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LAW, GOVERNANCE,
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TRADITIONAL AUTHORITIES IN AFRICA

Resurgence in an Era
of Democratisation

JANINE UBINK

LEIDEN UNIVERSITY PRESS

Traditional Authorities in Africa

Law, Governance, and Development

Over a short period of time, the strengthening of law and governance has become a major focus for international development organisations, as well as for governments and organisations at the national level. These are now devoting a substantial portion of development funds into reform and capacity building programmes aimed at legal and administrative institutions in transitional and developing countries.

However, the 'building' of legal and governance systems is proving to be a dauntingly difficult and complex task and one in which the methods of approach are highly contested. It has been assumed that law and governance reform is a technical, managerial and financial matter, which allows for the export of laws and the transplantation of legal and administrative structures. The disappointing results of such reforms have illustrated, however, that not enough attention has been given to how laws, policies, institutions and stakeholders operate in reality, in their socio-political contexts. The uniqueness of individual countries, sectors and institutions is often insufficiently understood, and the actual experiences with the myriad of law and governance programmes and projects are not translated into knowledge on how law and governance reform promotes development.

In response, the Leiden University Press series on Law, Governance, and Development brings together an interdisciplinary body of work about the formation and functioning of systems of law and governance in developing countries, and about interventions to strengthen them. The series aims to engage academics, policy makers and practitioners at the national and international level, thus attempting to stimulate legal reform for development.

Traditional Authorities in Africa

Resurgence in an Era of Democratisation

Janine Ubink

LEIDEN UNIVERSITY PRESS

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Outline

Traditional authority is a distinguishing feature in the landscape of contemporary Africa. In many African countries, traditional leadership remains important in organising the life of the people at the local level despite modern state structures. Traditional leaders deliver essential services that African states do not always succeed in delivering; they act as intermediaries between the government and the local population; and they are often a political force to reckon with, wielding enormous electoral and general influence in their own communities due to their control over resources and people.

After independence, many African governments saw chiefs as threats to their power and impediments to modernisation and nation-building, and tried to curtail their role in local government and national politics. Despite these efforts, chieftaincy survived. And since the 1990s, African governments, international institutions and donor organisations have shown a renewed interest in it. As a result, a large number of African countries have enhanced or formalised the position of their chiefs.

At the same time, however, the resurgence of traditional authority coincides with the wave of democratisation that has rolled over sub-Saharan Africa since the 1990s, and many question the desirability and legitimacy of traditional authority in modern forms of governance, and the compatibility of traditional rule with the principles of democratic rule of law.

To enable policymakers, academics, and donor institutions to critically assess claims of the enhancement of the position of traditional authorities, and the desirability of such moves, this Research & Policy Note will discuss the following issues:

- What are traditional authorities, and which functions do they perform?
- Why do governments display a renewed interest in traditional authorities?
- What are the effects of policies and laws regarding traditional authorities on their tasks, power, independence, and local legiti-

macy? To what extent do these policies and laws change power configurations and control over resources?

To understand the complex relationships between government and traditional authority, on the one hand, and between traditional leaders and their people, on the other, an analytical framework is presented. This framework consist of five questions regarding the actual functions, powers, and position of chiefs to determine the legal, administrative and political aspects of the position of traditional authorities vis-à-vis the government and vis-à-vis their people.

In the last section, this Research & Policy Note will return to the question of the legitimacy of traditional authority in democratic states, and the desirability of enhancing its position. It proposes a 'realistic approach' to this issue, in which the performance of traditional authorities is compared to the reality of elected (local) government in developing countries – with all its problems of accountability, mismanagement, and capacity – and not to how it is supposed to work in theory.

1 What are Traditional Authorities?

Traditional authority is a characteristic feature in the landscape of many modern African states. Traditional leaders perform a variety of important functions regulated by customary law – including dispute settlement, natural resource management, local development, and traditional religious tasks –, they often play a role in local or national politics, and they are in various ways linked to modern state structures. But what or who are these traditional leaders?

Diversity marks the world of African traditional authorities. This diversity is partly due to differences in pre-colonial political structures, and partly due to a range of colonial and post-colonial governmental policies towards chieftaincy. Pre-colonial traditional societies covered a whole range of political orders. At one extreme, some African societies had extremely hierarchical, militarised forms of kinship or chieftaincy. At the other extreme, many societies traditionally had no chiefs but were loosely linked segmentary lineage systems. In the colonial period, in some areas, the existing chiefs were ‘recognised’ by the various colonial governments, whereas in other areas – areas without chiefs or with chiefs that did not suit the colonial government involved – new ‘chiefs’ were imposed by the colonial administration. In many areas, the colonial government also invented or strengthened hierarchical relationships – between different tribes and traditional authorities – that had not existed or were still in flux before the period of colonial rule. They integrated the chiefs into their administrative apparatus by placing them between the local colonial administrators and the population.

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The colonial powers varied in their approach towards chieftaincy. For instance, when comparing the British and the French administration in colonial West Africa, it becomes obvious that the British tried to install 'legitimate' traditional leaders who had fulfilled all the traditional prerequisites for assumption of office. The French were far less concerned with legitimacy than the British and took a much more pragmatic approach towards the appointment of chiefs. They balanced the traditional right to rule against the ability to administer in the modern sense, including the ability to speak French. They also created administrative territories that often did not match the boundaries of pre-colonial territorial units. However, in cases where the British did not find strong local chiefs or a clear hierarchy among the various chieftaincies, they too were inclined to make 'administrative appointments' and create hierarchies. Also with regard to the functions of chiefs, the British and French policy differed. This is represented in Box 1. It should be noted, however, that policy and practice diverged in many cases. Whilst the French and British had their distinct local administrative policies, West Africa was far from being a *tabula rasa* on which these could be imposed without reaction. In reality, there was less choice than has often been assumed (Crowder 1978).

