

FINDING THE MIDDLE GROUND:
Land Tenure Reform and Customary Claims
Negotiability in Rural Ghana

Richard Ameyaw Ampadu

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**FINDING THE MIDDLE GROUND:
Land Tenure Reform and Customary Claims
Negotiability in Rural Ghana**

EEN MIDDENWEG ZIEN TE VINDEN:

**hervorming van het pachtstelsel en onderhandelbaarheid van
aanspraken op basis van het gewoonterecht op het platteland in Ghana**

Thesis

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*I dedicate this book to my wife Doris Ampadu-Ameyaw (Mrs)
and children Jedidiah, Jeconiah and Jebobannan
without whose sacrifices and love
my dream of obtaining a PhD could not have been a reality.*



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Acronyms

| | |
|-------|--|
| ADR | Alternative Dispute Resolution |
| CA | Communitarian Approach |
| CLS | Customary Land Secretariat |
| CPP | Convention People's Party |
| CTI | Customary Tenure Institution |
| DA | District Assembly |
| DCE | District Chief Executive |
| DFID | Department for International Development |
| EA | Evolutionary Approach |
| ERP | Economic Recovery Programme |
| ETLR | Evolutionary Theory of Land Rights |
| FAO | Food and Agriculture Organization |
| FGD | Focus Group Discussion |
| GNA | Ghana News Agency |
| GSS | Ghana Statistical Service |
| GOPDC | Ghana Oil Palm Development Cooperation |
| IDI | In-Depth-Interview |
| LAP | Land Administration Project |
| LC | Land Commission |
| LTC | Land Tenure Centre |
| LTRL | Land Title Registration Law |
| MKD | Manya Krobo District |
| MiDA | Millennium Development Authority |
| MLF | Ministry of Land and Forestry |

| | |
|--------|---|
| MoFA | Ministry of Food and Agriculture |
| NLP | National Land Policy |
| PNDC | Provisional National Defence Council |
| OASL | Office of the Administration of Stool Land |
| OFY | Operation Feed Yourself |
| PO | Personal Observation |
| SASF | Semi-Autonomous Social Field |
| SAP | Structural Adjustment Programme |
| SSA | Sub Saharan Africa |
| SPSS | Statistical Package for Social Sciences |
| UN-ECE | United Nations Economic Commission for Europe |



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Abstract

Land (property) rights have returned to the development agenda of national governments and international organizations globally. Central to the debates are issues concerning the interaction between customary and state legal systems. With an example from rural Ghana, this thesis looks at the interaction between customary and state-led legal processes of tenure arrangements and its implications for land investments and general welfare of farmers. Critical to this study is the social legitimacy and equity of land access negotiations and tenure arrangements. It shows that contrary to neo-classical propositions on formalization of local land tenure practices, state-led processes of land tenure reform are not always equitable and inclusive; they have sometimes rendered some rural poor people destitute by denying them access to and control of land. This implies that security of tenure and access to land are not limited to either state-led legislation or customary practices only but that each one can be complemented by the other. This study argues that sustainable and successful land tenure reform will require a ‘marriage’ between customary and state arrangements of land tenure. It suggests that such reforms should be built on local existing structures such that the new system can be accorded a certain level of legitimacy, enough to reflect the interest and gain acceptance of the local people.

Focusing on the limits of legal centralism (as measured by the responses of farmers to state legislation on land) and supported by some theories of socio-legal studies, social relations, local power dynamics and literature on land tenure reforms, empirical data collected from three rural communities in Manya Krobo District are employed to explain outcomes of the interaction between state legislation on land and local customary land claims practices within a pluralistic environment. A process-oriented framework is used to address the overarching question: how and why have efforts aimed at restructuring customary land tenure systems often failed? It aims specifically at understanding who actually gains or who loses from tenurial reform pro-

cesses and their implications for agricultural land investments and welfare of farmers.

The study shows that the communities are diverse and that people respond differently to policy reforms. This leads to a situation where the more powerful and privileged benefit more at the expense of the poor and vulnerable. The study shows that while customary tenure institutions are generally not equitable, the majority of local people continue to appeal to them. In addition, it shows that state reform through titling and registration often denies actual users of land (poor farmers) the opportunity to gain access to land on which their survival depends. Arguably, the limited performance of the titling and registration programme is due to inadequate understanding of the logic of local customary tenure institutions, their operation, existing power relations and inherent structural inequalities, as well as the anxiety of farmers in relation to the tendency of losing their land or land rights through the formalization process.

The flexibility and resilience of local customary institutions show that local laws are still valued in local communities. The overlap of objectives of state-led reforms of local land tenure shows a possibility of marrying customary and state laws on land tenure. It suggests sustainable state-led tenurial reforms can be attained if the right bridges between state legislation and customary practices are built. In view of this, it will be crucial to find a middle ground between the interaction of state legislation processes and customary practices. This enables the ills of each system to be offset by the positive effects of the other. The attainment of this objective will be possible, if policy/law makers will make the effort to understand and integrate the key (and most adaptable and flexible) aspects of the customary in state legislation on land. This requires further investigation into the function and logic of the local institutions, which involves taking account of power imbalances within rural communities and the extent to which these can be mitigated.

In general the study has suggested that simply formalizing informality without ensuring that the (new) policies will have legitimacy among the target population does not always guarantee positive change. On the contrary, it is likely to worsen the already undesirable situation of insecurity, conflict and inequity over land, particularly when the customary system is still strong and highly praised or appealed to. Social legitimacy of the new rules and the extent of interaction between the legal systems are critical for determining its success or otherwise. It is therefore argued that, for any land tenure reform to achieve its objectives, such policies or reforms must be designed

based on enhanced understanding of the responsiveness of local people to the new policies, and the logics and relations of power structures within local communities. Such policies, I believe, must be built on locally existing structures which serve the interest of local people and can therefore alleviate the fear and apprehension of poor people as well as increase their confidence in the new law. In the absence of this, the instabilities and undesirable social consequences which certain farmers are currently experiencing will continue to constrain agricultural production and investment, and worsen poor farmers' general welfare.

Een middenweg zien te vinden: hervorming van het pachtstelsel en onderhandelbaarheid van aanspraken op basis van het gewoonterecht op het platteland in Ghana



Samenvatting

Het recht op grond (onroerend goed) in ontwikkelingslanden staat wereldwijd weer op de agenda van nationale overheden en internationale organisaties. Het debat concentreert zich op de interactie tussen gewoonterecht en rechtssystemen van de staat. Aan de hand van een voorbeeld uit het platteland van Ghana wordt in dit proefschrift gekeken naar de interactie tussen gewoonterecht en wetgeving door de staat op het gebied van pachtregelingen en naar de implicaties voor investeringen in grond en voor het algemeen welzijn van boeren. In dit onderzoek gaat het om de sociale legitimiteit en rechtvaardigheid van onderhandelingen over toegang tot grond en van pachtregelingen. In tegenstelling tot neoklassieke voorstellen over de formalisering van lokale pachtstelsels, blijkt dat initiatieven van de staat op het gebied van de hervorming van pachtstelsels niet altijd rechtvaardig en op iedereen van toepassing zijn. Hierdoor zijn arme mensen op het platteland in sommige gevallen berooid achtergebleven omdat hen de toegang tot en zeggenschap over grond ontzegd werd. Dit betekent dat pachtbescherming en toegang tot grond niet uitsluitend tot ofwel de nationale wetgeving ofwel het gewoonterecht behoren, maar dat beide rechtssystemen elkaar aan kunnen vullen. In dit onderzoek wordt betoogd dat voor een duurzame en succesvolle hervorming van het pachtstelsel een ‘huwelijk’ vereist is tussen pachtregelingen uit het gewoonterecht en staatspachtregelingen. Volgens dit onderzoek moeten dergelijke hervormingen voortbouwen op bestaande lokale structuren zodat het nieuwe systeem een zekere legitimiteit krijgt en de belangen van de lokale bevolking er zodanig in tot uitdrukking komen dat het door hen geaccepteerd wordt.

Het empirisch onderzoek is gericht op de beperkingen van juridisch centralisme (afgemeten aan de reactie van boeren op landelijke wetgeving op het gebied van grond) en gebaseerd op sociaal-juridisch onderzoek, theorie-

en over sociale verhoudingen en lokale machtsverhoudingen en literatuur over hervormingen van pachtstelsels. De data zijn verzameld in drie plattelandsgemeenschappen in het district Manya Krobo en worden gebruikt om de resultaten van de interactie tussen staatswetgeving op het gebied van grond en lokale aanspraken op grond op basis van gewoonterecht te verklaren in een pluralistische omgeving. Een procesgericht analytisch kader wordt gebruikt voor de beantwoording van de centrale onderzoeksvraag: hoe komt het dat pogingen om op gewoonterecht gebaseerde pachtstelsels te herstructureren vaak stranden? Het doel is om te begrijpen wie er daadwerkelijk beter en slechter worden van pachthervormingen en wat de implicaties zijn voor investeringen in landbouwgrond en voor het welzijn van boeren.

Uit het onderzoek blijkt dat er verschillen bestaan tussen de gemeenschappen en dat mensen verschillend reageren op beleidshervormingen. Hierdoor ontstaat een situatie waarin degenen die meer macht en privileges hebben bevoordeeld worden ten opzichte van arme en kwetsbare mensen. Het onderzoek laat zien dat pachtregelingen op basis van gewoonterecht niet rechtvaardig zijn, maar dat mensen er toch een beroep op blijven doen. Verder blijkt dat hervormingen van staatswege door middel van het verlenen van eigendomstitels en registratie vaak de eigenlijke gebruikers van de grond (arme boeren) de mogelijkheid ontnemen om toegang te krijgen tot grond waarvan ze afhankelijk zijn voor hun levensonderhoud. De beperkte effectiviteit van het programma van het verlenen van eigendomstitels en registratie blijkt te liggen aan onvoldoende begrip van de logica en werking van lokale pachtregelingen op basis van gewoonterecht en van bestaande machtsverhoudingen en inherente structurele ongelijkheid, en aan de ongerustheid van boeren omdat zij hun grond of rechten op grond dreigen te verliezen door het formaliseringsproces.

Uit de flexibiliteit en veerkracht van lokale regelingen op basis van gewoonterecht blijkt dat lokale wetten nog steeds gewaardeerd worden in lokale gemeenschappen. De overlap met doelen van hervormingen van lokale pachtstelsels door de staat biedt de mogelijkheid om gewoonterecht en staatswetgeving op het gebied van het pachtstelsel met elkaar te verbinden. Het wijst erop dat duurzame hervormingen van het pachtstelsel van staatswege gerealiseerd kunnen worden als de juiste bruggen worden gebouwd tussen staatswetgeving en gebruiken uit het gewoonterecht. Met het oog hierop is het essentieel om een middenweg te zoeken tussen processen van staatswetgeving en regelingen vanuit het gewoonterecht. Op die manier wegen de voordelen van het ene systeem op tegen de nadelen van het andere. Dit doel kan bereikt worden als beleidsmakers/wetgevers de moeite nemen

om de belangrijkste (en meest aanpasbare en flexibele) aspecten van het gewoonterecht en de staatswetgeving over grond te begrijpen en te integreren. Dit vereist nader onderzoek naar de functie en logica van de lokale regelingen. Daarbij moet rekening gehouden worden met een scheve machtsverdeling binnen plattelandsgemeenschappen en de mate waarin daaraan iets te doen is.

In het algemeen wijst het onderzoek erop dat het simpelweg formaliseren van informele regelingen zonder ervoor te zorgen dat de doelgroep het (nieuwe) beleid legitiem vindt, niet altijd een garantie is voor positieve verandering. De toch al onwenselijke situatie van onzekerheid, conflict en ongelijkheid over grond wordt er waarschijnlijk zelfs nog door verergerd, vooral wanneer het systeem van gewoonterecht nog sterk en hoog gewaardeerd is of er vaak een beroep op gedaan wordt. Sociale legitimiteit van de nieuwe regels en de mate van interactie tussen de rechtssystemen zijn cruciaal voor het welslagen van het nieuwe beleid. Daarom wordt betoogd dat een hervorming van het pachtstelsel alleen doeltreffend kan zijn als dit soort beleid of hervormingen ontworpen wordt op grond van een beter begrip van de ontvankelijkheid van de lokale bevolking voor het nieuwe beleid en van de logica en onderlinge relatie van machtsstructuren binnen lokale gemeenschappen. Dergelijk beleid moet voortbouwen op bestaande lokale structuren die het belang van de lokale bevolking dienen en daarom de angst en ongerustheid van arme mensen verminderen en ook hun vertrouwen in de nieuwe wet vergroten. Anders zullen de instabiliteit en onwenselijke sociale gevolgen waarmee bepaalde boeren momenteel te maken hebben de landbouwproductie en investeringen in landbouw blijven beperken en het algemene welzijn van arme boeren verslechteren.



Dynamics of Rural Land Tenure Systems

1.1 Introduction

The return of land tenure issues to the centre of policy and development discourses broadly reflects the interest of governments to establish connections between processes of land tenure formalization and poverty reduction. In developing countries and sub-Saharan Africa (SSA) in particular, governments have made efforts to integrate customary and statutory systems of land administration. The main objective is to devise ways of enhancing security of access and tenure. In spite of this, social inequity, inequality, injustice and conflicts over land have still persisted and escalated in some countries (Peters, 2004). This study looks at the interactions of the laws and responses of local farmers to state-led processes of land tenure reform and existing customary practices of tenure arrangements in rural Ghana. From this perspective, the study assesses the interaction as a way of contributing to the complex debates about the legitimacy and harmonization of formal and customary laws on local land tenure rights.

1.2 Background

Over the past three decades or more the World Bank and other international donors, in collaboration with their local partners, have sought to restructure agricultural land tenure systems in the developing world. Among others objectives, these processes have aimed at increasing tenure security, facilitating access to land by the poor, improving productivity and investment in land, enhancing access to formal credit, protecting all landholders against possible expropriation by local elites and state actors and reducing rural poverty.

While efforts have concentrated mainly on land titling and registration (formalization), most people in Africa, particularly in the sub-Saharan region, still gain access to land through a highly complex, dynamic and unpredictable local customary tenure system. Under the customary system, people may hold diverse, multiple and overlapping rights to a particular piece of land. This notion of rights to land contradicts the western notion of exclusive property right favoured by neo classical economics. As Firmin-Sellers and Sellers (1999: 1116) argue 'rights exist in a meaningful sense only when community members recognize and accept them as legitimate'. In a study in Nicaragua, Broegaard (2005: 859) asserts that, among others, elements such as local legitimacy of property rights, good relations with landowner and economic wealth all influence the level of people's tenure right security. This concern therefore raises questions about the social legitimacy of tenurial reforms.

Hall and Hirsch (2010) claim that the idea of titling based on Western notions of property rights is by definition an exclusion process. It provides exclusive rights to landholders and 'owners', without providing alternatives for the poor and vulnerable. Property rights founded on this notion of claims often result in erosion of the rights of certain categories of social actors (Atwood, 1990). This increases insecurity and land conflicts, particularly in land scarcity regions. The effects on social negotiation processes of land claims can be devastating. Apart from resulting in denial and exclusion of certain categories of people from access to land in some areas, titling causes divisions within families (Amanor, 2010) and community members (Boni, 2005). In many of these cases, community members resist or attempt to oppose such formalization processes if their concerns are not represented. This may breed tensions, conflicts and destruction of lives and property, with serious implications for economic development and agricultural growth.

In rural communities of Africa, many people gain access to land through customary systems (Cotula, 2007). Access to land under the customary system is often based on age, status, gender and other dimensions of power structures within the society. As pointed out by Chanock (1991: 64), 'rights to land often flow from the level of traditional authorities downward'. However, through processes of cultural interaction, socio-economic change and political processes (Cotula *et al.*, 2005), these systems may result in shifts in power relations and persons within a community's land administration and management system. Such situa-

tions may benefit those community members with power, positions and privileges, with serious repercussions for poor people's access to land and farming.

To understand the complexities of these dynamics requires systematic exploration of the economic, social, legal, cultural and political environment, particularly the power structure or relations within which the policy reform operates. Since people have different interests and values for any reform, diverse responses, perceptions and experiences to the reform are to be expected. A socio-legal theory or framework of analysis which is able to capture operations of different legal systems, the diverse nature of people's views and responses within a rural community is required to understand the complexity and tensions that may result from the interaction of customary and state legal systems on land.

This study looks at the interaction between local practices of land tenure and state-led land legislation, their social legitimacy, equity (Moore, 2000) and their implications for land tenure security, equality of access as well as agricultural land investments in rural Ghana. It examines the on-going land tenure reform in the country, with a focus on land titling and registration or what Lipton (2009: 126) refers to as 'tenurial reforms' or 'alternative land tenure reforms'. This type of reform aims to 'change tenurial relations between landowners and land-users without necessarily altering land distribution' (Quan, 1997: 1). It explores the changing nature of local land claims negotiation based on the lived realities and conditions of actual users of the legal ordering on land.

Employing a mixed method approach, the study is based on an ethnographic exploration of three rural farming communities of Manya Krobo, a former agricultural frontier of Ghana. The main objective is to understand the underlying practices and mechanisms (processes, relations and means) by which certain categories of social actors (farmers) are able (or not able) to gain, maintain or lose access to land following socially engineered changes like land tenure reform. Like customary systems, statutory law systems are always evolving and adapting to the changing dynamics of society, although they are often perceived to be more static and fixed.

1.3 Organization of chapters

This thesis consists of seven separate chapters. Chapter 1 introduces the subject of the study and focuses on the research problem, questions and objectives as well as relevance of the study. The theoretical and methodological underpinnings of the study are also discussed here.

Chapter 2 looks at the land administration and management issues in Ghana, underscoring the historical antecedents of land tenure reform and policies. It attempts analysis of some Land Acts in the country as a way of laying foundations for explaining the challenges of land in the country. A brief on the national land policy, the land administration project and the customary land secretariat, which are all important milestones in the reform process, are discussed.

Chapter 3 looks at the historical dynamics of customary land tenure systems, with a focus on the changes in land acquisition processes in rural Manya Krobo. Specifically it discusses how land and power relations, symbols and meanings of land access are changing with respect to current land tenure reform, the evolution of customary tenure, and commercialization of land acquisition processes all as a fall-out of increasing land scarcity.

Chapter 4 analyses the nature, extent and dynamics of agrarian structure and social differentiation in the study region. The analysis is based on the social categories of age (generation), ethnicity (nativity), gender and status within the communities. It outlines the agrarian structure, land allocation practices and related processes of socioeconomic differentiation in the former agricultural frontier.

Chapter 5 uses personal narrations and testimonies of selected individuals based on social relations to further examine the forms and mechanisms of social exclusion from land within rural communities. It explores the equity of customary land tenure systems/institutions in land allocation, control and use in an attempt to assess the appropriateness of the government's decision to return the control of local lands to traditional institutions and heads.

Chapter 6 focuses on the issues of state legislation of local land tenure, tenure (in) security and land conflicts. This chapter discusses the frequency and extent of land conflicts in the case study community, and farmers' perceptions in the context of increasing marketization of the rural land sector. It discusses issues of land access between and among

native and non-native people, in relation to intra community relations (based on gender, age, status, and ethnicity), regarding security of land access and tenure, marginalization, social exclusion and conflicts in relation to growing land scarcity, increasing insecurity and evolution of the customary system.

Chapter 7 looks back at the questions raised in the introductory chapter in order to provide some answers based on the findings from the study. It first presents a synthesis of research results, highlighting major and key findings. This is followed by the main conclusions and some reflections on implications for theory and policy.

1.4 Defining the problem: Struggles for control of rural land

As already noted, access to land is fundamental for rural people in agrarian communities and in sub-Saharan Africa (SSA) a large majority of rural people gain access to agricultural land through customary institutions (Wily, 2006). However, it is often argued that local land tenure systems of SSA are inadequate to generate sufficient output to solve the continent's food challenges. Therefore, in the 1970s, land tenure reform was put on the development agenda (World Bank, 1975, cited in Platteau, 1996), and taken up again more recently after two decades of near absence in policy discourses. This is in view of the re-appearance of agriculture as a main priority sector (World Bank, 2008).

The re-emergence of land tenure reform on national and international agendas is also evidenced by the great number of articles and debates found in the recent scholarly literature (Borras, 2007). In the main this has been triggered by dynamic changes in land claims within rural communities, where large numbers of derived and secondary right holders are losing access to their holdings, as land is appreciating in value. State-led reforms are designed to protect the rights of such people yet the result is not encouraging.

These State-led reforms have generally resulted in increased diversities, insecurity and inequalities within rural communities (Peters, 2004; Amanor, 2010). The results (past and present) show that instead of ensuring harmony in land relations, reforms tend to promote conflicts over control of land. Thus, new challenges have emerged while policy-makers

and legislators attempt to find appropriate policies and laws to correct deficiencies in agricultural land access.

During the 1990s a re-birth of the land deeds registration efforts of the 19th century emerged, now under a new nomenclature, namely land titling and land registration programmes. These programmes were expected to ensure formalization of local land rights, and thereby enhance land tenure security, and facilitate access to financial capital to encourage land investments and promote higher productivity and thereby poverty reduction (World Bank, 2003). In spite of (or partly because of) all these reforms the problem of land access and land tenure security in SSA seems to be more severe now than ever. The combined effects of increased land scarcity, customary rights systems and their evolution, and various land tenure reforms (past and present) have resulted in diverse forms of struggles in relation to land access and land tenure security for most poor people. These struggles are influenced by conflicting understandings of the role of state and customary institutions in land management regarding local practices and meanings of land ownership, control and management.

As pointed out above, the empirical part of this study has been done in three selected rural communities of Manya Krobo, a former agricultural frontier of Ghana. It focuses on the sociopolitical, legal and power relations that underlie the shifts in land allocation mechanisms and land access within these communities. It will look at the challenges of inequality in access to land, land tenure insecurity and conflicts over land, and how to improve local land rights, avoiding the possible worsening of the plight of poor farmers through 'top-down' land rights legalization processes. It focuses on the lived realities and conditions of actual users of laws and land rather than government statistics, which are usually unreliable.

1.5 Exploring the 'land question' of Sub Saharan Africa

Recent debates on land in some developing countries suggest an obsession with, and support for, the fundamental premise of restructuring of customary land tenure system (Platteau, 1996; World Bank, 2003), yet there is disagreement about the foundation on which such reform process should be sustained. Some authors argue that customary systems discriminate among social groups, particularly women and non-natives.

Customary tenure systems are said to be 'inefficiently used, restrict investment in land and are leading to increased inequality and other forms of social instability because of the unequal level playing field for negotiation' (Woodhouse, 2003: 1705-1706; see also Peters, 2004). This has led to the proposition of state-led legislation to reform local land tenure.

In a counter argument, other authors claim that the use of state legislation to restructure customary tenure systems exposes local tenure systems to market forces, which work adversely against the poor and vulnerable, who do not have the money to compete for resources in the open market. It disinherits people from their legitimate communal rights to land since individuals' rights to local lands are socially constructed and tied permanently to their social relations (Platteau, 1996). State-led land reform through titling and registration, which aims at formalizing land boundaries, terms and conditions of access to, control and use of land, shows some exclusionary tendencies. Apart from theoretical and anecdotal accounts there seems to be little research on the social equity, legitimization and exclusionary practices which supposedly have been enhanced by land titling or the mere announcement of it in some rural communities.

This contemporary discourse on land policies seems to have been polarized between proponents of state tenure reform in terms of registration of individuals' rights and those who claim that customary or 'communal' tenure is the best check against landlessness among the poor in rural Africa, and that 'pro-poor' land policy should therefore strengthen customary rights to land (Chimhowu and Woodhouse 2006: 346).

While some authors argue that the ambiguity and 'negotiability' of customary land rights actually produce insecurity (World Bank, 1989), others claim that these characteristic features of customary tenure create opportunity for the poor and vulnerable, who would otherwise have never had access to land (Berry, 1993). Recent studies identify that such flexibilities in customary tenure also create opportunities for the wealthy to expropriate and accumulate land at the expense of the poor. Thus, the contention over customary land is also about which of the above approaches is most likely to create more land tenure security that is easily transferable, inheritable and with enforceable mechanisms (Alchayan and Demsetz, 1973).

As pointed out by Kerekes and Williamson (2010), both economists and sociologists show serious interest in seeing secure land tenure established in order to encourage ‘development’. The question of how to achieve this (and measure it) has been debated in the theoretical literature on land, shaped by two main broad schools of thought – the evolutionary approach (EA) and the communitarian approach (CA). These are in many ways related to the legal centralism and legal pluralism approaches on land tenure, which are discussed below. Each of these have sought to explain shifts in customary land tenure systems and their implications for agriculture, land tenure security and investments as well as poverty reduction in developing countries (World Bank, 2003). This raises the question, why, despite the many years of reform, unequal access to agricultural (or pasture) land, land conflicts and exclusion of certain social actors from land and benefits of access still remain, and in some cases are even increasing (Atwood, 1990; Platteau, 1996; 2000). While several explanations have been provided, Scott (1998) has attributed the failure of state-led projects to ‘state simplification’ of social and economic problems and processes. The state has sought to address complex social realities through rationalization and standardization of society’s need to suit the legislators’ and planners’ interest and knowledge.

In a bid to control local land, policy/law makers have failed to question the social legitimacy of using state legislation to formalize local land tenure systems. Instead, they have become obsessed with legislating local land so they can record and monitor local people’s activities for purposes of taxation and ‘legibility’ (Scott, 1998). The assumed low productivity and the inefficiency of communal allocation of land have rather dominated policy and views of policy/law makers. The issues of supposed irresponsibility of communal land-users, ‘free rider’ problems (Alchaian and Demestz, 1973: 19) and low in productivity and welfare associated with local communal land tenure therefore remain open. Thus, studies explaining the conflicts between state legislation and customary laws, and their impacts on the current transformations of customary land, are still few or inconclusive.

The CA, which focuses mainly on equity issues, supports community-led reform as the most effective way of curbing social instability and ensuring land access and tenure security; the EA argues for state-led land tenure reforms based on market development and exclusive private individual land rights. Both approaches argue that the particular reforms that

are promoted will enhance productivity, growth and poverty reduction. The CA claims that customary tenure rights and practices can ensure that all members of land communities, including non-natives, women and other vulnerable groups obtain access to land through one mechanism or another, and that this land access is negotiable (Ostrom, 1990; Amanor, 1999). The CA thus claims that traditional or customary forms of land tenure are an effective way to ensure secure equitable rights over land.

The EA, in contrast, argues that formalized and individualized local lands are proven to be an effective base for smallholder development, and can be used as collateral in order to access credit, promoting investment in land. According to the EA, fundamental social changes in land tenure can be achieved through state legislation only (Bruce and Migot-Adholla 1994). In contrast, the CA argues that insecurity of local land rights is the result of state-led tenure reforms which do not adequately factor in local laws but ignore local customs regarding land and land rights.

Furthermore the CA favours complementarities between state-led and community-led approaches, promoting some changes in legal systems and a minimal role for government. Again, recent land policies suggest greater acceptance of community-led reforms but such synergies are often short lived as communal systems and practices often conflict with state policies, rather than complement them (Moore, 1978). The CA sometimes bases its argument on the idealized notion that 'traditional' systems are egalitarian, ethical and protective of the poor (Amanor, 2001), even though this ideal is rapidly transforming. It promotes the idea that land rights should be vested in the land-owning community as opposed to individuals (Bonne, 2007: 570).

Clearly these arguments have ignored the importance of changing dynamics of relations of power within communities, institutional structures and families. As Moore (2000: 1) suggested, 'the making of rules, social and symbolic order is a human industry matched only by manipulation, circumvention, remaking, replacing and unmaking of rules and symbols in which people seem almost equally engaged'. Underlining these processes of change and continuity are notions of power, politics of belonging and social identity.

Some critical elements of social reality seem to have been overlooked by both the EA and CA. In particular, they both fail to consider the role of power, social ties and structural inequality embedded in customary

systems and historical antecedents. Both these schools of thought abstract from the actual social, political, economic and cultural environments that form the core foundation within which customary tenure systems operate. In these environments, access to land is generally a political process which usually favours land-owning members, elders, seniors, males and generally those with local political power, privileges or position.

Land tenure reforms have often ignored market imperfections and distortions, while assuming the effectiveness of private (or individual) land ownership in resource allocation. This creates incongruence between cultural values and legality, while unequal power relations continue and have even been strengthened through these reforms. Land tenure reform implemented under these conditions opened up opportunities for the state and its allies (local heads of land groups, sponsors of the reform programme, politicians and other power holders) who were seeking to re-order, control and manipulate land relations (Aryeetey *et al.*, 2007).

The lack of serious interactions between the state and the custodians of customary land tenure systems was (and is) a fundamental flaw in land tenure reforms. The CA argues that secure land access and land tenure security should not only be about gaining access to credit and technology but also to promote peaceful social relations within the community (Platteau, 2000). The CA is therefore more concerned with social relations, social contracts, social investment (Berry, 1993) and the prevention of landlessness (Amanor, 1999; 2001; Toulmin *et al.*, 2002), rather than an exclusive focus on efficiency of resource allocation, which is very much present in the EA. This is not to suggest that the customary tenure systems are always equitable, as studies show a clear demonstration of unfair allocations in several communities (Peters, 2004).

While Moore (1978; 2000) asserts that spontaneity and adaptability are constant features of customary tenure, others claim that such processes may not automatically evolve or even if they do, they may require state intervention to speed up the process. They argue that in situations where customary authority is weak, competition and disputes over local land may be severe and frequent (Quan, 1997; Atwood, 1990) and such interventions are necessary. Studying farms in south-eastern Ghana, Gyasi (1994) observed that, even in the absence of state-led land tenure reforms, the customary land tenure system had evolved and adapted to economic changes. In a different country and area of study (South Afri-

ca), Du Toit (2004) demonstrated that despite institutional and policy changes, historical antecedents and local power relations persist and influence people's actions. This situation is the result of the tenacious opposition emerging from the logic of customary systems to state legislation and other institutions of law operating within the community. To overcome this, it is important to look again at these challenges from the perspective of legal pluralism.

Local communities are often able to devise their own systems of solving land issues (Moore, 2000). However, this observation should not be used to strengthen an idealized notion of 'traditional' systems. They often require a push by state legislation and development policies in a situation where customary systems themselves are also changing, and there is a great need to promote agricultural growth and poverty reduction. Some proponents of the CA claim that customary tenure systems provide a source of social security and continuity for the local farmer (Kasanga, 1996; Kasanga and Kotey, 2001) and that it should be preserved. However, considering the degree of social differentiation in many rural communities, the question that usually emanates is: who benefits from such social security?

The history of land struggles in Ghana indicates that the rich and more powerful and their allies have always benefited from changes in the land rights systems to the detriment of the poor, vulnerable and less powerful (Goldstein and Udry, 2008; Aryeetey *et al.*, 2007; Ubink, 2008; Amanor, 2010). While the CA supports community-led land tenure reform, it seems to have ignored the hierarchical social relations of power within local communities and therefore the social differentiation and class formation it engenders. It focuses on the ambiguity, flexibility and adaptability of the customary rights system, while neglecting the political, economic and social context within which it is situated (Peters, 2004). Possibly for reasons of simplification, the CA as much as the EA 'ignores essential features of any real, functioning social order' (Scott, 1998: 6), historical antecedents of land tenure development within communities and the use of power and social relations to exclude others (Grischow, 2008; Gore, 1994).

Thus, these bifurcated views on land tenure reform, as promoted by the two mentioned approaches, provide an insufficient and incorrect evaluation criterion to measure success or failure of a land tenure reform policy. Issues of unequal power relations in land negotiations and con-

trols both at state and local community levels are crucial and require systematic assessment. Ignoring the diverse forms of power relations, hierarchies, histories and the reality that certain people are 'locked into multiple channels of access' (Berry, 1989: 50) could be detrimental for any land tenure reform process. A middle ground or bridging of the two competing legal approaches becomes critical yet may be difficult to achieve in practice due to the somewhat entrenched position already taken by the state and local communities.

1.6 Legal centralism and pluralism: key strengths and weaknesses

In thinking about how to address the land question in Africa, two main legal frameworks – legal centralism and legal pluralism – have been pursued in several countries. While legal centralism (the notion that only the state makes law and the fact that it should be the only law to appeal) and legal pluralism (which recognizes the coexistence and interaction of multiple frameworks of law within the same community) both aimed at creating secure land tenure, their roles in restructuring land tenure systems and ensuring freedom from manipulation by elites have become a subject of controversy and debate. The question here is which of these two approaches can be more equitable, inclusive and more socially acceptable by local communities. This requires an exposition on the strengths and weaknesses of some important features of the two legal approaches to land.

Table 1.1 attempts to summarize briefly some of the key strengths and weaknesses of the two approaches, focusing mainly on some of their central features: central objectives, assumptions, functionality and effective protection of the poor (outcomes).

Table 1.1
Brief comparison of legal centralism and pluralism

| | Legal centralism | | Legal pluralism | |
|---------------|---|--|---|--|
| | Strengths | Weaknesses | Strengths | Weaknesses |
| Central focus | Existence and use of the law of the state as the only law in every community. Law is uniform, systematic, administered by one institution and exclusive of other laws. Focuses more on legal titles than social rights. Allows for state monitoring and control of local lands | Ignores the reality that every society is full of heterogeneous rule, and diverse people appeal to diverse ways. Limits people's options. | Co-existence and use of more than one legal system in a community. Law is non-uniform, unsystematic and administered by different institutions. Focuses more on social rights than legal titles. Flexible and adaptable to local situation. | Social actors could blame the systems for their own failure to act due to inability to make a choice. |
| Assumption | It focuses on what and how world ought to be and therefore assumes that State legislation alone can change society. | Idealistic and ignores the reality of other forms of legal orderings to effect or contribute to social change. | Focuses on what the world is and therefore assumes that positive change can be effected by several legal systems through 'institutional shopping'. | Roles of various institutions and actors can be problematic, contested and chaotic, if tasks are not carefully designed and given social legitimacy. |
| Function | Provides rigid protection for a few, and not necessarily the majority as a way to maintain social order. | Provides exclusive rights and ignores realities of existence of multiple legal systems within a community. | Allows wide range of actors chance to gain access to property rights. | Different mechanisms of claims to natural resources are made possible and can be problematic. |
| Flexibility | Non-flexible and enforcement of strict conditions of access to own resources. Institutions are relatively less easily accessible. | Imposition which gives the state sovereign political power to control resources of the people even to their displeasure. | Flexible and allows people to appeal to different legal systems or rules of their choice. | Sets confusion as to which law to be upheld in court or appealed to in case of disputes. Institutions relatively easy to access. |
| Outcomes | Law may limit manipulations by elites if enforced. Yet law could also be interpreted or applied differently within local communities. | This may create conflicts and gaps or opportunities for elites and other knowledgeable persons within the local communities. | Maintenance and fostering of peace and social order within communities since people have a choice, although limited. | Outcomes of one institutional process can be overturned in another court or institution when people appeal to other institutions. |

Source: Author's own construction

Generally, legal centralism as an instrument of social change or ‘development’ ignores the reality of multiplicity of legal systems operating within a community (Griffiths, 1986). It assumes that state legislation alone can change society, yet this has been criticised by several socio-legal studies experts (Griffiths, 1986; von Benda-Beckmann, 1989; Moore, 1978; 2000). In every social grouping, including the family, members are bound theoretically to follow rules of the society and good behaviour is judged according to such rules. Apart from such rules, people are expected to conform to rules of a wider community since such societies or communities operate within a wider context of the state or state law. It is argued that the use of state legislation alone to establish social order ends up creating ‘socio-legal gaps’ because of the differences between the observed and expected working of the law. This is not to uphold legal pluralism as a panacea since it also has its pitfalls, as enumerated above. Yet it is envisaged that the use of legal centralism to engineer social change produces ‘restricted capacity of state or elites to define rights and exercise coercion’ (Moore, 2000: 48). This therefore raises the question about the extent to which state legislations are socially acceptable and how they gain (or fail to gain) legitimacy.

The above-mentioned inadequacies in land tenure reforms could be ‘too complex to address’ (Mabogunje, 1992 cited in Gough and Yankson, 2000). Yet ignoring them could be a greater cost to countries, such as Ghana, which are involved in these reform processes. Table 1.1 suggests that state-led legislation can above all be successful when local people decide to accept reforms, which are often based on the terms and conditions of local people (see Moore, 1998). These conditions include a state of flexible plurality of laws that avoids unnecessary manipulations by elites. Nevertheless, this aspect of land tenure reform has so far attracted little attention in the literature.

1.7 Objectives of land tenure reform

Ghana’s current land (administration) reform includes the notion of changing and restructuring rules and procedures in gaining access to, control over or use of land. This is to be carried out in such a way that local tenure systems will be ‘consistent with the overall requirements of economic development’ (Hasmad and Ahmad, 1994: 10). In this study,

we define land tenure to include ways in which land is held or owned and used by individuals or groups of people.

Conventionally, land reform involves measures aimed at ensuring a more equitable distribution of agricultural land (Lipton, 2009) through redistribution of land, yet there are other types, apart from the classical paradigm (Hasmad and Ahmad, 1994; Lipton, 2009). This study departs from the premise that the outcome of state-led land tenure reform will depend on the extent to which state policy makers and legislators are willing to accept and able to integrate local norms and rules on land access, control and adjudication procedures in new land policies and national legislation. The success of the reform should be measured by its social acceptability or legitimacy, particularly by the poor and vulnerable people and the feasibility of its implementation. It should also depend on how effectively members of communities, particularly the poor, are able to afford the cost of registration and also work together to exercise power to influence decisions of government.

We argue that a mere recognition of tenure systems at national level will not be enough to broker peace among local land disputants. As pointed out by Borras (2007), recognition of local tenure systems by state law is good but it is not enough, unless it is able to empower local people. In addition, new land rights and land management systems should ensure that farmers are able in practical terms to gain access to other agricultural inputs in order to produce on 'their' land under 'secure' conditions.

Generally, land tenure reform has two main sets of objectives: (1) to ensure that the terms and conditions of access and tenure of land are secured (economic objective) and (2) to protect the right of all land beneficiaries to the resource (sociopolitical objective). This is stated in various forms, and is found in several development policy and reform documents. The national land policy of Ghana, for example, aims at using the tenurial reform to reduce poverty (economic objective) and ensure enhanced security (socio-political) as well as maintaining social order (MLF, 1999: 6–7). Yet in implementation of the policy, one of these objectives has been prioritized over the other. While both the social and economic objectives are regarded as inseparable, others argue that the fulfilment of one precludes the other from happening (Hasmad and Ahmad, 1994).

In general, while the economic objective seems to be receiving more attention by state government (Hall and Hirsch, 2010), the sociopolitical objective, which many presumed to favour the local poor people, is least prioritized in the implementation process, as the focus of the current land tenure reform is on the legal aspect (titling and registration) seen as the basis for increased (economic) productivity. The interest of state government in accessing funding from international organizations and donors could explain the drive towards the pursuit of the economic objectives. They have promoted programmes and policies which follow the EA approach, and yet these have shown to be leading to greater differentiation and often loss of land by the poor in the absence of access to credit, land and (formal) markets for inputs and output (Bruce and Migot-Adholla 1994).

The second objective, namely promoting an equitable allocation of local customary land, through titling and registration processes, is less considered by state governments. This could be due to the differences in perception about local land by both the state and local people who seek to gain effective control over land. While the state might perceive land as an economic resource and one which should be privatized or based on exclusive rights in order to maximize its allocative efficiency, local people recognize that there are benefits beyond the economic realm. Local people regard land as that which belongs and serves the living, dead and unborn together (Danquah, 1968). This suggests that land is just not a property with economic value but that which connects generations and relations and foments relationships between and among people (Ellickson, 1991). It has social values, and its distribution and access should reflect the demands and interests of the people. It should be seen to be providing secure and equitable access to land and a safety net for the poor and vulnerable people in rural areas.

In view of this, local people cannot imagine estranging themselves from the relationship with their ancestors, who they believed fought and claimed the land for them and future generations. Relinquishing control over land to the state cannot be done as simply as suggested by the advocates of the EA since that is deemed as giving out power to a stranger. According to Cotula *et al.* (2005), property markets fail to secure land for the large majority of people. Since the majority of these people require land in order to survive, the lack of access to land may create social unrest in farming communities. For that reason, any change in the control

and management of local land that may alter local arrangements related to land or sever social relations, and conflicts with local norms, is likely to be met with diverse reactions from the community.

In spite of these differences both views on and objectives of land tenure reform have the potential to bring about social change and can be complementary and interrelated. This requires a well-crafted land tenure reform policy. One way of framing such land tenure policy, capable of resolving the current challenge and providing equitable access to farm land, is to gain a right balance between the different legal systems. However, as of now there is no strategy in sight aiming to integrate, or find a middle ground between, the two approaches in current land policy reforms.

This is evidenced by the virtual non-involvement or exclusion of local people in discussions of subjects which matter most to their welfare (Ar-yeteey *et al.*, 2007). In view of this, this study argues that state legislation has not been able to reform local lands successfully, not because it is frustrated by local practices per se, but that it has taken for granted the roles of unequal power relations and inherent social inequality embedded within local institutional structures, which form the bedrock of local tenure systems. The state's refusal to depart from the conception of legal centralism and the law as a fixed instrument to engineer social changes (Woodman, 1985), makes it difficult for the state and its donor partners to acknowledge the reality of how local people perceive the law (legal ordering) or employ it in negotiating land claims within their communities.

As was noted earlier, in the context of legal pluralism, interactions among land management institutions or laws (state or customary) create some flexibility which encourages 'forum shopping' (von Benda-Beckman and Benda-Beckman, 1994). This allows both the wealthy and powerful, and the poor and vulnerable opportunities to use any legal framework or ordering that best suits their situation. While forum shopping can create negotiation platforms, it can equally create limitations for the poor and vulnerable. The wealthy and powerful also use the window of flexible opportunities to manipulate the systems to their own advantage through the use of power, capital, networks and political alliances. This makes the case for a middle ground solution to the land question significant.

Given that land ownership or holding rights under the customary or state laws are based on power relations, and recognizing that people are able to use local norms and rules to contradict objectives of state legislations (Moore, 1978), power relations are still marginalized in land tenure reform analysis and policy. We will argue here that the neglect of these factors has also contributed to the exclusion of many rural poor and vulnerable people (Aryeetey *et al.*, 2007; Amanor, 2010).

On a practical level, there is the need to understand that society is not homogenous and that every society or community consists of different social actors, groups and institutions with diverse interest and objectives. In rural farming communities many people usually hold 'bundles of rights' to land, and claims to land are not just about access to a physical asset but relate to the interplay between power and rights (Ostrom, 1990) embedded within complex social relations and structures. Any abstraction from this reality or what Moore (2000) calls a 'semi-autonomous social field' (SASF) and its connections with the external political, social, legal and economic environment may make it difficult, if not impossible for governments to use state legislation in order to achieve fundamental changes in society.

1.8 Research objectives

The main objective of this study is to contribute towards understanding how and why state legislation and processes have not been able to fully reform customary land tenure systems, and to explain how these processes shape land claims negotiations, often in socially undesirable directions. It also looks at the implications of these processes for (smallholder) agriculture and poverty (welfare) of farmers in rural Manya Krobo, Ghana. This is achieved by exploring the interactions between customary practices and state laws on land access. It focuses on how rural communities are differentiated, the social legitimacy of titling and registration of land, how socially undesirable consequences (inequality, insecurity, exclusion and conflicts) over local land relate to negotiated land claims and the extent to which these shape land and agriculture investments and influence poverty reduction.

The specific objectives of the study are to:

1. Examine the patterns of land distribution, the diverse mechanisms used by the various social actors to negotiate land claims and ex-

explore the limits of local land claims negotiation within a pluralistic legal environment.

2. Assess the dynamics, equity, practices and mechanisms of land claims negotiation and their effects on agricultural investments and farmers' welfare.
3. Evaluate the implications of these dynamic changes for development policies, in particular regarding legislation relating to customary land.

1.9 Research questions

In line with the above research objectives, the main research question of this study is: who benefits and who loses from the changing dynamics in local customary land claims negotiations, how does this happen, and what are the implications of the tenurial consequences for investment in land, agriculture and livelihoods of farmers? To answer this question we will explore and explain how certain categories of social actors (farmers) are able (or are not able) to gain, maintain or lose access to their land within the context of a multi-legal ordering. This question also addresses the theoretical aspect of whether state legislation as such can influence social change within an existing local social structure which is characterized by power, unequal social relations and structural inequality. This is made possible by looking at what really happens or is happening within local communities, regarding the acceptability of customary and/or formal systems of land administration.

Specific research questions posed include:

1. What aspects of the customary land tenure system are shifting, what are the driving force(s) behind such shifts, and with what effects for resilience and adapting to social change?
2. What land distribution patterns, processes and mechanisms are exhibited and how are these shaping, and/or being shaped by social class and differentiation?
3. What perceptions, experiences and responses do farmers hold towards the shifts in customary land tenure negotiations and formalization and their effects on processes of insecurity, land conflicts and investments?

4. What are the implications of these shifts for equity in customary tenure and practices and with what consequences for security of the poor's right to communal land?

