

1 Contesting land and custom in Ghana:

Introduction

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Since the 1990s there has been a resurgence of interest in land tenure reform in Africa, which is reflected in a growing academic and policy oriented literature on the subject, and in the implementation of new land tenure reform policies and programmes and new legislation. In policy circles, recent concerns with land tenure are characterised by a distinctive approach, which focusses on building and facilitating the emergence of land markets, on promoting the rule of law and property rights, and on integrating customary and formal land tenures and the 'empowerment' of customary institutions as part of a trend towards decentralised government administration. In contrast to the dominant global approaches to land reform under modernisation during the 1960s, the major focus is now on institutional and administrative reform rather than equitable redistribution of land.

During the 1960s and 1970s land administration in Africa was influenced by the paradigms of modernisation theory, which sought to replace a traditional 'backward' agricultural sector with modern farming based on mechanisation and synthetic inputs. Agricultural modernisation focussed on promoting a cadre of elite or 'progressive' farmers, whose adoption of new technologies would eventually trickle down to the peasantry. Within this modernisation framework customary land tenure was viewed as outdated. It did not provide individual farmers with secure and fungible rights in land. It was argued that this inhibited long-term investment in the productivity of land since users were not sure they would retain ownership over a long period. It also prevented the development of financial and risk markets, in which farmers would be able to use their title to land as collateral for loans and mortgages. Under the influence of modernisation theory, land tenure reform was based on promoting land titling and the creation of state cadastres through which farmers could register their land. However, land registration and titling procedures were cumbersome and expensive and only a tiny minority of rich farmers registered their land. The cost of titling was beyond the means of the majority of smallholders and most of them continued to hold their land under customary or informal arrangements.

With the implementation of structural adjustment programmes and neo-liberal policies in the 1980s, the major emphasis in development policy turned towards opening African economies to the private sector and foreign investment. However, the expansion of foreign investment required an institutional framework which promoted a regulatory framework for transactions in land and which would enable policies promoting free markets to translate into functioning and transparent property and land markets. The requisites for this transformation include easy access to information about transactions, clearly demarcated property rights, the enforcement of property transactions and contracts, and the speedy registration of transactions and ownership changes. Early approaches to land tenure administrative reform under structural adjustment promoted by the World Bank and other donors thus also focussed on promoting land titling and registration (Bruce et al. 1994; Deininger and Binswanger 1999; Feder and Noronha 1987; Feeny 1988; Lipton 1993).

The continued focus on titling and registration was not uncontested. Given that much land lay under customary ownership and that rights in this sector were often contested, the translation of customary land into formal tenure was not easily achieved without establishing procedures for transparency in the recognition of rights in the customary sector. The focus on extending titling was challenged by World Bank sponsored research that looked at the relationship between security of tenure, land markets, and investment in land or agricultural development in various African countries (Bruce and Migot-Adholla 1994). This research argued that there was no direct correlation between titles to land and long-term investment in land, since investment was conditional upon the existence of another set of infrastructures, such as functioning land markets – on which the development of collateral and ability of banks to foreclose on mortgages was dependent – as well as credit and insurance markets. In place of full-titling programmes, the authors recommended ‘community-based’ solutions that would decentralise land administration to communities.

This approach also resonated with approaches to development policy that had developed from the 1970s in Africa, which were critical of the state and state-community relations. These often focussed on the rationality of local level management strategies and institutional frameworks, and on the adverse effects that state interventions often had on the community level. The inclusion of articles by John Bruce in Reyna and Downs (1988) *Land and Society in Contemporary Africa*, and in Basset and Crummey (1993) *Land in African Agrarian Systems*, and the seminal influence of these articles, marked the convergence of these two approaches and the mainstreaming of community-based development approaches into land policy.

This position led to a polarisation of land reform approaches within the World Bank, between those advocating individual land titling as a way of promoting market development, and those supporting decentralised community-based management in response to rolling back the state (Deininger and Binswanger 1999). Eventually, there was an accommodation between these approaches, which has resulted in the incorporation of a framework supporting the recognition of customary tenures within the evolutionary theory of property rights (Deininger 2003). Within this framework it is now accepted that community-based or customary systems are dynamic and changing, and are evolving towards individual property rights systems in response to economic changes. Thus, by supporting these systems and the institutional process of change within them, secure property rights will eventually emerge in a movement from communal rights to extended family rights, and then to the rights of individuals and atomistic nuclear families. The atomistic family farm is seen as the highest evolutionary form of property (Binswanger and Deininger 1993; Deininger 2003; See Amanor 1999 for discussion on the relationship between the family farm and agribusiness).

