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# THE CONFLICTING CATEGORIZATION OF KINGS AND CHIEFS IN GHANA: THE STATUS OF THE ASANTEHENE

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## **Abstract**

This article aims to explore the historical development and contemporary role of the chieftaincy institution in Ghana, highlighting its enduring significance and adaptability. The institution of chieftaincy has been with the people of Ghana for centuries. Chiefs, now known as traditional rulers, are distinct from political rulers. The laws of Ghana require chiefs to maintain neutrality by forbidding their engagement in active politics. Chiefs are royals who have been validly nominated, elected, or selected by their respective kingmakers to be enstooled or enskinned according to the relevant customary law and usage. When Europeans came to Africa to trade, chiefs governed independent states, each with its own laws, courts, police, and military. The chieftaincy institution is organized hierarchically, ranging from the lowest rank to the apex, and among the Asantes, the Asantehene is the apex. Before 1901, when the British colonized the Asantes, the Asantehene served as the political, executive, and legislative head of the people of the Asante Kingdom.

The Asante Kingdom covers the Ashanti Region, Ahafo Region, parts of the Bono and Bono East Regions, and a paramountcy each in Ghana's Eastern and Oti Regions. The traditional capital of the Asante Kingdom, Kumasi, was initially at Kwaman. In the 1670s, Chief Osei Tutu from the Oyoko Abohyen Dynasty became the chief of Kwaman after succeeding his late uncle Nana Obiri Yeboah, who reigned from 1640 to 1680 and united all the Asante chiefdoms, which were independent and had their political autonomy. The occupants of the Golden Stool are designated as kings and have held the title to this day. Although the British succeeded in changing the name of some kings to paramount chiefs, they failed to change the name of the royals responsible for the nomination, election or selection of a person to be enstooled or installed as an Asantehene, paramount chief or chief, who are still called the kingmakers.

**Keywords:** Asante Kingdom; Asantehene; enstooled; fetish-priest; Gold Coast; golden stool; kingmakers; Oyoko clan; paramount chief; traditional ruler.

## [A] INTRODUCTION

Beginning about 1200 CE, the Mali, Songhay and Ghana empires and kingdoms spread their sequential influence across the western horn of Africa, making advances in trade, language, culture and economy. These empires and kingdoms flourished and grew under influential leaders, including one Mansah Musah, whose skills were celebrated in European capitals (Conrad 2010). A kingdom is a government or political organization where a monarch, such as a king or queen, rules as the head of state. In a kingdom, the monarch holds significant power and authority over the territory and its people. The monarch's position is usually hereditary and passed down within the royal family from one generation to another. Kingdoms vary in size from small territories to vast empires. The monarch may govern with the assistance of advisors and governing council or ministers. The structure and organization of a kingdom usually differ on the grounds of historical, cultural, political and other factors. Historically, kingdoms have been a common form of government in various regions worldwide. They have consistently played a pivotal role in shaping societies' vision, aspirations, culture, laws and political systems towards achieving economic growth and development, all in the people's interest.

The Asante Kingdom evolved around the 17th century. The Asante people established the kingdom before the establishment of the Gold Coast and now modern-day Ghana. The Asante Kingdom was an independent nation with its own courts, judges, administrators, soldiers, police and laws. The Asante Kingdom grew in power and influence through military conquest, trade and diplomacy. The rise of the kingdom was characterized by the unification of various Asante states or nations under the leadership of King Osei Tutu I, who is credited with founding the kingdom with his advisor and priest Okomfo Anokye, who played a significant role in consolidating the Asante people and establishing a centralized political system. The kingdom peaked in power and prosperity in the 18th and 19th centuries. The kingdom was known for its military strength, elaborate court ceremonies, rich cultural traditions and thriving trade networks. The Asante Kingdom had a complex political and social structure, with the Asantehene at the top of the hierarchy, followed by various sub-chiefs and officials who administered aspects of governance. The King was the administrative head, the military head, the religious head, and the head of the judiciary (Busia 1951: 233).

The Asantehene, as the head of the military of the Asante Empire, determined whether or not the nation should go to war and fight with

its neighbouring states or have an alliance with them. In the 1750s, the Asante Empire was the most powerful empire in the region and was very wealthy. It had acquired its wealth by trading gold, slaves and through mining.<sup>1</sup> The Asante Empire was made up of three categories of states. They were the provinces, protectorates and tributaries. The provinces comprised the different chiefdoms in the area that formed the empire. The protectorate comprised states that were in alliance with the Asantes and were protected from attacks by the other states. The third category was the tributaries, which formed the economic and manpower source for the empire's expansion (Arhin 1967).

## [B] THE FORMATION OF THE ASANTE EMPIRE

The Asante Kingdom, started with Kwaman as its headquarters. This was later moved to Kumasi by King Osei Tutu I, who, aided by his friend, Komfo Anokye, entrenched its monarchy through the conquest of the other neighbouring states, including Gyaman and Takyiman. The Asantes subsequently waged a war against the most powerful Denkyira Kingdom, which at some point in time had controlled the Asantes. In 1701, the Asantes, led by King Osei Tutu I, engaged in a war against the Denkyiras, killed their king, Ntim Gyakari, and divided his dismembered body into four to symbolize the defeat and fall of the Denkyira Kingdom. Robert Sutherland Rattray, GBE, known as Captain R S Rattray, a renowned barrister and anthropologist who came to Ghana in the 1920s and whose collected works spanned from 1881 to 1938, stated thus: "Ntim Gyakari's head was given to the Asantehene, his left leg bone to Asumegya, the right leg bone to Mampon, and the vertebrae to Aduaben. Kumasi permitted these three stools to copy the regalia of Ntim Gyakari" (Rattray 1929: 132). The Asante Kingdom was rich in gold, traded this gold with the Europeans on the coast and tried to overpower any states that attempted to act as intermediaries between them and the Europeans. Through their geographical position, wealth, and fearless people, the Asantes expanded their frontiers through war. The Asantes, the Asantehene and the Golden Stool became popular, making them an enviable kingdom in the 1700s.

