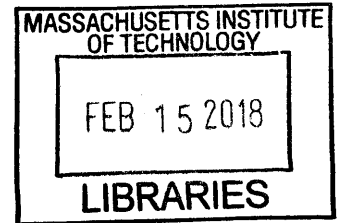


Reform from above, Reinterpretation from below:  
State making and Institutional change in Ghana

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ARCHIVES

Submitted to the Department of Urban Studies and Planning  
in partial fulfillment of the requirements for the degree of  
Doctor of Philosophy in International Development Planning

at the

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Submitted to the Department of Urban Studies and Planning  
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**Abstract**

The dissertation engages a fundamental question in the social sciences: How do institutions change? The questions that drive this research include: How does institutional change occur, and how do varied forms of social organization within informal institutions influence institutional reforms in the land sector? The dissertation does this by examining land administration reform in Ghana during the period of 2003 – 2016.

Theoretically, the dissertation employs the literature on institutions and change, critically engaging the role of the state and the role of society in constituting property rights along with the institutions and organizations that support them. Empirically, the study is based on extensive field research to find that the theoretical assumptions regarding informal organizations are inadequate to understand the role of diverse societal actors in institutional change.

The dissertation argues that the state, seeking to build coherence, employs land administration reform as a mechanism towards the objective of economic transformation. The reform is based on an integrative approach, whereby the state seeks to incorporate customary authorities into a logic of the state, emphasizing coherence instead of autonomy. However, this integrative approach is flawed as it downplays the heterogeneity of organizations, including their interests and internal characteristics. The findings demonstrate that institutional change is mediated by the strategies and behaviors of informal organizations, requiring categorizations of these actors and their behaviors as a necessary component of any theory of institutional change. Such categorization requires an analysis of relative power – economic, political and social – of informal organizations and their ability to not only affect informal institutions, but formal institutions and change.

The prominence of the customary sector in Ghana highlights this condition and challenges the relatively low significance accorded to informal institutions in

considering institutional change. As such, customary authorities, leverage institutional innovations using various strategies to achieve their goals according to internal characteristics, rather than collective action. The dissertation reveals that institutional reforms in the land sector are triggering a new moment of territorial competition. These reforms, which seek to reconstitute legal frameworks and institutional arrangements, call into question the balance of political and economic power foundational to the state. The findings also suggest that institutional change, in the context of complex state-society relations, instigates simultaneous dynamics of centralization and fragmentation.

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The undertaking of a dissertation can be opaque, uncertain, ambiguous. You begin with an inkling, an idea and you observe, ask questions, and muddle around, sorting through theory and observed reality trying to identify a question, the question, a puzzle. Thankfully this labyrinthine process is not traversed completely in the dark, at various moments there are subtle sign posts that you recognize from years of instruction, guidance and sheer grace. At other moments, there are not so subtle markers that call for redirection, retracing one's steps and going in a different direction. Eventually, you reach the end, indebted to a myriad of people and moments that contributed to the development of your ideas, work and even your own growth.

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## Table of Contents

List of Tables .....	8
List of Figures .....	9
Acronym List .....	10
<b>Chapter 1.</b> Introduction, Methodology and Chapter Organization.....	11
<b>Chapter 2.</b> Theorizing Institutions and Change.....	35
<b>Chapter 3.</b> Territory in Historical Perspective.....	82
<b>Chapter 4.</b> Routes to Institutional Change – Reform from Above.....	128
<b>Chapter 5.</b> Route to Institutional Change II – Reinterpretation from Below.....	164
<b>Chapter 6.</b> Experiences of Institutional Change.....	211
<b>Chapter 7.</b> Conclusion.....	248
<b>Appendix A.</b> Qualitative Interview Respondents .....	264
<b>Appendix B.</b> Model Interview Protocol .....	265
<b>Appendix C.</b> Survey Protocol .....	267
<b>References</b> .....	274

## List of Tables

Table 2.1 Modal Types of Institutional Change .....	65
Table 2.2 Typology of Change Agents .....	66
Table 4.1 Political Regimes, Coups and Constitutions of Ghana Since Independence .....	134
Table 4.2 National Land Policy Objectives .....	143
Table 4.3 National Land Policy Amendment Objectives .....	144
Table 4.4 Sample of Land Laws and Regulations .....	146
Table 5.1 Behavior of Informal Organizations Relative to Formal Institutions.....	191
Table 5.2 Behavior of Informal Organizations Based on their Interests and Internal Characteristics .....	198
Table 6.1 Survey Sample Questions .....	214
Table 6.2 Customary Communities .....	216
Table 6.3 Respondents by Gender .....	220
Table 6.4 Mean Age of Respondents .....	220
Table 6.5 Respondents by Status .....	221
Table 6.6 Respondents' Income per Month .....	222
Table 6.7 Opportunities for Engagement with CLS .....	225
Table 6.8 Change in Access to Land .....	229
Table 6.9 Changes in tenure Security .....	231
Table 6.10 Changes in Incidence of Land Related Conflict .....	232



## List of Figures

Figure 1.1 Ghana Regional Map .....	21
Figure 3.1 Gold Coast Colony .....	107
Figure 3.2 ARPS Deputation to London .....	112
Figure 6.1 Asantehene's Lands Secretariat .....	218
Figure 6.2 Ngleshie Alata Mantse Palace – Jamestown CLS .....	219

## **Acronym List**

ACC – Greater Accra Region  
ADR – Alternative Dispute Resolution  
ARPS – Gold Coast Aborigines’ Rights Protection Society  
ASH – Ashanti Region  
CLS – Customary Land Secretariat  
CPP – Convention People’s Party  
DfID – Department for International Development, UK  
GoG – Government of Ghana  
LAP – Land Administration Project  
LC – Lands Commission  
LSA – Land Sector Agencies  
MOU – Memorandum of Understanding  
NAO – Native Administration Ordinance  
NJO – Native Jurisdiction Ordinance  
NLM – National Liberation Movement  
NPP – New Patriotic Party  
OASL – Office of the Administrator of Stool Lands  
PDO – Project Development Objective  
UGCC – United Gold Coast Convention  
WB – World Bank

## **Chapter 1. Introduction, Methodology and Chapter Organization**

### **1.1 Overview**

The dissertation examines a fundamental question in the social sciences: how do institutions change? The overarching questions driving this research include: How does institutional change occur and what role do informal institutions and organizations play? How do varied forms of social organization within informal institutions influence institutional reforms in the land sector? The dissertation addresses these questions by analyzing land administration reform in Ghana from 2003 – 2016. For scholars, development practitioners, and societal actors including state and local governments that seek to facilitate institutional change, developing an understanding of how change occurs in complex institutional settings is a significant endeavor.

The purpose of this study is to explore reforms in land administration in Ghana, which is host to a highly complex institutional environment in the land sector, to ascertain how change occurs and how land reform has been influenced by the behavior of customary authorities as informal organizations. This research examines the reform itself as well as the role of heterogeneous customary organizations in redefining land governance and administration in Ghana's urban and peri-urban areas. While the reformers, the statutory land sector agencies and customary organizations are the key stakeholders in the process of change, the citizens and community members are also impacted by the changes. As such, this dissertation

also attempts to provide some understanding of the perceptions of preliminary outcomes of changing institutional arrangements by affected communities in Ghana.

For many transitioning and developing countries, one route to economic development has been through land reform, intended to redistribute land and shift land management practices to enable more productive property regimes and encourage investment. The theory behind such reforms is based on an evolutionary premise that 'backward', 'traditional' or communal land regimes will eventually give way to more exclusionary practices resulting in private property in land. To this end, reformers that employ this approach to land reform have focused on promoting elements to facilitate 'modern' land regimes, including legibility and clarity of claims, homogeneity of processes and documentation, and adjudication in cases where there are competing claimants. This approach has been embraced by international institutions, whose business is enabling development in these countries, as well as local actors in these states and societies. In contrast, there are voices across this spectrum of actors that are concerned about the potential impact of an evolutionary trajectory on societal organizations, communities and individuals, particularly marginalized groups. Still reform of some kind seems inevitable as state and local authorities in many Sub-Saharan countries, such as Ghana, are increasingly faced with shifting environmental conditions including demographic changes, such as population growth and rapid urbanization, resulting in increasing land scarcity and the commodification of land. These pressures encourage local actors to seek new institutional arrangements to address the challenges facing the

land sector. It is in this developmental context that the complexity of institutional change occurs.

The dissertation examines the Land Administration Project (LAP), an intervention by the Government of Ghana (GoG), the World Bank, DFID and other development partners during the period of 2003 – 2016. The design and implementation of the LAP project is based on the National Land Policy of 1999, a comprehensive policy framework intended to address multiple challenges in the land sector including: a fragmented institutional framework, multiple and overlapping agencies, inadequate coordination between and among agencies, poor coordination between statutory land sector agencies and customary authorities, inadequate land records, multiple sales of land and rising land-related conflicts. The LAP project is multi-phase, and ongoing during the present writing. As such, the dissertation was not approached as an evaluation, rather the research is an entry point to focus on the process of institutional change that considers the implications of top-down institutional reform and the role of customary authorities as critical stakeholders and change agents in the land sector. It analyzes the reform component of the LAP project to understand the desired objectives, implementation and outcomes to date.

The analysis then turns to focus on how the customary authorities accept the reform, including institutional innovations, and the strategies and behaviors they deploy in response to the reform, effectively reinterpreting the purpose of the institutional change. Customary authorities respond to the reform as it introduces revised

institutional arrangements and the introduction of a new organization, the Customary Land Secretariat (CLS). In addition, customary actors are responding to demographic and environmental shifts that necessitate change in their land governance practices. As land scarcity and thus land values rise, particularly in urban and peri-urban areas, the evolutionary theory of property rights suggests that the demand for private property will grow. However, in this context of powerful landholding customary authorities, the institutional reforms intended to provide an incremental step to formalization and private property are being subverted by customary authorities who seek to maintain their trustee status over land, thwarting the emergence of private property regimes. The project also explores community perceptions regarding the outcomes of the LAP reforms, and to consider if heterogeneity in informal organizations correlates with varied outcomes.

To achieve these objectives, the dissertation employs extensive field research that finds conventional approaches to institutional change such as institutional reform, do not adequately consider or explain the role of diverse societal organizations. And, theoretical assumptions underlying policy initiatives, as in the case of decentralization, have been extended beyond local government to the customary sector where they no longer fit. This over extension of theory falls short in explaining the role of customary authorities as informal organizational actors in the process of change. There must be greater focus on the strategies and actions of these actors, as their conduct can influence the process and outcomes of institutional change. The dissertation argues that institutional change is mediated by the behaviors of informal

organizations, and thus developing appropriate categorizations of these actors and their behaviors is a necessary component of any theory of institutional change. This also requires an analysis of relative power – economic, political and social – of informal organizations and their ability to not only affect informal institutions, but formal institutions and change. The prominence of the customary sector in Ghana highlights this condition and challenges the relatively low significance accorded to informal institutions in considering institutional change.

### **1.2 Theoretical Frame – The Central Role of Informal Organizations in Change**

The theoretical framework for this dissertation explores institutional change in the context of a society that is fundamentally questioning property rights institutions, specifically their dual role in constituting local citizenship and providing the foundation for the integrity of the state and its economic development. Through the examination of property rights institutions in land, the role of informal institutions and organizations in the process of institutional change is highlighted. The discussion of the related political and economic theories is particularly attuned to the influence of historical interventions into economic, political and social formations. This section provides a brief description of the theoretical frame guiding the research.

As the state fell out of favor with scholars that previously championed state-led development, the concept of governance gained strength with additional roles for the market and for non-state actors to contribute to the process of development.

Through policy and scholarship, the centrality of institutions to development emerged, recognized by social science scholars and development practitioners. Institutions matter as they are thought to provide a framework for behavior and a sense of predictability in guiding social, economic and political relations. As such, a theory [or theories] of change is necessary to address ineffective institutions that have failed to guide economic and societal development. The process of institutional change was formerly perceived by economic historians as primarily discontinuous, with exogenous shocks providing the impetus for change. However, political scientists and sociologists have demonstrated gradual, endogenous change precipitated by dynamic institutional landscapes that host political struggles within a society, as suggested by historical institutionalists. This alludes to a variety of actors in state and society that contest the formation of rules and institutions, resulting in political compromise. The resultant institutional compromise is a tenuous stability, that is contested and renegotiated as various actors find opportunities, such as disruptions, changes in environmental conditions or institutional arrangements, to renegotiate their position. However, the assumptions regarding political and economic actors do not fully encapsulate the role of informal actors in the process of constituting the rules. It is through this reading of institutional change that institutional reform is introduced into a highly complex context of land governance.

This raises a critical question of who are the actors engaged in contestation of authority in economic, political and social institutions, that jockey for access to resources? One obvious response is the variety of actors seeking economic or



political gain. However, in the Ghanaian context, beyond political parties in the political domain or firms and other corporate groups seeking economic gain, there are customary authorities, informal organizations, that have a long history of authority over people and a complex relationship with territory in Ghana. As institutional reform is introduced in the land sector, what is the role of customary authorities in the process of change? Are customary authorities assumed to be engaged as stakeholders that react to new rules, or do they have some ability to set or influence the rules? North, one of the most prominent economic historians, suggests the need to know more about culturally-derived norms of behavior and how they interact with formal rules to understand the functioning of institutions and the implications for institutional change. The dissertation begins with this admonition and seeks to develop a deeper understanding how customary authorities, as informal organizations, interact with formal institutions in the process of institutional reform as a means of change.

In this case, institutional change is observed through land administration reform. As previously noted, evolutionary theory in the property rights institutions literature suggests a unidirectional trajectory of change, whereby pre-modern, communal systems of governance give way to private property regimes over resources. This theory presumes that changes in incentives such as relative price of a factor or changes in the cost of internalizing externalities is enough to induce the transition to private property. However, the interests and incentive structures for customary institutions and organizations problematize this trajectory. Considerations for these

institutional actors include the preservation of their authority and status or position in the social and political domains, as well as maximizing their economic interests. In this case, private property rights may not be the most desired institutional form. As such, customary authorities exercise these interests through their strategies and behaviors in reinterpreting institutional reform. Within the context this study, decentralization theory is employed as a key modality of institutional reform. Decentralization theory, which promotes localization of decision-making based on local knowledge and accountability, is extended beyond local government to these informal organizations with varying forms of social organization that do not fit with key assumptions that portend successful localization of decision-making.

### **1.3 Research Design and Methodology**

The dissertation also responds to the call by Evans that “we need more analytically satisfying and practically effective implementation of the concept that governance institutions matter by asking the question how and for whom?” (Evans, 2005). As such, the overarching questions for this research focus on how institutional change occurs, the role of informal institutions in this process and alludes to the outcomes of these changes in communities. In considering the diversity of stakeholders and their interests, the research design and methodology employs the transformative paradigm as an overarching framework for the research design. The ontological assumption of the paradigm is that individuals occupy varied positions of power relative to one another within a socially constructed reality and is useful in addressing distributional concerns in society by employing a socially and

contextually relevant design (Creswell, 2013). The recognition of existing power structures embedded within social, political, economic, and cultural organizations suggest the importance in considering what views might be privileged in a research context (Creswell, 2013; Mertens, 2007, 2010). Research from this perspective takes care to include the perspective of marginalized groups and individuals by placing emphasis on incorporating their views or participation directly in the study. Methodologically, a transformative approach to research allows for the use of mixed-methods as a mechanism to address the complexities of research in culturally diverse settings (Mertens, 2010).

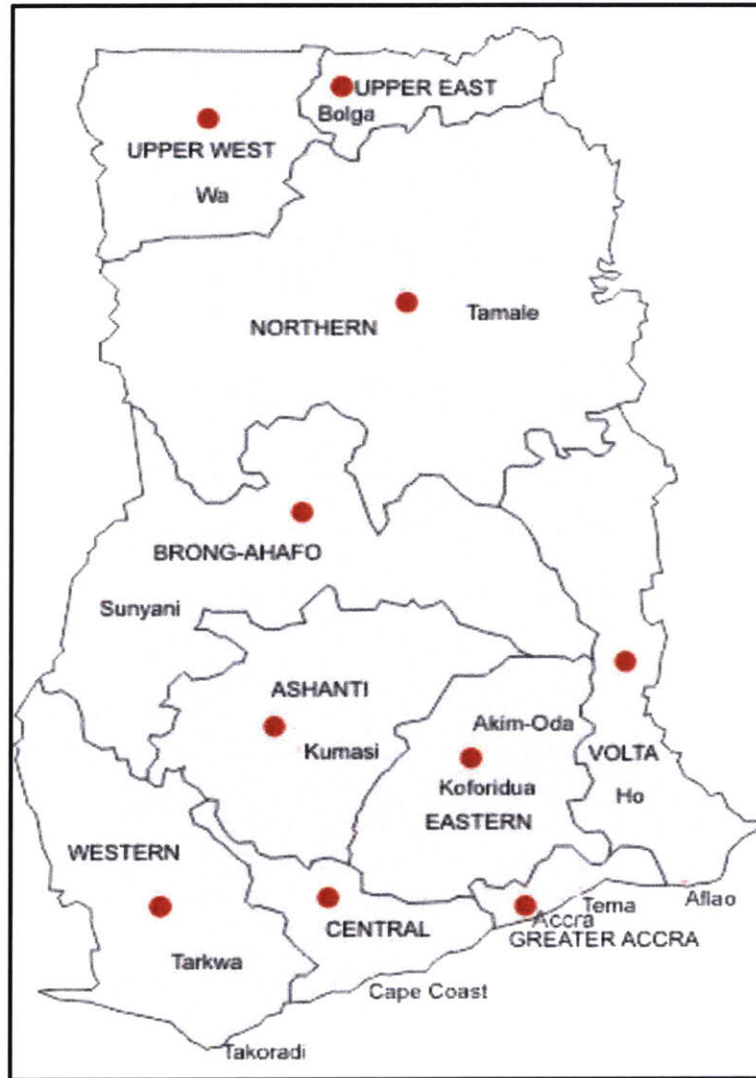
To address these questions, the dissertation employs an exploratory sequential mixed- methods approach to research design (Creswell, 2013; Mertens, 2007, 2010). In the exploratory mixed-methods approach, research generally begins with a qualitative phase to collect information and build an instrument that best fits the sample population and identifies strategic dimensions of inquiry for a second quantitative phase. The qualitative aspect of this study has dual objectives. The first objective is to develop a deeper understanding of the institutional arrangements around land management and administration in the selected sites. How have institutional arrangements and dynamics changed resulting from the LAP project reforms in these communities? This was achieved through document analysis of key resource documents from the World Bank, the GoG and its various land sector agencies. Additionally, the qualitative portion of the research relied heavily on the use of open interviews with key informants including academics, consultants and

staff of the LAP project, as well as semi-structured interviews with land sector stakeholders in the statutory and customary sectors. Interviews were conducted in customary communities at each of the CLS selected for the study.

The second objective of the qualitative research was to gather information for the development of the survey instrument, including the relevant dimensions to analyze the outcomes of this institutional reform. In employing the transformative paradigm, the initial phase of the research was inductive, drawing patterns and inputs from key stakeholders in the land sector regarding the dimensions of improved land governance and management to be measured from data collected through interviews and document analysis (Creswell, 2013; Singleton et al., 2009). The quantitative phase of the research measures the outcomes, as perceived by community members themselves, on land governance using these dimensions. What improvements were made in land administration, if any? How did outcomes vary based on extant forms of social organization? Did these improvements in land management exist for marginalized groups or for those that have greater access through customary authorities? To answer these questions a survey instrument was developed using the data collected during the qualitative portion of the research. Given the diversity of stakeholders in the land sector, triangulating qualitative and quantitative data provides an opportunity to identify convergence across sources and methodologies as well as identify divergence where the intentions of reform versus the reality of outcomes can be exposed. The elements of this approach contributed to the development of a single case study of Ghana, with nested sample regions in Ashanti

and Greater Accra, that provides a detailed analysis of institutional change through the reform and reinterpretation provoked by the LAP project (Yin, 2009).

Figure 1.1 Ghana Regional Map



The administrative territory of Ghana covers a total area of 238,539 square kilometers, including land and inland waters. Ghana is a unitary republic that has ten administrative regions, subdivided into 216 districts as of 2012. There are over 100 linguistic and cultural groups, clans and states in Ghana, each with distinct identities. The 1992 Constitution of Ghana is the highest legal institution in the country, and recognizes the customary sector, including customary law and customary authorities.

The selection of Ghana as the site for this case study was purposive as the study seeks to understand the implications of institutional reform within a context with complex and diverse forms of social organization (Seawright and Gerring, 2008; Gerring, 2004). The situation of land governance in Ghana is highly complex with multiple forms of land ownership and management coexisting in parallel systems. It is often quoted that 80 percent<sup>1</sup> of the land in Ghana is held in the customary system, vested in the trusteeship of customary authorities, inclusive of chiefs and families or lineages (Asante, 1965). Customary institutions are recognized in the Ghanaian constitution and land is primarily governed by customary authorities in the form of stools, skins and families. Stools, are symbolic as the seat of royal power, constituting the spirit of these descent-based communities, and animal skins are similar, symbolic of the chief's authority, with stool lands primarily found in the southern part of the country and skin lands found in the northern areas. Landholding families and lineages comprise another form of social organization that manage customary land. These customary authorities have the rights and responsibilities to make decisions regarding the allocation, alienation and adjudication of land within defined territorial boundaries. The remaining 20 percent of land is a combination of public land, vested in the state under the authority of the President, and a small amount of private land. Embedded in this hybrid system are the vestiges of customary law as codified and entrenched by colonialism and statutory law that has evolved with a succession of constitutions and legislative reforms related to land

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<sup>1</sup> This figure is widely cited but not substantiated and given the lack of clarity of land ownership and boundary demarcation this figure is likely to be an estimation.

management and administration. The statutory system developed multiple land sector agencies that are meant to provide a bridge to customary land as well as some level of oversight for development planning and revenue generation. These agencies included the Lands Commission; the Office of the Administrator of Stool Lands, Land Valuation Board; Survey Department; Land Title Registry and the Department of Town and Country Planning (Ubink and Quan, 2008). Enabled by legislation, the different agencies administered public lands and supported the administration of stool<sup>2</sup> lands and vested lands. However, these agencies lacked mechanisms for the coordination of land use policies and plans among themselves and for collaboration with customary authorities.

The study focuses on two regions in Ghana that are home to the largest metropolitan areas, Ashanti and Greater Accra. The selection of these two regions provides variation in the form of social organization, or internal characteristics, that dominate land governance and management in each locality. The Ashanti region is host to the most highly centralized form of social organization in the country. Kumasi is one of the largest cities in Ghana and the center of the Ashanti region. Kumasi is also the seat of the Ashanti Kingdom, a highly centralized federated system, atop of which sits the Asantehene, who has a role in decisions regarding the management and administration of land in his territory. The paramountcy structure includes paramount and sub-chiefs, organized in a manner that is upwardly accountable to

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<sup>2</sup> From this point, any reference to stool land is inclusive of skin land as well. In terms of administration the two terms do not require differentiation.

the Asantehene. The land in this region is all stool land, a concept that will be elaborated in greater detail in Chapter 3 on territory and land forms in Africa. The study also focuses on the Greater Accra Region, which includes Accra, the capital city of Ghana. Forms of social organization in Accra are far more horizontal with family land being the norm. Though there are family heads, councils of elders and in some cases chiefs, there is no similar paramountcy structure that is as highly centralized or a figure that wields as much authority as the Asantehene. This natural differentiation between regions provides variation within the case regarding forms of social organization in Ghana.

With so many institutional actors at the national and local levels there has been a severe lack of clarity regarding land ownership<sup>3</sup> and boundaries. Indeterminate boundaries of stool, skin and family lands are the result of oral agreements, inadequate surveying, record-keeping and maps, a system that has created high levels of multiple sales of land and land-related conflict. The World Bank project appraisal document suggests that land litigation in Greater Accra alone, only one of 10 regions, topped 15,000 cases that clogged courts (World Bank, 2003). Encroachments, unapproved development schemes, and violent confrontations between and among opposing claimants have become the norm, resulting in the haphazard development of land, environmental degradation and declining social

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<sup>3</sup> While land ownership is often referred to, as well as buying and selling land, the customary tenure system does not outright recognize private property rights in land or freehold title. Rather the system is based on customary rights in property whereby allodial title is not transferred. Instead a lesser right in the form of leasehold or indenture can be acquired albeit for lengthy time horizons ranging from 50-99 years depending on one's status as a native to the area or a migrant or foreigner or whether the use is for commercial or residential purposes.



cohesion. These concerns regarding land governance are most acute in urban and peri-urban areas. Ghana has one of the highest urbanization rates in Africa at 3.4 percent, surpassing the 50 percent urbanized mark in 2008. Rapid urbanization has led to increased demand in land for housing, industrial and commercial uses. With a shortage of urban land relative to demand and inefficient land markets, urban land values have increased dramatically and urban areas have absorbed formerly agricultural lands to address demand (Owusu and Afutu-Kotey, 2010). As the commodification of land intensifies and land values rise, the interests and incentive structures for customary authorities have shifted leading to new strategic approaches to engage with changing environmental and institutional conditions (Gough and Yankson, 2000). To analyze the institutional reform process, the focus is on the LAP project including its design and implementation of the reform. To analyze the reinterpretation of the reform, the primary units of analysis are the CLS and the related customary authorities in eight urban and peri-urban communities between the two regions.

#### **1.4 Key Findings**

The dissertation makes three main contributions to the institutions, comparative political economy and decentralization literatures. First, it highlights that understanding institutional change as simply the process of reform is incomplete without acknowledging the role of informal institutions in receiving and interpreting the reform. Informal institutions matter as they can significantly influence the process of institutional change, particularly concerning reforms that occur at the

local scale. Second, the dissertation demonstrates the importance of heterogeneity among informal institutions including their internal and external characteristics, rather than an exclusive focus on their propensity to engage in collective action. Third, it problematizes the extension of decentralization beyond local government to informal organizations, revealing expected examples of elite capture, as well as unexpected examples of positive or developmental performance.

More broadly, the dissertation presents not only a case study of institutional change, but also reveals an evolving picture of state-society relations. It demonstrates that institutional change occurs primarily through state-led reform, which is then interpreted and mediated by customary authorities as the dominant organizations in society. The state is engaged in a process of state-building with the objective of economic transformation, promoted by the National Land Policy and its implementation through the LAP project. As such, land administration reform serves as a technique to facilitate legibility and homogenization in the land sector, as seen in the diffusion of uniform interventions such as the CLS. These institutional reforms are based on an integrative approach, in which state actors seek to incorporate customary authorities into a logic of the state, emphasizing coherence instead of autonomy. The dissertation suggests that state-making is an interactive process between the state and both internal and external actors. However, the integrative approach is flawed as it downplays the heterogeneity of customary authorities as defined by their internal and external characteristics. This approach is also undermined by decentralizing beyond the state, which diminishes the state's

ability to elicit coherence from societal actors with a range of capabilities and power. As such, customary authorities leverage shifting institutional arrangements and innovations to achieve their goals according to these characteristics. The dissertation findings suggest that institutional change in the context of complex state-society relations, can instigate simultaneous dynamics of centralization and decentralization, whereby the state asserts its 'stateness,' pushing into land management that has been the domain of customary actors. Simultaneously, we see that institutional change using an integrative approach to reform can facilitate decentralized and fragmented behavior when the heterogeneity or informal organizations are not sufficiently taken into account.

### **1.5 Chapter Organization**

The final section provides an overview of the chapters in the dissertation.

#### **Chapter Two**

Chapter Two is titled Theorizing Institutional Change – Property Rights in Land. It provides a thorough elaboration of the theoretical argument introduced in this chapter and made in the dissertation. It does so by locating the argument firmly in the inter-disciplinary literature on institutions and change, while tying in related elements including literature on property rights institutions and decentralization.

#### **Chapter Three**

Chapter Three is titled Territory in Historical Perspective. This chapter contextualizes the history of land and authority in Africa broadly, and in Ghana with greater detail. It highlights the relationship of territory to state-making from the pre-

colonial to post-colonial periods. State creation and the consolidation of territory occurred in divergent manners in the sub-regions of Africa as compared to Europe. Africa's many polities held different conceptualizations of territory and control, with land serving sacred and social purposes. As land was an abundant resource, conflicting polities sought to conquer peoples and enforce systems of allegiance or relocated to evade war altogether. Property in persons was often considered of greater value than property in land, suggesting that conquest and consolidation of peoples was the primary mode of expansion. The chapter also addresses colonialization and the varied forms of territorialization, through which certain forms of land use and access were regulated. Customary tenure institutions are introduced and distinguished from communal property regimes, suggesting the importance of understanding the type of informal institution in the larger framework of institutions and change. While customary institutions have historically demonstrated responsiveness to change, they have shown varying ability to confront shifting environmental conditions such as rapid urbanization and increasing commodification of land. These shifts have exposed the fragility of usufruct rights and led to increased tenure insecurity.

This chapter also provides a detailed look at territory and control, illustrating the shifting tensions between competing elites as they sought to define state-society relations. Though land was not the central consideration in pre-colonial states, it has become integral on a number of scales from national territorial integrity and economic development to local forms of authority and social organization, as well as

access to land for communities. The present understanding of customary authority and its relationship to land, stems from the late-nineteenth century compromise between colonial authorities and traditional elites, which was contested at its inception and repeatedly since in a struggle to articulate modalities and institutions of governance, as well as distributionally favorable land regimes. Despite the dynamic nature of customary institutions, they are struggling to adapt to the pressures of demographic change, urbanization, increasing land scarcity and balancing emerging land markets with preserving the customary sector. Significant elements of the land administration reform are largely dependent on the behavior of this complex array of societal actors in how they respond and reinterpret the institutional reform for their own purposes as will be addressed in the empirical chapters.

#### **Chapter Four**

Chapter Four is titled *The Route to Institutional Change – Reform from Above*, and is the first empirical chapter. This Chapter draws from the theoretical underpinnings of institutions literature as set out in Chapter Two, to engage the process of reform as one of the main pathways to institutional change (Andrews, 2013; Hall and Thelen, 2007; Rodrik, 2004). Reform can take different modalities such as displacement, layering, drift and conversion (Streeck and Thelen, 2005). This chapter focuses on layering as the modality employed by the LAP project, whose approach to institutional reform includes shifting institutional arrangements through consolidation, decentralization and the addition of an institutional innovation, the

Customary Land Secretariat (CLS). However, reforms in the Land Administration Project are not the first instance of layering in the Ghanaian context. Focusing on the land sector in the post-colonial era, this chapter provides a detailed account of previous interventions in the land sector as agencies are added, eliminated and the authority structures are adjusted in the statutory and customary systems. These intermittent interventions in the land sector are not neutral, but highly political and change as frequently as the political system did during Ghana's most tumultuous period from 1966 until 1992, when the current Fourth Republic was instituted. Even during the most recent period of regime stability from 1992 to the present, there have been significant changes and adjustments to the land sector as political parties have initiated varied approaches to relationships with the customary sector. Thus, the LAP project engages in institutional reform in a context with a long-contested history of layering institutions.

With such a complicated historical backdrop and mounting environmental pressures on land, the GoG began the process to reform the land sector with the development of the National Land Policy of 1999. The chapter also provides significant detail of the challenges faced in the land sector, that broadly fall under three categories according to the World Bank: an inadequate policy and legal framework; fragmented institutional arrangements and weak institutional capacity; and indeterminate boundaries and a poorly organized land registration system. Ultimately, the GoG took a liberal approach to the reform, deciding to focus on how to improve the efficiency of the land sector's many agencies and organization, clarify

land records and rights as an intermittent step towards formalization, with a pilot of titling interventions. The chapter concludes with an analysis of institutional reform in the context of such a deeply politicized history of layering organizations and shifting institutional arrangements, and the spaces and points of leverage this creates in a context with so many land related actors vying to increase their authority and claims over land as values rise.

## **Chapter Five**

Chapter Five is titled The Route to Institutional Change II – Reinterpretation from Below. This chapter draws on the theoretical framing with a focus on the role of informal organizations, and their interests, in the process of institutional change (Helmke and Levitsky, 2004; North, 1990; DiMaggio, 1988). Two primary interests of organizational actors are their survival and the predictability of institutions. As such, institutions do not only resolve collective action problems, they also reflect and entrench the balance of power found in the political economy (Hall and Thelen, 2007; DiMaggio and Powell, 1983). This chapter explores the role of institutional actors as entrepreneurs in initiating, leveraging and institutionalizing change and applies this exploration to customary authorities as such agents. The chapter then turns its focus to the institutional innovation of Customary Land Secretariats through the LAP project. LAP envisioned the introduction of CLS as a secretariat to facilitate greater efficiency in land administration and management and serve as an intermediary between the customary authorities and statutory land sector agencies. However, the CLS were initiated in communities without sufficient

understanding of how the CLS was meant to operate or the interests and motivations of the customary authorities themselves. The chapter addresses the questions of institutionalization and diffusion by employing three analytic dimensions to understand the behavior of heterogeneous customary authorities: the origin of customary authorities; their internal characteristics, including forms of organization, capabilities and interests, and their external characteristics, or position in an organizational field. The chapter then turns to explore the actions of customary authorities and landholding families in response to the environmental and institutional changes affecting the land sector. Customary authorities deploy a range of strategies and behaviors in relation to the statutory sector, ranging from collaborative to competing, to maintain or consolidate their authority over land and their position within the shifting institutional arrangements for land management and administration. They also engage in a variety of behaviors relative to their own communities including developmental and predatory.

## **Chapter Six**

Chapter Six is titled Community Experiences of Institutional Change, is the final empirical chapter of the dissertation. The survey and resulting analysis provides a different perspective from which to view institutional change, that of community residents. The format diverges from the two previous chapters in that there is no theoretical introduction, rather a more detailed description of the research design and methodology for the survey, including the survey implementation team and an introduction to the eight communities across the two regions of Ghana. The survey



responds to three questions generated during the qualitative portion of data collection, focusing on change and preliminary outcomes as identified by interview and survey respondents. The survey seeks to identify if there is variation between the two regions in terms of these outcomes, as well as variations among sub-groups of the population that might be vulnerable to marginalization. The Chapter then presents the findings and provides a detailed analysis of the results. The conclusion of the chapter synthesizes the findings and relates them back to the overall question of the role of informal institutions in change and what this means for community residents.

## **Chapter Seven**

Chapter Seven is the Conclusion of the dissertation. It summarizes the overall argument, provides a discussion of the theoretical contribution of the dissertation to the institutions and change literature in political economy. The dissertation also has significant implications for development theory and practice as these theories of change are acted upon through policy and interventions across a wide range of societies with diverse forms of political and social organization. It does so by reiterating the role of informal institutions and organizations, their interests, strategies and behaviors, as a crucial component of a process of reinterpretation that is often understated in the institutional change literature. It also demonstrates the importance of organizational diversity in understanding informal institutions and what this means for introducing uniform institutional innovations across a highly diverse field of organizations, an element that should be accorded greater analytic

attention, and suggests the importance of institutional flexibility rather than homogenous diffusion.

## Chapter 2: Theorizing Institutions and Change

### 2.1 Introducing the Theoretical Frame

As the dissertation focuses on the fundamental question of how institutional change occurs through the lens of land reform, the theoretical basis for the study is grounded in the institutions literature, with emphasis on institutional change and property rights institutions as the cornerstone. Institutions and change in developing countries, even from a theoretical perspective, must be contextualized due to the dual nature of change itself, which is embedded in two scales: the international – where theories of development and governance yield policy interventions prescribed by powerful international institutions, and the national – where theories of state building and transformation complicate those policy interventions, bringing the tenuous balance of state and society into vivid relief. Institutions, particularly those constructed to organize expectations and behavior around valuable resources, persist or change amid these multi-scaled dynamics.

Over the last two decades, institutional reform of political and economic institutions is increasingly seen as central to the development agenda. Property rights are the most significant institutions that structure social and economic relations, including decisions concerning the transfer of valuable resources (Weimer, 1997). The role of the state is assumed, it is meant to set and enforce the rules, and thus plays a fundamental role in shaping property rights regimes. With this assumption underpinning the understanding of successfully developed societies, economists assert the preferred form of property rights to support development and deploy this

supposition in attempts to re-structure property regimes throughout the developing world. However, such attempts at restructuring confront complex intersections of indigenous institutions and socio-political organizations with actors that have economic and political interests. Attempts to provoke the evolution of property rights institutions threaten the precarious balance between dominant forces in society and the state. Amidst these competing actors, perceived state failure called into question the role of the state and ushered in the governance agenda, which elevated the role of actors outside of the state and opened the door for strategies including privatization and decentralization. The shift in focus to localization allows reformers to envisage decentralizing not only to local governments, but to other forms of local organization that have the legitimacy and authority to manage resources. As the state seeks to build cohesive institutions, decentralization and specifically localization to actors outside of the state threatens cohesion and empowers diverse societal actors. In this chapter, the relevant elements of these literatures will be discussed in terms of their assumptions, expected outcomes and whether these assumptions are reasonable in the complex institutional environments constituting African land regimes. The chapter is divided into three sub-sections, the first of which engages the international scale including a discussion of the paradigmatic theories that shape the intervention of powerful international actors. The second section addresses the national scale where the tenuous relationship between state and societal actors plays out as they seek social and political compromise. The final section addresses property rights theories and some of the practical implications of engaging in reform processes.

## **Part I – The International Scale**

### **2.2 State Led Development**

In the late 1950s and 1960s a wave of colonial territories gained independence sparking the post-war discourse and practice of development. During this period, the modernization school emerged as the dominant paradigm of development studies. The assumption was that these new-found states would embark on an evolutionary process to ‘catch up’ with more developed economies, that would occur through a multi-stage process towards fully fledged capitalist systems (Rostow, 1960). Those in traditional society, competing elites, might challenge this evolution, but any barriers erected would be overcome by modernizing elites and a new sense of nationalism, accompanied by foreign aid to bolster capital accumulation (Mkandawire, 2001). Literature in development economics suggested the positive role of a dirigiste state in stewarding economic growth in developing countries (Kohli, 2002). The relatively good growth performance of new states in Africa during the early part of the decades of development 1960 and 1970, obscured concerns regarding state organization, performance and capacity (World Bank, 1992). However, political instability, poor macro-economic management, persistent poverty and urbanization without expected industrial growth, demonstrated how poorly states functioned, particularly as growth declined and the developing world was adversely affected by various economic crises (Jessop, 2000; World Bank, 1992). This view was challenged by dependency theorists who argued that the cause of these troubles was not the state, but the position of the ‘periphery’ relative to the ‘core’ in the global economy, and an external orientation to trade and export, in lieu of a more internal or

protectionist orientation (Gunder-Frank, 1966; 1981; Baran, 1958; Prebisch, 1949; Singer, 1949). Indeed, most development strategies for African countries were based on the comparative advantage of land, suggesting that the path to capital accumulation and industrialization was through exporting minerals or other primary products, leading to an eventual diversification of export bases<sup>4</sup> (Mkandawire, 2001). Despite challenge by dependistas, assertions of failure mounted, as states were reproached for the inability to stabilize their economies and successfully implement developmental reforms, suggesting the state itself was in crisis. Nowhere was this discourse more prolific than Sub-Saharan Africa, where the state was deemed not only a failure, but a predatory actor that purposely exploited policy interventions for the enrichment of leaders, state officials, and urban populations; to the detriment of the basic development needs of their own populations (Mkandawire, 2001; Robinson, 2001; Herbst, 2000; Bates, 1981).

### **2.3 Governance – the State in Crisis**

The response to perceived state failure by international organizations was a turn towards the market to drive development and determine economic policy and, to a lesser degree, community organizations or other forms of self-help strategies to address gaps in poverty alleviation and social development (Bardhan, 2002; Jessop, 2000). The expansion of neo-liberalism in the 1980s influenced the development agenda resulting in structural adjustment programs that promoted privatization,

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<sup>4</sup> This path also led to land-intensive exports rather than labor-intensive exports that are associated with Asia. Mkandawire suggests that this had significant implications for the stability, flexibility and social structures of African economies (2001).

liberalization, de-regulation and the use of market proxies to take on some of the traditional roles of the state (Easterly, 2005; Konadu-Agyemang, 2000). However, neo-liberalism also struggled to deliver on its promises, as market failures revealed the inadequacies of this approach to address developmental concerns, with devastating impacts on developing country economies and social sectors. As both the state-led and market-led approaches resulted in failure to achieve stable economic growth and other developmental goals, a new approach emerged as a return to the state was both ‘ideologically and politically unacceptable,’ (Jessop, 2000). During the late 1980s into the early 1990s, there was increasing interest in alternate forms of governance and how they might contribute to developmental goals. In an evaluation of Africa’s adjustment experience, the World Bank began to acknowledge a role for the state in managing development and social change, however this inclusion was premised on a set of ideas regarding ‘good governance’ (Mkandawire, 2001; World Bank, 1989). The World Bank’s position on governance was first outlined in a report titled *Governance and Development* in 1992, where it defined governance as the “exercise of authority, control and management of a country’s economic and social resources for development,” (Chhotray and Stoker, 2009; World Bank, 1992). Definitions beyond the World Bank’s focused on pluralism within society, shifting away from government towards self-organizing, inter-organizational networks, that might complement markets and hierarchies as governing structures for allocating resources and exercising control and coordination (Rhodes, 1996). The interest in governance and thus sound management of development policy and interventions extended beyond building

capacity for public sector management, to encouraging the reformation of the rules and institutions to provide a “predictable and transparent framework for the conduct of public and private business and to promoting accountability for economic and financial performance,” (World Bank, 1992).

#### **2.4 Institutions for Development**

Institutions are embedded in the discourse of improved governance, through questions of how best to encourage change towards institutional forms that enable developmental outcomes. Development theory, still based on an evolutionary trajectory for post-colonial and post-socialist countries, shifted from a focus on strategies for capital accumulation and industrialization, toward a more complex integration of the institutions that make development possible (Evans, 2004; Hoff and Stiglitz, 2001). In particular, new growth theories began to recognize that while technology and ideas are endogenous and essential variables in determining the possibility for economic growth, it is institutions that enable the exchange of ideas and sharing of technological advances and incentivize behavior, which are essential for economic growth (Evans, 2004). Institutions, as critical components to economic growth, have increasingly become seen as playing a vital role in development, as evidenced by the literature from economic historians and development economists, particularly new institutional economists. Acemoglu, Johnson, and Robinson (AJR) assert that institutions matter because they shape the incentives of key economic actors in society, particularly as they influence investments in physical and human capital, land and technology (AJR, 2005; Bardhan, 2002; Rodrik, 2004; Easterly and



Levine, 2003). Differences in economic institutions are often cited as the fundamental cause of variations in economic development between countries. In response to this placement of institutions in a central role, institutional scholars suggest the necessity to develop good economic institutions, particularly private property rights and relatively equal access to economic resources to a broad cross-section of society, to ensure security stability and legitimacy of economic and political institutions. Sen's capabilities approach takes a different route that still ends with the placement of institutions in a central role. For Sen, institutions facilitate the choice of developmental goals, by focusing on institutions and processes of collective decision-making (Evans, 2005; Sen, 1999). Deliberative decision-making institutions, in this framing, are the sole means of defining the desired outcomes of development for any given society.

