STATES AND CHIEFS
ARE CHIEFS MERE PUPPETS?

E. Adriaan B. van Rouveroy van Nieuwaal

Introduction

Processes of state formation in Africa have taken various forms. This is true just as much for the post-colonial states as for the old African states that date from before colonial domination (Claessen and Geschiere 1984: 298). In Africa it is becoming clear what widely different forms a state can take.[1] This is why the results of the processes of democratization that were started in the years between 1989 and 1991, following the failure of the one-party system and the downfall of the marxist-leninist ideology, must be of great importance to the African citizen as well as to many researchers - although it must be noted that social and political welfare are at stake for the first, which is not the case for the latter. Whatever the outcome of these processes may be, it is clear that the African state,[2] just like any other state, is not shaped by a static principle. It is, on the contrary, constantly

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[1] Just an example, among many others: During almost forty years of independence Ghana has had eight different governments and the country has seen almost all forms of constitution. Initially Ghana was a constitutional monarchy for a short period of time, it continued with a republican form of government, the country has had several presidential governments and a number of military regimes. A parliamentary democracy has functioned here for some time and there have been several proposals for democracies without parties.

[2] It is highly remarkable how lightly authors speak of 'the' state in Africa, whereas they would certainly refrain from speaking of 'the' European state in a European context. For within Africa there is not only a great diversity of territorial states (whether they have a large number of inhabitants, like Nigeria, or not), but the variety is especially great with respect to origin and background (Doornbos 1990: 181).

subject to change. It is not static, nor unsteady as Saul (1976) called it, but adaptive, or more favourably: strongly evolving because of the changes that occur in various parts of the African societies. Bureaucratic forms of organization have come into being. They strongly influence the everyday life of the African population through constant administrative reorganizations, conscription for the army,[3] increasing state education[4] and medical care, but also through the creation of (para)statal organizations such as human rights committees (An-Na'im and Deng 1990; van Rouveroy van Nieuwaal 1993a) and non-governmental organizations.[5] Finally there is the influence of chiefs upon these processes of state formation in spite of the fact that they are persistently depicted as an "out-dated and past phenomenon" (Reyntjens 1992).

Since the recent processes of democratization in Africa traditional forms of authority, such as chieftaincy, have come back into the spotlight of interest, especially with respect to the role of chiefs as an intermediary between the state and the citizen, a role already created by the colonial conqueror.

The phenomenon "chieftaincy" has undergone profound transformations during the last hundred years. Against this background it seems obvious to examine in what way institutions such as chieftaincy could play a role in these transformations and processes of democratization. It is also obvious, however, that an answer to such a general question cannot be univocal. This is not only caused by the fact that the regional differences within Africa itself are too great, but it is also due to the diversity in colonial and post-colonial histories in which these institutions of chieftaincy have evolved. These traditional institutions are structured on the hereditary devolution of power. At first sight, the pattern of the transfer of power

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[3] Often a selective conscription takes place in favour of the ethnic groups that support the military regime. This was the case in Togo, where the Kabiye were favoured to join the army (Toulabor 1986).

[4] See also de Lange 1987 for some critical remarks.

[5] This is what van Binsbergen (1993) describes as the 'blind spot' for those formal, bureaucratic forms of organization that have completely overrun Africa within a period of a hundred years with their absorptive power in respect of non-formal relations. Hardly any research has been done in this field within African studies (at least not in the Netherlands). See the research done by the Cameroonian legal anthropologist Fisiy (1992) working within Dutch African Studies, and the VIth *Rencontre Européenne d'Anthropologie du Droit* in Freiburg (Germany): "Représentants et représentation locales de la force publique dans le processus de la décentralisation" (22.11.-24.11.1996).

associated with chieftaincy appears to be an anachronism; however, chiefs are still charting new spaces on the political landscape. They posses a remarkable resilience enabling them to adapt to socio-cultural change and to play a crucial role in future social, economic and cultural transformations at regional and national levels. The complex patterns of socio-cultural interactions in the context of chieftaincy have resulted in the co-existence of different institutional frameworks.

The underlying question is to know how chiefs have mediated the link between the past, the present and the future. In this connection it is important to understand the correlation between their control over people and over resources which issue from different conceptualised worlds.

Chiefs tend to consider the modern contexts of power in Africa merely as an accidental, foreign and imposed fringe. The chief often, but not always, occupies the apex of his own traditionally conceptualised local order. He is at the same time a dispute settler, an administrator, he allocates plots of land and even through witchcraft he continues to control his society to a considerable context.

It is diversity that marks the world of African chieftaincy. This diversity is as much a result of the differences which characterize the relationships between chiefdoms and the institutions of central government as of differences between pre-colonial political structures, which themselves covered a whole range of political orders. Chieftaincy became part of a unifying political and administrative structure. This structure, set up by the colonial rulers, transformed African chieftaincy radically and is still the basis of contemporary African chiefship. An "administrative chieftaincy" has been created (Beck 1989; von Trotha in this volume).

Administrative chieftaincy is one of the results of a unifying process of state formation. In Africa this was historically set in motion and shaped primarily by the colonial conquerors through the establishment of their state administrations. Administrative chieftaincy was organized on the basis of three institutional innovations, von Trotha's principles of devolution, hierarchy, and the administrative district (von Trotha in this volume).

Devolution has meant that the central state government has broken with the traditional rules of investiture and reserved to itself the right of appointment and dismissal of chiefs. During colonial days these state prerogatives were mainly in the hands of the district officers. Under the post-colonial rule they have become even more centralized. Elsewhere I describe (van Rouveroy van Nieuwaal 1987; 1992b; 1994) the tight control which post-colonial rulers kept over chiefs. This situation has led to a close integration of the (neo)traditional chiefdom into a

monopolistic party structure.

Colonial governments sometimes invented or strengthened the relationship between different chiefs and integrated the chiefs into their local administrative apparatus by placing them between the local colonial administrators and the population. In the post-colonial administrative structure the hierarchical order has become even more pronounced. Up to now, post-colonial regimes have usually tried to reduce, sometimes without much success, chiefs' formal administrative and legal power. Chiefs normally have administrative responsibilities which are purely local and are under the supervision of the local administration. Their formal judicial tasks have sometimes been totally crippled. But on the other hand post-colonial regimes raised the position of chiefs by giving them a place in the political system as members of assemblies on different levels, and re-valorized the position of particular chiefs who managed to place themselves at important positions within the national political structure (Miller 1968; Proctor 1968). To summarize: the colonial and post-colonial principles of devolution, hierarchy and the administrative district made African chieftaincy part of a unifying administrative apparatus. They changed the bases of power and authority of African chiefs, because African chieftaincy became partly or even totally dependent on the central administrative apparatus. In many cases the institution of chieftaincy itself was reshaped, lost its independence of the state and became more or less part of the political system: it was simply politicized.

True as it may be, this did not mean, however, that chieftaincy in Africa disappeared from the political and judicial landscape. Particularly in the field of dispute settlement in many African countries chiefs still play an important role in spite of the attempt of the colonial and post-colonial state to restrict this role 'merely' to reconciliation.[6] Many accounts demonstrate the paramount role in dispute settlement of chiefs and the local courts over which they preside. Contrary to the law in the books, it is the chief who is the veritable judge and the chiefly court which is the basic institution of dispute settlement in the colonial and post-colonial African state. This chiefly judicial role is situated right at the intersection of the administrative tasks of the chief as part of a unified central administration and the singularity of the local order. In the 'shadow of the state' (Hesseling 1992; Spittler 1980) the chief guarantees the settlement of conflicts of different kinds and at the same time upholds the traditional local legal system.

On the other hand the state sometimes manages to bring the chiefs into action in order to force through its hegemonic projects. For instance, in 1987 General

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[6] More often than not in African languages no difference in terminology is made between 'adjudication' and 'reconciliation'.

Eyadema, the President of Togo from 1967 to the present, added the chiefs, who had been united in 1972 in an *Union Nationale des Chefs Traditionnels du Togo*, as an *aile marchante* (marching wing) to his *Rassemblement du Peuple Togolais*. Even though the chiefs welcomed this integration of their union in public, they confessed in private that their independence, in so far as it was still intact, and their ability to manoeuvre had been very much reduced by the measure (Fisiy 1995b). The Togolese chieftaincy became an instrument of political control in the hands of a ruthless despot and his ruling party. The latter has especially compromised many a chief in the eyes of the people, particularly in those cases where chiefs openly sided with the ruling despot during the bloody struggles for democratization. Since 1994-95 the Togolese chiefs, having rebaptized the organization as the *Association des Chefs Traditionnels*, have formed what is almost a political party closely allied to President Eyadema and adopting his positions on the 1992 constitution. There have been rumours that the chiefs' positions have been carefully orchestrated by Eyadema himself in order to counter the opposition parties. (van Rouveroy van Nieuwaal n.d.)