Box 1: Functions of French and British chiefs in colonial West Africa

French chiefs:

- lost their traditional functions of justice, policing the state, and of administering the government of his people
- no official criminal jurisdiction over their subjects
- no 'native authority' of their own with a budget and control of appointments
- agents of the colonial administration, assigned to perform unpopular tasks such as the recruitment and supervision of forced labour, the rounding up of soldiers for the army, and the collection of taxes.

British chiefs:

- 'native authority' of their own with a budget and control of appointments
- left to carry on local government with relatively little interference from the colonial administration
- when interference was deemed necessary, the colonial political officers were careful to let it be seen that the resulting decision was made by the chief



- these chiefs lost their sovereignty to the colonial overlords, but their powers over their subjects increased because the traditional checks and balances to the exercise of their authority were neutralised by the same colonial authorities. This increase in power was the principal cause of the unpopularity of many chiefs in British West Africa during the colonial era.

We can now go back to the question of what traditional authorities are. The word ‘traditional’ seems to refer to the historic roots of leadership. We have seen, however, that the current traditional leaders in Africa do not all have pre-colonial roots. Instead of referring to historic roots, ‘traditional leadership’ in this Research & Policy Note refers to leadership whose *legitimacy* is rooted in history – either real or invented – and culture, often combined with religious, divine or sacred references. In the course of this Research & Policy Note, I will use ‘traditional authorities’, ‘traditional leaders’, and ‘chiefs’ synonymously. These terms can denote kings, spiritual leaders, elders, heads of extended families, and other local ‘big men’.

2 The Changing Attitude of African Governments

After the attainment of independence, the attitude of African governments towards traditional leadership varied, although none can be considered overly positive. Some countries, such as Guinea, Uganda and Tanzania, ventured to formally abolish traditional leadership. Other countries entered a path to curtail chiefs' powers. For instance, the first independent government of Ghana, headed by President Kwame Nkrumah, abolished the formal judicial function of the chiefs and tried to break their economic power base by depriving them of any role in land management and eventually of ownership and their claims to have the right to collect land 'rents'. The Botswana government in the first years after independence transferred the responsibility for local health, education and public works, the levy of local taxes, and the impounding of stray stock from the chief and his tribal administration to the newly created District Councils, and the right to allocate tribal land to executive tribunals, known as Land Boards. In both countries, the government was given a final say in the selection and removal of chiefs. This say in the determination of chiefly status could also be witnessed in some other countries, such as in Togo during the regime of President Gnassingbe Eyadema (1967-2005), who heavily interfered with the local selection of chiefs and installed many of its own allies. In some other African countries, chieftaincy was more or less ignored by the state administration, left to its own devices, whether to thrive in the locality or to slowly wither away.

“After independence many African governments saw chiefs as impediments to modernisation and nation-building and tried to curtail their role in local government and national politics. But since the 1990s, a large number of African countries have enhanced or formalised the position of their chiefs.”

Although this was widely expected in the first decades of independence, in most countries chieftaincy did not wither and die. Traditional leaders often remained a political force to reckon with, for many of

them still wielded enormous electoral and general influence in their own communities. This can be understood from the relation between their control over resources and their control over people. In addition, many postcolonial regimes have raised the position of particular chiefs who were considered political allies, and gave chiefs places in the political system as members of assemblies on different levels ranging from local councils to national parliament. For instance, Houses of Chiefs were created in Botswana – where it formed the upper chamber of the National Assembly – and in Ghana – where it functioned as an independent institution to advise the government on traditional matters. In many countries, the chiefs held an important ‘intermediary position’, between the government and the local population. On the one hand, the government could reach the people through the chiefs. On the other hand, the chiefs represented the local people at the government and were a key for locals to enter the realm of public affairs. Chiefs represented the national culture in the locality and the local culture in dealing with members of the government at national and sub-national levels.

After independence many African governments saw chiefs as impediments to modernisation and nation-building and tried to curtail their role in local government and national politics. But since the 1990s, a large number of African countries have enhanced or formalised the position of their chiefs, including Mozambique, Uganda, Ghana and South Africa. Not only African governments, but also international institutions and donor countries are displaying a renewed interest in chieftaincy. Traditional leaders feature high on the agenda of international fora. A case in point is the World Bank’s ‘Promoting Partnerships with Traditional Authorities Project’ in Ghana (2003-2006). Under this project, the World Bank provided a US\$5 million grant directly to two traditional authorities in Ghana, the Asanteman Council and the Akyem Abuakwa Traditional Council, bypassing the Ghanaian government. The project aimed to enhance the standards of health and education in the traditional areas, and includes the goals of strengthening the capacities of traditional authorities and upgrading the financial and management capabilities of the traditional councils and their secretariats (World Bank 2003b). Many African conferences also deal elaborately with the issue of traditional authorities, and delegations of traditional authorities are regularly received by foreign governments or politicians on their travels abroad. (Otumfuo Osei Tutu II Education Fund n.d. lists recent visits by the Asantehene (Ghana)).