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<sup>1</sup> See [African Studies Centre](#), Leiden.

## [C] THE LEGAL SYSTEM AND LAW ENFORCEMENT

The Asantes had their own laws, judges and law enforcement bodies. The laws of the Asantes were unwritten, as customary law knows no writing, but were mainly sins against the gods, the king, chiefs and other Asante people. The sins were considered wrongs and were tried by the King and his chiefs, with appropriate sanctions imposed on those found liable. The punishments for severe acts included death, banishment and imprisonment. The King had his executioners and persons responsible for prisoners who were also chiefs. The constabulary was known as Abrafuo. The Toprefuo were responsible for the execution of people sentenced to death (Ampene & Kwadwo Nyantakyi III 2016).

The Asante Kingdom was a theocratic state that believed in God, deities and gods, and it invoked religious sanctions for acts that showed disrespect to the gods or cursed or disrespected the King, chiefs and fellow Asantes. Some serious acts attracted death sentences, including mutiny, rebellion, murder, the practice of sorcery and witchcraft, incest, intercourse with a menstruating woman, cursing a chief or the king, committing adulterous acts with the wife of a chief or king, rape of a married woman, insulting a chief or the king, and sometimes war captives. The King imposed all death sentences in his court. There were two types of death sentences. Persons sentenced to death for certain acts, such as cursing the king, invoking powers to harm the king and practising witchcraft and sorcery, were burned, strangulated, or drowned for the reason that they had committed unspeakable acts, and their blood should not be shed. The other convicts were executed with knives or other metals.<sup>2</sup>

## [D] THE RISE AND FALL OF THE ASANTE EMPIRE

The Asante Empire engaged in several wars intended to expand its territory and also for trade and the protection of its people, and it was not until 1874 that the British defeated the Asantes at Fomena and set Kumasi ablaze. The war, led by a British soldier known as Sir Garnet Wolseley, became known as the Sagrenti War. In the early part of the 19th century, when the Asante Empire was an independent state, it had serious issues with the coastal states, who were preventing it from dealing directly with the Europeans; notably among them were the English, Dutch and Danes. The coastal chiefs, among others, of Assin, Elmina, Cape Coast and

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<sup>2</sup> [African Studies Centre Leiden.](#)

Komenda, entered into an agreement with the British to protect them from the attacks of the Asantes in 1844, which became known as the Bond of 1844. In 1863, the British signed a peace treaty with the Asantes, stating they were not at war with the southern states. Still, the southern states wanted to impose themselves on the Asantes as intermediaries and, as a result, the Asantes periodically fought against them. The leading cause of the Sagrenti War was that the British wanted to punish the Asantes for breaking the agreement.

The intervening states between the Asantes and the Europeans at the coast became obstacles to the Asantes, preventing them from selling directly to the Europeans and buying arms from them to expand their empire after the main obstacle, the Denkyiras, had been defeated. After defeating the Denkyira state, which was the most formidable one, the Asantes could not understand the importance of the coastal chiefs acting as intermediaries between them and the Europeans. J D Fage stated the causes of wars between the Asantes and the coastal states as follows:

The defeat of Denkyira had brought Ashanti into touch with the apparently inexhaustible demand for slaves and gold created by the European traders on the Gold Coast. Their conquest of the peoples between Asantes and the sea was primarily inspired by the desire to trade in gold and slaves without putting money into the pockets of the chiefs and merchants of the intervening tribes. It also enabled them to secure guns and ammunition for their northern conquests, which provided them with more slaves and gold for sale to the Europeans and also with a protected market in which Ashanti could more profitably sell European imports (Fage 1962: 97).

The Asantes were justified in their wars with the intervening states, who wanted to impose themselves on them as intermediaries and, furthermore, know their trade secrets with respect to the arms and ammunition they were buying from the Europeans and using to enable them to buy slaves from the north. The support given by the British to the intervening states, who were their colonies, to impose themselves as intermediaries between the British and the Asantes was unjustified but, unfortunately, became the leading cause of the Sagrenti War. The Asante Kingdom remained autonomous until 1900, when it were defeated by the British and declared a British Crown Colony by right of conquest by an order of the King in the Council of 26 September 1901. All the other states south of the Asante Empire, including the Ewes, had been colonized by the British as far back as 1874. The Asante Empire lost its autonomy due to the conquest and became part of the erstwhile Gold Coast colony. The then-king of the Asante Kingdom was exiled to Sierra Leone and finally to Seychelles Island.

In 1935, the Asantes executed a deed to unite all the states to form a confederacy. The process of forming the confederacy became known as the “Restoration of the Ashanti Confederacy”, which was to bring back all the states that became independent to weaken the front of the Asantes together to form a confederacy to promote their common agenda under their King. The Asante Confederacy brought all the states together as a nation, but no more as an empire, and in the process, it restored the kingship of Asantehene, which the British did not abolish. The Asanteman Council was formed with the occupant of the Golden Stool as its head, who maintained his title as King of the Asante Confederacy.

There are 16 political administrative regions in Ghana, each with its own Regional House of Chiefs. The members of the present-day Asantes are found in five of the political-administrative regions. A paramount chief exercises jurisdiction over all the chiefs within his traditional area. All 70 paramount chiefs form part of the Asante nation, known as the Kumasi Traditional Council. All the members of the Asanteman Council owe allegiance to Asantehene, and he is their overlord. The issue to be addressed is whether the Asantehene, who was autonomous and had his own military, court, laws and other state infrastructure but lost them through a war, is a chief or a king. There have been discussions on social media about the right designation of the occupant of the Golden Stool, going by the English definition. This article seeks to clarify the position by using appropriate interpretation tools. Most English dictionaries define a chief using attributes traditionally associated with the King of England. However, some people regard the overlord of paramount chiefs as a king. The 1992 Constitution of Ghana recognizes the existence of traditional authorities and their role in governance. The Constitution consists of its written text and underlying principles and values. The Constitution mirrors the actions, conduct, values, principles, customs, culture, practices, conventions, vision, aspirations and other desires of the people of Ghana.