1.10 Analytical framework

Land tenure challenges are broad and multifaceted, and therefore require an analytical framework capable to incorporating a wide range of factors including political capital, which involves politics and power relations (local or/and state). Moore's (1978; 2000) process-oriented framework on social life is employed here to study the interaction between state-led legislation on local land and the social reality. Despite its possible shortcomings and limitations, this framework has been used in recent times by some authors (Lund, 2001; McCarthy, 2002) to explain how state processes fail to achieve their objectives. It provides opportunity for the study of interactions at the interface of policy/ideologies and social reality. Moore (1978; 2000) perceives the use of the legal centralism approach alone to engineer fundamental social change as inadequate. She argues that there exist laws, rules and norms within every society or what she calls 'semi-autonomous social field' (SASF), such that these are applied within the society to frustrate state legislations (Moore, 1978; 2000). In this way she calls for a pluralistic conception of law as a foundation for the working of state laws in societies. This framework is chosen to show the real impact of state-led processes of social change in a complex environment.

According to Moore (2000), law or ordering of social life is subject to various forms of negotiations and re-interpretation due to the presence of the factor of indeterminacy, which she maintains is a permanent feature of social life. This law (or social ordering), according to her, is not static or fixed but intrinsically unstable and full of inconsistencies, ambiguities and contradictions. In view of this, she maintains that the social order within society can be made and remade in order to achieve a form of stability through a process of regularization and situational adjustment. She refers to the process of regularization as 'enactments and representations of rules, categories, symbols and rituals that give form, order and predictability to social life' to the extent that durable social and cultural orders can be maintained (Moore 1978: 6).

Land titling and registration processes, which are a key focus of this study, are often designed to remove the insecurities, contradictions and ambiguities presumed to exist under customary systems, hence the appropriateness of Moore's framework here. Moore (*ibid.*) attributes the regularization or adjustment of legal orderings to the presence of the gap of indeterminacy, an indispensable factor of social life. This gap provides people (usually the powerful) with enough space and power to adjust the law to meet a variety of objectives depending on who is in control of scarce resources under competition.

Moore (*ibid.*) pointed out that state laws which are usually employed to stabilize social life should themselves be considered as part of the entire legal ordering within the society (*ibid.*). This is also because the success of state policy is dependent on whether the ruling elites or powerful people in society support or oppose policy or sections of it. This is critical, since the process of land tenure reform, for example, operates within social relations of communities which are generally heterogeneous. While some may support the new policy because of the benefits to accrue to them, others who may suffer loss will decline to support such policies.

The challenge whereby a legislation or policy aimed at creating stability simultaneously excludes people or creates more insecurity and conflicts presents a paradox. Thus *finding the middle ground*, concerning a mix of choices that matter most for groups or individuals, is critical for designing and implementing a workable land tenure reform. This raises questions about the conditions and processes by which state legislation will receive acceptance among local people who are used to a particular system.

The use of Moore's analytical framework helps to deepen our understanding of why and how certain groups or individuals are able to manipulate the existing indeterminacy (gaps) between state legislation (intentions) and social reality to their benefit. Particularly in this study, analysis of indeterminacy is employed to understand what actually takes place within the interface between state and customary law, and creates local differentiation in relation to access to resources in the community of study. This analytical framework provides an understanding of 'what is taking place in terms of effects, not *just* on individual fortunes alone, but *also* on solidifying or eroding or transforming or dissolving of culture and social regularities' (Moore, 1978: 50; 2000). It suggests that a SASF has the capacity to generate its own laws, rules and means of enforcing

compliance, and have some degree of autonomy in regulating community behaviour. It also interacts with the external or wider society, including the law of the state. This suggests that the challenges facing current dynamics of change in claims to local land can be best understood through exploring the issue within a context of multiple institutional and sociopolitical structures and in a historical perspective.

As pointed out by Lund (2002: 11), ‘struggles over property are as much about the scope and constitution of authority as about access to resources’. Underneath these processes of regularization and situational adjustments are human agency and struggles for power and authority over property. It is presumed here that humans are not passive to the changes around them and that they have the capacity to react to any sociopolitical processes ‘disequilibrizing’ their economic environments. The centrality of power relations and authority in tenure reforms, administration and management makes it appropriate for the study to employ an actor-oriented approach (Long, 1992). This study attempts to contribute to the understanding of the relationship between the excluded and excluders as well as between the state and local communities and their leaders. This is considered important because the ability, skills and power to negotiate well and control access rest on the socio-political position of the individual or group in question (Eyben, 2004).

Despite its wide coverage in the social sciences and development studies, the use of power as an analytical category or concept is still contested. The challenge arises from the different use and meaning of the concept. In this study, we are interested in how two forms of power are used in negotiations to gain, maintain or exclude and include people in claims to land in rural Manya Krobo.

The first form of power is conceptualized as the ‘ability to influence one party or person in a negotiation process to act otherwise’ (Dahl, 1957: 202). In the Weberian sense this type of power refers to the capacity or ability of one (usually the more powerful) in a negotiation process to compel the other(s) to comply with decisions that the latter would not have made, given the opportunity or acting from their own will. Even though both wield a form of power, the differences in the strength or capacity of the power of each permits the more powerful to enforce their will on the less powerful. This form of power may involve tendencies of exclusion and use of force or compulsions and negative sanctions. It is perceived as conflictual and anti-development.

Related to this is the second form of power considered in this study. This is defined as the ‘capacity of persons or collectivities “to get things done effectively”, in particular when their goals are obstructed by some kind of human resistance or opposition’ (Parsons, 1963: 232). Power is, therefore, in both of the two senses above, a relational concept, understood as ‘a relationship between two or more people or parties negotiating a deal’ (Foucault, 2000: 94). Viewed from this perspective, power is seen as consensual and developmental, and such forms of power are usually employed in settling disputes (Basu, 1986).

1.11 Research design and methods

This is a socio-legal ethnographic study on the dynamic transformation of customary land tenure in rural Ghana. It focuses on actions/inactions of diverse social actors interacting and struggling over land control and power within a multi-legal ordering environment. The theoretical challenges, the research questions and the analytical framework presented above require a combination of data sources and a range of research techniques that help to unravel the complexities of customary land tenure in past and present. A mixed method approach, informed by a choice between alternative methods to allow researchers to cater for inadequacies of a single method (Creswell *et al.*, 2004; Johnson and Onwuegbuzie, 2004) was therefore chosen for this study.

This section discusses the methodological choices and research processes employed to uncover information needed to address the questions posed at the beginning of this study. The fieldwork was combined with a study of the wider social, political and historical contexts within which the actions/inactions of social actors and institutions were (and are) embedded. Given that people’s perspectives, social life experiences and knowledge of their communities and their effects on wellbeing and livelihoods are critical to the understanding of the transformation occurring within the communities, they have a prominent place in our investigative methodology.

1.11.1 Study location and scope of work

The traditional capital of Manya Krobo, Odumase is about 70 kilometres from Accra, the capital of Ghana. The agricultural land area of Krobo consists of derived savannah low grassland plains and semi-deciduous

forests, surrounded by granite hills, the Krobo hills (Kloyo).¹ At present, Manya Krobo district is home to over 154,301 non-natives and natives (GSS, 2002). More than 70% of the latter group are Krobo, who are predominantly food crop farmers. The hills in the area are surrounded by a greater expanse of lowland plains with derived savannah vegetation, which also explains why the area became so attractive for commercial agriculture in the past.

The people of Manya-Krobo (Kloli) form the majority of the Ga-Adangbe community, and are mainly located in the south-eastern part of Ghana, between the Volta Lake, the world's largest man-made lake by surface area, and the Accra plains (Fields, 1943). These areas became famous in the nineteenth century for their role in the production of exportable palm oil and cocoa beans as well as food crops for domestic consumption (Fields, 1943). In addition to the production of export crops, the area used to be one of the major food baskets of the country, supplying food to almost all the non-food production zones of the south (Arhin, 1967).

The hitherto vibrant agricultural economy now belongs to history. Currently, the area can be said to have lost its agricultural and export glory. It can no longer boast of its food production, which in the past fed almost the whole of the southern part of Ghana. The cocoa and oil palm which brought the district into the limelight have been snuffed out with food crops. The current poor state of agriculture in the area has been attributed to the construction of Akosombo hydroelectric dam and the subsequent flooding of the area, which is said to have swept away all the rich top soils, caused environmental degradation, loss of forest ecotones and increased demographic shifts (Amanor, 1994).

Although there are some studies on Krobo land issues, oil palm in the region and particularly the *buzza* system (Fields, 1943; Hill, 1963; Benneh, 1973; Wilson, 1991; Amanor, 1994; Gyasi, 1994), most of these were conducted decades ago. Land issues in this old agricultural frontier with a relatively small ethnic population, like elsewhere in Ghana, have received little attention (Amanor, 1994) in more recent times. While land is crucial in Ghana, and land issues in some communities have been given considerable attention, such as in Ashanti, Western, Brong Ahafo and other regions, including the north in recent times (Ubink, 2008; Boni, 2005; Yaro, 2010; Lund, 2006), the situation in Manya Krobo district has

been largely ignored, although the area is on record as having pioneered commercial oil palm production.

The choice to focus empirical work on the Manya Krobo area has been informed by a number of factors. Although similar 'boiling issues' over land are ubiquitous and also common in the author's hometown, which is nearby Krobo, the study has been located in Manya Krobo and not the author's hometown so as to avoid bias. As already noted, Manya Krobo is an old agricultural frontier, which flourished in the past because of oil palm production. However, farming activities have been declining over time, a transformation which has seriously affected the communities involved. Poverty and inequality are widespread phenomena in this region, and many land conflicts have emerged, some of them violent. The seriousness of the situation has compelled some senior citizens of the country to make comments on the undesirable social situation in the area. At a ceremony held in honour of the Vice-president of Ghana, H.E. John Dramani Mahama, during the Ngmayem festival of Manya Krobo, he was reported to have said:

... those fanning chieftaincy disputes and land litigations in the Manya Krobo Traditional Area should give peace and development a chance to enable the area to flourish. Instead of fighting among themselves I will urge the people of Manya-Krobo to unite and fight against poverty and ignorance (GNA, October 30, 2010).

The area has a unique system of land acquisition and/or distribution (*buz̄a*), which was also instrumental in the choice of Manya Krobo for the study. Unlike the surrounding Akan communities, most land in Manya Krobo is still owned by extended families, clans and in some cases individuals, but based on customary principles. Given that land in the community is controlled by extended families or people of the same descent groups, a relatively homogenous landholding community was assumed. Differentiation and exclusion of people from land access was expected to be absent or at least minimal. It was also assumed beforehand that customary rules of land acquisition would be strictly adhered to, preventing the emergence of a land market or land sales within the community. The patriarchal system of inheritance and increasing scarcity of land, however, present challenges which can lead to exclusion regarding access to land. It will be shown that this is the case for women, youth and non-natives within the communities of study.

1.11.2 Selection of communities for study

Three farming communities within rural Manya Krobo were selected for the study, in order to help us understand why in communities with a relatively equitable system of land allocation (*buzza*) and undeveloped (and even restricted) land markets, inequality, insecurity, social exclusion and conflicts over land persist. Three main factors – geographical diversity, diversity of production systems and the degree of infrastructural development – informed the selection, after having consulted locals, other informants that were familiar with the area, and also my own observations during the preliminary phase of the study. The three communities selected share borders with areas inhabited by different ethnic groups, the Akans, Ewes and other Adangbes. Their cultures and way of acquiring land and production systems are considered to be quite different from the Krobo and hence are expected to influence the Krobo system through interactions.

For purposes of research ethics and in keeping with the promise on non-disclosure of names to the researched, the communities studied are labelled A, B and C. Community A shares boundaries with other Krobo people, where tree cash crops are being cultivated. Community B, located near the Volta River, could be influenced by the Ewes with whom they interact along the Volta River.

Finally, Community C shares boundaries with the surrounding Akan neighbours who have quite different rules of access to land, systems of inheritance and production patterns. Among the three study locations, community A was the most developed in terms of infrastructure (roads, market and electricity) and trade activities. It is located at the main road of the district, and most farmers cultivate tubers and grain crops, with few people growing vegetables such as tomato and okra. The community also has a few teachers and government workers. Community B has less population compared to A and C and is more remote than A but less remote than C, which has better roads compared to B. Very few government workers reside in community B and no teacher was found staying in B, while community C has a few teachers who teach in three mission primary schools in the community.

While farmers in community C mostly grow vegetables, due to the community's proximity to the Volta Lake, providing abundant of water for irrigation in most part of the year, farmers in community B grow all

sorts of food crops, including vegetables, grains and tubers. It was observed that people in C use more agrochemicals for the vegetables they grow than those in B. Generally, while some people in community A were found operating various non-farm micro-enterprises, including petty trading, dressmaking, blacksmithing, and agro-processing enterprises, the other two communities show a near complete absence of other income-generating activities, apart from farming. Beside these income-generating activities, wage labour and remittances from outside the communities were sources of income. However, farmers in these communities still largely depend on farming activities, and land is therefore the key resource.

1.11.3 Data collection

Both qualitative and quantitative information about the processes of tenure arrangements were gathered from social groups and individuals. Data collection techniques followed a triangulation strategy based on a survey, in combination with case studies of land issues in their local 'real life context' (Yin, 2006: 13). The mixed method approach that was followed included a survey with a structured questionnaire and qualitative data collection, through focus group discussions (FGD), in-depth (key informant) interviews (IDI), personal (or direct) observations (PO), and narrations and testimonies of peoples' real life stories to best capture the complex transformation underway within the rural areas. This strategy not only allows triangulation but also 'allows the researcher to draw on the strengths and minimize the weaknesses inherent in both qualitative and quantitative data in a single study' (Johnson and Turner, 2003: 299).

Survey of farmers

The survey involved the use of a structured questionnaire, containing both open and closed questions. Due to the diverse nature of social identities or location, to avoid double identity in the survey a record of how land-users (research participants) were commonly identified by people within their communities was constructed. As Peters (2004: 285) pointed out, 'struggles within classes' are 'as important as struggles between classes'. In view of this, classification of social identity employed in this study was based on personal (individual) and relational (belonging to broader social groups such as age and gender) characteristics.

Conducting a survey in communities which do not have records of their members and their activities is for a researcher sometimes frustrating and difficult. In all three selected communities there was no available data on farmers and farming activities. Therefore, a rapid appraisal technique was used to map out key actors and institutions involved regarding agriculture (Chambers, 1983). The population of interest comprised all farmers who cultivated a piece of land. In view of this, one important condition for selecting farmers was that the person should not only have access to the land she/he cultivated but also should be seen to manage the farm herself/himself.²

Using established sampling techniques, in the first instance only male respondents were selected. Subsequently, a sample of native female farmers was added, as they had been missing from the original lists of farmers. The local Assemblymen and the *dade mantse* (head farmers) of each community within the study area were asked to prepare the list of farmers within their communities. This consisted of only names of active farmers but with no details on farm sizes, location or distribution of landowners (direct right holders) and leaseholders (indirect or secondary right holders) provided. Finally, a list of 456 farmers (from the three study communities) was authenticated by the traditional community leaders.³ We then selected farmers for interviews through stratified random sampling. Sample respondents were categorized into identifiable social groups based on age and nativity, ensuring adequate representation of each.

In addition, female farmers were handpicked for the reason given earlier. Two categories of female farmers were selected for interviews. First, any female farmer who had her own plot (rented, purchased, inherited, donated, or exchanged) was selected for the interview. Secondly, other female farmers who did not solely manage their farm plots but worked on and co-managed their farms with their fathers or husbands were also included. The inclusion of women was necessary because they (female farmers) were found to be conspicuously missing during the FGD sessions. We therefore feared that if women were not purposively selected they would be excluded from the sample. We realize the weakness in this form of sampling, but within the constraints consider that this was an acceptable second-best strategy.

The different sections of the survey questionnaire included demographic characteristics of the farmer household, land size, 'ownership',

access mechanisms and practices, agricultural production, food and cash crops, labour use, observed insecurity and the presence and seriousness of conflict situations. A total of 357 questionnaires were fully filled and analysed for explanations. While guarded by the limitations of case study, where found appropriate such data were also used to make some generalizations towards the broader context of rural Ghana (see Flyvbjerg, 2011).

One important aspect of this study is the denial of access to land and the possibility of natives or indigenous people becoming landless. While the survey was purposively designed to gain access to some quantitative information from landholders and therefore did not capture landless people, efforts were made to use personal observations and FGD sessions to gather information about landlessness within the communities.

Secondary data

Secondary data used in this study included historical literature, scholarly articles, reports, newspaper articles and official documents on land legislation and policies in Ghana. These were collected from various sources including regional, university and community libraries as well as court (formal and informal) records on land dispute and settlement cases. Principal information collected included historical and background studies of communities, focusing on the social power structure, processes of access to land, terms and conditions pertaining to land access, and use and control by diverse social actors. Other data included mechanisms of land transfer, disputes and resolution processes. Secondary data also came from relevant policy documents, commission reports on land and agricultural developments, Acts and constitutional provisions of Ghana, mostly concerning those governing land access and claims to landed property rights.

Land disputes cases and settlement procedures in both formal and informal courts in the district were also recorded. This was carried out personally by the researcher by sitting and observing proceedings in both courts. I also had the opportunity to comb the district (state) court library to count and examine land cases which have been brought before the court over the years. This offered me the opportunity to encounter people who had themselves experienced land conflicts or ejection from plots they claimed to hold. Some plaintiffs and/or defendants were indeed interviewed to gain insight into their side of the stories.

In-depth interviews

A snowballing technique was adopted in the first phase of the primary data collection. This helped the researcher to locate and have a fair idea about on-going land issues within the communities. A cross-section of informants, involving people of diverse generations, gender, status, and social roles or leadership was contacted through a series of informants. The experience of farmers (e.g., years of farming or living in the community) across the social groups identified was critical in the selection of informants for the in-depth interviews. Other factors considered included insights of people into issues of land disputes and resolution procedures. Thus, the selected informants in the communities were considered to be those who understood their communities' present and past, and were knowledgeable about the issues of land relations, land use and local dynamics such that they could comment sufficiently on issues under study. Other people selected included those who themselves had experienced disputes (directly or indirectly) before.

The selected informants were therefore asked a wide range of questions related to changes in land use, shifts in rules and norms of negotiations, history of community, behaviours and activities of actors in the communities. In-depth interviews were also used to gain information on the historical background of the community, regarding settlement and land access patterns, changes in land use, cropping systems, coping strategies, access to and control over land, social interactions and negotiations, decision-making processes, gender, class and power status. Discussions with selected informants principally focused on land access and tenure, agricultural production, productivity and commercialization and its impact on poverty.

Key personalities involved here included: (i) traditional rulers (*dademantse*) of the communities/villages studied, (ii) the customary (chief's) court secretary and the chief's son, (iii) the head of the customary land secretariat, (iv) two officers from the town and country planning office, (v) notable elder statesmen and -women in the communities, (vi) two representatives of the farmers' association, (vii) a representative of the Lawyers in the district, (viii) a number of farmers (across the divide, generation, gender, status and ethnicity). Sometimes very particular choices were made on who to include. For example, a blind old man, who was *dademantse*, (machete chief), and was perceived by the people of community A as a repository of local knowledge and with lots of experiences in

land disputes, was the principal informant as regards the history of the community.

In addition, some officials from government ministries, departments and agencies as well as other land-related project offices were contacted and interviewed at district, region and national levels. The aim here was to collect information on their experiences on implementation of land-related programmes. Such organizations and institutions include the land title registry, land commission, the Millennium Development Authority (MiDA) project office in Accra, Ministries of Land and Forestry (MLF) and Food and Agriculture (MoFA) in Accra, the Office of the Administrator of Stool Lands (OASL) and the Coordinating Council and the Customary Land Secretariat (CLS) (in Accra and locally).

Focus group discussions

According to Krueger (1994), a focus group discussion (FGD) is a non-directive means by which participants provide information without being directed to answer specific questions. Unlike the one-on-one situation with the in-depth interviews the FGD allows participants to express themselves freely and interact with one another without any restriction. It uses structured and guided discussions in order to gather data for scientific purposes (Patton, 2002). A subset of the various social groups within the communities was invited to participate in various focus group discussions to interrogate local meanings and other processes of tenure arrangements.

FGD allows participants to stimulate each other, exchange ideas in smaller groups, and express their feelings, perceptions and opinions about a situation or an event which affects the lives of participants. In this study, discussions were done primarily to collate information from community members concerning their perceptions and experiences about land tenure and farming practices, norms, relations and processes involved with land acquisition and 'negotiability'. Other themes discussed included access to and control over farm resources, particularly land, based on gender, seniority, class and ethnicity.

The FGD meetings sought to explore farmers' perceptions on changing social relations, land use and tenure, and the challenges and opportunities that the changes might have brought, as well as perceptions of people about commercial agricultural development. Depending on availability of informants, between ten and fifteen FGD sessions were con-

ducted within particular communities. The discussion groups comprised: (i) customary landowners or their representatives, (ii) male tenant farmers, (iii) native women (of all categories – both farmers and non-farmers), (iv) youth (natives mostly between ages 18 and 35 years), and (v) non-natives (farmers and other settlers). Some informants for the FGDs were randomly selected from among their peers, others volunteered to be part of the group, the latter of which involved leaders of the social groups. In most of the FGDs, either the Assemblymen and/or local chief farmers (*dademantse*) chaired the meetings. Interviews were conducted in local languages (Twi or Krobo) and on a few occasions in English.

Personal or participant observation

As pointed out by Maguire (1987: 211) ‘observation entails being present in a situation and making a record of one’s impressions of what takes place’. The ‘directness of observation’ is an important advantage for a researcher (Patton, 2002: 359) in the sense that it helps researchers to validate their data by differentiation, based on first-hand observations, between what people actually do and what they say they do. In addition to observing social interactions within the communities, the author witnessed the processes of land access and transfer in some homes to observe conduct of land negotiations as well as how power is exercised in the process. My presence in the courts (state and traditional) to witness proceedings gave me, furthermore, the opportunity to select and interview some land disputants and encounter people who were excluded/dispossessed of their lands. Attending festivals (*ngmayem*) and other functions organized by traditional leaders or the district assembly also helped to understand further the social structure and power relations in the communities.

Personal narratives of social life

Even though personal life histories are increasingly important in the social sciences, their usefulness is only now becoming increasingly evident in development studies (Davis, 2006). Personal narratives of people about their life experiences in relation to land claims were elicited from selected individuals, focusing on their struggles with power structures and coping with inequality, vulnerability, exclusion and poverty. This is aimed at providing insight into the discriminatory practices within a rela-

tively homogenous group of people. These personal narratives complement data gathered through FGDs in various communities. In using this methodology, we show how ‘social changes affect human life experiences over time’ (Locke and Lloyd-Sherlock, 2011: 1133), through a focus on the role of local power relationships in land access and social conflict.

Measurement of land in Manya Krobo

The communities have no register of land showing who owns a particular plot and on what basis. Boundaries of land are therefore regulated through oral traditions and the use of the Buna (*Dracaena arborea*) plant for ease of identification and demarcation of boundaries. These trees were planted along the boundaries between vertical strips to mark the end and beginning of neighbouring farm plots. The significance of using the Buna tree is that it has no economic value and will therefore not be cut down or uprooted for anything. It is not even good for fuel wood in the homes, so people will not harvest it.

Given that the area of land is not measured, people did not know how much land they controlled in terms of modern ways of measurement. This is even so till today, except that most people have adopted the *gugue* (arm stretch or span) or *kepa* (rope) system of measurement to tell how much land they ‘own’ or hold. Since people have different arm spans, the *kepa* or *gugue* vary from place to place. Since the *buza* was shared along the vertical axis of the land, measurement of land is done only at the base of the plot of land, using the *gugue* system. The plot sizes as reported were recalculated from *gugue* or *kepa* to acres. In this study, a rope is estimated to be about 12 *gugue* (approximately 12 yards or 11 metres) (see also Fields, 1943: 55; Amanor, 1994: 59). These strips of farm plots were cultivated by the lineage or extended family⁴ units, who employed the labour of all members of the family unit (conjugal or extended), depending on who owns the farm, without any negotiation as it is today (interview with a Community chief, July, 2009).

1.12 Units of analysis

Amanor (2010: 104) maintains that case studies based on individual farmers’ life experiences, rather than the views of heads of households, community, or institutions should be used in research on land. This is partly related to the ‘extremely problematic nature of the concept of

household as a unit of analysis' (White, 1989: 22) in studies of this nature. De Haan and Zoomers (2005) point out that, individuals within households in most parts of Africa have moved or are moving away from pooling resources and incomes for mutual interest. In view of this, Amanor (2010) maintains that rather than interviewing elders, chiefs and other heads of families and clans, individual women, youth and non-natives should be interviewed (Amanor, 1999: 23). Many family members today are likely to depend on their families for moral, social, cultural and political rather than their economic support.

According to Udry and Conley (2004), policies that rely on the household as unit of analysis and intervention often are not able to achieve their objectives. It is, therefore, imperative that research moves away from treating the household as the unit of analysis. This study attempts to unpack the household, as defined by Schmink (1984: 9) and focus on individual farmers within a household or the community in accordance with the on-going processes of segmentation, collective land relations and demand for individual control and management of land, the relations of power in rural areas (Chauveau *et al.*, 2006: 19). This study treats individual farmers in the former agricultural frontier, who cultivate and manage their own land and take decisions concerning use of resources and profits generated from farm on their own, as the unit of analysis. The actors are the people who interact with one another within a given setting, which Moore (1978: 2000) refers to as a semi-autonomous social field (as explained earlier in this chapter).

Based on their own individual human agency, and also by the dictates of the larger economy, individual members of rural farm households are able to develop their own strategies of economic mobility or descent from poverty. The focus on the individual farmer rather than the household unit allows the researcher to go beyond the usual household analysis which is saddled with problems because families no longer pool income and resources together as an economic unit (White, 1989). It contributes to and attempts to help fill the gaps within studies on allocation and use of land within extended and intra-family and community systems.

Aspects of land access and control involving inter-generational and also gender and nativity (ethnic origin) dimensions seem to have received little attention in the literature. Analysing data in terms of social groupings based on the dynamics of social relations and differences enables

researchers to better capture the situations and problems of disadvantaged groups, and to argue for their recognition in development policies. Such a move ‘reinforces the need to shift attention away from households and marital relations to other institutional sites where limited research has been undertaken to date, but where much of the discussion of change in the agricultural sector is situated’ (Okali, 2012: 15). This suggests a focus on the individual as the unit of analysis.

1.13 A note on citizenship and land rights among Krobos

While land rights and access are socio-culturally and politically embedded, Peters (2004: 278) suggests that analysts should look at ‘the type of social and political relations in which land is situated, particularly with reference to relations of inequality of class, ethnicity, gender and age’ (*ibid.* 278). This becomes critical especially when formalization of customary land is embedded in sociocultural and politico-economic structures of power which shape rights to land in rural SSA.

Membership among the Kloli is strictly based on kinship groups, yet individuals born into any one kinship group can also trace his/her roots to other kinship groups within the Krobo fraternity by ancestry. This provides an individual better and more opened opportunity to gain access to land, the resource of which is vested within a lineage often traced to the original purchaser through the paternal line. This will, however, depend on the extent of knowledge of a person about the traditions. Knowledge about traditions and customs is therefore crucial to Krobos as its absence may work against an individual because he or she may find it difficult to trace his roots to land. In this case, autochthons are provided with better opportunity to participate in land allocation decisions than do migrants and those who have married into such landowning families. Wealth and other monetary factors can, however, give advantages to those who possess them.

In Krobo, a child born to a father or both parents is defined as a real native and therefore a citizen of Krobo. Such male children can have *de facto* rights to community or lineage land while a community member born to a non-native will have no such rights, no matter the number of years the parents might have been dwelling in the community. This is because land in this community, as pointed out earlier, belongs to those (sons) who are members of a Krobo ancestral lineage through the father.

The definition of a ‘native’ – one who hails from a paternal Krobo ancestry – is never compromised. This implies that nativity (ethnicity) can be and is applied in order to provide or deny one access to land and the benefits thereof. As to when and how this is used is subject to the situation, who is concerned and who is interpreting the traditional rules at the time of contention.

In contemporary times, as opposed to the past when land was in abundance, access to land between natives and non-natives is clearly distinguished. Thus, customary systems can be highly inequitable in relation to ethnicity, gender, age and status. This explains why perhaps none of the migrants (non-natives) interviewed claimed ownership of the land they cultivated. To understand the political processes involved in land acquisition and the role of power relations, this study has categorized respondents into natives, non-natives, youth and adult, female and male. As demonstrated in chapters 4 and 5, these categorizations are not only based on the author’s interest, they also represents the views of local people and local politics. The categorization employed here provides a better way to analyse and understand how social power is used to control, exploit and distribute land and land rights within the Krobo communities.

1.14 Challenges and ethics of customary land tenure research

Except for some development indicators as mentioned above, the studied communities possess relatively similar characteristics. The mechanisms of land access and exclusion, types of land conflicts and adjudications procedures and preferences were not very different. The opportunity of doing an in-depth study in a relatively smaller area allows the researcher to profoundly understand sensitive issues like local power relations, inequalities, land conflicts and exclusions. My long stay in these communities (June 2009 to September, 2010) allowed me to gain deeper and adequate understanding at first hand of the rural dynamics and practices involving daily struggles, cooperation and competition that configure poverty reduction strategies in rural areas (Patton, 2002).

One major problem encountered during the data collection phase was how to gain access to respondents and encourage them to speak on such sensitive issue as access to land. Rural people in general and the people

of Krobo in particular are often sceptical of 'strangers'. They are hesitant to divulge information about their communities. Land connotes power and wealth. Disclosure about these and discussing or revealing land conflicts are not easily done to outsiders, and therefore informants were often evasive in the beginning, but this changed with time. Interviewing women in the absence of a male person was often difficult. Culturally, women are not supposed to talk about land, especially to outsiders. The fear of facing public ridicule or facing divorce may prevent women from divulging information. This prevented some potential respondents from discussing issues of land and land conflicts, particularly in public.

The questionnaire interview and in-depth interview were relatively better in terms of information gathering on such sensitive issues. People even shared their views on land conflicts in which some traditional leaders were implicated. Interviews with most women were done in the open area, usually under trees where people could see us. In many cases, passers-by stopped to interrupt the interview. The men stopped for explanation of what was going on and often demanded to know the information provided by women. This extended the interview time and some interviews had to be rescheduled in order to make up for the lost time. Since the questionnaire did not capture the landless and near landless people, we used the focus group discussions to locate and interview them on a one-on-one basis. Responses are covered in the discussions in the empirical chapters.

Another hurdle we had to cross concerned arranging interviews with officials. This was really difficult and frustrating. In some instances interviews had to be re-scheduled several times and even with that some appointments were never honoured. Those who honoured them had to call me at very short notice on telephone. Verification of supporting documents on land such as land titling and registration was not possible at the offices of formal land organizations. In the end we were not able to get what we needed to successfully analyse official policies regarding land tenure.

The use of multiple sources of data helped the researcher to achieve a good degree of validity. This triangulation method helped in double checking the information gathered. The contradictions that arose between answers to questions in the questionnaire and the FGDs are a clear example of a validity check.

Notes

¹ Source: <http://www.uppermaryadistrict.com/climate.php>; accessed on 3/8/2011.

² This was, however, relaxed when we looked at qualitative data, in order to capture also those people who neither had access to land nor managed any farm land (momentary landless). These were interviewed but not with the questionnaire.

³ This figure or list is not inclusive of absentee farmers.

⁴ The term family as used here refers to a group of people who are related through either a patrilineal or matrilineal ancestry or lineage.

2

Land Administration and Management in Ghana

2.1 Introduction

The aim of this chapter is twofold. First, it provides the historical background for exploring, in the rest of the thesis, how customary land tenure has become a major subject of national policy and legislation. Secondly, it provides a background to how state legislations on land tenure have been implemented and their impacts on local farmers at various periods of Ghana's socio-political development.

Ghana has a long history of land tenure reform, which began in the 19th century during colonization. Invariably the objective of this reform has focused on increasing productivity through the restructuring, regulating and strengthening of local customary land tenure security and increasing investments in land. To understand contemporary land tenure reforms in Ghana requires an exploration of its historical antecedents. This requires a brief overview of land tenure reform policies and strategies designed and implemented under the various regimes, the reasons for their adoption and the impacts they have on local people, culture and the social environment. This is discussed within three main political epochs: pre-colonial, colonial, post-colonial, with a specific focus on the changing nature of land administration (formal and informal) and land tenure policy reforms.

Analysis of land tenure policies and past reforms in Ghana indicates that the basic trend and justification of land policy reform in the country has not changed. Reasons proffered by successive governments to reform land tenure have often included the need to correct abnormalities and inefficiencies in the agricultural sector; to ensure equitable customary land delivery; to establish and monitor written land records as a means of promoting investment; and to accelerate land development by facilitating land acquisition and documentation procedures (Kasanga and Kotey, 2001). With little or no mention of redistributive land reform, legal centralism has been the main tool with which governments have sought to

formalize local ownership and holding of land in rural farming communities. In spite of (or maybe because of) this centralist approach, the country still struggles to reform tenurial systems.

As Blocher (2006: 171) pointed out, 'well-drafted property laws do more than simply set down clear regulations for people to follow and rules for them to respect. They build on social understandings already in place'. Improving access to land through formalization is a technical issue, which may not be acceptable to the local people because it may conflict with the existing norms. This raises questions whether the knowledge and recognition of local processes and practices regarding land access have been well understood and integrated into the many land tenure reforms.

2.2 Ghana and its land systems

In 1957, Ghana, a British colony, became the first West African country to attain political independence. This warm tropical country is located along the Gulf of Guinea, sharing borders with Togo in the east, Burkina Faso in the north and La Cote d'Ivoire in the west. Ghana's population, according to the last census in 2010, is estimated to be around 24.2 million (GSS, 2011), living within a land area of 238,965 sq. km, roughly the size of the state of Oregon or the United Kingdom. The population is spread throughout Ghana's ten administrative regions, which harbour over 60 ethnic groups. Each region is endowed with rich natural resources including vast areas of agricultural land, minerals, rivers, forests and a good reserve of biodiversity. Its tropical rainfall regime makes it suitable for the cultivation of several food and tree crops. Rainfall decreases from the south to the north. The south is mostly covered by dense to slightly dense forest and mountains while the north has mainly drier savannah and grassland cover (FAO, 2001).

Land has always been an important resource for rural people and their livelihoods. With over 60 per cent of the working population currently employed in agriculture, a total of 35 per cent of household income in Ghana is said to come from agricultural activities (GSS, 2008). This gives an indication of the significance of agriculture and therefore of land sectors to the economy of Ghana. Generally, the history of Ghana is rooted in issues of land struggles between states, ethnic groups and families. Until colonization, all lands within the regions were under the

control of traditional leaders. However, since independence, government has sought to govern land by the instrumentalist ideology. Unfortunately, the principle of ensuring uniformity and administering local land centrally under legal centralism continues to face disagreements, limitations and challenges by the local people, who for a long time have been exposed to other forms of land administration.

2.2.1 Land tenure and administration systems

Ghana operates a heterogeneous pluralistic land tenure and management system. Thus, both state-enacted legislations and locally derived customary practices guide land administration and management in Ghana. This legal pluralistic land tenure system is a legacy which the country inherited from the colonial administration. However, before the introduction of any state-led land law or ordinance, several tenorial arrangements existed in many communities, which mediated access or denial of rights to customary land. The coexistence and interaction of customary practices and statutory laws within the national land administration system of Ghana, therefore, began with colonial administration. Thus two main forms of land – public and private (MLF, 1999) or customary and statutory land – can be distinguished in the country (Larbi, 2006). The rules of gaining access to any of these lands differ in terms of who allocates access, and who is able to access the land.

Customary lands are managed and allocated by the traditional or customary heads, including the chief, clan, family or household head and these arrangements are legally supported by Act 267 of the 1992 constitution of Ghana (Ghana, 1992). Customary land constitutes about 80 per cent of the total land size of Ghana (Kasanga and Kotey, 2001:13) and the remaining 20 per cent belongs to the state. State land is acquired by the state through the compulsory land acquisition Act – the State Land Act, 1962 (Act 125). This permits the state to compulsorily take over customary land for purposes of national development. Thus, state land is managed by a statutory body, the Land Commission (LC), and such lands are usually leased to statutory bodies and some other private individuals or organizations for the purposes of developing projects of national interest. Customary land was and is acquired through diverse mechanisms such as gifts, settlements, purchase and (in the past) conquest. Customary lands are entrusted in the hands of family or clan heads or chiefs who hold the allodial (dispositional) right to land in their own

right and on behalf of the members of the land-holding group. Conventionally, by these dispositional rights the head of the land-holding community or group has the power to control allocation and management of land under his jurisdiction. The other members of the land-owning group (family, clan or community) have user rights only to such lands. Despite the power vested in the head of the land-owning group, decisions about disposition and allocation of rights are based on collective decisions of the head and other principal elders of the land-owning group. This type of arrangement, however, seems to be changing in various places throughout the country. In many cases, this explains the numerous land boundary litigations and conflicts over land.

Apart from the north-south divide in terms of development and endowment, land administration and management in southern Ghana generally differs from the north in many respects. Beyond the marked differences in geography, agriculture, development, cultural practices, inheritance systems and colonial impacts, these two areas are generally typified by so-called 'stools' in the south (generally among the Akans) and 'skins' in the north. These represent the power of the traditional authority or the head of the land-owning group and the soul of the people who belong to the land-owning community (Larbi, 1995). The stool is the 'embodiment of a political community in which allegiance also implies recognition of rights over land' (Crook *et al.*, 2007: 28).

Section 36 clause 8 of the Constitution, under the Lands Commission Act, 1994 (Act 483), stipulates that the ... *the State shall recognize that the 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* (Ghana, 1992). This suggests that there are other land types or administration systems which do not fall under the skin or stool land categorization but are all recognized by the constitution of Ghana. The specific land categorizations of land types in Ghana are:

1. *Stool/Skin land* – The stool or skin lands are customary lands that are vested in a local authority or traditional head of a community or traditional area in trust for the people. The heads of the community, usually the chief and his councils of elders, have the mandate of the people and their ancestors to manage the land on behalf of the Stool or Skin.

2. *Family land* – Family lands are also customary lands, which are collectively owned by an extended family or clan. Such lands might have been acquired through purchase, conquest or original occupation. Members of this group could be related by patrilineal or matrilineal lineages and must share a common ancestry.
3. *Individual or private land* – This type of land is acquired and owned by individuals as their personal private property. In most cases such lands are acquired through purchase or inheritance. Decisions on land management are by the owner of the land without any sanctions or restrictions from the family.
4. *State land* – As pointed out earlier, these are lands that have been formally acquired by the state in the interest of the public, and are managed on behalf of the people of Ghana. Such lands can be reverted to the original owners depending on government's decisions or request by the people to have their land after government has not been able to use the land for the purposes for which it was acquired by the state.
5. *Vested land* – Vested lands are those customary lands which have been acquired by the state and vested in the state. This arrangement creates a dual ownership by which the state holds the legal title while the community or original landowners use the land. Administration of such lands is vested in the President of Ghana through the land commission. Unlike the state lands, where compensation may be made, vested lands do not attract any compensation when the state takes over.

In reality all these forms of land relations may coexist in the same community and people relate to them as defined by rules which govern local land access, control and use. These are all capable of dynamically changing and adapting flexibly to suit the prevailing conditions of the time. This indicates that the evolutionary assumption that communal lands are converted to individualized rights through a linear process orchestrated by state legislation does not always hold true.

The reality is one of multi-tenure systems with different land uses calling for different tenures (Platteau, 1996). Individualization¹ of land rights cannot be solely attributed to state-legislation or involvement in formal land market development. Informal land markets and customary

systems evolution all play a part in the processes of emergence of individual land rights from communal rights.

2.3 Changing dynamics of land tenure policies

Like many other countries in sub-Saharan Africa, transformations such as land tenure reform policies and customary tenure restructuring in Ghana are not isolated events ‘but an on-going process’ (Berry, 2009a: 1370). Large-scale restructuring of customary land tenure, based on state laws and neo-liberal assumptions, became the practice (Berry, 1993; von Benda-Beckmann, 2001: 49) in the country. In the main these reforms generally focused on reducing competition, contestations and conflicts over land as a way to ‘reduce gross inequality of rural land rights and cut down poverty’ (Lipton, 2009: 11). This has become necessary as a result of the alleged inefficiency of customary tenure and therefore the need to ensure security of ownership, protection of holding rights and increase productivity of land.

The results of such land tenure reforms in Ghana have generally been limited while insecurity and conflicts aggravate, as in many SSA countries (Peters, 2004). This has, therefore, rekindled discussion and debates on the land tenure situation on the continent. While several of these processes are underway, changes in land policies are driven more ‘by default reasoning ... a danger that continues to be eminent in the new policies’ (Ubink, 2008: 16) on land. Policy changes have mostly relied on guesswork or ad hoc instances and unreliable data (Aryeetey *et al.*, 2007). In many cases, these policies ignore existing customary systems, local institutions, and their power in local farming communities. Where these have been considered, the distributive aspect of land tenure security under the registration and titling programmes on-going in many developing countries has been ignored and hence the loss of secondary rights and increased social conflict in agricultural communities.

Since the present landholding system is a spill-over from local adaptations, historical antecedents of reforms and land policies, colonization, settlement patterns, inheritance, customary institutions, (Maxwell and Wiebe, 1998), national agricultural policies and recent shifts in demography among others, it is important to look at how these have influenced land insecurity and the poor. In the case of claims to land or dispute over land rights, competing land-users invoke different norms to support

their claims, and choose the channel which most appeals to them through what von Benda-Beckmann *et al.* (1997) refer to as 'forum shopping'.

No attempt has been made in this thesis to provide a detailed discussion of past land reforms in Ghana. Some effort is, however, made to look at some of the main tenets of state reforms and changes in customary land claims which are relevant to this study. This is divided into various epochs to reflect different land administrations.

2.3.1 Pre-colonial land administration

Prior to the first (colonial) reform, land was held through different customary systems (Amanor, 1989) specific to a community. During the pre-colonial era land was relatively in abundance in relation to the population. Ownership or custodianship of the resources was vested in a chief, lineage, and an extended family, clan of a land-owning community or group. Generally, access to land and entitlement was almost free (Kasanga and Kotey, 2001). Allocation of use rights to land was mainly done through the heads of local land-holding groups, who gave out land, mainly based on social relations and not in exchange for monetary benefits per se.

Though the situation was not the same everywhere, largely all that was required for land to be allocated was a token fee, local drink or cola or other forms of token in some communities. Access to land was mainly based on social relations, and verbal agreements not written contracts. Since rights to land under customary tenure vary and take a variety of forms, people of diverse backgrounds employed different processes and mechanisms of negotiations to gain access to land for farming. These mechanisms included wars, invasion, purchase, donations and loans (Amanor, 2010). With the inception of colonization, perception of land as social entity change. Land therefore became a market commodity, protected by the legal system of the state, forcing customary laws² to reflect realities of the new perception about land.

2.3.2 Colonial land administration

While the current land inequality and other forms of social conflict in rural areas cannot be entirely attributed to colonization, some authors (Berry, 1993; 2009b; Peters, 2004; Amanor, 2010) argue that land re-

forms in many African countries and land inequities have their roots in colonial administration. The imposition of Western ideas of exclusive rights on communal rights and the use of law (state legalisations) to control local lands are argued to be responsible for the skewed distribution of land. This colonial legacy is also blamed for the perceived corruption in land administrative management practices both at the state and local levels, creating problems of legitimacy and uncertainty among land-users.

The colonial government, upon assumption of power in Ghana (then the Gold Coast), became interested in modifying land relations among local landholders on the assumption that communal land was inherently insecure and did not enhance productivity. This period also saw the gold and other mineral mining booms in the forest regions, which generated much contestation over land and forest rights during the late nineteenth century. The administration saw the communal systems of ownership of land as insensitive, backward and inefficient (Berry, 1993; Aryeetey, *et al.*, 2007) and attempted to restructure the inalienable rights and communally owned lands and land relations in rural communities through various legislations.

Land tenure reform, starting with deed registration in the late nineteenth century (Aryeetey *et al.*, 2007; Amanor, 2010), with the promulgation of the 1883 Land Deed Registration Act (Kuntu-Mensah, 2005). Whether they 'appropriated land outright, (or) sought to control it indirectly through "traditional authorities"' (Berry, 2002: 641), colonial administrators formulated several laws to regulate land rights and practices (Aryeetey *et al.*, 2007). They provided their own interpretations of customary systems and passed some of them into law in what has proved to be an uneasy coexistence with the already existing customary rules or laws. Thus, a bifurcated legal environment to manage customary land was created. Local land was therefore managed by a combination of statutory laws or regulations and a host of customary practices and norms as well as local practices of land allocation.

Principally, in a bid to gain control of local lands, the colonial government took advantage of the characteristic features of inalienability and non-transferability in customary land systems, and co-opted chiefs and other traditional leaders into the government of the day (indirect rule under the Native Authority Act). Within a space of three years, two key land ordinances, the Crown Land ordinance of 1894 and Lands Bill of 1897, both of which aimed at bringing native/customary lands under the

British Crown (Aryeetey et al., 2007) were proposed. These were, however, resisted by the people.

The Native Authority Act (indirect rule), which co-opted chiefs into the colonial government, was supported by chiefs but not by their subjects. Under this law, the colonial administration gave local chiefs limited powers and control over their natural resources including land (Buah, 1998) while certain customary rules were suppressed. This was the genesis of the erosion of traditional systems of government in Ghana: local chiefs were denied the opportunity to hold certain rights within their own jurisdictions as the paramount chiefs were empowered to take over such activities. In this way, the colonial government was able to gain access to local lands and appropriate them from the natives (Amanor, 2010).

