Between Customs and State Law
Land management in peri-urban Kumasi, Ghana

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Introduction

Indigenous rights have gained increasing recognition in national and international discourse, policy and law in recent years and have been widely debated in scholarly literature (see, for instance, Kuper 2003; Nettheim *et al*. 2002; Oomen 1999; Price Cohen 1998). One salient element of the recognition of indigenous rights is the revaluation of indigenous institutions of leadership, including traditional leadership or chieftaincy. Chiefs are being put forward as a solution to the limited reach of government into the locality and its low performance concerning the principles of good governance (see Brempong 2001; Lutz and Linder 2004; van Rouveroy van Nieuwaal 1995; World Bank 2003a). While the standard view has been that chiefs are an historic burden on the road to modernity, they are now widely seen as the prime movers in the fields of development and natural resource management who can preserve a reasonably inclusive and equitable system (Daneel 1996; Lutz and Linder 2004: 3). Another element highlighted in the debate on indigenous rights is the reappraisal of customary law as a local regulatory system. And there is growing recognition that, for many people in developing countries, customary norms form the lived reality whereas state law and state courts are remote, strange, expensive and difficult to access. Policy and law should start from existing realities and systems since the top-down imposition of policy and law marginalizes people and exacerbates poverty (DFID 1999: 37; Platteau 2000; Toulmin and Quan 2000: 13-15).

This revitalization of chieftaincy and customary law is relevant to present-day African societies where, traditionally, weak states go hand in hand with strong local communities (Oomen 1999: 77), and where legal and institutional pluralism are dominant features of the governance landscape. Many African countries are strengthening or formalizing the position of their chiefs, and thereby accepting the rule of customary law.[2] The revaluation of chieftaincy is also demonstrated by the World Bank's recent allocation of US$5m directly to the *Asantehene*, the traditional king of the Asantes in Ghana, for ongoing development projects.

Diverging from the indigenous rights trend, this contribution takes a more critical stance on chiefs and customary law. This critique emanates from research on customary systems of land administration in peri-urban Kumasi, the capital of the Ashanti Region of Ghana.[3] In these areas, as in other peri-urban areas of Ghana, there is rising demand for residential land due to increasing urbanization and population growth. In response, the chiefs are rapidly converting communal agricultural land to residential land, which they then lease to outsiders. This is leading to insecurity among community members: they lose their agricultural land, which renders them immediately or ultimately landless, and they are no longer able to grow their own food and generate income by selling the surplus at the market. Most of the (often poorly educated) farmers are becoming unemployed or are resorting to petty trade as food prices rise in these communities, which in turn leads to a higher cost of living. Furthermore, local people cannot compete for a plot of land with outsiders employed in the formal sector, which makes it hard for them to find land for residential purposes in their own village. Despite the fact that the chiefs are customarily and constitutionally obliged to administer the land in the interests of the whole community, they generally display little accountability for any money generated and most indigenous community members are seeing little or no benefit from the leases. The customary

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[2] E.g. Malawi (Palmer 2000), Mozambique (University of Sussex MZ01) and even South Africa with its specific history of group-based discrimination and the prominent role of chiefs in the Apartheid system (Oomen 1999: 73).

[3] Ghana has fully recognized the chiefs as administrators of all customary land (Article 267(1) of the 1992 Constitution of the Republic of Ghana). Customary land makes up approximately 80% of the land area in Ghana (Alden Wily and Hammond 2001: 46-48). In the Ashanti Region, the traditional system is still very important and chiefs are highly revered.

land users are only rarely – and then very inadequately – compensated for the loss of their farmland, and in most villages only a meagre part of the money is used for community development.[4]

This account of customary land management in peri-urban Ghana poses some serious questions regarding the merits of customary systems and the presumption that customary law offers security to members of a customary community and that chiefs represent developmental, sustainable and somewhat equitable and inclusive governance. This contribution will analyse the merits of traditional governance by chiefs on the basis of customary law in peri-urban Kumasi by studying practices of land management in nine villages.[5] It first focuses on how Ashanti chiefs are trying to legitimate their actions by appealing to customary law, and how community members are trying to resist their chiefs' actions and claims. These local struggles and negotiations for land cannot, however, be disentangled from the discourse and struggles over property, power and meaning that are taking place at various levels of chieftaincy and government. An analysis of the mutually constitutive relationship between government and state law on the one hand, and chiefs and customary law on the other will thus be an essential component of any study on the functioning of a customary system within an environment of legal and institutional pluralism. This contribution shows that the success of local resistance to chiefs' misadministration of land is often limited due to a lack of traditional checks and balances and the government's present policy of non-interference regarding matters of chieftaincy. It then concludes with a discussion of the three main factors that explain how chiefs are able to profit so flagrantly from communal land. These factors lie within the traditional system itself, its interaction with the government and the nature of customary law respectively. The research data were gathered in 2003-2004 through participant observation, semi-structured interviews and a survey undertaken during the fieldwork period.[6]

Local struggles and negotiations for land

Chiefs

A large proportion of land in Ghana is managed by traditional authorities[7] on the basis of customary law (Larbi *et al*. 1998: 1). In the Ashanti Region, the chiefs are caretakers of all customary land or stool land.[8] According to representations of customary law in case law, textbooks and legal discourse, Ashanti customary convention holds that the ultimate title, also called the allodial title, of every piece of land is held in common by the members of a community, and the chief is the custodian of such land. Chiefs are customarily and constitutionally obliged to administer and develop the land in the interests of the whole community.[9] Stool lands are, therefore, communal property. As long as there is vacant

[4] Cases of chiefly appropriation of communal land have been documented for many areas and historical periods in Ghana, see Abudulai 1996, 2002; Berry 1993: 112; Crook 1986; DFID 2001: 28-30, D13-14 (within this same research project it was found that of the 364 farms in peri-urban Kumasi taken away from community members for housing development, only 7% of farmers had received compensation, and most of those were related to the royal family in the village, as described in Kotey and Yeboah 2003: 21); Firmin-Sellers 1995; Gough and Yankson 2000; Hammond 2005; Kasanga *et al*. 1996; Kasanga and Kotey 2001: 18; Kotey and Yeboah 2003: 3, 19, 21, 53; Maxwell *et al*. 1998; NRI and UST 1997: 91; Wehrmann 2002; Alden Wily and Hammond 2001: 69-73. Although the new lessors benefit from the land conversions, they are also affected by the lack of community improvement since the areas where they are building their houses are seldom serviced with electricity, roads or sewers. Furthermore, the numerous accounts of multiple sales of the same piece of land to different buyers show the vulnerable position buyers find themselves in.

[5] These nine villages housed a total of twelve land-owning chiefs. My main village of study was Besease, approximately 23 km from Kumasi on the Accra road. In addition, I studied four other villages on or near this road – Jachie, Tikrom, Adadeentem and Boankra – and four villages on the road to Obuasi – Ahenema-Kokoben, Kotwi, Brofoyeduru and Nkoransa. All the villages are within a range of 10-40 km from Kumasi.