The dynamics and negotiability of customary relations

The recognition of the dynamism and adaptability of customary land tenure systems originates within social science research. Berry has argued that African land tenure systems are adaptive arrangements which are negotiated, fluid, open, and ambiguous (Berry 1993). Rather than being fixed and conservative, customary relations are seen as being perpetually negotiated by various actors who use their social networks to redefine and renegotiate customary relations (Berry 1993 and 2001). People invest in social status and networks of community and kin and use their social status to make claims on resources including access to land, demands on labour, and the support of clients. Thus, mobility and fluidity are achieved through social skills in negotiating rules and the definition of what constitutes the customary, which is ever changing in relation to these social networks. The fluidity of the relations mediate markets and the planned interventions of states, which become another potential source of claims on resources. In contrast with policy approaches which seek to establish clearly defined property rights, Berry argues that land rights within the customary sector have been ambiguous over long historical periods and that this has not prevented people from investing in production and in social networks to establish their access and control over property.

Lentz (2006c) has similarly argued that customary rights in land are often deliberately ambiguous to allow room for further re-interpretation or renegotiation. Thus, they accommodate different perspectives and different interests. Juul and Lund (2002) argue that negotiability of rules and relations is one of the fundamental characteristics of African societies. Property rights are institutions in which people's access to, use of, and control over land are regularised and readjusted in the ongoing reconstruction and transformation of social relations. Social identities are contested zones in which people's claims are constantly being disputed and renegotiated. They argue that far from being rooted in ascriptive social relations, customary relations are constantly changing and reaffirmed. Rather than resulting from the static nature of tradition, stable and robust customary relations result from the constant reaffirmation of existing social relations. Thus, customary relations are only as enduring as their on-going re-enactment, negotiation and renegotiation. Juul and Lund argue that this fluidity of the customary not only results from the nature of the customary but also from the interaction between the customary and other institutions, particularly the existence of legal and institutional pluralism and an unwillingness to fix the rules and ensure constancy and compliance. This encourages people to renegotiate identities and social relations to either confirm existing arrangements or to change them. Thus the customary involves a continuous negotiation within and without. It involves a trade off with state institutions in which both sectors attempt to anticipate each other and redefine themselves against the institutional configurations and changes within the other. This results in a state of affairs in which both sectors incorporate elements of the other and in which the formal and informal continually adapt to each other and construct their identities in each other's image. The customary is frequently as modern as the formal sector, and the modern legal framework often bases itself on developments within the informal customary sector.

Harmonising customary and state relations

The emphasis on the flexibility, negotiability and adaptability of customary land tenure, and its social agency or embeddedness in social relations has generated a new policy oriented research which focusses on the institutional relationship between formal and informal land tenure systems. This research sees the customary as largely being inclusive and equitable against a state sector which is exclusive, inequitable, and favours the interests of political elites. While the state sector formulates rules and regulations about land, the majority of land users hold land on customary tenure, in systems that lie beyond the reach of the state

and beyond formal legal frameworks. This approach advocates the harmonisation of formal and informal systems through greater recognition of community institutions for land management and through the decentralisation of land administration to community organisations, which enables rural people to negotiate and manage their own solutions for securing access to land (Lavigne Delville 2000; Toulmin and Quan 2000a). It is argued that increasing devolution of land administration to local and customary-based institutions will result in a more equitable management of land, which allows rural people to be involved in the negotiation of rights to lands. Increasing recognition of the customary will also result in its greater accountability and the transparency of land markets at the local level, which will have to conform to criteria negotiated between local institutions and the state.

Social differentiation and power

Several researchers have questioned the conception of the negotiability and equity of customary land tenure systems. They stress the fact that negotiators or contestants in customary land matters seldom operate on level playing fields (Amanor 1999; Cousins 2002; Daley and Hobley 2005; Juul and Lund 2002; Lund 2000; Peters 2002; Shipton 2002; and Woodhouse 2003). Some have more negotiating power and more defining and contesting powers than others, and not everything is negotiable. As Lund (2008:2) puts it, '[t]he openness and contingency of land issues in Africa make absolutely central the questions of how and to whose benefit settlements are reached, who has the capacity to endorse or enforce them, and how and by whom they are challenged'. From a gender perspective Whitehead and Tsikata (2003) argue that customary systems often embody patriarchal values and power, which seeks to exclude women from land. Women are not well positioned within customary political institutional frameworks or within local government frameworks to represent their own interests. Thus, the harmonisation of the customary with the formal, and the turn to the customary, often further marginalise women's rights, and serve to legitimate institutions that undermine women's rights to land. They argue that in many respects, rather than decentralisation to community based structures rooted in customary concerns, a state institutional structure in which gender concerns can be brought to bear can offer better prospects for women's land rights to be addressed.