Institutions, like other conceptual categories, have been the subject of debate regarding their definition and distinguishing features. Ostrom articulates a number of questions for studying institutions, should customs and ethics be regarded as institutions? What about organizations (Ostrom, 1986)? Schotter states that social institutions are standards of behavior, "social institutions are not rules of the game but rather the alternative equilibrium standards of behavior or conventions of behavior that evolve from a given game described by its rules," (Schotter, 1981). Riker defines institutions as, 'rules about behavior, especially about making decisions,' (Riker, 1980). North's seminal work provides the most widely cited definition arguing that institutions are, "the rules of the game in a society or, more formally, the

humanly devised constraints that shape human interaction,” (North, 1990). In this definition, emphasis is placed on the existence and interaction of both formal and informal rules. Formal rules include political, judicial and economic rules and contracts. Political rules define the hierarchical structure of the polity, its basic decision-making structure and explicit characteristics that enable control. Economic rules define property rights over the use and income to be derived from property, as well as the ability to alienate an asset or resource (North, 1990). For North, organizations are purposively created given the opportunity set resulting from constraints, or rules, and with the intent to achieve their objectives (North, 1990). As intentional entities, organizations are designed to maximize their interests as defined by the opportunities afforded within the institutional structure of society. These actors deploy their strategies, capabilities and coordination in response to the institutional framework, to achieve their objectives. Leaders of organizations, whether they be entrepreneurs as in the case of firms, or some other form of decision making authority, are viewed as the primary agents of institutional change. Helmke and Levitsky concur, suggesting that it is not only useful to follow North’s separation of the actors from the rules, but they also distinguish between informal institutions and informal organizations (2004). Chang and Evans offer a similar definition of institutions as, “systematic patterns of shared expectations, taken for granted assumptions, accepted norms and routines of interaction that have robust effects on shaping the motivations and behavior sets of interconnected social actors,” (Chang and Evans, 2000). These definitions are all significant in that they highlight the tension between what the rules are and what the actors do with them, a theme that

will be explored in the empirical chapters of the dissertation. Briefly, there are different approaches to studying institutions that merit mentioning – rational-choice, sociological and historical institutionalisms. Rational choice institutionalists view institutions as coordinating mechanisms that seek to create and maintain equilibrium. Sociological institutionalism incorporates a broad range of institutions, focusing attention on non-codified, informal conventions and collective scripts that regulate human behavior. Last, historical institutionalism acknowledges the cultural components and coordinating functions of institutions, with the primary emphasis on the political legacies of historical struggles (Scott, 2014; Pierson and Skocpol, 2003). This study falls squarely within the bounds of a historical institutionalist approach, including the next chapter that goes to some length to discuss the legacy of political struggles between competing social and political actors that shape institutional reform in Ghana.

Property rights are at the core of the institutions literature, as fundamental institutions that organize and direct social, economic and political relations and processes. Property implies a system of relations between individuals, involving rights, duties, powers, and privileges over things (Feder and Feeny, 1991; Alchian and Demsetz, 1973). Property rights in land are constituted in different forms of ownership: state or public property, private property and communal or customary property. Public ownership implies that the state may determine access or exclude individuals from the use of a right in so far as the state follows accepted procedures for determining who may or may not use state-owned property. Private ownership implies that the community recognizes the right of the owner to exclude others from exercising the owner's private rights. Communal ownership means that the community denies to the state or to individual citizens the right to interfere with any

person's exercise of communally owned rights. In the liberal formulation, private property is held as the ideal form of property rights as the most efficient and productive. Communal property rights are often challenged as being much less desirable for economic development, as they lack the ability to exclude others from using the same resource rendering it difficult for existing communal owners to account for future costs and undesirable for investment (Alchian and Demsetz, 1973). A more detailed discussion of property rights follows in the third section of this chapter.

## **2.5 Development Theory and Policy Reform**

At the end of the 1980s, there was increasing consensus that to enhance growth and welfare, major policy and institutional reforms were required by developing country governments (Grindle and Thomas, 1989). While the institutional turn in development became essential, the narrow focus on rational choice institutionalism tethered institutional change to neoliberalism. In attempting to address the question of what institutions are appropriate to achieve economic growth and transformation, institutional monocropping, the transfer of idealized versions of Anglo-American institutions, emerged imposing these institutions on developing countries with the assumption they would transcend diverse social, cultural and historical contexts (Evans, 2006; 2004). As institutional reform took root as a fundamental intervention of international institutions and donor agencies, the tasks of institutions became increasingly aligned with the priorities and objectives of these actors, notably encouraging or attracting mostly foreign investment (Grindle and Thomas, 1989). Thus, the elements most related to creating an 'enabling environment' for this objective became the main priorities, including defining and reinforcing property

rights, regulating markets to promote competition, bolstering transparency and enhancing capacity of government agencies (Mkandawire, 2009). In attempting to address the question of what institutions are appropriate to achieve economic growth and transformation, institutional monocropping, the transfer of idealized versions of Anglo-American institutions, emerged imposing these institutions on developing countries with the assumption they would transcend diverse social, cultural and historical contexts (Evans, 2006; 2004). Monocropping is consistent with a modernization or evolutionary narrative, that suggests institutional inertia, “Once institutions take hold, they are likely to endure even if they have a long-run negative effect on development, limiting the likelihood that more efficacious institutions will emerge,” (Greif, 1994). With this prognosis of path dependence, monocropping is an attempt to radically transform bad or backward institutions into better ones. However, as indicated by the exposition of North’s theory of institutional change, monocropping is problematic for two primary reasons. First, the argument that selected institutions facilitated development in advanced countries has been roundly criticized. These institutions are more likely the result of development in Western countries, as many institutions did not exist in the current form during their developmental period (North et al., 2008; Evans, 2006; Chang, 2002). Second, pre-existing institutions, norms and the organizations formed around them are critical to evaluating potential avenues for institutional reform. The imposition of rules or institutions without respect to context leads to widely divergent outcomes in societies with different institutional arrangements and informal constraints, both of which are culturally embedded (Greif and Kingston, 2011; Evans, 2005; North, 1990;

Granovetter, 1985). The broader assumption that institutional reform is a largely a technical problem, rather than embedded in social and political arrangements is fallacious, often leading to perverse outcomes (Ferguson, 1994). In line with a historical institutionalist approach, North recognizes the need to know more about culturally derived norms of behavior and how they interact with formal rules to understand the functioning of institutions and as the point of departure for serious institutional reform.

Alternatively, there have been efforts to foster institutions that improve citizens' ability to make their own choices. Theories of how to build institutions capable of tying the allocation of resources and the organization of production to collective decision-making have emerged as an essential element of the development agenda (Evans, 2005). Rodrik concurs, arguing that it is useful to consider the role of participatory political institutions. For Rodrik, the external imposition of institutional blueprints undercuts the more fundamental process of developing institutions that allow effective choice, and reduces the possibility that societies will develop the internal capacity necessary for long-term institution building (Rodrik, 2004). Perhaps the most evident advocates for this participatory approach to development and theoretical pathways for its achievement are Sen – in his capability approach to development – and Fung and Wright – with their focus on empowered participatory governance (Evans, 2006; Fung and Wright, 2001; Sen, 1999). Sen argues for the fundamental priority of participatory political institutions and begins with the premise that “thickly democratic” decision-making institutions built on

public discussion and exchange of ideas, information and opinions offer the best way to adequately define desirable development goals (Sen, 1999). Fung and Wright articulate a path to 'deepen democracy' through participatory reforms that rely on the "commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation," (2001; 3).

In addition to monocropping, international actors have employed a variety of policy and institutional reforms to address so-called failures in state-led development and economic growth. Decentralization, perhaps the most prevalent, seeks to localize authority with the expectation of increased knowledge of local needs and accountability to local communities (Crook, 2003; Prud'homme, 2003; Smoke, 2003; World Bank, 1992; Wunsch and Olowu, 1992). For those seeking to reduce the role of an ineffectual central state, decentralization was considered synonymous with privatization or outsourcing service provision. For local actors, there was also support for this shift in authority and greater opportunity for self-governing communities from diverse actors labelled 'anarcho-communitarians,' (Bardhan, 2002). With such varied support for decentralization, it has been accepted and widely promoted as a key organizational reform, despite limited empirical evidence demonstrating beneficial outcomes (Smoke, 2003). However, the promotion of decentralization policy does not always recognize that decentralization is a shift in institutional arrangements and a redistribution of power and resources among different levels and territorial areas of the state, including varied interests and relationships among elites (Crook, 2003). Echoing earlier concerns regarding

institutional reform, Boone asserts that decentralization schemes cannot be treated as “technically neutral devices, which can be implemented without constraint, as if there were no pre-existing social context,” (Boone, 1998). Indeed, decentralization in developing and transitional economies must account for indigenous institutional context and the structure of organizations and incentives within these societies as they shape both political and economic incentives and behavior. From the statist perspective, decentralization is problematic for the establishment of corporate cohesion and coordination necessary to ensure state autonomy and capacity for policy conception and implementation (Rueschemeyer and Evans, 1985).

This indigenous institutional context structures incentives and shapes the relationships between rival economic and political elites in central and local government, as well as dominant societal actors. Decentralization without adequate consideration of extant institutions presents certain dilemmas that detract from the achievement of its primary goals. First, there is the assumption that decentralization takes place in a democratic context that enables local accountability. This is not necessarily the case in countries whose democratic practices vary dramatically, particularly at the level of local government<sup>5</sup>. Two additional dilemmas, both related to power dynamics, include a reluctance to share power between levels of government and the problem of elite capture (Olowu, 2003). Governments in developing countries have been convinced of the benefits of decentralization, yet implementation is halting as authority and resources are viewed as a zero-sum opportunity, in which local actors gain at the expense of central government (Smoke, 2003; Mamdani, 1996). While many countries have undertaken some variant of

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<sup>5</sup> Often local councils are configured with some elected and some appointed officials, as in Ghana where the district executive and one-third of local officials are appointed by the President and according to party affiliation.



decentralization reform, the process is often incomplete or there is an explicit attempt by central government to retain or regain authority over decisions and resources (Wunsch, 2001; Olowu and Smoke, 1992). Local governance is often handicapped by incomplete processes of decentralization such as the devolution of authority without sufficient fiscal resources or ability to generate resources locally. Local capacity might also be lacking and without appropriate support and training from other levels of government. In turn, this lack of capacity is employed as a justification to recentralize authority. A second dilemma is the problem of elite capture. Local elites contribute resources, knowledge, influence and networks that make decentralized governance appealing. However, local elites with vested interests can use their influence to capture resources resulting from institutional shifts and inadequate mechanisms for accountability, using them for personal gain, patronage and exclusion (Seabright, 1996). Most argue that inclusive and accountable forms of local governance are necessary for decentralization to meet the intended goals. However, Rodrik states that it is unclear that intentionally designed decentralization policies, even with institutional mechanisms that emphasize accountability, will directly map on to desired outcomes (Rodrik, 2004). This section has demonstrated that neo-liberal assumptions and theories have heavily influenced development thinking and policy interventions by powerful international institutions, that use their resources to influence state level actors. However, it is clear that the design and intended outcomes of these interventions have failed to fully incorporate the reality of contestation between rival actors within national contexts.

## **Part II – The National Scale**

### **2.6 The Autonomous State**

The state is a complicated yet pivotal actor that sits at the crossroads of the international scale through its interactions with global institutions, and the national scale through its interactions with societal organizations. The theoretical focus is

now turned inward, to understand the complex relationship of the state with societal actors. The state occupies a long, storied space across scholarly disciplines and history. Unsurprisingly, the definitions are multiple and at times contradictory. Political and sociological scholars often begin with a Weberian definition of the state, which is considered to be a set of organizations vested with the authority to make binding decisions for people and organizations located in a particular territory and to implement these decisions utilizing a monopoly of force (Rueschemeyer and Evans, 1985). In *The State as a Conceptual Variable*, Nettl teases out various lines of thought regarding the multiple definitions of the state (1968). One supports the state as a collectivity, a summation of structures and functions. Another represents the state in terms of international relations, as the gatekeeper between intra and extra-societal actors. A third definition identifies the state as a distinct sector of society. This view suggests autonomy of the state vis-à-vis other societal associations. Skocpol echoes this argument, suggesting that as states claim control over territory and people, they may formulate and pursue goals that are not simple reflections of societal actors and their interests (Skocpol, 1985). Nettl and others also identify the instability of states in developing countries due to the competition among groups and the struggle to dominate authority and perform effectively (Mkandawire, 2001; Rueschemeyer and Evans, 1985; Nettl, 1968).

The role of the state must also be considered. According to the neoliberal perspective, a key objective of the state is economic transformation to a capitalist

system<sup>6</sup>, which occurs through a process of institutionalizing market exchange and the assignment of economic value to land and labor. The earlier discussion on the centrality of property rights institutions alludes to the intended role of the state as the guarantor of property rights. Indeed, in economic development theory, effective state intervention, including property rights enforcement, is assumed to be an integral part of successful transformation. The state engages in a process of long-term institution building to develop the necessary bureaucratic apparatus, functionality and capacity to implement its agenda. To be effective the state requires coherence and coordination within and between its organizations, necessitating a minimum level of autonomy. Rueschemeyer and Evans argue that, “the state must acquire a certain degree of ‘relative autonomy’ from the dominant class in order to promote economic transformation effectively,” (1985; 49). Again, through interaction at the international scale, the state’s agenda is often buttressed by linkages with global markets, international development institutions and other transnational structures that encourage state officials to pursue transformative strategies, even in the face of resistance from politically dominant social forces (Skocpol, 1985). Mkandawire contests this view, citing that states in developing countries are preoccupied with nation building, autonomy, social cohesion, underdevelopment and poverty, however institutional reforms according new institutionalism and neoliberal economic development often sidestep these concerns (2009).

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<sup>6</sup> The authors cited here focus on the relationship between states and economic development as achieved by capitalism. There is also a significant literature on the role and functioning of the state particularly from a Marxist perspective that is not explored here.

## 2.7 Society – Pluralism and Power

What is evident from the discussion on the autonomy of the state, is the difficulty of defining and maintaining a clear boundary that distinguishes it from the interests of society and societal actors. These actors range from clans and chiefs to religious orders who have influence on social and economic behavior. Perhaps a key element for distinction are the differing techniques or mechanisms to achieve social control. In a Durkheimian sense, social control refers to organization and regulation on a societal level according to normative values, establishing social order and guiding behavior (Janowitz, 1975; Migdal, 1988). Both the state and societal organizations seek to control behavior and resources through differing mechanisms at their disposal: by establishing formal rules and institutions, by appeals to a shared sense of ethnic and spiritual identity and sometimes by coercive force. However, most formulations of institutions assume that a single entity, the state, has complete territorial integrity, sovereignty and a singular institutional framework that establishes the rules. For a long period, the dominant position in legal thought and social science studies of law was that institutional and legal centralism was a prerequisite for the modern nation state (Griffiths, 1986). Legal centralism is systematic, unified and supports the claims of legitimacy and authority for the modern state as the fundamental unit of social and political organization. Centralization itself occurs during the process of state formation, through standardization and minimizing differences in the population to establish or oblige a level of homogeneity and autonomy of the state (Scott, 1998; Griffiths, 1986). While pluralist perspectives have long been part of historical and anthropological studies, they emerged in law and normative theory during the 1960s

and 1970s amidst the struggle of economic, religious and ethnic groups against suppressive states (Almond, 1988). Legal pluralism is prominently associated with colonialism – where the legal system of colonial powers was superimposed on indigenous systems or with canon and religious laws (Berman, 2007; Merry, 1988). Legal pluralism calls into question the basic assumptions of liberal political theory, namely the congruence of territory, state and law as well as the concepts of the collectivity and cohesion (Randeria, 2007; Nettl, 1968). The presumption of centralized institutional and legal systems is challenged by legal pluralism and questions the state's exclusive claim to order economic, political and social organization. In plural environments, the state does not have a monopoly over the production and enforcement of norms, rules and law. This suggests the fragmentation of sovereignty and authority in plural contexts, both in the legal and institutional frameworks.

The existence of multiple systems can create space for contestation and resistance, where there is competition for legitimacy and authority regarding social control. Law and legitimacy are constructed and re-constructed through the contest of norm-generating formal and informal institutions (Berman, 2007; Migdal 1988). This is particularly salient when there are contradictory claims to legitimacy over territory. In post-colonial contexts, social control is often tied to property regimes that are negotiable and fluid due to the multiplicity of institutions competing to sanction and validate claims, in attempts to augment their own authority (Lund, 2006). In these contexts, the governance of land, the ability to define and enforce binding decisions

on members of society regarding property and other social and economic domains, is nested in two or more institutions. This is the case in numerous African countries that have complicated governance systems, involving statutory systems established by colonialism and customary or religious systems that continue to influence the organization of people and resources. These parallel systems present a challenge to state sovereignty and render the environment for gaining and managing property rights deeply complex. Ambiguity in such systems plays a significant role, as actors can gain or maintain access, enhance self-serving benefits or potentially assume authority and control over others. This ambiguity might even be desirable at times as a space for discourse regarding how property rights should be engaged within and between communities (Berman, 2007).

To understand the behavior and strategies of Ghana's customary authorities in the process of institutional change, it is useful to develop an understanding of their position within an institutional frame. North presents an analytically clear distinction between formal and informal institutions, which he positions as constraints. Institutions include any form of constraint that human beings devise to shape human interaction. Institutions can be either formal constraint such as rules or, informal constraints such as conventions or codes of conduct or behavior (North, 1990). He also makes a sharp distinction between institutions and organizations. Like institutions, organizations exist to provide structure to human interaction, however organizations develop in reaction to the institutional framework. In turn, organizations influence how the institutional framework evolves, suggesting that

organizations are the agents of institutional change. However, given the complexity of institutional pluralism, this distinction is not obvious in the case of the customary, suggesting that the basis for theories of institutional change might be oversimplified. As will be discussed in greater detail in Chapter 3, custom predated the colonial state, as represented by various forms of extant societal organization. As the British sought to transform their presence in Ghana from a relationship based on trade, to a position of political and economic dominance, they attempted to establish social control through the development of two forms of law: British law that regulated the behavior of the colonial government and native or customary law to regulate the behavior of the indigenous population (Mamdani, 2015; 2012). The creation of customary law was done in concert with select chiefs, through a process of co-production that radically altered indigenous societal organizations and had an enduring impact on state formation (Boone, 2014; Migdal, 1988). Since then customary law has continued to be sanctioned and buttressed by the post-colonial state. Customary institutions and organizations are often referred to simply as informal, with rules that are socially shared and often unwritten (Helmke and Levitsky, 2004). However, the formal-informal binary is not fully adequate to capture the empirical reality of customary institutions and organizations in Ghana, embodying the difficulty of distinguishing the state from society. The colonial state attempted to regulate custom by creating formal rules, however customary authorities were able to oppose the state successfully, achieving accommodation and, in some cases, capturing elements the state preferred under centralized control (Migdal, 1988; Kimble, 1963). Power must also be considered in the categorical

analysis of customary authorities. Migdal suggests that chiefs became, “impenetrable barriers to state dominance,” creating fractured and ‘web-like’ societies of autonomous societal organizations that could challenge and resist the state (1988; 33). Thus, in the case of Ghana, despite the codification of customary law, customary authorities were never fully incorporated into the state, “the incomplete nature of this process – or to put it differently, its relative success - gives the customary its two-fold character as both official and unofficial part of state and part of society,” (Mamdani, 2015; 7).

So how does one position customary authorities in terms of categorization? Customary law in Ghana has been recognized, first by the colonial government and now by successive post-colonial governments, indicating state sanction or recognition. Customary authorities as organizations, are bodies that interpret, implement and enforce customary rules, which are themselves a mix of formal and informal. There is also space and sufficient power for customary authorities to develop their own rules in specific domains in relation to social control, and to contest rules as established by the state. Customary authorities in some cases have acted as rule setters directly in challenging the state, and indirectly through wielding power over electoral processes. Their authority sets rules for civic and social engagement such as marriage and inheritance, including the ability to adjudicate disputes (Joireman, 2008). Their authority also underpins the functioning of land regimes, economic rules, including the alienation of land or the designation of transfer and use rights, providing the foundation for the economic sphere. In these



domains, they can set the rules and enforce them through a complex relationship with the state, and social norms that recognize and substantiate their authority. Thus, the customary sector in Ghana reflects the porosity between formal and informal institutions. More than just customs that allow for repeat interaction, the state-sanctioned existence of customary institutions suggests that they are formal rules. However, customary authorities in Ghana also maintain their separate existence from the state as derived from anteriority and social legitimacy from their descent-based communities, as such the customary maintains a dual existence as both formal and informal. This formulation allows for a more textured analysis and engagement with the strategies and behavior of customary authorities as informal organizations in later chapters.

## **2.8 A Relational Approach**

Development and political theorists struggle to agree on a definitional boundary between state and society. Statist or state-centered approaches view the state as being autonomous from society, an independent actor in making policy choices and transforming them into enforceable action, even when they run counter to the interests of dominant groups in society (Borras, 2001; Grindle and Thomas, 1989; Nordlinger, 1987). Pluralist or society-centered approaches position the state as an arena where social actors or economic interest groups, contend or ally with one another to shape the making of public policy decisions that are understood to have distributive effects (Borras, 2001; Almond, 1988). Kohli suggests that state and society are analytically autonomous arenas, of legitimate coercion and associational life

respectively, that are mutually constitutive (2002). These approaches are often thought of as dichotomous, unidirectional perspectives. Rather than search for a definitive boundary between state and society, Mitchell asserts that the focus should be placed on examining the political and social processes through which any tenuous distinctions are produced (1991). The concept of autonomy of the state is presented as the ability to formulate and pursue independent goals, that are not simply summative or reflective of the demands and interests of social groups, classes or society (Skocpol, 1985). States are formed based on collective interests and compromises. However, as the state evolves, it seeks to dominate the most powerful classes (Rueschemeyer and Evans, 1985). Conflict between state and societal interests is apparent, “the state as a corporate actor is problematic... despite interest in unified action, the state is simultaneously an arena of social conflict, unless social domination is monolithic,” (Rueschemeyer and Evans, 1985; 47). This tension reveals the relational aspect of the state-society continuum, rather than attempting to distinguish the role of each actor.

There has been much written suggesting that states require coherence and autonomy, as insulation from external influence to effectively exercise power and effectuate priorities. However, there are also moments and objectives that necessitate coordination and decentralization, where state effectiveness depends heavily on societal actors (Tendler, 1997; Fox, 1993). Many state or society-centered approaches treat the alternate perspective as a black box, and do not unpack complex dynamics within each of these arenas (Fox, 1996). Excessive focus on a state-centered

perspective may underestimate the differentiation in legitimacy, power or leverage among dominant societal actors (Fox, 1996; Grindle and Thomas, 1989). Policy makers within the state may assume the need to avoid challenging or conflict with entrenched societal elites, to ensure efficient policy implementation (Borras, 2001). Similarly, an excessive focus on a society-centered approach may underestimate differentiation among state agencies and actors or may overestimate the capacity of societal actors to restrain or circumvent the state. For those interested in effectiveness and outcomes, there is a need to develop dynamic alternatives to state-centered and society-centered approaches in terms of achieving and explaining policy outcomes. Borras, in his study on state-society relations and land reform in the Philippines, settles on a definition that encompasses both sectors, the state is thus defined as, “comprising the ensemble of political, social, economic and coercive institutions that exercise ‘public’ authority in a given territory,” (2001; 567). With this understanding of boundaries between state and society, not just as porous and elusive, but as a reflection of complex power relations, understandings of how these actors are interdependent has advanced, revealing opportunities for collaborative action (Sellers, 2010).

Historically, approaches to economic development have placed emphasis on the role of the state and the importance of the rule of law, despite the context of institutionally and legally plural environments. The role envisaged for the state in the neoliberal approach to development emphasizes securing the protection of rights and liberalizing markets to attract investment (Randeria, 2007). This requires the

creation of rule-making bodies and enforcement agencies within the state, leading to an emphasis on the rule of law and necessitates institutional and legal reform. New institutional economics suggest institutions maintain a fundamental, though circumscribed, role in economic growth. In plural contexts, the interplay between formal and informal institutions, loosely equated to state and society, can support or hinder economic development through contestation and resistance to a changing economic environment. However, North seems to underestimate the relative strength and ability of informal institutions to set the rules, by assuming that informal structures with high levels of stability only exist in 'primitive,' stateless societies (1990). African countries are not 'stateless societies,' rather they are complex societies where the state exists alongside strong societal organizations that maintain significant social, political and economic influence. As such the sovereign authority of the state is not unique, there are competing authorities within the territory that possess legitimacy, along with powers of coercion and enforcement to exert social control. This persistent tension between state and society, can produce perverse incentives and impact economic and political outcomes.

## **2.9 Stickiness – Institutions and Change**

Returning to the question of what the rules are and what actors do with them, we begin to unpack how change occurs and the role played by various actors. First, a word on informal institutions. While informal institutions are now recognized as critical to understanding the incentives that enable and constrain behavior, often explaining institutional outcomes, their definition remains ambiguous (Helmke and

Levitsky, 2004; North, 1990). Some equate informal institutions with cultural traditions, while others suggest the delineation between state and society serves as proxy for formal and informal institutions (Offe, 2006; North, 1990; Ostrom, 1990). For North, informal constraints are socially sanctioned norms of behavior and these norms are enforced internally through standards of conduct or behavior (North, 1990). They are also defined as problem-solving or coping mechanisms for problems of social interaction and coordination, which enhance the efficiency and performance of formal institutions as, “the socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels,” (Helmke and Levitsky, 2004). Informal constraints – customs, traditions, conventions – are perceived to be persistent and it is the interaction of formal rules with these constraints and their enforcement that shape the social, economic and political patterns that organize human society. The cultural filter provides continuity with the past in terms of how exchange problems were resolved, a salient aspect of stability as societies undergo long-run change (Greif, 1992). As such, informal institutions can take on varying relationships with formal institutions that are complementary or substitutive, and impact incentive structures, actions and outcomes as well as pathways to change (Helmke and Levitsky, 2004).

With the institutional turn in development, a theory of change is required that allows for the transformation of institutions. Nearly all definitions of institutions, formal and informal, treat them as relatively enduring features of political and social life, the rules, norms and procedures that structure behavior, cannot be changed easily

or immediately (Mahoney and Thelen, 2010). Formal rules can change rapidly as the result of political or judicial decisions or even radical changes such as conquest or revolution. However, informal constraints are culturally derived, endowing them with legitimacy and stability, thus they are unlikely to change immediately in response to shifts in formal rules. Rather, institutions are thought to change in an incremental fashion (North, 1990). If we are to accept North's proposition for the role of informal constraints, what is the relationship between formal and informal rules in terms of change? Is it simply a drag effect, whereby informal rules serve to slow and divert changes in formal rules? This seems to suggest that changes in formal rules are 'pure' and informal norms serve to distort the outcomes. This perspective appears to be grounded in the modernization narrative of development that insists cultural norms, particularly in 'backward' or 'primitive' societies must evolve to achieve economic and political development, and that 'tradition' only serves to slow progress towards development. To this effect, Darwin's evolutionary theory has had a lasting influence on the understanding of social survival and has been embedded in the economics literature since Alchian's discussion of evolution and economic theory (Alchian, 1950). This theory suggests that inefficient institutions are filtered out over time, with surviving institutions, supporting gradual evolution towards efficient forms of economic, political and social organization. In 'backward' economies and societies, the expected result is emulation of the institutions of advanced economies.

There is a subtle distinction between modeling how institutions evolve, from modeling the strategies and skills of the organization. North, focuses on the process of change, and develops a schematic to reflect his theory of change, whereby organizations, shaped by the institutional framework, deploy skills and strategies to maximize their position and in doing so support gradual institutional change. The maximizing behavior of organizations shapes institutional change by creating demand for knowledge and information, facilitating interaction between economic or political information, activities, and the institutional framework, and incrementally altering or de-mobilizing informal constraints to achieve their objectives (1990). Organizations with sufficient bargaining power leverage their position to achieve objectives when the payoff from maximizing in that direction exceeds the payoff from investing within the existing constraints. Greif and Kingston add a more politically nuanced perspective arguing that when existing rules governing interactions become unsatisfactory, individuals are driven to change them (2011). Following this, a bargaining process ensues where expected costs and benefits are weighed by those considering institutional change, with a minimum coalition necessary to effect change. Therefore, the set of rules that ultimately emerges will depend on the interests of actors involved in rule-setting and on the ability of various interest groups to ensure their interests are represented (Greif and Kingston, 2011; Olson, 1971).

From the perspective of historical institutionalists, Mahoney and Thelen's work emphasizes the legacies of political struggle and foregrounds the distributional

effects of power and political dynamics of institutions. They argue that institutions are distributional instruments “laden with power implications,” (Mahoney and Thelen, 2010). Tensions based on power dynamics and historical struggles that underlie the cooperation necessary to form or change institutions, are points for contestation that are vulnerable to shifts. Institutions are likely to have unequal implications for resource allocation, with rules that distribute resources to specific actors and not others, which is the case for institutions that mobilize highly valued resources, i.e. most political-economic institutions (Mahoney and Thelen, 2010; Skocpol, 1995; Hall, 1986). North also recognizes that there are institutional winners and losers even in efficient institutions, “institutions are not necessarily or even usually created to be socially efficient; rather they or at least the formal rules, are created to serve the interests of those with the bargaining power to devise new rules,” (North, 1990; 16). Theories of institutional change must confront political power and conflict in addition to cultural assumptions and organizational forms, the combination of which is forebodingly complex. If existing institutions provide differential returns to some portion of society, which has a vested interest in their maintenance, then it is unlikely they will cooperate with changes that limit or reduce those returns. If that segment of the population also has privileged political power or access, which according to Evans is “highly likely, if not axiomatic,” the problem becomes even more intractable (Evans, 2005; North, 1990; Feeny, 1988).

Given these characteristics, there is nothing automatic or self-perpetuating regarding the continuity of institutional arrangements. Instead, there is inherently a



dynamic element, whereby institutions represent compromise or tenuous settlements that are relatively stable, based on specific coalitional dynamics that are vulnerable to contestation and shifts. From this perspective, change and stability are inextricably linked, falling along the same continuum (Hall, 2010; Mahoney and Thelen, 2010). Even institutions that are formally codified have guiding expectations that remain adaptable to change and thus subject to interpretation and contestation. As such, Mahoney and Thelen suggest patterns or modalities of institutional change based on their own research into political and economic institutions and change in Central America and Europe. They argue that the characteristics of the political context and the institution in question drive the type of institutional change expected and offer four modal types of institutional change:

**Table 2.1 – Modal Types of Institutional Change**

<b>Mode</b>	<b>Definition</b>
1. Displacement	Consists of the removal of existing rules and the introduction of new rules.
2. Layering	Occurs when there is an introduction of new rules on top of or alongside of existing rules, changing the ways in which the original rules structure operates.
3. Drift	Happens when the impact of existing rules changes due to shifts in the environment.
4. Conversion	Exists when the enactment of existing rules is changed due to their strategic redeployment. The rules remain intact formally but are enacted in new ways.

(Developed from Mahoney and Thelen, 2010)

Layering will be explored in Chapter 4 as a primary modality of change in the context of Ghana’s land administration reform.

Rather than conceptualize institutions simply as fixed rules, historical institutionalists view institutions as subject to interpretation and as objects of active

reinterpretation by actors imbued with differential levels of power. Individual or collective actors are unlikely to support institutional changes that diminish their gains relative to other actors (Evans, 2005; Bardhan, 2002). Those who benefit from existing arrangements may prefer continuity but maintaining such continuity requires the ongoing mobilization of political or coalition support, as well as efforts to resolve institutional ambiguities in their favor. Actors with divergent interests, contest ambiguities as these interpretations can have profound consequences for resource allocations and substantive outcomes (Mahoney and Thelen, 2010). The possibility of reinterpretation hints at the contradictory potential of institutions as elements of stability within a society, while also holding the seeds for endogenous change. In this instance, the persistence of an institutional framework is not a matter of unreflective adherence, rather it is the outcome of exercises of power and interpretation, whose result, is at best contested stability. Continuing with their framework, Mahoney and Thelen not only model institutional change, but the actors or agents that instigate such change. The typology of change agents is a valuable step in being able to analyze the behavior and strategies deployed during processes of change or reform (2010).

**Table 2.2 – Typology of Change Agents**

<b>Actor</b>	<b>Definition</b>
A. Insurrectionaries	Consciously seek to eliminate existing institutions or rules, and do so by actively mobilizing against them.
B. Symbionts	Rely on institutions not of their own making and can interact as parasitic or mutualistic varieties.
Parasitic	Exploit an institution for private gain even as they depend on the existence and broad efficacy of the institution to achieve this gain.
Mutualistic	Thrive on rules they did not design but use them in novel ways to advance their interests. However, their activity does not

	compromise the efficiency of the rules or the survival of the institution.
C. Subversives	Seek to displace an institution, but they do not break the rules of the institution.
D. Opportunists	Have ambiguous preferences about institutional continuity, neither seeking to preserve or change the institutional status quo due to associated costs.

(Developed from Mahoney and Thelen, 2010)

Beyond individual types of change agents are groupings of actors that engage in collective action problems associated with mobilizing to enact reform. Where institutional change depends on the formation of a favorable coalition, one cannot neglect collective action dilemmas and organizational structures that either facilitate or impede coalition formation (Hall, 2010). This suggests the underlying role of power relations in institutional change. To collaborate on institutional reform or new institutions, actors must resolve the distributional issue of how to apportion the costs, benefits and risks associated with coordination. This is particularly complicated as actors can be motivated by relative as well as absolute gains offered by a new institutional arrangement (Hall, 2010). From a sociological perspective, normative beliefs tend to play a significant role where the establishment of new institutions, requiring actors to secure agreements among larger constituencies such as political parties or trade unions (Hall, 2010). In addition, identity politics are often embedded in normative beliefs and the underlying sociological structure of society. With this perspective of organizational actors and how they engage with institutions, it is evident that institutional change does not take place on a tabula rasa. Any proposed institutional innovations will be mediated by the actors engaged with the existing institutional landscape, such that these considerations become variables

conditioning the positions actors take on proposals for institutional reform. How the new institutions and arrangements will be resolved rests on various factors, not least of which is the relative power of concerned actors.

### **Part III – A word on Property Rights and Land Reform**

#### **2.10 Property Rights – In Theory**

The evolutionary perspective of modernization is particularly influential to understand shifting institutional arrangements for property rights institutions in land. In evolutionary theory, localized or communal systems are assumed to be a pre-modern form of property rights organization, where communities organize regimes of collective governance to manage access and use of resources held in common. According to this view, shifts in economic or social realities, caused by technological innovation, population pressure, or commercialization, often generate the need for changes in property rights regimes and associated institutions that regulate or enforce them. For example, an increase in the relative price of a factor such as the value of land, results in an increase in the demand for property rights institutions that allow for efficient exploitation. Whatever the source of the change, valuable economic rents are generated that are not assigned under the extant property rights regime (Barzel, 1997; North and Thomas, 1973; Demsetz, 1967; Alchian, 1950). To capture these rents individuals, move to demand a more exclusively defined property rights system, typically private or individual rights in property. Whether change will occur depends on the willingness and capacity of the fundamental institutions to provide a new arrangement (Feeny, 1988; Coase, 1960).

While institutional choices are potentially discrete, institutional shifts are likely to be disjointed rather than linear as this process can be contested by dominant societal actors (Ellickson, 1993; Field, 1989). The work of Alchian, Coase and Demsetz does not fully address the question of governance; who in society makes decisions regarding the shift towards institutional efficiency? And through what mechanism does such a shift occur? (Banner, 2002). There is an assumed neutrality in their arguments that suggests the state will determine and guarantee the necessary institutional arrangements. However, this institutional change, fundamental to economic transformation, is concerned with the distribution of access, resources and the ability to dominate decision-making processes themselves. As such, property rights are endogenous to underlying social and political compromise (Haggard et al, 2008). A model based solely on economic efficiency does not consider such concepts and assumes the most efficient outcome for all society, which is unlikely if the purpose of such a shift is to exclude others from potential gain in the name of internalizing costs. Property rights institutions and institutional changes are at least partially explained in terms of the balance of social power that they reflect, rather than purely in terms of the goals and objectives that they claim to serve (Offe, 2006).

Evolutionary theories and the resulting push for strong and clear property rights created a powerful and cohesive logic that has indelibly shaped approaches to land reform throughout the developing world for decades. There is some consensus that the basic assumptions regarding the evolutionary nature of property rights theory reflect empirical reality. As conditions change, such as demographic shifts,

expanded commercial opportunities and relative price changes, there is pressure for property rights to adjust to a new benefit-cost position, where the benefits of redefining the property rights structure, the underlying political bargains and institutions, outweigh the costs (Krier, 2009; Ensminger, 1997; Demsetz, 1967). However, property rights in land are fundamentally about social relations, with the 'bundle' of rights inherent in property often sub-divided to address social and economic needs, ranging from access to the ability to transfer property (Schlager and Ostrom, 1992). In addition to individual rights, there are complex communal and customary rights that constitute a 'web of interests' whereby individual and communal actors possess various rights, and manage resources based on a range of customary institutions, local norms or state law (Meizen-Dick and Mwangi, 2009). Customary and communal rights are not simply backward, traditional systems, but reflect localized social and economic relationships around property that are dynamic.

### **2.11 Property Rights – In Practice**

It is in these complex environments, further complicated by kinship and ethnic relations, that proponents of modernization have attempted to mobilize theories of property rights evolution by engaging in formalization of informal land claims. Formalization often focuses on enabling alienation or the ability to allocate property rights towards the most productive use. The process of formalization can include the identification of claims, adjudication, registration and titling. To achieve these objectives, the policy initiative of land reform was introduced in the 1960s and 1970s

as a development strategy during the decades of development. The primary goal of land reform is to support economic transformation using land as either a key input in production or as a resource to finance development. Land reform programs are concerned with increasing clarity of land ownership, efficiency of land management and administration, transferring land to more productive use, facilitating access to credit and supporting the development of appropriate property and land tax systems to secure revenue. Land reform typically has two aspects: administrative and tenure reform. Land administration reform focuses on the documentation and regulation of land use and transfers, including sales, leasing, taxation and resolving conflicts around the ownership and use of land (Dale and McLaughlin, 1999). A well-functioning land administration system provides the basis for the determination of land rights, assists in the resolution of boundary and ownership disputes, and leads to a more functional land market. Land tenure reform focuses on changing the rules governing ownership and rights that determine access, use, transfer and validation of land (Toulmin and Quan, 2000). While there are attempts to distinguish the two, they are clearly linked and co-constructed. The processes of land administration reform support and define changes in forms of tenure.

In practice, land reform programs are orchestrated by national governments often in conjunction with development partners, particularly the World Bank. The Bank's Land Reform Policy of 1975 prescribed the replacement of customary systems with formalization through titling and establishing private property rights, which the Bank believed were necessary preconditions for modernization and development

(Peters, 2009; World Bank, 1975). Land reform became a state-project for economic development and a means to consolidate territorial authority (Sikor and Muller, 2009). However, land titling programs of the 1970s and 1980s failed to achieve the expected increase in investment and productivity, nor did they facilitate the use of land as collateral (Peters, 2009). Despite these failed attempts, De Soto's manifesto, *The Mystery of Capital*, and his success in Peru revived the call for formalization to promote growth and development through the mobilization of dead capital (2000). The Bank has continued to advise a framework of secure, transparent and enforceable property rights as the critical pre-condition for investment and economic growth (Kennedy, 2011; Peters, 2009; De Soto, 2000). Deininger and Feder argued that in many parts of the developing world, "the lack of clear property rights, land information, and institutional or political obstacles limit governments' ability to exercise their functions effectively (2009). Thus, land reform, from an external perspective, is intended to facilitate the rule of law, interpreted as formalization and enforcement. There are also internal pressures for land reform, as African governments recognize the need to redress the nature of the legal regimes applied under colonial rule, particularly in settings with settler communities<sup>7</sup> (Mamdani, 2012). Indeed, a crucial challenge for the law and development agenda is how to reconcile statutory and customary law regarding land (Rajagopal, 2008; McAuslan, 1998).

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<sup>7</sup> For greater detail on sub-regional variation within Africa, see Chapter 3.



The formalization of property rights has historically led to severing various interests in land in favor of individual titling (Meizen-Dick and Mwangi, 2009). While transferability is regarded as necessary to allow property to serve as collateral for credit in De Soto's frame, many indigenous systems regard land as inalienable, presenting a dilemma for customary property rights institutions. Additionally, land titling programs can 'unintentionally' formalize inequitable property rights, as a shift to private property necessarily disinherits substantial portions of a community by extinguishing their rights (Meizen-Dick, 2009; Firmin-Sellers and Sellers, 1999; Bromley, 1989). Echoing Ferguson's critique regarding technical reform, Mkandawire argues that the idea that legal reforms are apolitical and only confined to neutral, technical matters is deceptive,

Establishing property rights always has political implications because in the context of scarcity, property rights are not only about incentives, but also about exclusion of some from those protected properties. In Africa, schemes such as land entitlement have meant depriving communities of customary property rights in favor of the individual, (Mkandawire, 2009;10).

By collapsing all rights within the individual through the process of formalization, claims by women, youth, seasonal users and marginalized groups may be negated. Simplistic calls for formalization must carefully analyze the trade-offs, including social and economic impacts, of such legal and institutional reforms given the complexity of existing institutional arrangements and overlapping rights and uses of land (Kennedy, 2011; Peters, 2009; Meizen-Dick and Mwangi, 2009; Rajagopal, 2008; Lund, 2000). "Increasing evidence from Africa is calling into question... (i) whether the gains of new property rights justify the transaction costs and (ii) whether the fit between customary tenure, social norms and the new property rights is sufficient to

lend legitimacy to their enforcement,” (Ensminger, 1997). Still, governments across the African continent continue to revise their land-related legislation, reforming institutions and experimenting with ways to register individual and collective rights (Toulmin, 2008). Some argue that central governments have neither the capacity nor the local knowledge to implement just, large-scale national land registration systems (Toulmin, 2008). Instead, they advocate providing support to local institutions to undertake intermediate forms of land registration.

As decentralization fundamentally questioned the role of centralized government, new frameworks began to explore decentralized forms of land administration, according a greater role to communities in land management (Amanor, 2012; Sikor and Muller, 2009; Toulmin, 2008). Land experts began to recognize certain advantages of customary tenure over formal, individual titles regarding cost effectiveness and equity. They also emphasized that titling requires a range of other conditions to be effective, and urged caution about state-led intervention in land tenure systems (Deininger and Binswanger, 1999; Bruce and Mighot-Adholla, 1994). While the 1975 World Bank Land Reform Policy recommended that communal tenure systems be abandoned for freehold titles, revisions to the policy recognize that some communal or customary tenure arrangements can increase tenure security and provide a “limited basis” for land transactions in ways that are more cost-effective than freehold titles (Deininger and Binswanger, 1999). In areas where credit and land markets are not yet developed, an investment in titling and land registration may be excessively costly in comparison with cheaper methods such as formalizing

the authority of local institutions. The empowerment of local institutions could provide security of tenure, allowing for gradual evolution and greater individualization of property rights overtime (Peters, 2004; Deininger and Binswanger, 1999; Feder and Feeny, 1991; Ostrom, 1990). Thus, this approach seeks to gain formal recognition for customary land tenure arrangements and to harmonize customary and statutory tenure, echoing the relational or interactive approach.

With the push towards decentralization of land management and administration, the foundation of property rights becomes less clear given questions regarding the division of responsibility. The central state is expected to provide the foundation of authority that guarantees and enforces claims to land. However, decentralization beyond local government appeals to the need to consider extant institutional configurations and the structure of socio-political and economic organization. The opposite of institutional monocropping, the ‘going with the grain’ approach empowers indigenous or traditional institutions with authority to manage crucial resources including forests and land. Some suggest that this institutional arrangement supports the flexibility of customary tenure, while engaging the state as a partner to enable integration into the statutory system (Amanor, 2012; Peters, 2004). Others argue that authority over resources is often being devolved to non-democratic and unaccountable local institutions such as chieftaincies, religious orders, non-governmental organizations and project-organized committees. Allocating environmental powers to chiefs or other non-representative authorities can reinforce social hierarchies, at the expense of representative authorities, which

are to varying degrees tied by local accountability structures (Ribot, 2003). Some projects circumvent local government in favor of project selected committees or customary authorities, where custom may entrench gender and ethnic inequalities. State agencies often support customary authorities as they are easily integrated into patronage networks for elections. In this sense, the re-emergence of 'neo-traditionalism' and customary authorities across Africa challenges democratic decentralization (Olowu, 2003). While many agree on the importance of recognizing and building on the advantages of traditional institutions in terms of cost and accessibility, they should not be idealized in an uncritical fashion (Deininger and Feder, 2009). If accountability is weak, increasing pressure on land can erode the advantages of such institutions, reinforce pre-existing inequalities and give rise to corruption, conflict and social strife (Deininger and Feder, 2009; Chimhowu and Woodhouse, 2006).

