

**IN THE FOURTH SESSION OF THE FOURTH PARLIAMENT OF THE
FOURTH REPUBLIC OF GHANA**

**REPORT OF THE COMMITTEE ON YOUTH, SPORTS AND CULTURE ON
THE CHIEFTAINCY BILL**

1.0 INTRODUCTION

In Pursuance of Article 106(3) and (4) of the Constitution, and Order 187 of the Standing Orders of Parliament, the Chieftaincy Bill was laid in the House on the 30th October, 2007 and referred to the Committee on Youth, Sports and Culture for examination and report.

2.0 DELIBERATIONS

The Committee held a two-day Stakeholders' Workshop and consultative session to deliberate on the Bill. The Minister for Chieftaincy and Culture Hon. Sampson Kweku Bofo and his technical team, the President and representatives of the National House of Chiefs, Mr. P. O. Appiah of the Attorney-General's Department were all in attendance at the invitation of the Committee to assist in its deliberations. Memoranda and other submissions were also received from stakeholders.

3.0 REFERENCES

The Committee had recourse to the under-listed documents in considering the referral:

- i) The Chieftaincy Act, 1961 (Act 81)
- ii) Chieftaincy (Amendment) Decree, 1966 (N.L.C.D. 112)
- iii) Chieftaincy (Amendment) Decree, 1967 (N.L.C.D. 112)
- iv) Chieftaincy (Amendment) (No. 2) Decree, 1967 (N.L.C.D. 136)
- v) Chieftaincy (Amendment) (No. 3) Decree, 1967 (N.L.C.D. 203)
- vi) Chieftaincy (Amendment) (No. 4) Decree, 1967 (N.L.C.D. 205)
- vii) Chieftaincy (Amendment) (No. 5) Decree, 1967 (N.L.C.D. 208)
- viii) Chieftaincy (Amendment) Decree, 1968 (N.L.C.D. 227)
- ix) Chieftaincy (Amendment) (No. 2) Decree, 1968 (N.L.C.D. 287)

- x) Chieftaincy (Amendment) (No. 3) Decree, 1968 (N.L.C.D. 312)
- xi) Chieftaincy Act, 1971, (Act 370)
- xii) Chieftaincy (Status of Chiefs) Act, 1972 (N.R.C.D.99)
- xiii) Presentations and clarifications by Resource Person
- xiv) Chieftaincy Bill,
- xv) The 1992 Republican Constitution of Ghana; and
- xvi) The Standing Orders of Parliament.

3.1 The Committee also referred to memoranda from the following:

- i. Presidential Commission on Chieftaincy Affairs
- ii. National House of Chiefs
- iii. Ashanti Region House of Chiefs
- iv. Hon. Kosi Kedem
- v. Volta Region House of Chiefs

4.0 BACKGROUND

The Chieftaincy Act, (Act 370) was enacted in 1971 and had since undergone several amendments. In recognition of the need to consolidate the amendments to the substantive Act, and bring it in conformity with the provisions of the Constitution, the Law Reform Commission initiated nationwide consultative sessions with critical stakeholder institutions on the subject matter. Proposals submitted by the Law Reform Commission and the Chieftaincy institution identified legislative gaps and also highlighted areas of novelty all which necessitated the introduction of this Bill.

The Bill continues the existence of the various bodies subject to the provisions of the Bill. Under section 1(9) of the current Chieftaincy Act, the tenure of office of the President, Vice-president and the other members of the National House of Chiefs is three years which can be renewed except that the President cannot hold office for more than two terms in succession.

5.0 OBJECT OF THE BILL

The Bill seeks to consolidate with amendments in the Chieftaincy Act, 1971 (Act 370) to bring the act into conformity with the provisions on the subject in the Constitution and to include new proposals. The Bill also consolidates eight pieces of enactments with the amendments to the Act.