[6] To protect the identity of local informants, the interviewees' names are not given. They are identified as a villager, a Unit Committee member, an elder, etc.

[7] Either chiefs, *tendamba* – descendants of the pioneer settlers of their respective villages and representatives of the 'earth god' (Kasanga and Kotey 2001: 14) – or family heads.

[8] The customary community is called 'stool' in reference to the carved wooden stool that is believed to contain the souls of the ancestors and is a traditional symbol of chieftainship.

[9] See Articles 36(8) and 267(1) of the 1992 Constitution.

land, each member of a community has the right to farm and build on part of it, which gives the member a usufructuary title to the land.[10] The usufructuary interest can be inherited,[11] and is extinguished only through abandonment, forfeiture[12] or with the consent and concurrence of the interest holder. The usufructuary cannot be deprived of any of the rights constituting the interest, and not even the chief can make an adverse claim (Asante 1969: 105-106; Danquah 1928: 197-200, 206, 221; Ollennu 1962: 29, 55-56; Ollennu 1967: 252-255; Pogucki 1962: 180; Sarbah 1968: 64-67; Woodman 1996: 53, 66, 107).

These customary rules date from the days when communities were involved in subsistence farming in land-abundant areas, when not land but people were of value to the chief and the community. Now that market production, population growth and urbanization have enhanced the economic value of land, many chiefs in peri-urban Kumasi claim that these rules are outdated and need to be adjusted to modern circumstances. They argue that communal land that can be used in a more productive way should be brought back under chiefly administration. Or, as the *Beseasehene*[13] (the chief of Besease) said: "It is a law that when the town[14] is growing and it comes to your farm, you do not have any land."[15] These claims have seriously weakened the value and security of the usufructuary interest: when there is a demand to change the use of land from agricultural to residential, individual farmers lose the security of their usufructuary rights and the chief claims the power to reallocate these lands.

Some chiefs, however, are taking the argument much further and are venturing to manipulate and shift the meaning of landownership.[16] They claim that their rights to administer the land do not derive from their function as caretakers on behalf of the community, but instead assert that "land belongs to the royal family, since it was members of the royal family who fought for the land" and the chief, as the leader of the royal family, has administrative powers over the land.[17] According to these chiefs, the royal family had only given this land out for farming purposes, to temporary caretakers, and can reclaim it when its use is changed without any need for compensation. "The farmer does not lose any land since he did not own any land. The farmer is only the caretaker for the chief. The land was given to him free of charge, so how can he claim part of the money when it has been sold?"[18] This narrowing down of the land-owning community degrades the nature of the customary rights of usufruct. The freehold is transformed into a permissive right of tenant-like character, based on the leniency of the chief instead of on the communal ownership of the land. Obviously, this severely reduces the security of these usufructuary rights. The allodial title proportionally gains in weight and shifts from the community as a whole to the royal family, on whose behalf the chief claims outright ownership.

The argument of the first group of chiefs – that communal land which can be used in a more productive way should be brought back into chiefly administration – is only convincing if the proceeds of the conversion are used for community development such as infrastructure, education and alternative livelihood projects, which might help inhabitants of the village to make a living after the loss of their agricultural land. Although all the chiefs interviewed – even the ones who claim that land ownership lies with the royal family and not with the whole community – acknowledged that they have at least a

[10] Some authors claim that the rule that no express grant is needed to farm or build on vacant communal land, has been eroded by the increased use of land, resulting in a need to expressly apportion remaining vacant land (Ollennu 1962: 32; Woodman 1996: 91).
[11] Under Ashanti customary law, individual property is inherited by the matrilineal family. Usufructuary titles thus become family property after the death of the usufructuary.
[12] Forfeiture results from the denial of the landlord's title.
[13] *Ohene* is the word for king or chief in Twi, the indigenous language of the Asantes. Within the Ashanti Region, each village chief (*ohene* or *odikro*) is subordinate to a paramount chief (*omanhene*), who again is subordinate to the *Asantehene*, the king of all Asantes.
[14] 'Town' refers to the built-up area of the village.
[15] Interview, 11 May 2003.
[16] Such manipulation is facilitated by the varying ways in which certain words, such as stool, stool land and ownership, are used in different contexts. For instance, the fact that the allodial title holder is often defined as the owner, without referring to the usufructuary title holder as the owner, gives ample leeway for reinterpretation.
[17] Interview former *Akyeamehene* subchief of *Tikromhene*, 7 January 2004. The argument that the royal family fought for the land is also found in Rathbone (1996: 511).
[18] Interview former *Akyeamehene* subchief of *Tikromhene*, 7 January 2004.

moral obligation to use part of stool land revenue to compensate the farmer and/or for community development, actual practice differs considerably.

The neighbouring villages of Jachie and Tikrom offer two extreme examples. In Jachie, the chief demarcated a large part of the village farmland for residential plots and allowed members of the community to buy this land at a very low price. The remaining plots were leased to outsiders for residential purposes. All the revenue generated has been used for community development. In the four years of his reign, the *Jachiehene* has built a library, a school and a palace, and has allocated part of his land to a technical school in exchange for scholarships. The neighbouring *Tikromhene* provides the opposite example. He has converted and leased most of the farmland in his village without giving the community members any part of the demarcated land or any financial compensation. When a member wants a residential plot, he has to pay the market price. Out of the revenue from stool land leases, almost nothing has left the chief's palace.[19] As the above-mentioned examples of Tikrom and Jachie illustrate, practices regarding the division of land and revenue differ enormously. On average, however, chiefs receive unsatisfactory marks from most villagers for their administration of the land. "So much money goes to the chief, and so little to development"[20] and "Due to the greedy nature of landowners (i.e. chiefs) there is not much development in this town"[21] are regularly heard utterances in the villages.

Local resistance

Local land administration practices result from continuing processes of negotiation and are not only shaped by the ideology, claims and actions of the chief but also by the extent to which these are accepted or contested locally and nationally. The chiefs' actions in peri-urban Kumasi and their severe effects on the livelihoods of the people are causing a great deal of turmoil among community members. Individuals, families and other groups of people are challenging the chiefs' actions.[22] In some villages, people have tried to resist the reallocation of land by the chief *per se*, while in other villages the reallocation itself was accepted but the *way* it was done was contested, especially the division of the revenue accrued after the conversion. In the following examples, both categories of resistance are discussed.