Rights regarding natural resources constitute a peculiar governance challenge concerning their management and allocation given the multitude of interests involved, including the livelihoods of local populations and the source of revenue generation within the national economy. Decentralized governance and the management of natural resources such as forests or land that have significant economic and social value, constitute an additional element of complexity. These resources often generate conflicts between actors with divergent interests such as small-scale farmers and commercial agriculture in rural contexts and real estate developers in urban contexts (Agrawal and Ribot, 1999). Historically, the colonial

state used the allocation of land to legitimize and strengthen customary authorities to serve as local agents for the purposes of controlling and managing local populations, as will be discussed in the next chapter (Ribot, 2003; Agrawal and Ribot, 1999; Mamdani, 1996). In the current wave of decentralization, these reforms aim to promote more efficient forms of local management and development. While such decentralization is re-shaping the local institutions that manage natural resources, they do not necessarily establish conditions for efficiency or equity, constituting additional challenges for the coherence of the state. Improving governance through institutional reform cannot be viewed as purely technical or administrative, but rather as a highly political process shaped by struggles within society and between local interests and the state (Bardhan and Mookherjee, 2006; Boone, 2003; Mitchell, 1991; Ferguson, 1990). Land reform, from an institutional and legal perspective, involves decisions that impact the structuring of society, state authority and political sovereignty (Boone, 2007). For citizens in African countries, land reform is also intertwined with debates over citizenship rights, women's rights, and legitimacy of existing traditional systems.

## **2.12 Conclusion**

This chapter has focused on developing a theoretical frame that supports an understanding of the fundamental question how institutional change occurs. The study is grounded in the institutions literature, with significant emphasis on institutional change and property rights institutions as the cornerstone. Central to this approach is identifying theoretical understanding regarding the role of the state,

both externally in its interaction with the international scale that has promoted economic development and transformation based on evolutionary theories, and internally at the national scale, where the state struggles with dominant forces in society to establish autonomy, cohesion and capacity to achieve its developmental goals. As such, the first part of the chapter explores theories for development including the shifting understanding regarding the role of the state and the emergence of the governance agenda. We also see the recognition of institutions and their ability to incentivize behavior in social and economic processes. The institutional turn acknowledged a role for the state in shaping development, but with limited priorities and scope focused on economic transformation with emphasis on legibility to enable foreign investment. Institutional monocropping and decentralization emerged as key interventions to spur institutional change, but created new challenges due to inadequate consideration of indigenous institutions and the dynamic societal struggles between rival elites.

The second part of the chapter turns to the national scale to present the complex relationship between state and society and their respective roles in development and reform. As statist approaches have waxed and waned over decades, economists as well as political and social theorists have come to acknowledge that the state plays a crucial, albeit circumscribed, role in development, particularly in economic transformation. Pluralist approaches highlight that the state is often not the sole actor wielding authority or social control, and instances where societal actors have sufficient power they have captured areas traditionally considered part of the state.

The historical institutionalist perspective facilitates an understanding that institutions emerge from these socio-political struggles and compromise. These processes produce contested stability, which allows for an understanding of institutions that demonstrates the dynamism inherent in institutions, the interdependence of state and societal actors, and the potential for interactive approaches to reform. Indeed, this framing of institutions also suggests that rather than the traditional binary perspective of discontinuous/gradual or exogenous/endogenous change, that the dual binaries are very likely related in that a shock or radical event provides the necessary disruption for coalitions of interest to reevaluate and seek to maximize their positions, resulting in endogenous change.

This chapter has also weaved together the literature on property rights with the policy intervention of land reform as influenced by governance and decentralization theory and practice. The liberal economic approach to property rights focuses on an evolutionary trajectory whereby pre-modern, communal systems transition towards private property regimes. From this perspective, the guarantor of the new private regime is the state. Yet, we see from the various critiques posed, that property rights are endogenous to underlying political bargains and informal institutions. This chapter highlights two key factors that question the core assumption of the central role of the state in guaranteeing private property institutions. First, the state in many developing countries, including Ghana, has been deeply undermined by various processes including structural adjustment and privatization, reducing its capacity to govern and manage territory and society. Second, the state is not the sole coercive

authority with the ability to make and enforce decisions that impact social, economic and political behavior, as seen in the discussion on legal and institutional pluralism. This renders questions of accountability and enforceability exceedingly complex. Finally, we see the influence of the property rights and decentralization literatures on the policy of land reform. According to the dominant paradigm, land reform is perceived as fundamental to economic development, as land is necessary as an input for production as well as a critical source of financing. Overtime, the approach to land reform and property rights has shifted from an exclusive focus on developing private property regimes through formalization and titling programs, to a grudging acceptance of communal forms of property that can at least improve clarity, tenure security and enforce claims. This acceptance of localized customary tenure regimes has allowed the merging of the ‘going with the grain’ approach and decentralized land reform. In this configuration, local customary institutions are empowered to support institutional changes in land administration and management, though not quite to the point of tenure change and private property. However, the concerns previously raised of accountability and enforceability are significant questions given hierarchical forms of organization, power dynamics and the undermining of democratically decentralized institutions such as local government.

Accepting Mahoney and Thelen’s typology for institutional change, this dissertation examines the institutional context in which change occurs and considers how the legacy of social and political struggle, combined with contextual factors has shaped the strategies and the behavior of diverse organizational actors. Through this framing



of institutions, the reconfiguring of Ghana's legal and institutional framework for the land sector – inclusive of new institutional arrangements and the institutional innovation of the CLS – are examined. While significant focus has been placed through various studies on the role of the state in establishing the rules or institutions to facilitate economic transformation, there is decidedly less literature regarding the strategies and behaviors of societal actors as they reinterpret and appropriate reforms. The empirical chapters explore both state and societal actors, with emphasis on heterogeneous customary authorities to develop a better understanding of their behavior as predicated on their interests and capabilities.

## **Chapter 3. Territory in Historical Perspective**

### **3.1 Introduction**

This chapter seeks to provide the contextual backdrop on which the processes of state-making and institutional change in Ghana are staged. The history of territory, land relations and state formation in Africa is complex, with significant sub-regional variation regarding local histories of social organization and related political economies, still some broad patterns can be drawn. Thus, the chapter is divided into two parts. Part I provides some contextualized background regarding the meaning of land and territory to state-making in Sub-Saharan Africa, both to provide a sense of how Ghana's particular circumstances fit in this larger context and to distinguish between African and European contexts, which provide the basis for much of the literature on state formation, property rights and the central role of the state. The second part of the chapter shifts focus to Ghana, where present day land administration reform is occurring against a densely storied and contested backdrop of institutional change defining authority structures and the governance of land. The chapter provides a detailed look at territory and the structures of social control, inclusive of the political economy of land as relates to state formation and the production of customary institutions. This is done through a periodization of institutions in land from the perspective of pre-colonial polities, the colonial authorities and the post-colonial state.

#### **Part I. Land and Territory in Africa**

### 3.2 Territory and State-Making

Power in pre-colonial West African polities was not, in the first instance, based on control of land<sup>8</sup>. Yet, land and territory are instrumental to the modern understanding of states and state systems (Herbst, 2000). In the Weberian tradition, two signal characteristics of a state are its monopoly on the legitimate use of physical force, and its ability to project or extend that power throughout the territory it controls (Weber, 1947). The connection between state and territory is foundational, as territory is understood in the political sense as the “privileged space of the exercise of sovereignty and of self-determination, and as the ideal framework of the imposition of authority,” (Mbembe, 2000; 263). The assemblage and consolidation of land is thus assumed to be a foundational act in the state-making project. These processes may occur through negotiation, market transfers or via more confrontational modes including conquest. Whatever the mode, the territorial boundary and scale are based on the ability to exercise control over the area, and in contexts where those boundaries are tested or threatened, they must be fortified against incursion. Control over land for the modern state, in the Weberian conceptualization, is typically exercised by a political or economic group, typically an elite minority, that determines boundaries and consolidates their position by constructing the requisite legal and political institutions. As such, economic and political power is expressed through spatial control.

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<sup>8</sup> However, land was not typically recognized as private property, in a fully exclusionary sense, throughout much of pre-colonial Africa. Instead, another factor of production, labor in the form of slave labor, was an integral form of private property in many pre-colonial African polities (Thornton, 1998; 74).

Given the focus of this inquiry into the reform of institutions in land, it is essential to consider indigenous conceptions of land and territory in Africa, acknowledging that relationships with land are contextual and subject to significant regional variation. State creation and the consolidation of territory occurred in divergent manners in the sub-regions of Africa as compared to Europe. Weber's state is based on the western European model where population density relative to a significantly smaller land mass rose early on, creating pressure on land. Charles Tilly suggests as much in *Coercion, Capital and European States*, where he argues that such pressure compels territorial competition (1993). Further, he articulates a fundamental reason for the creation of relatively centralized state system in Europe was the continuously aggressive positioning for trade and territory among the diverse states, making war a distinguishing force in European state formation (Tilly, 1993). Additionally, the European state developed cities as the core political arena and created outposts in the surrounding hinterlands to protect territorial borders against incursion from neighboring states. In contrast, Africa's many polities held vastly different conceptualizations of territory and control. In the African context, land served sacred and social purposes. Land was also considered to be an abundant resource, therefore instead of struggling over land, conflicting polities sought to conquer peoples and enforce systems of allegiance, or relocated to evade war altogether (Herbst, 2000). Control was based on systems where the conquering force could extract tribute from the dominated group, whether in labor, produce or other forms of payment. Property in persons was often considered of greater value than property in land (Thornton, 1998). Without competition over scarce land resources, the

imperative to develop exclusive practices of demarcating territory and authority was initially absent in pre-colonial Africa (Herbst, 2000). The costs of demarcation over such large territories on the African continent were high, as they would require significant infrastructure and human resources to protect boundaries. In addition, historians suggest that low population density relative to land on the continent was a chief obstacle to state formation (Osafo-Kwaako and Robinson, 2013; Herbst, 2000; Bates, 2001; Illife, 1995; Vengroff, 1976; Fortes, 1940). These fundamental differences suggest why territory was treated very differently in the practice of state-making in the European and the African contexts. With conquest being the primary mode of expansion and consolidation of peoples the mode of incorporation, African political entities were not determined foremost by territorial boundaries. Rather, “territory was constantly being assembled, disjoined and recombined through wars and mobility of people,” suggesting fundamentally different circumstances that continue to impact African states ability to assert centralized control over territory (Mbembe, 2000).

### **3.3 Customary Tenure Institutions in Pre-Colonial Africa**

To explore territory and land in African contexts, it is necessary to examine how land was accessed and managed. The terms ‘traditional’, ‘communal’ and ‘indigenous’ have been used interchangeably to describe all indigenous tenure systems in Africa, however these generalizations and equivocations have been contested (Nkwae, 2006; Migot-Adholla and Bruce, 1994; Noronha, 1985). Describing all forms of indigenous tenure as ‘communal’ reveals misconceptions about the different forms of

indigenous tenure systems in Africa. For example, Nkwae argues that using the term 'communal' to describe all indigenous tenure systems in Africa implies group management, ownership, exploitation, control and use of land (2006). This description is misleading in that it presupposes that all individual members have influence over communal governance and that there is no possibility for exclusive land rights for individuals. Nkwae's argument is supported by Ostrom, who asserts that findings from many studies on common property-rights systems indicate such systems do not exist in isolation of, but usually in conjunction with individual rights (Ostrom, 2000). In a similar argument, Noronha notes that the use of the term 'communal' to describe customary tenure systems oversimplifies complex tenure relations in the customary systems, and therefore should be avoided (1985).

In this study, the definition of 'customary' is adopted from Cotula, who describes a "system of authority that is based on anteriority and alliance, in which access to resources depends on social belonging, and in which rights are allocated under the auspices of land management institutions," (Cotula, 2007; 35).

Customary tenure institutions refer to i) indigenous tenure systems that have evolved locally; ii) where land is held on the basis of group and individual rights; and iii) the mechanisms for obtaining, using, distributing and disseminating these rights, which arise as a result of accepted practices based on the customs and traditions of a group (Cotula, 2007; Kalabamu, 2000).

Customary groups have developed various ways of controlling land rights in relation to members of communities; how land rights can be transferred within the group; and how land rights can be transferred to persons outside the group. The major

difference between customary tenure institutions and other common property regimes is that the former usually includes both use rights allocated to households or individuals, and common use rights. Common property regimes, however, describe joint use and access by community members of common pool resources (Otsuka and Place, 2001). Given the significant diversity in the composition of groups, their structure, culture and the physical environment, it is unsurprising that Africa is host to a wide range of tenure relations and customary tenure institutions (Arko-Adjei, 2011).

Despite the diversity in tenure relations across the continent, customary tenure institutions in Africa are grounded by two basic principles: access to land by group membership and ownership of developments on land (Pottier, 2005). Usufruct rights are generally available to all people belonging to a particular community, ethnic group or clan that provide access to land (Biesele et al., 1991). The rules governing access to and the use of customary land were implemented by customary authorities – kinship or social groups – whose legitimacy derives from the anteriority of presence, such as the founders of a community or settlers of land, priests, tribal chiefs or clan heads who exercise trusteeship over the land on behalf of the group (Cotula, 2007; Nkwae, 2006; Kalabamu, 2000). Asserting that land has been given to them by their ancestors and land related deities, these groups regard themselves as stewards of the land for present and future generations (Pottier, 2005, Ollenu, 1962). Religious, social and political conceptions of land are intertwined with land-use practices, making it difficult to separate tenure from social and cultural values.

Historically, these forms of association and social organization have guided people's way of life and structured their land tenure practices. Spatial and temporal use rights over parcels of cultivated land was orally defined and could be transmitted to succeeding generations in accordance with the prevailing rules of succession, usually through inheritance (Migot-Adholla and Bruce, 1994). Transactions in customary land were not recorded in writing, but were instead legitimated and publicly endorsed at ceremonial gatherings as mandated by customary law (Agbosu, 2000). The second common principle of customary tenure institutions is the recognition of an individual's right to anything developed or created on the land, including buildings or crops. Such rights can be inherited according to rules governing the inheritance of private property.

### **3.4 Territory, Authority and the Colonial State**

Whether African conceptualizations of territory would have eventually converged with the Weberian ideal undergirding the state or some other form of territorial agglomeration that fit with extant forms of organization will remain unknown due to the disruption of colonialization. The colonial encounter in Africa was one of critical disjuncture, where societies were disrupted by external influences that altered potential evolutionary paths. The disruption of social organization as well as political and economic modalities can be differentiated among the continent's micro-regions.

Amin articulates three such regions according to differences in political-economies:

i) traditional West Africa<sup>9</sup>, where the economy was based on colonial trade of labor

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<sup>9</sup> These micro-regions correspond approximately to present day [Cameroon, Chad, Gambia, Ghana, Guinea-Bissau, Liberia, Sierra Leone, Togo];



and goods; ii) the traditional Congo River Basin<sup>10</sup>, where the economy was based on mining by concession owning companies, largely exploited by the Belgian and the French; and iii) the eastern and southern regions of the continent", where the economies were based on imperialism and labor reserves (Amin, 1972; 504). Europe's colonial expansion and consolidation of territory was a long process that evolved hundreds of years after the initial encounters by European traders in the fifteenth century. A quintessential moment of territorial reorganization occurred during the Berlin Conference of 1884-1885, the historic gathering of European powers where Africa was partitioned, boundaries delineated and colonial territories claimed. This extension of European imperialism was primarily motivated by the need to ensure trade and borders against incursion from competing European powers. Following this division, colonial rulers were faced with the challenge of all who sought to govern territory in Africa's vast landscape, how to broadcast authority over lands with highly varied and disparate population densities (Herbst, 2000). The assertion of authority over people and territory is referred to by Lund as territorialization. He defines this as, "the attempt by an individual or group to affect, influence or control people, phenomena and their relationship by delimiting and asserting control over a geographic area," (Lund, 2013; 16). Territorialization employs strategies that allow or disallow certain forms of land use and access; regulates certain forms of mobility and transaction; and differentiates rights to resources that contribute to the structuring of citizenship (Lund, 2013). The differential basis for economies in each

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<sup>10</sup> [Central African Republic, Congo-Brazzaville, Congo-Kinshasa, Gabon];

<sup>11</sup> [Angola, Botswana, Burundi, Kenya, Lesotho, Malawi, Mozambique, Rwanda, South Africa, Swaziland, Tanzania, and Uganda].

of the micro-regions resulted in differences in colonial administration of people and territory. In West Africa, where the economy was driven by trade, the focus was on exporting, leaving greater flexibility regarding land regimes and the allowance of indirect rule. However, in the Congo River Basin as well as eastern and southern regions, where the economy was based on concession mining and large labor reserves, a different strategy was employed in the form of settler colonies to manage territory and people<sup>12</sup>.

The question of how to broadcast control within colonial territories yielded two primary modalities in the African context: direct and indirect rule, though some minimize the binary nature of these terms in favor of degrees of indirect rule. Given the limited extent of colonial administrators' reach to coastal or peripheral areas in West Africa, they engaged with 'native rulers' to extend authority throughout their territories. Indirect rule, promulgated most successfully by the British in this region, was a system of governance of one state by another, in which the people retain certain administrative and legal powers (Lugard, 1922). Mamdani articulates that the essential strategy of colonial governance centered on the definition and management of difference (Mamdani, 2012). This mode of rule claimed to preserve custom and tradition, "indirect rule embraced the administrative principle and justificatory belief that state-recognized customary authorities are authentic representatives of

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<sup>12</sup> For instance, in settler colonies vast tracks of land were taken either by the Crown, colonial government or directly by settlers and developed into plantations or large farms where African labor would come to work (Amin, 1972). Africans were relegated to areas that were designated as ethnic homelands through enclosure acts that often removed them from the most productive arable land.

ethnic communities indigenous to the chief's territorial jurisdiction," (Boone, 2014; 65). The colonizers sought to incorporate extant forms of social organization, or those presumed to exist, creating a dense network of social rather than physical infrastructure to ensure control. Their interpretation of African traditional institutions is often embodied in the ideal of chiefdoms. As rulers of native communities, chiefs were in some cases identified through negotiating with existing rulers to find those that were most sympathetic to a relationship with colonial administrators and thus able to advance their status within existing social hierarchies. An example of this process is detailed by Sally Falk Moore in her account from the Mt. Kilimanjaro region of Tanganyika, present day Tanzania:

The German colonial peace put a stop to the fighting among several dozen politically autonomous chiefdoms on Mt. Kilimanjaro, hanged some chiefs, deposed others and installed chiefs answerable to their colonial rulers... Over time, the political arena was completely reorganized. What had been dozens of chiefdoms were consolidated into fewer and fewer [for the convenience of the Europeans]. In both the German [1886-1916] and the British periods [1916-1961], each chiefdom had a law court presided over by the chief... The judicial role was an extension of chiefly administrative authority... It served as the main arm of the colonial government (Moore, 1991; 111).

In other cases, chiefs were created where no such authority existed or other societal figures had authority such as religious orders. Thus, a significant body of literature demonstrates that customary institutions were not static perpetuations of precolonial norms, rather new systems of law and organization based on colonial administrators' interpretation of African tradition (Boone, 2014; Mamdani, 2012; Berry, 1992). Mamdani also distinguishes between the customary as embedded in society and customary law that was shaped by the critical influence of British

colonialism and codified by European courts (2015). Customary law was co-produced as part of the colonial project, by colonial administrators, native rulers and elites resulting in radical shifts in state-society relations, as will be discussed in greater detail as the focus turns to Ghana.

### **3.5 Customary Institutions and Land Regimes**

Building on this discussion of indirect rule, it is evident that the colonial state in Africa, along with customary institutions, defined and entrenched differential institutions including institutions in land<sup>13</sup>, that dictated relationships of authority and segmented territory into political jurisdictions (Boone, 2014; Mamdani, 2012). Customary institutions are often described as the opposite of statutory institutions. However, as demonstrated customary authority, or as Boone describes it ‘neo-customary’ authority, was co-produced by and embedded in the colonial state. Customary tenure institutions were filtered through colonial courts and European legal concepts, resulting in an over-simplification of complex tenure relations and in support of colonial economies (Obioha, 2008; Pottier, 2005; Berry, 1993). Through this process, customary land regimes were established in customary law based on the principle that land in a customary or chiefly jurisdiction was a corporately held endowment of a descent-based community. Indigenous people were tied to customary areas that facilitated access to local citizenship, including participation in the administration of native or customary authority, dispute resolution as determined by customary law, and access to land. As such, land regimes, as political

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<sup>13</sup> Indigenous populations were relegated to customary rights that emphasized occupancy, whereas in private property rights were available to foreigners through concessions and for European settlers in settler colonies of eastern and southern Africa.

and economic institutions, determine four critical aspects of socio-political structure: rules of authority, territorial jurisdiction, property rights and rules of citizenship (Boone, 2014). Customary land regimes were also based on the principle of non-alienability of land. This practice began with colonial administrations who sought to suppress land sales within the chiefly jurisdictions, recognizing that the development of land markets could undermine indirect rule in customary areas. Customary authorities themselves also believed that the development of land markets could dissolve the hierarchically structured descent groups they sought to reinforce as the basic socio-political entity and landholding unit (Boone, 2014). Thus, the restriction of private property in land was a tool for both colonial authorities and the retention of chiefly authority to maintain political leverage over subjects. This social configuration of descent-based groups also created a distinction between indigenous people and migrants or foreigners, adding ethno-racial conditions to group membership and accessing land; echoing Tilly's assertion that "durable inequality among categories arises because people who control access to value producing resources solve pressing organizational problems by means of categorical distinctions," (Tilly, 1998; 7).

Post-colonial states inherited colonial and customary institutions, leaving post-colonial leaders and elite groups to determine how they would be reconciled. Postcolonial governments since have been actively implicated in the reproduction or suppression of customary institutions and tenure regimes as it suits their political and economic goals (Boone, 2014). Customary rules themselves, have continued to

be dynamic, responding to evolving political, environmental and social conditions (Cotula, 2007). Decades of colonial and post-colonial legislative interventions by governments including nationalization, centralized resource management, land registration programs and devolution of land management responsibilities to local government bodies, have affected customary tenure institutions (Cotula, 2007). Many post-colonial African governments recognized customary institutions in national constitutions, statutory law, executive or administrative decree or administrative practice. However, shifting institutional contexts, coupled with increasing land scarcity, have resulted in significant changes in the social value of land, intra-family land relations, land management institutions and land transfer mechanisms, and in some cases led to the erosion of customary authority (Obioha, 2008; Cotula, 2007; Abdulai and Ndekugri, 2007; Kombe, 2005; Pottier, 2005; Kasanga and Kotey, 2001). In such cases, the relationship between the customary authorities and members of the landholding groups has broken down or been usurped by integration into the statutory sector. In the Northwest Province of Cameroon, chiefs or Fons have been absorbed in the bureaucratic structure of the state:

Fons have now been rendered fully accountable to the administration at the Divisional level and this has reduced their former 'despotic' powers. A Fon's installation now has to be ratified by an express note of administrative recognition before he can officially exercise any active role as an auxiliary of the administration. It is clear from this that the chieftaincy has been bureaucratized and reduced to the lower ranks of the administrative ladder. As subordinates in a hierarchical bureaucracy, Fons might suffer disciplinary sanction from low level bureaucrats. Chiefs receive a monthly salary from the state in addition to a small commission from tax collections. This appears to be their primary source of income as tribute from their subjects is now rare (Fisiy, 1995; 53).

In other instances, this relationship has been reduced to one of 'landlord' and 'tenant' in the absence of any defined obligations (Ubink, 2008; Kotey and Yeboah, 2001). In addition, the shifting behaviors of customary authorities, particularly placing their economic interests above communal responsibility, is contributing to the erosion of social organization and cohesion. While customary institutions have historically demonstrated responsiveness to change, they have shown varying ability to confront shifting environmental conditions such as rapid urbanization and increasing commodification of land. These shifts have exposed the fragility of usufruct rights and led to increased tenure insecurity.

## **Part II. Territory and Control in Ghana**

From this broad ranging narrative of land and territory across Sub-Saharan Africa, the focus in this section is narrowed to the Ghanaian context. The history of land tenure, chieftaincy and transformations in Ghana's political economy is the subject of an extensive empirical literature (Lund, 2008; Ubink, 2008; Kasanga and Kotey, 2001; Berry, 2001; Amanor, 1999). In the pre-colonial period, the definition of territory and control of land were secondary to the extension of power through conquest, property in persons and access to valuable resources fueling trade. The colonial period drastically altered this dynamic with land becoming central to defining political, economic and social relations. The transformation of land regimes and customary tenure institutions in Ghana cannot be understood with a simplistic view of the state. The process by which these institutions in land are defined and

enforced is essential to an understanding of state formation, revealing the contestation among actors in state and society to secure access to valuable resources.

### **3.6 State-society: social organization and land during the pre-colonial period**

It is impossible to do justice to the numerous peoples and states found in pre-colonial Ghana in a single chapter. People of the Gold Coast in the pre-colonial era lived in a large number of ethnic or tribal societies<sup>4</sup>, such as the Akan peoples – Ashanti, Fante, Akyem, Denkyira; and the Ga-Dangme peoples – Ada, Krobo and PramPram, resulting from historic migrations from the north and east. These societies exhibited varied levels of organization, from small-scale politically autonomous communities, to highly articulated core states (Crook, 1990; Ward, 1967; Kimble, 1963). Generally, the core unit of society was the family, with families and kinship groups reinforced by systems of ancestor worship (Ward, 1967; 99). For organized states, villages were governed by a group or council of elders, composed of the heads of households or families in the village. These elders provided council to chiefs or kings regarding political and economic decisions. Various states engaged in mercantilism to the north through trade routes that crossed the Sahara, exporting gold and other goods that enabled them to consolidate their wealth and engage in wars with neighboring groups to establish dominance. Pre-colonial systems relied on customary tenure institutions that were flexible in enabling communal, family and individual access to land. As commercial or demographic pressures rose, there

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<sup>4</sup> There are over 100 linguistic and cultural groups, clans and states in Ghana, each with distinct identities (Aryeetey, Ayee et al., 2007).



were instances of movement towards more exclusive rights to land, with land sales occurring in the early nineteenth century (Ensminger, 1997; Kimble, 1963).

The Portuguese landed on the Gold Coast at the end of the fifteenth century, as some of these migrations continued within the states and societies of the Gold Coast (Ward, 1967; 62). With the arrival of Europeans by sea, enterprising groups developed trade routes to the coast, along which European goods were brought into the interior, fundamentally altering patterns of exchange (Kimble, 1963). The Gold Coast received its name from the Portuguese, at a time when gold was the chief commodity. Early European traders brought new commodities, eventually including guns, which profoundly altered the balance of power among the various ethnic states and contributed significantly to the rise of the interior kingdoms, notably the Akwamu and the Ashanti (Kimble, 1963). Initially, the Portuguese, and later the Dutch and the British established forts along the coast to serve as trading posts and positions to defend their economic interests, developing alliances with different groups. Significantly, the Europeans had to obtain temporary rights to land to build their forts, and paid a subsistence or fee referred to as ground rent for the use of the land to respective indigenous holders.

Additional detail is useful to understand the relationship of key ethnic and political states in and around the two focal regions of this study, as their histories provide a window into the complicated state-society relations of the colonial and post-colonial periods. The Ga people, one branch of which are the Accra, were themselves

migrants in the early sixteenth century. The exact location of their earlier home in modern Nigeria is uncertain, but commonly referred to as lying to the east, between two larger rivers, perhaps Benue, Niger or Benue (Ward, 1967). The Ga were situated in seven coastal towns, which are now the core of the capital city of Accra extending to Tema. With their coastal location, they were fishermen, salt producers, as well as middlemen and traders, given their longstanding contact with European merchants. According to Europeans, Great Accra was one of the most populous and wealthy commercial centers in seventeenth-century Gold Coast, and the capital of a centralized state with a high degree of political and economic power. The rulers were originally lomei or priests, however as they interacted with neighboring Akans and their distinct political system, they modified their governance structure with a division of sacred and secular power resulting in mantse or chiefs being the head of towns. Defeat by the Akwamu and recurring interaction with Europeans during the 1800s, resulted in an erosion of authority, including the loss of judicial powers and revenues. Customary authorities and Ga elites adapted to the changing political and economic environment and began to forge a new role as brokers in the distribution of urban and rural land (Parker, 2000).

The Ashanti were originally a loose confederation of tributary states and part of the Akan ethnic group that united into a hierarchically centralized kingdom during the 1670s bonded by military and spiritual alliance, with the Golden Stool as the symbol of the shared soul of the Ashanti (Ward, 1967; Rattray, 1929). Over the next century, the Ashanti became a great empire, expanding mostly through conquest. As they

sought to subdue rivals through military campaigns, they offered newly conquered areas the option of the joining the empire or becoming tributary states, thus extending their dominance in the region. The Ashanti state increasingly consumed European goods, guns in particular, to facilitate their ascendance, requiring the maintenance and security of coastal routes. The Ashanti exported gold on a smaller scale, though European traders shared stories of the potentially vast gold reserves under Ashanti control. The ascendance of the Ashanti was also based on conquest of neighboring groups, resulting in their main export commodity being slaves accumulated through raiding and warfare (Ward, 1967).

While the Ashanti were expanding their territory, coastal nations were also developing, particularly the Fante state. The Ashanti and Fante fall within the Akan meta-ethnicity that is found in the southern coastal areas of present-day Ghana and the Ivory Coast, with the Fante presence established in the region by the fifteenth century or earlier. During the sixteenth century, they expanded along the coast in order to defend from foreign invasion. Originally considered remarkable for their disunity, the Fante established the Fante Confederacy as interaction with European traders increased over the next century, requiring greater unity and strength (Ward, 1967). This consolidation was both economically and politically motivated as Fante controlled trade routes and received payments from Europeans to keep the routes open, and the Fante began to feel pressure from the rapidly growing Ashanti to the north that threatened the security of surrounding regions. Despite similar social and political structures the Fante, never managed to become as unified as the Ashanti,

however the Confederacy was most effective under threat of war. The Fante were allies of the British who supported their efforts against the rival Ashanti, allies of the Dutch. The Fante intervened in internal disputes among the Ashanti Confederacy, lending material support to rebel groups, offering harbor for refugees and dissidents, and cutting off supplies and introducing laws forbidding the sale of firearms to the Ashanti. Though the Fante Confederacy was smaller and less unified than the Ashanti, they were able to leverage their control of the coastal trade and their relationship to the British to increase their position.

Tensions between the two Akan Confederations flared until the Ashanti-Fante war of 1806-7. The Ashanti were successful but the British continued to work with the Fante to undermine the Ashanti, leading to another war in 1811. The Fante allied with the Akyem and Akuapem, while the Ashanti allied with the Ga people of Accra. Ultimately, the Fante became a tributary state of the Ashanti, who regularly engaged in punitive actions due to Fante defiance (Ward, 1967). Under continued pressure from the warring Ashanti, the Fante leaders entered an agreement, known as the Bond of 1844 that incorporated the Fante into an emergent British Protectorate, but guaranteed internal control remain with local rulers. In 1868, Fante leaders met to formalize the Confederation. The group proclaimed loyalty to the British Protectorate, promising to prevent the Dutch from assuming control of forts in Fante territory, and demanded the right to self-government. Initially, the British had little interest in directly administering the region and thus felt a self-governing state was a positive development. However, other British representatives in the West Africa

region saw the Confederacies as a dangerous precedent of anti-British sentiment. The Dutch also weighed whether it was worthwhile to stay and defend their position with continual pressure from Fanti raids, and continued competition from the British. Ultimately, the Dutch withdrew rather than continue investing resources into defending their forts and weakening position. With the departure of the Dutch, the British had a significantly more consolidated position economically and thus approached the leaders of the Fante Confederation, offering financial support and defense against the Ashanti if they acquiesced to the Gold Coast. Thus, the Fante Confederation was subsumed by the Gold Coast Protectorate in 1874.

As the British position slowly evolved during the nineteenth century, developing the Protectorate and eventually the Colony, several key decisions were made that initiated fissures regarding chiefly authority over property in people and land. The first decision was the abolition of the British slave trade in 1807. While this decision was completely desirable from an abolitionist perspective, it did have negative effects on African middlemen dramatically reducing this lucrative revenue stream<sup>15</sup>. This required an immediate and complete change in the character of the Gold Coast's trade with Britain and prompted alliances with other Europeans who had yet to move in the same direction<sup>16</sup>. A second set of decisions revolved around the question of territory and jurisdiction of the British. Until 1821, British forts were administered

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<sup>15</sup> Conversely, British slave trading companies were subsidized for their loss of revenue, minimizing the economic loss (Kimble, 1963).

<sup>16</sup> The slave trade continued with other Europeans, but on a diminished scale, with domestic slavery persisting until 1874 (Kimble, 1963; 2).

by the Company of Merchants Trading to Africa, and their officers had no jurisdiction, civil or criminal. The Crown took over from the Company at that point, and the Gold Coast Settlements were made subject to the laws and statutes of British West Africa, whose colonial seat was in Sierra Leone. Under this arrangement, trade and the maintenance and defense of the forts declined due to disinterest in protecting them from the Ashanti. Responsibility for British territory in the Gold Coast was then transferred to a Committee of Merchants in London and the local administration was entrusted to a Council of Merchants at Cape Coast, and administration began to flourish particularly as they were adept at settling disputes between opposing chiefs. The Crown resumed control of the settlements in 1843, leading to the Bond of 1844, the first of a succession of treaties under which certain Gold Coast chiefs acknowledged the jurisdiction of the Crown, giving their formal consent to govern and arbitrate disputes.

The increasing breadth of British jurisdiction resulted in a series of decisions related to traditional judicial systems, including “the prohibition of some common punishments – such as chaining, mutilation or enslavement of prisoners,” depriving chiefs of their ability to sanction behavior (Kimble, 1963; 129). The superimposition of external authority did not completely supplant the rule of chiefs, but it created “considerable tension between the Chiefs and the British Government on the one hand, and increasingly between the Chiefs and their subjects on the other,” (Kimble, 1963; 130). A final major decision leading to the consolidation of British jurisdiction and the undermining of chiefly authority over land was the exchange in 1868

between the British and the Dutch of their respective forts. Previously intermingled, the exchange established contiguous coastline fortified for each power. The Fante chiefs in the western part of the Protectorate were not consulted and feared that the exchange of forts in their area to the Dutch would expose them to Ashanti invasion without the protection of the British. In addition to the threat of the Ashanti, all chiefdoms and kingdoms involved questioned Dutch administration and what was perceived as a lack of respect on the part of the British regarding indigenous interests and institutions. These decisions over the course of the nineteenth century had two primary effects. The first effect was the expansion of British jurisdiction over territory in the Gold Coast as they sought to maintain their forts, slowly adding the surrounding areas and establishing contiguous control, ultimately outlasting the Dutch and consolidating the Protectorate with the annexing of the Fante. The second effect was the erosion of chiefly authority over property in people and territory. The ending of the slave trade by the British undermined a burgeoning economy, and was the first act towards a reduction in the ability of chiefs to exert coercive authority. Chiefs previously had the ability to determine the rules of economic and social behavior, enforcing these through various sanctions, however increasingly the British began to assume this role, including influencing traditional judicial systems. This is crucial in understanding the beginning of co-dependence between the chiefs and the British for coercive authority on the one hand and social control on the other.

### **3.7 From Custom to Law: The institutionalization of authority under colonial rule**

### 3.7.1 Administration of Chiefs

Increasingly during the late nineteenth century, chiefs and their states in Accra, Akyem, Akwapim, and the Fante Confederation came under the administration and protection of the British colonial government (Kimble, 1963). Significantly, territory was never ceded to the British nor was there conquest, rather the Protectorate grew out of negotiated agreements that maintained native control. From the time of the Fanti Confederation, the colonial government sought to identify how British rule could be exercised through chiefs and the customary system. Earlier negotiations, such as the Bond of 1844, were more so agreements that preserved the authority and territory of the chiefs. However, as time progressed and the British sought to consolidate their authority and expand their jurisdiction, they began to utilize proclamations to extend the scope of their reach territorially and in terms of controlling the Chiefs (Kimble, 1963). The Colonial Governor ended the slave-trade with other European powers and abolished domestic slavery in 1874, which had a profound impact on the economy as it shifted from slave-trading to the production of crops for export (Kimble, 1963; 10). In continuation of the series of nineteenth century Anglo-Ashanti wars, the British initiated a military campaign in 1895 to gain exclusionary access, to put an end to the practices of slave raids and trading, ensure peace for neighboring groups under the Protectorate, and to secure exclusive access to gold mines against the French and Germans. Eventually, the Asantehene Prempeh I was deposed and forced into exile and the Ashanti territory became a British protectorate in 1897.



After a rueful start<sup>17</sup>, particularly with the Ashanti, the British colony began to recognize the importance of taking greater interest in studying customary institutions<sup>18</sup>. As a result, chiefs were increasingly treated with respect by the colonial administration<sup>19</sup>. However, colonial restrictions on the sanctioning of customary subjects began to have the cumulative effect of weakening the judicial authority of chiefs, substituting it for the British courts. When subjects were disobedient, chiefs had become increasingly circumscribed in their ability to sanction behavior and reliant on the colonial government as their source of authority. The Secretary for Native Affairs admitted that the Government had taken out of the hands of the Chiefs the power to deal with disorder by force. “When we speak of native custom these days we mean such native custom as is countenanced by the Government,” adding that, “the Chiefs were now to be regarded as part of the administrative system,” (Kimble, 1963; 491). As the colonial government consolidated this new control, chiefs were made responsible for enforcing decisions of the colonial government at the local level, a practice that encouraged opposition to them as agents of colonial rule

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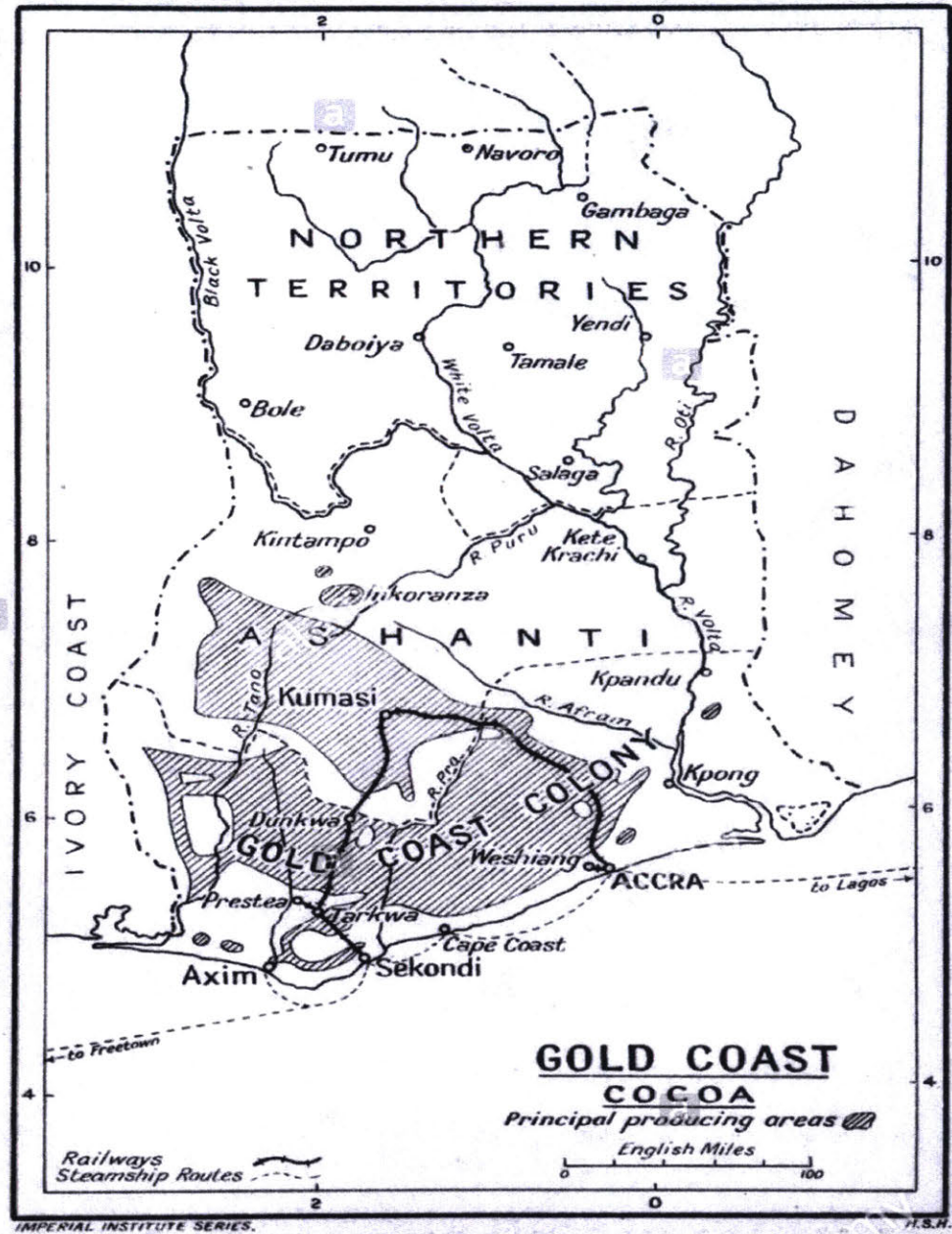
<sup>17</sup> Following the exile of Prempeh I and the dissolving of the Ashanti confederacy, the Colonial Governor at the time Frederick Hodgson demanded that the Ashanti bring the Golden Stool for him to sit on. “What must I do to the man, whoever he is, who has failed to give to the Queen, who is the paramount power in this country, the stool to which she is entitled? I am the representative of the paramount power; why have you relegated me to this chair? Why did you not take the opportunity of my coming to Kumasi to bring the Golden Stool and give it to me to sit upon?” The chiefs listened to this sacrilegious outburst in silence, as the Stool was never sat upon due to its representation of the soul of the Ashanti, and went home to prepare for war (Ward, 1967; 308). The War of the Golden Stool, also known as Yaa Asantewaa’s War, led by the Queen Mother occurred from 1900-1. The Ashanti territories, along with the original Gold Coast Protectorate in the South, and the Northern Territories, were incorporated into the Gold Coast Colony in 1902, and were the only area to annexed by conquest.

<sup>18</sup> Several studies were undertaken by the colonial administration in the varied forms of native rule.

<sup>19</sup> Additionally, after decades of exile, Prempeh I was returned to the Ashanti in 1924, creating goodwill and increased respect between the government and the chiefs.

without effectively strengthening their authority (Kimble, 1963). In some areas, the system of chieftaincy was rudimentary or non-existent. For instance, forms of social organization in the Northern Territories differed greatly from those of Ashanti and the Gold Coast colony, with the *tendamba* as guardians of the land and the spiritual connections of the clan (Ward, 1967). With the imposition of a territorial chief by the British, one chief articulated that, “the people belong to me, the land belongs to the *tendamba*,” (Ward, 1967; 129). In the Northern Territories, chiefs were now found to have greater responsibilities than their own customs sanctioned, resulting in newfound tensions (Ward, 1967; Kimble, 1963). Despite rising ‘nationalist’ sentiments that often expressed the need for defense of the traditional status and powers of chiefs, many perceived the institution of chieftaincy as becoming too closely interwoven with expanding British authority. The colonial government became the subject of regular criticism for interfering with native institutions and the chiefs faced criticism for usurping greater powers than were traditionally theirs, although chiefs themselves believed that the main problem was to restore their declining authority (Ward, 1967; Kimble, 1963; Casely-Hayford, 1903). These challenges and criticism were put forward by locally by educated elites who challenged traditional authority, a subject that will be addressed in greater detail below.

Figure 3.1 Gold Coast Colony



Source: Chronicle <http://www.alamy.com/stock-photo-map-gold-coast-colony-ghana-west-africa-with-the-main-cocoa-producing-131025441.html>

### 3.7.2 The Shifting Political Economy and Land Administration

With the slave trade fully abolished, the emerging economy of the Gold Coast shifted focus to two primary industries: gold mining and the production of cocoa for export.