The evidence on local land transactions and dealings suggests that the primary goal of the colonial government was to protect its interest and that of its cronies and other foreign investors in the land. The government focused mainly on forest timber and mining, as well as exportable crops and modernization of agriculture (Amanor, 2009), which served the interest of the enterprise abroad (Aryeetey *et al.*, 2007).

2.3.3 Post-colonial land administration

This section looks at post-independence regimes in two broad eras, based on the different development paradigms employed within each particular epoch. This allows the discussions here to be focused on two main forms (state and private sector induced) of land administration for ensuring effective land use rather than land tenure restructuring. While the first focuses on a socialist system of land governance, with the objective of bringing customary lands under the presidency or state control, the second focuses attention on a mixed but mainly private system where attempts were made to correct inconsistencies inherited from the colonial administration. In Ghana, like other sub Saharan African countries, the first period marks a stage of massive restructuring of the economy with a focus on poverty reduction as the reason for going for large-scale development, particularly in agriculture and industries.

When Ghana became independent in 1957, on assumption of office the Conventional People's Party (CPP) government led by Dr Nkrumah made several attempts to regulate customary land tenure in the same way

as its colonial predecessors. It aimed at making sure that all land revenues were paid to the newly established local councils for local and national development. Although a good policy, its design and implementation were weak as it aimed at eroding the financial base of some chiefs as well as expropriating land belonging to those chiefs who were alleged not to have supported the CPP. This policy affected mostly chiefs in the Ashanti and Akyem area, while the Krobo were not affected. Through this policy, lands were confiscated and its administration brought under the supervision of the Office of the Administrator of Stool Lands (OASL) (Amanor, 2010). The partial implementation of the law compelled some chiefs to flout the directives and, as the colonial administration did, the CPP government then enacted new laws that allowed state and traditional leaders to share the revenue that accrued from sale, rent and concessions. Many landholdings were confiscated, mainly because holders did not have money to register their lands (Amanor, 2010).

Among the several laws on land enacted under Nkrumah's regime is the land title registration Act of 1962 (ACT 122) (MLF, 1999). Commencement of land title registration, a major component of Ghana's tenurial reform, took place in the same year but not without challenges. The Act did not have the powers to address several ligitations on land and other land administration problems (Kuntu-Mensah, 1997). Between 1962 and 1998, a year before the national land policy was launched, over 90 laws related to land registration were enacted (MLF, 1999), and all these are still applicable in the country (Berry, 2009b). This indicates how important and complex the issues about land are to government of Ghana and the people.

Comparing the colonial and first post-independence government, it becomes clear that while the colonial administration focused on timber and mining resources and later exportable crops such as cocoa and oil palm, the first post-independent government used selective policies and Acts to take over lands belonging to some traditional states.

Following the abrupt end of the CPP government through military overthrow in 1966, there have been several alternating successions of civilian and military governments. Learning from the past, these governments were cautious not to interfere with traditional land rights of local people (Aryeetey et al., 2007). Policy on land therefore focused on large-scale and/or modernization of agriculture using the private sector, with emphasis on agricultural production and productivity. The existing

land tenure arrangements were hardly tampered with (Aryeetey *et al.*, 2007) by governments. In general, the content of policies on land during post-colonial government did not change much until 1986, when the land registration policy of 1962 was amended. The new law, Land title registration Act of 1986 under PNDCL 152, included 'machinery for the registration of title to land and interests in land' (Kuntu-Mensah, 1997). This became the law on title registration until 1999 when the National Land Policy (NLP) was enacted.

While agricultural modernization has become the major government policy on land use, the most successful government during the period was probably the National Liberation Council (NLC). It ensured that Ghana was able to attain a high percentage of food self-sufficiency in cereals, particularly maize. While the NLC's Agricultural Programme of 'Operation Feed Yourself' (OFY) improved productivity, it failed to lift people from poverty. The NLC, however, enacted decrees (military laws) to protect poor farmers from ejection and alienation from land, which was not uncommon in the 1970s and even today. Despite these decrees, the OFY also created more spaces for politicians, elites and other business people to engage in significant internal land grabbing (Woodman, 1996) in the name of agricultural modernization.

Generally, past land reforms, particularly those before the seventies, show an attempt of governments to capture and control local lands for the benefit of particular groups, which compromises the interest of the poor. The failure of these important land reforms to give critical consideration and space to restructure land tenure has contributed to worsening land tenure insecurity and other forms of social conflict (Bruce and Migot-Adholla, 1994) across the country. The feud between managers of stool lands on the one hand and family as well as clan individual lands on the other hand is the outcome of Nkrumah's CPP policy of colonizing some traditional lands. Both state and customary laws on land have failed rural farmers. While state laws or reforms failed to understand that 'security of tenure is in practice secured not through law and state administration, but maintained through open-ended, on-going complex processes of negotiation, adjudication and political manoeuvre' (Berry, 1994, cited in Cousin, 2002: 78), traditional systems have disappointed farmers by failing to provide enough protection of their land rights (Tettey *et al.*, 2008). Even though redistribution of lands occurred, it was generally

from the poor land tiller to the rich land speculator through various processes of land grabbing.

Like other African countries, particularly in the sub Saharan region, the introduction of the structural adjustment programme (SAP) in the 1980s opened up heavy investments in timber, mining and the tourist sector (Amanor, 2006). With this development emerged increasing changes in local customary land allocation procedures and norms, the creation of opportunities for increased local land dispossession, appropriation and transactions in rural Ghana. It is argued that this has contributed greatly to the development of agri-businesses in favour of cooperative organizations such as the Ghana Oil Palm Development Corporation (GOPDC) and has worked to the detriment of the poor, many of whom lost their land to the corporation in the Kwae district of Ghana.

Previous land reforms, therefore, have intentionally or unintentionally resulted in loss of land rights by the poor, with the state seeking to control local people's land as a way of controlling the populace. The state legal system has not really accepted customary laws based on communal and collective interests in land, which allowed enforcement of rights by either individuals or communities, to stand at par but has always seen a hierarchical relationship between the two. Unfortunately, this relationship remains a significant component of current land administration policies.

Despite decades of successive reforms, problems of access to and control of land by the poor still persist and in some cases have worsened. This is evidenced by the land conflicts which have spread throughout the country. The discouraging performance of the reforms does not indicate that reform in the land sector is impossible but that it is not likely to succeed using centralized state law alone. Local conceptions and interests in land should be carefully integrated into the land policy of the country, alongside the objectives and meanings of the state.

2.4 Legislative framework on land

As we have seen, land access and tenure arrangements in Ghanaian communities are administered in a multiple legal environment, a legacy which was inherited from colonial administrators. Land here includes both stool and skin lands. Article 267, clause 1 of the 1992 constitution

of Ghana states that all 'stool lands shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage'. This could imply placing the responsibilities, management and administrative powers on decisions concerning customary land allocation, control and use in the hands of the local customary leaders. This, then, would mean that local managers have the right to own, lend or claim back land, sell, receive payment for and benefits of land transaction, allocate plots of land, determine terms, conditions and price for any particular land transaction as well as take over rights without consulting any state agency. However, in practice this might not be the case. It is estimated that currently 'some 180 state laws that regulate land administration and establish mandates for different agencies exist in the statute books. Many of these laws and regulations conflict with one another and some are outdated and irrelevant. Their existence is often used to confuse issues, delay implementation of programmes and prolong land litigation in courts' (World Bank, 2003: 6).

In contradiction to clause 1 of Article 267, clause 2 of the same Article says that the 'office of the Administrator of Stool Lands (OASL) will be responsible for the collection and ... disbursements of all stool land revenues'. It stipulates that 10 per cent of stool land revenue is due to OASL, 49.5 per cent to the District Assembly (DA) where the land is located, 22.5 per cent to the landowner and the remaining 18 per cent to the traditional council of chiefs where the land sold is situated. This implies that from the whole only 22.5 per cent of the price paid for the land goes to the landowner and 59.5 per cent and 18.0 per cent go to the state (OASL and DA contributions). While Article 267 clause 2 has created an institution mandated to collect revenue from the sale of land, in this same 1992 constitution, Article 267, clause 5 prohibits the sale of customary land and therefore suggests that land cannot be permanently transferred. In view of this, land allocation or transfer documents like the indenture, refrain from the use of the term 'sale' of land. They rather use allocation of land by leasehold for a maximum of 99 years and do not talk about the amount involved in the transfer.

The fact that more than 50 per cent of the land revenue goes to the state suggests that the local people do not really have control over their own land. This contradicts the provision in the constitution that local or customary land is vested with the traditional leaders. This situation, where a small percentage of the revenue is allotted to landowners, en-

courages pocketing of the revenues by landowners, without declaring the actual revenue received from the sale of land. It also creates problems of sharing among landowners if the land is communally held by a large number of people, which is usually the case. Chiefs and heads of landowning institutions will, therefore, not find it proper to share the 22.5 per cent with their people whereas the government takes 59.5 per cent. Some landowners and chiefs will sell their lands, without the consent of the lands commission as proposed by Article 267, clause 3 (Aryee *et al.*, 2011). Corruption may increase over land sales and sharing of proceeds. This may be a sine qua non for custodians of land shifting from custodianship to landlords over communal lands in many communities.

In cases of land dispute, rather than resorting to state courts, where they know they may not receive favourable adjudication, landowners will proceed to local and chiefly courts for hearing. Thus, even though the 1992 Constitution reinforces the legal-pluralism framework, the state courts will not be used by the local people. Clause 5 of the Act seems to vest control of lands in the chief or head of landowning group, thereby making him effectively the landlord over the other land-users. These contradictions in the constitution do not help in transparent formalization of customary lands. They may also suggest a lack of political willingness on the part of the state to improve the land tenure system in the country. In one breath the state assumes a non-interference position in local land dealings, by not getting involved in local land matters, but in another breath it uses laws such as the constitution and Acts to bring all lands under its control.

This seemingly double standard is problematic and serves as a platform for uncertainty, disputes and litigation. It is not a surprise therefore to learn that litigation cases over land rank first in the state's superior courts, with over 60,000 land dispute cases registered in the books in 2002. These reported cases exclude the many others in the lower and chiefly courts (GNA, Friday, 29 November 2002).

2.5 The National Land Policy

Until recently, Ghana's land sector was without any concrete and comprehensive national policy. After following a piecemeal approach to land tenure reform for decades, a National Land Policy was enacted in 1999. The main rationale for the enactment of the NLP is to provide direction

for land management in the country and to address the many challenges facing the land sector in Ghana. Prior to the enactment of the NLP, quite a number of public sector institutions of land had been created, 'to facilitate a rational and relatively orderly system of land administration' (MLF, 1999: 2).

In spite of this, land tenure improvement in the agricultural sector continues to experience numerous constraints. Among these are the indeterminate land boundaries, compulsory acquisition of local land by government, inadequate security of tenure, difficulties with accessing land, weak land administration system, and lack of consultation with landowners and chiefs, lack of consultation, coordination and cooperation among development agencies, and inadequate coordination with neighbouring countries. The new policy, therefore, 'provides the framework for addressing these problems and constraints to ensure equity in land allocation and holding and to maintain a stable environment for the country's sustainable social and economic development' (MLF, 1999: 5). It aimed at the 'judicious use of the nation's land and all its natural resources by all sections of the Ghanaian society in support of various socio-economic activities undertaken in accordance with sustainable resource management principles and in maintaining viable ecosystems' (MLF, 1999: 6).

Enshrined in this national land policy document are a number of objectives and policy actions to pursue the stated policy objectives. Of particular significance to this study, and also echoed in the Millennium Development Authority's (MiDA) agricultural programme, is the objective to facilitate equitable access to land, enhance land capability and conservation and improve security of tenure for existing and potential land-users based on registered land in the agricultural communities as well as in the intervention zones (MLF, 1999: 7, 15-17; MiDA, 2006). These documents seem to suggest an effective collaboration between government and traditional authorities to restructure customary practices of land access and tenure arrangement to ensure maximum security, clarity and high level of certainty of rights to landholding, use and ownership.

As with the MiDA project, the government aims at cooperating and collaborating with the local chiefs and landowners and to encourage them to register their lands. Key to the registration and titling of local land is for government to ensure that landholders have legal means of protecting their rights to land from competing claims to land. This pro-

vides landholders with confidence and the right to transfer or sell their land without conflicts. While this is a bold step to help address social instabilities, inequity and poverty (MLF, 1999; LAP, 2008), the policy does not, however, stipulate the specific role of the state and traditional authorities and the processes involved in addressing the changing land claims 'negotiability'. In rural communities, where people of diverse backgrounds use different mechanisms and competing mechanisms, some rooted in history, traditions and customs and others in legality and the market, this could create social conflict among opposing claimants of local lands.

Wily and Hammond (2001) claim that in spite of its benevolence in several areas, the NLP does not provide any clear-cut agenda to prosecute its pro-poor vision of enhancing security of land access and tenure rights. They claim the NLP has failed to consider some important factors about realities of customary systems operations. The NLP as it stands now cannot therefore be described as laying a sound and workable foundation for equitable land access and growth. While the NLP (1999) purports to complement and 'collaborate with traditional authorities and other stakeholders' (p. 16) and 'return lands acquired but never used by the state to their original owners' (p. 10), as well as 'harmonize and streamline customary practices' (p.15) and 'facilitate development of land management knowledge and skills among stool, skin, clan and family landowners' (p. 16), its sustainability and effectiveness in ensuring egalitarian distribution of land is still uncertain (Berry, 2009b).

This doubt is also in part due to the reality that land access in Ghana and elsewhere in developing countries is subject to struggles and social negotiations embedded in a system of rules and norms which themselves are complex and contested (Berry, 1993). These negotiations are underpinned by unequal power relations and inequalities. Since the local power wielders often define and interpret local rules to their advantage (Peters, 2004; Ubink, 2008; Amanor, 2010), the formalization process is likely to reinforce the powers of local authorities to the disadvantage of the less powerful, poor and vulnerable in the society (Berry, 1993; Bassett, 1993).

2.6 The Land Administration Project (LAP) of Ghana

Four years after the inception of the NLP, a multinational donor support land project covering the whole of the country was launched with the

aim of correcting the inconsistencies and difficulties in the National Land Policy (MLF, 2003). The LAP is designed to correct the inconsistencies that had been identified by NLP over the years and to ensure that clarity and certainty of local people's rights to land is equitably provided. As a long term (15-year) project, LAP focuses on promoting equitable property rights and reducing transaction costs involved in land administration processes in Ghana (LAP, 2003; 2008). Together the NLP and LAP present a new focus and have therefore been described as major milestones in the land sector of Ghana (Aryeetey *et al.*, 2007; Yankson *et al.*, 2009). The desperate need of the national government to reform local lands is demonstrated in the creation of several land management institutions such as the LAP and others spread throughout the Ministries.

Generally, the LAP aims to 'enhance economic and social growth by improving security of tenure, simplifying the process of acquiring land by the populace, developing the land markets and fostering prudent land management by establishing an efficient system of land titling, registration and administration based on clear, coherent and consistent policies and laws supported by appropriate institutional structures' (World Bank, 2000, cited in Aryeetey *et al.* 2007: 59). The general principle that informed the creation or design of the LAP was the development of 'a sustainable and well-functioning land administration system that is fair, efficient, cost effective, decentralized and that enhances land tenure security' (LAP, 2003: 12). The project activities are structured in a way that appears to facilitate land administration as well as tapping the strengths of the local customary land administration and management in order to create a well-balanced land tenure and management system (LAP, 2008).

One cardinal pillar of the LAP concerns the hope that formal registration and titling of local land will facilitate dispute-free land transactions in a formal land market or through formalization of land rights. The core objective here according to the NLP is to initiate a process of ensuring individualization of rights to land and harmonization of customary and statutory rights or control over local land. This is argued to be crucial for ensuring security of access and tenure of the poor. This has received some criticism as it is increasingly being recognized that local poor farmers are not registering their lands.

According to Alhassan and Manuh (2005), the low rate of registration of the lands owned or held by farmers is due to the reality of inadequate knowledge of the process and the policy. This, coupled with their pen-

chant for and use of traditional systems to solve challenges over land security, suggests that local farmers are unlikely to legally register their lands as a way of securing rights to land. Many native people think that they have a natural right to the land so they do not usually register their landholdings. Alhassan and Manuh (2005) show that land registration has not actually benefited the poor in Ghana, and therefore propose that serious efforts should be undertaken to ensure that registration does not further aggravate the already worsened situation of the poor and vulnerable.

In addition to this, some more general critiques of these current land tenure reforms across developing countries and specifically LAP in Ghana are that:

They have the tendency to exclude and alienate the poor, weak and vulnerable people of the society in favour of the rich, wealthy and more powerful. This is because of their characteristic nature of always involving local and political elites; technocrats, chiefs, landowners, land administration, land lawyers, and academics among others (Aryeetey *et al.*, 2007).

It is argued that the content of land reform propositions, such as returning land to stools and skins, in contexts where some chiefs and heads of landowning communities are already selling communal lands for private gain, suggests that the LAP has the potential for reinforcing the powers and positions of traditional leaders and authorities to the extent that the poor are marginalized and excluded from land access and benefits (Goldstein and Udry, 2008; Amanor, 2010).

The LAP is criticized for placing too much emphasis on land title and registration, which, apart from the high costs, involves processes to secure title which have been described as cumbersome and frustrating. Centralizing registration in the capital is not in the best interest of rural people in terms of both costs and time, given that they need to be attending to their farms regularly. Again, the LAP is criticized for not talking about improving the distribution of rights, particularly of secondary right holders who form the majority of farmers and landholders in most rural areas. Over-emphasis on land title, without talking about the distributive aspects, discourages people from registering their lands. There is the need to balance the power relation by focusing on the distribution of land rights or power relations (Toulmin, 2000; Kuntu-Mensah, 2005).

More generally, studies on land titling and registration in some transition and developing countries have indicated that such a policy without the right resource foundations usually reinforces inequalities and other forms of social instability (Broegaard, 2008; Berry, 2009a)

The situation as observed from the foregoing indicates that certain forms of elite capture, not greatly different from what happened in the 1950s and 1990s, may be taking place in the land sector. This raises the question of whether land legalization always intrudes in land allocation processes or creates a situation of elite hegemony as observed by some authors (Moore, 1978; Berry, 1993). This calls into question the actual role of the state through its agencies and commissions in ensuring stability and poverty reduction in the land sector. Land administration may have been variously defined, yet viewing the current land administration project as 'the process of determining, recording and disseminating information about the ownership, value and use of land, when implementing land management policies' (UN-ECE, 1996: 6), clearly shows a neglect of concern for institutions such as tenure systems.

2.7 The Customary Land Secretariat (CLS)

Under the Land Administration Programme (LAP), the current land tenure reform seeks to promote harmonization of the customary and state land management as pointed out earlier, with emphasis on community-based decentralized structures. One critical factor for the successful implementation of the national land policy and reforms under the LAP is the establishment of a transparent and independent body, the Customary Land Secretariat (CLS) to oversee the registration of local land holdings (MLF, 2003). Management of this community-based institution has its focus on traditional rulers as the managers of local land in order to prevent large-scale sale of local lands and the payment of land revenue to government coffers.

Among other objectives, the secretariat was created to enable the LAP to achieve its goals of addressing challenges of cumbersome land administration processes, high levels of disputes and insecurity over land, uncertainty over land rights and delineation of land boundaries and registration of interest in land. This requirement was at the behest of Ghana's donor partners (World Bank and other International and bilateral development partners) to ensure that management responsibility over cus-

tomary lands is transferred to local land institutions, in order to ensure local level participation in land matters in keeping with government's decentralization policy. Generally, the establishment of the CLS is to 'help strengthen cohesion among land management systems and ensure a greater level of accountability among these institutions, while lowering cost of land transactions, easing difficulties of information flow, generate additional land revenue, making clear the procedures and processes of land acquisition within the respective traditional areas among others' (DFID, 2004).

In an incremental manner, the Customary Land Secretariat (CLS) is being piloted in selected communities across the country. Manya Krobo is fortunate to have had a CLS established in the district capital, Odu-manse-Krobo. As an independent body, it is supposed to be autonomous in its decisions and operations, devoid of chiefly or state control to ensure transparency and win the heart of the people it aims at serving. However, as it stands today, its sovereignty is questionable. One wonders if the policy of the new reform is not actually reinventing the wheels of indirect rule in order to free land for foreign or large-scale investment, which may benefit local elites but often crowds out the rural poor, youth and women from access to resources and livelihood opportunities (Amanor, 2006).

Among others, the CLS is to document and provide readily accessible land services to the public, keep a database on land ownership, availability, use and transactions 'which has multiple benefits in terms of eliminating conflicts, enhancing security, broadening rights to land via formal transaction and generally encouraging both national and international investments in land' (Yankson et al., 2009: 11). These responsibilities are also in agreement with the government's agenda to collaborate with local or customary institutions to ensure security of tenure and conflict-free land access and also to facilitate access to land and investment.

However, while the project claims to aim at benefiting the greater majority of poor and vulnerable people, supervision and management of the CLS remains vested with traditional authorities. The history of land control and use in Ghana, as we have observed in earlier sections of this chapter, indicates that such vested interest in chiefs has often worked out against the poor and vulnerable whom the policies seek to protect (Ar-yetey *et al.*, 2007; Amanor, 2005; 2010). The lack of any provisions for an open and more community-based participation seems to counter the

intention of the NLP to help create a more secure land rights based on the customary tenure system. Whether the LAP through the CLS will be able to deliver its mandates and achieve success will greatly depend on the extent to which the chiefs and other community and land-owning leaders are able to capture and dictate the operations of the CLS.

2.8 Local land titling and registration

According to Lipton (2009), land reform generally aims at reducing poverty and inequality. An aspect of this process in Ghana, which is also being vigorously promoted by international donors including the World Bank and USAID, is titling of local customary land through registration to enhance its legal tenure security. This new land tenure reform project is based on the De Soto (2000) ideals of how land in developing countries can be turned into profitable capital for the poor. Benefits of land registration and titling claimed by proponents of land formalization include promotion of and market development, investment in land, security of tenure and rights. These are addressed in the other chapters.

As pointed out earlier, the land title registration law (LTRL) of 1986 (PNDCL 152) was enacted during the Rawlings regime, with the aim of registering all titles to land. This was to create certainty, facilitate proof of title and simplify land transactions in a safer and cheaper way in order to prevent fraud in the system of land delivery. The Act was enacted to provide the instrument for compulsory land title registration of all interests in land, including customary law and the common law. By virtue of this provision, all stools, skins and family lands are eligible for registration. This law has been criticized for not been able to register all rights under the customary tenure systems.

The intention to privatize local land holdings in sub-Saharan Africa through *titling and registration* has 'come under challenge' (Toulmin *et al.*, 2002: 3). According to Dowuona-Hammond (2003), this law has not worked in the interest of the poor whom the law sought to protect. The cost of registration and its social and political affects among others have been criticized and disputed. In spite of the heavy investment in the land-titling project, evidence of its success on the ground still seems inclusive.

A report of the Land Tenure Center (LTC) maintains that 'findings are minimal with regard to the extent that projects achieved their objec-

tives and targets, and non-existent with regard to their long-term impact on land market development and socio-economic development. The paucity of findings is due both to the lack of project documentation, particularly end-of-project reports and final evaluations and to the quality of information provided in the reports that were available. The lack of post-project impact evaluation studies made it impossible to determine long-term impacts' (LTC, 2002: 7-8). It is, however, reported that a major setback here is the 'difficulty in harmonizing customary land practices and enacted legislation' (Kuntu-Mensah, 2000 cited in Awuah-Nyamkye and Sarfo-Mensah, 2011). The NLP (1999) also shares this view about the land question in Ghana.

Notes

¹ Bruce (1986:52): definition of individualization of right means 'a reduction of community controls over land use and distribution, enhancing the rights of the individual landholder/farmer'.

² Customary laws are usually unwritten rules, which have legitimacy in social norms, values and customs that are grounded in 'tradition' (Cotula, 2007). They are socially constructed and enforced within a particular local jurisdiction to regulate the lives and activities of a people who live within such boundaries. This is usually passed on from generation to generation orally, through songs, and other cultural practices (Kalabamu, 2000). This makes it dynamic as aspects of the law keep changing with time in response to general changes such as cultural interaction, population pressure, socio-economic change and political processes (Cotula, 2007) within the society. Generally, it guides the way and manner in which rights to land are allocated within a community, or rights to such land are used, controlled and gained as well as the responsibilities associated with that.

3

Development and Change in Land Rights and Tenure Systems of Krobo

3.1 Introduction

Customary land tenure is both a social and legal system which determines access to, control and use of local land under the customary laws. It adapts to changes through social networks and negotiated arrangements to fashion new relations over the customary (Gyasi, 1994; Berry, 1993). Access to customary land rights is therefore based on the socio-political system, community and family relationships and social networks (Berry, 1993). The dynamism of customary tenure suggests that contemporary tenure practices should be explored and understood in their historical context. This chapter presents aspects of the social and political organization, institutional and family structures relevant to this study from a historical perspective, in the former agricultural frontier of south-eastern Ghana, with particular focus on the case study communities. The chapter concentrates on the emergence of the Krobo people in the Krobo Mountain area, local land access mechanisms, distribution of landed resources and the evolution of inequalities, class formations and other social instabilities within the communities.

The relevant key factors and conditions that have contributed to the growth and decline of the agricultural frontier and/or shaped development patterns in Manya Krobo are identified. This analysis hopes to make visible issues of social stratification, hierarchical structures, exclusion, conflicts and other social instabilities in smaller political groups in Ghana, such as the Krobo who, despite their role in the development of Ghana's agriculture and economy, have received little attention in the literature (Wilson, 1991; Amanor, 1994). Since the macroeconomic policies have a role to play in the shifts and economy of the community, this chapter ends with discussion of some economic policies of Ghana and

agricultural development of the past to highlight the wider economic and political environment within which these the transformations are taking place.

3.2 A brief historical background of Krobo

Long before their engagement in oil palm production which began during the nineteenth century (Amanor, 1994; Huddleston, P. and M. Tonts (2007), the Krobo people of south-eastern Ghana were ruled by priests, a system of leadership which Fields (1943) refers to as theocratic oligarchy. This form of leadership according to Wilson (1989) was sacred and mystical in that the priests were not allowed to physically interact or be seen by the people they claim to have rulership over. The 'sacred' priesthood was later replaced by the Okumo, because the people wanted physical relationship with their spiritual leader. Unlike the theocratic oligarchies the new spiritual leader, Okumo, could interact physically with the people they ruled. This became necessary because the subjects or people wanted to see and interact with their leaders physically. The Okumo, therefore, became both the priest and secular head of the local people. Even though a priest, his dual role as a priest and a secular leader distinguished him from the previous priests.

With the introduction of commercial production of oil palm and therefore the need for people to acquire more land for expansion, the Krobo began to move to the foothills of the surrounding Akan territories around the eighteenth and nineteenth centuries (Amanor, 1994; Huddleston and Tont, 2007). This period marks a break of leadership from priestly to secular and political heads. The highest political head of Krobo then and now is the Konor (which literally means 'shoulders'), because the head or leader of the people is supposed to be carried on the shoulders of men during festive occasions. The Krobo political leadership therefore changed from priesthood leadership (wonu) to paramountcy (Konor) (Wilson, 1991).

One of the powerful and visionary Konors of Manya Krobo was Nene Azu Mate Kole (1939-1990). During his reign as Konor of Manya Krobo, economic development in the Krobo traditional area is said to have been transformed from an economy of food production for domestic markets to export crop production as well (Wilson, 1991).

The Konors are among others respected as the custodians of the laws and traditions of their jurisdictions and hence their speeches often serve as a visions or guidance for development in their communities. In one such speech, addressing his subjects at a gathering in honour of the gods of the land, Nene Azu Mate Kole, Konor of Manya Krobo, is reported to have made a statement to encourage his people to hold on fast to the ideals and values of Krobo and continue protecting their lands and aspire to use it to improve their life. In this speech Nene Azu Mate Kole is claimed to have said;

We are young eagles. Look up at the rising sun of the twenty-first century civilization and flap, again flap your wings and soar high beyond the dark clouds of suspicion, mistrust and envy, and emerge at the grand dawn where a haven awaits you. (Nene Azu Mate Kole, West Africa, May 21-27, 1989: 835)

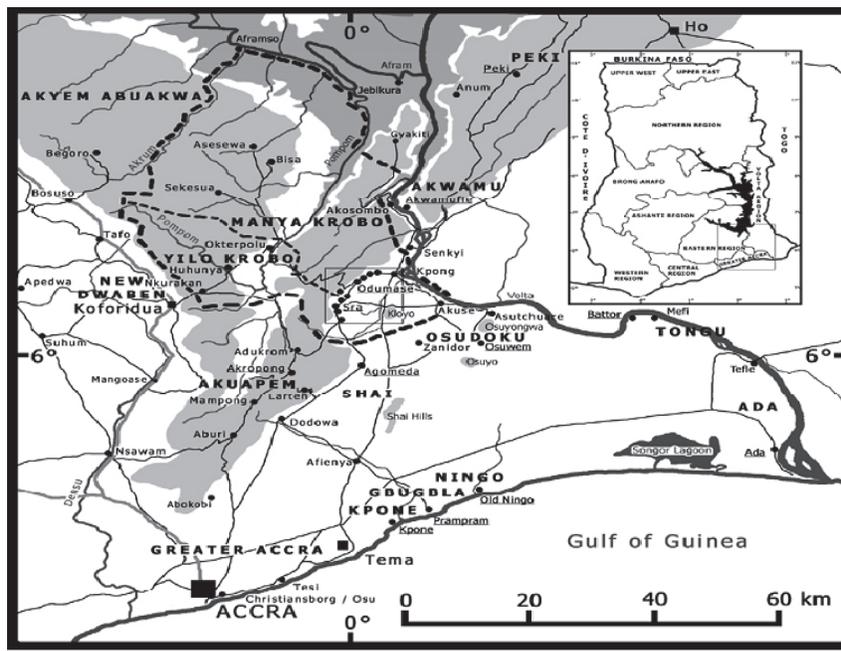
Contrary to this dream, the rich agricultural land of Manya Krobo is now beset with a series of accelerated transformations regarding laws, processes and rules of access to agricultural land. This does not suggest that the shifts are new to the community. However, the rate of shift and its influence on the alteration of social relations to land are the concern of this chapter. The former relatively egalitarian land allocation practices and rules of access are changing and local land is now a priced commodity. While access to local land by the poor and landless has become difficult if not impossible, the wealthy and more influential are the ones who are able to gain access to land. These changes have resulted in a more pronounced socio-economic differentiation among the Krobo people (see chapter 4 for detailed analysis).

3.3 Physical location and vegetation of Krobo

The Krobo people are Ga-Adangbes and one of the major ethnic groups located in the eastern region of Ghana. They are the largest among the Adangbe ethnic group in Ghana (Adjaye, 1999: 7). They co-habit the semi-deciduous forest region with their Akan (Akuapims, Kwahu and Akyems) neighbours, as well as other minority ethnic groups and migrants from other parts of the country. As shown in Map 1, the Krobo are bordered on the west and northwest by the Akuapims and by the Akyems to the north. The Ewes occupy the southeast, while the other

Adangbe communities, Shai and Osudoku, are located on the southwestern and southeastern borders of the Krobo land.

Map 1
Showing Many Krobo District



- | | |
|---------------------------------|-----------------------------|
| — rivers / sea shore | Ho regional capital |
| ■ Lake Volta | Sea seat of paramount chief |
| ■ elevation higher than 500 ft. | — major roads |
| - - - boundary (approx.) | — railways |

VA/2003

While the Krobo people are considered as people of a common origin, there are evidences that the community represents people from different ethnic groups; some Ewes and Akans were accepted into the Krobo tradition during the wars in the past and early settlement in the ancestral home (Wilson, 1991) and are all considered as Krobo today. According to history, all these people from different ethnic origin migrated from various places to settle in the present-day Krobo area, main-

ly from Lorlorvor (Samsac, community C, 2009). Migration to Lorlorvor, the first place of settlement in the Mountain area, occurred in different groups.

These groups later became the various divisions (*wetcho*) within the Manya Krobo polity. Apart from their status as farmers, the Krobo people, according to traditional knowledge, are very mobile. Today Krobo people are no longer encamped around the mountains or hills but are known to be living almost everywhere within Ghana, particularly where farming is carried out as the main occupation. Combining these characteristics of being mobile and cultivators, the Krobo people are said to have migrated everywhere in search of fertile lands, free from wars, to settle and farm. In view of their hunger for land, the Krobo and their surrounding Akan neighbours have been struggling for land around the mountain area for decades.

Currently, a greater proportion of the land area in Manya Krobo is covered with grassland, often interspersed with drought-resistant shrubs and trees such as the Neem (*Azadirachta Indica*), Acacia (*Acacia nilotica*) and Ceiba (*Ceiba pentandra*). This area stretches from the Savannah areas of the Afram Plains (now Kwahu South district) through the Moist Semi-Deciduous forest in the west to grasslands in the east of the district (Amanor, 1994).

The rich agricultural vegetation is currently subject to ecological challenges resulting from population growth, erratic rainfall, and over-exploitation of natural resources. The involvement of a large section of the population in livelihoods such as bush burning for the hunting of game and other small animals, charcoal burning and lumbering have all contributed to the depletion of the former forested land. Crops grown in this area include varieties of grains (cowpea and groundnuts), tubers (cassava, yam and cocoyam) and cereals (maize) as well as vegetables (okra, tomato), spices (hot pepper) and suckers (plantain and banana). The traditional cocoa and oil palm as cash crops have been phased out in many of the communities.

3.4 Origin and settlement patterns of the Krobo people

While their present location and settlement patterns can easily be traced, and the fact that they are migrants is unquestionable, the original home or place of migration of the Krobo is still debatable (Wilson, 1991). The

actual place (or places) where these migrant cultivators came from to settle in their present-day location is still uncertain. It is asserted that, wherever they came from, the Krobo, among the other Adangbe ethnic groups, first settled around the Lorlorvor hill around Shai in the fifteenth century, precisely about 1450 (Samsac, 2009). However, the constant feuds and quarrels within the area caused the Krobo to migrate toward the forest region, till they arrived at their present location, the Krobo mountain area from Lorlorvor (Wilson, 1991). Some evidence on the ground suggests that they might have arrived and settled at their present location, the Kloyo mountain area of Manya Krobo, around the 1850s (*ibid.*).

This settlement was piecemeal as already pointed out; division by division people arrived at the Kloyo (Samsac, 2009). The first of the divisions to have arrived at the mountain site were the Djebiam, later followed by the Akwenor, Piengua and Manya to occupy the forest area. Later the Dorm, Suisi and Nam divisions also arrived at the mountain area around the 1760s (interview: Samsac, 2009). The various divisions did not settle in the same area but spread out in order to take advantage of the fertile area surrounding the foot of the Akuapim hills and also to prevent internal conflicts among them. Since the place they first settled was not all that fertile, only millet was grown and as they grew in numbers and desired to expand towards the more fertile areas, up the hills, they first pleaded with the Akans to allow them to cultivate portions to feed their families. This area though unoccupied was controlled by the Akans, particularly the Akuapims. It was a fallow area, soggy and only good for the cultivation of crops such as millet and other grains (Amanor, 1994).

With their insatiable hunger for land, the Krobo people began to migrate inwards. This scramble for land resulted in constant skirmishes and feuds over the right of access to and use of the fertile land (Fields, 1943: 54). The Krobo then moved towards the Akyem-Abuakwa and Begoro areas of the mountain range, where the people (of various non-Krobo groups) were involved in the mining of minerals and did little farming (Wilson, 1991). By the late eighteenth and nineteenth centuries, Krobo people (Kloli) had succeeded in accumulating large acreages of land. This period also marks the beginning of many land disputes against the Krobo (Addo-Fening, 1997). This indicates that disputes over land existed long before colonization. The difference between those conflicts over

land before colonization and present conflicts, however, is the frequency of violent conflict over land and disagreements among land-owning families and kinship groups of today. In the past, especially in the late eighteenth century, disputes and conflicts over land occasionally occurred between neighbouring tribes or ethnic groups but 'no evidence of violent conflicts over land between Krobo and their neighbours is recorded' (Wilson, 1991: 77).

It is worth noting here that the quest to move from subsistence agriculture, and hence the need to look for more land to satisfy their aspirations, was triggered by no law or policy. State intervention did not play any role in the land expansion agenda of the Krobo farmers, but rather, as we will see in more detail later, when the state penetrated the customary land tenure system with laws, courts and other land management institutions the customary tenure system began to break down, creating more insecurity for farmers. The many court cases over land caused the traditional leaders, particularly Konor Emmanuel Mantey Korle, to instruct their people to limit the purchase of land (Amanor, 1994; Addo-Fening, 1999). The fear of possible conflicts greatly influenced his decision to stop his people from acquiring so much land (Gyasi, 1994; Huddlestone and Tonts, 2007).

3.5 Why Krobo occupied the Kloyo mountain area

As pointed out by Wilson (1991), the choice of Krobo settling in their present location was influenced by several factors. Location and agro-climatic conditions have traditionally been important determinants of the occupation of the mountainous area of south-eastern Ghana. The rich land in the area for the cultivation of export crops such as cocoa and oil palm as well as food crops (for local consumption and domestic markets) and the presence of the Volta River in the locality, which facilitated trade and mobility between southern and northern Ghana, all contributed to decisions that motivated the Krobo to stay on the mountain site. The mountain (Kloyo), which offered the people of Krobo protection and also served as ritual grounds, undoubtedly has played an important role in the settlement of the Krobo on that site. It is actually the ancestral home of the people of Krobo, hence the annual visit of the elders and people to the mountain top.

In addition to public policy support for the development of agriculture, cocoa and oil palm cultivation and marketing, the main driver for transformations in the community has been the desire and agency of the land-hungry Krobo farmers to convert forest lands into agricultural lands for the cultivation of important cash crops. This has been facilitated by increases in the supply of labour from other regions. Furthermore, the social relationships regarding use of family, kinship or kith labour and resources have all contributed immensely to the development of the Krobo area (Amanor 1994, 2001; Berry, 2010).¹

The agro-climatic suitability of the area has been another critical element contributing to the occupation of the Krobo in the mountainous area. Two rainfall seasons (*Gie*) (March to June and September to November) separated by a dry season (*Ahlabata*) (November to February) are experienced in this agriculturally rich area. Records show that the mean annual rainfall in the district (between 900 mm and 1,150 mm) is adequate for the cultivation of cereals, tubers and vegetables (MoFA, 2002), which farmers grow mostly in mixed crop patterns. Average daily minimum and maximum temperatures are about 24 and 32 degrees Celsius respectively (Ghana district.com n.d). Over the past few years rainfall has become erratic and highly unpredictable in this area, possibly due to global warming. My informants, mainly smallholder farmers, claim the weather is changing, in terms of regularity and amount of rainfall and its distribution. This, they reported, creates a lot of problems for agricultural activities and production systems.

3.6 Sociopolitical institutions and local power configuration

The early arrival of clans or sub-divisions of Krobo at the mountain site dictated the rules of occupancy of the later arriving groups. The Krobo operate a patrilineal succession system, whereby all legitimate male children belong to and inherit from their father. In this case, since all landed property belongs to males in the community, legitimate children are the only heirs of their fathers' land. The community's political structure is therefore centred around a configuration of hierarchical power based on the male lineage. Unlike the Ashantis and other Akans matrilineal groups, little is known about how and why the Krobo became a patrilineal community; most people consulted did not know but took it as

given and handed over from generations in the past. To better understand the power structure among the Krobo, it is pertinent to look at the fundamental social structure of the society from a historical perspective. This is done with the purpose of helping us to understand social and political institutions, particularly judicial institutions or systems and the line of reporting or adjudication of Krobo.

After the arrival of all the Krobo at the mountain area, the Krobo were later met with wars from the Ashantis and other Akan tribes over land acquisition. As a result they elected some brave people (war lords or chiefs) who they referred to as *Asafoatse* – a leader in charge of a military contingent (*asafɔ*) – from among the various subdivisions. Apart from their military responsibilities, the war lords were given powers by the ruling priests to defend their respective enclaves of the subdivisions against the Akuapins, Akwamus and Ashantis who frequently invaded the area (see Wilson, 1991). Each of these *asafoatse*, occasionally referred to as a sub chief after the wars, is appointed or selected by the local or traditional head of state with the consent of other elders within the locality, even though the final appointment of the *asafoatse* is the prerogative of the chief. Below the *asafoatse* in a hierarchical order is the *dade mantse* (literal meaning, the cutlass head) and then the *wenakotoma*. The *dadematse* is a relatively new position, occupied by the village head farmer. Apart from his responsibility as local arbiter on land disputes, he is also responsible for local community spiritual activities of pouring libation to invoke the spirits of their departed souls. He is assisted by the *wono* spiritual head of the community. All these preceded the rulership of Krobo by the priests of the gods of their land.

The system of leadership by priesthood (oligarchy), which existed even before the eighteenth and nineteenth centuries is considered by the Krobo or Kloli to have been a necessity and an asset during the ancient wars (see Wilson, 1987). Although the leadership of the *Djemeli* was later perceived as out-dated, it is said to have provided the people with spiritual powers, protection and directions in their many conquests. For some reasons, *Djemeli* (the priesthood title) were not supposed to have any direct personal contact with the people they claimed to rule. To reach the people he had rulership over, the *Djemeli* had to appoint a messenger from among his people. This person was to serve as a liaison (go-between), sending messages to and from the priests, whose responsibilities among others were to consult oracles on behalf of his people.

The *Djemeli* was therefore both the spiritual and political leader at the time. As Karugire (1980) asserts, these people ‘reigned rather than ruled’ (*ibid.*: 9-11), acting as spokespersons for the gods and the people. During times of war, the *Djemeli* consulted with the gods of the land, who then selected a war leader, the *Konor* (then not the title of a chief but a war lord), to lead the people. This was made possible because the *Djemeli*, who was supposed to lead the people to war, had a spiritual embargo placed on him. He could not go to war because, according to the traditions and customs of the people, the *Djemeli* was forbidden by the gods to come out from the shrine located in the mountains. He was not to be seen in public or any public function. Unlike the surrounding Akan communities, the Krobo people had no paramount chief, except the leadership of a *Djemeli*.

Later in the eighteenth century, the Krobo established the chieftaincy throne, which they call *Mantse* (chief). He was empowered by the community elders to oversee the management of their sub-tribes or subdivisions. These sub-divisions consisted of smaller units or areas controlled by a number of *asofoatse* or *asafatseme* (plural). These local leaders performed both judicial and religious roles among their people in consultation with the elders within their jurisdiction. After a while, the Krobo wanted to be like the Akans, who had a well-established institution of chieftaincy with paramountcy.

After several internal power struggles in the eighteenth century (Wilson, 1991: 57) the Many Krobo installed an overlord of the traditional area called *Konor* or paramount chief. He was assisted by the heads and elders of the three basic social units of Krobo, the *wetho* (division), *kasi* (clan) and *we* (family) in matters of juridical prudence (Wilson, 1989). The selection of ‘elders’ was not based on age per se but also on knowledge of traditions and customs of the people, as well as elucidation of wisdom and possible attempts to have solved a critical social issue in the community. In some cases, the elders depended on the gods’ directions to choose a leader. This selection was, however, made possible by the display of wisdom, wealth and knowledge. Thus, underlying this highly respected structural hierarchy position or institution is a form of order of power among the people of Krobo, established based on custom constructed by the people themselves. This form of unequal power relations and inequality is perpetuated and transferred to the community

and households and along the lines of gender and generation. As a result of these inequalities, resources are frequently shared unequally.

The traditional boundary of Manya Krobo is imbricated with the state political administrative divisions and hence governance system, but the powers of the leaders do not merge or overshadow each other. Thus, the system of traditional leadership has developed alongside the national state government system initiated by the colonial administration and inherited by the post-colonial officials. Thus, a dual system of administration operates in any local area of Ghana where boundaries of district administration coincide with local or 'traditional' political boundaries.

The traditional council is headed by the *Konor* sitting in council with his chiefs; *Wetsomantsemei*, *Asafoatsemei* and *Dademantsemei*, queen-mothers and elders on one side and the local or District Assembly headed by the District Chief Executive (DCE), an appointee of the government and the sitting president, on the other side. The traditional authority in Krobo, as we have seen, is sub-divided into local units, each of which represents a social group. These two run the day-to-day affairs of the community in different capacities and ways. What we have in Krobo is not peculiar to the community but is a national phenomenon. The co-existence of Manya Krobo traditional authority and Manya Krobo district assembly is a legacy from the colonial administration.

As in other parts of the country, these leaders from time to time meet to make or unmake rules governing the people, based on developments unfolding in the community and country. While these two systems co-exist peacefully and seem to share some common features, agreements on some decisions have always not been cordial. The state land administration appears to create a system of landholding where a small number of people or groups can gain access to land. In a way this is supported by the customary land system, which appears to ensure that a large number of individuals are represented by a few people regarding matters of control over land. In practice, this has resulted in a concentration of power in a small number of people. As a result, land transactions are gradually becoming more ambiguous, complicated and unclear as only a few people have the traditional authority or power to redefine and interpret processes and rules of land transfer and places of land dispute adjudication for the rest of the community members.

The wealthy and powerful extended family land custodians seek to take advantage of the system to expropriate land and enrich themselves

to the detriment of the poorest families. While the state administration encourages people to seek redress over land cases in courts, the traditional authorities prefer that all land cases be brought to them, but this is done clandestinely. This is done in an attempt to cover their 'illegal' activities and to continue to maintain their power and respect of the people, which is fast fading.