The laws of Ghana, including the Constitution of Ghana 1992, are made up of both written and unwritten laws, which means that not all the laws of the land are written or codified. No law in Ghana states explicitly that the Asantehene is not a king. No law in Ghana has expressly stated that the Asantehene is a king. From the Gold Coast era in the colonial days to the present day Ghana, under the fourth republican constitution, no law has taken away the kingship of the Asantehene. He was a king before Gold Coast, during and after the establishment of the country called Ghana. By custom, convention, conduct, actions and practices of the people of Ghana, the Asantehene is revered and held as a king. In

the definition of who is a chief in the Constitution of Ghana 1992, the supreme law of Ghana mentioned chiefs without a king, and by parity of reason, some people hold and are of the view that there is no king in Ghana (Constitution of Ghana 1992, Article 277). The Chieftaincy Act 2008 (Act 759) also categorizes chiefs without explicitly mentioning the status of the Asantehene.

## [E] THE GOLDEN STOOL OF THE ASANTE KINGDOM: ASCENSION TO THE GOLDEN STOOL

The ascension to the Golden Stool is by male children born of a woman in the Oyoko Abohyen Dynasty of Manhyia Kumasi. The monarchy of Asanteman is a hereditary sovereign form of government where the King reigns as the titular head of the people in his nation but under the President of the country. The name Asante means “because of war”, demonstrating how warrior-like the Asantes are. The Asantehene does not publicly sit on the Golden Stool; however, the term “sits on the Golden Stool” is used figuratively to represent his wealth and the riches of the kingdom. Apart from the Asantehene, no other person touches the Golden Stool, the ark of the covenant, and when it is sent to the Asantehene, it is carried on a pillow. When a new Asantehene is installed, he is raised and lowered over the Golden Stool without touching it, but subsequently, he is the only person who can touch it, demonstrating how the people revere it.<sup>3</sup>

## [F] THE OYOKO CLAN OF THE ASANTES

The Oyoko clan is one of the major clans among the Asantes. Only those who hail from the family and lineage within the clan have been validly nominated by the Asantehemaa (the Queen), elected or selected by the kingmakers, and installed by the Asante customary law and usage to become the King of the kingdom from time to time. The Queen knows the males born by women in the family and has the singular role of nominating those who, in her opinion, are eligible to occupy the stool. The ascension to the stool is determined after the death of the incumbent, unlike in the monarchy in Britain, where the successor is known during the occupant’s life. In England, it is settled that Prince William, the eldest child of King Charles, will succeed his father, King Charles. The Princess of Wales will become Queen Consort when her husband William becomes King, and their first child, Prince George, will be in line to succeed his father (Morris

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<sup>3</sup> “The Golden Stool”.

& Ors). See also the Succession to the Crown Act 2013, which amended the provisions of the Bill of Rights 1689, and the Act of Settlement 1701. The amendment repealed the provision that disqualified people married to Roman Catholics from becoming kings. Parliament now regulates the line of succession and can deprive sovereigns of their titles due to misgovernment.

## [G] THE DEMAND FOR THE GOLDEN STOOL

The war between the British and the Asantes fought in 1900 is known as the Yaa Asantewaa War. Yaa Asantewaa was the queen of Ejisu, a subordinate stool of the Asante Kingdom. She stood up against the British Governor on the Gold Coast, Sir Frederick Mitchell Hodgson, who demanded the surrender of the Golden Stool. The Golden Stool holds the people's soul; its surrender would have signified their acceptance of British domination. The demand for the surrender of the Golden Stool provoked the Asantes, whose king had been captured and exiled in a friendly meeting held in Kumasi. As a result, Yaa Asantewaa, a 60-year-old queen mother, exhibited her bravery by mobilizing the people to engage in a war with the British. Yaa Asantewaa and her mobilized force fought fearlessly without their leader and other chiefs, who were captured in 1896, and kept the British in the Fort in Kumasi until a reinforcement of 1400 British soldiers was deployed to Kumasi to overpower her forces. She was captured with some of her troops and exiled to Seychelles Island, where the Asantehene, Prempeh I, had been exiled. Yaa Asantewaa died on 17 October 1921, at 81 years old. The Asantehene Prempeh I, exiled to Seychelles Island in 1896, was brought back to Ghana in 1924.<sup>4</sup>

## [H] ELIGIBILITY OF A CHIEF

Who is a chief in Ghana is defined as follows?

“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 queen mother in accordance with the relevant customary law and usage (Constitution of Ghana 1992, Article 277; Chieftaincy Act 2008 (Act 759), section 57).

A person eligible to become a chief shall be disqualified if that person has been convicted of any of the following offences: the security of the state, fraud, dishonesty, or moral turpitude, and it extends to all forms of chiefs (Chieftaincy Act 2008 (Act 759), section 57(2): furthermore, chiefs have been prohibited from engaging in active party politics, and a chief seeking

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<sup>4</sup> “Prempeh I”.



to become a Member of Parliament shall abdicate the stool or skin he occupies (Constitution of Ghana 1992, Article 276, and Chieftaincy Act 2008 (Act 759), section 57(3): a chief may be appointed to a public office that he possesses the qualifications to hold, but the caveat on this is not to participate in active party politics (Chieftaincy Act 2008 (Act 759), section 57(4)). A Member of Parliament for the Talensi Constituency on the ticket of the New Patriotic Party, Robert Nachinab Doameng, resigned from Parliament in 2015 to become the paramount chief of the Tongo Traditional area and was enskinned in that capacity. Presently, he is a member of the Council of State, a body that counsels the President of Ghana in discharging his functions, which is not considered a political wing of the Government. The Chairman of the Council of State, Nana Otuo Serebour, is the Paramount Chief of the Juaben Traditional Council, one of the paramount chiefs of the Asante Kingdom.