Such was also the case for many South African chiefs who were persuaded to support the apartheid policy. At the same time, Ian Smith of Rhodesia succeeded, through underhanded practices (Holleman 1964/1965), in winning over the chiefs in his country to his side in the struggle for independence from the United Kingdom. In these instances the opinion that chiefs became mere 'instruments' of the (colonial) administration is correct. But an example that I derive from Ladley's legal anthropological research in Zimbabwe (Ladley 1991)[7] and many other cases elsewhere in Africa demonstrate that this frequently expressed opinion needs some adjustment.

But let us return to the process of politicization and administration of chiefs. In the long run, the process of politicization and administrative integration of the chief into the central government may turn the traditional and neo-traditional side of the chiefs' role more and more into what I have called 'folklorization' (van Rouveroy van Nieuwaal 1987; 1992a). In other words, chiefs will provide traditional legitimacy for the national leaders. The strong men at the top of the state - mostly the Head of State, but also Ministers and other members of the national political elite - like to praise the chiefs as 'the guardians of our cultural values and identity'. They decorate themselves with the regalia of chiefs. They order the chiefs to welcome important foreign leaders at the airport (van Rouveroy van Nieuwaal 1987, 1995b). This political instrumentalization of chiefs demonstrates, to quote von Trotha, "the gulf which separates the spheres of power and domination and of 'tradition', while at the same time integrating the sphere of

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[7] To which I come back in the section "Sates and Chiefs".

tradition into the space of power as a symbolic, legitimizing resource" (von Trotha 1995: 465).

Politically the chief may become part of an oppressive system of political control, while at the same time his administrative status and functions become those of a more or less minor civil servant. That is the way the central government often wanted to reduce the chiefs' role. His role as a powerful member and representative of the local order is in danger of being 'folklorized' or restricted merely to tourist guides for safaris. In short, the modern chief is confronted with the prospect not only of losing his intermediary power between the state and his people, a situation created already by the colonial conqueror, but also of becoming politicized and folklorized at the same time. That is a prospect which in the long run threatens the existence of chieftaincy as an institution within a process which aims to become more democratic.

Chiefs and the democratization discourse

The popular protest in many African states pursuant to the democratization process has renewed our interest in the mechanism of good governance. Today's keywords are transparency and accountability in the management of public affairs. The call for democracy, a multi-party system and democratization of the state bureaucracy has led to a growing quest for alternative sources of power that could be enlisted to provide more content to the democratization discourse. It is, therefore, not surprising that traditional forms of authority, such as chieftaincy, have been actively vying for new political space within the context of the African state, expressing claims that they are the 'true representatives of the people' (Fisiy 1995b).

So reports from Ghana indicate the social importance of chiefs, who have a high degree of autonomy. Rawlings' government has shown more than once that it is willing to reckon with them (Ray 1992, in this volume), in contrast with the situation in Togo where the state has demanded strict political integration and subjection to government authority from the chiefs (van Rouveroy van Nieuwaal 1992, 1994, 1995a, 1995b; van Rouveroy van Nieuwaal and van Dijk n.d.). In Nigeria, however, the great number of powerful and politico-economically influential chiefs has on several occasions been able to force the military leaders, who rapidly succeed each other, to change their political course (Vaughn 1988). In Zimbabwe, as I shall mention in the section "States and Chiefs", Mugabe's government decided first to reduce and then later to enhance the limited judicial powers of chiefs (Ladley 1991).

The basic content of the democratization discourse, which takes elective

representation as a basic tenet, strikes at the heart of those traditional institutions which are structured on the hereditary transfer of power. At first sight the pattern of the transfer of power associated with chieftaincy appears to be an anachronism when viewed from the perspective of elective representation (Fisiy 1995b).

The expectation that chiefs would wither away as elected officials took political power has not been fully realized. Even during the colonial period, Robert, a French colonial administrator said that "la chefferie semblait une autorité traditionnelle en voie d'extinction et une autorité administrative en voie de formation" (Robert 1957; and see also Fallers 1955). But despite such predictions, chiefs are still charting new spaces on the political landscape. The findings of many scholars illustrate that chiefs sometimes possess a remarkable resilience in adapting to social and political changes as well as continuing to play a crucial role in attempts to make socio-economic transformations on regional and national levels. This resilience is present in fields of local administration just as much as in that of dispute settlement.

There is reason enough to highlight the ambivalence that characterizes the chieftaincy phenomenon, especially as chiefs seem to mediate the past and the present by holding themselves out 'as guardians of tradition' and at the same time striving to serve as an agency for 'modern projects' (Geschiere 1993). Or as von Trotha says: "a chief should not only be, if he wants to survive in new political settings, an intermediary between the past and the present, but also be an agent of the present and an intermediary between the present and the future" (von Trotha 1995: 469). Not only does the post-colonial state elite attempt to reduce the chiefs' importance by reserving for itself the structures and institutional frameworks for 'inventing the future' (Davidson 1992), but other institutional sources also vie for the political space that chiefs occupy. Rather than considering elective representation a *sine qua non* for democracy, we should ask the fundamental question whether the democratization discourse, as it is being articulated in the African context, provides the most appropriate framework for inventing the future, given the pluralistic composition of African societies.

If chiefs could effectively act as vote banks, what implications would this have for the democratization process? Would it entail the segmentation of the post-colonial state into 'block vote areas', as Fisiy (1995b) puts it, with the obvious implication that ethnicity is at the heart of the political debate, despite the persistent rhetoric on national integration? The complex patterns of socio-political interactions have resulted, as said in the Introduction, in the co-existence of different institutional frameworks that sometimes articulate entirely different discourses and agendas. Within such a dynamic interaction setting, new institutions have emerged, some old ones have been substantially transformed, and others have simply atrophied. Chieftaincy is one of those that has shown remarkable capacities of survival. What

factors really account for such resilience?

To this simple question the answer is very complex. Chiefs are dispute settlers and local administrators. They exercise a firm ritual and moral authority over their people based on mystical and sacred attributes. Sometimes they are involved in witchcraft (Fisiy 1995a), even being seen as witches themselves and at the same time witch-hunters (van Rouveroy van Nieuwaal 1994). Several chiefs are even able to link the traditional orders of their local community life and the worlds of the modern economy (Konings n.d.) and politics (Geschiere 1993) by successfully using the changing social, political and economic structures to become part of a new entrepreneurial elite (Vaughn 1988). Thus the chief appears to be an enigma (van Rouveroy van Nieuwaal 1995b; n.d.; von Trotha in this volume).

Underlying these questions are the further questions of how to determine the power base of chiefs and to understand how this is affected by the recurrent experiments in nation building and democracy. In other words, to understand how chiefs mediate the link between the past, the present and the future it is important to understand the correlation between their controls over people and resources issuing from different conceptualized worlds.

If the old adage that two cocks cannot crow in the same compound is still valid (Fisiy 1995b), then one should not be surprised to find a confrontational relationship between the state and chiefs with regard to control over resources and people. By means of an extended system of constitutional, administrative rules of law and other regulations since colonial domination, the African chief has become part of the state bureaucracy and sometimes even part of the official administration of justice. Yet at the same time he continues to be part of a traditional world. Therefore, a chief disposes of two different bases of legitimacy and authority. This permits him to operate differently towards the state and his people. A kind of hinge point, a chief tries to connect both worlds. But this dual position is fraught with difficulties because it involves a reconciliation between two inherently conflicting roles and loyalties: that of a faithful servant of an essentially foreign and superimposed administration, and that of a head and representative of his own community. When the aims of the administration and of his community coincide, reconciliation is no problem, but when these aims diverge - as they often do - the chief is in the unhappy position of seeking to satisfy one master without incurring the displeasure of the other. Usually a chief tries to steer a middle course, thereby running the risk of weakening his position on both sides (Holleman 1969: 117-118).