Box 2: The changing position of chiefs in a number of African countries

- Mozambique: The socialist Frelimo government banned chiefs upon gaining its independence in 1975 and set up new governance structures. Despite this, the chiefs continued to play an important role in rural areas both during and after the war. In response, the government in 2000 decreed the chiefs a role as state assistants and community representatives. In 2002, a little over one thousand chiefs were formally recognised as rural ‘community authorities’ and delegated an extensive list of state administrative tasks and civic-educative functions (Buur and Kyed 2005).
- Ghana: The Constitution of 1992 guarantees the institution of chieftaincy and restricts the state from appointing or refusing to recognise chiefs (article 270). The position of the chiefs is currently being strengthened by the Land Administration Project, a donor sponsored, long-term programme which aims to enhance land management in Ghana through the strengthening of customary land secretariats under the aegis of traditional authorities. This is expected to enhance the chiefs’ power over land and people (Alden Willy and Hammond 2001; Ubink 2008; World Bank 2003a).
- Uganda: The powerful kingdom of Buganda, abolished by Uganda’s 1967 Constitution after the Buganda king had been exiled in 1966, was restored to a certain extent in 1993 by President Museveni. In 1995, the Constitution was redrawn to recognise the institution of traditional leaders (Englebert 2002: 53; Herbst 2000; Ray 2003: 11).
- South Africa: Despite the negative role of traditional authorities during the Apartheid period, South Africa has witnessed a surprising continuation and even strengthening of traditional leaders’ formal position in post-apartheid South Africa. After many hesitations, the South African Parliament passed two pieces of legislation in 2003 that would give some degree of clarity about the position of traditional authorities in South Africa’s democracy: the Traditional Leadership and Governance Framework Act (no. 41 of 2003) and the Communal Land Rights Act (no. 11 of 2004). The first act provides for the establishment and recognition of traditional councils. A majority of sixty percent of traditional council members consist of traditional authorities and their appointees. The second act provides that these traditional councils will have unprecedented powers in the area of land allocation and administration (Claassens 2006; Ntsebeza 2003; 2005; Ntshona and Lahiff 2003; Oomen 2002).

3 Explaining the Renewed Interest in Traditional Authorities

It can be assumed that widespread criticism of the state administration is an important factor causing the renewed interest in chieftaincy. In one argument, the resurgence of chieftaincy is connected to notions of 'failed states', unsuccessful nation-building, and internal conflicts and civil wars, and chiefs have filled the gap of absent governments. They are seen as 'the only remaining and functioning form of social organisation' (Lutz and Linder 2004: 4). Upon closer observation, however, it is revealed that the African continent displays a surprising lack of any resurgence of tradition in failed states. Rather, the revival of traditional authorities has taken place in countries with a functioning state apparatus, alongside the establishment of competing local institutions in the form of democratically elected councils. This can, for instance, be witnessed in South Africa, Uganda, Malawi, and Ghana. In fact, states that are more confident in their own institutions and stability might be more likely than weak states to tolerate the rise of alternative sources of authority, at least in the cultural sphere or in areas of local land management and dispute settlement (Englebert 2002: 57-8).

“States that are more confident in their own institutions and stability might be more likely than weak states to tolerate the rise of alternative sources of authority, at least in the cultural sphere or in areas of local land management and dispute settlement.”

But why would governments be interested in recognising or formalising the position of traditional leaders? First, chiefs are service providers, who perform a number of important functions in their localities. Box 3 displays the main functions of chiefs. The renewed interest in chieftaincy is linked to the understanding that traditional structures remain very important in organising the lives of the people at the local level despite modern state structures. Since African states often have not succeeded in delivering essential services, people keep turning to

traditional authorities. The government might recognise or formalise the position of chiefs hoping to expand the number of functions or enhance the chiefs' performance. Second, many African governments would like to add the legitimacy of traditional leaders to that of elected (local) government by giving traditional leaders an official role in governmental institutions. They hope to strengthen the position of the government by integrating tradition into the space of governmental power as a symbolic, legitimising discourse. Third, chiefs are intermediaries, who take up a position in between the government and the local population. By formalising the position of chiefs, the government can hope to reach the people through their traditional leaders and benefit from the mobilising potential of traditional authorities for developmental and democratic projects that the state does not have the capacity to conduct by itself. Fourth, the government sometimes needs the co-operation of chiefs to 'capture local communities' in order to achieve legislative hegemony. Fifth, without taking traditional structures into account, social and political engineering are likely to fail at the local level, as state measures meet resistance from reluctant or antagonistic chiefs. 'While chiefs cannot often oblige governments to take any positive action, throughout Africa they possess the power to hinder government policies by showing – as discreetly as they wish – that they do not favour popular co-operation' (Ribot 2000). In sum, the main reason to formalise and enhance the position of traditional leaders is to improve local governance. In many countries, attempts at decentralisation that excludes traditional authorities have failed, and state policies have not been implemented because chiefs have resisted them. Chiefs are a social reality in many countries and governments have to recognise the existing structures.

The resurgence of chieftaincy has been aided by the fact that new public spaces for traditional leaders seem to have been opened up in many African states by the adoption of multi-party democracy and democratic decentralisation, and by the trend of considering the state as just another actor in an increasingly complex and interwoven global order. In a comparable way, the liberalisation policies of the 1990s and donor calls for structural adjustment, emphasising a smaller state, cuts in public expenditure, a strengthening of civil society, and alternative dispute resolution, created an increased space for the involvement of traditional authorities in law enforcement, dispute resolution, service provision, and the implementation of development projects. Added to this, the enlarged distance between people and the state facilitated the resurgence of tradition as an alternative mode of identification.

