Effects of Monarchy in the Modern State

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ABSTRACT

The focus area of this article is to highlight the work of the inheritance of the British monarchy in African traditional leaders before colonization and after colonization. Traditional leaders have been playing an important role in their communities and they are still playing a bigger role even though municipal councilor are in power. This article is generated mainly by using desktop research meaning the collection of data was secondary from academic journals, books and government legislation. The main focus of African countries Botswana, Ghana, Kenya, Namibia, Uganda, South Africa and Zimbabwe. The countries history was used mainly because the countries experienced colonization and all of the countries have traditional leaders working with municipalities in their jurisdiction. In my findings I have demonstrated that Traditional Leaders are able to work with government in the same areas. Ghana is identified as a classic example of a country that looks at the injustice of the past to change the future. The contribution of the study to the body of knowledge is show that traditional leaders are able to work with municipal councilors and serve their communities even though they are not resourced and undermined by the governments. Traditional leaders and governments need to work together.

Keywords: Monarchy; Traditional leaders; Democracy; Colonization

INTRODUCTION

South Africa is part of Africa and it is important to understand the interface dynamics in relation to institutions of traditional leadership and the modern system of government in other African countries. The comparative analysis will be significant more especially in countries such as Botswana, Namibia, Ghana, Kenya, Uganda and Zimbabwe. The reason for selecting these countries is because they have been working with traditional leaders and municipal councils in the same jurisdiction and, moreover, these countries have all experienced colonization. This chapter considers the interface between municipal councils and traditional leadership in these countries. I draw parallels and determine the extent of their similarities and differences between the countries. The study will be conducted in six different African countries namely Botswana, Namibia, Ghana, Kenya, Uganda and Zimbabwe. The countries are chosen mainly because where traditional leaders are in the same working jurisdiction with municipal councilors

TRADITIONAL LEADERS AND MUNICIPAL COUNCIL IN THE CASE OF BOTSWANA

Introduction

Botswana gained its independence in 1966 under British rule. The country has over 2,343,981 in population and 80% of the total population is represented in eight principal Tswana traditional communities: Bakgatla, Bakwena, Bamalete, Bamanwato, Bangwaketse, Barolong, Batawana and Batlokwa. During the pre-colonial period, the traditional leaders in the community had powers over all issues regarding economic development [1].

Institution of traditional leaders before colonisation

In the Republic of Botswana, traditional leaders regularly hold public meetings, known as dikgotla (plural kgotla) to discuss proposed public policies which are expected to have direct local impacts. In this manner, many communities approve legislative proposals before they become laws Sklar R.L argues [2] that "Chief Linchwe II, a leading expert of modernized and socially-responsible traditional authority in Botswana, has justified this arguing that Botswana needs to build a political structure in which the Westminster-type of government and traditional government coexist for the preservation and development of a unique form of democracy. Dikgotla are strictly extra-constitutional agencies of the government. Insofar as traditional participate in the formation and implementation of public policies, the traditional leaders of the Tswana people complement constitutional office-holders without infringing on their legal jurisdictions. Traditional leaders perform governmental functions that are not authorized by the prescribed constitutional arrangements".

Role of traditional leaders during colonisation

Traditional Leaders in Botswana experienced dictatorship from the British authorities. The leaders had no say to disagree on

any new administrative reforms the British government imposed on the leaders and traditional communities [3]. For instance the 1919 Native Court Proclamation Act allow communities to co-opt customary courts. The Act offered the local people the power to appeal the verdict of the native courts to the district commissioner, a position created in the ordinance Vaughan O [4] point out that "the British authorities introduced the Native Tribunal Proclamation to further reorganize the Kigosi's judicial powers within the colonial native courts. This new provision curtailed the extensive judicial powers of the Kgosi in criminal and civil cases; and formally withdrew the Political Perspectives chief's authority over the adjudication of criminal cases involving Europeans and the local population".

