LAW

GOVERNMENT INTERVENTION IN CHIEFTAINCY MATTERS IN GHANA

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ABSTRACT

Evidence in the form of oral tradition or recorded history is not wanting in demonstrating the fact that of all institutions in Ghana the most ancient as well as the most indigenous is the institution of chieftaincy. As such, it is shrouded in tradition otherwise called customary law and usage. The quest for progress in contemporary Ghana has however brought to light the pressing need for a purposeful shake-up in the institution through the instrumentality of law, with modernising overtones and undertones in order to save it from sinking into obsolescence and practical irrelevance. The burden of the present paper is to examine briefly how the Provisional National Defence Council (P.N.D.C.) government has been, and is, responding to the needed shake-up. In the process it will be argued that it is eminently desirable for the government to intervene, but otherwise for government to interfere, in chieftaincy matters.

KEYWORDS chieftaincy, myth, intervention, interference

INTRODUCTION

Article 177 of the 1979 Constitution[1] of the Republic of Ghana provided:

> **"The institution of Chieftaincy together with its traditional councils as established by customary law and usage is hereby guaranteed."**

Although this constitution has been abrogated, yet there is a saving provision in P.N.D.C.L. 42 which abrogated it as follows:

> "(1) **Unless otherwise provided by law the National House of Chiefs, the Regional House of Chiefs and the Traditional Councils established under the 1979 Constitution and in existence before 31st December, 1981 shall continue in existence with the same functions composition and powers notwithstanding the abrogation of the said Constitution.**
>
> (2) **Notwithstanding the abrogation of the Constitution the definition of a chief remains the same as in that Constitution."**[2]

Thus, what we are saying as a people, even under the Provisional National Defence Council (PNDC) government is that chieftaincy together with its traditional councils as established by customary law and usage is guaranteed. However, this sort of thing is not novel. It has been said before. For example, the Nkrumah Constitution of 1960 contained a solemn declaration which the President was required to make before assuming office that chieftaincy in Ghana should be guaranteed and preserved.[3]

So the determination to preserve, and the profession of guaranteeing the institution of chieftaincy have been with us as a people, at least, since our independence from colonial rule. But if we genuinely desire to retain

1 Abrogated by Section 63 of the Provisional National Defence Council Established Proclamation. (Supplementary and Consequential Provisions) Law PNDCL 42.
2 Section 53 of P.N.D.C.L. 42
3 Constitution of the Republic of Ghana 1960. Article 13 (1).

chieftaincy which shows the world that, as a people, we have a distinctive culture, then it is respectfully submitted that we must be willing and ready to reform and/or adapt it to the needs of modern times. The present quest is not for traditional stagnation: the pressing need now is development or progress - politically, economically, socially or otherwise.

In this search for progress, the law comes in as the most appropriate, indispensable tool. Now, seeing that novelty and totality of change are two of the usual three components of Revolution (the third being violence which is not necessary here) the present call to action to save chieftaincy from sinking into obsolescence and practical irrelevance,[4] cannot have a finer hour than now, that is under the 31st December 1981 Revolution.

It is proposed in this paper to examine partially how the P.N.D.C. government has responded to the struggle between traditionalism and progress in Ghana manifested by chieftaincy disputes.

PROVERBIAL NON-INTERVENTION

At times, the Ghanaian public are mystified by official statements which seek to disclaim governmental intervention (interference?) in chieftaincy matters.[5] On the available evidence[6] the so-called policy of non-governmental interference is hard to believe. It is a myth. The present writer is of the opinion that the Government should without mincing words declare it as a policy that it will henceforth intervene in chieftaincy matters as and when necessary. A policy-statement like the one suggested here will have the advantage of breaking once and for all time the misunderstanding and suspicion that sometimes surround governmental measures in respect of chieftaincy. A few examples from the record of P.N.D.C. government will suffice to illustrate the need to break this myth as herein-above advocated.