6.0 PROVISIONS OF THE BILL

6.1 The Committee examined the Bill in detail and observed that it provides for the National House of Chiefs; Regional Houses of Chiefs; Traditional and Divisional Councils; Chieftaincy matters, Jurisdiction and Judicial Committees; Proceedings in Chieftaincy matters; Stool Property; Customary Law; Chief and Miscellaneous Provisions.

Provisions of various Clauses of the Bill

6.1.2 National House of Chiefs

The composition, election and functions of members of the National House of Chiefs are provided for in clauses 1,2 and 3 while clauses 4 and 5 empowers the National House of Chiefs to make Standing Orders for the orderly conduct of business and stipulates its meeting schedule respectively.

6.1.3 Regional House of Chiefs

Clauses 6, 7 and 8 make provision for the composition of the Regional Houses of Chiefs; creates the offices of the President and Vice-President of the Regional Houses and their election. Functions and Committees of the Regional Houses, their power to make Standing Orders to regulate their operation and their meetings are provided for in clauses 9, 10 and 11 respectively.

6.1.4 Traditional and Divisional Councils

Clauses 12 and 13 establish in each region a Traditional Council and provide for the office of President for the Councils. Membership and

meetings of the Councils are provided for in clauses 14 and 15. The Divisional Councils, their membership, presidency meetings and functions are covered in clauses 16 to 21.

6.1.5 Chieftaincy Matters, Jurisdiction and Judicial Committee

Provisions on the original and appellate jurisdictions of the National House of Chiefs as well as appeals to the Supreme Court are stated in clauses 22, 23 and 24. The Judicial Committee of the National House is established in Clause 25. Clause 26 to 30 provide for the original and appellate jurisdictions of the Regional Houses, the Judicial Committees of these Houses, jurisdiction of the Regional Traditional Councils and power to resort to customary arbitration in settlement of disputes respectively.

6.1.6 Proceedings in Chieftaincy Matters

Clause 31 empowers Judicial Committees of Traditional Councils to receive in evidence any matter including hearsay. Clause 32 makes provision for the award of security of cost in proceedings before the Committee while clause 33 provides generally for proceedings before Houses of Chiefs and clause 34 also makes provision for particular types of appeal to operate as stay of execution. The provisions of clauses 35 to 43 cover the conduct of proceedings before a Traditional Council, filling of vacancies in Judicial Committees of relevant House or Council, the enforcement of judgement of Houses of Chiefs or Traditional Councils, the protection of parties, counsel and witnesses, criminal sanctions for obstruction of proceedings, the right to institute proceedings for destoolment, the recording of proceedings in Chieftaincy matters in writing, the procedure for making application in chieftaincy matters

6.1.7 Stool Property

Stool properties and the procedure for alienation and seizure of such properties are stated in clauses 44, 45 and 46.

Provisions on the recovery of stool property affected by chieftaincy disputes as well as its preservation are addressed in Clauses 47 and 48.

6.1.8 Customary Law

Clause 49 mandates the National House of Chiefs to promote the development of customary law and clause 50 spells out the functions of the Traditional Council relating to customary law. Under clause 51, a Regional House may draft a declaration which it considers to be the customary law rule applicable in the region or any part of it following representations from a Traditional Council on its own initiative or on a written request by the National House. Alteration of customary law, effects of customary law on Regional House of Chiefs and assimilation of customary law are highlighted in clauses 52, 53 and 54. Clause 55 dwells on the assimilation of customary law and clause 56 indicates the method.

6.1.9 Chiefs and Miscellaneous Provisions

Clause 57 defines a chief and categories of chiefs are listed in clause 58. Clauses 59-63 deals with the National Register of chiefs, their contempt charges as well as issues relating installation and deposition. These clauses also include a number of offences in connection with chiefs. In clauses 64-70 the issues of Traditional and Divisional Councils as well as Accounts and Audit are addressed. Regulations are provided for in clause 71. Under clause 74-77, it is stated that the annual statement of accounts are to be submitted to stools. It also makes regulations for elections and mentions the performance of functions conferred on the President. Clause 78 is the Interpretation clause and repeals, savings and transitional provisions is stated in clause 79.

