Chiefs and farmers: Social capital and the negotiability of rights to land in Ghana

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Introduction: The Dynamics and Negotiability of Customary Tenure

For many years scholars, policy makers and donors have debated whether tenure security, increased productivity and poverty reduction could best be achieved through customary land use arrangements or through state led registration programs. In the first decades after independence many African countries witnessed attempts at land tenure reform through state programs of titling and registration. Disappointment with the effects of these programs combined with the realisation that customary tenure systems are the dominant existing reality, have led to a renewed interest in customary land tenure systems. Issues of equity and security are, however, still of particular concern. This article describes the tendency to describe customary tenure systems in terms of negotiability and flexibility. This is a welcome response to notions of 'customary tenure as a pre-colonial code of fixed rules' (Woodhouse 2003: 1712) and corresponding ideas that customary land tenure systems are unable to adopt new institutions and mechanisms for dealing with a changing environment. This article warns, however, for an overemphasis on the negotiability of customary tenure. Generalising the powers of negotiation of local actors in contestations over land obscures the limits to the agency of some people, as arising from the stratification of local communities, and paints an overly positive picture of customary tenure. Such a picture sends a wrong signal to policymakers interested in customary tenure systems, as it allows them to neglect the inherent injustices and to overlook issues of social differentiation and inequality.

The recognition of the dynamics and flexibility of customary land tenure systems largely originates within social science research, such as in the works by Berry (1993, 2001), Juul and Lund (2002: 3); Shipton and Goheen (1992: 308-11); and Toulmin, Lavigne Delville and Traoré (2002). Berry (1993; 2001), for instance, describes African land tenure systems as adaptive arrangements, of which the rules have remained ambiguous, and the rights are subject to ongoing reinterpretation. People's access to land is therefore linked

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to membership in social networks, influenced by relations of authority and obligation, and dependent on successful participation in processes of interpretation and adjudication. Juul and Lund (2002: 4) similarly see property rights as institutions which 'are only as robust, solid and enduring as the ongoing reproduction or re-enactment which enables them to persist'. They argue that the negotiability of customary tenure not only results from the nature of the customary system but also from functioning within an arena characterised by legal and institutional pluralism combined with a state unable or unwilling to fix the rules and ensure constancy and compliance. This encourages people to renegotiate social identities and entitlements in order to either confirm or change it (cf. Amanor and Ubink 2008: 11).

In line with the above, customary property regimes are now often analysed in terms of processes of negotiation, in which people's social and political identities are central elements, and are also becoming contested terrain (Berry 2002b; Juul and Lund 2002). Peters (2002: 46-7) identifies three basic positions in the literature with regard to the negotiability of customary tenure. The first argues that the ambiguity and negotiability of customary tenure leads to a pervasive insecurity of rights of producers and to a lack of investment and inefficient uses. This view was dominant from the 1960s to the 1980s (Acock 1962; Feder and Noronha 1987; Yudelman 1964) but it has now been largely abandoned. The second position identifies the negotiability and ambiguity of relations over land as a reflection of defining features of African societies, such as the hold social relations have over economic action, the dependence of individual actors on social networks to gain access to resources, and malfunctioning states. The fact that people's access to land is closely linked to membership of social networks and participation in political processes is seen to open up possibilities of access to land for the poor and not as necessarily engendering insecurity and increasing inequality (cf. Berry 1993: 104). Scholars such as Platteau (2000), Toulmin and Quan (2000), and Toulmin, Lavigne Delville and Traoré (2002) now appear to favour the second position, although 'with sufficient unanswered questions to leave open the possibility of accepting the third' (Woodhouse 2003: 1706). The third view holds that the ambiguity and negotiability of customary tenure has not prevented people from investing in production and in social networks to establish their access and control over property but lead to increasing inequality because some people are in a better bargaining position than others and there are limits to negotiability and ambiguity (cf. Berry 2002b: 219; Woodhouse 2003: 1705-6). Authors such as Cousins (2002), Daley and Hobley (2005), Juul and Lund (2002), Lund (2000), Peters (2002), Shipton (2002) and Woodhouse (2003) support the third position based on mounting evidence of land appropriation by influential elites and increasingly restricted and insecure access to land (see, for instance, Abudulai 1996; Downs and Reyna 1988: 18; Simo 1996: 49; Swindell and Mamman 1990: 177). They point to the fact that negotiators or contestants in customary land matters seldom operate on level playing fields. 'Some have more negotiating power, more defining and contesting power, than others' (Shipton 2002: X). 'When competition for land intensifies, the inclusive flexibility offered by customary rights can quickly become an uncharted terrain