RECORD OF INTERVENTIONS

Stated below are some instances of interventions by the government of P.N.D.C. in chieftaincy matters. First, barely seven months after taking over the reins of government of the country the P.N.D.C. passed the Wa Skin Property (Preservation) Law.[7] This law authorised the Regional Administrative Officer-in-charge of the then Wa sub-Region to take possession or custody of such property. Any person who was occupying the Palace of Wa skin before the passing of the said law was required to vacate it and make it available or surrender it to the said Regional Administrative Officer. The law further prescribed that any person who wilfully obstructed the Regional Administrative Officer, in his taking possession of the Palace and the skin properties or refused to vacate the palace was guilty of an offence and liable on summary conviction to imprisonment for a term of not less than three years without the option of a fine.[8]

Secondly, exactly thirteen days after Law 16 had been passed, another Law[9] was passed which prohibited the two contestants for the Wa stool, namely, Na Momori Bondiri II and Na Yakubu Seidu Soulia II from entering or residing at any place within the area of authority of Wa District Council. These two contestants for the Wa skin remained banished until August, 1985 when the P.N.D.C. government was satisfied that the prohibition order made against them was no longer necessary. Consequently, another Law[10] was passed to revoke the banishment.

Thirdly, by Osu Stool Property (Seizure) Law[11] the City Manager, Accra, was ordered to take possession of the Osu Stool Property forthwith from Nii Nortei Owuo III or whomsoever might be in possession of such property for the time being.

Fourthly, on 21st December, 1983, the Chieftaincy (Restoration of Status of Chiefs) Law[12] was passed to restore government's recognition to sixteen (16) chiefs whose recognition had been withdrawn by the National Liberation Council Government;[13] and simultaneously to prohibit sixteen (16) chiefs from acting as such. The latter were chiefs of Bawku, Bugri, Binaba, Binduri, Kulungungu, Pusiga, Teshie, Worikambo, Sinebaga, Kugri, Gagbiri, Tanga, Kusanaba, Tempane, Zebilla and Zongoiri. Further, they were obliged by the law to surrender their respective skin-properties to the former sixteen chiefs upon pain of punishment.

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4 See Prof. Kwamena Bentsi-Enchill : Institutional Challenges of our time (1972) Danquah Memorial Lectures.

5 Anytime a PNDC official gets the opportunity to address chiefs in any part of the country or comment on violet situations brought about by chieftaincy disputes the usual refrain has been that it is not the intention of the government to interfere in chieftaincy matters but...

6 See infra for Record of Interventions.

7 P.N.D.C.L. 16 of 15th July, 1982.

8 The expression "not less than three years imprisonment without the option of a fine" means that a person tried and convicted under the law would not be fined but imprisoned for a period of not less a than three years. Three years therefore is the minimum term of imprisonment. Since the maximum is not fixed by the law, more than three years imprisionment could lawfully be imposed on a person so convicted.

9 Wa Chieftaincy Affairs (Prohibition) Law PNDCL 21 (1982).

10 Wa Chieftaincy Affairs (Prohibition) Law PNDCL 118 (1985).

11 P.N.D.C.L. 38 (1982).

12 P.N.D.C.L. 75 of 21st December, 1983.

13 Chieftaincy Act (Amendment) Decree N.L.C.D. 112 (1966).

14 The Bawku Naba Adam Azamgbio for instance had died and a new chief had yet not been enskinned. Aborago Azoka the chief of Kusasis who also had then died was posthumously made Bawku Naba.

The fact that some of the chiefs who were so required to surrender their skin-properties had died at the time the said Law[14] was passed did not appear to make any differences to the Law Makers.

Fifthly, the Yendi Skin Affairs (Appeal) (Amendment) Law[15] was passed on 20th November, 1985 to amend and earlier Law on the same subject matter to allow appeal to the Supreme Court, Accra, against the decision of the Court of Appeal Accra. Although made on 20th November, 1985 and gazetted on 13th December, 1985 the law was nevertheless deemed to have come into force on 1st June, 1984. Yet another Law entitled: "Yendi Skin Affairs (Matters Consequential to Supreme Court Judgement of 17th December 1986) Law" was passed to declare null and void for all purposes, whether under customary law or otherwise, the nomination, election and enskinment of Adam Mahama as Karaga Na, and Yakubu Abdulai as Savelugu Na of the Yendi Traditional Area. The said Adam Mahama and Yakubu Abdulai were prohibited from exercising or purporting to exercise the functions of Karaga Na and Savelugu Na respectively.

