



# Hybrid Land Governance and The Politics of Institutional Change in Ghana: Explaining Divergent Trajectories

Thesis submitted for the degree of Doctor of Philosophy  
**School of Real Estate and Planning**

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**June 2019**

**Declaration**

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

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## **Abstract**

Much of the promise of governing Africa's land market since the 2000s has rested on reforms aimed at getting the right institutions in place, sometimes by creating new hybrid regimes to make formal and customary administration more compatible. Such 'institutional fix' strategies are often frustrated because the new institutions themselves are embedded in existing structures and power relations that shape the priorities, political preferences and interpretations of social actors affected by them. The thesis argues that attempts to develop new hybrid institutions for land governance at the local level in Ghana between 2003 to date under the Land Administration reforms illustrates this dynamic. By providing greater understanding about the conflictual and political process of creating new hybrid institutions in urban settings, the thesis aims to contribute to debates about how to operationalise hybrid land governance practices at scale in ways that facilitate equitable land development.

Conclusions were drawn from case study analysis of three urban communities that have benefitted from a long period of government's attempts to institutionalize new hybrid institutions for land governance: Gbawe in the Ga south municipality (Accra), Ejisu and Juaben both located in the Ejisu-Juaben municipal area (Kumasi). Building on historical institutionalism and ideational theories, the analyses focused on why attempts to make customary tenure and statutory law compatible under the Ghana Land Administration Program are producing widely diverging outcomes in the country. The thesis explores this divergence in relation to three critical aspects of urban transformation: land governance, local land use planning and urban land value capture.

The research results suggest that whether state interventions induce institutional change or not depends on customary actors' political priorities and the extent to which they valued compatibility between customary and formal institutions. These differing political priorities impelled customary actors in Gbawe and Juaben to implement the new hybrid arrangements by preparing the ground. Customary actors prepared the ground by reflecting on existing institutional arrangements, conceiving and 'selling' persuasive new proposals that appealed to shared cultural understandings of targeted supporters. On the contrary, in Ejisu customary actors' political priorities incentivized overriding these new hybrid institutions in the interests of political and economic gain. This study argues that the chances of achieving transformative hybrid regimes in land governance is enhanced when government's layering efforts when they activate existing potentials generated by supportive customary actors, and when it limits their ability to counter change. In addition, it suggests that theories of institutional change that focus on the largely theorized positive outcomes of hybrid regimes may miss the extent to which existing institutional context and the actors empowered within them can shape the course of reform, either by (un)intentionally interpreting or redeploying new institutions to new goals that may be inconsistent with national land policy objectives.

## **Acknowledgement**

First and foremost, I would like to offer profound thanks to my supervisors, Dr Angelique Chettiparamb and Professor Peter Wyatt, who were extremely diligent at reading all my chapters along the way in a timely manner and providing detailed, thought-provoking and constructive feedback. It is your precious comments and critiques that have allowed me to grow as a research scientist and to begin an intellectual journey. I am really fortunate to have been mentored by you both! Thank you very much. I further thank Dr Angelique Chettiparamb for the opportunity to work as the Editorial Administrator for Planning Theory, a top-ranking journal within the planning discipline. The experience, exposure to renowned planning scholars, and opportunities to participate in several international conferences have continued to shape my values, worldviews and my research projects and engagements.

The PhD was funded for three years by the School of Real Estate & Planning (REP) and Reading Real Estate Foundation (RREF). In relation to this, I am most grateful REP & RREF for the generous scholarship that played such an important role in enabling me to undertake this thesis, including funding to participate in several international conferences. To my colleagues and friends at the School of Real Estate and Planning especially Mark Dobson, Steffen Heinig, Shuai Shi, Tina Beale, Kenneth Donkor-Hyiaman for the many insightful comments and suggestions that fed into this project along the way (not to mention the interesting coffee conversations and fun times!!). Helen Clark, you made my studies (and that of many other PhDs) in HBS pleasant and enjoyable. Thank you. And to my family in Reading - Reading University Ghanaian Students' Society – for loving and supporting me throughout my journey. Your love has been incredible.

I received assistance from many people during my field research. I am particularly grateful to the chiefs, elders, secretaries, and indigenes of the study communities not just for sharing their views with me but also for the personal support they gave me. I am also indebted to the staff of the Customary Lands Secretariats, the Town and Country Planning Department in Ejisu-Juaben and Ga South Municipality, the various divisions of Lands Commission and to staff of the Land Administration Project for granting my interviews and offering me valuable information for this thesis. In addition, I am extremely grateful to Festus Animah and Brendan Atarigeya for your friendship and for accommodating me all the times I visited Ghana, without which my stays would have been considerably more complicated and expensive! My thanks go out also to Marie Vanderpuye, Victoria Okoye, Edward Lanyoh Tetteh and Efua Akwatea Mensah for the many interesting conversations that enriched my experience in Ghana.



Above all, I would like to thank my family for showing me plenty of love, support and encouragement despite distance. I particularly thank my parents, John Bosco Ayitio and Monica Kampoki for the support, sacrifice and for instilling in me a culture of hard work and discipline. To my brothers, Desmond, Collins and Pius who sacrificed a lot during the course of this journey, while supporting me with your prayers. To my mentor, Dr Kwadwo Ohene Sarfoh and his wife, Mrs. Rita Ohene Sarfoh, I am extremely grateful to you for your faith in me, and for your constant support, encouragement and prayers throughout this journey. Thank you and God bless you!! To Urban Akagwire, Bismarck Guba and Cornelia Agyenim-Boateng (*ground up to the top chale*), you brought to me a lot of focus, stability and strength. You wrote with me and encouraged me all the time. You are rare friends. Thank you!

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## **List of Acronyms**

AESOP	Association of European Schools of Planning
BoG	Bank of Ghana
CAP	Commonwealth Association of Planners
CBD	Customary Boundary Demarcation
CLS	Customary Lands Secretariat
CR	Critical Realism
DFID	Department for International Development
FGD	Focus Group Discussion
GDP	Gross Domestic Product
GIPC	Ghana Investment Promotion Centre
GLNT	Global Land Tool Network
ICT	Information and Communications Technology
LAP	Land Administration Project
LMC	Land Management Committee
MESTI	Ministry of Environment Science, Technology and Innovation
MPCU	Municipal Planning and Coordinating Unit
NLP	National Land Policy
OASL	Office of the Administrator of Stool Lands
SAP	Structural Adjustment Program
SDF	Spatial Development Framework
TCPD	Town and Country Planning Department
UN-HABITAT	United Nations Human Settlement Programme
UN	United Nations

## Chapter 1 - Introduction

### 1.1 Research Context

For decades now, scholars have emphasised the pace at which cities are growing in Africa and the implications of this for development (Davis, 2006, Silva, 2012). Urban growth has generally been extremely high in recent decades<sup>1</sup>. The World Bank, for example, estimates that the number of Africans living in urban areas is projected to grow from 36% in 2010 to 50% by 2030 (Lall et al., 2017). Yet, much of the urban growth is happening in a context of low levels of industrialisation, and most cities are often unable to provide adequate infrastructure, housing and basic services to their growing populations (United Nations, 2014, United Nations, 2017b). These challenges have been compounded by rising inequality, informality, constrained fiscal decentralization and weak systems of governance (Myers, 2011, Parnell and Pieterse, 2014, Pieterse et al., 2015, Pieterse and Hyman, 2014). In this context, the problem of how to effectively manage Africa's urban transition is therefore more urgent now than ever.

Most governments are responding to this urban challenge by directing their attention toward land governance and urban institutional reforms, in order to enable investment and development, reward compliance, and ensure enforcement (Napier et al., 2013, Pieterse et al., 2015). These attempts are against the backdrop that the growth of most of Africa's cities are hindered by dysfunctional urban institutions and regulations that misallocate land and limit productivity (Lall et al., 2017, World Bank, 2015). In many African cities, the nature of land tenure is such that formal, communally defined and informal land rights co-exist or overlap as in the case of South Africa, Ghana, Mozambique, Zambia and so on (Napier et al., 2013). These overlapping and sometimes conflicting property rights regimes are considered as severe constraints to urban land development (El-hadj et al., 2018, Firmen-Sellers, 1996). And because these structural problems are likely to persist as the principal constraints on economic growth, addressing them is one of Africa's most urgent challenges today.

Some urban economists have argued that informal land markets are not good enough for African cities, insisting that clear rights to urban land are necessary for the emergence of a formal land market (Collier, 2017, Collier et al., 2018, Lall et al., 2017). It is believed that formal land markets will notably increase economic efficiency as well as help African cities tap the potential of rising land values to

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<sup>1</sup> The distinction between urban growth and urbanisation is an important one, the former referring to the increase in absolute numbers of people living in cities and the latter to an increase in the proportion of the population in urban as opposed to rural areas (Dyson, 2010). The former is proceeding at a globally unprecedented rate; the pace of the latter on the continent as a whole is more contested (see Potts, 2009; Fox, 2012 and Potts, 2012)

finance infrastructure and other public goods. Indeed, most of the land in sub-Saharan Africa is governed under various forms of customary tenure where property rights depend on the consent of customary authorities (i.e. local chiefs or family elders). This means that where planning capacities to coordinate these customary regimes are weak, a vast majority of land transactions take place outside statutory regulatory and legal systems (World Bank, 2015). Such market constraints, it is argued, contribute largely to the low investment in land development and housing in most African cities (see for example Collier et al., 2018, El-hadj et al., 2018, Lall et al., 2017). But even where customary land markets work, land records are maintained poorly, causing disputes (Barry and Danso, 2014). This is partly because the processes of acquiring formal land titles can be lengthy and costly, involving many administrative steps over several years (Toulmin, 2009). In Tanzania for instance, an application for land registration involves as many as 68 administrative steps over several years (World Bank, 2019). In Nigeria, the process of obtaining a formal land title can cost up to 30% of the price of property construction (Lall et al., 2017). Unsurprisingly, only 10% of total land in Sub-Saharan Africa has been registered (Byamugisha, 2013). West Africa in particular has the lowest proportion. Only 2-3% of land is held with a government-registered title (Toulmin, 2009), although this figure may have improved due to recent national titling programs undertaken by various countries (Byamugisha, 2013, Boone, 2019). Some scholars have acknowledged how the lack of a proper registration system prevents urban land markets from functioning well (Deininger and Feder, 2009, Hendriks et al., 2019b), and how it creates obstacles to revenue generation efforts for local governments (Berrisford et al., 2018, Lemmen et al., 2017). For these reasons, the priority of most governments has been to reform urban land markets and regulations by formalising land markets, clarifying property rights and instituting effective urban planning regimes (Lall et al., 2017, Napier et al., 2013, Berrisford et al., 2018).

The discourse on improving land and property rights in Africa's cities has been occurring alongside critical dialogs on how these governments could also leverage land values to finance the rising urban infrastructure needs (Turok, 2016, Lall et al., 2017). Many scholars (e.g Alterman, 2012b, Peterson, 2008, Berrisford et al., 2018) have suggested that land-based infrastructure financing has the greatest payoff where there is rapid urban growth. Rapid growth causes land values to rise markedly, which can be captured in the form of taxes or other instruments to finance public infrastructure (Peterson, 2009, Turok, 2016, Paulais, 2012). The implication here is of new frameworks for land markets comprising a suite of land and planning tools aimed at directly extracting revenue for government from the land development process. France, Japan, and the United States used land-based financing most heavily during periods of rapid urban growth, when there were leaps in the scale of urban investment (Alterman, 2012b, Booth, 2012, Walters, 2013). Several Latin American cities, especially Bogota, Buenos Aires and Sao Paulo are successfully leveraging the value of their land to finance

infrastructure and provide public goods and services (Smolka, 2013). Other countries like Scotland have started to explore the opportunity of complementing intergovernmental transfers with land taxes to provide public goods and services (Hughes et al., 2018). Introducing such regulatory frameworks however requires strong institutions to define property rights clearly, ensure standardized and objective methods of land valuation and oversee the process of land management, land sales and tax collection (Paulais, 2012, African Centre for Cities, 2015). This means that African cities that succeed in improving the underlying land tenure, land market, and land governance conditions, would therefore be able to capture and direct rising values towards the financing of urban infrastructure. Moreover, improvements in land and property rights system could equally incentivise private developers to invest in land and housing. This represents a 'double win' and a motivation for African governments to pursue land and urban regulatory reforms.

These arguments have spurred renewed interest among African urban policymakers to develop land policies that enable efficient land markets and to create platforms on which land use coordination, infrastructure investment and urban regulation can be achieved. However, for most African cities where state and customary property rights overlap, achieving these objectives typically involves the integration of state and customary land governance systems (Byamugisha, 2013). This is because previous attempts to privatise customary land rights through large scale titling programs have produced varied results - sometimes starkly contrasting outcomes (Payne et al., 2009, Sjaastad and Cousins, 2009, Bromley, 2008). At the same time, customary tenure has begun to be seen as progressive and adaptable by urban policymakers (Boone, 2019, De Soto, 2000). Therefore, recent land policies have started to embrace an approach which combines private property rights with communal land rights regimes, especially where the two systems are mostly interdependent such as in Ghana, South Africa, Tanzania, Burkina Faso, Zambia and so on (Napier et al., 2013). This typically involves specific actions such as recognising customary tenure and standardizing existing customary practices within statutory law, documenting and registering customary land users and physically surveying boundaries to make customary tenure more legible (Biitir et al., 2017, Schreiber, 2017).

The broad aim of this policy approach is to facilitate the emergence of a more formal market on customary land in peri-urban areas and to allow land transfers to those best able to use it productively (Lall et al., 2017, Obeng-Odoom, 2012). It is claimed that the integration of customary practices with statutory practices could create clear pathways for statutory recognition of customary tenure practices, and thus reduce the problems associated with legal pluralism (co-existence of customary tenure and statutory practices). In this way, land administration becomes more predictable and property transactions more efficient. Furthermore, these initiatives seek to extend the state's power



into a realm that has hitherto largely remained governed through local rules and norms (Byamugisha, 2013). By bringing customary land closer, the state can administer and implement new laws while providing supportive mechanisms meant to stabilise some of the inefficiencies associated with customary tenure such as the curtailment of usufructuary rights, or unaccountability of chiefs regarding land revenues (Ubink and Quan, 2008, Ahmed et al., 2018). In this way, it may be possible to leverage the best parts of customary systems and integrate them with statutory laws and practices: that is, combine the technical and enforcement capacity of the state with the successful principles of customary tenure to administer and govern land development processes in cities.

For a long time, planning scholars focusing on the global south have been arguing that governments should recognise everyday practices and harness the existing structures already fulfilling planning and urban development roles (Berrisford, 2014, Taylor, 2004, Watson, 2013a, Yiftachel, 2006), and now this is happening. Moreover, emerging consensus over the necessity and centrality of government collaboration with non-state actors including customary authorities has been solidified through the UN Habitat 'Towards an Africa Urban Agenda' (Pieterse et al., 2015). Most governments are taking non-state actors in urban planning and management more seriously, with some African countries and cities attempting to make formal and customary administration more compatible by developing hybrid regimes (Chimhowu, 2018a, Lall et al., 2017). These hybrid regimes<sup>2</sup> involve fusing elements of customary (informal) institutions and practices with some of the values of statutory institutions to take on the responsibility of land governance (Goodfellow and Lindemann, 2013, Boege et al., 2008, Meagher, 2012). For example, in Malawi and Zambia, customary authorities are supported by statutory bodies such as local authority professionals to survey and sub-divide land for private development in a manner also seen in Ghana, Kenya, Zimbabwe, Namibia, Rwanda and Tanzania (Akaateba et al., 2018, Cirolia and Berrisford, 2017, World Bank, 2016). However, these new hybrid institutions are producing varied results, with starkly contrasting outcomes in some instances (Byamugisha, 2013, Chimhowu, 2018a). Therefore, interrogating the outcomes of this hybrid governance approach in the context of rapid urbanisation is critical if we want to understand the range of possibilities for developing African cities, and provide insights into how future outcomes could be shaped. The overarching purpose of this study is therefore to analyse the mechanisms behind the differing trajectories of urban development concerning efforts to develop hybrid institutions.

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<sup>2</sup> Although the concept of hybrid governance was first applied in conflict and development studies by Boege et al. (2008) and later by Meagher (2012), it has now been adopted and applied in various fields, including land and urban governance (see e.g. Akaateba et al., 2018; Cirolia and Berrisford, 2017; Chimhowu, 2018; Lall et al., 2017).

## 1.2 Motivation for the study

In comparison to other countries in Africa, Ghana is often seen as a model case in Africa that has provided legal recognition to customary land administration (Chimhowu, 2018a, Locke and Henley, 2016). Customary authorities such as chiefs<sup>3</sup>, earth priests and family elders possess constitutionally guaranteed powers in land administration. These customary authorities have not only persisted but have gained considerable authority and influence in land management over the years. Since 2003 the Ghanaian government has sought to reform and strengthen customary land administration through the implementation of the Land Administration Project (LAP I and II). The reform seeks to divest government of responsibility for the management of customary lands and to transfer this to Customary Land Secretariats (CLSs) (Ministry of Lands and Forestry, 2003b). In this respect, CLSs were established under the aegis of customary authorities as a strategy to unify customary and statutory legal systems and to strengthen customary land management. These CLSs operated as decentralised administrative units of customary land administration in charge of managing customary land holdings and derived rights within landowning communities (Bugri, 2017). As decentralised land administration units, they also served as the interface between customary and public land sector agencies such as the Lands Commission, Office of the Administrator of Stool Lands (OASL) and local planning authorities. Chiefs and Heads of Families governed the operations of the CLSs.

Rather than attempting to displace existing customary practices and norms, the national consensus was to strengthen customary land administration by building on existing customary institutions and practices. By integrating or 'layering' support institutions to assist customary authorities in the management of land, the implementers of the LAP (i.e. national government) intended to gradually transform customary land administration and practices (Larbi, 2010). This is because past experiences of institutional reforms have shown that completely replacing customary rules with statutory laws is impractical (see Chapter 5 for a detailed discussion of this point). Thus, the government intended to induce institutional change without having to deal with significant opposition from customary authorities.

Given these land policy initiatives and intentions, this research has focused on three major urban communities in Ghana that have benefitted from attempts to integrate elements of customary tenure and statutory law under the LAP. These are Gbawe (Ga south Municipality, Accra), Ejisu and Juaben (both located within the Ejisu-Juaben Municipality). In Ejisu and Juaben new Customary Land

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<sup>3</sup> Articles 270 (1) and 277 of 1992 Constitution and sections 57(1) and 58 of Act 759 (the Chieftaincy Act, 2008) defines a chief as a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

Secretariats were established in 2008 and 2014 respectively with equipment such as computers and accessories provided to the customary authorities to strengthen local administrative capacities (Bugri, 2017). In Gbawe, the land secretariat existed prior to the commencement of the LAP and was thus strengthened in 2003 with similar technical support. However, these efforts to make customary and formal land administration compatible through the creation of the CLS produced varied outcomes in terms of land use planning, infrastructure investment and access to secured and registered urban land.

Of all the three communities, Gbawe has become the epitome of CLS good practice in Ghana (Kasanga and Kotey, 2001, Ubink and Quan, 2008) and an example of the hybrid land management practice that is emerging across Africa (Chimhowu, 2018a). The community is orderly planned, easily accessible with tarred community roads with basic community facilities available to most of the population. Land allocation in the community is based entirely on a leasehold system and revenues generated from land transactions are reinvested in community infrastructure such as schools, roads and other public services. In Juaben, land allocation is plan-led, and newly transacted rights are documented on fraud-proof allocation papers. Village chiefs continue to exercise control over land allocation and administration with the help of Land Management Committees to ensure fairness in land allocation and the use of revenues for community infrastructure investment. Meanwhile, Ejisu has become renowned for land disputes due to uncontrolled land allocations and rampant privatisation of communal land (Biitir and Nara, 2016). Competition over urban land in Ejisu is fierce and driven largely by speculative activities. Much of the planning is characterised by negotiations between customary authorities and public planners whereby customary actors make payments (cash or in-kind) to public planners for the planning, surveying, and demarcation of customary lands. Given these differential outcomes – all of which occurred within a roughly similar institutional and political context – it is crucial to critically interrogate the largely theorised positive outcomes of integrating customary and statutory practices and institutions, particularly in the context of rapid urbanisation.

These differential outcomes cannot be explained by city growth: all three urban communities are the fastest growing in their respective municipalities, which presents similar challenges and opportunities for urban management and revenue generation for these communities. Nor are these differences side-effects of major variance in administrative capacity among customary actors to implement decisions: in all three cases, the establishment of the CLS came along with administrative equipment and periodic technical training in various land governance modules. Each CLS was expected to generate its own land revenue and dedicate a sufficient portion to maintain the CLS's operations. In terms of legitimacy to effectively make and implement decisions, all the customary organisations rely on customary procedures, and their respective communities' support for customary tenure within

their respective communities. By and large, the land use and urban regulations on tackling urban development issues are also similar in the three communities. What the observable divergence between the three urban communities does reflect is dramatic differences in the extent to which customary actors are willing to exploit or dedicate *political* resources to the development of these newly created hybrid institutions. This study argues that the divergent outcomes can be explained in relation to the political priorities and incentives confronted by customary authorities, which impel these actors to implement the new institutional arrangements or override them in the interests of political or economic gain.

### **1.3 Knowledge gap and research question**

There has been a marked tendency to prescribe policy remedies for African cities that emphasise reforms to urban governance institutions, without paying sufficient attention to the political behaviour and power relations that condition the effectiveness of these prescriptions (Pieterse and Hyman, 2014, Pieterse et al., 2015, Watson, 2016, Watson, 2013b). Myers (2011) and recently Cirolia and Berrisford (2017) argue that this failure to look at the political context within which policy change takes place is of particular consequence to studies of African cities, where land policy prescriptions and theorization have been adopted wholesale. Both now and in the future, dealing with Africa's land and urban development challenges will not simply be a matter of 'getting the institutions' right. Because institutions tend to structure opportunities and distribute resources unequally (Mahoney and Thelen, 2010a), the processes of creating new urban institutions will always give rise to daily political struggles, negotiations, compromises and contestations among urban actors looking to secure favourable outcomes. According to Sorensen (2018b) a central reason why the generation of institutional change in cities is challenging has to do with the sometimes necessary involvement of powerful local actors in the implementation of new arrangements. Such involvement obviously empowers these local actors and could allow them to significantly influence whether new institutional arrangements take place and how they would actually look like. Yet, in many African cities, land and urban governance institutions cannot be developed without reference to certain powerful non-state actors (e.g. customary authorities) and organisations with which particular institutions are associated. Hence, attempts at achieving institutional transformation through hybrid regimes would require that any fundamental discord between these state and non-state institutions be resolved innovatively. Consequently, an interesting point of departure for this research is to analyse how state and customary actors, acting individually or collectively in particular spaces, are able to formally and informally shape hybrid land institutions to be transformative, and in turn are shaped by them. If we understand the inherently conflictual and political process of creating new hybrid institutions in urban settings and the extent to which hybrid institutions can be facilitated, it may be possible to overcome

sub-optimal outcomes and dysfunctionality, and to operationalise hybrid land governance practices at scale in ways that facilitate equitable land development.

This results in the following central question for the research:

*How do some attempts to institutionalise hybrid institutions of land governance manage to persist and transform policy and planning, while other initiatives fail, and how can we understand the differential responses to these institutional hybridisation processes?*

This thesis examines the hybridisation process of land governance at the local level in Ghana as a means and a potential intervention for achieving equitable land development<sup>4</sup>. The focus of analysis, therefore, is not on the existing interactions between the state and customary institutions. Rather, it traces government's institutional layering attempts as a tactic of achieving gradual transformation, with particular attention to the complex processes through which different customary actors (un)intentionally subvert or dedicate resources to the enforcement of hybrid institutions. Examining the processes and outcomes of institutional hybridity in Ghana's land governance also speaks to issues confronted by many African states contemplating the merits of integrating customary and state institutions for effective land governance, especially those looking to take land-based finance seriously.

This thesis follows Streeck and Thelen's (2005: 9) definition of institutions as "collectively enforced expectations with respect to the behaviour of specific categories of actors or to the performance of certain activities". This characterisation of institutions helps us focus more narrowly on collectively enforced expectations such as those relevant to planning, governance and property. Institutional hybridity in this research is taken to mean the integration of statutory and customary land laws, norms and practices relevant to land administration. This also involves the integration of customary and statutory land authorities into a unified property system. By customary organisations, I refer to collective decision-making bodies with authority relations defined by long-standing rules whose origins lie outside the formal authority of the state<sup>5</sup>. And finally, institutional transformation is the situation in which new meanings and functions are being attached to stable institutions or when actors switch from one logic of action to another (Streeck and Thelen, 2005).

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<sup>4</sup> Following Fainstein (2010; 2012), and in line with John Rawls' (2009) argument, the criterion of equity holds that the benefits of urban land ownership should flow to all city users and further should be used to redress disadvantage.

<sup>5</sup> Although most scholars describe customary organisations as falling under the Weberian rubric of traditional authority (see for e.g. Chimhowu and Woodhouse, 2006; Goodfellow, 2013), I prefer to use the term *customary* rather than *traditional* to describe community/village-based informal governing organisations common throughout much of the developing world. For me the term "traditional" evokes images of extreme stasis. Also, in this thesis, I use customary authorities and customary organisations interchangeably.

#### 1.4 Research strategy

This research has sought to study government's efforts to integrate state and customary institutions of land governance in Ghana. It focuses on Ghana because of the peculiar position of customary authorities in urban development matters compared to other societies in Sub-Saharan Africa. As noted earlier, customary authorities in Ghana have *de jure* and *de facto* roles in land management; providing leadership under customary norms. Thus, Ghana is often seen as a model in Africa for the integration of customary and state land administration systems, making the country unique for the study of engagements between state and customary authorities in land delivery. Accordingly, this thesis developed a critical realist view of policy making and planning, with an emphasis on the way processes of new hybrid institutions are developed through interactive political processes and compromises (Collier, 2011, Hall and Taylor, 1996, Mahoney and Thelen, 2010a). The process of creating new hybrid institutions has been operationalised in terms of government's institutional layering efforts, and transformative outcomes in terms of improvements in property and land rights, local land use planning and land revenue mobilisation.

The strategy for data collection and analysis was based on a case study approach, as recommended by Duminy et al. (2014) who call upon planning theoreticians and practitioners studying African cities to critically examine planning practices-using cases rather than to search for abstract planning theory. The case study focused on three urban communities that have benefitted from a long period of government's attempts to institutionalise new hybrid institutions for land governance. These sub-cases are: Gbawe in the Ga south municipality (Accra), Ejisu and Juaben both located in the Ejisu-Juaben municipal area (Kumasi). Four main considerations guided the choice of these three communities for this thesis: (a) the magnitude of urban growth in the communities; (b) beneficiaries of all pilot projects of the ongoing LAP (I & II); (c) the nature of customary landholding system; and (d) data accessibility and temporal/spatial considerations. In each of the case study sites, the primary units of inquiry were the actors; their interactions, interests and power relations; as well as the motivations, preferences and strategies which characterised the creation of new institutions, planning and land delivery practices and revenue generation activities. The empirical core of this thesis is focused on the period from 2003-2017, although historical dynamics were considered in some depth.

The study used both unstructured and semi-structured interviews as the main research technique. A total of 5 group discussions and 51 semi-structured interviews were conducted with customary authorities, staff of the Customary Land Secretariats, community members as well as members of land management committees. Participants were selected based on their *direct* involvement with customary institutions and land governance as well as their expertise in the land market in the study

sites. In addition, 21 in-depth interviews were conducted with various local government and officials of various national and decentralised land sector agencies. Document analysis and observations facilitated an informative interview process and aided nuanced analysis and interpretation of the primary materials. The way these case studies were analysed using a critical realist research strategy is elaborately discussed in Chapter 4. The analytical framework (in Chapter 3) provided ‘theoretical lenses’ with which to engage the empirical data to address the research question. A combination of these methods and processes, with a wide range of research participants, allowed for triangulation, to ensure both internal and external validity of the research.

### **1.5 Overview of the thesis’ argument**

The aim of this study is to explain why policy initiatives aimed at developing new hybrid institutions for land governance at the local level in Ghana met with differential outcomes. Historical institutionalists tend to favour an analysis of institutions as the result of political conflicts and compromises, while attributing institutional transformation to the nature of political context and the character of existing rules that permit actors to comply, contend or break new rules (Mahoney and Thelen, 2010a, Sorensen, 2017a). These views characterise institutions as distributional instruments that regulate social and political processes. However, they throw little light on why under similar institutional and political contexts certain hybrid institutions are more successful than others. In other words, when are hybrid institutions likely to have a greater transformative potential?

This study outlines a political economy approach to understand how changes in actors’ ideas about existing institutional arrangements shape their priorities, political preferences and interpretations, rewards and opportunities in a given setting. In this thesis, I argue that institutional hybridity in land governance is likely to ‘work better’ as a means of gradual transformation when government’s institutional layering efforts activate the preferences and political behaviours of customary actors along the implementation course of new arrangements. In other words, whether state interventions induce institutional change or not depends on the extent to which supportive customary actors have already prepared the ground - whether deliberately or as a result of political struggles. Preparing the ground includes being motivated to match formal and informal institutions; and also reflecting and ‘selling’ persuasive and convincing proposals for reform to veto players in their communities.

This research aims to make both an empirical and theoretical contribution. Empirically, it offers some important insights on the potentially transformative role of hybrid regimes in land governance and planning practices, by demonstrating how these practices have enhanced the supply of planned (sometimes serviced) developable land. Further, the thesis findings may also be relevant to land policy

scholars and governments looking to recover land-based revenue from customary land. The study shows how attempts to regulate urbanisation processes, and the introduction of new models of land management and planning risks enriching particular local actors at the cost of the public as a whole. Thus, in addition to the usual technical and political difficulties associated with capturing economic rent, it is crucial in reform-oriented developing countries to understand the nature of land tenure systems and how they are changing, as well as historical legacies relating to land. Theoretically, the study aims to contribute to institutional analysis in the context of cities undergoing urban transition, particularly those in the global south. The study combines a historical institutionalist approach with ideational theories to shed new light on why ideas and political priorities of social actors, conditioned by historical and structural factors, have shaped the changes in property rights and planning institutions overtime. It does this by identifying some of the conditions under which social actors are incentivised to intervene in ways that make the state's efforts more, as opposed to less, effective in realising stated land policy goals.

### **1.6 Structure of the thesis**

This thesis is organised in eight chapters as follows. After this introductory chapter, the next two chapters provide a review of the relevant literatures to theoretically ground the research problem and develop the thesis' conceptual framework.

**Chapter 2** revisits the discourse on integrating formal and customary institutions and explains how these contemporary land policy initiatives are intended to result in transformative outcomes in urban development for African cities. The chapter discusses how this policy orientation has informed recent calls for new hybrid institutions for land governance, which has dominated much of policy and scholarly framing of African urban planning and governance.

**Chapter 3** outlines an analytical framework tailored specifically to making sense of the complex political, behavioural and institutional forces that influence the development of hybrid regimes. It addresses key arguments on institution formation, continuity and change by highlighting the role of path dependence, positive feedback effects and the issues of political conflict in which actors compete to deploy and revise institutions in their own interests. It then goes on to consider how to combine analysis of historical causes of change with claims by discursive institutionalists that ideas and discourse matter in bringing about institutional change.

**Chapter 4** provides an account of the overall research design for this research with a focus on causal mechanisms and theory-guided process-tracing methods. The chapter begins by clarifying the choice of a critical realist approach for examining state and non-state interactions and institutional



transformation. It then explains how retroductive and abductive approaches have proved useful in examining the mechanisms, conditions, processes of institutional development and outcomes of interactions between customary and state land sector actors in urban land delivery. The subsequent sections explain case study as the thesis' research inquiry strategy, the criteria for case study area selection, the research methods employed, the research participants, how they were chosen, the strategies for contacting them, and the data analysis approaches.

**Chapter 5** presents an analytical literature review that places the three case communities in their national and institutional context and draws out some of the themes in relation to existing literature. The discussion in this chapter emphasizes the importance of the broader political and institutional contexts, how this contributes to understanding the emergent state-customary interface, and the motivations for adopting institutional layering as an attempt at (or tactic of) achieving gradual transformation in the land sector. The chapter attempts to trace power relations, political behaviour and the rewards and opportunities experienced by both state and customary actors throughout the process of land and urban institutional reforms from colonialism to date. On the whole, this chapter serves as an important milieu in examining the issues presented in the succeeding chapters.

**Chapter 6** is the first of two chapters rooted in the empirical field research. This chapter focuses on the efforts of a self-organised customary organisation that managed to get support from relevant stakeholders and subsequently established hybrid institutions of land management which brought about spatial transformation to its community. After highlighting how the customary organisation gained the support of local stakeholders to implement a well-organised land allocation system, it then explores how the 'layering' of statutory and customary institutions occurred through the establishment of the Gbawe Customary Lands Secretariat (Gbawe CLS). Following this, it examines the remarkable improvements in land governance practices in terms of land documentation, local land use planning and land revenue mobilisation. In so doing, interactions between formal and customary institutions, actor motivations and compromises are analysed.

**Chapter 7** explores state-led efforts to establish hybrid institutions of land management in Ejisu and Juaben. The chapter begins with a brief account of trigger events, particularly changes to the land market in the Ejisu-Juaben area that prompted action for improvements in the existing customary land structures. It then moves to describe the government's initiatives to establish CLSs in Ejisu and later in Juaben and compares the contrasting outcomes between the two communities which share similar political contexts. The accounts of the hybridisation process in each of the communities provides examples of *successful* versus *unsuccessful* land use practices and analyses the political and behavioural conditions underpinning/driving these contrasting outcomes.

**Chapter 8** brings together the key arguments in the two previous chapters to address the thesis research question. The findings suggest that the differential responses to the government's efforts to develop hybrid institutions can be explained by the political priorities and incentives confronted by customary authorities. That is, the differing machinations of power and the strategies and tactics of customary actors, which in Gbawe and Juaben impel these actors to implement the new institutional arrangements while in Ejisu incentivize overriding them in the interests of political and economic gain. The chapter begins by reflecting back on the empirical evidence collected in the previous two chapters in relation to the overarching research question. It then turns to the theoretical propositions posited in Chapter three, re-evaluating them in light of the evidence. Following this, the chapter broadens out to a discussion of how actors' behaviour and preferences impact on the relationship between formal and customary institutions and the significance of this for creating new hybrid institutions. Finally, it assesses the implications of the research for cities in the developing world and particularly the study of urban Africa.

**Chapter 9** is the final chapter of this dissertation. It provides overall reflections on the research findings for planning. It then follows with key limitations of the study. Finally, the chapter concludes by proposing directions for future research.

## **Chapter 2 - Property Rights Institutions and the Promise of Hybrid Land Governance**

This chapter examines the notion that integrating customary and statutory systems of land management promotes efficiency and equity in the land market and can provide the basis for instituting land-based financing mechanisms. The land question remains at the root of most of the obstacles and difficulties that affect the growth and development of cities in Sub-Saharan Africa. As cities of the global south continue to grow rapidly, the search for improved land management and innovative mechanisms to provide much-needed urban infrastructure remains imperative. Land-based finance instruments constitute a significant potential for improving the financing of urban service provision. Yet introducing and implementing these land-based mechanisms is challenging, in part due to land management and production failures.

The literature reviewed in this chapter focuses on the discourse on the integration of customary and state land tenure regimes in sub-Saharan Africa with respect to broader urban planning and land-based financing debates for Southern cities. The discussion demonstrates that over the past few decades a quiet paradigm shift in land policy has been taking place, with a focus on integrating formal land sector institutions and traditional institutions in land management. This contemporary policy shift is driven in part by the inadequacies of dominant land reform models (land privatisation and communitarian paradigms) but also by adaptations to changing context and the resurgence of customary authorities in urban development. This contemporary land policy regime is rooted on the concept of hybrid governance arrangement which emphasises processes that have practically governed urban land production for decades. Despite the merits of this contemporary land policy regime, however, much of the existing literature appears to overstate the perceived transformative outcomes. The chapter concludes by suggesting that there is the need to specify the limits of such proposals by acknowledging their context-specificity and by critically evaluating their functionality and outcomes across the diverse geographical locations in Africa.

I develop this argument in six stages. First, I provide a brief overview of Africa's urbanisation challenges and the potential of land-based finance as a less explored means to finance urban infrastructure and services. Second, I outline the typical land challenges hindering the implementation of land-based financing in most African cities, with particular attention to security of tenure rights, land use planning and the capacity of local governments. This is followed by a discussion of the theories that inform the prescriptions of the two prevalent views on land reforms – individual and communal land rights. Next, I examine recent land policy approaches that are based on reconciling informal and formal institutions and procedures of urban land management. The fifth section examines the theoretical merits of these

proposals of hybrid forms of land governance based on which land reforms have been undertaken. The final section draws attention to the limits of such proposals while highlighting grey areas that require empirical interrogation.

## **2.1 Growing need for land management and urban infrastructure**

Over half the world's population currently resides in urban areas, and by 2050 this share is expected to increase to two-thirds with consequent pressures on demand for land, housing, infrastructure and services (Brenner and Schmid, 2014). Most of this growth is occurring in Asia and Africa, where cities are expanding far more quickly than government capacities to cope with this transition. This rapid urbanisation extends much responsibility to state and local governments to supply new infrastructure and adequate services to the increasing population. Without such infrastructure and equitable services, it will not be possible to create sustainable cities – cities that offer an adequate habitat to their populations without undermining the ability of future generations to experience the same (United Nations, 2018). However, contrary to the rhetoric surrounding the transformative potential of urbanisation, constrained fiscal decentralization, weak governance, and infrastructure deficit are Africa's major challenge (Myers, 2011, Parnell and Pieterse, 2014, Pieterse et al., 2015). Although the rapid urban growth in most African cities is generally accompanied by highly visible booms in property development and rapid escalation of land values, these go to benefit the upper classes, particularly elites who manage to build portfolios of often high-profit rental properties (Goodfellow, 2015). Consequently, it has become imperative to strengthen municipal finance and local fiscal systems to create, sustain and share the value generated by urban development in an inclusive manner. Reversing this situation also requires increasing land production sufficiently to meet the demand for urban development (El-hadj et al., 2018).

As many of the investment needs in urban areas relate to the provision of public goods, it has proven difficult to attract private sector investment in much needed urban infrastructure (cf. Webster and Lai, 2003). The majority of countries have split the responsibility of service provision in urban areas between national and local governments in lengthy and complex processes of decentralization (Paulais, 2012). However, local governments, especially in developing countries, are often not equipped with the financial means to deliver on their functional responsibilities. They tend to lack the legal mandate, the technical capacity and the access to sufficient and timely inter-governmental transfers necessary to provide needed local infrastructure and services (Paulais, 2012, Pieterse and Hyman, 2014, Turok, 2016). With limited access to credit markets, most local governments in African cities are forced to explore other ways of increasing their revenue to provide the services their citizens need.

Among all the means to increase revenue at the local level, land-based financial tools have garnered particular interest over the past years (Berrisford et al., 2018, Paulais, 2012, Peterson, 2009, Turok, 2016). Land-based finance instruments refer to a broad category of financing mechanisms that include land value capture as well as contributions made by property owners or property developers, regardless of whether land values are increasing (Berrisford et al., 2018). These methods are generally viewed as untapped, efficient, socially equitable and financially powerful means to create a healthy investment environment, efficient usage of inner-city land (decreased urban sprawl) and as a means to increase municipal revenue. The importance of land-based finance is also underscored by the New Urban Agenda which specifically highlights the commitment to: “best practices to capture and share the increase in land and property value generated as a result of urban development processes, infrastructure projects, and public investments” (United Nations, 2017a: para. 137). However, land-based finance instruments are not always easy to implement and frequently require improvements in the realm of land and property rights before being implementable at the local level (Alterman, 2012a, African Centre for Cities, 2015, Berrisford et al., 2018, Walters, 2013).

## **2.2 Land based finance and the land question in African cities**

Land-based financing is based on a recognition that the state can exercise its regulatory powers to marshal various land instruments to capture rising urban land values and ensure that the benefits are shared equitably (Berrisford et al., 2018). This scenario depends on a virtuous cycle of urban land governance, illustrated by Napier et al (2013), as now discussed. The state puts in place a regulatory framework (institutions and rules) to manage and administer land tenure, land use, and land development. As that regulatory framework is implemented it creates land value, primarily through ensuring certainty for investors, both large and small. As that land value grows so it is taxed by the state, establishing flows of revenue that can then be reinvested both in the effectiveness of the regulatory frameworks and in the construction and maintenance of physical infrastructure. This creates more land value, which in turn builds more revenue that enables the state to plough more money into the urban system. The inherent logic of this cycle reinforces itself, driven by mutually reinforcing incentives and pressures (Napier et al., 2013). As such, this model is the premise on which policy-makers design governance intervention in the urban land sector. Both national government officials as well as multinational agencies (e.g. The World Bank, UN-Habitat, DFID, and Global Land Tool Network) believe that if this cycle can be established, it will be impelled by its own dynamism and its own internal logic to resolve the multitude of urban dysfunctions and inefficiencies so prevalent in African cities.

Land-based finance includes very old mechanisms of municipal financing that probably date back to antiquity. In more recent times, western countries systematically used land sales, leasing, taxation, and land-use fees during the nineteenth century's industrialization period and its accompanying, intense urban growth (Alterman, 2012a). These mechanisms were also used during the 20th century for Europe's post-war reconstruction (Peterson, 2009). Today, in Europe and the United States of America, land value capture mechanisms have been and remain central to municipal financing systems, especially for major investments (Walters, 2013). Furthermore, experience in Latin America shows that there is tremendous potential to use land and planning regulations to connect land value appreciation and infrastructure investment to generate new revenue sources to finance urban investments. Smolka (2013) for instance has documented how land value capture instruments such as betterment levies, development charges, land readjustment, and impact fees have been used by various Latin American cities to raise revenue but also achieve land use planning goals. Hence, the strengths and potential of this approach holds great potential for African cities whose main challenge has been how to scale-up low-cost serviced land to urban dwellers in a context of rapid urbanisation. Whilst acknowledging the differences in situations and market size, it is argued that African local governments should also finance part of their local investments in this way, with different tools as appropriate (Turok, 2016).

However, introducing such regulatory frameworks in many African cities is extremely challenging. To most planners and policymakers, the difficulties of implementing land-based financing in most African cities relate to land management and production failures (Agyemang and Morrison, 2017, Berrisford et al., 2018, Paulais, 2012). In particular, the multiple tenure regimes and unclear land rights, poor land administrative procedures and inefficient regulations and poor land use policies (inefficiencies induced by the political economy of land policies).

Secure land rights, provided formally or informally, ensure certainty over future ownership and give opportunity for the intrinsic returns to accrue on a development, an essential prerequisite for investors (Napier et al., 2013). However, at the fringes of many urban areas in Africa, private property, state ownership, and communally defined rights co-exist, overlap, and sometimes contradict each other (El-hadj et al., 2018). Many governments perceive the co-existence of customary system of landholding and statutory land rights as a clash of cultures where customary authorities are in opposition to formal institutions or constitute a challenge to realising modern urban development outcomes (Napier et al., 2013). Across the African continent, customary tenures remain predominant accounting for 30-90% of all land transactions (Durand-Lasserve, 2003, Durand-Lasserve et al., 2013). This means that a vast majority of land sales and rental transactions take place outside statutory legal

systems. Research in six African countries shows that 50–70% of land transactions for housing take place in the domain of customary land markets (Rakodi and Leduka, 2004). In Zambia, about 94% of urban land is governed under customary laws (Habitat, 2012), while in Ghana an estimated 80% of the total land area is under customary land tenure (Kasanga and Kotey, 2001). Yet, government institutions responsible for the demarcation of plot boundaries, land registration, record-keeping, and adjudication of land rights fail to recognise or regulate these transactions (Napier et al., 2013). Historically, landownership under customary, or traditional land systems is not guaranteed by a title deed issued by the government, giving rise to a wide variety of systems and land practices. According to Napier et al. (2013), this often results in a situation whereby urban developments are largely unplanned and unregulated as much of the urban land development in African cities occur outside of formal regulatory and legal frameworks. Here, the blame is clearly placed at the door of the state, whose ability to govern land and to regulate markets is questioned. El-hadj et al. (2018) make similar remarks, arguing that the existence of a customary land regime, even for those countries where land customary practices are recognised by statutory law (e.g. Ivory Coast), often results in uncertainty and insecurity of land rights due to difficulties in obtaining formal land rights and individual titles. Here, it is important to point out that insecurity of tenure has different meanings across African cities. In Ghana, it connotes the multiple sale of the same parcel of land, resulting in protracted litigation (Barry and Danso, 2014). However, in South Africa, it means the likelihood of eviction, inequitable land distribution between races and lack of secure jobs for farm workers (Hall, 2004).

Other scholars have drawn attention to the effects of poor land administration systems on Africa's land markets. Urban land management and administration in most African countries remain heavily centralised and bureaucratic (Byamugisha, 2013), which hinders the documentation of land records and thereby the transfer of land rights. Although some countries (e.g. Kenya, Cameroon, Ghana) have adopted policies to decentralize land management to local governments and streamline the registration procedure (Biitir et al., 2017), in many countries the process of land titling remains long and arduous, with many steps and documents still required (Lall et al., 2017). In Kenya, for instance, Byamugisha (2013) observes that for many households including government officials, the steps to register land are not easy to understand. As a consequence, many Kenyans abandon the land registration process or seek tenure security through informal means such as giving "gifts" to speed up the land titling process. As a result, land information systems cover only a small portion of available land in most countries, resulting in unclear ownership rights. This reflects the lack of an adequate land registration system including up-to-date maps and registries that can identify and prove who owns the land. Furthermore, in many countries, land data and registries are still maintained manually due to a lack of capacity to acquire and use modern technologies. This makes it difficult to gather

consistent information on registered land and land rights. Consequently, it is not uncommon for government land registries and customary landowners to issue multiple titles to different people for the same plot of land (Barry and Danso, 2014). The weak land administration systems in most African countries, therefore, provides insufficient incentives for governments to be cognisant of opportunities related to land value capture (African Centre for Cities, 2015, Agyemang and Morrison, 2017, Berrisford et al., 2018).

Land markets alone do not ensure efficient land use in cities. A functional planning system helps to coordinate the investment decisions of businesses, households and government entities by specifying the permitted land use for each parcel and confirming any development rights in order to value the land. This is particularly important in rapidly developing cities to help ensure that value is indeed directed to serve the public interest. Moreover, planned settlements also facilitate the provision of public infrastructure that could provide connectivity and services for residents. However, many African cities continue to operate under planning laws and standards inherited from former colonial powers (Watson, 2011). These standards and regulations are either outdated or unsuitable for addressing twenty-first-century urban issues in Africa. Even where these planning laws have been revised (e.g. Zambia, South Africa, Ghana), the attitudes and practices of politicians and planning professionals towards urban development still reflect the approaches enshrined in the older colonial laws (Berrisford, 2011c, 2011b, 2014, 2011a). Consequently, municipal land-use plans are often prepared in line with outdated legal procedures and building standards, whose approach is excessively prescriptive and inflexible. Using examples from seven African countries, Watson (2014a) concludes that the urban plans adopted by most of Africa's larger cities tend to be top-down blueprint plans, and based on questionable assumptions about the nature of demand for the land. Berrisford (2014) and recently Acheampong (2019) also found that most municipal plans are based on little knowledge of property market dynamics, local land values and the amount of space that most households and firms can genuinely afford. Therefore, these plans are often unrealistic and disregarded by private developers. As a consequence, land is built upon whether or not infrastructure is available and often without planning approval (Turok, 2016).

The quality of urban development and basic services are also known to be affected by the poor performance of local governments in implementation. Two broad categories of problems contribute to this weakness: First, is a local government's capacity for implementation, particularly skills shortcomings. Inadequate skills and expertise at the local government level are common in the African continent (Paulais, 2012, Watson, 2013a). Qualified personnel with requisite skills levels are in short supply in regional or local governments. A recent survey of the number of planners per country in the



commonwealth shows a critical lack of capacity and a significant shortfall in many countries of the Commonwealth many of which are urbanising rapidly (CAP, 2018). African countries are among those with the lowest number of planners per population as in the case of Tanzania (1 professional planner per 463,102 population), Uganda (1 planner per 441,361 people) and Kenya (1 planner per 220, 000 people). Although no definitive benchmarks exist against which to assess the number of planners required, the significant shortage of planners could impact on the productivity of cities. It is argued that most African countries lack education and institutional capacity to grow the planning profession fast enough (Watson, 2013a). Where good education systems exist, Paulais (2012) argues that graduates find the low pay of local governments unattractive, while the most competent see local government jobs as stepping-stones to private sector jobs. However, this weakness can be addressed through training and capacity building for local government professionals. It is not uncommon for donors and aid agencies to offer programs for this purpose.

The second problem relates to local governance issues and related phenomena, such as resistance to change, stakeholder interactions, and special interests. Governance dysfunctions are frequently well known and defy successful reforms because resistance to change is strong. Where economic and political elites are closely related through personal relationships, nepotism and privileged networks easily develop through a process of accumulated relations (Maclean and Mle, 2011). In Africa, such networks have become commonplace at the local government level in the wake of increasing property booms (Goodfellow, 2015), and getting around systems organised by supportive individuals within small determined groups is hard. The inability of some national and local governments to implement land-policy reforms and other legal reforms provides a clear illustration of these phenomena (Berrisford, 2011c). Despite the intended public benefit of such land and planning reforms, they often fail to change because of the elites' powers to resist and circumvent reform especially where they benefit from the status quo.

The challenges highlighted above have significantly undermined the ability of African countries to properly value land, effectively manage the available land, or negotiate fair land concessions. In many countries, the lack of adequate land valuation system and weak land markets prevents several local governments to effectively mobilize domestic resources through land value capture to finance urban infrastructure. Therefore, and for many years, the focus on land governance in many African cities has centred on eliminating property and land development bottlenecks through responsive land use policies.

## **2.3 Recent land reforms in Africa: policy paradigms and applications**

Active land policy influences how cities grow and develop by enabling land markets, coordinating land use where the market is unable to and determining whether the appreciation of land value is directed towards the benefit of a few lucky individuals or for the public good. In most sub-Saharan African countries, achieving these objectives requires pragmatic and realistic solutions, which integrates state and customary systems of land governance. For a long time, two polarised views, described here as the 'land privatisation' and 'communitarian' paradigms, have dominated the debate over improvements of land and property rights in sub-Saharan Africa. One based on promoting growth and land markets through private property rights and the conversion of customary rights into individual rights along the lines of neo-liberal economics, and the other promoting the strengthening of customary tenure arrangements based on socialist ideologies. Several attempts at implementing either model have drawn criticism for their inherent inadequacy for African land situations, leading policymakers to call for new approaches to land tenure policy, one which combines customary and statutory systems. This contemporary approach, termed hybrid form of land governance, is considered more appropriate in promoting a more equitable and efficient land market as it combines the strengths of the state and customary institutions. Before discussing this adapted approach, the two polarised views are discussed in turn.

### **2.3.1 The land formalisation debate**

#### *The land privatisation paradigm in Africa*

The private property rights school believe that statutory individual property rights in land is the cornerstone of an enabling land market and a universal solution to tenure security particularly for the poor. It is argued that unless a bundle of rights can be privately owned by individuals they would have little incentive to put it to the highest and best use (Demsetz, 1974, Douglass, 1990). This is based on the notion that people are driven mainly by self-interest which, in turn, spurs them on to be productive. Thus, the main concern with this tenure framework is with promoting forms of secure, private ownership and a free market in land.

The emphasis on private property right origins date as far back as the era of the enclosure movements when common lands were fenced off to become private lands (Alchian, 1965, Demsetz, 1974, Hardin, 1968). Advocates of private property view communal property rights as inefficient because, not having any private or individual interest in a resource, people are likely to become irresponsible and act in ways that injure the common good. As two advocates of private property rights, Alchian and Demsetz (1973: 19), put it 'persons who own communal rights will tend to exercise these rights in ways that ignore the full consequences of their actions'. Moreover, scholars such as North and Thomas (1973)

and Demsetz (1974) argued that as land values increase, land rights will evolve towards greater individualisation. This will result in landholders mounting pressure for formalised individual property titles – a demand which the state needs to meet by supplying state-backed private property rights. Thus, most proponents contend that replacing customary land tenure systems with formalised individual property rights has the potential to ensure guaranteed land tenure security and facilitate easy transfer of land rights (Deininger, 2003).

The idea that state-backed individual property rights is superior and more conducive to economic development was given renewed prominence by the arguments of Hernando De Soto (2000). De Soto (2000) argued that land held under communal tenure systems is ‘dead capital’ particularly because of its communal *nature* and its lack of documented information. In his view, because the rights to communal land are not formally documented, their true worth could not materialize, traded outside of narrow local circles where people know and trust each other, or used as collateral for loan. In other words, these characteristics of communal land, particularly its communal ownership and lack of documented information are recipes for insecurity, rendering such land defective. For these reasons, he advocates a private property rights system in which land is individually owned, recorded and commoditised. These premises remain at the heart of World Bank programs on land reforms (Obeng-Odoom, 2012). Although there are indications of a shift in thinking with the World Bank recognising the strengths of customary land tenure especially in places where the rules and norms work well, the long term aspiration is to achieve private property rights regime (Obeng-Odoom, 2012, Chimhowu, 2018b).

However, problems and unintended consequences of this neoliberal thinking of land reform have been well documented. Among the unintended consequences are the huge administrative and financial costs involved with land titling and registration, which developing countries may not be willing and capable of providing (Benjaminsen, 2002). The high costs tend to facilitate opportunistic land acquisition by the elite and powerful at the expense of indigenous landholders and poor households who are unable to afford the high administrative costs. In Cameroon, the current process of obtaining legal occupation of rights can last 93 days and costs 18.7% of the property value. In Nigeria, it takes 105 days and costs 11% of the property value (World Bank, 2019). Needless to say, titling processes aggravates wealth differentiation and social inequalities. Moreover, it is reported that despite the high incidence of titling in East and Southern Africa, titling does not necessarily provide sufficient tenure security in these regions (Toulmin, 2009). In addition, critiques have pointed out that land formalization programs in Africa represent the “imposition of [western] legal and cultural practices” in an institutional setting “that differs so profoundly from the legal and cultural setting from

which they are taken (Bromley, 2008: 26). Questions have also been raised about the challenges of formalising titles in customary tenure systems where there are overlapping rights in both time and territory as well as how titling will deal with issues of redistribution of assets (Benjaminsen, 2002).

### *The communitarian approach*

The 1980s and 1990s witnessed an increasing emphasis on the possible benefits of communally held land and customary land, along topics such as decentralisation, co-management, social capital and natural resource management. This second view about how to ensure secure property rights is strikingly different from the first, and was promoted by the communitarian school. In contrast to the private property rights school of thought, the communitarian school argues that rather than replace customary tenure systems, land policy reform should be tailored towards meeting the needs of societies and their socio-cultural value systems by recognising and strengthening customary rights to land (Toulmin et al., 2002).

The communitarian approach to land tenure is influenced by anthropological, cultural studies and customary law approaches. The communitarian approach stresses that land tenure under customary arrangements rooted in social relations and cultural beliefs can be secure and land administration can be effective (Delville, 2000). It holds that these relations do not fit into a pattern of evolutionary determinism and insists on the diversity of human societies and diversity of institutional solutions to social problems. Communitarians are concerned with social capital, particularly, local perceptions of land relations, and local norms and practices relating to land tenure, and the administration and regulation of land, customary practices and customary authority (Delville, 2000, Toulmin and Quan, 2000).

According to communitarians, customary land tenure systems are egalitarian and capable of providing tenure security to the poor unlike individualised titles, which favour the elite and wealth (Amanor, 2001, 2008, Chimhowu and Woodhouse, 2006). They reject the framework of the private property rights school, in which the objectives of land tenure reform are to create a land market that will enable landholders to easily transfer their rights to the highest user. They are more concerned with existing insecurity in land tenure arrangements. Communitarians contend that under customary arrangements land tenure can be secure and land administration can be effective. Insecurity in land tenure relations, according to communitarians, is the product of state-led policies, which ignore traditional values, and legal pluralism which creates uncertainty in rights to land (Amanor, 2001)<sup>6</sup>. Legal pluralism is a product of colonialism, in which colonial powers imposed their legal traditions on top of local landholding

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<sup>6</sup> For a full discussion of this argument, see Amanor (2001: 5-20)

systems. They attempted to interpret African tenure systems and codify them, but in the process, the working of these systems was distorted by lenses fashioned by European perceptions of land at the end of the nineteenth century. Modern land law in Africa refers to legislation founded on colonial law at the beginning of the last century (Delville, 2000). The existence of legal pluralism creates confusion in which the rights to different areas of adjacent land may be established by different legal codes. This creates uncertainty in rights to land since they can be challenged and cancelled through appeal to different state authorities.

Advocates insist that customary land tenure systems are not inherently unstable. Local land use rights and rules are frequently clearly understood within the communities in which they operate (Amanor, 2001, Ostrom, 2015). Communitarians believe that customary tenure systems are characterised by inbuilt mechanisms such as social capital, flexibility, dynamism and negotiability that re-allocate land and check against landlessness (see for e.g Ostrom, 2000, Ostrom, 2015). As Katz (2000: 115) puts it, “the existence of social capital can substitute for well-defined property rights....a respect for customary law and viable local institutions, based on sustained interactions among resource users over time, can enforce respect for private property boundaries and regulate exploitation of common property resources”.

As a result, communitarians advocate that pro-poor land reforms should build on and strengthen customary rights to land (Kombe and Kreibich, 2000, Kasanga and Kotey, 2001, Blocher, 2006). They are concerned with harmonising local practice and state administration in land. They seek to facilitate dialogue between different stakeholders to achieve a better integration of land policy and a more transparent land policy that meets the needs of various land-users and stakeholders. Communitarians are also concerned with building local capacities to manage land and engage in dialogue (Chimhowu and Woodhouse, 2006). These communitarian views have however been criticised for focusing on social institutions and paying less attention to processes of social differentiations (Amanor, 2001, Chimhowu, 2018b), the curtailment of usufructuary rights, or unaccountability of chiefs regarding land revenues (Quan et al., 2008a, Obeng-Odoom, 2014a), the redistributive effects on women’s access to land (Whitehead and Tsikata, 2003), and the existence of ‘vernacular’ land markets (Chimhowu and Woodhouse, 2006).

Although both the land privatisation and communitarian paradigms agree on the need for customary land tenure reforms to provide secure tenure and unambiguous rights, they differ on the nature of the reform. While the communitarian view insists on strengthening existing communal structures and registering collective rights over land, the land privatisation paradigm advocates for the conversion of ‘communally owned’ rights into private property rights through titling and registration of land. This

difference notwithstanding, the two paradigms are not mutually exclusive. To be successful, both need the recognition of each other. Contemporary land policy debates has thus shifted towards the harmonisation of state and customary land administration systems (Ubink and Quan, 2008, Whitehead and Tsikata, 2003, Amanor, 2012, Cotula et al., 2004, Deininger, 2003, Biitir et al., 2017).

### 2.3.2 Building on custom: harmonising customary and state land administration

Integrating state and customary systems of land governance involves the decentralisation of land administration to pre-existing customary authorities or to community-based organisations. This implies a 'pragmatic' or hybrid governance arrangement which assimilates processes that have practically governed urban land production for decades (Hendriks et al., 2019b, Zevenbergen et al., 2013). This includes a recognition of customary rights in statutory law. These markets now constitute the principal means of access to land and are rapidly becoming more structured (Napier et al., 2013). A recent report by the Global Land Tool Network has shown the potentially transformative role of such inclusive community tenure practices in promoting broader land governance objectives (Hendriks et al., 2019a). Thus, it is argued that integrating or merging informal institutions into formal (state) institutions has the tendency to overcome the legal pluralism *problematique* in many African cities, thereby avoiding the current institutional clashes where different regimes operate alongside or are in competition with each other. This involves leveraging the best parts of customary systems and integrating them with formal land laws holds promise for ensuring equitable land development and providing the basis for institutionalising land-based financing practices.

This shift towards an integrated approach on land policy and development in African cities is driven in part by adaptations to changing context in the wake of urbanisation. In particular, the resurgence of self-organising organisations such as customary authorities in the supply and development of urban land (Akaateba et al., 2018, Chimhowu, 2018a, Byamugisha, 2013). In most African cities, including Ghana, customary authorities remain a key institution in the control, allocation and management of land in both rural and urban areas. Particularly, in rural and peri-urban areas these authorities have more power to allocate land than formal land administration systems do (Byamugisha, 2013). Their legitimacy is based on their claim to represent local populations and customs (Amanor and Ubink, 2016). In the context of increasing demand for urban land, customary authorities, as custodians of customary land, have formalised their role as key players in the supply of urban land (Locke and Henley, 2016). Planning proposals are therefore prepared with the anticipation of executing them on land that is controlled and administered by customary authorities. But as Yeboah and Shaw (2013) note, local realities and discretions, rather than the state, dictate the pace and overall configurations of physical development. The transformation of towns and cities is barely ever influenced by statutory or formal

planning policy because of the behaviour of some customary landowners (Acheampong, 2019, Byamugisha, 2013). Within this context most southern scholars have suggested that planning initiatives must be contextualised to account for local circumstances (Akaateba et al., 2018, Siame, 2018, Watson, 2009, 2013b). This entails going beyond 'traditional' participation of active citizenry and customary landowners in the planning process, coordinated by the government.

Amanor and Ubink (2016) have argued that while the need for the public sector to cooperate with customary authorities is indisputable, it is necessary to leverage the dynamism of customary land practices. This includes maintaining the entrepreneurial capacity of the informal/customary sector, for example, by allowing these actors involved in land markets to continue playing their roles in the delivery of affordable land. According to El-hadj et al. (2018) the majority of urban dwellers, particularly new residents attempt to meet their needs for land and shelter outside the formal land market. This means that customary/informal land markets offer quicker, easier and more affordable access to many poor urban dwellers. Similarly, Napier et al. (2013) observed that because the state typically does not release serviced land fast enough to meet rising demands, while the private sector developers often supply in the most profitable areas, serviced land for the bottom pyramid remains underserved. By necessity then, a range of officially unrecognised actors (e.g customary actors and land vendors) step in and become key players in supplying land for the bottom, albeit unofficially. Thus, where the state has failed to provide land and where the private sector may not be interest in doing so, the customary system tends to fill the gap.

It is reported that the achievements observed in the range of land management solutions and spontaneous development in some African cities can be traced to the initiatives of customary actors working with barefooted surveyors cum planners in co-productive ways (Siame, 2018, Akaateba et al., 2018). It is from this perspective that Kombe and Kreibich (2000) have suggested that the state should focus on consolidating the functioning of land transactions by forging new associations and complementarities of interests among various actors, such as customary landowners, developers and utility agencies without stifling the markets. In other words, state participation may be needed to aid in addressing exclusion, provide technical assistance and legal certainty to self-governance solutions by providing policy directives and a corresponding and reliable legal framework. This requires that the legal framework for property and land management provides a clear separation of ownership rights and land use prescriptions. In this way, progress can be made in overcoming the deficits of the formal system by gradual integration of the informal sector into decision-making concerned with land supply, security of tenure rights, land use regulation and land servicing.

Indeed, in the planning literature focused on the global south, the topics of a spontaneous development, self-organisation, co-production and 'doing-it yourself' have emerged (Nunbogu et al., 2018, Korah et al., 2017). Such adaptive planning approaches are increasingly proposed as viable alternatives to state-led planning, noting that planning rules should be reconstructed to guide self-organising and decentralised arrangements in the urban system. That is, a more collaborative and co-productive approach to planning where citizens and self-organised authorities take the driving seat in the planning process. This approach seeks to address the criticisms levelled against collaborative planning (see e.g Chettiparamb, 2007c, Boonstra et al., 2011, Huxley et al., 2000, Hillier, 2003), while emphasising a shift towards alternative planning approaches that pay attention to co-production, self-governing organisations and spontaneous development (Healey et al., 2008, Watson, 2014c, Boonstra et al., 2011, Webster and Lai, 2003). It is believed that such practical collaborative arrangements between state and non-state actors represent institutional adaptations to specific economical and logistical circumstances and thus offer alternatives to state-focused planning and public goods provision (Siame, 2018, Watson, 2014c, Webster and Lai, 2003, Joshi and Moore, 2004). Consequently, across various contexts in Africa, the dominant language in governance and urban planning has been pragmatism, pluralism and context-specific adaptation with preferential shift towards state and non-state actor engagements (Joshi and Moore, 2004, Blocher, 2006, Siame, 2018). The challenge however is to find the proper balance between the state and private actors in the management and planning of urban land.

In sum, achieving the objectives of active land policy in some sub-Saharan African countries requires challenging the conventional model: land titling as the sole land regularization model and the cadastre as the sole instrument of land registration. Rather, these models and tools should be replaced by pragmatic and realistic solutions, which decentralise land administration to pre-existing customary authorities or to community-based organisations. Such approaches demand a kind of tenure reform which considers the revived powers of customary authorities in land allocation, implying a 'pragmatic' or hybrid governance arrangement. In many countries, including Ghana, such changes are already under way, bringing together traditional and modern institutions of land management. However, this new shift in land policy reform would require detailed understanding regarding their practical applications and outcomes for implementing land-based financing mechanisms across various contexts. This thesis contributes to enhancing this understanding through generating knowledge from emerging interactions between customary and state authorities in urban land management in Ghana. The merits of this new paradigm are discussed in detail in the following section.



#### **2.4 A turn to institutional hybridity: making formal and informal institutions compatible**

The view that a land use policy that integrates custom and statute is the way to ensure secure and equitable land rights has had a significant influence in Africa (Obeng-Odoom, 2012, Chimhowu, 2018a). The emphasis of this approach is on integrating informal and formal institutions and procedures of urban land management: that is, combining the technical and enforcement capacity of the state, the legal certainty of ownership, and the successful principles of self-organisation may help govern responses where property regimes overlap. This view is rooted in the concept of institutional hybridity, which describes the multiple ways in which institutions of the state versus non-state organisations intertwine (Kombe and Kreibich, 2000, Colona and Jaffe, 2016, Goodfellow and Lindemann, 2013, Akaateba et al., 2018, Ainslie and Kepe, 2016).

The emergence of institutional hybridity within the governance discourse connects with debates on neoliberalization, participatory development, decentralisation and the resurgence of customary authorities in Africa. Peck and Tickell (2002) for instance note that processes of neoliberal restrictions such as 'roll-back' and 'roll-out' have created and consolidated spaces for non-state actor participation in public governance. Likewise, it connects with debates relating to the shift from government to governance and the increasing transfer of responsibility away from the state to citizens and non-state actors (Colona and Jaffe, 2016). Within conflict and development studies, hybridity is largely used synonymously with terms such as hybrid governance (Goodfellow and Lindemann, 2013, Meagher, 2012), real governance (Cleaver et al., 2013), hybrid political order (Boege et al., 2008, 2009) to reflect practical adaption to uncertainty and change in which non-state actors are doing what the state has failed to do. Here, the aim is to challenge the normative focus on good governance, weak/failed states particularly in developing countries. Together these terms capture and describe practical 'arrangements that work' under conditions of weak/failed states. The over-riding emphasis in most cases is about turning a negative discourse into a more positive one. As Goodfellow (2013a) puts it, "instead of focusing on the failings of the state in particular contexts, we should focus primarily on what and who is fulfilling the roles we conventionally assume that the state should fulfil". In the view of these scholars, this reality is one characterized by a high degree of "hybridity".<sup>7</sup>

Applied to land governance, the argument is that many of the problems associated with land supply, security of tenure rights, lay-out regulation and land servicing can be solved by better integrating customary law and customary authorities into the statutory system (Kombe and Kreibich, 2000,

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<sup>7</sup> For the purpose of this thesis, I use hybridity as an all-encompassing concept that has the analytical capacity to capture range of empirical contexts in which state and non-state actors interact in the provision of public goods and services.

Blocher, 2006, Kasanga and Kotey, 2001, Amanor and Ubink, 2016). Thus, the functioning of hybrid institutions often depends on the creative combination of customary (self-organising) and state regulatory approaches to the governance of land. This hybrid form of land governance regime is meant to bring together elements of customary authority and fuse this with some of the values of statutory institutions they interface with. At present, local and central governments across the continent are unable to regulate land transactions and development. This is because an estimated 90% of land transactions are conducted outside the existing formal-legal system (Deininger, 2003). This means that the bulk of land transactions are governed by customary practices thus creating a fissure between the formal legal systems of land administration and the everyday lived realities of the majority of citizens. Failure to recognise such customary practices will result in widespread tenure insecurity. On the other hand, the customary (informal) land delivery system is characterised by market inefficiencies including tenure insecurity (see section 2.4.1). Moreover, customary land delivery does not guarantee or provide for mechanisms for ensuring that land developers or sub-dividers fulfil their obligations to the public. As El-hadj et al. (2018) remarks, customary authorities have become land brokers, merely out to make profit rather than primarily serving as custodians of ancestral land. Thus, integrating informal and formal institutions of land governance pulls together untapped resources of both the customary and public sectors.

Other scholars have drawn on the social relations of property to insist that the ability of formal property rights to provide economic benefits is largely dependent on how well those rights build on pre-existing custom. For instance, Blocher (2006) argues that land laws and policies that build on the social norms and custom are more likely to promote more efficiency and equitable economic growth. In Blocher's view a divergence between formality and the realities of property practice of a place can deprive the informal sector and hence the economy of growth opportunities. Unlike formal institutions, informal institutions are not consciously designed nor neatly specified, but are part of habitual action. As such, it is not uncommon to find that in societies where formal property rights enforcement mechanisms are weak, as is the case in most African countries, people turn to custom, social norms and other informal institutions that act as alternatives to meet their economic needs. In Ghana, for instance, where state courts sometimes cannot be relied on to resolve land disputes, social relationships and norms take on an especially important role in the enforcement of property rights through customary dispute settlement (Wehrmann, 2008). Relying on social norms, rather than on costly formal institutions, minimizes the transaction costs associated with enforcement of economic and social agreements related to land transactions. Elsewhere, Murtazashvili and Murtazashvili (2016) found that customary process of land adjudication provide more effective and cheaper dispute resolutions mechanisms compared to state courts in rural Afghanistan. That is why Clements et al.

(2007) argue that until local governance practices and institutions rooted in place and culture, and enjoying widespread social legitimacy are taken seriously and incorporated directly into state building dynamics, the goals of creating capable, effective and legitimate governance regime will remain elusive. The importance of these informal institutions reinforces the idea that formal property rights must be closely aligned with social norms in order for land policy to play a role in enhancing economic efficiency.

Moreover, not all cost-reducing institutions (in this case property rights institutions) are created by the state. Informal property institutions like social norms and custom can perform an economizing function just as formal property institutions such as statutory law and government do (Murtazashvili and Murtazashvili, 2016, Fold et al., 2017, Helmke and Levitsky, 2004, Quaye, 2014). As Blocher (2006: 173) notes, “a strongly held norm or custom of transparency in dealings in land may render many economic transactions possible without a need to rely on elaborate and costly safeguards”. Indeed, some research in the African contexts supports these claims. In examining the pros and cons of customary and state management systems in Ghana Kasanga and Kotey conclude that though traditional land management systems do not always function perfectly, especially in urban and peri-urban areas, they remain “the only viable option” for land administration because the state system is even more “expensive, tortuous and corrupt...” (2001: 26). From this perspective, customary land arrangements and its attendant rights and structures may contribute to more equitable access to land for the poor.

#### **2.4.1 What (urban) institutions get integrated?**

A hybrid regime of land governance focuses on integrating statutory and customary systems of land governance to achieve more immediate tenure security results. In this research, this concerns the integration of customary and statutory land laws and local practices relevant to land use management. The experiences of the cities of Johannesburg and Huambo, respectively, in South Africa and Angola demonstrates how statutory and customary laws can be identified and adapted innovatively (see Royston, 2014 for more on the legal discussions). There is also a wide array of ‘customary institutions’ that are integrated and are of relevance to ensuring efficient and equitable land administration and improved land delivery. These include customary processes of land adjudication, local land allocation practices and recordation systems (Kasanga and Kotey, 2001, Byamugisha, 2013, Chimhowu, 2018a, Biitir et al., 2017). In other words, it is not just about recognising customary tenure, but also about standardising and incorporating its practices within statutory law. Reportedly, laws and policies aimed at harmonising and integrating customary law and practices with statutory land law have been enacted in countries such as Botswana, Ghana, Namibia, Uganda, Lesotho, Malawi and Tanzania

(Knight, 2010, Lemmen et al., 2017). Together, these forms of integration are used to explain how a hybrid land regime can potentially standardise customary land practices and support efficient and equitable land delivery.

