The Throne and the Ballot Box: The Formal Integration of Traditional Institutions in the Modern African State and Democratic Consolidation

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I. Introduction

The relevance of traditional institutions in the post-colonial African state stems firstly from these institution’s predominance and ability to exercise control and authority particularly in Africa’s rural areas (Keulder 2000). An example of a traditional institution would be a kingship, a chiefdom, or a council of elders. Is it possible for these types of institutions to exist within a democracy? Some scholars argue that these institutions are antithetical to the development of democracy (e.g. Pita 2004; Mamdani 1996). Other scholars have recently found to the contrary, that traditional institutions can successfully coexist with democratic forms of government (e.g. Williams 2010, 2004; Logan 2009). Regardless of the ideology of the scholar, or the perceived strengths and weaknesses of these institutions, what is certain is that traditional institutions continue to exist and wield power across the African continent. A number of studies have affirmed the relevance and resiliency of these institutions within the social, cultural, economic, and political lives of Africans (e.g. Fokwang 2009; UNECA 2007; Keulder 1998).

Taking all this into consideration, what then, are the appropriate roles for these institutions to play within the modern African state? Furthermore, how are these roles to be determined? One possibility is for the regime to uphold and incorporate these institutions into the modern state structure through their respective constitutions and statutes. Under this framework, the regime formally integrates traditional institutions and outlines their specific role within the modern state. Alternatively, traditional institutions could be left alone and allowed to operate extra-constitutionally in accordance to the desires of the citizens. In other words, traditional institutions could either be formally integrated by a regime or informally integrated and upheld solely by the citizenry. What is most commonly observed is for traditional institutions to exist extra-constitutionally. Of the forty countries surveyed for this study only sixteen have officially recognized traditional institutions within their constitutions. These include Ghana, Lesotho, Botswana, Zambia, Sierra Leone, Namibia, Mozambique, Uganda, Malawi, Zimbabwe, Chad, Congo (Kinshasa), Liberia, Swaziland, the Gambia, and South Africa. This study investigates the relationship between the formal integration of traditional institutions and democracy.
Several scholars and commentators have looked at the possibilities for traditional institutions to operate in a democratic dispensation (e.g. Williams 2004; Osei Tutu II 2004; Mijiga 1998). The general claim is that traditional institutions, when engaged appropriately, can benefit the development of a democracy. In order to analyze and perhaps further this claim, I am interested in whether countries which have formally integrated traditional institutions exhibit higher levels of democracy than those who have not. I hypothesize that formally integrating traditional institutions will lead to higher levels of democracy.

This paper is organized as follows: section II presents a review of the relevant literature on both democratic consolidation and traditional institutions. Section III describes the methodology used for the study and delineates the measures used for consolidation and the integration of traditional institutions. Section IV presents the remaining data and analysis. Section V includes a study of traditional institutions in Namibia. In section VI, I present the conclusion and make suggestions for further research.

II. Literature Review

Traditional Institutions

According to Crook (2005), a traditional institution refers to “all those forms of social and political authority which have their historical origin in…pre-colonial states and societies, and which were incorporated by…colonial rule into what is now [an African nation]” (Crook 2005:1). Four important aspects about traditional institutions can be gleaned from this definition. Firstly, traditional institutions existed prior to colonialism. Pre-colonial Africa was organized into various nation-states which had their respective forms of institutions for governance. These institutions wielded legitimate power over Africans for centuries prior to colonialism (Lamphear and Falola 1995).

Secondly, these institutions existed in various forms. Historians have generally classified African traditional institutions of governance into two categories: (a) decentralized systems of authority and (b) centralized systems of authority (Falola 2000b).

The Igbo of Nigeria or the Maasai of East Africa are examples of decentralized systems (Harneit-Sievers 1998). These decentralized institutions are largely based on consensual decision making. Conflict
resolution in such systems involves narrowing differences through negotiations (UNECA 2007). Participation in these types of systems is often based on age-set (Falola 2000a:111-359; 2000b:149-160).

The centralized systems consist of power being placed in the hands of specific leaders such as kings or monarchs. In these centralized systems, rulers are selected primarily on the basis of heredity. In some cases, the rulers exercise absolute power (Ayittey 2001: 185-289). In other cases however, the power of the rulers is restrained to a certain extent by councils (Osei Tutu II 2004). An example of a constrained monarchy is observed amongst the Ashanti of Ghana. Though the king, the Asantehene, enjoys a considerable amount of power in this society, the queen mothers and councils of elders are in place to keep them accountable (Busia 1968).

Thirdly, many of these institutions were incorporated into colonial governmental systems. This was particularly relevant for the British colonial practices of indirect-rule but was also done to different extents by the French, Portuguese ad Belgians (Falola 2000c). Under this policy, the colonialist sought cheap ways of governing their territories, particularly the hinterlands of these territories, without being forced to heavily involve themselves (Ayittey 2001: 421-432). This incorporation into colonial governments had varying effects on the different systems of institutions. In the case of the decentralized systems, the colonial state often tried to impose hierarchical rule (UNECA 2007:7). In cases where traditional rulers resisted incorporation, it was not uncommon for them to be pushed out of power and replaced with rulers appointed by the colonialist (Keulder 2000:155-159; Falola 2000c; Mijiga 1998:6).

Finally, these institutions continue to exist today. Though several of these institutions grappled with considerable changes during colonialism and through the period of independence, several of them were able to persevere, in many cases reinvent themselves adapting to their new surroundings, and continue to make claims to legitimacy. Many Africans continue to adhere primarily to the authority of traditional institutions (UNECA 2007; Williams 2004; Keulder 2000). Williams (2004) estimates, that even in South Africa, at least 46% of the population continues to be under the direct authority of traditional institutions (114). The literature is clear that traditional institutions remain an important political force at local and national levels (see Williams 2010; Logan 2009; UNECA 2007; Beall 2006; Oomen 2005, Williams
Africans continue to heavily rely on traditional institutions in dealing with their daily needs.

The difficulty with Crook’s definition is that it gives almost complete agency to the colonizers. There were cases where attempts at incorporating traditional institutions into colonial governments left the institutions relatively intact. Despite their best attempts at doing so for example, the colonial state was unable to replace the traditional system of village council among the Igbo of Nigeria (Uwazie, 1994). What is important about traditional institutions is that they wielded legitimate power prior to colonialism, existed in varied capacities through the colonial period, and continue to exist today. Therefore in the context of this paper, I offer a slightly modified version of Crook’s definition and define traditional institutions as the varied forms of social and political authority that exist across the African continent, which have their historical origins in pre-colonial states and societies, and continue to wield power and operate today within an African nation.

**Democratic Consolidation**

Democratic consolidation refers to the distance between democratic and authoritarian regimes. It generally describes the process by which a new democracy matures. Specifically, consolidation refers to the likelihood that a regime remains democratic (Schedler 2001, 1998; O’Donnell 1996; Diamond 1994; Valenzuela 1992). According to scholars, a democratic regime is considered consolidated when it is “likely to endure” (O’Donnell 1996: 37), or when we can expect it to last “well into the future” (Valenzuela 1992: 70).

Gunther and his colleagues (1995) argue that a democracy becomes consolidated when its participants “adhere to [the] democratic rules of the game” (7). The extension of this metaphor of the democratic game helps to harmonize the several factors that scholars identify as leading to consolidation.

A frequently identified factor is the establishment of electoral democracy (Lindberg 2006; Bratton 1998; Huntington 1991). The popular turnover-test, or Huntington’s more stringent two-turnover test, identifies a democracy as consolidated following one or two peaceful turnovers of power from one party.
to an opposition party. The more established a dual or multi-party system, the more likely it is for democracy to endure.

Several studies however, have illustrated that elections can coexist with abuses of political rights (Sørensen 2010, Zakaria 1997). Therefore, beyond the establishment of electoral democracy, consolidation “involves the widespread acceptance of rules to guarantee political participation and political competition” (Bratton 1998: 51).

Scholars also identify the rule of law as an important aspect of consolidation (O’Donnell 2004; accord Carothers 1998; Dahl 1989). Similarly to how it is possible to have undemocratic elections where participation and competition are limited, it is possible to have undemocratic laws which obfuscate lines of accountability, constrain civil liberties, and/or limit political rights. O’Donnell (2004) identifies what he calls the “democratic rule of law” (32). According to O’Donnell, democratic rule of law protects and establishes three basic principles: (1) political rights, (2) civil liberties, and (3) the mechanisms of intergovernmental accountability. O’Donnell argues that these three principles “affirm the political equality of all citizens and constrain potential abuses of state power” (35).

To extend the metaphor of the democratic game, the rule of law and the establishment of democratic elections are here likened to the game’s “rules”. The more that these rules are observed the more consolidated the democracy becomes.

Beyond its rules, games must have players. The players of the democratic game include, but are not limited to, citizens and elected officials. Diamond (1999) focuses on how political actors, whether citizens or officials, act. The rules of a game are most meaningful when observed. Diamond explicitly equates consolidation to the absence of antidemocratic behavior such as the use of violence and intimidation, and/or the rejection of elections. For a democracy to be consolidated, political actors need to “obey the laws of the constitution and mutually accepted norms of political conduct” (69).

Some scholars also identify the civil society as an important player in the democratic game (e.g. Diamond 2008; Gyimah-Boadi 1996; Przeworski 1995: 53-66). Linz and Stepan define civil society as “[the] arena of the polity where self-organizing and relatively autonomous groups, movements, and
individuals attempt to articulate values, to create associations and solidarities, and to advance their interests” (17). Diamond (2008) defines it as “as the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or sets of shared rules” (5). The voluntary and non-political element of civil society is thought to increase state-accountability, improve the lines of communication between state and society and methods through which society can voice its needs and opinions to the state. Some scholars argue that these characteristics of civil society increase social capital, making a better informed citizenry who in turn will make better decisions, these citizens are more likely and well-suited to play the democratic game (Fukuyama 2001; Edwards et al. 1998; Putnam 1995; Putnam et al.1993). In other words, a strong civil society encourages the other players to “buy-into” the democratic rules of the game.

Lipset (1981) identifies another aspect that encourages players to “buy-into” the democratic game, he argues that “the more well-to-do a nation, the greater the chances that it will sustain democracy” (31). In real games, players are most engaged when they are winning or at least have a good chance of doing so. The same is true with democracy.

The attitudes held by citizens of a country towards democratic regimes are an important aspect of democratic consolidation. The happier players are with the game, the more successfully the game is played. Several scholars identify legitimacy – the support for a democratic regime by its citizens, as an integral factor of consolidation (Merkel 1998: 59-62; Linz and Stepan 1996: 5-6). As it is necessary that there be a widespread acceptance of democratic norms and cultures amongst the citizenry, there must also be an acceptance of the other players, particularly the leaders. The more a regime serves the perceived needs and desires of its citizenry, the more likely it is to endure.

In summation, we see that as with every other game, democracy has rules which govern the interactions between its players. The players in the democratic game are the citizens, civil society, and elected officials. The basic rules are democratic elections which uphold the principles of popular participation and competition; and the establishment of democratic rule of law which protects basic human rights and civil liberties. The more that these players observe the rules of the game the more the
democracy becomes consolidated. The question then is where do traditional institutions fit into the democratic game? Juan Linz and Alfred Stepan (1996) extend the game metaphor and argue that a democracy is truly consolidated when it becomes “the only game in town” (15).

**Traditional Institutions and Democracy: Must democracy be the only game in town?**

This notion of consolidation illustrates some of the difficulties associated with the current discussion of the role of traditional institutions in a democratic dispensation. Under the “only game in town” framework, how can an African regime be considered consolidated when it includes generally non-democratic forms of authority such as traditional institutions? Scholars have looked at the viability of what they call “hybrid-regimes” that result from the blending of liberal and illiberal institutional structures (e.g. Villalon and VonDoepp 2005; Van De Walle 2000). Logan (2009) argues that “African societies are often quite adept at integrating seemingly incompatible institutional structures” (125). To extend her arguments to the democratic game metaphor, Logan argues that Africans view the traditional and the democratic as separate games that can be played simultaneously. Some scholars such as Melin (1995) and Ake (1993) have argued that each nation should give life to democracy in its own way, and in line with its own traditions. These scholars view the traditional and the democratic as overlapping or complimentary games. Under both of these frameworks, the democratic game does not need to be the only game in town, just perhaps the main game in town.