As argued by an elder of the community (Okutey, February, 2010), 'unlike us who sit here (referring to the palace) daily, on matters that ensure peace and stability in the community, the young men who sit in the offices (referring to those in the land administration and commission) have diverse opportunities of making lots of money. We (referring to the local leaders) also must therefore make sure that the system behaves in a way that benefits all of us'. This statement implicitly acknowledges that corruption abounds in the community, both between the elder and the younger generation, between traditional leaders and the state government officials.

The case of women's land rights in the community gives cause for concern, and will be discussed in detail in subsequent chapters. In brief, while customary law does not permit women to inherit land in practice, the intestate succession law (PNDCL, 114) and constitution of the country encourage women, together with their husband's relatives, to inherit from their spouses on their death. For reasons connected to the position and image of women in society, the institution of 'queen mother' for a long time was not established. Today, the queen mother position, which has never been part of the Krobo tradition, is attached to the local chieftaincy institution. However, the queen mother is often not involved in many serious decision-making processes, except for matters related to activities of *Dipo*, the annual puberty rite for young girls.

Like the chiefly positions, this new system of local traditional leadership is claimed to have been borrowed from the neighbouring Akans and therefore yet to be fully accepted into the patrilineal society. This and other arguments make it difficult for the women's concerns to be fully debated within the local traditional systems, even though most issues concerning women's rights to property are upheld by the laws of Ghana.

3.7 Demography, land pressure and migration

According to the 2000 population and housing census of Ghana, the population of Manya Krobo district was 154,301, indicating a rather modest rise of 12.8 per cent over the population in 1984, which was estimated at 134,530. With a total of 1476 square kilometres of land, the population density was estimated to be 104.6 people per km² and the majority of the people live in rural areas (GSS, 2002). Although there are no reliable statistical data on the population and labour movement in Manya Krobo during the period of their settlement in the Mountain area, recent data shows increasing population density. This was confirmed by the Chiefs' representative at Odumase Krobo, speaking through an intermediary.

As noted above, the movement of farmers in search of fertile agricultural and/or unoccupied land for the cultivation of various crops has for a long time being a common feature among Krobo farmers. Farmers are known to have travelled long distances in search of land when faced with difficulty of land access or bad weather in the place of origin (Wilson, 1991). It is worth noting here that apart from farmers looking for land, people who do not have access to land also migrate in search of opportunities to work in farms (Amanor, 1994). The creation of the northern territory by the British as a 'labour bank' to supply labour for the development of cash crop cultivation in the south, and the vagaries of the weather in northern Ghana, have encouraged many people to migrate down south and to the forested regions in search for farm labour employment (Anarfi *et al.*, 2003). The discovery of minerals and the establishment of mining companies in southern Ghana have also attracted a lot of migrants from the north and other areas of the country to the forest and mining communities.

The relatively high farm wages and the possibility of gaining access to one's own farm served as an incentive for people from less endowed areas to move into endowed areas. The historical development of migration of Manya Krobo is not different. Although migration of the Krobo in the past four or more centuries was mainly to rural farming areas, today the Krobo are located in almost every part of the country doing all sorts of jobs.

A historical perspective of the conditions that triggered migration centuries ago is important for reaching an understanding of the constitu-

tion of the contemporary social and political economy of Krobo. While one of the proximate causes of migration has been population increase, two main conditions have triggered migration in Manya Krobo over two different epochs. First, the quest for more land to cultivate oil palm and cocoa in the nineteenth century and secondly, impacts of the recent structural adjustment programmes which started in the early 1980s. During the nineteenth century, when the oil palm industry in south east Ghana was flourishing, the land hungry Krobo moved inwards into the forest unoccupied region of the surrounding Akan territories, all in search of farmlands. They were led by their first *Konor*, Nene Azu Odonkor, himself a farmer, who made agreements with some of his fellow chief friends to purchase all lands for the agricultural activities of the Krobo who had occupied them (Wilson, 1991; Amanor, 1994: 44). The quest for money by these Akan neighbours to purchase and manufacture weapons of war encouraged them to readily consent to the deals.

The Begoro and Akyem sold large tracts of land to the Krobo. This hunger for more land found the Krobo moving deep into the forest region far from their original settlement area around the mountain scarp. By the close of the nineteenth century the Krobo were already about 32 km away from the mountain valleys, reaching Bisa and Akrum River, occupying about 110 square kilometres of purchased land (Amanor, 1994: 58).

The Krobo purchased land as far as Noaso, Trom and Kotrope in the west and northwest of the hill Kloyo Mountain (interview: Samsac, September, 2009). Several peace treaties had also been signed between the Krobo and their neighbours in order to give them the peace of mind to cultivate their lands (interview: Samsac, September, 2009). This confirms why Krobo people – or specifically my informants – define land tenure security as peaceful occupation and cultivation of land. These migrations and purchases of land for farming continued until the land-owning group had no more forest land to be sold to outsiders. The close of the nineteenth century saw cocoa cultivation taking over from oil palm. This continued till the 1930s and middle of the century, when cocoa cultivation started dwindling, till the 1950s when cocoa was no more cultivated in many parts of the Krobo area.

Migration in post-independent Ghana in Krobo has followed different patterns in terms of the push factors. Principally, apart from the deterioration of soil quality attributed to the devastation caused by the

flood from the construction of the Akosombo hydroelectric dam, movement of people in and out of Krobo has been credited to the economic hardships rural people experienced during and after the structural adjustment programme. Without hard data on migration during these periods, this study resorted to in-depth interviews and focus group discussion to extract general information on migration in Manya Krobo. According to the information gathered in the communities (from chiefs, Government officials and the public), while Krobo are generally mobile, migration during the SAP was less than after SAP, with the youth forming the majority of those going out of the communities. This pattern of migration from Krobo confirms the impact of the subsidization during SAP (1984–1992) and after SAP (1992 onwards). As will be discussed in some more details (chapter 4), migration from Krobo today is not different from other parts of SSA, with the majority of those who migrate being youth.

In spite of this trend of youthful out-migration, there are still other young people in rural Manya Krobo who are interested in developing occupations in farming. This is evident by the return of young men, who travel seasonally to the cities to do menial jobs and return home during the onset of the farming season, to look for land and farm as independent farmers. With the little money they make in the city, they are able to influence landholders and owners within their communities to release lands to them on a rental basis. This idea of youth's independent farming has contributed to the high labour cost in the communities, as many youth are no longer willing to work for their own (parental) family farms.

3.8 Changes in Krobo social and economic structure

As we have seen, the quest for land has played a crucial role in determining the interest and location of the Krobo people at various times in history (Fields, 1943). Recent changes in Krobo society present some interesting variations which serve as a break from the past. The quest for land to cultivate and the need to leave an inheritance of land for son(s) compelled many Krobo people to migrate from their ancestral home. Although Fields (1943) argues that it was the intention of Krobo farmers to give birth to more children in order to increase the supply of land during the oil palm boom of south-eastern Ghana, Amanor (2010) observes that the use of family labour has declined steadily with some members of the

nuclear family opting for independent farmlands and farming (farming their self-acquired rather than family land), as opposed to helping on family farms. The youth especially who have access to land are reluctant to pool together resources for household or family farms since they claim they have lost hope in their fathers who have refused to allocate to them land for farming. The result has been the breakdown of traditional systems of land transfer, the rise of different alternative occupations such as migration, as well as loss of interest of some youth in caring for their elders and parents in their old age as it was in the past (Amanor, 2010).

Chiefs, even paramount chiefs, are now allowed to stay outside the hometown or even outside the country while still retaining their titles, positions and playing the role as chiefs. The chief only needs to elect some elders of his family to act on his behalf. They come home during festive occasions and other celebrations to perform rituals and return to their base after the ceremonies. This remote rule and the attitudes that go with it have some consequences for economic development of the rural community.

The ruling council members may have individual interest in community development, as well as eyeing the stool or chieftaincy title. Among the Krobo, there is a saying, literally translated, 'what you should know and you do not know is what I use against you', also found in some of their *klama* (local songs). You need to know what is happening around yourself, or else you will be exploited by others who know what you should know but you do not know. Interest in educating children is gradually increasing, except in homes where poverty is high and help is coming from nowhere.

The society is changing in terms of its polity and organization. With the increase in local and national political activity, more people are becoming aware of their civic rights and responsibilities, but that is not without a price. In view of the high level of inequality within the communities, the tendency for chiefs and other powerful local people (politicians, educationists and wealthy people) to exploit the low educational standards and poverty of their own people is something that cannot be glossed over easily. This may result in revolution or contestation over chieftaincy matters, which may degenerate into violent conflicts as is presently occurring in many places in Ghana. It was observed that in some cases, 'local level politicians have been enrolled into the community council of elders who make decisions on behalf of the community. In

the past politicians were not part of such councils and every decision was taken by the elders so selected for the job' (interview: an elder in community A, August, 2009). This statement was confirmed by the native male adult groups in the various communities during the focus group discussions, and discussions about it in public always raise tensions.

It is claimed that on many occasions decisions arrived at are far from what the people wanted. Community development projects are forcibly taken on by politicians as their own projects. Community structures and projects are more and more being painted in political colours. My personal observation suggests that almost everything has been politicized in the community. Historically, local politics in the communities have been dominated by the wealthy, the powerful (based on lineage or first comers) and personal attributes (the sub-division to which one belongs) (Wilson, 1991). These informal processes seem to be creeping back into the society after they were abolished by Nene Mantey Kole's regime (*ibid.*). Large land-owning groups within the communities are increasingly becoming dominant, since they use the power of their land and wealth to gain access to the councils and assemblies. Currently, access to council (local) or assembly (state) membership seems to be influenced by education, wealth, personality (popularity), lineage (land-owning families) and other networks to state or party politics. This has also affected intra-family relations as people within families are affiliated to different political parties and appraise policies of government from different perspectives.

These activities without doubt have created changes in modes of access to land, land tenure arrangements, struggles for land control and socio-economic activities in relation to land use and income generation activities. The inequalities and welfare affects these have created are discussed in the next chapter.

3.9 The 'land question' of Krobo

The current agrarian challenges in many developing countries, particularly in Africa, have often been associated with the 'rise and fall of agrarian frontiers and export crop development' (Amanor, 2010: 106; Peters, 2002; Berry, 2010). Land tenure practices and laws are found to be changing (Yaro, 2010) in tandem with emerging social, economic and political changes. Traditionally defined channels and procedures for local

land acquisition and transfer are changing, but the law is mostly oblivious to such changes. The question of the nature and extent of change or continuity in customary land, the drivers of change and how these have affected customary practices and the land poor are part of the land question of Manya Krobo.

Theoretically, every Krobo² male belonging to a land-owning community or group is entitled to a portion of land within the group. However, while all other members have usufruct rights to land, the head of the group is entrusted with the right of disposition of the land which is neither alienable nor transferable to outsiders. Allocation is carried out at the extended family or clan level and security of tenure is based in social networks to which a land user belongs, theoretically in perpetuity. Access to land is governed by the histories of ancestry, first occupier status, sacred sites, genealogies, folklore, dirges and other festival songs. The customary practices of the people are, therefore, embedded in the production and reproduction of such local knowledge.

This gives political power to the head of the land-owning community and others who claim to be the repository of knowledge concerning the local or family land, and in turn shapes political processes involved in land negotiation even at the local community level. This community possession of rights to land, therefore, makes it difficult for local laws to deal with aspects of state legislation such as individual rights to land. This new system as enshrined in the law and land policy raises some questions. Some important questions that may be raised here include, the factors contributing to the rise and fall of the frontier, who owned and/or owns land in the community, how ownership was assigned, and how all these link up with current conflicts in the case study communities. How have increase of population, migration, forest clearing, cultivation of land and political changes led to the present state of the former agricultural frontier?

To address these questions, we look at the historical antecedents of land acquisition rules, practices, mode of acquisition, land use, mechanisms and transformation. I explore the extent to which these practices and mechanisms are rooted in the daily social life of people in the community in relation to changing land access. Information provided here comes from two main sources; a review of the literature on Krobo and life histories and testimonies of people, particularly my informants in the case study communities.

3.10 Dynamics of land tenure systems of Manya Krobo

A common observation today is that rights to land are gradually moving away from communal towards individual rights. This process seems to benefit mainly men, the elderly and those who exercise local power. Women, youth and migrants are usually at a disadvantage since they mostly hold land through secondary rights. The consequences are unequal access to land, tenure insecurity and conflicts, in Ghana as elsewhere, which have been attributed changing processes of land allocation in several rural communities including Manya Krobo (Amanor, 1994; 2010). Analysis of the historical unfolding of a community enables us to understand how social relations in local rural areas have evolved and are evolving. Notwithstanding this, researchers writing on local and traditional societies have often ignored old frontiers, particularly those inhabited by minority groups. Manya Krobo is no exception (Wilson, 1989; Amanor, 1994).

Historically, Manya Krobo was one of Ghana's most favoured agricultural communities. The district has played a significant leading role in the production and supply of food for many domestic markets in Ghana as well as palm oil and cocoa for export to Europe from the eighteenth to the mid-twentieth century. However, toward the middle of the 1960s the old agricultural frontier, Manya Krobo, started experiencing decline in its economic fortunes. Farm sizes declined, cocoa and palm oil lost their local and international attraction, while poverty and inequality became major characteristics of the community. Though food crop production took over as new crops from cocoa and oil palm, performance of the new crops has been discouraging over the years.

These on-going developments in Krobo give an impression that the dream of Nene Azu Mate Kola (in his speech, above) is no longer a reality. The land which Nene Azu Mate Kola and his elders claimed, and for which they fought for generations (Addo-Fening, 1999) seems to have been besieged by forces of globalization and the market, and is more and more becoming accessible to only a few people. The land-abundant community, with sufficient land to share with its neighbours is no more; land access and farming activities in Krobo are now on a 'journey to the market'. Land in Krobo and its access have been commoditized in disguise, a process that can be attributed to the individualization of land in the context of land scarcity in the area.

3.11 Changing nature of land acquisition practices

In Krobo, land (*zũgba*) is deemed a property that belongs to the ancestors and/or local (fertility) goddess (often regarded as the spouse of Mau [God]) but given to the people to farm. Land, therefore, is a trans-generational gift, entrusted to all Krobo, born and unborn. Access to land in Many Krobo was mainly through the *buza* system (see Fields, 1943 for details) of land purchase or acquisition for farming, while land cases were mainly adjudicated by chiefly courts (Wilson, 1991). The mechanism by which land in the former cocoa and oil palm frontier was allocated or transferred (the *buza* system) was not affected in any way, in spite of the myriad changes going on within the communities (Benneh, 1973:136; Fields, 1943).

The strong adherence of the people to this characteristic feature of land allocation or transfer is partly explained by their attachment to and strict observance of cultural and traditional practices. As one of my informants told me, during a discussion in his house, 'Krobos will forever be appreciative of what our ancestors have done for us. The heritage won for us cannot be traded away so easily. We cannot change what our forefathers left behind and go in for another man's. It is our heritage and we must be able to preserve it because that is what keeps us together as Krobos. Whenever we renege on this social contract with our ancestors, we offend the gods of the land who we believe protect us daily from accidents and misfortunes' (personal interview with one of the *Otseamen*, the spokesman for the chief, January, 2009). Current land 'owners' are therefore supposed to hold in trust the land under their care for the lineage or extended families. While access to such family land was opened to all members and also to other 'outsiders', in practice some people were excluded from access to land.

The structure of land ownership in the distant past was generally characterized by limited exchanges, production of food crops was primarily for consumption, and social differentiation was not as conspicuous as we see today (Amanor, 1994). It is observed that access to land rights in the study area has followed a gradual move from privately owned or purchased land to extended family or 'communal' or lineage ownership of land to the different versions or pattern of land-holding rights of today. The change of land ownership from a privately or exclusively owned to the current land-holding systems was orchestrated by

death of original owners and the various forms of land transfers observed in the study communities. The re-configuration of social relations of production and tenure arrangement, facilitated by forces of land reforms, marketization mechanisms (increased use of money for exchange) and globalization has, however, affected the rules of land allocation in the community. While some aspects of land access are gradually changing, not everything about land is changing; some characteristic features of land allocation mechanisms have resisted any change.

3.12 Changing mechanisms of land access

When the Krobo first arrived at the Krobo mountain area, their hosts, the Akans, provided them with land to settle and cultivate in order to feed themselves and their families. Access to land was therefore based on a kind of first occupant principle, but not as ownership in the sense that they met the Akans already living on the other side of the hill, who gave the land in the valley to them for cultivation and settlement. It was actually a gift to those who first arrived in the place in the fifteenth century. (Interview: Samsac, September, 2009). These lands were granted to the Krobo as gift without any payment except tokens for the ritual performance of transfer.

The amount of land acquired in this way depended on how much of the forest one could clear over a specified period (hard work) and also on social ties. Since women could not clear forest, the processes of land acquisition did not provide them with direct rights, and this is one reason why most women today have only indirect user rights. This system of land acquisition by the Krobo expired after some time and those who needed land had to use other means to acquire the land. Thus land demanders had to acquire land through purchases from the surrounding Akan neighbours who were well endowed with the resource (Addo-Fening, 1999: 81). The latter had abundant land for farming, but chose to focus on mineral mining, which was considered by them (Akans such as the Akyems and Begoros) to be more lucrative. The right to land acquired in this way was private and exclusive.

The owner had absolute right to sell or transfer rights to the land to anyone of his choice without attracting questions or sanctions from anyone or institution of authority over land in the community. Though lands were mainly acquired by the Krobo people through purchases (Hill,

1963) or legitimately from the Akans, some portions of the Krobo land were also acquired through illegitimate means (Addo-Fening, 1999). The latter method of acquisition created a lot of skirmishes and court cases in the community between the Krobo and the Akan land-selling communities (*ibid.*).

The Krobo then adopted a legitimate mechanism to acquire land. This was generally acquired through purchase by the *buzza* system. The *buzza* is a system of land purchase where a group of people (or company as they often refer to themselves), who do not necessarily need to be kin but merely friends (also Krobo), contributed money to purchase land. Typically, a member of the group who had high standing and respect within the community was appointed by group members to lead the negotiations. After the land was duly purchased and paid for, it was then shared among contributors according to each one's monetary contribution (Fields, 1943; Addo and Asiedu, 2008).

The individual who contributed to the purchase of the land then becomes the permanent owner of the land apportioned to him and based on his contribution. Thus, the actual landowner (pioneer farmer) held exclusive and absolute right to the land purchased through the *buzza* system. However, like the people of Djimini-Koffikro in southern Côte d'Ivoire (Chauveau *et al.*, 2006), upon the death of the original purchaser or pioneer farmer, the individual land rights changed from individual private property to a form of communal or extended family private property. Initially, as told by one of the *dademanste* in community C, the most senior son of the deceased inherited the land of his father and in exchange was to take care of all the other members of the family and allocate portions of land to them at his will. This system, however, broke down when most people were unable to fulfil such responsibilities in the face of increasing population.

As in any patrilineal society, from the 1960s onwards, land has jointly been inherited by all male children of the deceased. The eldest son is usually allocated a double portion. In many cases, the land is not actually or physically shared but still kept as a communal land within the extended family. In this manner, land belonging to pioneer farmers is, therefore, transferred to his heirs (sons) but with fragmentation of rights. However, in some cases, particularly where the original purchaser had no son before his death, land was transferred to the other male members of the extended family. Even in the case where the pioneer farmer gives

portions of land for his sons, when those sons die, their portion of land is automatically converted into family property.

In this way, it becomes difficult for members of the land-owning community or group to alienate portions of the acquired land to outsiders. Today, some people violate such rules with impunity, because of their positions within the family. This form of land-sharing has resulted in more fragmentations and pieces of land that are not worth farming. As result, some sons have given away their portions to their siblings. For example, a strip width of land about 420 meters in Ogome, in Manya Krobo District, which in 1963 was divided into 37 portions, in 2006 had 51 divisions (Addo and Asiedu, 2008) and is still being divided to meet the needs of an increasing household membership.

3.13 Negotiating terms of tenure within a multiplicity of land rights

This section outlines the contractual forms diverse social actors (farmers) entered in order to gain access to and use land in the communities studied. Rights to land are many and overlap, making detailed analysis complex and difficult.

Following the period of transfer of land from original owners to extended families, the inherited land has become socially embedded in the Krobo traditions and customs. In the case of Krobo land, the death of the father was supposed to bring the family together to co-manage the land, albeit with one person as a leader. Land of a deceased owner or family was inherited by sons of the original owner or other males in the extended family. Unlike the previous mechanism, where such lands became the property of the heir, here the heir only has rights of disposition over the land and therefore controls the management and administration of the landed property in conjunction with the head of the extended family – the *wenokotoma* – and other elders of the extended family.

The heir, therefore, controls the landed property in the sense that he is given priority access to the land and has the power to decide, in consultation with the family elders, how the inherited land should be allocated. When the land is rented out or sold, the group of elders decides what the income from the family land should be used for so as to benefit the whole group. In other words, decisions concerning land allocation become the shared responsibility of the heir, head and elders of the extend-

ed family or lineage. While the heir may have proprietary rights to the land, by virtue of having the right of disposition vested in him, the management of the property, such as decisions to allocate portions of the land, remains with a selected member of the family.

The elders are usually selected based on a number of conditions as given by the community or the forefathers. The selected elder should, among others be the eldest in the lineage (by age), be in a position of influence, be knowledgeable in terms of traditional and customary issues of the land; education is not a requirement. Selection is never self-made even though some people can use their position of influence to get selected to the 'family council'. Traditionally, these elders are believed to be acting as custodians of the family land, holding the land in trust for the rest of the family members. Through such arrangements the elders and heads of families or land-owning groups were put under obligation to help maintain peace and harmony among community members (Bentsi-Enchill, 1964). It also ensures that unnecessary and conflictual land transfers are not encouraged. This process was aimed at preventing land poverty and landlessness among the Krobo people.

During the nineteenth century, when serious commercial agriculture started picking up in south eastern Ghana, land acquisition by tenants and other land-users apart from the owner (pioneer owner) was mainly through clearing of forest land. Labour to clear land at the time was scarce (Amanor, 2010), since the community had not been opened out. Forest clearing disadvantaged women and youth, since they could not compete with the adult men in an activity that required physical strength. The women and youth, including migrants (non-natives), however, were provided land which they cultivated with cash crops, co-managed with adult men and/or husbands.

In addition, they were also allowed to cultivate food crops interspersed with the oil palm during the initial development or growth stages of the perennial crop. Even though this was temporary and insecure because they knew the men were going to tell them to stop cultivating the food crops in the fields, it provided land for food crop cultivation for several years. Thus, women in the communities have always had the opportunity to cultivate food crops for subsistence as well as for commercial purposes on plots allocated to them by their spouses and family members. These lands were cultivated with a minimum of supervision or decision making from the male relatives or spouses. The men only came

in to give advice when they were consulted by the women, and were sometimes so busy that they did not visit the women's farm to see things for themselves.

Since the extended family system is the pivot around which all social activities take place or are organized, the elders of the lineage have the right to supervise the allocation of land, act as arbitrators in domestic disputes, and also play key roles in family activities such as naming of children, supervising marriages, arranging funerals and ensuring the security of the family members, in addition to supervising allocation of family land. The heir to the land takes an oath to keep the land in trust for all the family members. Through the dispositional rights vested in him, he becomes the landlord over the property and gains the right to allocate land to members of the lineage as well as to people outside the family who may require land to farm in the community. This is carried out in consultation with the head and elders of the family.

This arrangement automatically makes the other members of the lineage or extended family usufruct rights holders to the land. The fact that the land acquired by the pioneer farmer has become the lineage's property partly explains the almost total closure of the land market in the area. Though the pioneer farmer had the right to sell off the land, he rather chose to transfer it to his family members upon his death. In view of this, some authors claim that customary or 'communal' land in Krobo and elsewhere in other parts of Africa are neither purchased nor sold as goods and services in the market and hence do not support agricultural commercialization (Anyane, 1962, cited in Gyasi, 1994).

Although the prospect of high profits in the cultivation of export crops attracted people to the district, most migrants (non-natives) did not have the cash or capital to purchase land and even if they had money, the Krobo did not readily sell out their lands. Migrants therefore entered into various forms of land tenancy arrangements with the Krobo landlords. The commonest form of land tenure arrangement during the beginning of intensive oil palm cultivation, around the late eighteenth and early nineteenth centuries, was share cropping (Amanor, 2001). This arrangement came in different forms, including the *abunu* (half share), *abusa* (a third) and *abuma* (a fourth). A non-native who needed land had to go through a process similar to that of a native who finds himself in the position of looking for land to farm. The terms and conditions of acquisition and use are sometimes different for natives and non-natives.

Natives could access land through intra-family mechanisms of land acquisition. A native who requires land to farm and cannot get it from his own family would have to talk to a land 'owner' or holder, and if any portion of land for lease or otherwise is available, he will be granted the permission to use the said land after terms of acquisition are settled. In most cases, lands were released based on loans, friendship and gifts, without any form of payment of money to non-natives. Natives, however, could access land almost for free. As will be discussed in subsequent chapters, the only thing people provided in exchange for land was a bottle of local alcoholic drink (*Akpeteshie*). Land mortgaging in return for cash and loan repayment is of recent origin in the community as a mechanism of land transfer, albeit on a minimal scale.

Another major problem in addition to land inequalities and insecurity is the increasing fragmentation of land that occurred in the frontier when land began to attain scarcity value. Pressure on individual lands for commercial farming is encouraging fragmentation of 'communal' or extended family lands. As successive land-sharing among some male siblings over inherited land continues through renting out of family land, land has become more fragmented. Though the system of land-sharing may enable poor people to gain access to land for farming, thus confirming the social security attribute of local lands (Kasanga and Kotey, 2001), it may at the same time reduce the possibility of relatively large-scale farming as it used to be in the booming era of oil palm and cocoa cultivation. Sharecropping is also dwindling because of the smallness of land sizes due to fragmentation and scarcity of land.

As a way around this, some siblings have decided not to share their inherited land but to keep it as a family land bank of a sort. Rather than dividing the land, they have agreed that each son can have access to any portion of the land and cultivate this as much as he can, depending on his physical as well as economic strength. This also has its own problems as those siblings who are poor and may not have enough to invest in land complain that the wealthy among the family sons are able to cultivate more lands to the detriment of their poor brothers. The poorer brothers fear that if this is allowed to go on, one day those cultivating and investing in larger portions of the family's property will use their investments in land and long stay on the land to claim ownership of the land they are currently working on, even though it may belong to the family (Berry, 2009: 1372; Okali, 1983).

There is a traditional saying in Krobo, *'yo yi we'*, literally meaning a woman does not own or rule a house or family. The woman of Krobo is only seen as one that gives birth to children for the man and therefore has no right to own land. They are also perceived as properties of men, particularly married women, and hence are said to be owned by their husbands. This partly explains why women or girl children do not own or inherit land in the community. Control of land by Krobo women is highly limited. Access to land by women is through their male relatives or husbands. This is also based on age and responsibilities of the women in the case of unmarried or divorcees. This discussion will be picked up again in chapter 4.

With the increased immigration in and around the late nineteenth and early twentieth centuries, land became a commodity of great value. Increased demand has created different patterns of marketization and individualization of land within the customary land tenure systems (Gyasi, 1994; Amanor, 2001; 2008). However, this cannot be said to have taken place in the manner perceived by the evolutionary school of thought, which suggests individualization of land rights as the population of land demanders increases. A wide range of complex land transfer contracts took place in the communities studied, and at a rather faster rate (as will be demonstrated in chapter 4). This has resulted in rapid changes in land access and tenure arrangements. These changes include sale of lands (though uncommon and in many cases disguised), rental, sharecropping, mortgage of land, and land loans (Fields, 1943; Hill, 1963; Amanor, 2010). Thus, the Krobo people themselves have not been selling land on any large scale, as compared to their Akan neighbours.

3.14 Evolution of customary land rights in Krobo

While a number of changes in tenure rights are occurring in response to both internal and external forces, some customary rights have shown superiority and tenacity over statutory rights (Platteau et al., cited in FAO, 2005). Since people employ diverse methods to gain access to various rights over land, and require institution(s) to sanction the right to the land, the question of who has the authority to sanction the right (Lund, 2001) also becomes crucial.

Several forms of rights to land are identified in the case study community. These are grouped under three main categories of land tenure

arrangements or rights, for purposes of discussion. These include rights of disposition, right of use and rights to specific resources on land but not the land itself. It is important also to note that land rights in the community are grouped into primary and secondary, with the latter being the commonest in the community. Primary right holders refers to those who acquire access to land through inheritance, purchase, gifts and/or those who own land through wars and first occupation or clearance as it was in the past. Secondary right holders are those who hold rights to land through other people or landholding groups. Secondary rights are usually obtained through arrangements such as renting, sharecropping, loans and other arrangements with family members. Such rights are generally temporal and are thought to discourage land investment.

The right of disposition of land (extended family land) has evolved from being concentrated in an individual (pioneer farmer) to a communal or extended family right. Rights to a portion of the family or collective land are assigned to different people, with management and administration rights to the total group's or family's land entrusted to an individual ('caretaker landlord'), assisted by a 'council' of elders who also belong to the extended family. While this may be accounted for as primary right because the landlord has some control over decisions regarding what the land should be used for, his right over the land does not theoretically allow him to transfer land completely to 'outsiders' (non-members of the land-owning group). Dispositional right allows the custodian of the land to transfer land through market- and non-market-based mechanisms, but only on a temporary basis. Such transfers take the form of land rent, sharecropping, mortgaging, amongst other non-permanent transfers. While the landlord or 'caretaker' is entrusted with the right of disposition, the rest of the family members possess only the use right. By tradition and custom it is the responsibility of the 'caretaker landlord' to make land available to all other members of the family or land-owning group.

While rights of disposition and inheritance have always remained the prerogative of men, rights to use and benefits from other products from land have often remained with both men and women in Krobo. Wilson (1991) asserts that in the era of wars in Krobo, women were reported to be farming the land of these spouses and relatives' land in order to feed and generate incomes for the family. Women, therefore, had the rights to lands which they farm for different cash and food crops to support the

warring spouses and relatives as well as the children at home. However, these land rights ceased when the men returned from the wars to cultivate their lands.

According to one of my informants (interview: a blind old man in community C, August 2009), the release of land to people at the beginning of the oil palm era, when the population was relatively small, could be attributed to the same reasoning. He claimed that during the period of land abundance in Krobo, people, usually the *wenokotoma* and other land-owners, feared their uncultivated lands could be seized by the insurgents, other warring factions and later the British government, who all were fighting for land in the country. He also mentioned one of the Krobo chiefs, who at one point made an open declaration that all Krobo lands which were gained through war should go back to the people and not be held by the Krobo chieftaincy or stool. He claimed that after this pronouncement from the powerful King, many people took portions of the land and also gave some to their kin groups and kith, who were also Krobos.

He emphasized, however, that what is happening today is as a result of land scarcity triggered both by population growth and the submerging of Krobo fertile lands by flooding during the construction of the hydroelectric power dam at Akosombo between 1961 and 1965. As land and other natural resources become scarce, their values rise and elite interest in the resource increases, hence the demand for property rights in order to secure individual exclusive rights over the resource, leading to the situation we find in Krobo today. The old man's assertion supports the argument that in land-abundant communities, elite interests in land are usually not high, but institutions are developed to help manage natural resources in a way that helps to spread the risk of losing the resource.

It was also observed that even though some rural people do not have access to any right to land, they were not completely removed from or denied right of access to other resources on the land. Women who did not own or have access to any land had rights to harvest food crops and fuel wood from their husbands' fields, without asking permission from their husbands (FGDs in the communities, September to December 2009).

It is important to note here that this form of right has not changed with the processes of commercialization and individualization of rights over land in the community. Even before colonization, women, particu-

larly wives of farmers, had the right to harvest food crops from their husbands' farms. They also had the right to cultivate food crops of husbands' plots, especially young cocoa farms. This allows rights in crops in the field to be transferred and not rights in access to land. Food crops harvested from a field can be sold outright but not the land itself. All these are indications that land rights evolution does not necessary follow any linear or laid-down paths. It evolves to suit the prevailing conditions of the time. The fact that people held land as individual rights in the past does not mean the same process could be followed to ensure individual rights to land today. Even when such rights are established, it might not mean that output levels of agriculture will be the same, as things keep changing. Clearly, while access to land was and is still mediated through social processes of negotiation, the evolution taking place in the land sector of Manya Krobo is not triggered by any state law but through the system itself as people adapt to new political, economic or cultural conditions.

3.15 Agricultural land use, production and trade

Most of the people (80%) in the Manya Krobo district are farmers who cultivate mainly various food crops for the domestic market and for consumption at home (ghanadisrict.com, accessed on 3/8/2011). Millet and cowpea, which used to be the traditional staples of the people and the crops cultivated by the majority of Krobo farmers, have been replaced with maize (FGDs in the communities, September to December, 2009). In addition, other food crops such as cassava, yam, plantain and other vegetables were found to be cultivated in the area. The Krobo were not traders or commercial farmers until the era of oil palm production boom in the area. Before then they cultivated small plots of land to feed their families, picked oil palm fruits from the wild and went hunting animals for home consumption.

Traditionally, farming in the area is predominantly small-scale, with a few large-scale cocoa plantations in the past. Agriculture is largely rain-fed, putting farmers at the generosity of the weather. On technology use and application, it was observed that chemical fertilizers and other agrochemicals such as weedicides and insecticides were used only on a very limited scale by food crop farmers. However, those who cultivate commercial vegetables such as pepper and tomato were found to be using

relatively more chemical fertilizers and other agro-chemicals, particularly insecticides. Since power traction is almost absent in the communities surveyed and most people employed slash and burn in land preparation, use of organic manure was common among all other categories of farmers within the communities. Some farmers in the various FGD attributed the non-use of agro-chemicals in their farms to the price of the inputs. They claim the prices are too high and they cannot afford them. The second and third reasons for the non-use of the agro-chemicals are non-availability in local markets and its bad effect on the shelf life of farm products respectively.

Since the lands around the Accra plains which most Krobo occupied were not fertile enough for the successful cultivation of food and the emerging cash crop, oil palm, the Krobo began to move further inwards towards the surrounding Akan communities in search for fertile lands. As already explained, by the turn of the 1830s large areas around the Krobo Mountain had been settled and purchased by the Krobo for oil palm cultivation (Wilson, 1991). This period coincided with the selection of Odonkor Azu, a leading *buza* farmer, to be the first Konor of Manya Krobo. His elevation to the office of Konor triggered the acquisition of more lands and expansion of the oil palm industry and trade in the region (*ibid.*).

The Krobo had almost total control of trade along the Volta Lake, where fish, salt and slaves were transported north-south via the Volta River. As a result of this, Krobo became not only a known area for the cultivation of the two most important cash crops of Ghana, but also a major market centre for food crops, fish and slaves. Trade in salt and fish were mostly handled by the women, who somehow specialized in the trading of agricultural produce, while the men spent their efforts cultivating the land. Transport of slaves from Salaga, in the northern part of Ghana, to the south was enhanced by the Volta River (Odonkor, 1971). These slave trade activities along the Volta picked up mainly due to the increasing demand for labourers in the booming cash crop industry in south-eastern Ghana. The Krobo did not treat the slaves as servants, but rather the slaves were often received by the Krobo farm families, particularly wealthy families. They then integrated them into Krobo society as farm labourers in the growing oil palm cultivation, and later on some were treated as family members.

By the turn of the nineteenth and early twentieth centuries, the Kloli had invested heavily in land purchases and therefore oil palm activities (Wilson, 1991: 286). They had managed to be recognized as a major force in palm oil exportation in Ghana. The proximity of the area to the coast and the presence of ready markets for their goods enabled them to engage in large-scale production of palm oil, which was transported down via the Volta River or sometimes head-loaded to Accra, usually by women using the 'footpath economy'. In view of this, the area became designated as the largest agricultural production centre both for export and domestic food crop production (Wilson, 1991).

In general, the Krobo people took advantage of the booming economic activities, the presence of other non-native labour (particularly northerners), and some domestic slaves who they also used as agricultural labour on their farms, to rise to a position of prominence in the agricultural and trade sectors of Ghana. According to Wolfson (1963), (cited in Amanor, 1994), being the major producers of oil palm in Ghana, the Krobo in the nineteenth century supplied about 60 per cent of palm oil, followed by Akuapim, also in south-eastern Ghana, with 20 per cent for the export trade from Ghana. However, when Malaysia and other Asian countries started supplying large quantities of oil palm to Europe and other developing countries, it became difficult for the local farmers to compete. By the time Ghana became politically independent, oil palm was no longer counted as export commodity (Daddieh, 1994); it is now, however, regaining ground as global demand for palm oil rises.

People who were captured during the wars in the region were ferried across the Volta River from the north to Krobo to serve as farm labourers. This labour importation, particularly from the north, helped to supplement the labour shortages in the area during agricultural expansion in the nineteenth and twentieth centuries. In the 1920s oil palm, which gave prominence to the Krobo community, was more or less replaced with cocoa and by 1940 cocoa was already giving way to food crop production (Hill, 1963). By the 1960s food crops, were no longer cultivated as shade plants for younger cocoa plants, but as main crops cultivated for the market. Food crops such as maize, cassava and tomatoes, among others, which were mainly cultivated for subsistence, became cash crops. However, since government support for food crop production, particularly marketing of food crops, was and has not been adequate, produc-

tion has been limited, producing and supplying food for local markets mainly.

According to the *Otseamen* of the Konor, the flooding of the area during the construction of the Akosombo dam marked the beginning of the woes and current impoverishment in the community. He claims that many people migrated to other frontier communities in the western and Brong Ahafo regions and some other parts in the hinterlands of the Eastern Region, such as Kade and Kae in the Denkyira district where cocoa and oil palm are still cultivated.

The movement of people who could not get enough land to cultivate the cash crops into the hinterlands affected the wholesale markets for oil palm and other agricultural products. According to one of the *Dademantse* of community A, the movement of people caused local bulking or wholesale markets for various products in the communities to shift (see Amanor, 1994: 34). While 'frontiers moved further into the interior, away from the wholesale markets, new bulking centres emerged forming the basis for new market' developments in new locations within Krobo' (Amanor, 1994: 63). To facilitate development and export of the new crop, cocoa, roads were constructed by government to connect important market centres to the port or big towns where clients of farmers came from to buy their goods. For example, the major market in the area moved from Manya Kpongonor, Apimsu, Bisa, Otokpe and then to Asesewa. However, the movements of major markets were not received with joy.

A *Dademantse* of community A cited the loss of jobs and accessibility to goods by people of old market communities or centres as evidence of local people's grief over the situation. Since the creation of new markets overshadowed old ones, it created problems and confusion between people of old and new market centres. It often resulted in skirmishes among the local people. The people of the old market centres often complain that if they do not have access to land to cultivate or rent out for an income, the markets should have remained with them so they could at least get some revenue through taxation of market traders (Amanor, 1989 cited in Amanor, 1994; interview: *Dademantse*, July, 2009).

Notes

¹ For an analysis distinguishing four broad phases of change in the former agricultural frontier in south-eastern Ghana, see Amanor (2010).

² This includes those who belong to the original or first settlers, who gained access to land from the Akans who were already living in those areas before the arrival of the Krobo. This implies that the number of years a migrant or non-native stays and/or marries in the communities never qualifies one of such to change his/her ethnic (nativity) status.

4

Changing Land Tenure and Social Differentiation

4.1 Introduction

This chapter analyses changes in the mechanisms and practices of land access negotiations in the context of growing land scarcity and evolution of the customary land tenure and management systems. It aims to make visible how various actors are or are not able to gain access to agricultural land in a dynamically changing environment. It explores both historical and contemporary patterns of access to land, the social relations that define power and inequality, and tenure arrangements. This chapter shows how the current transformation is creating acute access difficulties for some social groups and how these are influencing the well-being of farmers.

This chapter begins with a brief description of land types and a short analysis of social differentiation within the studied communities. This is followed by historical analyses of the nature and practices of differentiation among farmers during the cocoa boom eras (late-nineteenth to early-twentieth centuries) and post-cocoa boom (early to mid-twentieth century) (Hill, 1961; Jedwab, 2011). This historical background will show the similarities and differences in mechanisms and practices of differentiation within the communities in different periods, while pointing out the underlying causes and factors that influenced the changes. After this overview, landholdings, access to land, and ‘ownership’ distribution are discussed, as well land scarcity, landlessness, access to credit, markets and farmers’ welfare. The analysis is mostly based on distinctions of gender, seniority and ethnicity (the latter defined in terms of ‘natives’ versus ‘non-natives’).¹

The data presented in this chapter is based mainly on the farmers’ survey but also supported by qualitative information gathered from various focus group discussions (FGD), in-depth interviews (IDI) and sec-

ondary data. The evidence presented suggests that the dominant view, which claims that rural farming communities are relatively egalitarian and homogenous, and that an ‘undifferentiated peasantry’ (Hill, 1963) would exist, is no longer a reality, at least within the rural communities studied. Expanding agricultural commercialization has triggered a new system of rules and institutions of land commodification, which have produced differentiation and inequality in land access and distribution. Transformation of customary land access and tenure arrangements has created forms of social differentiation and class formation, disrupting important family and local values which hitherto ensured family and community cohesion (Amanor, 2010). Even though the extended family system or lineages still have a role to play in land allocation and use, the power to allocate land within the community has gradually been eroded through processes of land individualization. Unequal access to land also shapes the processes of social differentiation in the communities, with resource-endowed farmers accumulating land, to the detriment of the poor tiller who requires the land to be able to sustain his/her extended family. Since the basic social structure of the community is centred on land, we begin our discussions with the type and characteristics of land within the communities of study.

4.2 Land types in rural Manya Krobo

Generally, there are two main types of land in the community, which are the stool land and family land, with in addition a third type, namely individually held or privately owned land (interview with CLS officer in Odumase in November 2009). Stool land refers to land originally settled on by the ancestors of the *Krobo* when they first arrived at the mountain area centuries ago. Generally, this land is meant for settlements and not for farming and it is to be managed on behalf of and for the benefit of all *Kloli* by the traditional chiefs and elders.

The extended family (or lineage) lands have been inherited from pioneer *Krobo* cocoa farmers. This type of land is usually held in trust for the extended family concerned by a member (usually an elder or heir) of a lineage or extended family. Traditionally, access to such land is mainly through inheritance and/or usufruct rights. This land is allocated by the head of family in consultation with the council of elders of the said family. The individual land refers to land which is owned by an individual in

private property mainly through purchase and/or inheritance. The individual landed property is common with first and second generation landowners (Hill, 1961). Furthermore, such individual (or private) lands can be acquired through marriage and gifts from an original assignor or pioneer farmer.

Access to land in the area of our study communities is theoretically open to all people, particularly members of landowning groups and community members, but in practice access to land within these communities is only through negotiations based on several factors. Thus, the conditions determining who in practice can gain access to land, how much of it and from whom are socioeconomically embedded. The processes involved are rooted in the diverse and complex norms, rules and practices within *Krobo* society, and they vary from one social group or individual to another and are evolving. This makes it necessary to study land access and tenure in the community as each group employs different mechanisms (singly or in combination) to gain access to land. This becomes more crucial in an era when land scarcity is increasing in tandem with changing customary land systems, among other things, on the international and national fronts.

4.3 Socio-economic differentiation

Agrarian differentiation 'is a dynamic process involving the emergence or sharpening of differences within the rural population' (White, 1989: 25). It involves the dynamics that bring about changes in patterns, processes and mechanisms that configure and reconfigure society, particularly in rural farming communities, regarding differential access to, ownership and/or control of land and other productive resources. It involves practices and mechanisms that have the capacity to change the existing relationships between social actors (poor and non-poor, elderly/younger, men /women, native and non-native, or landholders and landless people) in their interactions with resources and performance of activity. In other words, emerging differences in access to land, both resulting from and resulting in changes in social relations and interactions within the rural farming community or farm sector, can be referred to as a key component of agrarian differentiation. It helps us to understand and explain how processes of rural transformation continue to alter access to rural

property, influence social land relations and thereby differentiate rights of people toward material, family and cultural values.

In this section, we focus on the extent to which people differ in their access to land. Since differentiation is an on-going process we explore how past and present differentiation compare in access to and control over resources. More broadly it discusses the terms of access to farm resources and what types of class formation and social relations are emerging and their impact on land investments, commercial agriculture, and ultimately poverty reduction. To do this we adapt a flexible and open approach focusing on 'a cumulative and permanent process of change in the ways in which different groups in rural society-and some outside of it-gain access to the products of their own or others' labour, based on their differential control over production resources and often ... on increasing inequalities in access to land' (White, 1989: 19-20). In this way we expect to adequately analyse and understand the nature/pattern, processes and mechanisms of differentiation in the study communities.

Analysis of differentiation focuses mainly on the internal variation of agricultural landholdings, cultivated land sizes and labour type employed in farming. It explores the ease and extent to which these farmers or farmer groups are able to gain access to farm resources, maintain or lose them. Other factors that are considered significant in this chapter include access to farm credit, other farm inputs as well as the welfare improvement of farmers. Since differentiation occurs over a period of time, an attempt is made here to examine the agrarian differentiation which has taken place and is taking place in Manya Krobo in historical perspective. For the purposes of our analysis we will look at the transformation and differentiation during and after the cocoa boom in the former agricultural frontier.

4.4 Dynamics of differentiation in a declining rural economy

The analysis here is based on information gathered from previous studies on Ghana and the study area in particular, personal interviews with several people in the Manya Krobo, including the Otseamen and the head of the CLS in Odumase-Krobo. These people provide us with the history of changes that have taken place within the communities in relation to land distribution, agricultural development and socio-economic relations.