on which the least powerful are vulnerable to exclusion as a result of the manipulation of ambiguity by the more powerful' (Woodhouse 2003: 1715). Ambiguity offers room for manoeuvre to small farmers and modest rural producers, but, at the same time, is exploited by the privileged in order to obtain advantage (Peters 2002: 53). These studies also show that not everything is negotiable: 'porous boundaries and fluid, malleable identities too have their limits. There are some groupings and roles to which humans get ascribed and from which they have no escape' (Shipton 2002: X). Based on these considerations, Peters (2002: 47) proposes that 'we may have gone too far in the emphasis on negotiability, ambiguity and indeterminacy of land … rights', and suggests that 'we need to pay more attention to the limits of negotiability and ambiguity – to the cases where claims *do* 'stick' and, critically, to investigate the connection between these cases and socio-economic differentiation and class formation'.

The current article aims to contribute to this new emphasis on the limits of negotiability. It examines the scope of negotiability of customary tenure and the power relations at play in a peri-urban area in Ghana where land is at the centre of intense and unequal competition and closely tied to struggles over authority. After a brief introduction of customary tenure in Ghana, it zooms in on local struggles around residential land in the village of Besease. These local struggles provide a grassroots view of processes of negotiation and contestation of customary rights to land. In this way, the story of Besease opens small but meaningful windows on local contestations for rights to land and serves to illuminate the capacity and opportunity of various local actors to negotiate their positions. These local struggles will be placed in a broader perspective through a discussion of the power of chiefs in Ghana, the existence of traditional checks and balances on their functioning, and the actions and discourse of the Ghanaian government towards chiefly administration. In the conclusion, I will come back to the question of the usefulness of placing all local contestations for land under the term 'negotiations' and show that such a characterization risks undercutting the significance of local stratification and ignoring the winners and losers of uncertain rules.

This article is based on sixteen months of fieldwork undertaken in 2003, 2004 and 2005 as part of a PhD-research into customary land management by traditional authorities in peri-urban Ghana. The main research question of that study dealt with the local functioning of customary legal systems and traditional rule and the way officials apply and interpret customary law. Besease was the initial fieldwork site and operating base from which to visit eight other peri-urban villages, all within a range of ten to 40 kilometres from Kumasi. In the nine villages I combined participant observation with semi-structured interviews with farmers, chiefs, elders, youth leaders, local government representatives, and religious leaders. I supplemented the qualitative research with quantitative data, obtained by conducting a survey among 240 households. The local fieldwork was combined with regular visits to the district capital Ejisu, the regional capital Kumasi, and the national capital Accra, to interview judges, lawyers, politicians, civil servants, policy makers,

academics, and donors on the one hand, and to study literature, policy documents, court records, and archival records on the other.[2]

Customary Land Tenure in Ghana

In Ghana, the 'customary' dominates both property rights and allocational authority: 80% of land is regulated by customary law, with a decisive role for traditional authorities.[3] Although stool[4] land administration is largely the domain of the traditional authorities, the government is to a certain extent also involved in stool land administration, for instance through the collection and distribution of stool land revenue, the requirement to provide consent and concurrence for allocations of stool land, and through land use planning.[5] However, in 2003 Ghana started a Land Administration Project, a long-term programme with multi-donor support, under which the government would pass its responsibility for the management of stool lands to customary land secretariats under the aegis of the traditional authorities (DFID/Toulmin, Brown, and Crook 2004; Ministry of Lands and Forestry 2003: 12).[6] This project is expected to enhance the pivotal position of traditional leaders in Ghanaian land management.

The evolution of customary tenure in Ghana has been described by scholars such as Alden Wily and Hammond (2001), Amanor (1999, 2001), Berry (1993, 2001, 2002a), Boni (2006), Lentz (2006) and Lund (2006), who differ in their approach. While Berry, for instance, invariably stresses the flexibility and negotiability of customary tenure, Amanor (2001: 16) cautions that 'defining the customary as flexible, adaptive, dynamic and hybrid creates problems for examining processes of change, since change has now become an intrinsic feature of institutions rather than a product of struggle between different social forces'. All authors do agree, however, that property relations are subject to intense contestation in cases where access to wealth and authority are undergoing rapid change.

In line with this observation, the current article focuses on peri-urban Kumasi, and particularly on the village Besease, where such changes are salient. Due to urbanization and population growth, peri-urban areas are witnessing a high demand for residential land, which is triggering struggles over the rights to allocate village land that is being cultivated by community members, for residential purposes. As a result, in peri-urban areas the role of

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2 This research has resulted in a book with the following title: In The Land of the Chiefs: Customary law, land conflicts, and the role of the state in peri-urban Ghana, Leiden University Press, 2008 (Ubink 2008a).