Box 3: Main functions of traditional leaders

- *Dispute resolution* by traditional leaders in customary courts is said to be popular and often resorted to as it is easily accessible, cheap, fast, and comprehensible. For instance, in 1997, customary courts in Botswana tried about 75 or 80% of the criminal and civil cases in the country (Sharma 1997: 41). More recently, (neo-)traditional courts are also envisaged to play a role in the trial and reconciliation process after violent conflicts such as the genocide in Rwanda and the armed rebellion of the Lord's Resistance Army in North Uganda.
- Traditional authorities also have a role to play in the field of *natural resource management*. They are thought to be able to ensure nature conservation and environmental equilibrium and to manage customary land in such a way as to ensure general and equitable access to land and to guarantee the social security function of land.
- Chiefs should *promote community development programmes*. Traditional authorities are often seen as having the capacity to mobilise their people behind development initiatives and to be able to use the authority and respect from their people for community education and awareness creation. Combined with the intimate knowledge they possess of their areas, this pleads for the inclusion of chiefs in community development processes.
- Traditional leaders often *function as an intermediary between local citizens and government*. Donors, aid agencies, and governments often look upon traditional authorities as the missing link between rural citizens and the state. On the one hand, they are able to implement governmental law and policy and to facilitate, explain, and attain popular support for development projects in their traditional area, on the other hand, they can provide information from the locality.
- Traditional leadership is seen as a channel that can *articulate the needs and priorities of communities*, which it represents, and this can lead to genuine democratisation and development and the assertion of local autonomy against the globalising and modernising power of the state.
- In performing all these functions, traditional leadership is also expected to *protect local culture, tradition, identity, and religion*.

4 The Current Position of Traditional Authorities

We have seen that central governments often envisage a role for traditional leaders in issues of local administration. At the same time, however, they may view traditional leaders as a threat. When governments see traditional leaders as a force undermining their own power, they may attempt to turn chiefs from more or less independent local actors into mere agents of the state. On the one hand, this includes a co-optation through bureaucratisation of chiefs in order for the government to benefit from the functions chiefs perform in their communities and to exploit the control they exercise over people and resources. On the other hand this includes a plan to marginalise chiefs. What is presented as a recognition by the state or a strengthening of the role and position of traditional leaders, may in fact be a co-optation and may reduce the role of chiefs to helping legitimise state policies without being given real and independent power. In such cases, chiefs are not an alternative to the state, but rather a particular manifestation of state intervention in the localities. While integrating traditional leaders politically and administratively into central government, and utilising tradition as a symbolic, legitimising resource for governmental power, they simultaneously attempt to 'folklorise' the traditional side of the chiefs' role (Von Trotha 1996: 87-88). In such cases, the resurgence of chieftaincy will not significantly change power configurations and the distribution of resources.

As noted earlier, not all African governments regard traditional leaders as a threat. Especially in countries where an emerging or existing class alliance between traditional and modern elite can be found, there might be less hesitation to allow for independent local administration by chiefs or to even enhance the position and power base of traditional authorities. Such an alliance can, for instance, be found in Ghana, where there was considerable friction between the modernist elite and the elderly chiefs at the end of the colonial period and the first decades of independence, but this discord largely disappeared with the trend of selecting highly educated men as chiefs. Currently, modern and traditional leaders largely originate from one elite group and chiefs are often family members and former classmates of ministers, sub-ministers, high civil servants, etc., or even take up such positions them-

selves. And indeed, in line with the above hypothesis that such countries might be more willing to actually strengthen the position of chiefs, the position of traditional authorities in Ghana is currently being strengthened.

Governmental policy towards traditional leadership – whether informed by fear or friendship – has a bearing on the relationship between traditional leaders and their people. The power of traditional leaders is often based on two sources: state recognition and local ‘tradition’. Formal recognition of chiefs can enhance their local power and legitimacy, but might as well endanger those qualities, especially when the legitimacy of the government itself is being questioned. When chiefs are heavily integrated into the administrative apparatus and tied to the national political structure dominated by the interest of the head of state and the ruling national party, this can have a detrimental effect on their local position. The local attachment of the chief can to a certain extent give way to his responsibilities as a member of the central administration and his loyalty towards the national government and the politics of the national centre can come to dominate (Von Trotha 1996: 87). This happened, for instance, during the colonial period, and led to a decline in responsiveness to local needs, local accountability and the functioning of the existing local checks and balances. In the same vein, local checks and balances on chiefly administration can be enhanced by governmental interference but may as easily be eroded by governmental action or a lack thereof.

“The power of traditional leaders is often based on two sources: state recognition and local ‘tradition’.”

To understand the complex relationships between the government and traditional authority, on the one hand, and between traditional leaders and their people, on the other, an analytical framework is needed. Such a framework will enable researchers, policymakers and donor institutions to critically assess claims of enhancement of the position of traditional authorities, and the desirability of such moves. Box 4 presents a simple analytical framework. It consists of five questions regarding the actual functions, powers, and position of chiefs. These questions, which are elaborated below, are grouped according to (1) questions regarding the position of traditional authorities vis-à-vis the government (legal, administrative and political aspects) and (2) questions regarding the position of traditional leaders vis-à-vis their people.

Box 4: Factors determining the position of traditional authorities within African states

- *Their legal position:* Does national law recognise and guarantee the position of traditional authorities? Does national law provide the government with influence on the selection of chiefs?
- *Their administrative position in the governmental apparatus:* To what extent do chiefs perform functions for the government and how are these tasks regulated? Are chiefs on the government's payroll? Can they perform their tasks independently or are they circumscribed and monitored by the state? Do traditional leaders depend financially and administratively on the state? How do they relate to elected local government bodies?
- *Their role in national politics:* What linkages exist between chiefs and modern state structures? Are traditional leaders allowed to partake in party politics, and if so what role do they play in this field?
- *Their legal and administrative position in the community:* What tasks do chiefs perform in their community, and how do they perform them? How are these tasks and the performance of chiefs in general regulated in the traditional system?
- *Their social position in the community:* To what extent are people attached to traditional structures, values and norms? How popular and legitimate are the chiefs in their localities? Is the institution of chieftaincy being debated?