## [I] THE POWER OF THE EMBLEMS OF CHIEFS

In Ghana, some chiefs are enskinned or enstooled, while others are installed. The enstoolment deals with chiefs who sit on stools as symbols of authority, while others sit on the skins of animals such as tigers, lions, elephants and pythons as symbols of authority. A person who is elected or selected as a chief is confined to learning the customs and traditions of his stool. A chief who dies honourably without embarrassment or through suicide has his stool or skin blackened and becomes one of the chiefs whose name could be selected by any of the successors of the stool. The Chief, who is in confinement, is taken to the stool room or skin room, where the blackened stools and skins are kept, with his eyes closed and any stool he touches becomes his name. When he touches the stool of Osei Tutu, the late Osei Tutu will become Osei Tutu I, and he will become Osei Tutu II.

The person elected as chief takes an oath before his subordinate chiefs and his superior chief, if any, to make a firm promise. When an oath is taken before the superior chief, the position of the stool or skin determines the appropriate sword to be used. The paramount chiefs within the Asanteman Council and other senior chiefs, including divisional heads and other divisional chiefs within the Kumasi Traditional Council, such as Krontire (the head of the town), Akwamu (centre chief), Adonten (a chief who leads), Kyidom (the chief at the rear), Benkum (a chief responsible for the left-wing), Nifa (a chief responsible for right-wing), Gyaase (the chief responsible for the palace, women and children), Akyeamehene (chief

linguist), Mawere (head of bodyguards), Adumhene (chief responsible for the safety of Asantehemaa, Queen Mother of Asante and some of the warriors including Essuowin, Ananta (double barrel) and Anamenako (he fights whenever he finds himself) swear on Mponponsuo (the big sword) during their swearing in to Asantehene or where an Asantehene is elected, and at the death of Asantehene.

Some divisional and sub-divisional chiefs who are members of the Kumasi Traditional Council swear on the Ahwiabaa sword before the Asantehene. The chiefs use both swords to solemnly promise to affirm their unalloyed allegiance to the Asantehene and the Golden Stool. They shall heed his invitation in the morning, afternoon, or night, whether rain or shine and only sickness will prevent them from attending to his invitation. Whenever they act contrary to the solemn promise, they violate the oath they have taken and are amenable to sanction in accordance with custom. This sanction includes destoolment, payment of fines and banishment from the palace. George Hagan, a renowned anthropologist who is a Fante from Central Region, wrote in his article, published about 40 years ago, the following statement about the chiefs' allegiance to the King: "When all the chiefs come together to enstool the King, their pledges do not only validate the power of a particular king, the person they are enstooling; they also reaffirm the constitution under which the kingship is established" (Hagan nd: 31)

The chiefs from the five northern regions of Ghana sit on skins, and their counterparts from the other regions sit on stools. The chiefs who sit on stools sit on stools made of wood, except Asantehene, who sits on a golden stool, and his second in command, Mamponghene, who sits on a silver stool. A chief sits in state with his elders, who are also chiefs, except Odikro (a chief responsible for a town), whose elders are not chiefs properly so-called. A chief is a traditional leader of his town, paramountcy, or state, and he takes precedence over all the people in his town, paramountcy, or state, as the case may be. Several chiefs and categories of chiefs in Ghana have been categorized as follows: the Asantehene and paramount chiefs, divisional chiefs, sub-divisional chiefs, Adikrofo, and other chiefs recognized by the National House (section 58 of the Chieftaincy Act 2008 (Act 759)): among the Asantes, a male who hails from an appropriate family and lineage is validly nominated by the queen, and he is elected or selected and, enstooled as a chief in accordance with the relevant customary law and usage, becomes a chief and exercises only customary function.

## [J] THE DUAL CAPACITY OF ASANTEHENE

The Asantehene is the chief of the Asante Kingdom and, simultaneously, the chief of the Kumasi traditional area, the headquarters of the Asante Kingdom. When he sits as the chief of the Kumasi traditional area, he is the Kumasihene. He exercises the powers of a paramount chief in his traditional council, and he does so with the members of the traditional council. The members of the Kumasi Traditional Council are made up of 13 divisional chiefs, and each division is made up of many divisional chiefs and sub-divisional chiefs, including stools he has created and that have been recognized by the National House of Chiefs, mainly within the Nkosuo Sub-Division. Asantehene may recognize a person's contribution to the territory and appoint that person as a chief. The stool may be created for that person for his life, or he may make it hereditary, depending on the choice of Asantehene. Each of the 13 divisions has its head, and there are many more divisional chiefs in one division, excluding sub-divisional chiefs.

The Asantehene sits as Asantehene when he presides over the Asanteman Council, which comprises 70 paramount chiefs. Most of the paramount chiefs within Asanteman occupy large tracts of land with their subjects, including Asante Mampong, Nsuta, Kokofu, Kumawu, Juaben, Essumeja, Bekwai, Offinso, Manso Nkwanta, Bechem, Goaso, Mim, Brekum, Sampa, Worawora, Tuobodom and Akroso-Ntoonaboma in the Afram Plains. Each of the paramount chiefs has a traditional council, covering an area made up of the divisional chiefs, sub-divisional chiefs, Adikrofo, and other chiefs recognized by the National House of Chiefs within the traditional area. There are paramount chiefs who have other paramount chiefs under them, and they include Yaa Naa (chief of Dagon), Nayiri (chief of the Mamprusi Traditional area), and Yagbonwura (chief of the Gonja traditional area).

