

**OUR CHIEFS, THEIR LAND MANAGEMENT, AND
OUR CUSTOM: A CASE STUDY OF JUABEN,
ASHANTI**



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DECLARATION

I hereby declare that, this submission is my own work towards the MPhil degree in African Studies. To the best of my knowledge, it contains no material previously published by another person or material which has been accepted for award of any other degree of the University or elsewhere, except where due acknowledgement has been made in the text.

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ABSTRACT

The recognition of custom and inevitably the chieftaincy institution in land management has been of great interests, and been indeed advocated for in Africa in recent times. These advocates have opined that within custom lies the ability to achieve equitable goals and most importantly a security of land rights.

Drawing on empirical evidence from Juaben in the Ashanti region of Ghana, this study tests the validity of this position. In so doing, it points out the limitations and constraints bestowed upon the ruled and the advantages created for the ruler through custom, and the chieftaincy institution.

The study gives an overview of the chieftaincy institution in Ghana, and the transitions it has gone through, and how this, together with its character impinges upon custom and thereby also impinging on the security of the access and user rights of community people.

It makes a case for the need to not glorify custom as a collective position, and the need for interference of the chieftaincy institution though with caution.

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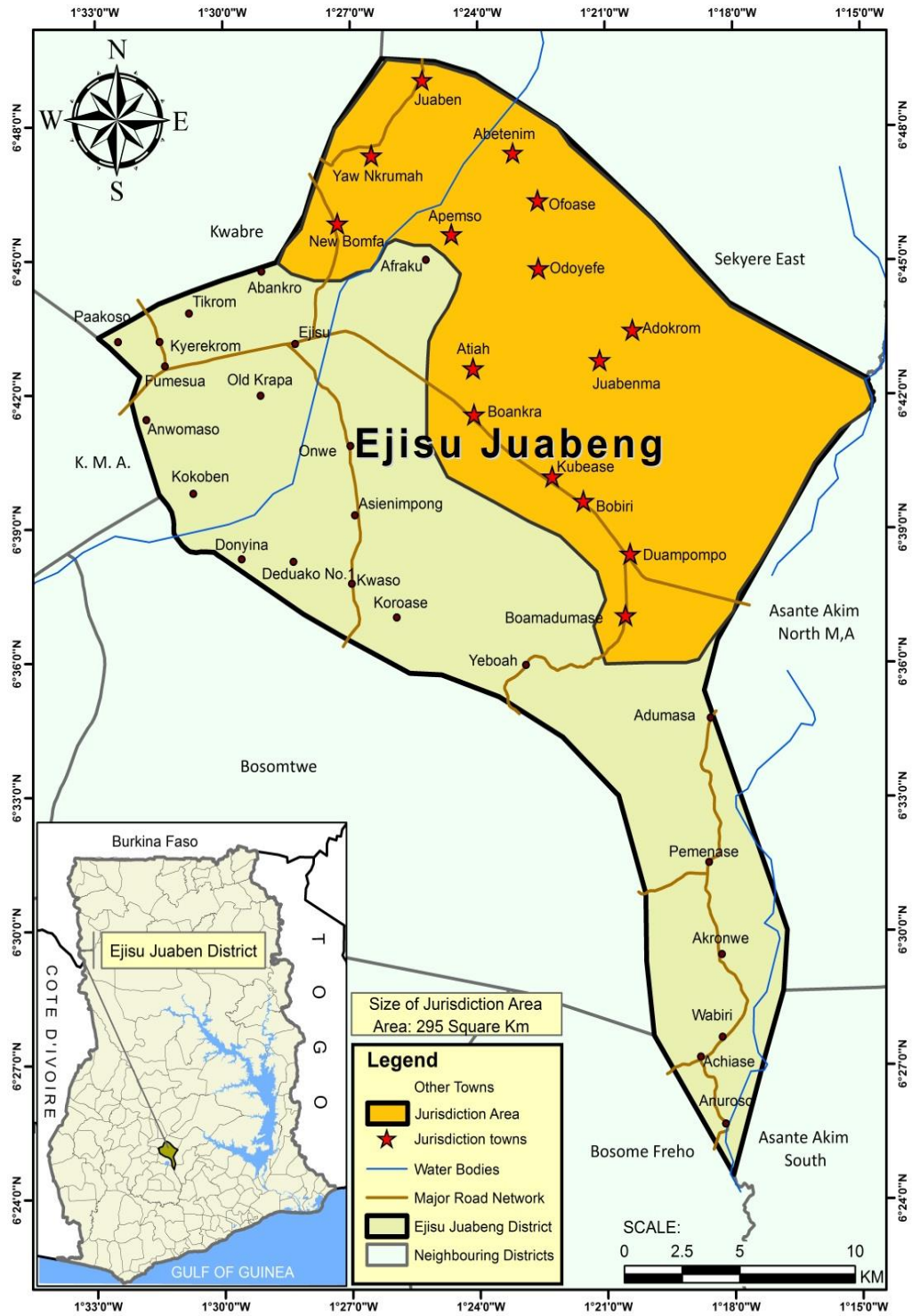
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MAP OF EJISU JUABENG SHOWING JUABEN COMMUNITY



Map from Dept. of Geography, University of Ghana

CHAPTER ONE

INTRODUCTION

In June 1999, Ghana implemented the Land Administration Project (LAP) aiming to develop a decentralized land administration system which will ensure “economic development, poverty reduction, promotion of social stability, and development of efficient land management and market”. This aimed to improve security of land tenure, simplify the process for accessing land, and make it more transparent and efficient¹. The LAP was basically to solve the various problems the customary institutions and government agencies responsible for land management were encountering in their interacting with each other and also to deal with the cumbersomeness of the titling procedures (Ubink 2008). The LAP was to protect and ensure the acknowledgement of customary authority in land transactions through its locally established secretariats, the Customary Land Secretariats (CLS).

Ghana witnesses the importance of access to land for economic dependence, growth and sustenance. Ghana has about 40% of its total land area of 230,020sq.km either arable or covered with crops and pasture”². Land ownership is in four major categories:

- (i) State lands, compulsorily acquired by the government through the invocation of appropriate legislation and held in trust for the entire people of Ghana;

¹ Ministry of Lands and Natural Resources, Land Administration Project, Phase II, Project Implementation Manual, Main Document, (2011)

² Ministry of Lands and Natural Resources, Land Administration Project, Phase II, Project Implementation Manual, Main Document, (2011)

- (ii) Vested lands, belonging to stools or skins but vested in the state in trust for the people of the stool or skin or family from which it was vested;
- (iii) Private lands belonging to stools, skins or family communities and held in trust on their behalf by chiefs, tendana, family heads; and
- (iv) Private lands given or sold as freeholds by stools, skins and families to individuals, corporations and institutions³.

The lands are governed by both customary and enacted legislation but over 80% of the lands are held by customary authorities. The country is characterised by a myriad of customary practices associated with diverse ethnic groups and local political formations. In some societies management of land comes under the authority of chiefs, in others, under priests, and in others, under lineage heads. In a community such as the Gas of Accra, it is common to find Family Heads managing lands while in a centralised one such as the Akans, it is common to find chiefs/Paramount chiefs in the helm of affairs (although land still comes under lineages and lineage heads, Abusua Panyin).

The customary authorities are required to hold the land in trust for the community and its future generations. Most importantly, they are “expected to dispose of lands in the interest of and with the consent of the community”⁴. Since the government projects custom to be grounded in a community and its people, it does not interfere with rights within the customary sphere.

³ Ministry of Lands and Natural Resources, Land Administration Project, Phase II, Project Implementation Manual, Main Document, (2011)

⁴ Ministry of Lands and Natural Resources, Land Administration Project, Phase II, Project Implementation Manual, Main Document, (2011)

Chieftaincy rule is recognised in Ghana's constitution⁵. Governments from 1992 have publicly iterated the necessity for non-interference in chieftaincy affairs. As a result chieftaincy institutions enjoy some level of sovereignty and autonomy. Thus access to resources and equity issues are left by government to the supervision and discretion of chiefs and custom with no interference from government.

STATEMENT OF THE PROBLEM

Several assumptions have been made about the role of customary management of land in terms of its equity and transparency. The various literatures on land are replete with diverse views as to how equitable and transparent the customary is in terms of security over land. These arguments do not take into consideration the rural perspectives of what rights are accorded by the customary, local perceptions of chiefly privilege and chiefly privilege in land, their conception, and local perceptions of their rights to land.

This study develops a case study of the Juaben area in which the paramount chief has gained both national and international recognition as playing a significant role in development and land administration. While the sale and registration of land by the paramount chief has been seen as a model of transparency, at the community level he is associated with the appropriation of lands from farmers. The paramount chief has also established an oil palm plantation and mill. While his advocates view this as a contribution to local level development, others have argued that he has manipulated custom to exploit Juaben lands for personal accumulation of wealth

⁵ 1992 Constitution of Ghana, Chapter 22, Article 270, clause (1)

(Brempong & Pavanello 2006). This study examines perceptions in the community about customary land management, chiefly privileges, land ownership, and accountability.

CONCEPTUAL FRAMEWORK

The emergence of LAP reflects the growth of communitarian approaches to the land question. Advocates of the communitarian approaches argue that most land in Africa is held under customary tenure. In contrast individual land titling is often expensive and cumbersome, and subject to long delays. Therefore an equitable solution to the land question is to use customary institutions as a basis for recognising customary rights, harmonising customary and statutory tenure and giving formal state recognition to recorded customary rights (Kasanga 1996, Wily 2001, 2003, Osman 2006). Some of these advocates again propagate the use of the customary because of the belief that it has the ability to draw out and demand accountability.

In contrast with these positions, several commentators have looked critically at customary land relations and argued that the customary is also the product of power relations within the community and that what is presented as the customary is often privileged interests which do not even pave way for any form of accountability (Chanock 1991, Mamdani 1996, Amanor 1999, Berry 2002, Boone 2007, Ubink 2008). Berry (2002) for instance maintains that actors invest in social networks to gain support to redefine the customary and build political support for their economic interests.

Other writers draw upon the literature on invented traditions to show how the customary has been historically invented during the colonial rule (Ranger 1983,

Chanock 1991, Amanor 1999, Berry 2002, Brempong & Pavanello, Ayittey et al (2007). To aid in the running of the colonial administration, colonial Ghana (Gold Coast) witnessed the restructuring of local political order. The colonial authorities created new chiefs where there were no existence of chieftaincy, transformed some chiefs who were not paramount chiefs into paramount chiefs, and created paramount chiefs even where the concept of paramount chiefs were not in existence. All these came with some levels of power and newly constructed responsibilities; prominent among them was being given administrative roles over land. Land administration was assigned to chiefs even in societies where land was originally being managed by different local political heads such as Earth Priests, herdsmen, or family heads. Amanor (1999) and Ubink (2008) for instance draw upon contemporary case studies showing the dynamics of power relations in contemporary community land politics. Thus chiefs often use the customary to embed their own narrow interests in controlling land for economic gain.

This study is therefore situated within the communitarian concept to investigate how really communally focused the customary is, and how equitable and transparent it is.

OBJECTIVE OF THE STUDY

The study examines local perceptions of the stability of rights to land accorded by customary land tenure. It examines local perceptions of customary rights to land, and the role of the paramount chief in land administration. It also examines the extent to which citizens can draw upon the notions of the customary to hold chiefs to account and prevent expropriation of their lands.

To examine the relationship between customary privilege and rights to land the study examines the following research questions:

- 1) Perceptions of the role of customary authority (the chieftaincy) in land management.
- 2) The role of customary rules and regulations in land acquisition
- 3) The conceptions of security of property rights embodied in customary land arrangements
- 4) The ability of local actors to demand rights and accountability within the customary land relations
- 5) The extent to which customary land rights can be redefined in the interests of accumulations and equity.

SIGNIFICANCE OF STUDY

Much of the recent debate on customary land management assumes that the customary is more equitable without looking at local perceptions of the customary and the customary officials who control the management of land. This work focuses on local perceptions of the customary as embodying popular rights in land and human rights. It contributes to the ongoing literature on the level of equity of customary management, and how rights over land in respect to customary practices are secured. It contributes to approaches that view land administration in Africa as being complex, in which land ownership and access rights are fraught with multiple truths and interests, competing claims to management, social stratification and unequal political relations, and a situation in which the customary may be reinvented and adapted to reflect dominant political and economic interests. It also contributes to arguments that

debates over land should be context and location specific but yet still interlinked with global perspectives.

RESEARCH METHODOLOGY

The study exposed the extent to which the processes of customary land management embody principles of equity, and or privileges and how the conception of customary is perceived by people of Asante-Juaben to give them security, rights and entitlements to land. The customary in this study is conceptualised similarly to Hobsbawm's (1983) conception of the customary as the "motor" of traditional societies and tradition as being fixed practices which tend to be rigid, ideological, accompanied by paraphernalia and ritualised processes, and usually connected to antecedents. This study conceptualises the customary as the guidelines or rules by which land is managed and accessed, and the practice of having land managed by local political authority (at whichever level) as a tradition. Thus, custom is what is done to ensure that the practice is materialised or realised.

Both quantitative and qualitative research methods were used to collect the data. Quantitative helps to provide an analogous of views and objectives while qualitative research method allows an exploration of opinions and positions on issues (Harwell, 2005). Both were used because the study demanded both an inductive and deductive reasoning of the issues. The face-to-face interviews provided the various subjective positions while the questionnaires provided the general wider objective positions. The interviews provided not only illustrations of their experiences, but highlighted major issues concerning custom and customary institutions.

Perceptions of land management, acquisition, security, custom, and the chieftaincy institution were investigated. To gain a deeper understanding of how these perceptions have been, people with knowledge and understanding of chieftaincy rule, and customary land management were interviewed. It was also important that information is gathered from people who have experienced and observed as well the effects of custom and the chieftaincy's role in acquisition, and access of land. To this end, purposive sampling was used to select informants. Bernard (2006) maintains purposive sampling is most appropriate in studies that are sensitive, and used to describe cultural processes. The research embraced chiefs, other local political heads such as family heads, farmers and other land users, and "people" of Juaben. People is conceptualised as anybody hailing from and living in Juaben, and migrants living in Juaben.

Time of visits to study areas helped to determine respondents engaged in only farming, and a combination of other economic activities. Locations played a role for selection of particular groups of people. For instance, the market and lorry stations were visited in the afternoon to gather views of non-farmers and people who are engaged in both farming and other economic activity such as trading. Interviews and questionnaires administered totalled (134). The questionnaires were administered by four assistants who were introduced to the researcher by an informant. The researcher conducted the interviews in addition to two focus group discussions. Both focus group discussions were held with people who had lost land to the oil mill and migrants who had managed to access land for farming. Some of the community members were hesitant about discussing a topic involving the paramount chief and declined totally or insisted permission is sought for from him first. For those who responded, assurance

of anonymity was given to them. In view of this, pseudonyms were used for respondents. Communication was through Twi, the local language and English.

Data was collected from the Juaben Township and 6 farming villages. The four field assistants were briefed on the research topic and the objective of the study. Two assistants administered the questionnaires at Juaben Township and Atiah. The other two covered Abetanim, Yaw Nkrumah, Ofoase, Abesuase and Korkodie. A timetable was drawn for them to ensure not more than one assistant was present at a particular location. They were instructed to make sure respondents were of different age brackets, and different sexes. They were also instructed to conduct independent work. Periodically the researcher will communicate with all of them for regular updates. At the end of each day, each assistant will present completed questionnaires to the researcher.

Informants were selected at market places, lorry stations, and various social meeting places such as “under tree” joints. The palace and office of the Ejisu-Juaben district were visited. The palace was to provide information on land management. The Ejisu-Juaben district was visited because Juaben is under that district and Ejisu-Juaben plays a major role in the authentication of land titling at Juaben. An Outgrowers’ office known as the Juaben Oil Palm Plantation Cooperative Society (JOPOCOS) managing farmers and the production of oil palm for the oil mill established by the paramount chief was visited. The Outgrowers’ office was to find out information on the scheme and impact of the paramount chief’s involvement in agribusiness on land and social lives of Juaben people.

Although land management is done at various levels, the highest body of authority is the Traditional Council. Due to this, members of the Traditional Council were considered vital to be interviewed. It was also important to interview these

groups of because they, with the paramount chief as head are the custodians of the custom. Additionally, other lower level political heads such as family heads were also interviewed. These groups of people highlighted the influences of the various roles and statuses on the land management process. Conversations with members of the Traditional Council described how custom impacts and directs the land management and acquisition processes. It described also the participation capacities of the various local political levels in decision making. This brought bare the equity nature of custom. Conversations with farmers (both private and outgrowers) also informed how custom impacts on their livelihoods, both economic and social and the various processes they take in attempts to manoeuvre their ways to grant them access to land and subsequently, security over it. Finally, structured questions were thrown to people of Juaben to measure the depth of perceptions associated with land management.