4.1 The position of traditional authorities vis-à-vis the government

Question 1: What is the legal position of traditional authorities?

Sub-questions: Is the position of traditional leaders recognised and guaranteed in the constitution or other state law? Is the selection of chiefs a purely local affair or does the national government have a say in the process?

Formal recognition of the institution of traditional authority by the state is likely to transform the position and legitimacy of traditional leaders. On the one hand, it strengthens their position vis-à-vis the government. On the other hand, the possible negative impact of formal recognition is that they may lose their independence and risk being identified with state failure. State influence on the selection of individual candidates affects their independence even more. An additional effect is that the government will become implicated in local struggles for chieftaincy positions, which are rife in many countries and often lead to violent popular uprisings.

Box 5: The legal position of traditional authorities in Ghana and Botswana

The Constitution of the Republic of Ghana (1992) guarantees the institution of chieftaincy, and states that Parliament has no power to enact a law which ‘confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever’ (Article 270). This same document defines a chief as ‘a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage’ (Article 277).

In Botswana, chieftaincy is recognised, but not independent. Section 4 of the Chieftainship Act (Act 19 of 1987) states that a chief is an individual who (a) has been designated as a chief in accordance with customary law by his tribe, and (b) has been recognised as a chief by the Minister of Local Government. The Minister can withdraw recognition at any time when he considers this to be in the public interest. Any chief who fails to comply with any direction given to him by the Minister is liable to be suspended or deposed (section 18).

Question 2: What is the administrative position of traditional leaders in the governmental apparatus?

Sub-questions: Does the state define and control the powers and functions of the traditional leaders? To what extent do they perform functions for the government and how are these tasks regulated? Does the government allow for independent local administration? Do traditional leaders function alongside elected local government bodies, and do they have reserved seats or advisory functions in those bodies? Are chiefs on the government’s payroll? Do the traditional authorities depend financially and administratively on the state?

Some of the main functions of chiefs lie in the realm of local administration. These functions can result from their ‘original jurisdiction’ and from governmental regulations and policies. Officially chiefs exert their power ‘in the shadow of state law and administration’, but – to stay within the proverbial idiom – the size and coolness of the shadow vary considerably from one country to another. Some governments provide mechanisms to carefully monitor chiefly performance, others leave this up to the locality – either because of a lack of power or capacity to exe-

cute such control, or because of an ideology that they should not or need not interfere in local affairs. Administrative duties in the name of the state can provide chiefs with additional power, but might also give a chief the place of a low-placed office holder. The payment of a salary to traditional leaders by the government enables them to discharge their functions and maintain the status of their office. Additionally, the provision of a salary could diminish the chiefs' incentives for self-enrichment or corruption in the discharge of their responsibilities and for clinging to outdated customs, as long as those customs bring financial benefits. Payment of salary can also be seen as a way to transform chiefs into civil servants, accountable to senior civil servants and subject to disciplinary sanction. Besides a salary, chiefs are sometimes allowed to retain a percentage of the tax revenue they collect. However, if traditional leaders are paid by the government, their role as local leaders might be compromised. They might be seen as agents or even tools of the central government.

“Some governments provide mechanisms to carefully monitor chiefly performance, others leave this up to the locality – either because of a lack of power or capacity to execute such control, or because of an ideology that they should not or need not interfere in local affairs.”

Box 6: The administrative position of traditional authorities in Cameroon and Ghana

In Cameroon, Decree No. 77/245 of 1977 turned all traditional leaders into auxiliaries of the government. The chiefs' installation has to be ratified by an express note of administrative recognition before he can officially exercise any active role. He is now accountable to the senior Divisional Officer of his area and might suffer disciplinary sanction from low level bureaucrats. In return, the chiefs receive a small monthly salary from the state in addition to a small commission from tax collections. This bureaucratisation of chieftaincy has demystified the sacred nature of royalty and seriously curtailed the powers of the chiefs (Fisiy 1995).



In Ghana, traditional leaders are not seen as agents of the government. They do not perform tasks such as tax collection and registration of births and marriages and do not receive a state salary. They

manage approximately seventy per cent of the land, and their position as custodian of this land is recognised by the government. The law is silent about the way they should perform this function, except for one provision: article 267(1) states that they should manage the land on behalf of and in trust for their subjects in accordance with customary law and usage. Although a number of state institutions are mandated to regulate the management of customary land – for instance, through land use planning and land title registration – in reality, they do not act as a check upon the management of land by traditional leaders, who have more or less free reign to act as they please (Ubink and Quan 2008).

In many African countries the administrative functions of chiefs overlap with those of elected local government structures, for instance, in the field of management of natural resources, including land, and of provision of basic services to the communities. Research shows that elected local government can form a serious threat to traditional authorities. For example, when people in Ghana were asked what they considered the main function of the chief, they mentioned seven main tasks. But when these same people were asked who they considered to be the most appropriate actor to perform five of these tasks, it is striking that for all these tasks the chief was only considered the third or fourth most appropriate actor, behind the Unit Committee – the lowest level of elected local government – and the local representative of the District Assembly – the second lowest level of elected local government in Ghana (Ubink 2008). African governments have developed a number of different policies to regulate the relationship between elected local government and traditional leadership. A typology of such policies is presented in box 7.

Box 7: A typology of government policies concerning traditional leadership

1. *The policy of exclusion*: This policy, which is usually legitimated by representing traditional authorities as being backward, aims to abolish traditional authorities or at least folklorise their position and annihilating their role in local government. This policy has mostly been implemented by countries with a revolutionary orientation, such as Guinea in 1958 and Mozambique after the 1975 independence.