The British authorities presented the main instrument, the Native Administration Proclamation (no. 74 of 1934), which specified the privileges, powers and roles of a chief and his subordinates Silitshena RM argue [5] that "for the first time that succession to and tenure of the chieftaincy was subject to the approval of the administration, which reserved the power to pass over an unsuitable heir or suspend an incompetent or otherwise unsatisfactory chief. It provided machinery whereby the tribe could overthrow a chief, but it also made collusion against the chief a statutory offence. Finally, it established a formal tribal council to assist the chief in executing his duties in another ordinance named the Native Administration in 1943".

Legislation governing traditional leaders

Botswana's legislation was influenced by the British ruling classes. This include amongst others the foreign policy and security was in the hands of the colonizers [6].

Aguda JA clearly [7] state that "courts were given limited jurisdiction in both criminal and civil cases. They were confined to applying (1) native law and custom prevailing in their areas of jurisdiction; (2) the provisions of all rules and orders made by the Resident Commissioner, etc., under the Native Administration Proclamation; and (3) the provisions of any proclamation or any other laws which they were specially authorized to administer. The Native Courts Proclamation was repealed and substituted by what was called the African Courts Proclamation, 1961, 53 possibly in consonance with the scheme of the government at the time to create an administration for Africans".

Role of traditional leaders in the new democracy

Traditional leaders in Botswana were prominent in the elections after the independence of the country. President SeretseKhama allowed the system of pro-democracy and Chief were able to have a say in the running of the government [8].

Relationship between traditional leaders and municipal councilors

The traditional leaders worked closely with municipal councilors following the Chieftainship Act stipulating that traditional leaders are to maintain peace and welfare of their tribes. The government thought it was reasonable to retain the system of traditional structures alive mainly because the Chiefs will be influential during elections and encouraging their tribes to support certain political parties [9]

Dzivenu S argue [10] that "today, Botswana provides a case where the integration of customary courts into formal justice delivery systems has contributed to its overall peace and stability. Giving

evidence to the contribution of chiefs, BogosiOtlhogile noted that the overwhelming majority of Botswana prison population was sent there by the customary courts". British colonialism brought parallel and indirect rule. For instance, the traditional leaders were tasked to collect hut taxes and ensure that there was local economic development. Moreover, the traditional leaders were responsible for ensuring that schools, clinics and roads were built for the community. With all their monitoring and evaluation, the traditional leaders were able to fast tract rural development and raise community issues in Kgotlas [11]

Gillett S argue [12] that "the politicians down-graded the chiefs further. For example, collection of taxes and decision making powers were transferred to the elected councils. The elected councilors were also responsible for issues dealing with Land Boards and local government service delivery matters such as water, education, land allocation and all social welfare responsibilities. Chiefs were further marginalized from dealing with any competencies of local government. The issues that traditional leaders were responsible for were issues concerning to traditional courts cases such as marital law and small crime matters".

Conclusion

The interface between the traditional leaders and municipal councils in Botswana only works when a new political party is unable to develop a grassroots organization outside of the urban areas. The political party will work with traditional leaders to mobilize traditional communities to vote of the new party. Thus, the interface of traditional leaders and municipal council in Botswana is minimal and mostly the traditional leaders are used for achieving the personal goals of municipal councils.

GOVERNANCE AND INSTITUTION OF TRADITIONAL LEADERSHIP IN GHANA

Introduction

Ghana gained its independence from being a British colony in 1957. Although the population is about 28.21 million, traditional leaders number only 32, 000.

Legislation governing traditional leaders in the new democracy

Article 272 of the 1992 Constitution state that the traditional leaders in Ghana, enable the leaders to evaluate traditional social practice. The traditional leaders are divided into National House and Regional Houses [10]. Moreover, National House Chief has the authority over any matters that affects the determination of chieftaincy promulgated by the Regional House of Chiefs [13,14] point out that "the state shifted this responsibility to the chiefs because the state expected that since chiefs dealt with customary rule and law (i.e., political and legal custom), the Houses of Chiefs system would also be the appropriate structure to deal with social customs. The Houses of Chiefs have discussed a number of important social custom issues such as the cost of funerals, widowhood, and the treatment of certain girls and women under the rules of certain aspects of the traditional religions. In the case of funerals, the Houses of Chiefs did condemn what has become the high cost of funerals in Ghana and recommended that Ghanaians adopt less elaborate and expensive funeral practices. The National House of Chiefs does not have the legal power to outlaw what it deems to be undesirable customary social practices or the legal power to punish those who continue to carry out such undesirable

traditional customs. In these senses, the Houses of Chiefs are not legislative or judicial bodies, but rather they are forums for public debate of issues that might not otherwise receive much public attention".