The researcher was assured of the possibility of meeting the Paramount chief for an interview on Juaben land management and protection of rights but that could not be attained because he was normally out of town or engaged in series of meetings. An interview of the Traditional Council collectively, even without the Paramount chief present was, however, also declined. The inability to conduct these interviews however did not affect the research because two sub-chiefs were interviewed and information from them was enough to highlight views from the Traditional Council.

SAMPLE CHARACTERISTICS

Juaben township was chosen by default because it is the capital of Juaben and in fact houses the palace, the only factory (an oil mill by the paramount chief) including the Outgrowers Office Society, and a relatively busy trading centre and

lorry station. It serves as the connecting point to the other regional areas and among other things has people coming from nearby villages to engage in diverse economic activities. A larger number of the participants were at the Juaben Township.

Atiah was chosen because it is the hometown of the royal family, and this drew out the desire to find out perceptions of custom and land management over there. Being the “royal community” as prescribed by custom, these views were necessary to either corroborate or invalidate some of the assertions from the other communities. Atiah was reported to have the largest number of farmers growing oil palm for the mill by the Cooperate Society. Abetanim, Yaw Nkrumah, Korkodie, Abesuanase, and Ofoase were chosen because they are neighbouring farm areas.

The population for the study included outgrowers, private farmers, non-farmers, and people from the community (*see Table 1*). This was also to identify whether there might be common opinions from farmers and non-farmers and if being farmers or engaging in particular economic activity influenced their perception on land relations. It also included officials of the Outgrowers Society and officials of Ejisu-Juaben District. The interviews of the two sub-chiefs were mainly to find out individual views and perceptions of the Traditional Council on Juaben customary land practices and its effects, and the system of rule.

Table 1

Occupations of respondents of questionnaires by town and gender

JUABEN	OCCUPATION									
	Farmer (self employed)	Out-grower	Petty Trader	Farmer & Petty Trader	Teacher / Clerk	Hair Dresser	Public Transport Operator	Oil Mill Worker	Out-grower Officials	Unemploy ed
GENDER										
Female	2		4	7	1	2				1
Male	3	4		2	2		4	2	4	2
Total	5	4	4	9	3	2	4	2	4	3

ATIAH	OCCUPATION								
	Farmer (self employed)	Out-grower	Petty Trader	Farmer & Petty Trader	Teacher / Farmer	Dress maker	Public Transport Operator & /Farmer	Oil Mill Worker	Unemployed
GENDER									
Female		1	2	2		1			1
Male	1	3			1		1	3	1
Total	1	4	2	2	1	1	1	3	2

ABETINIM	OCCUPATION			
	Farmer (self employed)	Petty Trader	Farmer & Petty Trader	Teacher Farmer / Palm Oil Tapper
GENDER				
Female		2	2	2
Male	2			1
Total	2	2	2	2

YAW NKRUMAH	OCCUPATION						
	Farmer (self employed)	Petty Trader	Farmer & Petty Trader/	Farmer & Palm Wine Tapper	Oil Mill Worker	Cobbler	Unemployed
GENDER							
Female	1	1	1				1
Male	2			1	1	1	1
Total	3	1	1	1	1	1	2

OFOASE	OCCUPATION						
	Farmer (self employed)	Petty Trader	Farmer & Petty Trader/	Public Transport Operator	Hair Dresser	Mechanic	Unemployed
GENDER							
Female		2	2		2		
Male	2			1		1	
Total	2	2	2	1	2	1	

ABESUANSE	OCCUPATION		
	Farmer (self employed)	Farmer & Petty Trader	Farmer & Palm Wine Tapper
GENDER			
Female	1	2	
Male	2		2
Total	3	2	2

KORKODIE	OCCUPATION	
	Farmer (self employed)	Unemployed
GENDER		
Female	2	
Male	1	2
Total	3	2

Table 2**Number of Interviews conducted in various settlements**

Location	Juaben Township	Atiah	Yaw Nkrumah	Korkodie	Abetinim	Ofoase	Abesuanse	Ejisu-Juaben District Office
Female	3	2	2	2	3	2	1	
Male	7	4	2	1	1	1	1	2
Total	10	6	4	3	4	3	2	2

Table 3**Profile of main interviewees****JUABEN (10)**

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Akua Ansah	Female	Trader	46	Akua trades usually at Juaben but occasionally moves out to other markets on their market days. She has 3 children but 2 are in Accra. Her husband is a farmer and they have been living at Juaben all their lives
Auntie Akyaa	Female	Trader & Farmer	55	Farms early in the morning and goes to the Juaben market to trade in foodstuff and other plastic products. Her farmland is access by her through her lineage.
Florence	Female	Hair Dresser/Petty Trader	32	Initially moved to Kumasi for 5yrs but returned to live with her fiancé in 2009. Her husband is a teacher in the Juaben secondary school in the town
Kofi Benneh	Male	Unemployed	25	A senior high school educated man who has been living in and out of Juaben. Considers farming to be tedious so is not interested in it. He talks of possibly migrating elsewhere he can find a job
Commander	Male	Trader	28	A very popular young man, many young people hang around his shop chatting away. He sells foodstuff and alcoholic drinks.
Issah	Male	Migrant/Mill Worker	45	Has been living in Juaben for more than 15 years having migrated from the northern part of the country.
Kwabena Owusu	Male	Mill Supervisor/	44	He has been living in Juaben all his life and appears to be very knowledgeable about Juaben. His role at the mill has witnessed him dealing with chiefs and the paramountcy alot. He is considered to be close to the Traditional Council
Ernest Brobbey	Male	Manager at JOPOCOS		He posits his knowledge and expertise in agribusiness made him migrate to Juaben to help manage the mill and plantation. He has been living in Juaben for about 10years. His position at JOPOCOS makes him sometimes privy to affairs of the traditional council. He has been able to access land for farming using the local sharecropping system.
Nana Outblon II	Male	Sub-Chief		He still has some lands under his supervision/control. He is a member of the traditional council
Nana Sarkodie III	Male	Sub-Chief		He is a sub-chief with no lands because the town reached his land. He is a member of the traditional council.

ATIAH (6)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Maame Konadu	Female	Trader	45	Maame Konadu was helping her husband on his family farm until his untimely death. She has 2 children
Abena Agyei	Female	Student	21	Her father is an outgrower for the oil mill. The land subjected to this arrangement was accessed by her father through his family
Nana Yaw Odei	Male	Retired Clerk/Farmer	60	Nana Yaw has lived the major part of his life in Atiah. He is considered one of the elders in his family and is able to make inputs in decisions concerning land and other communally owned properties
Opanyin Kwasi Agyekum	Male	Retired Farmer	69	Opanyin Kwasi has passed on the land he was farming on to his son. His family has some land and some have been rented out using both the "abusa" and "abunu" systems
Nana Yaw	Male	Petty Trader/Farmer	21	Nana Yaw grows oil palm and cocoa together with his uncle (mother's brother). He has also been given a small portion of land by the same uncle on which he grows some vegetables for himself.
Opanyin Ofori-Atta	Male	Retired Teacher & Farmer	75	Apart from settling of disputes, he manages the family land. Opanyin Ofori-Atta plays very significant roles in the affairs of his family. He was very helpful with oral history of Atiah and Juaben as a whole.

YAW NKRUMAH (4)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Grace Owusu	Female	Trader	33	Grace is married to an outgrower and has been living in Juaben for about 7 years after she moved from Kumasi
Auntie Gabriella	Female	Farmer & Trader	45	Gabriella has been farming for a long time and was able to access land through her family head. The land on which she is farming is her family's land.
Kwadjo Faakye	Male	Trader & Farmer	42	Owens a mini shop and is also a farmer. He has managed to put up a building on a land given to him by the family head of his wife. He is of the opinion he technically owns the house though. But his wife's family still benefits and his children are still secured because they belong to their mother's lineage.
Kojo Sono	Male	Outgrower	33	Kojo is an outgrower on the paramount chief's plantation. He also has access to land through a relative on which he cultivates other crops for consumption and trade sometimes.

KORKODIE (3)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Naana Sarpomaa	Female	Farmer	39	She is married to an <i>Odikro</i> , and has 2 teenage children. She is a cocoa farmer. As a spouse to an <i>Odikro</i> , she appears to be very familiar with the tradition of Juaben. She contends that although her husband has some land under his control, the paramount chief has the final authority.
Mama Akose	Female	Trader/ Seamstress	25	Has a farming father and a mother who is also a trader and seamstress. Her father accessed the land through the sharecropping system
Nana Agyen	Male	Student/ Teacher	21	Nana has been living in Korkodie and only away when he has to go to school. He lives with his parents and some other relatives.

ABETINIM (4)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Abena Grace	Female	Oil Palm production	45	She is a member of a family which produces palm oil. She shares the opinion that custom is necessary and expresses vehemently that the paramount chief shows no compassion when appropriating land
Maame Adjoa	Female	Petty Trader	63	Maame Adjoa has lived in and out of Juaben all her life. However, for the past 15 years, she has been living in Juaben. She considers herself to be a daughter of the soil with appreciable knowledge of the community.
Naana Boatemaa	Female	Farmer/ Palm oil producer	48	Naana has lived in Abetininim all her life and highly dependent on land for both of her economic ventures. She posits she has witnessed how an <i>Odikro</i> 's role over land management was ended because the paramount chief wanted that particular land to demarcate for sale.
Oheneba Manu	Male	Outgrower/JOPOCOS Official	38	Oheneba Manu has been connected to the agribusiness of the paramount chief for about 10 years. He moved back to Juaben having completed his secondary education in the Eastern region.

OFOASE (3)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Mavis Serwaa	Female	Baker	23	Mavis bakes and sells pastries. She is of the opinion the mill is beneficial because of the jobs it has created.
Nana Akosua	Female	Trader	45	Nana Akosua sells food stuff at the Ofoase market. She is married to a farmer who is using local sharecropping system to access land. She has lived in Juaben for about 20 years now.
Akwasi Agyeman	Male	Farmer/ Commercial Transport Operator	42	Akwasi has ties to Asante Juaben and New Juaben in the Eastern region. He has lived in and

				out of Juaben but has been stable in Asante Juaben for about 10 years now. In addition to his transport business, he grows fruits and other food stuff on lands he access through his family.
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ABESUANSE (2)

PSEUDONYM	GENDER	OCCUPATION	AGE	OTHER
Afia Kyerewa	Female	Trader & Farmer	45	Afia farms on land given to her by her family head and sometimes helps her husband on his farm also. Excess products from both farms are sold by her
Wofa Kyei	Male	Farmer		Wofa Kyei has a big farm on which he cultivates cocoa, oil palm, and some food vegetables. He is the brother of an <i>Odikro</i> . He sometimes sells some of his oil palm to the mill. His family has rented out some lands using both the <i>abunu</i> and <i>abusa</i> systems

EJISU-JUABEN DISTRICT OFFICE (2)

PSEUDONYM	GENDER	OCCUPATION
Evans Brown	Male	Officials at Ejisu-Juaben District Office
Alex Nkansah	Male	

TECHNIQUES EMPLOYED AND DATA COLLECTION METHOD

The research used both primary and secondary data. The primary data gathered was mainly from the administration of questionnaires and interviews. The primary aim of the interview was to find out the views of the local political heads, outgrowers, private farmers, and people from Juaben about the land relations and management. Questions about chiefs within the community are sensitive and so the questionnaire was used to facilitate the anonymous expression of opinions.

Though the questionnaires were structured, and interviews were conducted in a semi-structured manner and sometimes on one-on-one basis as preferred by informants. In some cases also there were more than two informants present at the preference of the informants. There were few open discussions also. Notes were made

of behaviours and comments “outside” the interviews that were considered relevant to the study.

The in-depth interviews were conducted with farmers, two members of the Traditional Council, some inhabitants of Juaben in general, and some officials managing the outgrowers and the scheme. Interviews were in a relaxing atmosphere of the respondents’ choice and they were assured of the confidentiality of the study and their responses. The free willingness of participation was communicated to the participants. The questions were a mixture of close-ended and open-ended ones.

JOPOCOS was also visited and officials interviewed. This organization also serves as a liaison between the private farmers and the mill. Interviews were also about the lands being used for oil palm production and the mechanisms used for the management. Information from here was also very helpful due to its candid nature. The interviews highlighted bits of information most likely to be ignored, overlooked or not mentioned at all. This enabled the researcher to obtain deeper understanding of relevant issues pertaining to experiences, perceptions, values, and occurrences of informants.

The secondary data was sought for at state apparatus for land management such as the Ministry of Lands, and the Land Administration Project for cases regarding Juaben land. The Ejisu-Juaben District office was contacted on the management of Juaben land because as stated earlier, as at the time of the study, Juaben was yet to establish its own Customary Land Secretariat.

DATA ANALYSIS

Data analysis used a mixture of quantitative and qualitative methods. The Ground Theory Approach was used to reduce the data into categories, and themes. Bernard (2006) maintains that the Ground Theory Approach is widely used to analyse ethnographic data. Three types of codes were used in this study. The first was based on the authority and ability to be able to take or influence decisions. The Second was based on access rights and security. The third categorisation was based on the inclusiveness of custom and the ability to demand accountability.

The themes categorised were 1) Power 2) Processes 3) Protection of custom. The various categories were thus mapped to the framework of the study and the necessary analytical comparison carried out.

ORGANISATION OF THE STUDY

The study is divided into five (5) chapters.

The next chapter discusses the literature in the areas of custom, custom validation, chieftaincy/traditional institutions, global economic debates on land, and a summary of the chapter.

Chapter three presents an overview of the chieftaincy institution and land management in Ghana from colonial Ghana to contemporary Ghana. It highlights the changes that have gone on in both situations and the various factors accountable for that.

Chapter four brings to light the intricacies of the chieftaincy institution and the pivotal role the institution plays in land matters in Juaben. The chapter demonstrates also the extent to which custom guarantees access to land, and yet still paves a way

for the vulnerability of land rights in Juaben. The information presented in this chapter is drawn from discussions with members of the community. In the process, the chapter gives an overview of the profile of Juaben.

Chapter five, the final chapter presents a conclusion of the study. It demonstrates a logical link between the vulnerability of user and access rights over land with the chieftaincy institution, and custom.

CHAPTER TWO

LITERATURE REVIEW

INTRODUCTION

The assumptions of the communitarian approaches are that an equitable solution to the land question demands the use of the customary as a basis for recognising customary rights. The customary is believed to protect the rights of all, whether rich or poor, weak or not. Threats over the access and security rights are believed will be forestalled at the local or community space spear headed by chiefs and with custom as guidelines.

However, several commentators have argued that the characteristics of custom coupled with the fact that it is not codified make custom questionable. Some of these commentators even argue that some customary practices were historically invented in the colonial era. They further argue that the ability of custom to evolve and adapt to changes are applauded without looking at what causes the changes, how they occur, and who benefits. The effects of the actions of various players and other variables on custom are downplayed, treated homogeneously and consensually. Critically looking at custom relations, the arguments are that customary land relations and the customary in fact have the tendencies to alienate others and protect privileged interests.

Considering the fact that custom is not codified, it is imperative to try to ascertain which reference points are used to ascertain what constitutes custom and most importantly, how to validate custom. In view of all these, this chapter is concerned with literature that examines custom and the approaches to ascertain the

validity of custom. The review also looks at a corollary of custom, the chieftaincy institution.

Although the customary is conceptualised as local and community based, global economic debates on land tend to focus on it due to its connection. Indeed conversations on the global arena have led to many African countries embarking on titling programs one time or the other which have impacted on the customary. In view of this, this review will also take a look at global economics debates on land.

CUSTOM

Custom as known is not ossified or codified but believed to emanate naturally from society, and perceived to have characteristics such as equitable, flexible, negotiable, dynamic and capable of responding and adapting to new circumstances (Berry 2002, Toulmin et al 2002, Cotula & Neves 2007).

Indeed while there have been arguments that the “flexible”, “negotiable” and “dynamic” nature of custom in effect make customary rights vulnerable (Amanor 1999, Amanor 2008, Berry 2002, Chanock 1991), others have also argued that these characteristics put custom in a unique seemingly advantageous position. Mighot-Adholla et al (1991) for instance maintain that the non codification of custom is most appropriate and necessary because otherwise will prevent its unique tendencies from taking its usual course of adaptation and evolution. Custom is ultimately expected to be authoritative enough to impact a distributional structure which will ensure equity, security, and inclusiveness. Wily (2001, 2003), for instance, maintains that security of user rights are always recognized and protected within customary practices and that

the recent recognition of them have led poor people to enjoy an unprecedented protection of their rights.