Blocher (2006) argues that integrating formal and informal institutions can also concern the integration of customary and statutory land authorities into a unified property system. Land reforms often focus exclusively on the problem of recognising customary rules, while ignoring customary authorities who are themselves a fundamental part of traditional land tenure regimes (Delville, 2000). The colonial administration of Africa (indirect rule) which nominally supported customary law, but only through hand-picked and compliant customary authorities illustrates this point (Firmen-Sellers, 1996, Onoma, 2009b). Recent studies also show that customary authorities frequently act in ways that enhance their material position by re-interpreting customary laws in ways that favour them (Obeng-Odoom, 2012, Quan et al., 2008a, Chimhowu, 2018a). For these reasons, it is argued that the customary system may not be able to sustain itself in urban and peri-urban areas without drastic overhaul. As Blocher (2006: 195) puts it, “arguing that customary authorities should play a role in the machinery of local-level land administration does not mean abandoning the concerns of equity and economic efficiency”. In this regard, it is suggested that integrating statutory and customary land authorities may include empowering or revitalising customary authorities to be able to regularise the management of customary land in their areas (Kasanga and Kotey, 2001); and it can also concern the creation of decentralised institutions to support existing land governance arrangements to serve as new checks and balances on customary authorities in ways that did not exist before (Biitir et al., 2017, Lemmen et al., 2017). In this way, the authority and power of chiefs to govern land would be diluted by the incorporation of their powers into statutory law. It would also ensure accountability and democratisation of customary tenure practices.

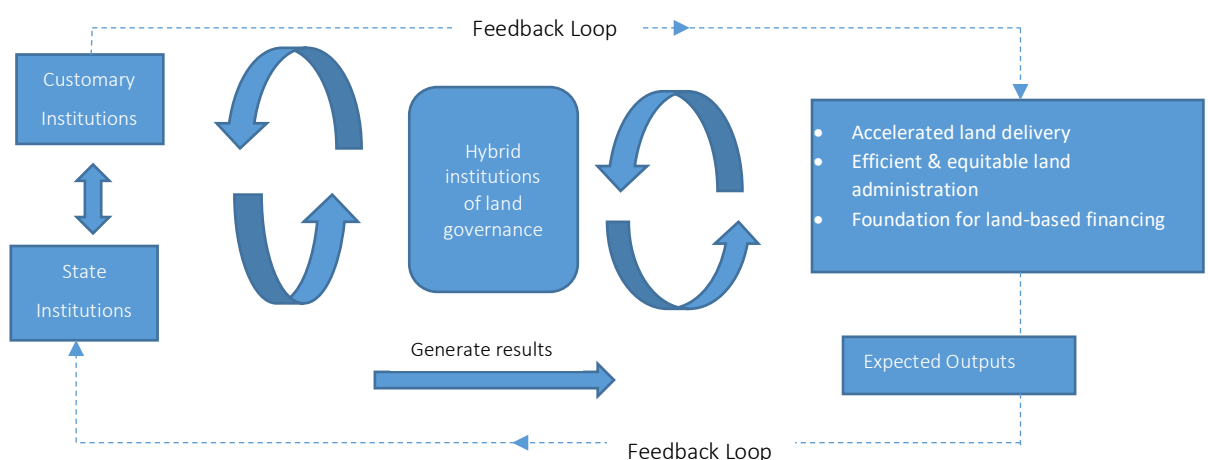


Figure 2. 1: State and customary interface, and interaction process  
Source: Author's construct

In essence a hybrid governance regime would make land administration more predictable and facilitate a more efficient property transactions, as shown in figure 2.1. For example rather than relying on oral institutional memory, land transactions would be documented and registered at the local level as in the case in Rwanda (see Schreiber, 2017). In this way, the establishment of a hybrid regime means a little more than endorsing existing local practices. It also means formally recognising an individual or a collective's right not only to use and profit from but in some cases also disposing of land much in the same way as De Soto (2000) envisaged. Additionally, land administration and management could become more professional and more egalitarian in the way decisions about land governance are made. The creation of decentralised institutions is about the extension of state power into a realm where it has had limited influence. Such land use planning and regulatory measures may include the establishment of flexible frameworks for informal and self-regularised land management, preparing municipal or city strategic plans, defining permissible lots sizes among others. As that regulatory framework is implemented it tends to create land value, primarily through ensuring certainty for citizens and developers alike, both large and small. The profit from rising land values can be taxed by the state, establishing flows of revenue which can then be reinvested both in the effectiveness of the regulatory frameworks, and in the construction and maintenance of physical infrastructure.

### **2.5 Institutional hybridity: transformative potential or business as usual**

It is argued that when customary and statutory land governance systems are integrated, property rights will be more formalised and more secure leading to an efficient land market (Biitir et al., 2017, Byamugisha, 2013, Chimhowu, 2018a, Obeng-Odoom, 2012). However, achieving inclusive and equitable land development is likely to prove difficult in increasingly marketised environments, and where vested interest in land are entrenched.

Concern is expressed about the largely theorised positive outcomes of hybrid institutions of land management as they are driven by the desire to make customary land more predictable and legible to outsiders/investors in the short run, while aspiring for a private property rights regime in the long run (Byamugisha, 2013, Chimhowu, 2018b, Lemmen et al., 2017). Similar to the critique about neoliberal reform processes of state-backed individual land titling programs, it is argued that the idea of hybrid institutions is just political rhetoric (Obeng-Odoom, 2012), and that scholars have erroneously assumed a direct and predictable relationship between the administration of hybrid institutions and achieving equity through land development (Akaateba et al., 2018, Millar, 2014). Yaro (2012) and recent studies by Akaateba et al. (2018) found in their research, instances where increases in land values have precipitated various forms of opportunistic engagements between public

bureaucrats and local chiefs to deliver land, resulting in largely negative and inequitable outcomes for indigenous landholders. It is feared that the transformative energy of hybrid institutions would inure to the benefit of people in authority, some traditional power groups and private capital at the expense of the poor. Moreover, it is unclear whose interests are being served when the boundaries between formal and informal institutions get blurred. That is why Meagher (2012) cautioned against uncritically celebrating all forms of hybrid approaches to governance as viable practical arrangements, noting that some forms of hybrid structures could promote corrosive rather than constructive outcomes.

Established practices and land governance processes are produced and reproduced through strong self-reinforcing positive feedback effects that block out innovation arising in new ways and in sites not recognised by those practices. Even despite reforms searching for new approaches and innovative institutional ideas, actors (both local and national) benefiting from the *status quo* are inclined to reproduce structures which form institutional constraints for innovation (Chettiparamb, 2007a, 2014, Sorensen, 2015, 2018b). Powerful actors are only receptive to those institutional arrangements that offers significant rewards or does not counter their interests (Mahoney and Thelen, 2010a). The distributional effects of institutions mean that new institutional arrangements that do not fit into the interests of dominant actors are thus overlooked, whether or not they may contribute to efficiency and equity in the land market. Needless to say, the outcomes of particular institutional arrangements will depend on the political compromises, power relations and the characteristics of actors involved.

Moreover, because they develop out of existing institutional arrangements, hybrid institutions are often seen to reinforce existing power structures and interests, and may not help to address the key institutional deficits they were meant to address in the first place (German et al., 2013, Locher, 2016). This is rather perverse for an initiative geared towards efficient and equitable land management. Indeed, there have been concerns about the capacities of state organisations to supervise and provide the kind of guidance required for these new institutional arrangements. Contrary to the popular perception that the creation of new decentralised institutions will dilute the power of customary authorities and extend state power into areas it had limited influence, many local governments lack the capacity to follow through this statutory influence as Byamugisha (2013), Boone (2017) and Wily (2017) have observed. This implies that by default customary authorities will continue to manage lands just like before, except this time they are more resourced to advance their interests. These concerns pose a challenge for planning scholars and for those practitioners concerned with facilitating hybrid forms of governance to secure transformatory change in land governance (Akaateba et al., 2018, Merrey and Cook, 2012).

To guard against hybrid institutional forms that engender negative rather than positive outcomes, some commentators have argued for the need to pay more attention to the processes of institutional hybridisation. Mac Ginty (2011) for instance argues that moving away from a focus on the categories of actors to critically examining the processes of hybridisation can illuminate the grey areas of hybrid governance practices. In the same vein, Cleaver and De Koning (2015) call for a more critical examination of the process, power and meaning dimensions of hybrid governance as a useful way of identifying 'arrangements that work'.

In a similar line of argument, Goodfellow and Lindemann (2013) insist that there is the need to distinguish hybrid institutions from other forms of interaction, co-existence, or interface between state and non-state institutions (institutional multiplicity). This distinction is particularly important given that informal institutions can combine with formal ones in a number of different ways, some of which are much more complementary than others (Helmke and Levitsky, 2004). For Goodfellow and Lindemann, hybridity only occurs "when rules and procedures associated with the state merge in some way with those of other organisations" leading to a synthesis or integration of one institution and its structures into the other (2013: 6). In relation to customary authorities, this might be referred to as the 'integration' or 'embedding' of traditional systems into state ones, or the 'incorporation' of customary authorities by the state (Ubink, 2016). From this perspective, such institutional arrangements should not generate conflict between the state and non-state organisations as long as the latter are not attempting to usurp roles and functions that the state is claiming exclusive rights to fulfil. This conceptual understanding helps us to better understand conditions under which formal-informal institutional interface is likely to pose a challenge or indeed a solution.

While these propositions provide a good starting point for a much deeper theoretical exposition, they do not adequately detail the everyday local practices on the ground, the practical arrangements and strategies as well as the outcomes that emerge in different contexts to aid policy makers in their land law making and implementation efforts. In the face of the increasing attention to non-state action, it is crucial to ask, how and to what extent hybrid institutions of land management can be facilitated to be transformative. Why have some attempts to institutionalise hybrid land governance managed to persist, and transform policy and planning, while other initiatives fail? In other words, can we ensure that hybrid land management processes do not result in 'business as usual' but positive change? At a time when land uses are changing, and new models of land management and planning are being introduced, it may be conceptually and empirically useful to examine the complex processes through which different social actors (un)intentionally design and sustain hybrid land management arrangements, and how such arrangements contribute to secure, inclusive and equitable access to land.

## **2.6 Conclusion**

This chapter examines the notion that incorporating customary and statutory systems of land management promotes efficiency and equity in the land market and can provide the basis for instituting land-based financing mechanisms. It does this by linking the discourse on the integration of customary and state land tenure regimes in sub-Saharan Africa to existing broader urban planning and land-based financing debates for cities in the global south. The literature discussed above has demonstrated that just as land administration systems based on customary land tenure failed to achieve their intended objectives in Africa, so have modern formal titling and registration processes failed to tackle the land management challenges in sub-Saharan Africa. As a result, contemporary debates in both land policy reform and urban planning point towards a paradigmatic shift towards organic and pragmatic forms of planning and land management that incorporate everyday local socio-cultural practices in Africa. This contemporary view on land policy seeks to reconcile informal and formal institutions and procedures of urban land management based on hybrid institutional arrangements. However, critical issues on their applicability and workability in different contexts abound and are worth exploring to avoid their universalisation. The chapter suggests that much of the existing literature is inclined to overstate its perceived transformative outcomes as such there is the need to specify the limits of such proposals by acknowledging their context-specificity and by critically evaluating their functionality and outcomes across the diverse geographical locations in Africa.

In contributing to assessing how these proposals work on the ground and their potential for instituting land-based financing mechanisms, I employ two theoretical concepts from new institutionalism (historical and discursive institutionalisms) to examine the impacts of processes of institutional hybridity and the management of urban land in different urban societies in Ghana. These two concepts are used to build a theoretical framework to investigate why attempts to establish hybrid institutions for land management and land-based financing show substantively different outcomes in different cases with seemingly comparable institutional conditions, as discussed in the next chapter.



### **Chapter 3 - Hybrid Governance and Institutional Change**

The growing discourse on hybrid institutions of land management, discussed in chapter 2, suggests that integrating customary and statutory systems of land management can induce gradual institutional change. Although the established historical institutionalist literature suggests that historically constructed institutions create major constraints and opportunities that affect institutional change processes, it is also open to the possibility that, under certain circumstances, individual agents can influence change (Streeck and Thelen, 2005, Mahoney and Thelen, 2010a). Other analytical frameworks such as discursive institutionalism focus on how institutional change can be explained by the dialectic of human agency and the structural forces and routines that are both medium and outcomes of actions of individuals agents (Schmidt, 2008a, Blyth, 2002). Thus, change cannot be fully managed, pre-planned or controlled, but it is prepared and navigated by people depending on the circumstances, timing, power relations and combinations of actors involved. This chapter draws insights from these two theories to help explain how efforts to establish hybrid institutions of land management succeed in some environments and fail in others, and the circumstances that shape their differential responses. In this conceptualization, Streeck and Thelen's (2005: 9) definition of institutions as "collectively enforced expectations with respect to the behaviour of specific categories of actors or to the performance of certain activities" is useful. This characterisation of institutions helps us focus more narrowly on "collectively enforced expectations" such as those relevant to planning, governance and property.

The section that follows reviews the analytical strengths and weaknesses of the historical institutionalist approach to institutional change. This is followed by an examination of recent theoretical work that focuses on processes of incremental institutional change. Although this contemporary view of historical institutionalism helps to enrich our understanding of the existing conditions, interests and institutional context that shape people's actions, it does not adequately account for the motive of actors and why actors respond differently under comparable institutional conditions. The third section examines insights from discursive institutionalism that help explain why actors behave the way they do, focusing on the role ideas and discourse play in shaping and legitimating the actions of individuals or groups. In the final section, I explore the merits of integrating insights from both historical and discursive institutionalism. Building on the theoretical foundations of these two branches of new institutionalism, I derive a set of propositions that would help explain the divergent outcomes and responses to attempts in establishing hybrid institutions of land management and land-based financing mechanism in urban Ghana. These propositions highlight the greater

challenges to establishing hybrid institutions of land management and the differential responses to institutional efforts in rapidly growing cities.

### **3.1 Understanding planned and unplanned change**

#### **3.1.1 Positive feedback effects and institutional continuity**

Historical institutionalism is best known for the concept of path dependence, particularly so, as it conceives institutions to evolve historically through political conflicts and compromises to structure action and outcomes (Hall and Taylor, 1996). In its simplest form, the concept of path dependence is often used to support the assertion that legacies of the past limit the range of current possibilities and/or options in institutional innovation (Sorensen, 2015). Pierson (2000b) for instance, points out that path dependent processes are “social processes that exhibit positive feedback and thus generate branching patterns of historical development”. This means that where self-reinforcing positive feedback exists each step down a particular development pathway increases the likelihood of further steps along the same pathway making it very difficult to reverse course, even if it leads to inefficient outcomes. In other words, positive feedback effects tend to support institutional continuity even if that institutional arrangement is inefficient. Invoked in this way, the concept of path dependence is used to stress that some institutions become harder to change because they generate self-reinforcing “positive feedback” effects.

The idea of positive feedback effects suggests that individuals or groups who benefit from an institution have incentives to resist changes that will reduce their power or rewards (Mahoney and Thelen, 2010a, Pierson, 2004). Hence, rather than converge on a single most efficient institutional arrangement, societies may continue to follow different trajectories over extended periods, and inefficient institutional arrangements may persist. Positive feedback effects therefore work to reinforce the continuity of particular developmental pathways. The question is what sorts of positive feedback effects are pervasive in cities, particularly in Ghana’s cities where land is controlled and administered by customary authorities.

#### **3.1.2 Critical junctures for change**

Mahoney and Thelen (2010a) have pointed out that the idea of path dependence does not mean that institutions become frozen or unchanging, but that only an unpredictable event triggered primarily by external forces can disrupt a particular development pathway. Indeed, several historical institutionalists have shown that ‘path dependent’ processes are sometimes disrupted at critical junctures (see Sorensen, 2015, 2018a, 2017b, Mahoney and Thelen, 2010a, Moulaert et al., 2007). The critical junctures referred here are labelled tipping points (Gladwell, 2006), windows of opportunity (Kingdon and Thurber, 1984) or acceleration phase (Geels, 2004) in policy science studies. They all

refer to those crucial founding moments where existing institutional structures fail to provide adequate solutions to pressing problems, creating opportunities for actors to develop new institutions or revise existing ones. During these moments of critical junctures, major changes are triggered primarily by exogenous forces, and new institutional arrangements are created. The nature of such external shocks will depend on the institution and context, and this might be a change in economic growth, urbanisation or the creation of new institutions by external actors or some other shock to existing arrangements.

The key point is that when existing institutions lose their legitimacy as a result of crises, a heightened opportunity is created for policy entrepreneurs and other actors to replace existing institutions and create new arrangements. As Capoccia and Kelemen (2007) argue during critical junctures policy change is enhanced because the structural constraints imposed on actors are broken or substantially relaxed so that purposive action may be especially consequential. From this perspective, policy change is only expected during critical junctures.

Critical junctures therefore represent opportunities for actors to establish new institutional structures. Yet, historical institutionalists hold that the institutional outcomes that emerge during critical junctures are often a result of the particular compromises and sets of power relations at the time (Sorensen, 2015, Pierson, 2000b). This is because institutions tend to distribute valued resources unevenly, and those who stand to benefit from a particular institution are often willing to fight to defend it. The resources available to them help prevent unwanted changes. Thus, change is only likely to occur if there is a shift in the balance of power, or if those in favour of continuity are weaker than those who favour change (Lowndes, 2009, Mahoney and Thelen, 2010a). This view of institutions as distributional instruments implies that minor differences in the particular circumstances, configuration of actors, timing and sequencing of institutional development in terms of level of urbanisation, economic context and so on may lead to very different outcomes in different places. That is, the particular conjuncture surrounding the establishment of major institutions is likely to have powerful impacts on the compromises achieved and the institutions established.

The effect of sequencing, timing and configurations of actors is particularly evident in rapidly urbanising cities, where attempts to develop, revise and enforce institutions that regulate and manage land use are routinely contested even if some specific institutions do demonstrate path-dependent characteristics and consistently privilege some outcomes over others. Berrisford's (2011c) study of planning law reforms in Africa, for example, illustrates this point. According to Berrisford, the complexity of systems that include land ownership systems, municipal law, and the high value of urban land create political obstacles and vested interests that continue to hamper reforms. It is from this

perspective that Sorensen (2018b: 13) argues that ‘the institutions in place when land is urbanized have profound structuring impacts on the specification of, distribution of costs and benefits of, and forms of the urban property and infrastructure created’. The consequences of critical junctures is therefore that institutional innovation arising in new ways and sites is not recognised in established policy practices (see e.g Chettiparamb, 2007a). In other words, new institutional arrangements for land management that do not fit into the interests of dominant interests/landowners may be overlooked, whether or not they contribute to efficiency in the land market.

### 3.1.3 Institutional change from within

An exclusive focus on continuities and path-dependencies can, however, appear historically deterministic and ignore incremental changes or any changes generated endogenously from within the institution. Recent theoretical work on historical institutionalism has focused much attention on understanding how institutions change outside critical junctures, in gradual and incremental but nonetheless potentially transformative processes (Thelen, 2004b, Pierson, 2004, Streeck and Thelen, 2005, Sorensen, 2011, Lowndes and Roberts, 2013, Mahoney and Thelen, 2010a). While many existing institutions do generate elements of path dependence that make change difficult, in other cases change is more readily achieved through gradual and endogenous change processes such as *layering* (Genschel, 1997, Streeck and Thelen, 2005, Schickler, 2001) and *conversion* (Thelen, 2004b, Mahoney and Thelen, 2010a)<sup>8</sup>.

Institutional layering is described as a process whereby actors attach new rules to a particular institution without revising the existing ones, but nevertheless changing the ways in which the existing rules structure behaviour (Streeck and Thelen, 2005, Thelen, 2004a, Mahoney and Thelen, 2010a). The logic of positive feedback and lock-in effects means that established institutions can be difficult and very costly to change. Instead, reformers learn to work around those elements of an institution that have become unchangeable by introducing new institutions to address contemporary demands. These new initiatives add to, rather than replace pre-existing institutional forms. Streeck and Thelen (2009) explain that institutional change through layering can be gradually effected not through a frontal attack on existing institutions but by adding different institutions that eventually make the unchangeable institution obsolete. This means that actors looking to influence changes in land reforms can introduce new amendments that can initially be ‘sold’ as refinements of or correctives to existing institutions. Since the new layers created in this way do not directly undermine existing land

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<sup>8</sup> Other modes of incremental institutional change that have been identified by Thelen and others include displacement, drift and exhaustion. For detailed explanations of these mechanisms of change, see Streeck and Thelen (2005: 19).

institutions, they typically do not provoke counter mobilization by defenders of the status quo. The introduction of the new arrangements set in motion path-altering dynamics which crowd out the old institutions overtime. Hence, policy change is achieved without changing the existing rules, but by adding new policies to the existing system. A typical example is the new Land Law of 2017 in Ghana, where established land use legislative frameworks have been refined by introducing new amendments, without undermining the intent of the existing system (see Chapter 5 for a detailed discussion).

Mahoney and Thelen (2010a) have argued that layering is more likely to occur in contexts where powerful defenders of the status quo that can block changes to the institution exist. But these powerful defenders are unable to prevent the addition of new elements or do not have the need to block changes to the existing institutional framework. An example in the case of Ghana is the existence of customary authorities who have vested interest in customary land and the revenue that is generated. It will be difficult for state actors hoping to change land use policies to revise formally the existing land management rules without significant resistance from customary authorities. So layering as a mode of change has been used to effect such revisions by introducing customary land secretariats that assure institutionalised community-level participation and accountability in the use of stool land and the revenue it generates (see for e.g Amanor et al., 2008, Brookins, 2018). Overtime, it is expected that the new institutional layer will siphon off support for the old layer.

Institutional conversion is another mode of gradual institutional change, where existing institutions are adapted to serve new goals, functions or purposes or to fit the interests of new actors (Thelen, 2004b, Mahoney and Thelen, 2010a). Unlike layering where the rules are amended, here the rules remain formally the same but are interpreted and implemented in new ways. Such redirection may come about as a result of new urban challenges, to which political actors respond by deploying existing institutional resources to new ends. Institutional conversion can also come about through changes in power relations, such that actors who were not involved in the original design of an institution and whose participation in it may not have been reckoned with, take it over and turn it to new ends. In Ghana, instances of institutional conversion have been observed in many urban areas (see for eg. Akaateba et al., 2018) where customary landowners have redirected existing land use planning policies to fit their private interests through changes in implementation. Planning legislation in Ghana requires local authorities to develop local plans for urban areas. However, some customary landowners and public planners have taken advantage of gaps whereby customary authorities make various payments (in cash and kind) to cover the costs of surveying, planning, and sub-dividing customary lands for their own gains (this point is discussed later in Chapter 7).

According to Mahoney and Thelen (2010a) institutional conversion may occur as a result of the gaps that exist or emerge over time between institutionalised rules and their local enactment. These gaps give strategic actors considerable latitude to interpret and implement rules in new ways. According to Streeck and Thelen (2009) gaps between institutionalised rules and their local enactment result from four sources (see also Pierson, 2004). First, unintended consequences of institutional design may offer opportunities for actors to redirect institutions to new functions or purposes. Second, where there are ambiguities in the ways rules are framed, institutional challengers may be able to exploit its inherent ambiguities in ways that allow them to redirect it toward more favourable functions and effects. Third, strategic actors including even those not involved in the design of an institution will do anything in their power to interpret its rules in their own interest (or circumvent or subvert rules that clash with their interests). The distributive character of institutions means that actors will continue to protest existing institutions, and consequently take advantage of existing gaps to drive change through conversion. Fourth, time and changing contextual conditions and challenges opens gaps that entails possibilities for institutional conversion. This emphasis on gaps between institutionalised rules and their local enactment means that where there are high levels of discretion in the interpretation or enforcement of the rules, conversion is more likely to occur.

#### **3.1.4 The limits of historical institutionalism and the need for ideas**

Contemporary historical institutionalists attempt to explain how institutions change incrementally outside critical junctures by focusing on how actors cultivate change from within the context of existing opportunities and constraints. In this way, historical institutionalism sheds light on the conditions of policy change because it stresses the influence of previously enacted policies and the institutional mediation of interests. However, this view still leaves several questions unanswered. First, historical institutionalism is better at specifying the opportunities and constraints that political institutions create than at explaining the policy choices that occur within this 'political opportunity structure'. For instance, historical institutionalists emphasise that actors seem primarily interest-oriented and that they will seek to defend those institutional arrangements that benefit them or protest against those that disadvantage them (Streeck and Thelen, 2005, Mahoney, 2010). But it remains unclear how these interests take shape or where they originate. That is, what motivates actors' response to layer, reinterpret or subvert those institutions? Understanding actors' preferences or goals is important because it points to the specific content of policy proposals that actors promote within concrete institutional settings, and the reasons why actors conceive and make sense of particular policy choices.

Second, historical institutionalism understates the creative faculty of actors and the strategies that actors develop to convince interests groups to support their proposals for institutional change. Historical institutionalists emphasise actors' interpretation of the meaning of institutions in order to explain gradual changes of institutions (Mahoney and Thelen, 2010a). For instance, the redirection of institutions to new purposes associated with conversion is based on actors' discretionary interpretation of existing institutional arrangements or enforcement. This focus on interpretive processes points to ideas as the most plausible candidate in the institutional transformation process. As Blyth et al. (2016) have pointed out, the process of interpreting and implementing rules in new ways (institutional conversion) is always and everywhere a mental event. Similarly, Jacobs (2011) suggests that since actors cannot accurately predict the impact of their actions, their choice of any course of action is powerfully determined by their perceptions, ideas, and mental maps of policy cost and benefits. This implies that ideational factors make the processes and mechanisms of gradual change possible.

Given these shortcomings associated with historical institutionalism, it is increasingly acknowledged that ideas and discourse can help explain why institutions change (Béland, 2009, Koning, 2016, Schmidt, 2011, Sorensen, 2015, Blyth et al., 2016). Therefore, in the next section, I turn to discursive institutionalism, which focuses on actors' ideas and discourse to elucidate the preferences that drive institutional change from within.

### **3.2 Bringing in ideational processes**

The discursive institutionalism literature points to both the content of ideas and the interactive processes of discourse to explain institutional change (Schickler, 2001, Schmidt, 2008a, Blyth, 2002, Campbell, 2002). For scholars in this tradition, ideas stand as forces that help individuals formulate their preferences and are the currency for the discursive interactive processes that help produce institutional change (Schmidt, 2010). Ideas in this sense refer to stories (Gabriel and Connell, 2010, Throgmorton, 1996), narratives which shape understandings of events (eg. Hajer, 1995, Hajer et al., 2005), or the scripts, myths, collective memories that frame action (Rothstein, 2005).

Discursive institutionalists trace the transformative power of ideas to moments when windows of opportunity open. During these moments, old institutional arrangements no longer solve the problems for which they were designed (Blyth, 2002, Kingdon and Thurber, 1984, Schmidt, 2010). As Walsh explains, there is more space for ideational change at times that existing policies seem incapable of addressing changing societal conditions: "the failure of existing policies prompts decision makers to implement different policies in accordance with a new idea" (2000: 484). Likewise, Blyth (2002) argues that moments of institutional destabilisation and uncertainty serve as critical juncture

when institutions lose their power and ideas come to the fore. When existing institutions fail, actors need ideas to reduce the uncertainty about possible courses of future action, because “before agents can institutionally respond to a crises they must have some idea about what the crises is and what caused it” (Blyth, 2002: 36). Hence, ideas help actors to construct the issues and problems that enter the policy agenda.

Yet, ideas cannot be discussed without pointing to the ‘carriers’ of ideas who articulate them. Windows of opportunity alone are not sufficient for policy change. Actors with plenty of authority and credibility need to be present and involved in the process through which those ideas are constructed and communicated (Schmidt, 2008a, Kornprobst and Senn, 2017). As Hacker (2004) notes, specific ideas are more likely to become influential when powerful actors decide to promote them. These carriers of the ideas who bring about change (agents of change) can be policymakers, state bureaucrats, interest groups, opinion leaders, and more. The transformative capacity of institutions is further enhanced if the agents driving change are guided by a learning process through which they reflect on the institutions they are experiencing (Kwon, 2013). Buitelaar et al. (2007) work on Dutch land policy illustrates the role of such learning in institutional change. According to them changes in actors’ ideas about an institution leads them to pursue institutional change by communicating critically about those institutions and building social consensus regarding how to change them. For Buitelaar and his colleagues, strategic actors can drive institutional change through a process of ‘learning’ or institutional reflection. Through a process of trial and error, actors are able to weed out any unintended features or consequences if they dislike the experiences of an institution. Based on this perspective, it stands to reason that if actors’ priorities and subjective beliefs change about the desirability and efficiency of an institution, they will consciously pursue changes to the institution through discursive practices.

A number of scholars have examined how agents use discursive processes to consciously change institutions (Kwon, 2013, Schmidt, 2008a, Béland, 2009). Schmidt (2008a) for instance points out that the deliberative nature of discourse allows political actors to conceive (ideas) of and talk (discourse and argue) about institutions as objects at a distance, and to dissociate themselves from them even as they continue to use them. For Schmidt, two forms of interactive discourses are available to agents seeking to pursue institutional change. First, is ‘coordinative’ discourse, where political actors interact among themselves in creating, deliberating, arguing, bargaining and reaching agreement on policies. Here, actors seeking to change an institution share cognitive and normative ideas about how to effect such change. The second is ‘communicative’ discourse, where political actors engage with the public in presenting, deliberating, arguing, contesting and legitimating those policy ideas. From this



perspective, institutional change only works when actors are able to develop specific communicative and coordinative discourses that enable meaningful action within institutions (see also Schmidt, 2008a, 2010, 2012).

When these new institutions are crafted, ideas can help to stabilise them by familiar mechanisms of institutional reproduction such as legitimacy and the logic of appropriateness (Blyth, 2002). In other words, ideas can become powerful “weapons” that allow actors to delegitimise or challenge the existing ones. These ideas form a public discourse that can help to convince interests groups, and the general population that change is necessary (Schmidt, 2010). This is what Cox (2001) labels as “the social construction of the need to reform”. According to Cox, “advocates of reform need to employ strategies to overcome the scepticism of others and persuade them of the importance of reform” (2001: 475). Hence, policy change becomes possible when the need for new institutional arrangements has become widely established and a supply of new ideas is easily available.

The question then becomes, why some ideas are more effective in transforming institutions while others are not. In other words, how do proposals for institutional change get accepted by local actors and successfully transform planning agendas but fail in some environments. In this respect, Schmidt (2012: 19) plausibly argues that proposals for institutional change succeed when speakers “address their remarks to the “right” audiences at the “right” times in the “right” ways”. Ross (2013) recently offered insights on the “right audience”, arguing that individuals are more likely to adopt ideas from actors they identify with. Hall (1989) already answered the question of “right times” by suggesting that ideas will only be persuasive when they are relevant – when they seem effective at addressing issues that are salient at the time they are proposed. With regards to the “right ways”, Cox (2001) points out that an idea needs to strike a chord with a tradition or widespread norm in order to be successful. The emphasis on ‘right audience’, ‘right times; and ‘right ways’ points to the importance of the institutional context within which ideas are communicated. In other words, the chances of a proposal getting accepted by targeted audience are enhanced when it ‘makes sense’ within a particular institutional context. Ideas or proposals for policy change make sense when they are both convincing and persuasive by resonating with targeted audiences’ ambitions and everyday experiences (Blyth, 2002, Schmidt, 2010). Based on this perspective, the same ideas or proposals for change can receive wildly different treatments in different jurisdictions, and this can be explained by the institutional context.

In the light of the above, it is possible to integrate the insights from both historical and discursive institutionalism to fully explain how attempts to institutionalise hybrid institutions of land governance have received differential responses. Similar to historical intuitionist approaches, discursive

institutionalist approaches may also be overly deterministic or idealistic with regard to the role of ideas, seeing the influence of ideas and the persuasiveness of discourse everywhere (Blyth et al., 2016). Often, critical ideas for change have little effect on routinized patterns of interaction while critical discourse and deliberation do not persuade (Koning, 2016). Equally importantly, historical institutionalists remind us that processes of change are often unconscious (Thelen, 2004b, Streeck and Thelen, 2005). Sometimes people act without prior ideas about what they are doing, creating new practices such as layering or conversion. But even when there is conscious action events do occur outside people's control all the time. At the same time these actions, whether conscious or not, have unintended consequences because ideas may be reinterpreted or misunderstood (Fioretos et al., 2016, Sorensen, 2018b). This is where an integrated approach that draws insights from both historical and discursive institutionalism is useful. Historical institutionalism is helpful for analysing the unintended consequences of (intended) actions while discursive institutionalism is to account for actors' ideas and actions about those events and their reasons for subsequent courses of action in response. In other words, the historical institutionalist processes of layering and conversion can be explained as the product of political agents engaged in thinking up new ideas about what to do and how to do it. In order to emphasise the relationship between ideas and institutional constraints, the next section summarises the main analytical concepts that guide this research.

### **3.3 Towards a framework for analysis**

This chapter provides the theoretical foundation with which the central question of this research is operationalized. The thesis' question concerns how institutions of the state combine with those of non-state authorities to deliver urban land to the market with a focus on capturing some of the land value increment. The starting point for the empirical research is government's efforts to integrate State and customary institutions of land governance to form a hybrid land management regime that would serve as a basis for implementing land-based financing at the local level. The question is why, under seemingly comparable conditions, some attempts to institutionalise hybrid institutions of land governance manage to persist, and transform policy and planning, while other initiatives fail in such attempts.

The concept of path dependency is used to illustrate how institutions become harder to change over time because they generate self-reinforcing "positive feedback" effects that support institutional continuity. Institutional and policy choices allocate resources unequally, thereby shaping the composition of interest groups, benefiting some actors over others, altering actor preferences and influencing political behaviour (Pierson, 2000b, Pierson, 2004). Hence, customary organisations and some government bureaucrats who benefit from an existing institutional arrangement have incentives

to resist changes that will reduce their power or rewards. Invoked in this way, the concept demonstrates that some institutions that generate self-reinforcing positive feedback may therefore become difficult to reform. Hence, actors can only create or change institutions during 'critical junctures' (or moments of crisis) - times when established structures fail to provide adequate solutions to pressing problems. The question is which kinds of urban institutions get stuck in relatively path dependent forms, and how do positive feedback effects shape this form of continuity.

Recent historical institutionalists have pointed out that because institutions distribute valued resources unequally, actors do not always wait for critical junctures to cause institutions to change (Mahoney, 2010, Mahoney and Thelen, 2010a). Instead, strategic actors try to cultivate change from within the context of existing opportunities and constraints in response to external conditions such as economic growth, urbanisation or changes in the socio-economic context. Actors achieve this by working around those elements they cannot change by attaching new rules to existing ones (layering) or by subverting or circumventing rules that clash with their interests (conversion). Such changes are shaped by characteristics of the institution in question and by the characteristics of the actors who seek change. In simple terms, change is most sought by those who were losers in previous rounds of institutional development who have the most to gain from policy change, while those who benefit from existing arrangements are more likely to seek to further strengthen existing rules. Thus, historical institutionalism helps us understand the existing conditions, interests and institutional context that shape people's actions. What remains unclear, however, is the motive driving actors' actions. In other words, under which circumstances do state-led efforts to establish hybrid land management institutions become accepted by local actors.

On the basis of the policy science literature discussed in this chapter, it is argued that ideas and interactive discourse shape people's conceptions of their own self-interest, structure conceptions of possible and desirable change and serve as powerful tools in legitimizing courses of action (Blyth, 2002, Taylor, 2013). When existing institutions fail, actors consciously build new institutions through deliberation, contestation and consensus building through ideas and discourse. Actors seeking to change an institution may use persuasive ideas or discourse to promote public acceptance of new institutional forms or policies, particularly when those ideas or proposals seem effective at addressing issues that are salient at the time they are proposed. Proposals for institutional change likely succeed if they are connected to an important problem and resonate with targeted actors' ambitions and interests (Schmidt, 2010). Moreover, individuals interacting with an institution may decide to change it from within if their ideas about it changes. In the course of experiencing an institution, actors

recalibrate it in a process of trial and error to weed out any unintended features or consequences through discursive interaction (i.e. institutional reflection or learning).

From the theoretical concepts presented in this chapter, we can derive the following integrated framework (Figure 3.2), which serves as the basis for inquiry in three case studies (see Chapter 4). The starting point is an existing institutional arrangement. Two interrelated developments affect and subsequently make the existing institutions susceptible to change: first, the stream of endogenous processes, namely institutional reflection (Gabriel and Connell, 2010) and actions of individuals experiencing the institution that challenge the present stable institution. In particular, the properties or character of the existing institutional arrangement can likely give rise to 'learning' effects amongst the individuals interacting with it. This can take the form of institutional reflection or proposals for new institutional forms through discourse and discursive interactions. Institutional reflection is likely to occur when the institution has consequences that are difficult to accept for people on the ground. The consequences of such learning can lead to ideational effects and subsequently influence the existing institution to begin to work differently. The ideational change can also have a more indirect effect that enhances the likelihood of ensuing formal change (institutional transformation). If the actors responsible for the institution in its day-to-day working decide to apply it differently because they disliked their earlier interactions with it, the institution will start to function differently, which in turn could strengthen the idea among actors that change is necessary. In this thesis, an important consideration is to identify the individuals whose views have changed leading to this institutional reflection and how this affects their preferences and the distribution of power.

The second stream of effects that can put the existing institutional arrangement under strain concern external societal developments, notably the creation of new institutions or structural changes in society such as urbanisation, large-scale developments and so on. Structural developments such as rapid urbanisation for instance have the potential to shake up customary beliefs systems, question the legitimacy of existing institutions, challenge taken-for-granted norms and generate uncertainty about existing institutions. These structural effects may incite powerful actors to strategically create new institutions through layering or interpret and implement the existing institution in new ways that aligns with their interests. What might also happen is that, although an institutional arrangement is dysfunctional, it might persevere because of some positive feedback effects that is derived by some individuals or groups. Thus, an important consideration in this study is to examine how powerful actors (e.g. customary authorities) respond to these informal changes. That is, the actual consequences of institutionalized behaviour, the changing meanings and functions being attached to an otherwise stable institution and the new 'logic of action' that is established by these actors. Tracing how changes

in actors' views about the institutional arrangement influences the distribution of power and the preferences of powerful actors could help explain how transformative change can result from incremental change.

Applying this integrated institutionalist approach is useful for explaining the differential impact of processes of institutional hybridisation on different rapidly growing urban areas in Ghana. A historical institutionalist account will help elucidate the existing conditions, interests and institutional context under which efforts to establish hybrid institutions for land management in rapidly urbanising societies may succeed. However, it cannot explain the differing responses to the institutional efforts. Also necessary is a discursive institutionalist explanation of the role of ideas as well as persuasive discourse in promoting public acceptance of the new institutional form. Within this framework the empirical analysis must continuously confront why, under seemingly comparable conditions, some attempts to institutionalise hybrid institutions of land governance manage to persist, and transform policy and planning, while other initiatives fail in such attempts. The next chapter discusses how this research question is operationalised.

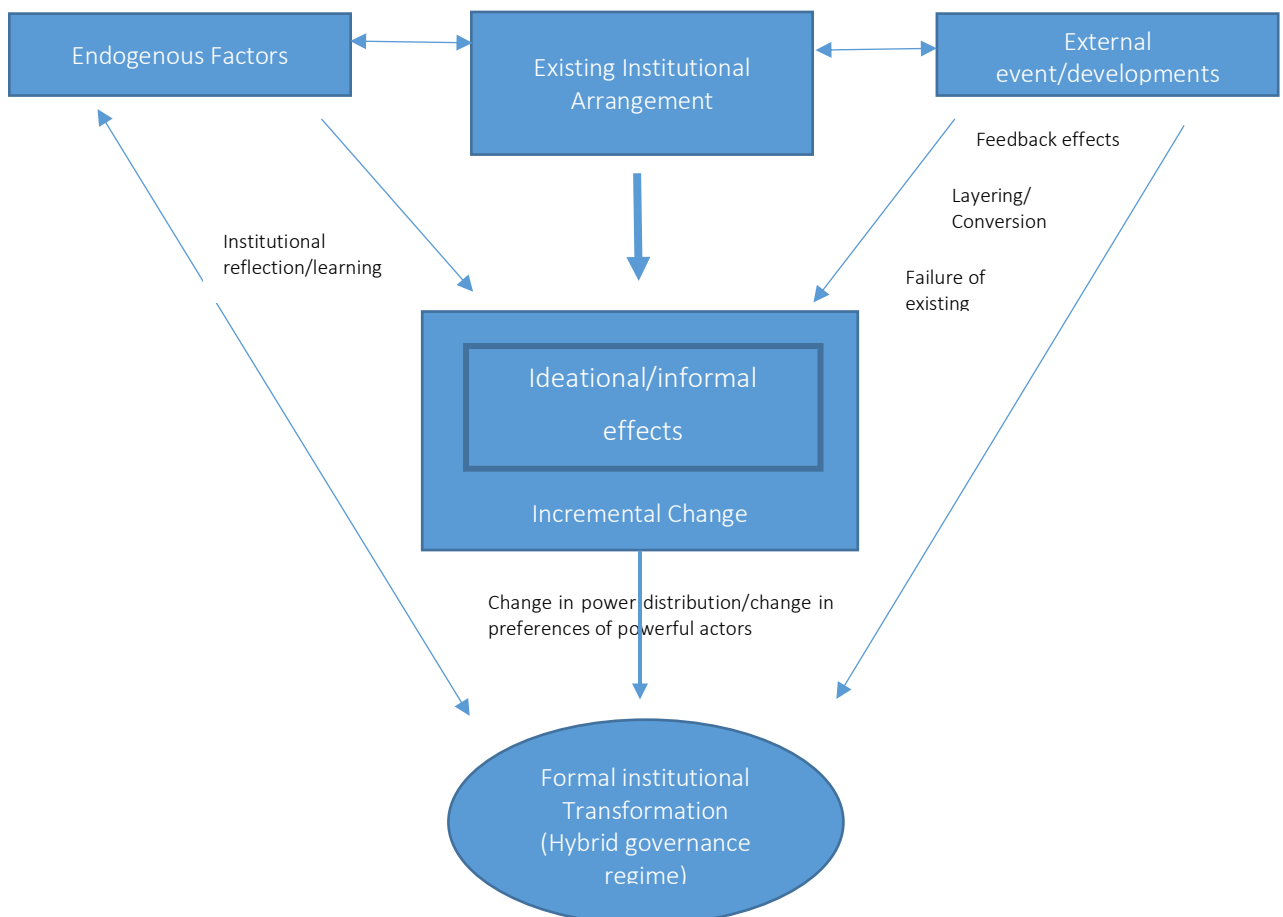


Figure 3. 1: The process of institutional change  
Source: Adapted from Koning (2016: 657)

## **Chapter 4 - Methodological Framework and Data Collection**

This chapter presents and discusses the methodology employed to answer the research question. In doing so, it provides a link between the theoretical and empirical chapters by discussing how the research question was operationalised in the field in Ghana. The thesis is focused on the outcomes of efforts to create new hybrid institutions for land governance under conditions of rapid urbanisation in Ghana. The aim is to understand the processes, relations, actor motivations and outcomes involved in the development of recently decentralized hybrid institutions on the one hand and formal attempts to capture the economic rent from land value appreciation on the other hand. The ensuing sections in this chapter discuss the philosophical stance of the research. This is followed by the research design, with particular focus on the criteria for case selection. The next sections discuss the data collection, data presentation and analysis processes. A reflective account on ethical considerations, reflexivity, trustworthiness and challenges encountered in the research process is discussed in the concluding sections of the chapter.

### **4.1 A critical realist approach**

Critical realists believe that an objective world exists independently of beliefs, perceptions, theories and constructions. However, the objective world consists of subjective interpretations which influence how the world is perceived and experienced. To this end, critical realism accepts that knowledge is imperfect and highly fallible because human knowledge captures only a small proportion of a vast reality (Easton, 2010). For critical realists, although theories can help us get closer to reality, our examination of this reality will never be perfect.

This research, with its focus on the interactive effects, processes and outcomes of institutional change is positioned within the critical realist research tradition. It contributes to the growing body of critical realist work that has appeared ever since the critical realist turn in policy and planning science (Watson, 2004, Njoh, 2011, Fletcher, 2017, Sorensen, 2018b). A critical realist approach to land policy and planning processes focuses on the causal mechanisms and contextual conditions driving social events, activities or phenomena; and the essential relations that necessitate these social problems (Fletcher, 2017). This approach encourages reflection on key questions as to why things stayed the same and why things changed, and critically, what were the necessary conditions for this to be possible (Easton, 2002). Hence, critical realism is well suited to addressing the central questions of structural change and transformation in planning and policy due to its distinctive advantages in studying processes over time. In comparison, positivists conceptualize structures as static and governed by law-like regularities

while interpretivists view structures as entirely constructed through and within human knowledge or discourse.

Easton (2010) argues that an important advantage of critical realism lies in its performative nature. Critical realism (CR) embraces ontological realism as well as epistemological constructivism where individual subjectivity and the meanings they ascribe to actions are crucial in understanding the external world. However, while recognizing the importance of subjective interpretations, critical realists in the social sciences highlight that our ability to observe the world is fallible. For this reason, knowledge production through participants' experiences and understandings provide provisional and complementary explanations for understanding social phenomena (Fletcher, 2017). The ability to engage in explanation and causal analysis (rather than engaging in thick empirical description of a given context) makes critical realism useful for analysing social problems and suggesting solutions for social change.

From a CR perspective, the relationship and the modes of engagement between the knower and the known comprises of multiple levels and modes. For Bhaskar (2013) CR has a stratified rather than a flat ontology and this has major epistemological implications. The strata are the empirical, the actual and the real. The *empirical* domain is where observations are made and experienced by observers. It consists of human experiences, meanings and interpretations where individual and social perceptions operate. However, events occur in the *actual* domain and may not be observed at all or may be understood quite differently by observers. Events occur as a result of causal mechanisms that operate in the *real* domain. These 'generative mechanisms' are the inherent properties in an object or structure that act as causal forces to produce events. It is not the case that the real or actual cannot be observed but simply that it may not always be capable of being observed. As Bhaskar (2013) explains, causal mechanisms exist only in virtue of the activities they govern and cannot be empirically identified independently of them. This means that causal mechanisms are social products that can ultimately be understood through phenomena at the empirical level (e.g. human actions and ideas that are generated by these mechanisms). As Easton puts it, "we see just the tip of an iceberg but that doesn't mean that the invisible three-quarters is not there or is unconnected to what we see" (2010: 123). For these reasons, critical realists hold that our knowledge of the world is fallible. It is unlikely to reveal completely and lead to a full understanding of any social situation. Since there can be no definitive criteria to judge the 'truth' of a particular version, it is therefore important to go beyond empirical observations or facts to identify causal mechanisms underlying social events (Fletcher, 2017). In this way, CR helps to explain social events through reference to these causal

mechanisms and the effects they can have throughout the three-layered mode of engagement with reality.

In the wide spectrum of critical realism research, retroduction and abduction<sup>9</sup> are the key epistemological processes that critical realists recognise for developing deeper understanding of the empirical results (see for e.g Fletcher, 2017, Byrne and Ragin, 2009, Easton, 2010, Tsang, 2014). I deploy retroductive and abductive approaches, to understand the mechanisms, conditions, processes of institutional development and outcomes of interactions between customary and state land sector actors in urban land delivery. Retroduction is used to identify contextual conditions that facilitate the occurrence of causal mechanisms. As a reasoning process, retroduction typically progresses from a theoretical framework, to an empirical case, and then 'reach back' to address the original theoretical idea (Danermark et al., 2005, Ryan et al., 2012, Duminy et al., 2014). This operation compels the researcher to ask not only what happened, but what could happen or what hasn't happened. In doing so, initial theories and concepts may be accepted, revised or rejected in favour of ones that provide better theoretical justifications and explanations to the studied phenomena using insights from a real-world context or event. Through critical reflections, retroduction allows researchers to probe into the stratified layers of reality and attempt to work out theories that describe the structures and mechanisms responsible for giving rise to the observable events. For this reason, Lauria et al. (2006) argues that the real value of retroductive analysis lies in its ability to enable critical realism researchers to reflect upon and question the potential of a certain theory, or to develop concepts and measures for evaluating and modifying the effectiveness of that theory, using insights from a real-world context or event.

Abduction on the other hand, is a closely related process which has been suggested as appropriate for case research (Dubois and Gadde, 2002, Easton, 2010). The abductive inference begins with findings that fall outside the initially identified theoretical frame (s). In other words, the empirical findings are interpreted through the lens of theoretical frameworks in order to identify exceptions or 'surprising' findings that do not fit into the underlying theoretical frameworks, and treats explanations as hypothetical (Danermark et al., 2005, Bhaskar, 2013). In this way, abduction raises the level of theoretical engagement beyond thick description of the empirical entities, but with an acknowledgement that the chosen theory is fallible. In this thesis, it entails explaining the findings on

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<sup>9</sup> Charles Peirce used the terms "retroduction" and "abduction" interchangeably (see Burch, 2011). Bhasker (1979), and Wynn and Williams (2012) use "retroduction" to represent both terms. Following Danermark et al. (2002), Easton (2010) and Fletcher (2017), I distinguish between "retroduction" and "abduction" in this thesis



the divergent outcomes of state-customary institutionalisation that have never been fully captured and/or problematized in the same way by relevant theories on institutional design.

The research was initially guided by historical institutionalism literature. But in keeping with CR epistemology, I understood that I might ultimately support, modify or reject some insights of this theoretical framework to better explain how the state-customary interface in planning and land delivery influenced (or not) institutional attempts to capture land value from urban land in Ghana. Originating from new institutional theories of institutional development and change, historical institutionalism allows us to look beyond the scale of individual actors or groups (intentional institutional design) to examine how path dependence, systematic power and distributional impacts shape institutional formation processes in contexts of increasing land use changes and rapid urbanization. The retroductive-abductive analytical process, which places equal role to both theory and empirical data, is elaborated in section 4.3.4 (data analysis) below.

#### **4.2 Case Study Research Approach**

Most critical realists have pointed out that case study research is consistent with a critical realist ontology because it is a particularly fruitful way to explore the interaction of structures, events, human actions, and contexts for identifying and explicating generative mechanisms (Easton, 2010, Ryan et al., 2012, Sayer, 2010, Wynn Jr and Williams, 2012). Following these arguments, this study adopts a case study strategy of inquiry, and the multiple case study design was employed to investigate efforts to integrate state and customary land institutions in Ghana. Studying institutions as well as actor interactions, relationships and motivations in urban land governance is intricately intertwined with context. It also involves a complex set of both historical and contemporary events. Therefore, a research approach that recognises complexity, context and detail in its choice of methods fits this thesis. Yin also argues that ‘the distinctive need for case studies arises out of the desire to understand complex social phenomena’ (2013: 4). This complexity applies to land governance in Ghana, where land use planning operates under a dual land management regime intertwined between state institutions and customary land tenure systems. Besides its suitability for studying complex phenomena, its focus on in-depth analysis of real-life events, and on actions that drive processes of change, make the case study method useful for generating detailed contextualised knowledge. Duminy et al. (2014: 23) have pointed out that “the real value of the case study is its capacity to show what has happened in a given setting, and how”. Based on this perspective, the authors recommend the case study method as a promising urban planning research approach for understanding and intervening in complex environments and processes, particularly of urban contexts in Africa. Hence

the case study method stood out as a useful approach for investigating ongoing interactions, interests, and power relations between customary authorities and state institutions in urban land governance.

Moreover, case studies are widely acknowledged and particularly suited to *how* and *why* questions. According to Yin (2003: 6), these sorts of questions point towards the need for an explanatory research strategy because they “deal with operational links needing to be traced over time, rather than mere frequencies or incidence”. This thesis is driven by several ‘how’ questions: how have customary authorities capitalized on the social support for land ownership structures to respond to increasing demand for urban land? How are interactions between state and customary institutions structured in rapidly urbanising secondary towns and what factors sustain their engagements? How do hybrid arrangements and practices in land delivery contribute to equitable land development or cause distributive conflicts, in areas under intense urbanisation? How can institutional hybridity in land delivery be targeted at the financing of much-needed urban infrastructure in increasingly marketised environments? These kinds of questions help to understand the politics of institutional change in an urban setting by recording and analysing the associated events or outcomes that take place as a result of the actors’ actions. Such questions trace the links between actors and processes to follow the actual development of the practices and interfaces in relation to wider contextual changes in urban governance and policy, as well as actor motivations, and behaviours. They also examine the role of structures, agency and context in power relations among actors.

Lastly, the case study approach allows for the application of a variety of evidence from a multiplicity of data collection methods such as interviews, focus group discussions, observations, and document analysis in answering the research questions (Somekh and Lewin, 2005). This flexibility in the choice of methods allowed me to explore the research questions in detail, through data collected using multiple sources of data and developing a holistic description through an iterative research process. Noor (2008) points out that the range of methods case studies allow is an intriguing quality of case-study research that lends the research its characteristic flexibility. This increases the validity of findings (Yin, 2013) hence the approach of this research.

Notwithstanding the strengths of the case study approach, there have been a number of critiques of the case study approach. A major critique, emanating largely from proponents of positivism, relates to the issue of generalisation. From a positivist perspective, a case study is based on a very small sample and its contribution to establishing law-like universally applicable generalisations is therefore marginal (Yin, 2013). This critique has been subjected to an intense debate even among supporters of the case study method. Interpretivists for instance hold different views of generalisation which can be divided into three categories. The first group argues that it is misleading to conclude that one

cannot generalise from a single case, and that the strategic choice of a case could contribute to its generalisability (Flyvbjerg, 2006, Schofield, 2002). For instance, Flyvbjerg (2006) suggests that whether or not one is able to generalise from a case depends on the type of case that is being considered and how it is chosen. The second category emphasises that cases involves a certain kind of generalisation that is different from the positivist conception of generalisation (statistical generalisation). For example, Stake (1995) argues that cases are a powerful means for building naturalistic generalisations because they provide thick descriptions and experiential accounts that are more epistemologically in harmony with the reader's experience. As such, the reader of a case is able to determine if and how far the case can be used to understand a new setting. Using a different rationale, Lincoln and Guba (2000) argue that generalisation is impossible to achieve since phenomena are neither time-nor context-free. Instead, they replace 'generalisability' with 'transferability' to argue that the aim of case study research is to enable a process of experience-based learning. This means that readers of case study research must themselves decipher whether the findings being reported are applicable to other cases. For the third category, Yin (2013) puts forward the argument that the purpose of the single case study is to expand and generate theory or 'analytical generalisation'. Case studies are generalizable to theoretical propositions (analytic generalisation) where the investigator is striving to generalise a particular set of results to some broader theory. For Yin, conclusions should not be extended beyond the boundary conditions of their subject matter without offering a logical justification.

Unlike interpretevisists, however, critical realists recognise the role of case study research in both empirical and theoretical generalisation (Danermark et al., 2005, Mingers and organization, 2004). With respect to empirical generalisation, critical realists argue that a representative case can help identify some kind of empirical regularity (or demi-regularities<sup>10</sup>) in the population to which the case belongs (Lawson, 1997, Tsang, 2014). This knowledge serves as the raw material for subsequent theory building. At the same time, critical realists embrace theoretical generalisations. From a critical realist perspective, case studies enable researchers observe not only events in their empirical domain, but also help them understand the generative mechanisms in the real domain leading to the events. In this respect, case studies provide useful information concerning how the postulated mechanisms operate under a set of contingent conditions by striving to understand empirical events in their rich contexts (Mingers and organization, 2004, Tsang, 2014). Critical realists generate mechanistic explanations by employing retrodution as a mode of inference (Ryan et al., 2012). In the context of

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<sup>10</sup> Demi-regularity means semi-predictable patterns ... The term was coined by Lawson (1997), who argued that human choice or agency manifests in a semi-predictable manner - "semi" because variations in patterns of behaviour can be attributed partly to contextual differences from one setting to another.

this thesis, I tend to draw on the critical realist' view on the theoretical and empirical generalisation potential from my case findings. The aim of this thesis is to attain in-depth contextualised understandings of the causal mechanisms for the divergent institutionalisation processes for hybrid land governance based on the cases studied. At the same time, the thesis' case study aims to cultivate "concrete, context-dependent knowledge" (Flyvbjerg, 2006: 224) on the politics of recovering land revenue from customary land in an era of land commodification.

#### 4.2.1 Selection of the cases

Denzin and Lincoln (2011) argue that the researcher should select a case which offers the most opportunity to learn, for example because it can contribute to wider knowledge of a particular issue. Following this strategy, I chose three cases that correspond with respect to the phenomenon under study, that is, the process of making formal and customary administration more compatible by creating new hybrid institutions.

Four main considerations guided the choice of the cases. The first consideration bordered on issues of relevance and richness of information. The cases concern three rapidly urbanising peri-urban communities in two different Municipal regions in Ghana (see Figure 4.1) that are experiencing increasing demand for land: Gbawe in the Ga South Municipal Area; and Ejisu and Juaben both located in the Ejisu-Juaben Municipal Area. The first case, Gbawe in the Ga South Municipality, has experienced consistent population growth and urban transformation in recent years. The population for Gbawe in 2010 was 69,366 making it the second most populous community in the Ga South Municipal area. This population is currently estimated at 92,219 (in 2017) due to the additional population expected to have relocated from Accra and the surrounding areas (Ga South Municipal Authority, 2018). The transformation of the town is largely influenced by its close proximity to Accra (the administrative capital of Ghana)<sup>11</sup>. This has made Gbawe an attractive hub for both commercial and residential development. The population influx coupled with the urban expansion from Accra and its environs have led to increased demand for residential and commercial land causing land values to increase astronomically. According to Awuah and Gyau (2016), the annual per acre land values for leasehold interest increased by 35% for the period 2011 - 2016, and the construction boom in the town has become more visible than before.

The second and third cases, Ejisu and Juaben, are two peri-urban communities under the Ejisu-Juaben municipal area. With a population of 143,762 in 2010 (Ghana Statistical Service, 2014), the Ejisu-Juaben Municipal Area has grown tremendously in commercial, educational and administrative

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<sup>11</sup> Gbawe is situated approximately 10 kilometres west from the centre of Accra

prominence partly due to its proximity to the regional capital, Kumasi metropolis, and its location along the Kumasi-Accra transport corridor. Ejisu and Juaben are the two most urbanised communities in the municipal area and thus serve as the receiving territories for the expansion, spatial sprawl and overspill of population and activities from the Kumasi metropolis and nearby communities. The strategic location of Ejisu along the Accra-Kumasi highway coupled with its position as an administrative capital make it an attractive area to migrants from Kumasi and other peripheral smaller localities. Similarly, Juaben has grown rapidly as the second most populated town in the municipal area due to intense pressure from commuters and population spill from Kumasi and its environs. These conditions are causing land values in the two communities to increase and has precipitated the conversion of peri-urban and hitherto rural lands into urban uses. Consequently, a greater need for customary authorities in such towns to collaborate with formal land sector agencies to deliver urban land has emerged. This presents both opportunities and challenges for local governments to raise much-needed revenues by extracting some form of economic rent from these customary land transactions.

Gbawe, Ejisu and Juaben, therefore, serve as information-rich cases that intensely manifest the interface, relationships, and negotiations between customary land custodians and formal land planning authorities in urban land delivery. They constitute social laboratories where the actions, motives, and interactions of the various actors in urban land delivery can be studied in a real-life context. This falls in line with Flyvbjerg's (2006) argument that when the objective of a study is "to achieve greatest possible amount of information on a given problem or phenomenon" a purposive rather than random sampling strategy is most appropriate. He proposes that it is more appropriate to strategically select cases for their validity, as such cases often reveal more information about the actors and underlying mechanisms in the situation studied. He labelled this as 'information-oriented selection' where cases are selected on the basis of expectations about their information content. Tsang (2014) agrees with this view and state that rich data collected from cases may be useful for confirming or disconfirming the structures and mechanisms proposed by existing theories.

The second consideration is that the three study sites have been beneficiaries of ongoing state-led land administration reform programme to integrate state and customary land delivery systems with significant implications for urban development. Since 2003, the Ghanaian government has been undertaking legal and administration reforms to formalise land and property rights, through its Land Administration Projects (LAP I and II). A major part of the LAP was the establishment of Customary Land Secretariats – to promote institutionalised community-level participation and accountability in land administration (Amanor, 2009). In addition, the LAP also supported various recognised

landowning communities to carry out Customary Boundary Demarcation (CBD) to improve land tenure security as well as avoid land disputes between allodial owners (Asenso-Gyambibi et al., 2017). These state-interventions are part of a long-term strategy to expedite the process of formal land title registration and to foster prudent land valuation and information systems in order to provide reliable land transaction records, ensure security of tenure. Agyemang and Morrison (2017) point out that by having an effective land administration system in place, the government will be in a stronger position to establish land value capture mechanisms. In Ejisu and Juaben new Customary Land Secretariats were established in 2008 and 2014 respectively with equipment such as computers and accessories provided to the customary authorities to strengthen land management activities (Bugri, 2017). In Gbawe, the land secretariat existed prior to the commencement of the LAP and was thus strengthened under the LAP. The three study communities were also supported under the LAP to demarcate and register their boundaries. While the Ejisu and Juaben traditional areas successfully demarcated and registered their boundaries (Asenso-Gyambibi et al., 2017, Bugri, 2017), the boundary demarcation and registration process in Gbawe was incomplete due to unresolved boundary disputes (Quaye, 2014: 212). Nonetheless, the three study communities provide ideal comparative perspectives to interrogate the outcomes of deliberate state attempts to integrate customary and state systems of land management in the context of rapid urbanisation.

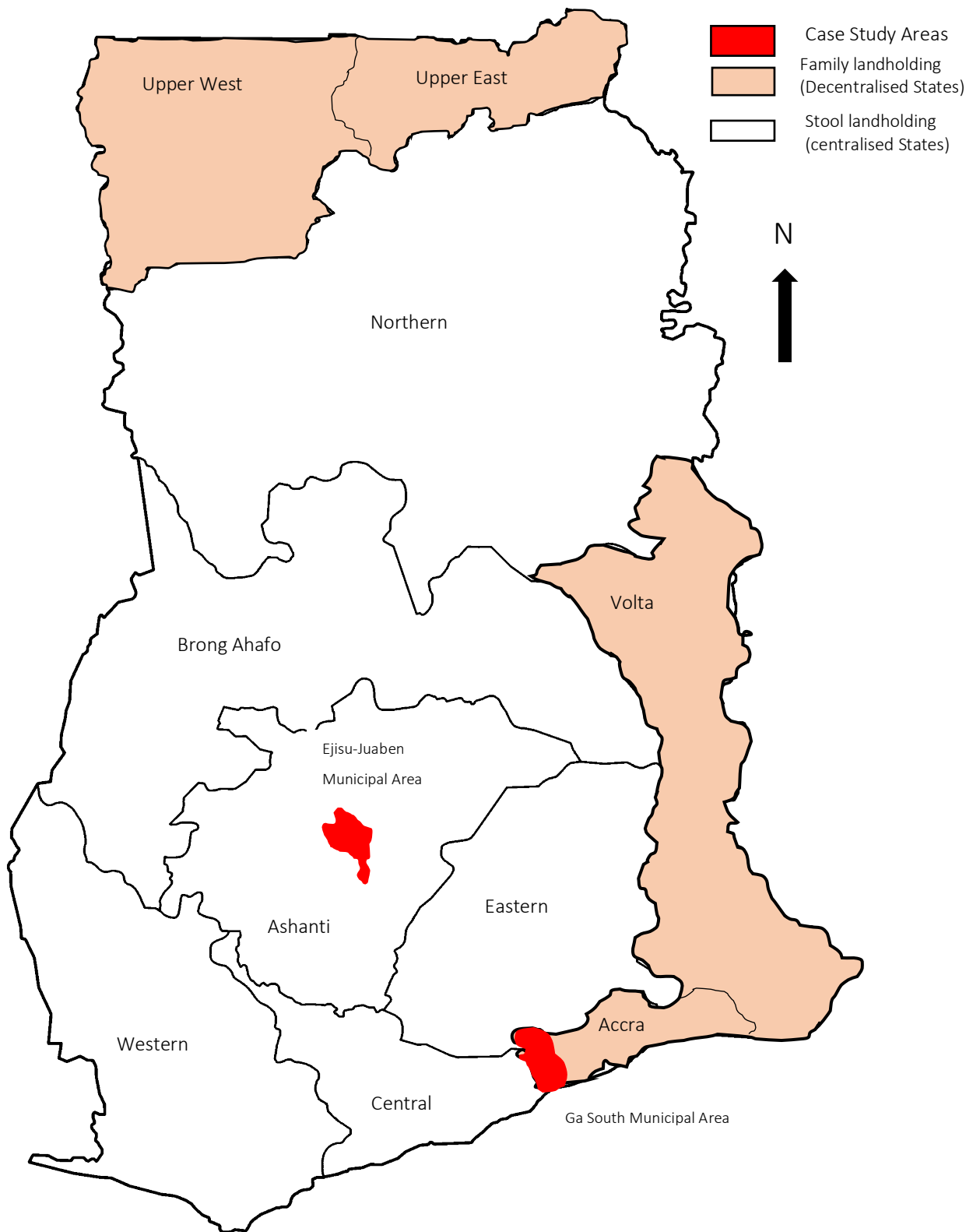


Figure 4. 1 A map of Ghana showing the three study sites and the types of customary landholding  
 Source: Author's own

The third major consideration for the choice of the three study sites relates to issues of heterogeneity and comparability. This is in line with the logic of ‘maximum variation’ (Patton, 1990: 172) or what (Creswell, 2012: 207) termed ‘maximal variation sampling’ where cases are chosen such that they reflect different characteristics, perspectives or contexts of the study phenomenon or problem. The choice of Gbawe and Ejisu/Juaben reflects a particular variation in the customary landholding systems in land management in Ghana and the nature of vested interests demonstrated by customary land actors. Although the same land use planning system is practiced throughout Ghana, Gbawe and Ejisu/Juaben differ markedly in terms of the customary landholding institutions, namely stool and family lands (see Figure 4.1). An important distinction between the two categories of land is the location of the allodial title within the traditional political system, as elaborated in the section below. The allodial title provides the holders with certain rights, such as exclusive possession, use and enjoyment, alienation, and reversionary proprietorship. Moreover, Quaye (2014) notes that stool land areas are usually associated with highly centralised states, where there is a close link between the land tenure arrangement and the allegiance to chiefs while the social organisations that underpin the family lands are not centralised.

Land in Gbawe is vested in the extended family, where the Gbawe Kwatei family holds the allodial title. Ancestry is traceable to one person who first settled on the land (the patriarch) and expended his singular effort in acquiring it (See chapter six for description of the Ancestry of the Gbawe Kwatei family). Membership of the family is therefore based on common blood. The management and allocation of lineage land is undertaken by the family head, elected by the principal members of the landowning family. In contrast, customary land in Ejisu and Juaben is vested in ‘stools’ (larger communities), with the paramount chief acting as a custodian, holding the land in trust for his customary group. The same customary landholding system prevails in both Ejisu and Juaben, as such, they share a similar traditional structure (see Figure 4.2). In Ejisu the customary land area is vested in the Ejisu-Besease paramountcy, while the land in Juaben is vested in the Juaben paramountcy. The paramount chief of a traditional area, referred to as the ‘Omanhene’ oversees the traditional area. The Omanhene therefore, holds the allodial (near-maximal/ultimate) interest in land on behalf of all subjects of the traditional area. Customary laws require the allodial holders to manage customary lands in a manner that takes into consideration the interest of their subjects or members (Agbosu, 2000). In this context, the 1992 Constitution of Ghana established the principle that ownership of land imposes an obligation towards not only the immediate landowning group but also to the entire population of the country. Article 36 (8) of the Constitution stipulates that the “...managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are



accountable as fiduciaries in this regard". Consequently, to ensure effective management of land, the Omanahene sub-divides the lands in the settlement among his divisional chiefs (caretaker chiefs) to oversee their day-to-day administration on his behalf. The divisional chiefs allocate land to prospective land seekers with the consent of the Omanhene. Various Sub-divisional chiefs and village chiefs assist the divisional chiefs in exercising day-to-day managerial functions over land as depicted in Figure 4.2. The village chief owes allegiance to a higher-ranking or a superior sub-divisional chief whom he reports dealings in land to in the traditional hierarchy. The sub-divisional chiefs are in turn under the divisional chiefs but they can report directly to the Omanhene without necessarily reporting to the divisional chief. They are also caretaker chiefs since part of the divisional chiefs' land would have been allocated to them.

The choice of case studies of landholding systems in Gbawe and Ejisu/Juaben was therefore deemed to be a fair representation of the two categories of customary land tenure systems in Ghana. These differences in customary landholding systems have varying effects on land use planning and delivery arrangements, relationships between customary and formal land sector institutions and importantly the use and management of land revenue as shown later in Chapters 6 and 7. The variations between the cases serve comparison in terms of shedding new light on each case (Flyvbjerg, 2006). And as Tsang (2014) points out, representative cases are useful for critical realism research because they can provide useful information regarding certain characteristics of the population to which the case belongs. Therefore, situating the cases in both family and stool lands systems allowed for a varied and a context-specific understanding of the diversity within the representativeness of the customary tenure in Ghana. At the same time, the choice of the study sites also allowed for comparability between similar landholding systems, although in relation to Ejisu and Juaben only. As discussed in the above paragraph, Ejisu and Juaben have similar customary land tenure practices as well as traditional hierarchy in the governance of land and are located within the same Municipal Area. This similarity thus facilitates the drawing of cross-level inferences between the study sites but also provides an opportunity to probe for new explanations, where anomalous outcomes associated with attempts to achieve institutional hybridity in land management emerge even within broadly similar environments. In the event diverse outcomes emerge, this would provide insights and opportunities to generate knowledge about the causes, modalities or outcomes of deliberate state efforts towards land-based institutional reforms.

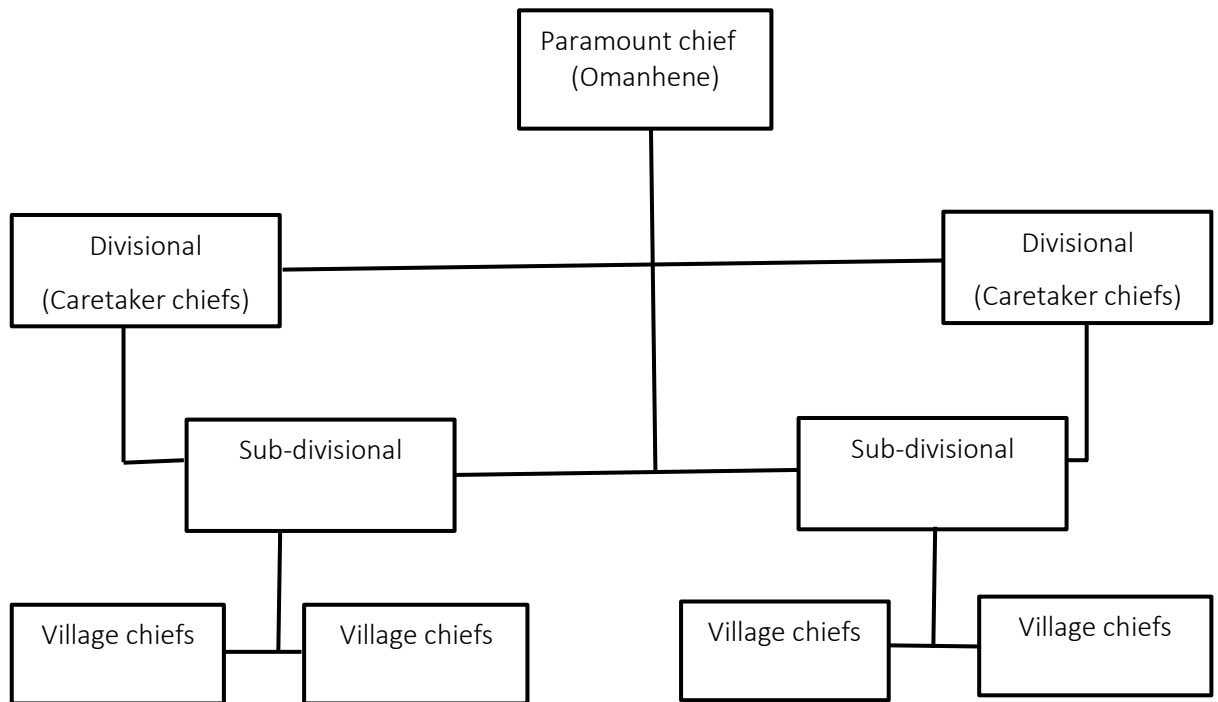


Figure 4. 2: Structure for Stool Land Administration  
Source: Author's illustration

The last consideration that inspired my choice of the three study communities relates to practical issues regarding accessibility and temporal/spatial considerations. Although these issues may seem mundane, Duminy et al. (2014) notes that they are nevertheless important for case study research in African cities and other contexts of the global south. For instance, during phase one of my field work, I visited the Lands Administration Project office in Accra for documentary information that would guide my choice of active customary land secretariats in the greater Accra region. Although records of active CSLs were unavailable, I was able to access the mobile phone contacts of the CLS coordinators. This led me to visit all the (seven) Customary Land Secretariats around Accra to ascertain those offices that had sufficient records of land transactions with higher incidence of interactions with public bureaucrats of state land sector agencies. The Gbawe (Kwartei Family) CLS and to some extent the Kwabenya (Iddrisu Ayaa Family) CLS were the only active and functional CLSs, the rest lacked adequate data on land transactions, land use plans or were at the verge of collapsing. I opted to study the Gbawe CLS because it is fully functional and has operated for a longer period (since 1994) compared to the Kwabenya CLS which had little documentation and collaboration with the local government authorities. Also, staff of the CLS as well as members of the Gbawe customary authority were willing to share their experiences with me and provide me access to relevant information. Duminy et al. (2014) have emphasised the importance of sufficient access to participants, research locations and data for in-depth case inquiry. Similarly, Yin (2013) states that in case study research, a researcher needs

sufficient access to the potential data, whether to interview people, review documents or records or make observations in the field. This means that without appropriate access to the necessary participants, key actors and primary sources including locations, good case study research is likely to be extremely difficult to carry out. It is also important to state that besides issues of accessibility to land information, my choice of Gbawe CLS was also informed by popular reports of Gbawe in the literature as the paradigm of CLS good practice (Kasanga and Kotey, 2001), a source of inspiration for the design of the CLS component of LAP (Quan et al., 2008b); and an exemplar case of successful customary land management (Bugri, 2017). Although many of these studies were principally concerned with customary land governance, and not principally on the state-customary interface and issues of land revenue management, they suggested that Gbawe could serve as a strategic case and a critical take off point for my research.