Some scholars argue that it is not appropriate for traditional institutions to play a role within a democratic regime. The literature on traditional institutions is characterized by a polarized debate which consists on one hand of those who argue that traditional forms of authority are outdated institutions, fundamentally contrary to the foundational principles of popular government and therefore view them as impeding on the development and consolidation of democracy (Ntsebeza 2005; Pita 2004; Mamdani 1996). Other scholars argue that traditional institutions are an integral aspect of African societies. These scholars claim that any attempts at building a well based democratic system should heavily involve these institutions (Fokwang 2009; Ayittey 2001; Osabu-Kle 2000). Keulder (1998) calls these groups of scholars “modernists” and “traditionalists” respectively. Mamdani (1996) presents the quintessential
modernist argument, stating that it is impossible for Africans to be “subjects” and “citizens” at the same time. Not only does he view traditional institutions as being the repressive legacies of colonialism, but he argues that the institutions necessarily vie for legitimacy with the state. This argument juxtaposes the state with traditional institutions and from it we can infer that the two cannot successfully coexist. Effectively, this is reminiscent of the “only game in town” argument.

Some of the literature suggests that traditional institutions can participate in the democratic game in a meaningful and beneficial way. It is possible to tie some of these findings back to our discussions on the sources of consolidation. Williams (2004) for example, finds that traditional institutions can have a positive influence on the acceptance of democratic norms and attitudes at local levels. This relates back to Diamond’s (1999) interest in the democratic behaviors and the acceptance of a democratic culture. In relation to Lipset’s (1981) argument that countries that are more well-to-do are more likely to sustain democracy, Crook (2005) and UNECA (2007) illustrate how traditional institutions can play a major role in the implementation and success of development strategies. In relation to the role of civil society in promoting consolidation, Orvis (2001) argues that traditional institutions can, if engaged correctly, perform many of the same functions as civil society.

What we see then, is that Africans play the democratic game differently. As is often the case with real games, players can develop “house rules”. As Fredric Schaffer argues in his influential book Democracy in Translation (1998) “similar institutional arrangements in different cultural contexts are not necessarily imbued with similar meaning” (p 115). There are certain basic rules to the democratic game but what we observe in Africa is that Africans have added some rules and invited some new players to the table. One of the house rules in Africa is seemingly that traditional institutions are allowed to participate.

Traditional institutions continue to have significant effects on African politics. Though these institutions exist throughout the continent, only a small number of nations have chosen to formally integrate them into their modern political structures. After taking into consideration the persistent relevance and legitimacy bestowed upon traditional institutions by the African people, should it be surprising that attempts at integrating them into the modern state have been infrequent? Our
understanding of the effects of these institutions on democratic consolidation will help guide future attempts at integrating them into modern forms of government.

Furthermore, some scholars have noted a persistent discord between the African state and society (Melin, 1996; Owusu 1992; Ekeh 1975). A notable study is Ekeh (1975) who argued that Africans continue to be more closely aligned to what he calls the “primordial public” than they are aligned to what he calls the “civic public”. In many places, there also seems to be a discord between the state and traditional institutions. Many states have resisted incorporating traditional institutions into the modern state structures. Some have even gone as far as attempt to ban and dissolve them. In places where they have been integrated, the choice to integrate them was often met with considerable opposition from the political elites (Williams 2010: 2-11). Regardless, these institutions have been resilient.

Williams (2010:15) identifies traditional institutions as a “linking point” or “hinge-point” between state and society. Other scholars such as Van Nieuwaal and his colleagues (1996) have also identified this relationship. Englebert (2000:129) suggest that regimes who integrate traditional institutions are more likely to maintain their own legitimacy. Noting these arguments, I hypothesize that higher levels of formal integration will result in higher levels of consolidation. The formal integration of traditional institutions within the modern state, (as opposed to these institutions existing and operating extra-constitutionally), might serve to facilitate this “linking-point” relationship. Both the arguments of Ekeh (1975) and Mamdani (1996) also inform this hypothesis. This discord between the African state and society which is noted by both scholars is argued to be promulgated by the reported split allegiances of Africans. Formally integrating traditional institutions might mitigate this discord because, as can be inferred from Mijiga (1998:6), through formal integration, governments harmonize the purpose and role of these otherwise rival institutions with their own.

A direct counter argument to my hypothesis is presented by Migdal (1998: chapter 7) who argues that states that incorporate traditional institutions do so to their own detriment. In analyzing the relationship between the formal integration of traditional institutions and consolidation I will directly test this claim.
while also exploring the viability of general modernist arguments stating that traditional institutions are antithetical to the development and consolidation of democracy.

As illustrated through the review of the literature, there are a vast number of studies which analyze the relationship between traditional institutions and democracy in specific countries. The current study finds its relevance firstly in that there are very few studies which have done cross-national analysis of the topic. Furthermore, to my knowledge, no studies have looked at the different methods regimes use to formally integrate traditional institutions.

Questions of integration of traditional institutions might also be relevant in other parts of the world as well. Countries like Afghanistan and Pakistan for example, are known to have strong forms of traditional institutions. In both places, debate continues as to how to deal with these institutions in relation to the countries’ respective efforts at political development. As such, even a simple understanding of the various ways in which African governments have incorporated traditional institutions might be helpful for future studies and policy designs in those regions as well.

III. Methodology

First, in trying to determine whether regimes that integrate traditional institutions exhibit higher levels of democracy, I am going to perform a brief bivariate statistical analysis. My dependent variable is consolidation. My independent variable is the formal integration of traditional institutions. I measure each variable as follows:

Measuring Consolidation:

This paper uses Freedom in the World Scores to measure democratic consolidation. Freedom House publishes these scores as an annual comparative assessment of the state of democracy in 192 countries worldwide. The index scores two broad categories: political rights and civil liberties. These ratings are based on the composite score of specific subcategories. The subcategories that comprise the political rights ratings are (A) the electoral process, (B) political pluralism and participation, and (C) the functioning of government. The subcategories that comprise the civil liberties score are (D) freedom of expression of belief, (E) associational and organizational rights, (F) rule of law, and (G) personal
autonomy and individual rights. Each country receives a separate numerical rating for political rights and civil liberties based on the aggregate of the above mentioned sub-scores. This numerical rating ranges from 7 to 1. A rating of 1 indicates the highest level of democracy and a rating of 7 indicates the lowest level of democracy.

Each country’s political rights and civil liberties scores are averaged to determine an overall status of "Free," "Partly Free," or "Not Free." Those whose scores average 1.0 to 2.5 are considered free, 3.0 to 5.0 partly free, and 5.5 to 7.0 not free.

The Freedom House index is certainly not a perfect measurement of consolidation (see Munk & Verkuilen 2002). Nonetheless, the benefits of the index are numerous. Firstly, the scores, which have been collected since 1973, are available for most nations in the world. The Freedom House rankings are simple, straightforward, and easily comprehensible. This facilitates cross-national comparative studies. The scores are widely used and often treated as authoritative in both academic research and government studies (Giannone 2010: 74-77). Furthermore, Freedom in the World scores are the most popularly used scores for studies on democratization in sub-Saharan Africa.

**Measuring the Integration of Traditional Institutions**

In order to measure levels of formal integration of traditional institutions, this study has created an original index. This index was applied to the standing constitutions of 40 nations in sub-Saharan Africa. The composite score on the index ranges from 0 to 5, whereas a rating of 5 represents the highest levels of integration and a rating of 0 represents the lowest levels of integration. The index is divided into 5 subcategories. Each of the five subcategories was given a score of either 1 (if variable was observed) or 0 (if variable was not observed). The final rating was the aggregate score of the 5 subcategories. In some cases, scores of .5 were given when the variable was observed but not as explicitly as described above. As is often the case with legal writing, some things are merely alluded to. The Constitution of the Republic of Gambia for example mentions traditional rulers once in Chapter XV but never explicitly protects them or delineates their roles. Their role can be inferred by their placement alongside local government. There is also mention of the traditional institutions Seyfolu and Alkalolu in the Gambian Constitution. Once
again we can only infer their specific roles and responsibilities. As such, Gambia receives a rating of .5 in
subcategory (1).

The subcategories were as follows: (1) Explicit constitutional statement recognizing/protecting
traditional institutions; (2) Laws governing the interaction between the traditional institutions and other
branches of government; (3) Outline of the roles of traditional institutions; (4) laws establishing an
organized body of traditional institutions; (5) constitutional powers granted over land. These parameters
were gathered from the major themes and discussion points presented in the general literature on
traditional institutions.

This concept of integration could be viewed in two ways; on one hand we could say that the more
attention that is paid to delineating their role signifies that they are more integrated into the modern state
and hold a more significant and official capacity. Conversely, one could argue that the more provisions
made for the institutions, the more constraints that are placed on their power resulting in a lessened role
for the institutions. In other words, we might say that the first way of looking at integration takes the
vantage point of the central state whereas the second takes the vantage point of the institutions
themselves. Laws can either serve the purpose of expanding or constricting powers. Though I have failed
to take this into consideration for the current study, future research might be interested in incorporating
this issue into their respective analyses. I have conceptualized integration from what I take to be the
perspective of the state. Under the current framework, the more delineated the role of traditional
institutions the higher the levels of integration. This is a point which I revisit in the analytical section of
the paper however.
**Constitutions**

The constitutions that were surveyed were accessed via the World Wide Web. The relevant portions of these constitutions are included in Appendix A of this study. Citations for the complete constitutions can be found in the bibliography. Most of these constitutions were available in official English translations and cited as such. I was unfortunately unable to locate the constitutions of Mauritius, Cape Verde, Mauritania, Niger, Somalia, or Guinea. Furthermore, I was unable to locate translations of the Constitutions of Sudan (Arabic) and Madagascar (French). This left my sample size as forty out of a possible forty-eight nations.

**Afrobarometer Data**

Within the analysis I also discuss data from Afrobarometer Round 4. There are also several questions which pertain to traditional institutions and democracy on the Afrobarometer questionnaire. For a listing of these questions see Appendix D. In this study I have looked at five of these questions. Responses were divided amongst integrated and non-integrated cases. I had to exclude Cape Verde and Madagascar from the survey data because I was unable to find their constitutions and consequently did not include them in the earlier analysis. Excluding these two cases left me with a sample size of (n=18). Ten of the eighteen cases were previously noted as having integration scores higher than 0. The remaining eight were non-integrated cases. Q30 and Q43 were used to gauge popular support for democracy. Q27B deals with the frequency of contact with traditional institutions. Q65 and Q66 look at the popular perceptions on the appropriate influence of traditional institutions within local communities.

**IV Data and Analysis**

The first question is whether countries with formally integrated traditional institutions exhibit higher levels of democracy. Figure 1A compares the mean Freedom House scores of the countries who have integrated traditional institutions with those of the countries that have not integrated them. As illustrated in the figure, the mean Freedom House score of integrated cases (n=16) was 4.42 compared to an average Freedom House score of 5.15 for the non-integrated cases (n=24). This is a sizeable and statistically significant difference.
These means were compared using a one-sample T-test. Results of the one-tailed T-test are provided in Tables 2A and 2B. There was a significant effect for integration, $t(15)= 2.228$, $p<.05$, with integrated cases receiving better Freedom House scores than non-integrated cases.

### One-Sample Statistics

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>Mean</th>
<th>Std. Deviation</th>
<th>Std. Error Mean</th>
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<tr>
<td>Freedom House Average</td>
<td>16</td>
<td>4.42075</td>
<td>1.316211</td>
<td>.329053</td>
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</tbody>
</table>

Table 1A

### One-Sample Test

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<tr>
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<th>Test Value = 5.153917</th>
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<tbody>
<tr>
<td></td>
<td>$t$</td>
</tr>
<tr>
<td>Freedom House Average</td>
<td>-2.228</td>
</tr>
</tbody>
</table>

Table 2B

As I expected to find based on the literature, here we observe evidence of a relationship between integration and higher levels of consolidation. Those countries which have integrated traditional institutions generally exhibit higher levels of consolidation. This is enough to dispel Migdal’s (1998) argument that regimes that integrate traditional institutions do so at their own peril. It seems rather that integrating traditional institutions benefitted those countries.
We have already examined the literature which suggests that traditional institutions lead to higher levels of consolidation. Many of these claims are supported in various reports across the continent. Williams (2004) finds that traditional institutions can have a positive influence on the acceptance of democratic norms and attitudes at local levels. The United Nations Development Program reported in 2007 that paramount chiefs in Sierra Leone had played a role in promoting free and fair elections (UNDP 2007). These both relate back to Diamond’s (1999) interest in the democratic behaviors and the acceptance of a democratic culture. In relation to Lipset’s (1981) argument that countries that are more well-to-do are more likely to sustain democracy, Crook (2005) and UNECA (2007) illustrate how traditional institutions can play a major role in the implementation and success of development strategies. The World Bank has on several occasions engaged traditional leaders in its efforts of fostering development across Africa (World Bank Group n.d). From a specific report In Ghana, the Asantehene had established an education fund and the Golden Development Company Board (See Ghana News Agency October 2001). In relation to the role of civil society in promoting consolidation, Orvis (2001) argues that traditional institutions can, if engaged correctly, perform many of the same functions as civil society. Across the continent, traditional leaders have mobilized citizens in support of democratic goals, have created educational initiatives, and are partnering with NGO’s and government officials in the fight against HIV/AIDS (see Baguma & Kwesiga March 2010; ABT Associates n.d). All of these aspects benefit the consolidation of democracy.