In a critique of the framework of evolutionary property rights and communitarian perspective on land administration, Amanor (1999) has argued that the qualities which are adduced as the flexibility and negotiability of customary land often emerge from the interests of the

political elites in rural and urban areas who are able to continually re-define customary tenure to meet their interests and to dispossess rural toilers of their access to land and natural resources. He argues that since the colonial period governments have recognised and invented the control of land by chiefs as a strategy for gaining control over land, natural resources, and agricultural production at the expense of the poor peasantry. While the customary continually changes in relation to transformation in policy and the economy, the negotiations over the customary (or investments in social networks able to carry out processes of redefinition) are limited to those with wealth and power, and elude the rural poor who increasingly find themselves excluded, dispossessed, and marginalised by the customary. In a similar vein Pauline Peters (2004) argues that there is mounting evidence of increasing social differentiation within Africa and expropriation of land by local and non-local elites. Peters (2004:270) urges that:

More emphasis needs to be placed by researchers on who benefits and who loses from instances of 'negotiability' in access to land, an analysis that, in turn, needs to be situated in broader political economic and social changes taking place over the past century, particularly during the past thirty or so years. This requires a theoretical move away from privileging contingency, flexibility, and negotiability that, willy-nilly, ends by suggesting an open field, to one that is able to identify those situations and processes (including commodification, structural adjustment, market liberalization and globalization) that limit or end negotiation and flexibility for certain social groups or categories.

Several studies within Ghana show increasing social differentiation within rural areas, increasing conflicts over land and rifts between rural elites, chiefs and producers, which question notions about the negotiability of customary land. Tonah's (2002 and 2006) research in Northern and Middle Ghana analyses the rising land use conflicts resulting from intense competition between indigenous farmers and migrant Fulani pastoralists for the most fertile land. In these areas chiefs prefer to give land to migrants, especially the pastoralists who are rich in cattle and can afford to make substantial payments as settlement fees. Allocating land to migrant pastoralists has become a 'gateway to prosperity' for many chiefs. As a result, farmers do not see traditional authorities as impartial dispute settlers, but believe them to take sides with stockowners and pastoralists because they benefit directly from their presence and activities in the area. In the Sefwi area of Western Ghana Boni (2005; 2006) has shown that chiefs have consistently changed and revised the conditions on which land has been given out

to migrants, and how recently redefined customary norms apply retrospectively to previous contractual agreements. Thus, transactions which were understood as the alienation of land have been re-interpreted as the payment of tribute for land leases, and amounts paid as tribute have been constantly inflated. Attempts to redefine customary tenure have often been resisted by migrants, and chiefs have mobilised disgruntled youth within the area to engage in violent confrontations with migrants as a way to force them to accept the new impositions or to dispossess them of the land. When land was first given out to migrants, it had little scarcity value and was given on favourable terms, since the migrants, unlike locals, had the capital to invest in cocoa farming. The early migrants thus opened up the area for development initiatives, with the state investing in areas which became important cocoa growing centres. The opening up of these areas brought an influx of new migrants and new demands for land, which raised the value of land. As land values increased, chiefs found new ways to augment their revenues from older lands transacted on more favourable terms to the farmers, particularly when the already allocated land began to exceed remaining unclaimed forests. In this context, the ever-changeability of customary land does not create security for cocoa farmers but creates increasing insecurity as chiefs are increasingly empowered over customary land. Similar experiences have been documented for Côte d'Ivoire (Chauveau 2005).

Ubink (2008a) has described how, in peri-urban areas around Kumasi with a growing demand for real estate, chiefs are attempting to redefine customary tenure as a way of dispossessing farmers on the perimeters of towns, to give out the land to wealthy urban dwellers willing to pay large amounts for residential land. Ubink documents differing relations and outcomes in different settlements depending on the 'enlightenment' of the chief, which serves to highlight the lack of accountability of chiefly authority and the ability of chiefs to redefine customary relations to meet their interests. Ubink argues that the failure of the state to hold chiefs accountable results in a complicity in failing to establish accountability in customary land tenure.