Recent changes occurring in patterns of access to land, production practices, land relations, labour arrangements, as well as agricultural commercialization, are believed to have emerged since the introduction of structural adjustment programmes (SAP) in the 1980s and their associated institutional reforms that were aimed at improving allocative efficiency, including of agricultural land.

Historically, agrarian differentiation of the nineteenth and twentieth centuries in Manya Krobo was principally prompted by the 'hunger for land' to cultivate oil palm and cocoa, which was booming in the former agriculture frontier. Although the commercialization of agriculture and the expansion of the market economy have given impetus to agrarian differentiation, sales of land in the area pre-date even the establishment of the colonial administration. Sales of land in that period were conducted in informal markets and between different ethnic groups. Social differentiation in the agrarian community has mainly been based on differential access to land, land management institutions (courts, norms, and rules) and the type of labour used on farms.

With this background, we will now look at the dynamics taking place in Manya Krobo communities with a particular focus on patterns of differentiation in two different epochs, marked by the rise and fall of the major perennial tree cash crop (cocoa) in the study area.

4.5 Social differentiation in historical perspective

4.5.1 Social differentiation in the era of cocoa boom (1890s-1950s)

Widespread cultivation of oil palm, a perennial crop which before the arrival of the colonizers grew in the wild, began in earnest in the southeastern part of Ghana. Since land was by then no longer freely available, the Krobo farmers decided to employ various forms of legal and illegal land acquisition strategies to acquire land for the cultivation of oil palm. By the end of the nineteenth century, the Krobo area was already attracting people from various places, including Europe, neighbouring West African countries and Northern Ghana, to acquire and cultivate land. With the ready market for the crop, these landowners became wealthy and purchased more land from the surrounding Akan communities with the money generated from oil palm cultivation. For Krobo farmers the

hunger for more land and the need to leave an inheritance of land for their children was a major preoccupation (Fields, 1943).

According to Amanor (1999), 'several studies on cocoa farming reveal a marked differentiation in holdings' in Ghana. Wealthy farmers were able to acquire several plots of land in different locations within their communities. Land acquired through the *buzza* system, for example, was never divided equally. On the contrary, land so purchased by a group of farmers was divided according to each person's contribution towards the purchase of the land (Wilson, 1989; Hill, 1963). This resulted in differentiated land ownership, which in a way mirrored the type of farming practised in the community. Thus, at the time of early land purchases, differences among farmers were based on differential access to land, which also depended on the wealth of the individual. Those who made substantial wealth in the cultivation of oil palm and cocoa were able to acquire large acreages of land in the south-eastern forested area to expand their farms. Although access to financial resources was significant, access to labour and negotiated customary land were more important to farmers, particularly tenant farmers.

Establishing a cocoa farm is laborious work, as it requires the extensive use of labour to clear the land, and later for planting, weeding, spraying, harvesting, drying and marketing of beans among others. Labour of all sorts, ranging from slaves, migrants (non-native), family, land-deficient people, hired labour and sharecroppers among others were employed. People from the three Northern regions of Ghana and other nearby countries (Amanor and Diderutuah, 2001) joined the farm labour force on the cocoa farms, while the Europeans dominated the trade/marketing sector of the newly established industry. The different tasks involved in the cultivation of the crop necessitated the employment of different categories of labour. Some was actually wage labour, but a majority was (extended) family labour. In her ground-breaking paper, Hill (1963) reported the emergence of a small class of 'large farmer-creditors' who sometimes helped to finance the 'not very rich', young farmers and new entrant farmers. Apart from providing credit to cocoa farmers, they also took over lands or farms belonging to those who defaulted on credit repayment.

4.5.2 Farmer types identified during the cocoa boom

Interviews in our fieldwork with local people revealed that there were principally three different groups of farmers during the period under discussion. These included those with large acreages of farm plots scattered all over the south eastern cocoa zone. The larger holdings were acquired through purchase, mostly from the surrounding Akan communities. These were followed by those who worked on family lands, and finally those who worked on smaller plots allocated to them by relatives, friends and others through special arrangements between the parties involved.

Wealth in these communities was measured by size of holdings, one's social position and connection with land mediation institutions such as chieftaincy or local power structures. It was observed that those with large acreages of landholding were not involved in the actual cultivation of land. They gave out lands under their control or ownership to the land deficient and other land demanders to cultivate through various forms of arrangement. To them land was a source of rent and power and could also be used to rally people around them or recruit more labour (Berry, 1993). The land also provided a reputation to the 'land giver' and put him in a social class or position. The latter used his landed resources or property to control the 'land seeker' as if he was one of the dependants in his household. The recruitment of people to work on their farms as tenants was not only an idea based on increasing family size or dependants but also to rally behind them people who could be used to protect them against intruders. For these landowners, the more people one could mobilize around themselves, the greater their political power (Berry, 1989).

Labour provided for farming was the sole responsibility of the tenant farmer, who took the responsibility to bring relatives to stay with him in order to help him with farm work. The landowners in this category sometimes arranged with their caretakers to assist in running errands for them. As pointed out by Berry (1989; 1993), this helps to maintain access to land. They run these errands gladly since it was often rewarded with a form of payment, mostly land or something else. The relationship here could represent a classic example of employers using their power in land rental markets to control assertive labour.

Proceeds from the farm accrued to the landowner, who allowed the tenant farmer to take care of a farm, entailing the fruits from other food

crops interspersed with young perennial crops such as cocoa. Since most of these tenant farmers worked for an agreed period, they were often rewarded with one third, one half, or two thirds of the output of the land cultivated. The amount of produce one received depended on how much contribution the tenant farmer could make to the farm owner. Most of these wealthy people were part of the local elite and chiefs who had other sources of incomes. Some invested in other businesses in big towns, in commercial vehicles and stores. Those who purchased vehicles, (often referred to as 'car owners' in the villages) invested in the then growing transport business.

The second group of farmers refers to those who cultivated family land because they did not have the money to purchase or rent land for cultivation. Such farms are 'owned' not by the extended family but by the nuclear family. Labour provided for farm activities came mainly from the farmer's family, including his own children and relatives staying with him. Thus, the capacity of labour within the household was one factor influencing the size of land that could be allocated. As a result, farmers who needed more land brought their relatives' children to the farm. These are people who they (the farmers) could exploit without payment except feeding them. Such recruitment practices enabled several farmers to acquire larger acreages of lands for cultivation. It was also a way to help the younger ones to gain access to their 'own' allocated land as a way to reduce poverty. Access to such land was strictly based on local customs, which did not proceed through contracts. Proceeds from the farms were usually controlled by the head of family.

The third group of farmers in our categorization had smaller land plots to cultivate in order to feed their families. They used family labour to cultivate their lands and also hired out their own labour to other farms. This category of farmers was in many cases dependent on those who gave them land to cultivate. This group helped on the farms of their 'land givers' as well as sometimes in their homes, fetching fuel wood, cooking and washing clothes (Adomako-Sarfoh, 1974). Unlike the first group of farmers, the second and third groups did not buy or rent in land, as they only had use rights to 'their' land, while the first group of farmers had dispositional rights and did not require consultation with others in taking any decision about what to do with their land. This category of farmers largely farmed on the boundaries of family land, in most cases as protective mechanisms to ward of encroachers. They mainly fo-

cused on the support they derived from the 'land givers' rather than the exploitation of their labour. It seems that this dependency relation or patronage never resulted in a revolt or resistance to their 'landlords'.

The foregoing shows how different mechanisms were employed by farmers to gain access to land for farming in the period until the 1950s. Generally amongst the Krobo access to land was through the use of authorities, community leaders or elders, social relations of friendship, marriage, patronage, relatives, community membership, and based on social identities. It also shows that since agriculture in Ghana is largely using manual labour, control (and supply) of labour played a significant role in differentiating farmers in the communities. Although rich farmers did not consciously display their wealth and were ready to 'share' their land with others, the display of wealth during funerals and other festive occasions was obvious. The number of wives and the type of clothes one usually wore at such public functions were clear indications of how people differentiated themselves from others, and how power relations were symbolized (interviews with Oblitey, September, 2009).

4.5.3 Labour mobilization and type

Even in the period before the inception of rigorous cocoa production, land was the main resource that attracted labour to the community (Amanor, 2010). The labour capacity and type used on one's farm varied from farmer to farmer within the communities. The most common forms of farm labour used at the time included family, migrants (non-native) and slaves as well labour exchange. Until the early twentieth century, the use of labour on farms did not involve monetary remuneration. The surrounding Akan communities had much uncultivated land, and they remunerated slaves and non-natives for their contributions to the landowners' wealth. This usually came in the form of land donations within families, special sharecropping and tenancy arrangements. However, the Krobo were not ready to part with any portions of their lands to 'strangers'.

The sons of Krobo landowners were sometimes proffered free lands to cultivate. Others were provided with specially arranged sharecropping or tenancy deals. The number of dependants in a family or household determined the labour capacity of a household, which influenced how much land should be allocated to a household. The need for the labour

of family and dependants to work the land may have contributed to the 'prolific nature of the Krobo farmers' (Fields, 1943: 59). These forms of labour use have changed, particularly since the 1960s and 1970s when land scarcity became a reality. This marked a period when native male youth's access to land began to decline. They no longer had assured access to land as a reward after working for years on the farms of (mostly) their fathers (Amanor, 2001). Some male youth hired themselves out as farm labourers to other farms in order to make money. Natives had to compete with non-native labourers within the community for farm work. This is something that did not happen in the past. Labour acquisition practices changed from dependence on social relations to economic rewards, and hence wage labour was widely introduced.

4.6 Social differentiation in the post cocoa boom era (1950s-1980s)

Differentiation among farmers was based on wealth, mainly gained from oil palm cultivation, and hence the ability to acquire more forested or uncultivated land from the neighbouring Akans. The few people who had money from oil palm production were able to purchase land, while a considerable number of people held small plots of farm land based on diverse forms of land arrangements but not through purchasing land. Differentiation among farmers during the post cocoa boom period followed a different path. Since land was not available to be purchased any longer, differences amongst farmers were basically premised on how much land one inherited.

Over time, the above conditions in Manya Krobo community have transformed into new patterns of land differentiation, access to land management institutions and other farm resources. Women lost their oil palm fields and moved into the cultivation of food crops in and around their homes. Some food crop fields available to women in the past were lost to men who wanted a plot of land to cultivate. The main driver of such changes in Ghana was the introduction of the Economic Recovery Programme (ERP), which was part of the Structural Adjustment Programmes (SAP) of the 1980s. This has brought drastic changes in agrarian relations and introduced more competition amongst land-users due to increasing appreciation of land values.

The economic liberalization policies and programmes under SAP, which continued in the 1990s, have also created increased commoditization of land and other natural resources. This period actually marked the beginning of monetized processes of land acquisition among the Krobo, and in relation to other ethnic groups. It opened the way for further tendencies of social exclusion and differentiated land appropriation in rural farming communities (Amanor, 2010). This new period of marketization of customary land acquisition processes has reshaped and transformed land access mechanisms and control (Gyasi, 1994; Amanor, 2010; Berry, 2010), weakening traditional forms of 'negotiability' in access to customary land.

The combination of increased commercialization of smallholder agriculture resulting from processes of liberalization and market development created winners and losers. In terms of access to land for farming, which is of fundamental significance to this chapter's analysis, people have greater difficulties gaining access to the resources on which their survival depends than in the boom period described above. Those who often gain relatively easy access to land include chiefs, businessmen, local and political elites. These people are able to define and redefine and/or reinterpret land relations and rights within the community, taking advantage of the new situation. By virtue of this position, they are able to control access to land and determine who should have access to land and which portion of land.

In the cocoa boom period, those who were able to purchase land from the Akans were mostly rich oil palm producers who decided to reinvest their profits in agriculture. A closer look at the processes of differentiation in the study area suggests that rural capitalism resulting from capital penetration from below, as occurred in the south-eastern cocoa zone of Ghana (Hill, 1963), is now past history. Today, there is little land available for purchase. There is no more cultivation of oil palm, which brought so much fame and wealth to (some) farmers. Many farmers complain of lack of money even to rent land for farming. Generally, farmers in this community may be characterized as smallholder commercial farmers, who do not have the opportunity to buy land to expand production as it was in the cocoa boom era.

Landholdings are becoming smaller due to divisions among siblings inheriting land. In general, the community of study is now characterized by increasing land scarcity, causing land values to appreciate. Although

there is much land fragmentation (in part through the splitting of land amongst siblings through inheritance), there are still farmers who hold reasonably large acreages of land, enough to feed themselves and their families and produce surpluses that are marketed. Since people are no longer purchasing forested land as in the past, this group of farmers (those with inherited rights) control land that they did not purchase themselves.

Unlike the previous larger landholders of the boom period, the current holders of larger land do not travel to supervise their farms in other places. These new large landholders have their holdings consolidated in one community. They also cultivate their own plots while renting out portions to others. The plots their fathers had in other places are controlled by other male siblings, since the local inheritance rights require that all land belonging to fathers be shared among sons no matter where they are located.

In addition to the inherited land they control, some of these farmers also rent in land. Nonetheless, unlike the other farmers, those found in this category do not offer or exchange their labour on other farms. They are part of the local elites, political power holders in the community and include a few absentee farmers who have their business located in the cities. The few older people who belong to this group have lands they farm themselves but also reserve some portions of their land to be rented out. Generally, a mix of hired and family labour is used but more of the latter are recruited.

The disappearance of the larger landholders of the past would suggest a declining process of differentiation at some point in the development of the communities. As pointed out earlier, the decline in cocoa and oil palm production in the Manya Krobo area and other parts of the Eastern region is attributed to a number of factors. According to Hill (1961), the cocoa industry was established by migrant farmers (who she calls 'rural capitalists') and not under the tutelage of the colonial government. She suggests that an analysis of investments in land and cocoa should be rooted in pre-existing local institutions and not opportunities created by colonial administration. This is not to say that the colonial administration did not play any role in the development of the crop. Rather it is asserted that the government then used policies to facilitate development of markets for the crops but the initiative to start and improve on production was taken by the farmers. The colonial government according to Hill

(1961) created the marketing board and a research institute to oversee the development of the crop (see Hill, 1963; Austin, 1978; Amanor, 2010).

Other factors that brought about the decline in farm size in the study communities include the outbreak of the swollen shoot disease of cocoa, a plague which hit most farms in the area during the 1920s (Hilton, 1966). The 'swollen shoot' disease resulted in the destruction of millions of cocoa trees without compensation, reducing the population of cocoa-bearing plants and thus marking the beginning of poverty in the area.

Finally, the flooding of a large part (over 80,000 hectares) of the cocoa-growing areas during the construction of the Akosombo Dam on the Volta Lake between 1959 and 1965 affected farm production negatively. The floods destroyed most crops and caused a depletion of top soil nutrients as well as degrading rich cocoa lands. Thus, many lands in the area became waterlogged and infertile and no longer good for the cultivation of cocoa. Some people began to move to the hinterland in search of new fertile land to cultivate the crop. Those who remained in farming in the communities have planted mainly food crops even till today.

The reforms in the agricultural sector, inheritance practices of land divisions, migration, and the breakdown of family values contributed in the change from social relations-based land access to contractual negotiation to access land and labour resources (Ponte, 2000, Amanor, 2010). Changes in the 'almost free' access to land, except for payment of drink moneys and tokens started in the early twentieth century, where labour supply is said to have outpaced the supply of land (Amanor, 2010). Generally, access to land for the male youth and for women began to be restrained especially during the mid to late twentieth century when the booming cash crop (cocoa and oil palm) experienced some challenges and landowners needed to strengthen their rights to land. The process of transforming land and labour acquisition from social negotiations to economic contracts actually reduced the possibilities for women to access land (Moore, 2000: 50). Most women today have some difficulties in gaining access to land.

What is presently emerging within the study communities is the increasing use of land rentals. This type of farmholding is found among both natives and non-natives, who are generally younger. They may employ hired labour but mostly rely on their own (family) labour in the per-

formance of farm activities. The near absence of alternative employment and lack of capital to start or learn a trade has confined some members of this group to work as farmers. Others within this category of farmers attempt seasonal migration to the cities and towns. To them, the goal in life is to save money or travel to the city to make money and one day travel outside the country. Those who do not often travel take up agricultural wage employment during the dry season, and at the beginning of the rainy season help prepare other people's land. The proceeds or income gained from these jobs are ploughed back into their farms.

Generally, family farm labour is becoming replaced by hired labour. Unlike in the past (referring to the cocoa boom and in land-abundant eras), young rural people of today, especially males, are no longer willing to provide labour on their parents' farms without payment of a wage. They need to make money in order to acquire their own land and purchase other inputs. Many households were reluctant to use hired labour, because young men were considered not to be doing the farm work well. Therefore sometimes, instead of spending money on labour, they would save and re-invest in farm management and husbandry practices.

As an old man in community B put it 'instead of giving the money to these boys to work on my farm, I will keep it or buy chemicals to spray my crops anytime they are attacked by diseases and weeds'. He went on, 'these boys do not do any meaningful work on the farm but they want your money' (interview with Osabu, August, 2009). There are other farmers in these communities who use hired labour. Responses from six different focus group discussions indicated that about two thirds of labour used on farms today is hired, while the rest is family labour. Thus, paid labour is increasingly replacing unpaid labour obtained through family or social relations. Exchange groups and family labour which were critical to farming in the past seem to be phasing out in the community.

Like other countries in Africa, the introduction of SAP in Ghana has contributed to the above changes in labour recruitment. Referring to the situation in Tanzania, Ponte (2000) maintains that economic reforms brought about increased charges in service provision and access to some facilities (school fees, transport costs, agricultural inputs, user fees, electricity tariffs, among others). This required the need for more and regularly available cash in order to cater for these necessities. Farm households, therefore, began to do other things than only farming to be able to make the kind of money they needed. This has impacts on organiza-

tion of family labour since that same labour is also seeking monetary income elsewhere.

Sons are denied access to land, while the parents are also denied access to the son's 'free' labour. The result is an increase in the use of hired labour as opposed to the traditional forms of family or exchange labour on the farms. In the communities studied, hired labour is paid in cash as well as supplemented with food. Most hired labour is from outside the community, but a few are recruited from within. In most cases, men are more frequently employed, with the men usually concentrated in the land preparation and weeding stages, while women attend to harvesting and portage of the produce (such as to the market).

Various authors have commented on the effects of wage labour on social relations and family values in Ghana. The economic reforms, particularly market liberalization of the early 1980s, 'provided conditions for unleashing the forces of rural commercialization' (Ponte, 2000: 1020) and thereby increased the quest for more and 'quick' cash to meet other socio-economic obligations. Family farms, therefore, began to disintegrate or evolved into individual farms operated separately by husbands, wives and children as independent entities, or sometimes a combination of the three (Woodhouse, 2003). This system of movement from 'traditional' social negotiation to 'contractual' social negotiation (Ponte, 2000) may affect social relations in bi-directional ways. On the one hand, in a poverty-stricken community such as Manya Krobo (GSS, 2005), government support is not forthcoming. Mechanized farming is almost absent and therefore agriculture continues to depend on manual labour from tillage to harvesting. Therefore, poor households will suffer since they cannot afford to use hired farm labour.

Using social negotiation to mobilize farm labour by poor farmers allows them to clear their farms of weed or harvest crops on time. However, as pointed out by Ponte (2000), the system of contracting hired (or paid) labour may lead to the decrease of economic interdependency within traditional systems. While individual farm operations may improve economic efficiency, other phenomena such as loyalty, social dependency, and the maintenance of family values and respect in African societies are likely to be compromised (see Amanor, 2010). Some young farmers who were interviewed said that since they started working on their own farms, they never sent farm produce or money to their parents who also live in the same community. Although they claim they some-

times feel guilty for not taking care of their parents as they should have been doing, they also feel not obliged to do that since their parents also did not bother to provide them with land.

All these changes in land and labour relations in the communities have contributed to the kind of differentiation we see today. In order to explore some dimensions of this differentiation in greater detail, later sections of this chapter provide information from the survey.

4.7 Characteristics of the sample population

This section provides a description of the sample in the survey to show the categories of farmer this study analysed. This is then followed by a presentation of the nature of current differentiation in the study communities.

The analysis is based on a sample of 357 farmers interviewed in 2009, who cultivated a total of 1,168 acres (about 486.7 ha) of land in three rural farming communities in the Manya Krobo district. A total land area of 2,054 acres (855.8 ha) was included in the study as land holdings. The data shows the distribution of gender, nativity (or ethnicity) and generational (age) differences of the respondents selected for the study. Of the 357 farmers interviewed, female farmers constituted 35 (9.8%) and male farmers 322 (90.2%). The under-representation of women in this study is not deliberate or due to sampling bias *per se*. This is largely reflecting the relative absence of independent women farmers in the community.

In spite of changes occurring in the communities, concerning access and use of family land, husbands and adult men still have control over their wives, daughters and younger children. Most women, the female youth and younger children were found to be helping husbands or other male relatives on their farms. In exchange, their relatives took care of all their daily needs. This explains the absence of native young women (female youth) in the survey. The absence of non-native females in the survey is also attributed to issues of ethnicity and gender, as only young non-native males were found to have migrated towards the study communities.

The male farmers in the sample can be subdivided into 56.0 per cent native adult men (aged 35-60), 28.0 per cent native male youth (aged 18-35) and 6.2 per cent non-native men, who were all adults (Table 4.2). In the focus group discussions (FGD) held in the communities and in per-

sonal interviews conducted, it was confirmed that women farmers cultivating and managing land independently were few in the community. This was attributed to the strong attachment in the community to the tenets of the traditional patriarchal system, which often limits the land access to males. This gender inequality has influenced the decision to purposively select women farmers into the sample.

Table 4.1
Education level of respondents

| Education | Frequency | % | Cultivated land (acres) | % | Average cultivated land (acres) |
|-----------------------------|-----------|-------|-------------------------|-------|---------------------------------|
| None | 75 | 21.0 | 251 | 21.5 | 3.35 |
| Primary | 264 | 73.9 | 863 | 73.9 | 3.27 |
| Secondary | 15 | 4.2 | 46 | 3.1 | 3.07 |
| Tertiary (training college) | 3 | 0.8 | 8 | 0.7 | 2.67 |
| Total | 357 | 100.0 | 1,168 | 100.0 | 3.27 |

Source: Author's own survey, 2009.

In terms of educational level, the data in Table 4.1 shows that 21.0 per cent of the farmers interviewed never attended any formal school. From those who went to school, 73.9 per cent received only some years of primary education, 4.2 per cent had secondary education and tertiary education certificates, while some reported to have training college level (0.8 per cent). This poor level of education among the sample was confirmed during FGDs. A considerable number of those present, including many who had at least some years of primary education, could neither read nor write. They did not keep any farm records, and farm planning and management were only based on experiences, memories and observed patterns of weather change. The poor level of literacy and numeracy capacity was attributed to their inability to complete school, which in turn was related to poverty levels of their families.

The sample data here reveals a rather negative relationship between educational attainment and landholding. Table 4.1 indicates that although average total land size cultivated showed variations among the educational statuses of the sample, these variations were relatively close to the

mean. This suggests that other factors are likely to better explain the pattern observed here, such as the indirect influence of age, since most land was concentrated in the hands of the adult native men (Table 4.2), while most of the small number of farmers with secondary and tertiary education fall in the younger age groups.

Table 4.2
Age of respondents in farmers' survey

| Age (years) | Frequency | % | Cultivated land (acres) | % Land of cultivated | Average cultivated land (acres) |
|-------------|-----------|-------|-------------------------|----------------------|---------------------------------|
| 18-35 | 117 | 32.8 | 364 | 31.2 | 3.11 |
| 35-60 | 210 | 58.8 | 699 | 59.9 | 3.32 |
| >60 | 30 | 8.4 | 105 | 9.0 | 3.50 |
| Total | 357 | 100.0 | 1,168 | 100.0 | 3.27 |

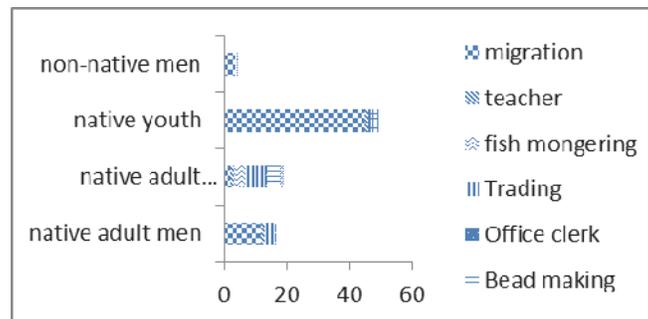
Source: Author's own survey, 2009.

In Table 4.2 the sample farmers are divided into three age groups: youth (18-35 years; 32.8 per cent), middle aged (35-60 years; 58.8 per cent) and elderly or pensioners (above 60 years; 8.4 per cent). The youth has on average the smallest area of cultivated land, namely 3.11 acres. The middle-aged group showed an average of 3.32 acres and the above 60 group 3.50 acres. Older farmers (mostly men) have more land possibly because they started acquiring it earlier. This outcome shows that inequality of cultivated land distribution is not only related to social identities of gender and nativity, but also to age.

Those with only primary education stayed more in the community, and stayed longer with their parents than those who attended secondary and tertiary schools. This latter group are more likely to move away from their parents and the community, since they attended school outside the community. The latter have fewer local social networks, which are crucial for gaining access to customary land. These observations are supported by the 'no school, more land' principle which was adhered to in the past. When land was still abundant elder sons were not encouraged to go to school. Education was not considered important for families with sufficient land, hence older sons were denied the opportunity of education so

they could stay around to get to know their father’s land, to learn the husbandry practices, and in return be apportioned more land when their father died.

Figure 4.1
Off-farm employments of respondents



Source: Author’s own survey, 2009

Figure 4.1 indicates that there are not many alternative livelihood sources for community members in the non-farm sector. From the 357 interviewed farmers, only 92 claimed to have another occupation outside farming in the community. Migration topped the list, with 65 people indicating that they migrate every dry season and return during the farming season. Of these, 45 of the youth were found participating in migration. The migrants mostly work as truck pushers, street hawkers and shoe shine boys as well as drivers’ mates in public transport (commonly known as *trotro* in Ghana). Others get involved in the growing of vegetables on vacant private and corporate bodies’ land (urban farming), petty trading and as apprentices in various artisanal workshops.

Figure 4.1 demonstrates a paucity of off-farm income generation activities among the sample population, particularly among the males. This implies that the welfare and the income-generation activities of farmers mainly hinge on land and farming. Access to land is therefore critical in determining their ability and opportunity to escape from poverty. However, over-exploitation and insufficient fallowing of land can be of great cost to these communities, leading to land degradation. This situation

makes the issue of land scarcity, in view of a growing population, even problematic. The native adult women seem to participate in all existing income-generating activities, outside farming. The predominance of women in these alternative livelihoods suggests that they may not be very lucrative, as men usually gravitate towards more lucrative and profitable income-generation activities, and often have more access to these than women.

4.8 Land distribution patterns

Table 4.3 presents the distribution range of landholding sizes among the sample population. 'Land holding' here refers to the total amount of land considered in this study and controlled or managed independently by individual farmers. It includes all the lands under ones' control, including rented in but excluding rented out. Most landholdings in the case study communities are characterized by multiple plots with different sizes which might have been acquired under different terms and conditions. The possession of different plots is as a result of disguised land sale and fragmentation through successive sub-division of landholdings among sons.

Table 4.3
Sample farmers and sizes of their landholding (acres)

| Size of holding (acres) | Frequency | % | Land holding (acres) | % of holdings | Average holding |
|-------------------------|-----------|-------|----------------------|---------------|-----------------|
| <5 | 158 | 44.3 | 493 | 24.0 | 3.12 |
| 5-10 | 186 | 52.1 | 1,395 | 67.9 | 7.50 |
| 10-15 | 11 | 3.1 | 133 | 6.5 | 12.09 |
| >15 | 2 | 0.6 | 33 | 1.6 | 16.50 |
| Total | 357 | 100.0 | 2,054 | 100.0 | 5.75 |

Source: Author's own survey, 2009.

In Ghana, the commonly held view is that agriculture is predominantly small scale, with about 90 per cent of farmers cultivating farm holdings less than 2 ha in size (MOFA, 2006). This generalization obscures farm size inequalities among farmers. Our study indicates that total land-

holding size ranges from less than 5 acres to above 15, with a majority (186) of the respondents clustered in the 5–10 acre category (Table 4.3). The data revealed that the smallest landholding among the sample is about 1 acre, and the largest is 18 acres.

The data indicate that 44.3 per cent held less than 5 acres of land (less than 2 hectares), 52.1 per cent held land sizes within the 5–10 acres category and only 0.6 per cent of the total sample held land above 15 acres. The moderately unequal pattern of holding in the communities is reflected in the distribution of land in the sample. This is evidenced in the analysis of the average size of holdings, which shows that the majority of farmers are clustered in the smaller farm size groups, while larger holdings are controlled by fewer people. This translates into the fact that the top 3.7 per cent of farmers hold 8.1 per cent of all land, while the bottom 44.3 per cent hold 24.0 per cent of total landholdings amongst the sample.

Table 4.4
Distribution of landholding by social groups (acres)

| Gender | Social category | Frequency | % of landholding | Landholding | Average holding |
|--------|-----------------|-----------|------------------|-------------|-----------------|
| Male | Native adult | 200 | 56.0 | 1,456 | 7.80 |
| | Native youth | 100 | 28.0 | 427 | 4.27 |
| | Non-native men | 22 | 6.2 | 57 | 2.59 |
| Female | Native women | 35 | 9.8 | 118 | 3.37 |
| Total | | 357 | 100.0 | 2,054 | 5.75 |

Source: Author's own survey, 2009

Table 4.4 shows the distribution of landholdings and averages by social groups. The sample data shows significant differences in average land size between these social groups, with more land held by native adult men than any other social classes. It indicates that 56.0 per cent of the total landholding is held by native adult men, followed by the native youth with total landholding of about 20.8 per cent of total land surveyed. This pattern is repeated for the average total landholding, with the native adult men holding land sizes substantially larger (7.8 acres) than the average for the whole sample (5.75 acres). Since men (adult or youth

males) are supposed to have better access to land in a patriarchal community, it was expected that non-native adult men would have held larger proportions of land than women but the data set shows the opposite. Native adult women in the sample are observed to have a relatively larger landholding (3.4 acres) than the non-native adult men (2.6 acres). This could suggest a priority given to natives as opposed to non-natives when it comes to land distribution and access, irrespective of gender. To substantiate this requires further investigation though.

Although the absence of native female youth and non-native women in the sample population may limit a full understanding of the disparity in access to land within the community, the data presented give a reasonable impression with regards to land allocation in the community. In addition, the results from this one-time survey on farm size distribution shows that the younger generations as opposed to older generations of native people have relatively smaller holdings and therefore rent more land (see Table 4.8). The older generations have relatively more land, which they might have accumulated over the years.

Table 4.5
Distribution of cultivated land by farmers in sample

| Gender | Social category | Frequency | Cultivated land | % Cultivated land | Average cultivated land |
|--------|-----------------|-----------|-----------------|-------------------|-------------------------|
| Male | Native adult | 200 | 721 | 61.7 | 3.65 |
| | Native youth | 100 | 329 | 28.2 | 3.29 |
| | Non-native men | 22 | 54 | 4.6 | 2.45 |
| Female | Native women | 35 | 64 | 5.5 | 2.05 |
| Total | | 357 | 100.0 | 2,054 | 3.28 |

Source: Author's own survey, 2009

Table 4.5 shows total and average area of cultivated land. 'Cultivated land' here refers to the land under cultivation (or operated farmland) by an individual. This includes rented in as well as 'own' or inherited land under cultivation. The results indicate that again more than half of the land cultivated (61.7%) in the sample was held by native adult men as opposed to the native youth, who had 28.2 per cent of the total cultivat-

ed land. While a large proportion of land (95.4%) is cultivated by natives, only 5.5 per cent of total land surveyed was cultivated by native adult women, who at present are only able to gain access to land through their male relatives. Generally, it is observed that men cultivated more land than women on average acreages cultivated per person. Native adult men held on average 3.65 acres, native youth 3.29 acres, non-native men 2.45 acres, and native women 2.45 acres of cultivated land, which are significant (although not very large) differences.

Table 4.6
Distribution of cultivated land (acres)

| Land size | Frequency | % | Cultivated land | % Cultivated land | Average cultivated land |
|-----------|-----------|-------|-----------------|-------------------|-------------------------|
| <3 | 122 | 34.2 | 232 | 19.7 | 1.9 |
| 3-5 | 210 | 58.8 | 787 | 67.4 | 3.8 |
| >5 | 25 | 7.0 | 149 | 12.8 | 6.0 |
| Total | 357 | 100.0 | 1,168 | 100.0 | 3.4 |

Source: Author's own survey, 2009.

Table 4.6 indicates that 87.1% of land cultivated was held by 93.0 per cent of farmers in the two categories under 5 acres (or 2 ha). All the farmers in the sample fall within the 'smallholder farmer' category. Table 4.6 shows that about a third (34.2%) cultivated less than 3 acres of cultivated land, while only 7.0 per cent cultivated more than 5 acres. The largest single group of farmers, however, was found within the 3-5 acres range, holding a total of 67.4% of the total cultivated land. The results from our three research communities thus seem to mirror the more general pattern observed in Ghana, that a majority of farmers in Ghana basically are smallholders (Chamberlin, 2008).

In rural Many Krobo, access to land is generally through kinship, marriage, social network and community membership. As will be further explained in chapter 6, most farmers cultivate several plots of land and each of these may have its own terms of acquisition, control and use. The rising land scarcity and inequality in land access demonstrated among the sample, have contributed to worsening the situation of tenure in the communities. This multiplex of terms of arrangements for land

access makes the situation analytically complex. This raises questions about the actual existence of the flexibility of local land arrangements in modern times as opposed to the cocoa boom era (explained in chapter 4). The study therefore investigated whether opportunities still exist for more flexible/negotiable access to land within the communities.

Table 4.7 presents the most common modes of access to land employed by the respondents in the survey. The significance of the mode of access lies in the explanation of how unequal distribution of land arises (see Boni, 2005).

Table 4.7
Most common modes of access to land among sample farmers

| Mode of access | Frequency | % of total sample | Area under cultivation | % Area under cultivation | Average area cultivated |
|----------------|-----------|-------------------|------------------------|--------------------------|-------------------------|
| Inheritance | 184 | 51.8 | 668 | 57.2 | 3.7 |
| Share cropping | 20 | 5.6 | 53 | 4.5 | 2.7 |
| Rental | 135 | 37.8 | 391 | 33.5 | 2.9 |
| Gifts | 7 | 2.0 | 24 | 2.0 | 3.4 |
| Purchase | 2 | 0.6 | 8 | 0.7 | 4.0 |
| Loans | 3 | 0.6 | 6 | 0.5 | 3.0 |
| Others | 6 | 1.7 | 18 | 1.5 | 3.0 |
| Total | 357 | 100.0 | 1,168 | 100.0 | 3.3 |

Source: Author's own survey, 2009.

Table 4.7 shows that different arrangements, including monetary and non-monetary mechanisms, are frequently used to acquire land for farming in the community. In other words, the former requires that the 'land seeker' gives the 'land giver' an amount of money or in lieu of that a certain proportion of harvest or labour in return for the use of land. Without resorting to any strict legal mechanisms of land access or any fixed way of gaining access to land, the sample data show the extent to which flexibility of access to customary land exists. It shows that farmers are able to employ diverse mechanisms, including inheritance, rent, sharecropping, gifts or donations to gain access to land for farming in

the communities of study. This flexibility allows farmers who want to expand their cultivated land to do so, if that land is available and they have access to other factors of production.

In contrast to Gyasi (1994) and Amanor (2001), who claim that a majority of farmers in the south-eastern corner of Ghana prefer sharecropping over land rent, the study indicates a different pattern of land tenure. The position of the above authors was earlier suggested in a study conducted in Ghana by Migot-Adholla *et al.* (1991). The increasing preference of farmers for rental arrangements could be attributed to the changes in crops cultivated – from tree to food crops. This also supports the view of Binswanger and McIntire (1987: 89) that specialization through formalization leads non-owners of land to choose ‘between renting land and working entirely as landless labourers’. This shift also has affected the content of the sharecropping arrangements. Instead of the usual share of produce in bags (*nkotokoanu*) during the cocoa era, the share often comes in the form of money after the produce is sold.

It can be inferred from Table 4.7 that apart from those who claim to have inherited (51.8%) their lands, which represents a non-monetary arrangement, 44.0 per cent acquired their lands through monetary means (rental, purchase or sharecropping), showing the extent to which land markets have penetrated. Nevertheless, land access in the community is still purely a local affair, suggesting that land markets cannot always be initiated by state rules or laws. Informal markets exist but formal land markets only scale up the processes of transferring physical land through monetary exchanges. Unlike in some communities, the government plays little or no role in the actual allocation of land in the study communities except regarding judicial matters.

Table 4.7 further indicates that those with inheritance rights had 57.2 per cent of the total land under cultivation, while 33.5 per cent of the cultivated land was acquired through rental arrangements. Cultivated land under sharecropping, which used to be dominant form of land acquisition during the cocoa and oil palm era in the area, accounted for only 4.5 per cent of the total land under cultivation. The use of monetary mechanisms to acquire land in the area is increasing but land is transacted in informal markets. There is increasing land scarcity, lack of virgin forestland yet to be cleared, and there are difficulties people encounter in getting access to extended family land. This suggests that land scarcity is expressed in increased monetary value of the resource, stimulating the

reinforcement of informal land markets. These changes seem also to reflect that commercialization, population pressure and land scarcity stimulate the emergence of individual land rights.

From the various FGDs, it was also observed that even though a majority of the farmers, according to the sample, gained access to land through inheritance, such right does not grant people private or exclusive rights to land. In most cases the land they inherited still belongs to the extended family or lineages. Exceptions are found in cases where land is inherited directly from a father, transferring land in the customary way. Land so inherited is perceived more as family heritage than a resource for sale, although part of it could still be exchanged temporarily through sharecropping and renting for cash to take care of family or social needs.

Table 4.8
Pattern of access to land among social groups

| Mode of land access | Social groupings | | | | |
|---------------------------------|--------------------|----------------------|-------------------|------------------------|---------------|
| | Native adult males | Native adult females | Native male youth | Non-native adult males | Total |
| Inheritance % within group | 165 (82.5) | | 19 (19.0) | | 184 (51.8) |
| Sharecropping % within group | 6 (3.0) | 10 (28.5) | 4 (4.0) | | 20 (5.6) |
| Rental % within group | 17 (8.0) | 21 (60.0) | 75 (75.0) | 22 (100.0) | 135 (37.8) |
| Gifts % within group | 5 (2.5) | | 2 (2.0) | | 7 (2.0) |
| Purchase % within group | 2 (1.0) | | | | 2 (0.6) |
| Loans % within group | 1 (0.5) | 2 (5.8) | | | 3 (0.8) |
| Others % within group | 4 (2.0) | 2 (5.7) | | | 6 (1.7) |
| Total % within group | 200 100.0% | 35 100.0% | 100 100.0% | 22 100.0% | 357 100.0% |

Source: Author's own survey, 2009

Table 4.8 suggests that while local farmers still have flexible opportunities to gain access to land (rights) through the use of any of the above-mentioned mechanisms, certain social groups did not or could not use some of these mechanisms, or were excluded from them. The results show clear patterns of inequality in access to more secure land. Non-natives' only way of gaining access to land is through land rental while natives could employ several of the different available mechanisms. While adult native males and youth were the only groups that accessed land through inheritance, the data show that natives could use any of the other forms of acquiring land. Sharecropping and land rent seem to dominate, with 37.8 per cent of farmers obtaining land through rent arrangements as opposed to sharecropping (5.6%) (see Tables 4.7 and 4.8). While adult native men mostly (82.5%) gained access to their land through inheritance, the native youth (75.0%) did the same through land rental (Table 4.8). In a community where poverty is high, farmers complained of lack of money to rent land (Table 4.9), as access to farm credit is restricted (Amanor, 1999: 6). The strong preference for land rental, particularly by the native youth (75%) and women (60%) should not be a surprise. It suggests that in the absence of alternative employment, the youth in particular has a strong penchant for farming and are willing to look for money to rent land.

The data show that in spite of the relatively high land rent farmers still prefer that arrangement above others, which theoretically might be considered cheaper. The reasons for the dominance of such mode of access are summed up in a statement made by a farmer:

.... food crop production is riskier than perennial tree crops, like cocoa. One cannot afford any longer to do all the difficult farm work alone, for the 'land giver' only to show up at harvest and take half of the proceeds. I will rather look for money the hard way in order to rent land, where I can be my own boss and enjoy a less risky tenancy' (Interview: Ayengo, in Community B, September, 2009)

Table 4.8 indicates that 82.5 per cent of native adults hold inheritance rights to their lands. This distribution is not much of a surprise, since access to land through intra-family system or arrangement was and is still fundamentally the basic form of gaining access to land in the communi-

ty. Access to such land is usually based on age, position and wealth, which nearly always excludes the women and non-natives.

In view of the observation that land allocation in rural areas is gradually shifting from community chiefs to extended families and to households and individuals, respondents were asked questions which related to institutions that granted them access to the land they currently cultivate. The study revealed that a total of 312 farmers (87.4%) had gained access to some of the lands they cultivate from their extended families. This shows that, in spite of the growing scarcity of family lands, a majority of the sample population still got land from relatives or family lands. It is, therefore, inferred that extended family systems still retain the right to allocate land to various land demanders (family and non-family members). That is to say that, while access to farm land on the basis of social negotiation of identity and status is changing, it has remained relatively unchanged within extended farming systems.

The act of 'borrowing' land for farming which was a common practice in the past is almost phasing out of the system. We were told that this change is as a result of the refusal of families of people who borrowed such lands generations ago to return the land when it is demanded back by the lenders. This has caused serious contention in the communities, usually between the borrower's and lender's extended families. It is even worse when the actual borrower is dead and his children have 'inherited' these borrowed lands.

4.9 Land scarcity and intra-family land allocation opportunities

We assume that since there is hardly any more primary forested land to be cleared and family land is finite, the only way one can get access to more land is through the ability to access land from other extended families. We therefore asked whether there was any other way to gain access to land for expansion of farms. In response to the question of whether farmers have enough land to cultivate, 32.8 per cent of the sample population responded in the affirmative, while the remaining 67.2 per cent claimed they did not. This supports the view that land is becoming scarcer in the community. The need for government to look at the unemployment situation is critical, since most people are likely to lose access to farm-related employment. The pressure on land has created a sit-

uation where the commodification is differentiating societies based on power relations. Those who stated that they did not have enough land to cultivate were asked to provide reasons for their inability to acquire more land. Among the answers high land rent topped the list with a total of about 38.8 per cent, followed by difficulty arranging for additional (more) land (25.0%) and that there were no more lands for expansion in the community constituted (22.1%). Other reasons provided included, no money, plans to travel outside, planning to abandon farming (Table 4.9).

Table 4.9
Hindrances to acquisition of more land for expansion

| Responses | Frequency | Per cent |
|-------------------------------|-----------|----------|
| High land rent | 93 | 38.8 |
| No more land for expansion | 53 | 22.1 |
| Not interested in expansion | 2 | 10.0 |
| Difficulty arranging for land | 60 | 25.0 |
| Others | 10 | 4.1 |
| Total | 240 | 100.0 |

Source: Author’s own survey, 2009.

High land rents are likely to indicate increasing scarcity of land in the community. This reality was confirmed by some farmers we interviewed. Gaining access to forest or uncultivated land is now almost history and access to cleared land is also very difficult. While the study did not intend to include landless people in the community, responses from the sample population show some tendencies for the community that will likely produce landless people in the near future. The continuous division of land among siblings is likely to result in ever smaller fragmentation of land.

4.10 Evidences of landlessness

The term landlessness has been defined variously by different authors to suit a particular situation. According to a report by the FAO (1984: 1), landlessness is considered ‘both the cause and symptom of chronic pov-

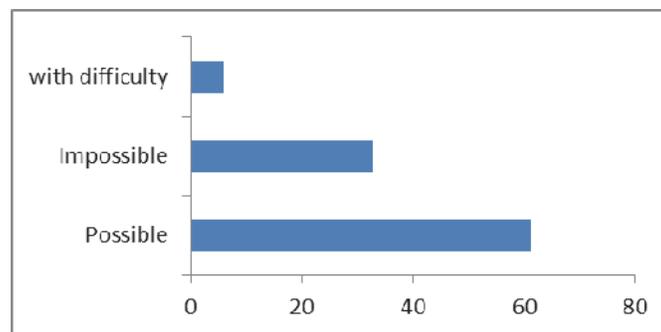
erty, insecurity, indebtedness, and powerlessness of majority of rural households'. The FGDs and personal observations conducted within the communities revealed that, apart from the flooding of cultivated land during construction of the hydro-electric project, some people were physically evicted by 'landowners'. Lack of money to rent land, and 'illegal' purchasing of land, among others, contributed to loss of land by many people or households. Other people were reported to have abandoned their lands because they were not ready to accept the small plot sizes provided to them by their extended families. They felt these were too small and that they could not do anything meaningful with them.

The landless identified within the communities included those who lived there without any plot of land to cultivate as independent farmers. These included those with difficulty in accessing land on their own (women, poor native adults, some youth, non-natives). The presence of natives among the landless and near landless people supports Okoth-Ogendo (1976) findings that superimposing Western notions of property rights on African societies leads to increasing landlessness and land concentration even in the absence of fully fledged land titling and registration. Difficulties in gaining access to land could also be as a result of one's status, poverty, nativity, and gender among other. The majority of those without land, in terms of the social groupings, are women, although they play a key role in food production (FAO, 2003). For reasons of lack of adequate land and land rights, independent women farmers in the community were rare. The strict adherence to patriarchal systems produces a reality in which women are not allowed to hold rights to lands in their names. The other social groups who have limited access to land included some young people and non-native adults.