Role of traditional leaders in the new democracy

Traditional leaders in Ghana collaborated with the state to ensure that the communities' welfare in not compromised. For instance when Ghana gained its independence from the British Authorities in 1957, the President and his cabinet passed laws to reduce the powers of traditional leaders. However, leaders knew that communities believe in the traditional system more than the state structures. Traditional leaders partnered with government to strengthen the customs and tradition of the communities [15].

Relationship between traditional leaders and municipal councilors

Ray and Reddy further argues that "traditional leaders have been incorporated directly into local government administration by both the colonial and post-colonial states. While Nkrumah did remove traditional leaders from participating in elected local government councils, all the other post-colonial governments have directly incorporated traditional leaders as members of state-run local government. Even Nkrumah had to accept the continuing existence of traditional councils and the creation of Regional Houses of Chiefs in order to have local governance structures that had the legitimacy to deal with customary or traditional aspects of Ghanaian society".

Conclusion

Ghana Traditional leaders work together with the municipal council. The traditional leaders and municipal councilors have parallel powers to deal with local government challenges. Therefore, the relationship between traditional leaders and municipal councilors is conducive and there is harmony between the two structures.

GOVERNANCE AND INSTITUTION OF TRADITIONAL LEADERSHIP IN KENYA

Introduction

Kenya's democracy was found in 1963 and the country is a sovereign and multi-party democratic state with values and principles that govern all communities. Barasa & Eising, claim "the other significant developments in local authorities in pre-independent Kenya were that in 1937, Africans were elected as councilors in local authorities and that Local Native Councils were changed in 1950 into African District Councils. From the foregoing, it is apparent that colonial local authorities existed to serve the interests of the colonial establishment with natives being given but only nominal representation. In any case, the District Councils were units for organizing Africans for ease of administrative management rather than service delivery. Modern local government in Kenya is an evolution from a system that was established by the British Colonial Administration at the beginning of the last century. The local government laws have always since colonial times defined the functions of local authorities in a manner that has continued to ensure a superior-subordinate relationship between the central and local governments. When Kenya attained independence, it inherited a local government system that was not designed with community needs in mind. Even where a strong local government was previously established, its functions were mostly administrative

and regulatory, having little to do with self-determination".

Traditional leaders during colonization:

Traditional leaders under the British authority were required to assist govern mention ensuring that villages are running smoothly [16] argues that "under this Ordinance, the provincial commissioners had the power to appoint any native or natives to be official headmen or collective headmen of any village or group of villages. These were supposed to maintain law and order, collect taxes, maintain roads in their areas and help in the settling of minor disputes between and among Africans. As time went by, it was discovered that this system was not suited for executive or legislative functions. In the same year, 1902, an ordinance was passed which appointed chiefs as agents of the system of administration as the population was increasing".

Legislation governing traditional leaders

The 2010 Constitution promised people land reform and to return public land that was stolen to the community. There was a massive land demands and government could not deliver on initial promises as outlined in the Constitution mainly because there was not political buy in [17,18].

Boone, argues that "the state was the landlord of all of the rural land in Kenya and traditional leaders did not have own any land. The state held final rights to the land, and did not accord any formal, legal basis to other claims. This created a legal basis for establishing a direct relationship between the central state and the users of the land. Prerogatives so claimed by the modern state gave post-colonial rulers an opportunity and an instrument for playing a major role in constituting rural collectivities, and in defining the locus and nature of political authority at the local level. African governments tried to use these prerogatives in ways that were deemed to serve the interests of the centre, usually taking into account the limited administrative and political capacity of the post-colonial state to overcome direct challenge or even passive resistance from small farmers and rural notables".