Ejisu and Juaben were selected during my preliminary information search and interviews at Gbawe. My initial research design relied on a single case study approach with Gbawe purposively selected as an “extreme case” (Flyvbjerg, 2006: 229). During my initial interactions with local stakeholders in Gbawe however, it turned out that the depth of data on land transactions and records on landholding was inconsistent and undetailed, while information on land revenues was limited to a relatively short period (2010 and 2016). In line with critical research principles, my anticipated research approach was to trace the state-customary authority interactions back to the initial establishment of the Gbawe CLS (i.e 1994) and examine the development and possible consolidation of this institutional interface. This requires both real time and longitudinal data to help define the sequence of events, actions and activities unfolding over time in context (Sayer, 2010). The absence of consistent data meant that this would be impossible. To overcome this problem of inconsistent data, I followed the proposition of some institutional analysts (Sorensen, 2015, Ho, 2016) who recommend that an alternative approach is to examine the research problem (i.e. state-customary institutional interface) simultaneously at different sites. In this respect, each site represents a different stage in the institutional development process and thus displays the specific conditions prevailing at that particular stage of development. Thus, I specifically sought for study sites that had established Customary Land Secretariats in other parts of the country with consistent data that demonstrates relevant information (e.g co-produced local plans, land allocations documents) over a similar period as Gbawe (2010 to 2016/2017). This also led me to select Ejisu and Juaben which had rapidly urbanising peri-urbanising areas with higher incidence of interactions between customary authorities and public bureaucracies of state land sector agencies with identical contents and appearances of institutional interfaces. The ambition was to extract commonalities in the organisational practices of the three sites while fleshing out the

differences where appropriate. This meant that I was collecting documentary evidence spanning over a 6-year period (2010-2017) and integrating this with primary data, via interview, over a longer period.

Study Site	Basic characteristics on which cases differ	Reason for choice
Ga South Municipal Area		
Gbawe	92,219 inhabitants. A predominantly indigenous community dominated by service and trading activities. About 10 km from the CBD of Accra. Existing Customary Lands Secretariat strengthened in 2003	<ul style="list-style-type: none"> <li>• Family landownership (decentralised state)</li> <li>• Self-organised land delivery under functioning customary land secretariat</li> <li>• Active community involvement</li> <li>• State-customary engagement processes completed</li> </ul>
Ejisu-Juaben Municipal Area		
Ejisu	25,428 inhabitants. Subsistence farming, trading and commercial activities as the main livelihood activities. About 15km from the CBD of Kumasi. Customary Land Secretariat established in 2008	<ul style="list-style-type: none"> <li>• Stool landownership (centralised state)</li> <li>• Chief-public bureaucratic engagements</li> <li>• Inactive CLS (government attempted to create new hybrid institutions)</li> </ul>
Juaben	18,549 inhabitants. A largely indigenous community engaged in trading, cash crop and subsistence farming. About 28.1km from the CBD of Kumasi. Customary land secretariat established in 2014	<ul style="list-style-type: none"> <li>• Stool landownership (centralised state)</li> <li>• Customary organisation – public bureaucratic engagements</li> <li>• Active state-customary interactions in land governance under a functioning Customary Land Secretariat.</li> </ul>

Table 4. 1: Summary characteristics of the three cases  
Source: Author's illustration

#### 4.2.2 Data collection methods

As Yin (2013) points out, a key strength of the case study approach is its ability to deal with a variety of evidence. Utilizing this unique advantage, this thesis relied on four major data collection methods: in-depth interviews, focus group discussions, document analysis, and observations. The combination of methods allowed me to obtain wide-ranging perspectives of the processes, motivations and outcomes of state-customary actors' interactions in land delivery in Ghana to facilitate an in-depth understanding of the mechanics of the political processes of value capture. The triangulation of the data collection methods also served as a source of validation for the thesis findings as information obtained from interviews was validated, clarified/reinforced during focus group discussions or field observations, and vice versa.

The process of data collection involved three phases of fieldwork at the three selected study sites. The first phase was a pilot study in April 2017. This took the form of explorative interviews to identify the

cases as well as the key actors and relevant legal and policy documents. Thus, initial contact with potential respondents and general consultative interviews were made during this phase. Seven groups of stakeholders were identified: 1) national government officials; 2) local government officials; 3) members and leaders of customary organisations; 4) staff and members of customary land secretariats and Land Management committees; 5) citizen collectives, community members, landholders and land seekers; 6) private sector professionals engaged by customary authorities; 7) academics and practitioners. This categorization was based on the different interests they represent and the roles these various groups of actors play in respect to customary land management. Two separate periods of detailed fieldwork followed the pilot study phase. The second phase of data collection spanned from May to September 2017 whilst the third phase took place in February 2018. The methods of data collection used as well as the study respondents for the various phases are presented in Table 4.2. It must be noted however that there was no clear separation of methods for each phase as the methods and the phases overlapped. The next section discusses how different data gathering methods were operationalised during the fieldwork.

### **Documentary Search**

Collating secondary information from national, local government offices and customary land secretariats of the three study sites was an important step before reviewing the documents. Gathering the first set of materials happened during the first phase of the fieldwork in April 2017. This continued in the succeeding months and throughout the fieldwork. Documents analysed included legal and policy frameworks as well as land administration project reports obtained from state agencies. Such documents included the National Lands Policy, 1999; the Lands Commission Act 2008 (Act 767); the Office of the Administrator of Stool Lands (OASL) Act, 1994 (Act 481); project documentation from the Land Administration Project (LAP); the Town and Country Planning Act, 1945 (CAP 84) and its amendment Acts. Others were the Local Government Act of 1993 (Act 462); the National Development Planning Systems Act, 1994 (Act 480); the National Buildings Regulation, 1996 (LI 1630); the Land Use and Spatial Planning Act, 2016 (Act 925); the New Spatial Planning Model Guidelines, 2011; various drafts of the Lands Bill; and the National Urban Policy Framework, 2012. These policy documents were reviewed to reveal the legislative and institutional framework governing land administration and urban planning in Ghana. In addition, I obtained and analysed press reports by local, national and foreign media press and municipal and community land use plans from Municipal planning authorities of the study towns. Administrative documentation, progress reports, archival records of landholdings, records of land allocation, and revenue reports were also obtained from the customary Land Secretariats of each of the study communities. These documents were used as evidence to analyse

the land use conversions and changes in these areas, the land delivery processes and the outcomes associated with the interactions between state and customary actors. Some documents also provided historical accounts on how landowning groups came to occupy particular territories. These accounts shed light on how these groups constructed narratives to defend their interest over land rights, for instance in Gbawe.

## **Interviews**

Interviews (unstructured and semi-structured) constituted the principal method for gathering data for this thesis, and proved to be effective in generating experiences, interpretations, interests, perceptions and attitudes of various stakeholders on the institutional interactions between customary and state authorities. Following the decision to conduct interviews as part of my fieldwork, I produced a list of information needed based on my research question. This list was informed by the analytical categories derived from the documentary search and my theoretical framework. This helped me to do a theoretical clarification of the themes I wanted to investigate in my research and also to easily convert them into interview questions. All the information needed was then translated into the form of unstructured and semi-structured interview questions. The first phase of the data collection exercise was largely explorative. I relied on unstructured interviews to obtain deeper insights on the general practices of customary land delivery and the key actors involved. The flexibility associated with unstructured interviews allowed for a deeper exploration of key ideas and relevant information at the beginning of the fieldwork. The insights from the preliminary interviews with national government officers and key actors involved in the implementation of the Land Administration Project formed the basis of further inquiries in the subsequent phases of data collection, which took a semi-structured form.

In the second and third phases of the fieldwork, semi-structured interviews were the dominant mode of soliciting information from respondents. While allowing for flexibility, these semi-structured interviews also allowed for an in-depth and consistent line of inquiry into the processes and interactions between state and non-state actors in the delivery of urban land and the mechanics involved in generating and directing value to private or collective interest. At this stage, I was interested in respondents' narrative accounts of events. As Ryan et al. (2012) point out, individuals having experienced a phenomenon under a study are seen to be able to tell narratives about the reality by describing the sequence of events in time and their experiences of them. Thus, I viewed the outcomes of efforts to design and implement new hybrid institutions in the three cases as encompassing the actions performed by the involved actors, their perceptions and decisions, as well as the structural context that shaped these actions.

Selecting interviewees in some cases was a straight forward decision based on purposive sampling. In purposive sampling, participants are deliberately selected because they can provide in-depth information on a particular issue and/or contrary evidence or opinions related to the topic (Yin, 2013). For instance, the key informants such as the local planning officers, staff of the customary land secretariats and customary leaders of the study communities were decided at the beginning, without need for any other sampling strategy. They were purposefully selected with specific reasons connected to the research question based on my judgement, as well as on my local knowledge and documentary search. Other interview respondents such as private professionals engaged by customary authorities, national government officials, academics and practitioners (see Table 4.2 and Appendix 7) were selected based on their *direct* involvement with customary institutions and land governance as well as their expertise in the land market in the study sites. This was possible through a snowballing approach, by contacting new interviewees who were suggested by previous respondents. As Yin (2013) notes this sampling strategy can be acceptable if it is purposeful, not done out of convenience, and if there are reasons for choosing the subsequent interviewees. In this regard, the snowball sampling was guided by the research themes and the categories of groups I had identified.

Since I identified community members and other local participants for my interviews, I had to consider language issues. I was well aware that interviews with local government officials and officers of the CLSs could be conducted in English. However, I anticipated that interviews with local key informants, customary authorities and community members may be conducted in local languages of the study communities. In Gbawe, the local language is Ga while people in Ejisu and Juaben speak Twi as the main local language. Although my fluency with both the Ga and Twi languages was good, I had concerns about my ability to communicate effectively or to interpret some local terms. To address this language issue, I recruited two field assistants to assist with the language barrier – one research assistant each for Gbawe and Ejisu/Juaben. The selection of the two field assistants was strategic in terms of their commitments to the study, education background and language skills and training. The two assistants both have graduate level education and were indigenes of the respective communities. Therefore, they were personally known, well recognised and respected by the villagers. I conducted a two-day joint training session for both field assistants to explain my research study, its focus, my research questions, the information required and the techniques of conducting interviews. They were also trained to use recording devices and take field notes. Through the help of the two field assistants I was able to effectively communicate with participants who preferred to be interviewed in their local languages.

In all, 51 interviews were conducted with customary authorities, staff of the Customary Land Secretariats as well as members of land management committees in the three study sites. In some case, respondents were interviewed twice at various times during the fieldwork with the rationale of seeking clarification on information provided earlier. Questions that were posed to participants during the interviews focused on general issues related to customary land management, attitudes towards new land reforms, interactions with state actors in land use planning and delivery, institutional arrangements for land revenue mobilisation and management, and the intended and unintended outcomes of customary land conversion. Thirteen in-depth interviews were conducted with local government bureaucrats including municipal planning officers, municipal finance officers, key staff at the district Office of the Administration of Stool Lands and officers of the regional Lands Commission (see Appendix 7). Key issues covered focused specifically on the roles, motivations and experiences of participants in state-customary actor engagements in local land use planning, land delivery and institutional arrangements for revenue mobilisation and management.

In order to gather varied perspectives on the practices, processes and actors in the land market, I had informal interactions with prospective land seekers and individual landholders; and eight key informant interviews with privately licensed surveyors, land experts, key officers of the Land Administration Project, and municipal finance experts. These key informants gave valuable outsider-perspectives to the practices of customary land governance and existing institutional arrangements for land revenue mobilisation and management. Moreover, the key informant interviews served as a source of validation for my study as they confirmed most of the practices I had already gathered from interviewing the main actors in peri-urban land conversion. Interviews with key informants centred on issues such as the intended and unintended impact of institutional changes on land markets, outcomes of efforts to capture land values, winners and losers in the process of land conversion, mechanisms legitimising these land activities and customary-state engagements in land management in general. Each interview typically lasted between 45 to 85 minutes with the average interview length being 65 minutes. The complete list of participants, time taken for interviews and their profiles are given in appendix 7.



Method	Category of respondents	Phase
<b>Documentary search</b>		
Research and review of legal and policy documents related to the cases		1,2,3
Collection and analysis of landholding records, land allocation records, revenue reports, land use plans, land disputes records for the study sites		1,2,3
<b>Observation</b>		
Field observation of land use change, conversion process and infrastructure improvements in the study sites		1,2,3
Participant observation of land allocation processes and actors		1,2,3
Participant observation of land rent collection by CLS actors in Gbawe and OASL officers in Ejisu-Juaben municipal area		2,3
<b>Individual Interviews</b>		
13 repeated unstructured/semi-structured interviews with public bureaucrats	<ul style="list-style-type: none"> <li>▪ Municipal planners of TCPD,</li> <li>▪ Municipal Finance officers,</li> <li>▪ Regional mapping and surveying officers, valuation officers and registry officers of the Lands Commission</li> <li>▪ Regional officers of the OASL</li> </ul>	1,2,3
13 In-depth interviews with staff of the CLSs	Staff of the CLS in Gbawe, Ejisu and Juaben	2,3
2 in-depth interviews with district officers of OASL	District officers of the OASL in Ga South and Ejisu-Juaben municipalities	2,3
9 in-depth interviews with customary authorities	Family heads, divisional/village chiefs who are custodians of customary land and chief's secretaries	2,3
6 in-depth interviews with members of secretaries of the Land Management Committees	Members of land management committees and/or their secretaries in Gbawe and Juaben	2, 3
8 key informant interviews	National officers of the Land Administration Programme, OASL coordinators and CLS facilitators, land policy experts, private surveyors, academics, municipal finance analyst	2,3
Informal interactions with prospective land seekers/landholders	Land seekers and landholders in Gbawe, Ejisu and Juaben	2
<b>Focus Group Interviews</b>		
1 group discussion with customary authorities (council of elders) of the Gbawe-Kwartei family	Chief of Gbawe, 4 sub-chiefs, and the Family head/ <i>Djaasetse</i> (head of the council of elders and leader in the appointment of chiefs for the Gbawe local community) <sup>12</sup>	2
1 group discussion with the land management committee (LMC) of the Gbawe family	Five members of the LMC appointed by the council of Elders of Gbawe family to administer both the family land and the CLS	2
3 group discussions (8-12 participants each) with members of study communities	Household heads, elders, opinion leaders, representatives of organised youth, women and business interest groups of Gbawe, Juaben and Ejisu	3

Table 4. 2: Data collection methods and study participants

Source: Author's illustration

<sup>12</sup> In the encounter, the *Djaasetse* was the main speaker with his linguist.

In conducting the interviews, I followed Yin's (2013) suggestions, by identifying two important roles for myself as a researcher: (i) to follow the line of inquiry; (ii) to ask conversational questions in an unbiased manner in line with my research question. Generally, I started with an open question to invite interviewees to narrate their experiences of customary land administration and to encourage an independent and free narrative from the interviewees. For public sector officials, the interview started with a brief biography of respondents in terms of their position and responsibility within the organisation. With this background, I then followed up with fairly guided questions (see Appendix 6) that probed into parts of the narrative to get participants to elaborate and clarify issues of interest to the research study. This conversational style encouraged respondents to freely express their expert opinions and experiences about customary/state interactions in land delivery while at the same time directing the interviews to key interests of my study. The approach resulted in a congenial atmosphere, which allowed a balance between issues of interests to me and those of interest to the study participants. However, I was careful to maintain the focus on the research question and to avoid distancing from the main line of inquiry while conducting the interview. The decision to adopt this strategy was partly informed by my previous experience as an urban planner working in Ghana where I observed that rigid/structured interviews did not yield detail information in many instances. Respondents often preferred to speak to tangential issues before directly answering interview questions. My first few interviews during phase one reaffirmed this observation, leading me to reposition my interviewing style towards a more conversational style throughout phase two and three.

I contacted the participants early in the process and gave them all needed information including the details of me as a researcher, my research aims, confidentiality of the information, audio recording arrangements and so on. A standard information sheet communicating these details was given to participants in advance, particularly for meetings with officers and professionals (see Appendix 1 for a sample of an information sheet I used during my field work). For public officials, an introductory letter communicating all this information was required before I could be granted institutional access to key actors and data (see Appendix 4). For interviews with some customary leaders and community members, the relevant details of the research were conveyed to participants verbally through meeting them a few days prior to the interview or through telephone calls. Although a standard information sheet was available, I decided that verbal communication was the best where it was determined that the participant's level of education and their ability to understand such details in writing was limited. Further to advance information, I reiterated the main features of the research study at the beginning and at the end of each interview. A consent sheet (see Appendix 3) was also used to get the participant's consent with their signatures before the start of every interview. The participants were

assured that any private data about them would be kept confidential (name, age, sex etc...), and they would only be released for publication upon their consent.

All interviews in my study were recorded using a digital audio recorder with the consent of each respondent. Each recording was then transcribed verbatim in English immediately after the interview. In some instances where respondents declined to be recorded, notes were taken during the interview. I maintained a separate note book to write down reflections of any significant happenings during every interview that were not recordable using the recording device. Such events included facial expressions, hand signals and any before/after interview talks. This reflection note produced significant context for my later analysis and transcripts. I did the transcription on my own for the interviews conducted in English language. Although it is consuming, I chose to transcribe the interviews myself rather than give the tasks to outsiders; I felt that there is a possibility to miss valuable points. Besides I wanted to interrogate the side notes and reflections (which were taken during the interview) along with the process of transcribing. I also intended to do the first step of analysis while transcribing. Regarding the interviews conducted in the Ga and Twi languages, I got the help of my field assistants (Marie and Peter) to translate and transcribe the interviews. As I am fairly fluent in spoken Ga and Twi languages, I could always check the recordings to verify the transcription and translations.

### **Focus Group Discussions**

Focus Group Discussions (FGD) assume that actors' attitudes and beliefs are not shaped in a vacuum and that people often need to listen to others' opinions and understandings to form their own (Marshall and Rossman, 2014). Aided by guide questions, I conducted five group discussions (involving 31 participants) with community leaders, youth, elders, representatives of organised women and neighbourhood groups. Each group comprised between 8-12 members. The objective of these sessions was to understand the emergence of practices, changes in the land market, use and management of land revenue, citizens' perceptions and attitudes towards land-based institutions. The roles of community members in the process, as well as general land administration procedures, were also discussed. The insight from these discussions enriched the data gathered and at the same time served as a way to crosscheck findings obtained from the individual in-depth interviews.

As it was not feasible to get the whole community to participate, I employed the non-random quota method to get community leaders, selected landholders and representatives of organised women, youth and neighbourhood groups within the study communities. These participants shared diverse views on the experiences of state-customary land governance arrangements and its outcomes for land revenue mobilisation. Apart from representing different group interests, I ensured that the FGD

participants were selected from different locations of the study communities. This helped in tackling issues related to variations in community experiences. The insights from these group discussions were useful as they served as a basis for triangulating the findings from the individual interviews conducted with community members. Group discussions were documented through digital audio recording, with the consent of participants. Photos were also taken during the activities after gaining consent from the participants. In Gbawe, Marie, my field assistant assisted in convening and translating the discussions from Ga to English where necessary. Similarly, Peter, helped in Ejisu and Juaben to translate the discussions from Twi to English language in some instances. The group discussions lasted between one to two hours and were later transcribed.

### **Direct Observations**

Direct observation was used as a complementary method to the interviews and documentary search as a source of data and information in my study. The main focus of my observations was to gather contextual data and information on different aspects relating to the collaborative practices between state and customary institutions in land delivery and its spatial dimension in the study communities. Particular attention was given to events; not only what happened but also what didn't or could have happened in state-customary actor relationships. The field observation was also intended to clarify, verify and to explore further data and information gathered in the documentary search and interviews.

I observed a wide variety of physical actions, behaviours and physical objects. After spending reasonable time and having conducted a few interviews with customary authorities and CLS staff in each of the study towns, I asked to be taken to sites where recent local plans had been prepared, where land use conversions were taking place, and where community infrastructure projects financed from land revenue have been implemented. In many instances I visited the site in the company of a staff or local resident. Through these visits, I observed various land use changes and community infrastructure and services in each case. I also conducted an extensive observation of land use activities in the various study areas. This was necessary to compare the existing land use maps I obtained from the municipal planning authorities or the customary land secretariats to current land use changes on the ground.

During the fieldwork, observation activities entailed varying degrees of involvement on my part. I repeatedly visited the Customary Land Secretariats in the study towns to observe some interactions and negotiations that go on between customary authorities, staff and land seekers, and to experience

the plan preparation process, *drink money*<sup>13</sup> negotiation and land allocation process. In some instances, I was invited to observe administrative meetings of CLS staff. With the consent of other participants in the meeting, I observed proceedings without playing any active role. In Gbawe, I was granted permission by the CLS coordinator to follow revenue collection officers to the field to observe the various negotiations, procedures and strategies employed by officers as they collect land rents from leaseholders. Similarly, in Ejisu and Juaben, the director of the District Administrator of Stool Lands permitted me to join field officers to observe the same. These spaces provided opportunities to see how different actors framed and communicated information as well as how they advocated for certain practices. It also allowed me to study behaviour on the ground particularly the attitudes and perceptions of landholders towards revenue mobilisation officers.

At the latter part of my fieldwork, the customary leaders of Gbawe invited me to help organise a community forum comprising the chiefs, elders, entire Gbawe-Kwatei traditional council<sup>14</sup> and residents of the Gbawe traditional area. The community forum was organised to offer a visiting delegation of land commissioners from 16 African countries to learn about customary land management practices in Gbawe. The field visit by the delegates of land commissioners was part of a three-day cross-country learning and information-sharing workshop on securing community land rights organised by the Land Policy Initiative (African Union) and the Ministry of Lands and Natural Resources of Ghana<sup>15</sup>. Throughout my involvement in organising the event, I observed the interactions between the delegates and Gbawe customary authorities. This provided a deeper insight into historical accounts of customary land tenure in Gbawe, the extent of social support for customary management practices, dispute resolution procedures, relations (and tensions) between state and customary authorities in land administration as well as customary land revenue management. The international delegates' visit to the Gbawe community also reaffirmed my choice of Gbawe as an "extreme case" (Flyvbjerg, 2006: 229) worth studying. The discussions during the community forum also clarified and validated some of my preliminary findings. These observations constituted a rich source of information that allowed me to gain a deeper and fuller understanding of customary urban land management practices.

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<sup>13</sup> Drink Money' is the local term for capital payments made by a tenant which may be equivalent to premium

<sup>14</sup> A traditional council is a council of chiefs made up of the paramount chief of the traditional area and his senior or divisional chiefs. It is a creation of statute and did not always coincide with or reflect an indigenous constitutional and political entity.

<sup>15</sup> For a detailed reading on the delegate's visit and community forum, see report: [https://rightsandresources.org/wp-content/uploads/2017/12/RRI-LPI-African-Land-Commissions-Workshop-Report\\_EN.pdf](https://rightsandresources.org/wp-content/uploads/2017/12/RRI-LPI-African-Land-Commissions-Workshop-Report_EN.pdf)

When conducting such observations, there were mainly two concerns that I was concerned about: (i) the impacts of my presence on proceedings and in turn on the data/information I gathered; (ii) the restrictions imposed by the participants on the use of recording devices, which limited the range of my observations of the proceedings. The first concern was uncontrollable to a large extent. However, I anticipated that my presence as an observant would have very minimal impact on participants' behaviour. This is because I had already established links with them (and therefore I was familiar to the participants), and most of them were already involved in my interviews. Conducting some of the interviews prior to the observation was thus useful in this regard. This emphasises the complementary benefits of using multiple methods in case studies as explained earlier. Field notes, observation checklists and digital camera were used as instruments in capturing images and events in the research setting. In every observation, field notes were recorded in my fieldwork journal. In instances when it was hard to jot down the observation highlights, I did the note-taking a few hours after the actual observation was done. Photographs were taken to capture the scenes, events, spatial arrangements, community discussions sessions and public events where possible.

#### **4.2.3 Data processing and analysis**

The data collection methods employed in the thesis - document review, interviews, focus group discussions and observation - served as a triangulation strategy to strengthen the validity of the findings. Figure 4.3 illustrates how the data gathering methods which were divided into three phases, complemented each other in validating the collected data. The diagram also shows that the task of data analysis and gathering was an iterative process, in line with critical realism research.

As explained in section 4.2, the analytical approach for the three cases followed approximately the line that most critical realist researchers (Danermark et al., 2005, Easton, 2010, Fletcher, 2017, Ryan et al., 2012) propose: abduction and retroduction. The first phase of the data collection process focused on document review and unstructured interviews which yielded information and themes relevant to answering the research questions. Guided by the retroductive inference, the initial themes generated through the document review informed the revision of instruments such as the interview and focus group discussion guides and the broad observation checklist. This phase provided preliminary and limited answers to the research question as the document review was able to identify some players and explain their roles and governing relations in the customary-state interface.

The second phase generated preliminary data through the first set of semi-structured interviews, observations and focus group discussions. I used a primarily deductive yet flexible coding process (Hsieh and Shannon, 2005) that drew on existing theory and literature. Using the NVivo (12) software, the data were categorised into themes represented by NVivo nodes. Some of these themes include

land conflicts, state presence, financing community infrastructure, attitude towards land policy, among others. The identified themes emerged from the thesis' theoretical framework and key concepts from the literature review. However, some of these themes were changed, eliminated, and supplemented with new themes during the process until every piece of text was coded. Over the course of the coding process, new themes - e.g. planning approaches, formal-informal interface, financing land use plan preparation, and distributive conflicts - were identified in the rough trends in the empirical data and were added to the existing ones.

Retroductive and abductive approaches guided the classification and examination of ideas (Danermark et al., 2005). As explained in section 4.2, the retroductive approach treats the theoretical premise as the take-off point for finding sound explanation on certain phenomenon (e.g interface between state and non-state institutions in this thesis) while abductive inference begins with analysing the findings that are outside the realm of the identified theoretical frame(s).

After clustering the emerging themes, the second stage continued with another round of document review, where I compared the results with the clustered themes that have been developed. This comparison validated and contextualised the themes and ideas, which served as the preliminary analysed data. For instance, a key preliminary finding at this stage was customary authorities' motivations for collaborating with local planners to deliver developable land. Customary actors developed alliances with public planners to finance and co-produce local land use plans - a finding that challenged existing explanations in the literature. It is possible to explain this co-productive arrangement to deliver serviced land as a straight forward matter of material self-interest. However, to do so would be an epistemic fallacy, a failure to consider deeper causal structures, particularly in light of new tendencies (demi-regularities) such as distributional conflicts that was discovered in the preliminary analysis. The literature on historical institutionalism reminds us of important political and economic conditions as well as power relations structuring structure and agency relations (Sorensen, 2017b). This theoretical perspective points to causal mechanisms that go beyond the individual choice and shape agency in particular ways. Recent work in historical institutionalism has examined the effect of distributional impacts on institutional formation and change (Sorensen and Practice, 2018, Ho, 2016, Mahoney and Thelen, 2010a). In this study, it is important to situate public sector- customary actors' engagement within a macro-level context of national reforms in land policy such as the introduction of customary land secretariats. Although customary actor's own explanations of motivations for collaborating with public planners are important and indicative of the 'real', existing theories on state-society relations in urban development and theories on institutional change allowed me to look beyond 'self-interest' to engage with other causal mechanisms in phase 3 of the field work.

The third phase of the data collection and analysis process centred on identifying causal mechanisms and conditions through focused observations and another round of in-depth interviews. The goal of this phase was to identify the necessary contextual conditions for a particular causal mechanism to take effect and to result in the empirical trends observed. This stage also helped me to clarify and validate the initially examined information and to seek further explanation on the established as well as the emerging themes. Thus, focused observations meant paying closer attention to themes and issues that surfaced through the previously conducted observations, interviews and focus group discussions. Besides these data gathering activities, it was in this third phase that I repeatedly coded the new data, identified and modified analytical themes. Retroductive and abductive approaches guided this process of coding and analysis as well.

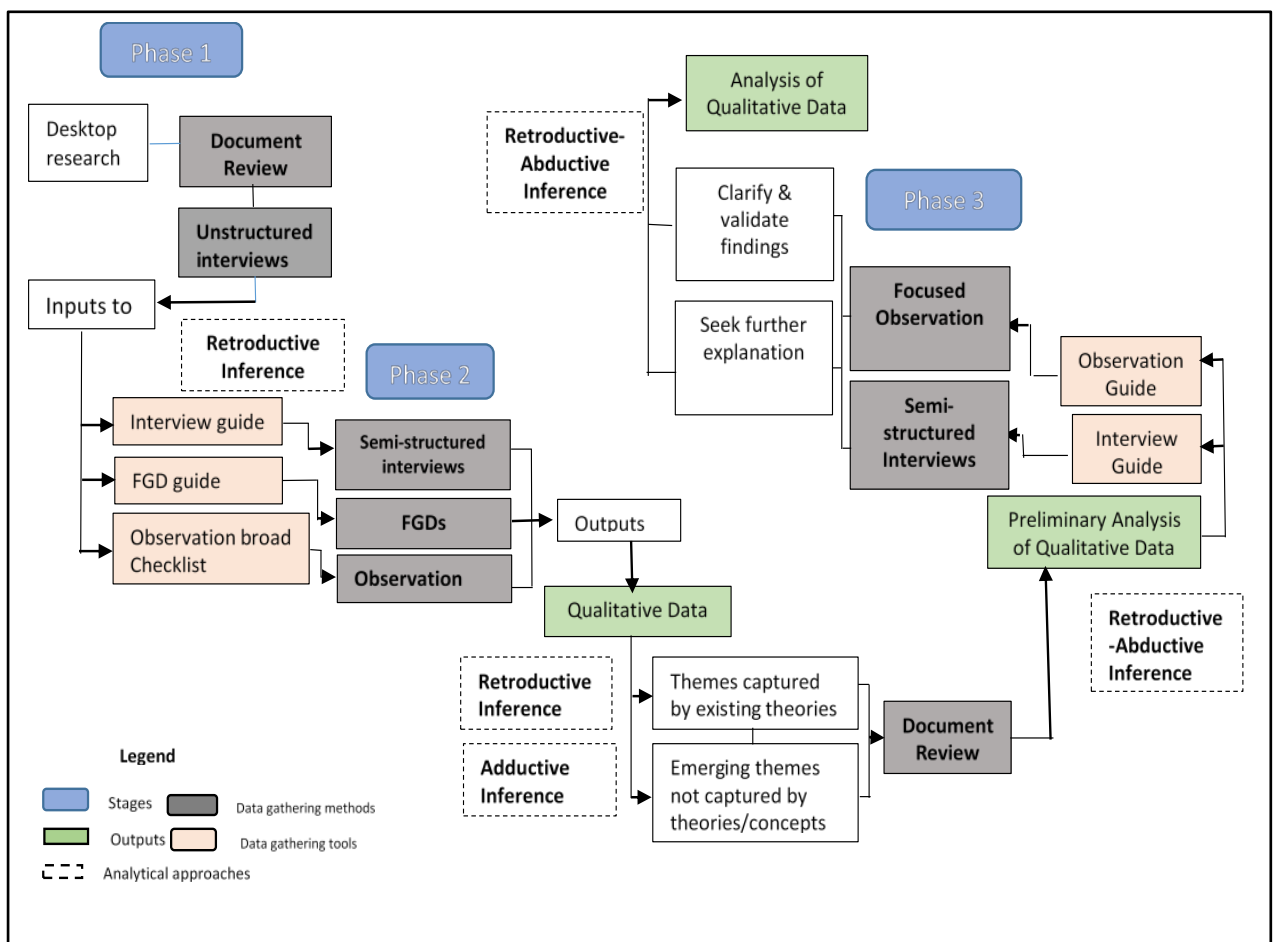


Figure 4. 3 Data collection and analysis  
Source: Author's illustration



### 4.3 Criteria for critical realist case analysis

To arrive at an explanation of the case findings, I used criteria that are widely accepted in critical realism research (Easton, 2010, Ryan et al., 2012, Danermark et al., 2005): judgemental rationality, trustworthiness, reflexivity and triangulation. As discussed earlier, the fundamental tasks of critical realism research is to gain generalizable knowledge about the nature and operation of causal mechanisms behind an event or outcome (Danermark et al., 2005). This means that where a critical realist's investigation goes according to plan, there will likely be multiple plausible explanatory accounts, which each have particular strengths and weaknesses. This raises the problem of making a choice between competing explanations of a phenomenon under examination. Ryan et al suggest that critical realists can address this problem by committing to judgemental rationalism, which refers to the view that "all explanations/conjectures are not equally fallible" (2012: 308). As such a comparative evaluation of existing arguments is required to deduce reasoned judgements about what explanatory factor best explains the phenomenon. As Archer et al. (2004) note, subscribing to judgemental rationalism requires researchers to publically discuss their claims about reality and attempt to marshal better or worse arguments on behalf of those claims to arrive at reasoned judgements about what reality is objectively like. The basis of evaluation is whether the interaction between the researcher and the research subjects adds value in that it uncovers unperceived dimensions of a given phenomenon. This does not imply, however, that there are definitive criteria to judge the "truth" of a particular situation. As Easton (2010: 123) writes, " ... critical realism relies on the researcher to collect further data that helps to distinguish among alternative explanations and on the community of researchers to debate them thoroughly".

By analysing the content as well as the context surrounding state's efforts to make statutory and customary administration more compatible, various causal mechanisms that influenced the diverse outcomes in urban land delivery and value capture processes were identified. These included power relations, distributional conflicts and the processes of intentional efforts to support or undermine new institutional arrangements. In addition, actor's reasons for the resistance of institutional change were identified as significant causes. However, based on this analysis, I was still unable to identify any one of these causes, as having ultimately explained the degree of institutional diversity that can be observed across the three case sites. The complex interactions between state land sector and customary institutions denied this possibility. Critical realism helped me to see that it is important to be able to offer many causes or explanatory accounts, although the most improbable are then rejected. Constructive feedback from discussions with peers and "critical friends" (Yin, 2013: 150) and presentations at the 2018 PhD AESOP workshop in Karlskrona, Sweden, helped to re-examine the possible alternative explanations. This process of eliminating improbable explanations crystallised my

understanding of the underlying causes regarding the divergent outcomes of attempts to integrate state and customary land delivery systems.

Trustworthiness is about whether the interpretation of raw data into results is credible (Morse et al., 2002, Lincoln, 1995). This involves dependability, whether other researchers with the same approach would come to the same sort of conclusions taking changing circumstances into account. To ensure credibility of my research findings, the use of multiple sources of evidence addressed this concern. The use of an iterative approach to data analysis where evidences were tabulated and compared ensured construct validity and reliability. The iterative approach involved steps such as identification of demi-regularities, coding, verification and comparison of emerging themes from the different sources of data collection. In doing so, active reflexivity was required which helped in avoiding researcher bias and pre-conceptions. Trustworthiness is further supported by transparent and systematic data collection as well as systematic data analysis in which interpretations are related to theoretical concepts and frameworks. Transparency is important to all choices that are made during the research process. The earlier sections of this chapter about case studies (section 4.3), the methods of data collection, and analysis in section (4.3.3) are devoted to providing transparency about my critical realist work and account for how I systematically collected and analysed data. The use of computer-aided qualitative analysis (NVivo software) helped to meet criteria of trustworthiness by improving transparency. It enabled a systematic approach by relating data to concepts and by recording the steps that have been taken to develop interpretations.

Reflexivity and positionality involve a critical reflection by the researcher on his role and influence in data interpretations, and adaptation of critical realism research methods. I acknowledge that the way of seeing state-customary relations in land governance in this thesis is shaped by my own conceptual views and analytical lens I have deployed in this research. My educational training in planning; my current positionality as a researcher affiliated with a British University; and my previous experience as a professional urban planner in Ghana jointly facilitated easier access to planning related documentation and land administration technocrats. To an extent, these personal characteristics allowed me to build rapport and trust with public officials who participated in the research. Most participants willingly narrated their experiences and challenges in urban land delivery, as well as granted access to planning policy documents. There was an equal platform for discussions, and I did not occupy a more powerful position relative to them. Moreover, in many instances, I discussed findings with a knowledgeable senior colleague who made his office space available to me to work on days I had no scheduled interviews. As a senior colleague, he acted both as a 'critical friend' and a peer

debriefed. He reviewed my biases and assumptions and offered feedback and alternative suggestions to ensure validity.

In respect of customary authorities such as traditional chiefs, elders and opinion leaders, I was able to gain access to them through the help of CLS officers and respected community members. These intermediaries helped me to establish contacts with key actors in the customary organisations, navigate cultural barriers and helped in clarifying doubts about my identity and intentions to key informants. Although I come from a cultural background different from the case study communities, I did not anticipate any significant problems in conducting interviews with customary authorities because I was well aware of the local traditional practices. For instance, I was aware that I had to approach chiefs through their linguists (spokespersons) with a bottle of schnapps as a customary requirement, although some chiefs prefer other 'customary drinks' or money. With the help of the intermediaries, I was able to overcome these cultural barriers easily. Furthermore, as an 'outsider' I was considered by respondents as an independent, non-indigenous and curious student who needed to be assisted to understand the politics of customary land governance arrangements. Hence, I earned the trust of the participants and was accordingly accepted into the study sites. Moreover, as part of social norms, it was difficult for potential respondents to ignore the request for participation made by intermediaries. Respondents openly revealed and explained the issues in customary land delivery to me, which gave me useful insights into the thesis. While acknowledging that my role as a researcher influenced the data collection, selection and analysis, I also recognise that the co-construction of knowledge in this research is informed by the social contexts, experiences and perspectives of the various respondents. With these considerations, I believe that the critical realist ontology and constructivist epistemology provided the reflexivity I needed in examining the issues under study and in situating my own subjectivities in the research process.

Triangulation involves combining different methods, theories, perspectives, and information sources. It enables deeper and multi-perspectival understanding of the studied situation and improves credibility (Yin, 2013, Denzin and Lincoln, 2011). In this research, triangulation was an important strategy to get detailed information about events, outcomes, interactions, and relations between actors. I used interviews, documents analysis, observations iteratively in the three cases to obtain various perspectives of urban land delivery and institutional design from different actors. Both national and local public officials in different land sector agencies, as well as customary authorities in the case communities, staff of the respective Customary Lands Secretariats were all interviewed to gather multiple perspectives on peri-urban land conversion and the management of revenue generated from land transactions. In addition, individual in-depth interviews were combined with

focus group discussions, document analysis and observation (see section 4.3.3) in the data collection process. These multiple data collection sources and methods served as a way of corroborating evidence gathered on the various actors, processes and outcomes of state-customary interactions in land delivery. During the third phase of my data collection process, I also shared preliminary findings from the previous phases with respondents for them to confirm my interpretations. This way of member checking helped to validate my initial findings and also allowed issues to be clarified and additional information gathered for the research study.

#### **4.4 Challenges of conducting processual research**

Negotiating, gaining and maintaining high-quality access in fieldwork plays an important role towards the conduct of a successful research (Duminy et al., 2014). However, this can be challenging and problematic because research is undertaken in complex social situations especially from a processual or organisational perspective. Cunliffe and Alcadipani argue that many empirical research studies fail to give a detailed account of access because of the assumption that gaining access is contingent on having the right strategies and the ability of the researcher to maintain relationships during fieldwork. This linear and neutral assumption often lead many researchers to present a “sanitized account of our research” by disregarding the uncertainties and complexities of conducting empirical research (2016: 536). It oversimplifies the entire research experience. Moreover, ignoring issues about access may result in the loss of rich empirical data as the experience of gaining and maintaining access is an important indicator of the practices, processes and power inherent in the actors, organisations and contexts under study. This helps in providing a better understanding of the politics of knowledge production.

Although I mentioned that my previous experience as an urban planning professional and affiliation with a British university afforded me privileged access to resources and some participants, my position as an ‘outsider’ presented several challenges. As explained in section 4.3.1, the absence of consistent documentation on land transactions, land values and land revenues in the study communities led me to rely largely on interviews with customary actors, landholders and prospective developers most of the time for such information. This limited the depth of analysis which could prove useful in identifying, analysing and understanding trends such as changes in land transactions and revenue and the context within which these changes occurred. Even where documentation on land transactions existed, customary authorities were unwilling to disclose their annual financial statements or revenues generated from land transactions despite several requests. Non-disclosure of information raises questions about customary organisations’ accountability and transparency and reflects the chasm between what they self-report and ground level realities. The challenges with access to data was not

limited to only customary authorities but also among public officials. For instance, accessing audited financial reports on annual land rents mobilised by the district Offices of the Administrator of Stool Lands (OASL) proved difficult even after several letters and visits to the offices. To overcome this challenge, I resorted to acquaintances and my connections with superiors at the national and regional level to 'pull some strings' in order for me to access revenue data at the district levels (see Appendix 5). However, the data on annual land rents obtained from the district OASL were inconsistent with the annual land rent revenue reported by the local government authorities. This experience was insightful for me by offering deeper insights into the power dynamics at play within organisations especially within superiors and subordinates. Consequently, I made the decision to rely on the financial statements reported by the local government authorities since district budgets and financial statements are often audited and made available to the public, as such are deemed reliable.

In addition, I encountered challenges in making appointments with interviewees especially public sector officials during my fieldwork. In attempting to secure interview appointments with respondents, I had to continuously visit the offices of public bureaucrats after repeated phone calls and emails failed to get any response. Even after booking appointments, I had to reschedule several interviews because respondents had to change their appointments at the 'last minute' due to work and family commitments. Others attempted to multi-task while engaging with me, which was destructing for me. Some respondents also spent less than the stipulated time with me which led to shortened interviews. Where I anticipated such instances, only salient questions were asked in order to make use of the limited time allocated.

#### **4.5 Conclusion**

This chapter has argued the case for a critical realist ontology to qualitative methods in urban planning and policy research. In terms of research design, I employed a case study approach consisting primarily of in-depth interviews, document analysis and observations to gather data from three case study sites. The fieldwork comprised of three phases. The first phase explored general issues pertaining to practices of customary land delivery and the key actors involved through unstructured interviews, document reviews and cursory field observations. Insights and emerging themes from this explorative work were used to develop more focused guides for field observations, semi-structured interviews and focus group discussions with participants in phase two. The aim in this stage was to obtain participants' narrative accounts, understandings and experiences of the processes and interactions between state and non-state actors in the delivery of urban land, and also to identify explanatory mechanisms for the varied outcomes of land value capture attempts. Both purposive and snowballing approaches were used to select respondents including national and local government land sector

officials, staff of customary land secretariats, customary authorities such as chiefs and elders, as well as land policy practitioners and academics. The preliminary findings informed more focused in-depth interviews and field observations in the third phase, aimed at identifying causal mechanisms and conditions and to seek further explanation on the established as well as the emerging themes. In line with critical realist research criteria, data analysis processes were discussed as well as reflections on ethical considerations and reflexivity.

## Chapter 5 - Contextualising Land Governance in Ghana

This chapter discusses the customary land governance regime in Ghana. In particular, it analyses how land and property rights institutions have evolved from the pre-colonial period through to post-independence era and how the goals of policies regulating land use are often in conflict with those intended to improve customary institutions. Understanding the institutional development for governing customary land in Ghana is helpful to identify the challenges that will need to be overcome when integrating customary and statutory systems of land management.

The discussion in this chapter shows that colonial and national government policies on land use and planning have had a lasting influence on the rules of customary land delivery in Ghana. Land management is thus interwoven between state agencies and customary authorities, as two separate tenurial systems. This has created a 'new' customary system of land administration that is characterised by legal pluralism and displays little resemblance to indigenous practices of customary land management. The complexities surrounding land ownership, acquisition and management are therefore among the major challenges facing many local authorities across the country. To address these challenges, the state has recently embarked on the Land Administration Project (LAP) to reform land use and planning institutions and to craft a more market friendly 'customary tenure' that is secure and efficient. The reform is based on an integrative approach, whereby the state seeks to incorporate customary authorities and institutions into the statutory systems, emphasizing coherence instead of autonomy. However, this integrative approach downplays the heterogeneity of customary organizations, including their interests and motivations.

Following this introduction, the first section contextualises the nature of customary land, with particular focus on tenure relations in pre-colonial Ghana. The section that follows traces the evolution of customary tenurial relations and property rights institutions in Ghana from the colonial era to the period when the first national land policy was developed (1999). The approach adopted in this section is of necessity historical, because without the historical background, both the immediate question of land reforms and the property rights context within which approaches to recover revenues take place are inexplicable. The third section examines recent state-led efforts to consolidate and decentralise land governance arrangements through land administration reforms. In particular, the section explores how new land use and planning policies and legislations are 'layered' onto existing institutional frameworks to bring about institutional changes to the land and planning regime. The chapter concludes by drawing attention to the risks associated with the LAP's approach to institutional reforms.

## 5.1 The nature of customary land tenure in Ghana

Most of the land in sub-Saharan Africa is governed under various forms of customary tenure (Chimhowu, 2018a, Napier et al., 2013). Although obtaining accurate data on land under customary tenure is still challenging, some estimates suggest that as much as 90% of land in sub-Saharan Africa falls in this category (Boone, 2017). Customary tenure has always been treated with some ambivalence in the literature on land in Africa (Chimhowu and Woodhouse, 2006). While some in the past have seen it as unregulated capital holding back the ability of poor people to prosper (De Soto, 2000), more recently it has begun to be seen as progressive and adaptable (Byamugisha, 2013, Cousins, 2007). Recent studies have shown that over the past three decades customary land in most parts of sub-sarhan africa has transformed into a more market friendly regime that is secure, efficient and democratic (Chimhowu, 2018a, Byamugisha, 2013).

The term customary tenure is an omnibus term that at its most basic means collectively owned land that is usually under the authority of traditional chiefs or under the control of large families or clans (Berry, 2017). Customary tenure is often defined in terms of an idyllic Arcadian past, which was characterised by communal and egalitarian values, based on group solidarity and rooted in spiritual and moral values (Asiama et al., 2019, Kasanga and Kotey, 2001). For these reasons, most scholars often associate customary tenure with equitable access to land. Kasanga reflects this perspective, when he writes:

Customary tenurial systems are a source of social security and continuity. The full enjoyment of the fruits of one's labour and efforts are guaranteed, and in regard to land, no man is 'big' or 'small' in his own village or town (Kasanga, 1999: 89).

In its contemporary usage in the literature, customary tenure is still treated as land that is owned collectively, although it allows for the registration of collective and individual title as is the case in countries such as Burkina Faso, Uganda, Rwanda and Tanzania (Chimhowu and Woodhouse, 2006, Chimhowu, 2018b).

In Ghana, about 80% of land falls within customary ownership (Kasanga and Kotey, 2001, Ministry of Lands and Forestry, 2003a). The remaining 20% is state owned, compulsorily acquired or occupied over the years in pursuit of the State's development objectives. Customary land tenure in Ghana is anchored on the fundamental principle of communal ownership with land held by customary authorities in trust for the whole community (Amanor, 2008). In this communitarian approach, individuals belonging to a particular landowning community enjoy different types of interests and rights to the land. These interests are generally grouped into allodial and usufructury interests (Asante,



1964, Woodman et al., 1995). The allodial interest constitutes the ultimate title over land and therefore the root of all interests in land in Ghana (Amanor, 2008, Kasanga, 2002). All other rights to land are derived from the allodial title. The allodial interest is vested in communities<sup>16</sup>. Sub-stools, families or clans under the stool or clan hold a sub-allodial title. The acquisition of the sub-allodial is synonymous to the allodial interest as they are both acquired at the same time, but at different levels of importance (Ollennu, 1962). Chiefs or family heads who represent these landowning communities execute judicial, governance and land management functions.

As discussed in Chapter 4 (see section 4.3.1), customary land in Ghana can either be categorised as stool land or family land depending on where the allodial title is located within the traditional political system. Stool lands are customary lands where the allodial title is vested in a stool, i.e., the landholding community (Kasanga and Kotey, 2001). The landholding community is called a 'stool' as the special carved wooden chair on which the chief notionally occupies (Ministry of Lands and Forestry, 1999)<sup>17</sup>. Although the entire community owns the land, the chief<sup>18</sup> together with his council of elders are responsible for managing the land on behalf of the Stool. Membership of the customary community is based on a common allegiance to the stool. This form of landholding is common mainly among the Ashanti, western central and northern regions of Ghana (see Figure 4.1 in Chapter 4).

Family lands, on the other hand, are collectively owned by families or clans with a common ancestor, who might have acquired the land through purchase, long settlement, or conquest. The allodial interest is vested in families or Clans represented by family or Clan heads. Such lands are therefore popularly called family lands, constituting about 35% of the total lands in customary ownership (Ministry of Lands and Forestry, 2003a). The entire family or clan enjoys the benefits accruing from the alienation of such land, but the management rests with the family head and elders (Amanor and Ubink, 2008). Membership of a family is based on common blood. Thus, the family represents a closer unit than the stool. In some cases, a landowning family may hold allegiance to particular stools. However, the relationship is only jurisdictional and does not affect the proprietary interest in the land

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<sup>16</sup> A community is being defined to range from a small group of people to whole tribes and townships and comprises the living, dead and yet unborn (Kasanga and Kotey, 2001).

<sup>17</sup>The 'stool', is the symbol of traditional authority and the unifying force of any particular group of people upon which their socio-political systems depend. In the Northern part of the country, the skin of an animal represents the symbol of authority of the traditional state or community<sup>17</sup>. The general belief is that the stool or skin holds the soul of the ancestors of a family, tribe or community. Usually, the term 'stool' refers generally to both stool and skin. In fact, Section 76 of the Chieftaincy Act 2008 (Act 759) provides that a "stool includes a skin".

<sup>18</sup> Articles 270 (1) and 277 of 1992 Constitution and sections 57(1) and 58 of Act 759 (the Chieftaincy Act, 2008) defines a chief as a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

(Bentsi-Enchill, 1964). Family lands are common in the upper east region, upper west region, Greater Accra region, Volta region and Central region.

Regardless of whether the landholding system is categorised as stool or family land, the position of every allodial titleholder of land is that of a titular holder, holding the land in trust for the whole landowning community. This means that customary leaders vested with the allodial title can only, in principle, make decisions on the disposition of land after a collective decision with heads and elders of the rest of the landholding group. Customary leaders are held in check by a council of elders, selected by and representing all major factions of the community, without whose consent the chief cannot make any decision (Ubink, 2008b). Malfunctioning chiefs may also be destooled by the kingmakers, i.e. those sub-chiefs and members of the royal family who can also make or enstool a chief (Firmen-Sellers, 1996, Hayford, 1903).

Typically, members of a landowning group have use rights to vacant lands, which gives them the usufructuary title or the customary freehold to land (Asante, 1964). This type of ownership is the highest type of land ownership that an individual member of the landowning group can hold (Da Rocha and Lodoh, 1999). The usufructuary rights may be acquired through first cultivation, construction or through allotment from the allodial land trustee (Kuusaana and Eledi, 2015). When an indigenous member of the landholding community acquires usufructuary interest in land, such a member has clearly defined spatial, exclusive and perpetual rights to that parcel of land. Such rights are heritable, transferable and can only be extinguished through the abandonment of the land in question or absence of successors, or with the consent of the interest holder (Asante, 1964). Through these mechanisms of land governance, access to land was therefore equitable and egalitarian for 'sons of the soil' (Boone, 2017, Chimhowu and Woodhouse, 2006).

But even for migrants, access to land in the pre-colonial era was equitable. For a stranger (non-subject of a clan, skin or stool) who wished to acquire land, s/he must first seek the permission of a chief to settle in his area. If permission is granted, the stranger is then granted land on a contractual basis, such as gift, seasonal tenancies or share cropping terms (Bentsi-Enchill, 1964, Kasanga and Woodman, 2004). Under these terms land is given to strangers for a particular farming season and the produce shared equally or into three between the new farmer and the chief, depending on the initial agreement or support by the landowner (Kimble, 1963). In exchange for the use of a parcel of land, all that a person had to pay was a bottle of aromatic schnapps or a token sum of money appropriately

called “drink money”<sup>19</sup>. There was little or no land rent, not due to the absence of demand for land or an abundance of empty land. Rather, the land tenure system was different. Land was not a commodity (Obeng-Odoom, 2016). Market relations in land existed, but they were mainly social and political institutions for allocating interests in land and for non-profit. For instance, political historian David Kimble (1963: 20 -22) shows that as far back as 1814, the Adangmes, Ewes and Akans of Ghana had a system of exchanging land in markets influenced primarily by religion rather than profit. It is only recently, following the enactment of Act 267 in 1994, that allodial and usufructuary holders started to allocate leasehold interests (Asabere, 2004a, Da Rocha and Lodoh, 1999). (This topic is discussed in detail in section 5.3.3). Thus, Figure 5.1 illustrates the various types of land ownership as well as the stakeholders and their interrelationships.

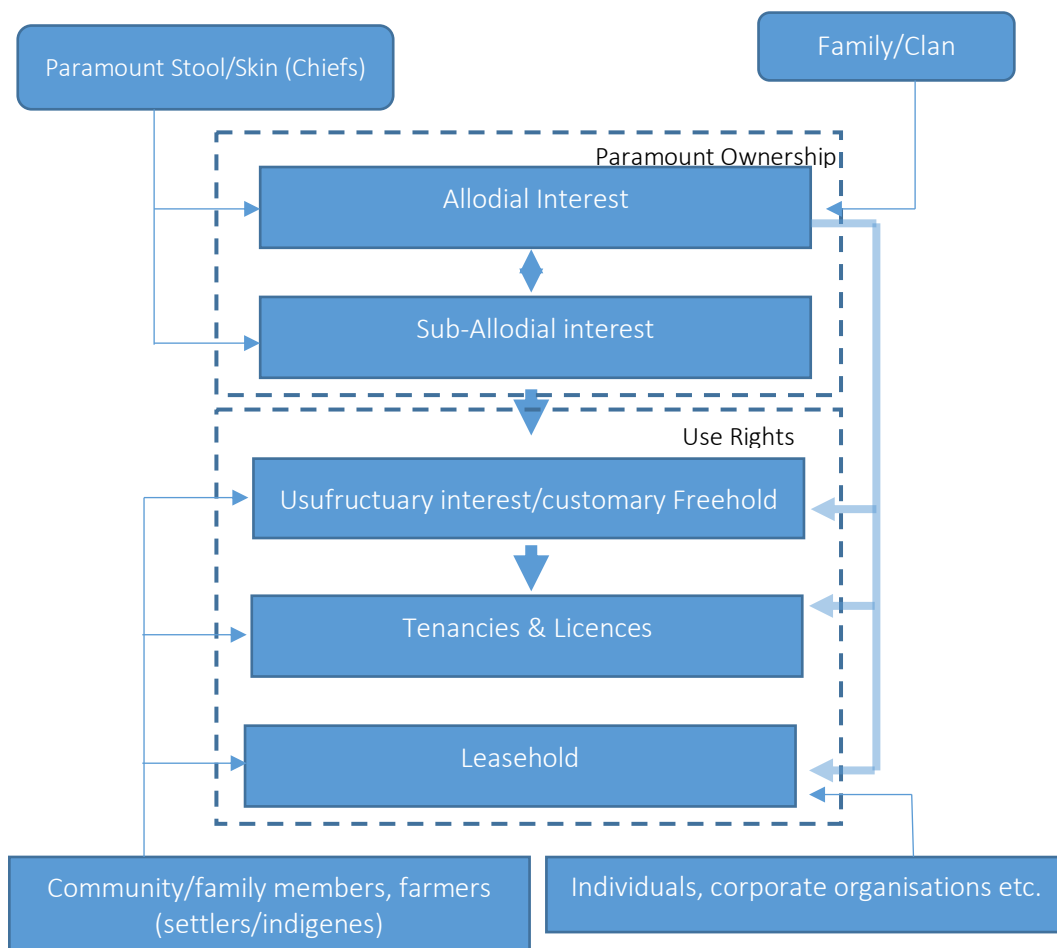


Figure 5. 1: Land tenure in Ghana  
Source: Author’s illustration

<sup>19</sup> Drink money refers to a taken payment of Kola nuts or schnapps in deference to traditional authorities by land acquirers. A bottle of Schnapps was sufficient in times of land abundance. When land became more valuable a small amount of cash money (Ubink and Quan, p. 200)

The above description of customary land tenure is the formal documented representation of customary land tenure system according to customary law in Ghana. The morality of customary land tenure has however been shown variously to have changed, renegotiated and re-invented to respond to changing socio-economic, political and government policies (Amanor, 2008, Toulmin et al., 2002, Yaro, 2012). In spite of these changes, customary land tenure relations in the country has remained embedded in this 'traditional' ideology as collective property (Obeng-Odoom, 2016). The following sections analyse the influence of the interventions of the colonial state on customary tenurial relations with particular focus on the major features of continuity and change during this period.

## **5.2 A History of land reform**

### **5.2.1 Colonial land tenure policies and customary tenure relations (1874 – 1957)**

The advent of colonialization was the decisive critical juncture in Ghana's history due to its influence on the character of land and property relations. The colonial state promoted a system of land tenure which retained some pre-colonial land interests while creating new interests based on English land law. Principles of English law were applied on customary law to facilitate state control over land administration (Woodman et al., 1995). Although these land administration and planning principles were not uniform across the country, a common outcome from them was the commodification and introduction of 'formal' land markets in customary land (Kimble, 1963, Hammond and Antwi, 2010).

A prominent characteristic of colonial administration across the country was to enable state control over customary land (Okoth-Ogendo, 2000, Firmen-Sellers, 1996). Many reasons informed this choice. Trade, colonialism and hence the monetization of the economy buoyed the development of markets and property in land (Obeng-Odoom, 2016). In particular, the emergence of large scale commercial plantations and mining activities propelled a market in land (Austin, 2005). However, the Colonial government believed that the pre-colonial land relations of collective land ownership could hamper the economic activities that had emerged (Aryeetey, 2007). There were other concerns relating to the need to facilitate the penetration of British capital into the mining industry (Kimble, 1963). Accordingly, the colonial state tried to exert control and management over customary lands in the country by passing several statutory laws that enhanced its powers of control and expropriation (Aryeetey, 2007, Kimble, 1963, Obeng-Odoom, 2016).

The colonial government attempted to control and administer all lands by proposing the Crown Lands Bill of 1894, and later the Lands Bill of 1897. These proposed laws sought to confiscate all unoccupied lands and administer them as 'Crown land'. While the stated aim of the bill was to control rampant concessions of land to European companies, Bennion (1962) rightly points out that these proposed

bills sought to vest all property rights in “vacant lands” in the colonial state. This would effectively dispose the indigenous communities of their land. In response, some influential citizens and some chiefs of the south of the country formed what became known as the Aborigines Right Protection Society (ARPS) to resist the Crown Lands Bill of 1894. As Amanor (2008) explains, most chiefs in the south of Ghana were farmers and cocoa investors, and were thus interested in ensuring the security of their own investment. The ARPS also argued that land often thought of as ‘vacant land’ was, in fact, fallow land or land left to regain its lost nutrients (Howard and Howard-Hassmann, 1978). Chiefs teamed up with farmers’ organisations to protest the colonial government’s attempts to expropriate native lands. This alliance led to fierce resistance and eventually the withdrawal of these bills.

Having failed to implement a land nationalisation regime in the Gold Coast, the colonial government resorted to regulating the activities and land transactions of customary authorities instead (Obeng-Odoom, 2016). The Concessions Ordinance (No 14) was therefore passed in 1900, requiring government’s discretionary approval of all land use and transactions. By this ordinance, all transfers of interest in land to non-natives required concurrence by the Governor upon which a grant could be considered complete. Also, the ordinance limited the quantum of forests and mining concessions customary authorities could offer to European entrepreneurs (Howard and Howard-Hassmann, 1978).

The introduction of ‘indirect rule’ by which the British ruled the Gold Coast (now Ghana)<sup>20</sup> further disrupted customary tenure relations. The colonial state usurped the management over land from local chiefs and placed it in the hands of paramount chiefs (Firmen-Sellers, 1996). As discussed previously, land exchange in pre-colonial Ghana took place within an institutional context that recognised the rights of local chiefs to sell land and the perpetual alienation of the land in these transactions. However, under the indirect rule system, the British placed customary land under the jurisdiction of paramount chiefs who hitherto had no such powers (Amanor, 2008, Firmen-Sellers, 1996). In an attempt to create larger political units for governing the indigenous communities, the colonial administrators appointed paramount chiefs for these societies. These paramount chiefs were accountable to colonial appointed officials (District Commissioners). From this period, the management of land came under the authority of paramount chiefs, and the British colonial administration supported the privileges of these chiefs and their control over land and natural resources (Amanor et al., 2008, Firmen-Sellers, 1996). Paramount chiefs were recognised as the only

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<sup>20</sup> Under indirect rule, colonial rule was effected through an alliance between the British colonial administrators and paramount chiefs. For a detailed discussion of the influence of indirect rule transformed property rights relations in the Gold Coast (now Ghana), see Firmin-Sellers (1996).

social group who could transact land (Amanor, 2008). In northern Ghana, where traditionally there were no chiefs<sup>21</sup>, the British introduced chieftaincy institution in these areas by warrant (Kasanga and Kotey, 2001). Mainly influential people – the rich, merchants, and the strong – were appointed as divisional and paramount chiefs (Lentz, 2010, Yaro, 2010). These paramount chiefs became powerful in land issues, leading to the weakening of the actual landowners (i.e. local chiefs in the south, and Tendema in the north of the country). In this way, the colonial government was able to rule the local people and control land through an alliance with the paramount chiefs whom they controlled.

According to Amanor (2008) land relations during this era were determined by what was considered customary practice and by the proclamations of byelaws by paramount chiefs defining these relations. This land policy regime was problematic because the paramount chief's version of customary law was not necessarily the customary law of the people. For instance, Firmen-Sellers (1996) finds that in many cases, some customary leaders 'deliberately' distorted historical accounts of land boundaries to increase the size of their territories. Yet in most cases the British acquiesced in this 're-writing' of history to favour traditional power groups (also see Lentz, 2010). According to Amanor (2008: 61) these re-interpretations of communal land law in the Gold Coast resulted in the "erroneous but widely held theory of African communal land tenure" whereby paramount chiefs hold the allodial rights while the subjects hold only user rights. Although this construct of customary land now sits easily in much of the literature, it does not reflect the social relations and transactions in land that had existed in pre-colonial Ghana. This colonial construct of communal land ownership was largely worked out to meet colonial interests in land and increase the power of chiefs. In his earlier writings, Amanor (1994, 2001) showed that in Asante, for instance, where paramount chiefs did not exist, local chiefs sold and pledged settlements under their control including both lands and inhabitants. And as discussed previously (see section 5.2), local chiefs make land management decisions with the consent of the community elders.

Thus, what ought to be stressed is that the intervention of the colonial state significantly distorted customary tenure relations. The indirect rule system did not only facilitate a commodification of customary land, it also increased the hegemony of paramount chiefs over land and ultimately increased state control in land. As such, from the beginning of colonial rule, certain patterns of land relations found in today's Ghana had been firmly established. Ghanaian land tenure had become

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<sup>21</sup> But there were "earth priests" or *Tendama* who were not only priests but also leaders of their people as well as administrators of land. See Yaro (2010) for details on the land tenure system in northern Ghana.

pluralistic, based in part on statutory law and 'modified customary law' resulting from the colonial government's attempt to interpret local landholding systems and codify them.

### 5.2.2 Post-independence era: 1957 – 1992

Initially, the immediate post-independence government, led by Kwame Nkrumah, preserved the balance between the state and the customary sector in land management. However, the new government increasingly introduced legislation that sought to centralise the control of customary land, and expand the role of the state in the customary sector (Kasanga and Kotey, 2001, Larbi, 1994). The government adopted a socialist ideological stance as it viewed state-led development as the most favourable approach to promote economic development. This socialist agenda was predicated on the 'Big Push' paradigm of development orthodoxy prevailing at the time (Aryeetey et al., 2000). The central feature was to build up a stock of capital through industrialisation to generate growth, within a centrally planned economy, the development of a welfare state and the proliferation of bureaucratic controls (Aryeetey, 2007). To achieve this, the government implemented two categories of legislation related to land.

First, attempts were made by the state to curtail the powers of chiefs over land administration for fraternising with the opposition party (Obeng-Odoom, 2016). As with the colonial authorities, the new government was guided by the caution that chiefs in the south, particularly in the Ashanti and Akim-Abuakwa communities, had strong lineages with the opposition and professional elites (Aryeetey, 2007). These fears were heightened following the findings of two commissions of inquiry<sup>22</sup> which confirmed that local revenue from two paramount stools was being used to support a rival political party, the National Liberation Movement (Kasanga and Kotey, 2001). Since stool revenue was alleged to be the main source of finance for the chiefs and by extension, the opposition, the government's ultimate aim was to gradually extend a firmer grip over stools lands, including the collection and distribution of stool land revenue (Larbi, 1994, Agbosu, 2007).

Accordingly, the new government devoted some attention to weakening the financial base of the chiefs' administrations by passing the 1951 Local Government (Gold Coast) Ordinance No. 29. The Ordinance transferred the control and management of stool lands and stool revenue from the chiefs to the new local authorities that had been established (van Dijk, 1999). The main findings of the Commissions of inquiry which necessitated this intervention included the application of stool land

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<sup>22</sup> These paramount stools were the Ashanti State Council and the Akim Abuakwa State. They were investigated by the Justic Sarkodee-Addo Commission and the Jackson Commission respectively. Both commissions were 'one-man commissions' LARBI, W. O. 1994. *Urban land policies and the delivery of developable land in Ghana*. University of Reading.

revenue to purposes not connected with the stool and to stop the notorious practice of funding political activities of the opposition party. Subsequent legislations were enacted with more explicit intent on curtailing customary authorities' financial administrative capability. These included the Ashanti Stool Act, 1958 (Act 28), the Akim Abuakwa (Stool Revenue) Act 1958 (Act 8), and the Stool Lands Control Act 1960 (Act 79). In various ways, these legislations essentially took away the fiduciary role of chiefs over their land and thus stripped them of stool land revenue. However, due to the government's cautious approach to chieftaincy, those laws did not change the existing land tenure system (Aryeetey, 2007). The government operated within the ambit set by the rules of customary law. Nevertheless, such laws marked the state's most forceful entry into the politics of land ownership and control and its attempt to gradually take over the management of customary lands in the country.

Second, the government's socialist principles and drive towards industrialisation resulted in further legislations aimed at asserting stronger state control over customary lands (Obeng-Odoom, 2016). According to Aryeetey (2007) the new government's policy to expand the economy focused on modernising agriculture, expanding the cocoa sector through smallholder production and massive real estate and public works development. All these spheres required unrestricted access to abundant land. The state accessed such large tracts of land through compulsory acquisition by law. This was facilitated through the enactment of the State Lands Act, 1962 (Act 125) which empowered the President as the sole authority capable of acquiring land compulsorily for developmental purposes (Larbi et al., 2004). An Executive Instrument in which the President declared that a piece of land is required in the public interest was enough to extinguish all subsisting rights and interests in the land. What is more, issues regarding compensation were to be dealt with after the expropriated land had been vested in the president (Kotey, 1996). This means that government could acquire land for use and pay compensation at a time of their choosing. Thus, the compulsory acquisition procedure was simplified under the Act involving a top-down approach. The act gave the state unhindered access to stool land without incurring a large measure of hostility from various interests.

The act of compulsorily acquiring land was seen as a betrayal of customary trusteeship and an encroachment of the power and legitimacy of customary authorities, which they derived mainly from the control over land. This is because customary authorities were not consulted or involved in the decision-making process during land acquisition (Kotey, 1996). Moreover, communal land was taken from customary authorities and given to private companies and wealthy individuals for residential development (see for e.g Kasanga and Kotey, 2001, Kotey, 1996, Larbi et al., 2004). These processes resulted in protests and agitations by chiefs and uncompensated farmers who were cultivating in the respective areas (Larbi et al., 2004, Kasanga et al., 1996).



Following the overthrow of Nkrumah's government in 1966, subsequent governments abandoned the socialist ideology in favour of a pro-market shift in land management with a strong affinity to private property rights (Hammond et al., 2006). These governments (e.g. The National Liberation Council and the Supreme Military Council) perceived the policy of state control of communal lands to be contrary to the sanctity of private property (Obeng-Odoom, 2016). In this regard, they kept the legacy of colonialism intact. That is, they left power regarding land administration and management in the hands of the chiefs with little interference. In some instances, initiatives were taken to protect customary property rights, such as the establishment of an independent Lands Commission to manage all lands acquired by the government. According to Kasanga and Kotey (2001), the creation of the Lands Commission was necessitated by the excessive abuse of state power in respect of customary land administration. The Office of the Administrator of Stool Lands (OASL) was also created within the Lands Commission and made responsible for managing all revenues generated from customary land transactions. The OASL was expected to set up accounts for every stool and pay all revenues into such accounts in accordance with a statutory formula set out in the Lands Commission Act 401 (see Table 5.1). The OASL has subsequently been reformed, particularly with regards to the mode of disbursement of stool land revenue (see section 5.3.3 for detailed discussions of this topic). However, the functions of the OASL and the beneficiaries of the stool land revenue remained the same (Auwah and Gyau, 2016).

By 1983, Ghana had adopted the World Bank's Structural Adjustment Program (SAP), and this kick-started a series of neoliberal reforms in all aspects of the economy (Aryeetey et al., 2000). The adoption of the SAPs, characterised by limited government involvement, meant that a radical restructuring of the prevailing customary tenure systems was impossible.<sup>23</sup> The most practical option, therefore, was to reform the customary system from within through mild incremental changes (Agbosu, 2004). A significant pro-market shift in land management that occurred during this period was the passage of the Land Title Registration Law in 1986 (PNDC 152) to replace deed registration. Before this period, a system of deeds registration was in operation, providing for the registration of land with existing written titles. It therefore excluded the registration of oral transactions and titles to land common under customary law (Agbosu, 1990). The land title registration scheme was therefore introduced to deal with problems of uncertainty and insecurity in land titles and transactions and thereby improve land management. Law 152 provided for the registration of all existing interests in land (customary law and common law), although its application was limited to only the urban centres of Accra, Tema and parts of Kumasi (Woodman, 1987). The Law also provided for the registration of

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<sup>23</sup> SAPs generally implement "free market" programmes and policy, including privatisation and deregulation.

the allodial title in the name of the landholding stool or family. Thus, in many ways the law sought to improve land management.

### **5.2.3 Endorsing legal pluralism: The 1992 constitution and beyond**

The 1990s and beyond witnessed the most advanced stage of land reform. In 1992, the fourth republican constitution was established. The constitution reiterated and upheld the fiduciary role of customary authorities over customary land. This trusteeship role is recognized by Article 36(8) of the 1992 Republican Constitution which states that:

The state shall recognize that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the state shall recognize that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana of the stool, skin or family concerned, and are accountable as fiduciaries in this regard (Government of Ghana, 1992).

By this provision, the Constitution recognises that customary authorities, as trustees, must manage communal lands in ways that benefit the wider interests of their communities. This is not to deny the legitimate interests of the state in the land question, particularly in promoting tenure security and efficiency in the allocation and use of customary land and the revenue it accrues. In this regard, the 1992 constitution introduced the leasehold system under Article 267. The Act effectively abolished the outright sale of stool lands in Ghana and ensured landowning communities have perpetual right (through its reversionary interest) in their lands. This provision was necessitated by the need to address the increasing trend of customary land transactions on a freehold basis. According to Asabere (2004a), the customary system of landholdings was slowly transforming into a relatively more modern system within which customary authorities were offering transactions with freehold titles. Thus, customary lands were effectively being privatised since lands granted by chiefs were being treated as freehold interests. Article 267 (5) therefore sought to reverse this process and to prevent the outright sale and buying of customary land as freehold by stipulating that “no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described” (Government of Ghana, 1992: 267[5]). Instead, the constitution provided for leasehold interests to be created from allodial title and customary freehold sources (see Figure 5.2). The introduction of the lease system therefore helped to protect the reversionary interest in customary land. In other words, use rights can be granted to developers over a specified period of time as leasehold title, but the allodial title still remains with the landowning group. This is very useful in terms of intergenerational equity, which constitutes a core principle of customary land tenure (Amanor et al., 2008).