Current land administration initiatives

National laws and government policies constitute a structure of opportunities for the negotiation of rights and redistribution of resources, although the result is neither coherent policy implementation nor a complete disregard of law and policy (Lund 2008:4). Several policy initiatives have been launched in African countries during the 1990s to create new institutional land management frameworks that give greater

roles to customary institutions and authorities and create institutional linkages between state and customary systems (Benjaminsen and Lund 2003; Toulmin et al. 2002; Toulmin and Quan 2000a).

Within Ghana the main vehicle for attaining land administration reform has been the Land Administration Project (LAP). The stated aim of the LAP is to lay the foundation for an accountable, harmonious, and transparent customary land administration system from the bottom up which will then form the bedrock for an enhanced formal land administration in Ghana. This is done with the intention of both enhancing the tenure security of smallholder farmers and facilitating speedy transactions and registration of land to enable investors to purchase land in Ghana with confidence. To achieve an effective registration of land in Ghana, administration is being decentralised to Customary Land Secretariats (CLSs), which are associated with traditional rulers. At present a number of pilot secretariats have been established in different parts of the country. By placing the CLSs under the authority of chiefs the LAP ignores the fact that chiefs often exercise customary privileges and use their powers to redefine land relations in their interest and to dispossess the powerless. The LAP has chosen to work within the existing power structures of chieftaincy rather than to attempt to create a more democratic framework for land management. This enables the traditional elites to further their interests in land. There is evidence that chiefs are resisting attempts to introduce more transparent and accountable procedures for recording their incomes from land transactions and are using the CLSs to gain further control over land (Ubink and Quan 2008).

LAP implementation began without the promotion of systematic dialogue in Ghana about the form and content of land reform, although a series of ten regional land policy consultation fora and one national forum took place in late 2007. The LAP has largely been implanted through recommendations of foreign consultants and the national land sector bureaucracy. It fails to take into account the considerable recent research on customary land within Ghana and the critique of neo-liberal land policies. It is only following the adoption of the LAP that a major research project has been funded in Ghana to examine land policies, the ISSER Land Tenure and Land Reform Project, which is producing a large number of case studies and generating a debate through a number of workshops.¹ Within rural areas the incorporation of the CLS under the authority of traditional authorities has inhibited debate about land, since farmers who can be dispossessed by chiefs may fear being critical which might result in the wrath of chiefly power. In contrast to the communitarian perspective which presents the customary as the site of open and equal negotiation, rural producers are often wary to carry their land cases to traditional authorities, since they are

seen as parties with particular interests in land who may use the opportunity to extract revenues from the litigants or dispossess them of the land, and often prefer to appeal to state institutions, if the disputes cannot be settled within extended family and village institutions (Crook et al. 2007). Paradoxically, while the communitarian perspective aims to create more negotiability in land and voice for the rural poor, its attempt to harmonise the customary with the formal often closes down the multiple institutional choices available within the situation of institutional and legal pluralism and forces rural land users to deal with customary authorities who are not democratically elected or accountable. This carries the danger of further marginalising and disempowering marginalised groups, including the rural poor and the poorer sections of women, youth, and toiling migrants.

The scope of this work

The various contributions to this book critically examine notions of customary land tenure. They examine the relations between the customary and statutory tenure and the institutional interactions between the state and traditional authorities in land administration, addressing issues of power, economic interests, transparency, accountability, conflicts and notions of social justice, equity, and negotiation. They examine both past and contemporary policy issues, and present a number of case studies with implications for the integration of customary institutions into the framework of state land administration. The first four papers by Berry, Amanor, Boni, and Tonah are concerned with the nature of customary institutions, historical changes in the customary, and the ways in which notions of the customary are manipulated by local elites and the state and are subject to political reinterpretation, redefinition, and invention. The next two papers by Crook and Ubink are concerned with local perceptions of customary and state institutions involved in land management, the ways in which the plurality of institutions are negotiated and utilised, issues of accountability, and the role of the state in enforcing accountability and transparency in customary settings. The final chapter by Quan, Ubink, and Antwi examines problems of implementing contemporary land policy reform in the Land Administration Project (LAP).

In the first contribution to this volume, Sara Berry analyses the salience of history in local struggles over property and power through a comparative study of socio-economic and political change in the former cocoa frontiers of southwestern Ghana and Côte d'Ivoire. In both countries, the process of forest clearance and tree crop cultivation was carried out by migrant farmers. While the first migrants in both countries

encountered little difficulty in getting access to land, the terms on which they did so and their subsequent relations with host communities differed significantly. In Ghana immigrants obtained cultivation rights from local chiefs, for which they paid substantial annual payments. In Côte d'Ivoire farmers obtained land from village elders or family heads, and relations between hosts and migrants were discussed in terms of the *tutorat*, a form of guardianship which perpetuates a patronage relationship between autochthones and strangers, serving as an institution for transacting land with migrants and incorporating them into the local community based on a moral economy of obligation and reciprocity, including presentation of gifts and mutual assistance at times of funerals and other social events.