Viewed from the state side, the starting point is the legislation by which chiefs are encapsulated into the bureaucracy, reduced to simple auxiliaries, who can be punished like any civil servant, or even simply dismissed. But that is only the

outside, as underneath these regulations there is a much stronger model. That is what I call the personalistic model, which consigns all those legal regulations to the rubbish bin. To a certain extent the state view is merely a legalistic paper-model constructed only for reasons of legitimization, addressed to the outsider who often distrusts the state. (van Rouveroy van Nieuwaal n.d.)

Probably chiefs see this bureaucratic logic, differently shaped during the colonial regime, the subsequent period of the one-party system, and the current period of a politically pluralistic landscape, as merely an accidental, foreign, imposed fringe.

Seeing itself as a point of strength, the state tries to co-opt and marginalize the chiefs within its bureaucratic models as mere auxiliaries. But the question is: what can chiefs do? Clearly, this is related to their prerogatives in the management of resources and how they interact with those state officials that administer new law reforms. How they develop new strategies to cope with changes, either political administrative or legal changes, should inform us on the transformation chieftaincy might be undergoing. Chiefs continue to struggle for control over resources and people in the post-colonial period just as they did in pre-colonial and colonial times. However, socio-cultural transformations now take place in a field of globalisation, which offers new forms of organisation and communication, new actors and new models of administration and agencies for socio-economic development, not to forget women's associations (van Rouveroy van Nieuwaal 1995b), at the local and regional scene (NGOs, for instance), and which offers chiefs a new range of status symbols in new contexts (the media, for instance).

Nowadays they additionally have to face a society which is undergoing rapid and sometimes radical political transformations.

States and Chiefs

The present struggle for democratization can be explained in the first place by the gloomy economic and political situation most African states are in. Other factors that made the phenomenon 'democracy' a priority in Africa were the decline of faith in a communist society and the demands based on growing financial independence put forward by the international community.

By now the African citizen has lost faith in the ability of the state to steer society in a direction that is favourable to him. This is, according to Galjart, on the one hand caused by an underestimate of the tendency of "individuals as well as collective actors (constitutional bodies and government officials themselves) to what is called 'rentseeking' in economics and on the other hand by gross overestimation of the ability of states to restrict it" (Galjart 1992: 17).

CHIEFS AND STATES: ARE CHIEFS MERE PUPPETS?
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The attention of many political scientists has shifted from the concept of 'nation-building' in the African state to the area of tension between the state and civil society. (Cf. Bayart 1989; Callaghy 1987; Chazan 1988; Chazan et al. 1992; Decalo 1992; Healey and Robinson 1992; Mamdani 1990; Mbembe 1992; Rotchild and Olorunsola 1983).[8] The post-colonial state and the Parti-État which has become a common phenomenon since the beginning of the 1960s has not succeeded in the slightest in coupling socio-economic development to what has come to be called 'civil society'.[9] Or even worse: the relation between state and civil society degenerated into oligarchic patrimonialism in a form that would have been unknown in pre-colonial Africa (Uwazurike 1990). Among others, it would have had the following results: violation of human rights on a large scale, unbridled glorification of personalities, ever increasing national debts and chronic instability (Decalo 1992). Another sad result was the massive flight of African intellectuals to escape from oppressive and despotic regimes (Bossuyt 1993).[10]

In this context Bayart's (1983) ideas about that area of tension between state and civil society draw my attention because of the role chiefs can play in it. Bayart explicitly points out that this relation is characterized by its own dynamics, complexity and ambivalence in which businessmen and religious leaders have a part to play (Buijtenhuijs and Rijnierse 1993: 15-16).

I have demonstrated that chiefs have their own contribution and colour to add to this dynamic field of tension (van Rouveroy van Nieuwaal 1994). This contribution is characteristic because traditional leaders operate from cosmological views that are totally different from those of other groups within the civil society. It is not without reason that the chiefs of Togo call themselves 'the guardians of our customs'. Not only do the chiefs wish to point out their (traditional) legitimacy by saying this, they also use it as a political statement, through which they mobilize forces against the hegemonic projects of the state - which itself acts

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[8] It is however remarkable that these studies are centred on the field of conflict and that of socio-economic, political and legal interaction - where, for example, the state (in Cameroon) tries to penetrate witchcraft (Fisiy and Geschiere 1990) - between the state and the civil society, but concentrate far less on, or even neglect entirely, the most significant and fundamental aspect, that of the symbolic and physical state monopoly of violence; cf. Le Roy and von Trotha 1993.

[9] In spite of the great amount of literature, an analytical concept of 'civil society' does not exist (Buijtenhuijs and Rijnierse 1993: 15).

[10] See the special issue of the *Revue Politique Africaine* 51 (1993), dedicated to this theme.

through 'hegemonic alliances', as Bayart calls them (1983), formed by the political elite. In this way chiefs use their 'guardian-role' in attempts to defend themselves against these `hegemonic alliances', but they also use it for their own local, political interests. The way the chiefs ignore land tenure legislation or use it for their own good is illustrative in this respect (von Benda-Beckmann 1989; Fisiy 1992; van Rouveroy van Nieuwaal 1986, 1995a). Another example lies, as already mentioned above, in the field of jurisdiction where chiefs, at least in Togo, still play an important role, in spite of the attempt of the (colonial) state to restrict this role to one of reconciliation. Up until now, chiefs have succeeded in taking away the ground from under the feet of the state judiciary. Another example is witchcraft: there are chiefs that not only hunt, punish and eliminate witches in their society, but who are witches themselves at the same time (van Rouveroy van Nieuwaal 1988; Fisiy and Geschiere 1990; Fisiy 1995a). Through this hybrid conduct they even succeed in taking the wind from the sails of that same state jurisdiction that is nowadays faced with the problem of having to hunt witches itself, unlike in the colonial age, without an adequate arsenal of legal concepts (Renteln 1987/1988). In Ghana, with its important centres of powerful chiefs such as the Asantehene in Kumasi, Rawlings had to change his political course when chiefs opposed his policy of Revolutionary People's Committees (later renamed the Committees for the Defence of the Revolution).

On the other hand it is equally undeniable that the state sometimes uses the chiefs as agents of its own projects. The cases of President Eyadéma in Togo and of South African and Zimbabwean chiefs have already been noted. However, other cases from various parts of Africa demonstrate that chiefs do not always let themselves become trapped within those hegemonic alliances. These cases show that chiefs can no longer be depicted as mere tools of the regime. In some respects they are the spokesmen of the counterforces in society, in a way that embodies Bayart's understanding of the *modes populaires d'action politique* (Bayart 1983). Let me illustrate this with a case from my own experience.

> In September 1991, during one of the daily sessions of the *Haut Conseil de la République*[11] in Lomé, I met the district chief of Mission-Tové, 35 kilometres north-west of the Togolese capital. He was one of the only traditional chiefs who was a member of the *Haut Conseil*, to which he had been appointed thanks to the

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[11] This originated from the *Conférence Nationale Souveraine* with legislative authority (Heilbrunn 1993; Ellis 1993; van Rouveroy van Nieuwaal 1993b; von Trotha 1993b).

positive reception of a speech he had made.[12] In this speech he gave examples of the resistance by chiefs against the regime of Eyadéma, ranging from not mentioning the epithets made mandatory by Eyadéma during public speeches to fleeing to nearby Ghana. In his long career as a chief he had used this last strategy himself when he, being a member of the losing political party during the period of the first two Togolese republics (1960-1967), had to take refuge in Ghana in order to escape the revenge of the winning political party (Cornevin 1988: 284-316; Toulabor 1986: 19-24). He took this policy quite light-heartedly because of the small distance between the two countries and of the fact that he always found relatives of his own ethnic group (the Ewe) in Ghana.[13]

Another example I derive from the research of Ladley (1991) on the position of chiefs in Zimbabwe. Shortly after the country gained real independence in 1980, the Zimbabwean government decided to take away by law the chiefs' role in the allocation of rights to land and their authority to adjudicate related legal disputes. State-controlled courts were instituted in order to administer justice according to folk law. However, several years after this statutory order, in 1990, parliament

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[12] See: "Doléances des chefs traditionnels des régions maritimes et plateaux au Togo" *Courrier du Golfe* 97, 29 July 1991: 7. This district chief's discourse has been, just as many other discourses of the *Conférence Nationale Souveraine*, recorded on video. The complete collection of these videotapes are to be found in the library of the African Studies Center in Leiden.