These developments in the political economy of the Gold Coast had significant

ramifications for the administration of land and the consolidation of colonial authority. Some in the Colonial Office welcomed the expansion of gold mining for European enterprise<sup>20</sup> and for the economic development of the Gold Coast, even though the British initially possessed no territorial rights beyond the forts and settlements. However, others were more cautious, believing that for the successful development of mining, the colonial government would have to take over the land. Chiefs and landholding families as customary authorities, were the rightful landowners in the Protectorate, and unlikely to agree to a unilateral change of ownership. Nevertheless, many chiefs were willing offer valuable concessions to Europeans in return for what appeared to be profitable revenues. The disposal of land in this manner progressed so rapidly that, “the Secretary of State began to wonder whether the [Tarkwa] Chiefs had not disposed of the rights and property of their people in a manner contrary to native custom,” (Kimble, 1963; 16; Hailey; 1945). During the late nineteenth century, land values in the Gold Coast and neighboring Ashanti began to appreciate with increasing gold prospecting and mining. This led to a rush to claim land, sparking speculation and the first appearance of multiple sales of the same tract of land. The response of the Protectorate was the introduction of the Crown Lands Bill of 1894. Legislation was drafted to vest ‘waste lands’, forest Lands and minerals in the Queen, with the main objective to control further exploitation of timber and mineral resources, safeguard existing grants and

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<sup>20</sup> The development of the gold-mining industry brought not only European capital, on an increasing scale, but also encouraged the rise of a new category of African middleman, negotiating concessions between the mining companies and the chiefs (Kimble, 1963).

concessions; and acquire all remaining land. Indigenous communities could continue to occupy and use the land; but chiefs would be deprived of the right to make grants to foreigners, particularly Europeans, on the grounds that these were assumed to be illegal according to native law and custom. Under the Bill, all concession of waste lands, minerals and forests would be made by the Crown alone. This was intended, in part, to put an end to the practice of rival chiefs conceding mining or timber rights over vast, ill-defined tracts of land, with minimal likelihood of ensuring secure title and no guarantees regarding the efficiency or productivity of land (Kimble, 1963; 334). In response to the Crown Lands Bill, multiple protests were lodged through petitions from the various chiefs in and around the capital of Cape Coast, referring in detail to the Bond of 1844 and the 1874 Proclamation<sup>21</sup> defining British jurisdiction, neither of which had stated that the soil of the Gold Coast was the property of the Queen<sup>22</sup>. Local papers, by educated Africans, such as *The Gold Coast Chronicle* and *The Gold Coast Methodist Times* recorded the outrage and dismay, with the latter announcing that, “it could no longer restrict itself to religious matters, since there had arisen from all quarters a fiery indignation likely to devour the Colony, on account of the Bill intituled Crown Land Ordinance,” (Kimble, 1963;

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<sup>21</sup> The Gold Coast Protectorate was on a different footing from other British dependencies, “Its position is unique. It has not been acquired either by conquest, cession, or treaty,” (Letter of 22 March 1895, from Brew to Ripon; CO/96/267 Kimble, 1963; 338). Although the Government exercised certain powers and jurisdiction, it possessed no inherent legal right to deprive the inhabitants of their lands.

<sup>22</sup> The Colonial Government had already established title to land for official buildings in 1876, when it acquired land for the new seat of administration in Accra through the Public Lands Ordinance. Protestors of the Crown Lands Bill used the agreed upon compensation for this land as evidence that land was owned by some chief or family and thus, ‘unoccupied’ or ‘waste’ land did not exist (Kimble, 1963; Casely-Hayford, 1903).

336). Ultimately, the Protectorate's inhabitants – inclusive of kings, chiefs, and natives – declined to consent to the Crown Lands Bill.

The second industry revolutionizing the political economy of the Gold Coast Protectorate was the rapid growth of cocoa production for export<sup>23</sup>. By 1911 the Gold Coast became the world's leading producer of cocoa. The permanent nature of cocoa farms, as opposed to seasonal rotation of food production, gradually brought about gradual modifications in land tenure towards individualization of holdings (Meek, 1946). This shift of agricultural and economic production led to another attempt at the Crown Lands Bill in 1897. It was framed to give the Crown rights of administration but not of ownership, the intention of vesting waste and forest lands in the Queen was abandoned. The Government held that so-called 'public land' must be administered for general advantage. Chiefs would still be allowed most prerogatives, but colonial authority would ensure that private rights were not 'improvidently' created over public land. Most significantly, African rights of ownership would no longer be recognized. Occupiers of land would not be disturbed, but were now entitled only to a settler's or occupancy right, which was permanent and heritable. This could be transformed into an absolute right through application to the Governor by the grant of a land certificate. Land held under this certificate could be transmitted only according to British law. The new bill also gave the colonial government the ability to declare any piece of land ownerless, and then

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<sup>23</sup> Cocoa was first introduced in 1858 by the Basel Mission, but its expansion is attributed to Tetteh Quarshie who introduced the seedlings to small-scale farmers around 1879.

authorize its occupation (Firmin-Sellers, 1996). Africans could make grants and concessions to other Africans, but not Europeans except by express permission of the Governor.<sup>24</sup> Most concessions would be granted directly by the Government, using its power of administration.

Reaction to the new Bill, revived challenges from the growing class of educated elite as well as customary authorities including chiefs and kings. The main objection to the Bill was the fundamental change of absolute ownership into that of mere holders and settlers. The response is reflective of the elites' understanding of the British legal system and colonial rule that deferred to chiefs, as well as their own economic interests. They were also aware that the British would discount their protests as unrepresentative of the indigenous population given that they were primarily Western educated. Thus, the elites formed the Gold Coast Aboriginal Rights Protection Society (ARPS) with the support of as many chiefs as they could gather. John Mensah Sarbah, a lawyer and co-founder of the ARPS, cited an 1895 report on the customs related to land tenure commissioned by the colonial governor in support of his fundamental contention that every piece of land in the Gold Coast had an owner. Family land remained the property of the family, whether cultivated or not. The land reverted to common land of the village, subject to control by the chief and elders, only if successors failed to cultivate the land. The new Bill provided no

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<sup>24</sup> Transfers of land rights, and even sales of land were clearly recognized under customary law. The principle was long standing among many groups including, the Ga-Adangbes who engaged in land transactions dating back to 1814.

distinction between individual, family, and communal rights; and the Bill would destroy the control exercised by headmen over villages and families. Sarbah noted, “Not only are the bonds of society to be snapped but family ties are to be broken and family relationships destroyed,” (Kimble, 1963; 345). Opposition to the Bill took place through petitions, articles in local newspapers and ultimately in London. J.E. Casely Hayford prepared a brief against the Bill for the ARPS that also resulted in the pioneer study of native institutions. With this ammunition, the APRS sent a deputation to London to present the Society’s grievances arguing that the Lands Bill could not be applied as there were no wastelands in the Gold Coast, with all land already allocated according the principles of customary tenure (Nti, 2013; Firmin-Sellers, 1996).

**Figure 3.2 ARPS Deputation to London**



Source: British National Archives – Africa Lens



In accordance with the maintenance of indirect rule, the British accepted the ARPS' claims and withdrew the Lands Bill, after which colonial officials sought to uphold notions of customary land tenure.

I think I can give you the assurance which you wish... I am willing that in all cases where the natives are concerned the native law shall remain and prevail... with regard to the devolution of land. And I am also willing that the Court which is to decide upon these questions should be a judicial court. (Report of the Proceedings of the Deputation, 1898; Kimble, 1963; 354)

As the British consolidated colonial governance, they recognized chiefs, whose authority was derived in large part from their control over people and now land, were essential to indirect rule. To claim land or allow the development of private property rights and alienation, would completely undermine the basis of British colonial rule. From this point on, contestation over property rights in land was squarely framed within customary institutions, allowing customary authorities to define and entrench their role in the colonial political economy.

### **3.7.3 State – Society Relations in the Colonial Period**

The shifting economic landscape benefited the British as they monopolized trade, as well as the customary authorities, due to their position in land administration. Yet, these groups did not possess a monopoly over economic opportunities, as entrepreneurs emerged including middle men for gold prospecting and mining, investors in cocoa farming and merchants in cocoa, palm oil and salt. Historians are hesitant to describe this process in purely economic terms as the emergence of clearly articulated classes in the Gold Coast, rather they seem to focus more on the

social origins and impacts of the rising elites in this context (Kimble, 1963; Ward, 1967; Busia, 1956). Three groups of elites are identified in Gold Coast society: the European or 'alien' rulers, the traditional 'royal' families, and the educated Africans<sup>25</sup> – identified as those, “who have been most successful in learning the skills and mode of life introduced by the Europeans,” (Busia, 1956; 426). Unsurprisingly, the existence of multiple elite groups spurred conflict, particularly in a society undergoing social, political and economic change. Rival elites claim pre-eminence over the same areas of interest with different basis of legitimacy, an old elite based on aristocratic descent, and a new elite deriving its claim from technical skills or economic prowess, and advancing diverse ideals (Nadel, 1956). Busia, who generated the distinction between Gold Coast elite groups, offers this analysis of the rival elite:

The traditional elite owe their pre-eminence to the fact that they set standards which are in accord with the people's own conceptions of life and with their traditional values. They operate within a culture that is not only understood, but also cherished. In this regard, their position is securely entrenched. The ideals they represent are meaningful and significant within the historical and cultural experience of their people. But their position also in part carries authority, social as well as political. It is particularly in the political sphere that there is conflict with the new literate elite. With the introduction of parliamentary institutions, the political authority of the chief and his traditional councilors is challenged by the elected local councilor, parliamentarian, or cabinet minister. Thus, in the struggle for political power, there is rivalry between the old elite and the new. (Busia, 1956; 429)

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<sup>25</sup> This elite group is classified as such because it demonstrated some degree of corporateness and exclusiveness, forming a more or less self-conscious unit within the society, due to shared values influenced by Western education, without making direct assumptions regarding their economic interests (Nadel, 1956; Busia, 1956).

Friction between the chiefs and the educated elite revealed critical social and political cleavages within society. Increasing conflict between the educated elite and the superimposition of Europeans as alien rulers provided the origins of nationalist struggle.

As the British consolidated the Protectorate into the Gold Coast Colony in the mid-to-late nineteenth century, they grappled with defining the relationship between the government and the chiefs. The Native Jurisdiction Ordinance (NJO) was enacted in 1878, representing the first public statement of the jurisdiction of the Government vis-à-vis the chiefs, with the objective of defining the powers of the chiefs themselves. Kings were designated as 'Head Chiefs' atop subdivisions of lesser chiefs within their states. Head chiefs could make by-laws from a list of prescribed subjects, with the assent of their councilors and the Governor's approval (Ward, 1967; Kimble, 1963). It also empowered head and minor chiefs to establish tribunals to hear civil cases and cases dealing with land tenure, native custom and breaches of the state's by-laws. One major innovation given to the colonial government was the ability to dismiss a chief. Defining the boundaries of chiefly power in this manner was the first step towards making the British government the source of the Chief's authority. However, due to internal conflict and shifts among colonial Governors, as well as concerns about the reaction of chiefs, the NJO was never implemented. The British continued to struggle with the question of whether the Protectorate would be governed through the chiefs, with only general supervision and control by the British; or whether all power and authority was to be taken out of traditional hands

and exercised by colonial officials stationed throughout the regions, making its position similar to that of a colony (Kimble, 1963). The Native Jurisdiction Ordinance was repealed and re-enacted in 1883 with one modification – decisions of native tribunals were made subject to appeal to British courts. The Ordinance gave paramount chiefs the power to make by-laws covering a wide range of subjects, such as the administration of public lands and forests and the upkeep of roads (Bourret, 1960). One example of the effect of the NJO was the transformation of the loose federation of Ga republics, in what is now Greater Accra Region, into a rigid hierarchy (Firmin-Sellers, 1996). The NJO elevated the office of the Ga Mantse making its occupant the head chief over all other traditional offices. This occurred at a time when the relocation of the seat of colonial administration from Cape Coast to Accra sparked commercialization of Ga land and provoked an intense battle among elites to claim more exclusive rights to the land. However, many feared that Europeans would buy all the land, so educated elites and customary authorities sought to strengthen their rights over land through entrenching land in the customary sector and thus reinvented tradition (Firmin-Sellers, 1996; 40). The Ordinance roused opposition from both elite groups, inducing the study and interpretation of their native institutions. To some extent, the NJO laid the foundation for the co-operation of the Chiefs and the intelligentsia in the formation of the ARPS.

The question of the authority and jurisdiction of chiefs was still not settled. In 1887 a legal decision raised the question of chiefs and their courts. Native courts,

“considered a remnant of barbarism,” were often discouraged due to their severe punishments (Kimble, 1963; 464). The colonial governor at the time decided that the Ordinance did not go far enough as there continued to be ambiguity regarding the chiefs of particular districts, towns, and villages; the extent of customary powers, duties and relative importance; and which of them were recognized by and the degree to which they were held responsible to the central government. For the chiefs, a crucial question was who provides the primary enforcement of orders, the government or the chiefs themselves? A key point of contestation was the election or deposition of a chief (enstooling or destooling), of which the governor’s decision was now final and not subject to challenge. Chiefly authority was also under pressure from challenges of educated elites and youth that began to challenge traditional authority as their economic prospects improved under the cocoa economy. The ARPS began to assert itself as the “custodians of the native customary laws and procedure written and unwritten in this country”, a claim that was repudiated by powerful chiefs such as Nana Ofori Atta, who claimed that it was the Chiefs who should codify customary law (Firmin-Sellers, 1996; Kimble, 1963). Against this contested backdrop, the attempts by the colonial government to strengthen and systematize customary institutions resulted in the increasing identification of customary law with an alien system of rule. Elites attacked the government for interfering with native institutions and accused chiefs of attempting to usurp greater authority than was traditionally theirs under pre-colonial custom (Firmin-Sellers, 1996; Kimble, 1963). In this context, the Native Administration Ordinance was introduced in February 1927 with the main purpose to provide a clearer foundation

to the power of the chiefs, and in some respects to extend it, notably in judicial matters<sup>26</sup> (Bourret, 1960). The jurisdiction of head chiefs was extended in civil matters and they now had the right to seize property. The Ordinance garnered serious protests, from educated elites in particular, who alleged that chiefs were increasing their privileges at the expense of the people. The NAO was enacted in April 1927 after decades of opposition to government attempts to revise the 1883 Ordinance. The NAO was again revised in 1944, with significant revisions requiring that all organs of local government be recognized by the central government. As such, the colonial government ultimately gained direct control over native administration (Bourret, 1960). This permitted the governor to arbitrate stool disputes by appointing native council or assuming responsibility for administration until a new chief was elected. It also allowed the governor to group chiefs together into paramountcies where he believed the state divisions to be too small to enable treasuries to support social and economic development. The educated elite argued against the Ordinance again, citing the increased authority and position of chiefs within the government, instead arguing for the need to elevate educated Africans in government. The series of ordinances demonstrates the shifting emphasis of the colonial rulers from controlling the power of the chiefs, to defining and bolstering an institution that had become essential to the colonial administration. In the

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<sup>26</sup> The Oman council (under head chiefs) was recognized as the highest authority within each state, responsible for deciding stool disputes. The Provincial councils (created in 1925 under the colonial government) were given formal administrative and judicial power, including the right to hear appeals in stool disputes; they were also to adjudicate on the demands of sub-chiefs for independence and inter-tribal disputes. The Governor became the final arbiter on all stool disputes and matters affecting native custom (Ward, 1967; Kimble, 1963).

process, the nature of chieftaincy was considerably modified; adapting the heterogeneous and localized systems of governance in communities into a broad relationship with an increasingly national system. This suggested the need to replace diverse forms of governance appropriate to the local level, with the coherence and centralization required of the colonial state.

### **3.8 Nationalism and the Post-colonial period**

As the British sought to consolidate the colonial administration, discontent rose in response to the social and economic implications of these changes and to increasing exposure to global political and economic pressures. Initially, educated elites sought alliances with chiefs, particularly as they contested British attempts to claim ‘unoccupied’ or ‘waste’ land. However, as evidenced by the previous discussion of changes in colonial administration and competition among the two groupings of indigenous elites, the preference of the British to incorporate customary authorities, as were co-produced and redefined, into colonial administration was a major concern. Educated elites agitated for greater representation in the municipal and central government, while chiefs were more interested in preserving or elevating the position of native institutions<sup>27</sup> (Bourret, 1960). The chiefs were increasingly faced with a choice between an alliance with the nationalist leaders, who would have relegated them to a strictly local sphere as the price of independence from the

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<sup>27</sup> The executive council was made up of British officials, the legislative council, first inaugurated in the nineteenth century, by 1920 included eleven official members – the executive council and heads of administrative departments, and nine unofficial members – among them were three chiefs, three educated Africans from Accra, Cape Coast and Sekondi and three Europeans representing commercial interests, all appointed by the governor (Bourret, 1960; 38).

colonial authorities; or a closer collaboration with the British Government, which would likely result in an increase in prestige and responsibility. Many head chiefs chose the latter (Kimble, 1963). Educated elites articulated their discontent through vehement advocacy in their positions on legislative councils and notably through the burgeoning indigenous press. They believed that predominantly illiterate chiefs were not equipped for rule in the Gold Coast Colony with its foreign political and legal institutions as well as their rising interest in nationalism, as chiefs were primarily concerned with varied local contexts. Others took a more pernicious perspective, regarding chiefs as instruments of British policy that abused their new authority for personal benefit, such as the excessive collection of fees through native tribunals (Bourret, 1960). Mounting frustrations with chiefs as well as their British enablers, led educated elites to engage with international discussions of self-determination. From 1898 onward the ARPS, was the primary advocacy group for constitutional demands, accepting the Legislative Council as the main instrument for advance towards self-government, but always hoping to strengthen the influence of the ARPS (Kimble, 1963). However, with its cadre of influential lawyers, the ARPS was criticized by both customary authorities and the British as not being representative of the broader population.

In addition to these political struggles, there was a rising undercurrent of economic grievances against British colonial rule. While Africans thrived in the agricultural production of cocoa, the export industry was dominated by expatriate banks and firms held by Lebanese, Syrian, Indian and European interests, and the Cocoa



Marketing Board. These groups controlled the import-export sector of the colonial economy and during the depression years were accused of paying low prices for cocoa. Farmer's associations were organized throughout the Colony to fight price fixing, engaging in boycotts and protests to advocate for better terms. However, it was not until the outrage over the Swollen Shoot Order of 1946 that the push for nationalism by elites and the demands of the mass base of cocoa farmers joined to challenge the colonial government (Danquah, 2003). An outbreak of swollen shoot disease threatened to decimate this highly lucrative cornerstone of the Gold Coast's economy, along with the livelihoods of small farmers across the forest region. In response, the government developed the policy to destroy infected trees, backed by scientific research at the time which suggested this was the only way to preserve the long-term potential of this industry. "Swollen shoot, for economic reasons, was slowly dissolving the links between the chiefs and the colonial government, and aligning the native rulers and their rural populations behind the nationalist politicians," (Danquah, 2003; 51). Rising rural discontent was matched in urban areas, as urban residents<sup>28</sup> faulted colonial administrators for commodity shortages, inflation, neglecting education, industrialization and the rise of urban slums. The confluence of grievances from the mass of farmers, alongside the concerns of a minority of urban residents and educated elites led to the inception of the first nationalist party, the United Gold Coast Convention (UGCC) in 1947 led by J.B. Danquah.

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<sup>28</sup> There had been a steady increase in urban populations, particularly in the 1940s resulting from economic changes and wartime needs (Bourret, 1960).

These concerns were further bolstered by returning servicemen, who had fought in World War II for the British. A significant political turning point came in February 1948, when African veterans marched to colonial seat of government in Accra, to seek redress for unfulfilled wartime promises. Government soldiers gunned down two veterans and wounded several others, leading to an eruption of violent anti-colonial protests in urban and rural areas. These riots produced a major reconfiguration of social forces in Ghana (Danquah, 2003). As the nationalist endeavor gained traction, the political landscape fractured with Kwame Nkrumah breaking from the UGCC and forming the Convention People's Party (CPP) in 1949. Both groups sought independence, however the CPP demanded immediate self-government and was viewed as the more radical organization. The colonial government adopted the Henley Coussey Constitution as a preliminary step towards granting partial political autonomy to the Colony in 1951, where an elected African government would control domestic policies<sup>29</sup>. Nkrumah proved a shrewd politician, courting urban youth to protest against European businesses under threat of boycott or additional riots, as well as the rural masses by courting the main farmers' associations through a strong condemnation of the Swollen Shoot Order for cutting cocoa trees (Danquah, 2003; Crook, 1996). However, once in power, Nkrumah's nationalist government switched to compliance with the Swollen Shoot policy, citing

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<sup>29</sup> Under arrest, Nkrumah was excluded from the development of Coussey Constitution. The UGCC and educated elites took this opportunity to draft a highly centralized government assuming that they would win the upcoming elections and be able to block out the CPP from governing. However, in a twist the CPP won a resounding victory in the first elections, and Nkrumah emerged directly from prison to assume control of this centralized government, leaving little room for maneuver of political opponents at the local level (Kimble, 1963).

it as the only scientifically plausible option. Nkrumah's CCP government also sought to curtail the position and authority of the chiefs, whom he began to view as an outmoded reference to feudalism (Bourret, 1960). Opposition began to rise against excessive centralization, with the creation of the National Liberation Movement (NLM) in 1954 driven largely by traditional and educated elites from Ashanti region, who advocated for a federal system of government to preserve some local autonomy.

The CPP consolidated its position through winning new elections and convincing the remaining colonial government to select a date for independence in March 1957. The NLM won some representation but came under attack by the CPP as it was strongly associated with Ashanti ethnic identity, defense of customary authority and happened to be based in the most dynamic region of the cocoa economy. Nkrumah and his party argued that theirs was an ethnically neutral nationalism and chose to placate the urban masses through measures such as expanding bureaucratic employment (Crook, 1996). The CPP's position towards cocoa farmers hardened with oversight of the Cocoa Marketing Board that provided access to the surplus from cocoa revenue, which was diverted for state-financed development and bureaucratic expansion. The CPP made its position towards customary authorities clear with the Chieftaincy Act of 1961, which removed customary authorities from local government administration (Kimble, 1963). The Act classified chiefs in four grades, defining their powers and limiting them to 'traditional' functions. The Government maintained the power to withdraw recognition from a chief and compel him to leave his customary

area. It also established a House of Chiefs in each of the regions to be responsible for advising the Government on matters concerning traditional affairs.

Nkrumah also used the instruments of central government to redefine customary land regimes, including the aggressive use of executive instruments to claim land for the state, largely in urban areas and land around key natural resources such as rivers for the construction of infrastructure and industrialization. The educated elites in the UGCC and NLM resisted the redefinition of property rights in land. In the face of a hostile CPP government, the elite sought again to vest the power to define and enforce property rights in the customary authorities. To this end, they launched a campaign to bolster customary institutions and chiefs, placing them at the center of political life. The elites struggled to shield themselves from Nkrumah and the CPP due to the Coussey Constitution that enabled a highly centralized state, blocking local actors from having a voice in national government (Firmin-Sellers, 1996). Since the independence period, the pendulum has continued to swing between centralism and localism, between support of customary authorities and measures to undermine customary authorities as differing political parties and ideologies have come into power.

### **3.9 Land in Modern Ghana**

As the political landscape in post-independence Ghana took shape, the role of land has become integral on a number of scales from national territorial integrity and economic development to local forms of authority and social organization, as well as

access to land for communities. A fundamental feature of most African societies has been access to land, based on membership to a descent based group (Hailey, 1938 in Chanock, 1991). Historically, tenure security has been an intrinsic feature of this land regime, assured by group membership. Where insecurity did exist, it was the result of political disputes, rather than scarcity or market pressures. At present, increasing land scarcity in Ghana, primarily to due to population growth and migration in both rural and urban areas, is fueling the rising incidence of tenure insecurity and land-related conflict, and more broadly in various African countries. Increasing land scarcity has led to rising land values that strain the sociopolitical hierarchies and interdependencies that were previously institutionalized in customary land regimes (Boone, 2014). Corporate lineages tend to be defined in more restrictive terms and hierarchies of rights become more rigid. Pressure on ethnic or descent-based groups threatens already fragile notions of national continuity and citizenship, gives rise to conflicts that sometimes result in rising tensions in Ghana and more extreme ethnic expulsions in neighboring Ivory Coast.<sup>30</sup>

In the context of increasing land scarcity, land markets, formal and informal<sup>31</sup>, in Sub-Saharan Africa are resurgent. What distinguishes the present upsurge in land markets, beginning in the late 1990s, from these earlier periods is the widespread

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<sup>30</sup> The Ivory Coast serves as a prime example of such identity-based dispossession over land. The civil war that arose in the early 2000s, was due in part to land scarcity leading to land-based conflict that sought to expel migrant communities (Boone, 2014).

<sup>31</sup> Land markets are not always formally recognized, particularly in countries where land is state owned, denying private or customary ownership, such as Tanzania and Ethiopia. Still there is evidence that informal land markets have emerged and thrive with increasing recognition from the state.

nature, the acute character of land scarcity, sharply rising values in urban and peri-urban areas, and the use of land reforms to instigate change in this direction. In Ghana, land transactions between prospective developers and indigenous land-owning families, community members and chiefs are increasing in frequency (Amanor, 2006). With these developments, inheritance rights to land under customary tenure are no longer guaranteed, as people increasingly struggle to access land through descent-based channels and are forced to compete for less land. Consequently, there have been bitter struggles between indigenous groups, families and chiefs over the right to sell land, particularly the conversion of agricultural land into residential peri-urban land. The increase in land transactions has resulted a rise of multiples sales of land and allocation to investors and developers that has led to rising insecurity and displacement of members of descent based groups. Despite the dynamic nature of customary institutions, they are struggling to adapt to the pressures of demographic change, urbanization, increasing land scarcity and balancing emerging land markets with preserving the customary sector.

### **3.10 Conclusion**

This chapter has attempted to provide sufficient historical context to understand the processes of state-making and institutional change. The history of land and state formation in Africa is disparate due to the varied forms of extant social organization as well as the diverse modes of territorialization and governance introduced by colonial rulers. The first section of the chapter broadly discusses some of the commonalities of customary tenure institutions, including the importance of ethnic

and descent-based groups and the ability to incorporate various forms of access to land ranging from individual or household rights to communal rights. This section also discusses the entrance of European colonial powers into Africa, particularly their perceptions of territorialization and modes of governance. Indirect rule sought to engage native rulers in the practice of controlling indigenous populations. As such custom underwent a process of institutionalization, as customary law was co-produced by chiefs and colonial administrators, entrenched in colonial laws and ordinances. This process resulted in dramatic shifts in state-society relations. As suggested by Mamdani, this process is what lends the customary sector its dual nature of being at once official and unofficial, formal and informal. The second section of the chapter focuses on Ghana's complicated history of social and political formations, gradual absorption into colonialism, and its ultimate constitution as an independent state. Through these processes, the chapter provides a detailed look at territory and control, illustrating the shifting tensions between competing elites as they sought to define state-society relations. It is significant to note that the present understanding of customary authority and its relationship to land, stems from the late-nineteenth century compromise between colonial authorities and traditional elites, which was contested at its inception and repeatedly since in a struggle to articulate modalities and institutions of governance, as well as distributionally favorable land regimes. Though the chapter does recognize the dynamism inherent in customary institutions, as they shift in response to political, economic and other environmental conditions, it also acknowledges the challenges posed by demographic change and increasing land scarcity.

## **Chapter 4. Routes to Institutional Change, Reform from Above**

### **4.1 How Institutional Change Occurs**

This chapter begins to address one of the fundamental questions of the dissertation, how do institutions change. It does so by briefly elaborating related theory on institutional change, that emphasizes reform and reinterpretation, and provides an initial glimpse into understanding how these pathways to change may intersect. The chapter then goes on to discuss the long history of reforms in the land sector in Ghana, focusing attention on the political motivations of the various actors. This history has resulted in a bifurcated land sector that is besieged with problems that are systemic, institutionalized and further exacerbated by the actions and behaviors of actors in the statutory and customary sectors. To address mounting challenges, the Government of Ghana developed its National Land Policy in 1999 and worked in tandem with external actors, most prevalent being the World Bank, to establish the Land Administration Project. The chapter traces the process of this reform, its modalities and implementation, and identifies some of the flaws of employing such a top-down approach. Regarding methodology, the chapter relies upon analysis of documents detailing the history of political reforms as well as documents specifically focused on the land reform inclusive of those by the Government of Ghana and the World Bank. In addition to document analysis, the discussion is based on open-ended interviews (12) of key informants in the World Bank, DfID, former LAP staff, academics and consultants, and the Ministry of Land and Natural Resources, as well as semi-structured interviews (28) from national and local government actors, including the OASL, the Lands Commission, staff at the LAP Secretariat and the



Institute for Local Government Studies (ILGS). The data from these interviews was coded using an inductive approach to identify patterns and potential hypotheses explaining how institutional change occurs.

Returning to the theoretical framing of institutional change introduced in Chapter 2, three routes to institutional change are identified that facilitate an understanding of change for the land sector in Ghana (Hall and Thelen, 2007). The routes include: reform, defection, and reinterpretation. Reform is defined as transformation that is explicitly mandated or endorsed by governments and, as such, is the most visible and clearly pronounced route to institutional change. The second route, defection is a term borrowed from game theory that refers to strategies or behaviors that deviate and discontinue practices consistent with institutional outcomes desired by actors able to assert their interests in the process of contestation leading to institutional compromise<sup>32</sup>. If reform can be thought of as institutional change from above, as it is government mandated, then reinterpretation, the third route to institutional change, is reform from below. In this instance, actors associated with an institution gradually change their interpretation of the rules and practices, without defecting from or dismantling the institution itself (Hall and Thelen, 2007). In attempting to understand institutional change in Ghana's land sector, this chapter focuses on reform from above in the form of legal and institutional changes in the land sector made by the Government of Ghana and its development partners. The

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<sup>32</sup> Revolution seems to fall under this category, with actors discontinuing rules, institutional compromise and existing arrangements in favor of establishing an entirely new configuration that allows them to assert their interests or worldview.

focus of the following chapter is reinterpretation from below by the primary stakeholders in questions of land, customary authorities.

Institutional reform often takes place through layering as a transformative mode<sup>33</sup>. Layering consists of the addition or elimination of elements to or from an institutional structure and often includes the reorganization of institutional arrangements (Streeck and Thelen, 2005). The process of layering preserves the overarching logic of the institution and thus does not directly undermine existing institutions. For this reason, layering does not usually provoke direct counter-mobilization efforts by institutional actors. Reformers often introduce change as marginal shifts meant to improve or complement the extant system. However, if there is a new institutional logic, particularly within a changing context, it may flourish and become entrenched over time in a manner that fundamentally alters the overall trajectory, as old institutions stagnate and new institutions assume a more prominent role in governing behavior and practice. This may be the intended purpose of introducing reforms that do not immediately threaten existing institutions, in order to maintain the delicate balance of existing political dynamics, but overtime layering may be able to siphon support and authority from older institutions considered outmoded.

Contextually, institutional reforms have emerged as central to development and an essential aspect of interventions by development actors such as the World Bank,

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<sup>33</sup> Refer to Figure 2.1, page 65 in Chapter for a description of the various modalities.

African Development Bank, DfID and other multilateral and bilateral agencies. These international institutions rely on the evolutionary theories outlined in Chapter 2 that articulate how institutions incentivize behavior regarding social and economic decisions, and suggest defining the right institutional framework can significantly alter socio-economic outcomes (Rodrik, 2004). In this line of neo-liberal development thought, improving the formal rules of the game will foster disciplined government and facilitate market-friendly policy, while formalizing and modernizing government processes (Andrews, 2013). Though there is significant international influence, as a variety of agencies incorporate such stylized reforms as interventions in their development portfolios, institutional reform is unquestionably built from or set atop domestic coalitional politics<sup>34</sup>. One of the primary challenges facing those who would articulate institutional or public-sector reforms, is to identify and understand the array of economic, political and social actors, often referred to as potential ‘champions’ of reform, and the complex coalitions they form (Andrews, 2013; Hall and Thelen, 2007). Not only is it important to understand who these so-called champions may be, it is additionally useful to consider the factors motivating their support of a reform and their capabilities. This chapter explores the process of reform for land administration in Ghana, including the motivation of the primary instigators: the World Bank and bilateral partners, as well as key social and political actors in the relevant Ghanaian state agencies.

## 4.2 A History of Reform in Ghana’s Land Sector

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<sup>34</sup> As opposed to institutional monocropping, referred to in Chapter 2, which focuses on transplanting typically Western institutions regardless of local context.

Building on the history of territorial organization as explicated in Chapter 3, Ghana's approach to land management and administration has evolved with the emergence of the colonial and post-colonial state through political contestation and various iterations of political regimes, and the contentious yet mutually reinforcing relationship between the statutory and customary sectors. This section highlights key moments in the post-colonial period that illustrate the shifting landscape of land management and administration. Initially, the post-colonial state in Ghana preserved the balance between state and society, and the role of the state and the customary sector in land management, including the concept of trusteeship in landholding. However, the state increasingly sought to expand its powers over land with various legislative acts. The State Property and Contracts Act of 1960 transferred all colonial properties vested in the Governor General to the President, while the State Lands Act of 1962 empowered the President to compulsorily acquire land for developmental purposes, a process which quickly became politicized (Kasanga and Kotey, 2001). Shifts in the balance of power between the state and customary authorities occurred amidst the history of political struggle during the independence period, offering the newly installed government under Nkrumah instruments to penalize their political opponents. For example, in southern Ghana, two commissions of inquiry confirmed that local revenue from two paramount stools was being used to support a rival political party, the National Liberation Movement. In response, the President vested these customary lands in the state through

successive legislative acts<sup>35</sup>. Public and vested lands throughout the country became state property, subject to administration by the Lands Department. The Administration of Lands Act, 1962 required the consent of the state to alienate land,

“An assurance of stool land to any person shall not operate to pass any interest in, or right over any stool land unless the same shall have been executed with the consent and concurrence of the Commission. Any stool land which is sold, or exchanged for money, to non-members of the stool without the consent and concurrence of the Lands Commission is therefore considered invalid,” (Kasanga and Kotey, 2001).

The act of compulsorily acquiring land, predominantly in urban areas, was seen as a betrayal of customary trusteeship and viewed as encroachment of authority by the statutory sector on the customary, whose power and social legitimacy are, to a significant extent, based on their control over land. “Land was acquired by executive instrument, but compensation was not factored in. Some felt land was taken from communities and given to private companies and individuals, leading us to ask what is the public interest?” (Respondent-Academic, 2015). Some customary authorities and families protested, others went as far as occupying or repossessing their land illegally and selling to developers, just to extract some value (Respondent-ILGS, 2015). In 1966, the First Republic under Kwame Nkrumah was overthrown by military coup due, in part, to what was perceived as his abuse of state power in taking land and undermining the position and authority of the customary sector.

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<sup>35</sup> The legislative acts include the Ashanti Stool Land Act and the Akyem Abuakwa Stool Revenue Act, in 1958. Under these arrangements, legal interest in the land went to government while the beneficiary interest was intended for the community (Kasanga and Kotey, 2001). However, in practice the government controlled the management and administration of the land, including the beneficiary interest or revenue.

**Table 4.1. Political Regimes, Coups and Constitutions of Ghana Since Independence**

Party	Leader	Date	Notes
Independence Constitution 1957			
Convention People's Party CPP	Dr. Kwame Nkrumah	March 6, 1957	First post-independence government
First Republic			
CPP	Dr. Kwame Nkrumah	July 1, 1960	Parliamentary government that became one party state
National Liberation Council	Lt. Gen. Joseph Ankrah; Lt. Gen. A.A. Afrifa	February 1966 April 1969	First military coup
Second Republic 1969 Constitution			
Progress Party	Dr. Kofi Busia	October 1969	Prime Minister
National Redemption Council/ Supreme Military Council	Gen. I.K. Acheampong	January 1972 October 1975	Second coup Third coup
Supreme Military Council	Lt. Gen. Fred W.K. Akuffo	July 1978	Became Head of State
Armed Forces Revolutionary Council	Flt. Lt. Jerry Rawlings	June 1979	Fourth coup revolt by junior ranks of the Ghana Armed Forces after a failed attempt by Rawlings on 15 May 1979
Third Republic 1979 Constitution			
People's National Party	Dr. Hilla Limann	September 1979	US Presidential style
Provisional National Defence Council (PNDC)	Jerry Rawlings	December 1981	Fifth coup, second by Rawlings
Fourth Republic 1992 Constitution			
National Democratic Congress (NDC)	Jerry Rawlings	January 1993	Rawlings elected President
New Patriotic Party (NPP)	John Kufuor	January 2001	First change in government by elections
NDC	John Atta Mills	January 2009	Died in office
NDC	John Dramani Mahama	July 2012	VP for Mills assumed presidency after death
NPP	Nana A.D. Akufo-Addo	January 2017	First opposition leader to win against incumbent president

With this change in government came the Second Republic, the 1969 Constitution and the Lands Commission Act of 1971. The Constitution gave the Commission, under the Ministry of Lands and Natural Resources, authority to hold and manage land and minerals vested in the President. A period of substantial political instability and successive coups between 1972-1979, led to the establishment of the Third Republic and the 1979 Constitution. In it, the functions of the Lands Commission were essentially restated from the 1969 version, with the exception that the Commission was put directly under the authority of the President. This shift was enacted to give the Commission greater autonomy and 'insulate' it from political influences and considerations (Kasanga and Kotey, 2001). Following the 1979 Constitution, the Lands Commission Act of 1980 continued the practice of requiring consent from the state regarding alienation of land. Under this Act, an Office of the Administrator of Stool Lands (OASL) was created within the Lands Commission to serve as trustee for the stools with the following functions: i) establishment of a stool land account for each stool, in which all rents, dues, royalties, revenues or other payments, in the nature of income or capital from the stools shall be paid; ii) collection of all rents, dues, royalties, revenues or other payments, in the nature of income or capital, and to account for them to the beneficiaries; and iii) disbursement of these revenues according to regulations made under the Act (GoG, 1980).

Yet another coup overthrew the Third Republic, forcing a regime shift to military dictatorship under Jerry Rawlings in 1981 under the Provisional National Defence Council (PNDC). Under the 1982 PNDC Law (PNDCL) 42, the PNDC government

appointed members of the Lands Commission and amended its responsibilities, and reversed some of the power of the state over stool land by limiting their ability to allocate stool land, “grants of public lands, except land over which a stool exercised the power of disposition, or land over which mining, prospecting or exploration activities were being undertaken,” (Kasanga and Kotey, 2001). Additionally, all grants of public land made by the Commission required notification to the Council as well as the Secretary responsible for Lands and Natural Resources. The Council reserved the right to reject a grant of public land made by the Commission. Presumably, these changes were made to restore greater authority over stool land to customary authorities and to check corruption in grants of public land. PNDCL 42 also maintained the Administrator of Stool Lands and went further in defining the collection of revenue accrued to the relevant stool for its maintenance in keeping with its status; traditional councils; as well as local government councils within whose area of authority the stool lands concerned are situated (Kasanga and Kotey, 2001). The PNDCL also articulated the division of revenue to key stakeholders: 10 percent to the landholding stool, 20 percent to the stool’s traditional council, 60 percent to the local government council, and 10 percent to government. However, the OASL could withhold payment of any amount due to a stool if there was a dispute regarding the occupancy of the stool or ownership of stool lands, and if there was reason to believe that money would be ‘frivolously dissipated,’ again highlighting the existence of impropriety in both the statutory and customary sectors. PNDCL 42 (1986) also split the functions of the Lands Commission with the creation of the Land Valuation Board. Its primary functions included: determining



all matters of compensation for land acquired by the government; preparing valuation lists for property rating purposes; and valuation of government rented premises.

Most recently, the Constitution was revised in 1992 at the dawn of the Fourth Republic. In this iteration, the OASL was established as an independent body with the Constitution as its legislative foundation. It maintained its responsibilities for the establishment of stool land accounts for the revenues of each stool; collection of rents and accounting to the beneficiaries; as well as the disbursement of revenues. This revision in institutional arrangements was contested because it removed the OASL from the Lands Commission, signifying a further splitting of functions, centralizing the OASL in Accra and siphoning human resources from the Lands Commission. In addition, the percentages of disbursement were revised: 25 percent to the landholding stool for the “maintenance of the stool in keeping with its status”; 20 percent to the traditional authority; 55 percent to the District Assembly within the area of authority in which stool lands are situated; and 10 percent to the OASL for administration purposes (Kasanga and Kotey, 2001). Despite tensions under the new institutional arrangement, in order to effectively collect revenue, the OASL was still required to collaborate with the Lands Commission, which holds the relevant land records. The Lands Commission operated under the Lands Commission Act of 1994 that provided for the national Commission as well as ten regional Lands Commissions to manage public and vested lands; to advise the government, local and traditional authorities on the policy framework for the development of land; to

formulate recommendations for the government on national policy with respect to land use and capability; and to advise on and assist in the execution of a comprehensive program for the registration of title to land throughout Ghana. In addition, Article 267 of the 1992 Constitution stipulates that, “there will be no disposition or development of any stool land unless the Regional Lands Commission has certified that the disposition or development is consistent with the development plan approved by the planning authority for the areas concerned,” (GOG Constitution, 1992). This shift in land management and governance was also highly contentious as it tied the hands of stool landholders regarding their ability to allocate and transfer land without government oversight. Other agencies with land-related responsibilities that were either created or whose responsibilities shifted during the evolution of the sector include: District and Metropolitan Assemblies, the Town and Country Planning Department, the National Development Planning Commission, the Survey Department and the Stool Lands Boundaries Settlement Commission, which was abolished and its functions transferred to regular courts.

Through this tedious, yet abbreviated, account of the perennial changes made to statutory agencies in the land sector, one can observe the process of reform through layering is not new to the Ghanaian context. Successive changes in regime and the constant shifting of the institutional and legislative framework in the land sector demonstrate the highly political nature of reform. Splitting and overlapping responsibilities, inadequate resources both financial and human, conflicting structures of organization, mistrust between state agencies and customary

authorities and frequent political interference appear as significant constraints for the effective functioning of the state-run LSAs. Of significance is the history of various governments in increasing the power of the state over customary lands, done much to the consternation of traditional authorities. State acquisitions in land, along with inadequate compensation, itinerant corruption, and allowing available land to sit idle rather than return it to customary communities have led to a general aversion to state control over land and substantial popular support for customary authorities to maintain their historical interest and positions in land (Kasanga and Kotey, 2001). Customary authorities saw the creation of the Lands Commission and later the Office of the Administrator of Stools Lands as an incursion into their authority over land governance, as these agencies were created to administer their lands and extract revenue. The operations of these organizations and their bureaucracies have been the cause of dissatisfaction and frustration by all parties that engage them, including citizens attempting to access land. Concerns regarding rent-seeking behavior are commonplace in the LSAs as well as the customary sector. Particularly land allocation, registration and the administration of land revenues have not been fair or transparent in the eyes of many, leading some to assert the need to “sanitize the land administration system by government, traditional authorities and families,” regarding the demarcation of land and addressing conflicts (Respondent-ILGS, 2015).

#### **4.3 Land Sector Challenges and the National Land Policy**

Amid this shifting political backdrop, a variety of land-related challenges have contributed to the evolving institutional and legislative framework and their ad-hoc nature. The tumult of splitting and layering the statutory agencies in the land sector has contributed to high levels of inefficiency in the system. The various statutory land sector agencies created to facilitate surveying, valuation, registration and land use planning had overlapping responsibilities, low levels of organization, capacity, resources and coordination among themselves and with customary authorities. For the population dependent on engaging these bodies for land management, this has translated into considerable confusion and frustration due to lengthy and expensive registration processes for those that attempted to formally register land. For the majority of the population, formal land registration has been prohibitive as evidenced by the low number of land allocations formally registered in the country. “The desired outcome by most citizens and communities is equitable distribution, affordability, accessibility, land for farming and residential purposes or small-scale industry; but affordability is key,” (Respondent-ILGS, 2015). For the state overall, the lack of a functioning LSAs has negatively impacted the maintenance of land records, revenue generation, and the ability to manage land use and development, which is a significant obstacle in a country where agriculture makes up 36 percent of the national economy, and urban expansion continues to extend peri-urban areas (Bugri, 2012). The lack of adequate records coupled with rising land scarcity has led to high numbers of boundary disputes that clog courts and overwhelm weak traditional structures.

