

# GOVERNANCE

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## MANAGING CHIEFTAINCY AND LAND CONFLICTS: TRADITIONAL OR MODERN MECHANISM:

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### *Introduction*

That peace and stability are pre-requisites for human development and progress is an incontrovertible dictum. But it is also recognized that conflicts are inevitable in human societies and that certain kinds of conflicts may even be necessary because they could be the driving force of politics and the economy and assist in social renewal. Nonetheless, conflicts sap human energies and expend scarce resources; if allowed to fester or gestate, simmering conflicts could explode with tragic and disastrous consequences. All societies, therefore, have mechanisms for managing and resolving them.

In Ghana the most persistent, intractable and, often violent conflicts tend to occur over land acquisition and ownership, and succession to chieftaincies. Two distinct mechanisms have been generally adopted for managing and resolving these conflicts: one centers on the people's traditions or culture, and the other on the colonial experience, and what may be termed "modernization" or, perhaps, "westernization." The traditional mechanisms seem to be losing their luster because of the rapidly changing belief and value systems. The "modern institutions," on their part, appear less able in dealing effectively with the mounting social disputes because of structural and operational weaknesses which reduce their effectiveness.

of land and chieftaincy conflicts, as with other conflicts, therefore, call for innovative mechanisms.

This essay briefly reviews traditional and modern sources of conflict, and the mechanisms adopted for their resolution in Ghanaian society - with land and chieftaincy disputes as illustrations.

### *Traditional Conflicts*

Traditional institutions and structures such as the family system, elders, the clan, the court of the chief, and traditional religious beliefs provide effective mechanisms for managing and resolving conflicts.

Generally, the first point of call when a dispute arises is the head of the family who will assemble the respectable elders of the family or the clan to "sit over" the case. In extreme cases, however, such mediation and arbitration processes may fail, and the chiefs court could then become the final resolution point.

An important basis for managing or resolving conflicts in the traditional society is the existing belief and value systems: respect for the elders and authority; respect for the gods and fear of making retribution to them for wrong-doing; and belief in the potency of taboos and oaths. Elders are, for the most part, highly revered and their intervention in disputes obliges the disputants to at least "sit and talk" and, in most cases, to accept compromise proposals from the elders.

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Reinforcing the belief and value systems as a mechanism for conflict management and resolution is the role of the gods and the shrines. A disputant can invoke "Tigare" or "Akonedi," for example, as a witness and, because of the belief that telling a lie could attract severe retribution, both the mediators and parties in the conflict would be more circumspect on their statements. Similarly, disputants and witnesses can swear the oath, or willfully break a taboo to prove truthfulness in testimony. The psychological import of such practices helps the elders to manage conflicts; for disputants become...menably to compromises in the belief that the gods, in the end, will vindicate the truth. But how relevant and effective are these practices today?

### *Are Traditional Methods Sustainable?*

Certainly, not all our traditional institutions and practices are worth preserving and consolidating. For example, it is doubtful whether the fear of the gods and taking the traditional oath remain effective mechanisms to resolve conflicts. Unlike our traditional beliefs, the God that most of us worship today does not appear to administer instant justice and retribution; moreover, since some churches provide for confession and forgiveness of sins, and preach delayed or suspended punishment, many people are less fearful than before of the consequences of sin. Also, with the strong encroachment of western concepts and values on our culture, it proves very difficult, if not impossible, to get the younger generation to subscribe to some of our traditional values.

But several aspects of the traditional conflict resolution and management mechanisms are still pertinent, particularly those pertaining to mediation and arbitration, for instance, the role of *respectable* elders in facilitating conflict mediation. An elder who is perceived as partisan, or who engages in anti-social practices such as alcoholism, street fights, etc., cannot command the needed respect to mediate or arbitrate between or among disputants. Similarly, a chief who is not perceived to be legitimate by his own people, or whose behavior is regarded as disgraceful, cannot be an effective conflict manager. The effective mediator must possess high moral standing; be perceived as impartial; and have the confidence and trust of his people

Returning to our traditional ways of resolving conflicts would require a thorough review of such practices to weed out those which are clearly outmoded and reactionary. For instance, the system of "trokosi" which is? (was?) practiced in some parts of the Volta and Greater Accra regions is supposed to resolve conflicts over indebtedness. But today this tradition offends our democratic sensibilities just as female genital mutilation offends our physiological sensibilities, and invocation of the gods offends the religious sensibilities of the Christian or Muslim.