The relevant portions of the said law may be quoted as a matter of interest:

"(a) **Adam Mahama is hereby prohibited from residing entering or remaining in the town of Karaga or from residing entering or remaining in any place within a radius of 86 kilometres from Karaga.**

(b) **Yakubu Abdulai is hereby prohibited from entering residing or remaining in the town of Savelugu or residing, entering or remaining in any place within the radius of 24 kilometres from Savelugu."**

The sanction attached to these prohibitions was a term of imprisonment of not less than two years and not more than ten years without the option of a fine. Nor was that all. The law still further decreed that until such time that a new Karaga Na and a new Savelugu Na were respectively enskined for Karaga and Savelugu, the Northern Regional Administrative Officer was authorised to take possession of the Karaga and Savelugu skin properties, pending subsequent orders/directives from the P.N.D.C. government.

Sixthly, by virtue of the provisions of Chieftaincy (Amendment) Law,[19] a chief or queenmother who has been duly installed in accordance with the requisite applicable customary law and usage must also be recognised as such by the P.N.D.C. Secretary responsible for Chieftaincy matters by Notice published in the Local Government Bulletin. Otherwise such a chief or queenmother would not be deemed a chief or queenmother for the purposes of exercising by him/her of any statutory function.[20]

Seventhly, the membership of the Brong Ahafo Regional House of Chiefs was expanded to cover thirty or so chiefs by two Legislative Instruments.[21] The Amanhene of Akroso, Kwatwoma, Seikwa, Badu, Nsoatre, Dwenem, Odumase No. 1, Odumase No. 2, Bechem, Dwan Hwidiem, Goaso, Sankore, Mim, Acherensua, Kenyasi No. 1, Kenyasi No. 2, Kukuom, Akrodie, Nsawkaw, Offuman, Japekrom, Sampa, Yamfo, Basa, Nkomi, Amantin and Nsawkaw were among the new members of the House.

Eighthly, the Chieftaincy (Specified Areas) (Prohibition and Abatement of Chieftaincy Proceedings) Law[22] appears to be one piece of legislation which has affected chieftaincy in the most fundamental manner since the advent of the P.N.D.C. government. This law expressly prohibits the commencement before any Chieftaincy Tribunal or any Court of any cause or matter affecting chieftaincy relating to the nomination, election, enstoolment or recognition of the following chiefs, namely Na Momori Bondiri II Paramount Chief of Wa Traditional Area, Nenyi Kweku Issaw VI Paramount Chief of Shama Traditional Area and Nana Konadu Yiadom I, Effiduasehene and Nifahene of Ashanti-Mampong Traditional Area.

This particular law is perhaps too radical for comfort. This is so because the specified persons can be said cynically to be government-made-chiefs, seeing that by virtue of this law their respective families and lineages, the validity or otherwise of their nominations in terms or the requisite applicable customary law and usage are matters which cannot under any circumstance be questioned. Governmental intervention may be tolerated; but where intervention becomes interference, as it would appear to be in this case, even progressives would find it hard indeed to follow. For, measures of this kind may ultimately lead to the extinction rather than the salvation of the institution of chieftaincy.

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15 P.N.D.C.L. 124 (1985).
16 P.N.D.C.L. 86 (1987).
17 P.N.D.C.L. 179 (1987).
18 Section 3 (1) of P.N.D.C.L. 179 (1987).
19 P.N.D.C.L. 107
20 It is instructive to note that the abrogated 1979 constitution did away with this power. The Constituent Assembly in its proposals thought that device gave the govenment too much liberty to unduly interfere in chieftaincy matters.
21 These are L.I. 1348 (1987) and L.I. 1369 entitled Chieftaincy (Membership of Regional House of Chiefs) Amendment Instrument.
22 P.N.D.C.L. 212 (1989).