(a) Resistance against the chiefs' reallocation of land

Outsiders started to look for residential land in the village of Brofoyeduru about fifteen years ago. "At first it was the chief selling[23] these plots, but the farmer did not get his right percentage", i.e. the chief paid no compensation to the farmer.[24] After a while, the chief's sisters went to talk to him and he allowed first one and then all of his siblings to sell their own land. When word got out, other people also started selling. "The chief is letting it go. He signs the papers after the sale for some money."[25] Although the people in Brofoyeduru successfully resisted the actual sale of their land by the chief, they do not in general deny the chief's *right* to sell. Some villagers explained their behaviour as follows: "The right thing would be for the chief to sell it. But if the chief does that, the farmer does not get much money. Since everyone is poor here, the chief has to allow it."[26]

In Besease, unlike in Brofoyeduru, many people deny outright their chief's claim that he can reallocate their land. The majority of the villagers have acknowledged the chief's right to be informed about a sale, to sign the land allocation papers and to receive a signing fee for this service – although some said it should be the buyer who takes care of these issues and not the seller – but they claimed the farmers

[19] When confronted with the many development projects in the neighbouring village of Jachie, the *Tikromhene* pointed out that he was building a primary school in his village. On further enquiry in the village, however, it turned out that this project was being financed by the EU.

[20] Interview youngster Besease, 15 June 2003.

[21] Interview Unit Committee Ahenema Kokoben, 11 November 2003. The Unit Committee forms the lowest level of local government in Ghana and is made up of 5-15 people per village.

[22] During my fieldwork I did not find any NGO involved in land matters in peri-urban Kumasi. Discussions with church leaders in Besease revealed that they were not in any way involved in land issues.

[23] Although stool land is offically leased rather than sold because the Constitution prohibits the sale of customary land, nearly everyone talks about the 'selling' of land and many people, 'sellers' as well as 'buyers', seem to regard it as a definitive transfer.

[24] Interview members of the Unit Committee and the royal family of Brofoyeduru, 5 November 2003.

[25] *Ibid.*

[26] *Ibid.*

were the only ones to initiate a sale and to receive the money paid for the land: "When the town reaches my land, I can sell it. The *abusua panin*[27] and the chief have no say in that;"[28] "If the chief wants a third of the money when I sell land, I will take the case to court."[29] Land transactions in Besease thus display ongoing struggles between the four land-owning chiefs and their people. "If you are very persistent, the chief cannot take your land away," a farmer explains. "You can sell it and give part (of the money) to the chief. But if you are unlucky, the chief will take the land, and if you don't fight it, you won't get anything."[30]

Struggles over land can sometimes lead to violent incidents between villagers and the chief. For instance, the *Beseasehene* sold land that did not belong to his family. When the buyer started to develop the land, the family that owned the land stopped him. After the buyer applied to the chief to recover his losses, the chief "went to the land-owing family to plead, but he nearly got beaten up".[31] In some villages there have even been large-scale violent uprisings of commoners against the chief. For instance in Pekyi No. 2, where the chief sold a large part of the village land to the Deeper Life Christian Ministry and then pocketed the money, the commoners chased both the chief and the church representatives out of the village, killing one of the latter in the process.

Of the nine villages studied in-depth, only in Boankra – where there has not been a chief for the last fourteen years – did the royal family seem to acknowledge the families' rights to initiate the sale of land: "When the new chief comes, the clans can still sell their own land, but with the consent of the chief, who will 'take something' for the stool."[32] However, it remains to be seen what position the royal family will take in land negotiations when a new chief is enstooled.

(b) Resistance against the way chiefs reallocate land

In a number of the case-study villages, people did generally accept the fact that chiefs were reallocating community land but they vehemently opposed the procedure and division of the revenues. The previously mentioned village of Tikrom presents a worst-case scenario with regard to community development. According to a Unit Committee member, "the *Tikromhene* is selling land without consulting anyone, compensating the farmer, or giving part of the revenue to the town", and part of the remaining land has been degraded or even destroyed as a result of sandmining.[33] Furthermore, the chief does not abide by the planning scheme and has, for instance, sold land that was reserved for the school.

A long process of consultation took place between the chief and the community. At a range of village meetings the people requested a substantial percentage of land revenues for community development, but to no avail. They then tried to involve the chief from their place of origin, but this chief did not want to come and talk to his 'son'. As the *Tikromhene* comes directly under the *Asantehene*, the former assembly man[34] then wrote a petition to the *Asantehene* in May 2002. However, the case has never been called before the *Asantehene* and it is assumed by some that the *Tikromhene* has encouraged the secretary of the *Asantehene* to remove the petition from the files. In addition, the former assembly man has brought in the Environmental Protection Agency (EPA) to investigate the chief's sandmining lose to streams. The EPA came, looked and reproached the chief, but does not have the power to prosecute. Such power lies with the District Assembly but it is rarely used. A local radio station discussed the sandmining problem in Tikrom in one of its programmes and the assembly man appealed to the *Asantehene* for help, but there has been no response.

As the example of Tikrom shows, local assembly members and Unit Committee members often play an important role in challenging misadministration by chiefs. One of their popular procedural solutions to the misadministration of stool land is the establishment of a village committee, usually called a Plot or Land Allocation Committee, to oversee the proper allocation of village land. Such a committee usually consists of representatives of the chief and his elders, and representatives of the village, often Unit

[27] Head of the extended family.
[28] Interview farmer in Besease, 27 August 2003.
[29] Interview farmer in Besease, 29 August 2003.
[30] Interview farmer in Besease, 27 August 2003.
[31] Interview elder of *Kontihene* subchief of *Beseasehene*, 20 May 2003.
[32] Interview royal family members Boankra, 18 December 2003.
[33] Interview, 15 April 2003.
[34] The District Assembly is the second lowest level of local government in Ghana. An assembly member is the representative of an electoral area in the assembly.

Committee members. The Plot Allocation Committee checks that the site plan is in accordance with the planning scheme and it has to sign the allocation papers. The existence of such a committee usually coincides with the transfer of a fixed portion of the money to the community for development. Although many chiefs pay lip service to such committees, they usually work with a committee made up solely of elders and the chief himself, and popular attempts to set up committees with a broader representation have often been frustrated by the chiefs.