Within Ghana the state did not interfere in local tenure arrangements between hosts and migrants, while in Côte d'Ivoire the state intervened to ensure migrants gained access to land, while assuring the host communities that their claims on the land remained intact. This was done ambiguously, without abolishing or reforming customary tenure or customary laws and conventions. The Ivorian president Houphouët-Boigny merely announced in 1963 that 'land belongs to the one who develops it'. On the ground, party cadres and local officials followed his lead, reassuring local villagers of the moral force of the *tutorat*, while settling individual disputes in favour of the migrants who produced the greater part of the cocoa that fed the state's coffers. The claims of the migrants were dependent upon the patronage of the state. This generated social conflicts and tensions based on notions of entitlement, ancestry, origins, and interpretations of history, as well as the renegotiation of the *tutorat*. Local communities maintained their claims to land on the basis of custom while migrants made claims on the basis of their relationship with the state. With increasing shortage of land in Côte d'Ivoire, the intensification of rural struggles provided fertile ground for political mobilisation with the return of multi-party elections at the end of the 1980s. This coincided with ethno-regional antagonisms over national power and political exclusion, which brought 'ethnic' conflicts into electoral politics with disastrous effects. This was further exacerbated by the crisis in the cocoa-growing areas and neo-liberal insistence on the promotion of a single model of 'open' markets and multi-party elections, and by political opportunism on the part of the main competing political factions. While many of these conflicts over 'ancestral' belonging and 'traditional' prerogatives also occurred in Ghana, they were fought along more localised lines. By placing contemporary land issues in historical and comparative perspective, Berry underscores the connections between land, politics and citizenship, and the directions in which they change under different policy and political initiatives.

In the second chapter Kojo Amanor also deals with processes of transformation and contestation of customary law. He argues that the characterisation of customary land relations is a product of the dominant interests of political alliances rather than a historical fact. He shows how the depiction of customary relations as based on communal forms of tenure – in which the chief holds the land in trust for the community – is a political invention. This invention was created in the colonial period firstly to constrain the development of land markets, which were viewed by the colonial authority as a threat to the peasant-based export crop economy which they sought to promote, and secondly to empower chiefs on whom the system of rural administration by Native Authorities depended. During the nineteenth century, there was marked social differentiation within the Gold Coast, and considerable transactions in land took place. Under colonial rule the colonial administration sought to protect customary land tenure systems from the market by vesting lands in paramount chiefs and by preventing the rise of a class of indigenous land speculators. Since indigenous community members had an inherent right to use land for free, chiefs who wanted to gain revenue alienated land to outsiders. This resulted in the rapid alienation of land to migrant farmers, hungry for land to invest in cocoa farming and foreign concessionaires. This has often resulted in land scarcity for local poor farmers, youth, and women, as unused land is alienated to migrants and appropriated for sale. It often creates insecure access to land for migrants, who find that as land becomes more valuable, chiefs attempt to renegotiate the terms of ownership.

Amanor argues that present policy initiatives, which attempt to make land distribution more equitable and transparent by strengthening customary forms, are misplaced, since the customary forms are reinvented traditions which express the interests of elite factions. He illustrates this by showing a multiplicity of customary forms, which are marginalised and do not enter into policy frameworks. Contemporary notions of customary tenure assume that notions of ownership or rights over particular plots of land are based on entitlements to fixed plots of land, mapped out by customary rulers and family heads. However, in many farming systems based on shifting cultivation, rights to land arise out of the changing dynamics of the rotation of land, which requires constant movements over changing plots of land and negotiations between neighbouring farmers. Farming plots expand and retract according to the farmers' access to labour, soil fertility, the concentration of farmers, conflicts over resources, and other factors. Under these types of farming systems land plots are not easily mapped and digitised, since they are constantly changing. However, within these areas, contemporary notions of customary land ownership open up the alienation of land and dispossession of shifting cultivators to a class of wealthy local and

migrant tree planters. Amanor argues that notions of customary privilege are often used by an alliance of local elites, aspiring investors, and agents of the state to justify accumulation and the dispossession of the poor and marginalised of their land.