Hobsbawm (1983) asserts that custom is variant and open to innovation although quite tactically in appearance to identical and compactible precedents to give or guarantee some form of social perpetuity. He further argues that the innovations, resistances, and changes however are as desired and that it takes deliberate consciousness for customary/traditions to be isolated, abandoned or adapted. Amanor (1999) however maintains that the stratification in society inevitably paves way for manipulation. He argues that within this sphere, authority and power play key roles in determining what stays within or out and decisions taken sometimes affect the distributional structure. He explains that with respect to the desired change for instance, processes may appear to be neutral at the local level, but it is in fact determined by, and only available to a privileged few who wield power and influence with the poor and weaker individuals just succumbing to the outcomes. Tripp (2001) for instance maintains that custom does not allow women access to land in Uganda. While recognising custom might prevent external appropriation, she contends that it deepens also male dominance as it preserves the subordination of women.

Amanor further asserts that the practice of not codifying custom and the dynamism of it sometimes allows for negotiation and renegotiation for personal benefits of a few people depending on the kind of influence they wield and not necessarily for the community as a whole. Chanock (1991) similarly in regard to this maintains that class guides as to which aspects of custom are made to appear essential and due to this, people invest in status to have influence for personal benefits. Boone (2007) also posits that there is an assumption that decisions by local political heads are synonymous to that of the community as a whole. As Warburton (1997) posits,

living in the same place does not mean a common view about local issues and community and therefore does not mean consensus. Thus, fundamentally, ability to influence decisions can skew things in one way or the other. This implies that equity may not be attained. It is imperative therefore in accepting what custom is, one must not remain blind to underlying issues such as inequalities, power struggle, conflicts of interests, gender differences and individual influences within a community.

According to the Falk et al (1993) equity seeks to disrupt barriers raised due to partiality and unfairness. Unequivocally therefore, custom cannot be analysed within the frameworks of equity because it allows diverse interpretation and manipulation which is capable of breeding negotiation and manoeuvring. This inevitably defies the principles of equity. Although treating communities homogenously is not appropriate, differences are not clearly discernable since they only emerge in disputes and conflicts.

Peters (2004) asserts that what custom is essentially adapting to and “negotiating” is modernization, globalization, economic liberalization, structural adjustment programs, and commercialisation. These macroeconomic factors lie beyond the control of local communities and beyond their space. Peters argues further that these features have managed to weave their way directly into the communities and have caused changes and reforms that have appeared to be given or appropriate. For instance, the apparent need for effective land utilisation for maximum benefits which propels the alienation of land to “outsiders” for investment and others purposed by chiefs is seen as custom being responsive to development and therefore being dynamic and adapting to changing situations. However, the fundamental powers and economic distributional structure are not focused upon or are totally ignored (Amanor 2010). Indeed the revisit of customary practices has not only been due to the

resilience of custom but the acceptance of it within the global space as a necessary instrument.

CUSTOM VALIDATION

The peculiar nature of custom has caused the production of diverse opinions and views even in determining what constitutes and validates custom. There are assertions that the safest way to determine what constitutes custom at a point in time is through analysing disputes and their settlements within a society (Llewellyn & Hoebel 1941 cited in Ubink 2008). This approach maintained that by analysing what issues people contest, the processes of adjudication and the kind of judgements pronounced, what constitutes custom will be known or highlighted. They maintain that it is the existence and consciousness of certain acceptable norms and values (whether written or not) of society that guides in, or promotes the contestation of issues and the drawing of particular conclusions including its acceptance.

But this approach could be dangerous, and result in an unfair representation of the society. Within this approach a society which is free of disputes or records less disputes will be unfairly represented. Several aspects of the society which will be important in the construction of the customary of a society that do not find their way into the corners where disputes are settled are thus most likely to be alienated. Disputes that are also settled outside the local courts are not likely to be recorded to be included into the analysis of what constitutes a particular society's custom. In colonial Ghana, chiefs who appeared to benefit from the new order of chieftaincy system created by colonial authorities took advantage of their power relations to defy custom as was known by the people and affirm it while those who did not benefit

contested it. Indeed, although “focus on disputes” approach may appear valid in this situation in ascertaining the “truth” for instance, the situation nevertheless demonstrates how inappropriate it will be to draw out “correct” custom from “deformed” or “invented” chiefs who will be looking for ways to affirm their authority. As often advocated, the African custom is fluid and negotiable and therefore settlements at the end of disputes sometimes may not lie within the framework widely known and accepted by the society as a whole and in fact may be contrary to the usual practice. Ascertainment of custom through this lens unquestionably presents a near myopic position.

Others also argue that custom is best defined and identified through interacting with customary or local political leaders because of their pivotal roles within societies and by interacting with other individuals mostly considered as “experts” or of broad knowledge within societies (Danquah 1928). Kuper (2003 cited in Ubink 2008) for instance argues that words spoken by chiefs are foundations for truth. However, the journey of custom from colonial rule has demonstrated explicitly that custom has succumbed to power and manipulation by external factors and local political heads such as chiefs. Determination of what constitutes custom through conversations with traditional leaders and experts is a flawed process because fundamental issues are downplayed and not analysed critically. Indeed chiefs’ projections as the collective opinion may be in contrast to what pertains. Interactions with chiefs for “unquestionable truths” not only affirm Amanor’s (1999) position of unlevelled playing field, and biased negotiation process, but defeat the principles of equity and inclusiveness.

Critical also to this approach is that while it is clear who a customary or local political leader is, it is not clear where expertise of the customary resides. To begin

with, in an environment where rules are not codified, and ever changing, what procedures and criterion are used to determine expertise and how easily identifiable and equitable are these procedures? How and to what extent should these procedures and criterion even be considered valid? Within an already unbalanced gendered space or environment, will the determination parameters be yet still equal and levelled? For instance, in a male dominated environment such as among the Gas of Ghana, will women be given equal judgment parameters such as the men? Also importantly, an identified expert is to be an expert of what, and of which era considering the outlined characteristics of custom? Where there is a clash of ideas even between these experts, whose is to be taken as the superior? Who sets the tone or determines these frameworks? This approach is very alienating and unjust because what gets affirmed most importantly depends on the force and power backing it and who wields them. In fact it has the tendencies to allow individualistic opinions to be shrouded in collective positions and views. It can even serve as an instrument for suppression and oppression by few people.

Changes in society are inevitable and individuals tend to take advantage of changes to pursue a particular interest. In the colonial era, the colonial authorities resorted to affirming their authority by ruling through chiefs with the indirect rule system. Within this system, custom was to be acknowledged and operations carried out with reference to it. The determination of what constitutes custom was cumbersome as its fluidity and un-codification opened the door for the projection of many different versions (Mamdani 1996). In the end, custom was accepted to be that which the native authorities set up by the colonial authorities in conjunction with some local political heads projected. The possibility of the existence of other views was not considered. This act, Mamdani argued was unfavourable as it provided an

unlevelled field for the battling of the “truth” because people who did not have access to the Native Authorities could not present their views. Yet still, the views presented were assumed to be the collective view of the society and therefore presenting a false state of consensus. Inevitably, it also promoted unequal participation and an advantage for users of the courts.

Debates on identification and authentication of custom have highlighted that apart from its diverse approaches, it is not equitable. In most instances, reliance on its validity is on a few and limited people. To conclude that individuals or certain groups’ agenda may shift a course in a certain manner will not be implausible as the characteristics advanced for custom appear vulnerable. Indeed, a total reliance on existing customary practices might actually lead to a reliance on illegalities. Whereas rights might really be protected on the basis of custom, it will not be farfetched if rights being protected are actually rights that need to be resisted and trampled upon.

THE CHIEFTAINCY/TRADITIONAL INSTITUTION

The chieftaincy institution is generally considered as traditional and a core identity of particular communities. Kasanga (1996) maintains that the chieftaincy institution embodies the elements of inclusiveness, accountability, discipline, impartiality, and safety. He posits that corruption is checked and management is done effectively because chiefs are accountable to their people. According to him, the possibility of evoking punishments such as destoolment on chiefs propels them to demonstrate good and effective management. With regards to land for instance, Kasanga argues that there is equitable distribution and protection of user rights.

Similarly, Englebert (2002) draws on the issue of discipline and progress and asserts that with chieftaincy institutions, there may be a reduction of opportunistic behaviour by members of the community, and a greater potential for development mobilisation. Osman (2006) also reiterates these issues and advocates that the guarantee of greater security lies with the chieftaincy institution taking a leading role. He further maintains that the management of land has always been the responsibility of chiefs and they have carried this out very effectively. He deems this progressive because not only do chiefs ensure equity in distribution and protection of rights, but resources belonging to a particular body and managed by another body normally results in mismanagement. It is therefore imperative that resources are managed by their owners. Land then, should be managed at the community level with chiefs taking their usual leading role because chiefs again ensure that land is wisely exploited so that generations even yet unborn can have access to it.

However, Kasanga's assertion on inclusiveness of chieftaincy is highly questionable because to become a chief is by birthright and not necessarily opened to all. Becoming a chief generally is simply based on what family or lineage one belongs to or connected to. It is not opened to approval by members of the community but to a selected few who are also connected to the family. Inclusiveness therefore is very limited or can be argued to be nonexistent. Mamdani, (1996) for instance argues that whether custom can be documented or not and "natural" or not, it emanates from undemocratic bases and must not therefore be fully implemented. He further posits that it is oppressive because it paves way for local authorities to have political and economic power over their subjects. Boone (2007) also maintains that apologia of chiefs as land managers posit as though threats are only from external factors.

The advancements of Kasanga, Englebert, and Osman again posit the system of chiefs as land managers to be primordial. However, having chiefs as managers of land was invented in the colonial era to facilitate access to land by the colonial authorities (Ranger 1983). In the northern part of Ghana for instance, land administration was assigned to chiefs instead of their usual system of having Earth Priests in charge. The situation did not only give new roles, power and recognition to questionable and challengeable individuals and offices, but created the platform for manipulations and private inventions to exist and proceed within perceived legal frameworks. Hobsbawm (1983) for instance contends that any change in custom tend to have an effect on its related tradition and vice versa. Where chiefs were already in control of land, this new system gave them extra powers that were initially not in existence. This new authority has metamorphosed into some of the chiefs assuming ownership of land contrary to their initial position (Aryeetey et al 2007). In contemporary Ghana for instance, invented traditions continue to exist and activities carried out are proclaimed to be along the lines of custom/tradition. As Hobsbawm (1983) argues, fixed practices tend to be accepted as traditions when they seem connected to antecedents.

It has been argued that fear of punishment such as destoolment propels chiefs to exhibit good and effective governance systems which thrive on the tenets of chieftaincy mentioned above. However, while this idea of destoolment may still be in existence in contemporary times, the fluidity of custom has caused changes in the reasons for its call and grounds for the call of it are different now. The focus is now on whether a chief is development oriented or not. Development here means being able to facilitate, and provide social amenities such as clean water, electricity, health care centres, schools, hospitals, factories (for jobs), and others. Chiefs are willingly

exposing themselves, and aligning themselves with external factors/parties such as political parties, central governments, international bodies, and others who can help in the provision of these (Brempong & Pavanello 2006). By default, these actions tend to affect custom because of the conditions which sometimes come with them.

These acts by chiefs have created a platform for them to abuse their authorities and engage in activities for their selfish benefits as against that of the community. In Zambia for instance, many chiefs have been challenged by their people about projects they have embarked on in the name of development for the people. Some of these projects the people believe are trampling on their land rights (Brown 2005). The chiefs are accused of supporting the commodification of land in the name of development and benefiting from it (ibid). Recognition of chiefs as the mouthpiece of the people and the ability to have direct access to external funding have thus witnessed chiefs going against the wishes of the people. Drawing examples from the Akyem area in Ghana, Amanor (1999) demonstrates how chiefs have manipulated their ways within the community to take advantage of political and economic environments for their personal benefits. This critical question then arises with respect to the approaches of custom validation outlined earlier. Firstly, in analysing these disputes, whose version and countenance will be taken into consideration in ascertaining the true custom, and secondly, should the words of chiefs be considered as the unquestionable truth, since they are the custodians of custom, even when the community is challenging their claims and actions?

Contrary to the assertion of accountability, Amanor (1999), Brown (2005), Aryeetey et al (2007: 48), and Ubink (2008) maintain chiefs are not necessarily accountable to their people as projected. Aryeetey et al posit that especially when it

comes to the management of land, chiefs do so without the consent of their people.

They argued that:

“The positive view of customary land tenure systems ignores the long history of mismanagement and abuse of fiduciary responsibilities by customary land administrators, which has been traced to the 19th century mining boom in the colony when chiefs began to alienate vast tracts of land, sometimes in violation of the usufructuary rights of their people. They enriched themselves by transforming themselves into landlords and having been accepted as such, engaged in costly litigation and mismanaged stool land revenues, leaving their people and communities impoverished.”

The concept of custom has empowered chiefs and aided, from the colonial era in the commodification and alienation of land. Custom serves as a good and necessary instrument because not only does it empower chiefs in land allocation, but it shields the influence and role of the state in some of the allocations (Amanor 2009:78). When land is availed by chiefs to the state upon incitement by the state, it is justified within the frameworks of custom. Thus, due to its modification tendencies, custom and chiefs are used as frontiers for the misappropriation of land by “external” parties such as the state.

Chanock (1991) maintains that customary is generally considered to be vital but it is however adhered to by individuals depending on benefits they can reap from it or as a reason of it. Where custom is beneficial such as enabling ties to land, it was considered relevant but where it seemed to impede the acquisition of more land, custom was considered as a constraint. Chanock argues further that customary land tenure system serves as an instrument to control the peasantry because as a member of a community and to be identified as such, one must be seen living by the communal by-laws mostly constructed by elites. This however does not mean that there might be

no struggles or conflicts. He asserts that there are always actors who invest in status and abuse the power and authority accompanying it and use it as a means to negotiate and renegotiate their ways in the community.

Land management at the local level has been argued to pave way for self wealth accumulation by local elites (Brown 2005, Ubink 2008). Brown explains that in Zambia, the wealth is derived from the honorarium which comes in many forms ranging from cash to vehicles required to be given to chiefs in land transactions. The honorarium, he says has served to support their little incomes from subsistence farming and allowing them to transform their hut palaces into large modern buildings and in the acquisition of plush vehicles. Ubink maintains that the decentralised management of land has increased the control of benefits of land into the hands of traditional authorities. In Ghana, payments on land transactions consist of different units with a part known as “drink money” generally supposed to be for the community. However, she contends that the “drink money” is of substantial amounts and yet free of accountability by the chiefs.

The glorification of the chieftaincy institution and custom thus eschews them from interference and monitoring. In reality, custom actually has the potential to affect rights of poor people in a rather negative manner while invariably contributing to inequality, gender disparity, and class differentiation (see Tripp 2001, Boone 2007, Ubink 2008). In fact idealising custom presents a false state of homogeneity and treats trivially internal struggles, conflicts, and selfish interests clothed in communal apparel. Authority, power, status, and ability to influence pave ways to the engagement in illicit activities and a misrepresentation of the collective position of the community in seeming legally accepted frameworks and yet go unpunished.

Ranger (1983) however makes fundamental arguments that “what were called customary law, customary land-rights, customary political structures and so on were all in fact invented by colonial codification”⁶. He maintains that while these creations were in fact meant to re-establish order and offer security to the colonial authorities, Africans equally took advantage of the emerging trend to reassert themselves and create some authoritative space for themselves. He further posits that colonial rule created the situation where land allocation, marriage transactions and political office were controlled by elders. Similarly, these new creations were used against women by men, and against subjects (children of the soil) and immigrants.

GLOBAL ECONOMIC DEBATES ON LAND

Although land is considered a local or communal issue, it has never been shielded from both national and international conversations regardless of divergent views. This affirms the notion that the local space is not entirely detached from the national/international space. This section looks briefly at how the conversations have been constructed.

The neo-classical economic theory during the era of modernization theories argued that the communal ownership system is inappropriate and maintained that it was an impediment for agricultural development. It argued that the communal land tenure system was full of limitations. The process of moving land from one party to

⁶ Ranger, T. (1983). “The Invention of Tradition in Colonial Africa” in E. Hobsbawm, & T. Ranger (eds.), *The Invention of Tradition*, p. 250.

another at different periods coupled with the multiplicity of ownership or access rights at the same time were considered to be limitations. The multiple party-ownership, it further posited created a difficult environment for long term investment as an absolute issuance of the right to use land is dependent on many parties with possible different interests. This, it is argued caused conflicts, delays and complexities in investment agreements. The environment for economic operation, it further argued must be opened and free for individuals without the constraint of community institutions (lineage, family, etc.). Individuals should have the power and absolute authority to make preferred choices to fully utilize economic resources. Thus, individuals must be made to know clearly what belongs to them, what they have at their disposal, and what can be acquired for their benefit. Individuals could arrive at conclusions which will reflect their resources and preferences. By this, farmers could use their lands as they please and could use lands as collaterals to access credit for modern farm inputs to develop their agricultural production or for any economic agreement. They could sell lands to individuals who could maximize production. Land will be commoditized and could be transferred to efficient users. Individual land titling needs then to be promoted.