These concerns are mirrored in the customary sector, where there is substantial heterogeneity amidst the customary actors: stools, skins, lineages, families etc. Due to the primarily oral nature of customary practice, imprecise boundaries and records of land allocation are the norm leading to high incidence of conflict between customary areas as well as individual family landholders and occupants. In addition to disputed boundaries, several symptoms have become emblematic of Ghana's contemporary land governance challenge. First, is the practice of multiple sales of land, enabled by poor record keeping in both the statutory and customary sectors<sup>36</sup>. In this instance, the same plot of land is sold to multiple buyers, either by a single customary authority, or multiple people i.e. chiefs, sub-chiefs or family members. This in turn contributes to land allocations or sales of land being disputed in courts, creating a significant backlog of cases and tying up land. Without clarity regarding land claims or rights, enforcement by the state or appropriate customary authorities is inadequate. Rather, de facto enforcement becomes the responsibility of land claimants themselves, some of whom resort to hiring land guards to ensure that competing claimants are unable to develop or build on contested land. The use of land guards has led to regularized practices of intimidation, extortion of fees by armed gangs, and violence.

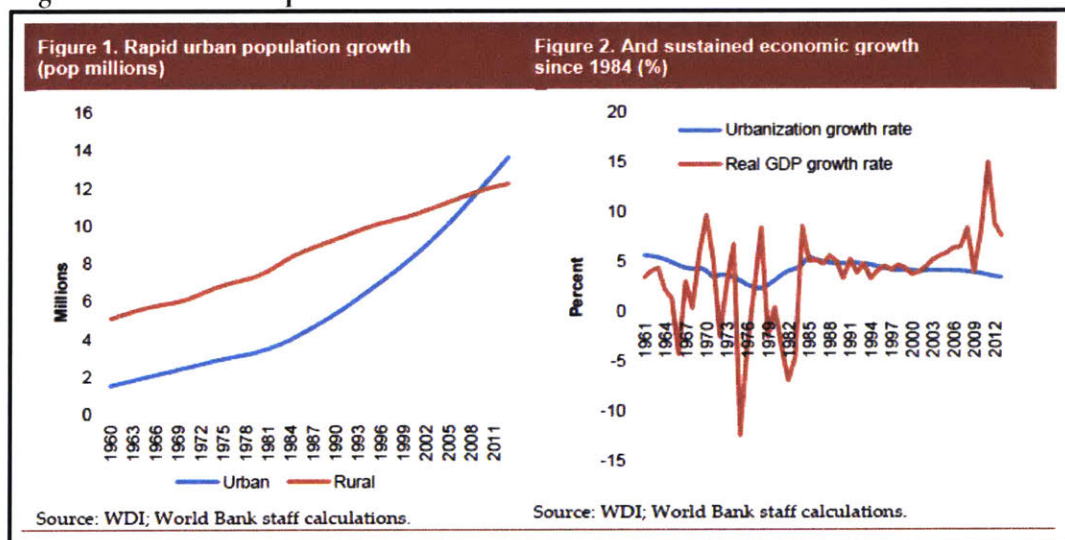
The challenges regarding clarity of land claims, records, and land-based conflict are exacerbated by the increasing incidence of land scarcity. As land becomes more

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<sup>36</sup> This practice has become pernicious, particularly due to large scale land acquisition in rural areas; and rising speculation in land-scarce urban areas.

scarce, customary arrangements for land that provide individual members of families and lineages general rights of access are facing erosion. Amidst scarcity, the commodification of land has intensified, land values have risen, incentive structures for customary authorities have shifted towards a different focus of land management, one that emphasizes potential revenue rather than one that maintains the preservation of community land for present and future generations (Gough and Yankson, 2000; Blocher, 2006). Commercial transactions in land and the transformation of inheritance rules, compounded with population pressure have given rise to increased litigation over land as people seek to narrow the definition of those considered to have legitimate claims to land. In urban and peri-urban areas, these pressures are acute. Ghana's urbanization rate rose from 31.51 percent between 1984-2003, leading to dramatic increases in urban land values and conversion of agricultural land for residential use and absorption into the expanding peri-urban sprawl (World Bank, 2015).

**Figure 4.1 Urban Population Growth**



Source: Rising through Cities in Ghana - World Bank, 2015

To address the multiple challenges to land governance and administration the Government of Ghana issued the National Land Policy (NLP) in 1999. The preamble of the NLP recognizes, “the urgent need, more than ever before, to ensure the wise use of land, based on sound principles of resource management through striking a meaningful balance among the competing demands of the very economic activities, which support human livelihood and survival,” (GoG, 1999).

**Table 4.2 National Land Policy Objectives**

i)	Ensure that Ghana’s international boundaries are maintained at all times and cross border activities are managed jointly.
ii)	Ensure that shared water bodies are utilized to the mutual benefit of all stakeholder countries.
iii)	Ensure that every socio-economic activity is consistent with sound land use through sustainable land use planning in the long-term national interest.
iv)	Facilitate equitable access to and security of tenure of land.
v)	Protect the rights of landowners and their descendants from becoming landless or tenants on their own lands.
vi)	Ensure the payment, within reasonable time, of fair and adequate compensation for land acquired by government from stool, skin or traditional council, clan, family and individuals.
vii)	Instill order and discipline into the land market to curb the incidence of land encroachment, unapproved development schemes, multiple or illegal land sales, land speculation and other forms of land racketeering.
viii)	Minimize and eliminate, where possible, the sources of protracted land boundary disputes, conflicts and litigations in order to bring their associated economic costs and socio-political upheavals under control.
ix)	Create and maintain effective institutional capacity and capability at the national, regional, district and where appropriate, community levels for land service delivery.
x)	Promote community participation and public awareness at all levels in sustainable land management and development practices to ensure the highest and best use of land, and thereby guaranteed optimum returns on land.
xi)	Promote research into all aspects of land ownership, tenure and the operations of the land market and the land development process.
xii)	Ensure continuous education of the general public on land matters.

Source: Adapted from National Land Policy 1999

With these objectives, the Land Policy articulates policy priorities, including: facilitating equitable access to land; security of tenure and protection of land rights; ensuring sustainable land use; and enhancing land capability and land conservation (GOG, 1999).

This approach, which considered equitable access and tenure security in reforming the land sector, shifted with an amendment in 2002. The amendment was developed under the newly elected president, John Kufuor and the New Patriotic Party (NPP) government, comprised of many in the propertied class that supported pro-market urban development (Obeng-Odoom, 2016). The change in government, along with the elaboration of the Ghana Poverty Reduction Strategy I (GRPS), led to a different articulation of priorities in the land sector reform. The long-term goal of the Government's land policy became to, "stimulate economic development, reduce poverty and promote social stability by improving security of land tenure, simplifying the process for accessing land and making it fair, transparent and efficient; developing the land market and fostering prudent land management," (World Bank, 2003b). Accordingly, the objectives of the land policy were amended to the following:

**Table 4.3 National Land Policy Amendment Objectives**

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| <ul style="list-style-type: none"><li>i) Harmonize statutory and customary laws to facilitate equitable access to land and enhance security of tenure of land through registering systematically all interest in land;</li><li>ii) Minimize and eliminate where possible the sources of protracted land boundary disputes, conflicts and litigation in order to bring their associated economic costs and socio-political upheavals under control;</li><li>iii) Ensure payment within reasonable time of fair compensation for land acquired by Government from customary or private landowners;</li></ul> |
|--|



- iv) Instill order and discipline in the land market to curb the incidence of land encroachment, unapproved development schemes, multiple or illegal land sales, land speculation and other forms of land racketeering;
- v) Create and maintain effective institutional capacity and capability at the national, regional, district and where appropriate, community levels for land service delivery;
- vi) Promote community and participatory land management and land use planning within a decentralized planning system; and
- vii) Formalize land markets where appropriate; promote business-like and professional property management principles based on sound economic and financial considerations. The aim is to secure the best optimum economic, financial and social returns towards a self-financing land policy.

Source: Adapted from Amendment to National Land Policy 2002

This shift embraced a neo-liberal approach to reform of the land sector, emphasizing formalization of land markets, decentralized land management, and economic returns on land; while tying equitable access to registering title and de-emphasizing communal rights and concerns of sustainability and access for future generations.

#### **4.4 Reform from Above – The World Bank Approach**

With the new focus of the National Land Policy amendment, the Government of Ghana, supported by its development partners, initiated the Land Administration Project (LAP) to reduce poverty and enhance socio-economic growth in Ghana (Ehwi and Asante, 2016; World Bank, 2003). In preparatory documents for the project, the World Bank formulated land sector challenges in categorical terms including: i) an inadequate policy and legal framework, ii) fragmented institutional arrangements and weak institutional capacity; and iii) indeterminate boundaries and an inadequate land registration system. Regarding the policy and legal framework, there are over 166 laws that regulate land administration in the statutory system, and mirroring this are customary laws, though not recorded, that reflect diverse

communities and land management regimes throughout the country. Many of these laws and regulations stand in contradiction with one another and, in some cases, are outmoded. At times, they are politicized and purposely used to confuse issues, delay implementation of programs and prolong litigation over land conflicts (Respondent – Academic, 2015). The ensuing confusion contributes to high transaction costs related to land management and administration, frustrating citizens and potential investors alike.

**Table 4.4 Sample of Land Laws and Regulations**

Public Lands Ordinance, 1876
Land Appropriation Ordinance, 1901
Survey Rule, 1924
Land and Native Rights Ordinance, 1927
Kumasi Lands Ordinance, 1943
Town and Country Planning Ordinance, 1945
Akim Abuakwa (Stool Revenue) Act, 1958
Stool Lands Act, 1960
Land Development (Protection of Purchasers) Instrument, Accra Prescribed Areas, 1961
Land Registry Act, 1962
Administration of Land Act, 1962
Administration of Lands Regulations, 1963
Administration of Lands (Kumasi Open, Spaces) (Exclusion) Regulations, 1964
Stool Lands Boundary Settlement Commission Decree, 1973
Public Lands (protection) Decree, 1974
Land Title Registration Law, 1986
Stool Lands Boundary Settlement (Amendment) Law, 1986
Survey Regulations, 1989
Hemang Lands Acquisition and Compensation Law, 1992
Land Title Adjudication Instrument, 1992
Lands Commission Act, 1994
Office of the Administrator of Stool Lands Act, 1994

Each enacted to deal with specific land-related problems. List is illustrative, not exhaustive.  
Source: GOG National Land Policy, 1999 Annex

The second categorical challenge facing Ghana’s land sector, as identified by the World Bank, is the complex and fragmented institutional arrangements within the

customary and statutory systems and the limited capacity of any institutional actor to manage these arrangements (World Bank, 2003). In the customary sector, there is considerable heterogeneity with stools, skins, lineages, families, earth priests etc. On the statutory side, section 4.2 of this chapter details the history of adding, splitting, and recombining statutory land sector agencies including: the Lands Commission, the Office of the Administrator of Stool Lands; the Land Valuation Board; the Survey Department; the Land Title Registry; and the Department of Town and Country Planning. Each of these agencies were enabled by legislation and administer public and vested lands, and to a lesser extent, stool lands. Yet the management and administration of these lands are done without appropriate mechanisms to coordinate land use policy, plans and programming (World Bank, 2003). Though the public sector is meant to define the rules through these agencies and enforce compliance, processes are often too complex and costly leading people to avoid engaging the statutory sector unless it is deemed necessary. The LSAs do not have well developed mechanisms to collaborate with customary authorities and relevant stakeholders outside of the statutory system. One respondent stated that prior to the LAP reform, “Land sector agencies did not have regard for traditional councils. They are official bodies that do what they believe are their duties,” (Respondent-ILGS, 2015). The lack of collaboration between customary and statutory authorities regarding land allocation, management, utilization and development has generated intractable disputes in some cases and rendered land use planning irrelevant as development proceeds haphazardly without regard to plans, as articulated by several respondents. This dysfunctional relationship between

the customary and statutory systems contributes to lengthy land acquisition procedures for agricultural, industrial, commercial and residential development due to conflicting claims of ownership as well as varied and outmoded land disposal procedures. These challenges are often exacerbated in urban and peri-urban areas, where land is increasingly scarce and highly contested.

The third categorical challenge of the Ghanaian land sector, as identified by the World Bank, is indeterminate boundaries and land registration. Indeterminate boundaries of stool, skin and family lands are pervasive and result from a lack of reliable surveying, maps or plans. The use of outdated maps often leads to protracted litigation and freezing of land for development. There was no systemic cadastral mapping, registration and titling program in the country, with the exception of a few areas within urban centers that benefited from urban interventions and development projects, such as Accra's urban renewal project in 1986 (World Bank, 2003). Given the uncertainty of boundaries and lack of titling and registration, multiple sales of the same plot of land, encroachments on both private and public lands, unapproved development schemes resulting in informal development and environmental degradation became prevalent, as well as violent confrontations between opposing claimants and their proxies. In addition to the confusion regarding competing claims and subsequent conflict and litigation, the lack of land registration contributes to inefficient land markets. World Bank policy has historically subscribed to the logic that land-titling and registration are necessary to facilitate investments and improvements in land, and that land markets facilitate the

reallocation of land to its most productive use (World Bank, 1975; World Bank, 2003b).

#### **4.5 Land Administration Reform – Consolidation and More Layering**

With these challenges to land administration, the stated goal of LAP was essentially to, “promote efficiency in the land sector,” as shared by a respondent from the World Bank staff (Respondent – World Bank, 2015). However, it is also apparent from the reliance on evolutionary theories, liberal policy formulations and the categorization of problems in the land sector that the purpose of the LAP was also to move Ghanaian land regimes closer towards formalization and privatization of property in land. To achieve these goals, LAP was implemented by the LAP Secretariat, staffed by Ghanaian nationals, supported by the World Bank and housed within the Ministry of Lands and Natural Resources. LAP was intended to be a long-term reform of 15-25 years. Based on the various experiences of the World Bank with land reform projects in the developing world, and the complexity of the various interests in Ghanaian land, the project implementation period was broken into three five-year phases to build progress. The specific objective of the first iteration of the LAP project – LAPI was to develop a sustainable and well-functioning land administration system that is efficient, cost effective, decentralized and that enhances land tenure security. It sought to:

- a) harmonize land policies and the legislative framework with customary law for sustainable land administration;
- b) undertake institutional reform and capacity building for comprehensive improvement in the land administration system;
- c) establish an efficient, fair and transparent system of land titling, registration and valuation; and

d) issue and register land titles in selected urban and rural areas as a pilot to test b) and c) above and innovative methodologies, including community level land dispute resolution mechanisms (World Bank PID, 2003)

Regarding the component on institutional reform, the project performed a comprehensive review of the statutory land sector agencies. The review resulted in the preparation of a Lands Commission Bill (2008) that merged four of the LSAs: the Lands Commission, Survey Department, Land Title Registry and Land Valuation Board, into the new Lands Commission. In the first phase of the project, LAPI also focused on providing targeted institutional strengthening and capacity building support to key stakeholders within the land sector agencies to improve and accelerate project implementation. Interventions were also made to improve land administration and registration, including decentralization of the lands (deeds) registry to the ten regional capitals, systems re-engineering and capacity building to regularize the use of computerized processes and record keeping. According to the Bank, these reforms led to a reduction in the number of days to register a deed (2008). Additionally, decentralization coupled with the re-engineering of processes and systems resulted in a significant increase of people registering land, and an increase in land transaction revenues (World Bank, 2008). A significant element of the institutional reform component, is the introduction of customary land secretariats (CLS) as an institutional innovation based on existing models in three areas of the country – the Asantehene’s Land Secretariat in Kumasi, the Akyem Abuakwa Land Secretariat in Kyebi and the Gbawe-Kwatei Family Land Secretariat in Gbawe - Accra (Respondent-LAP, 2015). The CLS were introduced to bolster customary authorities with professional organizational support in land

administration, specifically documentation and dispute resolution, and to provide, “effective, accountable local structures for administration of land,” (Toulmin et al, 2004). During the first phase of LAP 37 CLS were established, with varying levels of functionality as defined by various indicators, including the increase in new land transactions being recorded, and the development of alternative dispute resolution programs used by CLS.

Despite these changes, a mid-term review indicated a significant gap between projected activities and actual implementation. Much of this was attributed to a poor understanding, as reflected in the project design, of diverse land practices and weak implementation capacity in terms of the coordination and execution of project activities. The review indicates that project performance was less than satisfactory in at least six areas: i) piloting of systematic titling and registration; ii) reducing the backlog of land cases in courts; iii) improvement of land use planning and management systems; iv) procurement constraints and v) slow disbursement of project funds (World Bank, 2008). Overall, the initial poor performance of the project led the report’s author to suggest that, “it is unlikely that the project will fully realize its development objective within its original completion period,” (World Bank, 2008;8). Based on the review, the GoG formally requested a restructuring of LAPI and an extension of the closing date by two years. The original project development objective (PDO) was maintained for the overall 15-25year program, however the PDO for the first phase was considered too ambitious for the five-year project. Selected activities considered to be dependent on the implementation of

others, were deferred until the second phase of LAP. To address minimal civil society engagement in the implementation of the project, a small grants program was also introduced. LAPI was also extended by two years with the new closing date in 2010. The revised PDO for this period was, “to undertake land policy and institutional reforms and key land administration pilots for laying the foundation for a sustainable decentralized land administration system that is fair, efficient, cost effective and ensures land tenure security,” (World Bank, 2008). For the remainder of LAPI, the program focused on the implementation of policy and institutional reform agenda and carried out pilot activities including: decentralization of deeds registration, systematic titling, demarcating allodial boundaries, reducing the backlog of land disputes through alternative dispute resolution, community-based land use planning, and the establishment of CLS among others. The expected outcome for institutional reforms was the streamlining and restructuring of public land sector agencies, strengthening their capacity, decentralizing operations for effective land administration service delivery, and integrating customary authorities through the CLS.

The objective of LAP II is to consolidate and strengthen land administration and management systems for efficient and transparent service delivery. This phase focused on decentralization of land service delivery and ensuring transparency in land transactions. LAP II also provided capacity strengthening to land sector agencies for improved, efficient and transparent service delivery (World Bank PID, 2011). A significant reform within LAP II was the shift in approach towards the



implementation of the CLS. Given difficulties of sustainability and lack of ownership<sup>37</sup> of CLS as evidenced at the end of LAPI, LAP II shifted to a demand-driven approach to the expansion of this element of institutional reform. Rather than strategically select customary areas, the LAP project through the OASL conducted sensitization workshops throughout the country to introduce the purpose and potential benefits of having a CLS in customary areas. The targeted audience being customary authorities, who opt to host a CLS in their area by signing a memorandum of understanding with the OASL. Under this revised approach, approximately 24 CLS were introduced during the second phase of the project up to the end of the research period. The operations of the CLSs have resulted in an increase of documented land rights for customary land. Despite the introduction of CLS in communities across the country, the CLS lack a legal basis for their existence and a sufficient model for financial sustainability. The Ministry of Lands and Natural Resources is currently working on a new Land Bill, that will among other priorities, incorporate the CLS into the legislative framework, in a further attempt at increased coordination with customary authorities and the state. With the implementation of these pilot activities for institutional reform in LAPI and LAP II, much of the focus has been on improving efficiency and the achievement of numeric targets, such as increasing the number of people registering land, the number of days to process registration and the reduction of costs. “There has been considerably less systematic attention to monitoring and analyzing how these initiatives have functioned in practice regarding the quality and impact of interventions on tenure security or

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<sup>37</sup> The issue of sustainability will be elaborated in greater detail in Chapter 5.

transparency and accountability in customary land administration and ascertaining beneficiaries' perceptions of the project," (Respondent-MoL, 2017). While a thorough evaluation of the project is beyond the scope of this project, an understanding of some of the changes implemented and initial impacts is useful in examining the process of institutional change through reform.

#### **4.6 Institutional Reform in Process**

The institutional reform component of the LAP project occurs through three modalities: consolidation, decentralization and layering. Through legislative and institutional reform, LAPI merged four land sector agencies into the new Lands Commission. The desired outcome was the formulation of a 'one-stop shop,' that could minimize inefficiencies in terms of time and fees required to go through the processes of surveying, valuation and registration of land title. However, the four agencies, while physically located together, continue to operate as separate or siloed entities. "In practice, many simple procedures – inspecting land, surveying, valuation – have not been taken care of. There are still many grey areas of duplication, where each division performs as though they were autonomous in themselves," (Respondents-Academic, 2015). While joining these organizations together seemed likely to increase efficiency in terms of location, process, time and fees; the incentives and motivations of each of the individual agencies were not adequately considered in the reform itself. The Lands Commission has struggled to break down silos within the organization and although they are now co-located, the processing

and service delivery under each department suffers from a lack of coordination, incongruent systems, fees, and processing.

The Lands Commission, not only went through a process of consolidation, but also decentralization whereby new or revised Lands Commissions were set up in the ten regions of Ghana. Arising from the shift in institutional arrangements, a key concern is the lack of attention paid to addressing differences in capacity and resources at the central level versus the decentralized Commissions. One example provided by an official with the Institute for Local Government Studies is the varying land valuation capacity and inability to utilize new technology, which affects policy implementation, (Respondent-ILGS, 2015). At the regional level, new Lands Commissions suffer with personnel that lack the necessary training and equipment to carry out key tasks such as surveying or valuation of land. Even with the new institutional structure, the ‘one-stop-shop,’ intended to facilitate efficiency, these smaller regional Lands Commissions still were not operating effectively. Additionally, there are differences between the regions in terms of local authority and legitimacy. In some regions, the Lands Commission has a strong presence, local recognition and receives more traffic in terms of processing land transactions including surveying, valuation and registration. Such is the case in the Ashanti region, where the Lands Commission is one of the more functional LCs that works in tandem with customary authorities. However, Lands Commissions in other regions lack the same level of functionality or legitimacy. Several respondents, for example, indicated that their attempts to gain titles for land even at the Accra Lands

Commission were equally frustrating after the consolidation process as before, citing that the location change did not minimize the duplication of responsibilities and the charging of multiple fees (Respondent – Key Informant, 2016).

Lastly, the introduction of the CLS is an example of institutional layering. In LAPI, the project sought to introduce pilot CLS across Ghana's ten regions. One area of dispute within the project design process was whether the land secretariat should be a customary or community secretariat, essentially layering an additional organization under customary authorities or potentially within the statutory system. Up to this point, most legal and policy reforms were focused on strengthening public land sector agencies. Those involved in the reform took a critical look at the policies and concluded that customary authorities were not systematically incorporated in the reforms, and would thus continue to operate in the same manner, repeating negative behaviors such as the multiple sale of land (Respondent-Academic, 2015). Ultimately the decision was taken to put the CLS under the customary authorities as an integrative measure. This decision has consequences in terms of strengthening customary authorities over other potential community-based authorities for land management such as local government through local councils. Some participants in the institutional design process were skeptical of the potential to improve access to land and tenure security, citing that "the CLS is championing the interest of the chief," to the detriment of the community given the lack of accountability structures, echoing the discussion in Chapter 2 of localization beyond the state and 'going with the grain' (Respondent-Civil Society, 2015).

As theorized by Hall and Thelen, the decision to insert this organization under the aegis of customary authorities does not threaten the overarching logic of maintaining the status quo land regime in Ghana, which is dominated by the control of land by customary institutions. One respondent, a key official in the LAP Secretariat made it clear that, “land administration reform is not land reform,” and that, “LAP is not changing ownership and not touching customary land,” (Respondent -- LAP Secretariat, 2015). He insisted that no one was attempting to take land from customary authorities, rather the project was introduced to administer lands more efficiently. However, the CLS not only inserts an additional layer in the form of an organization, but it also inserts a logic that is only partially compatible with the extant property rights institutions in land as governed by customary authorities. The CLS is intended to support customary authorities to improve record keeping, facilitate boundary demarcation and where possible resolve land conflicts through customary or alternative dispute resolution. These functions are useful to the customary authorities as they facilitate improved governance and likely increase revenue generation. Clarity regarding boundaries and records enables customary authorities to keep track of rents from land allocation and to track leasehold periods for potential reallocation, another revenue generating activity. However, the intention behind the reform, according to World Bank land policy documents, is to introduce record keeping and registration as a stepping stone towards private property rights,

Although the current World Bank position envisages registration of group rights as a possible first step in such a process, it is clear that it expects this will be followed eventually by individualized property rights formalized in a written title to physically demarcated land, transferable through a market (Deininger, 2003; 79; Chimhowe and Woodhouse, 2006).

While the immediate reform is non-threatening, through appealing to customary authorities interests in resolving conflict and increasing revenue, the clarification and recording of land claims places land management and administration on a path towards titling and formalization, ultimately leading to the privatization of property rights. Thus, the overall trajectory of reform is not necessarily consistent with the logic of customary authorities, who seek to maintain their claim of allodial ownership and position of administering land. If the logic of formalization and private property rights gains enough traction, it would undermine the principle of trusteeship, the practice of leasehold and the legitimacy and authority of customary institutions, the primary elements of the extant and regime.

Each of these reforms was initiated by central government in conjunction with development partners, suggesting a shared logic to enable economic transformation facilitated by state-led land administration reform. There were participatory segments of the design process where key stakeholders, academics and consultants, could contribute their input regarding the reforms, but in these cases stakeholders were selected and invited to workshop sessions, presented with material and asked to respond. The shortfalls of the project are, at least in part, attributed to the top-down nature of the reform. Through consolidation, decentralization and layering the LAP Project introduced institutional change in terms of legislative and institutional reforms that altered institutional arrangements. Decentralization of the Lands Commission throughout the country did not adequately identify the resource requirements, or provide a plan to strengthen those resources to enable the

functioning of key departments such as survey and land valuation. The introduction of CLS into selected communities assumed that customary authorities would see the value of having a CLS in their community, seizing an opportunity to increase the efficiency of land management and administration. LAP assumed that customary authorities would take ownership of the new organization and support its functionality. However, as the next chapter details, customary authorities had varied motivations for accepting this institutional innovation and saw the World Bank or the LAP Secretariat as primarily responsible for their maintenance through the provision of equipment, training and salaries for CLS staff.

#### **4.7 Conclusion: Challenges of Reform from Above**

This chapter has outlined the complex history of the land sector, including repeated political upheaval, institutional splitting and layering; as well as the resultant challenges, policy reform, and the initiation of the Land Administration Project. From these observations, what can be ascertained regarding how institutional change occurs through the lens of the land sector in Ghana?<sup>9</sup> Employing the three modalities of reform identified at the beginning of the chapter, how change occurs can be examined and perhaps to what extent. The first modality is consolidation. Observing the changes made by consolidating four land sector agencies into the new Lands Commission, it is evident that the combination of legislative and institutional reform, once approved, can yield change swiftly. However, that change can often be superficial depending on the degree of implementation and enforcement, as well as the internal motivations of state agencies and actors within those agencies,

suggesting the need for improved understanding of organizational behavior in project design. In this case, the law went into effect in 2008 and the Lands Commission began the process of consolidating the individual agencies by relocating together. However, the new Lands Commission faced difficulty in integrating the varied departments, systems and processes. While the physical accessibility was certainly improved, the opacity and complexity of the process remained a key issue up to the end of the data collection period. This suggests that institutional change occurs through top-down measures, but the issue of how deep a reform is able to permeate institutions and organizations requires additional intervention.

This chapter also highlighted the layering of institutions in the reform process. It is apparent from the history of splitting and layering land sector institutions during the post-colonial period in the 1960s up to the present, that layering can undercut the stability and credibility of institutions overtime. The constant shifting of institutional arrangements due to political upheaval demonstrates flexibility of institutions as they have been politicized rather than institutionalized. While layering in the case of the LAP project appears to be a simple process of adding support institutions to assist in the management of customary lands and a slight shift of institutional arrangements, the description demonstrates the complexity of the process and the potential to initiate unintended institutional change. First, layering calls into question extant institutional arrangements and the itinerant political dynamics. By approaching institutional reform through a top-down approach, the change in institutional arrangements creates a fissure in which the balance of power between



the statutory and customary sectors can shift. As one respondent from the Ministry of Lands and Natural Resources described, there are often conflicts between CLS staff, traditional authorities and land management committees regarding the roles, authority and continuity of staff (Respondent-MoL, 2016). This raises questions regarding how organizational actors and relevant stakeholders interpret reforms and make decisions regarding how they will respond.

While decentralized management was envisioned as a core principle in the development and implementation of the LAP project, decision-making occurred at a highly-centralized level. Decisions regarding how to approach the reform were made primarily between the national government and international donor partners, based on an inadequate understanding of land management administration, resources and priorities at the local level, which is highly varied across the ten regions of Ghana. This suggests a conflict of centralized decision-making versus decentralized implementation that can negatively impact the success of institutional change (Andrews, 2013). As one respondent from the World Bank suggested, “If we leave it [the LAP reform], it will collapse,” (Respondent, 2015). This remark raises concerns about the sustainability of the reform, largely due to the inability of the state to assert authority evenly throughout the country and the subsequent lack of full acceptance and engagement of decentralized actors in the process of reform. This inability of the state reinforces the notion of a contested stability between the customary and statutory sectors and hints at the potential intersection of reform and reinterpretation.

The question of organizational actors and their interpretations of institutional reform will be addressed in greater detail in the next chapter. However, some initial observations regarding the role of diverse organizational actors suggest that misunderstanding their motivations and capabilities undermines the potential success of reform. As seen in the LAP project, there are diverse actors whose motivations and behavior deeply influence the reform process, including: partners such as the World Bank and centralized government agencies like the Ministry of Lands and Natural Resources. The World Bank, as an international actor, and the state share the objective of state consolidation, and employing institutional reform to facilitate economic transformation. There is also the vast grouping of statutory LSAs including the Lands Commission and the OASL and their decentralized regional components whose interests and motivations require greater understanding from an organizational standpoint. Then there are the heterogeneous customary authorities throughout the country, that recognize reform as it takes place and devise strategies to adapt. Notably, the state employed an integrative approach through the introduction of the CLS. This likely undermines counter mobilization or collective action as a potential strategy for customary authorities, given the immediate reform does not yet threaten extant property rights and land regimes. Instead, individual customary authorities now have a direct mechanism to interact with LSAs and negotiate their position regarding localized land management and administration. Such a vast array of actors, which also includes civil society groups focused on land, and the citizens that use the land for their livelihoods, has an equally complex array of interests in land. Therefore, introducing a reform as a means of changing the

institutional structure and functioning of this sector certainly suggests that the incentive structures of these various actors will be realigned according to the set of opportunities available through reform. Hall and Thelen posit that “institutional change [in the political economy] is driven by the shifting strategies of several sets of important actors, each acting out of different sets of interests,” (2007). While institutional change was initiated by the actions of central government and external actors, each of these stakeholders act based on their interests and motivations regarding land within, around, or against the incentive structures put in place by the reform. Institutional change does occur through reform, however without adequate consideration of the interests, motivations and capabilities of key stakeholders, the changes that occur can easily diverge from intended outcomes, resulting in a different kind of change.

## **Chapter 5. Route to Institutional Change II – Reinterpretation from below**

### **5.1 Informal institutions, Interests and Entrepreneurs**

This chapter begins with some theoretical reflection to enable greater understanding of institutional change from a different perspective, those who did not initiate the reform but are the dominant stakeholders in society and vital to the process of change, customary authorities. The chapter then turns to analysis of customary authorities' interests, behaviors and strategies in response to institutional reform. Regarding methodology and empirical analysis, the chapter is based on semi-structured interviews (32) across the eight customary areas of the study, inclusive of customary authorities of stool and family land, CLS staff and academics in each of the study regions.

The theoretical frame presented in Chapter 2 positioned North's view of institutions and organizations as separate entities; institutions set rules that enable predictability, while organizations are constituted by the opportunity set created by those rules (North, 1990). He also acknowledges that informal institutions play a role in incentivizing and organizing behavior. The differentiation between formal and informal institutions is blurred in this case as customary law was legally entrenched by the state. However, customary authorities simultaneously maintain characteristics of formal and informal organizations, with informal rules and practices that are not defined or enforced by the state. The production of the modern customary sector in post-colonial Ghana, as elaborated in Chapter 3, demonstrates the significance of the politics of institutions and motivating interests of organizational actors, in the

creation, reproduction and in some cases erosion of institutions. By virtue of their social legitimacy, access to resources and political power these organizations have become infused with value. According to DiMaggio, “institutional theory has no explicit or formal theory of the role that interests play in institutionalization and consequently de-focalizes, or distracts attention from, the ways in which variation in the strategies and practices of goal-directed actors may be related to variation in organizational structures, practices and forms,” (DiMaggio, 1988; 4). This chapter addresses such questions of the role of interests in institutional change and how the combination of interests and capabilities manifest in terms of the strategies and behaviors employed by informal organizational actors.

Organizations have two primary interests, their survival and the reduction of uncertainty. The tendency of individual and collective organizations is to use institutionalized rules to achieve their objectives. Organizational actors have ideal or material interests in the structure and persistence of the institutions that support their legitimacy. In addition, organizations tend to exist in a field that is institutionally defined. Organizational fields are characterized by connectedness, the existence of relations or transactions tying organizations to one another; or structural equivalence, defined as ties to the same set of other organizations (DiMaggio and Powell, 1983). Moore advances these ideas with further nuance in suggesting the existence of semi-autonomous social fields (SASF), as a network of social relations that can generate rules, customs and symbols internally, but that is also vulnerable to rules emanating from the larger context in which its based, in this case a complex

relationship with the state (Razzaz, 1994; Moore, 1978). Within an organizational field, diversity of forms is a reflection of environmental or contextual diversity (DiMaggio, 1988). This diversity can also present itself in terms of differential capabilities, levels of development and power. Organizations may change their goals or develop new practices, and depending on the field they can enter or leave. Organizational actors are creative in using the ideological and institutional resources available to manipulate norms, expectations and behavioral practices. Older, more entrenched organizations may dominate their environments rather than adjust to them, and in the process become organizational leaders to which other organizations in the field conform. Customary authorities exist in an organizational field defined both by connectedness and structural equivalence. They interact with each other in neighboring communities to establish localized rules regarding social practices and mediate conflict between households and communities. Some are directly related as they sit under the same paramount chief and thus have a relational aspect in terms of similar rules, characteristics and authority structures. Customary authorities also exhibit structural equivalence in terms of land administration through their connection with land sector agencies in their regions, suggesting a semi-autonomous relationship where they are increasingly impacted by their relationship with the statutory sector. Each customary authority interacts with the OASL, the Lands Commission, Town and Country Planning to some degree. Regarding land governance, the institutions that structure property in land do not simply resolve collective action problems, in defining the organizational field of customary

authority, they also reflect and entrench the balance of power (Hall and Thelen, 2007).

According to DiMaggio and North, institutional change occurs when organizational actors, imbued with interests and sufficient resources, seek to shift the rules (1988; 1990). These institutional entrepreneurs, have the power to initiate change by leveraging their authority or lending social legitimacy to change depending on their position. Institutional change can also be initiated by actors internal to the institution, such as state-mandated change. As state actors seek greater legibility and homogenization in a field of organizations, they develop new configurations or institutional innovations. This process suggests isomorphism as a constraining force that shapes organizational actors within a field or population to resemble others that face the same set of environmental and institutional conditions (DiMaggio and Powell, 1983). There are several varieties of isomorphism – coercive, mimetic, and normative – but for present purposes coercive isomorphism is the focus. Coercive isomorphism results from formal and informal pressure placed on organizations by higher level organizations upon which they are dependent or must transact. At the field level, this approach suggests that organizations are modified in the direction of increasing homogeneity, including the introduction of supporting organizations to change behavior, practice or culture. Yet, in these politically constructed environments, centralized decision-makers are distanced from organizations that directly experience the consequences of these innovations (DiMaggio and Powell,

1983). Innovations that are applied across an entire field exhibit low levels of flexibility and local adaptation.

Institutionalizing innovations, particularly changes to new arrangements or the addition of new organizations, requires the support of subsidiary organizational actors (DiMaggio, 1983). Institutional changes are supported by these subsidiary actors who provide legitimacy to new organizational form through leveraging their resources and accepting or implementing changes. These actors expect to gain from the institutionalization of the change or innovation (Hall and Thelen, 2007). However, the interests of these subsidiary organizations can diverge from those of decision-makers at the core of the institution. Adopters of institutional innovations may indeed be motivated to improve performance, but the innovation can be infused with value beyond the desired outcomes. As an innovation spreads, it reaches a threshold beyond which the adoption of the innovation lends legitimacy to the organization rather than improving performance (DiMaggio and Powell, 1988). Though an organizational form may become institutionalized, its diffusion may not be complete. “Successful institutionalization of a new form at the local level often requires a process of constituency building and interpretation, replicating the process at the system level,” (DiMaggio, 1983; 16). To the extent that the distribution of interests represented in the bargaining process and the positions of the holders of these interests differ across locales, central institutional forms will be subject to local modification. Interestingly, DiMaggio also posits that institutionalization can follow a contradictory logic whereby the “process of institutionalization can create



new sets of legitimated actors who, in pursuing distinct interests, tend to delegitimize and deinstitutionalize aspects of the institutional forms to which they owe their own autonomy and legitimacy,” (DiMaggio, 1988; 13).

Thus, rather than consider institutions as crystallizations of previous political conflict, it is important to recognize that institutions are continually reproduced through dynamic political processes (Streeck and Thelen, 2005). The underlying logics and motivations of these processes are often what spur change. Given that these logics may not pair exactly with extant institutional structures and arrangements, entrepreneurial actors may test new behaviors inside old institutions. These activities may be in response to external conditions, internal changes such as reform, or both. Political and social institutions are not just periodic contests, but the subject of ongoing struggle as actors attempt to secure advantages by interpreting or redirecting institutions in pursuit of their interests. From this perspective institutions are seen as resources that actors may use to achieve their objectives rather than a rigid set of rules and sanctions. With such a perspective actors may switch from one institution to another when it seems to serve their purposes (Hall and Thelen, 2007).

How do actors cultivate change from within the existing set of opportunities and constraints as derived from the institutional set up? The strategies and behaviors they use include subverting or circumventing rules that clash with their interest. Alternatively, they work within or around elements they cannot or choose not to

change, while seeking to harness and utilize the institutional set up in novel ways. Institutional stability, is tested continuously by experimentation as relevant actors test the bounds of what is acceptable behavior to assess the effects of alternative courses of action and consider how severely defection from institutionally sanctioned patterns of behavior will be punished (Hall and Thelen, 2007). Thus, emerges the second route to change that this research explores, reinterpretation as institutional change from below. Organizational actors gradually change their interpretation of institutions as, rules and practices without defecting from or attempting to dismantle or overtly undermine the institution. In some instances, this entails the reinterpretation of a legal or regulatory regime through engaging the courts. In other instances, it may involve gradual acceptance of practices that would not formerly have been seen as congruent with the continued presence or structure of the institution. “In comparison to ‘reforms’ that formally revise or abolish an institution, the process of reinterpretation shifts existing practices in a piecemeal fashion from below,” (Hall and Thelen, 2007).

## **5.2 Institutional Innovation – Customary Land Secretariats**

With this theoretical backdrop in place, the introduction of Customary Land Secretariats (CLS) can be examined. As previously noted, the LAP program envisioned the change of institutional arrangements through consolidation, decentralization and layering. The focus here is on the CLS, as this is the primary aspect of the reform that attempts to integrate the customary and statutory sectors. Prior to the LAP project, three secretariats existed in Ghana and supported the

Gbawe-Kwatei family in Gbawe, (Greater Accra Region), the Asantehene's Land Office in Kumasi, (Ashanti Region) and Kyebi in Akyem Abuakwa, (Eastern Region). Each of these anterior organizations were spontaneous innovations by local customary authorities, who identified the need for improved governance structures and professionalization to manage increasing land transactions and conflict. During the design phase of LAP, donor partners and Ghanaian officials identified this organization as a potential model that could be adapted and diffused to facilitate improved efficiency of record keeping, boundary demarcation, settlement of boundary disputes and other potential conflicts (Respondent – DfID, 2017). A set of principles and resources were developed to support the diffusion of this institutional innovation. Discussions regarding the placement of the CLS within institutional arrangements in the land sector exposed tensions between local government and customary authorities, as some involved in the design process jockeyed for authority over such a critical resource as land. Ultimately, the decision was taken that the CLS as an organization should be placed under customary authorities rather than local government. Kufuor, president at the time, among others advocated for this placement of the CLS as he and his party, the NPP<sup>38</sup>, were considered pro-chieftaincy and sought to consolidate political support from customary authorities. This decision entrenched the relative power of customary authorities over land management and governance. It also diminished the potential of local government authorities to play a role in addressing boundary disputes between adjacent

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<sup>38</sup> The New Patriotic Party is a center-right liberal conservative party that has emerged as one of the two dominant political parties in Ghana.

customary authorities, which is a recurring issue in local government areas that house multiple customary areas.

With this decision, the LAP program envisioned the introduction of the CLS as a support organization that could facilitate greater efficiency, serve as the entry point for people requiring land services and act as an intermediary between the customary and statutory land sector agencies. The CLS allocates land, manages record keeping and associated fees including the agreed upon ground rent, and engages in dispute resolution regarding conflicting claims of land. Once the allocation is properly recorded, people can take their documentation, typically in the form of an indenture or leasehold document, to the reformed Lands Commission to proceed further with the process of registration and titling. To ensure sustainability of the CLS, LAP envisioned that the income generated by processing fees and a portion of ground rent accrued to stools would support the functioning of the office and staff. In the first phase of LAP, the Secretariat in conjunction with the OASL selected the initial customary communities for implementation. In the first iteration of this process, ten communities were selected for the introduction of the CLS. The pilot included the three communities with pre-existing CLS, where the CLS would be reformed and strengthened to facilitate the aforementioned functions. However, CLS were initiated in communities without sufficient knowledge of variations in local organization, leading to many challenges regarding capacity, communication and logistics (Respondent – DfID, 2017). In addition, a range of respondents including donor partners, the Ministry of Lands, LAP secretariat staff, OASL staff as well as

civil society groups engaged in the project to provide social accountability assessments have stated that this so-called 'supply-driven' approach to the piloting of CLS was flawed in that the customary communities identified had no ownership in the process (Respondents, 2015; 2016). The selected customary communities saw the intervention as led by the donors and expected that donors would establish the office, provide equipment and resources to pay staff and facilitate the required work functions. In at least half of the initial CLS, offices were identified and equipment such as computers and desks were procured and delivered by the LAP Secretariat, yet this equipment sat idle, in some instances not even connected to a power source. "In some cases, LAP officials simply dumped equipment in offices that did not even have electricity...They set up CLS with no serious thought of how to help them manage themselves or how to monitor before scaling up," (Respondent – former LAP, 2015). While this is indicative of problematic design and implementation of the CLS, it is also suggestive of issues of diffusion and institutionalization.

The CLS is a prime example of an institutional innovation, conceptualized by external and centralized actors, consultants and state officials. Through this top-down approach, they made decisions regarding the insertion of a new organization within an existing organizational field. This decision was not made with the input or considerations of customary authorities themselves, resulting in a highly problematic and varied implementation. How the CLS might alter the interests and behaviors of the customary authorities was not sufficiently considered during the initial design phase. During LAPI, 37 CLS were introduced between 2003 and 2008.

As LAPI progressed and members of the LAP Secretariat and the OASL began to see that the CLS were not functioning according to the intended design, as measured by project targets and indicators, they realized that a different approach was needed in order to achieve the objectives of improved functionality and efficiency in land management administration. Thus, LAP II employed a revised approach to the introduction of the CLS into new customary areas. Utilizing a 'demand-driven' approach, the OASL 'sensitizes' communities, or customary authorities, regarding the benefits of having a CLS and customary authorities accede, signing an MOU that details their responsibilities for accepting and maintaining the CLS. Initially, institutional diffusion was mandated from above as the reformers selected communities to pilot their innovation, and subsequently diffusion occurred through a combined approach of introduction from above and agreement from below.

There are at least two aspects to note with the shift in approach. First, decision-makers at the LAP Secretariat conceptualize customary authorities as representative of their communities. While not completely inaccurate, this conceptualization is problematic in that it does not account for the hierarchical organization of customary groups. These authorities, often from ethnic groups and family lineages, are local elites politically, economically, and socially. Customary authorities necessarily possess social and political control, and often greater access to resources than other members of communities, thus their interests and preferences are not necessarily representative of the communities in which they are embedded, particularly

regarding access to land and tenure security. Second, consideration of the motivations or interests of customary authorities to host a CLS continued to be inadequate in consideration of the reform. Nor did there appear to be recognition or acknowledgement on the part of the LAP Secretariat of potential differences in interest between the reformers and those accepting this institutional reform.