The absence of available land and the near absence of any alternative employment in the community explains why male youth constitute the majority of those who migrate to the cities and town. The increasing marketization of communal land acquisition processes plays a major role in the exclusion of certain people from access to land. Those who have money but did not belong to any land-owning group were found to be given priority over family members who had money to rent land. Adult males in the study communities already control and wield much power. If the government's agenda of transferring control of local lands to traditional leaders becomes a reality, then one would not be surprised to see

these leaders accumulating more land at the expense of youth and women and thereby increasing landlessness among natives.

Figure 4.2
Sample respondents' perception of the possibility of acquiring inter-family land (per cent)



Source: Author's own survey, 2009.

4.11 Inter-family land access

In the light of growing scarcity of farmland we wanted to find out whether opportunities exist for people to gain access to land in other families within the community. About 61.3 per cent of the total sample claimed it is always possible for people from one extended family to gain access to land from another extended family. Another 32.7 percent from the sample also claimed access to land from another family was not easy and almost impossible. The remaining 6.0 per cent of the sample asserted that it is somewhat difficult (sometimes easy, other times not easy) to gain access to land from other families (Figure 4.2). It was also hinted to us during some of the FDCs that access to such lands depends on the social relationship between the 'giver' and 'receiver' of land and quality of interactions between respective families. Some common mechanisms or forms of access to such intra-family land are through marriage or exchange of labour. Ability to pay for rented land is also crucial here.

The implication is that those who are denied access to land within their own extended families may have, as the only choice, to acquire land

from other extended families within the community. While this arrangement, which seeks to present opportunity for inter-family access to land, may seem to be solving the problem of future landlessness in the community, it could also constrain opportunities for access of certain people who may belong to land-abundant extended families. As maintained by Amanor (2006: 6), providing land to migrants and employment of migrant labour deprives indigenous people, such as native youth and native women from gaining access to land in their own communities.

Two examples may suffice here. First, in some communities, women are only allowed access to land when men do not need it. More often than not such lands are not good for farming because they are waterlogged, marginal or infertile. Such land can be allocated to those women who are interested in farming (Borteir-Doku Aryeetey, 2002). Secondly, in a situation where men control family or community land, women may have access to land for farming as found in the study sample, but their land sizes are generally small and opportunity to gain access to more land is likely to be limited or even shrink in the case of increasing land scarcity. They may be offered poorer and marginal lands, close to home but where it requires greater financial commitment to improve soil quality and productivity. The same applies to the male native youth within land-abundant families, who are likely to obtain either smaller portions, or poorer lands or nothing all. Such measures could create landlessness, intensify inequality, create tensions and conflicts and constrict agricultural production, which may result in intensification of poverty in this already poverty-stricken community.

4.12 Access to farm credit/loans

Within neo-classical economics it is argued that secure land rights through individual land titling and registration will enable smallholders to access bank credit to finance their farming activities and to increase productivity and income. It implies that in the absence of farmers' own capital, formal credit is the alternative to increase production. Nonetheless, despite the government's call to stimulate land markets, credit for, in particular, food crop producing smallholders is limited.

The study reveals that a considerable number of farmers, 259 (72.5%), self-financed their farming activities. Among the rest, 42 (11.8%) contracted (rural) bank loans, 25 (7.0%) used loans from rela-

tives, 20 (5.6%) received loans from friends and the remaining 11 (3.1%) cited *susu* (a local cooperative savings group) to support their farming activities (see Appendix 4.1A).

Among the 42 who contracted land from the rural bank, 6 (1.7%) used their lands as collateral, 33 (9.2%) used social relations and 3 (0.8%) used their political connections (see Appendix: 4.2A). This indicates that out of the 357 farmers interviewed, 315 claim they had not used a bank loan. The latter group confirmed that getting the loan from the bank is cumbersome and the requirements are many and time consuming. This was confirmed by some of those who got the loans. They complained bitterly about the struggles they had to go through in order to secure the loan. Farmers at the FGDs in community A and C respectively (21 August 2009 and 2 September 2009) indicated that they were not interested in bank loans. Their lack of interest was not because they were rich but because they felt banks can put impediments in their way. Others claimed that the bank officials saw them as poor they would not advance loans to them, and therefore preferred to stay poor, rather than be dragged to court or have their land confiscated or sold to a rich man for non-payment of loan.

A meeting with an official at Manya Krobo Rural Bank (14 January 2010) confirmed that banks sometimes turn down loan applications from farmers. Reasons provided include lack of appropriate documents for the collateral, the risks involved in food crop farming and most importantly the high default rate of farmers in the area. That does not mean that all farmers do not repay their loans. The official confided to me that apart from land title certificates, a major criterion for securing a loan from the bank is for the person to be a client of the bank before applying for a loan. One is required to have opened a savings account with the rural bank. Most farmers fall short of this because they claim they are poor and do not have the money to save. Although individualization of land property and land titling reforms have been implemented in the country for so many years, with the associated promise to make available loans to smallholders, banks are still not in the position (or do not want) to provide loans to farmers.

The non-use of formal credit in the study communities is a clear indication of the limited and poor development of formal rural banking institutions to supply such credit. This also partly explains why less hired labour is employed in the farms. The high cost of hired labour discour-

ages its use by farmers. As pointed out by one of the women ‘taking a loan from the bank is like becoming indebted to the government and therefore why should I worry myself if they (the banks) are not prepared to give me the loan’, (interview with Mansa, Community A, February 2009). Farmers will refuse to apply for loans if they perceive it as a high risk or something that will cost them by losing their lands or some other property. Apart from the social and other political challenges, these economic factors do not encourage land registration.

4.13 General welfare improvement among farmers

As Berry (1989: 41) pointed out, ‘people’s ability to generate a livelihood or increase their assets depends on their access to productive resources and ability to control and use resources effectively’. This suggests that prosperity and the prospect of one’s ascent or descent into poverty depends on his/her initial resource endowment. Since inequality is a good indicator of welfare, defined as ‘satisfying the conditions of human life’ (Bernstein, 2010: 13), inequality in access to land influences the welfare of farmers. By this, we also acknowledge the reality of social relations of power and entrenched inequalities and interests of various groups and classes within farming communities. We therefore looked at the extent to which the identified social groups in the communities benefited or are benefiting from the current transformations.

Table 4.10
Perceptions of changes in welfare among social groups

| Item | Social groupings | | | | |
|------------|--------------------|----------------------|-------------------|-----------------------|----------------|
| | Native adult males | Native adult females | Native male youth | Non-native adult male | Total |
| Increasing | 97 (48.5) | 18 (51.4) | 55 (55.0) | 13 (59.1) | 183 (51.3) |
| Decreasing | 82 (41.0) | 15 (42.9) | 42 (42.0) | 6 (27.3) | 145 (40.6) |
| Same | 21 (10.5) | 2 (5.7) | 3 (3.0) | 3 (13.6) | 29 (8.1) |
| Total | 200 (100.0) | 35 (100.0) | 100 (100.0) | 22 (100.0) | 357 (100.0) |

Source: Author’s own survey, 2009.

It is expected that variations between and within social groups would show the dynamics of the impact of current property rights reform on social relations and structure. Table 4.10 indicates that the likelihood for farmers that their welfare has increased, decreased or remained the same seems not to be influenced by the social group of the farmer, except for the non-native male adult. This notwithstanding, there are small differences between various social groups in relation to their responses. The results suggest that while a moderately higher proportion of sample farmers within the social groups claim to have gained some level of improvement in their living conditions (51.3%), while a slightly smaller group claimed the inverse (40.6%). A small group (8.1%) saw no change.

Contrary to the view of opponents of state-led land and property right reforms, Table 4.10 suggests some improvement in farmers' welfare. Inasmuch as the responses of farmers could be dependent on the individual farmer's life aspirations and how they rate social life improvement, (in)security of access to land and tenure seems to play a crucial role in determining the welfare improvement. Furthermore, the data on the women captured in this study shows that they have fewer and weaker land rights mainly because of discriminatory customs. Even though solid data is unavailable, it is possible that whatever gains the new reform has brought about may have been counterbalanced by the effects of the rising social inequality, insecurity and conflicts over land.

4.14 Emerging issues on women's land access and relations

The issue of women and land cannot be left untouched in a study which focuses on land titling and registration. This is because of the gendered nature of land policies, legislation and widespread discrimination, which the current programme of land tenure reform and its associated land titling is expected to resolve. In a society where social relations of land are largely informed by patriarchal systems, exclusion of women in the management and inheritance of land is dominant and requires special attention.

Over time and space women have been discriminated against in terms of access to natural resources, including land for farming. Women in the study community are not exempted. Paradoxically, while women are rec-

ognized as the main agricultural producers, they have often restricted access to land, the most important factor of production. Their ability to gain access to land has often been limited through the use of rules of inheritance and customs, which recognize access to land by females through the males. Women are not allowed to participate in decisionmaking regarding land management, and their access to land is constrained and mediated by patri-centric customary laws. The effect of these gender relations has been the weakening of women's voices in general decision making in the community. Such a position reinforces inequality between men and women and ultimately affects sustainable use of land as well as development in rural communities.

Women's limited access to land is confirmed by the data presented. One way through which women may gain access to land is through gifts or donation from their relatives or spouses. However, among the 35 native adult women in the sample, only one of them had access to land through a gift from her father. In terms of mechanisms of access to land, almost all the women gained access to the land they cultivated through indirect means either through husbands or male relatives. One thing that became evident in the study communities is that when land becomes scarce and opportunities for off-farm employment are limited, women's access to land is eroded. This can be through re-interpretation of traditional rules of access. In the absence of any strong institution to ensure women's security to land, the changing land relations in the community worsen the situation for women. Rules which hitherto gave women the opportunity to access land for farming are under siege and fast losing their hold (Yaro, 2010). The 'old' customary rules are continually redefined by the traditional and community leaders to the disadvantage of women.

Some women also allow such lands to be taken away from them by their own lack of interest in the land, which they believe belongs to the men and must be given to them when the need arises. The preference for men to provide for their families contributes to the current situation. Adede from community C explains that: 'our men are losing hold of their farms, because they have to share inherited lands with their brothers and also rent out some portions in order to cater for their father. There is no alternative income generating job here in the community for them to do. We do not also want to see them take up arms and one day becomes armed robbers. We are not worried if our men can have all the

land, while we stay at home and take care of the children' (Interview in Community, C, November, 2009).

Awonye, another woman in community B, suggested that the situation where women are losing farmlands in the community is not a bother to women. She said 'we (referring to the women) are happy once our husbands have land to cultivate and feed the family' (interview, October 2009). The fear of facing social sanctions from husbands, who traditionally have control over their wives, and the reality of a husband needing respect from his wife to sustain a marital relationship all serve as foundation for the perpetuation of unequal power regimes within the society. The attitudes of some women in accepting entrenched cultural norms which make them susceptible to negative discrimination may explain why women and men have a different attitude towards, or give another value to, a resource such as land. It was clear from women's focus group discussions that the apparent passivity of women was mostly attributed to the social relations and relations of power between husbands and wives, which have for long been sanctioned by local social practices. For example, access to land is also tied to marriage and marriage is of particular interest to these women farmers and they would not like to do anything that will destroy their marriage relationships.

It was observed that while the majority of farmers used own labour and hired labour for farm work, women used more hired labour than own labour. The use of more hired labour by women is also explained by the fact that certain farm activities such as tilling, felling of trees, and weeding cannot all be done by women themselves. Since women use more hired labour, they are likely to spend more money on a per acre basis compared with their counterpart men. Thus, the use of more hired labour requires more supervision of work and hence extra cost for the women. This cost will also affect the amount of profit or farm capital to be ploughed back into farming, weakening the financial resource base of women.

A majority (87.0%) of the sample, including 80.0 per cent of the women sampled, claim they often would not employ women in their farms, particularly for land cultivation activities. Thus, apart from restrictions to access land for farming, women also face farm labour restrictions. This is notwithstanding the wage differential between men and women, with women receiving less than men. This is often attributed to the task performed by women on the farm, which is claimed not to be as

strenuous as that which men do on the farms. While it may vary slightly from community to community, the wage is not bargained. It is fixed at the beginning of each farming season based on the previous season's harvest. For this and other reasons, women would prefer to employ hired labour, a majority of whom are likely to be men.

Gendered inequality in land access is deeply rooted in the community, reflecting and in turn influencing participation and how decisions are made. Talking to the women, it was realized that decision-making, particularly concerning land issues, is mainly the domain of men. In the chiefs' land court, for example, no women were found sitting in the court, not even the queen mother of the community. The secretary to the traditional or chiefs' court told me that the non-involvement of women in discussions of land issues is historical. Women never took part in land clearing during the days when forests were cleared for farms, women never bought lands in those days, and by customary laws women were not supposed to own land.

Generally, the information presented in this chapter indicates that the challenges of social differentiation, landlessness, loss of land, insecurity in land tenure and land conflicts are not of recent origin but at least partly legacies from the past. The only difference lies in the way these dynamics have been interpreted or unfolded.

Note

¹ This differentiation is used in the communities themselves, and is based on being an ethnic Krobo, or having migrated from other areas in the community and/or being member of another ethnic group.

5

Mechanisms of Land Access and Exclusion: Illustrative Cases

5.1 Introduction

Differences between social groups based on such factors as gender, age, and ethnicity cannot alone adequately explain inequalities in access to land. A comprehensive understanding of the situation requires a nuanced account of the individual differences, interest, positions and privileges in relation to land access and security of tenure. This chapter focuses on mechanisms (means, relations and processes) of access to and exclusion from local landholding and ownership rights in the context of the ongoing agrarian transformations. The cases below indicate how exclusionary mechanisms, such as embedded unequal power relations, positions and privileges, are used to deny or control poor people's access to land. It shows how exclusion from gaining access to land or the benefits thereof is achieved through deliberate and organized actions such as cultural discrimination, economic exploitation and political marginalization. It shows how such mechanisms are used to exclude or deny certain categories of people (even among people of the same ethnic group or relatives or blood relations) access to land so as to protect the interest, position or privileges of the more powerful (Kabeer, 2000) at all levels of decision making.

According to Aryeetey *et al.* (2007), ethnicity creates a bond among people in relation to land which leads to indigenous people rejecting the right of migrants to land even when migrants are fellow citizens. This suggests that rights to land by indigenous people are secured. Yet the reality on the ground seems to deny this reality. This chapter is attempt to understand the complex reasons why within a particular society of 'relatives', some people are excluded, by whom and for what purpose. It shows that such exclusions here are mainly effected through power rela-

tions and structural inequalities inherent within customary institutions. The narrations or personal testimonies help tease out the particularities of the changing mechanisms and strategies (covert and overt) of exclusion and unfavourable inclusion employed in the communities. Through the exploration of the backgrounds of individual farmers, more emphasis is placed on people's social relations and identities than on the individuals *per se*.

Cases presented in this chapter involve everyday forms of exclusion/inclusion practices and struggles for access to land which are usually taken for granted by the media, researchers and policymakers, yet which aggregate to create and reinforce social differentiation, class formation and conflicts. Although the cases presented here do not represent the situation in every rural farming community, they raise questions about the extent to which customary tenure institutions (CTI) are equitable, and in turn about the likely consequences of returning land management to local leaders without incorporating transparent and participatory processes of decision-making.

5.2 Evidences of land access and exclusion

While there are groups, networks, classes or categories to which people may be affiliated for diverse reasons and backgrounds, exclusion within this catalogue of affiliations cannot be discussed in isolation due to the interconnectedness of these processes and the reality that people may have various affiliations simultaneously. The inter-sectionality of diverse forms of affiliation, inclusion and exclusion mechanisms produces different forms of advantages and disadvantages, outcomes and problems.

Case 1: Cultural norms on gender and denial of access to 'own' land

Dede is a 35-years-old mother who came to live in community C some 20 years ago after her father and mother broke up. Dede's father relocated to community C, his hometown, to work on a portion of land which was allocated to him by his deceased father. Dede became pregnant and later dropped out of school but this did not stop her father from asking her to accompany him to farm. Since the young man who made Dede pregnant disowned the child and Dede, her father by custom had to take over the responsibility. Dede had no choice other than to follow her fa-

ther to the farm in order to get her father's attention and to get him to take care of her and the baby. Such children are called *yo bi* (a woman's child) and according to Krobo customary law, if he is a boy then he has legitimate right to the grandfather's land, just as his uncles. However, this can be problematic when it comes to actual allocation of land, after the grandfather's death.

After giving birth to her first child, Dede did not stop going to farm. In the company of the child's stepbrothers, she continued working on her father's farm plots until the father was taken ill and finally died. Before his death, Dede's father gave a portion of his land as a gift to her. As tradition and custom demand, this was done in the presence of a few elders of their family. The gift of land was to reward Dede for her loyalty and obedience and for being a hardworking child to her father. In the presence of the elders and a few community members, the rites of transfer of land were performed to allow Dede to cultivate her newly allocated plot of land. This was done before the death of her father.

A few months later, however, after the burial of Dede's father, her stepbrothers started harvesting her crops without her consent. Upon inquiry, the brothers became angry with her. This resulted in daily quarrels and sometimes the beating up of Dede when she confronted them on the issue. This continued until one day, upon returning from the market, she was handed a summons. This was apparently from the *Dademantse* of the local community, asking her to appear before the elders of the community council the following day. At the said meeting, she was told not to step foot on the farm or plot of land again till the elders would take a final decision on who should be the rightful owner or holder of the land. Sensing danger and as tradition demands, Dede quickly informed some elders of her clan who had been at the land transfer ceremony. They promised her their support and readiness to attend the next sitting of the local court of elders to defend her case. At the sitting, however, the elders of her clan were conspicuously absent.

The meeting went on, and another was scheduled without them. When she inquired after the meeting, Dede later found out that, apart from the fear of defending her in the chief's court as witnesses, the elders also did not come to the meeting because she did not provide them with transportation or transport fares and food. Although the elders did not need to board any vehicle, it was customary to provide them with money on their journey to the chief's house. According to her, she did

not give them the money for transport because she did not have the money. She took it for granted that the elders should have been able to pay their fares for her sake. Just as one is unable to name a child as one's own when marriage processes are not complete, land ownership or right to land may be considered partial when one is unable to go through the complete process of land transfer, although some aspects of this, for traditional reasons, are skipped in the case of women. At the third meeting she was told to forfeit the land on the grounds that she did not go through the complete process of land transfer as custom demands. Instead, the land was transferred to her stepbrothers, who never bothered to care for her and her child. From an owner or a local holder of right to land, Dede became landless. She lost her legitimate land right through the use of institutionally biased rules of tradition or customs.

Dede has since been living in the community and, because she is poor and her mother is dead, she told me 'I have nowhere to go now'. She has no family elsewhere and even if she has any relative, she cannot go to those relatives since she has no money. She told me she will prefer to die in her father's house than to travel and suffer shame and disgrace somewhere. She said 'after my first child no man has ever made any attempt to ask me for my hand in marriage, not even to say I love you'. According to her, it was been rumoured in the community that she is a witch and that she bewitched her father to give her that portion of the land which her stepbrothers later took away from her. She lives on petty trading and, in her father's compound, occupies one of her father's rooms with her other younger stepsisters, and works a small plot of land offered by one of her uncles (Interview, 6 and 8 October 2009, community C).

Dede's story illustrates how a combination of factors can be used by one's own family members to exclude women from access to land on the pretext of preserving the traditions and customs of their people. This case represents one of the many untold stories in rural communities, where customary or institutional rules of access could be used to discriminate and make people – in these cases women – strangers in their own community. It shows that even in a situation where people have legitimate rights to land, donated to them by legitimate right holders, such lands could at any time be taken away from them depending on how the rules are interpreted and applied.

Dede's experience in this patriarchal society indicates that exclusion is actually the practice invoked by the more powerful within the society,

who define and redefine the 'rules of the game' and determine who should have access to land, for how long and under what specific conditions. Thus, Dede's uncles and elders of her clan had to sacrifice their 'daughter' in this case, ostensibly in order to preserve tradition. She was also ridiculed, devalued and disrespected, creating more disadvantages for her. The intestate succession law¹ of Ghana could not be invoked and Dede lost her livelihood. Generally Dede's story shows how one form of disadvantage can lead to another and finally render people poor. The moral here is that no land in the community is allocated on permanent grounds until the total process of land transfer is duly and completely carried through. It demonstrates the power of customary laws or rules in the allocation and control of land in the community.

According to Krobo traditional inheritance law, it is rather Dede's child, who has been disowned by his father, who has traditional right to land and not Dede herself. Dede is, therefore, able to gain access to the land through her son, but since Dede could not argue out her case and her son is only a baby; the stepbrothers were able to take her land.

Case 2: Women and the fear of cultural sanctions

Naadu is a middle-aged woman (probably between 45 and 55 years), the wife of Kabutey, who is an enterprising man. They have five children. Until recently, Kabutey, the only son of Nene Morgan, worked on his father's land, not as his inheritance yet he paid no rent or shared crop. Kabutey travelled abroad and gave his plots of land to his wife to cultivate portions of it and rent out the rest with the consent of his father.

During the six years that Kabutey was away, and not remitting home, Naadu had to take care of the five children single handed. Neither Kabutey's father nor any of the members of the family interfered with the woman's farming activities for all those years until one day when Kabutey's uncle, Samsac, visited the village after a long stay in the city. He had received some money and was coming home to ask for land to farm. He requested a portion of the land which Kabutey's wife farmed but was denied. Naadu was so respectful that the whole family of Kabutey generally liked her and was not ready to send her back to her parents. The uncle of Kabutey did not understand why he should be denied access to land within his family while a 'stranger', as he called

Kabutey's wife, had so much land that portions were even rented out to other people.

Knowing that her own family did not have enough land to share or cultivate, Naadu humbly asked her father-in-law to take portions of her land and give them to Kabutey's uncle in order to procure peace for the family. This suggestion was not accepted by the family, who disagreed that Kabutey's land be given to his uncle. According to Naadu, she made the proposition because she did not want to attract the attention or fury of the rest of the family since she did not know if some members did not like her. She also feared their anger against her could cause her to lose the land because she does not and cannot own land in the community according to the tradition of the people.

Kabutey's uncle was denied access to the land because Naadu's father-in-law thought if he was allowed to farm on the land, it would be difficult for Kabutey to take back his land on return from his journey. Kabutey's uncle rented land outside the family plots. As a strategy to get the woman evicted from the land, Kabutey's uncle started spreading news around that the old man, Kabutey's father and Kabutey's brother were sleeping with Naadu, hence their insistence not to give the land to him. When Naadu heard this and wanting to save her face, her marriage and the relationship between her and the father-in-law who had been so good to her, she quickly relinquished her rights over her husband's land and went to her father's home to live peacefully there. Naadu left the husband's property which fed her and her children and today she lives in poverty because she chose to save her reputation and her marriage. Kabutey is, however, not happy with the development. He is even seeking divorce from a faraway country, while Naadu claims she is pleading with Kabutey's father to intervene (interview, Community B, 14 September 2009).

As indicated above, Naadu's story shows how people can use their positions and/or membership of a community or clan or family to claim access to land and seek the eviction of others. Kabutey's uncle's decision to claim a portion of the land belonging to his nephew is simply based on the reality that he, unlike the woman and wife of Kabutey, belongs to the landowning community by membership right and therefore deserves a share of the said property. Meanwhile, Kabutey has a right of inheritance to the land in question and may decide not give any portion to the uncle, who can go to his father and claim land.

While women can access land through their husbands, Naadu's story also points out that such access is insecure and the period for which one can keep or maintain rights over such land is subject to the tenant or caretaker's acceptance in the kin group, as a necessity but still not sufficient. It also shows that a wife who has been allowed to share the benefits of the lands of the husband's family can suddenly be treated as a stranger in the husband's family and deprived of land rights.

Case 3: Exploitation of a blood brother using the power of social networks

Asare is a 32-year-old former civil servant who returned home, after his dismissal on the grounds of alcoholism and negligence, to look for a plot of land to farm. Asare claimed he returned home with his pay-off money or gratuity to invest into farming. On his arrival, the elders of his family pitied him and gave him portions of the family land to farm. After ten years of farming, his family requested him to share his portion of land with his younger brother, who had been posted to a nearby community to teach after his teacher training education in the region. He obliged and gave portions of his land to his brother to farm. Asare's brother invested money in his farm and used his students' unpaid labour to work the farm. In the course of time Asare's younger brother, with the help of the elders, started renting in more lands from other families, and because he had a good reputation and was liked by many people, he very easily acquired more lands, an opportunity Asare did not have or explore.

Several times Asare's family members and elders approached him and asked him to relinquish more lands to his younger brother, seeing that he was unable to utilize the lands allocated to him efficiently. Asare, sensing danger or the likelihood of losing his control over the family land, refused to agree to the family pressures and coercion to give more land to his younger brother. Asare admitted that he was no longer able to support his ailing father, a job that his younger brother was effectively doing. His brother could also once in a while especially during the harvest seasons, give portions of his crops to some people in the community at no cost. He won the heart of the local people, who even named him 'development chief'. Asare attributed his inability to take care of the old father to his land losing its fertility and could no longer produce good harvests. He also did not have enough money to buy fertilizer to replenish the soil nutrients as he used to do when he returned first to the village.

According to some community members I spoke to (field notes, community A, 7 August 2009), Asare was no longer serious with his farming activity and was addicted to alcohol. He lost his farm to his younger brother, who took over the responsibility of providing for their father and Asare himself. During the period of the interview, Asare still had a small portion of the family land on which he now works as a sharecropper. At such an old age, Asare works as a village farm labourer, working on other people's farms in order to eke a living for himself, his wife and two children (Interview, Community A, 4 August 2009).

As pointed out by Berry (1989; 1993) investment (symbolic or material) in social relations is one of the ways by which one may gain access to more land or maintain rights to the land currently held. This is depicted in the story of Asare. We see how favouritism as well as investment in social relations among others could be used as possible mechanisms of exclusion from land and its benefits. Asare's younger brother used his education, knowledge, politics and wealth to outwit his elder brother and to put himself above his elder brother in terms of claims to land. This story suggests that even though seniority is critical and significant to access to land, wealth is becoming more important in gaining access to land these days.

Case 4: The primacy of customary courts in land disputes

Akwasi's father, some years ago, sold land to Francis, when he needed money to take care of his wife in the hospital. Akwasi was then a child, yet he still remembers what transpired then, although not having the details of the actual transaction between his father and Francis, a non-native Krobo. Akwasi has lost both parents and he now stays with his sister in their father's house. Both siblings are unmarried although they are no longer children. Akwasi recently discovered that Francis did not fully pay for the land he claims to have purchased. According to him, the land transfer process was not complete so he decided to reclaim the land. This nearly became a quarrel so Akwasi took the case to the state court in the district. Unfortunately, this case stayed in the state court for about five years and, seeing no sign of proper adjudication, Akwasi decided to take the case to the chiefs' court on the advice of some elderly people.

Francis claims that Akwasi's father first borrowed a sum of money from him (Francis) but did not finish repaying. He came for a second

loan, to take care of his ailing wife in the hospital, and in that case too he did not repay. In the process, Akwasi's father decided to sell portions of his land to Francis. Francis agreed and paid the price difference, taking into consideration the outstanding debt owed by Akwasi's father. So he took custody of the land and started working on it as his private property. There are no documents to prove his point but Francis was able to produce witnesses who stated that Francis' claims are right. None of Akwasi's family members was informed or have any knowledge of such details of the transaction. However, after going back and forth for days, it was realized that the land transfer process was never attempted, even though Francis presented the sheep, which form part of the ritual, to Akwasi's father. In view of this, the chief asked Akwasi to call for a new sheep to be brought by Francis so the land could be properly and customarily transferred to him (Francis), since he at least finished paying for the land. Akwasi objected to that decision and instead suggested paying back the money to Francis so that Akwasi could take over his father's land. This was accepted and Akwasi was given time to pay back, which he did in due course and now owns the land in spite of numerous threats from Francis' family members (Interview, Community A, 15 August 2009).

This narration from Akwasi again demonstrates the significance of traditional and customary rules in legitimizing land rights or its ownership or transfer. It supports the idea that land allocation under the customary and tenure system is temporal. This process of land transfer and the performance of rituals before land can change hands clearly is an important measure, which serves as a check on anyone who is selling or buying land for that matter. It in many ways prevents people from using unscrupulous ways to sell community or family land, to the detriment of the younger and unborn generation. It also shows why local people will choose non-legal courts over legal courts for the adjudication of land cases. It takes a long time for land cases to be heard in legal courts. It also shows that land access is a negotiable process and it takes place at all times and not only at the point of initializing the process as carried out in some markets. This story shows the supremacy of local customary land laws or norms over state laws and legal processes.

Case 5: Use of links and power to influence formally adjudicated land cases

Tekpetey is from Kwame Keke's family in community C. He claims that some years ago, Kofi Nyarko encroached on his family's land and when he confronted him, Kofi said the land was his portion of land given to him by his late father, Nyamtawo. Tekpetey, however, found this story questionable. He disagreed and reported the matter to his family head. Kofi later brought some papers to prove his ownership of the land. The head of the Tekpetey family claims that in 2001, after the death of Tekpetey's father, Kofi brought the same papers and schnapps to show that he (Kofi) had purchased a piece of land from the late Tekper (Tekpetey's father who was then the head of the family). Upon inspection of the documents, the head of family claims the documents were faked; that the document couldn't have been signed or thumbprinted by Tekpetey's father. He claims any agreement of such nature should in principle involve some senior elderly family members, but this did not happen.

The family members of Tekpetey told Kofi therefore to wait while the other family members and friends of the late Tekper were consulted to ascertain authenticity of the document. Kofi ignored this and went ahead to cultivate the land. Tekpetey's family reported the incident and Kofi was arrested by the police. The case was then taken to the legal court to claim repossession of the disputed land and request a perpetual injunction on Kofi not to be seen anywhere near the land. The said land was never cultivated for years till Tekpetey's cousin became a lawyer in a magistrate court in a nearby community. Upon informing him about the case, Tekpetey's cousin asked some of his friend's lawyers to re-open the case, and within three sittings, according to Tekpetey, the case was resolved and his family land was returned to them. Kofi lost the case and was asked to pay some amount of money as a fine to compensate the Kwame Keke family for denying them access to their own land, opportunity to cultivate the land and to use the land to produce food to feed the family (Interview, community C, 11 October 2009).

The story of Tekpetey demonstrates how a man who claims to have inherited a purchased land from his father had to lose the land without any compensation, when it was found out that the land was not absolutely transferred according to custom. It is one of the cases where people use their friends and cronies in top-ranking positions and places of power to influence cases. Tekpetey's story presents a picture of how the legal

systems sometimes work (or not work). It does not always follow the due process of adjudication but is influenced by several factors, economic, political and social. This provides opportunities for the poor to be excluded, due to their inability to invest in social relations or their lack of social connections. It is interesting to note that a case which has stayed in court for years could just be re-opened and in a matter of few days judgment is passed in favour of the friend of the new lawyer. It also shows that land transactions in the past were sometimes recorded on paper, but those documents can be challenged in legal courts. The chief's court on the other hand may accept those documents and may rule or pass judgement based on such evidence in conjunction with other customary principles. It shows that the rule (law) never rules in reality but it can be challenged or negotiated.

Case 6: Lack of hierarchy among laws, forum shopping and tenure insecurity

Teye (53 years old), a Technical School graduate, a mechanic in Accra, and a native of community B, claims that when his father died he left landed property for him and his elder brother Tetteh. According to Teye, after the death of their father, a will was found in a box in their father's room. He showed it to a lawyer and informed the head of the family, and the property was later shared between the brothers. After this, the elder brother objected to the decision in the will and reported his displeasure in the chief's court. He claims since he is senior son, tradition demands that he was supposed to be given a larger portion of the land, if not double. The chief saw wisdom in what he said and re-allocated the land, giving a double portion to Tetteh. He was then charged with the responsibility of taking care of his sisters and their fatherless children. In other words, the will prepared by their father (a legal document) was ignored by the traditional leaders. As tradition demands (see Wilson, 1989), the elders who led them or assisted in the sharing of the land were also given a portion of the land. This makes Teye suspect that the local leaders might have taken money from his senior brother, who is a school mate of one of the elders who sits in the chief's court.

Teye also ignored the chief's ruling and decided not to set foot on the land again. According to him, since the chief and his elders and his brother had decided to overrule the agreement and will of the dead, he decided to allow the dead to revenge. The elder brother, therefore, start-

ed enjoying the benefits from the land and using their father's property alone. After several warnings to his brother to refrain from going to or entering his land went unheeded, Teye then took the case to the local state or district magistrate's court at Krobo-Odumase. Fortunately, judgement went in his favour but the chief and his elders were not happy in that particular case. The court ordered the re-division of their father's property according to the dictates of the will. The court then warned the elder brother not to venture on the younger brother's land any more. This has created enmity between his brother and him and the rest of the family (Interview, community C, October 3 and 29 2009).

This is another case showing the flexibility of a system that allows people to choose from an array of legal and non-legal institutions. The parties involved have the flexibility to appeal to different legal frameworks to support their claims or 'forum shop' for the legal channel that they hope to favour them and create insecurity for the other party.

In case of dissatisfaction, people have the opportunity to appeal to courts of their choice to seek new adjudication. It reveals the dislike of chiefs and elders when their subjects appeal or take their cases to the legal court. It shows the power that land commands and how issues of land can divide people of the same family, including siblings. This narrative shows that while the chief and his elders may have the power to rule on land cases the disputants can always resist in cases where they feel the right thing has not been done. The chiefs and more powerful within the community may not be happy with such decisions but may not always succeed in intimidating people and have their way. It shows that the people still believe in the judgement of the dead. This suggests that land is not just an economic resource but has spiritual symbolism for the local people.

Case 7: Past misbehaviour threatens a returning migrant's social position within community.

Nartey is a native of community A, where he had his primary education. In the course of time he left the village to further his education in the city, where he sat for his senior secondary school certificate examination. He only came back to his village five years ago with his wife and children after the death of his father, who was *dademantse*. As successor to his father's properties, he became the landlord of his father's lands and decid-

ed to join the landlord association in the community. By virtue of the traditional position of his father and family lineage, which also compelled him to move to the village, he was to become the next chair of the association; every *dademantse* automatically becomes the head of the association, except if one is not interested in the position. Looking at his age and the reality that he had been living outside the community most of his life, some members of the association did not want him to assume such a high-ranking position in the community. But they could not openly tell him. The members looked at his age then and thought he could not be their leader, seeing that his knowledge of traditional norms and customs was scanty. While these struggles were going on, the people did not take into account that Nartey was going to be the next community chief, in the event that his uncle (the head farmer) died. According to Nartey, he approached some elders of the community for advice, since he did not want his dead father to think that he had abandoned his rightful position within the group.

Krobos are one group of people in Ghana who fear to renege on the agreements and oaths with the dead, and as such they will do everything possible to please the dead. The elders counselled him not to worry because they were still discussing the issue. For about a year and a half this case was still unresolved, until Nartey decided to approach the clan or divisional head (*asofoatse*), who then told him what the real problem was. The *asofoatse* told him that the elders and landlords were angry with him because when he was growing up in the village he had no respect for anyone and on many occasions he misbehaved towards some elderly people, which actually resulted in his father sending him to the city to live with his uncle, who was a soldier. As a result, the people thought that with such a background and what they have heard about him while he was still in the city, he would not be capable of leading any group in the village. Therefore, the idea was to frustrate him till he would decide on his own to move back to the town. Knowing this, he went ahead and asked for clemency from his elders, ancestors and the gods of the land. He was then fined an amount of money for his past misbehaviour, and later after various rituals he was accepted into his inherited position in the village (Interview, community A, August 2009).

This narration shows us a lot about struggles over power and position. It also points out how belief in the dead and life after death can be used to determine the rightful positions of people or exclude people

from accessing what belongs to them by custom. It also informs us that while resources in terms of money and other material things can help place people in certain positions, these attempts and claims can be resisted in a silent way. Again, it indicates that age, knowledge of cultural norms and customs as well as long absence from the community, particularly when the person does not visit the village over a long period of time, can all create situations of uncertainty and insecurity in the minds of people. Display of power in terms of age and authority in custom is also demonstrated in this narration. It also suggests that one's behaviour now or in the past may all be taken into consideration when it comes to acceptance in local positions and rulership. We see that while the landlord association requires large numbers to perpetuate their existence and activities, members will not condone misbehaviour of any member which may tarnish the image of the association.

Case 8: Investing in social relations mediates access to farmland

Kpongbor is a 28-year-old Junior Secondary School leaver who has been farming on rented plots ever since he completed school. He is a non-native and comes from the Volta Region. As a non-native in the community of residence, Kpongbor has no land of his own or parents. Kpongbor is a good friend of Kotoku, a teacher and a native of the community. Kotoku had helped Kpongbor to gain access to land when he first arrived. According to Kpongbor, for the past three years he has not been able to access land in the community where he lives with his wife and child even though he has farms (rented lands) in the surrounding communities. In addition to his farming activities, he is also a fisherman and therefore goes fishing (fulltime) when the farming season is over.

Recounting his recent failure to access land in the community of residence, Kpongbor told me that he thought initially that the people in the community did not like him, because he is a hardworking person and he does not come from the community. He felt he was the victim of dislike and jealousy towards young non-native men like himself who live in the community. One day, while Kpongbor was lamenting his predicament, he told his friend about his plans to leave the community. This did not go down well with Kotoku. Kotoku, being a native of the community and a good friend and confidant to most of the elders in the community, decided to unravel the secret about why no one wanted to rent out land

to him, Kpongbor. His intention was to talk Kpongbor out of the idea of wanting to travel or migrate from the community. Kpongbor told me that Kotoku had no family and liked him so much that he did not want him to leave. He sat down with him and told him everything concerning why he was not getting land for farming in the community. Kotoku told Kpongbor that the people of the community neither hated him for being a hardworking person nor as a non-native. Rather, they refused him land simply because he was a 'hard-fisted person'. They described him as a wicked person, not loving, and 'inward looking'. In view of this, the people conspired and decided not to rent out land to him. Kotoku therefore told him to be very nice with the people, particularly the opinion leaders in the community.

According to Kpongbor, he understood his friend and decided to mend his ways. He started giving fish to some elders of the community and that earned him some respect and friends. This gave him the opportunity to rent land in the community. During the period of the fieldwork he had a considerable amount of land in the community, which he cultivated as a rent-paying farmer (Interview, community A, 19 September 2009).

The case of Kpongbor indicates how an alliance between a native elderly man and a non-native youth can help in access to land. This community in reality does not hate 'strangers' or non-natives but it is expected that people here show their readiness to abide by the rules and ethics of the community and invest resources in relationships with those in positions of authority. As pointed out by Berry (1989), to maintain their access to and control over land in some sub-Saharan countries, people had to sacrifice resources, which they could have ploughed back into farming or productive activities, in order to invest in social relations.

Case 9: Customary laws override written agreements

Tetteh is a 52-year-old resident of community B. He is married to Maku and they have four children. Tetteh has three plots of land, located in different communities within the Manya Krobo district. Two of these lands are inherited lands which are not divided among the children. In other words, they all farm the land but have separate farms controlled and managed independently. The amount of land one cultivates depends on each person's capabilities regarding finances and other farm re-

sources. In view of this and wanting to have land for his children, Tetteh decided to buy additional land in his community of residence.

Ten years ago, Tetteh claimed he bought a plot of land from one of the *dademantse* (farmers' chief) for which the full amount was paid and some sort of an agreement form was signed between those involved in the transaction (himself and the *dademantse*). According to Tetteh, when the *dademantse* died, his children came to claim ownership of the said land, which he refused. The case went before the sitting *dademantse*, who could not handle it so asked them to go and see the *asafoaste*, who is higher in rank than the *dademantse*. The *asafoaste* also could not decide on the case, because the land in question happened to be part of his extended family land. Tension started building up within the community where Tetteh actually hails from and the community of his residence over that piece of land. Finally, the case went before the chief's court in the district capital.

Tetteh, in his submission, claimed he had bought the land and paid for it, and proved this with the agreement which both parties had signed. But this document carried no legal backing since it had not been registered at the court. The children of the deceased, evoking traditional and customary knowledge, pointed out that land in the community cannot be sold outright and that they do not believe that the land was sold. They claimed that when Tetteh came to live in the community, he approached their father who agreed to give him portions of land to cultivate, a point Tetteh did not deny. Therefore, in their view, the money Tetteh claimed to have paid was a token gift to their father since the actual amount was not even stated on the paper. They also claim that the undisclosed amount of money Tetteh claimed to have paid to their father amounted to a bribe which Tetteh used to compel their father to release the land.

Apparently, the document or agreement was also written by Tetteh himself, since the deceased could not write or read English and his children were so young that they could not have written it for their father. The chief, upon listening to the case carefully and employing customary rules, asked that the land be given to the deceased's children, since in his view the deceased wanted to assist Tetteh to cultivate the land temporarily in order to be able to feed his children. Tetteh lost the land without any compensation except the harvesting of his crops when they were matured. Tetteh claims he is not taking the case to the state court, since

that could result in him being ostracized in the community where he currently resides (Interview, community A, 11 August 2009).

The case of Tetteh shows how the local customary laws can be used to settle cases of land disputes. It illustrates one of the many cases where people purchased land and later had the land taken away from them because of claims of invalidity of land sales in the community. This is another case where traditional laws are re-interpreted to suit the interests of the head of the land community. It suggests that while adjudication of local customary land laws may not be equitable, most local people prefer that to state courts.

Case 10: Vulnerability of women's land rights

Korkor is a 46-year-old widow with four children and they live in community C. When her husband died and left her with the responsibility to care for these children, she needed to continue farming the small piece of land the family, including her late husband, had farmed together. A few months after the funeral of her husband, the widow's in-laws decided to take over the land and sell it without her consent because they claimed they needed money to defray the expenditure and debt incurred during the funeral celebrations. According to Korkor, no one told her this until she met Tettey, a cousin of her late husband, who invited her to his house. In his house, Tettey told her of the plan to sell her husband's land. According to Korkor she became morose, knowing that the late husband's family had not liked her even while her husband was alive. So she thought of going to see a lawyer since she somehow knew that the traditional or chiefs' court would not favour her. Knowing how the people did not like her, Tettey advised her rather to go and see her father who would lead her to see an elder of the community and ask him what to do instead.

Tettey felt that should she take the matter to the state court she would be finished; she would find life very bad and uncomfortable if she decided to stay in the community. Korkor's father agreed to see the elder, who told them to report the case to the chief's court for hearing. Unfortunately, the hearing at the chief's court did not favour her so she decided to proceed to the state court in the district capital. An embargo was placed on the land but the case took three years to be rectified. She won the case but did not get all the land, as part was given to the hus-

band's family. The land allocated to Tetteh was also not permanent but was given to her because of the children she had with the late husband. She told me that for the three years while the case was in court she and the children borrowed to eat and she also made some money from the pottery she buys and sells in the city. The 'family kept insulting us and calling us names but I told my children to be strong because I knew we will one day overcome'. True to her confession, 'the gods spoke on our behalf', she told me. She regained access and use of the land after she got legal assistance with the help of some friends who knew some 'big men in the city' (Interview, community C, 13 October 2009).

The case of Korkor shows another episode of a widow losing access to land she had formerly farmed with her husband, due to other family members' attempt to sell the land. It also shows that some women will ignore the potential hostility of the community and seek a solution to their problem wherever possible. In situations like this many women in the community will be silent and allow what belongs to them to be taken away because of societal consequences and disgrace. According to the stories we heard from the community, many women like Korkor have lost their lands and other properties through such manipulations and fear of the elders and chiefs of their communities after the death of their husbands or divorce. This story tells us that with some efforts, the weak and vulnerable can take advantage of the legal pluralism within the community to get justice..

Case 11: Social relations trump cultural norms in defence of women's land rights

Lizzy is the widow of Papa Krobo who died some fifteen years ago, leaving behind his wife and five children. When Papa Krobo (hereafter referred to as PK) died, his children were old enough to take over their father's lands. The children had the option of either sharing the land among themselves or keeping it together as family land. Those who needed land could, therefore, have the opportunity of cultivating what they were capable of doing. One of the important conditions was that no portion of their father's land was to be rented out to 'outsiders', but other members of the extended family, as tradition demands, could be allocated portions on a sharecropping basis. The only situation under which portions of land could be rented out is when the family comes under severe economic hardship, and even with that such decision should be col-

lective, involving all the brothers and other elders of their extended family. Because PK invested in the education of his children, particularly the male children, none of them stayed in the village after the death of their father. Two had good jobs in the city while the other two managed to travel overseas. The said land therefore became the 'property' of their mother and their only sister. These women had use rights to the cultivated lands from the male children and therefore in their absence the mother assumed the ownership right.

In the course of time, some relatives (cousins of the boys) appeared and inquired about some portions of the cultivated land, which the two women according to Lizzy agreed, with the consent of her children, to allocate to their cousins to cultivate as sharecroppers. They initially agreed to this but never paid anything for the first year of farming. They claimed they had used the income accrued from the farm to defray their expenses incurred on the farm. PK's children understood their situation and allowed their cousins to keep their shares of proceeds, given that they were relatives. This attitude continued till the third year of farming when PK's children decided to terminate the deal on the grounds that they also needed the land to farm, specifically to plant teak trees. Their cousins, however, disagreed. They argued that their wealthy cousins (PK's children) should allow them to cultivate food crops underneath the tree crops. Knowing their intentions, the brothers disagreed and forcibly ejected them.

