementary to the National House of Chiefs. It is specifically enjoined to:

- Hear and determine appeals from the traditional councils within their region in respect of nomination, election, selection, installation or deposition of a person as a chief.
- Have original jurisdiction in all matters relating to a paramount stool or skin or the occupant of a paramount stool or skin, including a queen-mother to a paramount stool or skin.
- Undertake a study and make such general recommendations as are appropriate for the resolution or expeditious disposition of chieftaincy disputes in that region.
- Undertake the compilation of the customary laws and lines of succession applicable to each stool or skin in that region.

The Traditional Council consists of a paramount chief and divisional chiefs, and performs functions similar to that of the National and Regional House of Chiefs, at paramountcy level.

A unique feature of the Constitution is the provision in Article 276 that:

'A chief shall not take part in active party politics: any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin'

Ayee (2007) isolates some of the reasons for the ineffective participation of traditional authorities in local governance as the following:

- Lack of a consistent policy regarding the representation of traditional authorities in local government units by successive governments.
- Lack of political will and commitment by successive governments.
- Ill-defined relationships between traditional authorities and local government units.
- Traditional authority disputes ie disputes over stools or skins creating factions

Ayee also bemoans the lack of clarity regarding the constitutional-legal requirement providing for consultation with traditional rulers, correctly pointing out that the mode of consultation is not prescribed and the traditional rulers are left at the whim of politicians, who may not have a clear grasp of the objective and spirit of the requirement. Also, when you have so many authorities, there can never be any certainty that any or all of them were consulted.

3. Traditional Authorities in Kenya

3.1. Background

African traditional institutions of governance are diverse and have evolved significantly from their pre-colonial forms, during the colonial and post-colonial eras. Much of the post-independence literature classifies African traditional institutions of governance into two types, based on their pre-colonial forms as:

- The consensus-based systems of the decentralised pre-colonial political systems and
- Chieftaincy: the centralised political systems.
In large parts of Africa, pre-colonial political systems were highly decentralised, with law-making, social control and allocation of resources carried out by local entities, such as lineage groupings, village communities and age-sets like village elders. The fundamental principles that guide the consensus based system include curbing the concentration of power in an institution or a person and averting the emergence of a rigid hierarchy. As much as decentralised authority systems avoid the existence of political and social gaps between the governed and those who govern, the decision making process is rather slow, since consensus-building is a time-consuming process. Most of the dominant tribes in Kenya are among well-known examples where decisions are largely made in a consensual manner of one kind or the other.

3.2. The situation in Kenya

The decolonisation process in most African states transferred power to the dominant groups in the territory. As a result, certain groups remained vulnerable due to their close attachment to their traditional cultures and their refusal to assimilate and embrace western development which was adopted by the post-colonial state. The Kenyan state officially recognises 42 ethnic tribes, which effectively excludes a number of indigenous groups in the country and thereby denying them of fundamental rights that accrue to indigenous people, which include language and cultural rights. There is no specific legislation in Kenya governing indigenous people, and any rights to culture enshrined in the Kenyan constitutions can only be invoked as individual rights, not as group rights.

Traditional leadership is not formally recognised in Kenya, and indigenous people continue to be marginalised in elective politics. There is hope that the devolution of powers will be comprehensively addressed through constitutional and legal reforms, to give local communities the power and capacity to manage their affairs according to their culture, traditions and ways of life, as long as it not contradictory to the Bill of Rights.

The only substantial role played by traditional leaders is through the recognition of customary law in Kenya. The Kenyan Judicature Act No. S 3 (2) outlines the applicability of customary law in the Kenyan Courts, clearly stating that all courts shall be guided by African customary law in civil cases in which one or more parties are affected by it, as long as such customary law is not repugnant to justice and morality or inconsistent with other written laws.

4. Key Issues For Consideration

Ghana, like South Africa, exhibits similar tensions between the hereditary rule that underlines traditional authority and representative democracy. The constitutional and political ambivalence regarding the powers, roles and functions of traditional authorities seems to manifest itself strongly. It seems that in both countries there needs to be a shift that goes beyond the ‘constitutionalization’ of traditional leadership, to a complementary role to be played by the institution in a modern state. The role played by traditional leaders as
authorities in customary law may hold lessons for South Africa's approach in putting in place traditional courts in the near future, and South Africa may, in turn, provide valuable lessons to Kenya on the promotion and protection of cultural rights and practices.

References


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