The mode of nominating, electing or selecting a person to become a chief varies from one tribe to the other, and the determinant factor is whether it is matrilineal or patrilineal. In the matrilineal system, it is the queen who nominates a person/persons who is or are eligible to be selected or elected by the kingmakers, unless the queen's stool is vacant, whereby the mantle will fall on the head of the family, acting with the consent and concurrence of the principal members of the family, including both males and females, to nominate a candidate/candidates to the kingmakers for consideration. There are few stools in the Asante Kingdom that do not have queens, and in that sense, the nomination is normally made by the head of the family or the overlord of the vacant stool. The stools

are Bantama, Asafo and Adum. Traditionally, they are either elected or selected by their overlord, the Asantehene. They are patrilineal, and, to be eligible to occupy the stool, it must be established that the person's father or grandfather, and in extreme cases, mother or grandmother, was born by one of the chiefs who sat on the stool. Among the Asantes, where the female stool becomes vacant, the election to the stool is made by the chief of the male stool unless the male stool is also vacant. Under such circumstances, the overlord queen plays a pivotal role in the election and enstoolment of the queen.

## [K] THE NATIONAL REGISTER OF CHIEFS AND ITS LEGAL EFFECT

There is a register where the names of chiefs and queens are entered to give them statutory recognition. The register is known as the "National Register of Chiefs" (Chieftaincy Act 2008 (Act 759), section 59(1)). The contents of the National Register of Chiefs are *prima facie* evidence of the particulars entered in it with respect to a chief. A person who is aggrieved by the refusal of the National Register of Chiefs to register him or her as a chief has the right to appeal against the same to the Supreme Court within 30 days from the date of the refusal (Chieftaincy Act 2008 (Act 759), section 59(7)). A chief who has gone through the relevant customary laws and usages of his area shall not be considered a chief for the performance of a function under the Chieftaincy Act 2008 (Act 759) or any other enactment unless that chief has his name registered in the National Register of Chiefs for the performance of a statutory function and his name has been published in the Chieftaincy Bulletin (Chieftaincy Act 2008 (Act 759), section 57(5)).

There are constitutionally created bodies that chiefs are to serve on, and a chief cannot serve in his capacity as a chief unless his name is registered in the National Register of Chiefs and his name is published in the Chieftaincy Bulletin. A chief is to be nominated by the National House of Chiefs to serve on the Judicial Council, a body whose functions include the making of proposals for judicial reforms to improve the administration of justice and efficiency in the judiciary for the consideration of the Government, as well as assisting the Chief Justice in the performance of his duties to achieve effective and efficient justice (Constitution of Ghana 1992, Article 154(1)(a) and (b)). The President of the National House of Chiefs is a member of the Council of State, a constitutional body that counsels the President of Ghana in the performance of his functions (Constitution of Ghana 1992, Article 89(1) and (2)(b)). The chiefs have

representatives on the Prisons Council at the national level to advise the President of Ghana on matters of policy relating to the prison service. The chiefs also have a representative on the National Lands Commission and a representative each on the Regional Lands Commission to advise the Government, local authorities, and traditional rulers on land policies and governance (Constitution of Ghana 1992, Articles 206 and 258–261).

The participation of traditional rulers in governance is very important. The institution of chieftaincy is recognized by the Constitution of Ghana 1992, the supreme law of the land. The Constitution of Ghana is made up of 26 chapters, and chapter 22 is on chieftaincy. The chieftaincy institution has three layers of courts that determine the cause or matter affecting the chieftaincy, and they have exclusive jurisdiction. The “cause or matter affecting chieftaincy” over which the chieftaincy tribunals have exclusive jurisdiction only, with the Supreme Court exercising appellate jurisdiction, is defined as:

a cause, matter, question, or dispute relating to the following: (a) the nomination, election, selection, or installation of a person as a chief or the claim of a person to be nominated, elected, selected, or installed as a chief; (b) the deposition or abdication of a chief; (c) the right of a person to take part in the nomination, election, selection, or installation of a person as a chief or the deposition of a chief; (d) the recovery or delivery of stool property in connection with the nomination, election, selection, installation, deposition, or abdication of a chief; and (e) the constitutional relations under customary law between chiefs (Chieftaincy Act 2008 (Act 759), section 76; Courts Act 1993 (Act 459), section 119).

## [L] HIERARCHY OF CHIEFTAINCY INSTITUTIONS

The Constitution has created three levels of chieftaincy: the National House of Chiefs, the Regional Houses of Chiefs and the Traditional Councils. The National House of Chiefs is composed of five paramount chiefs elected from each of the 16 regions of the country. Where the paramount chiefs in the region are not up to five, that regional house of chiefs shall elect such a number of divisional chiefs to make up the number (Constitution of Ghana 1992, Article 271; Chieftaincy Act 2008 (Act 759), sections 1(1) and (2)). Currently, the National House of Chiefs is made up of 80 paramount chiefs from the 16 regions. The members of the National House of Chiefs elect their President, who becomes its head. The President of the National House of Chiefs is Nana Yaw Gyebi Gyeahohuo, the Paramount Chief of the Sefwi Anhwiaso Traditional Council. The President and the Vice President are elected for a four-year term and are

eligible for election again, but they shall only hold office as President or Vice President for up to two terms in succession. The election to the office of the President and Vice President of the House is supervised by the Electoral Commission, a constitutional body created, among other things, to conduct and supervise all public elections and referenda (Constitution of Ghana, Article 45; Chieftaincy Act 2008 (Act 759), section 2). There are 16 regions in the country, and each of the regions has a regional house of chiefs. The National House of Chiefs performs several functions. Among these functions are: to advise any person or authority who has been given responsibilities to perform by the Constitution or any other law; to interpret and codify customary law, which is one of the sources of law in Ghana; and to evaluate customs, usages and practices and outlaw those that are outmoded and obnoxious (Constitution of Ghana 1992, Article 272).