Amanor's contribution shows that the customary realm is not independent of the state. On the contrary, the shaping and reconstruction of custom by local elites often take place through a close alliance with the state. Economic and administrative considerations have led the state to side with the powerful elite, accepting claims of chiefly control over smallholders' claims for livelihood rights, and the demands of paramount chiefs over local chiefs, ignoring historical evidence pointing in other directions. The state institutions justify their actions with the discourse of egalitarian communities and traditional leadership in the best interest of the entire community and nation. In reality, however, chiefs often use their power to expropriate and profit from community land. Thus, state policy that strengthens chieftaincy and chiefly control over land, and ignores contested definitions of the customary presented by other interest groups, will tend to promote highly unequal development in rural areas and ignite considerable social turmoil and upheaval.

Stefano Boni's contribution continues with the topic of struggles around chiefly prerogatives. The chapter is based on field study in the Sefwi Wiawso and Juabeso-Bia districts of the Western Region. He describes disputes in four different realms: conflicts among chiefs, disputes concerning the rights of immigrant farmers, age-related confrontations, and conflicts concerning the determination of appropriate compensation for wives' marital toil. In all these realms Boni shows that the customary tenure system is ambiguous and constantly shifting, and that this ambiguity and indeterminacy are being defended and preserved by the chiefs, the people with interpreting powers. This allows for differentiation of norms according to people's ethnicity, ancestry, gender, and age. The customary elite who control the administration of land consists of the same people who have interpreting powers. They are therefore able to preserve and exploit the unequal conditions and profit from new values in land. This becomes especially evident in the cases concerning immigrants; when chiefs try to unilaterally change the conditions of land 'contracts' with immigrants, disputes arising from these redefinitions are mainly dealt with in the 'courts' of the very same chiefs. This shows the near impossibility to circumvent chiefly arbitration, as well as the lack of alternative and more impartial channels for redress for the immigrant farmers.

The disputes within these four realms again clearly show the impact of the state on customary land tenure – sometimes through certain direct actions, but often also through decisions *not* to intervene in local struggles. Boni argues that the state's actions should be seen within

the existent 'land tenure orthodoxy'; a discourse of egalitarian communities, traditional leadership administering land on the basis of a clear set of unchanging criteria of land allocation in the best interest of the entire community, in which conflicts are considered as misunderstandings of the interpretation of tradition. The dominant idiom and interpretation of traditions are constantly questioned by the marginalised groups, but they often do not find accessible platforms through which they can address their grievances and complaints to state agencies.

Steve Tonah presents a case study of the village of Biu and its neighbouring communities in the Kassena-Nankana District of northeastern Ghana. Tonah traces the transformation of land tenure arrangements in that area, in the context of, first, colonial rule and then the development of a large-scale state-sponsored irrigation project from the 1970s. Both periods witnessed continuing struggles between earth priests, chiefs, and state agencies for control, allocation and management of lands. Prior to colonial rule, settlements in the area were under the political and religious headship of earth priests (*Tengnyono*), the traditional leaders of the first-comer clans, who would also function as the custodians and administrators of the land. Each clan within a settlement was autonomous and governed by its own clan head, who would consult the earth priest in cases of disputes and for general directions on the administration of the clan. During the colonial period, the various clan heads were transformed into headman, and later chiefs, whom the colonial government regarded as the political representatives of the people. This sidelined the earth priests and altered the balance of power. The various hitherto independent and autonomous chiefs were later grouped into a hierarchy with the creation of village, divisional, and paramount chiefs, which led to a great number of conflicts among them. The declaration of all lands in Northern Ghana as 'public lands', under the management and control of the Governor in 1927, further curtailed the powers of the earth priests and chiefs, as their powers with respect to land management were made subordinate to that of the colonial government. However, the control of land by the government was only effective in the major towns. In the rural areas, land continued to be administered according to 'customary law'. Since 1979, when the lands were de-vested and returned to the ownership and control of the 'traditional owners', there has been an intense competition between the earth priests and chiefs over who has allodial title to the land.

In 1974 the government decided to construct an irrigation project in the research area. Land used for the construction of the irrigation facility was expropriated by the government without consulting the landowners, and the payment of compensation to the landowners, through the chiefs, was far from adequate. In all matters concerning land the

government dealt exclusively with the chiefs, bypassing the earth priests, which enabled the local chiefs to gradually legitimise their hold on land in their traditional areas with the connivance and active support of the state. For instance, the Land Allocation Committee, responsible for the allocation of zones and plots of land on the project, included chiefs, not earth priests. In 1987, management was transferred from Land Allocation Committees to Village Committees, which generally include earth priests. With the increasing participation of the communities in the project, the earth priests seem to be regaining part of the authority over land that they had lost to the state. This again increases the contestations between chiefs and earth priests, as membership of the Village Committee offers opportunities for economic gain and for ensuring political support and patronage within the community through the allocation of irrigation plots. Tonah's paper highlights the heavy interference of governments since the colonial period in local power structures and customary land management in Northern Ghana and the ways in which chiefs and earth priests have struggled to capitalise on new opportunities to gain control over land and access to power.