[13] From this discourse (see the previous note) we quote:

> Dear President of the Presidium [of the *Conférence Nationale Souveraine*], dear delegates… we can assure you that our case [i.e. that of the traditional chiefs] was even worse than that of certain of you during the period of the regime of Eyadéma; but it was impossible for the traditional chiefs, bound to the Administration Territoriale as they were by their engagements, just as it was for quite a lot of you present here today, openly to denounce the crimes of the Parti-État… You know only too well that you can never insult the lion while you are still in his claws. (*Courrier du Golfe* 97, 29 July 1991: 7)

Three days later the traditional chief Nana Ohiniko Quam Dessou XIV expressed himself in the same way: 31 July 1991, *La Tribune* 20: 11-13.

decided to do away with these courts and to restore to the chiefs their juridical role to some extent. The most important reason for this measure was that the state judges concerned had become most unpopular, besides being flooded with an ever-increasing stream of applications from women who claimed maintenance for children born mostly outside of (formal) marriage. Ladley formulates this as follows:

> As gender crept out from custom, so did sexuality - and neither society in general nor the customary court system in particular, could cope with the result. An explosion of claims by women took place and by the end of 1989, the vast bulk of work in these primary courts related to claims by women for the maintenance of children born outside of marriage…
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> In 1982 [two years after the establishment of these courts], faced with queues of… women outside of court rooms, the jurisdiction of these customary courts was extended by legislation to allow women to sue for maintenance. Under the onslaught of litigation which followed over the next eight years, the administration of the courts buckled. An industry grew in the pursuit of males reluctant to pay maintenance. By early 1990, many… businesses had employees whose wages were garnisheed to send maintenance directly to the primary courts, so that women could collect them. And at the end of every month, huge queues of women and babies used to gather outside the courts in the main centres, waiting for their cheques.
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> In the streets, the description of the courts was that they were *women's courts*. Officials reported dramatic increases in problems such as defendants hiding from the court messengers, lying about identities, changing jobs to avoid garnishees, etc. People of both sexes accused women of *manufacturing* their claims, in the sense of finding out they were pregnant then seeking out an appropriately wealthy *father* [who could only deny affiliation (fatherhood)] by a non-conclusive blood test which cost $1000. Few could pay to disprove. (Ladley 1991: 595-597)

So after the collapse of these courts, the chiefs were back in town, although one wonders, after so many social, economic and political changes in Zimbabwean society, how the chiefs are going to deal with these maintenance problems, and what they will now say to Zimbabwean women.

One could say that the last example, from South Africa, is 'hybrid' in character. On the one hand it demonstrates how South African chiefs have, under certain circumstances, themselves engaged within the hegemonic state in alliances in Bayart's style. On the other hand it shows just how the chiefs offer resistance to that practice.[14] In 1951 the Bantu Authorities Act (Mzala 1988) came into force. This Act decreed that chiefs, appointed by the South African government, would become local administrators of so-called 'tribal areas'. This was the beginning of separate development, better known as *apartheid*. In 1959 a policy of Promotion of Bantu Self Government was adopted. This formed the basis for the 'bantustans', homelands for the original inhabitants of South Africa. To carry out this policy the government decided to appoint Dr Verwoerd (Minister of Home Affairs at that time).

In theory the chiefs would have been able to offer resistance to this 'divide and rule' policy (Rogers 1980). From the start, however, chiefs who refused to submit were discharged from office and replaced by more submissive successors. The motives for chiefs to let themselves be used in this manner by the government are not entirely clear. They may have felt that the measure meant a revaluation of their position as chief (although some predicted the deleterious effects it would have)[15] and they probably also acted out of fear for the consequences of refusal. The Act rather quickly divided the chiefs into three groups: a) those who converted to the apartheid system in order to keep their position as chief;[16] b) chiefs who did adapt to the apartheid system but laboured for a better position of

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[14] The following description is only meant to give some general outlines.

[15]   Far from increasing the powers of the chief, this Act [the Bantu Authorities Act 1951] will reduce the chiefs to policemen. They will have to carry out Verwoerd's orders without question. Instead of being independent, the chiefs will be hounded by the Native Commissioners to see that they carry out their orders to the letter. Under the Bantu Authorities Act, it will also be the duty of the chief to see that he quells the slightest protest of the people against the government. The witch-hunt for so-called agitators which is now being conducted by the police will have to be conducted by the chiefs. The Bantu Authorities Act is not intended to, nor will it, restore the unity of the tribe. Instead it is intended to divide and disrupt the tribe. (Mzala 1988: 61)

[16] I refer here to the enthusiastic support of chief Kaiser Matanzima who once said: "Dr Verwoerd was sent by God to liberate the black people of South Africa" (Peires 1992: 367).

their countrymen within the authority they still had; and c) chiefs who said 'no' to the system and were thus forced to resign from their position.[17] The bantustan policy turned out to be disastrous for the position of the chiefs: the South African government constantly used them to suppress riots. Their role became that of policemen, and they became the extension of Pretoria's repression. The chiefs became isolated and alienated from their own people. But in the 1980s resistance also grew among the chiefs against that repressive policy, corruption and poverty. In September 1987 a number of chiefs decided to combine their resistance in the Congress of Traditional Leaders of South Africa (CONTRALESA) "aimed at combatting the bantustan system and uniting the traditional chiefs crossing ethnic boundaries (van Kessel 1989: 90; see also: Zuma 1990: 69; South African Institute of Race Relations 1988: 922). With some amazement, the institution of the CONTRALESA was welcomed by the South African liberation movements, the UDF and the ANC. On the other hand many chiefs hesitated to join in, but

> after a slow start, the organization can nowadays pride itself on the support of several dozens of chiefs across the country. In joining the liberation movement and in denouncing the bantustan policy, which is the keystone of the 'Grand apartheid' project, the CONTRALESA has become a potential menace to the South African government and to the governments of several black 'independent' states. (van Kessel 1989: 90)

The cases mentioned above are of recent times. They demonstrate that the common and frequently expressed opinion that the role of chiefs in processes of state formation has been greatly reduced because of their loyalty to repressive regimes (e.g. Annor 1985; Geschiere 1993; Guillemin 1983; Lombard 1967; Reyntjens 1992), needs some adjustment. Some time ago I demonstrated (van Rouveroy van Nieuwaal 1994) that the chiefs' space for manoeuvre, and especially the strategies they use to enlarge that space for manoeuvre,[18] is much

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[17] A well-known example is the stepping down of Albert Luthuli in 1952, when he refused to give up his membership of the ANC. He gave the following explanation for his choice:

> I felt that the fight for democracy for all people in South Africa, including my own people, demanded absolute loyalty on the part of the leaders of the people, and on principle I could not resign from the ANC which is waging a struggle against fascism. (Mzala 1988: 55).

[18] In that article I demonstrate that a local chief in south Togo during the last days

larger than the formal constitutional and administrative legal models would lead one to suspect. This is not only the case for chiefs in Togo, but it is apparently equally valid for other regions in Africa (Goheen 1992; Groff 1991; Roberts 1991; Vaughn 1988). That space for manoeuvre is created by the gap that exists between a modern, bureaucratic, organised state that derives its authority from state law, and the social context of the majority of the African citizens associated with a completely different ideological, symbolical and cosmological world view. It is exactly within that 'gap' that the chief, being the representative of that other, 'traditional', cosmological world with its own world view from which the chief (partly)[19] derives his legitimacy, credibility and respect, plays a very important role. The state is only too pleased to annex the authority of chiefs as representatives of that other world that is not easily described and established in a code understandable to the outside world. So does that state power try to revitalize its own legitimacy and authority in order to close the gap between its bureaucratic, alien, and foreign-imposed logic and the traditional world.

In this regard it is characteristic that African heads of state frequently use traditional external features such as 'praise names', regalia, symbols and myths in order to emphasize and legitimate their authority towards the people (Hayward and Dumbuya 1984).[20] This legitimacy is an absolute must as their presidential authority is in many cases hardly founded on a thoroughly worked out constitutional basis but rather balanced on the barrel of a gun. A good relationship with chiefs who are the representatives of that other traditional, moral and political order is conducive to the legitimacy of the head of state (Francis 1968: 345).

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of the French colonial regime was able to resist the demands of his colonial superior, the district officer.