2. *The policy of adaptation and re-orientation:* This policy proceeds by re-interpreting the functions of traditional leaders or by re-orienting them towards political or developmental ends. Sometimes this entails merely using the name of a traditional institution for a completely new purpose. Usually, this does not include a role for traditional leaders in local government.

3. *The policy of integration:* Traditional authorities are integrated into the government administration and recognised as the only legitimate local administrators. For instance, in Cameroon, canton and village chiefs are up to the present day the only representatives of state powers in rural areas below the level of districts (sub-prefectures) and they continue to be chosen from among the members of traditional local power lineages.

4. *The policy of subordination:* This policy refers to a situation where the government officially recognises traditional authorities, but makes them subordinate and answerable to the elected local authority organs. Namibia provides the clearest example of this policy. Section 12 (2) of Namibia's Traditional Authorities Act, 17 of 1995, states that in the case of a conflict between traditional authority and a local authority council, the powers of the local authority shall prevail.

5. *The policy of association.* The government officially recognises traditional leaders alongside new, modern, democratically elected and decentralised ones, and gives them official consultative or executive functions associated with elected local government in the field of the local political and development activities. Ghana is an important example of this policy, where chiefs have constantly been associated with local government activities, either in a consultative role or with some executive powers.

6. *The policy of harmonisation.* This policy is a somewhat extremer form of the policy of association. It acknowledges that whereas traditional and elected structures have distinctive and specialised roles which require their separate existence, they also have common roles and objectives which must be reconciled. In areas of common interest, institutions should be created that involve all the role players, so that the decisions made by the 'harmonised' institutions will be binding for all concerned. Thus, traditional authorities are represented in the local council and can argue their point of view there. Its decisions will then be binding for all concerned. Similarly, a specialised land allocation body would have representation from traditional leaders, elected councils and other interested parties, and its decisions would be binding for all concerned.



7. *The policy of 'informal' strategy or laissez-faire.* The government refuses to define official roles for traditional leaders in local government but does not interfere in their activities as long as their activities do not breach the law. An illustrative case is Uganda where the government of Museveni has authorised the re-establishment of the traditional kingdoms, but has not given the traditional leaders any executive or consultative role. They exist only for traditional matters and are not permitted to interfere in the activities of local decentralised institutions that are in charge of local government activities.

Source: Based on Bako-Arifari 1999: 5-15 and Hlatshwayo 1998.

Question 3: What role do traditional authorities play in national politics? Sub-questions: What linkages exist between chiefs and modern state structures? Are they allowed to take part in party politics, and if so what role do they play in this field?

There are many forms of linkages and formal institutional arrangements between traditional authorities and modern state structures throughout Africa. Associations of chiefs set up to defend the interests of their members have also become increasingly numerous across the continent. These cases include the national associations of traditional authorities in Niger and Togo, which are considered important political structures and are consulted by their governments in the formulation of national policies. The 'resurgence of chiefs as a class' (Englebert 2002: 55-6) is frequently embodied in the creation of national or regional Councils or Houses of Traditional Leaders. For instance, in Botswana, a House of Chiefs forms the advisory, upper chamber of the country's bicameral parliament. The House of Chiefs has no legislative or veto powers but acts as an advisory body to parliament and government. All bills affecting tribal organisation and property, customary law, and the administration of customary courts should go through the House of Chiefs before being discussed. In Ghana, the National House of Chiefs functions as an independent institution to advise the government on traditional matters. The president of the National House of Chiefs also has a seat on the Council of State, an advisory body to the President, Ministers of State, Parliament and other public institutions, which the President is required to consult when appointing high-ranking public servants such as the Chief Justice, Ambassadors, etc.

Many African countries either have laws in place or very strong sentiments against allowing traditional leaders to combine traditional and

active political leadership roles. This has two motives: 1) to prevent traditional leaders from abusing their positions to unfair political advantage, and 2) to prevent factitious political divisions along ethnic lines, which are likely to occur if traditional leaders are given free reign in party politics. But because national politics excluding traditional leaders also does not have a good track record on this last point in Africa, this argument seems an excuse for politicians to keep traditional leaders out of their way. Nevertheless, it is a valid argument that a politicisation of the chiefs' role can seriously endanger the respect and regard given to the traditional leaders. For instance, in Togo, during the regime of President Eyadema, the chief came to be seen as part of his oppressive system of political control (Ray and Van Rouveroy van Nieuwaal 1996: 32). It should be born in mind, however, that such a politicisation can also occur when governments have a decisive say in the recognition or installation of chiefs, and use this power to install chiefs from a certain political denomination. Table 1 shows the approaches of four southern African countries to the issue of access of traditional leaders to political office.

“A politicisation of the chiefs’ role can seriously endanger the respect and regard given to the traditional leaders.”

When chiefs have no official role in party politics, this does not mean they are politically impotent. In the decades after independence, chiefs in many countries have functioned as vote banks or vote brokers. Although it is currently being questioned ‘whether the ‘customary authorities’ have retained sufficient prestige to function as vote banks’ (Geschiere 1993: 151), politicians are still influenced by the fear or hope that chiefs might be able to bring votes to certain political parties.