The introduction of the leasehold system further boosted a formal land market in customary land (Gyau Baffour Awuah and Gyamfi-Yeboah, 2019). Within the framework of the Article 267, customary authorities can allocate certain rights and privileges to lessees, for a maximum lease term of ninety-nine (99) years for Ghanaians and 50 years for foreigners (see Article 267[1–5] of the Republican Constitution of Ghana [1992]). The rights that are conferred to a leaseholder include the right to use the land, the right to sell or mortgage the leasehold interest, right to possession of the land, and right to quiet enjoyment. In consideration of these rights and privileges, the lessee is supposed to perform certain responsibilities including the recognition of his/her lessor, payment of rent and not undertake improvements that have not been agreed upon with the lessor. The rent payable under the ground lease is “peppercorn” ground rent, although many customary authorities impose economic rent rather than peppercorn rent (Biitir and Kuusaana, 2019). The revenue generated from the sale of leases however serve as sources of finance for landowning communities. As Mahama and Baffour (2009) and recently Awuah and Gyau (2016) have shown, the resulting revenue from customary land transactions provide important capital for urban development.

The 1992 constitution reinstated the OASL as an independent body (Article 267 [2]). The OASL’s responsibilities were maintained, as before (see section 5.3.2). However, the statutory formula for disbursing stool land revenue was revised (see Table 5.1). According to the revised formula (267 [6]), 10% of all land revenue generated from customary transactions shall be paid to the OASL to cover its administrative expenses. The remaining 90% is to be disbursed in the following proportions: 25% to the stool for its maintenance; another 20% to the customary authority; and 55% to the local authority within the area of authority in which the stool lands are situated (Sections 3 and 6, OASL Act, 1994 (Act 481)).

Beneficiary	Period			
	1962 -1979	1979 – 1981	1981 - 1992	1992 till date
<b>Central government</b>	10	10	10	10
<b>Local Authority</b>	30	30	60	55)
<b>Customary authority</b>	30	30	20	20)
<b>Landowning stool</b>	30	30	10	25)
<b>Total</b>	100%	100%	100%	100%

Table 5. 1: Disbursement of stool land revenue (percentage of the amount collected)

Sources: Distilled from Kasanga and Kotey (2001); Larbi (1994)

Under this formula a landholding stool (landowning community) is entitled to only 25% of the proceeds from their land. This share is expected to be used for community development activities. The customary authority of the landholding community retains 20%. The majority share (55%) goes to

the local authority. Therefore, the revenue from customary land transactions constitutes land-based revenue for local authorities especially in jurisdictions where there are stool lands. However, the 1992 Constitution is silent on how the revenues paid to the customary authority and the local authorities are to be used. In other words, the usage of the revenue over the years has been left to the discretion of the local authorities. Partly because of this constitutional omission, some local authorities fail to use their revenues to deliver tangible benefits, spend too much on recurring expenses and salaries, and invest too little in works and infrastructure programmes (Asiama, 2006, Kasanga and Kotey, 2001, Mahama and Baffour, 2009). At the same time, because the funds that go to the local authorities are meant to be used for development, some chiefs refuse to spend the 20% their share on development projects (Locke and Henley, 2016). The concerns about mismanagement of land revenue is particularly pertinent in peri-urban areas where much revenue is raised from the rise in land value as agricultural land is converted to residential land. Although this lacuna is widely acknowledged (Awuah and Gyau, 2016, Agyemang and Morrison, 2017), few efforts to address this have been made due to fears that a case brought against the system would be met by broad backlash by the chiefs, with important political consequences (Ministry of Lands and Natural Resources, 2017).

What ought to be stressed is that the statutory requirements on customary land revenue are limited to only stool lands and do not apply to family lands as defined in the Constitution (Article 295[1]). In other words, the functions of the OASL are constitutionally confined to only stool lands. Clan and family land revenues are exempted from collection and disbursement. This is because the interventions in the customary sector erroneously perceived all indigenous Ghanaian societies as hierarchical with chiefs in control of land (Agbosu, 2007). But as pointed out in section 5.2, the jurisdiction of chiefs over land is not recognised in some parts of the country such as in the Greater Accra Region. Rather, land in these areas is in the custody of family heads. The legal arrangement therefore created a disparity such that stool lands are subjected to a different regime from family lands, although both categories are customary lands held in trust for members of the community. This has created a situation where revenue from stool lands are shared with local authorities and are applied for developmental purposes whilst family lands contribute nothing (Ministry of Lands and Natural Resources, 2017).

Overall, the 1992 constitution sought to facilitate efficiency in the land market while attempting to safeguard the interests of landowning communities. In these circumstances, maintaining a balance between customary practices and statutory regulation of land appeared most appropriate. Achieving this required incremental modification to the customary system, with common law and equitable principles grafted onto it (Amanor and Ubink, 2016, Larbi, 2006, Kasanga and Kotey, 2001). This bias

in favour of a more incremental approach to customary land tenure was a product of two factors. First is the fact that the state had not demonstrated that they were better managers of land as compared to customary institutions. Past experiences showed that state management of land generally worked against the interests of poorer groups while benefiting bureaucracy and the high class. In contrast, customary land tenure systems and management mechanisms were argued to be resilient, dynamic and evolutionary while delivering efficient land markets (Aryeetey, 2007, Kasanga et al., 1996). There was also the claim that Ghanaians would not support a radical overhaul of the land tenure system (Agbosu, 2004), as evidenced by the resistance of land nationalisation during the colonial era. The approach was therefore to maintain customary land tenure systems and strengthen areas where they have difficulty in allocating land effectively. Second is the fact that the dominance of the neoliberal arguments at the time supported reduced state involvement in the economy. Government was expected to perform a limited role in the promotion of security in land transactions and efficiency in the allocation and use of land (Kasanga and Kotey, 2001). Thus, Ghanaian land tenure reforms were geared towards harmonising the statutory and customary sectors, with statutes and customary laws, public and indigenous institutions, traditional values and corporate norms all operating side by side. This rationale underpinned the 1999 National Land Policy and subsequent efforts to implement the contents of the policy through activities under the LAP.

### **The 1999 National Land Policy**

The first comprehensive National Land Policy was developed in 1999. The goals of the National Land Policy (NLP) were to; (i) harmonize statutory laws and customary practices to facilitate equitable access to land and enhance security of tenure; (ii) minimize the sources of protracted land boundary disputes; (iii) ensure payment within reasonable time of fair compensation for land acquired by the state from customary landowners; (iv) promote community and participatory land management and land use planning within a decentralised planning system; (v) formalise land markets where appropriate to promote business-like and professional property management principles with the aim of maximizing economic, financial and social returns (Ministry of Lands and Forestry, 1999). The adoption of the NLP was in response to the many land sector challenges that had been experienced since colonial times. The principles of equitable access to land and security of land use are emphatic in the NLP and are to be facilitated through improved customary practices and land registration. In keeping with the 1992 constitution, the NLP reaffirmed customary relations in land. Also, by underscoring the principle of adequate and timely compensation for government acquisitions, the policy seeks to defend the interests of landowners and their descendants against marginalisation from the state. The policy also sought to promote land markets by ensuring that land delivery processes are streamlined to reduce inefficiencies by decentralising land administration services. Clearly, the policy

considered the pluralistic land tenure system as the most appropriate - where the traditional and modern are juxtaposed. Whilst the customary institutions operate mainly under customary law, the other agencies, being public sector agencies, operate mainly under statute.

Procedures on customary land transaction and regulation, as depicted by Figure 5.2, therefore show the duality of legal and institutional frameworks. The land acquisition process starts with the customary tenure system and moves through to formal institutional processes. An applicant or land seeker can acquire land from customary authorities as leasehold interests, although allocation notes are commonly granted instead of leasehold indentures<sup>24</sup>. Customary lands acquired must be registered /titled at the land registry department. Following the completion of the land title registration process, the applicant must also acquire a building permit from the Town and country planning prior to any development, although the complications involved lead many applicants to develop their lands without permits (Awuah and Hammond, 2014). For all land allocations by customary authorities, the Town and Country planning Department checks for concurrence with the particular Municipal land use plan. However, most local planning authorities fail to prepare these plans due to inadequate resources (Yeboah and Obeng-Odoom, 2010). The absence of local land use plans means that most land allocations and subsequent developments are undertaken without planning approval (Gough and Yankson, 2000). Concerning revenues accruing from land transactions, the valuation board values all interests in land, including all customary land, for the administration of stamp duty; and advises the Office of the Administrator of Stool Lands (OASL) on annual rent payments. The OASL then collects annual rents from all landholders (applicants) and disburses this according to the statutory formula.

The co-existence and functioning of customary practice and statutory regulation presents key challenges for urban land use planning, regulation and governance. Central to the challenges posed by the dichotomous relationship between state and customary land administration is a regulatory and legal conflict which appears to enormously empower customary authorities as custodians of land but seeks to dictate the process of acquisition and use of their land. Yet, these customary authorities do not have any defined role within the land governance structure for planning and land use decision making. Essentially, there is an institutional framework that appears to ignore the customary system but a legal framework that gives enormous power to the same (See Figure 5.2).

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<sup>24</sup>Leasehold indentures are prepared by the land registration department later in the acquisition process. The allocation paper is the first step towards acquiring full legal rights over land under customary tenure. It serves as evidence that an individual or corporate body has purportedly acquired land. The allocation letter/note is filed at the Lands Commission as part of the requirements for land leasing. For details on the use of allocation papers/notes in land administration in Ghana, see Mireku et al. (2016).

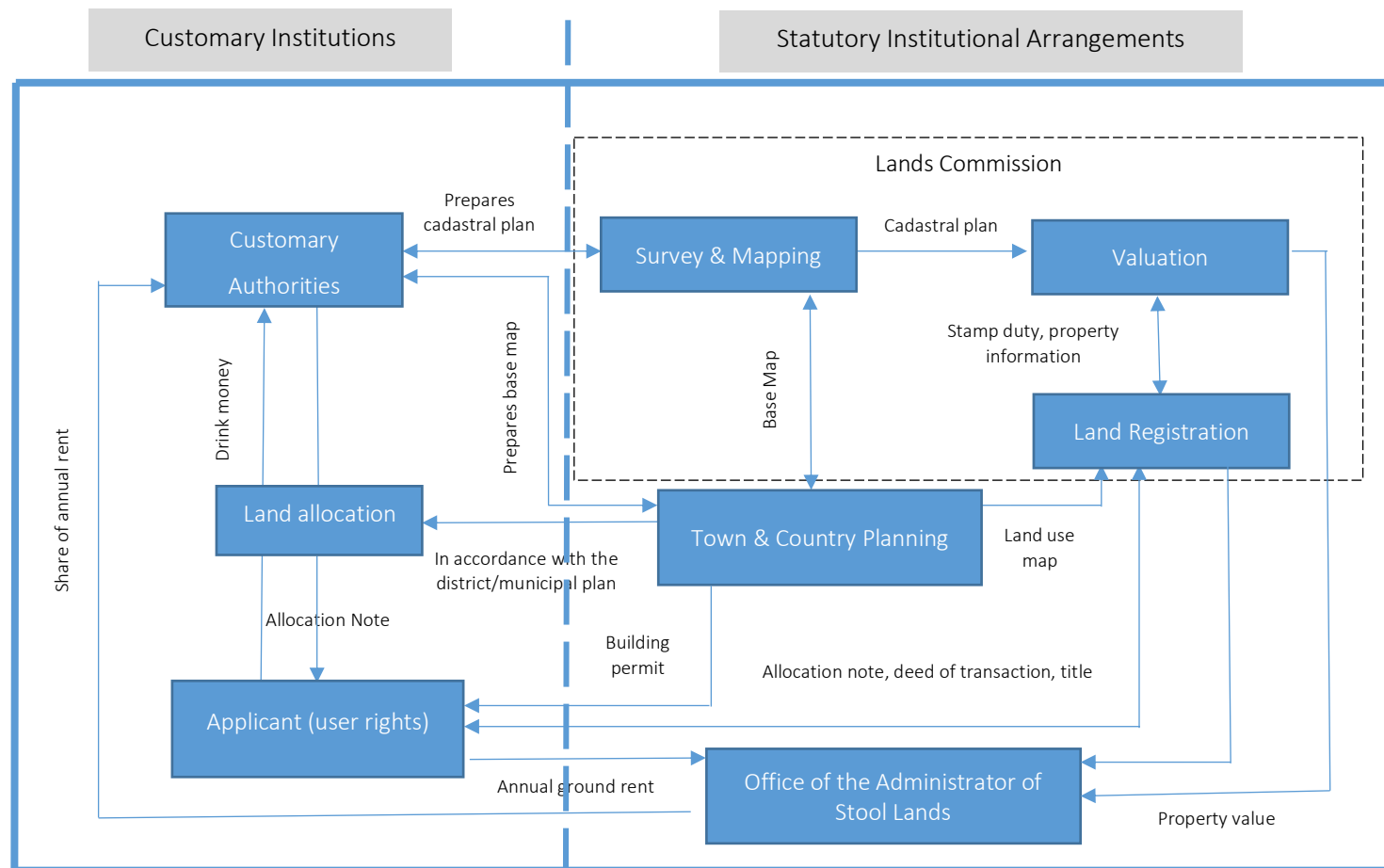


Figure 5. 2: Institutional framework for administering customary land in Ghana  
 Source: Adapted from Arko-Adjei (2011)

### **5.3 The age of new reforms**

In 2003, Ghanaian policy makers sought to reform the existing legal and institutional arrangements for customary land administration. With support from the World Bank, the government of Ghana embarked on the Land Administration Project (LAP) with the goal of creating an accountable, harmonious and transparent customary land administration system from bottom up (World Bank, 2003a). The LAP was conceived as a long-term project with the intent of reforming land institutions and to lay the foundation for greater certainty of land rights for ordinary land users and enable greater discipline and efficiency in the land market. In this regard, the project was split into two phases. The first phase, which ended in 2011, laid the foundation for the implementation of a long-term land administration reform. The second phase was implemented between 2011 and 2018.

The LAP is primarily a land administration reform program, aimed at institutions, legislation, judicial decisions, records management, titling, community-based land use planning, monitoring and evaluation, human resource development, etc. (World Bank, 2003b). It is not a direct intervention in land tenure in terms of re-arranging and re-shaping land relationships and rights and interests in land (Larbi, 2006), even though a lot of the interventions have far reaching implications for land tenure. To understand the logic and approach behind the land administration reforms, it is important to unpack the processes that spurred the legislative and institutional reforms.

#### **5.3.1 The challenge of urban development control**

In the last two decades, Ghana has experienced significant urban growth, during which the country's urban population increased from 31% of the total population in 1984 to 51% in 2010 (Ghana Statistical Service, 2013). The 2017 population of Ghana was estimated to be 28.8 million (United Nations, 2017b), up from the official 2010 census figure of 24.2 million (Ghana Statistical Service, 2013). At the same time, the annual GDP growth rate averaged 5.7% between 1984 and 2013 (World Bank, 2015). In 2011, Ghana was ranked the fastest growing economy in Sub-Saharan Africa and one of the fastest in the World after recording a GDP growth rate of 14.4% (Ghana Statistical Service, 2013) with the real estate sector contributing approximately 5% of GDP (Awuah and Gyau, 2016). This impressive performance of the economy over the years created urban economic opportunities and consequently influenced demand for residential estate. The Ghana Investment promotion Centre recorded about 85,000 transactions annually in luxury residential real estate during this period (CAHF, 2018). Further, the Ghana Investment Promotion Centre (GIPC) registered 81 real estate development companies with investible real estate development, civil engineering and residential construction valued at US\$105 billion between 1995 and 2005 (Asiedu and Arku, 2009).



The rapid urban growth also had its dark side, especially with the increased demand for secure land and infrastructure. Within policy circles, security of tenure in Ghana is regarded as freedom from land encroachment, usually not from government but from individuals who make competing claims on land (Obeng-Odoom, 2012). But, the World Bank (2013) reports that surveys of land ownership rights and land claims are poorly developed with only a small proportion of (about 6 million) parcels of land in Ghana being registered. This means that most of the land transactions occur outside the formal land market and registration system. As discussed in Chapter 2, the majority of land ownership rights and claims are undocumented, such that incidences of multiple sales of the same parcels of land have begun to emerge, leading to widespread land disputes especially in peri-urban areas (see also Barry and Danso, 2014). As a result, the courts have had to deal with many cases of competing claims to land. The Greater Accra Region alone is reported to have about 15,000 land cases pending before the court (World Bank, 2013). One effect of tenure insecurity is the difficulties in establishing uncontested access to land, especially in peri-urban areas, which creates problems of investment in landed property.

Underlying this state of affairs is the general absence of effective practical administrative links between rights established through customary rules, and the formal governmental land administration system (Quan et al., 2008b, Yeboah and Obeng-Odoom, 2010). In other words, the present problems in land administration emerge from the poor harmonisation between the statutory laws and customary practices. Most people gain access to land under the customary system, but there are few institutional arrangements that enable customary arrangements to be formally recognised within the state system of land administration. The formal land law and land administration systems are unable to effectively regulate the diversity and dynamics of customary land rights and transactions. This is because the existing dual regime establishes separate institutional arrangements for land ownership and land use regulation with limited linkage between the two regimes (Acheampong, 2019, Siiba et al., 2018). Consequently, in many instances, physical developments have often preceded planning in contravention of formal planning legislation. Several writers (Acheampong, 2019, Boamah et al., 2012, Yeboah and Obeng-Odoom, 2010) have attributed the extensive areas of unplanned sprawl and the lack of basic municipal regulations and services to these deficiencies in the planning system. Accordingly, these scholars argue for stronger planning laws and their enforcement (Fuseini and Kemp, 2015, Cobbinah et al., 2019), resourcing local planning authorities (Cobbinah and Darkwah, 2017) and streamlining land registration processes (Awuah et al., 2014) to address this crisis. It is believed that by strengthening the position of customary land authorities and building their capacities to manage land and document transactions, customary transactions will be increasingly documented

and land use planning made more effective (Antwi and Adams, 2003, Agyemang and Morrison, 2017, Yaro, 2012).

### 5.3.2 The land administration project: consolidation and institutional layering

In view of these urban development and land sector challenges, the government embarked on a series of legislative and institutional reforms collectively called the Land Administration Project (LAP). These reforms seek to improve security of tenure, simplify the process of land titling, and foster prudent land management practices (Ministry of Lands and Forestry, 2003b). Under the LAP the medium to long-term plan is that the government should divest itself of direct responsibility for the management of customary lands. This should proceed incrementally, on the basis of the satisfaction of certain criteria, including the decentralisation of land administration functions and the setting up of Customary Land Secretariats. To achieve this, the first phase of the project, comprising four main components, was implemented between 2003 and 2011. In this study, only the first and second components are discussed<sup>25</sup>.

The first component comprised institutional reforms which merged four land sector agencies, namely, the Survey Department, Land Valuation Board, Lands Commission and Land Title Registry into the new *Lands Commission*. The new Lands Commission, established by the Lands Commission Act, 2008 (Act 767), is meant to operate as a one-stop shop that would minimize inefficiencies in terms of time and fees required to go through the process of surveying, valuing and registering land title. As envisaged, the consolidation of the individual land sector agencies resulted in a reduction in the turn-around time for processing land documents from more than 36 months to about 3 months and consequently improved land formalization and security of title (Ehwi and Asante, 2016, Barry and Danso, 2014). Moreover, Ehwi and Asante (2016) find that the operations of the new Lands Commission has led to increased public awareness about the process of title registration. This is a significant achievement in a context where insecure and uncertain property rights is causing endless land disputes and litigations (see section 5.3.1).

The second component of the LAP entailed the harmonization of land policies. In order to unify customary and statutory legal systems and to strengthen customary land management, Customary Land Secretariats (CLSs) were established for recognized and organized land-owning communities to promote good local land governance. The CLSs would operate as decentralised administrative units of

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<sup>25</sup> Under the third component, there would be constant monitoring and evaluation; and in a fourth component, the reforms would remove government from the management of stool lands, and generally make the Lands Commission market-focussed. These components are for phase 1 of the project. For a discussion of the various components, see Larbi (2010).

customary land administration in charge of managing customary land holdings and derived rights within their respective communities (Bugri, 2017). As decentralised land administration units, the expectation is that CLSs would be owned by land owning communities and serve as the interface between customary and public land sector agencies such as the Lands Commission, Office of the Administrator of Stool Lands (OASL) and local planning authorities. Their operations would be governed by Chiefs and Heads of Families through Land Management Committees. For these reasons, CLSs were put under the aegis of customary authorities as an integrative measure.

The CLSs are expected to enhance certainty of land rights for ordinary land users and enable greater discipline and efficiency in the land market. This would be achieved through gradual documentation of existing customary rights and the registration of newly transacted rights. This is expected to help achieve tenure security through formal recording of interest in land. If this can be done effectively it would obviate the excessively high cost and complex system of title documentation processes which has served as a barrier preventing many customary land users from obtaining documented land rights (Toulmin and Quan, 2000, Toulmin et al., 2000, Zevenbergen et al., 2013). Moreover, it is the expectation of the LAP that these decentralised units would improve ground rent collection systems and more generally improve land and financial records for both customary authorities and the state. As Ubink and Quan (2008) point out, clarity regarding records enables customary authorities to keep track of revenue from land allocation and to track leasehold periods for potential reallocation.

Yet, the CLS is not only about formalising or standardizing local practices to make them more uniform, more consistent and more legible to formal institutions and outsiders. It can be argued that the clarification and documentation of land rights also places land management and administration on a path towards titling and formalisation, ultimately leading to the privatisation of property rights. As several writers have observed, formalising and securing rights of use indirectly facilitates a transformation from customary to individual privatisation of rights (see for e.g. Benjaminsen et al., 2009, Chimhowu, 2018a, Obeng-Odoom, 2012).

During the initial stages of the LAP, thirty-eight (38) CLSs were established around the country, and furnished with office stationery (Biitir and Nara, 2016, Bugri, 2017). However, this supply-led approach led to a situation whereby some customary authorities perceived the CLS as an appendage of the state rather than integral to the operation of the customary authorities (Bugri, 2017). Subsequently, all CLSs that were established during the second phase of the LAP took a demand-led approach.<sup>26</sup> With this

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<sup>26</sup> Fifty-one (51) additional CLSs were established across the country at the time of writing this thesis. This brings the total CLSs in the country to 89.

approach, landowning groups must demonstrate interest in establishing a CLS under their jurisdiction by making initial investments in office accommodation and basic office facilities. In addition, they must submit a proposal to LAP stating their willingness and capacity to establish and manage the CLS.<sup>27</sup> These new requirements culminated in a restructured CLS with increased functions, including (i) developing landholding rules and public land allocation and transaction procedures; (ii) adopting simple land use planning of the customary area; (iii) dispute resolution functions; (iv) establishing simple registries to record land allocations, transactions and land use planning decisions; among other functions. These functions suggest that CLSs are not only local land administrative units but are also required to perform planning functions, particularly to facilitate the participatory preparation of local plans for customary land. In addition, CLSs are expected to provide biannual records of all land transaction to the Lands Commission and the OASL as part of measures to ensure accountability and transparency of customary land management.

The logic of institutional change in the case of the CLS is simply a pragmatic response to the deficiencies associated with accessing secured urban land as discussed above. The LAP implementers expect to achieve institutional change by adding or 'layering' support institutions to assist customary authorities in the management of land. Past experiences of institutional reforms have shown that completely replacing customary rules with statutory laws is impractical since customary authorities are in a stronger position to oppose any reforms that weaken their authority over customary land. Thus, the national consensus was to strengthen customary land administration by building on existing customary institutions and practices. It is expected that the new institutional layers will alter the logic of the old customary practices towards new pathways. In this way, the government intends to encourage institutional change without having to deal with significant opposition from customary authorities.

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<sup>27</sup> The proposal must address economic viability and the customary authority's readiness for CLS. The factors considered under economic viability include the demand for land relative to supply of available land; extent of catchment area of customary authority, potential for income generation from land transactions to support the CLS once established, and the nature of land based economic and social activities. By demonstrating readiness, customary authorities must show their willingness to allow necessary changes to extant land management structures, preparedness to meet costs of personnel and material etc. for running the CLS, preparedness to provide suitable accommodation for CLS and preparedness to maintain and replace equipment of the CLS (Bugri, 2017).

### **Land use and planning reforms**

The second phase of the LAP commenced in 2011 and is currently being implemented. During this phase of the LAP, a significant strengthening of planning and land laws occurred in a similar way – institutional layering. In 2016, a revised land use and spatial planning law (Act 925) was introduced as part of the ongoing reforms under LAP. The provisions in the new Planning Law are, of course, complex and multi-faceted, but it is possible to summarise some of the main features briefly.<sup>28</sup>

A key feature of the new planning law is its definition of planning areas. Under the previous planning regime (i.e. the 1945 Town and Country Planning Ordinance (CAP 84)), only specific areas determined to qualify for planning through a legislative instrument received the benefits of planning. The new planning law (Act 925), in contrast, abandons this procedure and instead, declares all areas in the country as potential planning areas, subject to the provisions of the Act. By this, the new planning law seeks to place restrictions on ownership rights, by directing the use of land and its benefits. This is a precedent setting limits on the formerly unregulated right to develop land and attempts to ensure that requisite approvals are required prior to development.

The new planning law has also established a decentralized spatial planning system based on a three-tier model of spatial planning instruments. These instruments are National Spatial Development Framework, Regional Spatial Development Framework and District Spatial Development Frameworks (see Figure 5.4). The three-tier system of spatial planning instruments is intended to provide a direct connection between national development strategies and their spatial realization and local development policies through a ‘chain of conformity’ (MESTI, 2011). It is, therefore, a legal requirement under the new spatial planning system for a spatial development framework (SDF) to be prepared at the national level and for all the administrative regions and local authorities in the country. The SDF at the local level would guide the formulation of structure Plans and local sub-divisions plans for cities, towns and neighbourhoods. All approved spatial plans derived from these frameworks are legally binding. Although considered as a restraint and great interference in property rights, it is expected that the use of master and sub-division plans would promote orderly development as well as ensure highest and best use of land leading to real estate value appreciation (Acheampong and Ibrahim, 2016). More importantly, the spatial plans would create certainty in the early stages about future building possibilities by spelling out what landowners are allowed to build.

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<sup>28</sup> For a detailed discussion about the features of the new spatial planning system, see Acheampong (2019: 48-53)

Lastly, the new Planning Law established the land use and spatial development fund in an attempt to make spatial planning financially viable and effective, and to tackle the resource challenges that many planning authorities face (MESTI, 2011). Several writers (Fuseini and Kemp, 2015, Yeboah and Obeng-Odoom, 2010, Boamah et al., 2012) have pointed out that planning authorities are severely under-resourced and barely have sufficient funding to do independent planning as required of it by law. Thus, planning authorities invariably rely on customary landowners to self-finance the preparation of local land use plans (Cobbinah and Darkwah, 2017, Ubink, 2008b). In these circumstances, most customary landowners attempt to manipulate the plan preparation process to their advantage (see for instance Akaateba et al., 2018). The introduction of the planning fund is therefore expected to give planning authorities some financial independence thereby increasing their ‘bargaining’ power in planning.

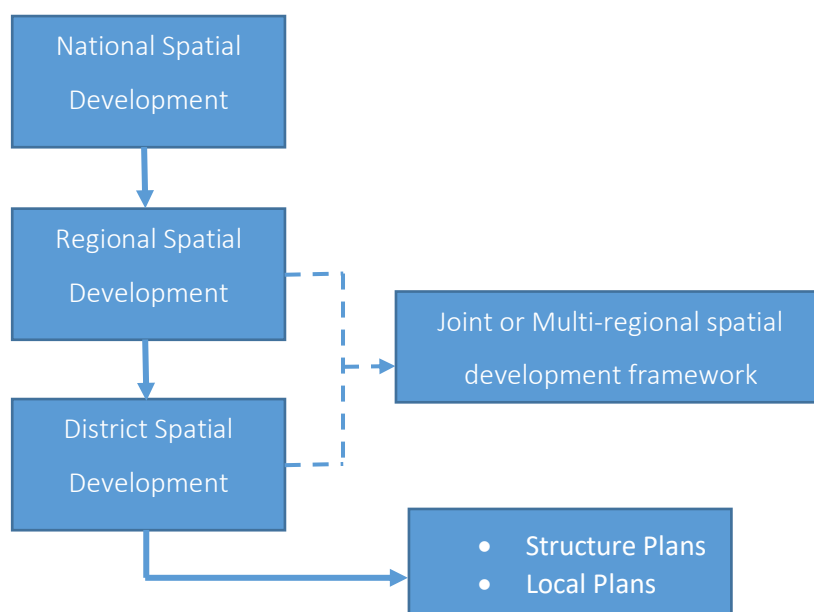


Figure 5. 3: Three-tier model of spatial development framework  
Source: MESTI (2011)

The new Lands Bill (2017) on the other hand seeks to revise and consolidate the existing one hundred and sixty-six (166) state laws that regulate land administration (Ministry of Lands and Natural Resources, 2017)<sup>29</sup>. In addition to the land administration challenges highlighted earlier, the contents of the bill are also motivated by the difficulties faced by local authorities to promote effective land use and infrastructure provision. Accordingly, the bill is emphatic about the fiduciary role of chiefs in the administration of land and makes provision for family land to be treated in the same manner. As previously discussed, legislation on customary land administration was confined to only stool lands.

<sup>29</sup> At the time of writing this thesis, the draft land bill had received cabinet approval and now awaiting parliamentary consideration.

To correct this disparity, as well as create a unitary form of customary land administration, the bill proposes that family lands should be subjected to the same regulatory regime as stool lands. This is because both family and stool lands are all lands held in trust for the various landowning groups and heads of these groups are fiduciaries accountable to the people as indicated in Article 36 (8) of the 1992 Constitution. Equity would therefore require that such lands are subject to the same regime.

Concerning land revenue, the New Lands Bill reinforced the stool land revenue sharing formula provided in Article 267 (6) of the 1992 constitution (see section 5.3.3). The draft Land Bill further proposed that the provisions of the OASL Act, 1994 (Act 481) should apply to family lands since both categories of customary land are communal lands held in trust for members of the landowning community. In this regard, the drafters of the Land Bill sought to create a vehicle through the Lands Commission to collect and disburse revenue from family lands and to bring them to parity with stool lands. Thus, section 11 (2) of the fourth draft of the New Land Bill emphasised that;

...for the purposes of distribution of revenue to clan or family land, ten percent of the revenue accruing from the clan or family land 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) forty-five percent to the clan or family; and (b) fifty-five percent to the District Assembly within the area where the clan or family land is situated. (Ministry of Lands and Natural Resources, 2016: 13-14)

This arrangement was however met with much resistance from customary authorities, who argued that it would be unconstitutional to do so (Ministry of Lands and Natural Resources, 2017). The national coordinator of the Land Administration Project recounts his experience;

...that is the difficulty faced in the lands bill. The original idea was to bring family lands, particularly revenues generated from family land transactions, under the same regime of stool lands. But others resisted that idea, arguing that the constitution defines family lands separately from stool lands. And that the operations of OASL are limited to only stool lands and not family lands. (In-depth interview, LAP Coordinator, 29.08.17).

Consequently, this provision was erased from subsequent versions of the Lands Bill. This implies that landowning families will continue to retain all the revenue generated from land transactions.

In keeping with efforts to promote secure land tenure, the bill focuses on facilitating clear definition of land ownership rights; ease of access to and allocation of land; clear determination of ownership boundaries; ease of registering land and minimisation of land disputes (Ministry of Lands and Natural Resources, 2017). To achieve these aims the lands bill seeks to usher in a national title registration system, replacing the Deeds Registry that is now prevalent in most of the country. The bill also makes land registration conclusive evidence of title, and registered rights generally indefeasible. The

emphasis on improving secure tenure are therefore expected to stimulate demand, promote investment in land and ensure value appreciation.

Similar to the CLS strategy, each of these legislative reforms have taken the form of layering of new rules on established land use and planning frameworks. LAP reformers intend to induce institutional change by pursuing subtle changes without having to contend with resistance from customary authorities. The choice of a layering approach is partly informed by the idea that a radical overhaul of the customary land tenure system would face much resistance from powerful customary authorities benefiting from the prevailing system. The resistance of land nationalisation during the colonial era and attempts to expand the state's control over customary land in the post-independence era reflect this point. On this basis, the LAP's approach is therefore to maintain customary land tenure systems and strengthen areas where they have difficulty in allocating land effectively. Thus, the prevailing policies and approaches were strengthened and refined without undermining the intent of the existing system.

Overall, it is unclear what impacts these reforms would have, in part because the LAP seeks to revise and consolidate existing institutional arrangements rather than make major changes in the structure of property rights. Many of these proposed elements are premised on the assumption that if laws are clearer, simpler and fewer, then transactions costs would reduce, opportunities for corruption will decrease and the general populace would be able to participate in and benefit from the market. But as Napier et al. (2013) have shown, this approach seems to overestimate the ability of legal systems and institutional reforms to ensure compliance and to achieve fundamental urban legal reform. Rationalising and improving institutional and legal systems do not always improve land markets particularly in contexts where vested interests have been entrenched (Berrisford, 2014, Brookins, 2018). That is why Berrisford (2013) insists that for urban land governance systems to bring about fundamental changes, legal and regulatory frameworks must address the political economy of land markets. That is, the fact that the laws, institutions and decision-making processes relating to the access and use of land are highly influenced by the existing power relations within society. Therefore, without negating the value of the current LAP interventions, the emphasis on 'streamlining' and 'adapting customary laws' represent an incomplete picture of what is needed to get urban land markets to deliver real opportunities to the majority of citizens.

Furthermore, the renewed policy emphasis on the importance of recognising and supporting customary tenure systems is subject to critique because these social relations are inherently unequal, involving power relations between ordinary land users and customary authorities. As the previous discussions (see section 5.3) have shown, customary land rights are not the products of immutable



customary 'law' but rather the outcomes of negotiations and continuous interactions between state and customary authorities. Customary authorities' powers and opportunities to redefine customary 'law' in their own interests may be increased by seeking to formalise or promote the customary tenure systems over which they exert significant influence and control. In the context of increasing land values, the phenomenon of customary authorities using their power to privatise, enclose and dispose of land previously held in reserve for community use has been identified in a variety of African countries (see for instance Byamugisha, 2013, Obeng-Odoom, 2012). In Ghana, there is empirical evidence that customary authorities in many cases do not manage lands in the interests of other customary rights holders, because of the opportunities to generate revenues from transactions in land (Ubink, 2008a, Akaateba et al., 2018). And as Obeng-Odoom (2014a: 123) puts it, "the perceived custodians of land have consistently acted in their individual interest while successfully using a discourse of 'communal' to secure the backing of the colonial and post-colonial state". On this basis, it can be argued that placing a strengthened customary land management institution (i.e. the CLS) under the control of customary authorities may provide enhanced opportunities for them to further their private interests rather than the 'communal' interest.

#### **5.4 Conclusion**

This chapter has highlighted some of the contextual issues most relevant for the empirical chapters that follow. It provided a brief and necessarily selective history of the evolving institutional changes to property rights in Ghana, while drawing out some key moments of institutional change with regards to land ownership and the planning system. The discussion demonstrated that the property rights approach established in the early colonial period through to post-independence has had enduring impacts on conceptions of land ownership and the state's ability to regulate land use effectively.

The indirect rule system, by which the British ruled the Gold Coast, established a plural and path-dependent land tenure regime in the country. Colonial administrators and paramount chiefs adapted, and in some cases reinterpreted customary norms to rule the local people and to exert control over customary land relations. One consequence of the colonial state's approach to land governance is the co-existence of statutory laws and customary practices for land administration in colonial Ghana. Moreover, this regime of governance increased the hegemony of paramount chiefs over land matters and revenues accruing thereof.

In the post-independent era, several attempts by the Nkrumah government to expand state control in the customary sector faced much resistance from customary authorities. As custodians of customary land, customary authorities derived their power from the control of land. Revenue from

customary land transactions also served as the main source of finance for chiefs. Thus, the prevailing institutional arrangement for land governance benefited customary authorities greatly since they received both power/authority and revenue from their control over land. Subsequent governments therefore resorted to preserving the balance between the state and the customary sector in land management, by providing constitutional guarantees and protection to customary authorities as trustees of customary land. For instance, the land-related constitutional changes and policies that were established in the 1992 constitution reaffirmed a relatively strong regime of customary property rights, while attempting to establish government control over land use. Thus, Ghanaian land tenure and management became officially pluralistic with statutes and customary laws, public and indigenous institutions, traditional values and corporate norms all operating side by side.

This dual regime was endorsed by the 1999 National Land Policy and has served as the basis for land administration and planning in the past two decades. Land is owned and administered communally by customary authorities, while state agencies are expected to be involved in regulating its use including the revenues it accrues. The state regulates customary land through land use planning, land title registration, and land revenue collection. The intervention of the state in customary land seems necessary given that over 80% of the total land area is under customary ownership. Yet, attempts at regulating customary land tenure continue to be hindered by the regulatory and legal conflict that prevails – the legal system appears to empower customary authorities enormously as trustees of land but seeks to dictate the use of their land and its revenue. This contradiction is particularly pronounced in peri-urban areas where local authorities are weak, and where the land market is extremely active.

In 2003, the LAP was conceived in an attempt to resolve this institutional and legal conflict. The major change that the LAP seeks is not to cast off the *customary* nature of land tenure in Ghana. Rather, they are geared towards facilitating access to urban land for housing and urban development. In the long run, however, the aim of the LAP is to achieve a private property rights regime through the titling and registration of land. On this basis, the state's land administration reform has focused on supporting the better functioning of customary institutions and practices rather than seeking to diminish and replace them.

This approach to institutional change has taken the form of institutional layering. As discussed in chapter 3, actors can transform institutions by attaching new rules to particular institutions without revising the existing ones, but nevertheless changing the ways in which the existing rules structure behaviour. Thus, the LAP has attempted to initiate change to the customary system and statutory agencies in the land sector by 'layering' new elements on existing institutional frameworks. This is exemplified by the establishment of the CLSs to help streamline customary land administration. As

decentralised land administrative units, CLSs have been placed under the aegis of customary authorities as an integrative measure. These decentralised land administration units are intended to facilitate the documentation of land use rights, support land use planning activities and operate as the link between customary and public land sector agencies. In this way, the LAP implementers expect to achieve institutional change by adding (layering) support institutions to assist customary authorities in the management of land. Similarly, the land use and planning reforms are also occurring in the form of layering. Both the revised land use and spatial planning law and the new consolidated Lands Bill seek to strengthen and refine the land and planning systems without undermining the intent of the existing systems. However, whether these LAP initiatives would result in the changes envisaged remains to be seen. This is the focus of the empirical chapters 6 and 7.

## **Chapter 6 - Urban Development in Gbawe: From Self-Organisation to Institutional Hybridity**

This chapter addresses the efforts of a customary organisation that managed to get support from relevant stakeholders and subsequently established hybrid institutions of land management which brought about spatial transformation to its community. It concerns an in-depth case study about the Gbawe-Kwatei customary organisation that successfully built partnerships with governmental actors and implemented a land leasing policy to capture rising land values. As a reaction to rising demands for urban land, the Gbawe Kwatei customary organisation created new institutions for land management, invested in land use planning and community infrastructure, and capitalised on government's support to retain much of the increases in land values through leasing customary land. This chapter aims to understand how the integration of state and customary institutions happened, and how the emergent hybrid arrangements influenced urban land delivery and the implications for generating land revenue for the state.

The chapter begins with a discussion of the processes leading to the establishment of new institutions for land management, and how the customary organisation gained the support of local stakeholders to implement these institutional reforms. The section that follows deals with how both the interests of the state and the customary organisation were aligned, and how the establishment of the Gbawe customary land secretariat helped to improve practices of land documentation and land use planning. This leads on to a discussion on the customary organisation's efforts to capture rising land values through land leasing.

### **6.1 The first step towards a self-organised community**

Land administration in Gbawe is considered as an instructive example of the new trend of hybrid land management that is emerging across Ghana (Chimhowu, 2018a, Kasanga and Kotey, 2001). Gbawe is located about 10 kilometres west of the centre of Accra, the capital of Ghana, and covers about 10,000 acres (see Figure 6.1). The land is owned communally by the Gbawe-Kwatei Family and administered in accordance with customary land law. 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 Gbawe area was once an ancient farming village (Kasanga et al., 1996). However, in the last three decades the community has experienced a distinct and rapid transition, one characterized by the conversion of agricultural land into residential and commercial uses. The most recent national population census designated Gbawe as one of Ghana's top 20 fastest-growing urban towns between 1984 and 2010 (Ghana Statistical Service, 2013: 228). The population of Gbawe increased from 837 to 69,356 inhabitants during this period. Currently, the population is estimated at 92,219, making it the second most populated area in the Ga South Municipal Area after Ngleshie Amanfro (Ga South Municipal Authority, 2018). One of the reasons for this fast population growth has to do with its proximity to Accra's central business district. This makes Gbawe quite attractive for both poor and wealthy residents from Accra in search of cheaper land and residential accommodation (Yankson et al., 2005). Another important stimulator of growth in Gbawe has to do with the construction of the N1 highway (Figure 6.1), which opened up the area for more development. Residents of Gbawe claim that the improvements to the N1 highway in the early 2000s provided opportunities for them to set up home-based and roadside businesses, or to commute easily to the central city where their livelihoods are located (Group discussion with Gbawe residents, 24.06.17). This phenomenon where the livelihoods of many residents are based on proximity to the road is common to Accra and its peri-urban zone (see e.g. Doan and Oduro, 2012, Grant and Yankson, 2003). These spatial changes and population growth led to significant increases in demand for land in Gbawe, and this in turn resulted in higher land values.

The Gbawe-Kwatei family responded to the rising demand for land by making some decisive and fundamental changes to the procedures for land administration. These changes were achieved through the implementation of three key initiatives: a land exchange partnership to install community infrastructure; a compensation policy; and the creation of a new institution for land management. These initiatives set the foundation for significant transformation of the community in terms of land administration and spatial development, as discussed below.

#### **6.1.1 A land exchange initiative and the compensation policy for residents**

The Gbawe Kwatei family's first step in responding to the commercialisation of land was to find suitable partners and influential developers who were willing to invest in the community. In 1987, the Gbawe Kwatei Family approached the senior staff association of the Bank of Ghana (BoG) to present a land exchange arrangement. This land exchange arrangement included a commitment to construct certain public infrastructure in exchange for a residential site in Gbawe (Interview with Gbawe council of elders, 17.07.17). The Bank of Ghana Senior Staff Association is a voluntary union of employees of the Bank of Ghana. Hence, the land exchange deal was not with the Bank as an organisation but with

the staff association. At the time, several members of the Association were looking to acquire parcels of land to build their retirement homes (In-depth interview, BoG staff, 05.10.18). The BoG staff immediately embraced the proposal, which they understood to be an attractive deal and aligned with their desire to acquire residential developments for their members (In-depth interview, BoG staff, 05.10.18). The family leased an 80-acre land (500 building plots) to the staff of BoG for purely residential development (Figure 6.1). In exchange for the land, the staff of BoG paid a concessionary price for the site in addition to ground-lease payments for a 99-year period. The BoG staff also agreed to use their political influence to convince the central government to provide social amenities (extend roads and water mains) to parts of the Gbawe community (In-depth interview, BoG staff, 05.10.18). As explained by the secretary to the Gbawe Kwartei family:

We gave the land to them [BoG staff] at a fraction of its 'market' value. In exchange for the land, they pushed for water, electricity and roads to be supplied to the Gbawe area. Since they were staff of the central bank, it was easier for them to use their political influence to bring public amenities to this vicinity. (Interview with Gbawe council of elders, 17.07.17).

The customary organisation was keen to leverage this site to catalyse a broader reinvestment in other parts of the community. The customary organisation used the revenue (concessionary fee) from the land exchange to prepare the site by demarcating individual plots and constructing a new road and pedestrian alleys through the site (In-depth interview, secretary, Kwartei family, 03.06.17).

The period after the development of the bank quarters site saw massive new development in the area as demand for land increased. The infrastructure and new residential development in the area enhanced the value of the land and consequently attracted more developers to the community. According to the secretary to the Gbawe Kwartei family "this initiative [land exchange deal] really triggered development in the Gbawe area" (Interview with Gbawe council of elders, 17.07.17). The mutual benefits that both the customary authority and BoG staff derived from it enhanced the success of the land exchange deal. For the customary organisation, this approach seemed attractive since it provided certainty and reduced the costs of servicing the land relative to borrowing from the capital market. Till date, the customary organisation continues to employ this land exchange strategy with selected private developers, although with some modifications (also see section 6.3.2 for a fuller discussion of this strategy). For staff of the BoG, the arrangement offered them access to secured, low-priced serviced land at a time land prices within the city centre were increasing rapidly (In-depth interview, BoG staff, 05.10.18).

The new developments however had differential impacts on community members. As value and demand for Gbawe land increased, competition for developable land in the community heightened.

Those most disadvantaged by the experience were indigenous community members who held usufructuary rights. In line with customary law, members of the landowning community have so-called usufructuary interests in the land, which they have acquired by farming or building on vacant communal land. These interests are heritable and are extinguished only through abandonment, forfeiture or with consent and concurrence of the interest holder (Asante, 1964: 105-106, Ubink, 2008b). The challenge for the family therefore was how to reconcile the objective of encouraging urban transformation within the community while safeguarding the interests of its members.

The family sought to uphold the usufructuary interest of community members and to encourage productive investment for members of the community through two key actions. Each household within the community was allocated 2 plots of land (12, 600ft<sup>2</sup>) within the core of the village (old Gbawe) to continue with their productive activities, mainly subsistence farming (In-depth interview, Gbawe LMC, 03.06.17). Additionally, a new settlement (new Gbawe) was reserved for community members to accommodate future growth, with each household granted 2 developable plots (12, 600ft) at no cost (Figure 6.1):

The family realised that demand for land in Gbawe became rampant and agriculture land for our people was becoming scarce. So basically, we gave each household 2 plots of land that they can continue to farm. It was free. We also gave every household 2 plots to build whatever they wanted (In-depth interview, Gbawe LMC, 03.06.17).

The new site was reserved in anticipation of the expected growth of the indigenous population. It was also to ensure that members of the community benefitted from the new developments that Gbawe had started to experience. Individual plots in the new settlement were demarcated and access routes created through the site to enable the occupants develop their residential properties easily. It was however unlawful for “any native to allocate or ‘sell’ their lands to non-members of the community whatsoever” (In-depth interview, Gbawe LMC, 03.06.17). Any individual who intended to convert the agriculture land to a non-agricultural use was required to seek the consent of the family’s leadership. The family warned that conformity to these rules was essential to maintain orderly development within the community (In-depth interview, Gbawe LMC, 03.06.17). Yet, as the values of urban land increased majority of the beneficiaries exchanged their lands for money, and others converted their lands from agriculture to commercial uses, according to interviewed residents Gbawe and representatives from the family leadership.

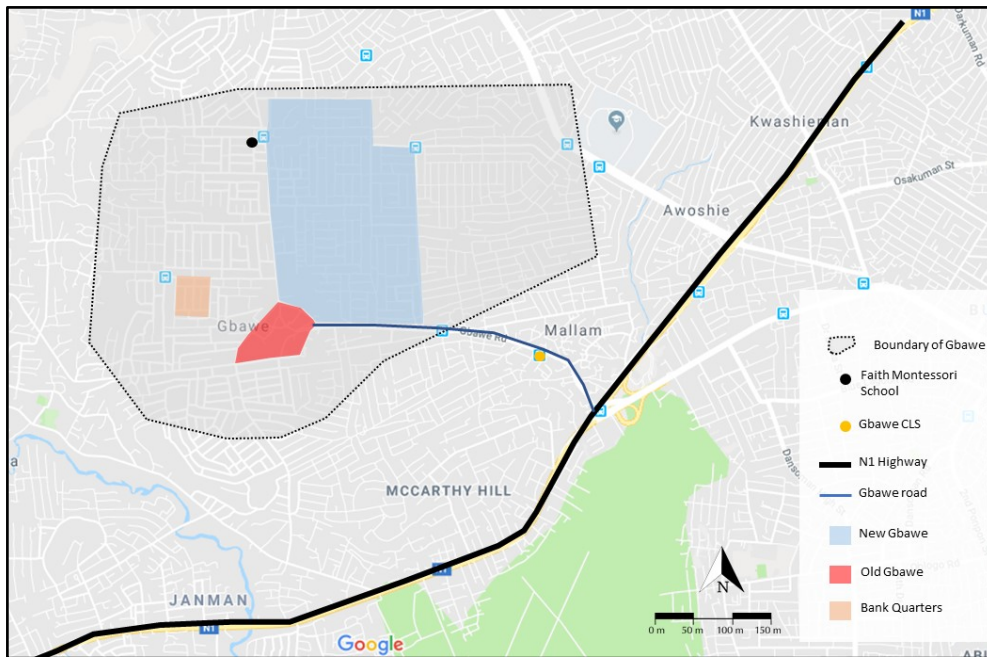


Figure 6. 1: Map showing Gbawe community  
 Source: Author's illustration based on google maps

The land grants appeared to address some of the concerns of community members at the time, related to rising local inequality of access to land rights. Subsistence farming was the main occupation for most residents in Gbawe (Kasanga et al., 1996). However, the consequences of the spatial transformation and increasing pressure for urban land meant that some farmers would likely lose their lands (livelihood) to residential and commercial uses. The family recognised this tension and took steps to protect the usufructuary rights of members of the landowning collective by allocating a total of 4 plots (25, 200ft<sup>2</sup>) to each household. In many ways, this land grant was aimed at safeguarding the usufructuary rights of members of the landowning community, according to interviewed representatives of the Gbawe-Kwatei family.

While this claim by the family holds value, it can also be argued that the family leadership sought to use this land grant to gain the support of community members as they make changes to existing customary land management rules. In addition, other new initiatives and institutional arrangements were envisaged, as discussed below. To enhance the attractiveness of these new institutional arrangements and planned initiatives, the family leadership needed to construct a collective understanding among community members that the reforms were for their benefit. The land grants were an appropriate strategy to do that because it appealed to the shared cultural understandings within the community – that is, the benefits of customary land must be enjoyed by all members of the collective. It helped to mobilize public support for the proposed institutional changes by assuring community members that the new initiatives were for their interests. This aligns with Schmidt's (2010)



emphasis that proposals for institutional change are more likely to be accepted when they resonate with targeted groups' interests and ambitions. The next section further analyses one of these new initiatives (the creation of the Land Management Committee), and how this institution helped to improve tenure security and land allocation procedures in Gbawe.

### 6.1.2 The logic of delegating land management

In 1995, the leadership of the Gbawe Kwatei family established a seven-member Land Management Committee (LMC) as the body responsible for making decisions regarding the allocation of customary land for development. The LMC was relied upon to predict how prospective developers might respond to various land policy options, and to implement land use decisions on the family's behalf. These land policy decisions include the determination of land prices and allocation of land use, dispute resolution, and ensuring fair distribution of proceeds from land transactions (In-depth interview, Gbawe LMC, 03.06.17). According to interviewed representatives of the family leadership, the decision to delegate the land management responsibilities to a LMC was aimed at promoting responsible governance of the family's land.

Before 1995, the head of the Gbawe-Kwatei family was responsible for administering and allocating the family's land with consent from the family's elders, as is the case in other parts of Accra (see for e.g. Owusu, 2008, Amanor et al., 2008). However, the family's leadership conceived that delegating land management responsibilities to a LMC, comprised mainly of elders and representatives of the community were better placed to ensure that land is managed to benefit 'communal interest. As the family's secretary explained:

The "*Oshibi* [elders] command widespread authority within the township and villages that they govern. Customarily, elders are considered as natural leaders of the people, they are intimately acquainted with the needs and interests of their villages (In-depth Interview, Gbawe LMC, 03.06.2017).

The family viewed these elders as well suited to act as advisors to the customary organisation with respect to enforcing property rights in land. The family also opined that the elders could leverage their *authority* to implement the family's land policy decisions, initiate and supervise developmental schemes and even mobilize an underpaid (or unpaid) labour force through the youth to participate in those schemes.

The structure of the LMC further reflected the family's desire to pursue communal rather than private interest. The LMC comprised two queen mothers who represent and safeguard women's access to land, the family's secretary, the LMC chairman and three principal elders of the community with each representing an interest group. There was also a permanent surveyor and lawyer to provide technical

advisory services on land surveying and legal matters. Although the youth were not directly represented in the LMC, they were (and still are) used as the local police force (*Asafo Company*) through which land laws and decisions are enforced<sup>30</sup>. Later in 2003 (following the creation of the Gbawe CLS – see next section), the membership of the LMC number was increased to 13 to accommodate additional community representatives and the Gbawe CLS coordinator.

The members of the LMC are appointed by the council of elders, although they account to the landowning family and community members through periodic family meetings, annual reports and community durbars (In-depth interview, Gbawe LMC, 03.06.17). In this way, the family believes that the LMC would seek to represent the interest of the people they govern in communal decision-making processes. As the top executive body vested with the power to manage and administer the land, the LMC is strictly enjoined by customary doctrine to do so for the collective benefit of members of the landowning committee. What constitutes communal benefit is not defined but native law and custom have elaborate schemes for ascertaining this. For example, the committee cannot sell communal land to defray an individual's debt. Hence, one of the first initiatives undertaken by the LMC was to improve public confidence in the property rights system in Gbawe. The LMC achieved this by; (i) clarifying the land allocation practices; and, (ii) improving land documentation by facilitating the establishment of a customary land secretariat. The latter initiative is discussed in section 6.3.

#### *Towards clarity in land allocation*

In the early days of its operations, the LMC established clear rules and expectations for land acquisition. These rules were drawn mainly from existing customary practices with minor modifications to include statutory land use and planning requirements. All prospective developers are expected to contact the LMC directly at their dedicated office (see Figure 6.2) to express his/her interest in acquiring a developable land. Most land seekers, however, rely on community members to access information about possible land opportunities, to learn about acceptable conditions, to articulate an agreement and also to secure the trust of the LMC (Group discussion with Gbawe residents, 24.06.17). This approach tends to create middle men. At the same, many prospectors find these useful networks as sources of salient information such as potential land options, better contractual conditions, or going land prices among others.

Every applicant is required to pay a 'knocking fee'<sup>31</sup> to the LMC, which is a widely accepted customary practice associated with traditional authorities in Ghana (Amanor, 2009). The receipt of the knocking

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<sup>30</sup> The youth group, the "Asafo Company," acts as the local law enforcement body against trespassers and encroachers on family and stool lands.

<sup>31</sup> The knocking fee comprises a customary drink, mainly schnapps or a token fee

fee signifies the LMC's willingness to negotiate with the prospector. At the start of every negotiation, applicants are made aware that lands in Gbawe are granted on leasehold basis, and not as freeholds. As the LMC secretary emphasised, "we make it clear to the applicant that we don't sell the land. Here, we only lease land. If we don't say that, some people will think that once they make payment, the land is theirs forever" (In-depth interview, Gbawe LMC, 03.06.17). This principle of leasing customary lands is in line with Article 267(5) of the 1992 Constitution which requires customary land transactions to be processed as leaseholds. Prior to this statutory provision, freehold or quasi-freehold transactions were the dominant form of land transactions (Gough and Yankson, 2000).



Figure 6. 2: Office Accommodation for LMC located within the Gbawe palace  
Source: Author's photograph

Generally, there is no discrimination as to who can acquire a developable land. Land acquisition is open to anybody who is interested and can fulfil the conditions of sale<sup>32</sup>. The LMC however ascertains the seriousness of a prospective purchaser through an interview process, and a few background checks to ensure that the applicant is capable of developing the plot<sup>33</sup>. For instance, the applicant is made to complete a 'land application form'<sup>34</sup> (see Figure 6.3). Completing the application form requires the applicant to provide detailed personal information. Further, applicants are required to make a commitment to complete their development within a stipulated time, and to acquire a development permit from planning authorities among others. There are other requirements that are not included in the document but form part of the negotiation process. For instance, a prospective

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<sup>32</sup> In fact, the elders of the family report that an estimated 3% of lands in Gbawe have been allocated to non-Ghanaians. Interview with LMC, 03.06.17

<sup>33</sup> Previously, a 'waiting period' was incorporated as part of the land acquisition process, during which the LMC makes inquiries into the background of prospective purchasers<sup>33</sup>. The waiting period could be as long as two months. When the investigations suggest that the prospective purchaser has been known to be of doubtful character, suspected of having the capacity or disposition to destabilise the community or cannot pay for the plot he/she is denied.

<sup>34</sup> The cost of the form is GHS20, equivalent of £4 as at June 2017

purchaser “cannot acquire more than two plots of land for residential purposes unless otherwise stated and explained” (In-depth interview, Gbawe LMC, 03.06.17). The rationale is to prevent wealthy individuals from monopolising the lands at the expense of poorer households, an egalitarian characteristic rarely found among landowning groups (cf Owusu, 2008, Kasanga et al., 1996, Kasanga and Kotey, 2001). When the applicant has passed this initial ‘test’ the terms and conditions of the allocation of the plot, including the land price are negotiated and payment is made.

Although some of the recent literature on customary governance in Ghana depicts customary leaders as predatory (Akaateba et al., 2018), self-serving and corrupt (Yeboah and Obeng-Odoom, 2010, Siiba et al., 2018), customary leaders in Gbawe seem to enjoy substantial legitimacy and support from community members and developers alike. In an earlier study of the development of land markets in the peri-urban area of Accra, Kasanga et al. observed that:

Each weekend, the unpaved plaza before the Paramount Chief’s meeting hall is strewn with individuals and their agents who have come from the city to petition for land. Their goal is typically to obtain a parcel on which to build a retirement home..... These individuals may wait for hours and may return several times before securing a parcel, but they will persist in Gbawe, even when land might be obtained more simply in other peri-urban communities, because land administration there is widely known to be well organized and secure (Kasanga et al., 1996: 55).

The positive perception by land users and residents in Gbawe is largely attributable to the participatory and transparent process of land allocation. At the same time, because the ‘new’ rules for land acquisition are based on the everyday experiences of the community, they appear legitimate and appropriate to community members. As a resident of Gbawe indicated,

The land acquisition process and the land system here [Gbawe] is quite clear compared to other areas. Anyone who comes here to look for land knows that it is only the LMC that gives out land. I have experience with acquiring lands in other places and I think the experience here has been very smooth (Group discussion with Gbawe residents, 24.06.17).

Overall, it can be argued that the transfer of land rights has become more predictable to outsiders due to the clarity in land acquisition procedures. The LMC’s actions enabled land rights to be documented, through simple tools like the application form, and in effect made land rights highly marketable. Moreover, land management has become more democratised. For instance, the structure and composition of the LMC can be considered as a more democratised land governance institution compared to what existed before. Similar forms of democratised land governance institutions have been observed to lead to more professionalism and equity in the way decisions about land governance are made (see Boone, 2017, Byamugisha, 2013).



**GBAWE KWATEI**  
**CUSTOMARY LAND SECRETARIAT**  
 OFFICE OF THE ADMINISTRATOR OF STOOL LANDS OF MLNR



From RBF: GKF CLS .....

**LAND APPLICATION / DOCUMENTS APPLICATION**

**Particulars:**

- (1) Applicant's Full Name \_\_\_\_\_  
 (Surname First)
- (2) Postal Address \_\_\_\_\_
- (3) E-mail Address \_\_\_\_\_
- (4) Residential Address \_\_\_\_\_
- (5) Nationality \_\_\_\_\_
- (6) District \_\_\_\_\_
- (7) Home Town \_\_\_\_\_
- (8) Age \_\_\_\_\_ Occupation \_\_\_\_\_
- (9) Purpose for which land is required:  
 (A) Residential      (B) School      (c) Clinic      (D) Church      (E) Commercial
- (10) Number of Plot(s) Required \_\_\_\_\_

(11) I hereby undertake that within ..... years of the execution of the lease, I shall commence the erection upon the demised land of the building or buildings for the purpose above indicated and shall complete same within ..... years of commencement. The building or building shall be constructed in a substantial workmanlike manner with the best materials of their several kinds and shall be, in every respect, in conformity with building plans previously approved by or on behalf of the Town and Country Planning Department. The building or building shall also be enclosed in a wall or fence the plan of which shall have been approved by the Town and Country Planning Department.

It is agreed and understood by me that if I shall fail to develop the demised land in the manner undertaken above, the Family has the fullest right to re-enter the land and determine the lease.

(12) I ..... declare that the above particulars given are correct/complete

**FOR OFFICE USE ONLY**

Knocking fee      ₵.....  
 Customary fee per plot      ₵.....  
 Total amount payable      ₵.....  
 Mode of payment      ₵.....  
 (Fully/Installment)

\_\_\_\_\_  
 Signature/Thumbprint of Applicant      Date

\_\_\_\_\_  
 Family Secretary      Date      Principal Elder      Date      Head of Family      Date

Figure 6. 3: Sample Land Application Form  
 Source: Gbowe CLS, Accra

## **6.2 Change from below accelerated from above: establishing the Gbawe customary land secretariat**

The influence of the 'new' land management committee helped to improve discipline in the land market, and this resulted in rising demand for land in Gbawe. This increased demand for land generated new sets of opportunities as well as problems for the customary organisation. As the LMC's secretary explained,

"... because of the development that is happening here [Gbawe] the other communities around us have started to encroach on our lands. So, we have been looking for help to map all our land [for the community]" (In-depth interview, Gbawe LMC, 03.06.17).

Indeterminate land boundaries is a common challenge associated with customary land ownership in Ghana, in part due to the absence of reliable maps (Ministry of Lands and Forestry, 1999, Paaga and Dandeebo, 2013). This is the case in Gbawe, where natural landmarks, such as big trees, rivers, anthills have been used to define the boundaries of their land (In-depth interview, Gbawe LMC, 03.06.17). No accurate surveys have been carried out to establish agreed boundaries. And as the community opened up to landed investment, title to portions of the Gbawe Kwatei family's land boundaries are now being contested by other claimants, notably the Akumaje Stool, the Sempe Stool and Nikoi Olai Stool as shown in Figure 6.2 (In-depth interview, Gbawe LMC, 03.06.17).

Moreover, the absence of formalised land records made it difficult to trace new landholders and to enforce land use regulations. Previously, the Gbawe LMC kept basic records of all land transactions using a ledger. The information documented included details of the purchaser's name, plot number, size and location, money paid and the date of plot allocation. Although this mode of record keeping is effective to document basic information on land transactions between parties (Zevenbergen and Augustinus, 2011, Zevenbergen et al., 2013), it is insufficiently detailed to serve as a legal form of evidence to defend ones claim to a particular plot of land (Collier et al., 2018).

These problems were difficult to ignore, and thus sparked the family's desire to establish new capacities to respond to them. In seeking to improve the existing local institutions, the customary organisation took advantage of the government's ongoing Land Administration Program (see chapter 5) to establish a Customary Land Secretariat (Gbawe CLS). The customary organisation saw an opportunity to draw on the state's resources to address problems of boundary demarcation and land documentation which had started to emerge in the community. This is reflected in the LMC secretary's remarks:

Sometime ago, the head of the family suggested that we create something like a secretariat to help us keep all our land records. So when we heard of the LAP, we requested for their [national government] help to establish this office (In-depth interview, Gbawe LMC, 03.06.17).

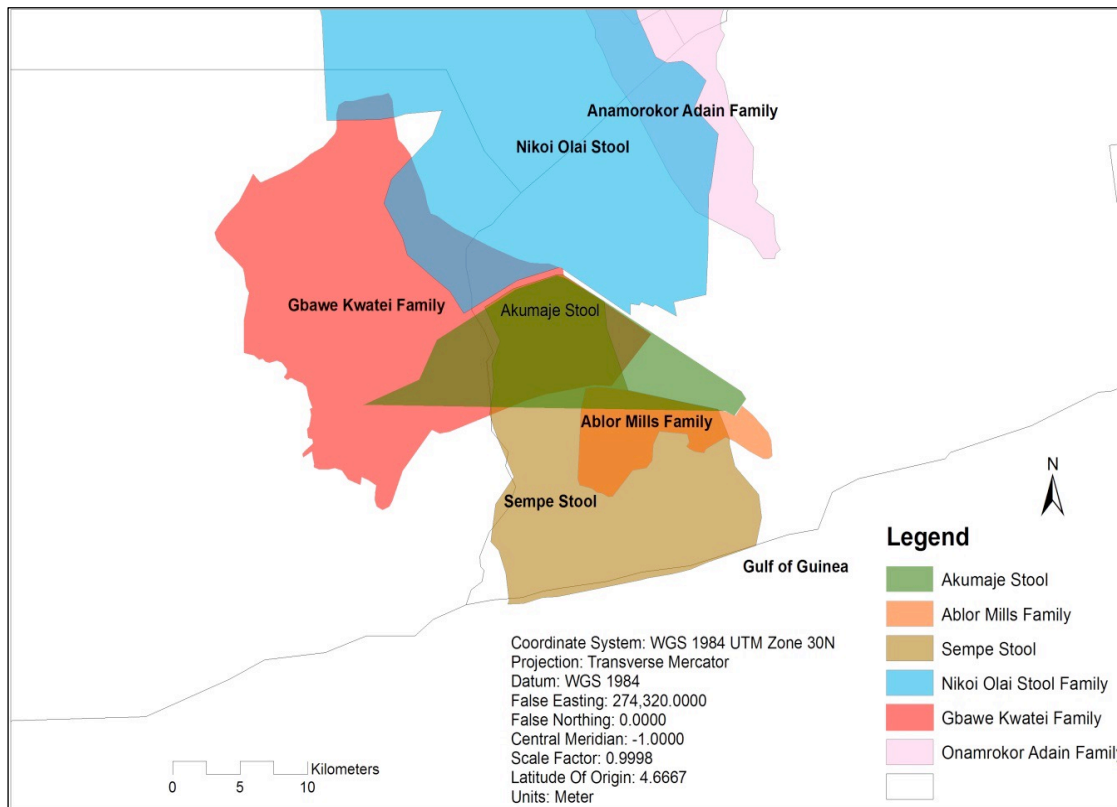


Figure 6. 4: Contested boundaries of Gbawe  
 Source: Quayle (2014)

In December 9th, 2003, the government supported the Kwatei family to establish the Gbawe CLS. The establishment of the CLS was part of the government’s efforts to strengthen local land governance institutions and in the long run, transfer the administration and management of customary land to these secretariats (Biitir et al., 2017). At the same time, it was also envisaged that deepening decentralisation in land administration could lead to the development of pro-poor land recordation systems, and subsequently improvements in land governance. Pro-poor land recordation systems are built on community tenure practices using existing local approaches to introduce simple land records and indexes (Zevenbergen et al., 2013). As a bottom-up approach, it is argued that this will allow for transparency, inclusiveness, equity and ownership for both citizens and the state (Hendriks et al., 2019b). But for this to happen, it is important that the land recordation system is owned by both state and the community (Zevenbergen and Augustinus, 2011). Once an effective land management and land use planning system are in place, there will be a strong basis for the State to establish land value capture mechanisms and to hold customary authority to account (Agyemang and Morrison, 2017, Napier et al., 2013). The Gbawe-Kwatei family, on the other hand viewed the CLS as an opportunity to strengthen the existing local institutions and to address several of its emergent challenges, discussed

above. Thus, for both the state and the customary organisation the establishment of a CLS aligned suitably with their interests and ambitions.

Consequently, the CLS was established to fulfil both land documentation and land use planning functions, as set out below (Gbawe CLS, n.d):

- Establish simple registries to record land allocations, transactions and land use planning decisions
- Undertake simple land use planning of the Gbawe area
- Monitor all developments on the land to ensure that they are in conformity with approved planning schemes and the prevention of encroachment
- Mobilise revenue to aid development projects in the community through ground rent collection
- operate as the link between the landowning community and public-sector land agencies, and other stakeholders

The structure of the CLS further reflects this rationale. The CLS has five key departments including an administrator (coordinator), operations unit, inspectorate division, monitoring and evaluation unit, finance and accounts unit, records department with other supporting staff under each of the departments/units. All the 16 staff engaged by the CLS are remunerated from revenues generated from land rents (see section 6.4.2). This reflects the customary organisation’s desire to be self-sufficient, and independent of government control. The CLS office is located exactly at the entrance to Gbawe (see Figure 6.1), and this makes it highly visible to people coming into the community. A large billboard showcasing the services provided by the CLS has also been placed at the front of the office (see Figure 6.5).



Figure 6. 5: Gbawe CLS office front and banner showing services provided  
Source: Author’s photograph



### 6.2.1 Improving land records and documenting property rights

The establishment of the CLS provided the opportunity for the family to address several of its land management problems, notably improvements in land records. The land documentation process in Gbawe starts from the LMC through to the CLS. After every land allocation, the LMC immediately transfers the details of the transaction to the CLS to be recorded. These details include the names and addresses of applicants and terms of grants contained in the approved application form (see Figure 6.3). However, receipts and records on payments made to the LMC for land transactions are not recorded by the CLS. The CLS formally documents this information by creating a folder to manually store the paperwork of the land transaction (see Figure 6.6). This mode of record keeping and documentation is sufficient to secure land agreements between parties and to provide leaseholders with some form of evidence to defend their claim to a particular plot of land (Bruce, 2014). So far, the CLS has recorded and documented over 16,000 land transactions since its inception. Moreover, the CLS is currently computerising its records to improve documentation (Quartey, 2017).

Documenting land transactions is particularly critical in Ghana where inefficient record keeping practices among some customary landholders have resulted in multiple sale of the same piece of land resulting in land conflicts (Paaga and Dandeebo, 2013, Barry and Danso, 2014). Customary authorities usually do not have systems of record keeping that enable them to keep pace with accelerating rate of land transactions, relying instead on trust and the memory of parties (Biitir and Nara, 2016). The efforts of the Gbawe CLS has therefore helped to improve land and property rights documentation, and this has enhanced tenure security and minimized land litigations in the community, according to interviewed residents of Gbawe.



Figure 6. 6: Land Documents Stored at the Records Room, Gbawe CLS  
Source: Author's photograph

The Gbawe CLS further insist on leasehold title as the principal means of land delivery and for registering newly transacted rights. This is in accordance with Article 267(5) of the 1992 constitution which bars the outright sale of customary land. The customary organisation's lawyer and surveyor, who are members of the LMC, assist the Gbawe CLS to prepare lease documents for all land allocations. Leases typically cover a period lasting 50-75 years (Quartey, 2017). All leases made by the Gbawe CLS are to be registered by the Lands Commission to make it legally effective. Hence, the process of preparing the lease documents requires the CLS to interact with other public sector agencies (Figure 6.7). Generally, it takes 30 days for the lease indenture to be prepared (in-depth Interview, CLS staff, Gbawe, 29.05.17). Furthermore, 'all lease documents issued by the family require three mandatory signatories of the landowning family - the head of family, the family secretary and a principal elder (In-depth Interview, CLS staff, Gbawe, 29.05.17). That the same mandatory signatories endorse every lease document further enhances its authenticity.

The CLS's ability to insist on lease contracts as the minimum instruments to transfer proprietary interest in land is a crucial achievement, particularly in Ghana's context where formal title registration has remained very bureaucratic and financially challenging (Naab et al., 2013). Like other sub-Saharan African countries, the cost of land title formalisation in Ghana is very expensive (Hammond and Antwi, 2010, Hammond and Abdulai, 2011), and involves a time lag of between 12 and 36 months (Ehwi and Asante, 2016). These challenges partly account for the low rate of title formalisation in Ghana estimated at 8% (Gyau Baffour Awuah et al., 2013). For these reasons, most landholders are forced to spend resources and time guarding their property by hiring costly land guards<sup>35</sup> due to the difficulties in title registration (Darkwa and Attuquayefio, 2012, Ghebru and Lambrecht, 2017). Others attempt to defend their land interests physically by erecting their buildings quickly even before obtaining building permits (Barry and Danso, 2014). These deficiencies highlight the need for alternative means of safeguarding land rights which are both effective and legitimate. In Gbawe, this is achieved by using leaseholds as the minimum instruments to secure land interests. The presence of the CLS enable the lease preparation process to be completed in a relatively short time.