[19] I use here "partly" as the chiefs' appointment and their (governmental) functions are sometimes regulated by statutory law as well (Sklar 1993: 87).

[20] There are plenty of examples of this. Sekou Touré, head of state of Guinea at the time and a marked opponent of chiefs, only too gladly identified himself with the resistance heroes of Guinea's colonial past. Jomo Kenyatta, one time president of Kenya, did not appear in public without a fly swatter, the traditional leader's symbol of power. Mobutu, president of Zaïre, liked to be carried around on a chief's seat, especially in the early days of his regime when his authority had not yet been firmly established. Nkrumah, who was no particular protagonist of chiefs either, had himself pontifically installed as president using a stool which had been carved on an Akan model (Nevadomsky and Inneh 1983/1984; van Rouveroy van Nieuwaal 1987).

This also means, however, that the distribution of power in reality is rather different from the model that the constitutional bureaucratic polity pretends to exit (van Binsbergen 1993b). Because of their central position in a historically grown world view embedded in religious views, kinship systems, conventions, seasonal agricultural cycles, marriage prohibitions, and conceptions of magic, witchcraft and suchlike, chiefs represent an almost intangible force that cannot be ignored by the modern state elite and bureaucrats. From this point of view, chiefs are ensured of their legitimacy which they express by saying 'we are the guardians of our traditions'. They also use this statement against a state that has been adorned with a constitution formed according to a North Atlantic system, such as Nigeria. It is also exactly this reference to 'tradition' that state organizations and state officials meet with when they try to carry out development projects or legal innovations (von Benda-Beckmann 1989; Galjart, 1992; Geschiere 1986).

The examples given above illustrate furthermore that chiefs fit within the current that is described as the 'dynamic culture view' (Geschiere 1989). This current points to the dynamism and resilience of local, 'traditional' societies and institutions that are characteristic of these societies. In this view societies are not static, unchanging units, but are in a constant process of development (von Benda-Beckmann 1989; van Binsbergen 1993; Geschiere 1989). They react to external and internal stimuli and adapt to them. At the same time, other actors react to their presence and respond to the changing situations: they are themselves stimuli to units or organizations within the state. The ANC in South Africa, for instance, as we have noted, had contacts with the union of chiefs, CONTRALESA, in order to establish a stronger basis for the resistance to apartheid rule. Those same contacts and negotiations, however, formed for their part a stimulus to the position of chiefs within their own societies, increasing chiefly authority and supporting their undermined legitimacy and eroded respect among the population.

On the other hand, the examples also show the bilateral character of the phenomenon 'chief'. For decades chiefs have been, some more than others, within the radii of action of two worlds that are totally different from each other: the world of the colonial and post-colonial state and their own, more or less 'traditional' cosmological order. They appear to be able, with varying success, to adapt and transform to the demands and wishes of both these worlds. Therefore, chiefs could be regarded as representatives of what may be called cultural dynamism. According to the example from South Africa chiefs seem capable of breathing new life into their weakened authority and legitimacy, for instance by creating the CONTRALESA in 1987.[21] This is one of the reasons for the renewed

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[21] Moore gives an interesting example of what completely different developments the legal position of chiefs can go through. She writes the following about the

interest of researchers in chiefs within the African state. (Cf. Abba 1990; Bayart 1989; van Binsbergen 1987; 1993; Geschiere 1993; Skalník 1983; Quinlan 1988). This interest declined during the 1960s and 1970s - though it certainly did not disappear (Crowder and Ikime 1970) - under the influence of the view that chiefs had collaborated with the colonial government and had in some cases openly supported revolutionary currents and ideologies that later turned out to be of despotic character (Miller 1968). These episodes seriously undermined their authority, their legitimacy and the respect they received from the African citizen. But this renewed interest in 'written off' institutions such as chiefs, or in the fragments still remaining of this traditional power, also compels us to give new consideration in historical perspective to the present crisis into which the African state has fallen.

Such observations can have several objectives. They can, for instance, breathe new life into the discussion about the influence of 'traditional' African standards and values. Caution, however, is in order here for it is well-known that authoritarian regimes in Africa appeal to 'tradition' only so as to legitimate themselves (Bayart 1989, 1991). Well-known examples are Mobutu's 'appeal on authenticity', which in actuality meant no more than abolishing christian (first) names, a kind of face-lift without inciting an in-depth reconsideration of the current African conventions. Mobutu's pre-eminent friend, Eyadéma of Togo, faithfully followed him in this policy, but added his 'let us return to the earth', a slogan that ideologically formed the basis for the utter failure of the land law

Chagga in Tanzania:

> …the abolition of chiefship [in 1964] was designed to alter a larger-scale, higher-level corporate social field, the 'village'. I have suggested that the spin-off products of the old chiefships, the general social position and networks of ex-chiefs and their families and associates, have had a persistence over several generations of time, despite repeated changes in surrounding formal organization and cultural context. Since such networks and chains of transactional relations may generate fairly durable rules regarding the relative status and mutual obligations of their members, it is useful to analyze them as semi-autonomous social fields. The TANU organization has moved from the status of being a non-legal voluntary organization to being part of the official, formal *de jure* body politic. The chiefly networks have moved in the other direction, from being attached to legal offices to the status of completely informal connections. (Moore 1978: 77)

legislation of 1974 (Améga and van Rouveroy van Nieuwaal 1979).

Civil Society, Good Governance and Chieftaincy

The (scientific) interest in the conception of 'good governance' is of more recent date. Just as in the case of the concept of 'civil society' this impalpable notion cannot be summarized in scientific, analytical terms, in spite of an increasing stream of publications on the matter. A clear definition does not seem to be at hand for the time being. Bossuyt summarizes 'good governance' as follows:

> [Good governance] is… rule of law with a really independent judiciary; a system of open political competition, allowing for alternation; effective participation of the various actors in decision-making; public accountability; transparency; respect for human rights, including freedom of association, and a free press and other media. (Bossuyt 1993: 2)

This description is analogous to that which Healey and Robinson give (1992: 163-164). Dunn adds the following:

> [G]overnance… implies a high level of reorganization effectiveness, but certainly does not imply the choice of a particular ideological model of state organization. (Dunn 1986: 169. See also Boeninger 1991: 1. Boeninger was the Minister in the Government of Chile responsible for the political reforms.)

Good governance is often equated in the literature with 'political accountability', which certainly does not make the definition any clearer. Dunn seems to strike nearest to the core when he continues: "good governance is… what Sweden and Singapore enjoy, and what Zaïre and Ethiopia distressingly lack". The only thing that is clear is that the conception is rather the invention of international financiers such as the World Bank and the IMF with reference to their specific policy and the conditions they lay down for their loans, than of scientists (Doornbos 1990; 1991; Buijtenhuijs and Rijnierse 1993). This is in itself a remarkable change from the years between 1970 and 1980 when those same agencies, based on the so-called *dependancia* views, saw the state as a full partner in their negotiations and even made a stand against the attacks of marxists or authors associated with marxism. Within the discussion about democratization the reference to and revaluation of African traditional concepts such as 'good governance' and 'democracy' can mean new élan.

It appears that as yet little in-depth attention has been devoted to the notions of

'civil society' and 'good governance' by legal anthropologists. This is surprising as most of us might accept that law can make an important contribution to structural and legitimizing frameworks for political, economic and social organizations. Law not only comprises rules and principles, including the procedures to uphold those rules and principles, but also concerns those organizations and institutions themselves. But it does not prescribe the behaviour of the people who hold positions in these organizations and institutions. Law regulates the legal relations between people and between people and things, movable or immovable, and it organizes and structures institutions. Recently the legal anthropologist von Benda-Beckmann has intervened in the discussion (1993). He frankly asserts that the 'good governance' discussion in developing countries is primarily not so much about good governance, accountability, the rule of law, participation, human rights, or democratization, but mainly about the reconstruction of economic mechanisms of regulation. Legal and governmental elements are drawn into economic issues, in complete accordance with the wishes of the international financiers, and less into issues the discussion should eventually focus upon: corruption, legal insecurity, violation of human rights, or, in short, on 'bad government'. In other words one could conclude that good governance is made subordinate to politics and law.