The position outlined above was not only calling for singular authority over land, but the alienation of other rights, primary or secondary. It was basically seeking to breakdown the structures created by the customary. Contrarily, Barrows and Roth (1990) maintained that communal land tenure systems (the customary) do not impede agricultural development or any other economic development. They maintain that regardless of the type of registration so far as it is secured, social benefits are most likely to be attained depending on available economic opportunities. Measures by land tenure institutions inhibit access to technology for effective land development for

instance and not the type of the registrations (*ibid*). Similarly, Kasanga (1996) posited that land titling has however not even guaranteed access to credits from the banks and that small holders seek for land titling as a means of protection against external appropriation. Amanor (1999) argued also that individual land titling is sought for by individuals who do not have user rights over land within the communal setting. Land titling programs also gradually caused great competition, demand of, and the commercialization of land. Additionally, it also undermined and limited the authorities of local political leaders and institutions and their basis for economic support, financial support and influence (Berry 2002).

In other countries apart from Ghana where land has been commoditized, sale of land has not even been used for agricultural production (Barrows & Roth, 1990). Commoditization has deepened inequalities and inequitable distribution of resources as parties with capital have been given opportunities to acquire more properties. Land commodification and appropriation have created instruments for victimization of the opposition and the rewarding of friends and cronies by people in power for instance (Kasanga 1996). The situation caused conflicts being attributed to economic dependence and the questioning of the legitimacy, and accountability of institutions governing land (Berry 2002). Globalization and market liberalization in general increased prices and intensified competition over resources. The commercialization of land resulted in the privileged having a great advantage over the less privilege, and divisions even within families (Konings, 1986). The poor class has been left to the dictatorship of the rich and this has left them poorer (*ibid*).

The New Institutional Economics (NIE) theory after the failure of the modernization framework explains economic activities paying attention to cost in transactions which include negotiation, information and litigation. Grischow (2008)

and Chinigo (nd) argue that social institutions and for this matter community institutions are considered very important by the NIE because they are believed to help reduce cost to improve the performance in an economy. In terms of accessing land for economic activities, transactions with a communal land tenure system are very costly. Transfers are cumbersome and difficult but it should be flexible so that parties/individuals who can afford to purchase and utilize it appropriately have the environment to do so. By this, individuals who can maximize production are able to do so by purchasing land or coming into agreements with owners of lands in a non-cumbersome manner. This simplicity, the NIE maintain can be enhanced by social/community institutions because of their ability to disseminate information easily, which is a key factor. The networking and interactions of these social institutions create platforms where people can have access to information in a non-cumbersome manner. Within this sphere however, contacts with chiefs and rural elites can be established to guarantee access of resources. Chiefs who buy into these ideas readily make land available mostly without consulting the people though the representation will be such that the community will be posited to be involved.

The Evolutionary Theory of Land Rights (ETLR)⁷ argues that so long as land is abundant, whatever system exists to ensure distribution does not matter. The problem however arises when land becomes scarce as a result of factors such as technical change which leads to disputes. At this point, measures which are considered clearer and effective such as a distinction of what goes where are automatically incorporated to mitigate these disputes. Thus, existing systems are subjected to changes to suit the newly emerging situations. Critical to this position is

⁷ ETLR is a theory by Platteau in 1996.

“*who calls for or directs the change*”? The position here is that, power, and authority come into play to determine the change. The causes of the changes may be instigated from the global arena, to the national level and inevitably to the community level and thereby having an effect on indigenous land rights. To this, Amanor (2010) maintains that ETLR gives an insignificant recognition to the extent to which political and power relations shape land relations because external factors such as trade, capital investment and processes of capital accumulation result in land sales.

Similarly, Izumi (1998) posited that systems are changed or subjected to changes depending on conscious motivations. She argued that the maintenance or change of institutions usually occurs per the agenda of people based on their political status, accessibility to resources and socio-economic status. Amanor (1999) for instance describes how during the colonial times in present day Ghana, attempts to vest southern lands in the Crown was strongly opposed by the intelligentsia because a land market had already been developed and control by the Crown was going to frustrate a class of locals with economic control who wanted concessions in land.

Cotula and Neves (2007) also argue that the customary and practices have changed because of factors such as demographic change, urbanization, and the integration of local economies into the world economy, which are beyond the control of the community. Mighot-Adholla et al (1991) similarly posit that intensification of agriculture or the commercialization of it gradually leads to privatization of land rights. For instance, cultivation of commercial crops such as oil palm caused an individualization of land rights in Hohoe in the Volta region of Ghana because transfers of land parcels became limited or in some cases non-existence at all (Mighot-Adholla & Place 1998).

The Old Institutional Economics (OIE) theory maintains that in looking at the economic situation it is important to disaggregate components and analyse how they interact with each other. To this theory, land should not be looked at as only an economic constituent but as a source of livelihood. The existence and survival of man is dependent not only on the market, but equally on social and political stratifications. Thus, the communal land titling tenure system is perceived as a guaranteed way for the survival of the poorest individual and a whole generation. In looking at it solely from an economic view point, other social issues are likely to be threatened thereby affecting the survival of a class of people. Land should be looked at in terms of how general needs of people are satisfied.

CHAPTER SUMMARY

It can be observed from the review that the fundamental problem with custom is the practice of not ossifying or codifying it and having characteristics such as “negotiable”, adaptive, and “flexible”. The issue underpinning “negotiable”, “adaptive”, “flexible” is that there is always some form of relinquishment to accommodate some other thing. This however may be due to coercion, manipulation, intimidation, or voluntariness. Authority and power play critical roles in what forms decisions. This therefore implies that custom may not be able to impact a distributional structure which guarantees equity, security, and inclusiveness. In fact, custom contrarily unequivocally defies the principles of equity. In addition, regardless of external factors such as power or influences, custom within itself can be discriminating. Thus, the customary is fraught with inequalities, power struggle, conflicts of interests, gender differences and influences.

The arrangement of chiefs as managers of land is an invented one from the colonial era. Their land management, and further authority being wielded tend to pave way for self wealth accumulation and state appropriation of land. In addition, the undemocratic principles of chieftaincy in some ways permit unaccountability of the institution. Security of rights over land is questionable as custom can be a controlling and oppressive instrument. The integration into the global space has given recognition of an invention as authentic.

Again it can be observed that custom is not shielded from external (both national and international) influences. Debates on land have always taken into consideration, the customary. The neo-classical for instance pays attention to the customary although it is to break it down. Indeed the global debates identify how beneficial custom is to their divergent goals. While the NIE seeks to take advantage of the tenets of custom which promotes the link to rural elites such as chiefs in the community within communal rules for an apparent effective market, post-Marxists also seem to consider the involvement of these rural elites as recognition of, and an incorporation of the rural community. This inevitably calls for a great caution in the idealisation of custom as the panacea for communal rights protection.

CHAPTER THREE

OVERVIEW OF THE CHIEFTAINCY INSTITUTION, AND LAND MANAGEMENT IN GHANA

INTRODUCTION

Critical look at custom, and thereby the chieftaincy institution, and land management in Ghana demands an overview from the colonial era to contemporary Ghana. This is mainly because the outset of colonial rule led off the direct interferences and in some cases indirect interferences into customary practices and local political and natural resource management structures. The effects of these interferences instituted some of the complexities and ambiguous issues associated with customary practices. Subsequently, domesticated political governance structure, and a much more elaborate integration into the global space and world economy further caused changes which have also deepened the unclear, ambiguous, and debatable customary relations. This chapter highlights the trajectory of the chieftaincy institution and land management in Ghana.

OVERVIEW OF THE CHIEFTAINCY INSTITUTION

Prior to colonial rule in Ghana, local political leaders governed. Their jurisdictions covered a demarcated area and groups of people with common ancestral backgrounds. Common to the various groups of people were land areas, and water bodies, and laws guiding their administrations or management and usages. The laws were generally referred to as customary laws and were considered inherent to the

people. The customary laws guided political, economic, social, and religious executions of the people. With the advent of colonialism, some changes were brought about which have affected the chieftaincy institution till present day.

Colonial (Pre-Independence) Era

The colonial era witnessed a paradigm shift with power and authority being within the domain of the colonial authorities. Prior to this era, indigenous societies were of two groups, those with a centralized authority such as the Akan areas and those without such as the Ga-Dangme. The centralized authorities could have a paramount chief and many other sub-chiefs under his command. While the paramount chief was the overlord of a cluster of communities, the sub-chiefs were overlords of single unit communities or villages. Chiefs within the centralized societies were believed to be in control of the various aspects of the societies' lives. This embodied the political, social, and economic. The chieftaincy institution controlled or had influence on the legislative, the judiciary, and the executive (Brempong 2000, Rathbone 2000). In view of all these, coupled with a seeming guaranteed access to land and other minerals coveted by the colonial authorities, and inadequate governance structures, it was deemed necessary by the colonial authorities that chiefs became allies of the new system (ibid) or forcefully incorporated into the new system of indirect rule where administration was done by the colonial authorities through chiefs. A system of governance thus germinated where there was the central government as well as the local government also known as Native Administration. The establishment of the Native Administration presented the governance system as respecting the customary of the people (Ranger 1983, Rathbone 2000).

The colonial authorities managed to successfully model the societies without a centralized authority into centralised ones (Brempong 2000). Autonomous villages were amalgamated into one village or society with a centralized authority. Where there were no chiefs, chiefs were installed and where there were also no paramountcies, they were created. For convenience, some existing paramountcies were reduced to lower levels while some lower level chiefs were upgraded to the status of paramountcies. Some individuals and chiefs at different levels took advantages of this to assert a certain level of authority they did not possess and further professed it to be customary. In most cases though, the colonial authorities supported people who could become their allies and could facilitate indirect rule. The paradigm became fraught with internal wrangling, and disputes relating to successions, jurisdictions, etc. Although some chiefs readily complied with the colonial authorities, there were some who resisted the colonial authorities (Boafo-Arthur 2001). The authorities of chiefs although recognised had been tampered with as some of their judicial functions such as trying murder or arson cases were taken away from them. They however had some level of autonomy as interference in their everyday activities was rare and in limited courts (Rathbone 2000).

Chiefs were given civic responsibilities such as sanitation, building of roads, etc. and expected to pay for and provide labour for the completion of such projects. The provision of labour was done in a forced manner and with time, some of the people began to resent their chiefs (Rathbone 2000). Prior to colonial rule, chiefs had no personal property and any property acquired during a chief's reign was considered property for the entire community (Brempong 2000). But chiefs were deemed unaccountable to their people and not pursuing the interests of the community as a whole. Incidentally, a new crop of people comprising of educated professionals best

known as the intelligentsia also shared the view that chiefs were not accountable. In fact, they were of the opinion that they were best to represent and pursue the interests of the people.

Some laws passed by chiefs were considered oppressive by the people. In some cases, chiefs played dual roles of both plaintiffs and judges. There was a proliferation of land disputes and it was not uncommon to find chiefs themselves involved and engaging in costly litigations (Brempong 2000). Chiefs were accused of corruption, bribery, and injustice among others. Some chiefs used their authorities to engage in activities and reinterpreted customary laws or practices for self benefits. In some cases they were accused of selling communal owned lands for personal gains and amassing of wealth (Amanor 1999, Rathbone 2000, Arhin 2001). There were some tensions between some of the people and some chiefs as the people generally felt support being given to chiefs by the colonial authorities is being taken advantage of mostly in the favour of the colonial authorities and the chiefs themselves. Despite these tensions and accusations, the colonial authorities still supported chiefs unwarrantedly because affirming their authority was partly dependent on the chiefs.

Economic growth was however not attained and this became clear during World War II which called for increase in food supplies and exportation (Rathbone 2000). Chiefs were categorised as part of this problem by the colonial authorities and this, coupled with the position that some of the chiefs had indeed become corrupt and were amassing wealth for themselves resorted to the curbing of some chiefly authorities by the colonial authorities (ibid). Chiefs were not to preside over courts as they used to and accordingly, in 1944, the Native Authorities Ordinance was passed. This allowed interference into the constitution and finances of the native authorities by the colonial authorities. The roles of the chiefs were confined to rituals and mere

symbolic activities. Even issues concerning enstoolment and destoolment were supervised by the colonial authorities (ibid). There were calls in diverse ways for the chieftaincy institution to reform itself.

In 1948, riots broke out and an investigative report prepared by the Watson Commission on the riots attributed it to the suspicions shared by the people of the chieftaincy institution being used as an instrument by the colonial government to suppress political aspirations of the people and also of the view that the chiefs were using the colonial authority as a shield in engaging in activities the people resented. After the commission's report which was slightly contested by the colonial authorities, the Coussey committee was set up to conduct further investigations. While the reports differed, there were common elements of both reports which suggested that chiefly duties should be confined to the management of customary laws and settling disputes connected to stools.

The Convention People's Party (CPP), a formidable nationalist party was also during that same period expressing disapproval of the actions of the chieftaincy institution with the advent of colonialism. The party, with its leader, Dr. Kwame Nkrumah, viewed the institution as equally imperialist like the colonial authorities. Their dislike for the chieftaincy institution stemmed from the belief that the institution had aided the colonial authorities in the oppression and suppression of the local people (Rathbone 2000). A resistance of the institution was therefore meant to be a resistance towards colonial rule. The protest against the chieftaincy institution was also a way to curb any collision with any other form of authority over the people and resources. Attention was given in ensuring the demise of the chieftaincy institution till independence. The rival nationalist party of the CPP, the United Gold Coast Convention (UGCC) consisted of members with royal backgrounds and therefore was

classified as an alliance of the chiefs. With time, some chiefs from Asante who opposed the CPP formed an alliance known as the National Liberation Movement (NLM). Chiefs who opposed the CPP readily supported the NLM.

So intense and serious was the dislike for the chiefs who opposed the CPP that upon the winning of the first general elections to gain places within the central government and thereafter constituting the first independent Ghanaian government, various measures were put in place to undermine the authority of chiefs'. Ordinances and By-laws were enacted as a way to curb the authority of the chieftaincy institution or see its total demise. But the colonial authorities whom still felt there was the need for a unitary state and a representation of the chieftaincy institution in central governance helped to draft a constitution where representations of the 5 regions during that period was necessitated. The chiefs were thus to advise the central government on customary matters.

Post Colonial Era

With the CPP in power and no colonial authorities to restrain affairs, various laws were enacted to frustrate the chieftaincy institution and limit its power. Through this, the political and economic basis of chiefs was seriously curtailed. This was deemed necessary also by the government because the belief was that there was the need for a unitary state and chiefs contrary to the position of the colonial authorities earlier were impediments to achieving such a cause. The old constitution was altered to pave way for direct interference of the government into chieftaincy issues without consulting the House of Chiefs established prior to independence. The alteration of the constitution also allowed the government to create additional regions. Just as the

colonial authorities had done, the government also reduced the status of some paramountcies and created new paramountcies as political rewards and token with the new regions created (Arhin 2000, Rathbone 2000).

In general, most of the chiefs who opposed the CPP government were from the Asante area and so much focus was granted to that area by the central government (Rathbone 2000). The Native Tribunals and Local Courts were demolished and chiefs were subjected to the dictation of the central government through the Minister of Local Government, who reported to the President (Dr. Kwame Nkrumah). The Minister also interfered deeply in chieftaincy affairs. Thus, while the constitution did indeed guarantee the chieftaincy institution, its autonomy was dictated and controlled by the central government. Chiefs were only those (chiefs) who were recognized by the central government. The interference ranged from determining members of chieftaincy councils, functions, procedures, meeting places and times, heads of the councils, and so on.

A Judicial Commissioner who reports to the President through the Minister was appointed with the mandate to enstool or destool any chief in accordance to procedures designed by his office. Activities to be carried out by chiefs needed clearance from the central government. The Councils or House of Chiefs were allowed to modify customary laws or alter them as they deemed fit and upon approval from the Minister (Arhin 2000). The civic responsibilities given them from the colonial era were now almost non-existent. Local state agencies were set up to embark on these activities. The government denied areas where the CPP government was opposed such as Akim-Abuakwa with social amenities and employment to aid in the generation of resentment by the people towards their chiefs (Arhin 2000). The CPP loyalists and sympathizers were in turn also frustrated by some chiefs and their

subjects in carrying out party activities. There was indeed conscious effort to prevent “local imperialists” (Kwame Nkrumah called the chiefs as such) from engaging in any activity to distort the unitary nation building for the common people.

In 1966, the Nkrumah led government was overthrown by a military group known as the National Liberation Council (NLC). This not only caused a change in the centralized system but that of the chieftaincy institution as well. Upon assuming office, the NLC started to do away with most of the procedures established during Nkrumah’s reign as a way of among other issues resisting anything connected to CPP. The authority of the chiefs was reasserted and interference into its affairs seriously curtailed. It must be noted however that the new “stools” created by the colonial authorities and the CPP government were made to remain and made to enjoy equally the respect of those stools already in existence prior to colonial rule. The control of land and possibly labour which was taken away from chiefs was given back to them and thus enabling them to regain the level of authority and influence they enjoyed prior to the CPP administration.