7.0 OBSERVATIONS:

7.1 Use of Expressions like Stool, Destoolment and Deposition

The Committee observed that the two main symbols of authority in Ghana are the stool and the skin. Skin is used in Upper East, Upper West and Northern Regions. Stools are used in the remaining Regions. The definition section of the Bill states that stool includes skin. The Bill uses destoolment and deposition in different sections. Destoolment means the unmaking of a chief who sits on a stool. Deskinment means the unmaking of a chief who sits on a skin.

The Committee further observed that to comply with the constitutional provisions in Art 274(3) ©, deposition which means destoolment or Deskinment must be used as the case maybe.

7.2 Categorization of Chiefs and the use of the word "Adikrofo"

The Committee was informed that "Adikrofo" is an Akan word and in fairness to chiefs who do not understand Akan, it will be safer to add "chiefs below the rank of a sub-chief" to that word.

7.3 "Appointment"/"Selection" of Chiefs

The Committee was informed that in this country, chiefs (traditional or conventional chiefs) as envisaged by the 1992 Constitution are not appointed. Before becoming a chief, a person from the appropriate family lineage is nominated, elected, selected, enstooled or enskinned in accordance with customary law and tradition in Articles 274(3)© and 277.

The Committee also noted that their status is ancestral and hereditary and the process is generally described as installation.

The term "appointment" may properly be referred to unconventional or honorary chiefs such as migrant chiefs (e.g. Mosihene of Kumasi, Fante

chief of Accra, development chiefs -Nkosuohene, entrepreneurial chiefs - Bayerehemaa, etc). Such chiefs are indeed appointed to their positions as chiefs. Their appointments do not involve their having to belong to any special family or lineage in a particular family and they are not nominated, selected, enstooled or enskinned.

The use of "appointment" in the Bill to refer to conventional chiefs should be replaced by the word "selection". This is actually the word used in the Chapter on Chieftaincy in the Constitution and deviation from it would be contrary to the Constitution.

7.4 **Chieftaincy-Related violence and security of the state: Clause 77**

In the light of the seemingly never-ending chieftaincy related violence, it is important that clause 77 be maintained. The Memorandum can be amended with a new clause to read: "In order to forestall unnecessary violence and arrest potential troubles arising from chieftaincy disputes which often lead to loss of life and property, it is important to retain this section as stated in clause 77".

7.5 **Some problems relating to chieftaincy**

The Committee is of the view that problems that relate to chieftaincy in this country are hydra-headed. They need to be tackled seriously else there would be constant insecurity. Some of these are:

- failure or inability of judicial committees to dispose of cases on time
- insufficient financial allocation to institutions e.g. who pays for allowances of judicial committee members at traditional council level? If the committees are allowed to levy their own charges, room might be created for systemic corruption.
- inherent potential for disputes – nomination, selection, enstoolment and enskinment, registration and lack of clear guidelines or on rules on succession

- family issues – royal family, lineage, timing of occupation, rotation and narrow family disputes.

7.7 Appointment of lawyers for Regional and National Houses of Chiefs

The Committee again observed that one of the obvious problems facing the institution is the appointment of counsel for Regional and National Houses of Chiefs. The Constitution under articles 273(3) and 274(5) provides for these appointments and every effort should be made to implement the constitutional provision.

The Committee considered the suggestion that appointment of lawyers for traditional councils is of great importance because the bulk of chieftaincy disputes commence from traditional councils. To improve justice delivery at the traditional councils, it is suggested that at least National Service lawyers could be recruited to assist at that level.

The Committee recommends that this suggestion be included in the Bill.

7.8 Resourcing and capacity building for Chiefs

The Committee further observed that, considering the pride chieftaincy brings to the people of this country and the fact that many Ghanaians identify their culture as what distinguishes them from every one else, it is imperative to adequately resource chieftaincy as an institution and in particular strengthen its Research Unit which is engaged in ascertaining the lines of succession of chiefs in the country.