Table 1: *Access of traditional leaders to political office*

Country	<i>Can traditional leaders as traditional leaders be:</i>		
	<i>Party officers?</i>	<i>Members of local government council?</i>	<i>Members of Parliament?</i>
Botswana	No – must resign as traditional leaders first	Yes – reserved place cannot be elected	No – must abdicate to join National Assembly – can be members of House of Chiefs (Second Chamber - advisory role only)

Country	<i>Can traditional leaders as traditional leaders be:</i>		
	<i>Party officers?</i>	<i>Members of local government council?</i>	<i>Members of Parliament?</i>
Namibia	No – must resign first – cannot combine traditional office with party political office	No – must resign first – cannot combine traditional office with political office	No – must resign first – Council of Traditional Leaders (only advises in land matters) not yet in place
Zimbabwe	Yes – no restriction	Yes – elected in own right – appointed as special-interest representatives	Yes – elected in own right – appointed into ten reserved seats for chiefs in National Assembly
Zambia	Yes – but ruling party strongly against it	No – no provision reserving place of chiefs – plans to include chiefs' representative council	Yes – through elections – House of Chiefs (Second Chamber - advisory) – Abolished 1991

Source: d'Engelbronner-Kolff et al. 1998: 148.

4.2 The position of traditional leaders vis-à-vis their people

Question 4: What is the legal and administrative position of traditional authorities in their community?

Sub-questions: Which tasks do traditional leaders perform in their locality, and how are these carried out? What kind of traditional checks and balances exist regarding the functioning of traditional leaders?

Traditional leaders perform a variety of functions, including dispute settlement and ensuring peace in the community, management of natural resources such as land and water, local development projects, organising communal labour, mobilising the people for certain activities, and traditional religious tasks. The institution of chieftaincy is characterised by an ambivalence, where it needs to mediate between the past and the present by propagating the image of itself as a 'symbol of tradition' while, at the same time, striving to serve as an agency for 'modern projects' (Fisiy 1995: 49). This forces chiefs to operate on two distinct fields, with different languages, but also enables them to mobilise a wider variety of economic resources and politico-legal instruments of power. Chiefs are nowadays selected on the basis of their education

and profession – characteristics that should enable them to bring development to their communities – but are at the same time expected to act as guardians of tradition, creating a Janus-faced ruler. One can wonder what effect the ‘modernisation of chieftaincy’ has on the traditional and religious functions and prestige of traditional authority.

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The legal basis for chiefly tasks lies in customary law. This is an unwritten normative order that is regarded as somewhat flexible and negotiable. It is often said that chiefs – who are considered as authorities in the field of customary law – have a very strong position to profit from the flexibility of customary law. Formally, the performance of chiefs is regulated by a number of customary checks and balances, including the condition that chiefs rule in council with their elders or subchiefs, and the sanction of deposition in case of serious mismanagement or corruption. Research has shown, however, that these checks and balances often do not function optimally in reality. As a result, traditional leaders have been able to rule arbitrarily and use their position to enrich themselves, giving power considerations precedence over the objectives of development. This can be witnessed especially in areas where natural resources are very valuable and chiefs can profit from their position as managers and caretakers of these natural resources. This results in increased social differentiation within African communities. Many have voiced their fear that laws and policies enhancing the position of chiefs will further exacerbate and elicit abuse of power by unaccountable traditional authorities.

Question 5: What is the social position of traditional authorities in their community?

Sub-questions: How do people feel about traditional authorities, and the way they perform their functions? Do people accept the institution of traditional leadership as legitimate?

The integrity or corruption of chiefs is an important factor influencing the legitimacy and popularity of chiefs in the locality. As said, this is

especially a topic of interest in areas with high pressure on natural resources. The self-enrichment of chiefs from the natural resources of the community creates much tension and distrust in the communities. But serious allegations of corruption and power hunger have been launched against certain chiefs in other fields as well. One would expect that such cases would severely effect popular trust in chiefs' local leadership and their position as reliable intermediaries between the people and either the state or the ancestors. There is very little research, however, on *how people feel* about the chiefs, their performance, and the institution of chieftaincy. Studies among the Sotho in South Africa, and among the Ashantis in Ghana are positive exceptions to this rule (Oomen 2002; Ubink 2008).

This lack of data does not hinder some academics and policymakers from making assumptions about popular views on chieftaincy. For instance, in South Africa, 'assumptions abound concerning the extent and nature of popular support for chieftaincy within the present democratic context. These assumptions are often striking in their simplicity, and can be classified into two categories. The first is that people "continue to owe allegiance to the institution of traditional leadership", which is "deeply rooted in the social fabric of African communities" and enjoys a cultural legitimacy. The second is as absolute, and holds that traditional leaders in South Africa have lost all legitimacy because of their involvement in the apartheid government' (Oomen 2002: 182).

Among the Sotho, four spheres of justification that people refer to for supporting chieftaincy can be distinguished. The first lies in the traditional and cultural character of the institution. The second refers to the governmental recognition of chieftaincy. A third realm of justification points to the performance of the institution. A last way to legitimate traditional leadership was by default, not because of the merits of the institution, but because of the lack of alternatives (Oomen 2002). Table 2 shows survey results in the areas Hoepakranz, Ga-Masha, and Mamone. The support for chieftaincy among the Ashanti is not based on high satisfaction with the way chiefs perform their tasks. Instead, reasons can be found in the realms of culture and identity (Ubink 2008).

Table 2: Why do people support traditional leaders?

<i>Reasons for wanting to retain traditional leadership</i>	<i>Hoepakranz (N = 133)</i>	<i>Ga-Masha (N = 100)</i>	<i>Mamone (N = 121)</i>	<i>All (N = 598)</i>
Culture, Tradition	10%	28%	36%	24%
Link with Government	22%	32%	11%	23%
Their performance	18%	21%	35%	27%
Default	50%	19%	18%	26%

Source: Oomen 2002: 203.