After the regime of the CPP, and during the regimes of successive governments, both civilian and military, the chieftaincy institution which was constructed during the NLC remained and efforts were just made to improve upon its autonomy and its acceptance within the national structures. The institution was given a recognized role in the bureaucracy in charge of the running of affairs of the country. It was however during the reign of the PNDC that some changes were again made. There was a revisit of some of the laws during the CPP regime. It was required that before a chief was going to be recognized as such, it was mandatory that there was approval or recognition by the secretary in charge of chieftaincy affairs of the state. This was however reversed as Ghana became a democratic state in 1992. Even though

it looked as though the sovereignty and autonomy of the chieftaincy institution were threatened, some of the chiefs also devised ways themselves through which to survive. Just as some of them had done in the colonial Ghana, some chiefs, for tranquillity are seen aligning themselves with the government of the day (Arhin 2000, Boafo-Arthur 2001) or with political parties (Brempong & Pavanello 2006). Thus, they do so to have a “sound environment” to operate and acquire assistance as and when they need it.

However, the existence of other avenues of gaining economic independence not necessarily linked to the community and the existence of other state recognized judicial bodies have automatically reduced also the power of the chiefs. There is migration and resettlement resulting in people living together within a common space but not having the same ethnic and customary/traditional ties. In such, cases, people may or may not comply with directions from the chiefs. Also, the state courts have become avenues where people may just seek redress from, and thus ignoring the local or traditional courts or seeking justice in the state courts when not satisfied with the outcome at the local court. In this situation, a decision by a chief may be overturned by the state court.

The Chieftaincy Institution in Contemporary Ghana

In contemporary Ghana the chieftaincy institution is guaranteed and the constitution documents this. Roles of chiefs have changed as of necessity to adapt to changing situations. The roles of the chieftaincy institution have been both statutory, and non-statutory. Thus, their roles are those that are codified in the national constitution and ones which are not codified but appear given. Chiefs are barred from

engaging in active party politics. They are to remain neutral and not influence their communities in partisan politics. Although they are not supposed to engage in active partisan politics, political parties do still seek their “blessing” during campaigns and elections.

Chiefs are perceived as development agents and in line with that, they tend to carry out activities supposed to promote development. For instance, they are expected to create or make available avenues for job creation for their communities. Chiefs are sometimes advocates against diseases, and the promotion of education. Unlike in the past where education was not necessarily a prerequisite for a chief, education has now become almost mandatory (Boafo-Arthur 2001). In some situations however, some of these educated chiefs focus on their careers and so become absentee chiefs relying mostly on their local elders or council to run the daily activities (ibid). In some instances, such absentee chiefs tend to have no or limited knowledge on how the customary is changing or adapting, and the players actively involved. On the flip side also, these chiefs infiltrate the customary with external experiences and knowledge gained.

Local people are however normally in support of an educated person as a chief because of the belief that such calibre can articulate and pursue the communal interests better. The belief also is that, since development has taken a different toll, an educated chief will know how to manoeuvre his way within the national and global spaces for communal infrastructure, amenities, and other modern required assets. It is not uncommon to find lawyers, engineers, doctors, etc as chiefs. This situation has also “re-elited” the elites in that not only are they seen as important within the community, but within the national and international space. They are able to establish direct contacts at different levels for benefits for the community and in some cases for

themselves. When they amass wealth and acquire infrastructures for the community, their people are appreciative of them because they have “brought development” to the community (Brempong & Pavanello 2006).

Regardless of the seeming attainment of recognition, the chieftaincy institution is fraught with problems which weaken it. Arhin (2000) maintains that the problems are of disputes relating to succession which in some case tend to result in to violence and litigations, and financial weakness. The problems also tend to affect land tenure security as there are sometimes contestations on who wields authority over which land and power to alienate. For more than a decade now for instance, the media has been reporting on some sub-divisional stools including a paramount chief of the Ga people being in contention. These problems can be said to be residue of issues that arose with the creation of paramountcies that were non-existent by both the colonial and some post-colonial governments. Arhin (2000) again opines that the succession problems have been due to a diffusion of population, a spatial segmentation and “sale” of stools to “unqualified” educated individuals in recent times. Education has become an instrument for people to acquire local political positions and perform roles they are not supposed to. Customary by-laws as such are being ignored, eroded, or trampled upon.

The financial weakness also, Arhin (2000) has attributed to the disappearance of levies and court fines imposed by the customary courts. Communal levies and dues are collected by local government state agents and agencies. Thus, while changes have been made for the recognition of the chieftaincy institution, most economic ventures associated with it are yet still being controlled by the central government. This system can be said to have started even from the colonial era, intensified by the CPP government and carried on by successive governments. Chiefs then tend to use

many ways to gain that financial strength. However, chiefs are sometimes perceived by their people to be pursuing selfish interests as against that of the community. They are also viewed as unaccountable especially with the issue of land management (Ubink 2008).

The Global Space and the Chieftaincy Institution in Contemporary Times

The chieftaincy institution continues to be awarded much respect and recognition from the global space especially in this era where a protection of local political structures and other institutions is being advocated by institutions such as the World Bank⁸. Other aid agencies and civil societies' such as the Department for International Development (DFID) bent on ensuring a protection of land rights have also created platforms on which the roles of chiefs in these projects are receiving recognition. The conceptualization of the institution itself as non-state and a civil society has allowed for a recognizable role in the pursuance of development and governance agendas. Expectation to be development oriented by their subjects, and individual ambitions tend to guide chiefs in the engagement of activities within the global space.

Some chiefs establish direct transnational and trans-boundary contacts for diverse agendas ranging from the establishment of business ventures, educational scholarship schemes, and others. The Paramount Chief of Asante-Juaben, Nana Otuo Serebuo II for instance established a direct relationship with the World Bank for

⁸ World Bank project on "Promoting Partnerships with Traditional Authorities, 2003

support for an outgrowers project for his oil palm plantation⁹. The Asantehene, Otumfuo Osei Tutu II, also was able to establish contact with the World Bank for the latter to support Asanteman with a grant in support for educational and health projects¹⁰. The Asantehene has also urged the World Bank to support agricultural development in Ghana¹¹. The paramount chief of Western Nzema, Annor Adjaye III, also solicited support from an Italian institution for the development of micro business and vocational training.

Chiefs make it easy for programs supposed to be for community members to reach the members on time. They also help in the successful running of these programmes by playing supervisory roles on the projects. This however opens the institution up for the global space to have direct impact, whether positive or negative and these trickles down to the communities and people.

OVERVIEW OF LAND ADMINISTRATION IN GHANA

Land, as has been argued countless times, is essential. Access to land does not only give you economic security and authority, but in some cases, control over people or labour. Due to this, there is almost constant movement of activities and negotiations in a bid to guarantee access, and control of it.

⁹ Interview with the Paramount Chief; Nana Otuo Serebuo II (Brempong 2006)

¹⁰ GNA news report; 15th August, 2011. “*Otumfuo urges more World Bank support for Ghana’s development*”

¹¹ Report on www.myjoyonline.com. 14th September, 2011. “*Asantehene and World Bank talk tough on agric and population*”

Land in Colonial Ghana

In order to regulate the agricultural, mining, and forestry sectors in colonial Ghana (Gold Coast) for the purposes of capital expansion regulation and maximization of government revenues, the colonial authorities deemed it necessary to court chiefs, and control land (Amanor 1999). Attempts were therefore made by the colonial authorities to control land through the Crown Lands Bill and thereafter, the Lands Bill. With the Crown Land Bill, “waste” land, forest land, and minerals were to be vested in the British Crown (B.C.) and only the B.C. could grant lands out to “foreigners” although user rights of the indigenous people still persisted. This was rejected by the intelligentsia as a violation of basic national rights and thereafter it was rescinded. With the Lands Bill, rights of usage and granting of land out to natives but not to Europeans were acknowledged to be able to be done by chiefs. This was also rejected by the intelligentsia again because it was argued to be similar to the earlier bill rejected and undermined the authority of chiefs and consequently, it was also rescinded. Several attempts were made by the colonial authorities to control access to and rights over land through such laws as the “Forests Bill” which was also protested against. Nevertheless, the colonial authority was successful in bringing lands of the northern sector under the control of the state. A dual system of land tenure thus existed where southern lands were still under the control of local indigenous political heads while northern lands were in control of colonial authorities.

The establishment of a Forestry Department however caused a change in the system as it permitted chiefs to could alienate land under its supervision. Native Authorities were set up to guide in land transactions within customary rules and practices spearheaded by chiefs without the inclusion of the intelligentsia. With this, chiefs gained firm control over land and the processes of its transactions, extraction of

free labour, and control over the inland migration (Amanor 1999). This paved the way for some chiefs to establish their own plantations and collect rents on lands they had availed for cocoa production which was then a hot export commodity (ibid).

Land in Post Colonial Ghana

At independence, land as usual became one of the instruments to curtail the authorities of chiefs as desired by the Nkrumah-led government. Most lands were vested in the central government for “public” good. Stool lands in Ashanti region for instance were vested in stools to be held in trust for their people. At independence, through the Ashanti Stool Lands Act, the Ashanti stool lands were vested in the president. The northern lands which were held in trust for the local people by the colonial authorities were declared public properties and vested in the president to control for public good.

In 1962 the State Lands Act was passed and through this, the President could vest in himself for the common good any land in Ghana. Compensation was sometimes given to indigenous owners and in other instances, this was totally ignored (Konings, 1986). Lands were appropriated for the establishment of state farms and other economic ventures across the nation. Konings (1986) maintained that the state’s interest in the easy acquisition of land was also as a result of the desire to establish large scale mechanized farms. Indeed, by the end of Kwame Nkrumah’s reign in 1966, about 1,200 state farms had been established. This was argued to boost up the cash crop production and build a vibrant food production sector which had suffered immensely as a result of the sole concentration on cash crop production by the colonial authorities. The acquisition of these lands for a “greater good” nevertheless

generated hostility between the state and chiefs and local farmers and this later affected the state farms. The establishment of these farms Konings (1986) argues was also to control the food production sector and the peasantry.

After the overthrow of the Nkrumah government in 1966 by the National Liberation Council (NLC), the state farms and enterprises were privatized to the control of parties with capital. The Ghanaian capital class lacked capital and inevitably, these farms ended up under the control of foreigners. Lands aligned with these privatized enterprises, through this process ended up within the control of foreigners. The sole focus on capital not only affected negatively the Ghanaian capital class, but most importantly the peasants whose lands were in question. Subsequently, lands which had been put under the direct control of the state were reversed to be controlled by chiefs/stools. The 1979 Constitution returned land management to northern chiefs, although in many societies land had been under the authority of earth priests. Changes were not made to this system by successive governments.

With the governments after Nkrumah, concentration of the alienation of land was made in favour of capital and not state development projects (Amanor 1999). Joint operations between foreign and local parties were established for access to capital by the local parties and access to resources and “local knowledge” by the foreign parties. The need to get access to both capital and modern farm inputs by farmers then saw the springing up of contract farming schemes in the country (Amanor 1999). This shifted management and control of farmlands to the parties with capital by proxy. Such a situation became possible because the guarantors of capital and farm inputs dictated what should be planted, particular species, and how they should be planted. Directions were also given on sale avenues and processes.

Globalisation and Land Management

Globalization at this section focuses mainly on events within the 1970s and beyond. It draws on changes which occurred to land management as a result of the seemingly voluntary adaptations of some development programs proposed or incited by international capital.

In the 1970s, a great focus and assistance in various forms ranging from farm inputs to subsidies to credit facilities were given to capitalist farmers based on the assumption that they could increase both the food and cash crop supplies and eventually replace the peasant production. Regardless of all these, the peasant population which had been ignored, yet still produced more than the capitalist farmers (Konings 1986). In the 1970s also, hit by the change of trade terms against primary commodities, the country plunged itself into huge international debts that could not be paid (Konings 1986, Amanor 1999).

In the 1980s, Ghana adopted the Structural Adjustment Programs (SAPs) proposed by the IMF and World Bank as a way to resolve the debt situation. The state was relegated to the back and was to create an enabling environment for the private sector to take up the leading role. State subsidies on health care, farm inputs and others were cancelled in addition to a cut-down on civil servants and state employees. Access was granted to capital first and this saw an increase in the influx of foreign capital as it made available that which the state and or local capitalists were not able to make available. The local capitalists were unable to provide these because they had also been undergoing crisis during this period. Land was locked up in transnational agreements and corporations.

Peters (2004) maintains that the SAPs eventually had deep impacts and constraints. She opines that the SAPs not only opened up gates for land appropriation

by foreigners, but the laying off of civil servants, cut-down in state expenditure, and the privatization of social services witnessed laid-off civil servants seeking to diversify their economic activities as a way to make up for their losses. There was a revisit to the communal areas by civil servants who had not paid much attention to their access and user rights of rural lands returning in a bid to maximise the use of land to acquire alternative means of capital accumulation or income. Rural people had to compete with these “elites” for resources and in most cases, due to among other things access to capital although limited, the new “elites” won. The rural population not only had to deal with the burden of the competition with the new “elites” but also the need for them (rural producers) to diversify to income strategies. Production tended to be intense, putting a strain on the land itself. The effects of privatization on land contrarily affected the security of customary land rights.

Chiefs also readily made lands available to foreign entities without consulting their subjects (Peters 2004, Brown 2005). This act of theirs was justified sometimes within the context of community development as communities were encouraged to welcome development projects. During this period, individual titling programs were advocated to guarantee security of access and user rights. Amanor (1999) contends however that, this was mainly by parties who had no rights or whose rights to land were wavering within custom. With the promotion of individual titling and the recognition of state prepared documents as evidence of the ownership of land, people who were not poor were advantaged as they were in positions to afford litigation fees and proceed to court to protect or acquire properties. Rulings from community or local courts could be overturned by state courts. This meant recognition within custom was not a complete security.

Globalization and market liberalization opened up spaces and increased the importance of personal networks for a guarantee of this. While this has been beneficial to those who demand the land, it has also been beneficial to those who avail them because they are able to manipulate the transactions to amass wealth for themselves. Some of the granting of these resources is however done without the consent of the community and this tends to sometimes draw out contestations and even violence within the communities.

Land Administration in Contemporary Ghana

Land in present day Ghana as stated earlier is basically under four categories with the public land being vested in the government for developmental purposes. The processes of the acquisition for the public lands have been in diverse ways. The processes are sometimes forceful and other times in collaboration with local political heads. Compensation for the indigenes has been argued to be inadequate or non-existent at all.

For the management of the public land, the Lands Commission (which has been in existence from 1969) has the sole responsibility free of interference from any non-governmental institution. It makes available land for any state project when the need arises. In the management of the non-public land, which can also be termed as stool lands, responsibilities normally lie within the domain of local political authorities. The state attempts to regulate the management of stool lands by chiefs through its organ, the Office of the Administration of Stool Lands (OASL) established in 1994. This implies that, the disposition of any stool land must be done to the knowledge of the Lands Commission though within customary practices pertaining to

their localities. The OASL is to manage the account for the lands and to collect all payments (rents, dues, royalties, etc.) and distribute accordingly to the Administration of OASL, District Assembly, the Stool itself and development of the community.

In 1999, the Land Administration Project (LAP) was initiated to protect and ensure the acknowledgement of customary practices in land transactions through its locally established secretariats, the Customary Land Secretariats (CLS). The CLS is to promote transparency and accountability in land management. User rights are to be fully recognized and protected at these secretariats. How these rights are to be protected are however not outlined by the LAP. They are left to the discretion of the local political heads and customary institutions. When there are grievances or contestations over land, people are however free to use which ever courts they prefer, be it the state/formal courts or the local community courts.

But the creation of the CLSs is still most likely to generate conflicts. To begin with, the OASL and its functions are still in existence. How the CLS operates is also not to be dictated to in a way to preserve custom. Determination of price and terms of payments for instance on land will be determined by the local customary authorities free of any interference. In this regard, the OASL will not be able to ascertain the correct amount of dues, royalties, etc on land. Chiefs might not necessarily feel obliged to report on incidences. Even when incidences are reported on, and they are explained or justified within frameworks of custom, they will be accepted. Thus, CLSs ironically comes to reinforce some of the irregularities that the OASL attempts to prevent.