3 See Sections 36 (8) and 267 (1) of the 1992 Constitution.

4 Customary land is also called stool land, as the stool, the chief's throne, symbolizes the traditional community. The installation and deposition of a chief are called 'enstoolment' and 'destoolment'.

5 See Office of the Administrator of Stool Lands Act, 1994 (Act 481); Lands Commission Act, 1994 (Act 483); Local Government Act, 1993 (Act 462).

6 See Ubink and Quan 2008.

traditional authorities in customary land management is shifting 'from stewardship to ownership' (Alden Wily and Hammond 2001: 96).

Besease

Besease used to be a village of subsistence farmers but with the growth of Kumasi – the second largest town in Ghana and located only 23 kilometres from Besease – it has become a popular residential area where land is a valuable asset, now selling for more than Cedis 10 million (almost €1000) per residential plot.[7] The village houses five chiefs. The first is the Beseasehene, the chief (*ohene*) of Besease, who also serves as the Akwamuhene and Baamuhene subchief of the paramount chief of the area, the Ejisuhene, who resides in the district capital Ejisu.[8] The second is the Kontihene subchief of the Beseasehene. The other three chiefs are also subchiefs of the paramount chief: his Kontihene, Kyidomhene and Gyaasehene. The term 'chief' can be confusing as it is used to describe various levels of traditional leaders. This article features the Asantehene, the chief or king of all Asantes; the Ejisuhene paramount chief; the Beseasehene, a village chief; and a range of subchiefs of the paramount chief or the Beseasehene. All are referred to by the term 'chief'. Subchiefs function as the chiefs' councillors.[9]

Four of the five residing chiefs 'own' land in Besease, with the fifth – the Kontihene of the Ejisuhene – 'owning' land in Ejisu. Ownership of land is a complicated concept since the ultimate title of stool land lies with the community, usufructuary interests with individuals or families, and the chief has been allocated the role of custodian. The multi-layered customary set-up allows considerable space for struggles to capture the new value of land. At the centre of these struggles lie issues of authority about allocating village land to outsiders for residential purposes and entitlements to the proceeds from such allocations. These contestations are taking place within communities and between the various levels of chieftaincy. A range of actors – farmers, families, family heads, chiefs, the paramount chief, local government representatives and 'foreign' or local buyers of residential land – is struggling for land on the outskirts, and the revenues this can bring. Sometimes actors team up, in other struggles former allies become new enemies.

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7 Although the Constitution (article 267(5)) prohibits the sale of customary land and only allows leases, nearly everyone talks about the 'selling' of land and many people, 'sellers' as well as 'buyers', seem to regard land allocations for residential purposes as definitive transfers. The allocation papers that I saw during my field research merely stated that plot x was allocated to person y, and did not mention the word lease or specify how long the allocation would be valid for.

8 The titles of subchiefs are not based on the names of their residence – as is the case with the Beseasehene and the Ejisuhene – but on their function. They either refer to the subchiefs' original position in the chief's army, for example, the Kyidomhene is the leader of the rear flank (Akyi: back, behind), or their administrative function in the locality, for instance, the Baamuhene takes care of the royal cemetery (Baamu: mausoleum).

9 The councillors of lower chiefs are called elders.

Table 1: Explanation of the position of the various chiefs

Title of chief	**Level of chieftaincy**	**Residence**
Asantehene	Chief of all Asantes	Kumasi
Ejisuhene	Paramount chief	Ejisu
Beseasehene/ Akwamuhene/ Baamuhene	Village chief of Besease and subchief of Ejisuhene	Besease – landowner
Kontihene	Subchief of Ejisuhene	Besease – owns land in Ejisu
Kyidomhene	Subchief of Ejisuhene	Besease – landowner
Gyaasehene	Subchief of Ejisuhene	Besease – landowner
Kontihene	Subchief of Beseasehene	Besease - landowner

The paramount chief in the area of study is infamous for his style of land management that lacks equity and pro-poor development. His own subchiefs have brought charges against him on that account, at the Asantehene's court.[10] The Ejisuhene for his part tried to destool a number of his own subchiefs, including the Besease-based Kyidomhene, Gyaasehene and Kontihene, because they did not agree with his land management. These depositions were not accepted by the families concerned, whose consent the Ejisuhene had failed to seek before taking action. Until these cases are settled, the subchiefs are not going to the Traditional Council in Ejisu but are still carrying on with most of their functions in Besease. The relationship between the parties has been thoroughly soured. At a certain point, the Ejisuhene even reported his subchiefs to the Regional Security Council for planning to assassinate him. However the council sent them home when they explained that they only wanted the Ejisuhene to account for his actions. 'The Ejisuhene is now so afraid', sniggered the Kontihene subchief of the Beseasehene, 'that even when he goes over the rumble strips in Besease his car goes at full speed because his Kontihene lives on the main road'.[11] The ruined relationship hampers the settlement of local disputes as the paramount chief – who has the exclusive jurisdiction to deal with destoolment charges – is unable to discipline his subchiefs.