To this second point, there was significant convergence in the responses of many interviewees regarding the motivations and interests of customary authorities. According to reports and respondents, from the LAP Secretariat and CLS staff, the first phase of the LAP project was not successful in getting customary authorities to understand the premise of their approach (World Bank, 2011). Instead, customary authorities had motivating factors of their own for engaging with the project and incorporating the CLS. One such factor is addressing their concern regarding increasing land scarcity due to population growth and increasing demand for land, which is particularly high in the urban and peri-urban areas of the study area. “The CLS has made us aware that God is not going to create new land for us. What we’ve got, we have to hold on to and administer property with a qualified surveyor, demarcating all the lands, giving plot numbers, etc... and capture it on our PC,” (Respondent - CLS, 2015). Additional motivations of customary authorities include the desire for support from LAP or the World Bank, both financial and in kind, as well as the aspiration to increase revenue generation by maximizing rent collection. “The CLS managed to tell us the benefit we can accrue from this huge land,” (Respondent - CLS, 2015). Customary authorities also have varied views on the

degree to which statutory LSAs should be engaged in land management, “We can manage on our own without the help of any financial institution and government will be our guarantor,” (Respondent - CLS, 2015). Rather than identifying the CLS as a potential organization to facilitate increased efficiency in land administration and management for consumers of these services, i.e. the local population or domestic and foreign investors as envisioned by donors and the LAP Secretariat, customary authorities largely viewed the introduction of the CLS as a means to consolidate their authority over customary land and capture a greater share of land value.

Given the motivations for customary authorities to accept the CLS, what are the implications for successful institutionalization and diffusion of this institutional innovation? Taking the latter first, diffusion of the CLS is somewhat complicated by the approaches taken by the LAP project. The approach of LAPI was ‘supply-driven,’ while LAP II, which is ongoing, uses a ‘demand-driven’ approach. By the end of the data collection period in 2016, 57 CLS had been created, in the period since an additional 30 CLS have been instituted. Thus, the CLS has been diffused, however when it comes to the functionality of the CLS and meeting target objectives of improving land administration through record keeping, boundary demarcations and conflict resolution the success of this diffusion is called into question. A full evaluation of the functionality of each CLS and their successful uptake into customary areas and according to LAP objectives and indicators is beyond the scope of this research, but from interviews with LAP officials as well as CLS staff, it is clear



there is significant variability in terms of their success. The question of institutionalization of the CLS is also complex. In customary areas that have invested more resources, including professional staff and financial resources, they have been able to institutionalize the CLS and use it to interact with the statutory land sector agencies. However, in areas where the CLS is partially functional or operating at low functionality, the likelihood of institutionalization and sustainability of the CLS as an institutional innovation is not probable. The question of institutionalization and diffusion is also influenced by location. The CLS model emerged in three urban and peri-urban customary areas out of a need to increase efficiency around the rising number of land transactions. Since then, CLS in urban and peri-urban areas have been more sustainable, in part due to the revenue generated from the frequency of land transactions and increasing land value. In contrast, rural CLS experience land transactions more sporadically. The lower level of transactions means less revenue for these CLS, making it difficult to sustain professional staff and the operations of secretariats.

The most successful CLS – the Asantehene’s Land Secretariat and the Gbawe CLS – existed prior to the LAP intervention. In both cases, the project sought to build capacity through the supply of training and relevant equipment to facilitate the documentation and recording related to land management. Capacity support focused on managing rural and urban land, transacting land, capturing and disseminating information, and alternative dispute resolution. The following are profiles developed on each of these CLS that demonstrate how they vary, interpret

the intervention of LAP in their pre-existing structures, and what ways they are successful.

## **PROFILE – Asantehene CLS**

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The Ashanti people settled territory in the central part of present-day Ghana. Originally a tributary state, it became a centralized hierarchical kingdom in the 17<sup>th</sup> century. The Asantehene, the ruler of the Ashantis, is revered and considered the ‘first among equals’ of the Akan paramountcies. He is also highly influential in the political domain. Ashanti society is matrilineal, determining land rights, inheritance of property, offices and titles. However, it is also possible to inherit land from fathers.

### **Land tenure regime**

Land tenure in the Ashanti region is mixed, including Part I, or vested and public lands, and Part II, or stool lands. In 1958 the government, under Nkrumah, passed the Kumasi Lands Act vesting all lands within the central business district, and lands falling within a one mile radius, in the President in trust for the Asantehene and his subjects. Vested Lands were acquired under the State Lands Act 1962 in (Act 123), while public lands were acquired under the same, in (Act 125). Both are managed by the Lands Commission in trust for the Stool. Since this period there have been multiple attempts, including lawsuits, to reclaim or re-vest these lands in the Asantehene. The Asantehene holds allodial title to all the lands in this area accept public lands, with stool lands forming the greater portion of all lands within the Kumasi traditional area.

### **Customary tenure institutions**

In 1943, the Kumasi Town Ordinance (CAP 143) authorized the establishment of an office, the Asantehene’s Land Secretariat (ALS) where land would be transacted and recorded. In the Kumasi traditional area, the Asantehene is the head of a complex paramountcy structure including caretaker chiefs and sub-chiefs who help manage land at the local level. The ALS covers the capital city of the region, Kumasi, and seven surrounding districts. It also has pockets of land in the remaining 20 districts within Ashanti region. From 1943 to 1958 the ALS and the Kumasi Traditional Council were responsible for all facets of land administration in the Kumasi traditional area. Land within the Kumasi Metropolitan Area (KMA) is considered prime land, with a vibrant land market.

### **Objective of the CLS**

Though the Asantehene’s Land Secretariat was an early model for the CLS intervention in the LAP project, restructuring of the ALS under the project only began in 2011. The vision of the ALS is to be “a modern land administration institution, providing quality and value for money service that meets local, national and international standards towards

the socio-economic and cultural development and growth of Asanteman,” (Prempeh, 2014). The mission of the ALS is to be productive and efficient in ensuring maximum satisfaction in all facets of service delivery. The intended beneficiaries, as designated by the Manhyiahene, chief of the palace, are financial institutions; investors – local and foreign; traditional authorities; private practitioners – lawyers, land-valuers; land sector institutions; non-land sector institutions; and the general public. The structure of the ALS includes the liaison officer (head of the secretariat), assistant liaison officer, quantity surveyor, town planning officer, clerks and messengers.

Reforms for the Secretariat seek to collaborate with customary authorities, government land sector agencies and other relevant stakeholders to achieve the following:

- Facilitate land management capacity amongst customary landowners;
- Develop a mechanism for effective land allocation and disposal by customary owners;
- Determine and advise the OASL on initial ground rent to be included in the lease;
- Simplify revenue collection and monitoring to ensure zero corruption;
- Promote modern ICT systems to facilitate record keeping of all land transactions including records on land availability, values, applications, processed documents, and fees and charges associated with land acquisition and documentation;
- Exploit the existing traditional governance structures to promote the use of ADR in settlement of land disputes and record land related conflicts;
- Create awareness and knowledge about land ownership rights, interests, land use and gender issues in land management and administration;
- Maintain records of renewal or surrender of leases.

### **Successes and Challenges**

The ALS has improved revenue collection and disbursement through valuations and has instituted a process to audit accounts. Documentation has also improved, and facilitated stronger collaboration with the relevant LSAs and other statutory organizations such as the Lands Commission, the OASL, Town and Country Planning Department, Ghana GIS, and the courts. The ALS undertook a lease documentation project as part of the reform. This included a moratorium to encourage all land owners to regularize their landholdings through a subsidized lease documentation project. Between September 2012 - May 2013 the ALS sought to ease access to land with reduced drink money, land survey costs, processing fees, to improve security of tenure and facilitate access to credit. Over 15,000 applications were received and the ALS has worked to process them all. In addition, the ALS is the only Secretariat with a bank branch on its premises, facilitating the process of revenue collection. “The Asantehene realized he could be losing money with people bringing drink money in large sacks. Now they can pay at the bank and bring the payment slip,” (Respondent – CLS, 2015). While the introduction of a bank has facilitated a more efficient process of paying drink money, receipts are not forthcoming as drink money is still considered a customary gift. Additional challenges of the Secretariat include multiple sales of land by different sub-chiefs and boundary disputes.

Record keeping also presents a major challenge, with a high volume of files both at the ALS and the Lands Commission, making it difficult to track files for reference.

## **PROFILE – Gbawe CLS**

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The Gbawe-Kwatei family belongs to the Ga ethnic group, found in the southern part of Ghana where land ownership is primarily vested in families. The Gbawe area was once an ancient farming village, located about six miles west of the center of Accra, the capital of Ghana.

### **Land tenure regime**

The head of the family holds allodial title in trust for the family, whose ancestors first cultivated the land. Family members have usufruct rights that permit them to use the land. Land transferred to the members of the family, whether by grant, gift or inheritance, is freehold. Land transfers to migrants and strangers is typically done through leasehold and requires consent of the council of elders. The system of inheritance is patrilineal, which allows children to inherit land directly from their fathers. Women can also inherit from their father, but only during his lifetime. The government has compulsorily acquired large pieces of land from the Gbawe-Kwatei family for urban development.

### **Customary tenure institutions**

The Gbawe land is managed by four organizations that support customary land: the Council of Elders (COE), the Land Board, the Land Allocation Committee (LAC) and the Customary Land Secretariat (CLS). The COE, which is the family's highest decision-making body, is made up of chiefs and elders, including women. Members of the COE are selected from all the 'royal gates' of the Gbawe-Kwatei family. The COE is chaired by the family head, and is responsible for the final approval of all land transactions. The Land Board is an advisory body to the COE, the LAC and the CLS on land resource management. The Land Board is made up of eight members, including the family head (as chairman), a lawyer, land surveyor, land economist, planner, the administrator of the CLS and two principal elders. The LAC is the technical wing, charged with advising land applications and implementing the decisions made by the Land Board (Gyapong, 2009). The head of the family suggested the creation of the Gbawe Secretariat in 1995, it was later incorporated in the LAP project in 2003. The CLS records and maintains information on land transactions and collects ground rent.

### **Land use development**

At present, the Gbawe-Kwatei family has approximately 10,000 acres of land under its jurisdiction. Like other peri-urban areas, Gbawe has experienced an influx of migrants as urbanization has increased. This demographic transition has resulted in high demand for land and the development of new housing areas in Gbawe. Forest and agricultural land in Gbawe has been converted into building plots. Agriculture has declined, while quarrying and salt mining have replaced farming as major occupations. Much of the land

has been surveyed, demarcated, and a cadastral map has been prepared. Increasing pressure on land has led to contestation of the boundary between Gbawe-Kwatei family and its neighbors.

### **Objective of the CLS**

The Gbawe CLS was identified for reform under LAPI in 2003, and was recognized by the Lands Commission in January 2004. The mission adopted by the Secretariat is to enhance the management of family land and facilitate sustainable development for the benefit of present and future generations.

The CLS protects the family's lands against intrusion into their boundaries by adjacent customary land owners and addresses land disputes among community members. To achieve this, the CLS seeks to maintain accurate records of land dealings in their locality. The CLS structure includes the administrator, head of operations, head of inspectorate, head of monitoring and evaluation, head of finance and accounts, record officer, secretary, public relations officer, cashier, receptionist and other supporting staff. The CLS collaborates with public LSAs, though it employs its own lawyers and surveyors. The revenue from land sales is used to finance infrastructural development.

### **Additional objectives include:**

- Ensure that land development is effected in conformity with community development;
- To mobilize revenue to aid development projects in the community through ground rent collection;
- Monitoring of all developments on the land to ensure that they are in conformity with approved planning schemes and the prevention of encroachment;
- Serve as the link between the land-owning community and the public land sector agencies such as the Lands Commission and the District Assembly etc.; and
- Providing Alternative Dispute resolution with respect of land related conflicts and helps to facilitate demarcation of residential lands.

### **Successes, Challenges**

The Gbawe Secretariat was among the initial pilot CLS in LAPI. It is regularly recognized by key land stakeholders as one of the highest functioning secretariats. The Gbawe CLS has improved record keeping and documentation of land transactions. The Secretariat itself is well known and utilized by community members to facilitate land access, secure necessary documentation and facilitate dispute resolution. Revenue collected by the Secretariat has been invested in to community development projects such as: infrastructure projects including roads and sanitation. The Gbawe CLS has also faced challenges including the lack of cooperation between the CLS and key statutory LSAs such as the Lands Commission. The accuracy and reliability of the documentation on land was questionable due to the manual recording of information. However, the CLS record room has been 'computerized' to improve documentation (Respondent – CLS, 2015). Additionally, while there are annual durbars, ceremonies or festivals, that serve as a

platform for public information concerning land, revenues from land transactions are not fully made available to the public.

### **5.3 Analytical Dimensions – Understanding Customary Authorities**

The questions of institutionalization and diffusion can also be addressed by employing three analytic dimensions to develop a contextualized understanding of the heterogeneous customary authorities and their behavior. These dimensions include: 1) the origins of customary authorities, or how they came into being; 2) the internal characteristics of customary authorities, inclusive of their forms of organization and the capabilities and interests; and 3) the external characteristics, or their position in an organizational field. Prior to describing these dimensions, the regional diversity of customary authorities should be recognized as an element of their heterogeneity. There are the skins and stools that make up the multitudinous chieftaincies across the country and the landholding families and lineages that exist in various pockets. The northern region is differentiated by the tendamba earth priests and their role in land governance and administration. The Ashanti region is known for the highly centralized and powerful Asante kingdom. The Volta region is primarily family land and the Greater Accra region is a mix of less powerful paramountcy and families that exhibit varying degrees of power and reach in relation to each other and the paramountcies.

Regarding their first dimension, customary authorities as organizations were co-produced to support the formal institution of the colonial state, unlike the process described by North where institutions are developed as the rules of the game and

organizations are established in response to the opportunity set established by those rules. We know, as explicated in Chapter 3, that customary forms of social organization were rearranged and consolidated to fit into a narrow conception of traditional institutions (Mamdani, 2012; 1996). The narrow view of this model was even replicated in regions of Ghana where chieftaincy was not the modal form of social organization and extant configurations were subverted to this new authority as in the case of tendamba land priests in Northern Ghana (Amanor, 2012; Kasanga and Kotey, 2001). Given this decision to consolidate the model of traditional or customary authorities throughout the country, there was an established relationship between actors in the colonial state and those seeking to shape and benefit from this reorganization in the customary sector. With this foundation and the continued dynamic between the post-colonial state and customary authorities, there is a long-established relationship between statutory institutions and customary institutions. For customary authorities that have had regular interaction between the statutory sector, as co-producers of customary authority, there is a potential for receptiveness to institutional innovations coming from 'above,' assuming these innovations do not threaten or seek to undermine customary authority. For those customary authorities who have been reformed or produced in detrimental ways by statutory sector, the potential for receptiveness to institutional innovation might be more contested. However, these hypotheses must be tested.

The second analytic dimension regarding the behavior of customary authorities in response to the CLS as institutional innovation are the internal characteristics of

customary authorities in land governance and administration. Customary authorities are numerous across Ghana and have varying organizational structures. While they differ in many ways, one of the principle distinguishing attributes is the level of centralization and hierarchy. Some customary authorities are highly centralized in terms of their governance or leadership structure with a king or paramount chief at the apex. Those leadership structures can be exclusively focused on lineage and male-dominated, or they can be more open beyond lineage and inclusive of women in positions of authority. Other customary authorities are less centralized without a paramount chief. In each case, there is the additional question of relative power of those in leadership positions and whether their decisions are respected and enforced, particularly in the land sector where conflict over boundaries and allocations is perennially present. Then there are family lands. Families are grouped with customary authorities as they have authority over land administration in some regions of the country. Families or lineages are typically more decentralized structures but can be quite large in terms of number of actors involved in decision-making processes. There is typically the 'head' of the family, traditionally a male elder. There is also a council or group of elders that assist in decision-making regarding social concerns and land administration. However, the level of consolidated power is variable. Some family heads are the primary decision-makers in their families, while others are not able to enforce decisions or curtail the actions of family members outside of the core decision-making group. As in many social organizations, there are often factions of families that engage in power struggles to assert their interests over the entire group. This occurs in chieftaincies as well, but



in those instances, there are more clearly defined procedural mechanisms to deal with challenges to power. These types of systems are less likely in families as land management organizations. In addition to the level of centralization versus decentralization, there are the elements of accountability and enforcement.

Chieftaincies, given their higher level of centralization or hierarchy, are typically able to enforce their decisions better given the existence of procedural systems and the social pressure of being subjects in a hierarchical system. However, accountability is decidedly more complex. Chiefs consider the people in their jurisdictions as subjects rather than citizens, so accountability to their communities is atypical. “Customary leaders are chiefs and chiefs don’t talk of law, they talk of power. You cannot criticize chiefs, due to this character,” (Respondent – CLS, 2015). This comment, made by a CLS staff member, demonstrates the challenge of holding chiefs, accountable for decisions made regarding land and demonstrates potential conflicts of interest between the professional duties of CLS staff and their loyalty to the hierarchy of the customary authority. Despite the lack of downward accountability, upward accountability does exist in some customary groups. In these instances, paramount chiefs have the ability to reprimand lower-level chiefs in the hierarchy, with the ultimate sanction being destoolment (Ward, 1967). This practice has been utilized on various occasions by powerful paramount chiefs, such as the Asantehene in the Ashanti region. In the current period, the most prevalent cause of destoolment by a paramount chief, is the multiple allocation of land or selling large concessions of land to foreign investors and displacing local populations. “Accountability issues

have led to the destoolment of three chiefs this year, issues of compensation and making multiple grants [of land] has become a major offense,” (Respondent – CLS, 2015). On these occasions, community members can lodge a complaint against their chief through the CLS, the land management committee or a council of elders will determine whether the problem is significant enough to bring to the level of the paramount chief. Thus, community members are indirectly able influence the sanctioning of their chief.

Families, on the other hand, have very different structures regarding enforcement and accountability. Given their decentralized nature and lack of established procedures to sanction dissenting behavior, their ability to enforce decisions is primarily based on the relative power of the key decision-maker(s), either the family head or the family elders. The case is similar for accountability. While families do not consider their extended members subjects, there are often internal hierarchies, based in part on gender and age, with youth and women in particularly vulnerable positions when it comes to accessing land. “In family meetings, we have some few women in the meetings, in our Ga custom we don’t include the gender, or women too much in the land decision,” (Respondent – CLS, 2015). Migrants that have relocated to family lands are dealt with according to the length of their tenure in the community. If migrants have occupied an area for a long time, often under share-cropping arrangements, they can be considered as extended family and are given preferential treatment in accessing land. However, migrants that have been in the community for shorter periods of time are considered strangers and required to

make entreaties to the landholding family and offer payment with their request for land allocation. While migrants, women and youth have varying access to land and decision-making structures some members of family CLS asserted that there is accountability in their system. “If holding the family property, we must account for it. If its money or land, you have to account for it. How much you have sold, what is left, what are the proceeds, if you have used some. At the family meeting, it will be decided what the money will be used for in terms of development,” (Respondent – CLS, 2015). Yet, all members of a community may not be included in such family gatherings, circumscribing accountability.

In addition to relative centralization or hierarchy, structures for accountability and enforcement, a discussion regarding the internal attributes of customary authorities would not be complete without mentioning power. While various authors refer to the presence of power in the dynamic of institutions, suggesting that institutions reflect the existing balance of power in addition to resolving collective action dilemmas, they do not often disaggregate that power (Hall and Thelen, 2007). Customary authorities possess varying degrees of power and authority over key political, economic and social domains. There are paramount chiefs that demonstrate high levels of power across each of these domains as evidenced by their ability to make decisions, enforce them, sanction others both within their customary area and beyond. The Asantehene is the prime example, “The Asantehene is the first among equals among paramount chiefs,” (Respondent – LAP Secretariat, 2015). This power extends beyond the Ashanti region and permeates the political domain as

well. One former LAP official, went to the extreme in his categorization of the political power of the Asantehene, “Kufuor may not have been his own president, the Asantehene is where is his soul is. Kufuor must show homage and respect, put his cloth down<sup>39</sup> to Otumfo to demonstrate his allegiance. For this reason, Ashanti should never be president,” (Respondent – LAP, 2015). In this incendiary comment, the respondent was attempting to convey that even the presidency must accommodate the Asantehene and if the president of Ghana is Ashanti, he must show deference to this higher power based on kinship. This is not to say that the Asantehene is all powerful, in pockets of the Ashanti region there are paramount chiefs that do not defer to him on land-related matters, but he still exhibits high levels of political, social and economic power. Lesser paramount and sub-chiefs within these systems of embedded loyalties, exhibit varying degrees of power. One extension of this power in the political domain is the influence over local and national elections. It is widely known that to secure votes, candidates must cultivate the favor of sub-chiefs, chiefs and paramountcies, to demonstrate credibility to the voting public. Chiefs are not directly allowed to influence electoral politics or run for political office, however de facto practice demonstrates that chiefs are often very influential in the endorsement and selection of elected officials (Amanor, 2001; Kasanga and Kotey, 2001). In the case of landholding families, power as an attribute is highly variable and can reside in the family head or dispersed in different nodes or factions within the family. While the family may be its own entity, it may also

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<sup>39</sup> Putting one’s cloth down refers to the practice of showing deference to a higher authority by removing the traditional Kente cloth from one’s shoulder. In the Akan ethnic group, all/adult men must lower the cloth in the presence of the Asantehene.

belong to a paramountcy and owe some deference to a chief. This point often becomes contested when families seek to assert their power over land and the paramountcy in which they sit does the same, as will be explored in the next section addressing the behavior of customary authorities. However, in terms of relative power, family heads generally do not exert the same power in the political domain as chiefs.

The final analytic dimension for the examination of customary authorities' behavior is their external characteristics and existence within the broader organizational field. Scott suggests that the behavior of groups is not only explained by their internal attributes, but by their location within the organizational field (Scott, 2014). Typically, one considers this as an opportunity for collective action to solve common dilemmas. This behavior does occur if informal organizations feel threatened enough to collaborate, for instance mobilizing the House of Chiefs to ensure the preservation of the status of chiefs within a legislative or policy reform at the national scale. "The House of Chiefs is just a coordination body to discuss and lobby for matters of their interests. It is a Chief's secretariat that has not instituted any regulations that will force them to do anything in their respective areas. There is no power to enforce or punish," (Respondent – Key Informant, 2015). The organizational field for chiefs is quite established with their own forms of internal organization that dictate hierarchies of the paramountcies that are highly varied and elaborate. Individuals, families, and kinship groups must know their place within these groupings and act accordingly regarding their social, economic and in some cases political behavior.

Within these organizational fields, actors are subject to influences, sometimes forceful, depending on their location in the field and their relations with other actors or larger structures (Scott, 2014; DiMaggio and Powell, 1983). However, in the case of landholding families and lineages, these organizational fields appear to be weaker in terms of the ability to influence behavior. Again, the presence of factions and various nodes of power in families demonstrates the inability of family heads to fully influence or discipline members of the extended family, including in instances of land allocation, management and administration. One landholding family member and CLS staff went as far to label a dissenting faction as ‘rebels’ who have grouped together and reached out to statutory land sector agencies, behind the back of family elders charged with making decisions and executing land management, (Respondent – CLS, 2015). While these organizational fields vary in terms of connectedness and influence over actors within the field, they do exist and decisions made by these organizational actors are often made with knowledge of what is possible given this contextual layer. These dimensions – origins, internal and external characteristics – provide useful lenses through which the behavior of heterogeneous customary authorities, in reaction to a standardized reform, can be refracted and understood in varied local contexts.

#### **5.4 Behavior – Responding to Environmental and Institutional Change**

The actions of customary authorities and landholding families explored in this section are in response to environmental and institutional changes in the land sector. As touched on in previous chapters, land scarcity is an emerging concern in Ghana.

With rising urbanization rates, urban land is increasingly congested, leading to diminishing access and high land values. This, in turn, places mounting pressure on peri-urban and surrounding agricultural lands, that are being converted to residential use, reinforcing the cycle of urbanization, urban expansion and shrinking agricultural land. With the LAP institutional reforms, customary authorities have reacted according to their interests and primary motivations. One such interest for customary authorities is the preservation of their position and status within the socio-political organization of the country. For landholding families, the primary interest is to consolidate and maintain control of land, particularly in a moment where land values are rising. The primary motivation for both landholding organizations is to ensure their position and to maximize the financial benefits derived from land. Customary authorities and landholding families engage in varied behaviors to achieve these goals.

Returning for a moment to the work of Helmke and Levitsky, they describe a typology of informal organizations that characterizes the different modalities of their behavior.

**Table 5.1 Behavior of Informal Organizations Relative to Formal Institutions**

<b>Outcomes</b>	<b>Effective Formal Institutions</b>	<b>Ineffective Formal Institutions</b>
Convergent	Complementary	Substitutive
Divergent	Accommodating	Competing

Source: (Helmke and Levitsky, 2004, p728)

In this framing, informal organizations either seek convergent or divergent outcomes with those of formal institutions and organizations. In this model, the outcomes and effectiveness of formal institutions are determinative of the constraints and opportunity set for informal organizational behavior. Complementary informal organizations tend to fill gaps by addressing contingencies not dealt with in the formal rules or by facilitating the pursuit of interests within the formal institutional framework. As such, they can enhance the efficiency of formal institutions. Accommodating informal organizations create incentives to behave in ways that alter the substantive effects of formal rules, without directly violating them. The incentive structure for competing informal organizations are incompatible with the formal rules, leading them to violate the rules and behave in contradictory ways. Lastly, substitutive informal organizations seek outcomes compatible with formal rules and procedures. However, they exist in environments where formal rules are not routinely enforced and thus provide an alternative path to achieve those outcomes.

According to this rubric, customary authorities deploy a range of strategies and behaviors to maintain, consolidate their authority over land. The institutional reforms within the LAP project provide an opportunity to consolidate their positions in the shifting institutional arrangements for land management and administration. In some instances, the strategies of customary authorities are complementary with formal LSAs. In other cases, they compete with formal institutions and directly subvert or evade statutory law and authority. In all cases their primary motivations appear to be the preservation of authority over land and the derivation of maximum



economic benefit. Complementary behavior primarily takes the form of customary authorities working with statutory agencies to achieve their desired outcome. The primary modality through which customary authorities demonstrate behavior that is convergent with the desired outcomes of formal institutions and collaborative with formal organizations is their effort to collect revenue through the OASL. The Constitution structures the collaborative arrangement between customary authorities and the OASL. The Office of the Administration of Stool Lands, a statutory land sector agency, is intended to provide statutory oversight for stool and skin lands. It is unique in that its legislative grounding is in the Constitution rather than a land law or act, and thus could not be integrated into the ‘one-stop-shop’ of the reformed Lands Commission. It is also particularly significant as the OASL is responsible for the collection of ground rent from land, a key source of locally generated revenue and, at present, the sole means of land value capture. The Constitution details the revenue derived from stool/skin lands in Chapter 22, section 67.6:

Ten percent of revenue accruing from stool lands shall be paid to the Office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions:

- a) Twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status;
- b) Twenty percent to the traditional authority; and
- c) Fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated.

(Government of Ghana, 1992)

In this configuration, the OASL collects revenue from stool and skin lands throughout the country in various regional offices. This is a critical interface between the statutory and the customary systems. The formula presented in the

Constitution details how the revenue is distributed between the statutory agencies – the OASL and local government in the form of District Assemblies – and the customary organizations – the stool which is the seat of authority, meaning the chief and the traditional authority or the traditional councils.

The introduction of the CLS facilitates the collection of revenue by systematizing and regularizing the documentation of land claims, land transactions and recording of ground rent. Hall and Thelen articulate that institutions are considered resources that actors can utilize to attain their own objectives, rather than being rigid structures of sanctions and incentives to which actors respond (2007). Customary authorities that are more sophisticated in understanding these rules and have sufficient capability and resources, see the introduction of the CLS as an opportunity and have used it as such. There are also customary authorities that are less organized and unable to use the CLS in this manner. Regardless of the level of sophistication in comprehending and leveraging the rules, customary authorities that have agreed to host the CLS engage in collaborative behavior with the goal of increasing revenue collection. This outcome is shared between the customary and statutory systems including the OASL and the local government assemblies. Indeed, the rules themselves provide the common objective of increasing revenue for both formal and informal organizations. Variation among customary authorities enables some to mobilize the CLS and profit from this institutional innovation more successfully than others, and use it as one tool in support of their strategy for maintenance and preservation of their status and

position. As previously mentioned, urban and peri-urban CLS have higher profitability and potential for sustainability due to the number of transactions and rising land values. An additional complementary behavior is the increasing collaboration with the Lands Commission. Prior to the LAP project, engagement with the Lands Commission was rare and primarily used for investors wanting to secure their land. Following the project, registration at Regional Lands Commissions is increasing, thanks in part to functioning CLS that direct people to the Lands Commission (Respondent – CLS, 2015). However, the number is still relatively low given the prohibitive costs of land registration for a majority of the population. Therefore, LAP has facilitated a deepening in the relationships between the OASL and customary authorities.

In opposition, customary authorities also engage in competing behaviors where they challenge the authority of the statutory system and seek to increase their position. These behaviors include maneuvers to consolidate control over key land management functions. The institutional reforms under LAP provide such an opportunity for the reconfiguration and consolidation of the institutional arrangements for land management and administration, in favor of bolstering the position of customary authorities. Customary authorities in stool and skin lands facilitate the collection of ground rent in collaboration with the OASL, however they refuse to include drink money in the documentation of land transactions making it impossible include this in revenue collection. As mentioned in Chapter 3, drink money was historically a symbolic gift, often something as simple as bottle

of schnapps, given in recognition of the stool or skin. Overtime, drink money has evolved into cash 'gifts' that reach totals that approximate market value for land (Ubink and Quan, 2008). Documentation of land transactions at the CLS does not include recording drink money. In some cases, individuals seeking access to land go directly to the chief, council of elders or the land management committee to negotiate the 'sale' of land. A price is settled upon for the drink money and then ground rent is derived from that price, which is a small percentage of the market value of land. This practice allows customary authorities to derive a significant economic benefit, while minimizing the ground rent available for revenue. The OASL has attempted, unsuccessfully, to at least encourage the recording of drink money but customary authorities and CLS have resisted, claiming this is outside of the domain of the statutory system.

The picture for landholding families is more complex. The Office of the Administration of Stool Land was explicitly developed to provide oversight to customary authorities of stool and skin land. There is no clear mention of what should be done in the case of family land regarding ground rent. Thus, landholding families contend that they fall outside the jurisdiction of the OASL and can collect ground rent directly. This is a significant point of confusion and contestation between landholding families and the statutory system. Two CLS in this study, Gbawe and Haatso, asserted that they have the capacity, jurisdiction and necessary records to collect ground rent and have begun doing so. (Respondents – CLS, 2015). In the case of Gbawe, this practice is accepted,

however in Haatso, ground rent collection is disputed by the OASL, which attempts to collect ground rent. The ‘rebels’ mentioned in an earlier quote are a faction of this landholding family that was attempting to work with the OASL, behind the back of the CLS staff, which consisted of a separate faction of the family. The question of how revenue can be captured from family land remains legally unclear. This loophole regarding oversight for family land by the OASL and the collection of ground rent provides incentive to strong families situated under stool land to seek reclassification. This is a significant mechanism to retain control of revenue generation through land rents. According to a LAP Secretariat official, Gbawe was part of the Ga paramountcy that controlled much of the land in Accra. The families that made up the paramountcy began to withdraw, citing corruption of Ga chiefs, while others were frustrated with their participation in the British system of indirect rule. As the paramountcy began to crumble, families went to court to withdraw from the paramountcy. After a series of court cases much of the land in Accra was reclassified as family land. Similarly, there is a claim that the Haatso family owes allegiance to the Ngleshie Alata stool in Accra, which would require the rent to be collected by the OASL and then distributed according to the formula indicated in the Constitution. These cases suggest that reclassification can be used as a tool or strategy to realize the interests of landholding families or lineages, with high levels of capacity and resources to engage lawyers, to maximize their authority over land to extract rents. Reclassification can also be used as a tool towards inducing more exclusive rights, by limiting who is considered part of the family.

Analysis of the strategies and behaviors of informal organizational actors demonstrates behavioral patterns of these actors. While the typology developed by Helmke and Levitsky (2004) that suggests the strategies of informal actors are based on the effectiveness of formal institutions is useful, evidence suggests that the pattern of behavior is based, at least in part, on the interests and internal characteristics of informal organizational actors as illustrated in Figure 5.2.

**Table 5.2 Behavior of Informal Organizations Based on their Interests and Internal Characteristics**

<b>Interests</b>	<b>Dominant Informal Organizations</b>	<b>Non-Dominant Informal Organizations</b>
Convergent	Collaborative → Competing	Collaborative
Divergent	Subversive	Contested → Fractured

Source: Created by the author.

As previously stated, the primary interests of customary authorities are the preservation of their status and authority, including the trusteeship of customary land that provides them with legitimacy and control over a crucial resource; and the maximization of rent associated with the management and administration of land. These interests can either be convergent or divergent with the desired outcomes of institutional reform by the statutory sector. The convergent interest for both the statutory and customary sector is the maximization of land-derived rents. Both parties seek to maximize the capture of rent, particularly as it is then divided amongst both sectors based on the Constitutional formula. Expanding potential revenue collection from land documentation and sales increases the potential gains for all parties. The divergent interest for the statutory and customary sectors is the integration into the state, as customary authorities seek to maintain and enhance

their separate position and authority outside of the state. There is another difference in terms of desired outcomes, the goal of formalization leading to a private property regime. While this is a long-term interest for the statutory sector, it is also against the interest of the customary sector in the immediate and long term as customary authorities would lose the ability to extract rents as a sustainable source of income over the long-run. If the land regime in Ghana shifts to private property, land allocation for leasehold would become the permanent transfer of land. Customary authorities would be able to capture the value of land at the moment of sale, however over the long-run they would no longer be able to extract rents from reallocation at the end of a leasehold or from revaluation, some of the mechanisms currently used to maximize rents. Turning to the capabilities of informal organizations, they are characterized as dominant or non-dominant. Dominant informal organizations, in this case customary authorities, are determined by the following characteristics: ability to enforce decisions, political power or social legitimacy and level of centralization. Examples of dominant customary authorities include the Asantehene and the ALS, the Gbawe-Kwatei family and the Gbawe CLS. An example of a non-dominant customary authorities is the Haatso family.

Returning to Figure 5.2, we can now work through the proposed schema employing these definitions of interests and capabilities of informal organizations. Firstly, there are dominant informal organizations with interests convergent to those of formal institutions. In this case, the behavior exhibited often begins as collaborative as the interests of both the formal and the informal are similar. However, overtime as the

dominance of the informal organization increases, potentially due to an increase in the political power or social legitimacy, they begin competing with the formal institution. One such example is improving record keeping in land management and administration. Both the Lands Commission and the Asantehene's Land Secretariat see the value in improving land records. While the ALS was initially collaborative with the Lands Commission, the ALS is now seeking to keep its own land records rather than collaborating with the Lands Commission. Though this practice is explicitly part of the mandate and division of responsibilities between the statutory and customary sectors, the ALS has gained prominence in the community and sophistication in terms of its capacity. It is now in a position to compete directly with the Lands Commission and is challenging this rule. Maintaining accurate land records is a step towards titling and formalization of the land administration system and is necessary in the shift towards a private property regime. However, if the ALS can keep their own records, they are in a better position to manipulate this evolutionary process to their advantage in future time periods. Secondly, there are non-dominant informal organizations that have convergent interests, relative to formal institutions. An example in this category is the collaborative behavior demonstrated by most CLS and the OASL regarding revenue collection. Again, as both parties seek to maximize revenue for their individual gain, collaboration is a useful strategy, particularly for relatively weak CLS that can engage the OASL, the statutory agency tasked with revenue collection.



In the third category, there are non-dominant informal organizations with divergent interests, relative to those of formal institutions and reform. An example in this instance can be taken from the Haatso family and CLS in the Greater Accra region. While both the statutory system and the Haatso family as the local customary authority share the desire to maximize revenue, Haatso is family land and thus the OASL does not have an explicit mandate to collect revenue from land users in this community. This dispute over who can capture revenue, taken as a divergent interest, leads to contested behavior of the Haatso family. There are some in the family that use the CLS to collect land rents directly from community members. However, the so-called 'rebels' in the family seek to collaborate with the OASL. In this instance, no group is strong enough to secure a consensus strategy, thereby the behavior is contested or fractured within the informal organization rather than directly competing with the statutory agency. In the final category, there are dominant informal organizations with divergent interests to those of formal institutions and reform. Again, while the overarching interests of both the statutory and customary sectors is rent maximization, customary authorities seek to maintain privileged access to land value, while agreeing to share in smaller land rents. In this instance, customary authorities game this system, or exercise institutional shopping, as they maintain the collection of drink money exclusively for themselves, based on an informal norm that allocates this once small sum that has evolved to become equivalent to the value of land. This allows them to cooperate with the Constitutional mandate for sharing land rents as revenue, while subverting the spirit of the law through exploiting an informal norm that is not contested by the statutory system.

An additional example is reclassification of land from stool land to family land in customary areas that seek to evade oversight and revenue collection by statutory agencies resulting in subversive behavior.

In addition to this amended set of behaviors defined by their own interests and internal characteristics, customary authorities engage in behaviors that, regardless of their compatibility with formal institutions, impact their local communities. These behaviors fall into two categories: developmental and predatory. Very few CLS have an interest or take actions towards community development, which several respondents indicated would be helpful in demonstrating what is done with the revenue generated by land management and administration. Gbawe is regularly cited as the exception, where the landholding family and the CLS have used revenue from land for investments in the community. People are more willing to pay the fees associated with the CLS because they recognize community improvements. Predatory practices by customary authorities are twofold: the multiple sale of land and revaluation, both of which are attempts to increase revenue for customary authorities. The multiple sale of land while in some cases has been a simple issue of lack of appropriate records, also occurs in more pernicious ways, as family members or chiefs repeat the sale of land to the highest bidder. This practice has received criticism from all sectors including President Mahama, who suggested that multiple sales of land were inimical to the activities of investors and to development, arguing that the country must shift to create an enabling environment for business (Modern Ghana, 2015). In stool and skin lands,

this is becoming a major offense, triggering calls for accountability. And, as we have seen in some cases, this has led to the destoolment of chiefs seen to be abusing their land allocation authority. In the case of family land, halting this behavior is more difficult, as authority is more diffuse and competing factions arise claiming legitimacy in land allocations. In all cases, the multiple sale of land has a negative impact for community members, who often are displaced from land. There is also a negative impact on potential investors, who are deterred from investing because securing rights to a piece of land are complicated by having to verify there are no other ‘owners’ or occupants, which often requires additional costs and in some cases dispute resolution or compensation to previous occupants. Multiple sales of land are competing or subversive behavior and break formal and informal rules regarding land practices.

The second predatory practice is the revaluation of land. Customary authorities can employ this practice to extract additional fees from those attempting to maintain access to land. Ejisu customary authority revalued land, with the stated purpose of improving documentation. However, community members suggested that the real reason was in order to assess a processing fee, (Respondent – Civil Society, 2015). When people were unable to pay the revaluation fee, the chief could re-enter and ‘sell’ the land, particularly when there was no physical structure. Under the leasehold regime, chiefs are able to use revaluation to take land back and resell with a higher valuation. This practice increases revenue generation through two avenues including the drink money, or market value, of the land as well as the ground rent.

Thus, the introduction of the CLS and its intended objective to improve land administration is deployed in a predatory manner that threatens tenure security. “The reform could increase the land processing fees so high that people are unable to hold onto their lands, increasing tenure insecurity and reducing access to land,” (Respondent – Civil Society, 2015). While this behavior is complementary to the rules and the spirit of the institutional reform regarding increased efficiency in documentation, it is based on a perverse incentive that has a negative impact on community members unable to pay the high fees associated with revaluation and documentation of land. Both multiple sales of land and revaluation are creative yet destructive practices deployed as means to capture land value. One World Bank official capitulated, “On the surface they will support the reform but underneath they will subvert it,” (Respondent – WB, 2015).

### **5.5 Appropriating Institutional Innovation – Successes and Failures**

The previous section demonstrates the varied behaviors of customary authorities in response to inserting or integrating the CLS into the institutional arrangements to manage land. From this discussion, along with the previous chapter, we observe elements in the design and implementation of the reform that suggest differential diffusion and integration across communities. One such element is the supply-led approach of LAPI where communities were selected to host CLS. This approach raised the likelihood of moral hazard whereby customary authorities were supported with training and equipment, but were not diligent about managing new resources. This behavior was based on their assumption or misunderstanding that the project

would continue to provide financial and in-kind support to sustain the CLS. Thus, this approach to implementation created a perverse incentive regarding the use of resources. A second element of the design that suggested differential integration is that the reform itself did not sufficiently consider that the varied characteristics of customary authorities might require different modalities of operation. For instance, stool and skin landholders have a different relationship with the OASL and the Lands Commission than family landholders. The OASL has a clear mandate to collect ground rent from stool and skin landholding communities and thus requires a close relationship and greater transparency regarding documentation that records ground rent, including indentures and leaseholds. This also suggests the need for uniformity in this documentation to ensure a consistent and fair collection of revenue by the OASL, particularly to combat the potential of corruption in both the statutory and customary sectors. Conversely, the OASL's mandate over family lands remains unclear, with some who collect their own ground rent and others that work in conjunction with the Office. This demonstrates diversity across family lands in terms of rules for setting and collecting ground rent, as well as transparency and accountability according to however the CLS and relevant land management bodies such as council of elders or land management committees decide to proceed. This opacity has great potential for exploitation by landholding families who can set rules for ground rent that are accessible or exclusionary towards individuals attempting to access land. This leads to a third issue in the design and implementation of the CLS. There is no incentive to address the issue of drink money for customary authorities. Drink money, the fee given to the landholding body, has evolved towards the market

value of land and is becoming increasingly prohibitive to land access. To date there is no mechanism to standardize the valuation of land or increase the transparency of the collection of drink money. Nor is there a mechanism to determine how drink money is used, whether for the stool, traditional council or broader community development. While this was recognized as problematic during the design phase of the project by World Bank staff, consultants and key stakeholders in the land sector, the consensus was that this is too significant a political dilemma to address, as the Constitution states that customary authorities, particularly chiefs, are entitled to accept this financial reward “in keeping with their status,” (GOG, 1992). Without a mechanism towards standardization of land value and an understanding of the purpose and procedure for processing drink money, customary landholding groups have complete autonomy to capture the largest amount of revenue from the transfer of land and no incentive to use this money to benefit their communities.

Given these elements of project and institutional design, customary authorities have interpreted and in some cases exploited these elements to their advantage in ways that complement or undermine some of the objectives of the reform. Where successful, customary landholding groups have increased the documentation of land, resolved land disputes and used the CLS to be the main point of engagement for community members to access land. In the most predatory cases, customary authorities have used the CLS to further their tendencies of dispossessing subjects of their land (Antwi, 2006). In the case of Ejisu, revaluing land to force the renewal of leaseholds to capture revenue is one such example. The stool is following the

letter of the reform but using it in a manner that is contradictory to its objectives, resulting in the dispossession of land for residents unable to pay the new fees.

## 5.6 Conclusion

This chapter sought to address how institutional reform is interpreted from below through the examination of the strategies and behaviors of informal organizations in accordance with their interests. As Hall suggests, “The calculation of actors’ interests is complex, [...] this entails balancing the multiple interests any single actor has in a potential course of action,” (Hall, 2005). However, the primary interest beyond survival that remains clear regarding the various strategies and behaviors utilized by the customary authorities is the desire to maximize the potential for revenue collection. Customary authorities employ strategies that alternate between collaborative or competing to pursue this objective. They also exhibit entrepreneurial behavior as necessary to enhance their position vis-à-vis revenue collection and other objectives. One such example is the desire to directly collect revenue rather than following the mandated process of collection by the OASL. Additionally, as CLS and their respective customary authorities become more sophisticated in land management and administration they are beginning to encroach on the roles and functions of statutory LSAs. This behavior is now seen at the most powerful secretariat, as the Asantehene’s Land Secretariat openly questions the role of the Lands Commission in holding records and the collection of revenue by the OASL. For family lands this practice is more complex, as the legal framework for family land is ambiguous. The jurisdiction of the OASL to collect ground rent from family lands is contested in the Haatso customary area, where there

are factions of the family that support and contest the right of the OASL to collect revenue. The family does demonstrate sophistication in that they have taken the matter to the courts to clarify their right to manage and administer their lands in this way. In both cases, we see behavior that seems to confirm DiMaggio's assertion that institutionalization legitimates actors who in pursuing their distinct interests, tend to de-institutionalize aspects of institutional form to which they owe, in part, their authority (DiMaggio, 1988).