Traditional institutions exist across the continent, and whether integrated or not, they have even been noted as engaging in many of the above mentioned behaviors that I considered beneficial to consolidation (see Umar 2010). As another example, in recent years, traditional leaders from Togo and Nigeria (both non-integrated countries) joined traditional leaders from Ghana and South Africa at a conference where they discussed the formation of an African Union of Traditional Leaders as well as the roles that traditional institutions can have in the promotion of democracy and development (Ghana News Agency 2003). The question then, is why do countries with integrated institutions exhibit higher levels of consolidation? The first hypothesis is that of reverse causation: the incorporation of traditional
institutions does not lead to higher levels of consolidation instead countries that exhibit high levels of democracy are more likely to integrate traditional institutions. This hypothesis is supported by the fact that traditional institutions in non-integrated countries are as active as they are in integrated countries. It does not explain why some countries with high levels of democracy have not integrated traditional institutions however.

A second hypothesis can be deduced from Richard Rathbone’s book *Nkrumah and the Chiefs* (2000). Rathbone details the struggle between the political elites and traditional institutions at the time of independence of Ghana. Akan chieftaincy was strong in Ghana at independence but the political elites of the time were strongly opposed to the chiefs and wanted to abolish them. In realizing however that internal fragmentation would result from alienating the chiefs, the political elites sought ways of keeping them around while also being able to exercise a certain amount of control over them. From the perspective of the political elites, the statutes integrating traditional institutions in the Ghanaian constitution seemingly served the role of limiting the powers of the chiefs. Thinking in this way, it could be argued that the reason countries that integrate traditional institutions exhibit higher levels of consolidation is because they are able to limit the powers of traditional leaders and keep them from “meddling” in the democratic process. This hypothesis finds further support in Migdal (1998) who argues that regimes that incorporate traditional institutions do so to control them. This hypothesis does not account for the fact that in many places, such as Madagascar and Botswana traditional leaders have petitioned the state to be formally integrated. If this hypothesis were true, we would expect traditional institutions to resist being incorporated. On the contrary, it seems that integration is viewed favorably by traditional institutions. This hypothesis also does not account for what happened later on in Ghana: the same provisions on traditional institutions have been in every version of the Constitution, when the Constitution of 1992 was drafted, several chiefs sat on the constitutional committee. If the legislation was done with the sole purpose of limiting their powers, why did the chiefs agree to keep the legislation there?

A third hypothesis is presented by Mijiga (1998:6) who argues that through formal integration, governments harmonize the purpose and role of these otherwise rival institutions with their own. This
argument finds support in Williams (2010:15) who identifies traditional institutions as a “linking point” or “hinge-point” between state and society. Other scholars such as Van Nieuwaal and his colleagues (1996) have also identified this relationship. Englebert (2000:129) suggest that regimes who integrate traditional institutions are more likely to maintain their own legitimacy. The formal integration of traditional institutions within the modern state, (as opposed to these institutions existing and operating extra-constitutionally), might serve to facilitate this “linking-point” relationship. Both the arguments of Ekeh (1975) and Mamdani (1996) also inform this hypothesis. The discord between the African state and society which is noted by both scholars is argued to be promulgated by the reported split allegiances of Africans. The harmonization of the roles of traditional institutions with those of the regime presumably mitigates the discord by allowing citizens to effectively support both without conflict. This is the hypothesis for which I find the most support. The issue with this hypothesis however is that there are both non-integrated cases with high levels of democracy (places like Mali and Benin) as there are integrated cases with low levels of democracy (Democratic Republic of Congo and Chad).

Some of the questions from Afrobarometer round 4 allow us to investigate these claims. There are several questions on the Afrobarometer questionnaire that pertain to traditional institutions and democracy. These will help us to understand the ways that Africans think about traditional institutions and democracy. Logan (2009) also analyzes much of this data but does not make the distinction between integrated and non-integrated cases. Analyzing the data in this way will further the analysis and help us to better understand the relationship between formal integration and democracy. The data illustrates that Africans in both integrated and non-integrated cases express high levels of support for democracy but that those in integrated cases report being overall more satisfied with democracy. The responses also illustrate similar levels of access by citizens of traditional institutions in both integrated and non-integrated cases. Finally, the responses show that Africans in integrated cases overwhelmingly think that the role of traditional institutions in their societies should increase. The responses to Question 30 are illustrated in Figure 3A. Question 30 states the following:
**Question:** Which of these three statements is closest to your own opinion?
Statement A: Democracy is preferable to any other kind of government.
Statement B: In some circumstances, a non-democratic government can be preferable.
Statement C: For someone like me, it doesn’t matter what kind of government we have.

As illustrated in the graph, popular support for democracy in both integrated and non-integrated cases was relatively high. The vast majority of respondents in both cases supported democratic forms of government over any other form of government. There was only a miniscule difference in the percentage of respondents in each case with a slightly higher percentage of respondents in integrated cases willing to support other forms of government. Question 43 measures participants’ satisfaction with democracy. The responses are illustrated in Graph 3B. Question 43 states the following:

**Question:** Overall, how satisfied are you with the way democracy works in [Ghana/Kenya/etc.]?
Responses: Not at all Satisfied, not very satisfied, fairly satisfied, very satisfied or my country is not a democracy.
Citizens in countries with integrated traditional institutions report being more satisfied with democracy than those in non-integrated countries. As was noted earlier satisfied citizens lead to a more consolidated democracy.

Figure 4A charts the responses to question 27B. The question looks at the rates of access and contact with traditional institutions. The question asks “during the past year, how often have you contacted a traditional ruler about some important problem or to give them your views?” It is perhaps surprising firstly to see that a majority in both integrated and non-integrated cases report to have never contacted a traditional ruler over the past year. Some of this might be due to the wording of the question, particularly the respondents notion of what constitutes an “important problem”, but this notwithstanding, the proportion of respondents who never contacted a traditional ruler is sizable.

The graph also illustrates that the rates of access in integrated and non-integrated cases are very similar. This helps to illustrate that the relevance of traditional institutions expands comparably to both integrated and non-integrated countries.

Questions 65 and 66 illustrate the popular perceptions on the current and appropriate levels of influence of traditional institutions within local communities. Other questions that would be relevant to
our understanding of this are Questions 58A-H. These questions deal with popular perceptions on the appropriate roles and responsibilities of different political authorities including traditional institutions. Due to constraints on time and resources I was not able to incorporate these questions into the current study, but future research should look at these questions also. The responses to question 65 are illustrated in Graph 5A. Question 65 states the following:

**Question:** How much influence do traditional leaders currently have in governing your local community? None, A small amount, Some, A great deal, Don’t know.

Graph 5A illustrates that the perceived influence of traditional leaders in local communities within integrated cases was higher than that of non-integrated cases. What is not clear is whether this disparity arises because of the integration or whether the disparity existed prior to integration. If the latter case was true, we might hypothesize that higher levels of influence of traditional institutions led to their integration by the state. We are not however, based on the information available, able to infer what causes the disparity.

The last question analyzed was Question 66. The responses are illustrated in Graph 5B. Question 66 asks “Do you think that the amount of influence traditional leaders have in governing your local community should increase, stay the same, or decrease?” It is fascinating to note that a vast majority of respondents in both integrated and non-integrated cases feel that the influence of traditional institutions
should increase. A larger percentage of respondents in integrated cases think that the role of traditional institutions should increase a lot. This clearly illustrates the legitimacy that is conferred upon these institutions by the citizens. This also might explain why regimes integrated traditional institutions -- Because the citizens were demanding that they be given more power.

**Q66: Do you think that the amount of influence traditional leaders have in governing your local community should increase, stay the same, or decrease?**

<table>
<thead>
<tr>
<th>Response</th>
<th>Integrated (%)</th>
<th>Not Integrated (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decrease A lot</td>
<td>4%</td>
<td>5%</td>
</tr>
<tr>
<td>Decrease A little</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Stay the Same</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>Increase Somewhat</td>
<td>22%</td>
<td>24%</td>
</tr>
<tr>
<td>Increase A lot</td>
<td>37%</td>
<td>33%</td>
</tr>
<tr>
<td>Don't Know</td>
<td>13%</td>
<td>13%</td>
</tr>
</tbody>
</table>

*Figure 5B*

What is likely is that a combination of the reasons identified in the proposed hypotheses explain the reasons why regimes integrated traditional institutions. There are constant pressures from every involved actor. As is illustrated above, the citizens want traditional leaders to have more influence. The citizens adhere to the authority of traditional leaders. The citizens also have daily needs. If the regime was unable to meet the needs of the citizens, it might be beneficial to partner with the traditional institutions to help the citizens be happy. At the same time, the traditional institutions have goals and because of their pull with the citizenry can put pressure on the regime to accommodate their needs and wants. The regime also has goals – namely that of staying in power, and might see making a few concessions to traditional institutions in its own long-term best interest.

Up until this point we have not discussed the various ways in which traditional institutions are integrated. The constitutional provisions for traditional institutions are diverse. Appendix A provides a
brief content analysis of the diverse constitutional provisions for traditional institutions in the sixteen countries that integrate them. A particular case which I found interesting and is worth discussing is that of Namibia.

Namibia interests me because since independence the regime has passed 4 separate pieces of legislation each of which grants increasingly expansive powers to traditional institutions. These four statutes pertaining to traditional institutions are Article 102 (5) of the 1990 Constitution, the 1995 Traditional Authorities Act, the 1997 Council of Traditional Leaders Act, and the Traditional Authorities Act of 2000. The case study is also helpful because it illustrates that the formal integration is carried out beyond standing constitutions. In this study I have only analyzed the standing constitutions of African nations. Future research should also incorporate statutes into the analyses of formal integration.

V. Namibia

The Constitution of 1990 only refers to traditional leaders once. Article 102 (5) states the following:

There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

This very vague article does not do much by way of integrating the traditional institutions. It took the government seven years to pass legislation that established a council of traditional leaders. This came in the form of the 1997 Council of Traditional Leaders Act. Furthermore Keudler (1998:56) observes that at the point of the publication of his research, the government had yet to establish a communal land policy. As such, though a constitutional provision pertaining to traditional institutions existed since independence, traditional leaders were integrated at relatively low levels for around seven years from the ratification of the Constitution. Looking just at the Constitutional provisions, Namibia received an integration score of 1.5. The subcategory scores were distributed as follows: the constitution alludes to the roles of traditional institutions as advisors, alludes to the establishment of an organized body, and alludes to the influence that traditional institutions will have pertaining to communal land. Namibia received a score of .5 on subcategories 3, 4, and 5.
In 1995 parliament passed the Traditional Authorities Act. According to this act, traditional institutions were placed under the jurisdiction of the Ministry of Regional and Local Government Housing (MRLGH). Articles 6 and 7 state that no traditional authority can take up its position without the approval of the minister of MRLGH. This fulfills subcategory 2 which refers to laws governing the interaction between traditional institutions and other branches of government. This raises the integration score from 1.5 to a 2.5.

Article 2 “establishes” the institution and allows each traditional community to have one chief, one senior traditional councilor, and one traditional council. Articles 3 and 4 uphold the institutions in accordance with customary law insofar as the practices are not contradictory to the constitution. This satisfies subcategory 1 which refers to an explicit statement protecting traditional institutions. This raises the integration score from 2.5 to a 3.5.

According to Article 12 (1-2) traditional institutions are to give support to the policies of the central government. Furthermore Article 10 prescribes the role of traditional institutions as follows:

(a) to ascertain the customary law of their community and assist in its codification;
(b) to administer and execute the customary law of their community;
(c) to uphold, promote, protect and preserve the culture, language, tradition and traditional values of their community;
(d) to preserve and maintain the cultural sites, works of art and literary works of that community;
(e) to perform traditional ceremonies and functions held within their community;
(f) to advise the Council of Traditional Leaders in the performance of its functions
(g) to promote affirmative action amongst the members of that community, in particular by promoting women to positions of leadership; and
(h) to register practicing traditional healers
(i) to assist the police and law enforcement agencies with the prevention of crime

Though the majority of these roles are advisory in nature, what is important for our integration score is that a role is clearly defined. This fully satisfies subcategory 3 and results in the integration score moving from a 3.5 to 4.0.