The kinds of activities undertaken in Tikrom to challenge the chief's style of stool land administration were also found in many other villages and appear to be a common response to misadministration by chiefs. Their success is often limited, leaving the people with feelings of desperation or resignation that they have been left to their own devices. The following statements by two former assembly men aptly illustrate these feelings: "In Europe, if a government is criticized three times, the government goes. But here people come to beat you up instead;"[35] "People who lose their land to the chief usually don't go to a chief or to court, normally they give up."[36]

Because of this lack of success in negotiations with the chief, many people do not aim their anger at the chief who is selling the land but at the buyer. Both my fieldwork and a study of pending cases at the High Court of Kumasi show that the farmer, who is angry that his land has been sold by the chief, often tries to restrain the buyer from going onto the land and building there. For instance in Adadeentem, the former chief sold substantial parts of the community's land. This aroused a lot of dissatisfaction amongst the people but no concrete actions were taken against the chief. One of the villagers, however, sued the buyer of a vast tract of land in the High Court of Kumasi. Another example of the 'buyer loses out' principle is found in Besease, where the *Beseasehene* sold two plots of the land belonging to his subchief, the *Kontihene*. On finding out about the sale, the *Kontihene* first "caused trouble with the *Beseasehene*", but "we enstooled him, so (…) we don't want to quarrel with him. But the buyer can't come and work on it. If you come to work you will meet the *Konti*."[37]

Power configurations in the villages

Practices of local land administration result from continuing struggles and negotiations about land, property and authority between the chief and community members. A valid question to ask is why resistance is more successful in some villages than in others.[38] Obviously this has a lot to do with the personalities of the chief and his opponents. But another part of the answer lies in the power configuration of the local arena in which these struggles are taking place. For instance, does the village have one, two or more chiefs, or no chief at all? And if a village has several chiefs, do these chiefs collaborate or compete with each other? Other determining factors are whether there is strife or unity within the royal family, whether the chief or his opponents have a good relationship with the paramount chief or the *Asantehene*, and whether powerful people, for instance members of parliament, come from the village. A chief's position within and outside the community and his ability to build coalitions with his elders, his family and other powerful people within the community are crucial for creating room for manoeuvre with regard to land administration. Although the scope of this contribution does not permit in-depth discussion of all these variables, two examples are presented here as an illustration.

Besease has four land-owning chiefs and it is generally well known which land falls under which chief. Nevertheless, villagers who wanted to sell their farmland without involving their chief have occasionally approached one of the other chiefs with a request to sign their land allocation paper. For instance, the *Aduana* family in Besease had been given land by the *Kontihene*, the head of the *Agona* family. But when the *Aduana* wanted to sell their land, they asked a different chief, the *Beseasehene*, to sign their allocation papers. Although the *Beseasehene* had no right to do so, breaking the rules earned him a signing fee. The *Aduana* also gained from this scheme since the *Beseasehene*, as a 'stand-in chief', was in no position to demand a substantial part of the revenue, and settled for a lower signing fee. On discovering the scam, the *Kontihene* challenged the sales: "I wanted to take the *Aduana* to

[35] Interview former assembly man Tikrom, 15 April 2003.
[36] Interview former assembly man Feyiase, 8 April 2003.
[37] Interview *Kontihene* subchief of *Beseasehene* and one of the *Konti* elders, 20 May and 1 July 2003.
[38] The extent of local resistance is naturally correlated with the amount of land and the time-span in which chiefs are selling.

court, but they are half-brothers and half-sisters so I couldn't do that. The *Aduana* apologized and are not selling anymore but all the plots have been sold and the money squandered".[39]

The presence of several chiefs in one village offers opportunities to play one off against another other but such a multi-chief configuration can at the same time enlarge the challenge of getting the chiefs to administer land in the interests of the community. If several chiefs mismanage stool land, the conduct of one will be partly legitimized by the similar conduct by another; amidst uncertainty about people's rights, the concerted behaviour of chiefs can stake a claim to legitimacy.

A number of the above-mentioned characteristics are evident in Boankra. This village has been without a chief or a regent for fourteen years following a dispute between rival factions of the royal family. One of these is supported by the paramount chief of the area, who enstooled[40] the chief candidate of that faction as *Boankrahene* during a ceremony at the palace. This enstoolment was challenged by the queenmother and Boankra elders at the Regional House of Chiefs in Kumasi. The House of Chiefs decided in favour of the queenmother, stating that she should be the one to choose a new chief. By February 2004, a new chief had still not been installed but the paramount chief has continued to countersign land allocation notes signed by his preferred chief candidate – on condition of the payment of a substantial signing fee. This signature supposedly gives the sales a semblance of legitimacy and makes it possible for the buyers to acquire a building permit at the District Assembly.

Traditional controls on chiefly administration

The chief often rejects people's suggestions and claims about adjusting stool land administration and continues to rule as he has always done. The pervasive misadministration of stool land by chiefs is closely connected with a lack of checks and balances on the chiefs' administration on the one hand and a lack of accountability on the other. Authoritative sources (Busia 1951; Danquah 1928; Hayford 1970: Ch. 2; Kasanga and Kotey 2001; Kofi-Sackey 1983; Obeng 1988: Ch. 7-11; Ollennu 1962, 1967; Pogucki 1962; Sarbah 1968) have described a number of customary checks and balances on the performance of chiefs in Ghana, some recently.[41] However they depict an idealized version of customary law rather than effective checks and balances in present-day village practice in peri-urban Kumasi. The two main checks on the administrative powers of the chiefs, as described in the literature, are that the chiefs ought to take decisions in council with their elders or subchiefs, and the possibility of destooling a chief who is not performing as he should.

Council of Elders

According to customary law, a chief can only bind the community if he acts with the consent and agreement of the whole community as represented by the principal councillors from all the important families in the community (Busia 1951: 14; Hayford 1970: 73; Ollennu 1962: 130). The chief is limited in his enjoyment of communal lands by his councillors, called 'elders' in the lower councils and 'subchiefs' in the higher ones (Pogucki 1962: 182; Sarbah 1968: 66, 87). Since these councillors are elected by and represent the interests of their communities, it is of utmost importance that the chief listens to their opinions. A chief who repeatedly ignores the advice of his people, especially that of his elders and councillors, is liable to destoolment (Danquah 1928: 57, 116).

Current practice in peri-urban Kumasi shows an entirely different picture. For instance, the secretary of the *Nkoransahene* explained that: "It is not the rule that a certain family always brings a subchief. It is the chief who picks them. When one dies, he can choose a new one."[42] In some other villages, the council elders are primarily or even entirely selected from only the royal family and not from the important families in the community. Furthermore, when elders criticize their chief, in many villages the chief does not listen to them. A subchief relates the following: "*Beseasehene* is a new chief. He doesn't mind the rules. I tried to talk to him, but he didn't take my advice. If I wasn't educated, he

[39] Interview *Kontihene* subchief of *Beseasehene*, 1 July 2003.
[40] As a chief's throne is called a stool, the installation and deposition of a chief are called 'enstoolment' and 'destoolment'.
[41] Prof. Kasanga, the Minister of Lands and Forestry (until mid-2003) insisted that "there are enough local checks and balances in the customary systems". Interview, 3 December 2003.
[42] Interview, 28 October 2003.

would try to cheat me as well."[43] In other villages, the chief co-opts his elders by sharing the benefits from land administration with them, removing their incentives to effectively check the use of power and, if necessary, to stand up against the chief. According to a Unit Committee member, "the subchiefs support the chief because they get a share of the money. If they argue with him, they won't get anything."[44] This is confirmed at the *Asantehene's* Land Secretariat: "The natives of the town have to try to stop the chief from malpractice. If you constantly attack him, he will have to change. This is usually done by the elders, but in many villages the elders connive with the chief."[45] This leads to regular conflicts between elders and their own family.[46]

Destoolment

If the people of a community want to destool their chief, a case has to be brought before the Traditional Council, which is made up of the paramount chief and his subchiefs.[47] Removing a chief thus always requires the involvement of other chiefs. This can be complicated because paramount chiefs often have a direct interest in who occupies the village stools, mainly because of their claims to a share in the villages' land revenues. For instance, the *Ejisumanhene* – the paramount chief of Ejisu – favoured those chiefs who sold stool land and shared the proceeds with him. The fact that this does not usually leave much land or revenue for the community does not seem to bother him. But even if the paramount chiefs do not have such an agenda, chiefs are still judging their fellow chiefs. Many of the current destoolment charges are to do with land administration in one way or another. And often the charges against the chief-on-trial, such as not using enough stool land revenue for community development, are also points of discussion in the villages of the judging chiefs. Clearly, their personal interests in such cases may stand in the way of objective and impartial judgment.