Moreover, the CLS assists applicants to register their land titles at the lands commission. According to the Gbawe CLS coordinator, the CLS relies on its good working relations with the Lands Commission to reduce the turn-around time for title registration to 3 months<sup>36</sup>. The applicant is however required to pay an additional service charge of GHS700 (£123) to the CLS. Recent improvements in the title

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<sup>35</sup> 'Land guards' are private security service providers who employ illegal means of enforcement to protect land and landed property

<sup>36</sup> Gbawe CLS service charter

registration system as part of the Land Administration Project (LAP II) have led to significant improvement in the turn-around time for processing land documents (Ehwi and Asante, 2016). According to the recent World Bank doing business ranking, registering property now costs 6.2% of the land value, involves 6 procedures, and takes about 47 days assuming there are no queries with the document and no contesting interests to the land (World Bank, 2018). Although land registration is the conclusive evidence of title (Ministry of Lands and Natural Resources, 2017), it is worth emphasising that insisting on leasehold indentures as the minimum form of documenting land rights has helped to improve tenure security, minimized land litigation and improved discipline in Gbawe’s land market.

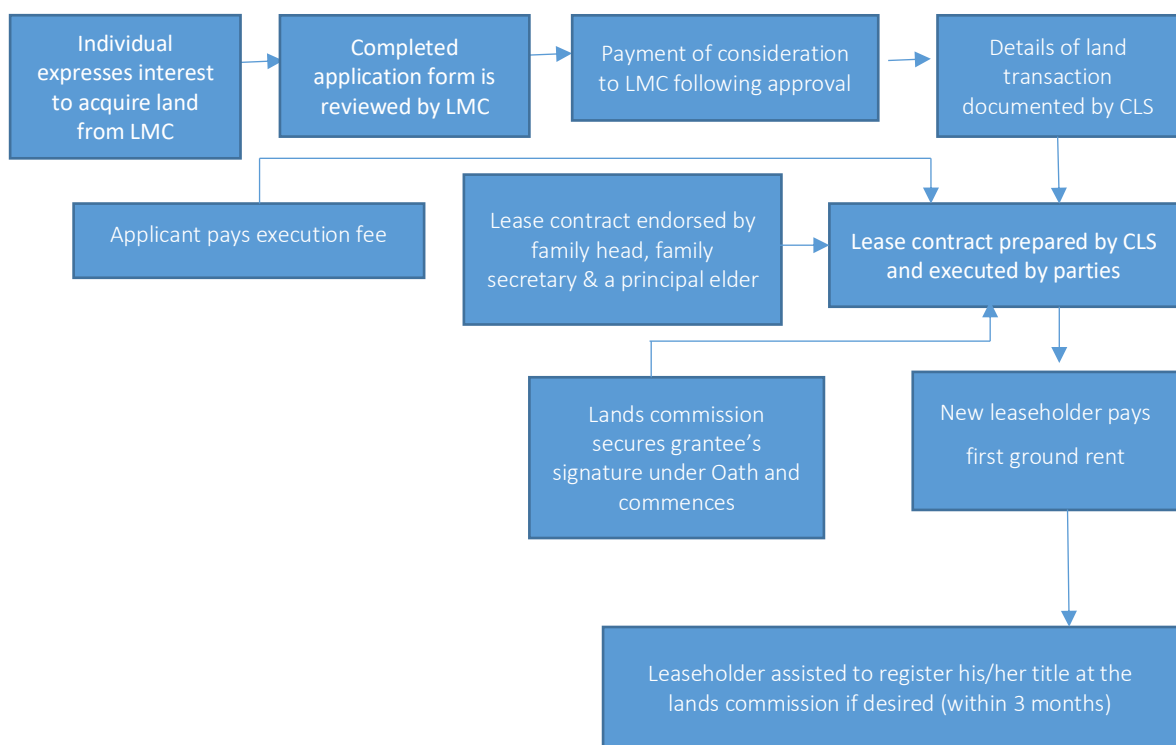


Figure 6. 7: Lease documentation process in Gbawe  
Source: Author’s illustration

Overall, it is safe to argue that the establishment of the Gbawe CLS has brought better protection of property rights through land documentation and formalisation. Related to the above, the formal documentation of land rights through leasehold indentures have made land transfers more legible to statutory agencies and prospective land seekers. The language used, and the practices and procedures created are more and more legible compared to the situation before. The process of documenting land rights in Gbawe can also be considered as a hybrid of customary tenure practices and statutory land governance institutions, as elements of the ‘customary’ have been fused with some of the values of the ‘statutory’. For instance, three family elders including the family head must endorse every land documentation. This process adds a layer of authenticity to land documentations that register newly

transacted rights, thereby helps to uphold the ‘sanctity’ of land documentations (e.g. lease indenture) originating from Gbawe. The effect of this hybridisation is that land administration has become more predictable and legible to outsiders, thereby facilitating more efficient land transactions. And as Chimhowu (2018a) has observed, customary lands that have registered users with defined rights, clear boundaries and clear rules of the game tend to exhibit favourable transactions costs and possibilities for land (lease) sales and rental that could generate significant revenue, as shown later in section 6.4.

### **6.2.2 Unlocking land value through land use planning**

Land markets alone do not ensure efficient land use in a city. There is an essential role for land use regulation to coordinate the activities of individual developments, particularly in areas experiencing rapid urban growth. Yet, in many parts of Ghana, local authorities fail to undertake forward planning and the few plans that are prepared are rarely implemented (Kuusaana and Eledi, 2015). This has resulted in a situation whereby the normative sequence of planning-servicing-building-occupation has now been replaced with occupation-building-servicing (Obeng-Odoom, 2016). Likewise, customary landowners struggling to deal with new demands for urban land do not take the initiative to get subdivision layouts prepared for their land before marketing developable plots (Kleemann et al., 2017). This means that customary land allocations are neither in compliance with municipal local development plans or tied to land use planning procedures. Contrary to this general practice, land allocation in Gbawe is informed by proactive land use planning. The Gbawe customary organisation employs three tools to ensure land use regulation and coordination: land use plans, investment in community infrastructure, and lease terms and conditions. These mechanisms are discussed in turn.

#### *Land use plans guide land allocations*

In Gbawe, land use plans are prepared for neighbourhoods and this guides land allocation to applicants. This is achieved by demarcating land for arterial roads and other core infrastructure before settlement occurs. This practice has been used by the customary organisation since the late 1980s when the intention to self-manage its lands was conceived (see section 6.2.1). As the secretary to the LMC explained,

Around 1987, we [family leadership and elders] approached the TCPD to help us prepare a local plan for the Gbawe area. Since they are technical people, we trusted them to help us determine the best use of our land (In-depth Interview, Gbawe LMC, 03.06.17).

The land use plan was prepared to cover an area of about 345 acres (Figure 6.8). It produced over 1500 plots of land distributed over various land uses covering residential, commercial, educational, open spaces, among others. Up to 80% of these were residential plots, each measuring mostly about 0.23 acres. This local plan served as the basis for land allocations to applicants in the early 1990s.



Figure 6. 8: Gbawe land use plan of Sector Two  
Source: Gbawe CLS, 2017

Subsequent local plans have been prepared by the LMC and the CLS with assistance from the Town and Country Planning Department (TCPD). Respondents who were interviewed on community involvement in the local plans recounted how the community members are engaged in the process.

Before the local plan is developed for a sector, the family head [through the LMC] invites all the principal elders and key community members to inform them about the plan. After that, family members and some community people meet with the LMC members at the Gbawe palace to do the plan. The LMC and the surveyor lead the process (Group discussion with Gbawe residents, 24.06.17).

In developing the local plans for the subsequent sites, the family's surveyors and a contracted architect prepare the base map (cadastre) and the local plan respectively. The costs of these services are borne by the customary organisation (In-depth Interview, Gbawe LMC, 03.06.17). When the plan is completed, it is approved by the Ga South Municipal Assembly, which makes the document legally binding. According to the Director of the planning department, changes are recommended where necessary before approvals are granted by the Planning Committee (In-depth Interview, Gbawe LMC, 03.06.17). The involvement of the TCPD in terms of advice and approval of the final plan provides credibility and certainty to the local plan. It also provides surety and confidence to land users that these plans will not be ignored by the local authority and that they can make long-term investments on the land. Generally, copies of the completed local land use plans are deposited with the TCPD to enable the local authority supervise planning and development activities within the community (In-depth interview, Planning Officer, Ga south Municipal Assembly, 19.05.17). It is only at this point that prospective land seekers can acquire plots of land for development according to the land uses proposed in the local plan.

According to members of the Gbawe LMC, the ability to control the planning and sub-division of its land has allowed them to promote orderly spatial growth in the community (In-depth Interview, Gbawe LMC, 03.06.17). Yet there is also a parallel motivation for preparing land use plans that includes the desire to respond to consumer preference, reflected in the demand for well-planned urban areas. Control over land use planning powers offers opportunities to generate increased property values by determining preferred changes to land use in defined areas (Sorensen, 2018b). These property values can then be reaped in the form of premiums (i.e. drink money) through lease sales and annual land rents, as discussed later in section 6.4.

### *Delivering community infrastructure*

Beyond planning on paper, the Gbawe customary organisation goes the extra mile to build key community infrastructure that defines the shape of the community. The customary organisation continues to employ the land exchange strategy (see section 6.2.1) to deliver community infrastructure. At the land acquisition stage, the LMC negotiates with selected developers to provide certain basic infrastructure and other in-kind benefits. In return, the 'willing' developer is allocated a parcel of land at a concessionary price. One such developer is the proprietor of the Faith Montessori International School (see Figure 6.1). In return for the land to construct the school, the developer agreed to offer three scholarship awards in the form of free tuition to indigenes of the community (In-depth interview, Gbawe LMC, 03.06.2017). The developer also agreed to contribute in cash or kind to the development of community infrastructure projects such as the construction of a waste recycling plan (see Figure 6.9), rehabilitation of roads among other commitments. At the time of the fieldwork, the Owner of Faith Montessori School had provided cement, tiles, furniture, and a back-up generator to help furnish a newly constructed police station that has been constructed by the Gbawe Kwatei family (see Figure 6.9)<sup>37</sup>. Similarly, a "72-acre land was recently allocated to the Methodist church at no cost in New Gbawe for the construction of a new church and a school (see Figure 6.1). In return, the 'church' undertakes periodic maintenance of the access roads leading to the worship centre and the university. The church is also expected to provide at least one scholarship opportunity annually to needy-but-brilliant students from the community" (In-depth Interview, Gbawe LMC, 03.06.17).

The customary organisation does not however rely solely on the land exchange strategy to supply public infrastructure in the community. The elders of the Kwatei family reported that several community infrastructure projects have been financed from revenue generated from land

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<sup>37</sup> During the fieldwork, the investigator was part of the delegation (as an observer) that received the donations towards the completion of the Gbawe police station.

transactions. For example, the customary organisation has supplied street lights to several parts of the community, financed the construction of a public toilet (see Figure 9), and the Gbawe Islamic school, and partly financed a street naming project spearheaded by the local government (In-depth interview, Gbawe CLS staff, 29.05.17). At the time of the fieldwork, the customary organisation had just completed a new police station for the community financed largely from land revenues (see Figure 6.9). Other ongoing community projects include the construction of the Gbawe Multiple Purpose Community Center, construction of New Gbawe Community Health Centre, the establishment of Nii Kpakpa Osiakwan Institute<sup>38</sup>, construction of Gbawe Senior High School<sup>39</sup>, construction of an ultramodern Gbawe Community Market in partnership with the Ga South Municipal Assembly and Private Investors and the re-construction of the fence wall around the Gbawe Methodist cluster of Schools (Quartey, 2017).

Both local authority representatives and the CLS staff persuasively argue that the government does not have the capacity to meet the needs of a growing urban population in terms of infrastructure and services, hence private initiatives are much needed. In Ga South Municipality, one of the planning officers explains:

Here [Ga south municipal area], we are lacking... we don't have enough funds to provide infrastructure; we are way, way behind. So, when somebody comes in to say, 'I am coming to put in infrastructure, to put up buildings', you have to encourage that person. (In-depth interview, Planning Officer, Ga south Municipal Assembly, 19.05.17)

Likewise, the customary organisation legitimizes the voluntary urban planning, infrastructure and services within Gbawe by referring to the incapacity of the local authority:

If we want to wait, the government will never get it done. There are so many things that the government has not been able to do. And recently in the news they [government] have actually been appealing to investors to come in and do some of these things. Because government doesn't have the money. Meanwhile the population is growing very quickly, developments are springing every day, and the government is not able to keep up with providing the infrastructure that people need. (In-depth Interview, Gbawe LMC, 03.06.17).

In the future, customary and local government actors will jointly deliver infrastructure and services in Gbawe, with a few exceptions such as fire and police services that are solely the responsibilities of the state. Even for these services, the Gbawe customary organisation has allocated plots of land for the siting of a fire service station (In-depth Interview, Gbawe LMC, 03.06.17), and has recently constructed a police station for use (Figure 6.9). This reflects the extent of collaboration between the customary and state actors. At the time of the fieldwork, the district police commander had completed

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<sup>38</sup> The institute will train students in Leadership and Traditional affairs.

<sup>39</sup> Architectural and site plans for this project have already been submitted to the Ga South Municipal Assembly for advice, consideration and approval



inspections of the new police building and committed to deploy police officers to take up the station and provide security services to the area. Adding to this, the Gbawe CLS actively seeks to improve its relationship with the local government, an approach explicitly stated in one of their core functions that reads “to operate as the link between the landowning community and public-sector land agencies, and other stakeholders” (Gbawe CLS, n.d). The local authority will continue to be part of the future maintenance of the physical environment of Gbawe, including maintenance of its streets, open spaces, sewage system, lighting etc. Already, the local government is collaborating with the Gbawe CLS to install street signage and address all the properties within Gbawe for the purpose of improving property taxation (In-depth interview, Planning Officer, Ga south Municipal Assembly, 19.05.17).



Figure 6. 9: Community infrastructure provided by the Gbawe Kwatei customary organisation

Source: Author’s own photograph

Note: The top left picture shows a waste recycling plant constructed by the owner of Faith International School. The top right picture is the newly constructed Gbawe Police Station. The bottom image is a public toilet constructed and financed by land revenue

### *Enforcing land use regulations through collective choice rules*

As previously discussed, lease contracts are the main instruments for land transfer in Gbawe. The leasehold titles provide the customary authority with opportunities to use the terms and conditions defined in the contracts to regulate land use and ensure strict development control. The conditions of leases typically stipulate what must be built, when, conditions of re-entry, rent payment and so forth. And because the Gbawe CLS prepares the lease documents, it is possible to stipulate these conditions in the land contract. To make sure that individuals develop their properties in compliance with the land use prescriptions and lease conditions, all future residents are made to sign a covenant.



When you are acquiring land, you sign a covenant that says that you will abide by the rules in the lease document. If you've signed that document, you can't blame anyone for any action they [Gbawe CLS] take against you especially for breaching the contract. (Group discussion with Gbawe residents, 24.06.17).

Furthermore, the Gbawe CLS uses existing customary norms and practices to enforce compliance with land use. For new builds, the chief priest (*Wulomo*)<sup>40</sup> plays the important role of a building inspector.

Before a site owner develops his land the Wulomo inspects your lease, building permit and other documentation. This is our way of making sure that your development conforms to the permitted land use. You have to pay a small fee for this inspection and collect a receipt. When all the conditions are confirmed, the Wulomo performs traditional rites to thank the gods for your achievements and to seek the god's blessings towards your new development. (In-depth Interview, Gbawe LMC, 03.06.17).

In the case of existing developments, the CLS engages the services of the "Asafo youth group"<sup>41</sup> to conduct periodic inspections and verifications of developer's documentation. The inspections also include modifications or structural alterations that have not been approved by the CLS.

If it is detected that you [developer] haven't attained approval from the CLS, the boys [Asafo group] will place a white calico on the site signifying an injunction on your development. The injunction is only lifted when you have paid the necessary fine and obtained approval from the CLS or LMC (In-depth Interview, Gbawe LMC, 03.06.17)<sup>42</sup>.

In this way, the customary organisation is able to ensure development control and compliance with the lease conditions. The Gbawe CLS claims that these informal mechanisms have resulted in 'over 85% of developments being developed in conformance with land uses and planning regulations within the community' (In-depth interview, Gbawe CLS staff, 29.05.17). By contrast, Awuah et al. (2014) find that about 60% of all developments in Accra proceed without authorization from designated planning authorities and this has resulted in increased slums and informal settlements. Although residents of Gbawe consider the periodic inspections by the *wolomo* and the *Asafo* group as inconveniencing, they admit that it is useful to ensure orderly development (Group discussion with Gbawe residents, 24.06.17). Thus, the use of these informal mechanisms have helped to control indiscriminate development within Gbawe.

The relative success of these customary/informal mechanisms has encouraged the family to deploy them towards addressing other urban challenges, including speculative activities by some developers.

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<sup>40</sup> A fetish priest in Accra indigenous community

<sup>41</sup> The "Asafo Company refers to the local youth group. They act as the local law enforcement body against trespassers and encroachers on family and stool lands. The customary organisation also relies on the Asafo Youth group to implement policy decisions within the township and mobilise commoners for social infrastructure development.

<sup>42</sup>Under customary law, placing a white calico on one's land signifies an injunction.

The relatively improved tenure security and active land market in Gbawe seem to encourage speculative land acquisitions. As the chairman of the LMC remarked that:

We are unhappy with the activities of land speculators who have acquired lands here and failed to develop them. Those people know that lands in Gbawe are safe, so they have no fear of losing it. They can buy land and leave it undeveloped knowing that they can sell it later for more profit. Others will fence it [land] and then leave it for so many years because they know that no one will touch [encroach] it. (In-depth Interview, Gbawe LMC, 03.06.17).

The LMC considers the increasing phenomenon of undeveloped or partially developed lands as an indication of land speculation. The LMC's concern was that land speculators may acquire land and then not develop it for an extended period with the objective of realising profit by simply disposing of the land at a higher price later. Merely leaving land vacant however does not constitute sufficient evidence that there is an intention to speculate. A number of people build incrementally due to limited finance (Boamah, 2014). Some people may also leave their land bare or partially developed because they have run out of resources. For such people, an improvement in their situation rekindles their interest to finish their housing projects (Amoako and Boamah, 2017). However, that reason cannot be imputed to all vacant or partially developed land, particularly so when the high demand for land and less supply encourages land speculation. The extract above further suggests that the LMC has observed similar kinds of trends of land occupation.

The customary organisation has tried to overcome these speculative activities by exercising its right of re-entry specified in lease contracts. Leases executed between the LMC and a prospective developer often include an obligation to develop the plot within a specified period - 18 months for commercial properties and 5 years for residential properties (Gbawe CLS, n.d). Failure to develop one's plot within the specified period entitles the family to re-enter or repossess the land. Although what constitutes 'development' is undefined, the customary organisation considers development to mean the construction of 'foundation or construction up to lintel level' (In-depth Interview, Gbawe LMC, 03.06.17). The periodic inspections by the *Asafo* group and the CLS helps to detect and enforce strong oversight over speculative practices. Where the *Asafo* group detects that a developer has failed to 'develop' his/her plot after the stipulated time, a notice is served to the developer to develop the land within reasonable time. While most speculators are quick to develop their plots due to the fear of losing their lands, those who fail to remedy the breach have their rights revoked (In-depth Interview, Gbawe LMC, 03.06.17). In this way, the customary organisation ensures that land within the community is actively developed.

For many years, the effect of these land use mechanisms is a pattern of development quite different from that characteristic of most parts of Accra. Because pro-active planning, rather than the market

determines land use, the usual sharp differentiation between desirable and undesirable parts of the community are absent. Community infrastructure is not isolated in particular neighbourhoods but is spread throughout. The supply of community roads has made all parts of the township accessible. Combined with customary mechanisms, the customary organization is able to use lease conditions to achieve a considerable degree of control over the urban land use pattern and the timing of building development. The outcome is a fairly even distribution of desirable residences across the community, together with some basic community facilities available to most of the population. The same outcome could not have been achieved by simply allocating land based on market demand. Land delivery based on market demand tend to respond to changes in market forces, with developments occurring where there's opportunity and rather than in desired areas (cf. Webster and Lai, 2003).

As elaborated in chapter 5, Ghanaian land use policy seeks to encourage private sector agencies and non-state actors to initiate, plan and implement urban land use plans and projects (Government of Ghana, 2016a: 68). This theme is also very evident in the national urban policy adopted in 2012 that aims to 'involve relevant state and non-state agencies and institutions in the governance of cities and towns' and 'promotes public private partnerships as alternative sources of funding for urban infrastructure and services' (Ministry of Local Government and Rural Development, 2012: 28). The processes leading to the establishment of the CLS, the land use planning process, infrastructure delivery and land management in Gbawe reflects this logic. Moreover, it is expected that these decentralised land governance arrangements would improve clarity regarding land and financial records and better ground rent collection systems for both customary authorities and the state. In this way, and with the effective land use planning system in place, revenue generated land transactions can be directed to serve the public interest. Yet, the strong policy support in the form of land administration and planning powers seemed to have incentivised the Gbawe customary authorities to resist any weakening of the current institutional arrangement, as discussed in the next section.

### **6.3 Exercising the 'right' to capture land value appreciation?**

Land values represent a significant source of municipal revenue for developing cities. As cities grow, the wealth they create becomes capitalised in the rising land values. Taxing the land in Gbawe will therefore allow the local government to capture these rising values to fund much-needed infrastructure. Although it can be argued that much of the land value created in Gbawe can be attributed to the family's investments, the government is still entitled to some portion of the land value. As Ingram and Hong (2012) emphasise, land value is the result of both public and private investments, and each entity is entitled to some portion of this value. The value related to the original productivity of the land paid for by the owner and the increment in value generated by private land

improvements should remain in private hands. The remainder of the value should be captured by the state, notably increases in land value due to population growth and economic development as well as public investments in certain infrastructure. However, the absence of clear metrics to correctly delineate the proportion to be captured by the state means that the landowning family would continue to retain much of the land value (see also Awuah and Gyau, 2016, Obeng-Odoom, 2014b, Agyemang and Morrison, 2017). And even if these technical challenges are overcome, there are bigger challenges relating to entrenched positive feedback effects (Jibao and Prichard, 2015, Thelen, 1999, Pierson, 2004).

This is currently the situation in Gbawe, where the Gbawe customary organisation has taken advantage of these technical challenges and loopholes in the legal framework to successfully retain much of the land value created within its jurisdiction. As discussed below, the customary organisation has successfully captured much of the rising land values for its gain, although some of it is channelled to the provision of community infrastructure. It achieves this by combining two main mechanisms to capture a portion of the increase in land values. In exchange for the right to occupy and use land for a specific period, individuals and private entities pay both lease premiums (upfront lump sum) and annual lease payments (ground rent) to the Gbawe-Kwatei family. The upfront sale of leases enables the customary organisation to recover part of its urban land value as lease premiums. The annual rent payments on the other hand are recurring payments and this helps to recover part of the successive increments in land values during the entire lease period. The family uses the revenue generated from lease premiums to finance basic community infrastructure, while the rent payments are earmarked for funding the Gbawe CLS's operations and resolving boundary disputes between Gbawe and other adjacent communities.

### **6.3.1 Recovering land value through pricing of communal land**

As previously discussed, land in Gbawe is owned and managed by the Gbawe-Kwatei family. The Gbawe Kwatei family converts their land into revenue by selling leaseholds, granting private individuals the right to occupy, use and improve the land. This involves the sale of leasehold interests of communally owned land whose value has been enhanced by infrastructure investment or land use changes. Because the customary organisation exercises control over land supply, it is able to internalize the benefits of infrastructure investments and capture the gains through the sale of leases. The customary organisation still holds the allodial title to the land and the right to reacquire the land if the lease expires.

Land values in Gbawe are determined through the value dictated by the market (In-depth interview, Gbawe LMC, 03.06.17) which in turn is influenced by the rapid urban growth experienced in Gbawe. Population and economic growth is generally associated with increased demand, and this causes land values to increase (Suzuki et al., 2015). Moreover, changes in land use regulations and investments in community infrastructure such as access roads and water services tend to cause land values to increase (Alterman, 2012a, Ingram and Hong, 2012). For instance, Awuah and Gyau (2016) have observed that in Accra, properties served with tarred roads and concrete drains are 1.8 times more valuable than areas where basic infrastructure is non-existent. Thus, in Gbawe where community infrastructures exist, and land use planning is effective, developable plots likely command higher value in comparison to other neighbourhoods in Accra that are without basic infrastructure. Yet, the high land prices do not discourage developers from Gbawe. Instead, they are attracted to the serviced plots and tenure security associated with the area (see section 6.2.2). The benefits that are produced by a well-planned community, secure tenure and community projects are capitalized into surrounding land values. Individuals express their preferences for these benefits by buying the leases and this enables the customary organisation to recover their infrastructure costs and other investments at the time leases are sold. Records on revenues generated from the sale of leases are unavailable because the LMC does not disclose lease payments to the public or the Gbawe CLS. However, a review of land values for the period between 2010 and 2018 suggest a significant revenue potential for the landowning family (see Table 6.1).

Estate Year	Min	Max	Mean	% growth in land value
2010	GHS 125,000.00	GHS 156,250.00	GHS 140,625.00	
2011	GHS 156,250.00	GHS 200,000.00	GHS 178,125.00	27
2012	GHS 187,500.00	GHS 200,000.00	GHS 193,750.00	9
2013	GHS 200,000.00	GHS 210,000.00	GHS 205,000.00	6
2014	GHS 210,000.00	GHS 230,000.00	GHS 220,000.00	7
2015	GHS 250,000.00	GHS 312,500.00	GHS 281,250.00	28
2016	GHS 375,000.00	GHS 500,000.00	GHS 437,500.00	56
2017	GHS 500,000.00	GHS 625,000.00	GHS 562,500.00	29
2018	GHS 750,000.00	GHS 937,500.00	GHS 843,750.00	50

Table 6. 1: Annual per acre land values for Gbawe (GHS): 2010 -2018<sup>43</sup>

Source: Lands Commission, Accra, 2018

<sup>43</sup> Note: £1 = GHS5.68 as at August 17, 2017

To ensure that lands are affordable, the LMC offers individuals flexible payment options. The LMC accepts payment by instalments, usually with an agreed period within which to complete payment.

To demonstrate one's willingness and commitment to acquire the land, the applicant makes a down-payment (no fixed amount) and may complete the remainder over time. However, no legal interest in the land is created for the prospector until full payment has been completed. In this instance, a developer cannot commence development until full payment has been made. (In-depth Interview, Gbawe LMC, 03.06.17).

Despite these measures, land prices in Gbawe seem expensive to most urban dwellers considering that 49% of Ghana's population live in poverty, of which half are in extreme poverty (World Bank, 2017). Interviewed community members at Gbawe also say that they themselves cannot afford to buy a plot (70ft x 100ft) in Gbawe, nor can their colleagues (Group discussion with Gbawe residents, 24.06.17). The chairman of the LMC further admits that current land prices are not easily 'affordable' to most individuals. 'But then again, serviced land won't be affordable to everyone. If we under-price our land, we will struggle to recoup much of our investment that we have been making all this while' (In-depth Interview, Gbawe LMC, 03.06.17).

The revenues generated from selling leaseholds have helped the customary organisation to finance most of its high-priority community infrastructure. This has been discussed in section 6.3.2 and observed by various researches (Kasanga et al., 1996, Kasanga and Kotey, 2001, Amanor et al., 2008). Apart from contributing to infrastructure development, another practical advantage associated with the sale of leaseholds is that the land ultimately reverts to the customary organisation when the lease period expires. The time lag may be substantial (a maximum of 75 years lease term), but reversion is inevitable. This however requires strong administration to manage the leasing system, including improved records on land dealings, to ensure that expired leases are detected and reclaimed by the family. The existence of the Gbawe CLS and the recent improvements in the land records is thus an important first step.

Yet, the improvements in land records have not necessarily translated into transparency and accountability regarding lease premiums. Generally, there is little public accountability as to how much revenue has been generated from lease premiums. Land transactions are conducted and documented by the LMC, but details of payments and receipts are not made available to the CLS or the public. Community members are only informed during family meetings, festivals and annual durbars about how these revenues are used (In-depth interview, Gbawe LMC, 03.06.17). The limited public accountability has the tendency to create opportunities for wastefulness and corruption, particularly as large sums of money are generated by private negotiations with developers.

### 6.3.2 The pursuit of urban land rent

The Gbawe customary organisation also recovers successive increments in urban land values through the collection of annual land rents. It achieves this by requiring leaseholders to pay annual rents throughout the lease period. The rates are adjusted every 3-5 years to reflect market conditions with commercial land uses commanding higher rent charges compared to non-commercial uses (see Figure 6.10). In this way, the customary organisation is able to capture successive increases of land values within Gbawe. See Appendix 8 for the calculation of ground rent. The Gbawe CLS is responsible for administering the leasehold system, including the periodic review of land rents, as well as the collection of the annual rent payments. Because all land transactions are recorded by the CLS, officers at the CLS are able to trace all landholders to demand rent payments.

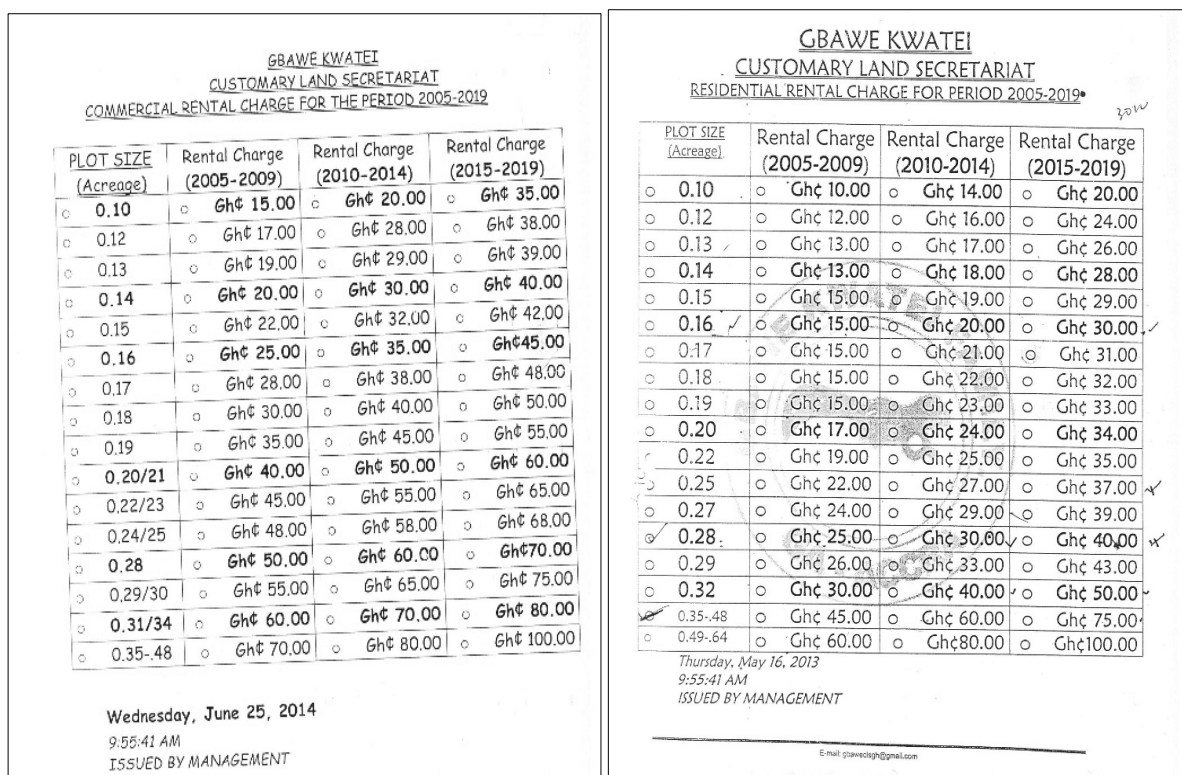


Figure 6. 10: Rental charge chart for commercial and residential properties: 2005 - 2019

Source: Gbawe CLS Office, Accra

To enforce the timely payment of rent, the CLS issues over 4,320 demand notices to leaseholders within the community (In-depth Interview, Gbawe CLS, 29.05.17). The rent demand notice (Figure 6.11) serves as a reminder to leaseholders of their obligations to pay their rents.

It [obligation to pay rent] is clearly indicated in their [landholders] lease documents that they are expected to pay annual rents. They know that the lease is a contract so once they sign it, they must abide by it. We inform them about all these terms at the time they acquire the land (In-depth Interview, Gbawe CLS Staff, 29.05.17).

Thus, the family considers ground rent payment as an entitlement to them as landowners. This understanding is in line with Article 267 of the 1992 constitution which provides that the payment of land rent is a tangible and continual reminder to the lessee that the land belongs to the lessor. The Constitution of Ghana demands that ground rent is imposed on all leases. Although the ground rent is set at minimal levels, often between 3-6% of the total land value (Asabere, 2004b), this does not in any way suggest that land rents are unimportant sources of revenue. As shown in Figure 6.12, annual rent payments have generated continued revenue for the customary organisation.

Some leaseholders have been reluctant to pay their annual land rents for reasons that they are unaware of this requirement to pay rent annually. They tend to consider the upfront lease payment, during land acquisition, to mean payment for the entire lease duration. This is not surprising given that most customary landowners do not impose any requirements for the payment of annual ground rents during land transactions. Instead, payment for leases are structured such that a lump payment is made upfront at the initial stage of land transfer (Amanor, 2008, Locke and Henley, 2016). In other words, most customary organisations hardly stipulate rent payment as part of land documentation. Only a few customary organisations such as Gbawe have started to insist on annual rent payments. Interviewed CLS officers admit that:

Some of them [lessees] do not know that apart from purchasing the land lease, they have to pay rent annually. We always have to remind them before they pay. Some also challenge us, but later when they go to verify from the local authorities, they realise that our demands are legitimate. They always come back to pay (In-depth interview, Gbawe CLS staff, 29.05.17).

Interviewed residents of Gbawe also say that they are reluctant to pay rents because the resulting revenues are not directly linked to infrastructure investment. A resident explained that:

I don't see that much of the revenue has been reinvested in the community in recent times. They [Gbawe CLS] come to collect rent from us. At the same time, the government people [local authority] also come to collect their money [property tax]. Meanwhile we are not seeing major developments in our community. So sometimes we are not always motivated to pay. (Group discussion with Gbawe residents, 24.06.17).

Staff of the CLS acknowledge that these complaints may be genuine but insist that it is not the responsibility of the customary organisation to provide infrastructure from ground rent revenue. They further argue that although the funds generated from lease premiums have been used for community projects, the family is not obliged to use the revenue from rent payments in the same manner:



The ground rent is not for infrastructure or things like that. It is for running the CLS. The government charges property taxes because it provides services to them [residents]. We also go around to collect our rent payments separately because they [residents] are occupying and using our land. It is true that rental payments are annual, just like property tax but the two are not the same. The rent is our entitlement as landowners. It is the government that is supposed to use the property tax for general services (In-depth interview, Gbawe CLS staff, 29.05.17).

The extract above points to the importance of distinguishing between rent payments and taxes based on land such as property tax. Although rental payments are often recurring, these are payments for occupying and using the land, and do not reflect the service burden placed on the community (Yeh, 2005). This is different from property taxes which are for the cost of using a public infrastructure and services (Peterson, 2006, Hong, 2012). This means that paying ground rent and paying a tax based on land are not incompatible, and such an arrangement does not represent double taxation. At present, this is the situation in Gbawe, whereby the CLS collects annual rent payments, while the local authority (Ga South Municipal Assembly) collects property tax. Property taxes in Ghana are based on improvements only (Franzsen and McCluskey, 2017, Obeng-Odoom, 2014b).

In order to clarify this miscomputation and to promote public acceptance of rent payment, the Gbawe CLS employs two mechanisms. First, the CLS relies on the provisions stipulated in lease contracts to insist on rent payments. Leaseholders are served a default notice specifying a deadline for payment, after which a fine of 10% of the rent is imposed (see Figure 6.11). The fine is increased to 50% for every additional year a leaseholder defaults in payment. Where necessary, the CLS threatens to take legal action against the defaulter.

When we realise that someone has failed to pay even after we remind him/her, we threaten to take legal action. Although we have never really gone through with it, they [leaseholders] know we have the capacity to pursue the case, so they pay when we threaten to file cases against them. (In-depth interview, Gbawe CLS staff, 29.05.17).

Second, the CLS undertakes public campaigns, using local radio and public forums to explain to leaseholders how rent payments have been used to finance the operations of the Gbawe CLS and to resolve the community's boundary disputes.

**GBAWE KWATEI FAMILY**  
CUSTOMARY LAND SECRETARIAT

BANKERS: GHANA COMMERCIAL BANK Ring Road West P.O.Box 2 Mallam - Accra Ghana. Tel: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-mail: gbawekwateicustomarysec2013@yahoo.com

Our Ref. \_\_\_\_\_ Your Ref. \_\_\_\_\_

**RENT DEMANDS NOTE**

To: \_\_\_\_\_  
Please take note that ground rent in respect of the under mentioned property became due and payable by you on the \_\_\_\_\_ Payment thereof is hereby demanded. You are requested to call at the office of Gbawe Kwatei Family Customary Land Secretariat office within Gbawe Plaza Adjacent the Mallam Post Office or in front of the Mallam - lorry station behind the Mallam post office, the office is open from Monday to Friday 8.30am - 3.30pm. Each day and Saturday 8.00am - 12pm to pay your ground rent.

**NOTE in accordance with the lease agreement between the land owners and you as contained in the lease document. Non-payment of ground rent constitutes breach of contract.**  
Cash or Bankers Draft Cheques should be made payable to the Gbawe Kwatei Family Customary Land Secretariat. Please insist on an official receipt.

LOCATION:	FILE #
LESSEE:	CURRENT RENT
	GH¢

Arrears for the period ( ) GH¢  
10% RECOVERY RATE GH¢  
**TOTAL AMOUNT PAYABLE** : Sayy GH¢

Paid for the period ( ) GH¢

**NB** PLEASE COME ALONG WITH A PASSPORT SIZE PICTURE TO BE ATTACHED TO YOUR RENT LEDGER

FOR NII AFUTU QUARTY (CO-ORDINATOR)

NB: Please you are to settle this bill within (14) days of receipt

**GBAWE KWATEI FAMILY**  
CUSTOMARY LAND SECRETARIAT

BANKERS: GHANA COMMERCIAL BANK Ring Road West P.O.Box 2 Mallam - Accra Ghana. Tel: +233 - 0302 803 783

Our Ref. \_\_\_\_\_ Your Ref. \_\_\_\_\_

Dear \_\_\_\_\_

**FINAL NOTICE OF RENT PAYMENT**

As per the lease agreement clause which binds all lessees, assignees, grantees and occupants on Gbawe Kwatei Family land to pay annual rent (Ground rent) to the family, you are hereby notify that default in the payment of this rent is a legal offence, you have therefore been given **14 days** to respond after which the Secretariat shall institute a legal action against you.

You are requested to call at the office of Gbawe Kwatei Customary Land Secretariat within Gbawe Plaza Adjacent the Old Mallam Post Office or in front of Mallam-lorry station, the offices is open from Monday to Friday 8.30am-4.30pm each day or call our Mobile Rent Team to pay your ground rent.

**Please this is the final reminder we are serving on this matter, any other notice will not be in this form.**

Thank you in advance for your anticipated cooperation in this matter.

Please kindly come along with a photocopy of the lease document (indenture) and a Passport picture.

mail: gbawekwatei@gmail.com

Figure 6. 11: Notice of rent payment

Source: Gbawe CLS Office, Accra

Note: the left picture shows a sample rent demand notice. The right image is a sample rent default note

The mechanisms employed by the CLS have arguably succeeded in promoting a positive attitude towards rent payment in the community and thereby generating continuous revenue for the family (Figure 6.12). Between 2010 and 2016, the CLS has collected GHS 925,134.71 (£162, 875) in leasehold rent payments<sup>44</sup>, significant enough to justify the administrative costs incurred by the CLS (Figure 6.13). The revenue from rent payments has been earmarked for two specific activities: to support the CLS's ongoing operating costs, such as salaries and staff benefits; and to finance the costs incurred in resolving land boundary disputes with adjoining stools. As the chairman of the LMC explained;

The money we make from the ground rent is not much. So we basically use it to run the CLS and give some to the committee [LMC] to pay for our boundary disputes cases....At the moment, we are dealing with 7 Supreme Court and 9 high court cases related to disputes with some part of our boundary. The cost of resolving these litigations at the court has been financially draining for the family. Most of the proceeds generated from land transactions have been spent on these legal matters. (In-depth interview, Gbawe LMC, 03.06.17).

The use of rent payments to map the community's boundaries and to ward off competing claims is an investment in itself. Although this process involves costly disputes resolutions, establishing the exact boundaries of the community is an investment because it improves tenure security for the community

<sup>44</sup> Note:£1 = GHS5.68 as at August, 17, 2017

and provides a decent basis for planning and land sales (Collier et al., 2018). At the same, the use of revenue to maintain the operations of the CLS points to the customary organisation’s desire to improve its land management institutions. Without such institutions, capturing the land value and adequately managing the leasehold system would prove difficult. Thus, the customary organisation recognises that reinvesting the revenue generated from land transactions in ways that benefit the residents would enhance the value of their land and attract more development. To the extent it succeeds, those finding it attractive will pay for the privilege of locating there.

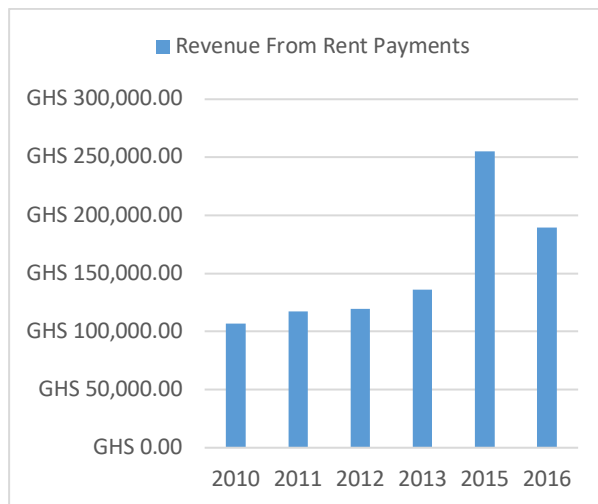


Figure 6. 12: Revenue from annual land rent (2010-2016)

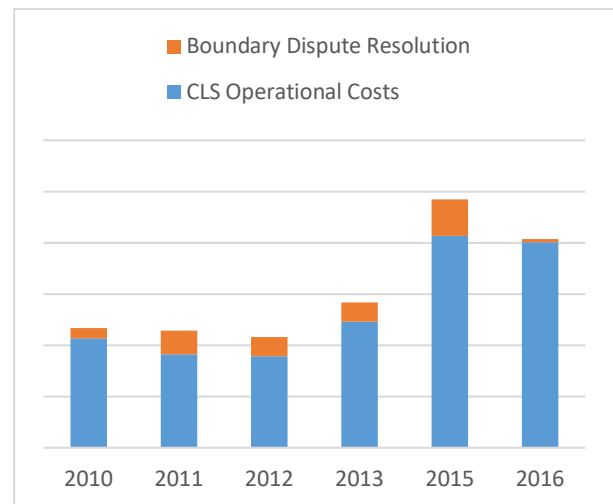


Figure 6. 13: Annual CLS expenditure

Source: Compiled from data at Gbawe CLS, Accra

Overall, Gbawe has arguably found success in generating land revenue, which is credited to its leasehold system. In exchange for the right to occupy and use Gbawe land, individuals and private entities pay both lease premiums (upfront lump sum) and annual lease payments (ground rent) to the Gbawe-Kwatei family. Land value is dictated by market conditions, and lease premiums are paid in full upfront, enabling the customary organisation to recover a large part of the value appreciation. The annual rent payments on the other hand are recurring payments and this helps to recover part of the successive increments in land value, serving as continued revenue for the family.

That the Gbawe customary organisation has successfully implemented land lease policies can be explained by three influences. First, the customary organisation’s ability to capture land values through lease premiums and rent payments is facilitated by the existing legal framework that permits customary landowners to sell leasehold interests. Article 267(5) of the 1992 Constitution provides that all customary land transactions shall be processed as leaseholds. This provision gives the Gbawe Kwatei family the right to sell leasehold interests to private individuals in exchange for recurrent rental payments. Thus, the Gbawe customary organisation has structured lease agreements to require

payment of upfront lease premiums in addition to the annual rent payment. The upfront payment is full market value, while ground rent payments are adjusted periodically to reflect changing market conditions. In this way, the customary organisation captures much of the enhanced land appreciation for itself. In addition, the current legal framework including the new land bill does not require family landowners to share a portion of the land revenue with the state (see Chapter 5). And because family lands are not considered as stool lands (ibid) families that own land are certain that they can reap the full benefits of their investments<sup>45</sup>. In other words, the ability to generate revenue from the sale of leasehold interests presents significant opportunities for family landowners who are able to plan, construct, and eventually recover profits through leasing customary lands, as is the case in Gbawe.

Second, a strong administrative capacity with support from relevant government actors was essential. Successfully orchestrating land leases and maintaining such a system requires a motivated and entrepreneurial customary organisation that has the resources to manage a complex programme. The Gbawe customary actors perceived government support to be crucial in local land administration. Therefore, the customary organisation sought the government's support to establish the CLS in order to improve the existing land management institutions within the community. As previously discussed, the Gbawe LMC determines land prices and allocates land to private individuals. However, documenting the exact use rights and conditions was challenging in the absence of leasehold titles. With the help of the government, the Gbawe CLS was established and this ensured that leasehold titles became the minimum instruments for property rights transfer. The CLS helped to administer the leasehold system. Improved land records also helped the CLS staff to trace and demand rental payments from leaseholders. The CLS staff also monitor changing market conditions and recommend changes in lease pricing, both for new leases and for updating existing leases. Essentially, the customary organisation's ability to access state resources enabled it to build a strong administrative capacity and this has contributed largely to make the land leasing system in Gbawe effective.

Third, the customary organisation was able to establish broad based support for the leasing policy by attaching land revenues to specific outcomes. Although the family's primary goal for implementing the leasing regime is to generate revenue, the customary organisation strategically balanced this motive with a development rationale. The revenue from the sale of leaseholds has been directly linked to tangible community infrastructure development in publicly beneficial ways. The existence of land use plans helped to channel community investments to locations and uses that best fit community

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<sup>45</sup> Stool lands are lands in traditional areas in Ghana where larger communities, represented by stools or skins, hold the allodial title. Family lands, on the other hand, refer to lands in which sub-groups, such as extended families or lineages, hold the allodial title. Both family and stool lands are referred to as customary lands, as discussed in Chapter 5.

needs. Additionally, resulting revenues from rental payments have also been reinvested in mapping the community's boundaries as well as financing the CLS's operations. Although this expenditure may not be tangible and visible to the community members, the various strategies and public campaigns employed by the CLS staff have helped to promote public acceptance and a positive attitude towards rent payments.

#### **6.4 Conclusion: how self-organised efforts attracted state support**

This chapter examined how the Gbawe customary organisation managed to get support from relevant stakeholders and subsequently established hybrid land management institutions. The chapter discussed outcomes in terms of the creation of new institutions for land administration, land use planning and infrastructure delivery efforts and the successful implementation of land leasing policies to capture rising land values. The main goal was to understand how institutions of the state and customary authorities combined to deliver urban land and its implications for capturing rising land values for the state.

The institutional change observed above was carried out through a process of 'layering'. As described in chapter 3, layering concerns adding new rules to existing ones without revising the existing institutions. In Gbawe new land use and governance institutions (e.g. the Gbawe CLS) were introduced as correctives to customary institutions without undermining the existing customary practices and norms. Existing customary institutions and norms were not scrapped but were layered with new statutory rules to facilitate efficient land administration and this subsequently resulted in transformative outcomes in relation to land administration, land use planning and revenue mobilisation. Prior to the establishment of the CLS, the distinction between statutory and customary practices was quite clear. Customary authorities were legally empowered as custodians of land but had no defined role within the statutory land governance structure for planning and land use decision making. This resulted in a situation where most of the land transactions occurred outside the formal land market and planning system, as discussed in chapter 5 (see section 5.4.1).

Today, elements of customary practices are being incorporated into statutory processes with one implication – to deliver secure urban land to the market. For instance, land use planning is now characterised by a high degree of cooperation and dialogue between the customary organisation and the local planning authorities. The Gbawe customary organisation prepares local plans jointly with the local planning authorities such that all land allocations by the LMC now conforms to the municipal land use plan. Furthermore, while local land use plans are prepared in line with statutory requirements, customary norms and practices are defined in leases and used to enforce land use regulations. The

CLS also collaborates with the Lands Commission and the OASL in preparing lease documents and registration of land titles for individuals that acquire land from Gbawe. This is uncommon for most customary organisations in the country. It is for these reasons that Gbawe is generally considered as the epitome of CLS good practice in Ghana (Kasanga and Kotey, 2001, Ubink and Quan, 2008) and an example of the hybrid land management practice that is emerging across Africa (Chimhowu, 2018a).

In relation to the question of how land governance institutions between the state and customary actors were successfully integrated, the case narrative shows that external events and individuals who performed as change agents were crucial in bringing about this form of institutional change. Changes in population growth and the construction of the N1 highway prompted the customary organisation to take action to strengthen local institutions for land administration. The rapid urban growth experienced in the community resulted in the commercialisation of customary land and triggered boundary disputes with neighbouring communities. These urban challenges challenged the desirability and appropriateness of the existing customary land administration arrangements. However, these contextual changes and events cannot explain the changes by themselves. Instead we can trace the institutional change processes to the strategic role played by the leadership of the Gbawe-Kwatei family. The leadership of the Gbawe customary organisation contributed to the institutional change process through careful recognition and exploitation of these changing circumstances – i.e. urban growth and soaring land values. They gave meaning to these circumstances and sought opportunities to respond to the rising demand for land by fundamentally changing the procedures for land administration. The case narrative shows how the actors responsible for the day to day administration of Gbawe land strategically identified suitable partners/developers and negotiated land exchange arrangements to shape the growth of the community. The case study also illustrates the conscious decision to establish the LMC, comprising community representatives and professionals, to take up the role of land governance. These self-organised efforts point to the importance of individuals or groups that performed as ‘change agents’ who made great efforts to learn about emergent opportunities and to build consensus about how to exploit them.

Individual agents or groups who managed to influence institutional change had both organisational and discursive capacities. As described in Chapter 3, change agents or groups who have authority and access to decision making are necessary to articulate, deliberate and persuade or sell new proposals to targeted actors. These are certainly recognisable in this case study, namely the leadership of the customary organisation and the LMC. This is apparent in the various ways that the family leadership and the LMC continuously scanned for opportunities, framed appealing proposals that resonated with targeted groups, negotiated partnerships and engaged in deliberations about how to bring about

institutional change. For instance, the family leadership put a lot of energy in knowing all that was going on within its environs and searched for willing partners for development (e.g. BoG staff association; and TCPD). They also invested a lot of time and energy in 'selling' the LMC and CLS to community members as correctives to existing customary arrangements. Moreover, they used their status and influence to negotiate land use planning and infrastructure development arrangements with government planners and private developers in ways that generated citywide benefit. It is also easy to see how the family leadership and the LMC established themselves as credible articulators of new proposals. This is evident in the way the family leadership framed the land grants to community members as a measure to 'uphold usufructuary interest' and presented the ground rent payment as necessary for the maintenance of the CLS's operations. These acts helped to promote the family leadership as representatives of communal interests and thus helped to secure the support of community members. These discursive practices demonstrate that although trigger events are important in facilitating change, strategic 'change agents' help to promote the change process. In other words, successful institutional change could not have occurred without the presence of supportive customary actors who performed as change agents.

With regard to the question of why institutional layering efforts were successful, the case study points to the importance of a clear connecting strategy with relevant government actors. Customary actors perceived the state support to be crucial and decisive in addressing emergent customary governance challenges. Government support was also crucial in aiding the family harness the potential benefits from the supply of urban land. The processes leading to the establishment of the Gbawe CLS illustrate this point. The Gbawe customary organisation was motivated to align customary practices to statutory regulations because the new arrangements such as the CLS provided opportunities to address emergent land problems within the community, strengthen land recordation and to strengthen control over land profits. As land values increased due to new demands from population growth, the customary organisation established an organised land allocation system (i.e LMC), which facilitated access to documented land rights. The initial benefits from these initiatives in the form of land profits, reinforced the customary organisation's ambitions to strengthen control over land development. That is, these efforts generated a positive feedback loop, thereby increasing the pay-off for additional initiatives in the same direction. Government involvement was considered necessary for resources (knowledge, regulations, and stationery) as well as coordination. Thus, the customary organisation established meaningful connections with the government through formal partnerships under the LAP. Equally, the national government was motivated to layer new rules onto the customary system through the CLS because it extended state regulatory control into a realm that has previously remained governed by local rules and norms. Such regulatory measures included the establishment

of frameworks for land use planning, approval of local plans, defining permissible lots sizes and access to land revenue records among others. The LAP implementers believed that implementing that regulatory framework could lead to general improvement in broader land governance for both the state and the customary authority. In reality however, the [local] government lacks the capacity to exercise the new dispensation brought on by this re-regulation of customary lands as evident by the OASL's inability to recover land revenues from the Gbawe customary organisation. Nevertheless, the outcome of this layering process has created a regime where rent collection has become better consolidated, land and financial records have improved, and secure, registered land rights have become more accessible.



## Chapter 7 - Developing Hybrid Institutions: Diverse Trajectories of Implementation in Ejisu-Juaben, Ghana

The previous chapter focused on how a customary organisation initiated efforts to establish hybrid arrangements for land development. The findings demonstrated that both layering and ideational practices matter a great deal in institutional change processes. This chapter builds on the Gbawe case, this time focusing on state-led efforts to establish hybrid institutions of land management in two peri-urban communities, Ejisu and Juaben in southern Ghana. In the case of Ejisu, efforts to bring about institutional hybridity have resulted in rather corrosive outcomes, largely due to positive feedback effects created by the rapid generation of land-based wealth. Motivated by the drive to capture a larger share of land profits, powerful customary actors countered state-driven efforts and altered the course of institutional design to achieve their private interests. In the case of Juaben however, a more robust process of institutional *hybridisation* evolved endogenously, where state and customary institutions are combining in a process of mutual adaptation and transformation to provide equitable access to land and its profits. The focus of the chapter is to understand how the institutionalisation of hybrid land management happened, and why some efforts attracted attention and support, whereas others failed.

Following this introduction, the first section identifies trigger events, particularly the changes to the land market in the Ejisu-Juaben area and how these events were decisive in the institutional change process for the two case studies. Section two discusses how the Ejisu customary organisation responded to government's efforts to institutionalise a hybrid land management regime, specifying how the new institutional arrangements provided opportunities for powerful local actors to strengthen their control over the profits from customary land. This is followed by a discussion of how an emergent interest group redirected the new institutional arrangements towards achieving their private interests. The third section examines efforts to establish hybrid institutions in Juaben. First, I outline the Juaben customary organisation's attempts to end distributional conflicts over land profits by establishing locally institutionalised land allocation and planning structures. This is followed by an examination of customary actors' efforts to reconcile collective and private interests by giving both chiefs and non-chiefs a positive stake in the new property rights arrangements. The fourth section reflects on the prospects for extracting economic rent for the local government in view of the emergent practices.

## 7.1 The land question in Ejisu-Juaben, state presence and the commercialisation of land

Ejisu-Juaben municipal area provides an ideal laboratory to interrogate the outcomes of deliberate state attempts to integrate customary and state systems of land management in the context of rapid urbanisation. The Ejisu-Juaben municipality covers 637 square kilometres and in 2010 was the fourth most populous district in the Ashanti Region with 143,762 people (Ghana Statistical Service, 2014). The municipality is located approximately 17 kilometres away from the regional capital, Kumasi, and thus serves as one of the receiving territories for the expansion, spatial sprawl and overspill of population and activities of the Kumasi Metropolis. The population growth rate is 2.5% (Ghana Statistical Service, 2014) but accelerated migration from the Kumasi Metropolitan Area may well increase population growth drastically.

The customary land ownership system operational in this part of the country vests land allocation powers in the stools<sup>46</sup>. Under this tenure system, community-level decision making about land is invariably the exclusive purview of chiefs (i.e. customary authorities) who exercise that role on behalf of the community (Antwi-Agyei et al., 2015). The stool holder (Chief) allocates plots of land to citizens of the stool, who then exercise rights of usufruct. Upon a citizen's death, the land and any improvements made upon the land reverts to the stool. At the time land was in ample supply, divisional chiefs often allocated plots to stranger farmers and immigrants and in return these immigrant farmers paid tribute to the divisional chief in recognition of his political authority. For the same reason, the divisional chief passed a portion of that tribute on to the paramount chief (Interview, Ejisu CLS Registrar, 07.07.2017).

In the last two decades, land values have appreciated significantly largely due to increasing economic and spatial growth. Due to its proximity to the Kumasi metropolis, the municipality has served as a dormitory town for the overspill population of Kumasi. The growing demand for land has also been heightened by various planned national infrastructure projects within the municipality. For instance, the structure plan for the Ejisu-Juaben area outlines plans to renovate, extend and reline the Kumasi-Accra railway line in the municipal area and reactivate the existing line between Ejisu and Kumasi for passenger traffic (COWI, 2010). In addition, the Boankra Inland Port and Industrial Free Zone are national projects that have been planned to be undertaken in the Ejisu-Juaben Municipal area (Government of Ghana, 2016b). These projects have attracted more economic and property development activities into the area, some of which are speculative developments. It is also worth

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<sup>46</sup> In large parts of southern Ghana, customary land is referred to as stool land in reference to the carved wooden stool which is a traditional symbol of chieftainship and is believed to contain the souls of the ancestors.

emphasising that in view of these planned national projects, the Ejisu-Juaben Municipal Planning Authority was supported under the national Land Administration Project to formulate a Spatial Development Framework to guide the redevelopment of the municipal area (In-depth interview, TCPD, 04.07.2017). In line with the new spatial planning system (Government of Ghana, 2016a), the local planning authorities were then required to prepare local plans to cover individual plots, neighbourhoods, production areas.

This reference to planned developments and spatial plans clearly alludes to the rapid urbanization, economic growth, and the intense pressure for residential and commercial land in the Ejisu-Juaben municipal area. Divisional chiefs and village chiefs alike responded to this growing demand by allocating stool lands to developers and claimed the proceeds from land transactions for their private use (Community group discussion, Ejisu, 14.08.2017). Because the distinction between stool lands (land vested in a stool) and lands belonging to the stool family is unclear (Amanor and Ubink, 2016), most chiefs often take advantage of their customary privileges to claim the proceeds from land sales. As the wave of speculative developments heightened, chiefs literally competed with each other to allocate their lands as quick as possible. For citizens, the land rush was an economic disaster. The majority of community members, particularly subsistence farmers, were simply disinherited as the land allocations systematically transferred community lands to strangers and property developers. As a community member explained it, “when the town reaches your land, your farm becomes the property of the chief” (Community group discussion, Ejisu, 14.08.2017). Some chiefs legitimized the conversion of farmland into residential land by claiming that communal land which can be used in a more productive way should be brought back into chiefly administration (In-depth interview, divisional chief, Ejisu, 14.08.2017).

The Paramount chiefs for the two case study areas (Ejisu-Besease traditional area and the Juaben traditional area) recognised the deleterious consequences of unrestricted land allocations to their political authority as well as the economic fortunes of their respective traditional areas. The secretary to the Juaben traditional council bemoaned the losses to the Juaben paramount stool:

“If land allocations continue unchecked, no land will remain, and future generations would go hungry”  
(in-depth interview, secretary, Juaben traditional council, 20.07.2017)

The spokesperson for the Ejisu paramount chief abhorred the losses as well. For the Ejisu paramount chief, the rampant land allocations provide a constant reminder of the paramount stool’s declining influence over the divisional and village chiefs. According to custom, the paramount chief is entitled to receive one third of the profits (now drinks money) from land transfers as tribute. When land values appreciated, the divisional chiefs ignored that custom. The paramount chief lacked sufficient political

authority to enforce his rights. Thus, the sales both deprived the paramount stool (and the paramount chiefs personally) of substantial economic gain, and undermined the power wielded by this centralised authority.

For the Ejisu-Juaben local authority, the appreciation of land values and speculative land acquisitions within the municipality presents an opportunity for them to raise much-needed revenues. Commenting on the rampant sales of customary lands, the Ejisu-Juaben Municipal director for Town and Country Planning Department (TCPD) noted that:

What we have realised is that some people [speculators] have a habit of holding onto their plots with the hope of reselling them when the value increases. It has become common particularly at this time that residents from Kumasi are relocating here. We have been considering a proposal for a 'vacant land tax' to reduce land speculation. It will also bring some money to us. (In-depth interview, planner, Ejisu-Juaben Municipal Assembly, 04.07.2017).

Indeed, the potential for raising land revenue for the public benefit has been highlighted in recent years (see for e.g. Awuah and Gyau, 2016, Agyemang and Morrison, 2017). As discussed in chapter five (see section 5.4), the introduction of the Land Administration Project in 2003 sought to improve land and property rights by integrating customary and statutory land systems through institutional reforms (World Bank, 2003a). The long-term goal is to expedite the process of formal land title registration and to foster prudent land valuation and information systems, ensure security of tenure and, in doing so, also release the latent value in land (Ehwi and Asante, 2016). Eventually, Customary Land Secretariats were established for recognised landowning communities as a strategy to build on and integrate customary and state systems of land management, which the Ejisu and the Juaben communities were beneficiaries of.

Yet, as the case narratives shall demonstrate, moves towards effectively recovering revenues generated from customary land transactions by municipal authorities have been ineffective. For different reasons in each case, I will argue that the political and institutional obstacles to generate revenue from customary land have proven extremely stubborn partly due to positive feedback effects and path dependent processes created by the rapid increase in land values. The remainder of the chapter explores the politics of efforts to institutionalise hybrid system of urban land delivery in Ejisu and Juaben with a particular focus on the outcomes for land value capture in the age of urbanization.

## **7.2 From Institutional hybridity to open discordance in Ejisu**

Ejisu is a fast-growing urban area with a population of 25,428 as of 2017 (MPCU, 2017). It is the administrative capital and the main urban centre for the Ejisu-Juaben Municipality. Ejisu is 15 km away from the central business district of Kumasi. Due to the rapid expansion of Kumasi and the high cost of urban land within the city Centre, urban growth is being diverted to Ejisu which is located along the Kumasi-Accra transport corridor. This is causing land values to increase, and much of the peri-urban land has become vulnerable to potential conversion to urban uses. In a context of increasing demand for land, customary authorities in Ejisu have begun to reinterpret and implement existing customary land law in new ways that allows them great discretion over the decision to convert agricultural land to potential urban use for private gains.

Initially, the Ejisu case presented a story of promising institutional change (Ubink, 2008c, Biitir et al., 2017). The critical moment which emerged following the commencement of the LAP reforms was grasped and turned into a critical juncture by the establishment of the Ejisu Customary Lands Secretariat (Gbawe CLS) in 2008. The Ejisu CLS was established by the national government as part of efforts to streamline customary land administration within the Ejisu-Besease traditional area. The CLS was welcomed by the chiefs and senior members of the landowning community (In-depth interview, CLS registrar, Ejisu, 07.07.2017). The CLS was meant to fulfil two main objectives: first, to help improve the quality of records and accessibility of information on land use and holdings, land transactions and availability, and associated financial and cadastral records. Hence, the CLS was responsible for the collection and maintenance of land records and transactions within the traditional jurisdiction of the Ejisu-Besease traditional area.

The second, and perhaps most important aim for establishing the CLS was to assure institutionalized community-level participation and accountability in the use of stool land and the revenue it generates (World Bank, 2003a). Despite this intention, the CLS was placed directly under the control of customary authorities. The expectation was that this gesture would help achieve the desired institutional hybridity in land governance by ensuring that the CLS operates as an integral part of the customary organization (Biitir et al., 2017). Moreover, the national facilitators argued that placing the CLS under the aegis of customary authorities would increase the coordination between the customary leaders and CLS staff, minimise delays in the process of land documentation and engender a sense of ownership and participation. An office accommodation was created within the palace of the Ejisu Paramountcy, and a package of equipment provided by the government to help resource and improve the efficiency of existing land management practices. The CLS staff were also appointed by the customary organization although they were trained under the LAP in various aspects of record keeping

and general principles of land administration. The salaries, including the cost for operating the CLS, were to be financed by revenue flowing from land transactions. Therefore, the CLS not only served as the decentralized administrative unit in charge of managing customary land holdings within the Ejisu-Besease traditional area, but also appeared to provide solutions matching the customary land administration problem at hand.

Yet, soon after its establishment, conflicts started to arise between the paramount chief and village (caretaker) chiefs, which paralyzed the institutional integration process, as the following sections shall show. The paramount chief of the customary organization sought to use the CLS to consolidate his political control over land. By making the political choice to work within the existing power structures of chieftaincy without progressing appropriate checks and balances, the state ignored the fact that chiefs often exercise customary privileges and use their powers to redefine land relations in their interest and to dispossess the powerless. The paramount chief's central role in the creation of the CLS provided opportunities for him to enforce a privileged land allocation arrangement. Village chiefs who derived no benefit from the new institutional arrangements responded by developing strategic alliances with public bureaucrats to co-produce local land use plans, enabling them to privatise, enclose, and dispose of customary land. The following sections explore how these strategic alliances between chiefs and public bureaucrats emerged, and the conditions that motivated and sustained these engagements and helped to facilitate private wealth accumulation at the expense of community members.

### 7.2.1 Institutional clash over land governance

Land in Ejisu is communally owned, held in trust by the Omanhene (paramount chief) of the Ejisu-Besease traditional area. The Ejisu-Besease traditional area comprises 33 towns/villages, of which Ejisu is the capital and the most urbanized town. Each town is ruled by a divisional chief, sub-chief or village chief (Odikro), who acts as the caretaker of the land within his jurisdiction. As the allodial title holder of the land, every land grant to a non-member of the landowning community requires the consent of the paramount chief, at least in principle.

Prior to the establishment of the CLS, the land acquisition procedures were such that a prospective developer approached a (caretaker) chief to negotiate and agree on a purchase price of the land. After an agreement on the price and payment of the *drink money*<sup>47</sup>, the applicant is issued an *allocation letter* to secure the grant even though it was orally made. Because most chiefs were illiterate and

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<sup>47</sup> *Drink money* represents a moral tokenistic offering traditionally paid to chiefs in the southern part of Ghana, in the form of cash or a bottle of schnapps, to start negotiations on the terms of a land grant

could neither read nor write in English, they created simple tools in order to record land allocations such as the *allocation letter*. The allocation letter simply communicates the intent of a land grant from a chief to a prospective developer. An example of a *letter* allocating a piece of land to a prospector in Nhyiaso, a town near Ejisu read, “*I have the honour to inform you that the above plot has been allocated to ... and I should be obliged if you would prepare the necessary papers for him*” (Mireku et al., 2016: 152). Although the allocation letter is insufficient to secure tenure on customary land, it is a requirement at the Lands Commission for land leasing. The *allocation letter* is then signed (or thumb printed) by the chief and witnessed by principal elders of the community. After the prospective developer is issued the allocation letter, the chief leads him to the Omanhene to endorse the allocation. As the allodial title holder, the Omanhene is given one-third of the drink money in line with customary practice (In-depth interview, CLS registrar, Ejisu, 07.07.2017).

However, in an era where the land market is clouded with dishonesty leading to multiple sales and contestations (Wehrmann, 2008), oral grants could not be entirely relied upon. The CLS was therefore established to help develop more secure formal mechanisms, to streamline the land allocation procedures as well as introduce principles of transparency and accountability in the management of customary land revenue. Following the establishment of the CLS, chiefs were obliged to give a written notice to the CLS whenever they allocated a parcel of land for development. Although the directive provided no strict guidelines for the nature, style or content, chiefs were expected to develop simple standard Allocation Papers on behalf of their stools to record land allocations. Unlike the *allocation letter* which merely communicated a land transfer, the *allocation paper* would provide much more details about the land transactions including the particulars of the parcel, parties and signatures/thumb prints. Thereafter, when a chief allocated land, basic details such as the name of the grantee, the designated number of plots, and the size of the plot allocated would be recorded to evidence that a certain transaction ensued between the grantor chief and the grantee. When all parties are satisfied and following the payment of the drink money, the allocation paper, is given to the grantee to present to the CLS for it to be recorded. Chiefs did not keep copies of the allocation papers because the CLS was the keeper of land records. These new reporting requirements ensured that a comprehensive land register was kept on all land transactions. At the request of the prospective developer, the CLS would then assist the grantee to prepare a lease and register the title to the land at the Lands Commission.

In terms of land use planning, there were no clear guidelines on the nature of coordination among CLS staff, customary actors and public planners. However, the expectation was that the CLS staff would support customary actors to develop local plans for their communities and ensure that land allocated

by chiefs were compatible with the municipal land use plan. Staff of the CLS, acting on behalf of customary actors were thus charged with the responsibility of shaping and implementing these expectations. As Biitir and Nara (2016) note, the initial design of the CLS provided room for discretion in the interpretation and implementation of how these broad aims could be achieved. The lack of specific guidelines is a reflection of government's 'policy of non-interference' in local chieftaincy administration (Ubink, 2008c). According to Ubink (2008b), government's desire to leave the interpretation of local tenure arrangements to the local elite and unwillingness to place any checks and balances on the customary realm can be explained by the close connections between state elite and chiefs.

It soon became evident that the CLS was seen by the paramount chief as an opportunity to consolidate the centralised control of the stool over land transactions. The paramount chief (Omanhene) of the Ejisu-Beasese traditional area sought to use the CLS to maximise land availability for profitable leasehold disposals to outsiders, and to strengthen the paramount stool's control over local land transactions for his private gain. Aware that land transactions to outsiders represent considerable sources of revenue, care taker chiefs were made responsible to the paramount chief for authorizing land transactions through the CLS. Chiefs were expected to present all land documents to the CLS for the Omanhene's signature. In this manner, the paramount chief controlled all local land transactions, and one-third of the profits from all transactions will be secured.

The increasing control of customary land revenues by the Paramount chief began to fuel resentment amongst caretakers who had invested their personal financial resources in the parceling of customary lands for delivery. This topic will be discussed in detail in see section 7.2.3. Most caretaker/village chiefs started to resist disclosure of customary land transactions to the CLS upon realizing that the Paramount chief directed land revenues towards private interests. Although chiefs are morally obliged to use part of the stool revenue for community development, caretaker chiefs reported that the actual practice differed considerably. Substantial amounts of land revenue disappeared in the coffers of the paramountcy (In-depth interview, Ejisu CLS staff, 07.07.2017). And for some chiefs, abiding by the new land allocation arrangements meant losing land profits to the paramountcy. Eventually, chiefs refused to use the CLS (i.e. the new institutional arrangements) as the basis for land transactions and documentation. As the CLS registrar explained:

The [village] chiefs felt that the CLS got to know everything about their business [land transactions] and the income that they generate. And that is the problem. They [chiefs] were missing out on the opportunity to keep all the money to themselves. (In-depth interview, Ejisu CLS staff, 07.07.2017)



To complicate matters, various forms of strategic alliances between chiefs and public servants in urban land delivery emerged in an attempt to resist the paramount chief's increasing control over land allocations and the revenue flowing from transactions. The Local Governance Act, 2016, Act 936 (formerly the Local Government Act, 1993, Act 462), mandates the Ejisu-Juaben Municipal Authority to prepare and approve planning schemes, grant building permits and enforce land use regulations within its jurisdiction. Before the Municipal Town and Country Planning Department (TCPD) (now physical planning department) grants a building permit to a developer, it is expected to check, among other things, that the site plan conforms to the municipal planning scheme and that the allocation paper is signed by the local chief (grantor). By means of the planning process, therefore, the municipal authorities can provide some checks on land administration by chiefs, preventing double allocations and unauthorised developments. At the initial stages of the CLS's operation, this institutional arrangement was reemphasised, albeit with additional requirements. The Ejisu CLS coordinator and head of the TCPD head agreed in principle that the TCPD should grant building permits only when an allocation paper bore the countersignature of the paramount chief (In-depth interview, Ejisu CLS staff, 07.07.2017). Thus, in addition to checking for the signature of the grantor (local chief) on land allocation papers, the checks would include the countersignature of the Omanhene. This requirement sought to strengthen the Omanhene's control over land transactions, and also ensure that the paramount chief's revenue was guaranteed for every land transaction.