Within this context I also shall not go into a theoretical reflection on the notion of 'good governance'. However, I would like to take one aspect of it which is relevant in this essay. During the chaotic period of the National Conferences in Francophone Africa, mention was frequently made of a 'return to our own, authentic African standards and values'. Such was also the case in Togo when the National Conference took place there (13 July - 23 August 1991). I pricked up my ears, for being a 'chief lover' I expected a reference to these traditional institutions, especially when a Togolese jurist in an almost hostile manner snapped at me saying that "Europe had to finally stop its interventions". I did not fully understand what she meant by this, since, because of globalization on international economic, political and juridical levels affecting both African states and the rest of the world, that intervention could not be suddenly undone. Likewise, it should also have been clear that there was little African resistance to once more falling back on Western concepts in the quest for democracy, free elections and (again) 'good governance', just as in the early years following Independence. But if she was referring to a specifically African contribution (cf. Copans 1991), the discussion about democracy and good governance is hardly sharpened by that. For Africa does not have one single heritage. On the contrary, many African societies are built up of several heritages originating from various colonial rulers outside Africa but also of those formed inside through colonization by African oppressors. In this way, native constitutions and customary law could be totally replaced by new home-grown constitutions and institutions.

The contribution of chiefs in this discourse is just as problematic. Quoting Fisiy (1995b) that the shift of emphasis in Africa from a development paradigm to one of democratization, has led to a growing quest for alternative sources of authority and power, it is therefore not surprising that pre-colonial customary forms of authority such as chieftaincy have been actively vying for new political space within the context of the modern state in Africa.

Geschiere (1993) illustrates the different fortunes of the office of chiefs in two Cameroonian societies, the Maka (who came under French colonial rule) and the Bakweri (who came under British colonial domination). But in neither instance, although for different reasons, does chieftaincy in Cameroon appear to offer the alternative, middle-range authority that is needed (Geschiere 1993: 174). Both cases, based on (colonial) archives, together with Geschiere's own anthropological data from fieldwork, give nevertheless only a limited view on the chief authority in Cameroon. Because in connection to a paper read by the Cameroonian legal anthropologist Fisiy on 5 November 1993 in Heidelberg (published in 1995b) and the ensuing discussion it becomes clear that these examples stay restricted to the local situation. Both Cameroonian examples can therefore not be exemplary for the situation in Cameroon, let alone for the entire continent.

Geschiere gives the Maka (in South-East Cameroon, ex-German and ex-French colonial territory) and the Bakweri (in South-West Cameroon, ex-English territory) examples somewhat more significance by referring to situations in other parts of Cameroon. Remarkable are, for instance, the developments under the Bamiléké chiefs. Just like their colleagues elsewhere in Cameroon they acted in the past as 'auxiliaries of the French colonial power'. This role certainly did not always mean an increase in the power and respect accorded them by their own people, but rather a decrease because of their collaboration with the colonial state. Nevertheless the Bamiléké chiefs were able to ensure their access to power in several ways by keeping a finger in the pie during the allocation of rights to land and by making use of the resilience of the secret societies surrounding chiefs while making members of the new political elite part of their networks. And so an extensive network of patronage came into existence, which made sure their position was not reduced to that of an executive organ of the state (Geshiere 1993: 167; in so far as the situation in Nigeria is concerned, see Vaughn 1988: 51-52). Furthermore the Bamiléké chiefs managed to secure their grasp on the favourable economic development in their region owing to the expansion of the coffee plantation and its concomitant operations. In this fashion the Bamiléké chief expanded his traditional sources of income from dispute settlement and land.

On the other hand Geschiere gives the example of a chief, the Fon of Mankon (North-West Cameroon) who was confronted with the theft of his car because of his involvement with a certain political party. It would never have happened to

him if he had stayed out of party politics. Another example from the area around Douala shows how chiefs can play a role in present-day political developments:

> In January 1992 the douala 'kings' - Akwa, Bell, Deido and others - took the initiative to invite all 'Sawa chiefs' for the yearly Ngondo ritual. They invited not only the other Douala chiefs but also colleagues from the Batanga, the Bakako and Bakweri and even those from as far inland as Kumba and Mafe. The ritual took place at the usual spot on the banks of the river Wouri. A large crowd attended, including modern elite persons from the area, even Ministers. The climax of the ritual came when all the chiefs descended into the water. They spent several hours in the water and talked to the spirits who promised that it would be a good year although important changes would take place. (Geschiere 1993: 168)

Geschiere makes two comments. In the first place the bigger than usual circuit of invited chiefs seems to point to an effort to make intra-ethnic bonds. Secondly, however, the critical attitude of the chiefs seems to stand in the way of such alliances.

But the political implications of the event are far more important. For by taking part in this ritual the chiefs claim their own role in the present political configuration of the Cameroonian state. Although members of the state elite were invited to be present, they were clearly given to understand that they had no role to play during the ceremony. The direction of the ceremony stays in the hands of the chiefs. But the event also makes clear that the chiefs find it hard to take a clear political stand. The indication that 'there are important changes in the air' could be explained as the chiefs breaking with the one-party system. It was an obvious explanation at that time, on the eve of the imminent elections, that did not force the chiefs to commit themselves in this respect, however.

From these cases Geschiere concludes that the developments in the position of the Cameroonian chief, in several regions, have gone through numerous phases, varying from almost complete disappearance of their authority, to claims to a prominent place in the (national) political existing order. According to Geschiere, the examples show that the position of chiefs has to a high degree been affected by processes of colonial and post-colonial state formation. The supposed consequence is that it is not obvious that chiefs should be regarded as 'a real alternative to state power'. This role, in so far as it exists, is furthermore affected by the fact that the distinction between the modern state elite and the traditional leaders is fading. This sort of chief is likely to become more and more a part of the state elite because of his academic education and business activities. Geschiere's opinion

seems to lead to the conclusion that, because of this integration, chiefs have become mere assistants of that modern state elite. This conclusion, however, is too general. For the conception of 'assistant' is usually too deterministic and is limited to the officials within a large (state) organization who simply carry out orders. When there is a certain space for manoeuvring within the structure, the conception of 'assistant' is out of place. Chiefs play an intermediary role by definition (Beck 1989; Spittler 1980; von Trotha 1990; 1992; 1994). One of the most characteristic elements of this intermediary role is that they dispose of economic resources that are independent of the state. For chiefs these resources can be formed by capitalist exploitation of agriculture just as in colonial times, but also by involvement in national and international trade as is often the case nowadays. This makes chiefs more independent of the state from an economic point of view, so that they could maintain their position even if the state were to reduce or stop their payments. Chiefs use these financial sources strategically and do not let the state lay down the law to them easily. Only in a few respects are chiefs mere executives of the state[22] and could be called its assistants, but when it comes to defending their own interests, such as building a palace, or a factory, the chief resorts to his own financial sources and does not let himself be ridden over rough-shod by the state (Vaughn 1988). One cannot imagine the Ooni of Ifé in Nigeria letting himself become a tool of the state:

> He is the descendant of Ododua, the god, Ooni from Ife, Okunade Oijawade Olobuse II... Ooni is 54 years of age, a wealthy business man, who studied in London and has seen all the world, who has been a commissioner in more than a hundred companies previous to his coronation... He is the undisputed leader to 15 million Yorubas and the representative of God on earth. (Leysen 1984)

There are numerous other examples that show that chiefs escape being turned into assistants through having sources of income other than their state salary. When Otumfo Opoku Ware II, the present Asantehene, visited the cacao factories in Zaandam (Holland), he did not reveal during an interview whether the visit was meant to look after his own interests or whether he was acting on behalf of the Rawlings regime.[23] Wisely, he left the reporter in the dark, maybe because of the

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[22] The district chief of Mission Tové (South-Togo) pithily expresses this by saying: "One has to kill under the orders of Eyadéma. If Eyadéma says: kill - you shall kill. That is it." (van Rouveroy van Nieuwaal 1992b).

[23] This Asantehene has received a substantial education in the West, followed by a political career. He studied law in England, was Minister of Communication

internationally critical attitude towards the Rawlings regime at the time (1987), but probably also because he did not want to be regarded as an extension of that regime.