The membership of the Regional House of Chiefs is made up of members specified by legislative instruments made by the National House of Chiefs and issued under the signature of the President of the National House of Chiefs in accordance with Article 274 of the 1992 Constitution of Ghana. Where the paramount chiefs in a particular region are not enough to constitute a regional house of chiefs, the Legislative Instrument, the Chieftaincy (Membership of Regional Houses of Chiefs) Instrument 2020 LI 2409 in pursuance of section 6 of the Chieftaincy Act 2008 (Act 759) has prescribed that other divisional chiefs in the region should be appointed on a rotational basis to the regional houses of chiefs concerned. The Legislative Instrument clearly states that the mere membership of a person in the Regional House of Chiefs does not confer paramountcy on that person and his area. The regional houses of chiefs perform almost similar functions to those performed by the National House of Chiefs in the region concerned. They are further tasked with compiling the customary laws and the lines of succession concerning each stool in the region. The Chieftaincy Act provides that, except in the Ashanti Region, where the Asantehene and Mamponghehene are the automatic President and Vice President, respectively, by their positions in Asanteman, each other region is to elect their President and Vice President, respectively, for four years. No chief shall hold an office for more than two terms in succession (Chieftaincy Act 2008 (Act 759), sections 7 and 8).

The creation of six other regions in Ghana has made two other paramount chiefs the automatic presidents in their respective regions, as all the chiefs within their respective regions owe allegiance to them. The position has been made statutory by a legislative instrument made per Section 6 of the Chieftaincy Act 2008 (Act 759) (namely, the Chieftaincy

(Membership of Regional Houses of Chiefs) Instrument 2020 LI 2409). The Yagbonwura, who is the overlord of Gonjaland, is the President of the Gonja Traditional Council and the automatic President of the Savanna Regional House of Chiefs. The overlord of Mamprugu Kingdom, Nayiri, has also become the automatic president of the North East Regional House of Chiefs because all the chiefs in the region owe allegiance to him. A paramount chief and members within a traditional area form a traditional council. The Asantehene is the automatic president of the Kumasi Traditional Council. Where there are two or more paramount chiefs in one traditional area, they shall hold the presidency on a two-year rotational basis, determined by the alphabetical order of the stool or skin name (Chieftaincy Act 2008 (Act 759), section 13).

## [M] THE CHIEFTAINCY COURTS AND THEIR EXCLUSIVE JURISDICTIONS

The courts in Ghana are made up of the Superior Court of Judicature and the lower courts. The Constitution created the Superior Court of Judicature, which comprises the Supreme Court, the Court of Appeal, the High Court and Regional Tribunals (Constitution of Ghana 1992, Article 126(1)(a)). The Constitution empowers Parliament to create such lower courts or tribunals (*ibid*). In pursuance of Article 126(1)(b) of the Constitution, Parliament has created the following lower courts: the Circuit Courts, the District Courts, the Juvenile Courts, the Judicial Committee of the National House of Chiefs, the Judicial Committee of the Regional Houses of Chiefs and the Judicial Committees of the Traditional Councils (Courts Act 1993 (Act 459), section 39). The jurisdiction for causes or matters affecting chieftaincy has been exclusively vested in the judicial councils, depending on the parties involved. The Court of Appeal, the High Court, Regional Tribunals, Circuit Courts, District Courts and the Juvenile Courts have been ousted in exercising original and appellate jurisdictions in cause or matters affecting chieftaincy. Section 57 of the Courts Act provides thus:

Subject to the provisions of the Constitution, the Court of Appeal, the High Court, the Regional Tribunal, a Circuit Court, and the District Court shall not have jurisdiction to entertain either at first instance or an appeal any cause or matter affecting the chieftaincy (Courts Act 1993 (Act 459), section 57).

The original and appellate jurisdiction of the traditional courts, except the Supreme Court, has been ousted to ensure that only the chiefs who are well versed in causes or matters affecting chieftaincy entertain and deal with them. It does not, however, oust the supervisory jurisdiction

of the High Court, which is exercised over all the lower courts and lower adjudicating authorities (Constitution of Ghana 1992, Article 141). The third position on exercising supervisory powers by the Court is about something other than the case's merits. There are five primary grounds for which a *certiorari* application is considered common law, which forms part of Ghana's law sources (Constitution of Ghana 1992, Article 11(2)).

The five grounds for which *certiorari* may be granted to quash the decision of a lower court or tribunal without bringing its merits to question are a breach of the rules of natural justice, lack of jurisdiction, excess of jurisdiction, patent error on the face of the record and violation of the *Wednesbury* principles. In the case of *Anisminic Ltd v Foreign Compensation Commission* (1968, 1969), Lord Pearce held that a breach of the rules of natural justice may be corrected by quashing the same. In the case of *R v Awashish* (2018), the Supreme Court of Canada held that *certiorari* may be granted where a lower court has decided out of its powers conferred on it by statute but shall not be extended to correct legal errors that are corrected by appeal. In the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948), it was held that a decision of a competent administrative body may be quashed on grounds of irrationality (unreasonableness), illegality and procedural impropriety.

## [N] THE NATIONAL HOUSE OF CHIEFS

The National House of Chiefs exercises both original and appellate jurisdictions in causes or matters affecting chieftaincy, and the jurisdiction is exercised on its behalf by the Judicial Committee. The members of the House appoint the members of the Judicial Committee. In exercising its original jurisdiction and appellate jurisdictions, the House appoints three and five from among its members, respectively, and the majority determines their decisions. The Judicial Committee is assisted by a lawyer of at least 10 years at the bar. The House appoints that lawyer on the recommendation of the Attorney General. The lawyer's advice does not bind the members of the Judicial Committee, who are the repository of the customs and usages of the people (Constitution of Ghana 1992, Article 273; Chieftaincy Act 2008 (Act 759), section 25).

The original jurisdiction of the National House of Chiefs is exercised in cause or matters affecting chieftaincy that lie within the competence of two or more regional houses, a matter that does not lie within the competence of a regional house or a matter that cannot be dealt with by a regional house. A person dissatisfied with the National House of Chiefs' decision in exercising its original jurisdiction appeals as a right to the



Supreme Court (Constitution of Ghana 1992, Article 273(5); Chieftaincy Act 2008 (Act 759), sections 22 and 23). The National House of Chiefs hears appeals from the judicial committees of 16 regional houses of chiefs. A person dissatisfied with a decision rendered by the National House of Chiefs in exercising its appellate jurisdiction may appeal to the Supreme Court with the leave of the National House of Chiefs or the Supreme Court (Constitution of Ghana 1992, Article 273(6); Chieftaincy Act 2008 (Act 759), sections 23 and 24).