However, less than a year after the CLS's operations, this arrangement collapsed. Various interactions with community members and key informants revealed that certain chiefs "negotiated" with the TCPD to discard the arrangement and to grant building permits to persons who possessed an allocation paper even if the grant did not have the countersignature of the paramount chief (In-depth Interview, Ejisu CLS staff, 07.07.2017). Sub-chiefs claimed that land allocations that are endorsed by a local chief and his elders are legitimate, even without the paramount chief's signature or authorisation. The discourse developed by chiefs to legitimize this practice was that their rights to administer the land derives from their function as caretakers on behalf of the community. They asserted that customary law permitted them to take decisions on behalf of their communities so far as they act with the consent and concurrence of the community elders (In-depth interview, village chief, Ejisu, 05.07.2017). And as discussed in Chapter 5, pre-colonial customary tenure relations permitted local chiefs to make land decisions with the consent of their respective elders. Thus, in the context of rapid urbanisation, the desire to maximise land profits has led chiefs in Ejisu to draw on pre-colonial tenure practices to assert their claim over land. Village chiefs therefore relied on the flexibility of customary law to assert and secure their claim to land profits by interpreting customary laws in their favour. Because customary laws are rooted in the local practices of respective communities, the meaning and contents

of customary rules are always in constant negotiation and interpretation in line with changing circumstances (Kludze, 2000, Blocher, 2006, Juul and Lund, 2002). Moreover, in many cases, the council of elders is fully or to a large extent composed of members of the stool family (Amanor and Ubink, 2016). Thus, it is possible for the chief to co-opt the elders by sharing the benefits from land administration with them, removing their incentives to effectively check the use of power. These concerns are captured by a community member's remarks:

The elders support the chief because they get some of the money. If they challenge him, they won't get anything. That is the situation here [Ejisu]. (In-depth interview, community member, Ejisu, 14.08.2018).

The TCPD on the other hand did not want to concern themselves with the 'politics' going on within the chieftaincy institution. The TCPD insisted that although requiring the countersignature of the Omanhene would be useful in improving land recordation, these arrangements are internal chieftaincy arrangements, which are beyond their mandate. As a local planner explained:

We have been told not to interfere in these chieftaincy matters. It is a chieftaincy matter and outside our purview to insist that allocations papers should be countersigned by the paramount chief. If the paramount chief cannot control his sub-chiefs, then what power do we have to interfere in these local matters? (In-depth interview, TCPD, Ejisu Juaben municipal authority, 04.07.2017)

Consequently, in the review of permit applications, the TCPD does not check for the countersignature of the paramount chief in the allocation paper. What is striking is that while the paramount chief saw the CLS as an opportunity to restore and extend his political and economic control over land, the sub-chiefs and caretakers sought to protect further revenue loss to them even as it caused the community's land resources to shrink. In order to undermine the paramount chief's political control and the new institutional arrangements that came along with the CLS village chiefs coalesced into an interest group, and interpreted existing customary land laws in their favour in order to assert their claim over land and the profits associated with its transactions. Consequently, the CLS has become dysfunctional and at the verge of collapsing<sup>48</sup>.

Discursive institutionalism emphasises the role of ideas and discursive interactions in maintaining (or changing) institutions. The analysis above show that the continuous framing of narratives that favour local chiefs' interest was crucial for the chain of events that unfolded. Customary actors used favourable narratives as 'weapons' to justify and legitimize their actions in a manner that facilitated institutional continuity. The case narrative points to the various ways that village chiefs constructed narratives to protect their privileged role as direct administrators of customary land. By drawing on

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<sup>48</sup> At the time of the field work, the CLS had only one active officer (the CLS secretary). Over the period of the data collection period (6 months), only 4 clients visited the CLS to make inquiries. The CLS had not documented any transaction over that period

the idea that local chiefs can allocate lands once the village elders approve, village chiefs justified and legitimized their actions and subsequently succeeded in contesting changes to the existing institutional forms.

The importance of narratives as important tools for contesting the new forms of institutional arrangements is also illustrated by its articulators, namely disadvantaged village chiefs. Disadvantaged village chiefs coalesced into a subordinate group and collectively articulated, negotiated and legitimized these narratives. This is consistent with Schmidt's (2012) argument that ideas do not "float freely" but need to be carried by articulators or agents. Village chiefs worked together to achieve their aims through informal (one-on-one) discussions and negotiations with public planners. This way, the village chiefs were able to protect their privileged role as 'custodians', although they administered the land in ways that contradicted this fiduciary function. These interaction practices confirm Schmidt's view that actors are sentient (thinking and speaking) beings who generate and deliberate about ideas through discursive interactions that lead to collective action. Similarly, public planners used the discourse of 'non-interference' to justify why they have desisted from checking the countersignature of the paramountcy by insisting that such matters are internal chieftaincy issues. This way, public planners freed themselves from the obligation to ensure compliance and proceeded to negotiate deals with village chiefs.

The forms of narratives actors construct and the many ways they deploy these through interactive practices tells us something about the institutional context which shapes actors' motivations leading them to act in particular ways. In a context of increasing land values, land profits associated with the existing land allocation arrangements means that parties will emerge to defend them even if the impact of the proposed changes do not fit into their interests and ambitions. Lentz (2010) already cautioned us that strengthening customary land institutions without significant measures for checks and balances could provide opportunities for customary actors to redefine customary law in their own interest because of the opportunities to generate revenues from sales and transactions in land. The case narrative illustrates this point.

#### **7.2.2 "Negotiated" planning: emergent strategic alliances between Chiefs and public bureaucrats**

The collapse of the new land allocation arrangement meant that once again, local chiefs returned to the opaque land administration arrangement. Some chiefs have capitalized on the failed land allocation arrangements to privatize land profits generated from customary land transactions. This often takes the form of various negotiations and strategic engagements between chiefs and public bureaucrats to prepare local land use plans (popularly called a Planning Scheme or Layout and used

interchangeably in this study) for their areas. In accordance with the Local Governance Act, 2016 (Act 936), municipal authorities are expected to develop land use plans for their respective areas. On the contrary, and as is the case elsewhere (see Yeboah and Obeng-Odoom, 2010), chiefs formally initiate the plan preparation process by requesting the services of the TCPD (renamed the physical planning department) of the Ejisu-Juaben Municipal Assembly. A planning officer justified why chiefs but not the TCPD are the lead initiators in the preparation of local land use plans as follows:

We are not land owners. The chief is the custodian of the land. Therefore, I cannot prepare a planning scheme for his area or compel him to do it if he doesn't want to. So usually the owners of the land must initiate the process by writing formally to us requesting our services to prepare a local plan. If they do not demand our services, we do not go to the community (In-depth interview, planner, Ejisu-Juaben Municipal Assembly, 04.07.2017).

These dual but interrelated mandates of who owns the land, and who takes decisions on the use to which the land should be put, creates a hybrid and interdependent system of land administration where both statutory and customary authorities co-exist and interact at various levels. Following the receipt of the request for the development of local plans, the planners of the TCPD proceed to design the local plan largely in collaboration with the chiefs, but with minimal or no community involvement. In some instances, chiefs contract the services of private planning consultants to develop the local plan. A divisional chief explained that private planning consultants take a shorter period to prepare local plans, and at a lower cost compared to the TCPD (In-depth interview, divisional chief, Ejisu, 14.08.2017). Plans prepared by private planners are then reviewed and approved by the TCPD to ensure that it matches with the planning conventions in the municipality.

As stated by some chiefs, the motivation for the development of local plans for customary lands includes facilitating the provision of basic infrastructure such as electricity, roads, and water; allowing for easy plot boundary identification; and ensuring orderliness in land development. Yet, it is worth emphasizing that beyond these stated motivations that appear to be in the public interest, some implicit personal motives can be associated with the increasing desire by chiefs to plan and sub-divide lands for urban uses. Various interactions with village chiefs and community members suggest that an inherent motive for the development of local plans is to get higher land values and to facilitate the allocation of lands to prospective developers. Due to its good accessibility and proximity to the city of Kumasi, an active land market has emerged in Ejisu with an increase in demand for residential and commercial use. This has motivated chiefs in charge of land administration to allocate hitherto farmlands for urban uses. Thus, much as chiefs may seem to attempt to be facilitating orderly development and observing planning regulations through local plan preparation, it is also the case that they are much more enthused by the immediate land profits that they derive from land

allocations. Besides the fact that areas with local plans have higher land values compared to those without, it is believed that land seekers prefer well-planned neighborhoods (In-depth interview, planner, Ejisu-Juaben Municipal Assembly, 04.07.2017). This belief coupled with the myriad sensitization programs on the relevance of land use planning and documentation of land transactions under the LAP have made chiefs to recognize that allocating land without first developing a local plan is not profitable. Thus, chiefs have resorted to public bureaucrats for land surveying and planning services.

The design of the local plans further reflects these implicit personal motivations. The dominance of residential land use in the local plans for all the sites reveals the motives behind the preparation of local plans by chiefs as shown by Figure 7.1. Their collaboration with public bureaucrats in preparing local plans was principally aimed at facilitating the opening up of peri-urban customary lands to the market, rather than meeting the needs of their subjects. Since peri-urban residential lands are in high demand, zoning a larger proportion of stool land into residential uses makes it easier for chiefs to subdivide such lands into readily marketable commodities for prospective purchasers. The result of such negotiated land use planning is the replacement of agricultural land use by residential land uses resulting in the displacement of peri-urban farmers. Besides, important land uses that were earmarked as reserved lands (open space), playgrounds, communal cemeteries and other public uses have been converted to residential uses in order to augment the supply of building plots. A community member expressed the following concern following the re-allocation of a plot earmarked for public use into a residential plot:

There is a land which was allocated for the construction of a fire service station, but it has been sold by the paramount chief and no one has attempted to take up the issue. (In-depth interview, community member, 14.08.2017)

Another community member tells of a confrontation over an intended sale of land earmarked for a public cemetery:

“In Krappa [a town under the Ejisu traditional area], the chief wanted to sell a land that has been allocated for a community cemetery to a private developer. It took the effort of one assemblyman to stop him. They became enemies till the chief passed away”. (In-depth interview, community member, 14.08.2017)

The extracts above reinforce the idea that the main aim of the chiefs is to maximize financial returns from land transfers. It can thus be concluded from the designs of the local plans that the plans do not serve the interests of the communities since they sacrifice the public interests of indigenes for the private interests of traditional land custodians.



Figure 7. 1: A Local Plan (for Ejisu-Hwereso) showing land use conversions  
 Source: TCPD, Ejisu-Juaben Municipal, 2017

A number of practical strategies and agreements are employed by chiefs to finance the costs of services rendered by the contracted public bureaucrats for both the planning and sub-division of land. These payments are either in cash or kind depending on the form of payment agreed between chiefs and the surveyors/planners. Chiefs are required to engage the private services of surveyors from the Survey and Mapping Division of the Lands commission to prepare the base maps, which is a prerequisite for the preparation of a local plan. Where chiefs are unable to afford the expensive costs involved, plots of land are given to survey officials in lieu of cash payment for their work. A fee of 10% of the total plots of land sub-divided is often charged by surveyors. For example, out of 100 plots surveyed and demarcated, 10 plots are used to defray the costs of surveying and demarcation. When the base map is complete, a negotiated cash payment is paid by chiefs to the contracted planners (TCPD officials) to prepare the local plan. Payments vary depending on the volume of work and size of land to be planned. Additional monies are also paid to the contracted planners and surveyors for subsequent field visits. When an officer of the Ejisu CLS was asked about the costs incurred by chiefs in getting their areas planned, she exclaimed:

In fact, the officers at the survey department and TCPD are making a lot of money. If you are the head of the TCPD, you can build a house or buy a new car within two months. (In-depth interview, CLS officer, Ejisu, 07.07.2017).

Indeed, this act of giving plots of land as payment for professional planning and surveying services is not uncommon in many parts of the country (see for e.g Akaateba et al., 2018). Although this is improper, it is a widely reported practice, attributed largely to the inability of chiefs to raise cash upfront to cover the costs of local planning services for undeveloped lands. These payments are unofficial arrangements made between chiefs and land administration bureaucrats of the statutory land sector agencies.

A key concern that emanates from the insights from the chief-public bureaucrat interactions, however, raises questions about, why public land administration actors require private payments from chiefs for public services rendered. While acknowledging that the emergent practice is improper, the director of the Ejisu-Juaben TCDP attributed the payments to the weak capacity of the department:

We are not expected to charge them (chiefs) for our services because the government is supposed to resource us. But we lack the resource capacity to spearhead the plan preparation. We hardly receive stationary these days. So we tell the chiefs our challenge and negotiate with them to make payments to cover the cost of materials such as fuel, labor and other equipment that are needed for the preparation of the local plan. Because the department does not have the budget, we request for mobilization from the chiefs to get the materials depending on the volume of work. If the chief is unable to find the money, we agree with the chiefs to use our private funds so that when we finish the plan and the plots are sub-divided, we are given some few plots of land as repayment. (In-depth interview, planner, Ejisu-Juaben, 04.07.2017).

The director of TCPD's comment suggests that on the one hand, challenges presented by the rather weak capacity of the municipal authority has created an opportunity for some public servants to use their positions for private accumulation. On the other hand, chiefs have also taken the chance to enter into strategic alliances with public servants to convert peri-urban agricultural lands into urban uses. Chiefs are perhaps keen to bear these costs because the control over land use plans offers them opportunities to protect land values by determining preferred changes to land use in defined areas. Though chiefs invest a significant amount of their personal resources to plan their communities, they are recompensed in the form of land revenues when such lands are allocated. In newly built developments, the motivation to control land use is even more enhanced because of the opportunities to reap higher land revenues by converting agricultural lands to urban uses. In effect, customary actors have emerged as an important new set of players in the planning arena. These strategic actors are continuously negotiating and searching for gaps and opportunities to secure certain planning powers and to assert their claim over customary land. As the evidence suggests, these actors often find

opportunities in the weak capacities and ambiguities provided in the planning regime to push for substantive outcomes in their preferred direction.

The evidence from plan initiation, design and financing presented above point to an integration of customary and formal authorities in local planning in Ejisu. The interactions between the two sets of actors creates a pragmatic mixture of formal land sector institutions and traditional institutions in urban land delivery, although the outcomes differ from what was envisaged under the land reform program. Municipal planning authorities acknowledge that they cannot solely undertake local planning without collaborating with customary authorities who are both customarily and constitutionally recognized custodians of the land. Similarly, the chiefs, acknowledge their dependence on public land administration technocrats who have the technical expertise, authority, and legitimacy to prepare local plans. The director of the TCPD expressed this interdependence aptly in his statement: “we planners cannot plan an area without the chief’s involvement and the chief cannot develop a plan by himself without us. He does not have the technical expertise to do that” (In-depth interview, planner, Ejisu, 04.07.2017).

Moreover, it can also be argued that the inclusion of customary authorities in the processes of local land use planning and land delivery in Ejisu stems primarily from the dual land management system enshrined in the 1992 constitution and promoted under the LAP. While guaranteeing the powers of chiefs as custodians of stool lands in Article 36 (8) on the one hand, the constitution in Article 267 (3) on the other hand empowers local government authorities and formal land sector agencies with the authority to take decisions over land use and management. This constitutionally induced interdependence compels customary leaders as custodians of customary lands to collaborate with public servants for the preparation of local plans. This resonates with Brandsen and Honingh (2016) argument that for some public services, co-production is not a matter of choice but an inherent characteristic due to interdependent relations among actors. These forms of interdependence create a hybrid system where each actor needs the services of the other to achieve their individual and collective interests. Similar conclusions have been drawn by Booher and Innes (2002), who posit that when participants in a collaborative engagement each have something to offer, a form of interdependence based on self-interest and reciprocity emerges and serves as a source of energy that fuels network power.

Besides the opportunities created by the weak capacities of local governments and the regulatory framework, the case findings show that chiefs have also deliberately positioned themselves as strategic actors in the land development process which enabled them to establish connections with government actors. They achieved this by presenting themselves as friendly partners in the planning



and delivery of urban land. Apart from demonstrating professionalism by initiating the development of these local plans, customary actors also finance the development of these land use plans. They aimed in this way to create a basis of trust that would enable future cooperation with local government administration. The process of building these partnerships and coming to compromises or consensus necessarily involved compromises, deliberations and negotiations in the ways that discursive institutionalist point out as coordinative discourse (Blyth, 2002, Schmidt, 2012). As such the emergent negotiated practices reflect the interests and agendas of both the state and customary stakeholders who together worked to configure an institutional arrangement that yields mutual benefits in the context of increasing land values. The negotiations and strategic alliances between chiefs and planners for both cash and in-kind payments for planning and surveying services demonstrates that hybrid land governance arrangements can sometimes be guided by private motives and gains. Thus, hybrid land management emerged, in line with government policy, but not in the ways envisaged under the land reform program.

### **7.2.3 Privatising communal wealth**

#### *Land delivery*

A critical but ignored issue in the discourse promoting hybrid land administration systems relates to the outcomes that emerge from the engagements between state and non-state actors in land administration. Evidence from various accounts given by the study participants show that the benefits of the local plans to community members have been marginal, and in some cases detrimental. The local land use plans have been used as instruments to convert, enclose, and dispose of customary land for private gains.

In the past, a locally instituted compensation scheme based on customary law prevailed, whereby local land users (indigenes) whose farmlands were converted to other uses due to urban development were given a replacement land of equal value to continue their farming activities. A village chief explained the compensation arrangement as follows:

In those days, before you allocate a piece of land for sale, you first consider your subjects especially those farming there. At the time, the rule was that for a farm that is up to an acre (four plots), you give the occupant one plot. He can either build on it or sell it and enhance his economic condition. When we allocate the remaining three plots, the drinks money from one plot goes to the caretaker chief for his own upkeep. Then one goes to the Omanhene for his upkeep and personal expenses. We use the last one to develop the community. But if somebody has less than four plots, we sometimes negotiate, and the occupant pays some small money for it. (In-depth interview, village chief, Ejisu, 05.07.2017)

In recent times however, the locally instituted compensation arrangement has been modified significantly or even disregarded in some instances. Community members report that occupants who

have built physical structures on community lands have had to pay GH¢1000 (£176.05)<sup>49</sup> in order to secure these lands. Securing the land in this sense refers to payments for land allocation documents (i.e allocation paper or land title if one can afford) from the village chief and sometimes an additional GH¢200 (£35.21) to the paramount chief to sign and confirm the documentation for their allocated lands. However, those who used community lands for farming purposes only, and without physical structures lost their lands. Such lands were converted into urban uses and allocated to those who are willing and can afford to pay for them. Occupants are sometimes given the first opportunity to acquire such lands from the chief if they still wanted to have access to them although most people hardly have the financial resources to pay to keep those lands.

There is always an urgent need to allocate some plots of land to potential developers in order to recoup the cost incurred in parceling customary lands. Various interactions with community members reveal that for newly planned areas, chiefs often distribute these plots among themselves, their sub-chiefs and elders. These plots are then subsequently leased out to prospective developers and the profits kept for themselves. Although the community elders are expected to advise and check the powers of the chief, they have coalesced into an interest group to advance their private interests. The chiefs' administrative role in land rights transactions enables them to appropriate subjects' interests in land for purely economic motives in ways that customary rules and principles, otherwise interpreted, would not make possible.

It is not only village chiefs that are engaged in these self-seeking land delivery practices. Community members report that the Omanhene (paramount chief) is equally engaging in such opportunistic practices of land allocations resulting in protestations from community members. One of such instances relates to a 255-acre prime land that has been reserved by the paramount chief near the site for the construction of a national inland port infrastructure – the Boankra inland port. The Boankra Inland Port is a dry port designed as a rail and shipping hub to serve as an inland extension to the Tema Port (Government of Ghana, 2016b). For this purpose, the government has acquired 400 acres of prime farmland in the town of Boankra, near Ejisu. At the time of the fieldwork, the land for the inland port construction had been demarcated, enclosed, cleared, and an administration block completed and nearly ready to be occupied (see figure 7.2).

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<sup>49</sup> Note: £1=GHS5.68 as August 17, 2017

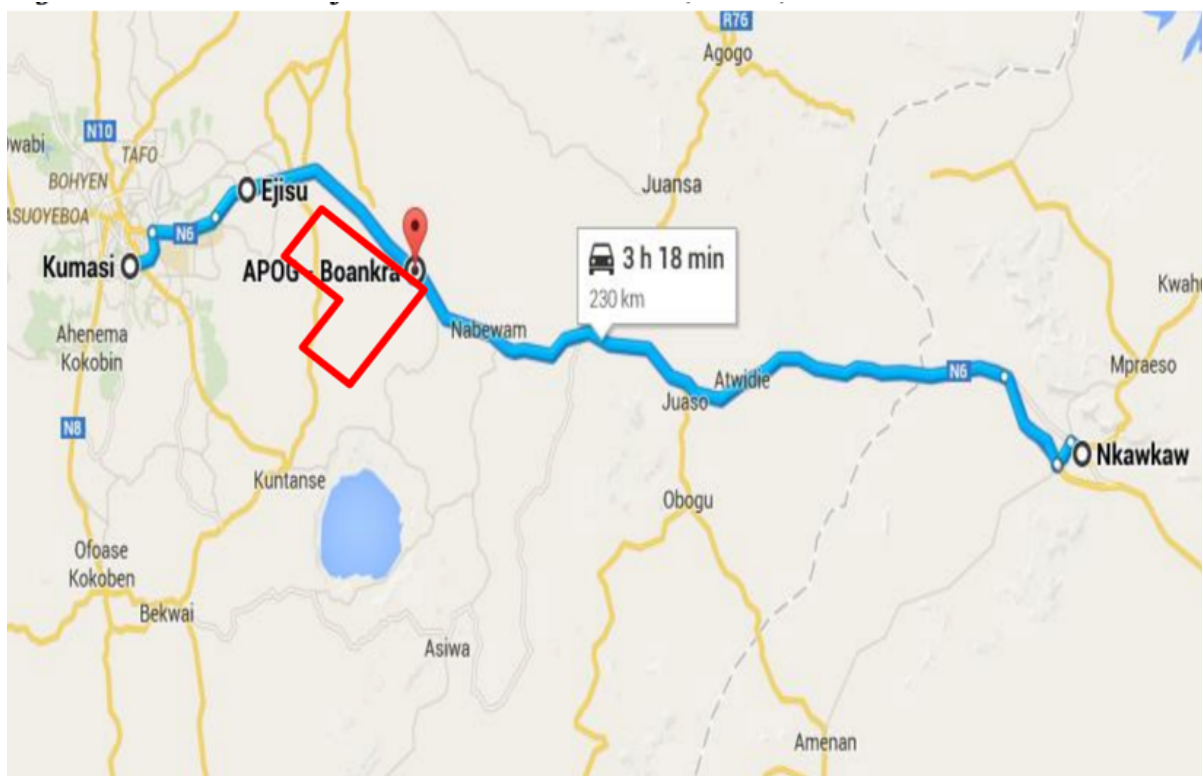


Figure 7. 2 Site for Boankra Inland Port (Red Boundary).  
Source: Developed by author

Interviews with community members demonstrate that the paramount chief has reserved a 255-acre land near the Boankra inland port for his private use with the hope of reaping huge speculative profits in the future (Community group discussion, 14.08.2018). Although the exact location of the reserved land is unknown, a private surveyor confirmed that he was contracted to demarcate the reserved land for residential and commercial development, and to prepare land title registration documents for the reserved land (In-depth Interview, private surveyor, Ejisu, 14.08.2017). Indeed, following the announcement of the inland port project, land values around the project area increased more than three-folds. For instance, a plot of land (70ft x 90ft) that cost GHS2000 in Kubease, a community near the port site, increased to between GHS10, 000 to GHS15, 000 depending on the proximity of the land to the project area. By reserving a large parcel of land near the Boankra project site, the paramount chief stands a good chance of reaping huge profits from allocating sub-divided plots in the near future. Insights from the land use plan implementation process and the land conversion practices raise critical issues of equity and demonstrate how public interest can be sacrificed for private motives. There are clearly few winners from the implementation of the local plans in Ejisu. These inequalities are even more pronounced in the way land revenues (drink money) are used.

### *Revenue from customary land*

Since whoever controls landholdings incontrovertibly controls land markets and the revenue flowing from land transactions, it can be argued that in Ejisu the bulk of the revenue generated from customary lands end up with the customary authorities. In accordance with Act 481 of the 1992 constitution, all revenues (rent and premiums or any form of income) that are raised from customary land are meant to be paid into stool land account for redistribution by the Office of the Administrator of Stool Lands (OASL), according to a prescribed formula. Yet, chiefs hardly disclose or record payments of drinks money on land documents. Declaring the sum of drink money (premium for leasehold transactions) for land transaction would mean that the OASL can collect and redistribute it, in effect leading to the chiefs losing a large percentage of the money. The drinks money is thus generally not disclosed and continues to be represented by chiefs as a ritual obligation rather than a capital gain from disposal of land. This topic is discussed thoroughly in section 7.4. Despite retaining all the revenue flowing from land transactions, customary leaders fail to use these revenues for social and economic development within their respective communities. During a community group discussion on the use of land revenues from customary land a respondent remarked as follows:

Don't even talk about the money [from land lease sales]. No development has happened here. Here we only sell and spend the money. In fact, our land is finished that is why all these cannot happen here. Instead of setting up a [land management] committee to decide on how to use the money from the land, he [the chief] won't. He prefers to use the money for himself. (Community group discussion, Ejisu, 14.08.2017)

Another respondent lamented:

The chiefs enjoy a lot from the sales. So, I think the government should intervene. If the profit generated from land sales are used well, there would be a lot of developments in this town (Community group discussion, Ejisu, 14.08.2017).

Community members believe that the presence of a land management committee has the tendency to inject some discipline in the processes of land allocation and the revenue that accrues from land transactions. The Case of Gbawe (chapter 6) illustrates this point, where the creation of a land management committee comprising of community representatives helped to check the powers of land actors in the use of land revenues. In the case of Ejisu however, demands for the creation of land management committees to promote community-level participation in land management have resulted in hostile confrontations between chiefs and local community members.

We don't have a land management committee in this town. Everything rests on the chief's discretion. Some of the chiefs are not good, they are greedy. If there were a [land management] committee, the members would demand that some portion of the land profit should be used for development in the community. We have tried (unsuccessfully) to get the chief to set up a committee but he won't do that.

He wants to continue enjoying the money alone. (In-depth interview, community member, Ejisu, 14.08.2017)

Aggrieved citizens attempted to transcend the political parameters imposed by the customary regime by appealing to the Ejisu-Juaben local government authority to sanction the unlawful behavior of some chiefs. But as in the case of countersigning the allocation paper issue (section 7.2.1), the local government authority avoided taking action against unruly chiefs. A resident explained the local authority's passive role as follows:

The local government cannot do anything because the chiefs are too powerful. In fact, they fear the chiefs. Take the municipal chief executive for instance who was assisted by the Omanhene to gain his position. He cannot complain or say something when the Omanhene sells a land illegally. The chiefs have too much power and now they take advantage of that to do whatever they want. That is why I said we have given the chiefs too much power. (In-depth interview, community member, Ejisu, 14.08.2018)

These remarks give credence to Ubink and Quan's (2008) postulation that the struggles over the land-related prerogatives of chieftaincy is partly a result of government's attempt to stay on the good side of those who broker land. For ordinary citizens therefore, the practical impediments to appealing to the state for redress can be overwhelming, especially in settings such as Ejisu where the exercise of power is clearly biased in favor of chiefs.

In sum, after almost ten years (2008 - 2018), the results of these state-led attempts are mixed at best. The case narrative shows that the old institutional arrangements for land allocation continued and the new rules for land use planning have been redirected by customary actors, in collaboration with public bureaucrats, to achieve new purposes and functions. Similar opportunistic engagements between chiefs and public actors has been emphasized elsewhere (Akaateba et al., 2018), yet the findings from this case provides a more in-depth look into these processes, and motivations and conditions that sustain such opportunistic engagements.

Discursive institutionalism emphasises that the ways in which a given problem is understood are of great importance for how potential solutions are perceived. One implication being that there is no need of a solution for a phenomenon that is not regarded as a problem. Another implication is that consensus concerning how a given problem is presented may pave the way not only for the emergence of new conceptions of how it can be resolved, but for institutional change as well. The chain of events and the deliberate attempts by customary actors to facilitate institutional continuity in the Ejisu case shows that customary actors did not share the same understanding of the land problems as the LAP implementers, namely, that the land market was dysfunctional. While the LAP perceived the existing regulations and norms as incapable of dealing with the state of affairs, customary actors perceived

them as functional and beneficial to them. Because a shared understanding or consensus concerning the existence of a problem was lacking, customary actors did not consider change to be necessary as such mobilized to maintain the existing arrangements. The analysis about institutional change in Juaben illustrates how consensus concerning land market problems emerged and how this inevitably resulted in changes in the processes of land administration and planning. It examines the experiences of Juaben, where similar efforts to develop hybrid land governance regime has emerged. Unlike Ejisu, attempts to establish in a hybrid institutional land system in Juaben has led to fairly equitable land development. First, I discuss the trigger events that led to a ban on land allocations and the role of change agents in securing the support of the state in establishing institutional arrangements for land management. This is followed by an analysis of the barriers that had to be overcome in order to establish collectively agreed arrangements for land use planning and delivery.

### **7.3 Establishing hybrid institutions in Juaben: a successful story?**

This second case examines similar efforts to establish hybrid institutions for land management in Juaben. The institutional creation process in Juaben evolved from within, in response to two events, notably the increasing chaos and dysfunctionalities in the land market; and the awareness of consequences of same in neighbouring Ejisu. These events triggered the customary organisation to intervene and to take the initiative to transform the existing institutional arrangements with support from the national government. But on the basis of the previous arguments (and the remainder of this chapter), this thesis challenges the inclination to think of trigger events in terms of linear cause-and-effect relations. Institutional change was rather the result of concurrence of events, consensus concerning an emerging problem and people who recognised and exploited opportunities. These discursive practices required customary actors with the capacity to be attentive to meaningful windows of opportunity, to act as credible carriers of ideas and to think up new ways of changing their institutions through ideas and discourse. Here the role of customary actors as strategic agents in the institutional change process is emphasised.

The section that follows illustrates how the Juaben customary organisation attempted to end distributional conflicts over land profits by placing a ban on all land transactions with a directive that all land allocations must be guided by local land use plans. Section 7.3.2 further illustrates how the customary organisation secure support from the state to support these local processes through the establishment of the Juaben Customary Lands Secretariat. The CLS helped to standardise procedures for land management at the local level. The remaining sections then elucidate how both chiefs and community members were given a positive stake in land management through the establishment of Land Management Committees and use of land revenue at the community level. These community-

based approaches bolstered public confidence in customary land actors, resulting in land governance and discipline in Juaben's land market.

### 7.3.1 An embargo on land sales: learning from the neighbours

Juaben is a fast-growing urban centre and the second largest town in the Ejisu-Juaben Municipality, following Ejisu. As at 2017, Juaben recorded a population of 18,549 (MPCU, 2017). Similar to the traditional governance arrangement in Ejisu, land in Juaben is communally owned, held in trust by the paramount chief (Omanhene) of Juaben Traditional area. The Paramount Chief (Omanhene) oversees land allocations within the traditional area by consenting to every land grant to non-indigenes.

Unlike in Ejisu, however, where the main motivation for land use planning was due to increasing urban pressure, Juaben had a different history regarding the development of local land use plans. In view of the pressures of urbanisation and the resultant increase in land values within the community caused most village chiefs to begin to allocate parcels of land rampantly and without the consent of the Omanhene. This meant that profits from land transactions were not shared with the Omanhene. Although this was a concern, it was not enough to trigger any changes to the existing institutional arrangements. The urgency to do something was however heightened by the emerging awareness among local stakeholders in Juaben about the consequences of similar land market dysfunctions observed in Ejisu. Information about the land conflicts and rifts between various chiefs and their community members in Ejisu had spread to neighbouring towns, including Juaben. Similar land conflicts and contestations over land rights were beginning to appear in Juaben as well. To avert these conflicts, the Omanhene decided to intervene, as the worsening land market conditions was beginning to reflect badly on his image. As the secretary to the Juaben traditional council noted,

“What the chiefs were doing was disrespectful to Nana (Omanhene). Nana is not bothered about the money [land revenue] but the lack of respect for our custom. He is big man [prominent citizen] and well respected across the country. He even owns an Oil factory and other assets so he's not concerned about the money. But the issue is that we cannot fold our arms and allow the same thing [land conflicts] that happened in Ejisu happen to be repeated here [Juaben] too”. (In-depth interview, secretary, Juaben traditional council, Juaben, 20.07.2017)

It is important to note that the paramount chief for the Juaben traditional area, Nana Otuo Siriboe II, is an accomplished electrical engineer, entrepreneur and is currently the chairman of Ghana's Council of State<sup>50</sup>. Needless to say, the paramount chief was not only influential but also wielded much authority and credibility among the customary organisation.

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<sup>50</sup> The Council of State of Ghana is a 25- member committee, of prominent citizens, responsible for advising the president of Ghana on national issues. The Omanhene previously served as a member of the Council of state from 2001 to 2009, among other many Government of Ghana appointments.

The Omanhene, through the Juaben Traditional Council, placed an embargo on the allocation of all lands within the traditional area and insisted that land allocations must be guided by a local land use plan. As explained by the secretary to the Juaben traditional council;

We [traditional council] arrived at the decision to implement the ban in August but we finally effected it somewhere in late 2015. Now it is only those communities with local plans that are allowed to allocate lands. Every chief is required to prepare a local plan for his community. All the communities know about this law. We want to make sure that every community develops in an orderly manner. (In-depth interview, secretary, Juaben traditional council, Juaben, 20.07.2017).

In other words, the decision to ban all land allocations was based on a deliberative process among local stakeholders, although the Omanhene initiated the discourse. This deliberative approach facilitated consensus building and the exchange of ideas among participating customary actors on how to proceed with the ban in ways that did not cause internal discontent and internal conflicts. Consequently, there was very little resistance to the ban considering that it was a collective decision among members of the Traditional Council which includes all the village chiefs and/or their representatives. The impetus for insisting that all village chiefs should prepare local plans, as stated by the secretary, includes facilitating socio-economic development in Juaben; using land tenure security to facilitate property development in the community; and ensuring orderliness in land development. In addition to these stated motivations which appear to be in the public interest, the Omanhene was also concerned with bringing certain local chiefs to order, especially those who transact in land without authorisation and without accounting to the Paramount stool. This desire to check unruly chiefs is captured by the remarks of the secretary to the Juaben traditional council:

We [traditional council] will not lift the ban until they [chiefs] have surveyed and demarcated their lands. When all the land is surveyed, it will be easy to tell how many plots exist in a particular community. Let's say you [a chief] sub-divide the land and there are about 2000 plots, everyone will know there are 2000 plots in your jurisdiction. So whatever happens, we would eventually know how much money to expect from you when you allocate the land. (In-depth interview, secretary, Juaben traditional council, 20.07.2017)

In the council's view local plans would not only promote orderly development, but also provide valuable information regarding the number of plots available and the potential revenue that should be expected from a particular community. Constructing and communicating the 'ban' in this way was crucial in attaining the support of the traditional council, including potential veto actors. This is because the perceived benefits associated with this framing of the ban connected with the perceptions of members of the traditional council. For instance, the ban had the potential to address their concerns about unruly chiefs whose actions had started to tarnish the image of the paramountcy, including the Juaben traditional council. Moreover, they understood that the new measures could



improve the revenue potential of the council and by extension, members as well. Therefore, the new propositions neatly fitted into the ambitions and interests of members of the council, which enhanced the acceptability of the new initiatives.

The only challenge with implementing the directive, however, had to do with the costs involved in developing land use plans for the various communities. Following the directive for all chiefs to develop land use plans, the traditional council placed a request to the TCPD of the Ejisu-Juaben Municipal Assembly to develop land use plans for the various communities in Juaben. As was the case with chiefs in Ejisu, the planning department advised the Juaben chiefs to self-finance the cost of surveying and plan preparation. Hence, to support village chiefs in meeting these costs, the Juaben traditional council made funds available to communities incapable of meeting the costs involved in surveying and planning. This topic is discussed in section 7.3.3. As at time of the fieldwork (August 2017), 16 out of 33 communities had completed their land use plans while others were at various stages of the planning process.

### 7.3.2 “We can’t do it alone”: establishing the Juaben customary land secretariat

The approach to establishing the Juaben Customary Lands Secretariat (Gbawe CLS) took a distinct form from that of the Ejisu CLS. Unlike in Ejisu, where the establishment of the CLS was state-driven, the process of establishing the Juaben CLS was facilitated by the Juaben traditional council. As noted by the Juaben CLS coordinator:

The CLS was established on 9<sup>th</sup> December 2014. Initially, we had our own system in place where we allocated plots of land and took records of those allocations. But we thought it wise to formalise the processes that is why we invited the government to support us. So, the CLS came to formalise what we were doing. (In-depth interview, Juaben CLS coordinator, 02.08.2017)

This extract reveals that the Juaben traditional council managed their lands in accordance with customary practices and usage. The establishment of the CLS thus sought to strengthen the existing procedures of land management and to improve these seemingly institutionalised processes by operating as the decentralised land administration unit for the Juaben traditional council. Contrary to the experience in Ejisu, customary authorities in Juaben took ownership of the CLS and facilitated its establishment. This is partly attributed to the approach in establishing the Juaben CLS.

It is important to highlight that after 2008, the LAP revised the approach to establishing CLSs across the country from a top-down approach to make it demand-led. Following a review of CLS operations across the country showed that the top-down approach (state-led approach) was not working towards project expectations (Biitir et al., 2017, Bugri, 2012, 2017). Consequently, assistance for the

establishment of a CLS was extended to customary authorities after they request for it. When a customary organisation expresses interest, an assessment is conducted to ascertain the economic viability of the traditional area. Economic viability is judged by the demand for land relative to supply of available land; extent of catchment area of customary authority; potential for income generation from land transactions to support CLS once established; and the nature of land based economic and social activities (Bugri, 2012). The customary land owners are also assessed for their readiness for a CLS, indicated by their willingness to allow necessary changes to extant land management structures; preparedness to meet costs of personnel and material etc. for running the CLS; and preparedness to provide suitable office accommodation for the CLS. This means that assistance for the establishment of a CLS is only extended to a recognised customary organisation only when it has fulfilled these conditions. The coordinator of the Juaben CLS reported their experience as follows:

When it was established, they [national LAP officials] brought a set of office equipment. And we [traditional council] provided an office accommodation within Omanhene's palace. The office has a registrar, secretary and others who were already employed by the traditional council. We had our own system that worked for us. So we integrated the existing system with the new establishment. We maintained our staff rather than engage new people to reduce cost. Besides the existing staff are already familiar with the activities of the traditional council. (In-depth interview, Juaben CLS coordinator, 02.08.2017)

The Juaben CLS was therefore set up to facilitate the maintenance of accurate land records, fees and charges associated with land grants. By serving as the link between the landowning community and public sector land agencies, the CLS also ensures that development conforms to planning schemes/layouts at the local level. It is also the responsibility of the CLS to directly supervise the implementation of the traditional council's land policies, including the directive that land allocations and subsequent physical development must conform to local land use plans. To ensure that it operates with financial autonomy, the CLS's activities are to be financed by revenue generated from customary land allocations.

The [Juaben] land management committee has laid down a procedure for sharing the revenue from land transactions. We [land management committee] agreed that for every drink money generated from a land transaction, one-third of the revenue will be given to the paramount chief, 10% to the Queen mother, 5% for the operations of the CLS, and the remainder is retained by the Town or village land management committees to run the town or village. So we are going to use that 5% to run the CLS. But presently as we have suspended all sales of land, we have been supported by the traditional council, including our field activities and land documentation costs and papers and other administrative activities. (In-depth interview, Juaben CLS, coordinator, 02.08.2017)

The extract above suggests a strong sense of ownership and commitment by the Juaben traditional council to ensure improved land administration within its traditional area. The Juaben traditional council has committed to finance the CLS's operations, at least for the early years of its operation,

until such a time that significant revenue has been generated from customary land transactions. The council envisages that the laid down procedure for sharing land profits will support the development of the CLS and strengthen the capacity of other local structures for land administration within the traditional area.

The importance of aligning self-organised initiatives with government's existing policy and planning activities is illustrated by the strategic actions of the customary organisation. The existing land policy and LAP program formed the structure within which the customary actors fitted their initiatives, enabling them to secure both technical support and resources. The case narratives demonstrate how customary actors made sense of the LAP program and exploited the opportunities associated with it in ways that facilitated their interests and ambitions. The customary organisation connected to government actors and initiatives by shaping its practices to fit the new CLS criteria and to be considered for LAP's support. This way, they aligned their ambitions with the government's intentions to improve local land governance, thus enhancing the resonance of the initiatives and enhancing the chances of getting new institutional arrangements in place. To increase the credibility and saliency of their new initiatives, the customary organisation aimed to build up improved local land administration arrangements as discussed in the next section.

### **7.3.3 Institutionalising local planning and land delivery**

The processes of local planning were enhanced in 2016 and took somewhat distinct forms from that of Ejisu. Following the ban on land allocations, and the directive that each community prepares a local plan, the traditional council set the following guidelines. To prepare a local plan for one community, a village chief is required to seek the consent of the Omanhene (through the CLS) as the allodial title holder. Although the CLS is the main point of contact for chiefs requiring the Omanhene's approval, the traditional council supervises the implementation of this directive. Once approval has been granted, the chief sends a request to the TCPD of the Ejisu-Juaben Municipal Assembly to prepare a local plan for his community at a fee. Financing arrangements (cash and in-kind) were negotiated between village chiefs in Juaben and the local government planners and surveyors. However, chiefs who were unable to afford the costs of the base maps and the local plan preparation, have the option of borrowing from the traditional council's coffers on condition that they repay after an agreed period (In-depth interview, secretary, Juaben traditional council, 20.07.2017). The council set aside some funds mainly for this purpose to ensure that chiefs and more importantly, community members do not lose out on their lands as a result of using the sub-divided plots for payments for professional planning and surveying services as was the case in Ejisu.

The Ejisu-Juaben Municipal planning authority developed the local plans largely in collaboration with the chiefs, although the involvement of community members was minimal. Community representatives were however invited to participate in preliminary field visits to be informed about the processes of local plan preparation. Community representatives in turn helped planners and surveyors identify the boundaries of the land to be planned. Boundaries of communities are usually determined by using landmarks such as rivers, trees, valleys, and hills which may only be known to a few old community elders/representatives. Overall, planners had very little interactions with community members. Although the Land Use and Spatial Planning Act, 2016 (Act 925) insists that local planning is supposed to be participatory and protective of the public interest, it is the case that key decisions on the design of the most local plans were largely taken by planners of the TCPD, chiefs and their elders. This raises questions about how responsive the local plans produced by the TCPD are to local needs and interests of residents. An examination of the land uses from some local plans however suggest that the collective needs of community members were considered to some extent during the plan preparation. Although residential land uses constitute the major land use, provision has been made for other public uses such as open spaces, nature reserve and recreational grounds as shown in Figure 7.2. A member of the Juaben Land Management Committee remarked that;

Each local plan is expected to be designed to incorporate all forms of land uses. Besides encouraging residential development, we have told chiefs to reserve lands for light industry, parks and other social amenities such as schools, clinics and so on. Another major requirement is for them to demarcate land banks for future development. They (chiefs) are expected to reserve and protect those (land banks) from encroachment. (In-depth Interview, Juaben LMC member, 17.08.2017)

Unlike in Ejisu, where important land uses such as public cemeteries, open spaces and fire station were sacrificed for commercial and residential developments with the aim of maximising profits, local plans in Juaben appear to make adequate provision for important public uses as observed in the sample map above.

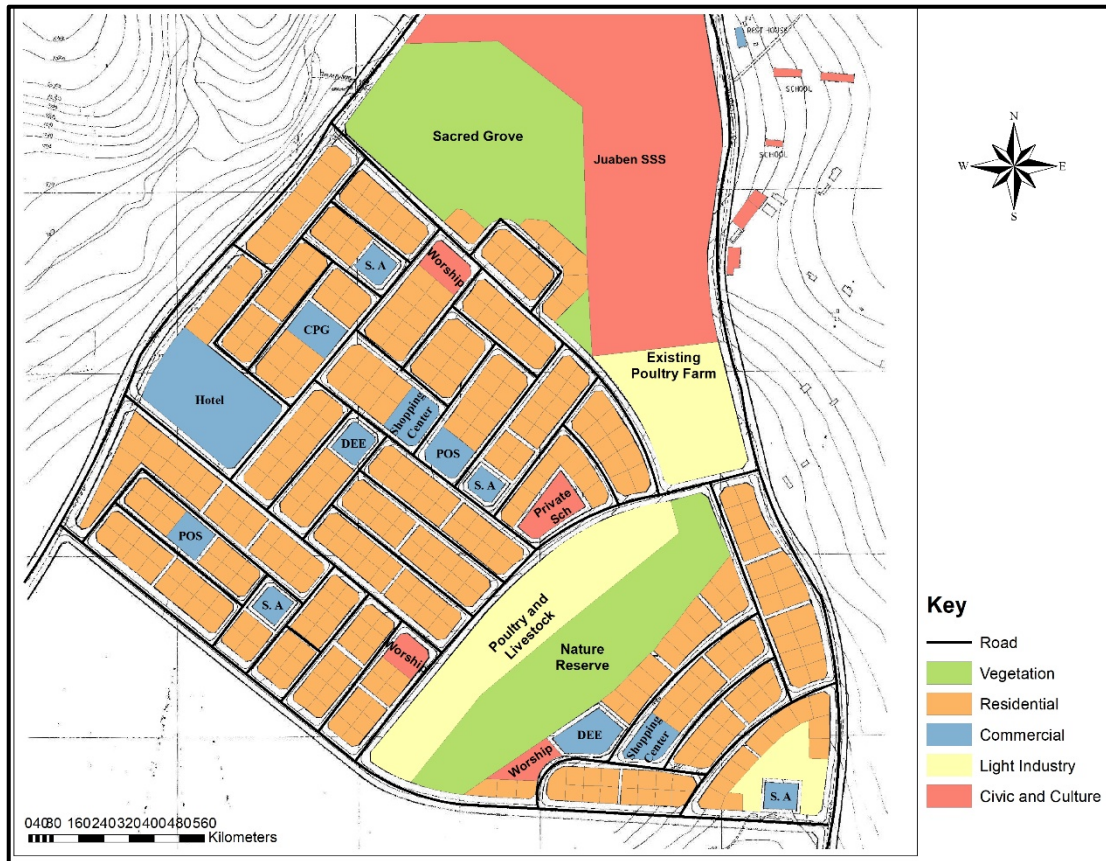


Figure 7. 3: Extract of a Local Plan for a developed area in Juaben  
 Source: TCPD, Ejisu-Juaben Municipal, 2017

### 7.3.4 Strengthening local structures: democratising land management

#### *The Juaben Land Management Committee*

As part of the mechanisms to ensure that the CLS remains accountable to the customary landowners and carry out their functions in line with the aspirations of the community, a Land Management Committee (LMC) was constituted under the Juaben traditional council. The seven-member committee comprises of a chairman (a divisional chief), the CLS coordinator, representatives of the land-owning community (selected village chiefs, elders and indigenous community members), two queen mothers and other identifiable interest groups. Similar to the roles discussed in the case of Gbawe (chapter six), the LMC exercises general oversight responsibility over the operations of the Juaben CLS; reviews the performance of the CLS and determines new direction for effectiveness and growth and resolves land related disputes through alternative dispute resolution. The LMC also offers guidelines for the determination of *drink money* and ground rent. Hence, the formula for sharing the revenue generated from customary land transactions highlighted in section 7.3.2 above was proposed by the LMC and adopted by the Juaben traditional council.

### *Village Land Management Committees*

At the village/community level, the CLS in collaboration with the Juaben LMC established village land management committees in each of the communities. Each village committee is made up of 5 permanent members, including a female representative and opinion leaders representing various interest groups. Members are nominated by the village chief in consultation with the village elders and approved by community members at a village durbar. Meetings of the committee are chaired by the village chief. The primary responsibility of the village committees is to assist their respective chiefs in the administration of customary land under their jurisdiction and to check the powers of chiefs by supervising land allocation activities including the use of its revenue. With regards to the process of establishing village committees, the Juaben LMC secretary explain it as follows:

The [village] committees are expected to advise the chief in land related matters and set land policy for the community. So, we advise chiefs to ensure that the members they nominate into the committee should be respected and knowledgeable members of their community. What we do is that when the members are nominated by the chief, they are availed to the community members for validation during a community durbar. Following their validation, the Juaben LMC then inaugurates the committee before they can commence their work. (In-depth interview, Juaben LMC secretary, 17.08.2017)

Hence, while the Juaben LMC oversees land management activities within the entire traditional area, the village committees supervise land allocation activities at their various communities. Essentially, the LMC structure serves as an institutional mechanism to promote effective land administration and to minimize any form of predatory behaviour by chiefs at both community and town levels.

#### **7.3.5 Standardising land allocation arrangements**

The delivery of planned and sub-divided parcels of land to prospective developers in Juaben is characterised by hybrid and collaborative practices. Following the completion of local land use plans, chiefs together with their village committees are expected to allocate land to prospective developers in collaboration with the CLS and TCPD. The typical process of land allocation, as stated by the CLS coordinator, commences with a prospective developer approaching the chief to ask for a piece of land for development. The prospective developer is required to complete a simple land application form (see Figure 7.3) that has been developed by the CLS and distributed among the various village land management committees. The application form requests for basic details from the prospector such as name and signature of the seeker, number of plots to be acquired. These details guide the chief and his committee members during the negotiation process. Guided by the community Local Plan, a member of the village committee would conduct the prospective land purchaser around the land to make a choice of a preferred plot(s) of land. After selecting the preferred plot(s), the prospective developer is informed about the price for the plot(s). The chief together with the village committee then forward the completed application form including the details of the negotiated price to the CLS

for approval before payment of the drinks money can be made. This process was confirmed by a divisional chief:

Here, we have standardized the procedures for land acquisition. We have an application form for those interested in acquiring a plot of land. You will complete the form, with all the relevant details including your picture. When we are satisfied with the details, we will proceed to negotiate and ask you to come and pay the cost of the drink money. It is only when you bring the drink money that the CLS will hand an allocation paper to you and make sure you understand the conditions attached. (In-depth interview, divisional chief, Juaben, 02/08/2018)

Once an application form is completed by an applicant and considered satisfactory, the chief is expected to consult the CLS before any land allocation is made. All land applications are reviewed and approved by the CLS (on behalf of the Omanhene). The prospective developer is issued an 'Allocation Note/Form by the CLS when the land application has been endorsed by the Omanhene and drinks money paid (see figure 7.4). Payments of the drink money are made to a bank account in the name of the Juaben traditional council, and the receipts submitted to the CLS as evidence of payment. Alternatively, payments for land allocations may be made to the village chief, although a share of the drink money is expected to be brought to the CLS together with the completed land application form. As noted by the CLS coordinator:

We do not issue the allocation paper to the prospective developer until the chiefs have reported the land transaction. The allocation is done here at the CLS. That is how we monitor and record every land transaction by the chiefs. So once a chief gives out land at the community, the application forms will be filled then brought to us alongside our share of the drink money. That is, one third for Omanhene, then 5% for the CLS, plus 10 percent for the Queen mother. Then once we are satisfied that you have done the right allocation and documentation, we will issue out the allocation note to the prospective developer. The allocation note is signed by the paramount chief as the final consent. The care-taker chief has a part to sign. The one seeking the land will also sign. (In-depth interview, Juaben CLS coordinator, 02/08/2018)

The allocation paper also provides covenants requiring the grantees to commence development of the land within two years of allocation, and further enjoins them to pay ground rent to the Office of Administrator of Stool Lands (OASL). A breach of any of the documented covenants contained in the allocation paper gives grantor chiefs the right to re-enter the land and take possession. The traditional council has enhanced the authenticity of the allocation paper by incorporating some fraud-proof features on it. For instance, the allocation paper has a reference number, and an emblem of the stool (a lion) as a strategy to curtail pirating of the allocation papers by some dubious personalities. A colour passport-sized picture of the grantee is also printed on the face of the allocation paper. These basic security features though not infallible, make it difficult to duplicate and forge the allocation papers.

Upon receipt of the allocation paper/note, the prospective developer presents it to the TCPD to obtain a site plan. The TCPD checks to ensure that the allocated plot and prospective use conform to the local plan<sup>51</sup> and ascertains whether the allocation note contains all the required signatures including that of the Omanhene's. The prospective developer is required to take the site plan to the CLS for final confirmation. The CLS then issues a document titled confirmation of allocation before development can commence. This completes the customary land acquisition process with the traditional authorities in Juaben. The CLS liaises with the TCPD by sharing copies of the approved site plan and allocation note for TCPD's records.

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<sup>51</sup> A copy of every local plan for the various plans are deposited at the TCDP of the Ejisu-Juaben Municipal Assembly



**JUABEN TRADITIONAL COUNCIL**

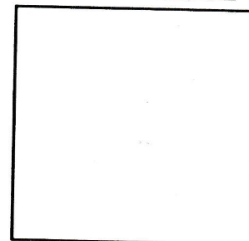
P. O. Box 5, Juaben – Ashanti

Our Ref. No. ....

FORM: BPA 1.

**APPLICATION FOR PLOT ALLOCATION**

- 1. NAME .....
- 2. ADDRESS: .....
- 3. NUMBER OF PLOT/S APPLIED FOR .....
- 4. DATED:.....



.....  
APPLICANT'S  
SIGNATURE/THUMBPRINT

**RECOMMENDED FOR APPROVAL**

PLOT NO.....SECTOR.....BLK.....

- 1. ....
- 2. ....
- 3. ....
- 4. ....

**APPROVAL BY NANA OTUO SIRIBOE II, JUABENHENE**

.....  
ON.....

**FOR OFFICE USE ONLY**

- 1. PLOT FEE GH c .....
- 2. AMOUNT PAID GH c .....
- 3. RECEIPT NUMBER: .....
- 4. DATE: .....
- 5. PAID TO BANK ON: .....

Figure 7. 4: Sample Land Application Form  
Source: Juaben Customary Lands Secretariat, 2017

**STOOL LANDS**  
(UNDER THE JUABEN TRADITIONAL AREA)

Date:.....

affix  
passport  
picture here

Dear Sir/Madam,

**PLOT ALLOCATION FORM**

Following your application for a parcel of land situated at .....  
and under the Juaben Traditional Area, we as custodians of the said land allocate to you

PLOT NO:	SECTOR	BLK
----------	--------	-----

**Subject to the following terms and conditions:-**

- i. That the Allottee(s) shall pay the required allocation fee to the.....Stool.
- ii. That the Allottee(s) shall within two (2) years commence and within five (5) years complete building on the plot.
- iii. That the Allottee(s) shall register the allocation with the Customary Land Secretariat of the Juaben Traditional Area.
- iv. That the Allottee(s) has/have no right to transfer the plot without the consent of the.....Stool.
- v. That the Allottee(s) shall pay the required ground rent to the Administrator of Stool lands.
- vi. That the Allottee(s) shall pay the necessary rates and levies to the appropriate Municipal /District Assembly.
- vii. That the .....Stool reserves the right to re-enter the said plot(s) if any of the above conditions is not complied with.
- viii. That this allocation is subject to the concurrence of the Juaben Paramount Stool

For and on behalf of the .....Stool

Sign ..... Witness : .....

Name/Title..... Name/Title:.....

---

I, the Allottee herein hereby accept to abide by the above terms and conditions

Sign:..... Witness : .....

Name/Title..... Name/Title:.....

---

**FOR OFFICE USE ONLY**

Signature:.....

Ref:.....

Date:.....

Figure 7. 5: Plot Allocation Form

Source: Juaben Customary Lands Secretariat, 2017

The insight from the land allocation process suggests that these standardised arrangements would help to improve the land administration process, and ensure improved accountability in land revenue. The CLS would be able to document all land transactions within its jurisdictions and ensure that land allocations conform to local land use plans since all transactions now require the consent of the CLS. Placing the ban on land allocations has allowed the Juaben traditional council to formalize and regularize the procedures for land allocation for all caretaker chiefs in the traditional area. By insisting that the power to issue allocation paper remains with the CLS, the traditional council is now able to authenticate land allocations by care-taker chiefs and thus avoid rampant land allocations and any potential land disputes.

It is evident from the land acquisition process that both the TCPD and customary authorities have come to rely on allocation papers as evidence of land transfer. Various accounts given by landholders and chiefs show that with the enhanced security features, allocation papers serve as a preferred evidence of land transfer compared to other seemingly more secure mechanisms such as land title registration. When asked how the allocation note differs from the lease document, a divisional chief explained as follows:

Land titles take time and are very expensive to prepare so for now allocation note is the basic document that we rely on. Even the lands commission depends on the allocation note to prepare a lease for you. They need to see your allocation paper first before you can do your land title registration. If you don't have an allocation note, it means you don't have any entitlement to the land. For us, the allocation note gives us some legal backing for the allocation because we have spelt out the terms and conditions in this document. These terms and conditions are expected to be signed by the allottee and then concurred by the Omanhene. So once the allottee signs, the Omanhene concurs then it becomes a binding document between the one who is acquiring the land and the stool itself. (In-depth interview, Juaben CLS coordinator, 02.08.2017).

Indeed, allocation papers continue to serve useful purposes in the Ghanaian land market especially in the Ashanti Region, despite their legal weaknesses. As Mireku et al. (2016) notes, until a proper lease is prepared, executed and registered, no legal interest is created and passed on to the grantee with the issuance of allocation paper alone. Nonetheless, customary authorities are increasingly using allocation notes as valid land contract documents to transfer interests in land. The reliance on allocation papers as evidence of land transfer is partly informed by the cost and time involved in registering land titles with the Lands Commission, as observed by the CLS coordinator. Also, the local planning authority relies upon allocation papers as evidence of landholding in order to grant building permits, even without a lease or title certificate. This is in breach of Regulation 3 of the National Building Regulation, 1996 (LI 1630). The regulation provides that an applicant for building or development permit shall satisfy the Local Planning Authority that he has good title to the land

relevant to the plans. Furthermore, the OASL continues to collect ground rent from allocation paper holders. Such extra-legal acts by these state institutions further deepen the controversy relating to the legal effects of land allocation papers in land transfers. Consequently, land grantees enter, develop and live on land on the basis of allocation paper from chiefs without first registering their interest in the land.

Nonetheless, allocation paper appears as appropriate mechanism for land allocation purposes and even for development control in the light of the situation at hand. Allocation papers are not only locally and contextually recognisable but also seem to serve the purpose for which they are designed, i.e to document the transfer of land rights from one party to another. In the absence of land title documents, these simple mechanisms are used to legitimize land transactions. Moreover, considering that allocation papers are checked by the TCPD to ensure that the allocated plot and prospective use conform to the local plan co-produced by the TCPD and chiefs. This helps to ensure land development is consistent with the municipal structure plan. The use of these information mechanisms support Blyth's (2002) assertion that familiar mechanisms that are considered by the targeted actors as logical and appropriate help to stabilise new institutional arrangements that are created, as is the case in Juaben.

### **7.3.6 In search of a balance between “private” and collective interests**

#### ***Determining land values (Drink money)***

The Juaben LMC is charged with the responsibility of providing guidelines for determining the ‘*drink money*’ and ground rent for customary land transactions. These guidelines are determined through a deliberative process among LMC members, and in consultations with the various community chiefs and their LMCs. Several characteristics affect the value of a developable site, which in turn inform the consideration (drink money) to be paid by a developer.

The amount that is requested [from a land seeker] depends upon the location. When we are preparing the plans, we look at the location and then we assign a particular land use to it. So, we have different prices for the respective land uses. We also consider how much a chief spends in preparing the base map, the cost for the services of a surveyor and planners to demarcate the land. So, all that comes to play to arrive at the drink money [land value]. (In-depth interview, Juaben LMC member, 17.08.2017).

The existence of an organised land allocation system, alongside investments in local land use planning by the land owners, are reflected in the high demand for residential and commercial plots in Juaben. Juaben is 28.1km away from Kumasi, the second most populous city in Ghana (Ghana Statistical Service, 2013). Juaben is increasingly developing as commuter town, second to Ejisu, and this is raising local housing prices and attracting upscale service businesses (COWI, 2010, Owusu-Ansah and Braimah, 2013). These changes tend to influence the decisions of the LMC in determining land prices.

At the moment majority of people are rushing to Juaben because it is cheaper to live here while working in Kumasi. Yaw Nkrumah [a neighbourhood in Juaben] is an example. It is made of mainly residents from Kumasi who reside there and work in Kumasi. It is the same situation for Bomfa [a neighbourhood in Juaben]. If not for the embargo Nana placed on land allocations, the whole area would have been occupied by residents from Kumasi who wish to stay here and work in Kumasi. (In-depth interview, Juaben CLS coordinator, 02.08.2017).

In line with common practice in Ghana, the unit of pricing for land is the price per plot with an average size of 650m<sup>2</sup> (70ft x 90ft). This means that when an application is made for a site, the price of that land is determined by multiplying the total number of plots by the unit price per plot. In many instances, land values do not include any improvements made on the land since much of the land being transacted is undeveloped or essentially newly planned neighbourhoods. Beyond these characteristics, a chief may also research what other sites of similar type and location are selling for; advertise the site, asking for offers; or seek advice from a professional surveyor. In essence, the combined cost of plan preparation, land registration and seemingly secure tenure have contributed to make land in Juaben attractive to investors, thereby enhancing the market value of land in the area.

In many parts of the country, formal land valuation mechanisms are weak (see for e.g Gyau et al., 2016), as such the guidelines provided by the Juaben LMC help to ensure village chiefs and their LMCs do not over/under price their lands. According to the LMC, developable plots should be leased at moderate prices to prospective developers. Although what constitutes a “moderate” price is undefined, the intention is to keep land prices to the barest minimum yet significant enough to recoup the costs of investments in terms of surveying, planning and registration. The secretary to the Juaben LMC explained that this approach is aimed at ensuring that land prices remain affordable to the majority of indigenes and attractive to prospective developers (In-depth interview, Juaben LMC secretary, 17.08.2017). Information on the final land prices is also communicated to community members by the respective LMCs. Making information on prevailing land prices publicly available has the tendency to prevent unruly chiefs and land speculators from benefiting unduly from the traditional council’s investments by ensuring that land allocation processes are transparent. Various interviews with community members confirmed that the Juaben LMC’s directive on land pricing are known to the majority of community members. A community member remarked:

What happens here is that when the price of a plot is fixed, majority of the people know it. The chief cannot sell it to you at a different price because others will know about it. And Nana (Omanhene) will summon him for that. (In-depth interview, Juaben community member, 12.08.17).

At the time of the fieldwork, the cost of a residential plot of land (70x100ft) across communities with local plans had been fixed at GHS7, 000 (£1,232.39)<sup>52</sup>, in line with the Juaben LMC's directive. There are however slight variations in the implementation of this directive, depending on the extent of land documentation involved. For instance, in Yaw Nkrumah, a village within the Juaben traditional area, the village LMC insists that the minimum documentation required to complete the land acquisition process is a registered land title rather than land allocation papers. This additional documentation has raised the price of a plot to GHS10, 000 (£1760.56) instead of GHS7, 000 as directed.

Insights from the land value assessment process however raise critical concerns of equitable access and unintended impacts on community members. When asked whether current land prices are affordable to them, a community member remarked:

For me the price is a little bit high. I can't afford GHS7000 to buy a plot now, and by the time I'm able to save that amount, the price would have moved up. As a community member I would say the price is high for me. But there are people who come from other places to buy a number of plots. If only the prices of the land could be reduced for us the indigenes. That may even motivate people to stay and work in the community. (In-depth interview, community member, 12.08.2017)

A member of the Juaben traditional council explained that farmers who lose agricultural land due to developments are compensated with new farm land or one-third share of the proceeds from the land sale. Moreover, indigenes could acquire additional developable lands for residential and commercial developments at subsidised prices. However, these rights have now been withdrawn such that the same land acquisition procedures now apply to both locals and outsiders.

In the past, Chiefs allocated lands to indigenes at subsidised prices. But later we found out that they [indigenes] were selling their plots to outsiders (non-indigenes) and keeping the profit. So this time the price is the same for even indigenes. Whether you are an indigene or outsider we take the same amount of drink money. (In-depth interview, secretary Juaben traditional council, 20.07.2017)

The extract above reveals that self-interest and private wealth accumulation by some community members have driven the traditional council to withdraw compensation arrangements and privileges to indigenes – as is the case in Gbawe (Chapter 6). However, locals who get affected by the planning process or developments continue to be compensated.

### ***Sharing the wealth: initial stages***

Compared to Ejisu, there have been attempts by customary authorities in Juaben to use land revenues to meet the needs of their communities. Although it is too soon to assess whether the intentions of customary authorities align with the general community interests, there appears to be very positive

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<sup>52</sup> Note: £1= GHS5.68 as at August 17, 2017

perceptions from community members regarding the use of revenue generated from land transactions by customary authorities. When asked how revenue generated from land transactions are spent by chiefs, a community member remarked:

As for this one we don't talk about it so much. There are certain developments which happen in this town, but we do not know how they were funded. Every year the LMC renders accounts to the chiefs. There is also an annual thanksgiving service where the chief talks about past developments and the ones to be expected (In-depth interview, community member, Juaben 12.08.2017)

Various interactions with chiefs and key informants across the Juaben traditional area reveal that chiefs are conscious about their roles as community development agents. A divisional chief explained why revenue from land transactions will not be misused:

We [divisional chiefs] meet with Omanhene all the time. He (Omanhene) keeps emphasizing that the chiefs shouldn't use the money to buy cloths and so forth, but instead use the funds to develop their towns. Now a lot of the chiefs are using the monies to develop their communities. So I don't think they [chiefs] will misuse it because Omanhene would not even allow that. You also risk the chance of a civil disobedience from your subjects. If you don't use the money wisely then it is likely they [subjects] will also oppose you. If you are in a town and they don't have toilet, water and so forth they [subjects] will rebel. Your citizens monitor your activities. (In-depth Interview, divisional chief, Juaben, 02.08.2017).

Field observations across communities in Juaben and subsequent interactions with key informants confirmed that some communities have begun to benefit from land revenues. In the Juaben township, a three storey multi-purpose facility has been constructed, financed from land revenues. The property is currently being used as a district court, a library and Information and communications technology (ICT) complex (see figure 7.5). The traditional council has also constructed a market facility, a police office, and provided street lights within the township, partly financed from land revenues. Members of the Juaben LMC also pointed out some community facilities such as an open space for community meetings, public toilet facilities, a small-town water system that have been financed by the traditional council.



*Newly constructed complex for Police office, library and ICT centre*

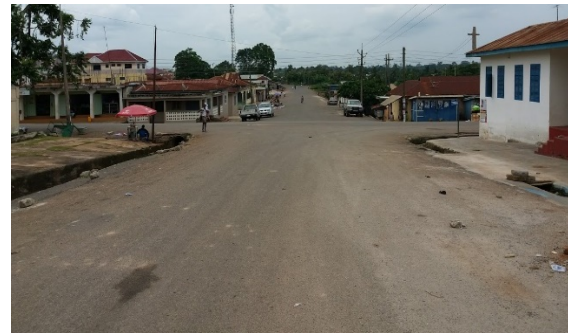


*Paved open space for weekly community market centre*





*Building for Juaben Circuit Court*



*Neatly Paved Community roads*

Figure 7. 6: Community facilities financed from customary land revenues

Source: Author's photograph

Overall, the evidence gathered from Juaben suggests that revenue flowing from customary land transactions have been used in ways that benefit community members through investments in community infrastructure projects. It can be argued that the locally institutionalised land use planning and organised land allocation arrangements have contributed significantly to ensure an effective land administration process in the Juaben traditional area. It is also worth emphasising that the locally instituted arrangements for land allocation, guided by local plans and allocation paper, helps to ensure strict accountability regarding land allocations, and the use of the resulting revenue. For instance, the activities of chiefs and their respective LMCs are supervised and monitored by the Juaben CLS. Community members have also been given a stake in the administration of their lands, although their participation is generally representative through village LMCs. The activities of the CLS are equally supervised by the Juaben LMC which in turn accounts to the Omanhene and the Juaben traditional council. As the main decentralised land administration unit in the traditional area, the CLS also provides biannual reports to the OASL regarding the use of stool land and its revenues. The presence of these local structures appears to promote some degree of accountability and transparency in the governance of customary land in Juaben.

Unlike the attempts in Ejisu, the case narrative in Juaben demonstrates that new rules for land allocation were successfully layered on the existing customary arrangements for land administration. Rather than overhaul the customary arrangements for land administration, the Juaben traditional council established new elements (with state support) in the form of standardised rules for land allocation that improved transparency and accountability. Existing customary practices that guide the distribution of land revenue were maintained, with slight modifications to ensure that revenue that is raised from land transactions are directed towards public benefit. Preliminary findings suggest that chiefs in Juaben have begun to reinvest the proceeds from land transactions in their communities in the form of community infrastructure, although it remains to be seen in the near future when urban



pressure causes land values to increase further. The next section focuses on what the divergent outcomes mean for government's ambition to generate land revenues from customary land.

#### **7.4 The politics of land revenue in Ejisu-Juaben: elite resistance and missed opportunities**

One of the main arguments in favour of establishing hybrid institutions of land management is that it could improve the government's chances of recovering revenue from customary land transactions. A hybrid land management regime would make customary land administration at the local level more predictable and efficient. The creation of decentralised institutions, in the form the CLSs was supposed to help achieve this objective by extending the state's planning powers into a realm where it previously had limited influence. Land use plans generate increased property values, primarily through ensuring certainty for developers. The profit from the rising land values can then be taxed by the local government, establishing flows of revenue which can be invested in the construction and maintenance of physical infrastructure.

On the basis of the findings presented in sections 7.2 and 7.3 it can be argued that a hybrid land planning regime has emerged in both cases, leading to improvements in the delivery of planned developable plots. Yet moves towards effectively recovering revenues generated from customary land transactions by municipal authorities have been met with much resistance from customary authorities, as discussed below. Customary authorities continue to deploy the discourse of 'drink money' in order to maximize their personal advantage in maintaining the status quo. Moreover, strong policy support for customary authorities in the realm of land use planning not only reinforces strong interests in the control of land but also privileges them in the use and administration of revenue from land transactions.

##### **7.4.1 The insistence on 'drink money': what's in a name?**

It has been emphasised in chapter 5 of this thesis that one policy tool that the government has used since the 1950s to control stool lands is control over revenue accruing from customary land transactions. Its administration has also been analysed in the same chapter. The Administrator of Stool Lands is the authority responsible for the collection and disbursement of all stool land revenue. In accordance with Act 481 of the 1992 constitution, all revenue accruing from stool land are meant to be paid into stool land account for redistribution, according to the following formula.

- 10% for the Office of the Administrator of Stool Lands;
- 25% to the landholding stool through the traditional authority for the maintenance of the stool;
- 20% to the traditional council; and
- 55% to the local authority which has jurisdiction over the area where the stool is located.

What this means is that in the Ejisu-Juaben Municipal area, the OASL is expected to create a stool land account for each of the Ejisu and Juaben traditional areas, and to collect and distribute all revenue accruing from land transactions whether in the form of ground rent, premium (i.e. drink money) or other payments in the form of income or capital. For all these revenues, the OASL retains 10% for administrative expenses. Out of the remaining 90%, 55% is given to the Ejisu-Juaben Local Government Authority and the rest shared among the traditional councils and traditional authorities. Customary landowners are heavily taxed on the income they receive from their lands to the extent that at present, only 20% of the revenue from customary land transactions actually goes to the custodians of customary land. The remaining 80%, irrespective of how it is apportioned and designated is a proportional and direct tax although it is hardly recognised as a tax in the country. According to (Larbi, 1994) the chieftaincy institution is not liable to tax, as such designating these deductions as a 'stool land tax' might be fiercely resisted.

An indirect consequence of this mode of disbursement (tax policy) is that in many peri-urban areas where land values are increasing rapidly, customary authorities have been reluctant and persistently resisted the disclosure of 'drinks money' in lease documents or allocation papers, which, as noted earlier, constitutes the greater part of all land revenues. The consideration indicated in land allocation papers or lease contracts, is only the ground rent reserved in the lease. Although land prices are known to the public, the number of plots allocated, and the revenue thereof are not made public. Customary authorities in Ejisu and Juaben do not disclose or state the final price of the land (and any other cost incurred by a purchaser) on land documents. Consequently, the Ejisu-Juaben OASL only collects ground rents (monies accruing from the annual fees on land leases), although the greater proportion of revenues accruing from land transactions are in the form of consideration (i.e drink money). In both Ejisu and Juaben, customary authorities argue that drink money does not symbolise revenue from land sales but rather represents a symbolic customary token for the grant of land. They consider drink money as a traditional gesture of appreciation and a symbol of allegiance/acknowledgement to them as land custodians and therefore not part of what is described by the OASL Act (481) as land revenue. This claim is captured by the remarks of one divisional chief:

What is paid is not the price of the land but only drink money. Long time ago, we used to collect customary drinks in return for land.... now we collect cash hence the name drink money. (In-depth interview, divisional chief, Juaben, 02.08.2017)

In Ghana, customary law precludes the sale of customary land (Aidoo, 1996, Obeng-Odoom, 2012). It is believed that land belongs to a vast family of whom many are dead, a few are living, and countless host are still unborn (Agbosu, 2000). This belief has been given constitutional backing by Article 267 (5) of the 1992 constitution of Ghana which provides that "...no interest in, or right over, any stool

land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described". The effect of this provision is that there shall be no outright grant of stool land in Ghana to any person, and such grants are unconstitutional. This constitutional prohibition is intended to keep stool lands within the lineage of the stools where future members would not be deprived through any outright alienation. Hence, chiefs who are customary land trustees may accept 'drink money' in exchange for land use rights.