The Committee again noted that, members of Judicial Committees are generally knowledgeable in their fields of expertise but are not lawyers or judges. It is considered necessary to insert in the Bill a clause on capacity building which would require members of Judicial Committees to attend courses – at least on trial of cases, writing of judgments and

performance of judicial functions. Without such a clause in the Bill, it may be difficult to get the chiefs to attend the training courses voluntarily.

7.9 Stay or execution, injunctions and rushed installations

It came to the notice of the Committee that by section 34 of the Bill, an appeal to the Regional House of Chiefs or the National House of Chiefs operates as automatic stay of execution.

Again, where an order has been made dismissing a petition to install a chief, the winning parties may rush and install their chief within a record time of twenty four to seventy two hours, thus hardly giving the appellant any time to file an appeal. Whether or not they comply with the requirements of installation, all that the public would be told is that a new chief has been installed. The aim of the fast installation is to frustrate the effect of the appeal operating as a stay of execution.

In all these situations, the design is to spite the opponent or to derail or deflect the course of justice with a view to defeat the ends of justice.

To avert this, it is proposed that a new clause to this effect be introduced in the Bill:

- a. No installation of a chief or queenmother shall be valid unless public notice of the installation has been given at least fourteen days prior to the day of the installation. The notice shall be in accordance with the custom of the area.
- b. An interim injunction shall not be effective if it is granted within the last seven days prior to the day of the installation.
- c. An appeal shall not operate as stay of execution if it is filed within the last seven days prior the day of installation to which a two-week public notice has been given.

These suggestions are to be added to clause 34.

7.10 Presidential responsibilities and the creation of Chieftaincy Ministry

The Committee took note of the fact that certain functions were assigned to the President at a time when there was no particular Ministry charged with the responsibility for chieftaincy matters. Now that there is a substantive Ministry in place, there is no justification for saddling the President with those purely administrative responsibilities. The Bill may re-assign these functions and responsibilities to the Minister, as they are not entrenched in the Constitution. Some of these are:

- a. Clause 71, add Minister of Chieftaincy to the clause
- b. Clause 76, replace public officer with Minister for Chieftaincy.
- c. Clause 62, include submission to Minister as well
- d. All the administrative responsibilities in clause 59 should be reconsidered and some of the Presidents' assignments there re-assigned to the Minister of Chieftaincy Affairs.

7.11 In the light of the above observations, the Committee proposes the following amendments for consideration by the House; the list includes corrections made to typographical errors, omissions as well as redraft of some of the clause to give clarity to the provision.

8.0 AMENDMENTS PROPOSED

(i) **Clause 2** – amendment proposed – sub clause (3) delete and insert the following:

“(3) A person is not qualified to be President or Vice-President of the National House of Chiefs if that person

- a) has been sentenced to death or to a term of imprisonment exceeding twelve months without the option of a fine or has

- been convicted of an offence involving dishonesty or moral turpitude and in each case has not been granted free pardon, or
- b) is adjudged to be a person of unsound mind, or
- c) having been declared insolvent or bankrupt under a law in force in the Republic or in any other country is an undischarged insolvent or bankrupt, or
- d) having professional qualification, is disqualified from practising the profession by the order of a competent authority of that profession not made at the request of that person".

(ii) **Clause 2** - amendment proposed - delete sub clause (5) and insert the following:

"(5) The Registrar of the National House shall by notice published in the *Chieftaincy Bulletin* provided for under section 60 convene a meeting of the

- (a) National House, where the vacancy is in respect of the President or Vice-President of the National House, or
- (b) relevant Regional House, where the vacancy is in respect of any other member of the National House

within sixty days after the publication of the notice for the election of a President, Vice-President or member of National House and shall invite the Electoral Commission to supervise the election."

(iii) **Clause 6**- amendment proposed – sub clause (2) paragraph (a) line one – delete "National" and insert "Regional".