CHAPTER SUMMARY

It can be observed that the customary has been historically subjected to interferences. From the incorporation of chiefs into indirect rule, to the remodelling of societies into centralised ones, to the creation of chiefs and paramountcies, authorities and responsibilities have been invented. Although the customary is local, there have been statutes which attempt to break it down or protect it. Indeed, every central political authority has viewed it as a friend or foe depending on aspects of interest, be it social, political, or economical. These inventions have generated conflicts within the society as the legality of some chiefs has been questioned. Chiefs have been accused at different points in time but quite consistently as pursuing self interests and other interests not of the community. Perceptions of chiefs by their people have been of great suspicions and distrust in that accountability is little or non-existent. This is coupled with the perception that there is connivance by the chiefs with other authorities or parties. The total collapse of the chieftaincy institution has been unattainable and political authorities have found diverse ways to protect it and yet still weaken it enough to manipulate it at various occasions. Chiefs themselves have reinvented and reconstructed their authorities and offices depending on matter of interest. Customary practices have been seriously tampered with and its seeming autonomy is consciously orchestrated by internal and external actors with influence.

It was further observed from the literature that although customary hold on certain aspects of life have waned, that of land is still closely associated with it which makes the control of economic, social, and political aspects a very major part. Custom appears to be resilient and constantly, actors closely associated with it are finding ways to secure their influence to either deconstruct or construct it. There was clear indication that land, as a major livelihood witnesses its management being fraught

with perennial complexities. Land management has equally been tampered with and reinvented on several occasions. Indeed, it can be argued that the acknowledgement of customary has even been based on patronage. These have impacted deeply on customary land rights because ironically, debates on the need to recognise and protect the customary, have not focused on rights of ordinary people that but on who manages land. Finally, it was observed that indeed customary is not a secluded local content/issue as events which occur at both the national and international arenas tend to affect it.

CHAPTER FOUR

CHIEFTAINCY AND LAND MANAGEMENT IN JUABEN

INTRODUCTION

This chapter brings out empirical evidence about the chieftaincy institution and its structures, and land management at Juaben. It shows the role of custom on these matters. It also provides evidence of the perception of the chieftaincy institution by the people ruled. In the process, it brings to light the profile of Juaben.



Map from Dept. of Geography, University of Ghana, Legon.

The Ashanti region has five principal towns of which Juaben is one. It is 19 miles from Kumasi, the capital of the Ashanti region and next to Ejisu, another of the region's towns. It was apparently named after the fruit of a particular tree situated at Juaben prior to the migration of the people over there (Agyeman-Duah 1976). The community comprises of a host of villages, Atiah, Abetanim, Korkordie, Yaw Nkrumah, Ofoase and others. The main town or capital town of Juaben is in the heart of town and known simply also as Juaben-town.

Juaben is noted to have ancestral hunters, (Rattray 1929, Agyeman-Duah 1976) and famous for its numerous war encounters in the past with its neighbours, and also with the people of Kumasi which resulted in the expansion of the land space to its present size. After one of its war encounters with the people of Kumasi, the people of Juaben migrated to the Eastern Region to establish a new settlement known as New Juaben. Nana Kwaku Duah I, the Asantehene during that period recalled them to resettle in Juaben. The main clans in the region are the Oyoko, Asona, Bretuo, Aduana, Ekuona, Agona, Asakyiri and Asenie with the Oyoko being the royal clan. The capital town is home to the Paramount chief (*Omanhene*) and a number of sub-chiefs. The current paramount chief, Nana Otuo Serebuo II is an electrical engineer and the longest serving Asante paramount chief having been on the throne for more than 40 years now. He is described by his people as intelligent. The language spoken is predominantly Akan and as an Akan society, it is a matrilineal one. The town hosts the Paramount chief's palace, and offices of the Traditional Council and a judicial office. As at the time of the research, there were ongoing structures for the purposes of a rural bank, a police station, and an ICT centre.

The population, as at the 2000 national census was reported to total 11, 425 comprising 5,391 males and 6,034 females. The number of houses reported was 918

and 2,177 for number of households. In general, national population increase is reported to be 3% annually so it is most likely that this figure has soared up. Although a national census had been carried out earlier this year 2011, the report had not been published making it difficult to determine the population size exactly.

The predominant economic activities in Juaben are a combination of farming and non-farming activities. The categories of farmers include outgrowers and private farmers. Production is of cocoa, fruits, and vegetables with the major crop being oil palm. Outgrowers are based in oil palm production. Trading is of both retail and wholesale. Other professional enterprises such as teaching, hairdressing, commercial driving, palm wine tapping, palm oil brewing, and others are also present. Most of these professionals still maintain farms on which they work on before or after close of their main work or on weekends. There are no factories in the town apart from the oil mill so not many were involved in factory work.

Juaben forms part of the Ejisu-Juaben district established by the central government. Unlike Ejisu which already has its Customary Land Secretariat, Juaben is yet to establish its own. It currently uses that of Ejisu for its land processes.

CHIEFTAINCY AT JUABEN

Although Juaben can be considered to be peri-urban, it nevertheless can also be considered as rural and like most rural communities, chieftaincy rule is predominant. It is a centralized society with a hierarchical political structure (see structure below).

1 st	Paramount Chief
2 nd	Divisional Chiefs
3 rd	Sub-Divisional Chiefs
4 th	Odikro (Village chief)
5 th	Abusuapanyi (Lineage /Family Head)

There is a paramount chief and various sub-chiefs seeing over the various towns and villages. The *Odikro* normally reports to a designated sub-chief. When the designated sub-chief is not available, (due to perhaps death) another will be designated by the Traditional Council. An *Odikro* however may play the role of a sub-chief. The authority of the sub-chiefs and *Odikros* covers various demarcated areas best known as villages. The authority of the paramount chief on the other hand covers the whole of Juaben and as such, lords over the sub-chiefs. The Traditional Council is the Executive, Legislature and Judiciary Body of Juaben and it consists of the paramount chief, Divisional chiefs, and Sub-divisional chiefs. There is also an *Ohemaa* (Queen) and other sub-queens. The position of the *Ohemaa* (queen) however is of a lower status than the paramount chief. The role of the queen is normally ceremonial. In some instances, she serves as an arbiter in conflicts normally for women and is generally expected to protect the interests of the woman.

Chieftaincy disputes are not common in Juaben. This is because chieftaincy is more of a right and given and so who a chief is to be is almost always known commonly by the people. There are however few instances where there have been contestations as to whose turn it is. In such circumstances, the paramount chief cannot

forcefully preside over the enstoolment of a chief, and cannot accept a disputed chief into the Traditional Council until a consensus has been reached between the opposing groups. Atiah, one of the villages and of which the paramount chief comes from for instance is noted to have many chieftaincy disputes. As at the time of this study, they did not have a sub-chief because the recently enstooled chief had been rejected by the people on the basis that he was not legitimate. When the legitimacy of a chief is deemed questionable by the people (subjects), and there is also a perception that communal interests are not being pursued, there is resentment among the people. This was illustrated by Maame Konadu, Nana Yaw Odei, Opanyin Kwasi Agyekum, and Nana Yaw, a 21 year old man.

Maame Konadu stated:

“As for us at Atiah, we cannot be pushed around. We can even reject propositions by the paramount chief when we deem necessary especially in areas he has not got absolute control.¹²

Nana Yaw Odei, a 60 year old retired man maintained that:

“The paramount chief is from here but we have not had any special treatment like one would expect. Due to this and other reasons, we do not also succumb easily to pressure...even from him. Currently, we do not have a sub-chief. The last one was rejected by us although he had the support of the paramount chief”¹³.

Opanyin Kwasi Agyekum, a retired man of 69 years stated:

“We do not have a sub-chief now. He was rejected. He was not to be the chief. He is coming from the chieftaincy lineage though. The elders of his lineage were even divided on his

¹² Interview at Atiah, April 2011

¹³ Interview at Atiah, April 2011

legitimacy. After so many years and even the paramount chief being a son of this particular soil, there is nothing to show for it. We do not have things we can boast of”.¹⁴

Nana Yaw:

The last chief was rejected here because he was not legitimate and was not pursuing our interests also”.¹⁵

Kwabena Owusu stated:

“As for the people of Atiah, they can be very stubborn. There is almost always an issue here and there. Due to their stubbornness, currently they have no sub-chief.”¹⁶

Chieftaincy rule governs to a large extent various sectors of the community: the political, economic, and social. Chieftaincy is a very important element for the people of Juaben and considered by them to be primordial. For instance, Akua Ansah, a 46 year old trader explained:

“.....the chieftaincy institution is important because that has been with us way back from our ancestors.....custom demands that there is chieftaincy.....we feel closer to it than that of the central government which is all the way in the capital.....¹⁷”

Although urbanization, migration, coupled with other modern factors have impacted on the Juaben community, their social lives are nevertheless affected by the chieftaincy rule. For instance, most of the chiefly festivals are still celebrated although

¹⁴ Interview at Atiah, April 2011

¹⁵ Interview at Atiah, April 2011

¹⁶ Interview at Juaben Township, August, 2011

¹⁷ Interview at Juaben Township, August, 2011

participation has not been stable. Traditional rituals inherited from ancestors are still performed and adhered to although the people are free to follow any religion. For instance Commander, a 28 year old man elaborated:

“The chieftaincy institution is necessary because of tradition, the religious and social activities. It is not us who must go against the old order. If anything at all, it is only the paramount chief who has power to change things. But for me, despite this, I have my reservations of the institution.¹⁸”

The control of labour however has dwindled down in Juaben. Where the paramount chief demands it, labour is voluntarily provided for the construction of projects and cleaning up of the community. In some cases, the local Assembly Official can also request for labour for such reasons and if the people deem it important, they readily provide labour voluntarily. In villages such as Atiah where chieftaincy conflicts exist, the Assembly Official plays more of these roles. Nana Yaw of Atiah expressed:

“We even prefer working with the Assemblyman here at Atiah most of the time”.¹⁹

However, some people simply refuse to provide labour to their local political heads for various reasons. Some of the reasons for the refusal to provide labour by the people has been attributed to among others plain discontent of some actions of local political leaders. As Kofi Benneh explains:

“...sometimes, they will call us to come and work and we used to go but now, as for me and some friends, we have stopped. When there is paid up work, they (chiefs) go and call people outside the community to come and work and they pay

¹⁸ Interview at Juaben Township, August, 2011

¹⁹ Interview at Atiah, April, 2011

them.....sometimes, they even advise “outsiders” to do similar. But when they want free labour, then they call us..... If it were you, will you go²⁰?

The view concerning the communal labour is a common one. Florence, a 32 year old woman and Auntie Akyaa, a 55 year old farmer corroborated it with these:

Florence:

“For communal labour, me and some colleagues, we attend but not all the time. In any case, call for communal labour has reduced. Perhaps it is because not many people come. If it is for clean-up exercises, we go when we have time.²¹”

Auntie Akyaa iterated:

“Times have changed so free labour is now scarce.²²”

Similarly, Nana Agyen, a 21 year old student and part-time teacher narrated:

“We respect our chiefs but when it comes to free labour some people go but not me. Those who go are few. Most of us the young ones do not really go. They don’t do well for us the young people especially at all. If they do not change their ways, we too we will not bother. As young people, we have to fight and fend for ourselves.²³”

Nana Yaw of Atiah stated:

“Chieftaincy is good but it has not been all that helpful. Some of the chiefs are selfish and do not think of the people.”²⁴

²⁰ Interview at Juaben Township, April, 2011

²¹ Interview at Juaben Township, August, 2011

²² Interview at Juaben Township, April, 2011

²³ Interview at Kokordie, August, 2011

²⁴ Interview at Atiah, April, 2011

Kofi Benneh further opined:

“All the chiefs including the main leader are not helpful. As for me, I don’t care. I will say this anywhere.²⁵”

(Yet when 3 older men came closer and were praising the paramount chief especially and stating how people are generally ungrateful, Kofi never uttered a word. His gestures however made me still believe he maintained his position. He never voiced out any opposition to what the men were saying).

It is reported that the paramount chief solicits for and raises funds on his own. He is believed to have influence and connected to government and this enables him to raise funds for various organizations and projects. Kojo Sono explained:

“Our chief is very powerful and connected. For example, when this Presidential Special Initiatives (PSI) was brought in the 2000s, he was able to solicit for funding because of our oil palms and his persistence.²⁶”

Auntie Akyaa explained:

Some time back, we were levied for various projects by the paramount chief but now we are not. Groups levy themselves for various activities however. For that from the paramount chief, he stopped we believed because people were always complaining about not seeing where the money went.²⁷”

Many people in Juaben believe that not levying them and personally seeking for funds prevents them from demanding accountability from the chief. His external links with government and perceived powerful parties reinforces feelings of powerlessness

²⁵ Interview at Juaben Township, April, 2011

²⁷ Interview at Juaben Township, April, 2011

²⁷ Interview at Juaben Township, April, 2011

among his subjects, who feel they have no rights to demand accountability from the paramount chief. This is reflected by Florence who stated:

“Many things have changed. I cannot even recall the last time an open forum was called. We cannot interfere in the chieftaincy matters. As for advising the paramount chief and other sub-chiefs, who are we²⁸?”

Similarly Akwasi Agyeman reflected:

“Even if we were able to advise our sub-chiefs, to me it is of no use because the paramount chief always has the final say and as for the paramount chief, who can advise him? Advise the owner of the land? There are some people he listens to though.....people close to him²⁹”

No open forums, where the people of the communities can participate, are held. Interference in chieftaincy issues can be done through family heads through to sub-chiefs who are members of the Traditional Council. Apart from being specially summoned, meetings of the Traditional Council are not open. Members of the Traditional Council are normally aware of the specified time for meetings but where necessary, emergency meetings are called. All, including specially invited guests are normally seated before the paramount chief takes his seat. Topics for discussions are presented and deliberated upon but really, the final decision lies with the paramount chief. He may take some suggestions presented on the floor when he deems appropriated but he is under no obligation to do so. The only times a party may have a seeming privilege to “advise” the paramount chief are during council meetings when the agenda requires the interventions of person(s) due to perhaps their knowledge or

²⁸ Interview at Juaben Township, August, 2011

²⁹ Interview at Ofoase, April, 2011

expertise regarding the subject matter or roles. Members are expected to comply with directives from the paramount chief even if they have reservations about the decisions. Especially when it comes to land and the issue of distribution or sale arises, he has the final say. When for instance he wants to start demarcating a piece of land for sale, he will just inform the sub-chief in charge of that area to start preparing for the people to vacate the land. Thus Ernest Brobbey narrated:

“The members of the Traditional Council are unable to question the paramount chief. All their reservations are not expressed in the hearing of the paramount chief but behind his back. Recently, Nana Boadi, the sub-chief near us came to me asking about accounts of proceeds for the Traditional Council from the palm oil farms the council owns, I just looked at him and told him to go and ask Nana. I know he wouldn't. None of them can³⁰”.

The authority of the paramount chief is evident at Juaben and incontestable. This, they attribute to the position that Juaben “belongs” to the royal family, the historical story about the paramount chief's clan, the *Oyoko* clan and how it is revered, the reputation he has acquired as an individual, and his closeness to the Asantehene, both personally and traditionally. The Juaben stool is expressed by the people of Juaben to be a very close wing of the Asante paramountcy. Opanyin Ofori-Atta explains:

“Nana Otuo Serebuo is not a small chief. As Juabenhene, the Asanteman constitution positions him to be one of the main wings of Asantehene. His presence is required in almost every activity, religious, and social. If he is not available, some things do not happen.

³⁰ Interview at Juaben, August, 2011

In addition, he is close to the Asantehene. They are friends. We know he advises the Asantehene a lot.³¹”

His astuteness makes the people of Juaben feel safe and secure from encroachment from neighbouring villages. Among the other paramount chiefs of Ashanti region, Juaben people believe he is one of the most respected. Kojo Faakye, commented:

“Nana is a serious man. There was a time a neighbouring village had a misunderstanding with us over a piece of land and the matter got to the Asantehene (Paramount chief of the whole of the Ashanti region) for a resolution.....while they were telling stories out of their heads, Nana was presenting papers as evidence and he won the case.³²”

Oheneba Manu stated:

“as for Nana if you want to “fight” him then be prepared....because he is very powerful and intelligent....how can you win over a chief who owns the land on which you live and an intelligent graduate also.....he documents everything.³³”

Kwabena Owusu further elaborated:

“Sometimes, some companies think they are smarter and want to benefit more than the community. He is very careful about such entities and will not allow them to operate sometimes. He is a good chief who knows custom very well. When he came, he was a young graduate now he is old and has learnt a lot. You know he has reigned for 40 years?³⁴”

³¹ Interview at Atiah, April, 2011

³² Interview at Yaw Nkrumah, August, 2011

³³ Interview at Abetanim, August, 2011

³⁴ Interview at Juaben Township, April, 2011

Regardless of the fact that the chieftaincy institution is exclusive, it is still revered by some people of Juaben. It is believed to be an institution which defines them. However, it is an institution which is yet still fraught with perceptions of oppression and distrust. The feeling towards the paramount chief is a mixed one. Regardless however, it is an institution which the people of Juaben seek to consensually protect and uphold. Thus the general consensus from the narratives is that, chiefs are important in the community. Similarly, Table 4 (see below) affirms the importance of chiefs as 71% of the respondents expressed this opinion.