We have also witnessed behaviors that range from developmental to predatory as evidenced by the cases of Gbawe and Ejisu. In each case, we see a pattern of entrepreneurial behavior where informal organizational actors take initiatives within or against the rules, in pursuit of their own interests. The importance of informal institutions and organizations in the process of institutional change is evident in their ability to support or undermine change and the variation in strategies and behaviors illustrates the significance of heterogeneity among these actors. To some extent, this contradicts DiMaggio and Powell's assertion that coercive isomorphism will lead to greater homogeneity within a field (1983). While the insertion of the CLS in customary communities may appear uniform on the surface, there is significant diversity and flexibility in local adoption due to the behavior of entrepreneurial actors. Finally, contrary to assumptions that location in an organizational field might determine behavior such as a focus on resolving collective action problems, it seems that the internal characteristics of these informal organizations are more significant and geared towards pursuing their interests directly through their contact with the



statutory sector. Landholding families and lineages are disparate and exist in weak sub-fields amongst customary authorities. Chiefs of stool and skin lands do have the House of Chiefs, a body that has the potential to address collective action problems such as boundary disputes between customary areas or disciplining behavior of chiefs that engage in predatory actions towards their communities. However, the House of Chiefs is used primarily for lobbying policies or reforms in favor of customary authorities rather than managing collective problems and behavior, leaving conflicts and competing interests to individual paramountcies. From the evidence presented in this chapter, understanding the internal structure of customary authorities demonstrates the greatest potential to steward the strategies and behavior of towards a productive and collaborative engagement with statutory agencies and their communities. Conversely, highly centralized paramountcies also have the greatest potential to engage in predatory and competing practices, with impunity, if they are so inclined.

Finally, this chapter has demonstrated how customary authorities, as dominant societal actors, assert their interests and capabilities. The previous chapter illustrated the state asserting itself through top-down reform intended to facilitate transformation. The CLS was created as a body that could link the customary and statutory sectors, helping to incorporate the customary authorities into systematized processes that reflect the states need for information, homogeneity and efficiency. However, we see that customary authorities are able to push back on reform and institutional innovations, reinterpreting and mediating the reforms to their

purposes. They do so employing various strategies and behaviors according to institutional constraints, and to their own internal characteristics, particularly their power, capabilities and whether their interests align with those of statutory organizations. In choosing to support the customary authorities by inserting the CLS, the state has enabled these actors to strengthen their authority over land, which may have unintended negative outcomes for local residents in terms of their access to land, tenure security and conflict.

## **Chapter 6. Experiences of Institutional Change**

### **6.1 Introduction**

This chapter departs from the format of the rest of the dissertation as it takes a preliminary look at the experience of institutional change in communities where reforms under the LAP project were instituted, including the insertion of a CLS into customary areas. While this empirical chapter does not rely heavily on testing the theoretical frame, it does seek to gain evidence of how theories regarding decentralization and evolutionary property rights ultimately extend to practice in affected communities concerned with how land is governed for their livelihoods. At the local level, the process of institutional change moves beyond the contested stability of dominant organizational actors, to how broader society, including communities, households and individuals, perceive these changes and respond through the development their own practices to negotiate land access. These observations are based on data collected by survey to elicit the perceptions of community residents in sample customary areas to begin to develop a picture of what institutional change, both through reform and reinterpretation, looks like from the most local level – those who live in these communities and rely on the customary and statutory systems to access and manage their interests in land. The data was coded and analyzed using quantitative analysis methods. The chapter begins with a deeper explanation of the methodology used in developing and administering the survey. The survey results are then detailed based on key indicators and responses from the sample communities, providing the perspective of community members. The conclusion takes this analysis and relates it back to earlier theoretical

discussions and ties in the differentiation in forms of social organization between the two regions.

## **6.2 Detailed Methodology**

### **6.2.1 Approach to the Survey**

As discussed in the introductory chapter, the transformative paradigm or approach to research recognizes that stakeholders and potential respondents occupy a variety of positions in society with power differentials between and among them. This is particularly significant as research on shifting institutions that govern natural resources have profound implications for the distribution of these resources and access to decision-making structures (Mertens, 2010; Ribot, Agrawal and Larson; 2006). With this approach in mind, the dissertation employed an exploratory sequential mixed-methods approach including qualitative and quantitative elements. In the initial phase of the research, data was collected from the open-ended and semi-structured interviews and used to develop Chapters 4 and 5. This qualitative data was also used in support of a survey instrument to better understand the perceived outcomes of institutional change, including consolidation of the land sector agencies and the introduction of the CLS into customary communities (Dillman, 2006; Singleton et al., 2009). Key themes and patterns emerged from the qualitative interviews, informing the development of the survey instrument including concerns regarding access to land, tenure insecurity and the rising incidence of land-related conflict. From these patterns, the key dimensions

necessary to measure the perceived outcomes from the implementation of the reform were extracted.

### 6.2.2 Survey Design

The resultant survey is a cross-sectional study, which analyzes data collected from a population or a representative subset at a specific point in time as opposed to repeated interventions over an extended time-period (Creswell, 2013). The patterns elicited from the qualitative research led to the following questions that guide the survey:

1. What changes and/or improvements were made in land administration, if any?
2. Do outcomes vary based on extant forms of social organization, i.e. between the type and internal characteristics of customary authorities?
3. Did improvements in land administration and management result in positive outcomes across various groups including marginalized and vulnerable populations?

The survey utilized closed-ended questions, which limited the potential responses to a pre-determined range of answers. This enabled the coding and analysis of responses across respondents. The survey employed a combination of questions including: dichotomous or two-point questions, multiple response questions and scaled questions that utilize a rating or Likert scale. However, respondents were also able to expand on their response with additional comments, and some did so providing support to their claims. Sample questions include the following:

**Table 6.1 Survey Sample Questions**

	<b>Question</b>	<b>Score</b>	<b>Response</b>
C1	Have there been changes in access to land since the implementation of the CLS into this community?	-2	-2-It has become significantly more difficult to access land since the implementation of the CLS/LAP project.
		-1	-1-It has become more difficult to access land since the implementation of the CLS/LAP project.
		0	0-There has been no change in access to land since the implementation of the CLS/LAP project.
		1	1 -There has been some improvement in access to land since the implementation of the CLS/LAP project.
		2	2-There has been significant improvement in access to land since the implementation of the CLS/LAP project.

	<b>Question</b>	<b>Score</b>	<b>Response</b>
C7	Is there any subset of the community that has become worse off since the introduction of the CLS and land policy reforms?	-1	-1-Yes, there is a subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.
		0	0 - The respondent does not know if there are any subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.
		1	1-No, there is not a subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.

For the full survey, refer to Appendix C. on page 267.

### 6.2.3 Survey Implementation and Data Collection

The survey was implemented in the two selected regions of the study, Ashanti and Greater Accra, which are both expansive and diverse in terms of types of land – including urban, peri-urban and rural. As mentioned in Chapter 3, the Ashanti

region is stool land, falling under the extended paramountcy of the Asantehene. The Greater Accra region is primarily family land, though there are few exceptions, such as Jamestown which is stool land. These two types of land help constitute the variation in forms of social organization between customary land in the two regions. To assist in the selection of the customary communities and support survey implementation, a team of four university students were selected. The students are graduates of Kwame Nkrumah University of Science and Technology with backgrounds in urban planning and land economics that were referred by academics at the University who served as key informants in the qualitative phase. The lead member of the student data collection team was also a staff member at People's Dialogue, a local partner of Slum Dwellers International. He represented People's Dialogue as a civil society partner in the social accountability assessment, financed by the World Bank, to assess social impacts of the LAP project. His participation in the social accountability assessment provided valuable knowledge and experience in observing and assessing the LAP reforms, particularly the CLS, in several communities. Once the team was identified, the overall purpose and the scope of work regarding the survey implementation were discussed with each member. The survey instrument was then circulated to the team for their review and input. They provided valuable assistance in reformulating some of the survey questions and responses, such as how to address the question of determining income or poverty level. Two team members, a male and female, covered each region, and were instrumental in selecting the customary communities. Eight customary communities with CLS were selected in total, four in each region. The selection criteria included

the following considerations: a mix of urban and peri-urban customary communities; a mix of types of customary authorities – stool or family land; and a range of how effective or successful the CLS is in those communities as suggested by the LAP-OASL team that worked with each CLS. The survey team considered these criteria and offered the following selection of customary communities for the survey:

**Table 6.2 Customary Communities**

Region	Community	Area	CLS Introduction
Ashanti	Adankraja	Peri-Urban	2014
	Appiadu	Urban	2014
	Bekwai	Peri-Urban	2008
	Ejisu	Urban	2008

Region	Community	Area	CLS Introduction
Greater Accra	Amamole	Peri-Urban	2008
	Gbawe	Urban	2004
	Haatso	Peri-Urban	2008
	Jamestown	Urban	2014



The data was collected over a four-month period, March – June 2016, and employed single-stage, non-random sampling. This modality, non-random sampling, was utilized due to inadequate census and community level data (Babbie, 2007; Creswell, 2013). Customary communities do not necessarily adhere to the boundaries of local government areas. Rather, there can be more than one customary community and CLS in one local government area, such as Bekwai and Adankraja, which are both situated in Bekwai Municipality, or a customary community and CLS that spans two or more local government areas. Therefore, using community surveys or census data that adheres to local government areas is unlikely to be equivalent to the same population data for the customary areas. The head of the CLS in each selected customary area was informed of the survey and asked if they would like to suggest some respondents. However, to avoid selection bias the survey team also randomly selected respondents in each of the communities, seeking to gather a diverse group inclusive of gender, age, and migrant status, in keeping with the transformative approach to this research and the impetus to determine if marginalized and vulnerable populations were affected differently by the reforms.

Each survey team member covered two customary communities and collected 15 surveys per community providing 60 survey responses in each region and an overall N of 120 for the total survey. As the survey responses were shared with the team, we discussed questions or concerns that arose during the process and resolved issues to ensure the data would be comparable and to facilitate cleaning the data. The qualitative elements of the data were coded and analyzed using statistical analysis,

including descriptive statistics and hypothesis testing with T-tests [Two-Sample Assuming Unequal Variances], to determine potential variation between the two metropolitan regions in the study. Where possible the survey results are stratified by gender, level of income and youth to determine whether perceived outcomes differ for those in marginalized or vulnerable groups using a Chi-square test for Independence. All hypothesis testing was conducted with a p-value of 0.05, and where statistical significance can be established, it is at the 95 percent confidence level.

**Figure 6.1 Asantehene's Lands Secretariat**



Photo Credit: Author

Figure 6.2 Ngleshie Alata Mantse Palace –Jamestown CLS



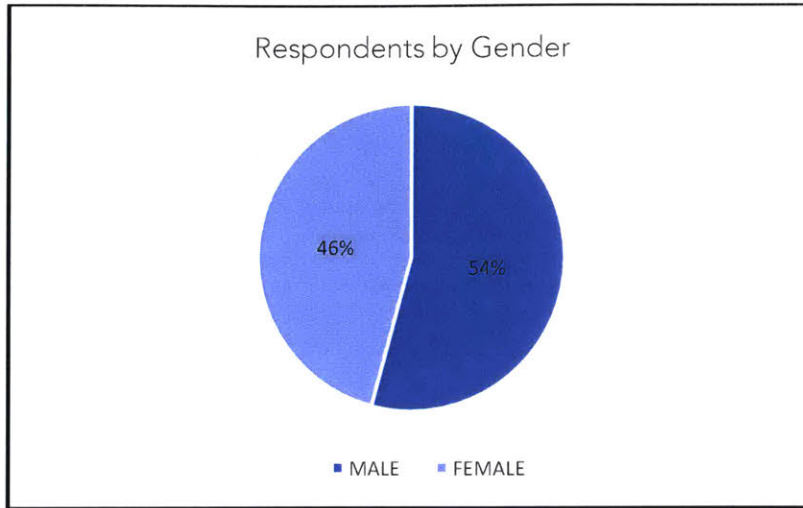
Photo Credit: Author

### 6.3 Findings and Analysis

#### 6.3.1 Descriptive Statistics of the Survey Population

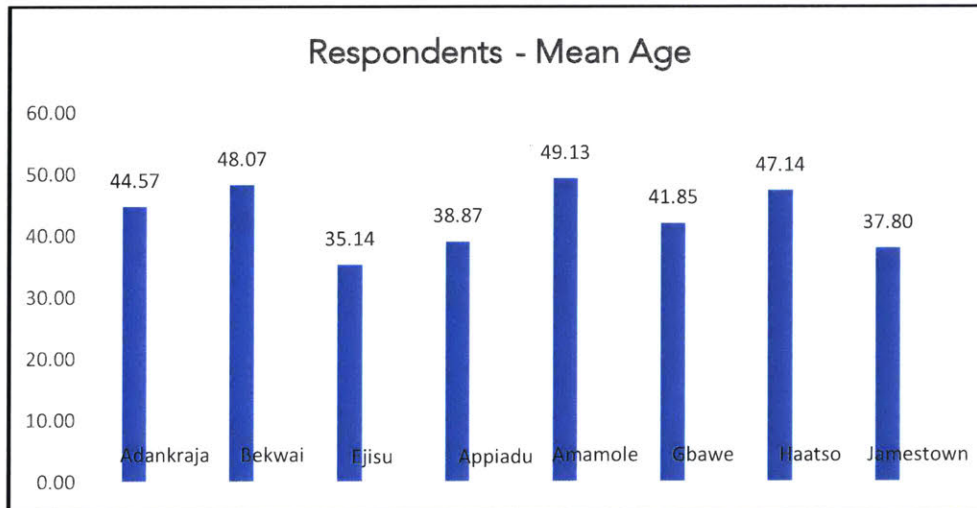
The survey had 120 respondents across the eight communities in Ashanti and Greater Accra regions. Among these respondents 55 were female, or 46 percent of the sample population, and 65 were male, 54 percent of the sample population. Historically, women have had great difficulty accessing land in Africa broadly, including in Ghana where gender is often marginalized concerning land allocation and inheritance.

**Table 6.3**



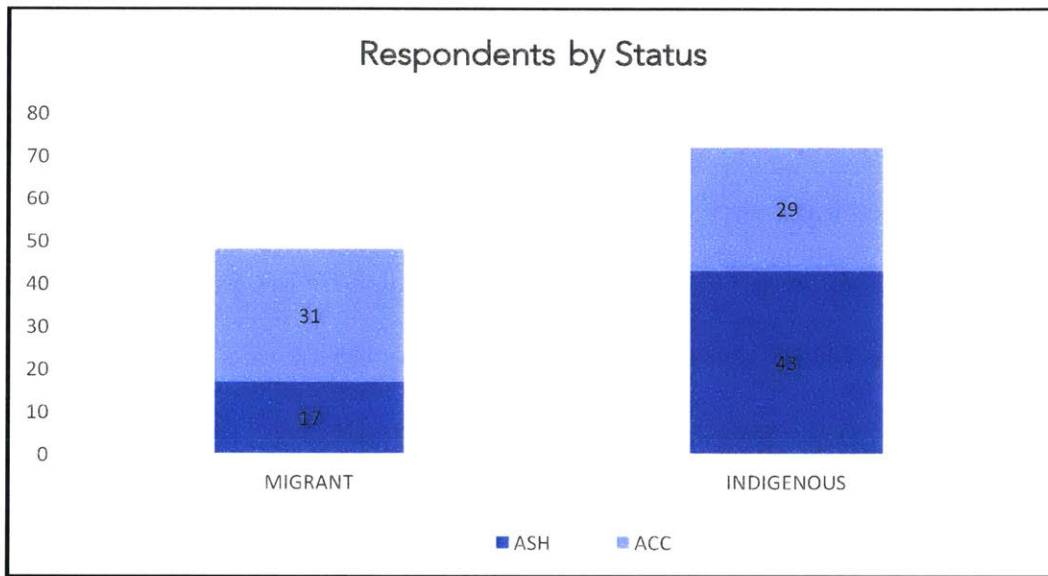
The strong percentage of female respondents is helpful to understand if and where women are marginalized regarding access to land, and their ability to maintaining tenure security. Similarly, youth often have trouble accessing land, which is often a push factor in considering whether to migrate to another region in search of land or towards cities in search of employment opportunities. For this reason, the survey included age among the descriptive statistics. The average age of the overall population is 43, with minimal difference between the two regions, in Ashanti region the average age is 42 and Greater Accra it is 44.

**Table 6.4**



In the open-ended and semi-structured interviews, respondents indicated in addition to the rising costs and various challenges to accessing land, that one's status as a migrant in a community can render access to land and tenure security precarious. In this context, 48 respondents or 40 percent of the population identified themselves as migrants.

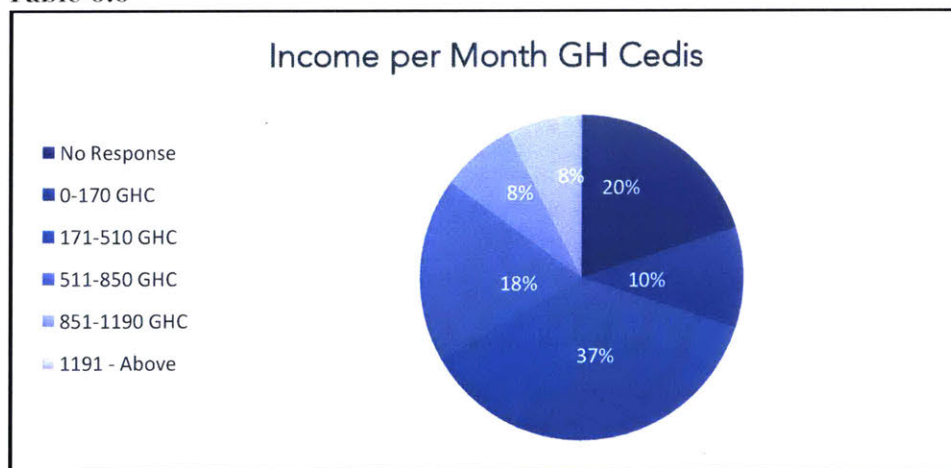
**Table 6.5**



The difference between Ashanti and Greater Accra regions is noteworthy. Of the 60 respondents in the Ashanti region, only 17 of 60 identified as migrants, whereas in Greater Accra migrants make up 52 percent of respondents, 31 out of 60. While both regions are significant metropolises and have the largest populations of Ghana's 10 regions, Greater Accra is the capital city and as such has drawn a significantly higher migrant population (World Bank, 2015). In three of the four sample communities in Greater Accra, respondents that identified as migrants were greater than those who identified as indigenous to the area.

Regarding employment, respondents indicated the following: 10 percent were farmers, 14 percent worked in the public sector, 41 percent ran small businesses, 9 percent were vendors, while 26 percent indicated other. Notably respondents chose the “other” category if they were unemployed, as some preferred not to report on this indicator. There was a higher degree of farming as a profession in Ashanti region, 15 percent, versus Greater Accra, with only 5 percent. Additionally, there were no respondents that indicated they were vendors in the Ashanti region, while 15 percent of respondents did so in Greater Accra. Another challenging descriptive statistic is determining income level. For this question, a range was provided for income per month, developed with the survey administrators from the regions, so that respondents might feel more comfortable to answer and did not have to be exact. Still, 20 percent of the population did not respond to this question<sup>40</sup>.

**Table 6.6**



<sup>40</sup> For the purposes of this study, the first category of approximately 0-170 Ghana cedis per month is the proxy for poverty. Only 10 percent of the survey population fell into this category, suggesting that this group was under sampled given the incidence of poverty in Ghana. The poverty line in Ghana set at 1,314 Ghana cedis per annum in 2013, with an estimated poverty rate of 24.2% (Ghana Statistical Service, 2014).

These descriptive indicators will assist in understanding if there are differences in how the reform process is perceived by the respondents, particularly potentially marginalized groups.

### **6.3.2 Community Perspectives – LAP Institutional Reforms**

The focus of this section is on community perceptions regarding the implementation of LAP reforms, including new institutional arrangements and the introduction of the CLS. The questions in this section of the survey sought to establish community members level of knowledge and awareness regarding the reforms and the introduction of the CLS into their customary community. It also sought to understand the level of community involvement in the decision to bring the CLS as well as community or civic engagement with the CLS once it was established. Regarding the introduction of the CLS to the community most respondents, 62 percent, were unaware of the initial introduction to the community. Only 11 percent of community respondents learned of the CLS through sensitization by the LAP-OASL team responsible for implementing this aspect of the reform. In 10 percent of responses, community residents learned of the CLS from announcements made by the customary authority themselves. Fourteen percent of respondents believed there was no introduction of the reforms or CLS at all. In looking at the regional breakdown, there was a significantly higher incidence of awareness by LAP-OASL sensitization in Greater Accra region than the Ashanti region, which had a very low rate. In the Ashanti region, there was a much higher incidence of customary authorities announcing LAP reforms and the CLS. This raises a question of how the

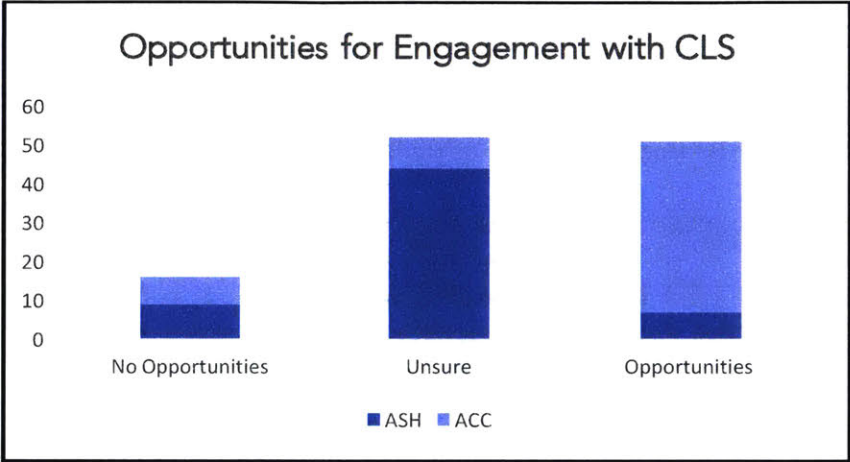
reforms have been diffused and what is the understanding regarding which organizations hold responsibility for the various aspects of land management. Regarding community involvement in the decision to bring a CLS into the customary area, only 8 percent of respondents suggested there was any involvement and all respondents were in the Greater Accra region, where the structure of family land management is more broad and inclusive. Thus, the higher level of centralization in the customary areas of Ashanti region may be a contributing factor to this concentration. Regarding knowledge of the responsibilities of the CLS, there was more awareness in the Greater Accra region, where respondents were able to identify at least one function of the CLS than in the Ashanti region. Additionally, respondents in the Greater Accra region were more likely to identify some of the multiple responsibilities of the CLS. The range of responsibilities included: responding to requests for allocating plots of land or making them available for purchase; assisting in the registration of land; settling land or boundary disputes; identifying available plots of land; and additional responsibilities.

Respondents were asked whether there were opportunities for individuals or community-based groups to engage with the CLS to make decisions regarding the community or for purposes of accountability regarding allocations and how revenue was used. The mean response in Ashanti region suggests that most respondents were unaware of such opportunities for engagement. In Greater Accra, the mean response



indicates that there were opportunities for engagement and a statistically significant difference in opportunities for engagement between the two regions.<sup>4</sup>

**Table 6.7**



When asked what types of interaction exist between citizens or community groups and the CLS, the responses differed again between the two regions. In Ashanti region, 15 percent of respondents believed there were no opportunities for interaction with the CLS, while 73 percent of respondents were unsure and only 13 percent suggested that there was an opportunity to engage with CLS officials. In the Greater Accra region, 73 percent of respondents believed there were opportunities to engage with CLS staff, while 11 percent suggested there were no such opportunities. For those who indicated there were opportunities to engage with the CLS, they listed attending public meetings or requesting independent meetings as

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<sup>4</sup> To determine if there was any statistical significance between the two regions, a T-test was utilized with an alpha of 0.05. The null hypothesis that the two means are equivalent can be rejected, signifying that there is a statistical difference between the two regions, with Greater Accra having more opportunities for engagement.

the primary modalities. Within those interactions, the survey sought to determine what types of information requests were made or the type of concerns raised by community residents or groups. Again, the responses vary between the two regions. In Ashanti region, 82 percent of respondents indicated that no questions or concerns were raised with CLS or land sector officials, while 12 percent suggested that community residents inquired about available land plots. One survey respondent in the Ashanti region, where stool land is dominant, indicated, “The CLS is influenced by the traditional [customary] authorities, and the authorities do not consider the concerns raised by the people,” (Survey Respondent-ASH, 2016). In Greater Accra, 52 percent of respondents indicated that community residents or groups inquire regarding available land plots; 20 percent suggested that community residents do not ask questions or raise concerns; and 13 percent indicated that community residents make requests for information regarding how collected money has been spent or allocated. This response has implications regarding the potential for accountability in land governance, which will be addressed in the analysis and conclusions.

Regarding changes to relationships between community members, customary authorities and land sector agencies, there were differences between the two regions. Respondents were asked if the insertion of the CLS changed their relationship with customary authorities, either the chief or the landholding family. In the Ashanti region, the mean response suggests that approximately half of the respondents did not know and the other half believed that the relationship had not changed. One

respondent in the Ashanti region, the Ejisu customary area, suggested that the insertion has changed the relationship of the community members with the customary authority, “There is no need to deal with the traditional authorities now so things are easier. The need to satisfy traditions such as buying schnapps etc. for traditional leaders has been eliminated,” (Survey Respondent – ASH, 2016). Another respondent in the same area also suggested that the introduction of the CLS reduced the need to engage directly with chiefs, “There is more contact with the CLS and this has curbed the cumbersome process involved in dealing with traditional authorities,” (Survey Respondent – ASH, 2016). In Greater Accra, 53 percent<sup>42</sup> of respondents said there were no changes, however, 38 percent suggested there were changes in the relationship with customary authorities. In Amanole, one respondent acknowledged that she is related to the secretary of the CLS and has observed his interaction with community members she suggested that, “because the secretary lives within the community and is also a very popular person, people go to him for services related to land. He is very accessible,” (Survey Respondent – ACC, 2016). In terms of changes in the relationship between communities and land sector agencies, the mean response in Ashanti region indicates that most respondents were unaware of any changes<sup>43</sup>. In Greater Accra region<sup>44</sup>, 33 percent suggesting there was no change in the relationship with land sector agencies, while 53 percent of respondents suggested there was a change. For those in both regions, the change in

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<sup>42</sup> The mean response for Greater Accra was 1.3.

<sup>43</sup> The mean response for Ashanti region regarding changes in the relationship was 0.3833.

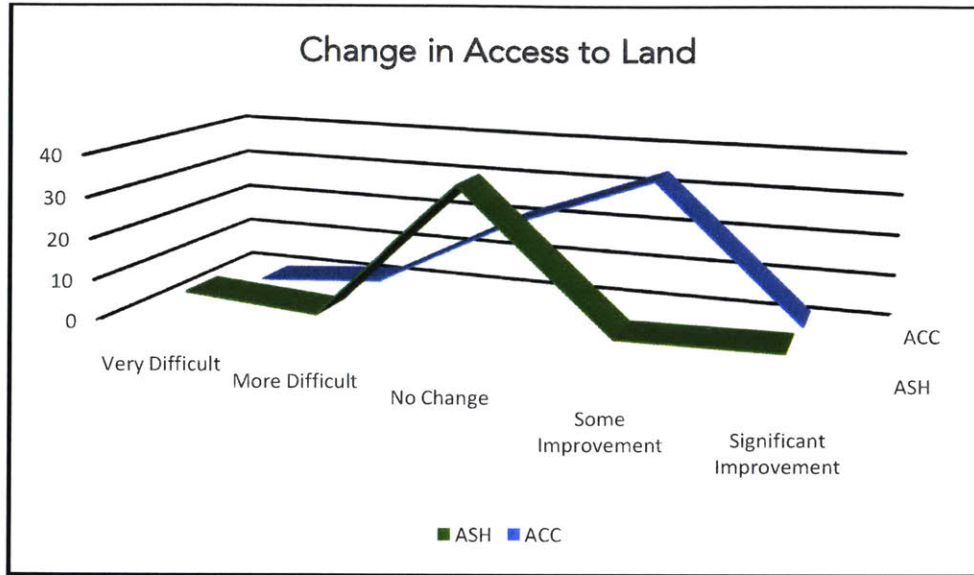
<sup>44</sup> The mean response in Greater Accra was 1.4 suggesting there was a change in relationship to land sector agencies.

relationship with land sector agencies was largely viewed as a positive development, whereby their interaction with the land sector agencies had improved regarding accessibility and in some cases reduction of costs, time and excessive bureaucracy. For others, the sentiment regarding these factors was unchanged.

### **6.3.3 Community Perceptions regarding Outcomes of the Reforms**

This section addresses the perceptions in the selected communities regarding the preliminary outcomes of the reform. Survey respondents were asked a variety of questions regarding changes in three crucial dimensions that the land administration reform was intended to address: maintain or improve access to land, reduce the incidence of tenure insecurity as well as land related conflict. Respondents were also asked to qualify these responses to facilitate a deeper understanding of why they selected certain responses and what they deemed to be contributing factors. The first questions in this section of the survey focused on access to land. Respondents were asked if there have been any changes in their ability to access land since the insertion of the CLS by the LAP project. In the Ashanti Region, the response was normally distributed, with 62 percent of respondents indicating no change in access to land, 17 percent indicating a negative change and 22 percent indicating a positive change in access to land.

**Table 6.8**



A respondent in Adankraja, Ashanti region stated that it is more difficult to access land, “primarily due to increased land prices, with no privileges for indigenous community members. The chief claims ownership of all land, so indigenous residents are not secure, their land could be taken away at any time the chief wills,” also alluding to concerns regarding tenure security (Survey Respondent – ASH, 2016). A second respondent in Adankraja agreed that it has become significantly more difficult to access land, in part “due to the purchase of land by foreign investors,” and because “no one else can sell land apart from the chief,” (Survey Respondent – ASH, 2016). In Ejisu – Ashanti region, a respondent suggested the opposite, that there has been “a significant improvement in access to land,” and sees the changes as encouraging (Survey Respondent – ASH, 2016). In Greater Accra, the response was positively skewed with 35 percent indicating no change, only 5 percent indicating a negative change, and 60 percent suggesting that access to land has

improved<sup>45</sup>. For respondents indicating a negative change in access to land, the most frequent contributing factors were the lack of available plots and lack of clear boundaries. A respondent in Haatso, in Greater Accra stated that in his community it has become more difficult to access land, due to increased land prices and no privileges for indigenous community members, leading to cases where indigenes lose their land to investors (Survey Respondent – ACC, 2016).

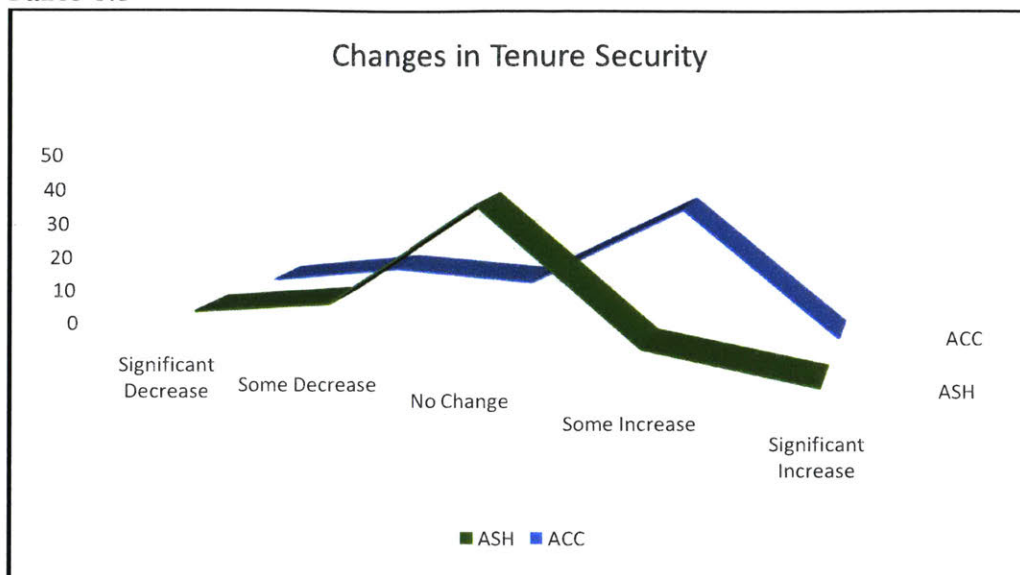
Respondents were also asked if there have been any changes in tenure security since the introduction of the CLS by the LAP project. In Ashanti region, the response was normally distributed with 68 percent of respondents indicating there was no change in tenure security after the introduction of the CLS, while 18 percent suggesting tenure security declined, and the remaining 12 percent suggesting it improved. In Greater Accra region 58 percent of respondents suggested that tenure security improved with the insertion of the CLS, while 22 percent felt that it had declined, resulting in a positive mean response<sup>46</sup>.

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<sup>45</sup> The difference between the two regions regarding access to land is statistically significant, with a p-value of 0.0013.

<sup>46</sup> The difference between the two regions is statistically significant, with a p-value of 0.001316.

**Table 6.9**

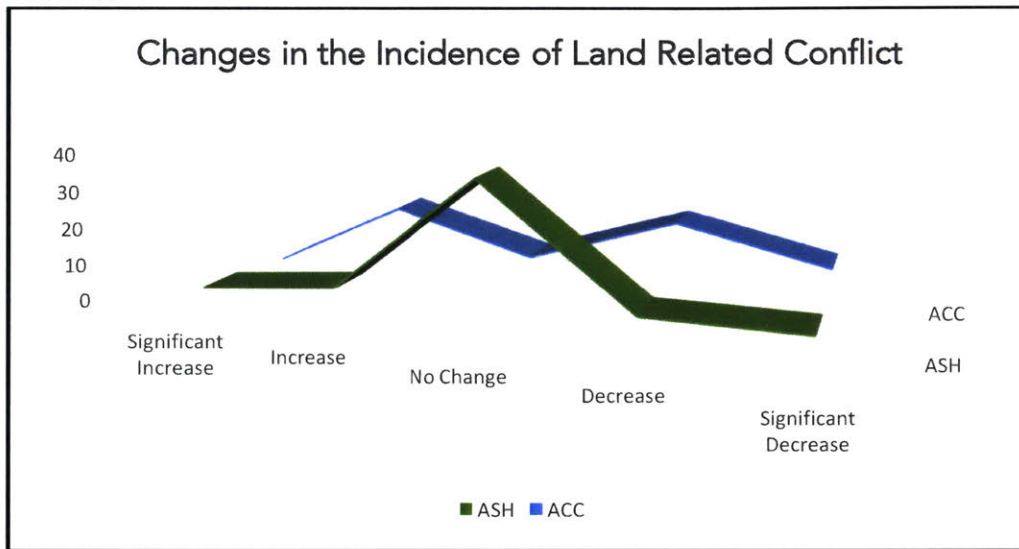


In response to the question of contributing factors to declining tenure security, respondents from both regions suggested that the rising price of land has been a primary factor. A respondent from Haatso in Greater Accra region, suggested that wealthy family heads claim ownership of all land and so the interests of poor family members are not secure, “their land can be taken away at any time,” (Survey Respondent – ACC, 2016). Additionally, increasing demand for land and lack of documentation were contributing factors for those who indicated rising tenure insecurity.

The third dimension addressed in the survey is whether there has been a change in the incidence of land-related conflict since the insertion of the CLS. In Ashanti region, 63 percent of respondents said there was no change in the incidence of conflict, while 13 percent indicated an increase or significant increase and 24 percent indicated a decrease or significant decrease in conflict. In Greater Accra region, 55

percent of respondents suggested that there has been a decrease or significant decrease in land related conflict, with 32 percent suggesting that conflict was increasing<sup>47</sup>.

**Table 6.10**



Some respondents interpreted this question to include legal conflicts as well as intimidation and violent conflict. A respondent in Adankraja suggested there has been some reduction in land-related conflicts, “because towns people have given up, they do not have the resources to keep stretching issues,” (Survey Respondent – ASH, 2016). Another respondent from Haatso suggested that, “due to the prolonged court judging, it discourages many from holding onto land litigation hence they allow arbitration, either the investor settles with the land owner for an additional amount or the person whose land has been taken unlawfully will be given a new plot

<sup>47</sup> The mean response in Ashanti region was 0.1833, in Greater Accra the mean response was 0.4333 and a p-value of 0.1838 suggesting the difference between the two regions is not statistically significant.



of land after an agreement, (Survey Respondent – ACC, 2016). Another respondent in Adankraja region suggested there the increase in conflict is again related to the chief’s “adverse possession of land,” (Survey Respondent – ASH, 2016). In Amamole – Greater Accra, a respondent indicated that there has been an increase in conflict due to the double sale of land by the chiefs and some families in the region, (Survey Respondent – ACC, 2016). For others that indicated an increase in land related conflict, they focused on violent conflict and the presence of land guards, armed men that guard a plot of land for a claimant who seeks to protect their interest against competing claims, as a contributing factor, with the increasing demand for land as a secondary factor. For example, a respondent in Haatso stated that land guards create problems for developers. In some cases, land guards block claimants as extortion, “Sometimes they take huge sums of money from developers,” (Survey Respondent – ACC, 2016).

The next grouping of questions sought to establish if there were any elements or subsets of local communities that were better or worse off following the introduction of the CLS by the LAP project into their communities. In Ashanti region, the majority of respondents, 70 percent, did not perceive that any subset of the community was better off, while 28 percent indicated there was a group that was better off after the reform. In Greater Accra, again the majority of respondents, 52 percent indicated that they did not know of or perceive that a group was better off. However, 32 percent did note that a subset of the community had an improved position following the insertion of the CLS. There difference between the two

regions is not statistically significant. Across both regions, the majority of respondents who indicated that a subset of the community has become better off since the introduction of the CLS through the LAP reforms, pointed towards customary authorities. For respondents that indicated a subset of the community became better off, the majority indicated that the improvements came in the areas of tenure security and financial gain. One respondent in Adankraja, asserted that, “traditional authorities instituted the CLS for their financial gain,” (Survey Respondent – ASH, 2016). While a respondent in Ejisu acknowledged that the CLS helps landowners and potential landowners, thus he believes that all community members are better off, (Survey Respondent – ASH, 2016). This perspective belies the position of power of landowners and those close to landowners that stand to benefit from the reforms and the power differentials that exists. In response to the opposite question, if any subset of the community became worse off following the insertion of the CLS, the majority of respondents in the Ashanti region, 72 percent, indicated that they did not know of or perceive a decline in position for any subset of the community, while 12 percent indicated that there was a subset that was worse off. In Greater Accra region, a majority of respondents, 82 percent, also indicated that they did not know of or perceive that any subset of the community was worse off, while seven percent indicated that there were some who were worse off as a result of the CLS intervention<sup>48</sup>. For those in both regions that indicated that there is a subset of community members that are worse off, the majority indicated that

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<sup>48</sup> The mean response in the two regions was equal, with minimal variance and a p-value of 1 indicating that we accept the null hypothesis and there is no statistical difference between the regions.

poor households were the main group, while only two respondents indicated that migrants were worse off, none indicated that women's position had declined. Regarding the ways in which these groups have become worse off, the majority of respondents in both regions indicated that these groups or households have lost access to land, and several indicated that the concerned subset had been displaced without access to another plot of land. When asked what subset of the community is worse off one respondent in Adankraja replied, "everyone else apart from those who have close relation with the stool," (Survey Respondent – ASH, 2016).

#### **6.4 Conclusion – Interpreting the Results**

What conclusions can be drawn from these results and analysis? From the descriptive statistics, it is evident that the survey did identify a diverse range of respondents, facilitating an assemblage of perceptions of the reform and its implementation from a variety of perspectives in each community inclusive of women, youth, migrants and the poor. The guiding questions for the survey were:

- What changes and/or improvements were made in land administration, if any?
- Do outcomes vary based on extant forms of social organization, i.e. between the type and internal characteristics of customary authorities?
- Did changes in land administration and management result in positive outcomes across various groups including marginalized and vulnerable populations?

In response to the first question, the knowledge of the reforms was relatively low overall, with respondents in Greater Accra having better knowledge of the introduction of the CLS as well as its main functions. There were few if any respondents that fully understood all the functions of the CLS. This reflects the

approach of the reform from above by LAP Secretariat and OASL staff that engaged primarily with customary authorities to insert CLS into customary areas, rather than a focus on engaging the community. The level of knowledge and information regarding the CLS also has implications for its institutionalization and diffusion, if community residents are unaware of the functions of the CLS, how can they take advantage of the services to improve documentation, enhance their access to land, tenure security or resolve disputes? In terms of opportunities for community engagement with the CLS, Greater Accra presented more opportunity and occasions. Here 73 percent of respondents indicated that there were opportunities to interact with CLS staff, and indicated various spaces for engagement such as public meetings or funerals. While in Ashanti region only 12 percent of the respondents indicated opportunities to engage with the CLS. The difference between the two regions was statistically significant and begins to provide support to the second guiding question for the survey that outcomes do vary based on forms of social organization. Regarding changes to respondents' relationship with customary authorities or land sector agencies, there was again difference between Ashanti and Greater Accra. The majority of respondents in the Ashanti region suggest that there was basically no difference in the relationship, while a minority indicated that there was some change, meaning less direct interaction with the customary authorities in lieu of the CLS. In Greater Accra, the relationship with customary authorities seemed to see minimal change, however there was a change in the relationship with the land sector agencies (LSAs), suggesting greater awareness and interaction with the broader set of institutional reforms. While

institutional reform attempted to promote an integrative approach, the reforms within the statutory sector appear particularly beneficial in the Greater Accra region.

The responses regarding community engagement: the relationship between the community, the CLS and LSAs; and accountability appear to reflect the characteristic of hierarchical organization in customary authorities, that is influential in determining the level of community involvement in decision-making and oversight. The Ashanti region is more centralized in nature, with opportunities for upward accountability as suggested earlier with incidence of destoolment of chiefs for predatory behavior. In this context, there is potential for greater coherence and autonomy from local residents, however that autonomy may be utilized in a way that benefits or threatens the population, as will be discussed in looking at access to land and tenure security. The Greater Accra region is decentralized, with disparate landholding families that do not sit under a singular or unified paramountcy. With the introduction of the CLS, community members have strongly signaled opportunities for engagement with the new body as well as engagement with LSAs. This greater level of access does not ensure downward accountability, but at least provides avenues to seek information and work with the CLS. While the study did not test causality, and cannot claim that decentralization is a causal factor for positive outcomes, there does seem to be some correlation given the statistical differences between the regional responses. One rival hypothesis is the issue of proximity of the CLS in Greater Accra to the LAP Secretariat and the OASL, which implemented this part of the reform.

In response to the third question, the survey also sought to identify the perceived preliminary outcomes from the changes in land administration and management, and again to establish if there was any variation between the regions or for marginalized groups. Regarding access to land, the Ashanti region had a normal distribution with a slightly positive skew towards improvements in access to land, while the positive skew Greater Accra was much more pronounced, as shown in Figure 6.8. In both cases, there were a minority of respondents that believed access to land had diminished since the introduction of the CLS. In these cases, the responses were most often linked to increases in land prices. Additional barriers to access land include the entrance of foreign investors into customary areas, including their ability to pay high land prices, and the chief's role in land ownership and allocation. The responses in Adankraja indicate that community members are concerned about the ability of the chief to consolidate his position as land holder as pseudo-owner and utilize that position to derive financial gain to the detriment of community residents' access to land. To determine whether there was any association between status in a marginalized group and perceptions regarding access to land, a chi-square test of independence was utilized. There was no statistical difference between male and female respondents in their perceived access to land. However, in the case of migrants, the poor and youth, there was a difference suggesting that one's status in these groups is related to their perceptions regarding access to land. For instance, the poor were more likely to suggest no change in their access to land, whereas the majority of the non-poor saw some improvement in their ability to access land.