Although other chiefs always have to be involved, an additional obstacle to destoolment is that, according to customary law, charges cannot be brought by commoners but only by the 'kingmakers', i.e. those subchiefs and members of the royal family who can also make or enstool a chief (cf. Hayford 1970: 36). As discussed above, these subchiefs are often restrained by their proximity to the chief or co-opted, and are therefore not likely to take the lead in actions against the chief. And if they do dare to do so, this is only, according to a subchief, "after many years of wrongdoing, the chief will first be given the benefit of the doubt."[48] If those years of waiting are added to the years the destoolment procedure itself may take, it can be seen how a chief can easily come to sell a considerable amount of stool land and spend the proceeds as well.[49]

Accountability

The main customary checks and balances on chiefs – ruling in council with subchiefs and the possibility of destoolment – are not therefore very effective. One can add to this the fact that chiefly accountability is extremely low. Most land administration is concealed due to a lack of registration. A good chief may account for his administration of his own accord but this is an exception rather than the rule. Some elders and chiefs claim that "nobody has the right to ask the chief to account",[50] and "if it goes wrong, there is nothing to do about it".[51] They explain this by the fact that the chief also has his professional income and it is impossible to know whether he is spending personal or stool money. Or they say that "the chief does not receive any remuneration but does have job-related expenses, to which the people do not want to contribute".[52] The chief continues to have obligations for which customary

[43] Interview *Kontihene* subchief of *Beseasehene*, 1 July 2003.
[44] Interview, 26 June 2003.
[45] Interview, 2 July 2003.
[46] Cf. Abudulai 1996; Kasanga 1996.
[47] Due to Section 15 of the Chieftaincy Act, 1971 (Act 370), which confers exclusive jurisdiction in any 'cause or matter affecting chieftaincy' on the Traditional Council, such cases cannot be brought before the regular state courts, only the Supreme Court, and then as a last resort.
[48] Interview *Kontihene* subchief of *Ejisumanhene*, 27 May 2003.
[49] This does not mean that no destoolments have taken place lately. The deputy registrar of the Ashanti Regional House of Chiefs could recall ten destoolments in the Ashanti Region in the last three years (Interview, 2 July 2003).
[50] See, for instance, interview elder of the *Beseasehene*, 5 June 2003.
[51] Interview *Gyaasehene* subchief of *Ejisumanhene*, 1 June 2003.
[52] Interview, 29 June 2003.

provisions have ceased.[53] Others claim that to ask a chief to account for his expenditures is considered a vote of no confidence. "If a chief does his work well, no one will bring him to account."[54] Most people will not dare to do this unless there are clear indications of serious misconduct by the chief. And even then, who is to bell the cat? The chief is still a powerful figure in most villages and one is certain to encounter his wrath by highlighting irregularities in his actions. Moreover, taking action against a chief violates his traditional sanctity. Most people would consider it the task of the royal family and if the royal family does not discharge itself of this task, how can commoners be expected to take it upon themselves? The only kind of functioning accountability is what I call 'end-term-accountability'. During destoolment procedures, a chief has to account for all stool revenue but by then most of the money has usually been spent and is very hard to recover. Besides, as said, starting a destoolment procedure brings its own difficulties.

Colonial distortion of checks, balances and accountability

The current customary system lacks effective checks and balances and accountability, but this is not surprising when the historical development of the position of the chiefs is taken into account. During the colonial period, local checks and balances and accountability structures were severely distorted when the British government overrode the traditional rules of investiture and reserved for itself the right to appoint and dismiss chiefs (Annor 1985: 153; Busia 1951: 105-6; Toulmin and Quan 2000: 10; van Rouveroy van Nieuwaal 1987: 11). With this 'devolution', as von Trotha (1996: 81) calls it, the local attachment of the chief to some extent gave way to his responsibilities and loyalties towards the government. Where commoners tried to reassert local checks and balances, a chief who was on friendly terms with the British administrator was easily able to discredit the commoners by branding them as malcontents and troublemakers (Kumado 1990-1992: 203; McCaskie 2000a).

The abolition of the position of *Nkwankwahene*, the elected representative 'chief' of the commoners, by the Ashanti Confederacy Council – supported by the British – in the 1940s also had a profound effect on local checks and balances and accountability structures. Since the subchiefs and elders were restrained in their criticism of the traditional administration due to their proximity to the chief, the *Nkwankwahene* served to infuse the views of the masses in the traditional government, for instance in enstoolment and destoolment procedures, and as a channel for common discontent (Busia 1951: 10, 215-6; Wilks 1998: 159). By abolishing this channel, the chiefs and the British government hoped to put an end to the frequent actions by commoners against chiefs who were abusing their position. They thus aimed to curb the youth and stabilize traditional communities by removing the channel of discontent, rather than by addressing its causes.

The British gave the chiefs strong rights to land, by accepting their claims that, according to customary law, all land belonged to a customary community and the chief was the administrator of the land. However, when it became clear that chiefs were attempting to amalgamate revenues from stool and family land utilizing the legal and political powers afforded them by the state, the colonial government tried to prevent the chiefs' "consolidation into a 'gentry'" (Crook 1986: 88), thereby to some extent compensating the lack of local checks and balances, at least in the field of land administration (Dennis 1957). Post-colonial governments in Ghana have shown an ambivalent attitude to chieftaincy (Kofi-Sackey 1983; Kumado 1990-1992; Nugent 1994; Ray 1996; van Rouveroy van Nieuwaal 1987, 1996) and the pendulum has swung between devolution and the prohibition of governmental interference. Although under the current constitution the Ghanaian state is not permitted to exercise its sovereignty over chiefs regarding their enstoolment and destoolment,[55] the pre-colonial local checks and balances and accountability structures have not beel rebuilt. A crucial question is, therefore, whether the current government can also impose state constraints on the administration of chiefs to compensate for the lack of local checks and balances.