Richard Crook examines the plurality of dispute settlement institutions (DSIs) in Ghana and the DSIs to which customary landholders turn if their land rights are threatened by the state, local government, or the chief, or if they come into conflict with other parties. There is a wide range of possible dispute settlement institutions to which they can turn, ranging from state courts and administrative agencies through superior chiefs' customary courts to village level arbitrations by village chiefs, family heads, elders, and community leaders. Given the reality that most landholders in practice use mainly local and customary forms of dispute resolution, and given the congestion and huge backlogs in the state courts, state policy in Ghana now favours an emphasis on encouraging these local and customary DSIs. Crook examines the legitimacy, effectiveness, and inclusiveness of these customary and informal local level systems of land dispute settlement based on case studies in peri-urban Kumasi (Ashanti Region), Asunafo District (Brong-Ahafo Region), and Nadowli South District (Upper West Region). He examines their viability as alternative dispute resolution (ADR) institutions, and their ability to reduce the backlog of land cases facing the state courts.

In his contribution, Crook clearly shows the influence of the colonial government on the courts of superior chiefs. Ranger's 'invention of tradition' thus also applies to the functioning of customary courts (Ranger 1983). The bad reputation of these courts, often accused of corruption, oppressive procedures, high fees, and lack of accountability for funds, shows the ambiguity of this legacy. Crook furthermore shows how the

ADR orthodoxy ignores differences in status and power (cf. Nader 2001), the paramount importance of which is also demonstrated in the contributions of Amanor and Boni. He argues that superior chiefs' courts do not in fact seem very suitable as ADR solutions, since those with land disputes in peri-urban Kumasi and Asunafo District tended to resort to local state courts in preference to superior chiefs' courts, especially if they were non-locals.

Janine Ubink examines claims and conflicts between chiefs and smallholders over the ownership of land in peri-urban Kumasi. The chiefs play a central and often negative role in the conversion of farmland to residential land, causing loss of land, jobs, and income for local citizens. A discussion of local contestations over land rights in peri-urban Kumasi reveals how chiefs abuse their position as guardians of stool land and authorities in the field of customary law to claim changes in the unwritten, ambiguous customary law. Resistance of local citizens against the chiefs' land conversions takes various forms, but hardly goes through DSIs: chiefs' courts are avoided since the chiefs are themselves a main party in these disputes; family elders cannot hear cases involving chiefs; and state courts are unsuited because of their long delays in delivering judgements. In general, popular actions of resistance are often not very effective due to a combination of eroded traditional checks and balances and the 'policy of non-interference' of the current government. Ubink shows in her contribution that the current government is not willing to place any checks and balances on the customary realm and to a large extent leaves the interpretation of local tenure arrangements to the local elite, for political and economic reasons, and as a result of close connections between state elite and chiefs. Again, we see the government justifying its non-interference with an appeal to local checks and balances.

In the second part of her paper, Ubink examines the relationship between the negative role of chiefs in land administration and people's views on the institution of chieftaincy and the other tasks and activities of chiefs – including involvement in local development, sustaining law and order, and the performance of traditional religious practices. Her data reveal a clear correlation between chiefs' style of land management and overall popular assessments. These overall assessments of chiefs, however, show no correlation with the assessments of the institution of chieftaincy, a fact that leads Ubink to conclude that people's opinion about chieftaincy hardly depends on the performance of current village chiefs, or – to put it differently – the way a chief governs barely reflects on the institution.

The last contribution to this book, a joint paper by Julian Quan, Janine Ubink, and Adarkwah Antwi focusses on the policy response to these problems. It describes the Land Administration Project (LAP)

Ghana, a long-term program with multi-donor support, started in 2003, that intends to reform land institutions and develop land policy so as to provide greater certainty of land rights for ordinary land users and enable greater discipline and efficiency in the land market. The reform seeks to divest government of responsibility for the management of stool lands and to transfer this to Customary Land Secretariats (CLSs). In initial project documents, these CLSs were characterised as local secretariats with appropriate governance structures to assure institutionalised community-level participation and accountability in the use of stool land and the revenue it generates. During the pilot implementation phase, however, government made the political choice that CLSs should fall under the aegis of traditional authorities rather than opting for more community based approaches to the management of customary land.