This act still does not provide for the constitutionally promised council of traditional leaders. Nor does it elaborate on the traditional leaders powers over communal land. Nevertheless, the 1995 act results in a significant raise in the levels of formal integration of traditional institutions.
In 1997 the government passed the Council of Traditional Leaders Act. Beyond the long awaited establishment of the council, the Act does not expand from the roles prescribed to the council in the constitution and the 1995 Traditional Authorities Act. The council is exclusively given an advisory role on issues pertaining to custom and communal land. According to Article 2 the council’s membership consists of up to two members from each traditional community. In relation to communal lands, the act states the following:

15. (l) Any draft legislation pertaining to communal land shall be laid before the Council for its consideration and recommendation before it is introduced in the National Assembly.

These two aspects of the Act, namely the defining of powers over land and the establishment of the council of traditional leaders, result in integration being scored as a 5 - the highest score possible on the index.

The final act of Parliament pertaining to traditional institutions was the 2000 Traditional Authorities Act. This act refines and expands upon the provisions of the 1995 Act of the same name. Along with the roles mentioned in the previous act, the 2000 legislation also provides in Article 3 subsection 2, the following additional roles for traditional institutions:

(a) to ensure that the members of his or her traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems for the benefit of all persons in Namibia;

(b) to be ordinarily resident in the communal area of the traditional community which he or she leads,

(c) to respect the culture, customs and language of any person who resides within the communal area of that traditional authority, but who is not a member of the traditional community which such member leads.

The act again requires the approval of the minister of the MRLGH to approve the designation of a chief, but adds in Article 5 subsection 5 that the President of the nation also has to approve the designation after conferral with the council of traditional leaders. Unlike the 1995 Act, Article 9 establishes the roles and responsibilities of the senior traditional councilor and traditional council as well. These were essentially to advise and support the chief. Unlike the previous legislation, The Act of 2000 allows traditional institutions to be appointed, run for, and hold public office. According to Article 15 (a),
they are simply required to “take a leave of absence” from their position as chief for the duration of their appointment in public office.

As I have conceptualized my index, the 2000 Act did not increase levels of integration (as the index score was already a 5). The purpose of the bill was to refine and expand upon the earlier legislation. The only major change that was enacted was Article 15 which allowed traditional leaders to hold political office. To my knowledge, this makes Namibia the only country to allow this.

The crucial point from the overview of the legislation pertaining to traditional institutions is that they have increased levels of integration over time. Namibia also provides an insight into the politics behind integration illustrating that it is not only important to analyze if traditional institutions are integrated but how they are integrated. As is also illustrated in appendix A, the various constitutional provisions pertaining to traditional institutions across the continent are diverse and varying in scope.

In Namibia, despite the fact that the assigned role of traditional institutions are mostly advisory in nature, chiefs are given salaries, considerable powers over communal lands, and are allowed to run and be appointed to political office. The fact that they are paid is not uncommon. Many of the constitutions of the neighboring southern African states provide that traditional institutions are to receive salaries. The fact that traditional leaders can run and be appointed to political office is a novelty on the continent and grants considerable powers to traditional institutions. This has also given way to conflict. Appendix F contains the news articles on the topic of traditional institutions in Namibia that are cited in the following section.

Several reports indicate that chiefs think of this formal integration as something worth having because they have frequently petitioned the government to gain official recognition. As mentioned, according to the Act of 2000, traditional leaders have to be individually recognized by the regime. According to several reports, the benefits associated with being officially recognized have led groups to break away from their communities and form smaller communities and then petition to be officially recognized. Beyond this, traditional leaders have taken advantage of their ability to be partisan and have mobilized their citizens in favor and against different parties for personal gain. One report indicated that it is
difficult for a traditional institution to gain official recognition if they are opposed to the politics of the regime. The constitutional provisions have also given way to ethnic conflict.

Namibians are of diverse ethnic origins. According to the U.S. Department of State Background Notes on Namibia, the principal groups in the country are the Ovambo, Kavango, Herero/Himba, Damara, Nama, Caprivian, San, and Tswana. There are also significant populations of Afrikaners. The Ovambo make up about half of Namibia's people. The San are generally assumed to have been the earliest inhabitants of the region. Keudler (2004) outlines the different types of traditional institutions associated with each ethnic group and region of the country. That being said, as was illustrated, the legislation makes it difficult for certain groups to be officially recognized. A common case is the Khwe-san who have petitioned the government for official recognition for years and repeatedly been denied. This might be concerning for the future stability of democracy and the viability of traditional institutions functioning in a democratic dispensation. There are already reports of leaders complaining that they have not been integrated due to divisions across ethnic lines.

Why did Namibia continue to grant more powers to traditional institutions? We see aspects of each of earlier mentioned hypotheses. Firstly the case gives credence to the hypothesis that regimes integrate traditional institutions to control them. The fact that traditional leaders are paid and can run for political office allows government officials to “incentivize” the traditional leaders’ support of regime policies. We also see evidence for another hypothesis however that regimes were pressured by traditional leaders and citizens to grant formal recognition and constitutional powers to the chiefs. In one report, a chief who had not been allowed to sit on the National House of Chiefs mobilized his subjects to not attend various festivals and state functions in protest. This shows the influence of traditional institutions within local communities. Finally we also see evidence for our third hypothesis that regimes integrate traditional institutions to harmonize their roles and interests. Several reports indicate that traditional leaders were given government training on how to implement development initiatives and how they could support democracy. It is possible that these three things converged to produce the outcome of increased integration.
One final question that Namibia allows us to investigate is whether higher levels of integration lead to higher levels of consolidation. The following section briefly analyzes this question.

The overview of Namibia’s Freedom House Scores demonstrates little change since independence. Here, to facilitate reading, I have reversed the freedom house scores such that the highest score is a 7 and the lowest is a 1. Figure N illustrates this data.

![Freedom House Scores Since Independence](graph)

**Figure N**

As shown, the Freedom House scores have been relatively stable since independence. The Political rights score improved from a 4 to a 2 in 1991 and has stayed at that level ever since. There is a slightly larger amount of variation for the civil liberties score but it has also rather consistently received a score of 3. It is difficult based on this data, to suggest that the integration of traditional institutions necessarily leads to higher levels of consolidation. Democracy in Namibia, though stable and consistently deemed “free” has not improved very much. The only exceptions are from 1990 to 1991 the average Freedom House score improve a whole point from 3.5 to 2.5 marked by a drastic change in political rights. Also, from 2005 to 2006 the average Freedom House score improved from 2.5 to 2.0 marked by a change in the Civil Liberties score. As illustrated, higher levels of integration do not lead to higher levels of consolidation.
Conclusion

This study found a clear relationship between the formal integration of traditional institutions and democratic consolidation. The study allows us to dispel the quintessential modernist argument that traditional institutions are antithetical to the development of democracies. The study also allows us to dispel Migdal’s (1998) argument that regimes which integrate traditional institutions do so at their own peril. The reasons that countries which integrate traditional institutions generally exhibit higher levels of democracy were analyzed and it was concluded that this outcome is best explained by a variety of factors. Firstly, the formal integration of traditional institutions allows regimes to harmonize their roles and facilitates the attaining of national goals. Secondly, the formal integration of traditional institutions seemingly reflects well on the regime because citizens in integrated cases report being more satisfied with the democratic experience. Thirdly, to some extent, formally integrating traditional institutions brings these institutions “into the fold” and allows regimes to incentivize their participation in modern government. These three factors come together to make formally integrated institutions more beneficial to the development and consolidation of democracy.

Seeing that traditional institutions exist across the continent and continue to wield power over Africans, and taking into consideration the ways that Africans view traditional institutions, it would seem in the best interest of governments to at least make attempts at engaging these institutions. Formally integrating traditional institutions through constitutions and statutes is a positive first step in incorporating them into modern state structures. Formally integrated traditional institutions are more capable of operating in a democratic dispensation.

This paper also reaffirmed the relevance of the study of traditional institutions within African politics. Many of the most pertinent questions of African political development relate to these institutions and the role that they play in the modern state. A good place to start with any investigation into the relationship between the state and traditional institutions is by looking into the various constitutional provisions and statutes of each country. The appendices in this volume will assist future research on the topic.
The study of Namibia illustrated the complex power relationships between traditional institutions and regimes. It also illustrated that the way in which traditional institutions are integrated affects how they interact with democracy. There is cause for concern in Namibia because the framework for integration has given way to internal fragmentation along ethnic lines. Further fragmentation along partisan lines has resulted from the provisions in the Traditional Authorities Act of 2000 which allow traditional leaders to run for and be appointed to political office.

Not forgetting the earlier mentioned possible applications of this study to the rest of the world, it will also be interesting to see how countries such as the newly formed republic of South Sudan and others who have recently drafted new constitutions will approach the integration of traditional institutions.
Bibliography


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Constitution of the Republic of Chad
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Constitution of the Republic of Ghana
Constitution of the Republic of Guinea-Bissau
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Constitution of the Republic of South Africa
Constitution of the Kingdom of Swaziland
Constitution of the United Republic of Tanzania
Constitution of the Togolese Republic
Constitution of the Republic of Uganda
Constitution of the Republic of Zambia
Constitution of the Republic of Zimbabwe
Appendix A: Content Analysis of the Constitutions

As demonstrated in Appendix C which contains the sub-scores for the integration index, there was notable variation amongst the constitutional provisions relating to traditional institutions. Sixteen of the forty cases surveyed have some form of constitutional provisions pertaining directly to traditional institutions. These include Ghana, Lesotho, Botswana, Zambia, Sierra Leone, Namibia, Mozambique, Uganda, Malawi, Zimbabwe, Chad, Congo (Kinshasa), Liberia, Swaziland, the Gambia, and South Africa. Chad is the only former French colony to be included on this list. Otherwise, with the exception of Mozambique, Namibia, Congo (Kinshasa), and Liberia, the eleven remaining countries are all former British colonies.

Three countries received a perfect score of 5 on the index. These were Ghana, Lesotho, and Swaziland. These countries each had specific statements recognizing and protecting the traditional institutions; constitutional laws governing the interaction between traditional institutions and other branches of government; and provisions creating an organized body of traditional rulers. Furthermore, each Constitution granted the traditional institutions powers over land and outlined the roles of these institutions. These three Constitutions integrate traditional institutions in similar manners. Nonetheless, the three government types are quite diverse. According to the CIA world Factbook, Ghana’s government is a constitutional democracy, Lesotho’s a parliamentary constitutional monarchy, and Swaziland’s a monarchy. Swaziland could be considered a constitutional monarchy in that the King acts as head of state within the confines of a constitution. The standing Swazi Constitution was signed into law in July of 2005. Based on the definitions in this paper, both the Kings of Lesotho and Swaziland are to be considered as traditional institutions. Both represent the leading authority in a hierarchical system of traditional rulers. Though both constitutions have sections delineating the roles and responsibilities of the respective kings, each constitution also outlines the role, office, organization, and responsibilities of various sub-chiefs.

Along with Ghana, Lesotho, and Swaziland, the constitutions of Botswana, Zambia, South Africa, Sierra Leone, Mozambique, Uganda, and Congo (Kinshasa) all have explicit statements protecting
traditional institutions. These statements were, for the most part, quite similar. Each of them recognized the institutions in accordance with customary law insofar that these laws are not contradictory to the respective constitutions.

When we talk about customary law in Africa we are referring to the laws that governed these various nation states prior to colonialism. In Africa, as is the case in most of the world, customary law is generally not codified. Therefore, from an outside perspective, upholding these institutions in accordance with customary law does not tell us very much about the institutions. Furthermore, most post-colonial African societies are multi-ethnic meaning that their citizenries are composed of what in the past would have been people from a variety of nation-states with varying laws (as such, we might also say that African nations today are multi-customary). Therefore, when a constitution upholds customary law in a multi-ethnic society, to whose customary law does this apply? Furthermore, how can varying customary laws be applied uniformly across the land? To take a hypothetical example, in a country with two distinct groups with distinct customs, should Group A be subject to the customs of Group B? Or perhaps it is the case that the customs of Group B apply only to the members of Group B. In which case, how do you determine who the members of each group are? What if someone from Group A was to marry a person from Group B; are each of these people subject to different sets of customary laws? It is clear to see how issues of application of customary law can be difficult in practice.

Differing customs were the cause of different political structures. These multi-ethnic societies are thus also composed of a variety of traditional institutions. In Ghana for example, the predominant ethnic group are the Akan and their various subgroups, each of which have the same basic traditional institutional structures. The other ethnic groups however, such as the Ewe, the Mole-Dagbane, the Guan, and the Ga-Adangbe people all have their respective traditional institutions. A blanket statement protecting traditional institutions in accordance with customary law makes no differentiation between the type of institution nor the manner in which they are respectively integrated.

Only the constitutions of Botswana, Lesotho, and Swaziland make mention of specific principal and/or sub-chiefs. The function and inter-institutional relations of the named chiefs is outlined clearly in
the constitutions of both Lesotho and Swaziland. In Botswana however, though several chiefs are mentioned, they are all integrated in the same manner according to the Constitution. Notably, no mention is made of the traditional institutions of the San people in the Constitution of Botswana. Future research should look at the different formal and informal ways in which different types of traditional institutions are integrated in multi-ethnic societies.