Chiefs as role models?

It is worth considering whether any regulation or change towards more equity and community influence can be expected to come from *within* the traditional system. Some chiefs distribute land and land revenue fairly among community members and display serious commitment to developing their villages. Could these chiefs serve as role models and can they be expected to advise or influence their

[53] Such as the chief's right to wild animal skins, tributes of fish, and communal work on his farm (Annor 1985: 157; Busia 1951: 44).
[54] Interview *Okyeame* subchief of *Beseasehene*, 12 June 2003.
[55] Article 270(2), 1992 Constitution.

fellow chiefs? At all levels of traditional leadership – from the village level to the *Asantehene* – discourse and practice moves away from individual rights of community members in stool land to the unrestricted rights of the chief to administer this land. There is no one-to-one relationship between development-oriented leadership and willingness to abide by certain principles of good governance, such as accounting for administration and cooperating with a representative Plot Allocation Committee. For instance, the earlier-mentioned *Jachiehene*, who was enthusiastically developing his village, not only abolished the local Plot Allocation Committee but stated outright that "land in Jachie belongs solely to the royal family" and "a chief does not need to account to anyone, only if things go wrong".[56] Most chiefs, including those who are development oriented, have supported rather extreme levels of chiefly discretionary powers. This has usually made them unwilling to condemn any misadministration by chiefs in other villages, let alone call such chiefs to account. In addition, chiefs are, in general, unwilling to interfere in other chiefs' business, with an appeal to the sacrosanct 'internal village affairs'. They form a united front when it comes to asserting their rights and are reluctant to check the boundaries of chiefly power. It is doubtful whether much can be expected of them with regard to curbing any mismanagement of stool land.

Within the Ashanti Region, the *Asantehene* forms the apex of the traditional hierarchy. Undoubtedly an impartial authority at the top of the traditional system could check many abuses. The current *Asantehene*, installed in 1999, seems to be mainly concerned with the development of the area and the role chiefs can and should play in this respect.[57] He is actively trying to settle the numerous chieftaincy and land disputes.[58] In various dispute settlements the *Asantehene* has proclaimed that land and land revenue should be divided between the chief, the elders, the stool (for expenses), the farmer (for compensation) and the community (for town development).[59] But the need to keep his chiefs satisfied restricts his room for manoeuvre on the sensitive issue of land administration. Furthermore, the integrity of his land secretariat is being challenged and his own rights to land are not going undisputed.[60] The *Asantehene's* readiness and capability to influence local land management are, therefore, uncertain.

[56] Interview *Jachiehene*, 29 June 2003.

[57] He is, amongst other things, involved in the areas of education and health care.

[58] Shortly after his enstoolment, the *Asantehene* commanded the withdrawal of land and chieftaincy cases from the state courts and the Regional House of Chiefs. These were to be brought to the Traditional Council for settlement. Although this is an understandable and sensible appeal considering the enormous backlog in state courts, the move is also highly political as the *Asantehene* reclaims the traditional *trias politica* of legislator, administrator and judge.

[59] A committee consisting of the heads of the thirteen divisions of the Kumasi Traditional Area has made a proposal to legislate land revenue sharing. This proposal, which was awaiting approval by the *Asantehene* when I left the research area in February 2004, proposes that the revenue from land allocations be divided as follows: a third to the *Asantehene* and two-thirds to the locality. This two-thirds would be further divided as follows: a quarter to the chief; a quarter to the stool; a quarter to the town; an eighth to the elders; and a further eighth to community members who lose land. Under this system, both the farmer and the town receive a part of the land revenues and the codification will probably enhance the accountability of chiefs: statements by the *Asantehene* on this issue are already being used as a resource in local struggles. The proposed legislation would be an improvement for some villages. On the other hand, in this system three-quarters of the revenues flows into the traditional system, whereas community member receives only a twelfth and the town a meagre sixth. One could wonder whether this is a fair distribution of revenue from communal land. When land revenue is distributed in such a way, the traditional system becomes a very expensive institution for villages.

[60] For example, according to the *Asantehene's* secretariat, the *Asantehene* is supposed to get a third of the revenue from stool land allocations in the Kumasi Traditional Area. However, since most chiefs do not register their land sales, the secretariat has no way of knowing how much land the various chiefs have allocated. The *Asantehene* cannot therefore enforce this 'rule' and does not receive his share. The secretariat is trying to overcome this problem by asking not for a third of the revenue but for a third of the land when it is demarcated for development. Another example can be found in a dispute between the *Asantehene* and his Kaase stool over the right to allocate Kaase land. This shows that the *Asantehene* is trying to increase his influence on land in the Kumasi Traditional Area (*Gyeabour II* v *Ababio* [1991] 2 GLR, 416). The court ruled for the Kaase stool.

State involvement

State institutions are involved in stool land administration in a number of ways: land planning, land title registration, stool land revenue collection, and the adjudication of land disputes. One of these state institutions – the Office of the Administrator of Stool Lands – is discussed here to illustrate the checks and balances that can be put on stool land administration and the extent to which this function is being fulfilled in practice. Some of the political constraints on state institutions will be emphasized by looking at state discourse with regard to chieftaincy in general, and land administration in particular.

The Office of the Administrator of Stool Lands

The Constitution provides for an Office of the Administrator of Stool Lands (OASL), which is responsible for the establishment of a stool land account and for the collection of all 'rents, dues, royalties, revenue or other payments whether in the nature of income or capital from the stool lands' to be paid into this stool land account.[61] Of the revenue accruing from stool lands, 10% should be paid to the OASL to cover administrative expenses. The other 90% has to be disbursed as follows: 25% to the stool for its maintenance; 20% to the traditional authority; and 55% to the District Assembly.[62]

This provision has a long history predating the present 1994 Act.[63] Its original purpose was to be the first step in depriving the big chiefs of any role in land management – and eventually of ownership – and their claims to have the right to collect land 'rents' (Rathbone 2000: 30). Chiefs, therefore, have always resisted handing over what they see as 'their' income to the OASL. In peri-urban areas, conversions from agricultural to residential land account for most land revenue and the chiefs are therefore focusing their resistance on the definition of stool land revenue. "In the olden days"[64] when a stranger was looking for land in a community he would visit the chief who would allocate him some. Since land was abundant and subjects meant power, the land was usually awarded without charge. The stranger, however, would offer the chief some 'drinks' – usually a bottle of Schnapps – to acknowledge the ownership of the land and to show his allegiance towards the chief. Over time, land became more valuable and a small amount of cash was added to the Schnapps. The amount has gradually risen and has currently reached an amount of about Cedis 10-20 million in peri-urban Kumasi.[65] The chiefs continue to call this payment 'drinks', and present it as an acknowledgement of their ownership of the land and a declaration of allegiance. They claim that the money should not be regarded as 'stool land revenue' in the sense of the OASL Act.