Due to its unusual set-up with four land-owning chiefs, Besease offers four cases for studying agency and resistance in land struggles at various levels and in different arenas. In the following section, a number of struggles around the right to sell village land for residential purposes will be discussed.

10 During my last field visit, in 2005, the case was still pending.
11 Interview, 1 July 2003.

The Right to Sell Land for Residential Purposes: Cases from Besease

The right to sell village land under cultivation by community members to outsiders for residential purposes is a highly contested issue in Besease. Some say that it belongs to the farmers and their families who have been cultivating the land for generations and passing it on to family members through gifts and succession. Others rather claim that it devolves to the chiefs who also have the right to allocate *unused* land to outsiders.[12] These differing opinions not only find expression in normative statements, but also in various actions regarding land transfers. This can be illustrated by a number of cases.

The first case features the former Beseasehene who, at some point, demarcated a piece of farmland, which was being cultivated by a farmer from another family, into eight residential plots. The chief sold seven of these plots and gave the last one to the family concerned. The current Beseasehene sold the last eighth plot and the family was first aware of this when the buyer started to develop the land. A quarrel broke out between the chief and the family but the chief refused to give the family another plot, and 'brought macho people in'[13] to restrain them. In contrast to this, the Beseasehene did not get his own way in a different case in which he sold a plot of land belonging to yet another family. As soon as the buyer started building on this piece of land, he was restrained by the infuriated family. The buyer then went back to the chief who approached the family to plead with them to settle the conflict but they were adamant and the chief almost got beaten up. The chief then had to compensate the buyer. A last case involving a former Beseasehene dates back to 1973, when Mr O. approached the Beseasehene about buying a piece of land on the other side of the road, near the station. After he had bought it, the land turned out to belong to the Kyidomhene. The two chiefs reached an understanding but Mr O. ended up with only a small part of the land he had bought, an outcome he felt unable to challenge.

A different chief who wanted to sell some land, which in this case belonged to his own family, is the Gyaasehene. One of his predecessors had given a large

12 According to authoritative interpretations in case law, the usufructuary interests of indigenous farmers and families on their land can be extinguished only through abandonment, forfeiture or with consent and concurrence of the interest holder. The usufructuary cannot be deprived of any of the rights constituting the interest, not even by the chief. This would seem to exclude the possibility of chiefs converting and selling subjects' farmland without their consent. It is less clear whether the usufructuary him/herself could convert his/her own farmland to residential land. It is thought that he/she needs to 'inform' the chief of any intentions to do so but it remains ambiguous as to whether it should be done before or after the conversion, whether this merely means informing the chief or whether it involves the chief's consent and, if so, on what grounds a chief could withhold his consent. Obviously these issues determine a chief's bargaining position regarding revenue from the land involved. See for an analysis of customary land law in the Ghanaian courts and a comparison with peri-urban practices, Ubink 2002-2004.

13 Interview assemblyman, 14 April 2003.

tract of land to the Catholic church on the understanding that it would start a school on part of the land. When the Catholics failed to honour their promise, the current Gyaasehene approached the Bishop who returned part of the land to the chief. The Gyaasehene, instead of giving it back to his family, sold the land to outsiders and pocketed the proceeds. When the chief's family discovered his action, they initially wanted to destool him but this would have involved the Ejisuhene, with whom the family was still angry for his attempt to destool the Gyaasehene without their consent. After extensive deliberations therefore, the family decided to keep the Gyaasehene on the stool but sent him away from Besease to avoid his meddling in land matters.

It is not only the chiefs who are selling land. A.D., a Kyidomhene elder, also sold some plots of family land. According to him, he sold the land to raise revenue to renovate the family house but his nephews claim that he sold more plots than was necessary for this purpose alone. When asked whether the chief's permission was required to sell land, A.D. replied that things were changing. 'It depends on the animosity between the seller and the chief. The chief has to sign the land allocation paper and the site plan. But we first sell and then we go to the chief.'[14] He later explained that his family has three houses or 'gates' from which the Kyidomhene is selected, and the people from these three houses can sell their own land, whereas others cannot.[15] When the Kyidomhene heard this, he stated angrily: 'A.D. was wrong when he said that members of the three gates can sell their own land. He said that because he has sold seven plots.'[16] A.D. does not have a bad relationship with the Kyidomhene however because when the Ejisuhene tried to destool the latter, A.D., who is next in line to the Kyidomstool, refused the position. A.D. is thus not just any member of the family and he fully acknowledges that it 'depends on your importance in the family' as to whether you can get away with selling your own land or can negotiate a fair price when the chief is selling it.[17]