The elite also used the same strategy of British authority even after the independence of the country and appointed Governors' to administer villages where traditional leaders were residing as outlined in The Bomet County Coordination of Government Functions Act, 2014, Section 12, Part III of Decentralized Units of Governance, subsection e) and f) Bubba N argue [19] that "The membership of the native councils consisted of the other Kenyans appointed at the discretion of the Provincial Commissioner. All resolutions passed by the local native councils were subject to the approval of the Provincial Commissioner and the Governor of the colony. The local native councils became very unpopular in some areas because they were perceived as useless showpieces devised to make Africans think that they were gaining control of their own affairs".

Relationship between traditional leaders and municipal councilors

Municipal Councilors in the country had more powers than traditional leaders. For instance, the state swept all structures of traditional governance and took over villages. These also led to the taking over of land and live stocks that traditional leaders were owning [20].

Boone, point out that "under the user rights regime, the central state commits itself to enforcing immigrant farmers' land rights if

and when these claims are challenged by the original inhabitants of the land; if it is actually enforced, no pre-existing or 'natural' political structuration of farming areas is recognized. Central authorities must become implicated in direct political management of localities and natural resource use therein. To extend the analogy with colonial theories of government, call this can be seen as a modern-day form of direct rule. In Africa today, there are many places that are governed under user rights land regimes that do not respect the primacy of historically established, communal land rights. The modern state has undertaken to expropriate, encroach upon, or compromise communal land rights in innumerable settings, and in a wide variety of circumstances. In Kenya, for example, the colonial state appropriated most land in the Rift Valley and gave it to European settlers; in the 1950s and 1960s the state bought out most of the landholders and reallocated most of the land to African farmers who were not indigenous to the Rift".

Conclusion

In the case of Kenya the new democracy did not bring new changes in the way politicians interact with traditional leaders. Politicians were not aiming to foster new relationship with Chiefs in villages or destroy the traces of their predecessor's regime. Traditional leaders are to report to the municipal council for any assignments and were not allocated any powers.

GOVERNANCE AND INSTITUTION OF TRADITIONAL LEADERSHIP IN NAMIBIA

Introduction

Namibia like any other country that is affected by colonization finds itself in a serious dilemma to deal with powers that were allocated to traditional leaders during the South African rule. The country gained its independence in 1990 and remained a sovereign democratic state that was ready to bring prosperity and mutual respect to the community. However, Political leaders were unable to bring changes in traditional communities, as a results more traditional communities lost trust in the democratic system of government [21,22] argue that "Studies in northern Namibian communal areas have come to the conclusion that regional councilors and governors fulfill their duties less satisfactorily in comparison to traditional leaders. The lowest level government officials are elected councilors whereas village-level structures are mostly absent. In many cases traditional authorities are often much more accessible than councilors and their behavior can be much easier socially controlled. They have a great knowledge of local circumstances and are ready to act quickly.

Role of traditional leaders in the new democracy

Traditional leaders were discriminated and all other African communities in Namibia. Racial discrimination was mainly a challenge for African people and the state forced Africans to reside in tribal segregated areas [23]. Both Werner W.A maintain [24] that "during the 1990s, several conflicts over land in communal areas have developed over the politically charged questions of restitution of 'ancestral lands', the 'illegal' fencing of communal rangelands, and women's rights to land under both civil and customary law. These issues highlight problems of undefined terms of ownership, control and access rights over common property resources at several levels between communities and the state, within traditional settings. The State forced removals of people under apartheid laws since the Native Administration Proclamation of 1922".

Legislation governing traditional leaders

Traditional leaders and African communities experienced sovereignty of land theft and of residence labour rights. For example, African had to work under white people or experience hunger, moreover, the families stayed in shelters to accommodate their families [25].