However, as land has assumed more economic importance, 'drink money' is no longer just a pre-negotiation fee, instead, it is now requested by the chiefs in huge sums of cash. A divisional chief affirmed this conception when he stated that:

Right now, we have replaced the drink money with cash. Those days, we did not use money, it was drinks. But due to the economic changes, we have replaced it with cash which we call drink money. We take drink money and give you the land to develop. (In-depth interview, divisional chief, Juaben, 02.08.2017)

This practice where 'drink money' has come to signify the actual consideration paid for the land in almost all instances, and reflecting the market prices for land is common in other parts of the country (see for e.g Kasanga and Kotey, 2001, Ubink, 2008c, Lentz, 2010, Locke and Henley, 2016). The amounts paid by applicants are technically speaking, premiums. Yet, in both Ejisu and Juaben, customary authorities use the term 'drink money' or 'allocation fee' to disguise customary land transfers as non-commercial activities, thereby avoiding any form of state interference in the mobilisation and use of customary land revenues. A divisional chief in Juaben justified the use of allocation fee in exchange for land use rights:

Here [in Juaben], the drink money is referred to as "allocation fee" on our allocation notes. For allocating the plot to you, you have to give some drink, and that is what we call allocation fee, to be paid in cash. If you say you are selling land, then you are entering into a commercial activity. And you will be required to pay tax. But if it is drink money, then it is not taxable. (In-depth interview, divisional chief, Juaben, 02.08.2017)

Therefore, much as chiefs may seem to attempt to be complying with the constitutional provision not to sell land outright, chiefs continue to use the discourse of 'drink money' to evade payments to the OASL and to retain revenues generated from land transactions. They do this by structuring land sales in way that reduces grounds rents while increasing what they receive (drink money).

The desire by chiefs to retain land revenues is also motivated in part by the perception that local authorities do not seem to use their budgets to deliver tangible benefits, and spend too much on recurring expenses while investing too little in works and infrastructure programmes. As discussed

above, chiefs in both Ejisu and Juaben often self-finance the planning of customary lands due to the weak institutional capacity of planning authorities. Hence, customary authorities are keen on recovering the costs incurred in surveying, planning and parcelling of customary lands for urban uses. Yet, article 267 (6) requires that the OASL should collect and disburse 55% of all revenues (drink money and ground rent) generated from customary land transactions to the local government authority. A divisional chief expressed his dissatisfaction with the land revenue sharing formula:

The 55% to the local authority is too much. We don't see what they really use it for. We have been fighting that they reallocate only 45% to the local authority and the remainder be retained by chiefs since we are expected to undertake some developmental projects in our communities. Besides the chiefs are those who generate this money. So, if these monies are generated by us, then we should have a bulk of it not the local authority. (In-depth interview, divisional chief, Ejisu, 14.08.2017)

Similar frustrations were reported by a village chief:

Just this morning, we needed to clear a place that we plan to develop as a satellite market for the community. So, we placed a request for a grader at the local authority. They asked us to pay for fuel at GHC850 per day. So, if you are taking this 55% and you are asking me to fuel it then what is the use of the money you are taking? Meanwhile, after spending a lot of money to parcel these lands, they [local authority] will be the ones to collect market tolls daily when the satellite market is established. (In-depth interview, village chief, Juaben, 12.08.2017)

Clearly, the disbursement formula is unpopular with chiefs because the local authority does not share in the costs of planning and surveying customary land, nor does it account to the customary authorities on how these revenues are expended. In response, officials from the Ejisu-Juaben municipal authority have questioned customary authorities' use of land revenues, arguing that most chiefs tend to keep much of the revenue while expecting the local authority to provide infrastructure services for their communities. This seems true in the case of Ejisu where land revenues have been directed towards purely private interests. In Juaben however, customary authorities have attempted to balance their private interests with the collective interests of their communities. Nonetheless, this blame game between customary authorities and local government officials points to the lack of accountability with regards to customary land administration.

This lack of accountability is further enhanced by the ambiguity inherent in the OASL Act, 1994 regarding the use of land revenues by the various beneficiaries. The OASL Act, 1994 lacks clear guidelines on what beneficiaries of various proportions should explicitly use the monies for except to state ambiguously that 20% allocated to the stool should be used "for the maintenance of the stool in keeping with its status". The Act 481 does not stipulate any requirement for revenues to be used for community development by any beneficiary. This has created a situation where community interests are overlooked in many cases, contrary to the constitutional provision that both customary and public

land sector actors are mandated to act in fiduciary capacities to manage customary land in the best interests of the public.

#### **7.4.2 Institutional barriers and unresponsive attitude of local government actors**

Besides the ambiguity enshrined in OASL's mandate, the Ejisu-Juaben OASL faces several technical challenges including the lack of proper records on land transactions by customary authorities, reluctance of lessees to pay ground rent, A more important challenge relates to difficulties in valuing registered parcels. The district OASL officer notes that because huge considerations in the form of drink money are charged for land allocations, the OASL finds it difficult to charge realistic land rents to leaseholders. Moreover, the valuation of land separate from structures is difficult. For undeveloped land, the value can be determined by the price of similar vacant plots, if sales activity is happening in the vicinity. Developed lands are even more difficult to calculate since the price of the land is usually folded into the price of the building (s) on it and distinguishing between the two components is challenging. For these reasons, the OASL calculates land rents based on fixed rental rates for various land uses (Interview, Ejisu-Juaben district OASL officer, 07.07.2017). These rates are provided by the Lands Commission. Records of the OASL in Ejisu-Juaben showed that as of July 2017, the annual rate for ground rent for a 0.25-acre residential plot was fixed at GHS118.6 [£20.88]<sup>53</sup>, and GHSS142.25 [£25] for commercial land uses. Comparatively, the price (drink money) of a 0.25-acre of residential plot ranges from GH20, 000 - GH30, 000 in the Ejisu, and between GHS 7,000 to GHS10, 000 in Juaben. Thus, a significantly higher proportion of land revenues accrues to chiefs in the name of drink money than the OASL from annual ground rents.

As evidenced by table 7.1, revenue from land rent constituted an average of only 7.84% of the municipal authority's revenue between 2012 and 2016. Yet the potential of urban land rent is enormous, particularly in the context of the economic boom in the municipal area. The Ejisu-Juaben municipal finance officer suggested that land rent could amount to as much as 10-15% of total local government revenue if a proper framework were put in place. Given that there are hardly any vacant lands within the municipality, land rents may become the main source of continuous income for both customary organisations and local government authorities in the future.

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<sup>53</sup> Note: £1.00 = GHS5.68 as August 17, 2017

Fiscal Year	Land Rent received by the local authority	Total internal generated fund*	Land rent as % of all locally-generated revenue
2010	53, 835.79	-	-
2011	98, 466	-	-
2012	26, 320	577,929.58	4.6
2013	69, 615.50	769,576.59	9
2014	85, 143.88	1,350,249.16	6.3
2015	119, 450	1,402,412.68	8.5
2016	138, 000	1,276,014.23	10.8

Table 7. 1: Land rent relative to total local revenues: 2010 – 2016

Source: Data Gathered from Ejisu-Juaben Municipal Finance Office

*\*includes property rates, fees, licenses and penalties, rent on physical assets*

*- data unavailable*

Moreover, the interviews demonstrated that in various ways, as well, the attitude of some local government actors contributes to the problem. The local government has strong reservations about its role in recovering revenue from customary land. The district OASL officer had suggested to the TCPD that individuals should be required to show proof of ground rent payments before building permits are approved by the TCPD (Interview, Ejisu-Juaben district OASL officer, 07.07.2017). Apart from improving the revenue potential for the local authority, this proposition would enable the OASL document records of all leaseholders and be able to follow up on rent collection. The municipal finance officer confirmed this proposition by the OASL, noting that repeated discussion towards establishing these arrangements have been conducted between the planning department, finance department and the district OASL. Yet at the time of the fieldwork, there was no evidence of cooperation between these local government actors. While acknowledging that setting up a reliable arrangement for rent mobilisation is necessary, the local planning authority did not invest much energy in responding to the ideas and propositions that resulted from the discussions. The director of TCPD explained that this additional requirement would make the permit application process more expensive and complicated.

The process of acquiring building permits is already difficult. If we add this extra requirement, would it not be too much a burden for them [lessees]? They may even be discouraged from acquiring planning permits. Besides, this ground rent thing is not our business. That is the OASL's job. Personally, I think people are already paying a lot for developable lands these days. So, insisting that they should pay their rents as well is too much. (In-depth Interview, planner, Ejisu-Juaben Municipal authority, 04.07.2017)

Although the TCPD director's concern may be justified considering that dealing with building permits in the country involves prolonged bureaucracy (World Bank, 2018), the lack of enthusiasm on the part of planning authorities raises some questions about the local government's commitment to cooperate with the other departments regarding land rent mobilisation. It would seem that local government actors consider the mobilisation of land revenue a 'political' issue with many actors opting to refrain from it. Another obstacle to effective cooperation in the respondents' eyes was the

compartmentalisation within the organisational structure of the local authority. It was described as a 'splitting zone' because of the unwillingness of the OASL, finance department and the spatial planning departments to share ideas and cooperate in joint projects. The local government officers appear to act too much on their own.

In sum, there is scope for extracting some form of economic rent from customary land transactions through the planning system. The evidence presented in sections 7.2 and 7.3 suggests that a hybrid land use planning regime has emerged, accompanied with improvements in security of property rights. Hence, the necessary prerequisites exist. However, political and institutional barriers created by vested interest in the form of land profits, limit the extent of revenue that can be generated from customary land transactions. By framing 'drink money' as a symbolic customary token for the grant of land, customary authorities have successfully evaded payments to the OASL and continue to retain much of land profits for themselves. Moreover, the lack of a political commitment to alter these path dependent process has furnished opportunities for customary authorities to sustain this distributional advantage.

Larbi (1994) suggests that the revenue accruing to customary authorities should be subjected to tax. In this way, the state can recover some revenue from land transactions by applying the progressive income tax rates in the country. In his view, this represents a fairer form of taxation than the current proportional tax basis adopted. The import of Larbi's proposition is that the deductions from customary land revenue should be explicitly designated as a 'stool land tax', and the customary authorities made to benefit fairly from the revenue generated from its land. The rich landowning stools will therefore pay more tax to the local authorities (via the OASL) than the relative poorer ones. Effectively, the state would generate some revenue from both land rents and premiums from customary land transactions. While this proposal may hold promise, efforts aimed at this outcome will be greatly opposed politically since customary authorities continue to control the land market and to some extent land use planning functions. This means that whether or not improved customary land administration offers any potential for directing land profits towards the public benefit depends on the commitments of customary authorities, as shown in the case of Juaben. Thus, rather than insist on confiscating 'drink money' from customary authorities, it would appear worthwhile for the local government to assume a stronger role in regulating and coordinating land use in collaboration with customary authorities. In this way, it would be possible to promote spatial equity through 'good planning' and by directing the little proceeds from land rent that it currently receives into maintaining public services.

## 7.5 Conclusion

This chapter dealt with the state's attempts to establish hybrid land management institutions in two rapidly urbanising communities, and why some efforts resulted in transformative outcomes, whereas others failed. The main goal was to understand the processes leading to the establishment of hybrid institutions for land governance and the circumstances resulting in the differential responses to these initiatives. On the basis of the theoretical framework and the previous chapter about self-organised efforts in Gbawe, this chapter focused on trigger events, institutional reflection and the extent to which change agents were pivotal in the institutional change process. Moreover, the findings directed attention to how positive feedback effects shaped the forms of institutional change observed in the two cases.

The case narratives illustrate a clear indication of persistent urban pressure, notably rapid urbanization and planned infrastructure developments, which, when accompanied with an extended process of institutional reflection at the national level, provides a window of opportunity for institutional transformation in both cases. Moreover, the establishment of the CLSs appeared to provide solutions matching the customary land administration problem at hand. Yet, efforts to develop a hybrid land management regime in Ejisu failed to occur in the ways envisaged, with customary actors redirecting the new institution to achieve largely private interests through strategies of 'conversion'. In Juaben, however, attempts to establish in a hybrid institutional land system were successful with new rules for land allocation and land use planning being layered on the existing customary arrangements for land administration resulting in fairly equitable land development outcomes. The analysis of the divergent outcomes observed in the two cases points to the importance of customary actors' priorities and the processes of building consensus concerning the land problem through narratives. Moreover, the findings in the Gbawe case directed attention to the strategic role of change agents, discursive processes, alignment of initiatives with existing government policy and the extent to which trigger events were decisive. In relation to how institutional change occurred in each of the cases, and the question of why efforts to establish hybrid institutions of land management were successful in Juaben compared to-Ejisu, the following conclusions have been drawn.

In Ejisu, efforts by the state to improve local land management institutions did not result in the outcomes envisaged by the LAP reforms despite the persistent urban pressure and inefficiencies in the land market. These external conditions questioned the ability of existing customary institutions to ensure effective land administration. Yet, efforts to develop a hybrid land management regime in Ejisu failed to occur in the ways envisaged. The form of institutional change observed in Ejisu is characteristic of what Mahoney and Thelen (2010a) refer to as conversion. As explicated in the thesis'



theoretical framework (see Chapter 3), conversion occurs when rules remain formally the same but are interpreted and enacted in new ways (Thelen, 2003). This is apparent in the way customary authorities in Ejisu engaged in and deployed a range of strategies and behaviours to maintain and consolidate their authority over land. Customary actors, whose interests were not served by the new institutional arrangements, sought to displace the new rules but in pursuing this goal they pursued a strategy of short-run conformity. Customary actors did not break the rules of the CLS and the local planning rules. Instead they effectively disguised the extent of their preference for institutional change by following institutional expectations and worked within the system to redirect the new institutional arrangements for their private gain. Thus, from the outside, both the paramount chief and village chiefs appeared to be supporters of the government's efforts to establish a hybrid regime. Although in reality, they were biding their time, waiting for the moment when they can actively move toward a stance of opposition. And when the opportunity opened up for these actors, they actively redirected the new institutional arrangements towards new goals.

#### *Framing narratives to contest change*

With regard to the question of why conversion strategies were successful, the following explanations were suggested. First, institutional continuity was enhanced by collectively constructing a favourable narrative that protected their privileged role as 'custodians' of customary land and this enhanced their opportunities to directly allocate land without the paramountcy's approval. To achieve this, village chiefs built coalitions by coalescing into a "united subordinate group" which increased their power to orchestrate the shift from within. Because customary land laws are flexible and open to contending interpretation (Juil and Lund, 2002), village chiefs were able to interpret these laws in their favour and eventually asserted their claim over land and the profits associated with its transactions. This reinterpretation of customary law enabled village chiefs to allocate lands without the paramount chief's consent.

#### *Facilitating conditions: character of institutions*

The findings also revealed that the character of prevailing institutions provided opportunities for customary actors to reinterpret and implement the new arrangements in ways that favoured their interests. Village chiefs who were disadvantaged by the new rules exploited the ambiguities associated with the new local planning rules and redirected the institutions to new purposes. The provisions associated with the CLS did not only lack clear guidelines about how to achieve its intended objectives, but also allowed high levels of discretion in interpretation and enforcement by customary actors. This offered a fertile terrain for strategies of conversion. Caretaker/village chiefs therefore took

advantage of these gaps in the CLS design to develop alliances with public planners in preparing local land use plans. They strategically positioned themselves as partners in land development by negotiating informal alliances with government actors and this enhanced the institutional conversion process. These customary actors built alliances with some public planners and surveyors by engaging in one-on-one (informal) negotiations, compromises and deliberations. Thus, conversion occurred because flexibility inherent in customary law and the discretion in the enforcement of the CLS' rules created strategic openings for village chiefs who opposed the new institutional arrangements.

In the Juaben case, government attempts to layer 'new' institutions onto customary practices to support local land governance were relatively successful and led to fairly equitable outcomes. Although land governance remains under the jurisdiction of customary authorities, statutory mechanisms are used to record newly transacted land rights and to legitimize land allocation and appropriate uses in urban areas. For instance, while the customary organisation continues to allocate land rights based on customary practices, locally adapted allocation papers are used to record and legitimize new transactions thereby affording the holder of the interest greater security of tenure. Rather than rely on trust and the memory of parties' customary authorities now have systems of record keeping that enable them to keep pace with accelerating rate of land transactions. In this way, the deficiencies in the old land allocation procedures have been corrected by adding standardized allocation papers for transferring land rights without distorting the existing customary practices. Layering statutory institutions onto existing customary practices has helped to structure land governance and to regulate land development in ways that yield fairly equitable outcomes compared to the situation before. For instance, land allocations are in conformity to land regulations and new land users are documented and tracked for the payment of ground rent. All this has been made possible through the introduction of the Juaben CLS with support from the national state.

#### *Events and opportunities*

With regard to why layering processes were successful in terms of responsiveness from customary authorities, the following explanations were found. First, the case narrative points to the importance of specific trigger events in institutional change efforts. The case narrative shows that Juaben is experiencing similar external shocks (e.g. persistent urban pressure) as Ejisu. However, as emphasised by the thesis' theoretical framework, whether or not events perform as trigger depends on the meaning given to them by proponents of institutional change and their targeted supporters. In other words, specific events only get meaning as triggers in relation to change agents who recognised and exploited them as meaningful for institutional change through discursive practices. For example, in Juaben two concurrent events were considered as opportunities for change: (i) the awareness among

local actors in Juaben about the consequences of a dysfunctional land market in Ejisu, and (ii) the increasing chaos and dysfunctionalities in the land market in Juaben (land disputes, rampant land sales, loss of land revenue to the paramountcy etc.). These concurrent events reinforced pre-existing perceptions of a land market problem in Juaben. These events were given meaning by the paramountcy as unique opportunities to improve the existing customary governance arrangements. The case findings revealed how the traditional council considered the chaos in the land market as disrespecting to the paramountcy, requiring urgent measures to bring unruly chiefs to order. The placement of the ban demonstrates this attempt to put a stop to the chaos. The analysis of trigger events illustrates that although these concurring events created favourable circumstances to a certain extent, strategic agents were necessary to 'sell' these opportunities as moments to institute change, including how to bring about that change. This required the presence of customary actors who can be attentive to windows of opportunity.

#### *Building consensus concerning the need for reform*

Presenting proposals for institutional change that would be considered relevant and acceptable was the main challenge. This was achieved by building a consensus concerning the land market problem in Juaben in ways that resonated with the concerns and interests of targeted actors. This shared understanding concerning the land problem was apparent both in the framing of the problem and the process of constructing the new reforms. For instance, the chaos in the land market was presented as a dent on the reputation of the paramountcy, including members of the council. This way, customary actors' support for the problem was secured. Several studies (Albrecht et al., 2011, Murtazashvili and Murtazashvili, 2016, Ubink, 2007) have shown that customary actors are typically attentive to their individual reputations and that of their organisations which they are closely linked. In addition to acquiring support for the land problem, the need for new institutional arrangements was also promoted as an opportunity to bring orderliness to the community's development. The new institutional arrangements were also presented as an opportunity to increase revenues for members of the customary organisation. Framing the problem and presenting the new institutions in this way was crucial in paving the way for the emergence of new conceptions of how it can be solved, but also who would be involved in enforcing it.

The consensus building process was also apparent in the practices leading to the construction of new institutional arrangements. For instance, the proposition to place the ban on land allocations was derived through discussions at the traditional council level and based on consensus among local actors. Through these exchanges (coordinative discourse), the perspectives of both the powerful (traditional council) and subordinate groups (village chiefs) were considered in the process of building new

institutions. In this way, the idea that land allocations will only recommence when all chiefs have developed land use plans for their communities appeared as a collective decision arrived by the entire customary organisation and not by a few powerful actors. This consensus building approach enhanced the chances of the new proposals since they incorporated the ambitions and interests of the traditional council and village chiefs. The use of simple and locally recognised mechanisms such as the allocation paper to standardise procedures of land allocation and land use planning helped to legitimise and stabilise the newly established rules. This is consistent with Blyth (2002) emphasises that new institutions are more likely to be accepted if they enjoy a certain degree of familiarity or are seen as appropriate by targeted supporters.

#### *Building responsiveness of targeted supporters*

Third, the analysis revealed that presenting proposals for change not as completely alternative ideas, but as ideas that fitted into existing interests and practices was crucial in enhancing the responsiveness of targeted actors. Positive response from the village chiefs was enhanced by maintaining that they would continue to retain profits generated from land allocations, although a portion of these profits are expected to be used for the benefit of their communities. Village chiefs were also made to understand that developing local plans for their communities would make it easier to track land transactions, and in turn maximise the capture of land revenue for them. In this way, targeted supporters perceived the new proposals as relevant because they resonated with their interests, priorities and ambitions. The acceptability of these proposals was also enhanced by the category of actors who articulated and promoted these proposals. The presence of credible articulators of institutional change, such as the paramount chief and his council, helped to align these proposals into initiatives that were recognizable and considered relevant and important to targeted supporters. The council and other village chiefs viewed the paramount chief as an 'important statesman' whose credibility was unquestionable. For instance, by reinvesting land revenues into community infrastructure, the paramountcy did not only demonstrate its selflessness but also exhibited that the new proposals were targeted at the community's interest. Thus, the paramount chief and his council were considered credible by members of the community and targeted supporters. Moreover, the establishment of the land management committees, comprising community representatives, demonstrated the paramountcy's enthusiasm to use land revenues for public interest. This tactic improved accountability and democratisation of customary tenure practices but also ensured that the power of village chiefs to govern land is maintained. The leadership of the customary organisation understood that convincing village chiefs and community members of the value of the new proposals was essential because these potential veto players had much influence in local politics.

## **Chapter 8 - Hybrid Land Governance and the Politics of Institutional Change**

The previous chapters about Gbawe and Ejisu-Juaben narrated how government tried to institutionalise hybrid regimes to make formal and customary administration more compatible. Some initiatives succeeded and resulted in transformational planning outcomes, whereas others failed. The processes and conditions in which hybrid regimes developed were analysed separately for each case study. In the cases, layering and conversion were identified as the forms of change that occurred. The conditions that shaped actors to layer and subvert institutions were analysed by considering how historical structures are navigated through ideas and discursive practices. This chapter brings the results together to draw conclusions about the causal dynamics and processes underpinning differential responses to government's efforts in these specific cases.

Following this introduction, the first section revisits the findings of the three cases and brings to fore the forms of change that occurred and the outcomes for stakeholders implicated in realising these changes. The second section looks more closely at some causal processes in order to reach more generalizable conclusions, revisiting and refining the theoretical propositions about institutional change presented in Chapter Three. A third section abstracts further from the case material to explore how ideational theories on ideas and discursive practices impact upon the development of hybrid land governance regimes. The fourth and final section broadens out to examine the implications of the foregoing analysis for cities and states in the developing world and especially Africa.

### **8.1 Fitting customary institutions into statutory systems: the three cases**

The cases can be summarised as follows. Gbawe (Ga south Municipality, Accra), Ejisu and Juaben (Ejisu-Juaben Municipality) are major urban communities and the fastest growing in their respective municipalities. Ejisu and Juaben are large cities hosting more than 18,000 people each. Gbawe, on the other hand is larger, home to more than 92,219. However, all three are growing, experiencing increases in the demand for urban space. The three cases have benefitted from the government's support to strengthen local land governance institutions and to integrate elements of customary tenure and statutory law under the LAP. That is, to institutionalise hybrid land governance in order to improve customary land administration which would then form the bedrock for an enhanced formal land market (Government of Ghana, 2003). This was done with the intention of enhancing tenure security through decentralised land documentation, land use planning and revenue mobilisation. However, these efforts have resulted in divergent outcomes in terms of the forms of change envisaged and the expected urban development objectives.

In Gbawe, efforts to develop a hybrid regime occurred through a process of institutional layering whereby statutory land use planning and urban regulations were attached to existing customary institutions of land governance without undermining the existing customary practices and norms<sup>54</sup>. In reaction to rising urban land values, the Gbawe customary organisation established a well-organised land allocation system through a LMC which facilitated access to relatively secured urban land. However, this initiative could not address the emergent problems that were associated with the increased demand for urban land. As such, the customary organisation mobilized government support through the LAP to establish a CLS which enabled the landowners to document newly transacted land rights, standardise land use planning and to mobilise land revenue. The institutional layering process was such that customary institutions and practices for land allocation operated alongside the new rules and this enabled the customary organisation to retain control over its land and the benefits associated with it. These interventions resulted in substantial change in terms of land use planning, infrastructure investment and access to secured and registered urban land. Importantly, the land allocation system is now based entirely on a leasehold system and this allows the customary organisation near total control of spatial development. Developable plots are formally released to the market after local plans have been developed and only after being serviced with basic infrastructure. However, the customary organisation is not the only actor managing the community's development. The local government jointly finances community infrastructures and sets the minimum standards and urban regulations that all land development must comply.

In Juaben, efforts to integrate formal and customary administration took similar forms as in Gbawe. Government's efforts to 'layer' new land use planning and urban regulatory institutions onto existing customary practices were relatively successful and led to fairly equitable outcomes. While property rights ownership and allocation remain under the jurisdiction of customary authorities, land documentation and land use development are guided by statutory regulations. Government support in the form of a CLS enabled the customary organisation to develop a locally appropriate land allocation paper for documenting newly transacted rights and for regulating land development. In this way, land is allocated to new users through customary procedures, although land use rights are legitimized and given government recognition through the allocation paper. The local authority provides regulation and development control through statutory regulations made possible via the existence of the CLS. As a consequence, land rights have become more secure, and development

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<sup>54</sup> Land use regulations are the rules which indicate how land in particular areas can be used and developed (Goodfellow, 2013). Common land use regulations include building codes, minimum standards or guidelines for the provision of infrastructure, zoning regulations etc. Land governance on the other hand refers to the institutions and mechanisms that allocate land to appropriate uses within urban areas, including property rights (Turok, 2016; Sorensen, 2018)

control further enhanced. Today, land allocation in Juaben is plan-led, and new rights are documented on fraud-proof allocation papers. Village chiefs continue to exercise control over lands although LMCs exist to ensure fairness in land allocation and the use of revenues for community infrastructure investment.

In Ejisu, unlike Gbawe and Juaben, institutional change took the form of conversion. Efforts to improve customary land administration and to establish a hybrid governance regime has not resulted in the outcomes envisaged by the government. Although the establishment of the CLS provided opportunities to improve the dysfunctional land market in Ejisu, customary authorities redirected the new resources towards private interests at the expense of community interests. When the CLS was established, customary actors were supportive of the new arrangements and appeared to follow the expectations of the new rules. However, when it became clear that the new rules did not serve their interests and ambitions, some disadvantaged village chiefs coalesced into a 'united group' to resist the CLS. They achieved this by exploiting the inherent ambiguities in customary land law and reinterpreted land allocation practices to allocate land without any restrictions. Moreover, because the provisions associated with the CLS permitted certain discretion in enforcement, village chiefs took advantage of this to negotiate strategic alliances with public planners and to redeploy planning rules towards privatising communal land. As a result, customary actors are enclosing communal lands through these 'negotiated planning' practices and revenues generated from land transactions are increasingly being privatised. Land allocation is plan-led but driven largely by market speculation. Much of the planning is made possible through negotiations between customary actors and public planners. Planners often enter into ad hoc commitments with customary actors to prepare local plans that guide land delivery processes in return for negotiated payments in cash or kind. This reflects what was described as redeployment of new planning rules towards private interests. Despite the revenues generated from land transactions, no investment in community infrastructure is undertaken by customary actors prior to land allocations, unlike the case in Gbawe or Juaben.

Table 8.1 illustrates the differential outcomes in terms of the effectiveness of efforts to institutionalize hybrid land governance in relation to land governance, local land use planning and urban land value capture. The table shows that although the three reformed customary institutions retain some features of existing customary practices, they have also adapted to a largely marketized environment in which they now operate and, are malleable to interfacing with the formal state institutions they now encounter. Three key differences with these reformed customary institutions include: the formalisation (and through this, securisation of customary tenure); incorporation of customary

practices into statutory law; and capturing land value increments. These differences are briefly discussed in turn.

*More formal, secure and marketable tenure.*

Despite the varied experiences, the three cases show graduated shades of tenure security ranging from simple registration of rights (through allocation papers) to dispensations offering legal recognition of customary property rights through leasehold titles (e.g. in Gbawe). These instruments have brought better protection of rights through formalisation compared to the situation before<sup>55</sup>. There are however still cases where oral land grants are the norm which works to undermine tenure security. In Ejisu for instance, customary actors continue to bypass both customary and statutory land laws to allocate land through verbal agreements. These practices are to an extent the outcome of collusions of customary and state actors who are motivated by expected economic gains for themselves at the expense of communal interest. Overall, however, where land rights are being secured through simple registration mechanisms such as in Juaben and Gbawe, the property rights have become more marketable and legally enforceable. The outcome is the effective use of land and the kind of urban transformation observed in these communities.

*More integrated and incorporated customary tenure practices into statutory law*

Prior to the reforms, the distinction between statutory and customary practices was quite clear, characterised in this thesis as legal pluralism<sup>56</sup>. Today, the reforms have reduced this and created clear pathways for statutory recognition of customary tenure practices. The three cases have seen (in varying degrees across cases) elements of the existing customary tenure being incorporated into statutory law for more effective land allocation and administration. In Juaben and Gbawe, the establishment of the CLSs have helped to streamline administrative procedures for the acquisition of developable land, and for land administration and record keeping. Moreover, in all cases land use planning is now characterised by hybrid arrangements where customary and state actors jointly prepare and implement local plans through processes of mutual adaptation and negotiations. In Juaben for instance, land use planning has become more standardised and professionalised while new formal land registers are now based on survey work done by para-professionals. In Ejisu local plans are being prepared by public planners through ad-hoc arrangements. And in Gbawe, customary practices and norms are now integrated and incorporated into statutory land regulation system to

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<sup>55</sup> The importance of tenure security for investment has been well documented (see for e.g. Goldstein et al., 2018)

<sup>56</sup> Legal pluralism is an acknowledgement that customary practices differed from and did not have the same status as statutory practices.



enforce development control in some cases. Through these hybrid arrangements, land allocation is now increasingly confined to only planned neighbourhoods and consistent with municipal structure plan. Furthermore, customary tenure practices and procedures have become more predictable and legible to statutory bodies. Potentially this means a dilution of the power and authority of traditional chiefs and an extension of state power into a realm that has hitherto largely remained governed through local rules and norms. However, the improvements in integration and legibility is limited to only land allocation and planning practices. Issues relating to land revenue mobilisation and distribution remain blurred and politically difficult to circumvent. In all cases, drink money remains undisclosed or shared with local authorities although there are some attempts by actors in Gbawe and Juaben to direct these revenues in support of desired community infrastructure.

#### *Capturing land value increases*

This is one area where there are many variations in practices across the three cases. Land value appreciation created by urbanisation are either captured by a few lucky individuals as shown in the case of Ejisu or directed towards the public good as illustrated in Juaben and Gbawe. The LAP reforms were underpinned by the logic that the new hybrid customary institutions would allow for city authorities to capture some of the land value appreciation through taxation of land transactions for the collective good. That is why the CLSs were established to facilitate the documentation and disclosure of all land transactions. In this way, the expectation was that city governments would share in the profits generated from land transactions particularly where customary land has become commodified. However, in all cases financial records on land transactions have remained undocumented. But even where they are recorded, customary actors fail to disclose land revenues in order to avoid sharing land profits with local authorities. Further, land revenue is characterised as a tokenistic payment (drink money) rather than a payment for land transaction making it impossible for city authorities to share in these profits. Nevertheless, there have been consistent efforts by customary actors in some cases (Gbawe and Juaben) to use land revenues for redistributive purposes such as directing proceeds to support desired community infrastructure and services. Such initiatives have helped to prevent uneven development and reduced discrepancies in desirability among different parts of the communities. This however suggests that strengthened customary land governance is not sufficient to produce equitable outcomes, since its contribution to equity depends on the commitments of those holding political power (see section 8.3). Overall however, communal ownership of land with structures available through leasehold offers the possibility of capturing the unearned increment for the population at large.

Theme	Variable	Gbawe	Juaben	Ejisu
Land governance	Authority over land.	Customary authority exercises authority over land ownership	Customary authority exercises authority over land ownership.	Customary authority exercises authority over land ownership.
	Day to day decisions over land allocation	An egalitarian LMC supports customary authority to undertake day to day decisions over land allocations and adjudication	An egalitarian LMC supports customary authority to undertake day to day decisions over land allocations	Customary authorities allocate land directly. LMC non-existent.
	Robustness of land allocation instruments	Land allocation based entirely on a leasehold system.	Locally designed and fraud proof <i>Allocation Papers</i> are used to transfer clear property rights to market participants	No standardized allocation instruments exist. Land allocated orally or with <i>allocation letter</i>
	Land administration and record keeping	Administrative procedures for acquisition of planned land streamlined through integration of CLS and Lands Commission activities. CLS established in 2003 and still operational.	Land administration and record keeping is documented manually by the CLS. CLS established in 2014 and still active. New formal land registers based on survey work done by paraprofessionals, group and individual titles captured	CLS established in 2008 but currently dysfunctional. Land administration and record keeping is based on embedded local memory, informal verbal and informal written agreements.
	Rights and tenure security	Registration of individual and collective use and ownership rights possible. Land transactions documented manually and computerised by the CLS. Rights and tenure security perceived as more secure due to statutory protection.	Rights and tenure security perceived as more secure due to statutory protection. Individual and collective use and ownership rights possible.	Rights and tenure security perceived as precarious especially for those without qualifying rights; Informal, individual and collective use rights with ability to exclude others.
	Land adjudication and dispute resolution	Locally embedded grievance and dispute resolution mechanisms. Dispute resolution is formally integrated into national judiciary system, but local dispute resolution preferred where state capacity is limited	Locally embedded grievance and dispute resolution mechanisms with formal integration into national judiciary system.	Local dispute resolution is weak and untrusted.

	Integration with formal state institutions (new hybrid arrangements)	Land governance practices increasingly integrated and co-opted in statutory law. Increasing standardisation of practices across community	Generally, land governance practices increasingly integrated and co-opted in statutory law. Increasing standardisation of practices across community	Largely independent although general guidance given
<b>Land use planning</b>	Forward planning	Proactive land use planning by a reformed customary institution – a hybrid of customary actors, appointed surveyor and planning officials. Plan preparation is initiated and financed by customary authority.	Proactive land use planning by a reformed customary institution – a hybrid of customary actors, appointed surveyor, planning officials. Plans are prepared by local authority but financed by customary authorities. Various payments both in cash and kind are made by chiefs to public servants for the planning, surveying, and demarcation of customary lands.	Land use planning reflects negotiated or ad hoc engagements between customary actors and public planners/surveyors. Spatial development is driven by speculative developments and inconsistent with planning objectives of equity.
	Customary authority's planning capacity	Customary authority's existing capacity and resources for urban planning strengthened by state support via CLS under LAP. More integrated planning practices between customary and statutory actors	Land use coordination strengthened by more professionalised and standardized land allocation and local planning practices across communities.	Generally, increased independence of customary actors in land use planning with limited statutory influence
	Regulation and development control	Reformed customary institution exercises near control over spatial development by specifying conditions of sale in lease contracts. Customary practices and norms integrated and incorporated into statutory land regulation system to enforce development control.	Scope for urban regulation using approved <i>allocation papers</i> although regulation is limited to new builds.	Little statutory involvement in development control and enforcement

	Infrastructure investment	Early installation of infrastructure and services enabled by statutory support to customary organisation. Infrastructure financed through land exchange deals and customary land revenue where state capacity is limited.	Spatial development is driven by local land use plans which often include future infrastructure investments. Some level of infrastructure provision – financed through revenue generated from land sales. Land is only released for development after being planned (and sometimes serviced).	Customary organisation has little ability to invest in community infrastructure. Municipal authorities are responsible for infrastructure provision. Land is released for development without infrastructure.
	Emerging planning outcomes	Land use pattern is highly egalitarian, with ample public space and civic culture. Combination of customary ownership with strict planning prevents land speculation.	Land use pattern reflects a fairly even distribution of desirable residences.	Vast portions of the community is planned but plots are priced out of the formal market.
<b>Urban Land value capture</b>	Commoditisation of land	Land sales and rental possible for all those with qualifying rights and investors. Land prices are determined by the market although equity measures are incorporated to enable affordability	Land sales and rental possible for all those with qualifying rights and investors. Land prices are standardized to enable equitable access	Largely informal land sales and rental. Land prices are determined by the market through arms-length negotiation.
	Practice of land value capture	Customary organisation captures rising land values through direct allocation wherein a base price (drink money) for serviced land is paid; and through recovery of annual land rent through leasehold system	Revenue from direct land sales (drink money) remains with customary authority but part of it is reinvested in community infrastructure.	Revenue generated from land transactions (mainly drink money) accrues to individual customary actors and actors involved in negotiations.
	Gains produced by market transactions in property	Customary organisation captures rising land values through direct allocation wherein a base price (drink money) for serviced land is paid; and through recovery of annual land rent through leasehold system	Revenue from direct land sales (drink money) remains with customary authority but part of it is reinvested in community infrastructure.	Revenue generated from land transactions (mainly drink money) accrues to individual customary actors and actors involved in negotiations.

	Land revenue and equity	Equity and good planning are the principal objects of capturing rising land values	Equity and good planning are the principal objects of capturing rising land values	Revenue generation is the motive behind capturing rising land values
<b>Institutional change</b>	Aspects of Transformation	Improved land governance, effective land use planning; and land value capture instituted	Improved land documentation; and Land use planning; Land Revenue Mobilisation fairly successful	Informal land use planning instituted but land documentation and land revenue mobilisation failed
	Mode of change	Bottom-up institutional layering. Through self-organised efforts, new land allocation and planning rules introduced as correctives on top of existing customary practices	Top-down institutional layering. Led by the state, new standardized land allocation and planning rules introduced on top of existing customary land allocation arrangements	Institutional conversion. New planning rules strategically redeployed to new goals by customary authorities (contrary to LAP objectives)
	Type of dominant change agents	Institutional supporters and opportunists	Institutional supporters and opportunists	Subversives and strong veto players

Table 8. 1 Implementation outcomes across the three cases

While the changes observed in the three cases do not necessarily align with the particular outcomes envisaged by the LAP, they are not impossible to understand. In each case, control over property rights and land allocation continues to be retained by customary actors. This is because land allocation has direct implications on the outcomes of urban planning processes and the control of these powers offer unique opportunities by which customary actors shape land development and the distribution of the returns, particularly in the context of increasing land values. The changes in relation to land use planning on the other hand, reflect the contestations and on-going negotiations among the stakeholders implicated in realising the hybrid outcomes. The results have demonstrated that integrating customary and statutory institutions of land governance does not automatically result in secure and equitable access to land. The creation of the new hybrid institutions is characterised by power-laden negotiations which take place between state and customary actors. The ability of such policy initiatives to achieve their intended outcomes depend on how customary actors respond to such initiatives and the specificities of the institutional and political context. These findings support the arguments of some institutionalists that change cannot be fully managed, pre-planned or controlled particularly in contexts of increasing land values (Sorensen, 2015, Pierson, 2000, Mahoney, 2000), but it can be prepared and navigated by people depending on the institutional context and power relations involved (Mahoney and Thelen, 2010). Therefore, attempts at creating transformative hybrid regimes need to go beyond simply integrating customary and statutory institutions to recognise how institutional context and targeted actors shape the possibilities and limits of these changes. Similar conclusions have been drawn in other recent research about the need for institutional analysts to shift attention towards the study of the actual practices of places and contexts within which institutional change takes place (Goodfellow, 2013, Myers, 2011, Salet, 2018). Following Watson's (2009) lead on 'seeing from the South', Cirolia and Berrisford (2017) suggest that understanding context requires unpacking particularities of places and focussing on what is actually happening. By examining the political dynamics and actual practices and contexts in each case, this research has shown that efforts to improve the land use and property rights institutions in African cities must begin by understanding the political struggles that surround urban reforms as it is key to understanding the possibilities and limitations of change.

The above discussion presents a stylised analysis of differential effectiveness of efforts to institutionalise hybrid land governance regimes at the local level. The task now is to abstract from this to achieve theoretical generalisation by looking more closely at particular causal mechanisms. In accordance with theory-guided process-tracing, causal processes are examined through the analytical framework presented previously in Chapter Three.

## 8.2 Institutional context, interventions and hybrid governance

The case studies demonstrated that efforts to integrate statutory and customary institutions at the local level resulted in subtle and step-by-step changes in existing policy and practice rather than radical change. Fitting long-standing customary institutions and practices into existing statutory land use and planning institutions through institutional and legislative reforms implied slow and incremental amendments and modifications to land governance institutions. This is illustrated by the layering of statutory land use regulation rules onto existing customary practices in Gbawe and Juaben, which has resulted in substantial change to local planning and land delivery practices while maintaining the logic of existing customary tenure systems. These changes confirm arguments in other institutional change research that change is almost never radical (Mahoney and Thelen, 2010a, Mahoney and Thelen, 2010b) and even punctuated change (Mahoney, 2000) can be explained as an accumulation of small, often seemingly gradual institutional transformations (Streeck and Thelen, 2005). Yet, the cases also show that not all attempts to integrate customary and statutory land governance systems succeed, as demonstrated by the conversion of new institutions into new functions and goals in the case of Ejisu. Synthesising the results of the empirical chapters, including the comparison of the case studies above, we can conclude that the following causal processes and mechanisms were critical in influencing how institutional change occurred (or not).

### *Political context, veto players and feedback effects*

In Chapter three, it was argued that the prevailing political context influences whether new institutional arrangements get implemented because it affords defenders of the status quo possibilities to block or resist change. And as noted in Chapter 5, customary actors have enjoyed significant power in relation to land and property rights over the years. Various colonial and post-colonial land policies and legislations have legitimized and further strengthened customary actors' interests and roles as custodians of customary land. By virtue of these powers and privileges over land and property rights, customary actors have become what Tsebelis (2002) calls "veto players" in the urban space<sup>57</sup>. The privileges and power associated with their status as 'veto players' enables them to potentially block any changes that do not align with their interests. The fact that customary authorities have managed to quite effectively block the nationalization of property rights during the colonial period or displacement of customary tenure during the immediate post-colonial period (see discussion in Chapter 5) aptly reflects the fact that, when it comes to protecting existing customary land

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<sup>57</sup> Veto players in the political science literature is used to refer to politically powerful actors, groups or coalitions who can stop a change from the status quo by virtue of their privileged access to access to institutional or extra-institutional means of blocking change (see for e.g. Mahoney and Thelen, 2010 and Tsebelis, 2002).

arrangements, these veto players have been quite politically powerful. This means that it would be difficult to displace the existing customary practices and norms that customary actors use to enforce their control over customary land. However, customary authorities do not enjoy similar strengths in relation to other land governance institutions such as planning and urban regulations. In the context of these myriad strong veto possibilities therefore, the government considered layering as a promising strategy to enable improvements in the existing land governance regime. Because layering does not require making any direct changes to the prevailing customary practices and norms, planning and urban regulatory institutions were layered onto customary tenure systems via the establishment of the CLS. The logic is that while customary actors can protect the customary institutions governing land, they cannot necessarily prevent the addition of new rules such as land documentation requirements, planning standards and urban regulations. The government's expectation was therefore that overtime the new rules will tilt existing customary practices towards new behaviours, particularly in relation to land and property rights institutions, land use planning and land revenue mobilisation.

The case findings suggest that while planning institutions (plans, regulatory processes, urban forms, and governance arrangements) have transformed substantially, land and property rights institutions (rules and mechanisms that allocate land) continue to display a certain degree of path-dependence because of the positive feedbacks that these generate in the form of land profits. Taking each dimension separately, the nature and extent of how planning institutions are evolving will be discussed first. In all the cases, planning regulations and practices are being used in the service of new ends, sometimes not in the ways envisaged by the LAP reforms. Customary authorities are tapping into their privilege as custodians of customary land to deliver planned areas. In Juaben for example, customary authorities have adopted informal mechanisms such as 'allocation paper' to facilitate development control. Similarly, in Gbawe, customary norms are infused with statutory land use regulations to enforce planning standards. But even where local structures have broken down as observed in Ejisu, major changes in planning practice can be observed whereby local chiefs negotiate with public planners to supply planned land to the market. Planning institutions are changing in line with government's institutional layering attempts largely because these changes do not really impact negatively on customary actors. On the contrary, improvements in local land use planning have served the interests of customary authorities by increasing land values and subsequently land profits. This is evidenced by customary actors' attempts to promote plan-led land allocation, and even constructing alliances with planners to attain local plans where necessary. In other words, customary actors in all the cases did not prevent or counter the layering attempts to transform planning institutions since they do not really suffer from the consequences of these improvements.



This is not the case for institutional structures for land ownership and allocation, which continue to exhibit strong continuity. Despite the efforts to modify institutional arrangements for customary land administration, property rights institutions have exhibited remarkable continuity. Much remains of the institutions that support the allocation of customary land. Because land and property rights systems often generate feedback, customary actors have consistently contested any attempts to weaken their control over land allocation or transform the form of property regime (e.g. from customary to private property system through titling programs under the LAP). The routine exercise of power and authority over land for instance enables customary authorities to impose rules on others, and to strengthen allegiance to them. Similarly, the control of land allocation enables them to dictate who benefits and how land profits are distributed. Land allocation is central to planning efforts given the control over property rights (Blanco, 2012, Krueckeberg, 1995). Therefore, the ability to retain control over land allocation offers customary actors unique opportunities to continue to shape the outcomes of urban planning processes. As custodians of land, customary actors can internalize the positive externalities in terms of land revenues produced by city growth and externalize the costs of inefficient land-use patterns, spatial segregation, urban sprawl, discontinuous growth, destruction of peasant communities to the public realm. For instance, in Ejisu, village chiefs continue to subdivide and allocate land through ‘negotiated planning’ processes, while failing to return the revenues to the landowning community. These actors are essentially privatizing the benefits from communal land while ignoring their responsibilities to the communities who are rightfully entitled to them as owners of land and as producers of land values through urbanization processes (Fainstein, 2012). Similarly, customary actors in Juaben have relied on the power relations that the notion of customary tenure produces to define their privilege over ‘drink money’ and to resist sharing this revenue with the OASL, while expecting the local authority to provide community infrastructure. That is why Obeng-Odoom (2014a) insists that the perceived custodians of land have consistently acted in their individual interest, whilst successfully using a discourse of ‘communal’ to secure the backing the of the state.

The strong feedback effects that property rights institutions generate give customary actors an incentive to deploy various kinds of strategies to ensure the continuity of existing institutional arrangements to favor their interests and ambitions. Such strategies include subverting rules or failing to dedicate resources to the enforcement of new rules as demonstrated by the Ejisu case. Rather than simply adapting to the new CLS rules, village chiefs in Ejisu evaded the CLS’s directives and have retained control over property rights and land allocation. Customary actors have capitalised on the notion of customary tenure to defend their privilege as custodians and have blocked any attempt at reforming property rights or sharing in land revenues. At the same time, policies aimed at strengthening the capacities of customary actors have not been accompanied by policies to check

their powers in attempt not to “meddle in chieftaincy affairs” (Ubink, 2008b: 164). The government’s policy of non-interference has afforded customary authorities strong discretionary powers in the management of customary land and its revenues. As shown by the case studies, this pattern of non-interference has been reproduced through local authorities allowing and even encouraging customary actors to develop local plans for their communities. The net effect is that customary actors can allocate lands in exchange for considerable profits for themselves while failing to share these revenues with the community.

But even where improvements in land and property rights have been observed, the issue of positive feedback effects can still be traced in the strategies customary actors have deployed in response to the state’s layering efforts. In Juaben, land allocation arrangements have become standardized, uniform and more legible to formal institutions and land seekers due to the establishment of the CLS. Land transactions are now formally documented by the CLS, while customary land allocations are supplemented with a customised land allocation paper. This has improved tenure security for new land users and has enabled the Ejisu-Juaben local planning authority to rely on allocation papers as evidence of landholding in order to grant building permits, even without a title certificate. In return for this state support, revenues generated from land revenues are expected to be shared between the customary authority and the local government in accordance with the statutory formula. But the customary organization refuses to document the land revenues, making it impossible for the OASL to collect and disburse this revenue. The notion of ‘drink’ is used to justify non-disclosure of land revenues to the OASL thereby retaining all the revenue from land transactions for themselves.

The point, therefore, is that where urban institutions foster strong feedback effects, change is only likely to occur if the new institutional arrangements fit into the interests of veto players. Compared to planning institutions, inducing institutional change particularly in relation to land and property rights in the Ghanaian context is challenging because it requires the necessary involvement of customary land actors in the implementation of new arrangements. Such involvement obviously empowers customary actors as veto players and thereby allows them to significantly influence whether new institutional arrangements take place. And in a context of rapid urbanization and increasing land values, strong feedback effects in the form of land profits means that customary actors would be prepared to counter any changes that do not enhance their interests. This view about feedback effects is supported by a growing body of literature on institutional ‘winners’ and ‘losers’ (Jacobs, 2011, Onoma, 2009a), which argues that those agents who benefit from existing institutional arrangements have an objective preference for continuity and will resist changes that reduce their rewards.

While this notion of institutional “winners” and “losers” holds value, it can appear too simplistic in explaining why certain urban institutions change while others display strong continuity in urban settings, in contexts where actors and coalitions are driving change. Sorensen (2015) rightly argues (following Pierson, 2004) that because institutions embody power-distributional implications, the particular conjuncture surrounding the establishment of major urban institutions can also have powerful impacts on the compromises achieved and the institutions established (see also Collier and Collier, 2002). In other words, minor differences in the sequencing of institutional development plays important roles in the development of land and property rights institutions. Hence, it is worth emphasising how the timing of institutional development influenced the layering processes and the development of hybrid governance institutions in the cases. The Juaben case provides an example where the timing and sequencing proved influential to the institutional layering outcomes observed. The leadership of the Juaben customary organisation envisaged the consequences of urbanisation and took steps to institute a more democratic framework that addressed potential distributional conflicts among customary actors (i.e village and divisional chiefs and traditional council). Customary actors in Juaben had the benefit of learning from the consequences of a dysfunctional land market in Ejisu. Moreover, the leadership of the Juaben customary organisation was motivated to curtail the activities of unruly village chiefs and to restore order in the community. The ongoing LAP program provided a timely opportunity for the customary authorities to consolidate control over the community’s land and to strengthen local governance initiatives. Subsequently, the government was invited to ‘layer’ the CLS onto the existing customary organisations’ practices and this helped to standardise land allocation procedures. Thus, in the course of experiencing the existing institutions, customary authorities reflected and acted upon this learning and subsequently requested governmental support to improve the local institutions for land administration.

This analysis suggests that the choices and behaviour of actors to mobilize action either for or against institutional reform is not only influenced by the unequal distributional effects of institutions which categorises customary actors as winners and losers. The findings show that the timing and particular circumstances surrounding the establishment of major urban institutions can also play crucial roles in whether actors achieve a compromise in reforming particular institutional arrangements as demonstrated in the Juaben case.

### *The Character of Institutions*

Following Mahoney and Thelen (2010b), the case findings indicate that particular characteristics of institutions create opportunities for various kinds of actors to interpret, bend, or break the rules in the pursuit of individual and collective goals (see also Chapter 3). Rules are often ambiguous in their

meaning, thereby giving strategic actors considerable latitude to contest, interpret and implement rules in new ways (Streeck and Thelen, 2005). These ambiguities invite different forms of change. Many aspects of the institutional development processes in the case studies demonstrate how customary actors harnessed the gaps and discretion in the interpretation or enforcement of rules to steer institutional developments towards preferred outcomes. In all the cases, customary actors collaborated with state authorities to secure formal changes in the rules and institutional arrangements for land management, planning and revenue mobilisation through layering, and in some cases subverted the effects of these rules in practice depending on which outcome favoured their interest.

In the Ejisu case, ambiguities associated with customary land law proved crucial to the ability of village chiefs to work *against* the system from *within*. Village chiefs who were disadvantaged by the establishment of the CLS contested the new land allocation rules upon realizing that the Paramount chief directed land revenues towards private interests. Village chiefs exploited the inherent flexibility in customary land law to assert and secure their claim to land profits by interpreting customary laws in their favour. They legitimized this re-interpretation by asserting that customary law permitted them to take decisions on behalf of their communities as long as they act with the consent and concurrence of their elders.<sup>58</sup> This reinterpretation of customary law enabled village chiefs to undertake land allocations outside the control of the paramount chief and the CLS. Furthermore, village chiefs harnessed the gaps in the CLS arrangements to negotiate strategic alliances with private land surveyors and local public planners to sub-divide and deliver customary land for their private interests. Although local planning authorities have been entrusted with the responsibility for planning and managing development on lands under their jurisdiction, they are under-resourced, making it difficult to execute their land management duties effectively (COWI, 2010, Yeboah and Obeng-Odoom, 2010, Yeboah and Shaw, 2013). Drawing on their land allocation powers, therefore, local chiefs took the initiative to negotiate strategic relationships with public planners to prepare local plans and sub-divide customary lands. Through this 'negotiated planning' process, local chiefs were able to determine preferred changes to land use in defined areas and be recompensed in the form of land revenues when such lands were allocated. These processes highlight how customary actors have continuously negotiated and searched for gaps and opportunities to secure certain planning powers and to assert their claim over customary land. And as the evidence shows, these actors found opportunities in the

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<sup>58</sup> It was noted in Chapter 5 that pre-colonial land tenurial rules permitted local chiefs to make land use decisions with their community elders. Paramount chiefs did not exist until colonial administrators established and vested land use decisions unto them (see also Firmen-Sellers, 1996; Kasanga and Kotey, 2001).

weak capacities in the planning regime and ambiguities provided in customary law to push for substantive outcomes in their preferred direction.

Similarly, in Juaben, the introduction of the CLS provided an opportunity for the customary authority to reconfigure the institutional arrangements for land administration, improve land documentation and facilitate the collection of ground rent in collaboration with the district OASL. However, the customary organisation refuses to document the revenues generated from land transactions making it impossible for the OASL to collect and disburse this revenue in accordance with the statutory formula. The Juaben CLS does not include allocation fee (drink money) in the documentation of land transactions, while using the discourse of 'drink money' as a symbolic gesture to evade payments to the OASL. In the Gbawe case, the ambiguity surrounding revenue from family land enabled the customary organisation to capture all the land value appreciation for itself, although some of the revenue has been directed to community development. The current legal framework for land revenue mobilisation (including the New Land Bill, 2017) does not require family landowners to share a portion of the land revenue with the state (see Chapter 5). And because family lands are not considered as stool lands, the Gbawe family has taken advantage of this legal loophole to reap the full benefits of their investments<sup>59</sup>. The Gbawe customary organisation collaborated with the state to establish the CLS and to attach new rules for land administration primarily because the success of these initiatives would enhance the family's capacity to generate enhanced land value and consequently land profits from its land. The institutional support from the government offered opportunities to further strengthen control over urban planning processes without interfering or requiring any changes to the family's control over local land administration.

The conclusions about the character of institutions suggest that ambiguity in the meaning of institutions provides a critical opening for actors to creatively interpret and pursue change in particular directions. The findings have demonstrated that actors animate the process of institutional development by exploiting gaps and ambiguities in urban institutions, particularly those that generate positive feedback effects. Ambiguity and gaps in institutions invite conflict and contestation as actors struggle over the meaning, application, and enforcement of institutional rules. And as Mahoney and Thelen (2010b) have argued, it is through these conflicts over rules and their meaning that actors can transform the way institutions allocate power and authority by interpreting or redirecting institutions in pursuit of their goals, or by subverting or circumventing rules that clash with their interests. When

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<sup>59</sup> Stool lands are lands in traditional areas in Ghana where larger communities, represented by stools or skins, hold the allodial title. Family lands, on the other hand, refer to lands in which sub-groups, such as extended families or lineages, hold the allodial title. Both family and stool lands are referred to as customary lands, as discussed in Chapter 5.

successful, these contestations establish precedents that become codified in new rules, changing the complexion of an institution in the process. In other words, the characteristics of institutions themselves, especially the ambiguity of their rule structure and the attendant struggles over the meaning of rules, help explain how institutions evolve (Thelen, 2004b, Pierson, 2004). And as discussed previously, the distributional consequences of institutions particularly urban institutions, influences actors to continuously search for ways to exploit new rules.

The foregoing analysis is not intended to suggest that any of these causal propositions sufficiently explains the variations in the modes of institutional change or responses of actors in all the cases. Such a claim would be an oversimplification. A feature of qualitative research into causal mechanisms is that it can highlight ways in which a cause 'works together in combination with other causes to produce an outcome' (Mahoney, 2008: 418). An explanation of the effectiveness of layering in Gbawe that focused, for example, on the political context and feedback loops alone would be partial and unable to account fully for the causal mechanisms observed. Similarly, a focus on the path dependencies or properties of institutions in Ejisu would be inadequate in explaining how conversion occurred. Process-tracing of the kind undertaken in this study thus facilitates not only the exploration of multiple paths of causality but also the type of change agents at play in the causal process (Hall, 2010, Mahoney and Thelen, 2010b).

Too much attention has been given to rationalising and improving the efficiency of urban land and planning laws in most approaches to developing hybrid land regimes, at the expense of political factors and state-society dynamics. Many land and planning reforms efforts in African cities are failing to produce the desired results because of failures to adequately address vested interests among customary and state actors (Obeng-Odoom, 2016, Napier et al., 2013), but also because of wider political factors that undermine land market reforms even as particular local capacities are built. This section has highlighted the importance of divergent political and institutional environments in which layering processes occur (also see Berrisford, 2014, Goodfellow, 2013b), as well as the incentives for customary actors to comply or dedicate resources to the enforcement of new institutional arrangements. Particularly relevant are urban contexts that generate strong positive feedback effects for customary and local government actors, and the nature of specific urban policies and regulations in place that permit various actors to interpret, redeploy or break them in pursuit of particular goals. The next section abstracts further from the case material to discuss how ideas and discursive practices enabled customary actors to construct and legitimize their preferences, interests and agendas which furthered government's institutional layering efforts (the integration of formal and customary institutions of land governance).

### 8.3 Tracing the politics of institutional change: ideas and political priorities

The analysis in the preceding sections suggests that whether government's efforts to develop hybrid institutions were achieved and enforced depended to a large degree on the political context and the character of existing rules that permit actors to comply, contend or break new rules. This, however, does not explain why in similar institutional and political contexts there is a great effort on the part of customary actors to shape customary institutions to be more compatible with formal rules; something that (whether deliberate or as a side-effect) renders hybrid governance more effective<sup>60</sup>. What this thesis contributes is some potential reasons as to *why* government's efforts to layer formal rules onto customary institutions produced varied results within roughly similar institutional and political context. Framing the main findings of the thesis in this way helps further to distil their generalizable theoretical implications.

Initiatives to develop hybrid governance regimes occurred at certain critical junctures which provided opportunities for state actors to establish new institutional structures via the creation of the CLS under the LAP. In all the cases, specific triggering events were observed in the form of rapid urbanisation and planned infrastructure developments which questioned the capability of existing customary institutions to address changing land market conditions. Yet, government's efforts to layer new land management and planning rules in Ejisu failed to occur in the ways envisaged by the LAP reforms. Meanwhile, Gbawe and Juaben actors were both eminently successful in developing hybrid land governance institutions, and both had new land use and urban regulations 'layered' onto existing customary practices and norms. The success of Gbawe and Juaben was consistently achieved by making the formal institutions of the state more effective through informal (customary practices and norms) supports. Why government's layering outcomes differed substantially in the three cases boils down to underlying political priorities of customary actors. As Streeck and Thelen (2005) note, external shocks often bring about fundamental transformation within an institution when it activates existing potentials that have been generated by supportive actors experiencing that institution. From this perspective, a crucial mechanism for achieving institutional hybridity is the degree to which supportive customary actors valued compatibility between customary and formal institutions and therefore prepared the ground. A few examples from the empirical chapters illustrate this point.

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<sup>60</sup> As noted in Chapter Two, the emphasis of developing hybrid governance regimes is that integrating customary and formal procedures and institutions of land management combines the technical and enforcement capacity of the state, the legal certainty of ownership and the equitable principles of customary tenure. This approach, it is argued, has the potential to enhance land use planning and urban development because this process in areas where multiple tenure systems are contentious or overlap.

### *Events and opportune moments*

Chapter Six showed that the rising demand for urban land in Gbawe presented an opportune moment for the leadership of the customary organisation to strengthen its control over urban land. As such, the Gbawe customary organisation responded to this rising demand for land by deploying various strategies to attract attention and institutional support for the community's development. Between the 1980s and 2003, they used land exchange deals and participatory land management procedures to administer their lands. As new land governance challenges emerged, more resources, capacities and 'new' institutions capable of addressing these problems were required, which ultimately had to flow from the local and national government. Aware that the government's LAP reforms offered the resources and opportunities for addressing the family's land problems, the customary organisation aligned its interests and ambitions with the government's land decentralisation policy in order to gain the state's support. The state on the other hand was keen to engage the well-organised customary organisation because of the prospect of extending its planning and regulatory control over the family's land management arrangements. The concurrence of these events and alignment of interests between the state and customary authorities resulted in the establishment of the Gbawe CLS. Thus, the right context was created to bring about institutional layering. The net result was that a comprehensive land allocation system based entirely on a leasehold system was developed, with customary rules and norms used to enforce land use regulations. The variety of approaches and contexts in which the customary actors promoted these initiatives enabled public acceptance of these institutional changes among community members as well as government support.

In Juaben, persistent urban pressure and dysfunctionalities in the land market led the customary organisation to shift attention towards improving local land governance structures. Changes to the local land administrative structures began with the enforcement of the ban on land allocations. The ban on land allocations had started out as an idea to bring unruly chiefs to order and to ensure planned development of the community. It was only afterwards, that the customary organisation took advantage of the ongoing LAP reforms to request for governmental support to improve the local institutions for land administration. The customary organisation was well aware that ongoing LAP reforms provided an opportunity to address the land administration problem at hand. Thus, the institutional transformation observed in Juaben occurred as external and various endogenous circumstances reinforced each other.

But even when a favourable political context existed, and the objectives of government policy and interests of customary actors aligned, the case findings showed that customary actors in Juaben and Gbawe were committed to facilitating the institutional change process. In both cases customary actors



conceived and constructed institutional changes in ways that made them appear relevant, appealing and convincing to targeted interest groups. The Juaben case for instance provides many examples of the construction of credible, relevant and attractive proposals for institutional change. In conceiving solutions for improving the dysfunctional land market in Juaben, the perspectives of both the powerful (traditional council) and subordinate groups (village chiefs) were incorporated in the process of building new institutions. For instance, the proposition to place the ban on land allocations was derived through interactive discourse at the traditional council level and based on consensus among local actors. In this way, the idea that land allocations will only recommence when all chiefs have developed land use plans for their communities appeared as a decision agreed by the entire customary organisation and not by a few powerful actors. This consensus building approach enhanced the chances of the new proposals since they aligned with the accepted customary norm of 'decision-making by consensus' (Amanor, 2012). Again, proposals for the use of local plans to guide land allocations were constructed in such a way that rendered them relevant in the eyes of the targeted actors. Local chiefs and members of the council were convinced and persuaded to reason that the local plans would enable them to track land transactions, and in turn maximise the capture of land revenue for their use. This increased the acceptability of the proposals. The use of simple and locally recognised mechanisms such as the allocation paper to standardise procedures of land allocation and land use planning helped to legitimise and stabilise the newly established rules because these were familiar and locally appropriate mechanisms (see also Mireku et al., 2016).

The Gbawe case also shows how the acceptability of proposals for institutional change were enhanced. The leadership of the Gbawe customary organisation employed several strategies to overcome the scepticism of community members and to persuade them of the importance of reform. For instance, the free land grants (4 developable sites to each household) to community members helped to gain the support of community members that the new initiatives would align with their interests. The gesture resonated with the community's cultural understanding that custodians of the land are morally obliged to uphold usufruct's interest. This helped to overcome scepticism and potential resistance. Additionally, the LMC that was established to manage the family's land was structured and comprised of community representatives who were considered credible and likely to represent community members' interests. This strategy made the LMC to appear legitimate, relevant and supportable. Moreover, revenues that were generated from land transactions were reinvested in the community's development, making these reforms appealing to community members. These examples show how strategic actors enhanced the acceptability of proposals for institutional change by constructing appealing propositions that connected with the lived experiences and expectations of targeted actors. These findings strengthen arguments that although institutional change cannot be

predicted, it can be steered towards targeted outcomes by strategic actors with the capacity to mobilize action through ideas and discourses (see also Chettiparamb, 2007b, Steinmo et al., 1992).

On the contrary, there is little evidence that customary actors in Ejisu were similarly motivated to bring customary practices and norms in line with formal land use and planning regulations. But where there were indications of increased commitment to do so, this was rendered very difficult because of the path-dependent or institutionally 'sticky' nature of established practices. As noted in Chapter seven, customary actors in Ejisu supported the government's new rules (associated with the CLS) at the earlier stages, but later failed to dedicate resources to their enforcement. Despite the government's attempt to build local capacities and to support the customary organisation in improving customary land administration through the CLS, the customary actors viewed the new institutional changes as inconsistent with their interests and ambitions. Subsequently, village chiefs who were disadvantaged by the new institutional arrangements identified with each other, developed a coalition and devised strategies to subvert these 'new rules'. They developed a discourse to legitimize their right to administer customary land without restrictions from the paramountcy or CLS, and this re-interpretation of customary land law increased their chances of subverting the new institutional arrangements.

*Change agents: people who make things happen*

The thesis results show that the effectiveness (or not) of hybrid land regimes is enormously influenced by the type of change agents, particularly because they operate as the intervening step through which the character of institutional rules and political context do their causal work. In all the cases, it was observed that what people did, how they prepared change by 'selling' alternative proposals, and how they influenced policy through their interactions, contestations and negotiations mattered significantly in enabling transformative change or not. Individual actors and groups, labelled in this thesis as 'change agents' (see Chapter 3), reflected and promoted new ideas and interests and acted upon them within specific events and contexts. The learning processes and activities of these 'change agents' enabled the emergence of the forms of institutional change observed in the cases.

To understand how change agents successfully pursued institutional change within specific institutional context, the study considered the characteristics of these actors. First, the case studies point to change agents who had the capacities to reflect on the institutions they are experiencing and to consciously pursue changes to the institution through discursive processes. An example in the Juaben case is the Juaben Omanhene and his traditional council who instigated changes to land allocation arrangements based on their observations of land inefficiencies happening in their

neighbouring community (i.e. Ejisu). Similarly, the leadership of the Gbawe customary organisation gave meaning to emerging events and sought opportunities to attract investment to the community. They recognised and exploited the increasing demand for urban land and the opportunities presented by the LAP and accordingly, built political support for the change process they desired, and established new capacities required to implement this change. In this regard, actors' experience of an institution proved to influence their ideas and desirability about it, and whether to maintain or change the local governance institutions, as evident by the layering processes in Juaben and Gbawe.

Second, actors also operated as 'change agents' when they were considered credible by other targeted audience (Kornprobst and Senn, 2017). In Gbawe, the decision to delegate land allocation responsibilities to the LMC enhanced the acceptability and legitimacy of the new land management institution. The LMC, which comprised of community representatives, was considered as credible, knowledgeable with local land matters and intimately acquainted with the interests of community members. This worked out positively for the community as land transfer procedures became more transparent, standardised and acceptable by land seekers. However, credibility was not exclusive to people considered as experts or natural leaders. Sometimes, people in authority who acted genuinely and in the interest of the people they represent also had a good chance of causing institutions to change. The Juaben case provides the example of the Omanhene (paramount chief) who was considered by the traditional council as credible and genuine because he was an accomplished statesman and wealthy entrepreneur and thus uninterested in privatising the community's wealth. The Omanhene's proposal to enforce the ban on land allocations was acceptable to the traditional council because it originated from a credible authority and appeared relevant to the targeted supporters, primarily the traditional council and village chiefs. The Ejisu case lacked similar 'credible' actors who could act as change agents. Although the paramount chief of the Ejisu area had authority over the village chiefs, he was not considered credible by his subordinates (i.e. village chiefs and community members) because his actions were geared towards his private interests. On this basis, it can be argued that change agents' credibility is a social construct, which entails a number of attributes such as expertise and knowledge about the locality and the extent to which the individual represents the interest of targeted audience.

This analysis provides strong support for historical institutionalists' argument that although institutions constrain and shape actor behaviour and outcomes, people make things happen (Steinmo and Thelen, 1992). Even when institutions act upon actors, they are in turn also acted upon by actors (Thelen, 2003). The general point is that the importance of structure and institutions in policy change is tempered considerably by individuals. However, the relative success of the institutional layering

process in Gbawe and Juaben could not be traced to single heroes or leaders of change. Instead, the institutional change processes in each of the cases were influenced by various actors, who acted in relation to other people also acting as change agents and in relation to specific events and settings. This suggests that the identity of change agents is not fixed or exclusive to a particular person but depends on the character of institutional rules and the political context (i.e. time, place, situation, and the proposals being promoted or competing) that provide appropriate settings for these change agents to act.

The foregoing analysis suggests that political opportunities and events are social constructs which are only given meaning as triggers in the light of negotiations, compromises and existing power relations. External interventions and events do trigger action, but individual actors and groups are required to give meaning to these events and opportunities by reflecting, promoting and acting upon these ideas, interests, events and opportunities. The reflection processes and activities of these 'change agents' is what enables change in institutions. Drawing on the analysis in section 8.3, we can summarise this point about discursive practices and government's institutional layering efforts as follows: the Gbawe and Juaben customary organisation had the *motivation* to match customary practices with formal institutions because of the need to promote spatial development, restore order in their communities and to strengthen control over land revenues. These customary organisations had the *ability* to do so because of the presence of credible 'change agents' who had the capacity to reflect and 'sell' persuasive and convincing proposals for reform to veto players in their communities. These factors together meant the customary organisations could and did reflect and conceive of the institutional system in its entirety – including how formal and informal rules relate – as a target for major streamlining and consolidation. On this basis, it can be argued that layering attempts are likely to 'work better' as a means of gradual transformation to the degree to which they actually activate change agents' potentials along the implementation course of new arrangements. In other words, whether external interventions induce institutional change or not depends on the extent to which supportive political actors have already prepared the ground - whether deliberately or as a result of political struggles. Preparing the ground in this sense includes being motivated to match formal and informal institutions and conceiving and promoting new institutional arrangements that appeal to shared cultural understandings of targeted supporters.

Furthermore, the conclusions offered here generally confirm the views of those who argue that path dependence should not be understood as meaning that institutions are simply locked-in, but that continuity is often the result of ongoing mobilization by those advantaged by the institution who seek to protect their advantages (Thelen, 2004b, Streeck and Thelen, 2005, Mahoney and Thelen, 2010a).

The starting point of the research was the difficulty for reforms to break through structural forces presented by established policy routines and customary practices. These structures are characterised by path dependent processes, consisting of positive feedback effects in the form of land profits and access to control over land that have evolved over time. These positive feedback effects create sets of beneficiaries and relationships among affected actors, which often generate powerful political and economic incentives to oppose change. By applying this integrated institutionalist approach, however, the thesis has added a strong emphasis on how ideas and discourses help actors to shape their own self-interest, formulate preferences and enable desirable change. The case findings have demonstrated how 'change agents' navigate existing institutional constraints and veto players' self-interest by promoting proposals that 'make sense' within specific institutional contexts. Proposals for institutional change make sense when they are credible, relevant and persuasive and connect with the life experiences, interests and expectations of targeted supporters (Schmidt, 2008b). To ensure that proposals are conceived and constructed to make sense, opportunities and events need to be recognised, interpreted and given meaning within a particular context. Through interactive discourses, change agents then persuade targeted actors of the need for reform and arrive at institutional arrangements that resonate with targeted audiences' ambitions and everyday experiences. Thus, ideas and interactive discourses enable actors to layer, interpret or subvert institutions and to reach collective agreement on change strategically despite the constraints imposed by a particular institutional context (Blyth et al., 2016, Schmidt, 2008a, Schmidt, 2010, Sorensen, 2018b).

#### **8.4 Implications for land use policy and the urban challenge in Ghana**

As noted at the start of the chapter, this thesis has not only been about the land question in Ghana but also about the political economy of financing local urban investment in most African cities that are characterised by unclear land rights and inefficient land use regulations. The land governance challenges in Ghana and urban context are not too different from the situation in most African cities. Moreover, by considering Ghana's land question in relation to contemporary debates about many of the proposed elements of urban legal and institutional reforms in most cities of sub-Saharan Africa, this study has enabled an understanding of the dynamics and outcomes of such an approach to land policy. Therefore, this section addresses the question of what this thesis contributes to the study of land policy in sub-Saharan Africa and explains why the issues it raises are so important for Ghana in particular.