A number of commoners also found ways to sell their land, although with some involvement by the Beseasehene. The following cases centre on the interpretation of history. When the town started to expand during the reign of the former Beseasehene at the beginning of the 1990s, the chief announced that anybody could sell the land he was farming. According to some, the Beseasehene's statement only referred to land belonging to his own family, others took it to have a much wider meaning and to cover all the land in Besease. The Aduana family in Besease, who had been given farmland by the Kontihene subchief of the Besease when they arrived in the village, seized the opportunity to sell their lands and went to the Beseasehene to sign the allocation papers, thus bypassing the Kontihene. The deal was of mutual benefit to the Aduana and the Beseasehene, since the first could sell their land without involving the Kontihene, while the latter could receive a 10% signing fee on

14 Interview, 7 May 2003.
15 Interview, 7 May 2003.
16 Interview, 19 June 2003.
17 Interview, 22 May 2003.

land that was not his. When the Kontihene discovered the sales, he wanted to take the Aduana to court but felt he could not do so because they were half-brothers and sisters. Besides this, 'all the plots have been sold and the money squandered'.[18] A similar story was told by the Kyidomhene:

> 'People with Kyidomland knew that I would not agree [to selling the land] and sign their allocation papers, so they went to the Beseasehene for a signature. When I heard about it, I could not do much about it. I called the people with a letter and sent a copy to the Beseasehene and Ejisuhene but I did not pursue it. I did not want to take my own family to court.'[19]

Whether the chief is the one to sell the land, or merely the one who signs the allocation paper, many people think that the chief has to be involved at a certain point. If a buyer wants to obtain a building permit from the District Assembly, his allocation paper will need to be signed by the chief, who will demand a signing fee for this service. A much debated question in Besease, however, is *which* chief needs to be involved. The Beseasehene posits that all allocation papers in Besease need his signature, whereas the other land-owning chiefs claim they can sign their own allocation papers. This dispute is tied up with the issue of authority. The Beseasehene claims that since he is the chief of Besease, he is superior to the other chiefs, at least regarding Besease lands. But according to the Kyidomhene and Gyaasehene, there is no hierarchical relationship. Both claims are grounded in their own versions of history.

The following case illustrates this struggle. The Kontihene sold thirty-two plots of land. When the Beseasehene heard of the sale, he – as self-proclaimed overlord of the land – claimed Cedis 40 million (approximately €4000) of the revenue. The Kontihene however refused to pay, even after the Beseasehene reduced his demand to Cedis 28 million.

Another inventive attempt by the Beseasehene to capitalize on his position proved equally unsuccessful. He personally went to the homes of all the people who had bought residential land from previous Beseasehenes, claiming that he should renew the signature on their allocation papers, a service for which he demanded a substantial signing fee. He went, for instance, to the house of Mrs O., who bought a tract of land from the then Beseasehene twenty years ago. He ordered Mrs O.'s mother, who lives in the house while her daughter lives in the Brong-Ahafo Region, to come to his house to get a new signature. But after consulting Mrs O. and her husband, she decided not to go. The chief also went to the house next door, where eighty-four-year-old Mrs A. told him that the papers were with her children in South Africa and that he had no right to see or sign them. A fight developed and insults were thrown by both sides. To another lady, Mrs S., he said that at the time of the sale, the land had been sold too cheaply and that he now had to sign the papers again. It was rumoured that she had gone to the chief's house for his signature, and was made to pay Cedis 1.2 million (approximately €120), but during the interview she denied the story.

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18 Interview, 1 July 2003.
19 Interview, 19 June 2003.

'He is cheating us. I am not taking my papers there' was her firm response.[20] Tellingly, the Beseasehene took no further steps to enforce 'his right' in these cases.

Although the cases above are described only concisely, a number of conclusions can be drawn from them.[21] When we compare the last two cases, where the house owners resisted the Beseasehene's claims for a renewed signature and his subchief refused to share revenue from land sales with him, with the earlier cases, we can conclude that it is much easier to resist claims for money or a renewed signature than to fight an established sale. This demonstrates the crucial significance of the power to initiate sales. Whether this initiative is taken by commoners or chiefs, the other contestants are often unable or need a lot of force to undo any established sales or to claim part of the revenue. Even chiefs, when confronted with established sales, do not always see the chance of reversing them to claim part of the revenue or to discipline the sellers in any other way, especially if the sale involves a larger group of people or the chief's own relatives.