Devereux, argue further that "all land that was designated for white settlement was systematically cleared of its black residents. In many cases this required the forcible removal of large numbers of people who had occupied their land for generations, but who were now decreed to be squatting illegally on land owned by white settlers holding freehold title deeds. According to the Native Administration Proclamation of 1922, which remained in force until after independence in 1990, chiefs and headmen were delegated authority to allocate communal land to community members, but they were banned from receiving any payment for doing so. The 1922 Proclamation decentralised legal responsibility to chiefs and headmen for the suitable allocation, to the extent of the authority allowed them by law, of arable lands and residential sites in a just and equitable manner without prejudice. At the same time, these chiefs and headmen were also warned that they shall not use any compulsion or other arbitrary means to secure any fee from communities".

Relationship between traditional leaders and municipal councilors

Traditional leaders and municipal councilors exist in the same space in local government. However, the issue of sovereignty of the state becomes a critical factor mainly because people are regarded as government however, the political sovereign have the legitimate power to introduce procedure in which government interact with people [26,27] further argue that "the community members in traditional areas are concerned with issues of having to survive under sometimes extremely bad ecological, economic and political conditions. The issue is not so much who represents the community, but rather whether or not they are represented at all. In the process of securing admission to the State, its agencies, projects and programs, members of disadvantaged rural communities seem to have little preference for elected leadership over traditional ones, and vice versa. With the proposed policy of decentralization and continuous efforts to expand the State into the rural hinterland, struggle between the two contending sets of elites will increase in the near future".

Conclusion

Traditional leaders and municipal councils are working together under the new decentralisation policy that allows funding to be allocated evenly between the two structures. However, traditional leaders are under the leadership of elected councilors.

GOVERNANCEAND INSTITUTION OF TRADITIONAL LEADERSHIP IN UGANDA

Introduction

Uganda pursued for self-rule for many year under the British rule and gained independence in 1962. In the 1992 Constitution the country opted to promote culture and respect each other customs and tradition [28].

Legislation governing traditional leaders

The 1962 Constitution provides federal status of Buganda kingdoms and semi federal status to other kingdoms. The Constitution

devolved powers of the central government and lower the levels that had to deal with issues of collecting taxes and rural water[29]. Articulation of cultural rights in constitution and the prohibition of some customary practices that conflict with national human rights standards has had only a poor effect in actually resolving the inherent conflicts between national human rights objectives and some dominant cultural traditions [30].

During the British rule in 1884, traditional leaders in Uganda were appointed by the settlers. The colonizers introduced laws that governed the country for 1949 example the Local Government Ordinance allowed the chief to collect taxes [31].

Role of traditional leaders in the new democracy

The modern system has been embrace in Uganda democratic government. The government of Uganda allowed the traditional system of government to co-exist in the modern state. Issues of culture and customs are taken serious by the state. Quinn argues that "Traditional cultural institutions themselves have special status under Article 246 of the Constitution (Constitution 1995). Customary practices are now legally recognized by legislation, including Article 129 of the 1995 Constitution, which provides for local council courts to operate in village levels.

The Children's Statute of 1996, which grants these courts the authority to mandate any number of things including reconciliation, compensation, restitution and apology "the public sector of Uganda has included these practices in the recent Agreement on Accountability and Reconciliation and its subsequent annexure, which emerged out of the Juba Peace Talks (Gashirabake interview). While these mechanisms broadly fit within very different approaches to justice, whether restorative or not, they fulfill different roles within their traditional institutions in relation to the customary practices in their respective societies, from cleansing and welcoming estranged persons back home to prosecution and punishment. What they have in common is that they draw upon traditional customs and ideas in the administration of justice in modern times. These cultural practices are, of course, vulnerable to problems including authoritarianism and other abuses of power. Any number of traditional institutions, both from within and from outside the communities where these practices are used, have caused confusion and problems for these practices and for the people who are subject to them (Quinn 2010a, 2010b). These include the imposition of administrative chiefs in the colonial period, including the Payira clan, which today promotes its chief as the paramount Acholi leader". Traditional customs in Uganda were embraced and government took initiative to work with communities to rearrange and modify old cultural practices to shape the new ones [31].