Many examples illustrate the hybrid character of the phenomenon 'chief'. It turns out that it is not easy to categorize the chiefs when determining their political and administrative role, or when it comes to the intermediary role chiefs have come to play on several levels. But apart from that intermediary role the chief in Africa has become a syncretic leader. By saying this I do not mean to claim that the chief has become an institution that is a synthesis of the antagonistic forces coming from different state models, bureaucracies and world views which we indicate as 'modern' and 'traditional' for convenience. It is a syncretism which exacts from the chief the ability to adapt constantly and even forces him sometimes, quite profanely, to take off his traditional garment and trade it for a European outfit. This syncretism, however, also offers a chief the possibility to mobilize widely divergent resources and means of power from both worlds (Barnes 1986; Vaughn 1988) in order to reach certain goals, sometimes purely in his own interest, but sometimes also in the interest of the people he represents. Within this syncretic conduct he succeeds in gaining access to economic resources and politico-legal means of power from different worlds, such as for instance, academic titles and various economic activities. On the other hand he is also assured of his access to more traditional areas such as dispute settlement, procedures to eliminate witches or, exactly the opposite, of witchcraft practice, distribution of rights to land and his ceremonial role at various local rituals. Because this is one of the specific elements of a chief: he is not just an administrator or judge, he is also in many cases someone whose aim is to protect the welfare of the country of his people by imploring rain and fertility from the ancestors.[24]

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after the fall of Nkrumah in 1966, then became ambassador in Rome and he had a flourishing legal practice previous to his election as Asantehene (King of the Asante, or Ashanti) in 1970.

[24] See in this context the story of the Ghanaian jurist Nii Amaa Ollennu, who paid a visit to a former colleague in the 1940s, also a jurist, appointed a superior chief in Akwapim:

> [H]e had expected to hear that the chief was finding life on the stool boring and a complete waste of precious time. To Justice Ollennu's surprise and enlightenment, the Chief said: 'I am kept busy from morning till evening; I thought chiefs were all rogues, idlers spending all their time drinking schnapps; I never realised that there was so great opportunity for service to my

The argument presented can be reformulated as follows. The modern chief in Africa has been absorbed into the state bureaucracy through an extensive system of constitutional and governmental rules, and is at the same time a part of a more or less traditional world. He therefore disposes of two bases of power and legitimacy. The position of the chief could be described as a hinge point, for he is the one who links both worlds. This is certainly not always a pleasant position since serving two masters demands certain juggling capacities many chiefs do not possess.

In both fields the chief disposes of an extensive network. This network is clear in so far as the state is concerned, as the state holds the opinion that chiefs are encapsulated in state bureaucracy by legislation, reduced to the status of mere civil servants who can be promoted, punished or even dismissed by means of payment, pension schemes and housing legislation. But this is just the surface, for underneath those regulations lies a stronger model. This is the personalistic model that often ignores all those formal rules and laws. In a way the legalistic paper-model only serves to enable the state to legitimize itself to the suspicious outside world (see also Sklar 1993: 91).

In the other field he is confident of his role as the upholder of the traditional order and rules, he is the pre-eminent dispute settler and allocator of rights to land, and through witchcraft he is in some cases able to exercise real supervision of power in his society. Against this background the chief is a sort of spearhead that raids the state and tries to take away resources such as markets and development projects from the state or to orchestrate his own local religious affairs,[25] but that also uses (new) legislation, such as land law reform (Fisiy 1992), or personal networks to reach his goals.[26]

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       people waiting for me; what is more, my people are so appreciative. (Annor 1985: 156)

[25] I have given an example in Ray and van Rouveroy van Nieuwaal in this volume concerning the Imam of Sansanné Mango (north Togo).

[26] See for an illustrative example van Rouveroy van Nieuwaal 1992a: 27-28. This is an outstanding illustration of how a representative of the state power - a district officer - is forced to negotiate, nolens volens, with a representative of the collective of chiefs in order to execute an administrative legal rule. This example is also interesting because it convincingly shows that the government perforce starts negotiations with the authority of the chiefs about the range of the state power, in this case centred on a governmental measure that market revenues should be handed over to the state. See also van Rouveroy van Nieuwaal n.d.

The chief's double basis of power is, however, also characterized by an entirely different aspect. Because that double basis of power also means a double-sided dependence between state government that connects the protagonists in a strategic balance of power in which each of the leading figures tries to consolidate his own authority (van Rouveroy van Nieuwaal 1992b). This is almost always accompanied by extensive negotiations.

Chiefs in Africa: Mere Puppets?

In view of the present governmental crisis in large parts of Africa, the question is repeatedly asked whether chiefs could offer a solution, as an alternative to state power. Geschiere answers the question in the negative (1993: 195). The question is not new, but is nowadays more acute. As early as 1985 Annor reported that:

> [i]t was taken for granted that one-party rule in particular, and socio-economic and political modernization in general, will conspire to sound the death knell of (Ghanaian) chieftaincy. But instead of decline, or death, there has been rejuvenation and revival. (Annor 1985: 154)

This statement supports the findings of the political scientist Skalník (1983), whose information shows that the Ghanaian chief possesses a remarkable resilience in adapting to social and political changes and in playing a crucial role in attempts to make socio-economic transformations on regional and national levels. Being a legal anthropologist I would like to add that this resilience and adaptability is present in fields of government equally as in those of dispute settlement. The chief has come to realise that he is no longer the ruler whose guidance is followed by every subject. More than in the past he should realise that he is expected to translate conflicts into current terms, for instance in dispute settlement. This dispute settlement will have to accord with social changes. As a traditional ruler and administrator of justice this is of essential importance to him. If he does not act accordingly he will have completed his role and will, in a manner of speaking, commit political suicide (Göhring 1980: 421).

Two examples from countries with entirely different colonial and post-colonial histories will serve as illustration here. The first is based on my own observation during March 1990 in Aného and deals with the way chiefs dedicate themselves to dispute settlement, where the state judicial system as well as the state administrative system is absent (van Rouveroy van Nieuwaal 1992b).

> On 16 March 1990 the prefect of the prefecture des Lacs invited
> me to film a meeting that was to take place in his office. All

chiefs from the region were present, among them Nana Ohiniko Quam Dessou XIV, traditional chief of the town of Aného (a title which I have taken from his visiting card). The highlight of that meeting was a long-lasting dispute between two ministers of religion fighting over the rights to a piece of land on which they meant to build their church. The dispute had followed the entire hierarchical road: from the district chief to the head of the village to the *Tribunal de Première Instance*.[27] No solution had been found. Because of the growing unrest within the community the government intervened and summoned both parties to come to the prefecture. Papers were shown and both ministers made a passionate plea for their cause.[28] Initially the direction was in the prefect's hands, but it gradually shifted to Nana Ohiniko Quam Dessou XIV. By making an appeal to the Bible he succeeded in bringing about a reconciliation. The prefect had retreated into silence a long time before that. Being an outsider, I got the impression - in spite of the modern entourage of paperclips, paperweight and telephone - that I was back in the traditional atmosphere of dispute settlement that I knew so well from previous research.

From the interview I had with the prefect afterwards, this turned out to have been the usual procedure: every Friday the chiefs met in the prefect's office, not only so as to be informed of administrative matters, but also in order to settle disputes, varying from violations of the game statute, to cases of witchcraft and (the largest category) disputes about rights to land.

According to my information this has become the regular procedure in every prefecture in Togo. For especially in disputes about rights to land the government realises only too well that chiefs can offer excellent legal assistance because of their social position in the society in question and their familial relationships. This proves that the support of chiefs is indispensable for government and judicial power. In other words, the state is not nearly as 'all-embracing' as it pretends to be.

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[27] The successor of the *Tribunal Coutumier de Première Instance* [*Juge de Paix*] following a legal organization dating from 1978, Ordonnance no. 78-35 of 7 September 1978.

[28] A remarkable detail: one of the ministers refused to speak the local language Ewe and spoke in French. This was received with disapproval by the persons present.