Regarding tenure security, the responses in Ashanti region indicated that the majority of respondents were unaware of any change, followed by 18 percent that suggested tenure security has declined. In Greater Accra, the responses skewed positive, suggesting that tenure security has improved since the introduction of the CLS by LAP reforms. Contributing factors to declining tenure security were similar to those mentioned for access to land: the rising price of land, increasing demand for land, and lack of documentation. Again, the role of customary authorities, particularly chiefs, was noted as a major factor. Chiefs, in their ‘custodial’ role, can manipulate leasehold arrangements and ‘take back’ the land, only to revalue and attempt to find a ‘buyer’ that is capable of paying the higher price of land. In this instance, community residents indigenous to the land do not necessarily feel secure regarding their ability to maintain long-term access to land. In the case of tenure security, there was no difference between male and female respondents, however the perceptions of migrants, the poor and youth status were not independent of their position or status in marginalized groups. The majority of migrants, contrary to expectations, suggested that tenure security improved, while the majority of indigenes indicated no change, with some suggesting negative changes<sup>49</sup>. The survey results for access to land and tenure security provide interesting results in addressing the third question regarding differences in perceived outcomes across groups. While the survey does differentiate the status of respondents, as indigenous

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<sup>49</sup> As noted in the descriptive statistics, only a 10 percent of the population identified as being in the lowest strata of income. This suggests that at least some of the migrants in the sample were relatively better off migrants. The greater the income level, the easier it becomes to access to land and maintain tenure security.

or migrant, the survey does not necessarily illuminate the meaning behind these categories, particularly in terms of expectations. The majority of Ashanti respondents were indigenous to the region. As demonstrated in Chapter 3, being indigenous to a customary area was equivalent to local citizenship in a descent-based group that entitled access to land and guaranteed tenure security. However, with challenging environmental conditions including land scarcity, demographic change and increasing land values, access to land is no longer guaranteed for indigenous residents of customary areas. Thus, the more negative and in some cases frustrated responses regarding the ability of customary authorities to act in predatory ways that threaten this entitlement are likely influenced by these expectations being threatened by change. In addition to the expectations of indigenous residents, the CLS in the Ashanti region provided significantly less opportunity for civic engagement, leaving residents with little recourse to address their concerns about access and tenure security. The opposite is true in the case of Greater Accra region. The majority of respondents are migrants in this region, which means for them that access to land and tenure security is not an entitlement. In addition to the difference in expectations, the majority of respondents from Accra felt that there were opportunities for engagement with the CLS and LSAs. Perhaps the additional factors of expectation and opportunity have some bearing on why perceived outcomes in Accra seem more positive.

Regarding the third dimension, incidence of land-related conflict, only 13 percent of respondents in Ashanti region indicated an increase in land-related conflict, with 24



percent suggesting a decrease. In Greater Accra, the result was higher with 32 percent of respondents indicating an increase in the incidence of land related conflict- some attribute this to the presence of land guards. However, the majority of respondents, 55 percent suggested that the incidence of conflict had actually decreased post-reform. Some of these respondents included legal conflict in their interpretation of the question, suggesting that the decrease was due in part to the use of alternative dispute resolution (ADR) with the CLS<sup>50</sup>, while others described the concerns of community members to engage with the court system, a process that drains financial resources and renders the process of accessing and being able to dispose of land for residential or commercial purposes difficult. Membership in all marginalized groups and perceptions of land conflict were not independent.

The survey also sought to establish if any sub-groups position improved or declined within the customary communities after the introduction of the CLS. The majority of respondents in both regions indicated that there was no specific group that had become better off. However, there were a minority of respondents, 28 percent in Ashanti region and 32 percent in Greater Accra, that indicated some groups had become better off. In both cases, community residents believed that the position customary authorities had improved most since the introduction of the reforms. Customary authorities made gains in terms of their tenure security, interpreted as consolidating their control over land, and ability to derive financial gain. In response

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<sup>50</sup> The Asantehene mandated the use of ADR in the region, as a means to decrease the backlog of land disputes in the courts and to reassert authority over this role as a responsibility of the customary sector.

to whether any group had become worse off following the insertion of the CLS, a minority of respondents in both regions stated that such a decline had occurred: 17 percent in Ashanti region and 12 percent in Greater Accra. They indicated the most affected subgroup were the poor, who are unable to pay rising prices for land and thus see diminishing access and tenure security. In Ashanti region, there was significant concern of negative outcomes for indigenous residents, again reflecting that the majority of the respondents were themselves indigenous. A few respondents indicated other potentially vulnerable groups, such as women or migrants, were adversely affected by the reforms.

From the survey and resulting analysis, the responses of the community residents provides a different perspective from which to view institutional change, incorporating the process of reform as well as reinterpretation. In analyzing the results, some of the concerns raised in Chapter 4 regarding the reform process become apparent. The aspects of the reform observed in the dissertation were successful in that they enabled consolidation and decentralization of the land sector agencies, as well as the layering and insertion of the CLS into customary communities throughout the country. However, the concerns regarding institutionalization and diffusion are reflected in survey responses. The lower level of knowledge regarding the CLS in the Ashanti region suggests that the reforms have not yet fully extended the intended benefits to community residents. Access to land, improved tenure security and a reduction of land conflict are all objectives of the project. Though the evidence is somewhat mixed, there were significant

concerns raised by respondents regarding each of these dimensions. The focus of the reform on engaging customary authorities and seeking to improve their practices related to record keeping and land management to facilitate integration with the statutory sector seems to be having some success. However, this success appears in some instances to be coming at the expense of community residents' ability to maintain access to land and tenure security. Responses from communities such as Adankraja indicate that residents are concerned about the ability of chiefs to consolidate their position over land and entrench a leasehold system that benefits customary authorities rather than community residents. This illustrates that while customary authorities might collaborate with formal institutions, their internal characteristics including hierarchical organization and strength, can contribute to negative or predatory behavior as described in Chapter 5. This result is also consistent with the literature on decentralization, that raises concerns regarding elite capture and decentralizing authority without accountability, particularly in the case of valuable resources (Evans, 2005; Bardhan, 2002; Ribot, Agrawal and Lawson, 2006).

Results based on community responses in Greater Accra demonstrate a slightly different picture. The CLS and knowledge of the reforms was greater in Accra region. Diffusion is likely to be attributed in part to proximity, as the LAP Secretariat and the OASL are both based in Accra and opportunities for repeat interaction with both customary authorities and communities are more feasible. Regarding the three dimensions, access to land, tenure security and the incidence of land-related conflict

seemed to improve. While the majority of respondents in Greater Accra were unaware of improvements in the position of any subset of the community, 32 percent did indicate that there were some groups that seemed to be in a better position post reform though they did not clearly specify which group, however they indicated that those that were better off seemed able to resolve land conflicts and secure some financial gain. A minority of the respondents, seven percent, in Greater Accra indicated that a subset of the population became worse off in the period following the reforms. In the case of Ashanti region, the primary indication for becoming worse off fell on the poor. The data from Greater Accra does not seem to demonstrate predatory behavior. To the contrary, there is much higher mean response indicating interaction with the CLS and a statistically significant difference between Greater Accra and Ashanti regions. The sample CLS communities in Greater Accra are family land, with the exception of Jamestown. As previously indicated, customary authorities under land holding families are more decentralized than the structure seen in Ashanti region, without strong and influential paramountcies leading land governance and administration. The responses for Jamestown, as the only stool land in the Greater Accra region are consistent with the rest of the region in terms of opportunities to interact with the CLS for decision making and accountability. Respondents in Jamestown indicated that there was no change in their relationship with customary authorities post-reform, which is consistent with the mean response for the region. In terms of tenure security and land conflict, respondents in Jamestown indicated more strongly that the situation of these two dimensions improved post introduction of the CLS. Overall, the results

of the survey seem to indicate that the difference in the internal characteristic of centralized versus decentralized organization, stool land in contrast to family land, matters not only in terms of the behaviors and strategies of customary authorities in reinterpreting reform, but also regarding the outcomes in communities themselves. Therefore, the internal characteristics of customary authorities as informal institutions are a contributing factor to community outcomes, though the responses from Jamestown demonstrate a simple causal argument cannot be made without ruling out additional factors including proximity and level of diffusion.

Two broader points can also be derived from the survey results. First, while the LAP focuses on land administration reform, the issue of allocation is inherent in the design. By choosing to focus on improving the institutional arrangements and processes of land management, the project is intentionally choosing not to engage directly with the broader question of redistributing land. By supporting the maintenance of the current system, whereby customary authorities are trustees of the majority of the land and holders of the allodial titles, the state and its donor partners are lending social legitimacy to the customary sector and entrenching the institutionalization of this configuration, which is then taken and reinterpreted according the objectives and interests of these dominant societal actors. The allocation of property rights in this manner is a fundamental determinant of how local citizenship and access to land is defined. In maintaining this system, the assumption is that members of these descent-based communities can continue to access land through these relationships and their entitlement. However, as

demonstrated the shifting environmental conditions as well as the reform itself, which in many ways encourages the development of land markets, undermines these relationships and incentivizes a market-based system where the economic value of land exceeds the importance of social value. One must question the point of bolstering customary authorities, when the bottom is falling out for citizens in customary communities. This point leads to the second observation, as the reform seeks to integrate customary authorities into the logic of the state and the ties to land of indigenous community members are being cut, different patterns of vulnerability or marginalization are being produced. At the outset of the survey, the assumption was that migrant communities, women and youth were historically marginalized groups in Ghana and the reform might negatively impact these sub-sets of communities. However, what came out most strongly in the survey, particularly in the Ashanti region where the majority of respondents were men indigenous to their customary areas, was the concern that indigenous claims to land were threatened. This observation requires a recognition that the definition of vulnerable or marginal groups is not static and can change depending on shifting environmental conditions or from changes by members of the groups themselves. While women, youth and migrants continue to face various challenges to accessing land, their expectations regarding access are significantly lower. Being an indigenous, male resident of a descent-based community used to ensure entitlement to land, this is decreasingly the case and these community members are concerned and frustrated as they see customary authorities benefiting from reforms that substantiate and in some cases increase their authority over land, in an environment where high land values

encourage practices such as revaluation, and allocation or sale of land to the highest bidder, rather than discharging their responsibility to the indigenous community.

## **Chapter 7. Conclusion**

The dissertation addressed a fundamental question in the social sciences: How does institutional change occur? The dissertation interrogated the process of reform as well as behaviors of customary authorities to develop a greater understanding of their role in institutional change. It addressed these questions by analyzing land administration reform in Ghana from 2003 – 2016. Through the analysis of the processes of institutional reform, the reinterpretation of that reform and perceptions of the initial outcomes of reform, the dissertation seeks to understand institutional change and how it differs from the theoretical trajectory. The dissertation employed extensive field research that finds existing theory for institutional change, not fully adequate to explain how change actually occurs. While the dissertation illustrated the role of formal actors in changing the rules through institutional reform, the dissertation also argued that greater attention must be paid to the interests, internal characteristics and strategic behavior of informal institutions and organizations in processes of institutional change. Attention to these attributes of informal organizations also calls into question the practice of extending decentralization theory beyond local government to informal actors. Finally, the dissertation also illustrated the perceived outcomes of institutional change at the community level from the perspective of citizens.

Thus, the dissertation makes three main contributions to the institutions, comparative political economy and decentralization literatures. First, it highlights that understanding institutional change as simply the process of reform is



incomplete without acknowledging the role of informal institutions in receiving and interpreting the reform. Informal institutions matter as they can significantly influence the process of institutional change, particularly concerning reforms that occur at the local scale. Second, the dissertation demonstrates the importance of heterogeneity among informal institutions as a key contribution, rather than an exclusive focus on the position of informal organizations within an organizational field and their propensity to engage in collective action. Third, it problematizes the extension of decentralization beyond local government to informal organizations, revealing expected examples of elite capture, as well as unexpected examples of successful performance. The remainder of the conclusion provides a review of each of these arguments, as well as a broader explanation of how the dissertation provides a revealing look at evolving state-society relations.

The dissertation illustrated the process of institutional reform, as initiated from above by the state in cooperation with international donors, and implemented through three modalities: consolidation, decentralization and layering. The empirical analysis demonstrates that reform is incomplete without considering how changes in institutional arrangements and innovations are received and engaged by formal and informal organizational actors, in this case customary authorities. In this vein, each modality presents its own challenges. The consolidation of organizations through reform in this case, is primarily refracted by formal organizational actors. The attempt to consolidate multiple land sector agencies into the 'one-stop-shop' requires reorganization of the actors in each of those agencies. While this reform

was successful in physically placing the individual LSAs under the new Lands Commission, there remain challenges in organizational behavior and functionality, as actors within each agency seek to maintain autonomy under the new structure. Decentralization occurred in two aspects of the LAP reform: first, LSAs in the statutory system were decentralized to the regional level to increase accessibility and presence of the statutory agencies at the local level. For some customary authorities, an increased presence at the local level, impinges on their ability to freely manage land; for others, this reform provided an opportunity for collaboration. Second, the introduction of the CLS is an example of decentralization beyond local government, as discussed in Chapter 2. The determination to locate the CLS under the customary authorities as opposed to the local government demonstrates the willingness to extend decentralization theory and practice to the most localized actors, customary organizations. Decentralization theory promotes localization of decision-making based on local knowledge and accountability. While customary authorities have extensive knowledge of local communities and customary law, forms of internal organization, including hierarchical structure, do not necessarily fit with the expectation of accountability. It is suggested that the decision to locate the CLS with customary authorities rather than local government was, at least in part, due to political compromise within the LAP project design, and to the significance and power of these dominant informal organizations in society. The insertion of the CLS is also an example of layering as a reform modality. The introduction of the CLS as a new body was intended to support the customary authorities in land administration, intended to increase efficiency in record keeping, land allocation

and conflict resolution among other objectives. This institutional innovation bolstered the social legitimacy of customary authorities over land management and administration. It also provided a new mechanism through which customary authorities could engage in strategic behaviors to maximize their interests and derive benefits from their relationship with the formal LSAs, particularly the OASL and the new Lands Commission. Overall, the three modalities of reform call into question the role of extant institutions, and undercuts negotiated stability by affording organizational actors new space to renegotiate their positions and secure interests in the evolving institutional context. Shifting institutional arrangements and layering in particular, appear to have negative consequences given the extensive historical precedent for the politicization of these types of interventions, which undermined the functioning and stability of reforms. In turn, formal and informal organizational actors are incentivized to pursue short-term interests given that change and restructuring are likely to continue. Initiating institutional change through reform without a sufficient understanding of the motivations and interests of both formal and informal organizational actors is likely to open the reform process to the influence of these actors and lead to unintended outcomes. Thus, institutional change does occur through reform, however without adequate consideration of the internal characteristics, particularly the interests and dominance of key stakeholders, inclusive of informal actors such as customary authorities, the changes may easily diverge from intended outcomes, resulting in a different kind of change.

By seeking to understand how institutions change, the dissertation also examines the institutionalization and diffusion of the reforms, as institutional arrangements were reorganized and institutional innovations inserted into the existing landscape. An organizational reform may become institutionalized, particularly in formal institutional rules as in the case of legal or institutional reform. The consolidation of several land sector agencies into the ‘one-stop-shop,’ was the result of legal and policy reforms, and a reorganization of these institutional arrangements. However, in considering functionality within the new Lands Commissions, the various departments continued to operate as separate domains, suggesting only a surface level of institutionalization. The introduction of the CLS has also become an institutionalized feature in the landscape of institutional arrangements in the land sector. The initial approach of the LAP project to select pilot communities for the introduction of the CLS proved largely unsuccessful without the ownership and buy-in of customary authorities. In the second phase of the project, the LAP Secretariat and the OASL opted for a ‘demand-driven’ approach, requiring sensitization of customary authorities where they learned how the CLS might facilitate their interests. Thus, customary authorities decided whether to participate in the project and host a CLS in their communities. This new approach seems based on the assertion that successful institutionalization of a new reform at the local level often requires a process of constituency building and interpretation, (DiMaggio, 1983). Yet, in both the ‘supply’ and ‘demand-driven’ approaches to the CLS intervention, the reform itself is uniform. The CLS, like the ‘one-stop-shop,’ is intended to be distributed throughout the ten regions of Ghana, without sufficient

attention to the variation of the land regimes regionally and the variation internally within the customary authorities. This innovation is a prime example of coercive isomorphism, identified in Chapter 5, whereby organizations are modified in the direction of increasing homogeneity by inserting support organizations to change their behavior. However, as discussed, centralized decision-makers are distant from organizations that actually experience the consequences of the innovations and thus interpret the reform (Andrews, 2013; DiMaggio and Powell, 1983). Such innovations, applied across an entire field, tend to exhibit low levels of flexibility. As such, the evidence suggests that organizational actors introduce their own adaptations to leverage the reform for their position. Customary authorities have interpreted the CLS in a variety of ways, ranging from the CLS being the conceptualization and responsibility of donor partners, to a means of extracting financial and other resources. Customary authorities have also interpreted the CLS as an opportunity to consolidate their authority over the management and administration of land or a means to capture greater economic value from this increasingly scarce resource. Thus, the institutionalization and diffusion of the CLS is occurring but with local variations in terms of interpretations, intentions and practices.

The institutionalization and diffusion of the CLS can also be viewed through three analytic dimensions that speak to the attributes of customary authorities and how these might support or undermine processes of reform: the origins of customary institutions and organizations, the heterogeneity of their internal organization and their interests and capabilities. As Chapter 3 demonstrated, customary authorities

were co-produced, first by the colonial state and a select minority of chiefs, and then again through contestation with the post-colonial governments. As such, customary institutions and law are embedded within Ghana's formal institutions including the Constitution. However, customary authorities maintain a separate domain that is governed by informal institutions, norms and socially legitimated practices. The long-standing and mutually constitutive relationship between the statutory and customary sectors predisposes customary organizations to cooperate with the state, as the state substantially contributes to their legitimacy. Thus, they engage and cooperate with changes to institutional arrangements, as long as these changes do not directly threaten the survival of the customary sector. Second, the internal organization of customary authorities helps determine the diffusion of new institutions and the degree to which reinterpretation is a factor. Customary authorities that are more centralized, hierarchical or stronger in terms of their ability to enforce decisions have greater ability to interpret institutional innovations to their advantage, and navigate shifting institutional arrangements by institution shopping. Conversely, customary authorities that are decentralized, some to the point of internal fragmentation, and weak in terms of enforcement, have less ability to interpret the institutional innovations to their advantage. Additional aspects of heterogeneity, such as regional differences between urban, peri-urban and rural areas also affect these processes. Urban and peri-urban areas are more likely to successfully institutionalize the CLS than rural areas, due in large part to the greater frequency of land transactions in urban and peri-urban areas that contribute to financial sustainability of the CLS. Third, the interests and capabilities of customary

authorities play a distinct role in how they interpret reform and thus how it is institutionalized or diffused.

Analysis of the strategies and behaviors of informal organizations demonstrates behavioral patterns of these actors. Building on the typology developed by Helmke and Levitsky (2004), which argues the strategies of informal actors are primarily based on the effectiveness of formal institutions; the evidence suggests that the pattern of behavior is based on the interests and internal characteristics of informal organizational actors as illustrated in Figure 5.2.

**Figure 5.2 Behavior of Informal Organizations Based on their Interests and Internal Characteristics**

<b>Interests</b>	<b>Dominant Informal Organizations</b>	<b>Non-Dominant Informal Organizations</b>
Convergent	Collaborative → Competing	Collaborative
Divergent	Subversive	Contested → Fragmented

The primary interests of customary authorities are twofold: the preservation of their status and authority, including the trusteeship of customary land that provides them with legitimacy and control over a crucial resource; and the maximization of rent associated with the management and administration of land. These interests can either be convergent or divergent with the desired outcomes of institutional reform by the statutory sector. The convergent interest for both the statutory and customary sector is the maximization of land-derived rents. The divergent interest for the statutory and customary sectors is the integration into the state, as customary authorities seek to maintain and enhance their separate position and authority

outside of the state. An additional divergent interest, in the long-run, is the goal of formalization leading to a private property regime. While this is a long-term interest for the statutory sector, it is against the immediate and long-term interest of the customary sector as customary authorities would lose the ability to extract rents as a sustainable source of income over the long-run. Internal characteristics of informal organizations can be described as dominant or non-dominant. The dominance of customary authorities as informal organizations is determined by the ability to enforce decisions, political power or social legitimacy and level of centralization. Figure 5.2 illustrates the subsequent strategic behaviors. First, there are dominant informal organizations with interests convergent to those of formal institutions. In this case, the behavior exhibited often begins as collaborative as the interests of both the formal and the informal are similar. However, overtime as the dominance of the informal organization increases, potentially due to an increase in the political power or social legitimacy, they begin competing with the formal institution. Secondly, there are non-dominant informal organizations that have convergent interests, relative to formal institutions resulting in collaborative behavior. In the third category, there are non-dominant informal organizations with divergent interests, relative to those of formal institutions and reform leading to contested behavior as the informal organization is not cohesive or strong enough to assert its interest against that of the formal institution or reform. In the final category, there are dominant informal organizations with divergent interests to those of formal institutions and reform. In this instance, customary authorities game the system, or exercise institutional shopping, subverting formal rules in their favor.



Thus, the dissertation supports the growing chorus in the institutional and comparative political economy literatures that informal institutions matter, as they have the capacity to influence institutional change. It does so through the examination of the strategies and behaviors of informal organizational actors. While the historical institutionalist literature suggests that organizational actors are constantly contesting institutional stability, buttressed by political compromises, there is an implicit assumption that informal organizations sharing political and/or economic interests will engage in collective action to gain advantages or secure their position in the new institutional arrangements (Scott, 2014). While that is the case to a minimal extent with the House of Chiefs, which uses its constitutionally established position to lobby for the maintenance of status and authority of the customary sector at the national level, customary authorities as informal organizations develop their strategies in response to institutional or policy reforms that affect them locally. Chapter Five demonstrates this through analytic description, that customary authorities act according to their interests – preservation of authority and rent maximization – and, internal characteristics including relative strength or dominance rather than their position within an organizational field (Scott, 2014; Stinchcombe, 1968).

The dissertation also provides insight into the perceived outcomes of institutional reform and reinterpretation by the communities. The survey and analysis were guided by three overarching questions:

1. What changes occurred following the institutional reforms, particularly the insertion of the CLS?
2. Do outcomes vary based on forms of social organization or internal characteristics? and;
3. Did changes in land administration and management result in positive or negative outcomes across groups?

The results indicate that institutionalization and diffusion of the CLS was limited, particularly in Ashanti region. While institutional reforms and the insertion of the CLS occurred in each of these communities, the extent to which the impacts or outcomes are felt and perceived by community members seems limited. In part, this result raises questions about the design and implementation of the reform itself, suggesting the need for additional consideration to the literature on how to implement reforms. However, this result also suggests diffusion of a reform and the ability to institutionalize change require a deeper understanding and engagement with extant forms of social organization and communities themselves. There was greater awareness and knowledge of the CLS and LAP reforms in Greater Accra, suggesting better diffusion and institutionalization. Community respondents in this region indicated the ability to engage more with their CLS and either participate in some decision-making activities as in the case of Gbawe, or request information about how land-related resources were being used in the community.

The survey also sought to establish perceived outcomes of community residents along three dimensions: access to land, tenure security and incidence of violence. Along all three dimensions there seem to be more respondents that indicated a positive change than a negative change across both regions. Where respondents

indicated that access to land had diminished, their responses were linked to increases in land prices, followed by the entrance of foreign investors into customary areas and the role of the chief or landholding family in consolidating land ownership for personal gain. In the case of tenure security, there was some divergence between Ashanti region, where the majority of respondents were unaware of a change, followed by a minority that believed that tenure security declined. In Greater Accra, the majority of respondents indicated that tenure security improved. Contributing factors to declining tenure security were similar to those mentioned for access to land: the rising price of land, increasing demand for land, and lack of documentation. Regarding the incidence of land-related conflict, a majority of respondents in Greater Accra indicated a decrease in conflict post-reform. This percentage was much lower in Ashanti region, again with the majority of respondents unaware of changes in either direction. The majority of respondents in both regions indicated that there was no specific group that had become better off. However, there were a minority of respondents that indicated some groups had become better off. In these instances, community residents believed that the position customary authorities had improved most since the introduction of the reforms. Similarly, a minority of respondents in both regions indicated that one subset of their communities had become worse off following the introduction of the CLS, the poor. The issue of rising land value most directly affects the ability of poor community residents to access land and maintain tenure security. Though the overall picture is somewhat mixed, there were significant concerns raised by respondents regarding each of these dimensions. One somewhat surprising outcome, was the

significant concern for indigenous access to land as opposed to that of migrants. The survey hypothesized that vulnerable or marginalized groups such as women or migrants would voice frustration with the reform regarding access to land and tenure security. While, there was some acknowledgement of these concerns by a minority of respondents, significant concern emerged for indigenous community members diminishing ability to access land. As explained in Chapter 6, indigenous membership in a descent-based community was a guarantee or entitlement to land. However, with increasing land scarcity and commodification of land, this aspect of customary institutions is eroding, allowing for these claims and interests to be denied. The data reveals that the clear beneficiaries of the reforms are customary authorities, while the poor are reported as suffering the most under the LAP reforms. The results of the survey demonstrate that the difference in the internal characteristics of hierarchical versus decentralized organization, stool land in contrast to family land, matters not only in terms of the behaviors and strategies of customary authorities in reinterpreting how to position the CLS vis-à-vis their communities, but also regarding the outcomes in communities themselves. The internal characteristics of customary authorities as informal institutions are a contributing factor to community outcomes, though a simple causal argument cannot be made without measuring additional factors including proximity and level of diffusion.

Looking at the overall results of the study, the dissertation presents not only a case study of institutional change, but also reveals an evolving picture of state-society

relations. This case demonstrates that institutional change in the land sector occurs primarily through state-led reform, which is then interpreted and mediated by customary authorities as the dominant organizations in society. The state is engaged in a process of state-making and consolidation with the objective of economic transformation. In the African context, state-making in the pre-colonial period was expressed through conquest and consolidation. As highlighted by Mbembe in Chapter 2, the assemblage of land or territory was a discontinuous process, as wars and mobility of populations defined the rise and fall of polities and ethnic states. However, the colonial period induced territorial competition more akin to that which precipitated state-making in the European context, where European powers and disparate local elites engaged in a period of contestation, war and negotiation, lasting over a century in Ghana, that yielded territorial consolidation of the colonies<sup>51</sup>. This process also instigated the initial efforts to construct legal and political institutions<sup>52</sup> that could facilitate the exercise of economic and political power over colonial territory. The dissertation reveals that institutional reforms in the land sector are triggering a new moment of territorial competition. These reforms, which seek to reconstitute legal frameworks and institutional arrangements, call into question the balance of political and economic power foundational to the state. This is evident in the process of land administration reform, which serves as a mechanism to facilitate

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<sup>51</sup> Since this period of colonial territorial consolidation, African countries have stridently sought to preserve and reinforce these boundaries for fear of dispersion on a massive scale, due to extreme diversity in ethnic and linguistic groups and the arbitrary nature of many national boundaries.

<sup>52</sup> Here, I refer to the legal and political institutions of the colony. This does not negate the existence of extant institutions, but these institutions were hyper-local to pre-colonial polities. The colonies, themselves an assemblage of multiple ethnic and political societies, were the first attempt at larger scale consolidation that resembles present day African states.

legibility and homogenization in the land sector. The reform modalities of consolidation, decentralization and layering are employed to these ends, in an effort to establish coherence.

According to state and society literature, there seems to be an implicit assumption that state-making is done exclusively by the state that makes autonomous policy decisions – towards homogenization, legibility and consolidation – in a directive manner. Rather, what we see is that state-making can be: i) a multi-nodal process whereby there are moments that states establish and re-establish themselves with new configurations – including political and economic institutions; and ii) an interactive process whereby states take policy decisions that are negotiated formally and informally with various actors, externally with international institutions and internally with dominant societal actors that exercise varying levels of social control as well as economic and political power. In this case, these institutional reforms are based on an integrative approach, in which state actors seek to incorporate customary authorities into a logic of the state, emphasizing coherence instead of autonomy, as traditionally posed in the statist literature discussed in Chapter 2. However, the integrative approach is flawed as it downplays the heterogeneity of organizations, as well as their interests and capabilities. One of the perils of decentralizing beyond the state is the diminishing ability to elicit coherence in terms of interpretations of reform and subsequent behaviors. As such, customary authorities leverage institutional innovations and shifting arrangements to achieve their goals according to these interests and internal characteristics. The dissertation

findings suggest that institutional change in the context of complex state-society relations, can instigate simultaneous dynamics of centralization and decentralization, whereby the state asserts its 'stateness' and attempts to establish dominance over societal actors. Simultaneously, we see that institutional change through reform can facilitate decentralized and fragmented behavior when heterogeneous informal organizations are involved.

Returning to the overarching questions, the dissertation has illustrated how institutional change occurs by exploring the dual processes of reform and reinterpretation, including an examination of the relevant actors. It has done this by foregrounding the role that informal institutions and organizations play in determining the trajectory of change. In so doing, the dissertation has made a theoretical contribution to the literature on institutional change from this perspective and specifically demonstrated that, in addition to the relationship of informal institutions to those in the formal sector, that their heterogeneity and internal characteristics also matter in how reinterpretation occurs, with implications for the impacts on communities affected by institutional change.

**Appendix A.  
Qualitative Interview Respondent Organizations\***

Accra Metropolitan Assembly

Civil Society Coalition on Land (CICOL)

Cities Alliance

CLS Staff – Adankraja, Amamole, Appiadu, Bekwai, Ejisu, Gbawe, Haatso,  
Jamestown, Manhyia

Ga Mashie Development Authority

Institute for Local Government Studies

Kumasi Metropolitan Assembly

Kwame Nkrumah Institute of Science and Technology

Lands Commission – Accra and Ashanti Region

LAP Secretariat

Ministry of Land and Natural Resources

Office of the Administrator of Stool Lands

People’s Dialogue

University of Ghana – Legon, Institute for Statistical, Social and Economic Research  
(ISSER)

World Bank

*\*Individual names and titles not cited due to potential recognition.*



## **Appendix B.**

### **MODEL INTERVIEW PROTOCOL**

*This protocol was modified slightly depending on the interview respondents, particularly in reference to state and non-state actors.*

**Research Question:** How does institutional change occur and what role do informal institutions and organizations play? How do varied forms of social organization within informal institutions influence institutional reforms in the land sector?

### **Interview Protocol – Questions**

#### **Past Institutional and Organizational Arrangements for Land**

1. How was land governed prior to the revision of the Land Policy of 1999 and the introduction of the Land Administration Project in 2002?
2. What government or non-government organizations were responsible for the allocation and management of land; disputes? Please describe.
3. What were the major concerns regarding urban and peri-urban land?
4. Did urban and peri-urban residents have concerns about tenure security? How did they seek to maintain or ensure tenure security?

#### **Present Institutional and Organizational Arrangements for Land – LAP project**

5. What is the current institutional arrangement to address land allocation and management at the local level, with LAP interventions?
6. How has the introduction of the CLS changed the relationship between community members and the traditional authorities?
7. How has the introduction of the CLS changed the relationship between LSAs and the communities?
8. How might this differ in Ashanti vs. Greater Accra regions? How does the influence of a king or high-level paramount chief impact the functioning of the CLS and LSAs? To settle boundary disputes and land related conflicts? To support community development?

### **Mechanisms for Accountability**

9. What opportunities or mechanisms exist for individuals or community-based organizations to engage with any land related agencies for the purposes of consultation, decision-making or accountability?
10. Does the CLS facilitate greater community engagement, or is it more so just for individual use to record deed/title and then formally register?
11. Are there any opportunities for community groups/organizations to interact with the CLS or LSAs to address common concerns?
12. Is there transparency regarding how plots are allocated, the site plan for the area or how monies collected by the TAs are dispensed, ie. for community development?

### **Impacts of the Reform**

13. Have there been improvements in access to land, tenure security or conflict resolution for poor communities or individuals since the implementation of the CLS?
14. Have there been any communities or individuals who have become worse off since the introduction of the CLS and land policy reforms? How and whom?
15. If there are any negative impacts resulting from the CLS or land reforms, how are they being challenged or addressed?

## Appendix C.

### Survey Protocol

LAND REFORM COMMUNITY LEVEL SURVEY	
Biographical Information	Response Options
How long have you lived in this community?	<p>1.0 - The respondent has lived in this community for 0 – 5 years.</p> <p>2.0 - The respondent has lived in this community for 6 – 10 years.</p> <p>3.0 - The respondent has lived in this community for 11 – 15 years.</p> <p>4.0 - The respondent has lived in this community for 16 – 20 years or more.</p>
Are you from this region?	<p>0 - No, the respondent is a migrant from another region within Ghana.</p> <p>1 - Yes, respondent is originally from this region.</p>
Are you considered a migrant by indigenous community members in your current community?	<p>0 - Yes, the respondent is considered a migrant by indigenous community members.</p> <p>1 - No, the respondent is not considered a migrant by indigenous community members.</p>
What activity do you do for employment?	<p>1.0 - The respondent engages in farming as the primary means of income.</p> <p>2.0 - The respondent is employed in the public sector as the primary means of income.</p> <p>3.0 - The respondent engages in small business as the primary means of income.</p> <p>4.0 - The respondent is employed as a vendor as the primary means of income.</p> <p>5.0 - The respondent is engaged in some other activity as the primary means of income.</p>
Approximately how much income do you earn per month?	<p>1.0 - Between 0 - 170GHc.</p> <p>2.0 - From 171 - 510GHc.</p> <p>3.0 - From 511 - 850GHc.</p> <p>4.0 - From 851 - 1190GHc.</p> <p>5.0 - Including or above 1191GHc.</p>

<b>LAP Institutional Reforms</b>	<b>Response Options</b>
How was the CLS introduced to this community?	<p>0 - No introduction was made of the CLS.</p> <p>1.0 - The respondent is unaware of the introduction of the CLS.</p> <p>2.0 - The CLS was introduced by an announcement made by the CLS staff.</p> <p>3.0 - The CLS was introduced through a sensitization program by one of the land sector agencies OASL/LAP.</p> <p>4.0 - The CLS was introduced by an announcement made by the land holding family or traditional authority.</p>
Was there any community involvement in the decision for the CLS to come to the community?	<p>0 - No, there was no community involvement in the decision for the CLS to come to this community.</p> <p>1 - The respondent does not know whether there was community involvement in the decision for the CLS to come to this community.</p> <p>2 - Yes, there was community involvement in the decision for the CLS to come to this community.</p>
What are the responsibilities of the CLS according to your understanding? <i>Indicate all that apply.</i>	<p>0.5 - a) The responsibilities include responding to requests for allocation or purchase of land plots.</p> <p>0.5 - b) The responsibilities include responding to requests to assist in the registration of land.</p> <p>0.5 - c) The responsibilities include settling land disputes.</p> <p>0.5 - d) The responsibilities include identifying available plots of land.</p> <p>0.5 - e) There are additional responsibilities not listed here.</p>
Are there opportunities or mechanisms for individuals or community-based organizations to engage with the CLS for the purposes of community decision-making or accountability?	<p>0 - No, there are not opportunities or mechanisms for individuals or community-based organizations to engage with the CLS for community decision- making or accountability.</p> <p>1 - It is unknown whether there are opportunities or mechanisms for individuals or community-based organization to engage with the CLS for community decision- making or accountability.</p> <p>2 - Yes, there are opportunities or mechanisms for individuals or community-based organizations to engage with the CLS for community decision-making or accountability.</p>

<p>What type of interactions do citizens and/or community groups have with CLS officials? <i>Indicate all that apply.</i></p>	<p>o.o - a) There is no interaction between citizens or community groups with CLS officials.  o.5 - b) Citizens and community groups can attend public meetings where they can engage with the CLS officials.  o.5 - c) Citizens and community groups can meet independently with CLS officials.  o.5 - d) Citizens and community groups can petition CLS officials.  o.5 - e) Citizens and community groups can request information from CLS officials.  o.5 - f) Citizens and community groups can engage with CLS officials through other means.</p>
<p>What information requests, or concerns do members of your community organization communicate with the CLS or other local government officials regarding land? <i>Indicate all that apply.</i></p>	<p>o.o - a) There are no requests or concerns raised.  o.5 - b) Members of the respondent's community make requests for information regarding available land plots.  o.5 - c) Members of the respondent's community make requests for information regarding price of land sales.  o.5 - d) Members of the respondent's community make requests for information regarding how collected money has been spent/allocated.  o.5 - e) Members of the respondent's community make voice concerns regarding poor management of land. (i.e. multiple land sales, lack of conflict resolution)  o.5 - f) Members of the respondent's community voice other concerns.</p>
<p>Has the insertion of the CLS changed the relationship of community members with the family or traditional authority over land?</p>	<p>o - The respondent does not know if the insertion of the CLS has changed the relationship of the community members with the family or traditional authority over land.  1 - No, the insertion of the CLS has not changed the relationship of community members with the family or traditional authority over land.  2 - Yes, the insertion of the CLS has changed the relationship of community members with the family or the traditional authority over land.</p>
<p>Has the insertion of the CLS changed how community members engage with or use other</p>	<p>o - The respondent does not know if the insertion of the CLS has changed the relationship of the community members with the family or traditional authority over land.</p>

land sector agencies?	<p>1 - No, the insertion of the CLS has not changed how community members engage with or use other land sector agencies.</p> <p>2 - Yes, the insertion of the CLS has changed how community members engage with or use other land sector agencies.</p>
<b>Impact of Reforms</b>	<b>Response Options</b>
Have there been changes in access to land since the implementation of the CLS/LAP project?	<p>-2 - It has become significantly more difficult to access land since the implementation of the CLS/LAP project.</p> <p>-1 - It has become more difficult to access land since the implementation of the CLS/LAP project.</p> <p>0 - There has been no change in access to land since the implementation of the CLS/LAP project.</p> <p>1 - There has been some improvement in access to land since the implementation of the CLS/LAP project.</p> <p>2 - There has been significant improvement in access to land since the implementation of the CLS/LAP project.</p>
If the response to the previous question is (-2) or (-1), what has created the increased challenge to access? <i>Indicate all that apply.</i>	<p>0.5 - a) The price of land has created challenges in access to land.</p> <p>0.5 - b) The lack of available plots has created challenges in access to land.</p> <p>0.5 - c) The lack of clear boundaries has created challenges in access to land.</p> <p>0.5 - d) An increase in population has created challenges in access to land.</p> <p>0.5 - e) The purchase of land by foreign investors has created challenges in access to land.</p> <p>0.5 - f) Other, indicate the cause in the justification of response section.</p>
Have there been changes in tenure security since the implementation of the CLS/LAP project?	<p>-2 - There has been a significant increase in tenure insecurity since the implementation of the CLS/LAP project.</p> <p>-1 - There has been an increase in tenure insecurity since the implementation of the CLS/LAP project.</p> <p>0 - There has been no change in tenure security since the implementation of the CLS/LAP project.</p> <p>1 - There has been some improvement in tenure security since the implementation of the CLS/LAP project.</p> <p>2 - There has been a significant improvement in tenure security since the implementation of the CLS/LAP project.</p>

<p>If the response to the previous question is (-2) or (-1), what factors have contributed to the increased tenure insecurity? <i>Indicate all that apply.</i></p>	<p>0.5 - a) Increasing demand for land has contributed to increased tenure insecurity.  0.5 - b) Rising economic value (price) of land has contributed to increased tenure insecurity.  0.5 - c) A lack of appropriate documentation has contributed to increased tenure insecurity.  0.5 - d) A lack of respect for use rights including <i>abusa</i> and <i>abuna</i>, have contributed to increased tenure insecurity.  0.5 - e) Other, indicate the cause in the justification of response section.</p>
<p>Has there been a change in the incidence of conflict regarding land since the implementation of the CLS/LAP project?</p>	<p>-2 - There has been a significant increase in conflict since the implementation of the CLS/LAP project.  -1 - There has been an increase in conflict since the implementation of the CLS/LAP project.  0 - There has been no change in conflict since the implementation of the CLS/LAP project.  1 - There has been some reduction in conflict since the implementation of the CLS/LAP project.  2 - There has been significant reduction in conflict since the implementation of the CLS/LAP project.</p>
<p>If the response to the previous question is (-2) or (-1), what factors have contributed to increases in land related conflicts? <i>Indicate all that apply.</i></p>	<p>0.5 - a) Increasing demand for land has contributed to increases in land related conflict.  0.5 - b) The lack of clear plot boundaries has contributed to increases in land related conflict.  0.5 - c) The use of land guards has contributed to increases in land related conflict.  0.5 - d) The presence of foreigners has contributed to increases in land related conflict.  0.5 - e) The presence of migrants has contributed to increases in land related conflict.  0.5 - f) Other, indicate the cause in the justification of response section.</p>
<p>Is there any subset of the community or households that has become worse off since the introduction of the</p>	<p>-1 - Yes, there is a subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.  0 - The respondent does not know if there are any subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.</p>

<p>CLS and land policy reforms?</p>	<p>1 - No, there is not a subset of community members or households that have become worse off since the introduction of the CLS and land policy reforms.</p>
<p>Which groups have become worse off since the introduction of the CLS and land policy reforms? <i>Indicate all that apply.</i></p>	<p>0.0 - a) No groups have become worse off since the introduction of the CLS and land policy reforms.  0.5 - b) Foreigners have become worse off since the introduction of the CLS and land policy reforms.  0.5 - c) Migrants have become worse off since the introduction of the CLS and land policy reforms.  0.5 - d) Poor households have become worse off since the introduction of the CLS and land policy reforms.  0.5 - e) Traditional authorities have become worse off since the introduction of the CLS and land policy reforms.  0.5 - f) Women have become worse off since the introduction of the CLS and land policy reforms.  0.5 - g) Other, indicate the cause in the justification of response section.</p>
<p>In what ways have these groups or households become worse off?</p>	<p>0.0 - a) No groups have become worse off since the introduction of the CLS and land policy reforms.  0.5 - b) Groups or households have lost access to land.  0.5 - c) Groups or households have been displaced but relocated to another plot of land.  0.5 - d) Groups or households have been displaced but compensated for displacement.  0.5 - e) Groups or households have been displaced without access to another plot of land.  0.5 - f) Groups or households have been forced to return to region of origin.  0.5 - g) Other, indicate the cause in the justification of response section.</p>
<p>Is there any subset of the community or households that have become better off since the introduction of the CLS and land policy reforms?</p>	<p>-1 - No, there is not a subset of community members or households that have become better off since the introduction of the CLS and land policy reforms.  0 - The respondent does not know if there are any subset of community members or households that have become better off since the introduction of the CLS and land policy reforms.</p>



	<p>1 - Yes, there is a subset of community members or households that have become better off since the introduction of the CLS and land policy reforms.</p>
<p>Which groups have become better off since the introduction of the CLS and land policy reforms? <i>Indicate all that apply.</i></p>	<p>0.0 - a) No groups have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - b) Foreigners have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - c) Migrants have become worse off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - d) Poor households have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - e) Traditional authorities have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - f) Women have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - g) Other, indicate the cause in the justification of response section.</p>
<p>In what ways have these groups or households become better off? <i>Indicate all that apply.</i></p>	<p>0.0 - a) No groups or households have become better off since the introduction of the CLS and land policy reforms.</p> <p>0.5 - b) Groups or households have improved access to land since the introduction of the CLS and land policy reforms.</p> <p>0.5 - c) Groups or households have improved tenure security since the introduction of the CLS and land policy reforms.</p> <p>0.5 - d) Groups or households have been able to resolve land related conflicts since the introduction of the CLS and land policy reforms.</p> <p>0.5 - e) Groups or households have received financial gain since the introduction of the CLS and land policy reforms.</p>

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