Relationship between traditional leaders and municipal councilors

Uganda is divided into 55 Districts and 13 municipalities and the Sub-counties are headed by an elected executive. Traditional leaders and organized civil society play a limited role in political space of the country. Improvement of relations the government and people they govern is crucial and leaders are working hard to bring change (Norwegian Agency for Development Cooperation, 2001).

Conclusion

Uganda's traditional leaders are not involved in the running of the local government. The powers and functions are left to the municipal council even in villages. The working relationship between traditional leaders and municipal council does not exist this is mainly because of the decentralisation of Uganda in 1963.

TRADITIONAL LEADERS' INTERFACE WITH MUNICIPAL COUNCILORS IN ZIMBABWE

Introduction

Rhodesia gained its independence in 1980 and was renamed Zimbabwe. Robert Mugabe became the first President of Zimbabwe since Liberation to date [32]. Zimbabwe in 2016 had over 16 million people and out of the 16 million traditional leaders were 269 traditional leaders [33].

Traditional leaders and municipal councilors in Zimbabwe experienced the colonization of the British. The traditional leaders were given more powers by the colonizers, including control of land and the people. However, with the onset of democracy traditional leaders have had limited powers and the local government greater power over the leaders [34]. However, even though other responsibilities are not under the control of traditional leaders, local government councilors have felt the need to leave issues of resolving customary law disputes to traditional leaders.

Legislation governing traditional leaders

The Tribal Courts were created by African Law and Tribal Courts Act, 1969 as a way of bolstering chiefly authority in response to growing guerrilla activity in the rural areas[35] argues that "the first hierarchy of courts created was the tribal courts, which were established in the Native Affairs Ordinance Chapter 72 of 1928, which to all intents and purposes reenacted the provisions of the 1910 Regulations. Note that it has been argued elsewhere that although the Chiefs Courts were not recognised by the colonial state before 1937, they never really stopped operating. For the first time, the colonial state created a self-contained hierarchy of African courts hearing civil cases between Africans. In criminal cases, an appeal mechanism was provided from the Tribal Appeal Court to the court of the Provincial Magistrate and thereafter to the Appellate Division. Thus, in criminal matters, the European hierarchy of courts was superimposed on the African courts. The Tribal courts had jurisdiction to determine petty criminal cases where the offence was committed wholly or partially within their area of jurisdiction and where the accused or complainant was an African. Their competence to mete out punishment was limited to the imposition of a small fine, whipping or restitution of property"

Relationship between traditional leaders and municipal councilors

Ncube W argue [35,36] that Traditional leaders in Zimbabwe perform the dual functions of working with both the state and their communities; the challenge for them is that the system encourages the leaders to report to the government and follow bureaucracy all the way.Moreover, much of the legislation passed since independence in Zimbabwe dis-empowered traditional leadership [37]. The general maintenance of law and order in rural areas would become the responsibility of chiefs, headmen and village heads. Argues that "traditional leaders would administer communal areas and would assist Rural District Councils in the allocation of land, the prevention of unauthorized settlement and environment conservation. In theTraditional Leadership Act (2002), rural governments, traditional leaders, and the judicial system were aligned. Traditional chiefs, village heads, and headmen and their powers restored to equitably distribute local rural land

and to try civil and criminal cases in local rural areas. This further encouraged chiefs to become ex officio council members".

Zimbabwe's Constitution under Section 111 of the Lancaster Constitution and section three of the Chiefs and Headmen Act (1992) states that chiefs are appointed and removed by the President. There are two pieces of legislation that guide the relationship between traditional authorities and local government[38].

Conclusion

In Zimbabwe traditional leaders and municipal council are working differently. Traditional leaders are not autonomous mainly because the Traditional Leaders Act Chapter 29.17 and the Constitution provides for the nomination Chiefs; the formation of a Council of Chiefs and village, and provincial assemblies and outline their functions. However, the interface between traditional leaders and municipal council is daunting because of separate functions assigned and the issue of bureaucracy is a challenge in allowing the two leaders to work together.

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