A distinction should be made between the legitimacy of individual chiefs and the institution of chieftaincy. This distinction is often ignored in the literature. Ray (2003: 5), for instance, states that ‘traditional leaders/chiefs can claim special legitimacy in the eyes of their people because these institutions can be seen to embody their people’s history, culture, laws and values, religion, and even remnants of pre-colonial sovereignty’. Among the Sotho, there is an exceptionally high correlation between how they rate their traditional leader and their rating of traditional leadership. Interestingly, the way Ashantis feel about their chief seems *not* to influence their opinion on the institution of chieftaincy (Oomen 2002; Ubink 2008). This dissimilarity between the Ashantis and the Sotho matches with the fact that the institution of chieftaincy is highly debated in contemporary South Africa, whereas it is almost a fact of nature in Ghana. In the Ashanti Region, dissatisfaction with local land administration and anger towards a particular chief seldom seem to lead to discussions of the desirability of the institution of chieftaincy. For the majority, chieftaincy is a fact. The Ghana case shows that people can simultaneously support the institution of chieftaincy and be highly critical of the performance of certain chiefs or certain tasks. Where governments consider recognising chieftaincy or enhancing their position, policymakers should therefore ‘critically assess chiefly rule – and popular perceptions of it – in various fields, taking into account the performance of other actors in these fields, including local government representatives’ (Ubink 2008: 160).

“A distinction should be made between the legitimacy of individual chiefs and the institution of chieftaincy.”

5 Traditional Governance in an Era of Democratisation

The resurgence of traditional authority coincides with the wave of democratisation that has spread across sub-Saharan Africa since the 1990s. Many question the desirability and legitimacy of traditional authority in modern forms of governance, and the compatibility of traditional rule with the principles of democratic rule of law. Aspects of good governance such as social inclusion of some groups or the division of power will be difficult to meet by traditional authorities. Traditional leaders often combine certain executive, legislative and judicial powers, and thus do not conform to the principle of the separation of powers. The democratisation discourse, predicated on the principle of elective representation, strikes at the heart of traditional leadership which is structured on the hereditary devolution of power.

“Many question the desirability and legitimacy of traditional authority in modern forms of governance, and the compatibility of traditional rule with the principles of democratic rule of law.”

One has to argue for a specific ‘African form of democracy’ to be able to reconcile hereditary traditional leadership with the principles of democracy. Within the prevalent discourse and ‘political imaginary’ of democratisation, proponents of traditional authority present chiefs as exercising ‘authentic’ African forms of democratic governance, as the true representatives of rural African communities, and as ‘culture cores’ on which a genuine sense of nationhood could be built. These justifications for enhancing the position of traditional leaders speak to discourses on cultural diversity, pluralism, democracy, and participation. Especially the concept of community is being used in order to provide a democratic ring to the state’s use of traditional leaders in governance (Kyed and Buur 2007).

Critics, however, question whether traditional leaders genuinely act in accordance with the interests of their communities and whether traditional rule truly enhances popular participation in decision making.

Traditional governance does not allow for the right of citizens to elect their representatives freely and according to their own choice. Where universal suffrage in modern democratic states in theory guarantees inclusiveness, the position of the traditional leader is not subject to a democratic selection process. This is further compounded by the patriarchal nature of traditional leadership, which is usually not socially, ethnically, or gender inclusive. Additionally, youth often have limited possibilities to be elected or selected as traditional leaders. Leadership is often reserved for male elderly members of one ethnic group and excludes all others. Although used as if they were representative of the local communities, chiefs often may not represent the whole community. They are also not necessarily popular public figures. Traditional leaders are also not always downwardly accountable to the local populations. Accountability is the idea that poor performance of decision makers can be sanctioned against. This requires mechanisms to penalise poor performance. A necessary condition to keep authorities accountable is the existence of sufficient transparency. The actions and decisions of traditional leaders are usually less transparent than those of governmental leaders in democratic countries. As the position of traditional leader is usually inherited for life, the option of voting out leaders whose performance was disapproved of does not exist. However, the legitimacy and – to a certain extent – the power of traditional leaders does depend on popular support. Greater accountability can be achieved by establishing participatory approaches actively involving the respective communities. In sum, critics fear that traditional rule will compromise the gains promised by democracy with regard to equity, human rights, and gender equality.

The above shows that we cannot take it for granted that traditional leaders act in accordance with the interests of their communities and that traditional rule enhances genuine popular participation in decision making. The fact that in some instances the recognition of traditional authorities has challenged local elected governments, and has been used to bolster the monopoly of the ruling party or to justify the decision not to expand locally elected governments to rural areas, further questions the compatibility of traditional rule with the principles of democracy (Kyed and Buur 2007: 9).

If mechanisms of accountability and responsiveness cannot be introduced, the risk of corruption and abuse of power by traditional authorities is too high to justify an extension of their role. The question of accountability towards the local population becomes more important with a growing amount of resources involved. On the one hand, accountability could be enhanced by integrating traditional leadership in government bureaucracy, on the other hand such a move could also have the opposite effect. When such an integration goes together with ‘an un-

holy alliance between the ruling party and the chiefs', attempts to hold chiefs accountable will be perceived as a challenge to the state and party bureaucracy, and will therefore be fiercely resisted by the bureaucracy and the political party in power (Mapedza 2007: 202). Accountability mechanisms to force malfunctioning chiefs out of office are also seriously undermined when the state has the final say in chiefly appointments and dismissals.

“When debating the desirability of formalising and strengthening traditional governance, the performance of traditional authorities needs to be compared with the reality of local government in developing countries, not with how local governments are supposed to work in theory.”

Let us end with a last, important caveat in this discussion. When debating the desirability of formalising and strengthening traditional governance, the performance of traditional authorities needs to be compared with the reality of local government in developing countries, not with how local governments are supposed to work in theory. The functioning of elected local governments is often flawed with major problems of accountability, mismanagement, and capacity. These flaws need to be taken into account when comparing the consequences of elected local government and traditional leadership.

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