There is general agreement amongst officials that the law clearly meant to include this 'drink money' in its definition of 'stool land revenue' and that if someone should take a case to court, the decision would be granted in their favour.[66] But, again, the question is "who will bell the cat?"[67] In Ghana's highly personalized society, if a case were brought to court by an officer of the OASL, this would not be considered as an action by the government, the ruling political party or even of the OASL in general, but as a personal action by that particular officer. "The one who takes this to court will become an enemy of the chiefs," I was told at a District Assembly, "and they are very powerful, don't make any mistake about that."[68] Actions will provoke the wrath of all chiefs and can pose serious dangers to one's career: "Careless statements by land officials could be dangerous. You may have to pay a price for showing discourtesy."[69] Furthermore, every official is also a chief's subject and such an action

[61] Article 267(2), 1992 Constitution.
[62] Sections 3 and 8, OASL Act, 1994 (Act 481).
[63] It dates back to the Local Government Ordinance, 1952 (Cap 64).
[64] Ghanaian storytellers often begin their tales with this popular expression.
[65] At the time of the fieldwork, Cedis 1 million was the equivalent of approximately €100. According to McCaskie (2000b, 215), drink money changed from a token sum to the market price for land as early as 1950.
[66] "According to the law, of course it is revenue" (Interview Lands Commission Kumasi, 9 April 2004); "I know I would win such a case" (Interview District Assembly Ejisu, 9 April 2003).
[67] Interview OASL Kumasi, 27 June 2003.
[68] Interview District Assembly Ejisu, 9 September 2003.
[69] Interview District Assembly Ejisu, 12 January 2004. In a number of cases officials have been 'transferred' after standing up to a powerful paramount chief or the *Asantehene*. For example, a few years ago the lawyer for the Kumasi Lands Commission made a statement in court about how the government owned the land in dispute because the British government had taken over the land when it conquered the Asantes in the Yaa Asantewaa War. It is rumoured that this statement was unacceptable

would be considered an act of disloyalty towards him. Nevertheless, in 2003 the District Chief Executive (DCE) of the Ejisu-Juaben District Assembly wanted to contest the issue of drink money following the sale of a huge tract of land in the village of Boankra to the Shippers' Council for the construction of an inland port. This sale brought in an amount of Cedis 3 billion in 'drinks' for the chiefs.[70] However when the DCE wanted to take this case to court, 'the government' stopped him, demonstrating the unwillingness of the current political establishment to control stool land administration. A researcher confirms this unwillingness: "Everyone realizes that things are not done the way they should be done, but politicians do not want to rock the boat."[71]

The OASL does not function as a check upon the use of stool land revenue because of the drink money issue.[72] Although most stool land revenue bypasses its office, the OASL does receive some revenue in the form of an annual tax called ground rent. The total amount of ground rent on a ninety-nine-year residential lease adds up to about 5% of the amount of drink money. It is interesting to note that:

> "Every time there is a seminar on the topic of land administration, the chiefs start to complain about the fact that the District Assembly receives 55% of this ground rent without even accounting to them, the chiefs, what they have done with it. And no-one counter-argues that this is only 55% of 5%, with the other 95% going straight to the chief, whereas everyone knows the chiefs use this money in their personal interest."[73]

The fact that such chiefly statements at workshops, conferences and policy meetings often go unchallenged gives a clear indication of the controversy surrounding the topic and the current state of public and scholarly debate about chiefs and stool land administration.

State discourse

In the media, government officials at all levels regularly and vehemently proclaim that they will not "meddle in chieftaincy affairs".[74] These statements are sometimes made in reaction to chieftaincy disputes, over which the law explicitly declares the government has no jurisdiction,[75] but also in general, expressing that the government will not interfere in chiefly administration. These statements not only claim that the government is not *allowed* to interfere in chieftaincy affairs but also allege that it is unnecessary since chiefs do not rule alone but in council with their elders. And since they can be destooled if they wrongly perform their duties, the local arena can deal with its own problems. Despite frequent indications that local checks and balances are not effective, the government hides behind "the morality of the local space" (Khadiagala 2001: 59) to disclaim the need for external regulation, thereby denying the people an opportunity to complain.[76] Obviously, such state discourse provides chiefs with additional legitimacy in the field of land administration, allows them ample room for manoeuvre, and communicates little fear of stately control.

The unwillingness of the political establishment to bring before the court the question as to whether drink money is stool land revenue in the sense of the OASL Act is an example of what I call the government's policy of non-interference. Another example can be found in the wording, drafting and content of the National Land Policy – the first comprehensive land policy ever formulated by the Ghanaian government – and its implementing programme, the Land Administration Programme

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to the *Asantehene*, who said he could not work with the lawyer in question anymore. The lawyer was subsequently transferred to the Lands Commission in Koforidua.

[70] At the time of sale, this was the equivalent of approximately €300,000.

[71] Interview researcher KNUST, 10 November 2003.

[72] So far a picture has been painted of an institution that is ineffective because of a lack of political support. This, however, is only one side of the story. A lack of funds, qualified staff, equipment and vehicles on the one hand, and mismanagement and corruption on the other also severely hamper the functioning of the OASL and affect its legitimacy in the eyes of the people.

[73] Interview researcher KNUST, 29 October 2003.

[74] See for instance *Daily Graphic* 25 August 2003: 3; *Ghanaian Times* 5 August 2003: 1, 25 August 2003: 3.

[75] Section 15, Chieftaincy Act, 1971 (Act 370).

[76] According to the former Minister of Lands and Forestry, "The state should not attempt to enforce local checks and balances. This should be done by the citizens themselves" (Interview Prof. Kasanga, 3 December 2003).

(Ministry of Lands and Forestry 1999; World Bank 2003b). The main objectives of this policy and programme seem to be to hasten the registration of land rights, establish security of tenure for all and, with regard to the administration of stool lands, set up, or where they already exist, strengthen customary land secretariats. On the one hand, rights that can be registered include both those of the allodial titleholder and those of the usufructuary. In that sense, the policy and programme do not support ownership by the allodial titleholder only. On the other hand, public consultation about the formulation of the policy and the programme has been minimal and there seems not to have been an open discussion on the role of chiefs in the administration of stool land – including the tendency of chiefs to adopt landlord-like positions – and the possible checks and balances the state could put in place regarding stool land administration (Wily and Hammond 2001: 54). One might say that the policy of non-interference is currently so pervasive that some problems and possible solutions are not even open to public discussion.[77] According to one of the researchers involved in the programme, "there is a real danger of topics remaining unmentionable", and that "now is the time to discuss and change things, otherwise it will be too late".[78] This is not to say that there is no internal debate between modernizers and neo-traditionalists within the government. On the contrary, there is quite an intense and highly sensitive internal debate. The modernizers, particularly in the land agencies and the Land Administration Program Unit, are trying to break the silence surrounding the misadministration by the chiefs but their efforts are being thwarted by their superiors. At present, there is no political party willing to enter into any real battle, such as land reform would cause, with the chiefs.[79]

This policy of non-interference can be explained partly by the political power of the chiefs, who are still regarded as very influential and "who are still voter-brokers, especially in the rural areas",[80] and partly also by the fact that the tendency to fill chieftaincy positions with highly educated professionals blurs the traditional distinction between the state elite and chiefs, and creates new alliances between these two groups (Ray 1992).[81] Furthermore, it could be argued that the rampant irregularities and mismanagement by state institutions in procedures of compulsory acquisition of land[82] do not give the state a strong moral position from which to judge the quality of chiefly land administration. Moreover, when the state wants to acquire land itself, a good relationship with the chiefs involved is useful.