## [O] THE REGIONAL HOUSES OF CHIEFS

The Regional Houses of Chiefs have original and appellate jurisdictions. The Judicial Committee of a Regional House of Chiefs comprises three members appointed by the members of the House from among its members in the exercise of its original and appellate jurisdictions. A judicial committee of a regional house is assisted by a lawyer of at least five years at the bar appointed by the House on the recommendation of the Attorney General, and the lawyer's advice does not bind the members of the house. The decision of the House is by majority. A Judicial Committee of a Regional House has exclusive original jurisdiction concerning the paramount chief or stool, the occupant of a paramount stool or skin, and the queen mother to a paramount stool or skin (Constitution of Ghana 1992, Article 274; Chieftaincy Act 2008 (Act 759), section 26). The Judicial Committee of a Regional House hears appeals from the decisions of judicial committees of traditional councils within its region (Constitution of Ghana 1992, Article 274; Chieftaincy Act 2008 (Act 759), section 27). A traditional council has jurisdiction to entertain causes or matters affecting chieftaincy within its area, to which the Asantehene, a paramount of stools or skins, occupants of paramount stools or skins, or a paramount queen mother are not parties. The jurisdiction of a traditional council concerning causes or matters affecting chieftaincy is exercised by the Judicial Committee, composed of three or five members appointed from among its members, and its decision is by majority (Chieftaincy Act 2008 (Act 759), section 29). The judicial committees of the National and Regional Houses and the Traditional Councils are composed of only chiefs. Still, they hear causes or matters affecting chieftaincy involving chiefs, stools and skins, and Queen Mothers. The author is of the considered opinion that the composition of the chieftaincy tribunals is discriminatory.

Furthermore, the National and Regional Houses of Chiefs and the Traditional Councils are made up of only chiefs. In places where queen mothers attend traditional council meetings, they attend as *ex*

*officio* without voting rights. The rationale is that chieftaincy is a male-dominated institution. Still, the queen mothers should be accorded status as members of those houses, as the definition of chiefs provided by the Constitution includes queen mothers (Constitution of Ghana 1992, Article 277; Chieftaincy Act 2008 (Act 759), section 57(1)).

## [P] THE DESIGNATION OF THE ASANTEHENE

There have been different definitions as to who is a king. The *Oxford Advanced Learner's Dictionary* defines a “king” thus: “the male ruler of an independent state, especially one who inherits the right of position by birth, ‘King Henry VIII’”<sup>5</sup> The above definition is that a monarch of an independent state qualifies to be called a king. The traditional meaning of an independent state is that a political community has its own government, is not subject to the control and authority of a larger body, and is recognized as sovereign by other countries. The above definition and the example it provided were in reference to the Crown of England and, therefore, limit the scope of a king as known in other countries and recognized as such. The dictionary defines a king within the context of England, giving it a parochial meaning.

The *Cambridge Dictionary*, which is another English dictionary, defines a king as “a male ruler of a country who holds this position because of his royal birth: King Charles II, the kings and queens of England. Prince Juan Carlos of Spain became King in 1975.”<sup>6</sup> The office of a king is made coterminous with a country, which is common in some of the European countries such as England and Spain that were not colonized. All the kings in Africa and Asia had their independent states until they were colonized and merged with other independent states to form a country. Per the definition above, they would be disqualified from being called kings. The *Collins English Dictionary* also defines a king as a person with control over a country. It provides thus: “A king is a man who is the most important member of the royal family of his country and is considered the Head of State”.<sup>7</sup> *Collins* followed the definition of a king, which equated a kingdom to a country. The combined effect of the above dictionary definition of a king amply states that where a person's kingdom is not coterminous with a country, that person is not a king but something else.

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<sup>5</sup> *Oxford Learner's Dictionaries: English*.

<sup>6</sup> *Cambridge Dictionary: English*.

<sup>7</sup> *Collins Online Dictionary: English*.

There was a conscious effort to reduce the kings in Africa and Asia during the Victorian era, thus the 63-year reign of Queen Victoria between 1837 and 1901 aimed to have one monarch in England and make all the other kings in the colonies chiefs to subordinate them to the British Crown. The above statement has been well articulated as follows:

During the Victoria era, paramount chief was a formal title created by the British colonial administrators in the British Empire and applied in Britain's colonies in Asia and Africa. They used it as a substitute for the word "king" to ensure that only the British Monarch held the title King.<sup>8</sup>

In the Victorian era, therefore, kings in the colonies were referred to as paramount chiefs. The paramount chief title purportedly conferred on the kings in the colonies is defeated by the fact that there are 70 paramount chiefs under Asantehene, and he cannot share the same title with them. The British introduced the term chiefs to royals who were the heads of their people and, having noticed that some chiefs had many people and sub-chiefs under them, they distinguished the superior chiefs into the category of paramount chiefs, meaning the chief who is above, upwards of, or superior to the other chiefs. The Asantehene, who is superior to 70 paramount chiefs in the Asante nation and presides over them at the Asanteman Council, cannot be a paramount chief unless he sits as the chief of the Kumasi traditional area. There is no superior argument to defeat the position that he is a king when he sits as the Asantehene in the Asanteman Council. Those who do the nomination, election and selection of qualified persons for enstoolment or enskinment and installation remain kingmakers, which applies to the Asantehene, the paramount chief, and other chiefs in the country (*In Re Kwabeng Stool: Karikari and Others v Ababio and Others* (2001-2002); Rattray 1929: 1443-1444).