Nevertheless, the initiator of a sale does not always get away with his actions. The first two cases demonstrate that the outcome of chiefs' attempts to appropriate rights in family land can be changed by the actions of a family, and depend amongst others on the family's power – determined by such characteristics as size, connections, economic capital – and their willingness to act and use force. The case featuring the Gyaasehene selling land returned by the Bishop demonstrates that a chief faces the greatest danger if he sells land that belongs to his own family, which has more direct power in disciplining the chief.

The cases also demonstrate that the stratification in Besease is more complicated than a simple opposition chief-commoners. Just as there are various levels of chiefs, commoners do not form a homogeneous group but should be differentiated on the basis of their 'capital', such as their property, power, connections and knowledge. Furthermore, the multi-chief configuration of Besease offers opportunities and challenges. On the one hand individuals and families can benefit from the animosity and rivalry between the chiefs, by selecting the chief most likely to co-operate on favourable terms. On the other hand, the presence of four land-owning chiefs complicates the process of bringing about accountable land management and equitable revenue sharing. Disagreements between the various chiefs in Besease and the paramount chief also show how the local and the supra-local are intertwined, and illustrate how contestations over land are intimately tied up with struggles over political power and authority. The Besease case furthermore shows that struggles both for land and political power, are intimately tied up with contestations of history.

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20 Interview, 29 May 2003.

21 See for a more elaborate discussion of cases Ubink 2008b.

The Strong Position of Chiefs

Since selling land is profitable and those wishing to reverse established sales are often unable to do so, gains largely depend on the opportunity or ability to initiate sales. Although we saw cases where commoners had been able to sell their land, the prime actors in selling land were usually the chiefs. Bruce (1988: 43) explains their strong position as follows:

> 'in many indigenous tenure systems a traditional leader who administers community land is viewed as holding a tenure in that land. This is best described as an estate of administration, held in trust, but where the land is unoccupied and rights to land are becoming increasingly individualized, the traditional leader is sometimes able to convert the administrative estate to a personal right.'

In Besease, where there is no unoccupied land left, chiefs are now even attempting to acquire personal rights over occupied land under cultivation by community members. This has also been documented for other villages surrounding Kumasi and for other peri-urban areas of Ghana.[22]

The customary system of land allocation, with the chief as the administrator of land, is obviously dominated by the traditional elite. We have seen that this does not mean that chiefs have unlimited and undifferentiated negotiating powers. Their room for manoeuvre and the success of resistance against their actions are highly influenced by the power configuration in the locality. The membership of social and political networks of both the chiefs and their opponents in the struggle, the social and economic capital of both these parties, the number of people they can mobilize, and the degree of physical force they are willing and able to use, all have an effect on the outcomes of struggles over land. Over the last decades, the power configuration in peri-urban areas has been profoundly influenced by the allocation of a number of administrative tools for land management in the chiefs. These tools, including the capacity to draw up planning schemes and demarcate village land into residential plots, have significantly enhanced the local position of chiefs. Although the power of chiefs to negotiate customary tenure differs per case depending on the local power configuration, it is in general influenced by two factors: the weakness of customary checks and balances and the government's current policy of non-interference in chiefly affairs.

Customary Checks and Balances

Traditionally, responsibility for village chiefs rests on two pillars. The first pillar is made up of a council of elders, selected by and representing all major factions of the community, without whose consent the chief can not make any decision. The second pillar consists of the possibility to destool seriously malfunctioning chiefs (Busia 1951; Danquah 1928; Kasanga and Kotey 2001; Ollennu 1962). Assuming that traditional rule was never that equitable and

22 See among others Abudulai 2002; Alden Wily and Hammond 2001; Bassett 1993: 17; Berry 2002a; Edusah and Simon 2001; Hammond 2005; Kasanga and Kotey 2001; Kasanga and Woodman 2004; Maxwell et al. 1998; Ubink 2007.

well-balanced – which has been convincingly demonstrated in the extensive oeuvre of McCaskie (including McCaskie 1992; McCaskie 1995; McCaskie 2000) – current performance of chiefs in peri-urban Kumasi proves that these two pillars have seriously eroded in present-day village practice in peri-urban Kumasi.