(iv) **Clause 8** – amendment proposed – sub clause (1) paragraph (b) for "Electoral Commission" substitute "Registrar of the Regional House"

(v) **Clause 11**- Amendment proposed – sub clause (5) line five - delete all the words after "member" to the end of the paragraph and insert the following after "member" "not present".

- (vi) **Clause 15** – amendment proposed –
- a) sub clause (1) line two – add the following: “but shall meet at least twice in a year”.
 - b) insist a new sub clause as follows:
“(5) A Judicial Committee of a Traditional Council may be assisted by a lawyer appointed by the Committee”.
- (vii) **Clause 24** – amendment proposed – delete the clause and insert the following
- “Appeal to the Supreme Court”**
24. An appeal against a decision of the national House in the exercise of its
- a) original jurisdiction lies to the Supreme Court, and
 - b) appellate jurisdiction lies to the Supreme Court with the leave of the National House or of the Supreme Court”.
- (viii) **Clause 25** – amendment proposed – sub clause (3) for “and” between paragraphs (a) and (b), substitute “or” and in paragraph (b) line one delete “infinity” and insert “infirmity”.
- (ix) **Clause 27** – amendment proposed sub clause (1) paragraph (a) line two – delete “disposition” and insert “deposition”.
- (x) **Clause 30** – amendment proposed – line two- delete all the words after “guaranteed” to the end of the paragraph.
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- (xi) **Clause 34** – amendment proposed – line one - insert at the beginning the following “Subject to the provisions of this section”, and insert the following:
- “(2) An installation of a chief or queenmother is not valid unless, at least fourteen days before the date of the installation, public notice of it, in accordance with the custom of the area, has been given.

- (3) For the purposed of this section,
- (a) an interim injunction is not effective if it is granted within the last seven days of the fourteen days, and
 - (b) an appeal does not operate as stay of execution if it is filed within the last seven days of the fourteen days".
- (xii) **Clause 40** – amendment proposed – for "destoolment" substitute "installation" and substitute accordingly wherever the word destoolment appears in the Bill.
- (xiii) **Clause 58** – amendment proposed – paragraph (d) delete "Adikrofo" and insert the following "Adikrofo or chiefs below the rank of sub-chiefs".
- (xiv) **Clause 59** – amendment proposed – sub clause (3) line one delete "a person authorized by the President" and insert "the Minister"
- (xv) **Clause 59** – amendment proposed - sub clause (5) delete line one and insert the following
"(5) The President or the Minister may at a....."
- (xvi) **Clause 62** – amendment proposed – sub clause (1) line one for "enstoolment substitute "installation".
- (xvii) **Clause 70** - amendment proposed – delete the clause
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- (xviii) **Clause 76** - amendment proposed - line two - delete "a public officer" and insert "the Minister".
- (xix) **Clause 77** - amendment proposed – sub clause (1) line one after "Minister" insert the following "In consultation with the Minister for National Security" and for "in writing" substitute "by a court order".

(xx) Amendment Proposed – insert a new clause as follows

"Capacity building for Chieftaincy

Members of the Judicial Committees shall attend training courses determined by the Minister in consultation with the National House of Chiefs.

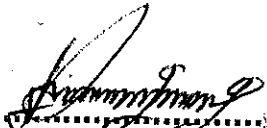
(xxi) **Clause 78** - amendment proposed – delete "appointment" wherever it appears in the clause and insert "selection".


(xxii) **Clause 78** - amendment proposed, insert the following definition appropriately " deposition" means destoolment or deskinment",

9.0 CONCLUSION

The Committee has carefully examined the contents of the Bill in the light of its object and purpose and is of the view that they are consistent with the Constitution and all other relevant statutes. The Committee accordingly recommends its passage by the House.

Respectfully submitted


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HON. ISAAC KWAME ASIAMAH
(CHAIRMAN)


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EDITH EDILYN ADJEI
(CLERK TO COMMITTEE)

FEBRUARY 2008