Table 4

Importance of Chieftaincy

	Chiefs are necessary in the community	Chiefs are not necessary in the community	Unsure	Total
Juaben	28	8	4	40
Atiah	11	4	2	17
Abetinim	7	3	1	11
Yaw Nkrumah	7	2	1	10
Ofoase	8	0	2	10
Korkodie	4	0	1	5
Abesuase	6	0	1	7
Total	71	17	12	100
% Total	71%	17%	12%	100

The Paramount Chief and Agribusiness

An active oil mill running 24 hours a day was established in Ashanti Juaben in 1984. It has a constant supply of oil palm from an established oil palm plantation which covers more than 1,200 acres of land, and individual farms in the community. The products are exported and processed for among other things electricity. The electricity is accessed by the community hospital, and community secondary school. The plantation was started in 1972 and has quite a sizeable number of farmers as

outgrowers currently. The oil palm plantation is believed to be owned by the two parties who are the custodians of the resources and the Juaben custom: the paramount chief and the Juaben Traditional Council. The mill on the other hand is owned solely by the paramount chief. There are many people involved in oil palm production but not under the scheme and are able to sell to the scheme when the scheme demands it.

Ernest Brobbey posits:

“The mill is very helpful. It has provided ready market for oil palm farmers. We have many farmers as outgrowers and many as private farmers we just buy from. Both groups of people grow the plants as directed. Some of the oil palms are processed here and some are exported. The paramount has established links abroad and these facilitate our business.³⁵”

There is a perception that the paramount chief’s established international links acquires wealth for him while he also supports the international networks. Similar to Ernest Brobbey’s comment, a worker from the palace commented to a young man:

“...you want to come to palace at this time? (It was after 7:00pm) it is too late. Come tomorrow morning.....and where is Nana you ask? He has gone abroad...he has taken all the money with him but he will bring more”
(Juaben, August 2011)

Abena Agyei, 21 year old student narrated about the scheme:

“...as for the scheme, when you want to be part, you will be given seedlings and farm inputs for production. My father is involved so I know. All will be calculated for you and you will use your produce to pay for your debt. The paramount chief will not give you land for it. If you already have land, you can use it for the oil palm production. Many people are doing it but there are also many people who plant oil palm but not under the scheme. Some of them are however able to sell to the scheme.

³⁵ Interview at Juaben Township, August, 2011

My father said that some of those not under the scheme believe theirs is better because they can sell to whoever they want.³⁶”

The establishment of agribusiness by the paramount chief is well received by most people of Juaben. It is perceived to be a good venture because it has created jobs otherwise non-existent and guaranteeing constant income for those involved. To some people, this development oriented venture needs to be encouraged. For instance, Issah, a worker at the mill, commented:

“The mill has provided jobs. I am from the Northern part of the country but migration and job search brought me here. Not all the workers are from Juaben.³⁷”

Afia Kyerewa, a 45 year old trader further elaborated:

“There are concerns but some of us still see him to be development oriented so we like him. His mill for instance has created jobs. If other companies come and he thinks what they will do will benefit the community and they have money available, he will make land available to them.³⁸”

Mavis Serwaa similarly narrated:

“...the scheme and the oil mill are good because many people involved now have jobs. But for me, it is a bit discriminating because I will not be offered a job there. The job they do is tedious and females cannot do it so I will not be employed meanwhile, I am unemployed. And I don't have land also to farm so I am selling these pastries. But I wish another will be created so that maybe I can have a job there.³⁹”

³⁶ Interview at Atiah, April, 2011

³⁷ Interview at Juaben Township, April, 2011

³⁸ Interview at Abesuase, August, 2011

³⁹ Interview at Ofoase, April, 2011

Some sub-chiefs are also involved in the scheme. In most cases, the lands put under the scheme by sub-chiefs are large tracts because of their easy access to land. Nuclear members of chiefs' families are also able to get access to land through their patrilineal lineage contrary to usual practice of a matrilineal system. A son of a sub-chief maintained this as a reason for his as well as his father's access to the many acres of land of which not all are even under the scheme.

The central part played by the paramount chief in this agriculture venture does indeed have significant impacts. The perception is that both national and international networks of the paramount chiefs tend to be advantageous in terms of constant access to farm inputs and the market. The involvement of the paramount chief also ensures compliance with scheme rules. The outgrowers cannot entirely separate the different roles being played by the chief and every instruction tends to have cultural or customary connotation. A non-compliance of rules is generally seen as disobeying the paramount chief and not a managing director. As Ernest Brobbey commented:

“The chief's involvement is very advantageous to the scheme. As you know, with contract farming, people try to misbehave and not make payments on time. Some also try to disobey general rules and even divert farm produce. But once the people involved...even sub-chiefs hear of a directive from the paramount chief, this is controlled and minimized although some stubborn ones still try to misbehave. When we want them to do things in a particular way and we inform the paramount chief, it is a done deal. Once the people hear “Nana says...” , their corporation is fully given. Even when for instance they want to go to the farm and the paramount chief wants them to convene at place for a meeting, all they will do is grumble but they all comply. He is very influential. He has friends in government and abroad who he can always go to for help. Through him, we were able to get PSI and even our rural bank has international funding⁴⁰”.

⁴⁰ Interview at Juaben Township, August, 2011

Regardless of the acceptance of the mill by many as a good venture, there are some reservations about it as there is an attempt to draw a line between the personal gains by the paramount chief and the effects of the mill in the community by some members of the community. For instance,

Abena Grace, 45 years, food seller narrated:

“People see the mill to be development oriented. First of all, I see it as simply his business. His benefits are his priority. Punishment for defaulters I am told are very strict. The job situation is just an add-on. I’m indifferent about the plantation and the mill. (She says this carefully looking around).⁴¹

Commander similarly commented:

“We heard a company came to establish a factory here but the land that was given to them was not good so they went away. Nana does not like competition. He wants only his oil mill to be the only big business venture here.⁴²”

There is no consensus on the communal benefits of the paramount chief’s agribusiness. Chieftaincy rule tends to be an instrument which sometimes serves the interest of the paramount chief both traditionally and personally. While some perceive him to be seeking the general good of the community, there are others who believe his actions are simply self-centered. Both national and international networks tend to create an impression of awe towards the paramount chief. The customary and established networks tend to create also an impression of a much more powerful individual. However, the fear of the paramount chief deters the people from resisting any decision or instruction from him.

⁴¹ Interview at Abetinim, August, 2011

⁴² Interview at Juaben Township, August, 2011

LAND MANAGEMENT AT JUABEN

The land is in various categories mainly being stool lands and family lands. In some instances though, some people refer to all the lands as family lands⁴³. This position is attributed mainly to the fact that all the lands are demarcated into categories for families including the royal family. While the whole area can be said to be stool or family lands, there are still some lands set aside as stool lands with access and user rights to them by the Traditional Council only. These lands are managed by the Traditional Council with the paramount chief as the head and every usage of them is normally based on the discretion and decision by the Traditional Council.

Land management lies within the domain of various local political heads and individuals (see table 5, pg 73) who have authority over lands although quite limited. The traditional council as a collective body manages some lands while the paramount chief as an individual also manages some lands. Similarly, there are lands managed by some sub-chiefs due to their jurisdictions. Family heads also manage lands belonging to their lineages and some lands are managed by individuals due to agreements or contracts they have gotten into (see table 5).

Table 5

The table displays the perception of the people of Juaben with regards to who manages land. It displays the various players or local political leaders involved in land management and the level of awareness of their various roles.

⁴³ Interview with Nana Otublon II, August, 2011

Who manages the land?

	Traditional Council (TC)			Family Heads	Individuals	Total
	All members of TC	Paramount Chief only	Other/Some Chiefs only			
Juaben	7	11	8	10	4	40
Atiah	6	2	2	5	2	17
Abetanim	2	2	4	2	1	11
Yaw Nkrumah	1	2	2	3	2	10
Ofoase	2	3	2	2	1	10
Korkodie	0	1	3	1	0	5
Abesuanse	2		2	2	1	7
Total	20	21	23	25	11	100
% Total	20%	21%	23%	25%	11%	

Absolute decisions on all the lands are however given by the paramount chief. Some of the stool lands are presently being used for the cultivation of oil palm by the Traditional Council under the oil palm production scheme by the paramount chief. The wide perception is that the paramount chief is the owner of all the Juaben lands until he relinquishes it to a particular party (see table 6).

Table 6

The table below captures the perception of the people of Juaben with regards to who owns Juaben land. The factor with the highest score is a display of a greater number of people sharing that common belief while the factor with the lowest score equally show the number of people sharing that same belief. For instance, a larger number (53%) of people believe the Paramount Chief owns the Juaben land.

Who owns Juaben land?

	Traditional Council (TC)			Family Heads	Individuals	Total
	All members of TC	Paramount Chief only	Other Chiefs only			
Juaben	6	26	2	3	2	40
Atiah	3	6	3	3	2	17
Abetanim	2	5	1	2	1	11
Yaw Nkrumah	1	5	1	1	2	10
Ofoase		6	2	2		10
Korkodie	0	3	1	1	0	5
Abesuanse	1	2	2	1	1	7
Total	13	53	16	12	8	100
% Total	13%	53%	16%	12%	8%	

But the paramount chief as the owner is morally expected to manage it for the benefit of the whole of Juaben. General consensus is that, unless some agenda comes up, the lands are almost left untouched by the paramount chief. In the event where he decides for instance to demarcate them into plots for sale or construct any developmental project such as a police station, or a learning centre, he will inform the sub-chief for that area to alert the people using the land to vacate, perhaps compensate them and proceed to the selling of the land. In such instances, the sub-chief and people do not protest because the land does not belong to the sub-chief or the people. Accordingly, Nana Otublon II, Maame Adjoa, and Naana Sarpomaa explain as follows:

“Juaben land, it is for the paramount chief. It is actually for the royal family but because he is the paramount chief now, one can say that it is for him because he determines what the land should be used for and who should get land. But he will at least make sure that there is some left for the future chief and other people who will be coming in the future.⁴⁴”

Maame Adjoa, a 63 year old petty trader stated:

“The land is for the Juaben chief. They say they came here first and fought for all the land so it belongs to them. But really, we believe it belongs to them.⁴⁵”

Naana Sarpomaa narrated:

“When Nana needs the land for development, he can take any land so far as structures are not on it. If people’s houses are on the lands, he does not touch them. In any case when he touches people’s farms, a

⁴⁴ Interview at Juaben Township, August, 2011

⁴⁵ Interview at Abetinim, August, 2011

committee at the Traditional Council puts measures in place for people to be compensated.⁴⁶”

There is a general acceptance that, as Ubink puts it “once the town gets to your land or doorstep, then you have no land”. This determination or control of the direction of the township lies within the domain of the paramount chief. If the purpose of the land is for any other than farming, as in for commercial building, other non-residential purposes, or endless terms of transfer of rights, it is the paramount chief that grants that. Even where there has been an agreement between at least two individuals or an entire family over their farmlands, the paramount chief will have to be informed and a clearance or permission for such transactions will be acknowledged. This is because according to Juaben custom, although indigenous families have a guaranteed access to land, it is only for farming. Usage of these farmlands can thus almost be termed as temporary although the duration is not clearly specified. The assertion is that “*Nana has absolute right over all the lands. The land is given to you (families) to eat from*”.

Family farmlands could be used for the cultivation of whatever crop the users of the land prefer. Such lands can even be used to engage in contract farming schemes and there are indeed quite a number of farmers engaged in contract farming. Incidentally, a majority of the contract farmers for oil palm are producing for the paramount chief’s oil mill. This however does not influence certain decisions of his concerning land appropriation. Simply implying that land contracted under his scheme is of the same status and can be viewed as vulnerable or unsecured as land not under his scheme.

⁴⁶ Interview at Korkodie, August, 2011

Nana Sarkodie III emphasized:

“One cannot sell the land without informing the Nana (the paramount chief). The land is his and he alone has the right to do that. In any case, it is his signature which has the final authority over such transactions. Without his signature, the transaction is not valid so really, you will have no choice than to inform him.”⁴⁷

Similarly Nana Otublon II maintained:

“Even if you go to court, our system is structured in such a way that Nana (the paramount chief) cannot be made to let go off a piece of land to any individual or group if he does not want to. It is his signature that can authorize the sale or transfer so if you don’t inform him, the buyer might have authority over the land but it just cannot be forever. He has the final say and the court or state institution will just formalize his decision. The state institutions cannot point out to him how and when to dispose of his land. He can refuse a sale transaction from happening if he has plans for that land. The reality is that, when you have the land, it is so you can eat from it (“didi so”). If he agrees to a sale of land, the seller will inform him as to how much the buyer is expected to pay. A portion of that money (which is argued to be 1/3) is extracted from the seller and paid to the stool. Technically the paramount chief is the landlord and we are all just tenants so how can you sell someone’s property”.⁴⁸

Nana Sarkodie III narrated:

“The paramount does not interfere with land to be used for private farming. His is mainly on land for development projects and other constructions. In the event where a family decides to turn a farmland into residential land, that is, build a house on it permission need not be sought for from Nana. If it is for commercial purposes though, permission must still be sought from him first. Common commercial purpose needed of buildings is for trading (stores) but most people simply turn a room or two of their houses into stores apart from those at the market center.”⁴⁹

⁴⁷ Interview at Juaben Township, April, 2011

⁴⁸ Interview at Juaben Township, August, 2011

⁴⁹ Interview at Juaben Township, April, 2011

Grace Owusu stated:

“Families are allowed to build houses on their land so long as there is a consensus among the family members because in such cases, generational transfers are sometimes interfered with causing a loss of farmland access for some family members.⁵⁰”

Kojo Sono stated:

“One is allowed to build on a farmland without permission from Nana. A consensus from the family is alright. For me for instance, I have built on a farmland and the farmland is not even for my family but my wife’s family. She spoke to her family and they agreed that I build on it because they know also that the house will benefit their daughter and sister in terms of who inherits the land, you know our system is matrilineal and so I believe my children still stands to benefit so really, it is good for me and I am happy for the arrangement.”⁵¹

These family lands are expected to be transferred to future generations and so long as there are no interdictions by the highest authority (paramount chief), this is expected to transpire. Where interdictions arise from others apart from Nana, as in family members, conflicts can and sometimes do arise. In such instances, family heads, a sub-chief, the *Ohemaa*, and or the traditional council help to resolve such disputes. In some instances, although rare, the resolution of the conflict goes to court. But nobody bothers to go to court after the paramount chief has taken a decision because his decision is superseded all.

⁵⁰ Interview at Yaw Nkrumah, August, 2011

⁵¹ Interview at Yaw Nkrumah, August, 2011

Auntie Akyaa stated:

“Some time ago, I had a land dispute with my neighbour and I went to the Ohemaa and she solved it for us. The dispute was mainly because of boundary but when land disputes are about ownership, though the Ohemaa is helpful, it is just best you go to Nana. He can easily tell who rightly owns it. That is what most people do anyway⁵²”.

When the paramount chief needed to establish his palm oil mill, he approached families/individuals farming on that particular land and informed them about his decision and they had to relocate and find new lands for farming. Compensation was given to affected people. Different views concerning compensation however exist. The compensation is usually based on the value of the crops/plants on the land and not the land itself. In accordance with this, the following narrated in a focus group discussion in August, 2011,

Paa Kow:

“We were there when Nana said he needed the land for something. We had our crops on it already but he wanted it so we had to vacate the place. You know, the land is for him so we had no choice”.

Eno Yaa, a farmer and trader:

“My family farm was where the mill is now. When Nana wanted it, we had to move. We were asked to calculate the collective price of our food produce on it for compensation. We didn't receive anything though. Perhaps, because we didn't follow it up. I don't know. My focus then was how to get access to land because farming is a big part of my life. Now, I am using the Abusa system.”

⁵² Interview at Juaben Township, April, 2011

Jack Amponsah, a farmer stated:

“My family has lost land because of the mill. The compensation given us was so inadequate. All that hard work..!!! But really what could we do? The owner wants his land. But as for a neighbour of mine, his compensation was good. The thing was not done in uniformity. Some, I heard got a lot.”

Ruby Amoah, a farmer:

“As for me, I didn’t receive anything. I followed it up till I got tired and I stopped. My family head was doing it up for me. But every time he came back with another story. After awhile I got tired and I stopped”.

To determine the appropriate compensation to be given, the paramount chief informs the Traditional Council and the land supervision committee proceeds to call for evaluation. This is illustrated by Kwabena Owusu who explains that:

“If Nana needs land for sale (plot-plot), he will inform the Traditional Council. A three (3) member committee within the Traditional Council in charge of land supervision will hire a surveyor. The surveyor in turn will inspect the land to ascertain the size of it. He will also check the farm produce on the land and draw an estimate of the crops. If there are oil palm trees for instance, calculation is based on the years or life span left of the oil palm trees. The life span of an oil palm tree is approximately 25 years. So if the tree has been in existence for 12 years for instance, calculation will be based on 13 years. The surveyor will then send a report to the council. As per the estimations of the surveyor, the compensation is given. However, if nothing is planted on the land, he will take the land without giving any compensation. This goes for everyone including sub-chiefs and *Odikros*. The committee consists of sub-chiefs selected by the council but am sure Nana does the selection”⁵³.