The chief heard this and summoned the children before the elders. They were asked to pay compensation to their cousins for having destroyed their crops in the field. They paid the compensation and asked their cousins never to go near their farm and also ceased to call them relatives. The boys later realized that the large acreages their mother cultivated kept attracting attention within the community so they decided to share the land among the children, giving portions of the land to their mother. The mother, therefore, became the holder of a considerable piece of land, even larger than most men in the community. Lizzy attributes her ability to have such a large farm to the unyielding heart of her children and to their being ever ready to defend her even from far away Krobo.

This story indicates that while women are not always excluded from land access, customary rules and mechanisms can be invoked to expropriate the woman's property if she is not strongly backed by her male

relatives. The wealth of her children is another thing that helped her sustain the land. Had they not been able to pay the compensation, which was considerable according to the widow, some portions of the land, if not all, would have been sold cheaply to compensate the children's cousins. Again, because of their wealth and connections in the cities and abroad, the local people and elders feared to deal with them the way they had been doing with the other people in the community. According to Lizzy, these children had provided gifts for most of the village elders any time they visited home, so that they were sufficiently in the good books of the elders that no one wanted to tamper with their property (Interview, community A, 17 August 2009).

Case 12: Generational transfers override a father's po

Martey is a 75-year-old farmer and a basket weaver of community B. Martey is married to three women and has eight sons and three daughters. Martey is considered wealthy in the community where he resides. He has large acreages of land scattered over many communities within Krobo and some parts of the Western region of Ghana. According to Martey, when he was about 63 years old he became seriously ill and almost bedridden. He was certain that he was going to die so he called his children together and shared his landed property among them. The daughters did not receive any portions of land but instead he asked their brothers to take care of them. This division of land among his children created bitterness among the family; tension mounted among siblings and jealousy among wives because some claimed the lands were unequally shared. According to Martey, this became a problem for him in his sick bed. Since he had already gone through the ritual or process of transferring land to his children, he could not reclaim his lands. This 'worsened my case and was everyday calling my ancestors to come and take my life', he said.

Not knowing what to do, 'an angel', he says, came to his rescue. His friend Kwei had returned from the village only to hear that he was sick and in bed. Kwei arranged and took him to a prayer camp because he believed that the causes of the sickness were beyond the physical. Somehow, after several days at the prayer camp he recovered and returned to his village. At the prayer camp, Martey said, he was told that the last wife was a witch who had bewitched him and caused him to suffer the sickness till he died so his children could have access to Martey's lands and

other properties. When he divorced the wife on his return, the children of the divorced wife threatened their father to bring back their mother or else he would face death, but he refused. Since he had no more land, he approached the village chief (*asofoatse*) to intervene and help him get some portions of the land he had given to his children so he could continue farming.

The children of the divorced wife refused to give portions of the land to their father, and on several occasions ignored the summons of the chief. According to Martey, his children argued that, customarily, since he (the father) blessed the land for them, it was impossible for him to revoke the blessings and therefore take back the land. The formal legal system could also not be used to regain the land since the transfer of land was purely oral. Martey admitted that what the children were saying was reasonable although they were not being fair to him. With this, Martey confided to me that there was the need to relax or make more flexible some rules under the customary system on land, given that times are changing.

After long discussion among the male siblings, some of the sons agreed to rent out their land to their father, on condition that he cultivate the land himself and pay the rent charged after harvesting his crops. This suggestion did not go down well with the other brothers, who thought their father deserved to have the land without any conditions attached. The argument of those who did not agree to give over their lands to their father was that their father was weak and could not cultivate the land and that he was only going to waste the land. After some time, the children all agreed to give portions of the land to their father. But rather than cultivating the land himself, he rented it out to some non-Krobo men, which angered the children. According to him, till now those sons of his have refused to talk to him (*Interview*, community A, 26 August 2009).

This story supports the notion that land is power, even across generations within families – once the land is handed over to the next generation (in whatever way) parents cannot be sure their children will defer to or obey them. No female child was considered for land. They were instead put in the care of their brother. It also shows how inheritance practices are used to exclude daughters from landed properties.

Case 13: Customary laws and social relations against women's land rights

Maamle is a middle-aged woman who a few years ago married one of the local chiefs in community C. Maamle claims that since she married the chief she had never absented herself from the farm except when she was pregnant or sick and could not do farm work. She claims that during the initial periods of her marriage, her husband treated her very well, and gave her a good portion of the profits accruing from the farm. However, years into the marriage the attitude of the husband changed towards her, and when she complained it affected her share of profits from the farm as well as rights to profits from crops she cultivated on land allocated to her by her husband. Maamle later found out that the husband was dating another woman and she reported the incident to the family, who later summoned the husband. The husband, a local village chief, became angry that his wife has disgraced him so he divorced her on the grounds that she was barren and bore no children for him after several years of marriage. Maamle thus lost all her rights to the land she had cultivated.

As a result of the shame of being divorced, she left the village to look for a job in another community. She told me, 'after years of not having any man to marry me, because I am unable to give them children, I have returned to work on my father's land, which he offered me before I travelled'. According to Maamle, she now cultivates almost two acres of land annually and makes some profits from which she feeds herself and the father, who is very old. In addition, she trades in beads. She sends the beads to the market in the community every marketday. Unfortunately, her brothers have become jealous of her because they think that she is making a lot of money and that if they do not stop her she will become richer than them and begin to disrespect them. She wants to go and see the chief, but is afraid the brothers will beat her up and do something evil to her so she might lose the land completely (Interview, community C, 25 October 2009).

Maamle's case illustrates how a wife's refusal to approve of a husband's dealings and misbehaviour can result in divorce and loss of right to land within the community. Such vulnerability clearly tends to perpetuate gender subordination within marriage and society and raises questions about the even-handedness of customary land tenure systems. This explains why rural women often remain silent when subject to mistreatment.

Case 14: Land returned to original owner due to incomplete transaction

Amarthey, commonly known as *Brefonyo*, is a middle-aged man who claims to have received a portion of land from an uncle years ago. He narrates a story of a complex process of land acquisition and retrieval. Amartey claims that his grandfather was given a portion of land to cultivate years ago by his grandfather's childhood friend. This large acreage of land was big enough for him to farm alone as he was just starting a family. He gave portions to a non-native, Dzato, who was in the community, to cultivate oil palm.

Amarthey did not know anything about the transaction until recently when the family of the original landowners (Amarthey's grandfather's friends' family) called upon him to pay extra money for the use of the land or forfeit it. He told me that they asked for 500 Ghana Cedis, equivalent to about 250 Euros in today's terms, but Amartey could not raise all the money alone. He went to see the family of Dzato, to whom Amartey's grandfather gave a portion of the land to cultivate years ago. The family said they also could not raise that kind of money. So, according to Amartey, he told them should they not be able to raise the said amount, he will look for the money and that after he has paid the money, he will claim back the land from them. According to Amartey, they did not say anything, and luck being on his side he got the money and paid the original owners of the land.

Amarthey later attempted to call a meeting with Dzato's family to solve the issue amicably, but none of the family members responded. He took the case to the landholders whose grandfather gave out the land to Amartey's grandfather. They could not do anything about the case since neither they nor their grandfather gave out the land to Dzato or his family. Amartey then reported the case to the local chief but after several sittings they could not come to a consensus. The family of Dzato continued cultivating the land without paying anything to Amartey's family. Upon suspicion that the chief and his elders had collected a bribe from Dzato's family, Amartey took the case to the state court.

It was again proved that the documents provided by the other family had no legal validity. It was found to be a personal arrangement between Amartey's grandfather and Dzato. The court therefore asked Dzato's family to pay some amount of money to Amartey or lose rights over the

land. According to Amartey, the family of Dzato has since paid part of the money and the remainder is yet to be paid. He has also been receiving some token gifts in the form of harvested crops from Dzato's family, signifying a new kind of arrangement between the new partners. He calls this arrangement healthy but he is looking forward to their paying the total amount involved very soon (Interview, community A, 26 August 2009).

5.3 Concluding reflections from case studies

A conventional view of African tenure systems is that they are equitable to the extent that there is no landlessness. As pointed out in chapter 4, this was partly true when fertile land was abundant and pioneer farming the rule in the sense that gaining access to land was flexible and less difficult. As land gains more scarcity value and land demanders increase, rights to access to land become less easy to claim.

The cases presented in this chapter have shown some of the mechanisms employed by the local power wielders to exclude certain people, usually the less powerful in society, from gaining access to land. They have demonstrated how the use of local power structures, relations and institutions are often used to exclude or accommodate people who require land for cultivation. Position, privilege and power are critical and often used as an advantage to control access of other people to land.

While local people may still prefer the customary laws to state legal systems (chapter 6), their preferences may not necessarily imply that the local customary system is equitable. As pointed out by (Moore, 1986: 38) the study shows that the 'many rules that are stated as if they are universally applied are in practice selectively used'. This is made possible because such rules are not fixed, regulated by no state law, but negotiable. According to Juul and Lund (2002), the traditional heads, who generally reinterpret and define the rules, take control over the negotiation processes to the detriment of the poor. Through such mechanisms, however, some of those who lose access to their land rights are able to repossess their land.

The fact that all categories of social actors identified within the communities encountered exclusion of one form or another challenges the dominant position, which views women as the only social actors who are excluded from access to land. It shows that while formalization process-

es may have reinforced the existing relatively unsecured position of a section of the community of land-users, the customary system by itself has always discriminated against certain sections of the community. This suggests that issues of local exclusion from access to natural resources such as land should not be only be looked at from the perspective of gender but as an issue of locally specific social relations since it involves many other social groups and relationships.

Note

¹ Intestate succession law of Ghana (PNDCL 111) states the intestate of a deceased spouse who has not been disposed of by will should be shared among the surviving spouse, children and family according to proportions dictated by the law. The law insists that three-sixteenths, nine-sixteenths, one-eighth and one-eighth to the surviving spouse, children, parents and extended family respectively.

6

Land (property) rights negotiations and social legitimacy of tenure reform

6.1 Introduction

This chapter provides an analysis of tenure security and land conflicts in the context of the current land reform and legal pluralism. It aims at providing a nuanced understanding of ongoing shifts in customary tenure, with a focus on the social acceptability of land titling and registration. Thus, it goes beyond the theoretical proposition of using state law to restructure customary land tenure and examines the extent to which the assumption that ‘it is society that controls the law and not the reverse’ (Cochran, 1971: 93–4, cited in Moore, 2000) is valid. According to Mackenzie (1993: 200), land tenure insecurity is far too often caused by ‘the contradictions that arise from the contest of (property) rights over land by individuals drawing on two different sets of legal rights, which interact with each other’. This chapter looks at the factors and conditions that explain increasing social insecurity, and how they have shaped land investment and the welfare of farmers. This is achieved by exploring farmers’ views, perceptions, responses, practices and experiences, in relation to some components of the land reform policy, conflicts and security of tenure.

Specifically, this chapter looks at the nature, scope, frequency and seriousness of conflicts and land tenure insecurity as well as issues of adjudication and resolution. Through this analysis answers are provided to the question of who is benefiting from the current transformation, how and to what extent. This provides an indication of the success or otherwise of the reform process. In a way, the chapter assesses the plausibility of the premise that state interventions facilitate equitable access to lands, hence the need to vest land allocation and management with local traditional leaders (MLF, 1999; 2003). It shows that local customary practices

do not function independently of state policies but rather both operate side by side. We argue that inadequate understanding and application of multiple institutional frameworks create uncertainties and promote tenure insecurity, tensions and conflicts.

6.2 Landholding and tenure security in Manya Krobo

Generally, local people cultivate several plots of land and each of these may have its own terms of acquisition, control and use. Variations in tenure arrangements are usually based on social position, status and relations between transferor and transferee of land. This suggests that, in practice, access to local land depends more on social relations than any fixed rights or laws. This is also because in many cases people hold different bundles of rights to the same property or land. This makes it difficult to use the textbook definition based on exclusivity to measure the state of land tenure security (Bruce and Migot-Adholla, 1994).

As Broegaard (2008) suggested, farmers' perception about the challenges they face are critical in describing the extent of their land tenure security. Views, perceptions and experiences of farmers, concerning security of tenure and conflicts over land were, therefore, assembled and analysed during the fieldwork. In contrast to variables such as the breadth of land rights, their duration and assurance that are normally measured (Besley, 1995), the interviewed farmers provided their own definitions based on their perceptions. In general, they defined security of tenure as a feeling of peace over the land they cultivate; hence, the occupation of land with freedom from all forms of skirmishes and continuous use of land without any external or internal disturbances.

FGDs held in all three communities during the field study revealed different perceptions and feelings about security of land tenure among farmers. Their perceptions are summarized below:

1. Uncertainty about type of rights and its legitimacy.
2. Inadequate duration of one or more rights to land.
3. Lack of trust in exerting rights (challenges with weak and corrupt legal systems).
4. High costs of enforcement of rights (bribes, social contributions, investment).

5. Complex inheritance issues, such as who has the right of final decisions on land.
6. Complex and overlapping tenure (limits of investment and registration of land).
7. Inability to choose and access appropriate land management institutions.
8. No assurance of renewal of 'contract' is considered during the initial tenure arrangements.

Two main points emerge here. First, local people have the ability to define and enforce their own rules and norms within their communities, independent of external influences (Moore, 1978: 1998; 2000). Secondly, they desire legal security, which might not necessarily be based on state legislation. This is discussed further in this chapter. Apart from farmers' individual perception of what security of land tenure is, Place, Roth and Hazell (1994) defined land tenure security to include aspects such as:

1. Breadth: this refers to the composition, number and strength of the bundle of rights.
2. Duration: the length of time to have land with the certainty to enjoy the benefits.
3. Assurance: there is an institutional framework that can enforce the bundle of rights.

Also, Sjaastad and Bromley (1997) provide a definition which, among others, suggests that those who hold rights to lands currently are likely to focus on prospects of keeping or maintaining their rights in the future. Therefore they think of investing in or continuing to use the land.

Thus a focus on future gains determines what type of use a particular portion of land should be put to. This is also in accordance with the reality that land tenure systems change in tandem with changing economic and other sociopolitical conditions of an area (Gyasi, 1994). Since this may create uncertainties about future benefit streams, farmers are much more likely to ground their investment decisions on perceptions about the future security of their land. This in a way helps local people to attempt to order social reality based on their perspectives and not on state legislation. This often creates social gaps that may allow certain local elites opportunities to manipulate and exploit the situation to their advantage.

As 'perception is one of the most common ways of estimating tenure security' (Wilusz, 2010: 37), in this chapter we focus on farmers' perception about the situation around them as a way of accessing security of land claims negotiations. Moore (2000) attributes the flexibility of legal orderings to the influence of social fields within which the law operates. Studying the interactions between social processes and legal ordering is critical to determining successes of the application of law. Before looking at the perception of land-users, we first look at the land access negotiations processes within the legal pluralistic environment of Manya Krobo.

6.3 Land access negotiations in rural Manya Krobo

Access to land depends on processes of negotiation (Berry, 1993; Juul and Lund, 2002) which are often sociopolitical in nature, as they involve competition, conflicts and sometimes cooperation (Seppälä, 1996). Access to land is deeply embedded in a web of social and economic relations and networks of power. The expression of power relations within land negotiations is a reality of everyday life in rural communities. As a result people (contenders for the land resource) become more interested in protecting, consolidating or extending their power (White, 1993: 3) than in the equity and efficiency gains from the scarce resource under transaction.

The social position of individuals or groups in the transaction is therefore critical. It determines who is able or not able to win or exercise power. Even though such negotiations are influenced by membership and status of the landowning group, the quality of social relations between the 'land seeker' and 'land giver', as well as the reputation of the 'land seeker', cannot be underestimated. In practice, these factors play a crucial role in combination with social power, interest and wealth in the processes of negotiating access to, control over and even loss of land. In the real world, power, whatever forms it takes and often embedded in social processes, is paramount in allocating resources. Legalization as an 'intruder' in local community activities in developing countries contributes to the dynamics of power play in the land sector.

6.4 Local power, privileges and interest in land access negotiations

Several strategies of land access have evolved in recent years. In the past (when land was in relative abundance), fathers and relatives who had enough uncultivated and forest lands readily gave portions of land to people other than their own matured sons and relatives in order to cultivate it. Apart from helping the 'land seeker' to feed his family, the intention of 'land givers' was to get assistance from 'land seekers' in managing their lands. Since the 'land givers' could not be at all locations of their farms or plots, they more or less employed their tenants to help manage their lands by farming portions of it. Sons were the most preferred choice as they could be trusted more than 'outsiders' and also because they could easily be controlled.

Apart from the traditional right of control over children, fathers managed to control sons with promises of gifts of land and hope of inheriting lands one day. This is significant, since land was and is considered as an important source of local power and authority. Thus, failure of a son to accept and/or abide by rules set by fathers with authority over land could result in a dismissal or ejection from the land he may be cultivating.

In view of this, 'land seekers' (transferees) were therefore respectful to their 'land givers' (transferors). In some cases the former used to run all errands and wash the clothes of the latter as a way of maintaining the relationship and hence access to the land. These activities were carried out with a fee. This is what Berry (1993) refers to as social investment for the sake of maintaining land. Sons who were found not ready to own their own plots (younger ones) were given portions of family lands to farm under the supervision of their fathers. The father dictated crops to be cultivated and the son helped to clear and manage his father's land.

Sons who needed land but did not have money to buy any because land was becoming expensive and scarce could also ask for a plot of land. The father or other relatives who had enough land willingly gave out land to such relatives. In addition to what their own families could provide for them, sons-in-law also benefited from access to land through their wives' fathers' family. Access to such lands by in-laws and other outsiders was/is based on reputation, in terms of character, respect and trust, as well as hard work. Land assigned in this manner usually creates a

patron-client relationship between 'land givers' and 'land seekers' which is itself embedded in social processes of power. Such ideologies and belief in seniority and providing for the 'junior' or less abled reinforces subordination but also land tenure insecurity.

Although access to land was relatively easier in the past, the procedure varied among different social groupings within and outside family circles. The terms and conditions in relation to duration, nature and renewal varied from one social group to another, even though the initial intention in all cases is indefinite but temporal access or use rights. Terms and conditions are usually not negotiated but given as a convention imposed by the society. The open-ended nature of the 'social contract' make rights to such land highly insecure since landowners could take over their land at any time.

Land rights were also not transferable, but portions of the land allocated could be given to friends and sons upon consultation with the landowner or custodian. This differential access to land has not changed much, except that monetary mechanisms of gaining access to land have been added. Transfer of land to relatives, particularly sons, did not attract any form of monetary payment, except for a token of gifts or 'drink money'. The ability of 'land seekers' to show that they would not be 'land waster' or lazy was also essential in informing decisions of landowners whether to give out land or not.

Productive efficiency was a major criterion for allocating land to people, including one's own sons. Even though there was no contract in terms of written do's and don'ts, the community intuitively knew what was not to be done, and tenants or 'land seekers' did their best to comply with such social conventions. To check on opportunistic behaviour of tenants, landowners or their representatives or even passers-by could occasionally walk through their own farms, or farms of neighbours or tenants to check on what was going on.

It was observed that native adult women were neither involved in land acquisition nor the clearing of forest lands and hence did not control lands of their own. Even if they had, it would have been taken away from them since women in the communities seldom own any landed property. Men make decisions concerning properties and women are not supposed to own land. However, they were able to gain access to plots of land for cultivation from their male relatives and spouses where they cultivated food crops and, in a few cases, oil palm and cocoa.

Accordingly, in spite of the strict adherence to patriarchal ideologies, in the past women were not completely left out of land acquisition and distribution for farming. Opportunities existed for them to gain access to land through this form or mechanism of land acquisition, as pointed out in chapter two. By the mid-nineteenth century, non-natives could also acquire land through various sharecropping arrangements including *abusa* (one-third share) first and then later *abumu* (one-half share) tenancies. These land acquisition arrangements brought with them an embryonic process of differentiation among farmers. Additionally, access to land among members of a landowning family was based on age, gender and status within the family.

For an outsider, land can be acquired in several ways but mainly through a social network of friendship, marriage or as a worker (labourer) of a landowning member or head. This outsider will first look for a place within the community to rent through a village person. He then tries to make friends with the local people. The friend leads him to either the chief or one of the heads of families who then listens to him and decides to give portions of the land to him. This relationship involves an investment of money in the social relation (Berry, 1993). After a few consultations with some other members of the family, the head of the family then decides to give out land to the 'land seeker' on a fixed term or sharecrop basis.

With the increasing marketization of land access and lack of transparency among land custodians, 'land seekers' bypass the community people and go directly to see those they know have lands. Land custodians taking care of family lands also ignore the other members of the family, go ahead to allocate the land for monetary rewards or exchange. This creates problems in the future if proceeds and dealings are concealed but discovered later. This can result in retrieval of land from secondary right holders or cultivators.

6.5 Boundaries of 'negotiability'

Theoretically, all people belonging to a landowning community are required to have access to land belonging to that community. However, this rarely happens due to the presence of indeterminacy within social reality and ordering. As a result of the political processes involved in land access, analysis of land and other natural resources should depart from a

framework of negotiations. The processes involved seem to be onesided and encouraged Ubink (2008) to ask whether all dealings within customary land tenure systems should be placed under 'negotiation'.

This is in view of the fact that land contestants negotiate on an unequal playing field. There are no mutual benefits to be derived and no possibility of opting out of the process, which means a situation where the less powerful literally plead with the more powerful in order to gain access to land or benefits. As a dynamic and adaptable social process, negotiation is a fact of life, exhibited in everyday life at different levels: the household, community, national or even at the international level (Lund, 2002: 33). The inherent structural inequalities embedded in the political, social and economic context within rural communities frequently provide opportunities for local elites to have advantage over the less powerful and poor. That is to say, land negotiation has never been conducted on an equal footing due to the imbalance of power between contestants. Exploring the process of 'negotiability' helps address the question of the extent to which diverse people can negotiate or navigate access to customary land and tenure.

Legal pluralism offers spaces and opportunities either for people to access land for farming or for the court to adjudicate in land-related cases. However, the power imbalances within the customary system and community limit the opportunity for certain social actors, particularly women, non-native men and certain groups of youth in Krobo, to exercise their rights to land. Women in the study communities do not have direct right of access to land but they are also not denied access to land, particularly married women. However, their access to land is dependent on their husbands or other male relatives. Any woman who takes her land case to the formal court may risk losing her marriage, children and land or face public ridicule (see various cases in chapter 5).

A woman can take her case to any court only with the support of her husband, and even in that event would be called names that are often derogatory. The community justifies these practices and discriminations towards women by referring to the land as men's property. This is in conformity with the belief among Krobos that land (*Zugba*) is the goddess or deity married to Mau (God the creator and giver of rain) and therefore the reference to land as a female, which must be married not to another woman but to a man. In view of this, customary rituals for the

transfer of land from one to another are similar in several aspects to the giving of a woman in marriage to a man.

The customary tenure system, which is embedded in an unbalanced power system, tends to favour the already powerful and privileged within the community. Those who already stand a better chance to gain access to land from the customary system by virtue of their power of knowledge, masculinity, seniority, or wealth, are the ones who have better access to the land-mediating institutions. This limits the opportunities available to the poor and tends to increase inequality and insecurity among the poor and vulnerable.

In most cases women are discriminated within all tenure systems, communal or private. This situation was more evident in the traditional or chief's courtroom where people were literally robbed of their rights by the elites interpreting the customary law to suit their own judgement or to favour their protégés. In one of the sittings at the chiefs' court, I observed the situation where a woman stood before the elders, with her hands behind her back. She spoke slowly and responded to whatever the elders said with the usual *nkeporpee* (please). Not everything under the customary is indeed negotiable.

The present study did not identify any serious conflicts associated with the registration and titling within the communities, probably because this has not yet taken full affect in the community. However, studies carried out elsewhere in Ghana show how land registration and titling processes have created and are still creating problems of social insecurity and conflicts (Ubink, 2008; Yaro, 2010; Seini and Tsikata, 2004). The only complaint people in the study communities have with respect to land registration concerns the cost of registration. This provides advantages to the youth who return from the cities with cash to rent more land.

While people had serious complaint about the corruption regarding land transactions in the community, they were afraid to say it or challenge the traditional leaders, fearing the consequences. This kind of uncertainty, some informants emphasized, creates more insecurity.

It was observed that those women who did not have farms of their own worked on their husbands' or relatives' plots. At various FGDs it was stated that 'partnered' women did not have control over farm produce and profit from the sale of produce, and produce was not usually

shared. In many cases, male relatives or husbands decided at their own discretion to give portions of profits or harvested crops to their wives. The women were allowed to harvest crops to feed the household, but in many cases output could only be used in the home upon approval by the husband.

Adjudication processes were frequently manipulated by the local elites to their advantage. It was observed that several aspects of negotiation processes favoured the traditional authorities, landowners and the wealthy. In the case of *abunu* or *abusa* arrangements, for example, the landowners contribute nothing other than their piece of plots. Every other provision on the farm, including risks, are borne by the tenant, increasing their insecurity. Therefore, because land rights are temporal, open-ended, verbal and subject to change at any time, land contracted in this way could be described as insecure.

6.6 State land reform and uncertainty over land in Manya Krobo

The insistence on compulsory registration and titling of land, meant that privatization of natural resources, assets and services, and empowerment of local land authorities were partially visible in the study communities, even though land markets were still under-developed in rural Manya Krobo. To generate a deeper understanding of what is going on, we examine in this section the extent of penetration of the land reform and its affects in the communities in light of the NLP, LAP and CLS. The focus, however, is on the CLS, since it is essential in the national policy and closer to the ordinary rural dwellers.

6.7 Extent of success of land registration and titling processes

There is evidence that land registration and titling as proposed by the land policy are not a major concern for rural people. Instead, their hope is that they will be able to retain the land they currently cultivate for a longer time and in peace or without any skirmishes. In this study, it was expected that since the current land reform calls for compulsory registration and titling of land, there was going to be a rush for registration. However, events turned out to be different, with slow and marginal reg-

istration going on in the communities. Some people even feared that the land registration process brought a risk of denying them access to their customary rights to land which they have been farming for many years now.

Tabulation of respondents' knowledge about whether or not the land they currently cultivate has been registered, grouped by operated farm size, is shown in Table 6.1.

Table 6.1
Cultivated lands registered (as at 2009)

| | Size of land cultivated (acres) | | | Total |
|--------------|---------------------------------|---------------|--------------|---------------|
| | less than 3 | 3-5 | more than 5 | |
| Yes | 6 4.9% | 10 4.8% | 1 4.0% | 17 4.8% |
| No | 65 53.3% | 144 68.6% | 19 76.0% | 228 63.9% |
| I don't know | 51 41.8% | 56 26.7% | 5 20.0% | 112 31.4% |
| Total | 122 100.0% | 210 100.0% | 25 100.0% | 357 100.0% |

Source: Author's own survey, 2009.

Among the 357 farmers who were interviewed, only 17 of them, representing 4.8 per cent of the total, had registered their lands at the time of the survey. Table 6.1 indicates that there is hardly any difference in frequency of land registration between the three landholding groups, with the percentage of farmers registering their land varying only between 4.0 and 4.9 per cent. The only major difference appearing in the results (Table 6.1) is that a relatively larger proportion of the smallest farm-size group did not know whether the land they farmed had been registered or not (presumably because of the higher frequency of tenanted land in this group).

Reasons provided for the low registration rate of land include cumbersome procedures, centralization of land administration, and expensive

processes, lack of awareness of the programme or policy to register lands, corruption and bribery, among others. Clearly these are issues for which the LAP and CLS were set up to correct. Surprisingly, all these factors are related to cost and boil down to financial issues, beyond the affordability of smallholder farmers. This raises questions about the pro-poor nature of such land policy.

Numo Yartey, an elder of Community B, said 'such laws (referring to the title and registration of land) are often made for the elites, wealthy, rich people as well as the educated who matter and are needed by the government. We the poor people who do not know how to read are not considered in such matters' (Interview, 12 October 2009).

Another indication of the results of the work done by the land reform administration and institutions is the level of awareness about land registration among land-users. The study therefore ascertained the level of public education about local land registration and titling. Of the total 357 interviewed, 225 (63%) stated they were not aware of any such reform programme. This is regardless of the fact that the CLS has been established in the community since August 2008. A number of the people we spoke to had no knowledge of the location of the secretariat in the community. What does this mean? An interview with Samsac (Interview, February 2010) revealed that lack of awareness of the programme, poor level of education and popular apathy toward reforms and other government projects partially explain why people did not know where the CLS is situated. Other reasons for the low level of awareness and hence slow/low land registration were lack of transparency regarding access to information and lack of participation of the poor and vulnerable people in decisions regarding land.

According to Sikor and Müller (2008), involvement of diverse social actors and their interests in the design and implementation of reform programmes creates a sense of project ownership among local people. Research in Ghana has shown that there was a general exclusion or lack of involvement of poor farmers in meetings which discussed such issues of great importance to farmers (Aryeertey et al., 2007). It was clear from my interaction and conversations with local people that the lack of interest or non-registration of land in the communities was also due to the people's loss of hope in government policies. One young man told me 'government policies did not help us in any way in the past as well as now' (Charles, Interview October, 2009).

Responses of this nature give an impression that land access in the community was conducted in an atmosphere of local politics to the extent that government is blamed for people's woes. It shows that people have insufficient or no information on the possible benefits of the reform policy to enhance their decision-making. This is one example of the evidence that sensitization programmes and public awareness creation on the reform were inadequate.

Table 6.2
Mode of access and land registration status

| Mode of access to land | Is the land registered | | | Total (100.0%) |
|------------------------|------------------------|----------------|---------------|----------------|
| | Yes | No | I don't know | |
| Inheritance | 15 (8.1%) | 157 (84.9%) | 13 (7.0%) | 185 |
| Share-cropping | | 14 (70.0%) | 6 (30.0%) | 20 |
| Rent | 2 (1.5%) | 45 (33.3%) | 88 (65.2%) | 135 |
| Gifts | | 5 (71.4%) | 2 (28.6%) | 7 |
| Purchase | | 2 (100.0%) | | 2 |
| Loans | | | 2 (100.0%) | 2 |
| Others | | 5 (83.3%) | 1 (16.7%) | 6 |
| Total | 17 | 228 | 112 | 357 |

Source: Author's own survey, 2009

Table 6.2 indicates that those who cultivated inherited land are more likely to be among those who are actively registering their land, although the percentage registering (8%) is still very low. Most of the larger landholders will be found among this group. This corroborates studies con-

ducted elsewhere in Ghana, which suggest that it is mostly the wealthy who register their lands (Osma and Takyiwa, 2005). The poor claim they do not have the money and time to go through the procedure of registering their land. According to Samsac, 'those who register their lands or come to see us, claim they are doing so such that in case government takes over their lands, they may receive some compensation' (Interview, September 2009).

In order to find out the role of the CLS in Manya Krobo, respondents were asked to indicate the extent to which they could access the land management institution. The answers to this question helped to understand how farmers interacted with the secretariat. Among the 17 respondents who had registered their land, 7 indicated that to a large extent, they had access to the land management institution. The remaining 10 respondents described their accessibility to the CLS as less, meaning they did not frequent the secretariat. It was also observed there were a few more people, outside the 17 who worked on land, who were not registered yet visited the CLS. In most cases, while some claimed they were at the CLS to have conversation with the head of the CLS, others said they were there for explanations on the land registration and some customary tenure issues.

A further probe indicates that of the 17 respondents, who had registered their land, 5 had an indenture, 10 had land tenure agreement documents from their landlords and the other 2 had documents from the coordinating council indicating they have lands in the community. This could imply the emergence of a new way by which people seek to protect their lands through written documents. These other documents are not legally supported yet the local people recognize that as the basis for tenure security.

Land conflicts and disputes have risen in recent years. As one of the informants told me, 'these days a lot of people are going to the court because some people are encroaching on others' lands, others are also stealing land at the boundaries of plots' (Asabu, community A, Interview, 10 August 2009). The informants attribute these developments to a number of factors, including the increased demand for land for farming, the increasing preparation of people in anticipation of the takeoff of the MiDA project, and emerging inequalities among kin groups and family members. Corruption, bribery and the dishonest behaviour of local political leaders as well as lack of alternative jobs and over reliance on land to

provide a survival strategy were cited as factors that might trigger such conflicts. All these have roots in class and identity politics, which create animosity within communities.

The cost of registration and titling of land was of serious concern to the farmers. The policy and rules of registration indicate that to qualify for registration, the landlord or landowner is required to submit a site plan, indenture, and an amount of money for the actual registration and title certificate. The hiring of a lawyer to write and endorse documents and a surveyor to demarcate and a draw site plan are costs to be borne by the landowner. When ready for further processing, documents are to be sent to Accra, the capital of Ghana, at the landowners' cost. These costs, farmers claim, are high and mostly unaffordable. The cost of acquisition of the title, in terms of money, time and efforts, all suggest that the process may only benefit the well-to-do farmers and landholders and not the poor. Some farmers, who claim to know what the registration process is all about, stated that the current system of land registration is creating more apprehension within the community.

Many rural young men pointed out that those who cannot afford land registration are likely to end up selling their land to the wealthy. They claimed that such money could be given to any of their sons to travel abroad, to go and trade in the big cities or even to start a grocery shop (FGD in community A, 19 August 2009). This was evident in some of the life testimony a farmer narrated, concerning the attempts he made to sell family land due to economic hardship.

Samsac asserted that the new land reform has also created some confusion and fear among the smallholder farmers to the extent that some of them do not want to have anything to do with the CLS (Interview, September 2009). According to him, farmers are not registering their lands with the CLS simply because they fear their lands will be taken away from them once it gets into the books of government. They fear government might use the policy of compulsory land acquisition to take over their lands for the agricultural (MiDA) project in the area. This assertion was also confirmed by an employee (Interview, 14 January 2010) at the district coordinating office, who wanted to remain anonymous. Generally, people in the community did not express any serious trust in the government, particularly in its dealings with local people's land. It is obvious that these poor farmers would prefer to have their lands unregistered or untitled than to have legal documents which say their land is

secure. This suggests that the hesitation to register their land cannot be attributed to lack of money and poverty alone, although they are important. The outcomes of government's (past and present) dealings with local people's land could have contributed to the current situation.

The young men, who often travel to the cities during the off-farm season, return home with lots of money, enough to 'bribe' the landowners to release land to them. This action deprives the 'left behind' and those with poor access to land, and also affects land rents. It was reported that sometimes the 'city returnees' tell the landlords to increase the rent so that the 'stay behind' youth will be unable to afford to rent land. In such cases, the 'city returnees' are able to rent more land and sometimes employ the poor who do not have access to land to work as labourers on their farms. This shows one way in which monetary power, clandestinely or covertly (in some cases supported by some elders) can be used to influence local authority to change local situations and customs (FGDs of native males, community A, B and C in August, September and October 2009 respectively). A considerable number of the people at various FGDs said they never attended any workshop on land (FGDs of native male, community A, B and C in August, September and October 2009 respectively). This was with the exception of one of the chief's linguists who said he remembered attending one such workshop in Accra (Interview 27 July 2009), but most people claimed they never did.

The current land policy of Ghana gives importance to the state collaborating with traditional authorities at community level in order to promote equitable access to land, founded on the realities of local laws, norms and rules. However, the situation as it is now suggests that more needs to be known about the logic and functioning of the customary land tenure systems. A civil servant in Odumase, Nii Teyeko (Interview 24 January 2009), told me that since land in the community is mainly owned by extended families, and not the chiefs, the latter are doing all things possible to gain access and control over such land. This will establish or reinforce their jurisdictional control and power and control over their people. As a result of this, he claims 'the chief and his elders have in recent times been making attempts to claim what they (the traditional leaders) believe are 'stool' lands. This is already creating tensions in the community between those occupying such lands and the 'traditional leaders'.

Nii believed that there are politicians who support the chiefs. However, one of the linguists I spoke with denied this charge and said the primary reason why they will take such land is because it is needed for development projects. Nii said: ‘we the youth in this area know what they are about and we will do everything possible, to resist any move they make, regarding the takeover of the family land’ (referring to the stool land in the community). This suggests that the government’s attempt to vest land ownership rights with the chiefs (MoLF, 2003) could face challenges of acceptance from their own people.

These findings seem to corroborate Atwood’s observation that ‘registration (of land) can create rather than reduce uncertainty and conflict over land rights’ (Atwood, 1990: 663). It is important to understand here that while state policies might be issued at central level, implementation is founded on local laws, rules and norms which determine the terms and conditions of land holding.

6.8 Local perception of security of tenure

As noted earlier (chapter 4), the majority of the farm plots surveyed were held by natives and those who have inherited lands for reasons already pointed out. It was therefore expected that an insignificant number of respondents would express fear of losing land they current cultivate. Table 6.3 indicates the percentage distribution of sample respondents’ perceptions within identified social groups. Of the 357 respondents, 45.5 per cent expressed their apprehensions about losing land in the future, although their number is less than those who claim they were not afraid (55.5%). Of the native men, 15.5 per cent were worried, but of the native women and male youth, 80.0 per cent and 78.0 per cent respectively said they feared they would lose their land. This indicates that the perception of tenure insecurity was highest with the latter two (native women and male youth) groups. The case of the non-natives was even worse as all 22 of them said they are worried they will lose their rights to the land they cultivate.

Table 6.3
Expressed fear to lose land

| Responses | Native adult men | Native women | Native male youth | Non-native men | Total |
|-----------|------------------|----------------|-------------------|----------------|-----------------|
| Yes | 31 (15.5%) | 28 (80.0%) | 78 (78.0%) | 22 (100.0%) | 159 (44.5%) |
| No | 169 (84.5%) | 7 (20.0%) | 22 (22.0%) | - | 198 (55.5%) |
| Total (%) | 200 (100.0%) | 35 (100.0%) | 100 (100.0%) | 22 (100.0%) | 357 (100.0%) |

Source: Author's own survey, 2009

Table 6.3 shows that those who expressed fear of losing the land they currently cultivate or hold are likely to be mainly secondary right holders, who hold land based on lease-rental or sharecropping or through primary right holders. This pattern suggests a feeling of security among the native adult men, the majority of whom hold lands that they have inherited from their fathers. In-depth interviews with two informants, a farmer (Community C, September 2009) and an opinion leader (Moussa, Community A September 2009) indicated that there was use of bribes and 'marketization of the customary system', particularly, to influence landlords, chiefs and other opinion leaders or the so called 'big men'.

On the question of how serious the concern was of those who were in danger of losing or worried about losing their land in the future, 65.3 per cent of the sample claim the issue was very serious, 22.1 per cent asserted it is not that serious, while the remaining 12.3 percent said that they did not know whether it is serious or not. This high degree of perceived uncertainty about security of tenure amongst the sample could serve as an indication of some ongoing transformation with regard to security of tenure. Clearly, the social security attributes of customary land tenure systems and security of land access (Kasanga and Kotey, 2001) may be eroding in a way that requires immediate attention. During our FGDs it was revealed that the majority of these farmers are cultivating their farms on the basis of derived and secondary rights.

Those who cultivate land on derived and secondary rights fear they will either lose rights to their holdings or have rents increased and sharecropping arrangements worsened. The apprehension expressed by these

people should, therefore, be seriously considered, given that not less than 40 per cent of sample farmers are mainly secondary right holders with usually weak and insecure access to the land they currently cultivate. Failure to hold on to the land they currently cultivate could be problematic as it has the tendency to frustrate every good intention of increasing agricultural productivity and production in the community.

Although customary laws do not permit land sales, lack of finance or support through kinship often leads to sales of land. A case of interest, similar to the one which will be discussed in detail later in this chapter, concerns a middle-aged man, Paa Nii, who lives in community B (Interview, September 2009). He nearly sold out land belonging to the family not because of the commercialization of agriculture but as a result of a misunderstanding between his siblings. The death of his mother and the debate about who should provide money for the funeral nearly resulted in the complete transfer of family property to someone outside the family lineage.

Paa Nii is the eldest son of the father, who by tradition is supposed to bury their mother but he did not have the money and neither his younger brothers nor the family was ready to provide money for the funeral. He felt ashamed and therefore thought that to redeem his image, the best way to go was to sell out the family land and face the consequences. Fortunately, after much debate and wrangling among members of the family, someone agreed to lend him money so they could perform the funeral rites and bury their mother. This is a clear case of a near-distress sale of land, triggered by poverty and economic hardship and made possible by the emerging land market.

We asked farmers about how ownership of land was formalized within the communities. The general response indicates that pouring of libation in the presence of some community members was used in all cases to confirm 'ownership' or transfer of 'ownership' or holding rights within the community. Pouring of libation as land transfer rite served as the seal on land transaction. This confirms the reality that security of tenure is also related to social recognition of rights and access to land. It also suggests how land distribution and transfer of owners are still controlled by the land-owning community. This could mean that legal documents such as registration and titling could play little or no role in decisions concerning how land tenure security is perceived.

There is a need to get a grip on local understanding of rights and security and integrate that in land reform policies. This will help policy-makers and academics determine the impact (and unintended affects) of pro-poor legal land reforms. What is crucial is to determine how various people negotiate access to land and tenure, which depends on the nature of the differentiated power relations between different actors within the community and how they are played out. According to Ferguson (1994: 281) 'subalterns know the tactics appropriate to their situations far better than any expert does'.

Reasons for fear of land tenure insecurity provided by the sample of respondents and also from the FGDs ranged from economic and political processes to cultural dynamics within the communities. The high rental fee was listed as the topmost anxiety among the factors that cause insecurity. This is followed by the short period of tenure and the jealousy of some landlords, who accuse tenants of cheating, being disrespectful and other things, which might be unnecessary and untrue allegations. These farmers stated that in most cases landlords will eject people on the grounds that they need the land to farm by themselves or reallocate it to their sons who are returning from the city to farm, but that never really happens.

It usually arises because land is allocated to relatives and non-relatives alike without any initial negotiated contract. Negotiations are often open and subject to no legal support. On the contrary, land is usually allocated based on existing relationships or customary forms of allocations in the presence of some witnesses. Generally, allocation of such lands is conducted without written documentation except in a few cases, where non-binding non-legal documents are prepared and signed by both parties and their witnesses. Land allocation is renewable but the decision about the renewal is the prerogative of the landlord. Unlike the price or land rent, which is decided upon at the beginning of the leasing process, decisions about renewal are usually taken at the time of expiry of a previous 'contract'.

6.9 Farmers' perception of land conflicts

With several stakeholders struggling over land and varied types of land-holdings and ownership challenges, land issues in Ghana can be an important source of conflicts and disputes. These often vary in frequency,

type and severity as well as in the kind of property rights over which contention emerges. In the study region there was a serious lack of properly recorded history of land conflicts that could enable us examine trends of conflicts. In the absence of this, we focus analysis of conflicts/disputes over land on local people's perception of land conflicts within the communities, on the basis of the answers to our questions in the survey and during the FGDs.

In response to the question whether or not land conflicts were problematic within the communities, the survey shows that a considerable number (79.3%) of the total respondents perceived land conflicts or disputes to be problematic, with the remaining 20.7 per cent saying it is not a concern at all. In response to the question of respondents' perceptions about the frequency with which such land disputes or conflicts occur within the communities, 5.9 per cent claim it is very frequent, 62.7 per cent say occurrence of land conflicts is frequent and another 16.8 per cent mentioned that land conflict was less frequent. This suggests that incidences of land disputes are indeed frequent in rural farming communities.

Furthermore, we wanted to find out more about the seriousness of land conflicts in the area. In response, 79.3 per cent of the total respondents perceived land conflicts to be of serious concern. Among the rest of the sample, 12.3 per cent said land conflicts are not a serious issue, while 8.4 per cent said they were uncertain (or did not know) about the seriousness of conflicts over land. Serious conflicts can easily degenerate into violent ones that may destroy properties and human lives.

The data show that 6.7 per cent stated that the extent of conflicts was very serious, 38.4 per cent claimed they were serious, 26.9 per cent asserted that extent of conflict is less serious and another 13.2 per cent claimed it is not serious at all. Research and policy focus are usually on violent and large-scale conflicts, to the neglect of smaller and maybe non-violent conflicts, even though such smaller conflicts often turn into large-scale conflicts and civil wars in many sub Saharan Africa countries (Yamano and Deininger, 2005, cited in Tettey *et al.*, 2008). In relation to agricultural development, the extent of severity of this conflict cannot be taken for granted (Seini and Tsikata, 2004). Serious action must be taken to correct any future challenges in the communities.

Given the sample farmers' claim that attaining land improvement could result in ejection from land by jealous landlords, and hence their

lack of interest in investing in land improvement practices (see chapter 4), we wanted to know who had suffered eviction from land and the reasons for such eviction. The result shows that 18 (5.0%) out of 375 suffered eviction in the past. Of this number, 12 (66.7%) were women, 3 (16.7%) non-natives and 2 (11.1%) native youth and native adult men 1 (5.5%).

This trend was expected, as most native adult men are likely to cultivate inherited land in our sample plots, while women as secondary right-holders are likely to hold the weakest land rights. With only 5.0 per cent out of a sample of 357 respondents claiming that they were evicted from their farm plots, this may seem to indicate that eviction from land is not a big problem within the communities. However, an attempt to explore the actual experiences of people about eviction and denial of access to land suggests that involvement in land conflicts is much more frequent than what appears in the survey results.