If our traditional conflict management mechanisms have diminished in efficacy, does recourse to our modern judicial system offer a better alternative? How equipped are our modern institutions to manage and resolve conflicts? To what extent can the imperatives of our new democracy - transparency and accountability - be invoked to address persistent land and chieftaincy conflicts? The sections below seek to address such questions.

### *Managing Conflicts in the Modern Era*

Every political system has its own mechanisms for resolving conflicts. In a dictatorship criminals and other law violators can be summarily penalized. The personal whims of the leader or any of his officials could determine the fate of offenders. In theocratic systems such as we find in the Arab world, conflicts are resolved through Koranic laws and punishment can be swift and repugnant to some as, for instance, the execution of the death penalty through stoning or beheading.

In "modern" Ghana, the Constitution is the fundamental law of the land and it serves as the reference point for all conflict management and resolution processes, even during periods of military rule when the constitution is in abeyance. Statutes and other laws, regulations, and rules reinforce and add to the fundamental laws of the land. Courts and Tribunals are institutions which play the central role in mediating and settling conflicts on the basis of the prescribed laws. Approaches and methods for resolving and managing conflicts should therefore be pursued within the constitutional framework, notwithstanding the procedural delays and the niceties involved.

But for the courts to be effective, they must enjoy the confidence of the people; low confidence undermines their credibility. The rule of law as a conflict resolution mechanism suffers:

- when the law is politicized, or when a significant number of the population perceive it as not serving their interests;
- when the law is used as instrument of oppression in order to serve the interests of a small number of people;
- when the law fails to change with the times, loses its dynamism, and becomes an impediment to progress;
- when the State or its agents are perceived to have enacted the law capriciously and arbitrarily; or

- when judgments are perceived to be corrupted.

To be effective in managing and resolving conflicts, the judiciary must be seen to be independent and impartial. The freedom to assert judicial authority and judge cases as objectively and humanly as possible, is necessary for the laws to be enforced and for the public to believe in their efficacy.

Unfortunately, this is not the case presently. In a 1996 nation-wide study, for instance, only 22% of respondents thought that the judiciary indeed asserted its independence and judged cases without fear or favor. A significant proportion, 71 %, felt that the judiciary was not sufficiently independent. This situation arises from the perception that the judiciary is packed with pro-government jurists; the partisan selection and hurried appointments of Supreme Court justices reinforce this perception.

The judicial system has its own internal problems which militate against efficiency. They include inadequate staff and facilities, and poor working conditions. Adding to the weaknesses of the judiciary are those of ancillary agencies, particularly the Police. Being the first point of call in conflict situations, the Police plays a pivotal role in the conflict management process. Their capacity to enforce the law is crucial in ensuring the effectiveness of the modern conflict management system by accosting, apprehending, and prosecuting suspects.

However, the capacity of the Police to meet the challenges of today is highly suspect. Not only is the Service woefully understaffed; it also lacks most of the basic equipment for rapid mobility and communication. Working conditions are so poor that many in the Service resort to panhandling and petty extortion to survive. This, in turn, has created a serious public image and acceptability problem as shown by the increasing incidence of members of the public defying Police commands and directions, and at times violently resisting arrest. Thus, the modern system of conflict management and resolution has yet to win full public confidence in its effectiveness.

While the weaknesses in the judicial system limit its capacity to manage conflicts in general, land and chieftaincy problems present peculiar challenges because they are rooted in the tradition of the people. Land ownership and allocation are private matters and succession to stools and skins is determined solely by king-makers. The processes are "closed" and the public has little or no access to the full details. Conflicts in these areas, therefore, do not lend themselves easily to resolution because the information gap confuses issues and undermines the capacity to make informed judgments. What are the sources of land and chieftaincy conflicts, and what can be done to strengthen the management mechanism?