⁵³ Interview at Juaben Township, April, 2011

The traditional council is supposed to oversee the overall management of all lands but in reality, the absolute authority lies with the paramount chief. He is the ultimate decision maker. Ability to be called to be involved in the decision making process depends on the authority wielded by a sub-chief and the depth or kind of interpersonal relationship a sub-chief has with the paramount chief. Thus, inclusiveness can be termed as “reward” and almost rhetoric. Decisions by the paramount chief are not challenged and in most cases tend to affect some lives. Evidence in this being people losing their lands to the oil mill. Status plays an important role because even in this matrilineal society, sons can contrarily get easy access to patrilineal lands if a father is a chief. The illustrations further pave way for the observation that the paramount chief himself does not differentiate communal projects from his personal projects. While he is allowed to appropriate land for communal projects, he equally does so for his private business.

PROCESSES OF LAND ACQUISITION

Processes of acquisition may begin with the informal system (which is at the community level) and end with the formal system depending on what the land is to be used for. If the land is being accessed for farming purposes, it is regarded as not permanent and in this case, various parties tend to have deciding rights over various lands. Table 7 & 8 displays the views of the people of Juaben in regard to this.

Table 7

The table below displays the perception of the people of Juaben about which local political authority to appeal to for temporary use of land.

Processes of Acquisition (for temporary ownership)

	Traditional Council (TC)			Family Heads	Individuals	Total
	All members of TC	Paramount Chief only	Other/Some Chiefs			
Juaben	3	5	8	14	10	40
Atiah	2	2	3	6	4	17
Abetinim	0	0	3	5	3	11
Yaw Nkrumah	0	2	3	2	3	10
Ofoase	0	2	2	3	3	10
Korkodie	0	0	2	1	2	5
Abesuase	0	1	1	3	2	7
Total	5	12	22	34	27	100
% Total	5%	12%	22%	34%	27%	100%

Table 8

Table 8 displays the perception of the people of Juaben with regards to how land is acquired. 52% people believe for permanent ownership, the authority to appeal is the paramount chief while 13% think you must appeal to Family Heads.

Processes of Acquisition (for permanent ownership)

	Traditional Council			Family Heads	Individuals	Total
	All members	Paramount Chief	Other Chiefs			
Juaben	6	20	4	5	5	40
Atiah	3	8	2	4	0	17
Abetinim	2	6	1	2		11
Yaw Nkrumah	2	5	1	1	1	10
Ofoase	2	6	1	1	0	10
Korkodie	1	3	1	0	0	5
Abesuase	3	4	0	0	0	7
Total	19	52	10	13	6	100
% Total	19%	52%	10%	13%	6%	

However, if the land is being accessed for non-farming activities, it may be considered as permanent acquisition and in this situation, the common view is that, the decision lies with the paramount chief.

Where a family has access to land, acquisition for farming purposes by family members is usually done through the family head or in some cases the clan head. Similarly, family heads may make land available to non family members through various forms of agreement. However, individuals who have land may also grant access rights to other individuals. This perception is shared widely by the people of Juaben.

Mr. Ernest Brobbey for instance posited:

“If you want land for farming, it is not the paramount chief who will give you. You will have to look for it yourself normally through the Abunu and Abusa systems. Many of us use these systems”. You can go to your family head to access it also if there is land in your family⁵⁴.

Nii Motey stated similarly:

“The Abunu and Abusa systems are helpful because I was able to access land through them. However, if I had wanted it to put up a building for commercial purposes, I would have had to go to the paramount chief.⁵⁵”

Kwesi Adu, also narrated:

“When I wanted land for farming, a colleague connected me to someone and we both agreed to go by the Abunu system. But when I wanted to build, I went to the Traditional Council, which is in fact the paramount chief. Lands were being demarcated as plots and I expressed interest. I paid the requested amount and I got the land, with papers and everything⁵⁶”,

⁵⁴ Interview at Juaben Township, August, 2011

⁵⁵ Focus Group Discussion, August, 2011

⁵⁶ Focus Group Discussion

These narratives above show the systems of acquisition and the common use of the local land tenure systems. In fact, both the *Abunu* and the *Abusa* are forms of land rental through sharecropping systems by which people (both local and migrants) who do not have access to land or people who want access to land are able to do so for cultivation. These types of agreement are very common in Juaben. The type of crop the land is going to be used to produce determines which of the local tenure systems is adopted. For instance, it is very common to find the “*Abusa*” being used when oil palm is being cultivated. With respect to the *abunu* system, sharing of the proceeds of the land is on equal terms between the landowner and the tenant. The *abusa* on the other hand is a situation where the tenant takes two-thirds (2/3) of the proceeds and the landowner takes one-third (1/3). It is not common to find these types of agreement within families. Land under any of these tenure systems is not transferable. The following explanations were given:

Wofa Kyei stated:

“Both the *abunu* and *abusa* systems are used here for land access. It is normally between people not from the same family. Those who farm on family lands normally just give back to the family a token from the proceedings. But they are not bounded like non-family members using the *abunu* or the *abusa*. Land under these systems cannot be transferred to another because the users are not the owners. Else they will start assuming ownership. Agreement was between the first applicant(s) and not the second one”⁵⁷.

⁵⁷ Interview at Abesuanse, August 2011

Auntie Gabriella narrated:

“The abusa is normally used for plants with short life span (20 or 25 years) such as oil palm. But for crops that can stay on the land for longer periods such as oranges, cocoa, etc, the abunu is used. The agreements are such that after about 5 years, the land is divided among the landowner and the tenant and each part gets the proceeds from his or her portion”⁵⁸.

The division is done after 5 or more years of the lease because most crops are reported to start yielding fruits after 2 or 3 years of planting. Harvesting the first solely by the tenant serves as a grace period to the tenant for tilling the land. Where there has been an agreement of permanent transfer between individuals, the paramount chief will have to be informed. This is basically to ensure that the paramount chief has no other plans for that particular land because, otherwise he will always count that piece of land as his and can appropriate anytime he wants to which will then lead to conflict between the buyer and the seller. Access to land is on equal terms regardless of the gender. The common view is that capital plays a key role in accessing land for non-farming purposes from the Traditional Council. This is reiterated by Nana Sarkodie III who states that:

“Once you have money, you can go to the traditional council and ask to buy land. It does not matter if you are not a daughter or son of the soil.”⁵⁹

Although this is in reference to purchasing of land for other purposes apart from farming, the impartiality between the genders does not change. Both men and

⁵⁸ Interview at Yaw Nkrumah, August, 2011

⁵⁹ Interview at Juaben Township, April, 2011.

women are of the opinion that land access for whatever purpose is on equal terms and women are not discriminated against. Mama Akose expressed hereby:

“I am a daughter of the land so my family has access to land. Our family head has made some available to me on which I farm on weekends. I am allowed to grow any crop I want but I have settled on food crops and fruits sometimes. When I wanted land for farming, I consulted our family head but if it were to be for building, I would have had to go to the Traditional Council and made a request and pay the said amount⁶⁰”.

Once the paramount chief decides to sell plots of land, or to grant access to some individuals, an amount is proposed to the buyer and if this is agreed upon, payment is made. Sale proceeds are believed to be put in the coffers of the stool. The sale system is centralized and supervised by the paramount chief. Although there are disputes, they are hardly ever involving the paramount chief nor between individuals if he authorises the sale. When he documents that a piece of land has been sold to an individual, his office will put together the necessary documents to be signed by him. The documents are then sent to the Ejisu Customary Land Secretariat for formal recognition. Without the paramount chief’s signature on documents presented, they will not be considered authentic. This pertains to everyone regardless of whether the individual is from Juaben or not.

As an Officer at the Ejisu Customary Land Secretariat informed me:

“So long as the paramount chief’s signature is on your document, we will process it. They have structured their (Juaben) system that way....that the paramount chief signs it. We don’t interfere with that or any of their processes. It is left entirely to their Paramount Chief and the Traditional Council. We just formalized it for them”.⁶¹

⁶⁰ Interview at Korkodie, August, 2011

⁶¹ Interview with an Official of Ejisu Customary Land Secretariat, August, 2011

Nana Sarkodie III also corroborated this stating:

“When someone wants to buy land, the person will go to the traditional council and the committee in charge of land will respond to the request. The amount will be quoted for the person and when payment is made, all necessary documentation will be completed for the buyer. There has never been a case where a piece of land has been sold to different people. Documentation is properly done.⁶²”

Kwabena Owusu similarly affirms stating:

“..., as for Nana he is very serious. He documents everything...even if it is about a table or even a pen.⁶³”

Land acquisition in Juaben appears to be in clear and precise manners. Getting access to land usually begins with individuals, family heads, or sub-chiefs depending on the life span of the rights associated with it including its use. Thus, although the listed parties may have authority over some lands, similarly to the rights, and usage, such authority is also limited. Capital tends to play a major role in situations where rights are desired to be permanent. Depending on who you are dealing with, you are either a renter (if rights are limited) or an owner (if rights are not limited) of the land. It is common to find a manager being a renter of the very land he or she manages though he or she may also rent the land out to another party. The patronage of formal land titling or registration system is also quite limited due to the high value placed on the paramount chief's signature and the costly nature of it. Although the paramount chief has been noted to keep records or document transactions, it is worthy to note that documentation is not done when the highest authority or reference point is

⁶² Interview at Juaben Township, April, 2011

⁶³ Interview at Juaben Township, April, 2011

custom but rather where there is the possibility of, or is going to be an external monitoring and evaluation instrument.

SECURITY OF LAND RIGHTS

There are few disputes over land in Juaben. As stated earlier, the disputes are normally between individuals and farm land boundaries. For these boundary disputes, the manager of the lands in question plays significant roles in settling the dispute. Sometimes, when these boundary disputes involve women, the queen gets involve. The paramount chief also gets involve in dispute settling but this is when it is considered to be of a higher scale such as between families or lineages.

User and access rights over land are clearly defined but not secured because rights are truncated ultimately when the paramount chief appropriates the land. Decisions taken by the paramount chief are respected by all. Nobody, not even members of the Traditional Council are known to have ever challenged the paramount chief. According to Naana Boatemaa:

“Even the court cannot order the paramount chief to do anything apart from what he decides to do when it comes to Juaben land. It is he who will be consulted for verification⁶⁴.”

The system is well organized and does not overlap. Everybody is well aware of the various processes. There is no double selling of any land by the paramount chief. The only incident was of an official faking the signature of the paramount chief and engaging in land transactions. This was deemed a very high crime by the

⁶⁴ Interview at Abetanim, August, 2011

paramount chief. He was reported to have been fired and rumoured to be further imprisoned.

CHAPTER SUMMARY

The combination of the myths around chieftaincy, the standing of the Juabenhene in the Asante kingdom and with Asantehene, coupled with the paramount chief's connections in national political circles and international business and development circles creates an awe and fear among the people of their paramount chief which prevents them from standing for their rights. This enables elite capture of land by the Juabenhene. The lack of accountability and low level of participation result in lack of local transparency, and despotism.

However while local people have no security in land resources, non natives and property developers who buy land in Juaben have some of the most secure rights in Ghana, and unlike in other areas, there is no double selling of plots or disputed ownership, since all land belongs to the paramount chief. The only insecurity in land ownership lies in customary user rights in land, since customary privilege enables the paramount chief to do with the land as he pleases. External recognition of customary rights reinforces these claims and results in non-intervention in creating stable land rights for local land users.

CHAPTER FIVE

CONCLUSION

The study critically reviewed local perceptions of the role of chieftaincy in land administration and the ability of the customary to provide security on rights in land. This was done reviewing the debates on the assertions that the customary is the panacea to land security especially for poor people, and the contrary assertions that custom presents a vulnerable state or near total insecurity for poor people.

This study highlighted that in Juaben, the customary plays a very significant role in land management and access, and chieftaincy authority embodies absolute power. Chieftaincy authority in land management in Juaben is widely accepted although it can be argued to be on the basis of “coercion”, because acceptance is due to a belief in the customary coupled with a sense of awe of the achievements of the paramount chief which seem to exert some form of intimidation. Regardless however, there is unpreparedness to abandon this system because the customary also paves way for access of land by the poor even if temporarily. The customary is mystified as ancestral transmissions embodying religious, social, and political ways of doing things and attempts to reject any is seen as rejecting the indigenous culture.

The evidence has proven that contrary to earlier assertions that chiefs are mindful in the management of resources because of several reasons with one being the responsibility to guarantee and protect land for unborn generations, actions by the paramount chief incidentally put generations at risk. The protection of livelihoods of the local people at Juaben lies with the discretion of the paramount chief. So far as

their accessed lands are for farming and the paramount chief does not develop an interest in the lands for commercial purposes, the people enjoy some security albeit limited. It is impossible to ascertain or determine when interest in any land by the paramount chief may arise as it is solely his prerogative.

This study has also pointed out that the customary allows for diverse ways of access to land through individuals, family heads, sub-chiefs, and village overseers although such lands have temporary rights. For the most secured rights, these levels of authority play a relegated or less significant role and capital becomes the fundamental deciding factor spearheaded by the paramount chief. In line with this, even non natives with enough capital tend to have the most secured rights.

Customary falls short of any democratic tendencies because as it can be observed from the literature reviewed and evidence from the field, it's management is not entirely inclusive and opened only to a few whose involvement is even based on patronage. Representations of various interests/groups at the Traditional Council are mere perfunctory. In regard to this, customary at Juaben allows the pursuit of interests and accumulation of properties for a selected few although it is predominantly for the paramount chief.

Drawing on the literature on invented tradition, the study maintains that the alignment of land management with chieftaincy rule was indeed contrived in the colonial era with the sole aim to benefit the colonial authorities and not the local people. Subsequently, the invented status quo has been maintained because similarly to the colonial authorities, it has aided in the appropriation of land and wealth accumulation by governments and the elites. This has also been further affirmed in Juaben by the acceptance by the people that the land belongs to the paramount chief and they are just tenants on it.

What is posited as custom should not be glorified as a fair representation of the total community interests since the customary also creates privileges for chiefs which can undermine the rights of the poor. Customary privileges of chiefs need to be seriously scrutinized. Accountability cannot be achieved without the participation of the members of the larger community in defining how customary land management should be undertaken. Thus, lack of local level participation results in lack of local transparency, and loss of land resources. Ascertainment of how beneficial the customary is to the community should be measured by the perspective of not only the governor, but also the governed.

In Chapter 6, Article 37 clause (8) of the 1992 constitution of Ghana, it is emphasized that

“...managers of public, stool, skin, and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard”.

While this objective is laudable, there is no institutional context to ensure that customary authorities discharge these functions and duties. Thus, there are no policy instruments to ensure that the CLS manage land in the interest of the people in the area under their jurisdiction. While the LAP facilitates the operation of a land market in Juaben, this is not necessarily in the interest of the rural poor neither does it promote poverty reduction and equitable development. Therefore strengthening customary authorities to manage land does not implicitly promote equity, transparency, and accountability, but frequently enables local elites to appropriate land by claiming customary privileges.

The difficulty associated with the call for scrutiny, and interference however is that it may tend to be similar to what happened in colonial Ghana. This is because it will be an attempt to re-establish some form of order in the system which might draw out other privileged interests. Again, the issue will be to ponder over what yardstick the “order” will be measured as accurate. Will it be a new invention or an old system which itself was invented. With no clear reference point for the “truth”, and the fluid nature of custom, it is appropriate to say that the vulnerability of custom is indeed far from over and will be an instrument to manipulate for vested interests.

It is worthy to note however that while the effects of the customary on the people have been threatening, it equally poses as threats to the chieftaincy institution. As land users lose their lands due to confiscation for sale by chiefs in a community with limited employment opportunities, people are likely to migrate in search for income earning ventures in other communities. They might sever ties to the community as families might deem it unnecessary to return as there will be nothing to return to. In instances where they return, it might be temporary, and limited to events such as funerals, festivals, and other social events as was noticed during the period of this study. This means that there will be the likelihood in having people with no commonly accepted ancestral allegiance within the community. Even in situations where the owners of the sold lands are “children of the soil”, chiefly authority might still be curtailed because authority now becomes over people exclusive of their lands because of the absolute rights they now possess.

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APPENDIX



Atiah- one of the villages in Juaben



Korkordie- another village



Abetanim- one of the villages



Market at Ofoase



Some farmers with their children at Abesuase
(they are not respondents)



Palm oil manufacturers with their children
(they are not respondents)