The Constitutions of Chad, Zimbabwe, Sierra Leone, Zambia, Botswana, Swaziland, Lesotho, and Ghana each had some type of provision pertaining to the interactions between traditional institutions and other branches of government. In Chad, Article 216 of the Constitution makes traditional institutions the “collaborators with the administration with respect to freedoms and human rights”. In Ghana members of the national and regional houses of chiefs sit on judicial committees (Article 153 m), regional police committees (Article 204 f), and prison service councils (Article 206 j). In Lesotho, the college of chiefs has the role of determining the line of succession of the office of King and Regent. Furthermore, in Zimbabwe, traditional authorities constitutionally hold 16 of the 93 seats in the Senate. The constitutions of Sierra Leone and Ghana prohibit the legislative branch from enacting laws that would take from or derogate the position of chief. Moreover, in Ghana, according to Article 106 (3), any bill affecting traditional institutions must first be presented to and accepted by the National House of Chiefs prior to being presented in parliament. In Zambia, Article 127 (2) gives the parliament the power to prescribe methods by which communities are to settle disputes relating to chieftaincy. In Liberia, chiefs can be removed by the president for “proved misconduct” (Article 57 (b)). Finally, in Zimbabwe, chiefs are appointed by the president (Article 111 (2)).

Only the constitutions of Zambia, Botswana, Swaziland, Lesotho, and Ghana explicitly outlined the roles of traditional institutions. In the case of the Democratic Republic of Congo, Namibia, Zimbabwe, and South Africa, roles were alluded to but not clearly defined. Most commonly, traditional institutions were given roles which were predominantly advisory in nature. There were some articles in a few of the constitutions that went beyond this however. In Ghana, chiefs and the house of chiefs hold authority on issues pertaining to traditions, and customary law and their usages. Furthermore, Article 272
(b) and 274 (f) require the national house and regional houses of chiefs to actively engage in the
codification of customary law. Similarly, in Zambia, Article 131 (b) of the Constitution gives traditional
institutions the authority to “initiate, discuss and decide on matters that relate to customary law and
practice”(emphasis mine). Again, in Ghana, the regional house of chiefs is given original jurisdiction to
settle any matter relating to occupancy of the throne in regions under their respective jurisdictions.

In the Democratic Republic of Congo, traditional institutions have the prescribed duty of
promoting “national unity and cohesion”. How they are supposed to do this is not clear. In another
example of a relatively vague attempt at delineating the role of traditional institutions, Article 215 of
Chad’s Constitution states that “traditional and customary authorities are the guarantors of traditions and
customs” Article 216 says “They are the collaborators of the administration with respect for the freedoms
and human rights”. Finally, in Namibia, Article 102 (5) simply states:

There shall be a Council of Traditional Leaders to be established in terms of an
Act of Parliament in order to advise the President on the control and utilization of
communal land and on all such other matters as may be referred to it by the
President for advice. (emphasis mine)

This vague article does not do much by way of integrating the traditional institutions. It took the
government seven years to pass legislation that established a council of traditional leaders. This came in
the form of the 1997 Council of Traditional Leaders Act. Furthermore Keulder (1998:56) observes that at
the point of the publication of his research, the government had yet to establish a communal land policy.
In other words, this Article did little, if anything, to define a role for traditional institutions within the
modern Namibian state. Section VI includes a case study of Namibia where these points are further
examined and discussed.

Liberia, Malawi, Zimbabwe, Uganda, Mozambique, Sierra Leone, South Africa, Zambia,
Botswana, Swaziland, Lesotho, and Ghana all had constitutional provisions establishing an organized
body of traditional institutions. One possible criticism for the constitutional provisions for these organized
bodies is that they only incorporate “upper level” or paramount chiefs (UNECA 2007:14). A closer
analysis however shows that this is not the case with all countries. The most intricate organized body is
the House of Chiefs in Botswana which is composed of eight “ex-officio” members: chiefs from eight regions of the country; four-elected subchiefs one from each the Chobe, North East, Ghanzi and Kgalagadi districts of the country voted in by the residents of the respective districts; and three members elected by the eight “ex-officio” and three elected members. Nonetheless, the Botswana House of Chiefs has no real powers or functions that extend beyond advising the Parliament and President on issues relating to customs and traditions. As mentioned in the preceding paragraphs, Ghana has both a national and regional house of chiefs which are established with the same basic function but with different jurisdiction and scope. The Constitution of Malawi upholds several traditional courts in Article 204. The courts are not outlined nor is a role delineated for them, but according to Forster (2001), these courts have authority and jurisdiction over a variety of cases and their authority is outlined in the 1969 Local Courts Act.

It is relevant to ask whether I should also incorporate into the analysis an overview of Sharia courts or other organized bodies (or institutions) associated with religious practices. Both the Constitution of Nigeria and Comoros recognize such bodies. In Comoros there is a council of Ulemas and in Nigeria there are Sharia courts. For the purpose of the current study, I have not incorporated these types of institutions into the analysis, but future research might be interested in doing so.

In all, we observe a large amount of variation amongst the constitutional provisions of African states pertaining to traditional institutions.

**Appendix B:**

**Constitutions of Each Country with Integrated Traditional Institutions**

*(Only Relevant Parts)*

**Ghana**

106. (3) A bill affecting the institution of chieftaincy shall not be introduced in Parliament without prior reference to the National House of Chiefs.

131. (4) An appeal from a decision of the Judicial Committee of the National House of Chiefs shall lie to the Supreme Court with the leave of that Judicial Committee or the Supreme Court.
153. There shall be a Judicial Council which shall comprise the following persons -
(a) the Chief Justice who shall be Chairman;
(b) the Attorney-General;
(c) a Justice of the Supreme Court nominated by the Justices of the Supreme court
…
…
…
(m) a chief nominated by the National House of Chiefs;

204. (1) There shall be established for each region a Regional Police Committee which shall consist of -
(a) the Minister of State appointed for the region, who shall be chairman;
…
…
…
(f) a representative of the Regional House of Chiefs;
…

206. (1) There shall be established a Prisons Service Council which shall consist of -
(a) the Vice-President, who shall be chairman;
(b) the Minister responsible for internal affairs;
…
…
…
(j) a representative of the National House of Chiefs; (sic)
…

209. (1) There shall be established for each region a Regional Prisons Committee which shall consist of –
(a) the Minister of State appointed for the region, who shall be chairman;
(b) the most senior member of the Prisons Service in the region;
…
…
…
(h) a representative of the Regional House of Chiefs;
…

CHAPTER TWENTY-TWO
CHIEFTAINCY
270. (1) The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed.
(2) Parliament shall have no power to enact any law which-
(a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or
(b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy.
(3) Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, clause (1) or (2) of this article if the law makes provision for-
(a) the determination, in accordance with the appropriate customary law and usage, by a traditional council, a Regional House of Chiefs or a Chieftaincy Committee of any of them, of the validity of the nomination, election, selection, installation or deposition of a person as a chief;
(b) a traditional council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana.

271. 
(1) There shall be a National House of Chiefs.
(2) The House of Chiefs of each region shall elect as members of the National House of Chiefs five paramount chiefs from the region.
(3) Where in a region there are fewer than five paramount chiefs, the House of Chiefs of the region shall elect such number of divisional chiefs as shall make up the required representation of chiefs for the region.

272. The National House of Chiefs shall -
(a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy;
(b) undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin;
(c) undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful;
(d) perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it.

273. (1) The National House of Chiefs shall have appellate jurisdiction in any cause or matter affecting chieftaincy which have been determined by the Regional House of Chiefs in a region, from which appellate jurisdiction there shall be an appeal to the Supreme Court, with the leave of the National House of Chiefs or the Supreme Court.
(2) The appellate jurisdiction of the National House of Chiefs shall be exercised by a Judicial Committee of the National House of Chiefs consisting of five persons appointed by that House from among its members.
(3) A Judicial Committee of a National House of Chiefs shall be assisted by a lawyer of not less than ten years' standing appointed by the National House of Chiefs on the recommendation of the Attorney-General.
(4) A member of a Judicial Committee of the National House of Chiefs shall be removed from office on the ground, of proven misbehaviour or of infirmity of mind or body by the votes of not less than two thirds of all the members of the National House of Chiefs.
(5) A Judicial Committee of the National House of Chiefs shall have original jurisdiction in any cause or matter affecting chieftaincy-
(a) which lies within the competence of two or more Regional houses of Chiefs; or
(b) which is not properly within the jurisdiction of a Regional House of Chiefs; or
(c) which cannot otherwise be dealt with by a Regional House of Chiefs.
(6) An appeal shall lie as of right in respect of any cause or matter dealt with by a Judicial Committee of the National House of Chiefs under clause (5) of this article to the Supreme Court.

274.
(1) There shall be established in and for each region of Ghana a Regional House of Chiefs.
(2) A Regional House of Chiefs shall consist of such members as Parliament may, by law, determine.
(3) A Regional House of Chiefs shall -
   (a) perform such functions as may be conferred upon it by or under an Act of Parliament;
   (b) advise any person or authority charged under this Constitution or any other law with any responsibility for any matter relating to or affecting chieftaincy in the region;
   (c) hear and determine appeals from the traditional councils within the region in respect of the nomination, election, selection, installation or deposition of a person as a chief;
   (d) have original jurisdiction in all matters relating to a paramount stool or skin or the occupant of a paramount stool or skin, including a queenmother to a paramount stool or skin;
   (e) undertake a study and make such general recommendations as are appropriate for the resolution or expeditious disposition of chieftaincy disputes in the region;
   (f) undertake the compilation of the customary laws and lines of succession applicable to each stool or skin in the region.
(4) The original and appellate jurisdiction of a Regional House of Chiefs shall be exercised by a Judicial Committee of the Regional House of Chiefs consisting of three chiefs appointed by the Regional House of Chiefs from among its members.
(5) A Judicial Committee of a Regional Chiefs shall be assisted by a lawyer of not less than five years' standing appointed by the Regional House of Chiefs in the recommendation of the Attorney-General.
(6) A member of a Judicial Committee of a Regional House of Chiefs may be removed from office on the ground of proven misbehaviour or infirmity of mind or body by the votes of not less than two-thirds of all the members of the Regional House of Chiefs.

275.
A person shall not be qualified as a chief if he has been convicted for high treason, treason, high crime or for an offence involving the security of the State, fraud, dishonesty or moral turpitude.

276.
(1) A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin.
(2) Notwithstanding clause (1) of this article and paragraph (c) of clause (3) of article 94 of this Constitution, a chief may be appointed to any public office for which he is otherwise qualified.

277.
In this Chapter unless the context otherwise requires, "chief" means 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 queenmother in accordance with the relevant customary law and usage.

267.
(1) All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust
for the subjects of the stool in accordance with customary law and usage

SOUTH AFRICA

Chapter 12
Traditional Leaders
Recognition

211. (1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.
(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.
(3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

Role of traditional leaders
212. (1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.
(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law -
(a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and
(b) national legislation may establish a council of traditional leaders.

Remuneration of persons holding public office
219. (1) An Act of Parliament must establish a framework for determining-
(a) the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders;

Namibia

102 (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

BOTSWANA

PART III
The House of Chiefs (ss 77-85)

[Ch0000s77] 77. Composition of House of Chiefs
(1) There shall be a House of Chiefs for Botswana.
(2) The House of Chiefs shall consist of—
(a) eight ex-officio Members;
(b) four Elected Members; and
(c) three Specially Elected Members.

[Ch0000s78] 78. Ex-officio Members of the House of Chiefs
The ex-officio Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively.

[Ch0000s79] 79. Elected and Specially Elected Members of House of Chiefs
(1) The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively.
(2) The Specially Elected Members of the House of Chiefs shall be elected by the ex-officio and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics.
(3) A person shall be deemed to be or to have been actively engaged in politics for the purposes of subsection (2) of this section in any circumstances in which he would be deemed to be or to have been so engaged for the purposes of section 64(4)(b) of this Constitution.
(4) Subject to the provisions of subsections (5) and (6) of this section a person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs if, and shall not be qualified to be so elected unless, he—
(a) is a citizen of Botswana;
(b) has attained the age of 21 years;
(c) is able to speak and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the House; and
(d) is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered.
(5) No person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs who—
(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
(b) has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;
(c) is certified insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;
(d) subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;
(e) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
(f) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the National Assembly or the compilation or revision of any electoral register for the purposes of such elections; or
(g) is disqualified for election to the National Assembly by virtue of provision made in pursuance of section 62(2) of this Constitution.
(6) For the purposes of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as
an alternative to or in default of the payment of a fine.