## *Land and Chieftaincy Conflicts*

The occasional flare-ups over religious, political and ethnic differences pale into insignificance when compared to land and chieftaincy disputes. The institution of chieftaincy and land are inter-related: the former thrives essentially on the control or ownership of the latter, and many chieftaincy conflicts revolve around land and rivalry between or among individuals competing to ascend the stool. The problem persists because the allocation or sale of land, and the lines of succession to stools remain chaotic, and this lend themselves to the manipulation of unscrupulous individuals, as shown by the following:

### *Sources of land conflicts include:*

- The indiscriminate sale of land by chiefs and other landowners
- Double, or at times triple sale of the same land
- Sale of land by people with illegitimate claims to the land
- The cumbersome process of land acquisition

### *Sources of chieftaincy conflicts include:*

- Disputed claims to the stool
- Rivalry between, or among families over the right of succession
- Corruption: the use of money or influence to "buy" the stool
- Politicization of the process: allowing partisan politics to influence the process of enstoolment or destoolment.
- Interference by political authorities

Many of our land and chieftaincy disputes emerge because of the lack of public information and knowledge about who owns what land and who has the right to what stool or skin. Unscrupulous claimants to land ownership or to the stool or skin have exploited the public ignorance to create confusion and unrest. Where there is public knowledge of the royal lineage, it is difficult for a pretender to claim a stool or skin.

Conflicts over land sales and chieftaincy succession can therefore be managed and, perhaps, resolved by empowering the public with the requisite knowledge to make informed decisions in cases of conflicting claims. To give the public easy access to information on land sales and the royal lineage would not only

help to "modernize" these two traditions, but would also infuse the new spirit of transparency and probity into the management of these primordial practices.

### *Proposals for the management of land disputes*

*Computerize land registration and create a network for public access:* Land registration should be comprehensive and computerized, and a network created with work stations at the district centers. The work stations (simple desktop computers) would serve as "land registers" and should be made accessible to the public. Requests for land purchase would routinely be routed through the network to verify ownership and availability. All prospective land buyers must have the right to inspect the register and check ownership as well as status of acquisition. The inspection of the "register" would help the buyer to make intelligent decisions. This mechanism would help to minimize land conflicts that result from illegitimate and multiple sales. This proposal does not seek to take away traditional ownership of land from Chiefs or other owners because the registration would be done in the name of the rightful owners of the land.

### *Proposals for the management of chieftaincy disputes*

1. *Record and publicize the royal lineage:* All families with the right to ascend a stool or skin should be recorded for public knowledge, as well as those individuals who have a similar right, and at what time and under what circumstances they can ascend the stool or skin. This information could also be computerized (to include family trees) and made accessible to the public. With

such a mechanism in place, pretenders can easily be identified and exposed by the public. The mere possession of wealth or political clout could no longer confer a semblance of legitimacy on what is clearly illegitimate.

2. *De-politicize chieftaincy affairs:* To maintain its traditional integrity and authority, chieftaincy should remain apolitical. Politicization of chieftaincy arises when an individual exploits powerful political connections in a bid to ascend the stool or skin. The problem emerges also when the government, for political reasons and against the will of the traditional community, seeks to impose an individual on the people. Such tendencies divide the community and create conflicts. The rejection by Parliament of the proposals to amend the Constitution to allow chiefs to engage in partisan politics, was therefore important in forestalling a potential avalanche of chieftaincy disputes.

### *Conclusion*

In conclusion, streamlining land acquisition by regularizing the system and making the relevant information available to the public would constitute major aspects of a conflict prevention mechanism. Similarly, publicizing the royal lineage to inform the public of rightful claimants to the stool or skin, and de-politicizing chieftaincy would go a long way to curtail the incessant conflicts over successions. In the first instance, the Lands Department and other agencies associated with land allocation, acquisition and registration, would have to be fully involved. In the case of chieftaincy disputes, the innovative proposal would require the active involvement of the National and Regional Chieftaincy secretariats. In both cases, it would be necessary to conduct thorough research to collect, assess and collate the accurate information. 0

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