Ninethly, publications in the Local Government Bulletins from time to time speak of numerous chiefs from whom government recognition has been withdrawn and others whose statues have been altered. In one of these Bulletins[23] recognition was withdrawn from eleven (11) chiefs, while the status of one was changed. The one whose status was altered was Nana Kwesi Kenin III known in private life as Mr. Samuel Entwi. By virtue of the said Bulletin he now becomes Omanhene of Estii-Mokwaa Traditional Area in the Central Region.

Clearly and demonstrably, this is not the result of objective customary jurisprudence. Perhaps, it is simply a pragmatic governmental response to the needs of the times. Even so, while recognition of the customarily conferred status of a chief by the Government for specific purposes may be applauded, governmental recognition of a status otherwise conferred would amount to interference in the institution as established by customary law and usage.

Finally, the P.N.D.C. Secretary responsible for chieftaincy Affairs has been clothed with power[24] to order any person notwithstanding any law to the contrary to take possession of any stool property in specified circumstances, including:

> **"where the Secretary is satisfied on reasonable grounds that there is a pending dispute affecting the stool property and it is in the interest of public order or it is in the interest for the preservation of the stool property to take possession of such property."**

In the exercise of this power numerous Executive Instruments have been made. One of such Instruments is the Nchiraa Stool Property (Seizure) Instrument [25]. By this Instrument the PNDC District Secretary, Wenchi Brong Ahafo was ordered to take possession of the Nchiraa Stool property.

Surely, the institution of chieftaincy as established by customary law and usage cannot accommodate this over-mighty jurisdiction conferred on the Secretary[26]. But it can be argued that in special or extraordinary cases this jurisdiction is necessary. In any case the foregoing record suffices in exploding the myth of non-governmental intervention in chieftaincy matters.

CONFUSION AND CHAOS IN SOCIETY

Such, in part, is the record of the P.N.D.C. Government respecting chieftaincy. Limitation of space would permit no more than this partial examination. It would be invidious to say that all of those measures amount to governmental interference in chieftaincy matters. At the same time it would be tantamount to flying in the face of overwhelming evidence to suggest that these laws have not intervened in chieftaincy in the country. Perhaps, it is charitable to believe that in passing these and other laws in relation to chieftaincy, the PNDC Government meant ill to no one in particular but well to all in the supreme interest of mother Ghana. As Government the P.N.D.C. has an inescapable responsibility to prevent confusion and chaos in the country, hence the passing of some of these laws.

CONCLUSION

Attempt has been made in this article to show that the Government cannot pretend that it does not intervene, will not intervene and/or has never intervened in chieftaincy matters in this country. Indeed the Government has; and it has been suggested that Government should continue to intervene. Care must be taken, however, that purposeful intervention does not become, or turn into brazen interference. The phenomenon is, at base, a struggle between tradition and progress. Perspectives in traditional jurisprudence reveal centres of personal interests and conflict of authorities in chieftaincy affairs which must be resolved in the context of contemporary aspirations. It is the role of Government to champion the resolution of these conflicts. It cannot be otherwise because in our present society no institution can grow bigger or more powerful than the government. Therefore the Government has been urged to keep faith with the people in this matter by making it plain that henceforth it will intervene in chieftaincy matters in the interest of peace, order and progress. Otherwise governmental measures in other areas of national concern will remain suspect because of the myth of non-governmental intervention in chieftaincy.

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23 Local Government Bulletin No. 7, of 31st March 1989.
24 Chieftaincy (Amendment) Law 1987, PNDCL. 180.
25 E. I. 13 made the 1st day of March 1989.
26 In Ware v. Ofori-Atta (1959) GLR 181 it was held that the Gyasehene was the customary custodian of stool property; that the Gyasehene's custodianship was not distinct from his position as a chief; and since the Act of Parliament, the Ejusu Stool Property Order 1958, affected the Gyasehene's traditional functions, it was invalid.