Conclusion

Many of the chiefs' current practices in the research area are diametrically opposed to descriptions of customary law in authoritative literature, case law, and articles of the Ghanaian Constitution. The chiefs still claim to act according to customary law, but a different kind of customary law and not the old version found in literature, legislation and case law, but a new one adapted to changing peri-urban circumstances. How can the chiefs make such bold claims – that practices diametrically opposed to

[77] This conclusion is reinforced by the fact that in 2003 a team of foreign consultants was carefully briefed by officials from the Ministry of Lands and Forestry about their critical attitude towards the traditional authorities before they were allowed to start their consultancy work.

[78] Interview, 29 October 2003. This researcher also recalled that when a speaker at one of the workshops at the start of the programme said that land administration should return to the 1960s with its government interference, the chiefs present would hardly let him finish his speech.

[79] The present mildly favourable climate for chieftaincy has even rekindled discussions about the creation of a second chamber of parliament made up of chiefs, and on whether chiefs should (again) have representatives in the District Assemblies.

[80] Interview, District Assembly Ejisu, 12 January 2004. Chiefs are said to be especially influential in the Ashanti Region with its hierarchical chiefly structure, with the *Asantehene* at the top. The following example illustrates the sensitive nature of criticism of the *Asantehene*. When the World Bank recently granted financial assistance to Ghana to benefit the *Asanteman* Council, certain media representatives made the suggestion that this facility had been sought especially for the *Asanteman* as part of an ethnic agenda because President Kufuor is an Asante, and it would only benefit the Asantes and not the non-Asantes living in *Asanteman*. This evoked several reactions from Asante groups, such as the Asante Congress and the Ashanti Graduates and Professionals Network, which vehemently defended the honesty and developmental attitude of the *Asantehene* (*Daily Graphic* 10 July 2003: 7, 21 July 2003: 28, 4 August 2003: 11; *The Independent* 29 July 2003: 7).

[81] Bierschenk (1993) and Geschiere (1996) describe the same phenomenon for Benin and Cameroon respectively.

[82] *Daily Graphic* 22 August 2002: 17; Kotey (1996).

authoritative descriptions of customary law are in accordance with 'adapted' customary law – and at least in part get away with it?

The first explanatory factor is to be found in the fact that stool land administration is characterized by a leading position for chiefs and the prominence of customary law. Customary law does not consist of static norms. With the notion of an unchanging customary law as a myth of the colonial era, it has to be recognized that norms and rules themselves are sources of power, manipulated and used selectively by parties in disputes (von Benda-Beckmann 1979; Chanock 1985; Comaroff and Roberts 1981; Mann and Roberts 1991; Moore 1986; Oomen 2002; Otto 1998; Ranger 1983; Roberts 1979: 182). On account of the prominence of customary law in the field of land administration, all actors in land struggles have to legitimize their actions and claims largely with appeals to customary law.[83] They will try to use the unwritten and somewhat pliable nature of customary law to construct norms in their own interests. Struggles over land will thus often take the form of interpretative struggles over meaning in which "the power to name" can be a highly political issue (Bassett 1993: 21; Shipton and Goheen 1992: 309-311). The critical question is which actor or group of actors has the power to issue definitions and is able to mobilize support – from community members, the traditional system and the state – for its version of customary law. Since chiefs are generally regarded as authorities in the field of customary law and as guardians of stool land, they are able to point to custom to acquire and legitimate power over land in the local arena and to resist interference by the state.[84]

A second factor that should be taken into account is the erosion of customary checks and balances on chiefly functioning. Theoretically, these checks and balances are supposed to constrain the chief in his administration of land and in his use of the pliability of customary law. But, as we have seen, in many localities the customary notion of ruling in councils with elders or subchiefs has been severely eroded, destoolment procedures are prone to difficulties, and accountability structures are lacking. In general, chiefly discourse shows that not much change in the direction of more equity and community influence can be expected to come from within the traditional system in the near future. Limited commitment to principles of good governance and the extreme reluctance of chiefs to interfere in other villages' internal affairs means that even development-minded chiefs will not engage in attempts to curb the mismanagement of stool land by other chiefs.

The government's attitude towards chieftaincy is the third factor influencing the behaviour of the chiefs. The government is currently providing hardly any checks and balances on local land administration.[85] Its policy of non-interference in chieftaincy affairs – with an emphasis on the sovereignty of the chiefs and on the fact that land administration rests exclusively in their hands – gives additional legitimacy to the chiefs, provides them with ample leeway to administer land the way they please, and places the power to define customary law squarely in their hands. The National Land Policy and the Land Administration Programme do not seem to predict any change in this respect in the near future. So while the British colonial government prevented the emergence of chiefly landlordism, the present government is not effectively controlling chiefs' dealings with land.

This research is placed squarely within the legal and institutional pluralism of the Ghanaian landscape. It does not paint a positive picture of traditional rule by chiefs on the basis of customary law, and does not therefore accord with the 'rights to culture' school. On the contrary, it shows that in peri-urban Kumasi chiefs do not represent developmental, equitable and inclusive governance. The customary system has been eroded by the current socio-economic reality of increasing land prices and does not offer any security to community members. Without clinging to an idealized view of traditional rule in preceding periods, it seems safe to state that the democratic and participatory level of traditional rule has decreased. The absence of checks and balances on chiefs in both the traditional and the state system has seriously disrupted the fragile balance between the chiefs and the people. This has given the chiefs the power to abuse their position as experts in customary law and guardians of stool land and to overstretch the somewhat dynamic nature of customary law by manipulating it to suit their needs and to legitimize their own claims.

[83] To some extent, state legislation and statements by state officials are also used as a local resource but in general claims are legitimized by referring to customary law.
[84] According to a land official, "Chiefs coat their actions in custom" (Interview OASL Kumasi, 27 June 2003). Dr Adinkrah, a legal scholar and a chief himself, calls this "the prostitution of customary law by the chief" (Interview, 4 September 2003).
[85] Aside from the courts that protect the usufructuary rights of community members in individual cases.

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