First of all, contrary to the argument that the co-existence of modern and customary systems of governance constitute a challenge to realising urban development goals (Goodfellow and Lindemann, 2013, Owusu-Ansah and Braimah, 2013), this thesis argues that customary authorities have a

meaningful and active role in managing urban development. By considering the processes and practices of local planning and land delivery, this thesis contributes to our understanding of the hybrid arrangements and pragmatic relationship between the so-call 'formal' and 'informal' in land management. Whereas local public planners and surveyors often operate under various forms of unofficial negotiations (receiving payments for preparing local plans, surveying and sub-dividing building plots), customary authorities likewise seek formal recognition (by requesting for the preparation of Local Plans and borrowing practices from modern land management principles) to advance their interest of delivering high value lands to the market. The actors combine community resources (land, funds, local knowledge and entrepreneurial capacities) with professional skills (planning and surveying principles) to co-deliver urban land to meet the increasing demand arising from urbanisation processes. Thus, the urban space is jointly co-produced by public sector professionals and customary actors and to some extent community members. Customary authorities and public planners are stimulated by their interdependent mandates to engage in various reciprocal relations in land delivery. This suggests that in some contexts, non-antagonistic relations can exist between customary and formal institutions of land use planning, with both constructive and corrosive outcomes on urban development. Here, state and customary procedures amalgamate and become interconnected, making it difficult to distinguish between the two. As the cases have shown, these practices have resulted in improvements in the supply of planned urban lands, and sometimes serviced plots for urban development. Thus, land use planning is taking place under a pragmatic cohabitation of state and customary land tenure systems as advocated by pundits of the hybrid land governance arrangements in Africa. This corroborates other studies on land delivery process in African cities which emphasise the need for the state and non-state actors (including customary actors) to work symbiotically to address urban problems (see for e.g Chimhowu and Woodhouse, 2006, Chimhowu, 2018a, Napier et al., 2013).

The emergence of locally appropriate practices in urban planning and land delivery can also be considered a pragmatic response by non-state actors to the failures and weaknesses of local state agencies in planning and land administration. The results have demonstrated how well organised customary organisations have been able to secure significant improvements to their living environments under conditions in which local governments are unable to deliver land and services. Though rudimentary, the forms of hybrid practices in these cases reflect advances towards the quest for workable and practical modes of governance for African cities. On this basis it is possible to argue that in situations where formal planning and land governance institutions are unable to provide the needed resources to deliver urban land, customary authorities can collaborate to fill such voids. Indeed, some urban scholars now acknowledge that it may be the limits to state capacity (whether at

the national or local level) that provide the most fruitful opportunities for understanding the meaningful role of non-state actors in realising urban development outcomes (Akaateba et al., 2018, Siame, 2018). This thesis pushes forward this agenda, not least by highlighting the ways in which customary and public planners collaborate to supply urban land, but also by demonstrating how hybrid governance arrangements can provide alternative land use planning solutions to bring serviced urban land to the market in contexts of weak local government capacities. This is particularly relevant now that local governments are being encouraged to partner non-state actors in the supply of new infrastructure and urban services (United Nations, 2017a) with planners calling for further studies that uncover the complexities and challenges of non-state action in planning (Pieterse et al., 2015).

Yet, in promoting hybrid arrangements between states and non-state actors in the developing world, certain reigning assumptions need to be overcome. The literature on hybrid land governance tends to assume that customary actors' entrepreneurship can formally blend with the the judicious exercise of state regulatory power to result in transformative outcomes. But as Locher (2016) notes hybrid institutions develop out of existing institutional arrangements suggesting that there is the tendency for these new arrangements to reinforce existing power structures. Thus, such arrangements may be ineffective in addressing key institutional deficits in areas with targeted need. The research conclusions have shown that the state-customary actor interactions which form the basis of hybrid land governance cannot be romanticized. The exercise of power, to either positive or negative ends, will always be present, and the possibility of manipulation and corruption is always possible (even likely) in hybrid forms of engagement. The assumptions which have tended to underpin hybrid land use planning ideas, particularly regarding the strength, reliability and forms of engagement, are all brought into question through understanding cases of hybrid land governance and their strengths and failings. Thus, it must be recognised that although the harmonisation of customary and state institutions is relevant for blurring the lines between formal and informal, it is not a panacea to securing the transformative change in land governance land reformers envisage. Only by devoting more attention to the processes, power and meaning dimensions of institutional hybridisation can we engage with questions about the likely outcomes of hybrid land governance regimes in a given urban context.

Second, this study emphasises that the development of urban land and planning institutions cannot be considered purely technical matters. By illustrating the mechanisms and strategies local actors devise to contest, negotiate and steer institutional change, this thesis challenges the optimistic view that the act of rationalising, reconciling and simplifying land and planning regulations will trigger desirable market outcomes (see e.g UN-Habitat, 2013, Lall et al., 2017). Land administration and urban

planning reforms can be manipulated to serve private interests, with major risks of exclusion. The powerful vested interests that benefit from the current patterns of operation of the market will always and necessarily oppose interventions that seek to reduce their rewards – precisely what this study has shown to be case in relation to attempts to develop hybrid land governance institutions at the local level. With regard to land documentation for instance, both the state and non-state actors see the value in improving land records. Yet, customary authorities’ ambitions for improving land records sometimes vary from that of the state. This is exemplified by the deliberate attempts by customary authorities to exclude the documentation of land revenues, particularly, drink money as part of the CLS’ records. And where these records are available, they are not accessible by the public or state agencies. Customary authorities have taken advantage of the state’s support for simplifying and improving local land documentation processes to strengthen their privileged access to drink money. This contradicts the intended purpose of decentralized land recordation aims of the LAP reforms (Biitir et al., 2017, Bugri, 2017), and more generally pro-poor land recordation aims (Zevenbergen and Augustinus, 2011, Zevenbergen et al., 2013).

The distributional consequences of urban land and property institutions means that they seldom yield to one-dimensional prescriptions. Nowhere is this truer than in African cities which combine historical legacies of oppression and dispossession with contemporary challenges of inequality and overlapping institutions of formal and customary land governance (Napier et al., 2013). That is why Berrisford (2014) suggests that instead of ‘simplifying and rationalising urban land and planning institutions’, then, what is needed is for land management reforms to be grounded in an understanding of how the land market works in a given urban context. This requires explicit attention to both formal and informal institutions, the degree to which these overlap and the processes through which they are acted on and reconstituted. But more importantly, an understanding of who benefits from the status quo and who is excluded, who contributes to the agenda for land governance and land management reforms, and how the benefits of reform are distributed, such as that contained here. This understanding can enhance the chances of land administration reforms to navigate existing power relations and ultimately increase the supply of affordable urban land tenure and land development opportunities for the majority of citizens in African cities.

Finally, the thesis provides useful insights about the politics of state attempts to capture rising land values in contexts of customary tenure. Urban land offers governments in developing countries a vital opportunity for self-financing development, particularly in the Ghanaian setting where urban authorities are tasked with providing vital goods and services to citizens with extremely limited budgets. As discussed previously, rising urban land values are not just the result of investments made



by landowners. Instead, this appreciation is in large part due to ongoing migration into cities that raises demand for urban space, and public investments in roads, railway lines and other infrastructure and services that make different areas of a city more attractive places to live and work. For instance, components of the planning systems such as zoning, granting of planning permission and the provision of infrastructure contribute to higher land values (McAllister et al., 2018, Hughes et al., 2018, Smolka, 2013). The question for policymakers is who captures this gain-customary land authorities, or city governments? And how?

In Chapter 5, it was pointed out that part of the LAP initiatives involved establishing a decentralised regulatory framework to help manage and administer customary land with the aim of 'capturing' the value of rising land for the public good. The government intended to achieve this by recovering 55% of all lease fees (drink money) and ground rent when customary lands are transacted. The establishment of the CLSs was expected to facilitate the collection of revenue for both the customary and local government authorities by systematizing and regularising the documentation of land transactions and recording revenues from land transactions (i.e. drink money and ground rent). The government's intervention was based on the logic that as tenure security improves, and more people invest in their land and property, the state can recoup the windfall benefits of that investment (Agyemang and Morrison, 2017). But as the research conclusions have shown, this logic operates erratically at best, and even where it succeeds, it does so to the benefit of entrenched and vested interests. Taxing customary land transactions remains administratively burdensome and politically impossible case. This is because the phenomenon (land) that is being governed is a market, in which participants compete for the best possible material advantage. And for Ghanaian cities where urbanisation pressures are so strong, and where opportunities to participate in the formal land market are so scarce, customary groups with control over land are incentivised to realise the maximum financial value from it.

The findings on the strategies adopted by active local actors as they manoeuvre and negotiate around documenting land revenues and the use of 'drink money' as a discourse to evade payments to the OASL provides deeper insight on the political economy of capturing land values across distinct contexts. Customary authorities also interpret and, in some cases, exploit existing legal gaps to their advantage in ways that undermine some of the land revenue mobilisation objectives of the state-led institutional reforms. This behaviour by customary actors reflects Hall and Thelen's (2009) articulation 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. Reforming land property rights institutions has therefore remained elusive because of the vested interests created by the rapid

generation of land-based wealth and because of the political clout of those who benefit from the status quo. The major challenge, as evidenced by the research results, is overcoming politically powerful customary landowners who stand to lose out on premiums they have previously enjoyed. Overcoming this is difficult, but it must be done if urban land is to serve the interests of the majority of Ghanaian citizens.

In order to implement new hybrid institutions including mechanisms that can direct land revenue towards redistributive and developmental interests, the research results point to the need to consider how broader institutional context enables actors to mobilize action land taxation. The case findings demonstrated that although drink money has evolved towards the market value of land, 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 any effort to improve clarity on how drink money should be used or directed to serve the public interests. During the design phase of the LAP, key stakeholders in the land sector recognised the need to clarify as well as strengthen the legislation surrounding customary land taxation (Ministry of Lands and Natural Resources, 2017). Yet, the consensus was that overcoming the vested interests of customary authorities was politically impossible and that if the attempts to reform land and planning institutions manage to enhance the supply of urban land, then government may have to accept the loss of land revenue as a necessary cost in the short term. In many respects this is unsurprising, given that land has been a major source of power and wealth for customary authorities (see Chapter 5), especially in this era of rapid urban growth. These vested interests mean that although state actors agree on the need to return land revenue to the community/public, they also know too well that there is an enormous political hurdle to overcome.

In the long run however, local governments could build support for land taxes by actively linking them to public investment. Customary authorities are more likely to collaborate with local authorities in sharing land revenues if they are convinced that land revenues will be reinvested in their jurisdictions, which would eventually increase the value and attractiveness of their communities. Cities such as Arusha, Hargeisa and Lagos (Berrisford et al., 2018, Goodfellow, 2015) have been able to increase land-based revenues while using these to pay for visible and popular infrastructure and services to maintain public support. By learning from these successes, Ghanaian local governments can begin to leverage land taxes as the legitimate price of badly needed public investments. Furthermore, local governments can earn annual rents from rising land values, as well as large lump sum payments for leases by streamlining the relationship between OASL authorities, customary authorities and planning authorities. A key tool with potential to make this link is the building permit, which is issued before new land or building can be legitimately developed. The declaration of rent payment could be made

a precondition for acquiring a building permit, thereby bringing new lands onto the tax register of OASL and incentivising self-declaration. This would enable tax authorities (OASL) to become automatically aware of new developments eligible for taxation. The OASL at the Ejisu-Juaben had proposed such an approach whereby the payment of ground rent would form part of the requirement for acquiring a building permit. However, there was less commitment on the part of local planning authorities since the existing bye-laws do not make provision to apply these requirements. Where CLSs are functional, detailed registry of land parcels and planning applications can easily spur the development of such a system, thereby linking the allocation of lands and acquisition of planning permits to the land taxation register. This is one way by which local governments can 'capture' the value of rising land for the public good in the medium to long run.

On the basis of the conclusions in this chapter, the following suggestions may help government actors and land policy reformers improve interventions in the land markets as well as their competences in performing their planning work.

- Focus on enhancing the supply of affordable urban land

It is frequently argued that registering and granting individual titles holds much promise for improving tenure security (Byamugisha, 2013, Schreiber, 2017, Toulmin, 2009). Yet, the reality of urban land governance in most African cities demonstrate that where landholdings are fluid (e.g. customary tenure) and where vested interests are entrenched, the benefit of this initiative acts to dispossess other members of the landholding group and less-well off citizens. Although there is value in large scale land registration programs for the purposes of raising land revenue, this does not necessarily need to be a short-term ambition. Such high ambitions are perhaps a distraction to achieving 'real' institutional reforms. In the short-term, however, interventions aimed at establishing hybrid land governance institutions should be geared towards breaking down barriers that hinder access to legally secure land rights through titling, as already being pursued under the LAP. But such legally protected rights must be complemented with locally appropriate land transfer mechanisms that might lack the same legal protection but afford holders of land interest greater security of tenure and the use and development of land. For instance, the use of simple, locally appropriate and standardised allocation papers as exemplified in this study (see the discussion in chapter 7). Such simple standardised land allocation papers have helped to improve tenure security for new land users and enabled the standardization of land allocation arrangements.

- Accept and embrace the meaningful contribution of non-state actors

As planners should aim to work alongside non-state actors and try to create room for innovative self-organization, they can take up the challenge of letting well-organised customary organisations establish meaningful collaborations with the local state. This requires planners to value, create and pay attention to opportunities for collaboration with non-state actors in the supply of affordable urban land and services. Collaborations can take many forms, like strategic alliances, and co-production practices. The emergence of locally appropriated practices in urban planning and land delivery, as illustrated in this study, demonstrates how non-state actors provide alternative solutions to the failures and weaknesses of local state agencies in planning and land administration. These emergent arrangements have inherent transformative potentials towards making land readily available to meet the demands of urbanisation particularly in contexts where local government capacities are limited. While these emergent practices illustrate innovative and potentially positive processes of state–society engagement under difficult conditions, it is also important to extract both the successes and pitfalls of these cases and feed them back into the realm of planning practice. This means that policy makers need to be both attentive and discerning about these new bottom-up and hybrid ventures of land delivery that are emerging in peri-urban areas. The focus of land policy and planning could then be directed towards building on the strengths of these locally-initiated practices whilst working towards reducing their associated adverse effects on equitable land delivery. This study has offered insights on how planners and policymakers can identify and nudge these pragmatic relationships towards potentially transformative outcomes. These include the need to: 1) be attentive to political context where supportive customary actors have generated potentials that can be activated; 2) discover and mobilize the resourcefulness of change agents; 3) create deliberative settings for learning exchanges, forging new associations and complementarities of interests and solution generation between state and non-state actors.

- Define areas of competence and accountability for the State and Customary Authorities

The essence of integrating customary land governance institutions and actors into formal land management is to pull together untapped resources of both the customary and public sectors. But, the idea of developing hybrid land delivery and planning arrangements needs to be wary of setting up artificial binaries between state actors and ‘empowered customary actors’ looking to further their selfish interests. Thus, the main challenge however is for state actors to avoid opportunistic customary actors seeking to compete with state actors for particular functions that the state is claiming exclusive rights to fulfil. Goodfellow and Lindemann’s (2013) suggestion to clearly demarcate the roles between state and non-state roles is a useful one, and can help to build an appropriately transformative

arrangement where the state recognises legitimate roles for the customary actors, and the customary authority in question does not attempt to usurp roles and functions claimed by state institutions. For example, limiting the roles and action areas of customary actors to strategic intervention fields where the available resources including the competence and entrepreneurial skills of the customary organisation can be optimally used. At the same time, conditions for developing hybrid arrangements should establish that the customary sector must guarantee or provide for democratic participation of residents in the land development process and provide mechanisms for ensuring that landowners fulfil their obligations to the public. This requires that hybrid land governance experiences are fully understood within their political and institutional contexts, and that inappropriate generalization is avoided.

## Chapter 9 - Beyond Hybrid Land Governance: Conclusions

### 9.1 Introduction

The thesis set out to explain how government's attempts to institutionalise hybrid institutions of land governance have succeeded in some urban communities but failed in other seemingly comparable areas. The goal of this research was to contribute to insights about how institutions of the state can combine with those of non-state authorities to deliver urban land to the market with a focus on capturing some of the land value increment. It was argued at the beginning of the thesis that several of the problems most African cities face in financing local urban investment with land-based revenue relate to problems of land governance. In particular, the multiple tenure regimes and unclear land rights, poor land administrative procedures and inefficient land use regulations. Consequently, much of the extant literature on the socio-political dynamics of African land tenure systems have focused on evolutionary theories of land rights and how land reform should enable the transition from community rights to individual rights (Firmen-Sellers, 1996). Others have focused on an argument that land reform should revert to traditional land tenure systems (Amanor, 2001) while some have dealt with the phenomenon of legal pluralism and the conflicts and tensions associated with it (Kasanga and Kotey, 2001, Kasanga and Woodman, 2004). This thesis has gone beyond these lines of research. It adopted a political economy approach to examine how laws, institutions and decision-making processes relating to the access and use of land are highly influenced by the existing power relations within society. As such the focus of analysis was not on everyday interactions between state authorities and customary authorities in local planning and land delivery, but on how the institutionalisation process of hybrid institutions occurred, and how state and customary institutions integrated to administer customary land at the local level. The research aimed to elucidate how attempts to establish hybrid institutions for land governance show substantively different outcomes in cases that share many demographic, historical and socio-economic similarities.

The following question was central to the research:

*How do some attempts to institutionalise hybrid institutions of land governance manage to persist and transform policy and planning, while other initiatives fail, and how can we understand the differential responses to these institutional hybridisation processes?*

In Chapter 2, the notion that integrating the institutions of the state and customary land governance promotes efficiency and equity in the land market was examined. This was done by linking the discourse on the integration of customary and state land tenure regimes in sub-Saharan Africa to existing broader urban planning and land-based financing debates for cities in the global south. The literature on hybrid governance has often emphasised that a land use policy that innovatively

integrates customary practices into the statutory land governance system can address many of the problems associated with land supply, security of tenure rights, land use planning and land servicing in societies where multiple property rights regimes overlap or co-exist (Kombe and Kreibich, 2000, Blocher, 2006, Kasanga and Kotey, 2001, Amanor and Ubink, 2016). This hybrid form of land governance regime is meant to bring together elements of customary authority and fuse this with some of the values of statutory institutions they interface with: that is, combine the technical and enforcement capacity of the state, the legal certainty of ownership, and the successful principles of self-organisation. In this research, the property-related institutions that require integration concern customary and statutory land laws and local practices relevant to land use management. This involves recognising customary tenure as well as standardising and incorporating its practices within statutory law. Moreover, it concerns integrating customary authorities and statutory land agencies into a unified property system. However, such initiatives and reform efforts have not always led to their intended outcomes (Akaateba et al., 2018, Chimhowu, 2018a). At the heart of such land policy initiatives are underlying concerns about equitable access to land development opportunities (Millar, 2014), the emergence of new class dynamics (those with registered rights and those without) (Chimhowu, 2018a), and growing inequality and potential social differentiation (Obeng-Odoom, 2012). These underlying concerns constituted the major considerations that formed the starting point of this thesis. Within such a framework, this thesis questioned the transformative potential of integrating state land administration and customary land tenure systems paying particular reference to the implications for generating land revenue for the state. Moreover, exploring the literature has revealed that although theoretical calls for recognising and building on customary systems of land administration are burgeoning, empirical studies on the dynamics and outcomes of such an approach to land policy are deficient.

Chapter 3 focused on the circumstances under which government efforts to establish hybrid institutions for land governance in rapidly urbanising societies might succeed, and the motivations that shape local actors' differential responses to these initiatives. Positive feedback effects were considered as powerful mechanisms that support institutional continuity (Mahoney, 2000, Pierson, 2004, Thelen, 2004b). Actors can only create or change institutions during 'critical junctures' when established structures fail to provide adequate solutions to pressing problems. But because institutions distribute valued resources unequally, actors do not always wait for critical junctures to cause institutions to change (Mahoney, 2010, Mahoney and Thelen, 2010a). This implied a focus on the ways strategic actors try to cultivate change from within the context of existing opportunities and constraints by working around those elements they cannot change by layering new institutions onto existing ones or by subverting rules that clash with their interests through conversion strategies

(Genschel, 1997, Streeck and Thelen, 2005, Mahoney and Thelen, 2010a). The analysis was based on the view that ideas and interactive discourse help actors to structure conceptions of possible and desirable change and serve as powerful tools in legitimizing courses of action. Actors seeking to change an institution may use persuasive ideas or discourse to promote public acceptance of new institutional forms or policies. Proposals for institutional change are more likely to succeed if they are connected to an important problem and resonate with targeted actors' ambitions and interests (Schmidt, 2008b). This happens in an interactive process of 'making sense' together, in which actors consciously build new institutions through deliberation, contestation and consensus building through ideas and discourse. I have argued that proposals for institutional change gain the support of targeted audience when they are considered by them as relevant and seem effective at addressing problems that are salient at the time they are proposed. Moreover, the transformative capacity of institutions is further enhanced if the agents driving change are guided by a learning process through which they reflect on the institutions they are experiencing in relation to events and specific contexts. Therefore, in this study, the focus has been on the ways in which actors driving change construct, align and present proposals for institutional change in their interactions with other actors and in relation to the specific context. Basically, this involved asking 'which powerful interests are seeking institutional continuity in what context, what is their reward for success, and which urban institutions tends to change continuously and incrementally?'

Chapter 4 discussed the critical realist methodology used to analyse the institutional change endeavours of state and local actors. A critical realist philosophical and methodological stance proved useful in several ways. Three in-depth case studies were selected concerning ongoing state-led land reform programmes to integrate state and customary land delivery systems in two different regions in Ghana: 1) the self-organised efforts of the Gbawe Kwartei customary organisation in the Greater Accra region to gain government support, and 2) the establishment of customary land secretariats in Ejisu and Juaben in the Ashanti Region. This methodological approach allowed the researcher to interrogate the interactive effects, processes and outcomes of institutional change in a context of dual legal land rules, changing land uses and the introduction of new models of land management and planning.

Chapter 5 presents an analytical review of the pre-colonial, colonial and post-colonial land and urban policies that have structured urban development processes and the behaviours of the stakeholders implicated by these constraints and opportunities. The analysis traced the power relations, political behaviour and the rewards and opportunities experienced by both state and customary actors throughout different periods of land and urban institutional reforms from colonialism to date. In this



way, it provided an important starting point for examining the issues presented in the succeeding chapters.

## **9.2 Reflections on research findings**

The results of the three in-depth case studies were presented and discussed in Chapters 6 and 7, and compared with each other in Chapter 8. Chapter 6 established that self-organized processes that connect with national land policy initiatives are more likely to lead to transformative hybrid regimes that can bring about dynamical change in local land governance and spatial transformation. This is evidenced by the case of Gbawe where the customary organisation's self-organizing strategies resulted in a well-organised land allocation system. These self-organising processes were amplified by the state in the form of technical resources, capacities and 'new' institutions capable of addressing property rights related problems. Government's initiative to 'layer' statutory institutions onto customary rules through the establishment of the Gbawe CLS helped to create a comprehensive leasehold system and improved local land governance practices in terms of land documentation, local land use planning and land revenue mobilisation. The outcome of this layering process is that rent collection has become better consolidated, land and financial records have improved, and secure, registered land rights have become more accessible.

In Chapter 7, the research results demonstrated how context and institutions shape customary actors' differential response to the state's institutional layering efforts. The analysis focused on two urban communities that do not only share similar contexts but are also beneficiaries of the same state-led institutional reform initiatives. Yet, the outcomes in terms of land allocation, documentation, land use planning, and revenue mobilization differed significantly between the two communities. In Ejisu, government efforts to develop a hybrid land management regime failed to occur in the ways envisaged, with customary actors redirecting the new institution to achieve largely private interests through strategies of 'conversion'. Attempts to establish a hybrid regime were successful in Juaben. New rules for land allocation and land use planning are being layered on the existing customary arrangements for land administration resulting in fairly equitable land development outcomes.

Drawing on these case findings, the thesis follows Mahoney and Thelen (2010b) to argue in Chapter 8 that whether state-led efforts to develop hybrid institutions succeed or not depend to a large degree on the political context and the character of existing rules that permit actors to comply, contend or break new rules. The case findings (see Chapter 6 and 7) have demonstrated how urban contexts that generate strong positive feedback effects incentivize customary actors to comply or dedicate resources to the enforcement of new institutional arrangements, revealing the importance of

divergent political environments in which layering processes occur (also see Berrisford, 2014, Goodfellow, 2013b). But also, the case studies show that the nature of specific urban policies and regulations in place permit various actors to interpret, redeploy or break them in pursuit of goals that may be consistent with national land policy objectives or not.

However, what is unclear is why under similar institutional and political contexts certain hybrid institutions are more successful than others. For instance, Chapter 7 demonstrated that trigger events, particularly changes to the land market in the Ejisu-Juaben area prompted action for improvements in the existing customary land structures by establishing CLSs in Ejisu and later in Juaben. Yet, government's efforts to layer statutory institutions onto existing customary rules succeeded in transforming policy and planning practices in Juaben but failed in Ejisu. There was a great effort on the part of customary actors in Juaben to shape customary institutions to be more compatible with formal rules (something that renders hybrid governance more effective) than in Ejisu, although both communities share roughly similar political and institutional context. To address this conundrum, the thesis analysed how changes in actors' ideas about existing institutional arrangements shape their priorities, political preferences, interpretations, rewards and opportunities in a given setting. Based on the case findings, this research concludes that whether state interventions induce institutional change or not depends on customary actors' political priorities and the extent to which supportive customary actors valued compatibility between customary and formal institutions. These differing political priorities impelled customary actors in Gbawe and Juaben to implement the new hybrid arrangements by preparing the ground. Customary actors prepare the ground (whether deliberately or as a result of political struggles) by reflecting on existing institutional arrangements, conceiving and 'selling' persuasive new proposals that appeal to shared cultural understandings of targeted supporters. On the contrary, in Ejisu customary actors' political priorities incentivized overriding these new institutions in the interests of political and economic gain. Thus, the chances of achieving transformative hybrid regimes in land governance is enhanced when government's layering efforts activate the protentional generated by supportive customary actors. The thesis relies on these findings to draw a number of key contributions as well as implications for urban research in the developing world and particularly the study of urban Africa.

## 9.3 Research Contributions

### 9.3.1 Theoretical contributions: Learning from Ideas and historical institutionalism

This thesis joins those who point to the potential for integrating insights from the different traditions of institutionalism (Koning, 2016, Capoccia, 2016, Blyth et al., 2016) to provide a comprehensive account of urban and land market institutional reform in Ghana. This thesis ventured this lane by drawing insights from historical and discursive institutional to emphasize the important, but often overlooked, relationship between exogenous and endogenous change. This approach was useful in providing a clearer account of the institutional change process. It demonstrated how and why ideas and political priorities of social actors, conditioned by historical and structural factors, shaped the changes in property rights and planning institutions overtime. This was achieved by identifying some of the conditions under which customary actors are incentivised to intervene in ways that make the state's efforts more, as opposed to less, effective in realising stated land policy goals.

This research, using the theoretical framework discussed in Chapter 3, has demonstrated that for state interventions to bring about fundamental transformation in land markets, it helps if supportive customary actors have prepared the ground. Customary actors prepare the ground (whether deliberately or as a result of political struggles) by reflecting on existing institutional arrangements, conceiving and 'selling' persuasive new proposals that appeal to shared cultural understandings of targeted supporters. This entails slow processes of continuous institutional reflection and framing of new proposals for reform through discursive interactions in order to bring about changes to existing institutions. Such discursive performances require credible actors who can make meaning of events and opportune moments, and to conceive and present new proposals that resonate with targeted audiences' ambitions and everyday experiences. Thus, change occurs, not entirely through explicit revision or amendment of existing arrangements, but rather as a result of active cultivation by local actors whose interests are better served by new arrangements.

#### *Historical Institutionalism and institutional change*

The relationship between historical institutionalism and change can be described as follows: Differences in the character of existing institutional rules as well as in the prevailing political context structure political openings for mobilization and articulation of interests by strategic actors. This research has argued that historical institutionalism is useful for understanding how previously enacted land and urban policies shaped the political powers of customary actors as veto players in the realm of urban development. The concept of path dependence was used to illustrate how customary authorities continuously mobilize to resist institutional change that impacts unfavourably on their

authority and control over customary land. In the context of rapid urban growth, land and property institutions generate strong positive feedback effects in the form of land profits which incentivise beneficiary customary authorities to resist any form of change that reduces their authority over land administration. The routine exercise of power and authority over land provides opportunities not only to exert high influence on how land benefits are shared but also affords a privileged access to block legislative changes to land and planning institutions. This explains why the state adopted institutional layering as a tactic of achieving gradual transformation in the land sector rather than, for example, displacement.

However, institutional layering did not automatically bring about the desired institutional changes. The study has shown that the institutional outcomes in the three cases reflects the particular compromises, power relations and the characteristics of actors involved. For example, customary actors in Gbawe deliberately shaped customary practices to match formal regulations because it strengthened local capacities and enabled them to capture rising land values while in Juaben it allowed them to bring unruly chiefs to order and to ensure planned development of the community. In contrast, the implementation of new hybrid regimes meant reduced land profits for village chiefs who were expected to declare their profits to the paramountcy. The distributional consequences of the new regimes highlight that the likelihood of continuity may therefore be related to the scale of benefits yielded by the institution in question, which may be decisive in successful mobilization in favour of such continuity. This conception of institutions as distributional instruments is consistent with historical institutionalism which emphasizes that because institutions distribute resources unequally, actors will continuously mobilize to cultivate change from within the context of existing opportunities and constraints.

While the observations made in this research have resonance with historical institutionalism, it fails to account for the underlying incentives that drive customary actors to make particular policies choices, and how they legitimize such choices. Historical institutionalism explains how political opportunities emerge, but not motives which ideas helps to explain better. In particular, historical institutionalism is limited in explaining why some individual actors or groups accept and dedicate resources to new hybrid institutions while others are seeking to redirect or reinterpret them. Moreover, it undersells the strategic behaviours of customary actors and struggles to explain how change is instigated whether through layering or conversion. In sum, although historical institutionalism helps in explaining how political context and institutions structure customary actors' incentives, it does not offer a framework for understanding why customary actors chose to support

institutional change and how they went about formulating their preferences to bring about desirable change.

#### *Discursive Institutionalism and change in this research*

The research has argued that the relationship between ideas and the process of institutional change is useful in explaining customary actors' strategic responses to the new hybrid institutions. Through ideas, customary actors can reflect on the institutions they are experiencing, communicate and deliberate about them and then take action to change them. Although institutions constrain political behaviour and structure political opportunities, this study has argued that ideas help actors construct understandings and responses to critical moments through deliberation, contestation, as well as consensus-building around ideas. The study further revealed that actors develop their understandings of events, and structure conceptions of possible and desirable change through interactive discussions with other actors.

As analysed in Chapters 6 and 7, external interventions and events trigger action for change when supportive customary actors recognise them as opportunities by socially constructing them in conversations as windows of opportunity. This requires credible actors to give meaning to these events and opportunities in the light of preceding events and negotiations. This also means that an event can only trigger when there has been preparation in the form of 'self-organisation', in which new propositions for reforms can become stronger. As demonstrated by the Juaben and Gbawe cases, support from actors interested in making fundamental changes to local customary practices was necessary to bring about transformation. Customary actors used coordinative discourse to reach agreements on policies and communicative discourses to persuade community members of the need for reform. For instance, the proposition to ban land allocations and to standardize land allocation arrangements in Juaben was arrived at through deliberative discourse at the traditional council level. In this way, the idea appeared as a consensual decision collectively taken by the entire customary organisation and not by a few powerful actors. Similarly, the introduction of the LMC and CLS were communicated to community members as correctives to existing customary arrangements. Conceiving and presenting proposals for institutional improvements in this way rendered them relevant, appealing and convincing to defenders of the status quo. This explains why in Juaben and Gbawe, new hybrid institutions transformed land governance and planning practices while in Ejisu institutions remained largely unchanged. In order to convince other people to support a particular proposition and contribute to institutional change, actors have to be considered credible change agents. Credibility is a social construct that is established through interactions with other agents in which people demonstrate their selflessness and intention to represent the public interest.

All in all, the most valuable insight of discursive institutionalism is that objective conditions are not enough to explain institutional change. The same social facts receive wildly different treatments in different jurisdictions, and ideas (actors' goals) help to explain why. Therefore, discursive institutionalism can be fruitfully used to nuance or complement historical institutionalism, particularly by providing more detailed specifications of causal mechanism and causal chains of events.

While historical and discursive institutionalism offer insights, none of them individually provides a complete and coherent understanding of how new hybrid institutions met with differential responses in an environment that shares roughly similar high levels of socioeconomic development and soaring rates of urban growth. Based on this study, it is possible to conclude that ideas (actors' goals) may give us motive but not opportunity, which is established by historical institutionalism. This thesis therefore points towards scope for both integrating the insights they provide into a more comprehensive theoretical framework.

#### *The promise of an integrated approach*

Integrating insights from historical and discursive institutionalism certainly has analytical merit in providing a comprehensive explanation of how new hybrid institutions bring about institutional transformation in some context but not others. The trends outlined in the case studies reflect and echo ongoing scholarly debates about the interrelations between exogenous and endogenous change (see for example Blyth et al., 2016, Koning, 2016, Salet, 2018), particularly, how strategic actors cultivate change within particular institutional context. This study offers important theoretical insights into customary actors' strategic behaviour by arguing that although they are embedded within deep institutional context of historical rules and regularities, they are not without agency. Customary actors come up with ideas that lead them to make meaning of their context, construct understandings and respond to critical moments. More importantly, it highlights customary actors' political priorities and preferences as influential in shaping their responses to new institutional changes, which in Juaben and Gbawe impelled them to shape customary institutions to match formal regulations while in Ejisu incentivized overriding them. Thus, the integration of insights from historical and discursive institutionalism has provided a perspective for understanding how new hybrid regimes induce land market reforms, and also how customary actors use agency to redirect or reinterpret them, when their preferences are differentially affected by the institutions.

The historical institutionalist examination of the institutional context of historical rules and regularities and incremental change revealed the political opportunities and openings for mobilization. For instance, it has contributed towards an understanding of which kinds of urban institutions get stuck

in relatively path dependent forms and are more difficult to reform, the sources of this continuity and the actors who have vested interest. Discursive institutionalism on the other hand provided insights on how strategic customary actors construct understandings and or come up with the ideas that lead them to layer, interpret or convert new institutions towards new goals. By drawing on ideational factors and mechanisms, this study has elucidated how actors who are disadvantaged by new rules made changes by exploiting institutional ambiguities and interpreted or redirected institutions in pursuit of their goals. Actors interested in bringing about change also reshaped the institution from the inside in reaction to external conditions, via discursive interactions to reach collective agreement on change. The cumulative effect was a sometimes radical shift in the nature of the land and planning institutions.

Therefore, historical institutionalism provides explanation to the conditions enabling the patterns of institutional layering and conversion observed in the study while discursive institutionalism enabled an analysis capable of endogenizing agency in such a way as to explain the dynamics of institutional change (and continuity). This framing provides insights into how, why, and when political/customary actors may (re)shape their macro-historical institutions, conceptualize their strategic interests, and (re)frame their cultural norms to match formal regulation. This research has therefore argued for an approach that integrates plausible insights from historical and discursive institutionalism for understanding planning practice and research through the prism of institutions.

### 9.3.2 Empirical Contributions

This thesis offers some important insights on the potentially transformative role of hybrid regimes in land governance and planning practices, by demonstrating how these practices have enhanced the supply of planned (sometimes serviced) developable land. These research results provide support to those scholars who insist that hybrid regimes can help to simplify and clarify transfers of property rights among land market participants, as evidenced by the Gbawe case. Moreover, the case of Juaben and Gbawe have shown that making formal and customary administration more compatible through hybrid regimes could support the effective management of urban development through foresighted planning, realistic regulation, and predictable enforcement. Indeed, the research results show, particularly in the case of Ejisu, that there may be unintended consequences associated with new hybrid regimes such as unequal access to land, privatization of communal wealth, and the reinforcement of unequal power relations in the land market. Nevertheless, these findings only serve as a reminder to us that there are no silver bullets to the land problems, and that hybrid land governance arrangements should not be romanticized everywhere. There is particular need to devote more attention to the processes, power and meaning dimensions of institutional hybridisation. Only

then can we engage with questions about the likely transformative outcomes of hybrid land governance regimes in a given urban context.

The research results may also be relevant to land policy scholars and governments who are concerned with building on improved institutional structures to direct rising land values towards infrastructure investments – including basic services, community roads, sanitation services etc. The case findings have demonstrated the difficulties associated with state-led attempts to connect the revenues that are generated from customary land markets with infrastructure investments. Attempts to regulate urbanisation processes through the introduction of new models of land management and planning risks enriching particular local actors at the cost of the public as a whole. Based on the research findings, this thesis has pointed out that in addition to the usual technical and political difficulties associated with capturing rising land values, it is crucial in reform-oriented developing countries to understand the nature of land tenure systems – particularly how political and institutional contexts conditions the priorities and incentives of social actors tasked with the responsibility of realising stated land policy goals.

#### *Taking account of 'winners' and 'losers' of hybrid institutional arrangements*

This study has demonstrated the potentially transformative role of these new hybrid regimes in promoting functional land markets in contexts where either model (private property or customary tenure) have struggled to achieve these outcomes. As this study has shown, Ghana's attempts to develop new hybrid institutional forms have accelerated the supply of planned urban land although these have often impacted differently on various urban actors. These arrangements also resulted in the emergence of 'halfway documents' such as allocation papers that have enabled improved documentation of newly transacted land rights, as evidenced in Juaben. This contemporary policy approach has drastically improved secured land tenure and effective land use planning across the communities as illustrated by this study and elsewhere (see for example Chimhowu, 2018a, Lall et al., 2017). The outcomes of new hybrid governance arrangements are uncertain, but there is some evidence that secure arrangements had a positive impact on community members' access to basic urban services and by extension their living standards. The study has illustrated the spatially localized benefits of urban infrastructure improvements in Juaben and Gbawe where these hybrid arrangements resulted in functional land markets. There are also broader citywide economic benefits from enhanced urban service provision to urban households where state capacities are weak. The gain in well-being from these services offer an extra incentive that may reduce workers from moving to larger cities such as Accra or Kumasi.



At the same, there are also losers of these hybrid institutional forms. First, hybrid arrangements tend to benefit powerful and opportunistic customary actors where state capacity to extend its regulatory power to customary land administration is weak. This is evident in all the cases where customary authorities have politically deployed the idea of 'drink money' to secure a privileged access to land profits. Similarly, ambiguity associated with new planning rules provided opportunities for some customary authorities to engage in negotiated arrangements in order to dispose land and control land use planning just like before. These practices have been possible because existing configurations of power tend to shape the processes and effects of land governance. The influence of power configurations means that differences in ethos and interests can present obstacles to working collaboratively across state and non-state actors. Whereas the public sector is governed by rules, the customary sector is guided by values, norms and indigenous practices which constantly evolve in unanticipated ways. This is a clash of cultures in which distrust, competing interests, misunderstanding and cross-purposes are ever-present risks. Thus, powerful actors who benefit from the status quo are inclined to reproduce structures which form institutional constraints for innovation. Therefore, getting these actors to act collaboratively in an increasingly marketized environment is a difficult but necessary endeavour in order to tackle the wicked urban problems present in African cities. This thesis has pointed out that attempts at achieving institutional transformation through hybrid regimes would require that any fundamental discord between these state and non-state institutions be resolved innovatively. Moreover, reducing veto agents' opportunities to counter a gradual transformation holds potential to minimize the negative outcomes of hybrid governance arrangements. Successful experiments with 'hybridity' yield important lessons, but it is equally important to learn from less encouraging experiences and to understand why what appeared to be attempts to merge authority ultimately failed.

Secondly there are concerns about the long-term impacts of these forms of new arrangements. Typical reform countries like Ghana, South Africa, Kenya, South Sudan, and Tanzania have built hybridity into their reforms as a mechanism for achieving intermediate formalisation and securisation of customary tenure. The long-term aspiration, however, is to achieve individual land titling (see Chimhowu, 2018a, Obeng-Odoom, 2012). This approach is consistent with the neo-liberalisation of customary lands which seeks to remove legal barriers to trade in customary land as a commodity. However, this neoliberal thinking of land reform has the risk of accelerating the agrarian transition to larger land holdings as the land moves from the less productive to those who can use the land. There is already evidence of this happening in some places. For example, Chitonge et al. (2017)'s work in Zambia does show that many of the people taking advantage of the national titling programme are urban based professionals seeking to invest in rural land. Ultimately the point of contention with respect to

formalisation and securisation of rights is that of displacement of poor people from their land through distress sales and in some cases through simple land grabbing by local elites working with state officials or investors especially in jurisdictions where customary tenure still does not offer statutory protection. The Ejisu case for instance has shown that poor members of the landowning communities risks losing their (usufructuary) land rights to wealthy land seekers who can afford well planned neighbourhoods. This confirms Akaateba's (2019) argument that the benefits of securitisation may not always go to the poor smallholder farmers. In contexts of rapid urbanisation and unequal power relations, customary tenure regimes can be manipulated to produce exclusionary outcomes. There is therefore no consistent evidence of consolidation from below.

These reflections beg several key questions for future research and practice. This research has illustrated that institutions evolve in unexpected ways and may be captured in the interests of particular stakeholder groups. So how can processes of hybridity be facilitated in order to further equitable land governance? Is it more effective to promote self-organised efforts amongst customary organisations, rather than to strengthen existing communal land institutions in general?

### 9.3.3 Methodological contributions

The originality of this thesis is strengthened by the uniqueness in the methodology used in understanding how the development of new hybrid institutions for land governance in Ghana met with differential responses. Over the last decade a number of authors have defended African cities as valid empirical bases for the construction of general urban and planning theory (Duminy et al., 2014). Watson (2009) also insists that theorizing planning in the global south can offer privileged insights into the workings of the world at large. In this spirit, this study adopted a critical realist case method to explain and critique the potentially transformative role of hybrid regimes, and to provide concrete policy recommendations and definitive claims for action on urban problems. In particular, the use of critical realist methodological framework has not only substantiated but also provided a philosophical validation to case study research in urban planning.

This study has analysed how hybridity brings about reforms in land markets, and also examined what caused these changes to occur. The research process involved identifying the key actors involved, their powers, liabilities, and necessary relationships. Data was captured with respect to ongoing and past events and analysed to understand why institutional change happened or is happening. The final result is the identification of variety of mechanisms that have caused these changes. By following this critical realist approach to case study research, this study has contributed to an understanding of the relationships between customary and state land sector actors in Ghana's complex tenure

arrangements, and the effects of such relationships for strengthening land governance institutions. In doing so, this study has demonstrated the importance of a critical realist approach in the study of urban institutional reform, but also in explaining how these reforms can occur (or not). It has also contributed to new ways for enhancing urban planning research in urban contexts experiencing similar processes and phenomena to those unfolding in Africa by demonstrating how case study research might be done and how theory can be fashioned.

In addition, the thesis adds to the literature on methodological options for the study of institutional change through the adoption of critical realism in a way that explicitly links the independent causal powers of both actors and institutions. This approach provides a suitable platform for investigating causal relationships between social conditions, spatial urban structures and the actions of agents (including those of planners). This study sought to understand the causal mechanisms influencing the divergent trajectories through careful attention to the process of institutional formation, particularly the influences of structures on the actions of agents as well as the contributions of agents to maintain or change structures. This understanding of relationships between structures and agency is consistent with the critical realist conception that both social structures and agents have particular properties and causal powers (Bhaskar, 2013, Sayer, 2010). To achieve this aim, the analysis went beyond a scrutiny of the directly observable institutional changes in the cases to also analyze how the political context and the character of existing institutions shapes actors' behavior and preferences. This involved examining how these actors socially construct an understanding of the particular institutional contexts within which they are located. Actors' socially constructed understanding of contexts (reality) provides useful insights into their strategic behavior, perceptions, priorities and motivations. Their socially constructed understanding also represents partial reality because they reflect the prevailing conditions, and the powers and liabilities that structure change in different jurisdictions. It is for these reasons that this research argues for the application of critical realism in the research of urban institutional change.

At a more empirical level, the detailed data analysis through abduction and retroduction discussed in chapter four has shed light on new ways of institutional analysis in contexts where the complexity of land ownership systems, urban regulations, and the high value of urban land has created political obstacles and vested interests that continue to hamper reforms. A CR perspective compels us to analyze the key decisions, perceptions, interactions and forces that generate and sustain change through inferential processes of abduction and retroduction (Easton, 2010, Næss, 2015). In keeping with abductive analysis, data analysis in this study began with the search for tendencies, rough trends or broken patterns which critical realists call 'demi-regularities'. These demi-regularities were

identified through qualitative data coding and included patterns of land allocations; negotiated practices of local plan preparation; political deployment of the idea of drink money; motivations for financing community infrastructure. These demi-regularities were interpreted using theoretical concepts from discursive institutionalism which points to important role of actors' ideas and discursive interactions in formulating and legitimizing their preferences and priorities. This theoretical perspective was useful in highlighting causal mechanisms that go beyond the existing political opportunities to identify the actors' goals. Although participants' own explanations of their behavior were important and indicative of the 'real', existing theory on ideational change allowed me to look beyond political openings for mobilization to engage with other causal mechanisms to identify actors' motives for their actions.

Retroductive analysis was useful in identifying the necessary contextual conditions for particular causal mechanisms that resulted in the outcomes in Ghanaian land market reform. The thesis began with the theoretical proposition that institutions (the rules that bind actors) constrain political behavior. Thus, the expectation was that new hybrid institutions will structure actors' behavior and practices along the direction envisaged by the new policy regime. Rather than the new policy, past policy decisions and historical regularities were the causal mechanism behind the preferences and behavior of customary actors. As discussed in Chapter 5, various colonial and postcolonial land policies and legislations have legitimized and strengthened customary actors' interests and roles as custodians of customary land. By virtue of these powers and privileges over land and property rights, customary actors have become powerful political actors and "veto players" in the urban development. At the same time, the ambiguity in the new institutions afforded defenders of the status quo opportunities to comply, contend or break these new rules. Through this retroductive analysis, the study concluded that political context and character of institutions were key causal mechanisms structuring political openings for mobilization and articulation of interests, even though few participants directly identified historical rules and regularities as a causal factor.

Through this abductive and retroductive analysis, the thesis has shown the usefulness of historical institutionalism for explaining the macro-level political economic conditions affecting customary actors' preferences and priorities to either comply or contest new hybrid institutions. Historical institutionalism has tended to focus more heavily on the political and institutional conditions as opposed to agential responses to these structures which discursive institutionalism has highlighted. Moreover, this form of analysis shows the clear distinction between institutions as constraining structures and actors as sentient agents consciously thinking up new ways to change their institutions through deliberation, contestation as well as consensus-building around ideas. This conceptual

distinction between structure and agency is useful for challenging the dominant conceptualization that getting the 'right institutions' in place can enable urban land markets and regulatory reforms. This thesis has demonstrated that such framing of land market reforms limits our understanding of why attempts to institutionalise hybrid land governance arrangements are met with differential responses.

#### **9.4 Limitations of the study and avenues for future research**

Besides the knowledge contribution and policy recommendations, I acknowledge two limitations of this research, which can also be a take-off point for future research undertaking. The first has to do with strategies to direct hybrid land governance outcomes towards the financing of much-needed urban infrastructure in increasingly marketized environments than it has been possible to explore here. Although Chapter 2 noted that integrating customary and statutory institutions is necessary for implementing land-based financing mechanisms at the local level, a sufficient understanding of how to direct these hybrid governance arrangements towards achieving desired spatial and economic outcomes is still elusive. This merits emphasis because the belief that reconciling informal and formal institutions and procedures of urban land management will spur improvements in Africa's land markets pervades development practice and, in some cases, institutional theory. Thus, future research may build on the idea of hybrid land governance to examine the political economy of land value capture in the urban fringes of African cities, such as that contained here, and the mechanisms to ensure that both the investment by the state as well as the windfall benefits of that investment are recouped.

The second limitation of this study relates to the inadequate discussion on the particular competences of state and non-state actors with regards to hybrid governance of land development and urban management. The finding that differential responses to government's institutional layering efforts has relatively little to do with local capacity throws up challenges for development theory and policy. Above all, the analysis presented here suggests that understanding the incentives and political priorities of customary actors to match customary institutions with formal rules necessitates paying close attention to the political resources available to customary actors and the incentives for enforcement and compliance with newly created hybrid institutions. Thus, scholars need to take the resurgence of customary authorities in urban development seriously as self-governing urban actors by seeking to understand how and why communities organise affairs without the state (Boonstra et al., 2011, Nunbogu et al., 2018). Yet as Watson (2014b) emphasises there is always a role for the state, and so the analytical challenge is to explain precisely the legitimate political boundaries of the state – where it should intervene, and where it should allow for self-governance. This thesis explored these boundaries briefly although further research is required to clarify more precisely the particular competences and limits of customary actors in urban development processes.

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## Appendices

### **Appendix 1: Information Sheet**



#### **Information Sheet for interview participants**

Dear participant,

Thank you very much for accepting to participate in the research titled “**Monetarised customary land transactions and the dilemmas of land value capture in Ghana**” being conducted by **Joseph Ayitio** for his Doctoral Studies at University of Reading. This research explores how institutions of the state combine with those of non-state authorities to deliver urban land to the market with a focus on capturing some of the land value increments. The study will examine these issues through the experiences of Gbawe in Accra, and the Ejisu and Juaben traditional areas in Kumasi, Ghana.

Your participation in this study by agreeing to be interviewed will help us gain insight from your experience and expertise. Information provided will be used for academic purposes as a partial fulfilment for the attainment of my PhD degree. Findings may also be discussed and published with the wider research community through conferences, journal articles and books.

Your participation is voluntary and you are free to withdraw from the study at any time for any reason. Information provided will be strictly confidential and will not be disclosed or shared with third parties without your permission. In addition, it will be stored safely. I will also be happy to share the results of the current research with you if you wish to obtain them. This research has received ethical approval from the University, according to the procedures specified by the University Research Ethics Committee.

In case you have further questions or need clarifications about the researcher’s identify or participant’s confidentiality rights, please feel free to contact:

**Supervisor:**

Dr. Angelique Chettiparamb  
School of Real Estate & Planning,  
Henley Business School, University of Reading  
Telephone: +44 (0) 118 378 4258  
Email: a.chettiparamb@reading.ac.uk

Thank you for taking time to read this information leaflet.

## Appendix 2: Ethics Approval Letter



### Checklist for Investigator

- I confirm that where appropriate a **consent form** and **information sheet** has been prepared in accordance with the checklist and will be made available to all participants. This contains details of the project, contact details for the principal researcher and advises subjects that their privacy will be protected and that their participation is voluntary and that they may withdraw at any time without reason.
- I confirm that **research instruments** (questionnaires, interview guides, etc) have been reviewed against the policies and criteria noted in The University Research Ethics Committee Notes for Guidance. Information obtained will be safeguarded and personal privacy and commercial confidentiality will be strictly observed in accordance with the University's Data Management Policy.
- I confirm that where appropriate a copy of the **Consent Form** and details of the **Research Instruments/Protocols** are attached and submitted with this application. Arrangements have also been made for the storage of the forms for a minimum period of five years from the date of project completion.
- For student research, I can confirm that I have consulted with my dissertation supervisor or Programme Director prior to submitting this form, and attended the necessary RRDП training courses (*for PhD – postgraduate research students*) or Research Methods Module lectures / workshops (*for MSc/BSc students*).

### Approval by HoD or nominee

- I have reviewed this application as **APPROVED** and confirm that it is consistent with the requirements of the University Research Ethics Committee procedures
- This proposal is **NOT APPROVED** and is returned to the applicant for further consideration / revision.
- This proposal is **NOT APPROVED** and will now be submitted to the University Research Ethics Committee

**COMMENTS** (e.g. where application has been refused):

.....

**Signed** (Staff or Student Investigator)

**Date:** 17<sup>th</sup> March, 2017

**Signed** (HoD for staff, or supervisor for students)

**Date:** 19<sup>th</sup> March 2017

**Countersigned** (HoD for students):

**Date:** 22/3/17

## Appendix 3: Consent Form



### School of Real Estate and Planning

### Consent Form

1. I have read and had explained to me by ...JOSEPH AYITIO.. the accompanying Information Sheet relating to the project on: URBAN INFRASTRUCTURE PROVISION IN GHANA: STATE OR CUSTOMARY ORGANISATIONS?
2. I have had explained to me the purposes of the project and what will be required of me, and any questions I have had have been answered to my satisfaction. I agree to the arrangements described in the Information Sheet in so far as they relate to my participation.
3. I understand that, in line with the University's policy on the management of research data, anonymized data gathered in this research will be preserved and made publicly available for others to consult and re-use.
4. I understand that participation is entirely voluntary and that I have the right to withdraw from the project any time, and that this will be without detriment.
5. This application has been reviewed by the University Research Ethics Committee and has been given a favourable ethical opinion for conduct.
6. I have received a copy of this Consent Form and of the accompanying Information Sheet.

Name: . . . . .

Date of I . . . . .

Signed: . . . . .

Date: ... . . . . .



## Appendix 4: Introductory Letter



Angelique Chettiparamb **Real Estate & Planning**  
*Associate Professor* Henley Business School  
*Director of Studies for Real Estate & Planning* Whiteknights, University of Reading  
Reading, RG6 6AH  
+44 (0)118 378 4258  
a.chettiparamb@reading.ac.uk +44 (0)118 378 8175  
repschooloffice@reading.ac.uk

25 May 2017

**Subject: Introduction letter for Mr Joseph Ayitio student number 21008035**

To whom it may concern

We herewith certify that Mr Joseph Ayitio is registered at the Henley Business School, University of Reading, UK, as a research student attending a three to four years PhD course in Real Estate & Planning.

His research is entitled *Land Based Financing and Urban Infrastructure Development in Ghana*. The aim of the research is to provide an in-depth and better understanding of the viability of financing local infrastructure from land revenue generated from leasing customary urban land. His supervisors are Dr Angelique Chettiparamb and Prof Peter Wyatt.

As part of his work, he intends to conduct interviews with traditional authorities, staff of local authorities and land sector agencies. Using Ghana as a case study, this part of his research is designed to use institutional level responses to study the governance arrangement for land based revenue and local infrastructure financing. This is to enable a better understanding of how the institutional arrangement for land governance affects land based financing in the context of customary land tenure.

The School of Real Estate and Planning will be grateful for any help you or your organisation can provide to Mr Ayitio in his data collection efforts. It is our hope that this research would lead to new insights and relevant evidence-based policy options for the development of Ghana's land-based financing potential with possible lessons for other developing countries experimenting with customary leasehold systems.

The information that would be made available to Mr Ayitio, will be treated as confidential and utilised only for research purposes. Your identity will thus remain anonymous. He will however make proper acknowledgement and reference to the anonymised source of the information in the final document.

Your cooperation is appreciated; please do not hesitate to contact me if you need further information.

Thank you.

Yours sincerely,

Dr Angelique Chettiparamb





**Appendix 5a: Letter to Local Government Authority for Information**

School of Real Estate & Planning  
Henley Business School,  
University of Reading  
Whitenights Campus  
Reading, RG6 6UD, UK  
j.ayitio@pgr.reading.ac.uk  
+233508819385  
July 26, 2017

The Regional Stool Lands Officer  
Office of the Administrator of Stool Lands  
Ashanti Region, Ghana

Thro:

The Municipal Stool Lands Officer  
Ejisu Juaben Municipal Assembly  
Ejisu

Dear Sir,

**Request for Ejisu Juaben Municipal OASL Annual Reports**

I am a PhD student at the University of Reading, UK and currently undertaking my field research within the Ejisu Juaben Municipality. After discussing with Madam Evelyn Brefo about my interest to acquire information on the revenue performance of the OASL in the Ejisu Juaben Municipality, she indicated that I seek your permission. I would be very grateful if your outfit provide me with information on the annual stool land revenue generated by the Municipal Office of Stool Lands for Ejisu Juaben. Specifically, I wanted information on the revenue generated by the Ejisu Juaben OASL for the period 2010 to 2016.

This information would enable me understand the implications of different governance arrangements for generating stool land revenue. The information that will be provided will be treated with confidentiality and strictly used for research purposes. I have enclosed a letter from the University of Reading confirming my student status.

I would very much appreciate your helping me meet my August 2<sup>nd</sup> deadline if at all possible. I will call your office next week to follow-up on the information. If you have questions about the information I need, please do not hesitate to call me at 0508819385.

Thank you for your consideration. I look forward to a positive response.

Yours Sincerely,

Joseph Ayitio

Appendix 5b: Approval Letter from Government Agency for land rent data

**OFFICE OF THE ADMINISTRATOR OF STOOL LANDS  
(ASHANTI REGION)**

In case of reply, the number and date of this letter should be quoted.

Telephone Nos.: 03220 – 31826; 34434 & 43403  
Tele-fax No.: 03220 – 31826

Our Ref. No: OASL/ASH/245



MIN. OF LANDS & NATURAL RESOURCES

P.O. BOX KS. 11055  
ADUM- KUMASI

Your Ref. No.....

REPUBLIC OF GHANA

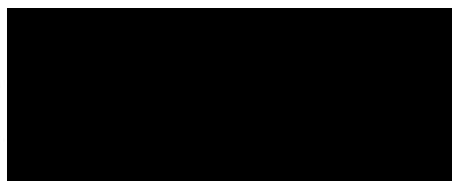
DATE: 28/07/2017

RE: REQUEST FOR EJISU/JUABEN MUNICIPAL OASL ANNUAL REPORTS

In reference to Researcher's official letter dated 26<sup>th</sup> July, 2017 and that of the Academic Institution in letter dated 25<sup>th</sup> May, 2017 in connection with the above subject, please kindly provide the necessary information required by Mr. Joseph Ayitio, the Researcher to enable him complete his field work on schedule.

You are to provide the Regional Office copies of the information provided for our records and future reference as you hand over the original information to the researcher.

You are urged to give him your maximum co-operation and support in this regard.



THE DISTRICT HEAD  
OASL  
EJISU/JUABEN MUNICIPAL OFFICE  
EJISU.

CC: MR. JOSEPH AYITIO ✓  
STUDENT ON RESEARCH.  
HENLEY BUSINESS SCHOOL  
UNIVERSITY OF READING

OASL – ASHANTI: For Equity, Tranquility and Development.

## **Appendix 6: Interview Guides**

Below are guide questions for interviews with the various categories of respondents for the thesis. The order of the questions was however, incidental as the interview guide was customised to suit each group/individual interviewed.

### **Interview guide for public officials in formal land sector agencies**

Town and Country Planning Department

1. Can you give a general overview of the nature of engagements between your outfit and customary authorities in peri-urban land delivery?
2. How does the local authority collaborate with the traditional authorities in the planning of land use?  
Who are the key stakeholders you often work with when you want to develop a Local Plan and convert peri-urban lands to urban uses?
3. In recent time, customary land custodians engage the services of planning institutions to prepare local plans, can you narrate your experiences and the story of how these engagements are done
  - how are the engagements initiated?
  - what negotiations are involved?
  - key individuals and institutions involved in the planning process
  - triggers/impetus/reasons for the collaborative partnerships
  - disagreements, challenges and conflicts in the process
4. How much does it cost to prepare a base map/local plan and sub-divide land in peri-urban?
5. What forms of transformation have occurred in customary-state actor relations in recent time following the Land Administration Project (LAP)
6. Do chiefs make any specific resource contributions in the urban land delivery process?
7. How do you balance the interest of customary landowners with that of the common/ public interest in local planning?
8. What unintended consequences arise out of the peri-urban land use conversions?
9. What is your general opinion of the co-existence of customary and formal sector actors in land delivery?
10. What general challenges do you encounter in peri-urban land delivery

Municipal Finance Department

1. What are the major sources of revenue for financing the municipality's local economic development?
  - Internally generated funds
  - External sources
  - Other revenues
2. How has the municipality coped with financing the increasing demand for community infrastructure over the past decade?
3. What has been the municipality's experience in generating revenue from customary land?
4. How have customary organisations complied with the family/stool land revenue sharing prescriptions?

5. What are the sources of cooperation (or tension) between the municipality and Gbawe customary organisations?
6. How much revenue is generated annually from stool lands?
7. How would you evaluate the effectiveness of the stool land revenue sharing prescription?
  - i. Sharing formula
  - ii. Institutional arrangement for profit-sharing
8. Do you see any winners and losers in the distribution of stool land revenues?
9. Have there been challenges over the years in the implementation of these prescriptions? How do you think these challenges could be resolved (if any)?
10. How are revenues generated from stool lands used by the Municipality?
11. What mechanisms exist to monitor the use of disbursed stool land revenue by Local authority?
12. How would you evaluate the use/management of stool land revenue by customary organisations?

**Interview guide for Customary Land Secretariat (Gbawe, Ejisu and Juaben)**

1. Year of establishment of the CLS
2. Driving factors/rationale for its establishment (How did it come into existence)?
3. Can you describe the;
  - General functions of the CLS?
  - Organisational structure/departments
4. How does the CLS finance its operations, including remuneration for staff?
6. Historically how did people come to acquire land (landowning procedures)?
7. How have land acquisition procedures (including the tradition of 'drink money') changed over time?
8. Are there different procedures for land acquisition for;
  - various land uses residential/commercial/agricultural);
  - by different groups (indigenes and migrants)?
9. What are the processes of land registration/documentation?
10. Is land insecurity considered a problem within your jurisdiction/territory of the CLS?
11. Are there disputes over land use (among indigenous families of the community; with other families or strangers)?
12. Records of land disputes (LMC)

Year	Number of disputes reported	Nature of disputes	Status	
			Pending	resolved

13. How are these disputes resolved and who are the actors involved? (procedures for dispute resolution). How are arbitration decisions over land disputes enforced?
14. Are there unresolved disputes over land within the community? If so, why?
15. Do you initiate planning layouts prior to land allocation and development? (If yes, what are your contributions)? If no, why not?
16. Who is involved in the preparation of local planning schemes?
17. What specific roles does your outfit play in the preparation of local plans?

18. How are the terms and conditions of land leases determined?
19. How are the following enforced:
  - Lease terms and conditions
  - Development control
  - If not, why?
20. How are land prices (ram fee) determined?
21. Are there any non-price (non-economic) factors guiding land allocation?
22. How is ground rent determined/calculated? Are there guidelines for land valuation?
23. How are land revenues generated from customary lands used/distributed?
  - what procedures guide the allocation of this revenue?
  - who is involved in deciding the allocation/use of revenues?
  - are there opportunities for community members' input?
  - Relationship with local authorities (other public land sector agencies) in relation to ground rent
24. How would you evaluate the use/management of stool land revenue by customary organisations?
25. What mechanisms exist to monitor the use of land revenue by customary organisations?
26. Do you see any winners and losers in the distribution and use of stool land revenues?
27. Are there measures to ensure that the CLS is accountable to the rest of the landowning community in the discharge of its functions? Who reviews the performance of the CLS?
28. What challenges does the CLS face in its general operations?
29. What relations exist between the CLS and;
  - OASLs
  - Land management committees
  - Lands commission (survey, land title registry, valuation departments)
  - Local authority including the Physical planning department;
30. What benefits has the CLS derived from its relationship with land sector agencies and what problems have been experienced?

#### Interview guide for Stool Lands Administration (Gbawe and Ejisu/Juaben)

1. What is the nature of your relationship with the CLS?
2. What forms of collaboration exist between your outfit and;
  - Customary landholding authorities within your jurisdiction
  - the CLS
  - the local government
3. How is the rate for annual ground rent determined in the Metropolis/Municipality?
4. Do you face any challenges with land valuation/ground rent calculation?
5. What are the procedures for collecting revenue generated from customary land?
6. How often are stool land revenues collected and how much revenue is being collected per year? (records)
7. Does the co-existence of the CLS and district OASL generate conflicts due to over-lapping functions/power relations?
8. How would you describe your experience regarding the collection of stool land revenues in the municipality?
9. How are revenues generated from customary land transactions shared?

10. What is the rationale for the criteria used in sharing stool land revenue?
11. Have there been challenges over the years in the implementation of these prescriptions?
12. Have you received any complaints regarding the apportionment of the stool land revenue?
13. Possible ways of resolving these challenges
14. How would you evaluate the effectiveness of the profit-sharing arrangement? What problems do you see? How do you think these challenges could be resolved?
15. How does the OASL minimize the costs of coordination (if any)?
16. To what extent have customary organisations complied with the stool land revenue sharing prescriptions?
17. How would you evaluate the use/management of stool land revenue by;
  - i. Customary organisations?
  - ii. Local government?
18. What mechanisms exist to monitor the use of disbursed stool land revenue by
  - Customary organisations
  - Local authority
  - OASL
19. Do you see any winners and losers in the distribution and use of stool land revenues?

#### Interview guide for customary authorities and/or their representatives

1. How did the stool come to acquire the land?
2. How would you describe current land uses today? Can you recall the dominant land uses say a decade ago? How do you think they compare? (If there are changes, what do you think precipitated these changes?)
3. Are you happy with changes in land use and the allocation of land in the community? What problems if any do you see? How do customary institutions and other stakeholders in the land market minimize these problems?
4. How are decisions regarding land allocation made?
5. How are land prices determined?
6. Are there any non-price (non-economic) factors guiding land allocation?
7. What motivates you to supply land to the market?
8. How are you coping with/responding to the increasing demands for land?
9. Are there disputes over land use (among indigenous families of the community; with other stools or strangers)? How are these disputes resolved and who are the actors involved?
10. How are arbitration decisions over land disputes enforced?
11. Are there unresolved disputes over land within the community? If so, why?
12. Do you initiate planning layouts prior to land allocation and development? (If yes, what are your contributions)? If no, why not?
13. Who is involved in the development of sector plans, if any?
14. Are there mechanisms to;
  - prevent land speculation;
  - check illegal constructions;
  - ensure development control
  - control timing of development?
15. How are revenues generated from stool land transactions allocated/spent? what procedures guide the allocation process?

16. How are decisions about the kinds of local infrastructure to be provided made?
17. Are you happy with the current prescriptions on the receipts and management of proceeds from stool land revenue? What problems, if any, do you see?
18. What relations do you have with the;
  - lands commission (survey, land title registry, valuation departments)
  - Physical planning department;
  - Public utility agencies;
  - private developers;
19. What benefits/problems has the community derived from its relationship with land sector agencies?
20. How can public land sector agencies be made more responsive to the needs of the community?

#### Interview guide for focus group discussions with community members

1. Are there principal landholding groups in the community and how did they acquire this position? How has land use within this community changed over time? What factors have precipitated these changes in land use?
2. Are you happy with the changes in land use and the allocation of land in the community? What problems if any do you see? How are community members (and migrants) coping with these changes?
3. What are the procedures for land acquisition in this area and who are those involved in the allocation process? Do you have confidence in the procedures of land allocation? Is the process transparent, participatory, equitable?
4. Are there any difficulties associated with land acquisition and allocation in this area? Do you consider the rights of land users as secure? How have customary institutions responded to increasing demand for urban land by private actors?
5. Do you consider surveyed lands within the community affordable by the majority of citizens? And are there mechanism to ensure that community land remains accessible to community members?
6. Are there conflicts over land use, among indigenous families of the community or with strangers? What are the procedures for resolving disputes over land? Which actors are involved in the arbitration process? Do you consider these arbitration procedures legitimate and enforceable? Are there any ongoing/unresolved land disputes?
7. How are benefits/revenue from land transactions spent? How have individuals within landowning-communities benefitted from land revenues generated by land transactions?
8. How do you perceive the competence/effectiveness of customary organisations in the management of community lands and associated benefits? How would you assess the performance of the Customary Land Secretariat?
9. Are there procedures for reporting complaints regarding the management and allocation of community land? What has been the response of community leadership in relation to members' complaints?

## **Appendix 7: Index of Interviews and Focus Group Discussions**

Although I used the information collected from 51 interviews and 5 FGDs, the list below only contains the interviewees and FGD participants that I quoted in the thesis.

<b>Category</b>	<b>Position of Interviewee</b>	<b>Date(s) of Interview</b>	<b>Place of Interview</b>
Public technocrats	Head of Planning Department, Town & country Planning Department	19/05/2017 & 25/08/2017	Gbawe
	Senior Planner, Town & country planning department	19/05/2017	Gbawe
	Finance officer, Municipal Finance Department	19/06/2017	Gbawe
	Head of planning department, Town & country Planning Department	04/07/2017	Ejisu
	Senior Planner, Town & country Planning Department	04/07/2017	Ejisu
	Officer, public and Vested Lands Management	31/07/2017	Kumasi
	Valuer, Land Valuation Department	31/07/2017	Kumasi
	Registrar, Land Registration Department	31/07/2017	Kumasi
	Senior Surveyor, Survey & mapping division	31/07/2017	Kumasi
	Valuer, Land Valuation Department	10/06/2018	Accra
	Officer, Office of the Administrator of Stool Lands	22/05/2017 & 25/08/2017	Gbawe
	Officer, Office of the Administrator of Stool Lands	07/07/2017	Ejisu
	Finance Officer, Municipal Finance Department	04/07/2017	Ejisu
	Administrator, Regional Office of the Administrator of Stool Lands	27/07/2017	Kumasi
	Operations officer, Regional Office of the Administrator of Stool Lands	03/08/2017	Kumasi
CLS staff, Customary Authorities and Land Management Committee members	Staff member, Customary Land Secretariat	26/05/2017 & 20/06/2017	Gbawe
	Staff member, Customary Land Secretariat	29/05/2017	Gbawe
	Staff member, Customary Land Secretariat	29/05/2017 & 21/06/2017	Gbawe
	Staff member, Customary Land Secretariat	02/06/2017	Gbawe
	Staff member, Customary Land Secretariat	02/06/2017	Gbawe
	Staff member (registrar), Customary Land Secretariat	07/07/2017 & 19/07/2017	Ejisu
	Staff member (coordinator), Customary Land Secretariat	07/07/2017	Ejisu
	Staff member, Customary Lands Secretariat	02/08/2017	Juaben
	Family Secretary, Nii Kwatei Family	22/05/2017	Gbawe
	Paramount Chief's secretary	19/07/2017	Ejisu
	Divisional chief	14/08/2017	Ejisu
	Village chief	19/07/2017	Ejisu
	Divisional chief	17/08/2017	Juaben
	Divisional chief	12/08/2017	Juaben
	Village chief	12/08/2017	Juaben
Member, Traditional Council	20/07/2017	Juaben	
Secretary, Land Management Committee	17/08/2017	Juaben	
Key Informants	Stool Lands Officer, Land Administration Project	28/06/2017	Accra



	Coordinator, Land Administration Project	29/08/2017	Accra
	Land policy analyst/expert	29/08/2017	Accra
	Private surveyor/consultant	14/08/2017	Kumasi

#### List of Focus Group Discussions

Group discussions	Date	Place of Interview
Group discussion with members of Land Management Committee	03/06/2017	Gbawe
Group discussion with inhabitants (community leaders, youth and household heads)	24/06/2017	Gbawe
Group discussion with council of elders	17/07/2017	Gbawe
Group discussion with inhabitants (community leaders, youth and household heads)	12/08/2017	Juaben
Group discussion with inhabitants (community leaders, youth and household heads)	14/08/2017	Ejisu

### Appendix 8: Assessment of Ground Rent

The method of assessment of the rent is based on the annual equivalent (AE) of the land value per unit of measure and taking account of any premiums (a single, up-front, payment at the beginning of the lease period) as shown in Equation 1 below. The assessment is done by the OASL and incorporated in the lease contracts during the land acquisition process as customary authorities may not have the technical know-how on the application of the complex methods of assessment (Bugri, 2012). In practice, the OASL typically applies a range of 3% to 6% of the economic rent of the land depending on the type of use. Upon arriving at the rent payable per annum, the amount is capitalised at the appropriate discount rate to get the total capital value of the land. It is out of this capital value that 10% of its capitalised value is used as the ground rent for the first 5 years after which it is revised. The rationale for using only 10% of its capitalised value as the ground rent is because the premium (considered as 'drink money') paid to the chiefs is almost often equivalent or between 80-90% of the economic value of the land (Mabe, 2013). As Mahama and Baffour (2009) note, what is technically called the 'drink money' is in fact the economic value of the land.

#### Equation 1: Formula for Assessing Ground Rent

$$\text{Annual Equivalent (AE) of similar parcels of land} = \frac{\text{Open Market capital value (CV)}}{\text{Amount of £1 pa factor}}$$

$$\text{Annual Equivalent (AE) of similar parcels of land} = \frac{\text{Open Market Capital Value}}{\frac{(1+i)^n - 1}{i}}$$

$$\text{Capital Value (CV) of subject land} = \text{AE} \times \left( \frac{(1+i)^n - 1}{i} \right)$$

Where  $n$  is the term of years and  $i$  is the discount rate.