[Ch0000s80] 80. Oath of allegiance
Every Member of the House of Chiefs shall, before taking his seat therein, take and subscribe before the House of Chiefs the oath of allegiance.

[Ch0000s81] 81. Secretary to House of Chiefs
There shall be a Secretary to the House of Chiefs whose office shall be an office in the public service.

[Ch0000s82] 82. Tenure of office of Elected Members and Specially Elected Members
(1) An Elected Member of the House of Chiefs shall vacate his seat in the House—
(a) on a dissolution of Parliament; or
(b) if he ceases to be a person for the time being performing the functions of an office of Sub-Chief in the district from which he has been elected.
(2) A Specially Elected Member of the House of Chiefs shall vacate his seat in the House—
(a) on the dissolution of Parliament;
(b) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House; or
(c) subject to the provisions of subsection (3) of this section, if any circumstances arise that, if he were not a Specially Elected Member of the House of Chiefs, would disqualify him for election as such.
(3) If circumstances such as are referred to in paragraph (c) of the preceding subsection arise in relation to a Member of the House by virtue of the fact that he is declared insolvent, adjudged to be of unsound mind, sentenced to death or imprisonment or convicted of an election offence and it is open to the Member to appeal against the decision (either with leave of the court or other authority or without such leave), he shall forthwith cease to perform his functions as a Member of the House but, subject to the next following subsection, he shall not vacate his seat until the expiration of a period of 30 days thereafter:
Provided that the Chairman of the House may, at the request of the Member, from time to time extend that period for further periods of 30 days to enable the Member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate 150 days shall not be given without the approval of the House signified by resolution.
(4) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Member of the House, or if by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to a Member to appeal, he shall forthwith vacate his seat.
(5) If at any time before the Member of the House vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant by reason of those circumstances, and he may resume the performance of his functions as a Member of the House.

[Ch0000s83] 83. Rules of Procedure of House of Chiefs
Subject to the provisions of this Constitution, the House of Chiefs may, subject to the approval of the President, make rules regulating its own procedure and in particular, and without prejudice to the generality of the foregoing power, make rules for all or any of the following matter—
(a) the appointment or election and tenure of office of a Chairman of the House;
(b) the time and place at which the House shall meet;
(c) the manner in which the views of the House shall be recorded and, if necessary, expressed to a Minister, the National Assembly, or to any other person or body;
(d) the regulation and orderly conduct of the proceedings of the House;
(e) the manner in which the Elected Members and Specially Elected Members of the House shall be elected.

[Ch0000s84] **84. House of Chiefs may transact business notwithstanding vacancies**
The House of Chiefs shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof including any vacancy not filled when the House is first constituted or is reconstituted at any time; and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the House or otherwise took part in the proceedings.

[Ch0000s85] **85. Functions of House of Chiefs**

(1) The House of Chiefs shall consider the copy of any Bill which has been referred to it under the provisions of section 88(2) of this Constitution and the House shall be entitled to submit resolutions thereon to the National Assembly.
(2) Any resolution which has been submitted to the National Assembly in accordance with the last foregoing subsection shall forthwith be laid before the Assembly by the Clerk of the Assembly.
(3) Any Minister who is responsible for a Bill such as is referred to in subsection (1) of this section, or his representative, may attend the proceedings of the House when the copy of the Bill is being considered.
(4) Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House.
(5) The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly.
(6) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (3) or (4) of this section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a Member of the House: Provided that he shall not be entitled to vote in the House.

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**Lesotho**

**CHAPTER V**

**THE KING**

**44. The Office of King**

(1) There shall be a King of Lesotho who shall be a constitutional monarch and Head of State.
(2) The King shall do all things that belong to his office in accordance with the provisions of this Constitution and of all other laws for the time being in force and shall faithfully comply with the terms of the oath of the office of King set out in Schedule I to this Constitution.

**45. Succession to the throne of Lesotho**

(1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who are entitled to succeed to the office of King upon the death of the holder of, or the occurrence of any vacancy in, that office and if on such death or vacancy, there is a person who has previously been designated in pursuance of this section and who is capable under the customary law of Lesotho of
succeeding to that office, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to succeed to the office) shall become King.

(2) If, on the death of the holder of, or the occurrence of any vacancy in, the office of King, there is no person who becomes King under subsection (1), the College of Chiefs shall, with all practical speed and in accordance with the customary law of Lesotho, proceed to designate a person to succeed to the office of King and the person so designated shall thereupon become King.

(3) Whenever the holder of the office of King or a Regent—
(a) has occasion to be absent from Lesotho for a period which the College of Chiefs has reason to believe will be of short duration; or
(b) is suffering from an illness which the College of Chiefs has reason to believe will be of short duration,
the College of Chiefs may for the time being designate a person, in accordance with the customary law of Lesotho, to exercise the functions of the office of King, and any person for the time being so designated may exercise all the functions of the office of King during the absence or illness of the holder of that office or the Regent.

(4) Every designation made for the purposes of this section shall be published in the Gazette.

(5) Where any person has been designated to succeed to the office of King in pursuance of subsection (1) or (2), any other person who claims that, under the customary law of Lesotho, he should have been so designated in place of that person may, by application made to the High Court within a period of six months commencing with the day on which the designation was published in the Gazette, apply to have the designation varied by the substitution of his own name for that of the first mentioned person, but, save as provided in this Chapter, the designation of any person for the purposes of this section shall not otherwise be called in question in any court on the ground that, under the customary law of Lesotho, the person designated was not entitled to be so designated.

(6) Pending the decision of the High Court or, as the case may be, of the Court of Appeal, a designation which is the subject of the appeal shall remain of full force and effect.

(7) In this section references to a vacancy in the office of King are references to a vacancy caused by the abdication of the King or by a resolution or resolutions of Parliament under section 53 of this Constitution that the holder of the office of King should cease to hold that office.

46. The Regent

(1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who shall be Regent, that is to say, who shall exercise the functions of the office of King in any of the following circumstances—
(a) when the holder of that office has not attained the age of twenty-one years; or
(b) when the holder of that office (and any person who has been designated as having a prior right to be Regent) is unable by reason of absence from Lesotho or by reason of infirmity of body or mind to exercise the functions of that office; or
(c) when, in the circumstances specified in section 45(2) of this Constitution, the College of Chiefs has not yet made a designation in pursuance of that subsection, and if, in any of those circumstances, there is a person who has previously been designated in pursuance of this subsection and who is capable under the customary law of Lesotho of becoming Regent, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to be Regent) shall become Regent.

(2) If, in any of the circumstances specified in subsection (1)(a), (b) or (c), there is no person who becomes Regent under that subsection, the College of Chiefs shall, with all practical speed and in accordance with the customary law of Lesotho, proceed to designate a person to be Regent and the person so designated shall thereupon become Regent.
(3) If the College of Chiefs fails within a reasonable time to discharge the duty imposed on it by subsection (2), the High Court may, upon the application of any person, itself designate a person to be Regent in accordance with the customary law of Lesotho and the person so designated shall thereupon become Regent.

(4) A Regent shall not exercise the functions of the office of King at any time when a person is for the time being designated to exercise such functions in pursuance of section 45(3) of this Constitution.

(5) Every designation made for the purpose of this section shall be published in the Gazette.

103. Chiefs

(1) The twenty-two offices of Principal Chief set out in Schedule 2 to this Constitution and the other offices of Chief recognised under the law in force immediately before the commencement of this Constitution shall continue to exist.

(2) Parliament may make provision for the regulation of offices of chief.

(3) Each Chief shall have such functions as are conferred on him by this Constitution or by or under any other law.

104. College of Chiefs

(1) There shall be a College of Chiefs which, subject to the provisions of subsection (3), shall consist of the twenty-two Principal Chiefs.

(2) The College of Chiefs shall have the functions conferred on it by section 45 and section 46 of this Constitution and the duty to maintain and safeguard the national archives in relation to those functions, and it shall also have such other functions as may be conferred on it by any other law.

(3) The College of Chiefs may, by resolution, co-opt members to assist it in the performance of its functions:
Provided that such co-opted members shall not exceed three in number at any one time.

(4) A co-opted member of the College of Chiefs may attend and take part in all meetings of the College but he shall not be entitled to vote on any question before the College.

(5) The College of Chiefs may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:
Provided that any decision of the College shall require the concurrence of a majority of all the members thereof (other than the co-opted members).

(6) Subject to the provisions of this section, the College of Chiefs may regulate its own Procedure

SCHEDULE 2
PRINCIPAL CHIEFS
The Principal Chief of Botha-Bothe
The Principal Chief of Makhoakhoeng
The Principal Chief of Leribe
The Principal Chief of Tsikoane and Kolbere
The Principal Chief of Ha ’M’amathe, Thupa-Kubu, Tejatejaneng and Jordan
The Principal Chief of Ha Majara
The Principal Chief of Koeneng and Mapoteng
The Principal Chief of Matsieng
The Principal Chief of Ha Ramabanta and Kubake
The Principal Chief of Rothe, Masite, Serooeng, Lets’eng, Kolo Ha Mohlalefi and Thaba-Tseka Ha Ntaote
The Principal Chief of Thaba-Bosiu
The Principal Chief of Ha Maama
The Principal Chief of Tebang, Ts’akholo and Ha Seleso
The Principal Chief of Tajane, Ha Ramoetsana and Ha Mohale
The Principal Chief of Matelile
The Principal Chief of Likhoele
The Principal Chief of Phamong
The Principal Chief of Taung
The Principal Chief of Quthing
The Principal Chief of Qacha’s Nek
The Principal Chief of Mokhotlong
The Principal Chief of Malingoaneng

**Sierra Leone**

**72.** (1) The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved.
(2) Without derogating from the generality of the provisions of subsection (1), no provision of law in so far as it provides for the abolition of the office of Paramount Chief as existing by customary law and usage immediately before the entry into force of this Constitution, shall have effect unless it is included in an Act of Parliament and the provisions of Section 108 shall apply in relation to the Bill for such an Act as they apply in relation to the Bill for an Act of Parliament that alters any of the provisions of this Constitution that are referred to in subsection (3) of that section.
(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of subsection (1) to the extent that the law in question makes provision for the determination, in accordance with appropriate customary law and usage, of the validity of the nomination, election, unseating or replacement of any Paramount Chief, or the question of restraining in any way the exercise of any rights, duties, privileges or functions conferred upon, or enjoyed by him, by virtue of his office or the installation or deposition of a person as a Paramount Chief.
(4) A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship of a Judge of the High Court or a Justice of Appeal or a Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed.
(5) Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, election, powers, functions, removal and other matters connected with the Chieftaincy

**76.** (1) No person shall be qualified for election as a Member of Parliament—

a. if he is a naturalised citizen of Sierra Leone or is a citizen of a country other than Sierra Leone having become such a citizen voluntarily or is under a declaration of allegiance to such a country; or

...
f. if in the case of the election of such member as is referred to in paragraph (b) of subsection (1) of section 74, he is for the time being a Paramount Chief under any law;

(4) A person shall not be disqualified for election as a Member of Parliament under paragraph (b) of subsection (1) by reason only that he holds the office of member of a Chiefdom Council, member of a Local Court or member of any body corporate established by or under any of the following laws, that is to say, the Freetown Municipality Act, the Chiefdom Councils Act, the Rural Area Act, the District Councils Act, the Sherbro Urban District Council Act, the Bo Town Council Act, and the Townships Act or any law amending or replacing any of those laws.

171. (1) in this Constitution unless a contrary intention appears—
"Chiefdom Council" means a Chiefdom Council constituted under the Chiefdom Councils Act;
Chief Not to Be Partisan
A person shall not, while remaining a Chief, join or participate in partisan politics.

Article 130
House of Chiefs
There shall be a House of Chiefs for the Republic which shall be an advisory body to the Government on traditional, customary and any other matters referred to it by the President.

Article 131
Functions of House of Chiefs
Notwithstanding Article 130, the House of Chiefs may—
(a) consider and discuss any Bill dealing with, or touching on, custom or tradition before it is introduced into the National Assembly;
(b) initiate, discuss and decide on matters that relate to customary law and practice;
(c) consider and discuss any other matter referred to it for its consideration by the President or approved by the President for consideration by the House; and
(d) submit resolutions on any Bill or other matter referred to it to the President, and the President shall cause such resolutions to be laid before the National Assembly.

Article 132
Composition of House of Chiefs
(1) The House of Chiefs shall consist of twenty-seven Chiefs.
(2) The members referred to in clause (1) shall consist of three chiefs elected by the Chiefs from each of the nine Provinces of the Republic.
(3) The Chairman and the Vice-Chairman shall be elected from amongst the members.