To begin with, in some villages in peri-urban Kumasi, the council elders are primarily or even entirely selected from only the royal family and not from all important families in the community. Furthermore, the rule that elders hold their offices not in the pleasure of the chief but to serve the family that has elected them also seems to be under strain. This is underpinned by the abundance of conflicts between elders and their own family, who can no longer dismiss them when unsatisfied. Regardless of the composition of the council, the chief often co-opts his elders by sharing the benefits from land administration with them, removing their incentives to effectively check the use of power and, if necessary, to stand up against the chief (cf. Abudulai 2002: 83). And those elders that are not co-opted are often simply ignored by the chief.[23]

When the people of a community want to destool their chief, a case has to be brought before the Traditional Council, the administrative and 'judicial' organ at the level of the paramount chief, which consists of the paramount chief and his subchiefs.[24] A first hurdle is that destoolment charges cannot be brought by commoners but only by the 'kingmakers', i.e. those subchiefs and members of the royal family who can also make or enstool a chief (Hayford 1970: 36). As discussed above, these subchiefs are often co-opted and are therefore not likely to take the lead in actions against the chief. And if they do dare to do so, this is only 'after many years of wrongdoing, the chief will first be given the benefit of the doubt, according to one of the subchiefs of the Ejisuhene, and to explain why they have waited so long to start a destoolment case against the latter, he adds: 'The kingmakers have deposed the previous Ejisuhene and installed this one, of whom they had high expectations. They now lose part of their legitimacy when they want to destool the one they selected'.[25] A second obstacle lies in the fact that the paramount chief, who chairs the Traditional Council, often has a direct interest in who occupies the village stool, mainly because of his claims to a share in the villages' land revenues. The paramount chief of Ejisu for instance favoured those chiefs who sold large amounts of stool land and shared the proceeds with him. The fact that this did not usually leave much land or revenue for the community did not seem to bother him. Furthermore, to mention a third hindrance, the members of the Traditional Council consist of direct colleagues of the chief-on-trial. Many of the current destoolment charges are to do with land administration in one way or another. And often the charges against the chief-on-trial, such as selling farmland and not using enough stool land revenue for community development, are also points of discussion in the villages of the judging chiefs. Clearly, their personal

23 See Ubink 2007.
24 Section 15 of the Chieftaincy Act, 1971 (Act 370).
25 Interview Kontihene subchief of Ejisuhene, 27 May 2003.

interests in such cases may stand in the way of objective and impartial judgment.

Governmental Policy

The second factor structurally influencing the negotiating power of chiefs consists of the activities and discourse of the government. In the media, government officials regularly and vehemently proclaim that they will not 'meddle in chieftaincy affairs'.[26] Land administration is the main area about which such 'non-interference-statements' are made. These statements not only claim that the government should not interfere in chieftaincy affairs, but also allege that it is unnecessary: since chiefs do not rule alone but in council with their elders, and since they can be destooled when they seriously malfunction, the local arena can deal with its own problems. Despite frequent indications that these local checks and balances are not very effective, the government takes refuge behind them, denying the people an opportunity to complain.

These statements form an element of a wider 'policy of non-interference', which can also be witnessed in certain actions, such as the fact that at inauguration of District Assemblies and Unit Committees – the two lowest levels of local government – its members are invariably told to abstain from chieftaincy affairs. A salient example can also be found in the wording, drafting and content of the National Land Policy – the first comprehensive land policy ever formulated by the Ghanaian government – and its implementing program, the Land Administration Program.[27] Although program and policy aim to tackle the current problems in land administration, both the role of chiefs in the administration of stool land – including the tendency of chiefs to adopt landlord-like positions – and the possible checks and balances the state could put in place regarding stool land administration, are not critically examined. There is an internal debate between modernizers and neo-traditionalists within government, which is quite intense and highly sensitive. The modernizers, particularly in the land agencies and the Land Administration Program Unit, are trying to break the silence surrounding the misadministration by the chiefs but their efforts are being thwarted by their superiors. Altogether, however, it seems that there is currently no political party willing to enter into any real battle, such as land reform would cause, with the chiefs.[28]

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26 See a.o. Daily Graphic 25 August 2003, 3; Ghanaian Times 5 August, 2003, 1 and 25 August, 2003, 3. These statements are sometimes made in reaction to chieftaincy disputes, for which the law explicitly declares the government has no jurisdiction (section 15, Chieftaincy Act, 1971 (Act 370)), but also more in general, expressing that the government will not interfere in chiefly administration.

27 A long-term programme with multi-donor support, which started in 2003 with the objective 'to develop a sustainable and well functioning land administration system that is fair, efficient, cost effective, decentralized and that enhances land tenure security' (Ministry of Lands and Forestry 2003: 12). See also Ministry of Lands and Forestry 1999: 99; Ubink and Quan 2008; World Bank 2003.