The Asantehene is the automatic president of the Ashanti Regional House of Chiefs because all 36 paramount chiefs in the Ashanti region are subordinate to him. Furthermore, the definition of chiefs in Ghana separates Asantehene from all other chiefs. Section 58 of the Chieftaincy Act 2008 (Act 759) separates Asantehene from other paramount chiefs. It provides thus: "The following are the categories of chiefs: (a) the Asantehene and other Paramount Chiefs." The Act takes Asantehene to another chief category, recognizing his kingship. The undiluted fact is that the only two chiefly positions above paramount chiefs are king and emperor. A king

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<sup>8</sup> "Paramount Chief: Great Britain's Foreign Office Correspondence with Foreign Courts Regarding the Execution of Treaties Contracted, London, 1821 (110pp)".

reigns over a specific individual kingdom, such as Asantehene, while an emperor controls multiple kingdoms.<sup>9</sup>

The first edition of *Black's Law Dictionary*, which was published in 1891, and is one of the acclaimed law dictionaries, defines a king as:

The sovereign ruler, or chief executive magistrate of a state or nation whose constitution is of the kind called "monarchical," is thus named if it is a man; if it is a woman, she is called "queen." The word expresses the idea of one who rules singly over a whole people or has the highest executive power, but the office may be either hereditary or elective, and the sovereignty of the king may or may not be absolute, according to the constitution of the country (Black 1891: 678).

The first edition of *Black's Law Dictionary* quoted above gives a more precise definition of a king to include a sovereign ruler of a state or a nation to distinguish it from the other definitions, which equate the area occupied by a king with a country. The Asantehene is a monarchy of the Asante Kingdom. The Asante Kingdom is a nation ruled by the Asantehene, whose office is hereditary. By the Constitution of the Republic of Ghana and the laws thereof, he is the traditional ruler over the Asante nation. There is no dispute that the Asantehene was the King of the Asante Kingdom before the Asantes were colonized. The Asanteman Council is analogous to the Asante nation, and the Asantehene's kingship cannot be questioned in any forum.

A modern definition of a king is as follows: "A male ruler of a nation or a state usually called a kingdom; a male sovereign, limited, or absolute monarch".<sup>10</sup> The above definition no doubt affirms the kingship of Asantehene. He is the head of the Asante nation, state or kingdom, which is presently made up of 70 paramount chiefs, including all 36 paramount chiefs in the Ashanti Region, all the paramount chiefs in Ahafo Region, a reasonable number of paramount chiefs in Bono and Bono East Regions, and a stool each in Oti and Eastern Regions. The *Merriam-Webster Dictionary*, one of the best legal dictionaries, defines a chief as: "A king is a male ruler of a nation or state, usually called a kingdom".<sup>11</sup>

The traditional definition of a nation is "a tightly knit group of people with the same culture and language". The definition above clearly describes Asantehene as a king who is the head of a tightly knit group of people in five different political regions of Ghana who share a common culture and a common language. William Tordoff, in his article entitled "The Ashanti

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<sup>9</sup> "What Is the Difference between a King and an Emperor?"

<sup>10</sup> See "King Definition", YourDictionary.

<sup>11</sup> Merriam-Webster Dictionary.

Confederacy”, quoted from Ramseyer and Kuhne, Basel Missionaries, and their experience of the Government of Asantehene Kofi Karikari from 1867–1874, stated thus:

The reins of the Ashantee government are not exclusively in the hands of the King, nor does he possess unlimited power, but he shares them with a council that decides his majesty, his mother, the three first chiefs of the kingdom [Juabenhene, Bekwaihene, and Mamponghene], and a few nobles of Kumasi (Coomassie). This council is called “Asante Kotoko” or Ashantee porcupine, which means that, like the animal of that name, nobody dares touch them.

The Asantehene’s kingship was acknowledged during the Asante Empire and after the Asante Confederacy, where the members of the Asante Kingdom reunited and formed the Asanteman Council. The Asante Kingdom currently exists as a constitutionally protected sub-national state headed by its occupant, the king, in union with the Republic of Ghana (Philip 2007: 281). Section 7(1)(a)(b) and (2)(a) and (b) of the Chieftaincy Act 2008 (Act 759) acknowledges the unique positions of Asantehene and Mamponghene as follows:

7(1)(a) Each Regional House shall have a President who shall, (a) be the head of that House; (b) in the case of the Ashanti Regional House, be the Asantehene. (2) Each Regional House shall have a Vice President who shall, (a) in the case of the Ashanti Regional House, be the Mamponghene.

## [Q] THE FLAG OF THE ASANTE EMPIRE

In Ghana, every paramount chief flies the flag of his paramountcy to show that he is the traditional leader of an area and, for that matter, occupies a traditional location. The Asantes have their flag to demonstrate their autonomy. The flag has three horizontal stripes. The upper stripe is gold, representing its mineral wealth. The middle stripe is black, representing the Asantes as black people. The lower stripe is green, representing its forest. The black stripe has a symbol in its centre, representing Asante unity and royal authority from the 18th century. The Asantehene fly the flag of Asanteman, while the paramount chiefs fly the flags of their respective paramountcies. The Asantehene stands out as a king by virtue of the Asanteman flags he flies (Brendon 2010: 523).

The author of this article does not mean to suggest that there cannot be other kings in Ghana, as traditionally, some of the chiefs had kingship status before the colonial government deliberately reduced them to paramount chiefs.

In conclusion, the Asantehene is a king by all standards; the kingmakers of the Asante Kingdom always consider his nomination, election or selection for enstoolment and installation, and it is fallacious to associate kingship with a country, as most of the kingdoms in the region, by all standards, would have attained country status if they had not been colonized. There are countries on the globe whose land size and population do not match that of the Asanteman Council but have the requirements to be called a country, and there are several of them in the European Council who maintained their statehood by the fact that they were not colonized.

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**Justice Sir Dennis Adjei** is a Justice of the Court of Appeal, Ghana. He was elected as Judge of the African Court in July 2022 for a term of six years. He is one of the Nine-Member Advisory Committee of the International Criminal Court. Justice Dennis Dominic Adjei was elected as the Inns of Court and Institute of Advanced Legal Studies, University of London, Senior Judges Fellow for Common Law jurisdictions for the 2022–2023 academic year. He is a Fellow of the Ghana Academy of Arts and Sciences.

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