The second example goes even deeper into the problem of failing state power and is reminiscent of what Spittler (1980) once called 'dispute settlement in the shadow of Leviathan', following Schott's findings (1978, 1979), that have been worked out by von Trotha (1993a). A pre-colonial phenomenon seems to be able to reactivate itself and fill the gap that has come into existence when the state monopoly of violence seems to have collapsed completely. The following concerns the phenomenon called *sungusungu*[29] that has come into being under the Sukuma and Nyamwezi in Tanzania since the 1980s.[30]

> *Sungusungu* are vigilante groups that have been brought into existence in order to fight crimes such as murder, rape, cattle-theft and witchcraft. State legal institutions failed to suppress these crimes, not only because of the enormous areas for which they were responsible, but also because of their corruption. The initiative for the institution of these groups was taken by (male) lineage-elders who were acquainted with the rules of magic and ritual forces. This was remarkable in itself for a country where traditional leaders have formally been done away with (Moore 1978; van Rouveroy van Nieuwaal 1987). The phenomenon was certainly not accepted unquestioningly by the established state courts. In the beginning the actions of the *sungusungu* groups were condemned as 'own direction' and they were felt to be in competition with the judicial organisation. Therefore, people in the *sungusungu* groups were arrested. But as the judicial forces continued to be incapable of fighting the increasing stream of crime and the faith of the Tanzanian population in the *sungusungu* groups grew, the opinion of the state also swung round. The vigilante groups emerged at a time when the exhausting war with Uganda had been brought to an end, the country was scourged by groups of ex-soldiers armed with modern firearms to which the state had almost no answer, and when the monopoly of violence of the state had ceased to exist or was only there on paper. There then came a reactivation of a pre-colonial institution, the *sungusungu*, that was able to establish security and order. This was followed by legal

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[29] *Sungusungu* is derived from the Sukuma word *busungu* (poison). It could therefore be a reference to the use of poisonous arrows (Bukurura 1993: note 3).

[30] I take as guides the recent publications of Bukurura (1991; 1993) and the report of the *Troisième Rencontre Franco-Allemande* in Saint-Augustin (Germany) from 22 to 25 November 1992 (Möhlig and von Trotha 1994: 19-20).

recognition of the *sungusungu* as a successful alternative to the state judicial organization, a 'traditional' form of dispute settlement with new tasks indicated by the term 'usalama'.

On closer consideration phenomena such as *sungusungu*, and in a wider context the actions of vigilante groups[31] give rise to pressing questions about the legitimacy issue. For the Tanzanian research in question illustrates how the legitimacy of traditional phenomena such as *sungusungu* and the legitimacy of state institutions such as courts come into competition with each other. Furthermore it appears that, in the absence of the state monopoly of violence, which actually has never been effectuated in the area of *sungusungu* in Tanzania, the legitimacy of pre-colonial institutions and law has stayed intact. But it also turns out that under the extreme circumstances of that time - looting by gangs of ex-soldiers - the *sungusungu* phenomenon became a legitimate basis for the Sukuma and Nyamwezi to maintain their own legal order. But examination of the *sungusungu* phenomenon has further shown that, because of that competition of legitimacies, and the fact that traditional institutions and constitutional authorities exist next to each other, new bases of legitimacy and institutions come into being.[32] They show a connection to the modern state as they are 'neo-traditional' services, but on the other hand they are also founded on 'tradition'. A final conclusion we can draw from the Tanzanian research is that lineage-elders can develop into a dynamic factor which is able to offer solid alternatives, which are seen by people as reliable, to a failing state jurisdiction with the support of large parts of the population within these processes of legitimacy and especially able to reactivate the undermined and barely effectuated monopoly of violence of the state.[33]

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[31] The phenomenon of *sungusungu* is highly reminiscent of what Brown (cited in Bukurura 1991: 5) writes about the 'vigilantism' in South Carolina (United States) at the end of the 18th century where there were militant groups "in order to combat lawlessness, since there were inadequate means of dealing with crime, especially on the frontier".

[32] The *sungusungu* phenomenon, initially restricted to rural societies, also expanded to the urban societies owing to its success. Therefore

> some [Tanzanian] government leaders have gone to the extent of ordering people to form patrols in urban areas, which are also called *sungusungu*. This has in turn made the term *sungusungu* synonymous with private citizen control. (Bukurura 1993: 5)

[33] See in this respect an analogous phenomenon in Zimbabwe where 'kangaroo

These findings can be related to the development of the authority of chiefs in Togo. I do this with reference to my documentary film "Democratic adventure in Togo: the traditional chief caught between the state and his people" (1992b). This film takes as a basic theme the social and political relations between chiefs and the state power, geared to the dramatic events between 1989 and 1992 when a process of democratization came into development. In his intermediary role between state and people the chief has been charged with double legitimacies and double loyalties. This is the consequence of his traditional tasks such as settling disputes and playing a ceremonial role on the one hand, and his close relations with and sometimes strong dependency on the Togolese state on the other. The film illustrates how chiefs were harshly confronted with the political events of the process of democratization. Some submitted to the military regime even when the true face of the general's regime had been exposed on Togolese television and even when it had been clearly recognized by everyone. Others kept a low profile. Only a few openly showed their support for the effort to achieve a democratization of society. It becomes visually clear how the basis of their double legitimacies fluctuates, how quickly existing legitimacies decompose during political processes that swiftly succeed each other and finally how close together legitimacy and illegitimacy are (Möhlig and von Trotha 1994: 21). But it is also clear that chiefs are constantly able to choose their options between the two poles of their intermediary position. Finally they can use this position in a strategy through which they seek to maintain that intermediary role between state and people.

Seeing the film it is all too clear how easily chiefs, as if in *Alice in Wonderland*, pass from a transforming traditional world into the world of the state. Chief Togbui Kpelly III, living in the village Mission Tové in South Togo, is one such example. In one scene he is a chief, dressed in his traditional outfit with all the paraphernalia belonging to chiefs, like an umbrella, walking stick, a crown and so on. In the following scene he is a faithful protestant attending the Sunday sermon in that beautiful church. Then the camera moves into the *Haut Conseil de la République*, a legislative institution created by the *Conférence National Souveraine* (Boulaga 1993), where this chief is acting like any other member of that institution within the constitutional framework of those days. (The *Haut Conseil* was dissolved in 1992.)

The film leads to the rather provocative question: should chieftaincy be considered to be on the fringe of the African state, or is it the African state which should be conceived of as on the fringe of chiefship? Or are chiefs simply at the crossroads

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courts' (ZANU party extra-legal courts) were integrated into state structures (Ladley 1991: 592).

of rapidly changing power relations within the context of the pluralistic landscape of emerging political parties? Since chiefs are as human as others, as the film demonstrates, perhaps they follow only their basic instincts with a view to protecting their own welfare, and not that of their subjects - whoever they may be.

The remarkable thing about that intermediary role of chiefs is that it does not show itself to us with one single face. For the reality reveals that there is a great diversity in the way that intermediarity is implemented by the chiefs. The actor's character is very important in this respect: the élan with which the chief deals with government institutions in daily social life, but also his economic and socio-religious position within the society over which he has been appointed are factors of influence. There are chiefs who act as sheer opportunists (Spittler 1980: 76). Others say: we are not interested in what goes on at the top and we will keep our distance from the struggle for political and economic power. Others are dismissed because of their non-cooperative or critical attitude towards the government. Others are simply eliminated - dismissed or liquidated. Finally there are those who accumulate such power as they can from their intermediary role. Likewise, it is conceivable that some chiefs, having an improved economic position through trading companies that are active in their region and try to win the chief's favours through financial inducements, put out their money in loans. Through these actions they may be able to consolidate their position further on a regional, perhaps even on a national level. Against this background a wide range of actions of traditional chiefs in several fields emerges. This I think has been too little reflected upon or has been disposed of too lightly by stating that chiefs have become mere 'assistants' of the government (Fisiy 1992, 1995b; Reyntjens 1992).

The most characteristic aspect of intermediarity is exactly the fact that the various possibilities I have indicated can occur. Chiefs consciously and gratefully exploit these possibilities. An example is the case of that chief in North Togo who did not feel very comfortable underneath the window of Eyadéma's residence in his native village Piya and had himself elected a member of the human rights committee founded in 1987 (van Rouveroy van Nieuwaal n.d.). Thus the chief in question tried to make his position more independent of the head of state. He probably achieved exactly the opposite: because of his appointment to the human rights committee the head of state could exercise supervision over him and so his influence stretched further than the chief had initially realised. De facto, Eyadéma had introduced him as a spy in this governmental committee. In an unanticipated way the chief became the assistant of Eyadéma who had introduced the human right committee in order to take the wind from the sails of internal and external criticism of his regime.

The fact that the development of this committee would be different from what the head of state had foreseen and that it was to become the fly in the ointment of the

state authority during the tempestuous years of the process of democratization,[34] is another story.

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[34] For some time only as Eyadéma succeeded in 1992-93 in infiltrating this committee with people loyal to his political party, the *Rassemblement du Peuple Togolais*.

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