28 Another example is found in the unwillingness of the political establishment to bring before the court the question whether 'drink money' is stool land revenue in the

The policy of non-interference can be explained partly by the political power of the chiefs, who are still regarded as very influential and vote-brokers, especially in the rural areas. In addition, the current tendency to fill chieftaincy positions with highly educated professionals blurs the traditional distinction between the state elite and chiefs, and creates new alliances between these two groups (Ray 1992: 109-113). The elite of the party presently in power, the NPP, is especially closely connected to the chiefs. Not only does it have its stronghold in the Ashanti Region, with its powerful chiefs, but president Kufuor himself is through marriage connected to the royal family of the Asantehene. Many members of the current government, up to high levels, are royal family members in their hometown. Furthermore it could be argued that the rampant irregularities and mismanagement by state institutions in procedures of compulsory acquisition of land do not give the state a strong moral position from which to judge the quality of chiefly land administration (Kotey 1996). Moreover, when the state wants to acquire land itself, a good relationship with the chiefs involved is useful.

The current mildly favourable climate for chieftaincy has even rekindled discussions on the creation of a second chamber of parliament made up of chiefs, and on whether chiefs should again have their own representatives on District Assemblies. The fact that chiefly statements on these issues at workshops and policy meetings often go unchallenged gives another indication of the affirmative attitude of the current government towards chiefs and chieftaincy issues. Obviously, such actions and discourse from the government provides chiefs with additional legitimacy and negotiability in the field of land administration, and communicates little fear for stately control and ample room for manoeuvre.

Conclusion: Negotiations and Unilateral Actions

The weakness of customary checks and balances and the government's policy of non-interference in chieftaincy matters help to explain why in many cases the chief is able to benefit from the resources of the community. Over time, this would result in reduced access to land for the poor and increased socio-economic inequality, a result confirmed by other research.[29] The third position with regard to the negotiability of customary tenure described in the introduction to this article imputes the increased inequality under customary

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sense of the Office of the Administrator of Stool Lands (OASL) Act. In line with the historical practice to bring a bottle of schnapps when requesting a chief for land, chiefs claim that 'drink money' constitutes a mere symbolic gift to show allegiance to the chief. Since this 'drink money' currently equals the market price for land, many officials suggest it amounts to stool land revenue in the sense of the OASL Act, and should thus revert to the OASL. When the District Chief Executive of Ejisu-Juaben district wanted to go to court over a case of approximately 300.000 Euro of 'drink-money', he was stopped by the government. See Ubink and Quan 2008.

29 See footnote 22.

tenure to the differentiated bargaining positions within a community and the limits of negotiability and ambiguity. Although the Besease case endorses both these aspects,[30] I agree with Peters (2004) and Amanor (1999) who warn that too much emphasis on negotiability results in an overestimation of people's agency and that the image of relatively open, negotiable and adaptive customary systems of landholding and land use obscures processes of exclusion, deepening social divisions and class formation. In line with, but perhaps surpassing the argument of these authors, I wish to caution against misuse of the term 'negotiability'. In instances when one party has the power to fully negate the other party's rights or to unilaterally impose a new constellation of rights, it is overstretching the term to continue to speak of negotiations. We cannot say that it is the result of a negotiation when a chief sells a farmer's land and refuses to pay any compensation. Practice in peri-urban Ghana shows a range of interactions on a continuum from 1) negotiations where parties have more or less equal power, such as between chiefs, and 2) negotiations between parties with severely unbalanced power relations, such as between chiefs and poor farmers, to 3) unilateral actions where one party is presented with a *fait accompli* regarding an alteration in his/her rights to land but where resistance changes the outcome to a certain extent, and 4) unilateral actions where acts of resistance remain ineffective and the strongest party imposes a new constellation of rights or even negates all the rights of the other party. Juul and Lund (2002: 6) state that 'just as poor and disadvantaged people may sometimes negotiate improvements to their lives, these may just as swiftly be negotiated away again'. I would like to argue that by using the word negotiation they present an incomplete and skewed picture that ignores a whole array of actions in which a powerful party one-sidedly abrogates or diminishes the other party's rights. An overstretching of the term negotiation – or rather a continued use of the term when in fact negotiations have ended – is not only incorrect but also dangerous as it obscures the stratification of the local communities in which these processes take place, overemphasizing the positive aspects of customary tenure, while neglecting its injustices.

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30 This research does not conclude that the increasing economic inequalities are solely or predominantly a consequence of customary tenure and negotiable land rights. Rather, these should be attributed to Ghana's political economy, with the internalization of the market-driven inequalities of the global economy and the strengthened position of chiefs that is discernable since the overthrow of President Nkrumah in 1966, but especially pronounced during the current reign of President Kufuor. This research also does not mean to suggest that national legislation will necessarily make land management more equitable. It recognizes customary tenure as a fact of contemporary political life but warns about treating it as a panacea.

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