Article 133
Tenure of Office and Vacancy
(1) A member of the House of Chiefs—
(a) shall hold office for a period of three years and may be re-elected for a further period of three years; or
(b) may resign upon giving one month’s notice in writing to the Chairman.
(2) The office of member shall become vacant—
(a) upon his death;
(b) if he ceases to be a Chief;
(c) if any other circumstances arise that would cause him to be disqualified for election;
(d) if he becomes a candidate to any election, or
accepts an appointment, to any office in a political party:  
(e) if he is adjudged or becomes an undischarged bankrupt; or  
(f) if he is declared or becomes of unsound mind under any law in Zambia.

Article 134  
**Oaths of Members of House of Chiefs**  
The Chairman and every member of the House of Chiefs shall take an oath of allegiance.

Article 135  
**Staff of House of Chiefs**  
There shall be a Clerk of the House of Chiefs and such other staff as may be necessary for carrying out the functions under this Part.

Article 136  
**President May Make Regulations**  
Subject to the provisions of this Constitution, the President may by statutory instrument, make regulations for—  
(a) the appointment of the Clerk and other officers of the House of Chiefs;  
(b) provide for the remuneration of the Chairman, the Vice-Chairman and other members of the House;  
(c) the proceedings and conduct of the House of Chiefs;  
(d) the application of any of the privileges and immunities of the National Assembly and its members to the House of Chiefs and its members; and  
(e) such other matters as are necessary or conducive to the better carrying out of the purposes of this Part.

Mozambique

Article 118  
**Traditional Authority**  
1. The State shall recognise and esteem traditional authority that is legitimate according to the people and to customary law.  
2. The State shall define the relationship between traditional authority and other institutions and the part that traditional authority should play in the economic, social and cultural affairs of the country, in accordance with the

MALAWI

112  
(3) Parliament may make provision for traditional local courts presided over by lay persons or chiefs:
204.--(1) All legal actions which, at the commencement of this Constitution, are pending or being undertaken before any court other than before the Supreme Court of Appeal, the High Court, a Magistrate Court, a District Traditional Appeal Court, District Traditional Court, a Grade A Traditional Court, or a Grade B Traditional Court shall be commenced or continued before the High Court of Malawi or before such Magistrate's court or District Traditional Appeal Court or District Traditional Court or Grade A Traditional Court or Grade B Traditional Court as the Registrar of the High Court shall direct.

Composition of the Senate
68.--(1) The Senate shall consist of eighty members as follows--
33
(a) one Senator from each District, registered as a voter in that District and elected by the District Council of that District in secret ballot within thirty days of each local government election;
(b) one Senator from each District, being a Chief registered as a voter in that District and elected by a caucus of all the Chiefs of that District in secret ballot within thirty days of each local government election;

Comoros: should I include Ulemas?

Liberia

The Executive
Article 57:
b. There shall be elections of Paramount, Clan and Town Chiefs by the registered voters in their respective localities, to serve for a term of six years. They may be reelected and may be removed only by the President for proved misconduct. The Legislature shall enact laws to provide for their qualifications as may be required.

Nigeria: there is a customary court but it is not specified who is on this court. We might think that a respect for customary law results in respect for chiefs but this may not necessarily be the case. In the meantime I have given them a zero.

UGANDA

(2) A person is not qualified for election as a member of Parliament if that person—
…
…
(c) is a traditional or cultural leader as defined in article 246(6) of this Constitution;

Chapter Sixteen
Institution of Traditional or Cultural Leaders.
246. Institution of traditional or cultural leaders.

(1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.

(2) In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament.

(3) The following provisions shall apply in relation to traditional leaders or cultural leaders—
   (a) the institution of traditional leader or a cultural leader shall be a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned;
   (b) nothing in paragraph (a) shall be taken to prohibit a traditional leader or cultural leader from holding any asset or property acquired in a personal capacity;
   (c) a traditional leader or cultural leader shall enjoy such privileges and benefits as may be conferred by the Government and local government or as that leader may be entitled to under culture, custom and tradition;
   (d) subject to paragraph (c) of this clause, no person shall be compelled to pay allegiance or contribute to the cost of maintaining a traditional leader or cultural leader;
   (e) a person shall not, while remaining a traditional leader or cultural leader, join or participate in partisan politics;
   (f) a traditional leader or cultural leader shall not have or exercise any administrative, legislative or executive powers of Government or local government.

(4) The allegiance and privileges accorded to a traditional leader or a cultural leader by virtue of that office shall not be regarded as a discriminatory practice prohibited under article 21 of this Constitution; but any custom, practice, usage or tradition relating to a traditional leader or cultural leader which detracts from the rights of any person as guaranteed by this Constitution, shall be taken to be prohibited under that article.

(5) For the avoidance of doubt, the institution of traditional leader or cultural leader existing immediately before the coming into force of this Constitution shall be taken to exist in accordance with the provisions of this Constitution.

(6) For the purposes of this article, “traditional leader or cultural leader” means a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional or cultural leader.

The Gambia
CHAPTER 5 Part 1 (3) Every citizen of The Gambia being of the age of eighteen years or older and of sound mind shall be entitled, in accordance with the provisions of this Chapter and any Act of the National Assembly providing for such elections to vote in elections for local government authorities and traditional rulers in the area in which he or she is ordinarily resident.

(1) The Secretary of State responsible for Local 6 of 2001 Government shall appoint an Alkalo in consultation with the Divisional Commissioner and District Seyfo or Chairperson of the Kanifing Municipal Council, as the case may be.
(2) The Secretary of State shall, in making an appointment under subsection (1), take into account traditional lines of inheritance.

CHAPTER XV
LOCAL GOVERNMENT AND TRADITIONAL RULERS
System of local 192 (1) Local government administration in The Government Gambia shall be based on a system of democratically elected councils with a high degree of local autonomy.
(2) An Act of the National assembly shall provide for the establishment of city councils, municipalities and area councils (which are together referred to as local government authorities), and the district in which each shall have jurisdiction. The geographical boundaries of each local government authority shall be determined by the Independent Electoral Commission.
(3) An Act of the National Assembly shall make provision for the functions, powers and duties of local government authority including provision for -

(a) the infrastructure and development of the area within the authority’s jurisdiction;
(b) the encouragement of commercial enterprises;
(c) the participation of the inhabitants in the development and administration of the area;
(d) the essential and other services to be provided by the authority;
(e) the raising of local revenue;
(f) the management, control and oversight of the authority’s finances and the audit of its accounts by the Auditor-General;
(g) the making of by-laws;
(h) the preservation of the environment;(i) the promotion of Gambian traditions and culture; and
(j) the control of financial and other resources allocated by the central government.

(4) it shall be an object of the local government system that so far as possible, issues of local policy and administration shall be decided at a local level and that local government authorities shall co-operate with the Central Government in adopting a policy
of decentralisation.
Local government 194 An Act of the National Assembly by or under which a
Authorities local government authority is established shall include
provision for –

(a) the election of members of the authority from among residents of the area within the authority’s
jurisdiction at intervals of four years, and the qualifications for election;

(b) the additional representation on the authority of District Seyfolu and representatives of local
commercial, occupational or social interests or groups, whether by election or otherwise;

(c) the direct election of the mayor or chairman of the authority;
(d) the tenure of office of members of the authority;

(e) the recall by their wards of members of the authority;

(f) the appointment of committees from amongst the members of the authority, including finance,
establishment and appointment, and development committees; and

(g) the appointment of a chief executive for the authority to be responsible to the authority for the
administration of its services and the implementation of its policy and programmes; and for the terms and
conditions of his or her appointment.

Swaziland

cal government authorities.
CHAPTER XIV
TRADITIONAL INSTITUTIONS
Traditional institutions
227. (1) The Swazi traditional government is administered according to Swazi law and custom
and the traditional institutions that are pillars of the monarchy as set out in subsection (2).
(2) The following Swazi traditional institutions are hereby guaranteed and protected -
(a) INgwenyama;
(b) iNdlovukazi;
(c) Ligunqa (Princes of the Realm);
(d) Liqoqo
(e) Sibaya;
(f) (Tikhulu) Chiefs;
(g) Umntfwanenkosi Lomkhulu (Senior Prince);
(h) Tindvuna (Royal Governors).

INgwenyama
105

228. (1) INgwenyama is the traditional head of the Swazi State and is chosen by
virtue of the rank and character of his mother in accordance with Swazi law and
custom.
(2) INgwenyama enjoys the same legal protection and immunity from legal suit
or process as the King.
(3) Subject to an elaborate system of advisory councils, the functions of
INgwenyama under this chapter shall be regulated by Swazi law and custom.
The Ndlovukazi
229. (1) The Ndlovukazi (Queen Mother) is traditionally the mother of the
iNgwenyama and the symbolic Grandmother of the Nation.
(2) The Ndlovukazi is selected and appointed in accordance with Swazi law and
custom.
(3) The official residence of the Ndlovukazi is the legislative and ceremonial
capital of the nation and the arena of the Incwala and Umhlanga.
(4) The Ndlovukazi has such powers and performs such functions as Swazi law and
custom assigns to her.
(5) Without derogating from the generality of subsection (4) the Ndlovukazi
exercises a moderating advisory role on iNgwenyama.
(6) The Ndlovukazi shall be immune from-
(a) suit and legal process in any civil case in respect of all things done or
omitted to be done by her in her private capacity; and
(b) being summoned to appear as a witness in any civil or criminal
proceedings.
(7) The Ndlovukazi shall be immune from taxation in respect of emoluments or
any income accruing to her in her private capacity and all property owned by her in
her private capacity.

Ligunqa
230. (1) The Ligunqa (Bantfwabenkhosi) are princes of the realm, the paternal uncles and
half-brothers of iNgwenyama who exercise functions of a sikhulu (chief) over some area and
whose mothers were given liphakelo (authority to oversee and exercise jurisdiction over an
area accorded by iNgwenyama in accordance with Swazi law and custom).
(2) Ligunqa ranks above liqoqo and is convened by iNgwenyama or the Ndlovukazi as
Queen Regent.
(3) The membership of ligunqa includes the indvuna referred to in Section 235(2) and
some members of Emabekankhosi (king-makers) determined in accordance with Swazi law
and custom.
(4) iNgwenyama, from time to time, consults all or some of the members of ligunqa on
important or sensitive matters or disputes including matters of succession connected with the
monarchy.
(5) Ligunqa will also advise iNgwenyama, the Ndlovukazi as Queen Regent where that
advice is necessary in the national interest to ensure the stability and continuity of the
monarchy.

Liqoqo
231. (1) The Liqoqo is an advisory council whose members are appointed by iNgwenyama
from the membership of bantfwabenkhosi (emalangeni), tikhulu (chiefs) and persons who
have distinguished themselves in the service of the Nation.
(2) Where necessary the members of liqoqo may be appointed by the Ndlovukazi as
Queen Regent.
(3) Liqoqo traditionally advises iNgwenyama on disputes in connection with the selection
of tikhulu (chiefs) boundaries of chiefdoms and any other matter iNgwenyama may assign for
their advice in confidence.
(4) A judicial officer, member of Parliament or of a service commission shall not at the
same time qualify to be a member of liqoqo.
(5) A member of liqoqo shall hold office for a period not exceeding five years and shall be
eligible for re-appointment and shall vacate office where the member -
(a) dies;
(b) resigns; or
(c) is removed from office by iNgwenyama or Indlovukazi as Queen Regent.
(6) A member of liqoqo shall, before assuming office, take and subscribe the oath of allegiance and due execution of office set out in the Second Schedule.
(7) Liqoqo is convened and traditionally presided over by iNgwenyama who may assign this responsibility to any person designated by him for that purpose.

**Sibaya (the Swazi National Council)**
232. (1) The people through Sibaya constitute the highest policy and advisory council (Libandla) of the nation.
(2) The Sibaya is the Swazi National Council constituted by Bantfwabenkhosi, the tikhulu of the realm and all adult citizens gathered at the official residence of the Ndlovukazi under the chairmanship of iNgwenyama who may delegate this function to any official.
(3) Sibaya functions as the annual general meeting of the nation but may be convened at anytime to present the views of the nation on pressing and controversial national issues.

**Tikhulu (Chiefs)**
233. (1) Chiefs are the footstool of iNgwenyama and iNgwenyama rules through the Chiefs.
(2) The iNgwenyama may appoint any person to be chief over any area.
(3) The general rule is that every umphakatsi (Chief’s residence) is headed by a Chief who is appointed by iNgwenyama after the Chief has been selected by the lusendvo (family council) and shall vacate office in like manner.
(4) The position of a Chief as a local head of one or more areas is usually hereditary and is regulated by Swazi law and custom.
(5) Unless the situation otherwise requires, a chief shall assume office at the age of eighteen years or so soon thereafter as the period of mourning comes to an end.
(6) A Chief, as a symbol of unity and a father of the community, does not take part in partisan politics.
(7) A Chief may be appointed to any public office for which the Chief may be otherwise qualified.
(8) The powers and functions of chiefs are in accordance with Swazi law and custom or conferred by Parliament or iNgwenyama from time to time.
(9) In the exercise of the functions and duties of his office a Chief enforces a custom, tradition, practice or usage which is just and not discriminatory.