6.10 Farmers' personal experiences of land disputes

Land conflicts are usually along ethnic lines in many rural communities of Ghana (Seini and Tsikata, 2004). However, in the studied communities conflicts over land seem to be devoid of any ethnic undertones. Land in these communities is nearly entirely controlled by the Krobos. In spite of this, non-natives were not denied access to land even though they may face some difficulties with access. The non-natives were observed to be competing with natives for access to all forms of land but through different mechanisms of access. For example, while natives gained access to land through inheritance rights, non-natives gain access to land through diverse mechanisms other than inheritance. Land conflicts here were mainly between (and with) local farmers and particularly relatives. This explains why people in the communities try not to discuss issues of land conflicts with outsiders.

The attempt to conceal land conflicts showed up when this researcher decided to compare information gathered from the qualitative research and quantitative survey. Data collected with these two methods show contradictions about the reality of land conflicts in the communities. In the FGDs, for various reasons (fear of community sanctions or support for community accountability), participants were not prepared to discuss land conflicts. This was understandable, as providing information on a

sensitive issue such as land conflicts could attract community sanction. Permission and opinions of elders were needed before such information could be made available to an outsider. Generally, while the community people claimed land conflicts were not a big issue, reports from the chiefs and state courts indicated that conflict over land was indeed a real problem and a challenge to development.

In view of this, we asked questions regarding personal experiences about land disputes or conflicts and the results were supported by the interviews, particularly the in-depth ones. On the question of who had experienced conflict(s) over the land they hold or held in the past, nearly a third or 112 (31.4%) claimed to have actually experienced these in the past. Some even said that their cases were still pending in the state magistrate's court as well as the paramount chief's court. A majority (68.6%), however, had not experienced disputes over their land before.

Table 6.4
Farmers' experiences of land conflicts

| Responses | Native adult men | Native women | Native male youth | Non-native men | Total |
|--------------|------------------|---------------|-------------------|----------------|----------------|
| Yes | 60 (30.0%) | 16 (45.7%) | 28 (28.0%) | 8 (36.4%) | 112 (31.4%) |
| No | 140 (70.0%) | 19 (54.3%) | 72 (72.0%) | 14 (53.6%) | 245 (68.6%) |
| Total (100%) | 200 | 35 | 100 | 22 | 357 |

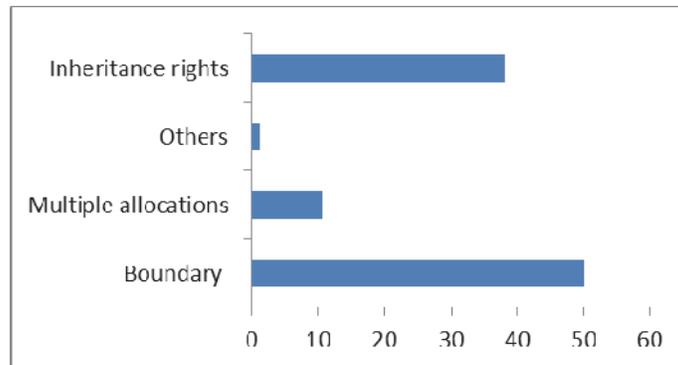
Source: Author's own survey, 2009.

Table 6.4 indicates that within social groups, native women and non-native men are the ones who are likely to be facing conflicts over their farm land. The involvement of these people in land conflicts could be associated with the weaker or subordinate rights' position they hold within a patriarchal society or their poverty status. In total, farmers who claimed they have personally experienced land conflicts on their plots, cultivated about 340 acres of land within the communities. This represents a total of about 29.1 per cent of total land under cultivation within the communities. Of those (112) who have experienced disputes/con-

flicts over their land before, 63 (56.3%) claimed they actually lost their lands in the process. Thus about 17.6 per cent of respondents claimed they lost rights to the 'land giver' who had provided a means of survival and family support.

In many cases, when land is taken away from a farmer, he/she is only allowed to harvest his/her crops in the field, without any compensation. However, in situations where people are under pressure or are being forced to leave the land, they usually lose everything, including crops in the field, since landlords would not give them the time to wait till crops are harvested before they finally vacate their plot of land. This suggests that the culture of paying no compensation operates not only with government but also with landlords or owners. This 'twisting of arms' is made possible when state or local elites use their power, wealth or position in society. The use of such forms of power further disadvantages the poor and vulnerable and hence makes it difficult for them break out of poverty. This raises the question of whether today's elite or local leaders would ensure equitable distribution of land when the resource is vested with them as prescribed in the land reform (registration and titling) policies.

Figure 6.1
Types of land disputes (per cent)



Source: Author's own survey, 2009

The survey data shows that amongst those lands that had been the subject of conflict there were different types. Boundary disputes were the most frequent (50.1%), followed by disputes over inheritance rights over land (38.1%), and then disputes over multiple allocations (10.6%) of the same piece of land (Figure 6.1). Conflicts or disputes over land reported within the communities were more related to eroding of rights (local legitimacy) rather than land registration or titling (state legislation).

There was no mention of conflicts over title registration except for the cost of the processes involved in registration, yet the reality of land conflicts cannot be disputed. It was often hinted that whenever there was a conflict between farmers, the one with better connections often went and saw the elders before the case came to court. In this way, those with closer ties or networks to social and political leaders were more able to influence the rulings in the chief's court. The inability of state law to fix customary laws creates uncertainty and opportunity for various people to manoeuvre and/or manipulate the system to their advantage (Amanor, 2010).

6.11 Land adjudication, processes and preferences

Security of tenure according to the farmers is that which assures them of peace without any skirmishes about their land rights, such that if disputes develop they could easily be defended, no matter what institution they approach. Implied here is a degree of indifference of farmers concerning the choice of land management institutions; critical to them, however, is the equity of adjudication over their land rights. Obviously, uncertainty in land arbitration cases can be a major source of insecurity, especially for poor farmers, and social conflicts.

As noted in earlier chapters, Ghana operates a pluralistic legal environment. In the case of a dispute, disputants theoretically have unrestricted opportunities to seek adjudication through accessing any of the available legal institutions. Three institutions of land dispute resolution were cited by our respondents, but one, the alternative dispute resolution (ADR) mechanism, seems not to be effective in the area. The other two include the traditional chief's court and the formal or state court located at Odumase in the Manya Krobo district. While both courts have the powers to preside over all forms of cases, the state court is the one with the legal capacity and mandate to hear criminal cases. The chief's court is

recognized by the laws and constitution of Ghana and mandated to adjudicate cases within their jurisdiction in accordance with assigned responsibilities. Cases do not have to be lodged at the state court before being referred to the chief's court or vice versa.

Equity of adjudication deserves a critical look not only for its own sake, but also because of the potential to create social tensions when adjudication is deemed to be unfair. A question about the equity of adjudication was posed to the respondents and also at various FGDs. The survey shows that while 170 (47.6%) of respondents claim they would prefer formal state court adjudication on land matters, 187 (52.4%) showed preference for adjudication in the local chief's court. Based on these statistics and information from the various FGDs held in the communities, as well as casual conversations with people, a general impression was given that even though there seems not to be a wide observable variation between people's preferences for the local chief's or formal state courts, slightly more people show preference for the chief's court resolutions as compared to the formal courts.

Indeed, cases of long proceedings, cost of transport, loss of farm work due to long periods of adjudication in formal courts, use of the English language, heavy presence of police and other things were cited as some of the reasons why people will not chose the formal courts for adjudication of land cases. Other reasons provided include the fact that a greater number of people do not trust the formal court systems to give equitable adjudication. It was also revealed to me that people who failed to win their cases in local chief's courts could not proceed to appeal in formal courts because some local leaders frown on such practices, and in such cases different types of sanctions could be the result.

According to Platteau (1995; 2000), instead of supporting market processes, pre-existing institutional rules and arrangements may act to subvert them, leading to unintended negative equity effects. As people get used to a system, they often have apprehension of new systems since they rarely know what outcome it will bring. It could also be the fact that in spite of this some people still accessed both courts in order to get what they call fair judgement (FGD, Community A, August 2009; Community B, September 2009; and Community C, October 2009).

Among those (63) who lost their land through disputes, 26 (41.3%) sought adjudication in the chief's court, 14 (22.2%) chose to go to the state court, while the remaining 23 (36.5%) claimed they used others,

such as the family and head of clans as well as the alternative dispute resolution (ADR) centres. A combination of the formal and local courts to resolve their land conflicts or disputes was also engaged. Together, a total of 49 (77.8%) of respondents who lost their land indicated preference for an out of formal court settlement. Although a rather small number of disputants preferred the formal court for adjudication, data gleaned from the state court registry in the district indicates that a total of 64 land-related cases were registered between 2000 and 2009 at the Krobo-Odumase Circuit court alone. These are cases related to various forms of land dispute among farmers within the district. This registration represents an average of 7 cases registered per year at the magistrate's court. However, some cases registered in 2000 were found to be still pending in the court.

An interview (Odumase, 23 January 2010) with the secretary to the chief's court in Odumase confirmed our assumption that more cases are likely to be heard in the chief's court than was suggested from our data. Yet he was not able to provide details, such as the number of cases they receive and hear in the court and how they ended. This indicates that even though more land cases are heard in the chief's court than the formal court, these cases pass through the court unregistered. His inability to provide the data was mainly due to the dearth of adequate recording and storage equipment to record and store court proceedings. Despite this, he disclosed to me that the number of cases on land disputes that come to the chief's court kept rising. The peak periods usually coincided with the beginning of the farming seasons.

Except for the few occasions of open skirmishes that were reported, violent land conflicts were minimal. Indeed, the low patronage of the state court is worrying. It also raises concerns about the possible manipulation of state courts by the elites. As pointed out by Platteau (1996: 43) 'there is always the fear that the adjudication/registration process will be manipulated by the elite to its advantage'. As noted in chapter 2 and also chapter 5, the use of bureaucracy and positions of power by elites to manipulate court proceedings is not uncommon in Ghana

The examples from other sub-Saharan African countries cited in Platteau (1996: 2000) suffice to explain why farmers are not keen on registering their lands or using the state court systems. The state courts and the judiciary are alleged to be corrupt. In the event that this turns out to be true, the only option left for these farmers is the chief's court. Alt-

though the sample data shows a greater level of confidence in the chief's court as opposed to the state-funded local court system, it does not imply complete trust in the adjudication of cases in the chief's court. Some people we spoke to in the study communities strongly lamented how the chief and his elders have used their knowledge and powers to subvert justice. The lack of confidence in both the courts is a cause for concern, but should not be taken to imply that the court systems should not be used. The existence of these courts is likely to be better than no courts. However, this may call for reassessment of the government's decision to use the court systems in such land adjudication. The ADR could be an alternative since it attempts to combine aspects of the other two court systems.

Rao (2007: 312) claims that the 'formal legislative system strengthens the voice of women by enacting laws that help protect the women against the possibility of losing their properties', but unfortunately these women do not use the courts to settle their land claim cases. Some scholars believe that the non-use of the formal court systems or laws by local people is because they feel that by resorting to the use of formal courts or laws, such laws will be enforced and may override locally constructed social rules and norms. Casual discussions in the field and my own observations indicate that apart from the mistrust in formal courts, tradition and poverty explain why local people prefer the local chief's court. Despite the reality that chief's court uses customary laws which in many cases are unfavourable to women, and represents inherent discrimination practices and rules, the chief's court is still the land dispute settlement institution most preferred and accessed by women.

Women are unable or unwilling to resort to formal courts because traditionally they would be seen as traitors and undisciplined people who have no respect for the traditional authorities. Those who ignore the traditional and customary authorities often face consequences thereafter. This is because rural people's reliance on higher authorities for other resources and needs transcends issues of land dispute resolution alone. The very act of taking a land case to the formal court is interpreted as bringing a disgrace to her husband and family. This could even result in divorce or asking the woman to go and stay with her parents for a while (see chapter 5). When this happens she will lose access to her land or farm. It could also affect her chances of gaining access to land within her

community. Local people may require or appeal to chiefs in cases of marital problems, child naming and other social activities.

Resorting to formal courts on issues that could be dealt with by a local chief's court can be very expensive to the disputant. While local leaders frown on people who seek adjudication in state courts, it was found that these same traditional leaders continually refer to state laws in their discussions, especially during their adjudication processes in the chief's court. These contradictions in the way traditional leaders perceive state laws in resolving land disputes also raise questions about how these leaders will deal with land issues when the policy to vest local lands with them becomes a law.

Poverty does not sit well with the need to appear several times at the formal law courts. Some people claimed that even though the chiefs' courts may have their own problems and may not 'temper justice with mercy' as it is said, they will still prefer to have their case heard in the chief's court because it is relatively faster in the adjudication of land cases. Although some cases were pending at the chief's court during the survey, none of those was over three months. Yet, statistics gleaned from the magistrate's court register revealed that some land cases registered as far back as 1976 have still not been discharged. In such cases the poor who do not have the money to be traveling in and out to court finally become frustrated and give up. This then procures an opportunity for the wealthy social actors, who may use this advantage to secure the right to the disputed land.

6.12 Investment in insecurity

A number of writers on Africa argue that land-related investments such as tree planting and building are important prerequisites for many rural dwellers to enhance their tenure security (Besley 1995; Platteau, 1996; 2000; Sjaastad and Bromley 1997; Berry, 2009) rather than an outcome of more secure tenure. While this may sound good for private landholders, it does not really question the type of investment that those working on communal land make. It also leaves open the question whether those investments really provide security of tenure, and who are those who really benefit from such land-related investments and what form these investments will have. This section therefore looks at the correlation be-

tween investments in land (soil) improvement and the extent of security it assures, based on the mechanism by which land was acquired.

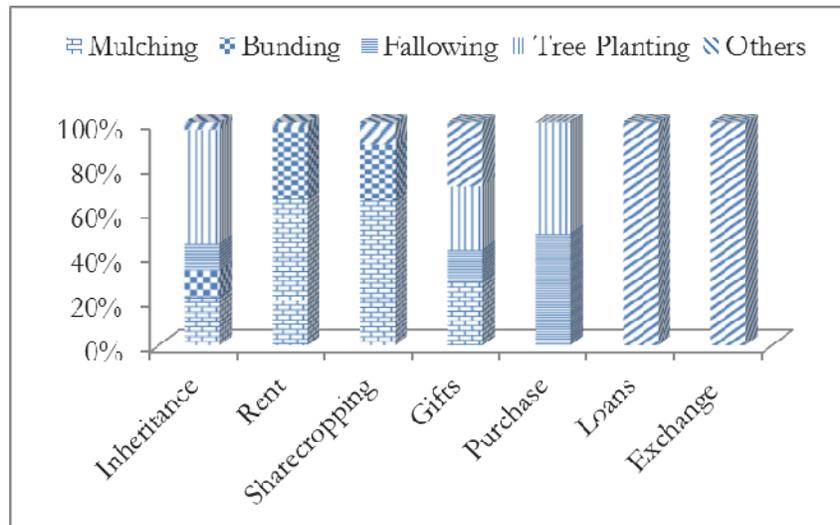
Figure 6.2 shows the relationship between the most common forms of land acquisition mechanisms and land (related investments) improvement practices within the communities studied. This figure shows the percentage of farmers employing what they considered the most important and common improvement practice within each category based on the most common access mechanism employed in the acquisition of land. It indicates that many farmers, of course, employ more than one improvement practice and that almost everyone in the sample (no matter the mechanism used in gaining access to land) made some efforts to improve their land situation. This suggests that no matter the degree of tenure security, efforts were made by farmers to invest in land improvement for increased productivity.

It is observed that on the one hand that those with more secure rights to their lands (such as those with inheritance rights) were found practising relatively more permanent land investments (security enhancing land measures) such as tree planting. On the other hand, those with ostensibly weaker or less secure rights to land, (such as those who cultivated rented, loaned and exchanged lands as well as share croppers) mainly practised mulching, bunding or terracing and other practices (such as stone and gravel removal from their fields) but not tree planting or fallowing, reserved for those with more secure tenure (see Goldstein and Udry, 2008).

Figure 6.2
Commonly practised land improvement activities and land access modes

Source: Author's own survey, 2009.

Apart from tree planting and fallowing, the rest of the activities practised by these farmers are referred to here as productivity enhancing measures. These are aimed at improving the quality of land for higher



productivity. Generally, in comparison with the security-enhancing technologies, the productivity-enhancing investment is less expensive and can be affordable by all, including the poor. It also suggests that in the event that the 'actual owners' of land demand their land back the investors of such productivity-enhancing investments may not have serious challenges. It shows that those with relatively weaker tenure do not get involved in more permanent land investments.

Gavian and Fafchamps (1996) observed in Niger that households applied more manure on owned plots than on borrowed lands which were held for a specific period and had to be returned to the landowners. Those with land rights through loans and exchanges were more engaged in simple and less expensive land improvement measures just to improve production and productivity. It is argued that in most part of West Afri-

ca and southern Ghana in particular, a strong relationship exists between political and social power on one side and control over land on the other. Goldstein and Udry (2008), for example, found a clear link between simple land-related investments, such as fallowing and modes of access to land, and consequently output in terms of farm income, which has effects on farmers' welfare. This result confirms the observation made by Deininger *et al.* (2003), that the perception of more secure tenure, rather than formal titles, was associated with productivity-enhancing investments in terraces among farmers in Ethiopia. Those with inherited and more secured rights constitute a majority of those who could invest in their farm. This finding corroborates research conducted in Thailand by Feder *et al.* (1988) in which they argue that tenure security enhances agricultural productivity by offering those with greater security opportunity to invest in land improvements.

Table 6.5
Most common land improvement practices by social groups

| Land related investments | Social groupings | | | | |
|---|------------------|--------------------|-------------------|----------------|-----------------|
| | Native adult men | Native adult women | Native male Youth | Non-native men | Total |
| Bunding Count % within Social groupings | 35 (17.5%) | 9 (25.7%) | 33 (33.0%) | 4 (18.2%) | 81 (22.7%) |
| Fallowing Count % within Social groupings | 21 (10.5%) | | 5 (5.0%) | | 26 (7.3%) |
| Mulching Count % within Social groupings | 57 (28.5%) | 24 (68.6%) | 50 (50.0%) | 18 (81.8%) | 149 (41.7%) |
| Tree planting Count % within Social groupings | 82 (41.0%) | 1 (2.9%) | 10 (10.0%) | | 93 (26.1%) |
| Others Count % within Social groupings | 5 (2.5%) | 1 (2.9%) | 2 (2.0%) | | 8 (2.2%) |
| Total Count % within Social groupings | 200 (100.0%) | 35 (100.0%) | 100 (100.0%) | 22 (100.0%) | 357 (100.0%) |

Source: Authors own survey, 2009

Table 6.5 shows that within social groups only a few people, mainly 10.5 per cent of native adult men and 5.0 per cent of native youth could allow their land to lay fallow. As expected, no woman or non-native man left her/his land fallow or uncultivated. An attempt to do that would be costly and could result in loss of farmland by anyone with less secure rights to land, such as these social groups. Mulching as a productivity-enhancing mechanism for protecting land was carried out by all categories of social groups, with a majority of native women, native youth and non-native men implementing this practice. This suggests that farmers in the sample were more concerned with increasing production rather than in enhancing the security of their rights over the land they cultivated.

Another 26.1 per cent planted trees as a measure to replenish the land fertility and perhaps as a land security-building measure. 41.7 percent of the total respondents 41.7 per cent practised mulching, while another 22.7 per cent invested in bunding as the best alternative way to ensure increased soil fertility and productivity. Generally, the native adult men and youth were found to be involved in all forms of land improvement practices identified within the communities, while the other social groups practised mostly those considered as productivity-enhancing measures. The reason for certain categories of people not investing so much in land improvement could be attributed to restrictions of rights to land and/or the lack of interest of temporal right-holder (secondary or derived) farmers to invest in other men's property, knowing that they will one day will have to give the land back to the owners. This finding corroborates Migot-Adholla *et al.*'s (1991) study in Wassa, Ghana, where farmers with only limited transfer rights were less likely to be planting trees on plots of land they cultivate.

The tenants and landlords explained their differences in land related investments and lack of interest to rent out land. On one hand, while tenants felt that they could be ejected from the land by their landlords at any time, they never bothered to undertake any land investment practices. The landlords on the other hand claimed that their refusal to rent out land to some people, where it is rented for short periods, is because some farmers do not use the land effectively and hasten degradation in the process. The *Otseamen* confided to me that the reason for not allowing people invest in long-term land improvement and soil conservation practices is because such could be taken advantage of by tenants to confer unto themselves relatively long term rights to the land. Evicting them

from the land could be difficult and expensive in terms of time, money and production (interviewed, 17 February 2010).

Equally so, those with less secure rights will hesitate to invest in their land because landlords might be tempted to take the land back after having noted its value increased. But farmers might also take the risk to improve land quality (by planting trees), which can help them in the case of conflicts brought to court. Farmers, particularly non-natives, fear they might not be around to enjoy the fruits of their labour in land investment, but their involvement in some form of land-related investments suggests that the notion that poor people are unconcerned about land investment is not true in all cases. While the poor farmer may be interested in short-term land investment that brings immediate returns, cumulatively over the years they cultivate the land and contribute to sustaining the fertility of the land without resorting to fallow.

As a way out of the difficulty of gaining and maintaining access to ones right to land, many of the FGDs conducted in the communities revealed that farmers, particularly the youth, would prefer a form of documentation, to be signed by the transferor, transferee and their witnesses. Through this form of land transaction documentation the people hope that sanity in land dealings will prevail in the community. Those in favour of this process argue that since they are poor and do not have the money to hire a lawyer, certain local safeguards and incantations should be invoked to make it impossible for any of the transacting parties to renege on their promise. The people opined that this method of sealing a land transaction is one of the surest ways to ensure security of tenure within their communities.

The people believe that such spiritual invocations will discourage people from indulging in acts of breaking the rules of the gods and ancestors of their lands. This issue of documentation of land transaction was found not to be alien to the community (see chapter 5). An elder and an *otseame* of a village confirmed this to me. He said that '*our great grand fathers who purchased these lands from the Akans had such written contracts although it was not a court document. They used such documents always to defend themselves whenever disputes over land erupted*' (Nene Mantey, interviewed in March 2010). This form of contractual documentation of land transactions is '*more open, less difficult and costly compared to the current system of titling and registration processes*', the elder opined. This process suggests a possible combination of local community and state safeguards, which is more en-

trenched in the existing local rules and arrangements for land allocation. The feasibility of this process needs to be further investigated.

Generally, the analysis presented here suggests that in the rural communities those closer to the network of social and local political power have better security (perceived or actual) and are more inclined to invest in land than those with less secure land rights, who, in order to have increasing productivity and income, invest in land productivity enhancing mechanism. It shows that the local people also have a way of solving their own problems without any imposition of law by the state or court. Clearly, pluralism of laws and land institutions involved in regulating local land rights is going to be a longterm reality.

7

Conclusion: Emerging issues and implications

7.1 Introduction

This study has engaged with some key issues and prospects of equity, insecurity, exclusion and conflict within the two major legal systems of land tenure administration in rural Ghana. Through the lens of an ethnographic socio-legal approach, this study focused on how local land-users (farmers) employ, respond, legitimate and appeal to the prevailing multiplicity of land laws (formal and informal). It has explored the social legitimacy and interactions of processes of tenure arrangements, reactions of farmers to the titling and registration processes, and ascertained whether or not the land reform processes actually protect and secure farmers' claims to customary land. It looked at how the interactions within the plural legal institutional environment shape and influence (in)security, rural differentiation, land claims negotiations and their impacts on farm investment and the welfare of farmers in selected rural communities of Manya Krobo, Ghana.

The study demonstrates that the transformation underway in rural areas has shifted the local power relations, in terms of who is able to gain access to or control rural land. The study shows that in spite of the plurality of legal frameworks which creates opportunities for all people to negotiate and re-negotiate access to land and tenure arrangements, certain categories of people are in a better position than others to influence land claims negotiability. Specifically, the study has revealed that those native adult men with inherited rights to considerable amounts of land are those who wield more power, and can use it to have their own way in land allocation and tenure arrangements.

This chapter provides a summary of the main findings and conclusions, in light of the study's original research questions and objectives, and concludes with some reflections on policy.

7.2 Summary, conclusions and reflections

This study has explored some key issues, factors and claims underlying the formalization process which also have implications for the current World Bank inspired market-led land titling and registration policy underway in Ghana. First, it has shown that formalization of local land tenure rights or arrangements is critical but may not be a real priority for farmers within the studied communities. Secondly, formalization may be possible, yet may not be automatic, as the process requires negotiations that ensure local people's interests are considered. The safeguard measures of both state and customary systems need be investigated, identified and integrated into the current processes of land tenure policy development. The flexibility and resilience of local customary land tenure arrangements to a large extent determine the success of land tenure reform. Thirdly, it has shown that compulsory formalization of informality may not be attainable in every community, since that may depend on the extent of legitimacy and acceptance the process obtains within the communities. It was found that markets in land have always existed and continue to exist, albeit mainly in the informal sector, which often makes transaction and transfer of rights precarious and insecure even among relatives or kinship members.

Fourthly, an obvious trend towards individualization of land rights is emerging, but not in any linear fashion as assumed by some authors. The evolution of customary systems is happening but through complex and dynamic processes, which may hold the potential to trigger landlessness even among natives and landowning family members. This suggests that contrary to neo-liberal propositions of universal benefits under the current shifts in customary system, a few people, particularly those with inherited rights, socially privileged and the more powerful within communities are benefiting at the expense of the poor and less powerful members of the communities.

The study has demonstrated that land tenure in rural Manya Krobo is generally governed by two legal systems – the state and customary – which interact in a characteristically complex, dynamic and pluralistic

environment. It has shown that there is no real hierarchy between these systems, yet the local land-users tend to prefer the customary system to state-led legal processes of land tenure reform. Despite this, the findings revealed that both state-led reform processes and customary practices of local tenure arrangements actually and potentially promote exclusivity, inequity, insecurity in access to land, tenure arrangements and benefits that may accrue to land-users. The unequal power relations and inequalities inherent within the systems and social fabric of the community have contributed to the current challenges by restricting poor people's access to negotiable land and land rights. This is so because in many cases the local norms and practices have allowed people, especially the more powerful, to take advantage of the system because there are no real parameters set up or designed to check and sanction manipulators.

The inequity and inequality in access and tenure arrangements suggest that such open provisions within the legal systems usually favour the more powerful, wealthy and traditional leaders at the expense of the poor, vulnerable and less powerful within societies. In spite of this, it was observed that the majority of farmers within the communities appealed more to the existing local customary and legal systems than to the state-led processes of reforming local tenure claims. They ignore its potential and actual exclusivity power or nature.

As noted earlier, the study has shown that the processes involved in reforming local land tenure are far from being linear or straightforward. They are more complex and multi-dimensional than what the market-led state processes of local land tenure reforms suggest. By definition and in practice the processes involved in the state-led processes of registration and titling are exclusive to the extent that they favour the more powerful players within land-owning communities. As a result, it was observed that those with inherited rights to land, who today control large acreages of farmland in the communities, are benefiting from the current transformation and negotiation over land tenure. Although they (those with inherited rights) may not have the absolute and exclusive rights to make allocation decisions over customary or family lands, they are able to manoeuvre their way out through the use of local land principles and norms. Access to 'the powers that be' is therefore critical in determining who is benefiting from the current transformation and should not elude policymakers in designing workable policies on land.

The 'shaky' customary system grants the local traditional leaders authority and opportunity to exclude others, usually the poor and vulnerable social groups. Thus, social norms and wealth in terms of economics, culture and politics were found to be used to influence land arrangements. State initiatives mainly serve as facilitators and not necessarily initiators (see Hill, 1963) in changing and developing local communities. This suggests that policy/law makers need to understand the responses of local people to state policy and ideologies before embarking on any policy reform.

It was observed that the poor and vulnerable people who do the actual cultivation of land were those who suffer from limited access to land. This is happening because the poor do not possess the social resources and power (constructed by society) that may enable them to hold claims to their land. For example, the term *zughantse* in Kroli, which literally means 'father of land', gives room for male adults to dominate over land within the kinship or family. It prescribes a fatherly right to land, hence excluding native women and youth within a landowning group. This will also give the adult men and local 'traditional' leaders the right to register lands (if registration becomes a reality in the communities), in their names and on behalf of their families. Thus, in many cases, formalization of land rights by the state or local allocation rights to land is subsumed in the name of the father of the household, kinship or community of landowners who govern and manage land based on 'customs'. Land transactions under such regimes may lead to abuse of power and weaken the tenure security objective of formalization.

The findings indicate that even though privatization or formalization of individual landholding rights or 'ownership' has not yet taken full effect within the communities studied, aspects of the market-led reform objectives such as commercialization of land acquisition processes, marginalization of vulnerable people and reduction (or fragmentation) in landholdings are already visible on the ground. This confirms Aldashev *et al.*'s (2007: 3) comparative assertion that 'even if the formal law is not resorted to in an explicit manner, the simple fact that it exists and that people whose interests concur with its prescriptions can threaten to use it, might create a situation in which its objectives are partly met'. Obviously, this suggests that the state law does not always need to be fully implemented before its objectives or impacts can become functional or reality on the ground. It suggests that the community within which the

state law is expected to operate has its own mechanisms to attract or transmit the effects of any new state law (see Moore, 2000). This provides an opportunity for us to study the effects of formalization in such communities.

This transmission of state rules or laws on land and impact on local people occur in several complex ways but two are common and worth mentioning. First, those in leadership positions, who hope to gain an advantage through its implementation within their communities, are likely to implement portions of the new law. Secondly, the new system interacts with other legal orderings, and in this way the impact or objective of the new law can begin to be felt even when there has been no formal announcement or implementation. This may help to explain why, in our case, the people acted and responded to state policies the way they did even when majority of the local people claimed not to have any knowledge of the new law or reform. The fear of losing their lands has been critical in their behaviour towards the shifts or transformations and acceptance of the new law.

The market-led approach to local land registration and titling argues for the establishment of a market in land to trigger commoditization and actual sale of land. The market as defined by the market-led models suggests that titling and registration of land will be successful under the MLAR. Yet, contrary to this argument, the study shows that sale of land within the communities occurs without any formal land-market and without the requirement for land to be registered. This study has shown that formal land-markets are absent in the communities, yet some of the objectives of a state-led market (formal) approach to land tenure reforms are already apparent in the communities. Chapters 3 and 5 show that there has always been a market in land, albeit in the informal systems and supervised within social structures and by the local leaders. This reality challenges the assumption that a market in land is made real and possible only when private property rights exist. Exchange of rural communal or ancestral land for monetary rewards has always been practised, even in the absence of a formal market in land or formal land title.

This study therefore confirms Atwood's (1990) assertion that formalization of local land rights by state-led processes may worsen the plight of the poor farmer, whose survival depends on secure access to land. Proponents of the formalization process have failed to consider the actual operations of the real market, local norms and the reality of unequal

power relations often associated with local relations of land and land rights. Although land may be considered as an economic resource, its meaning within local systems goes beyond the economic to embrace the social and cultural dimensions. Policy and lawmakers should understand that local social institutions have the capacity to restrict or allow the sale of portions of local or community land in the informal markets. The foundation of the harmonization process should be based on the existing land relations and institutions. This suggests that landholding and ownership rights should be put in the hands of the local people and the rules and management regulated by state laws.

As noted in the empirical chapters, customary land practices (access to land and tenorial arrangements) are mainly procedural, flexible and negotiable. The customary system is changing, yet not everything about the customary land practices is changing. The rules governing access to land are not strict but are subject to negotiation and interpretation, although the ability to influence negotiations may be limited in the case of certain social groups. This flexible and dynamic nature of customary land tenure systems may explain how and why aspects of the customary system of Krobo have remained intact despite several attempts by governments (both colonial and post-colonial) to codify and modernize it. Aspects of the system found to be unchanging are related to certain core principles of the local customary system (such as the inalienability of land, which disallows permanent transfer of land rights). This ensures some security and transfer of land rights within the larger lineage or kinship networks.

The change and continuities in the customary systems are often influenced or given impetus by the prevailing external conditions or initiatives, which are likely to be reacted to differently by diverse people. The announcement, introduction, and use of the law (state law or legislation), as observed in the study, may receive various reactions and responses from people within the community, which could be positive or otherwise depending on how the (new) law relates to local traditions. The ability of the customary tenure system to adapt and evolve to meet the need of local people without resorting to any imposition of state legalisation suggests that formalization of local land rights could be possible even though it might not be automatic. It suggests that the best practices of the legal systems that favour the poor and less powerful land-users with-

out worsening conditions of the more powerful should be identified and integrated in the new land law.

As noted in the last three empirical chapters, the changes within customary land tenure in relation to other shifts have resulted in complex, diverse and unpredictable processes of social differentiation, class formation, inequality and exclusion of poor people from land through the use of local power. Inequality of access to land is manifested within the communities, and this cuts across all identified social groupings including family units and kinship. As Platteau (2000) points out, in a widely differentiated community, certain people are likely to have an edge over others due to the extent of resources they control. The observation in the communities was therefore not a surprise. It is expected that in any community where people have differential access to land administration and management institutions, such manifestation of social differentiation is a reality.

This observation challenges the notion that customary systems, on their own or supported by state-led legislation processes, provide social security for all members of landowning communities. Contrary to conventional wisdom that says indigenous people cannot be landless in their own community, the study has shown that natives or indigenous people can become landless in their own communities. Since this might have serious implications for land conflicts and insecurity, policy and law-makers should pay critical attention to the reality of such phenomenon and their outcomes. As pointed out earlier, policy-makers should not rely always on theories and assume that landlessness in a local community of 'same' people is an impossibility. It is our hope that this study will open the door to greater discussion of the subject.

The persistence of inequality in access to land and land management institutions despite the many years of state-led reforms can be attributed to the inability of state reforms to counter the existing social power relations and alleviate the fear of local land-users, regarding the possible takeover of their lands by the more powerful citizens. Access to local land under the customary negotiation processes is still inequitable for and discriminatory against certain categories of land-users (youth, native women, migrants and native poor men), who were often denied (covertly and overtly) or had limited access to land. It was realized that the more powerful members used various mechanisms, including local institutions and norms, to control and claim the rights of other less powerful people

to land. Any reform process which does not take this into account will provide limited benefits for these people, who require land for their entire survival.

While many people adhere to the customary system, the popularity of this system among rural people does not suggest that the current crises within the agricultural sector of Ghana could be improved simply by recognizing customary systems and integrating them into the national land policy. As noted in chapter 5, the customary system permits and preserves social injustices and inequity and engenders social differentiation of various forms. The reality is that customary tenure systems can both enable and hamper the security of vulnerable people's land (property) rights. It has the tendency to enhance the interests of specific groups, usually the more powerful and wealthy. Yet the current market-led land tenure titling and registration underway in Ghana and other SSA countries have ignored this reality and basic attribute of local customary tenure systems, glossing over the reality of 'traditional' powers embedded within the social structure.

The testimonies (presented in chapter 5) illustrate the dynamics by which such denial of rights and exclusion operates. They show how vulnerable the customary tenure system is to local manipulations and misuse of authority and power, position and privilege by the more powerful individuals or groups for their own personal gain. Although many local people still prefer to appeal to the local customary practices over state laws and institutions (chapter 6) as the means of gaining access to land for farming, the fact still remains that the customary system of Manya Krobo is only equitable and negotiable to a certain extent. Arguments based on historical claims that customary leaders and, for that matter, customary institutions can provide equitable and secure tenure rights to local and ancestral land could be misleading (see Grischow, 2008). Policy makers should therefore be cautious not to just entrust the control of local lands to any local Chief as this may give them greater control over their people and land.

The customary system is not always equitable even though in practice it provides the rules of operation in rural communities where state rules are remote and less effective. The customary system of allocating land is further undermined especially when local people begin to employ (directly or indirectly) principles of state legislation. The study has shown that certain members of landowning communities or social groups, notably

the native women, non-native people, native youth and other native poor adult men are often excluded from access to land. To this group of land-users, land is becoming a scarce commodity, while those with inherited rights to land are becoming the new class of land 'holders' and 'owners'.

In particular women and youth in the study communities face limited access to land. Although women may not generally have direct rights or access to family lands, the study has shown that they are also not completely denied access to land for farming. At best, they are able to gain access to land through their male relatives, a situation which many describe as precarious, in the sense that such tenure rights may last only as long as the relationship continues to be cordial. Despite this, the women and other vulnerable groups are able to use their human agency to gain access to land and thereby reduce their poverty situation or devise ways to cope with their situation. Chapter 5 shows how people who were initially denied access to land were able to come back to 'own' farmlands to cultivate. This shows that although the customary system is exclusionary and inequitable, in many cases some people are able to negotiate a return to and cultivate their family land but usually under different terms and conditions.

The sharing of land inherited by and among 'sons of the land of Krobo' is creating more room for individualization of family or lineage lands and individual land therefore reduction in the size of farmlands – a disadvantage for large-scale agricultural modernization. Privatization of local land through state-led registration and titling processes may give more impetus to individualization of rights to land. As pointed out earlier, this situation has the potential to break family ties and community cohesiveness as well as social security and protection. This is because land serves as a link that binds communities or families together. In this way, the policy of registering and titling of land rights may fail to protect the poor and rather create a class of new land beneficiaries and thereby destroy community spirit of unity and peace.

In discussing the local land registration, the study indicates that local farmers are more concerned about social rules and principles of access and legitimacy witnessed by the community than a paper certificate (land title). They are unable to relate to state legislation because its interpretations and applications often lie outside their local social norms and customary practices. In a way, such legislation of the state is considered to be more optional and used by those who perceive it as necessary at any

particular time. The local farmers claim that the land certificates are for the urban and educated people and not the rural poor farmers, and also show some apprehension over losing their lands through the formalization process. Obviously, history has taught the local people some lessons to the extent that they are now hesitant to register their lands.

It is true that a local customary system has for a long period provided sufficient enough incentives for land 'owners' with inherited rights to invest in land. This has encouraged farmers to increase their efforts to invest in land and reap some benefits, in terms of productivity and income. The land investment patterns show that although land registration has not fully taken off within the communities, some measures were being taken by the local people to improve soil conservation, improve land and adopt other productivity enhancing practices, all in a bid to ensure agricultural intensification. These are all major objectives of the formalization processes. This study shows that those with relatively more security of land tenure invested not only in land improvement and soil conservation practices but also in security-enhancing practices, which those with less secure access to land and tenure could not undertake. For example, those with inherited rights to land were found to be better off in terms of security of tenure and ability to invest in land. Those with inherited rights also seem to have responded more positively to the current shifts and transformations than those with relatively weak security of tenure. The increasing shortening of tenancy periods is likely to reduce farm investment incentives for increased production.

This study has shown that for reasons related to fear of losing their land and costs involved in titling among others, local people do not perceive land titling and registration as an a priority. The majority of rural smallholder farmers claim that registration of land is for the rich and more powerful in the community and not for the poor. The poor and vulnerable are able to ignore the obligation to register their lands, and stay under the protection of customary laws. Although the presence of plural legal orderings on land has given the local people the opportunity to use whichever legal system that appealed to them to 'fight' for their land rights, the state court or local chiefly court or the family systems still restrict certain categories of people. The entire system is therefore unfavourable in many ways to the poor and vulnerable community members.

Despite this, the current system allows that cases adjudicated by state courts could be withdrawn from state courts and be heard in the local

courts. This indicates how strong local customary systems can be in land disputes and implies that recognition of the local power structures will be a critical if any tenurial policy reform is to succeed. Any land policy that overlooks the non-market dimensions of local land tenure arrangements may not be successful, as the local people are likely not to recognize it.

As noted earlier, both formal and customary tenure systems are fraught with serious power imbalances which are not easy to break but are need to be reduced if the reform process is to be successful. Local people need ways to curb the misuse of customary powers by their own landed elites as well as to prevent state actors' manipulations of local land practices which end up denying the poor and vulnerable to equitable access to land.

The World Bank's influential Policy Review Report on land policy (2003: 53) states that: 'customary systems of land tenure have evolved over long periods of time in response to location-specific conditions. In many cases they constitute a way of managing land relations that is more flexible and more adapted to location specific conditions than would be possible under a more centralized approach'. This underlines the need to base policies on what the situation on the ground is rather than on what some ideologies suggest it ought to be. Although both state legislation processes and customary practices show ample examples of exclusion and inequity, a 'marriage' between them may promise the most effective way of restructuring local land tenure systems.

As pointed out by Griffiths (1986), legal pluralism does not imply only the application of more than one law to the same situation but the existence of more than one law (legal order) within the same community, which she describes as 'self-regulatory' (*ibid.*). By this definition, what is needed to bridge the two systems is a law, institution or pattern of behaviour that is able to blend the flexible and interactive character of legal pluralism and predictable and restrictive nature of legal centralism. The resulting legal ordering must include mechanisms to prevent elites (local or state) from manipulating the system to their own advantage. National regulation must support local check-and-balances mechanisms to curb the problem of manipulation by the landed elites and minimize inequity of access and distribution on the ground. While not denying that this is difficult in practice, it is the only way forward.

A deliberate attempt must be made to bring on board views and voices of the poor and vulnerable (smallholder) farmers who usually bear the

brunt of land conflicts, insecurity and inequities of access. Ferguson (1994: 281) maintains that 'subalterns know the tactics appropriate to their situations far better than any expert does'. These people can represent their concerns and interests in a more effective, articulate and coherent manner than any expert or policymaker can do. Although they may not have the formal power to bring about changes in land policy, they may have the power to socially legitimize or invalidate new laws and policies at local level. This suggests that customary land tenure or laws should not only be constitutionalized or recognized by state laws, but serious efforts should be made to allow local people to define and administer their own local rules and land administrative systems.

As pointed out by Toulmin and Quan (2000: 3), land reform policies should 'search for approaches that are practical, democratic and consistent with African socio-cultural values'. In most African customary traditions, rights are established to land by birth, kinship and investment of sweat and toil, as well as by social contract. In a continent where poverty, vulnerability and human suffering have been endemic in many regions, the approach to land policy and land rights needs to be strongly human-centred, and less driven by economic prescription than government and donors have frequently allowed. Land policy and land law need to be more evenhanded in relation to the various stakeholders, particularly the poor. This requires a fundamental recognition that imported western notions of property rights are not the only principle which may be appropriate in Africa.

In conclusion, the study suggests that both the current transformation within the customary land system and processes of land restructuring have produced outcomes which run counter to what policy, theoretically, seeks to achieve, equity and social justice. It has created a class of 'land-owners' even within communities of blood relatives. It has generated increased opportunities for differential access to the resource which enhances community cohesiveness and togetherness.

The study shows that both legal systems of land administration operating within the communities show potentials to create undesirable social consequences (intended or unintended). At the same time, both legal systems possess some positive features or safeguards that can be further investigated and harmonized to protect and secure poor people's land rights. This study therefore suggests that an appropriate and sustainable tenure reform of rural land in Ghana will require a marriage between the

main legal systems that operate within any particular community. Land policies should not only aim at recognizing local systems, but ensure that the rigidities, inequalities and power imbalances within both state and customary systems are eliminated.

Despite the many years of claiming to promote greater equality and equity of access to land through land (tenure) reforms, the government of Ghana has not yet taken serious steps towards a better distribution of land access and control, but has simply limited itself to land titling programmes, for fear of resistance from the local people. This action or inaction of government has permitted certain elements of elite to capture the land administration systems of Ghana. Although elite capture and exclusion from land using different mechanisms are not new phenomena, the increasing competition, contestations and conflicts over land among owners, holders and users of local land are causes for policy concern. The current dynamics in the land sector, which make it easier for certain people to lose access to land (chapter 4) are becoming alarming. Significantly, this is happening at a time when it is becoming more difficult to obtain alternative employment in rural areas. This therefore calls for immediate and serious policy and research attention.

Policies are needed to secure land access for smallholder farmers, particularly women farmers and other vulnerable groups (chapter 4) who make up the majority of African farmers but rarely own or control the lands they cultivate. The harmonization and security issues should be approached in ways that allow overlapping and plural tenure systems to operate in a flexible or negotiable manner such that a true middle ground will be found. This suggests that while formalizing informality in the land sector is crucial, it should be done in a practical way such that concerns of local people are taken on board, and local elites made accountable.



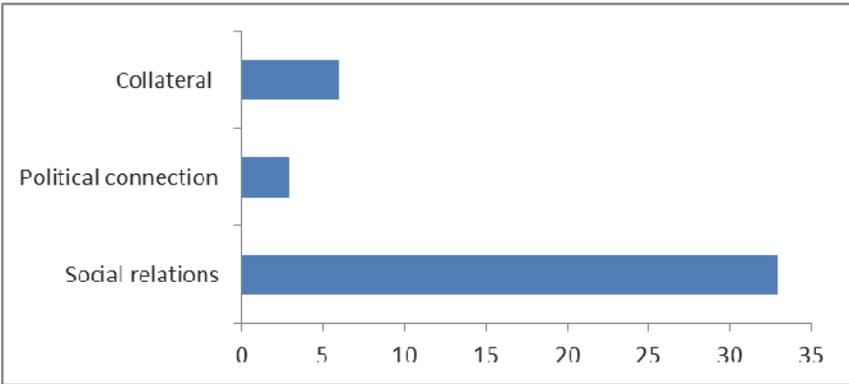
Appendices

Appendix 4.1A
Sources of Farm Credit

| Type of source | Frequency | Per cent |
|-----------------------|-----------|----------|
| Self-finance | 259 | 72.5 |
| Bank loan | 42 | 11.8 |
| Relatives | 25 | 7.0 |
| Friends | 20 | 5.6 |
| Susu (revolving fund) | 11 | 3.1 |
| Total | 357 | 100.0 |

Source: Author's own survey, 2009

Appendix 4.2A
Means of accessing Credit



Source: Author's own survey, 2009



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