Quan et al. discuss a number of difficulties encountered in the implementation phase of the LAP that lie both in the customary realm and in the state sphere. Considering the far from undisputed position of the chiefs in Ghana and their continuous renegotiation of chiefly prerogatives, the unwillingness of chiefs to enhance transparency and accountability of the new CLSs – the first obstacle described by Quan et al. – does not come as a surprise, as chiefs are profiting from these attributes of customary land management. The implementation of LAP is furthermore hampered by the resistance of staff of land sector agencies who are supposed to implement the LAP in such a way that it will decrease their own importance and revenue – both officially in the forms of stipulated fees and unofficially in the form of bribes. The implementation of donor-supported programs as an integral aspect of an existing ministry's business – mainstreaming – furthermore risks the subjection of the project to motives of politicians and officials who aim to utilise and allocate project resources in such a way as to legitimate their authority, entrench bureaucratic self interest, resist institutional change, and maximise votes, without necessarily having regard to objectives of equity and/or efficiency. A last obstacle in implementation links up with earlier papers: the unwillingness of the government to impose checks and balances on chiefs and to command their accountability. Quan et al. conclude that the approach taken in the first years of LAP amounts to the further empowerment of chiefs through the resourcing of CLSs without progressing appropriate checks and balances. This brings significant risks that powerful customary leaders may utilise CLSs to consolidate their political control over land, which will have the perverse effect that people are disenfranchised rather than empowered.

The various contributions to this book are characterised by two concerns: a focus on processes of transformation and contestation of cus-

tomary land tenure; and the relationship and interaction between customary institutions and state institutions. They examine political dimensions of customary tenure and point to the complexity of social, economic, and power relations involved in the harmonisation or articulation of customary and state sectors. They argue that customary institutions have always involved power struggles to define the control of land, as well as alliances and interactions between state and local-level actors to legitimise and redefine the customary. The papers examine the contestation over rights to land between competing traditional authorities, between chiefs and cultivators, between chiefs, local youths, women, and migrants, as well as the various ways in which concepts of belonging, ancestry, history, and family relations are used and reinterpreted to validate claims.

Tonah describes the considerable impact of the colonial and post-colonial state on customary land management in Northern Ghana through its policy of placing land in the north under the colonial authority, while implementing a policy of rural administration based on chieftaincy. This marginalised the control that earth priests exercised over land and has led to struggles between earth priests and chiefs to redefine and clarify customary ownership of land. The flow of these local power struggles is influenced by the changing framework of development policy and projects and the various political alliances built by government to initiate development activities. Decisions by the state not to intervene in customary tenure may also influence the nature of customary tenure, allowing chiefs to redefine customary land in their own interests as long as these do not contradict state policies. Both kinds of state influence – direct local interventions as well as decisions not to intervene in local struggles – can be found in the case described by Boni. Amanor similarly argues that the existing definitions and transformations of customary tenure result from an alliance between state and traditional rulers that represents elite interests and justifies a process of dispossession and land appropriation by elites in the ‘national interest’. This is echoed by what Ubink calls the ‘policy of non-interference’ and Quan et al.’s description of the current government’s approach to land tenure reform in the Land Administration Project.

The papers by Crook, Ubink and Quan et al. also focus on institutional accountability and popular perceptions of accountability. While Crook focusses on the legitimacy and accountability of dispute settlement by chiefs, Ubink analyses a wide panoply of chiefly functions. Both Crook and Ubink point to the need to place administration by traditional authorities within a broader framework of plural institutions involved in administration and local government. This leads Ubink to conclude that policymakers who wish to build on customary systems should critically assess chiefly rule – and popular perceptions of it – in

various fields, taking into account the performance of other actors in these fields, including local government representatives. Based on such assessments, governments should determine the desirability to recognise, formalise, and enhance or curtail the various functions of the chiefs. Quan et al.'s paper demonstrates, however, that this has not been the approach taken in the implementation of the current Land Administration Project, which has tended to empower traditional authorities to evade downward accountability. Berry, on the other hand, cautions that state interference in customary arrangements and attempts to establish a national framework for regularising customary relations can exacerbate local level tensions, drawing them into wider political conflicts which mobilise ethnic and xenophobic emotions to achieve political ends. These types of conflicts can ultimately result in civil war and considerable loss of life.

Note

- 1 Drafts of papers can be found on line at: http://www.issr.org/index.php?option=com_content&task=view&id=24&Itemid=11.