**Umntfwanenkhoski Lomkhulu (Senior Prince)**
234. Umntfwanenkhoski Lomkhulu is a paternal uncle of the King selected and appointed in accordance with Swazi law and custom.

**Tindvuna**
235. (1) Traditionally Swaziland has a number of tindvuna or governors in charge of the regiments and the royal villages.
(2) The Indvuna of the Ndlovukazi’s residence is the first-amongst-equals or governor-general.
(3) The position of an indvuna is not strictly hereditary even though appointment is made within a limited range of leading commoner families.
(4) Tindvuna assist in the traditional government of the country by carrying out certain decisions and advising iNgwenyama or Ndlovukazi in various other respects.
(5) Tindvuna hear cases, give judgments and advise on the temper of the nation, organise labour for the royal fields and ensure that the royal kraals and villages are periodically repaired.
(6) Tindvuna also facilitate access to iNgwenyama or Ndlovukazi to those seeking royal audience.
(7) The Tindvuna of the royal residences will normally have a small council to consult
before taking a decision.

ZIMBABWE

PART 2
The Senate
[Part 2 inserted by s. 7 of Act No. 5 of 2005 – Amendment No. 17 - with effect from the 1st December, 2005.]

34 Composition of Senate
(1) There shall be a Senate which, subject to the provisions of section 76(3b), shall consist of ninety-three Senators, of whom
(a) six shall be elected in each of the ten provinces by voters registered in the sixty senatorial constituencies referred to in section 61A(7); and
(b) ten shall be Provincial Governors; and
(c) two shall be the President and the Deputy President of the Council of Chiefs; and
(d) sixteen shall be Chiefs, being two Chiefs from each of the provinces, other than the metropolitan provinces, elected in accordance with the Electoral Law; and
(e) five shall be appointed by the President.

111 Chiefs and Councils of Chiefs
(1) There shall be Chiefs to preside over the tribespeople in Zimbabwe who shall, subject to the provisions of subsection (2), be appointed by the President in accordance with an Act of Parliament.
(2) An Act of Parliament shall provide that in appointing a Chief the President shall give due consideration to the customary principles of succession of the tribespeople over which the Chief will preside and may provide for the appointment of deputy Chiefs and acting Chiefs.
(3) There shall be a Council of Chiefs which shall consist of such number of Chiefs elected by the Chiefs from each of the various areas of Communal Land in such manner as is prescribed by or under an Act of Parliament, so, however, as to secure as far as is practicable equitable representation for the various areas of Communal Land with due regard to the total number of tribespeople in each such area:
Provided that an Act of Parliament may provide for the establishment of two or more Councils of Chiefs for separate areas of Communal Land.
[Subsection as amended by section 12 of Act 1 of 1983 - Amendment No. 3]
(4) The qualifications and disqualifications of candidates for election to any Council of Chiefs and the tenure of office of members thereof shall be as prescribed by or under an Act of Parliament.

DEMOCRATIC REPUBLIC OF CONGO

Customary Authority
Article 207
The customary authority is recognized. It is transferred in conformity with local custom, provided that the latter is not contrary to the Constitution, the law, public order and morality. Each customary Chief who desires to exercise an elective public function must submit himself to an election, unless the provisions of Article 198, paragraph 3 of this Constitution are applicable. The customary authority has the duty to promote national unity and cohesion. A law establishes the status of the customary Chiefs.

**CHAD**

**CHAPTER 1**

**Article 26**
Customary and traditional rules concerning collective penal responsibility are forbidden.

**CHAPTER II: Customary and Traditional Rules**

**Article 161**
Until their codification, customary and traditional rules are applicable only in the communities where they are recognised. However, those customs contrary to the public order or those which promote inequality between citizens are forbidden.

**Article 162**
Customary or traditional rules dictating matrimonial regimes and inheritances may be applied only with the consent of the parties concerned. The same applies in case of conflict between two or more customary rules.

**Article 163**
Customary or traditional reparation may not be an obstacle to public action.

**TITLE XII: TRADITIONAL AND CUSTOMARY AUTHORITIES**

**Article 214** The traditional and customary authorities are the guarantors of traditions and customs.

…

**Article 216**
They are the collaborators of the administration with respect for the freedoms and human rights.
### Appendix C

Freedom House Scores of Each Case (arranged in alphabetical order)

<table>
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Appendix D

Integration Scores and Subcategory Sub-Scores (Ordered by score):

EX: Constitutional Statement Protecting Traditional Institutions
SI: Constitutional Laws Governing the Interaction between Traditional Institutions and Other Branches of Government
RO: Roles Constitutionally Defined
OG: Laws establishing an Organized Body of Traditional Institutions
LP: Laws Giving Traditional Institutions Powers over Land

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Appendix E

Code Book for Afrobarometer Survey Questions Relating to the Popular Views of Traditional Institutions and Democracy (those that were used are highlighted).

**Question Number:** Q27A  
**Question:** During the past year, how often have you contacted any of the following persons about some important problem or to give them your views: A religious leader?  
**Variable Label:** Contact religious leader  
**Values:** 0-3, 9, 998, -1  
**Value Labels:** 0=Never, 1=Only once, 2=A few times, 3=Often, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Adapted from Zambia96

**Question Number:** Q27B  
**Question:** During the past year, how often have you contacted any of the following persons about some important problem or to give them your views: A traditional ruler?  
**Variable Label:** Contact traditional ruler  
**Values:** 0-3, 9, 998, -1  
**Value Labels:** 0=Never, 1=Only once, 2=A few times, 3=Often, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Adapted from Zambia96

**Question Number:** Q27C  
**Question:** During the past year, how often have you contacted any of the following persons about some important problem or to give them your views: Some other influential person?  
**Variable Label:** Contact some other influential person  
**Values:** 0-3, 9, 998, -1  
**Value Labels:** 0=Never, 1=Only once, 2=A few times, 3=Often, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Adapted from Zambia96  
**Note:** Interviewer was instructed to prompt if necessary with “You know, someone with more money or power than you who can speak on your behalf.”

**Question Number:** Q30  
**Question:** Which of these three statements is closest to your own opinion?  
Statement 1: Democracy is preferable to any other kind of government.  
Statement 2: In some circumstances, a non-democratic government can be preferable.  
Statement 3: For someone like me, it doesn’t matter what kind of government we have.
**Variable Label:** Support for democracy  
**Values:** 1-3, 9, 998, -1  
**Value Labels:** 1=Statement 3: Doesn’t matter, 2=Statement 2: Sometimes non-democratic preferable, 3=Statement 1: Democracy preferable, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Latinobarometer (LB)

*Note:* Interviewer was instructed to “read the question in the language of the interview, but always read ‘democracy’ in English. Translate ‘democracy’ into local language only if respondent does not understand English term.”

**Question Number:** Q31  
**Question:** Which of the following statements is closest to your view? Choose Statement 1 or Statement 2.  
Statement 1: We should choose our leaders in this country through regular, open and honest elections.  
Statement 2: Since elections sometimes produce bad results, we should adopt other methods for choosing this country’s leaders.  
**Variable Label:** Choose leaders through elections vs. other methods  
**Values:** 1-5, 9, 998, -1  
**Value Labels:** 1=Agree very strongly with Statement 1, 2=Agree with Statement 1, 3=Agree with Statement 2, 4=Agree very strongly with Statement 2, 5=Agree with neither, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Afrobarometer Round 2  
**Note:** Interviewer probed for strength of opinion asking “Do you agree or agree very strongly?”

**Question Number:** Q32  
**Question:** Which of the following statements is closest to your view? Choose Statement 1 or Statement 2.  
Statement 1: Political parties create division and confusion; it is therefore unnecessary to have many political parties in [Ghana/Kenya/etc.].  
Statement 2: Many political parties are needed to make sure that [Ghanaians/Kenyans/etc.] have real choices in who governs them.  
**Variable Label:** Political parties divisive vs. many parties needed  
**Values:** 1-5, 9, 998, -1  
**Value Labels:** 1=Agree very strongly with Statement 1, 2=Agree with Statement 1, 3=Agree with Statement 2, 4=Agree very strongly with Statement 2, 5=Agree with neither, 9=Don’t know, 998=Refused to answer, -1=Missing data  
**Source:** Afrobarometer Round 2  
**Note:** Interviewer probed for strength of opinion asking “Do you agree or agree very strongly?”
**Question Number:** Q43
**Question:** Overall, how satisfied are you with the way democracy works in [Ghana/Kenya/etc.]?

Are you:

**Variable Label:** Satisfaction with democracy

**Values:** 0, 4, 9, 998, -1

**Value Labels:**
- 0=My country is not a democracy
- 1=Not at all satisfied
- 2=Not very satisfied
- 3=Fairly satisfied
- 4=Very satisfied
- 9=Don’t know
- 998=Refused to answer
- -1=Missing data

**Source:** Eurobarometer

**Copyright Afrobarometer 23**

**Note:** Interviewer was instructed to “Read the question in the language of the interview, but always read “democracy” in English. Translate “democracy” into local language only if respondent does not understand English term.”

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**Question Number:** Q49I
**Question:** How much do you trust each of the following, or haven’t you heard enough about them to say:

Traditional leaders

**Variable Label:** Trust traditional leaders

**Values:** 0, 3, 9, 998, -1

**Value Labels:**
- 0=Not at all
- 1=Just a little
- 2=Somewhat
- 3=A lot
- 9=Don’t know/Haven’t heard enough
- 998=Refused to answer
- -1=Missing data

**Source:** Zambia 96

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**Question Number:** Q50H
**Question:** How many of the following people do you think are involved in corruption, or haven’t you heard enough about them to say: Traditional leaders?

**Variable Label:** Corruption: traditional leaders

**Values:** 0, 3, 9, 998, -1

**Value Labels:**
- 0=None
- 1=Some of them
- 2=Most of them
- 3=All of them
- 9=Don’t know
- 998=Refused to answer
- -1=Missing data

**Source:** Afrobarometer Round 4

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**Question Number:** 58A
**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community:

Keeping the community clean?

**Variable Label:** Primary responsibility: keeping the community clean

**Values:** 1-5, 9, 998, -1
**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58B

**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community:
Managing schools?

**Variable Label:** Primary responsibility: managing schools
**Values:** 1-5, 9, 998, -1

**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58C

**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community:
Managing health clinics?

**Variable Label:** Primary responsibility: managing health clinics
**Values:** 1-5, 9, 998, -1

**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58D

**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community:
Collecting income taxes?

**Variable Label:** Primary responsibility: collecting income taxes
**Values:** 1-5, 9, 998, -1

**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58E

**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the
national government, the local government, traditional leaders, or members of your community:
Solving local disputes?

**Variable Label:** Primary responsibility: solving local disputes
**Values:** 1-5, 9, 998, -1
**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58F
**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community: Allocating land?

**Variable Label:** Primary responsibility: allocating land
**Values:** 1-5, 9, 998, -1
**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58G
**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community: Protecting rivers and forests?

**Variable Label:** Primary responsibility: protecting rivers and forests
**Values:** 1-5, 9, 998, -1
**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4

**Question Number:** 58H
**Question:** Who do you think actually has primary responsibility for managing each of the following tasks. Is it the national government, the local government, traditional leaders, or members of your community: Maintaining law and order?

**Variable Label:** Primary responsibility: maintaining law and order
**Values:** 1-5, 9, 998, -1
**Value Labels:** 1=Central government, 2=Local government, 3=Traditional leaders, 4=Members of the community, 5=None of them, 9=Don’t know, 998=Refused to answer, -1=Missing data.

**Source:** Afrobarometer Round 4
Question Number: Q65
Question: How much influence do traditional leaders currently have in governing your local community?
Variable Label: Traditional leaders influence governing local community
Values: 1-4, 9, 998, -1
Value Labels: 1=None, 2=A small amount, 3=Some, 4=A great deal, 9=Don’t know, 998=Refused to answer, -1=Missing data
Source: Afrobarometer Round 4

Question Number: Q66
Question: Do you think that the amount of influence traditional leaders have in governing your local community should increase, stay the same, or decrease?
Variable Label: Traditional leaders more or less influence
Values: 1-5, 9, 998, -1
Value Labels: 1=Decrease a lot, 2=Decrease somewhat, 3=Stay the same, 4=Increase somewhat, 5=Increase a lot, 9=Don’t know, 998=Refused to answer, -1=Missing data.
Source: Afrobarometer Round 4
Note: Interviewer probed for strength of opinion