

Land and the Politics of Belonging in
West Africa

African Social Studies Series

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Land and the Politics of Belonging in West Africa

Edited by
Richard Kuba and Carola Lentz



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PREFACE

Early scholarly interest in African land tenure and local systems of access to natural resources was followed by a period of relative silence, but the topic has since the late 1980s been subject to renewed interest both politically and academically. International development agencies and their African counterparts organize ever more workshops in support of new tenure reform projects, titling schemes or programs of land and resource management. Partly in connection with this, and partly for other reasons, geographers, economists, political scientists, anthropologists and historians have discussed African property regimes and, more specifically, the feasibility and possible consequences of tenure reform and titling programs. The number of conferences held and books published is growing so fast that it is difficult to keep track.¹ From the perspective of our own research in Ghana and Burkina Faso, on settlement histories, mobility, and conflicts between ‘first-comers’ and ‘late-comers’ over property rights, however, we felt that certain themes merit more attention. To begin with, we found that despite the growing literature on the colonial ‘invention’ of ‘customary law’, the pre-colonial dynamics of property regimes and the *longue durée* of some of the lines of conflict have received relatively little attention. Secondly, we wanted to broaden the perspective, from a rather policy-oriented focus on tenure security, investment and productivity, to issues of power, authority and the politics of belonging. And thirdly, we wanted to stimulate debate by opting for a regional focus on West Africa, with case studies that are in many ways historically interconnected. The response to our call for papers was indeed very encouraging, and the conference, held in October 2002 at the University of Frankfurt on Main, provided a welcome opportunity for historians, anthropologists and scholars of law, working on ‘Anglophone’ as well as ‘Francophone’ West

¹ For an overview of the older literature, see Biebuyk 1963 and Shipton and Goheen 1992. For recent discussions, see Downs and Reyna 1988, Bassett and Crumme 1993; Berry 1993 and 2002; Platteau 1996; Lavigne Delville 1998; Toulmin and Quan 2000; Juul and Lund 2002; Toulmin et al. 2002; Benjaminsen and Lund 2003. For detailed references, see the bibliography of the introduction.

Africa, with their different colonial legacies and legal traditions, to exchange ideas and research findings.

This book contains a selection of revised conference papers, but our thanks also go to the participants whose comments greatly enriched the debate, but whose papers could not, for one or the other reason, be included in this volume, namely Andreas Dafinger, Youssouf Diallo, Georg Elwert, Benjamin Kunbuor, Pierre Yves Le Meur, Michaela Pelican, and Volker Stamm.² We also thank Andrea Behrends and Andreas Dafinger, from the Max Planck Institute for Social Anthropology in Halle, who organized a conference on 'The landed and the landless: strategies of territorial integration and dissociation in Africa', held in May 2002, for mutual inspiration and the coordination of the programs of our 'twin' workshops. The detailed notes that Michaela Oberhofer, Ulla Selchow and Andrea Wilhelm-Somé took of our discussions in Frankfurt helped the editors of this book with their task. Without the invaluable assistance of Katja Rieck, not only as an extremely helpful and friendly organizer during the conference itself, but also as a diligent as well as eloquent copy-editor, this volume would not have seen the light of day. Stephanie Delfs assisted with the technical aspects of producing a legible manuscript. Thanks for logistical and financial support are due to the Deutsche Forschungsgemeinschaft and the Special Research Project 268 on the West African Savanna at the University of Frankfurt, Main, as well as the Department of Anthropology and African Studies of the University of Mainz. Carola Lentz also wishes to thank the Max Planck Institute for Social Anthropology for providing her with a congenial working environment while editing the chapters and writing up the introduction.

Richard Kuba and Carola Lentz
Mainz, October 2004

² Andreas Dafinger and Michaela Pelican's paper, 'Land rights and the politics of integration: pastoralists' strategies in a comparative view', has been published as Working Paper No. 48, Max Planck Institute for Social Anthropology, Halle, 2002. Benjamin Kunbuor's paper, 'Multiple layers of land rights and "multiple owners": the case of land disputes in the Upper West Region of Ghana', has appeared in Franz Kröger and Barbara Meier (eds), *Ghana's North: Research on Culture, Religion, and Politics of Societies in Transition*, Frankfurt: Peter Lang, 2003, pp. 101–28.

LAND RIGHTS AND THE POLITICS OF BELONGING IN AFRICA: AN INTRODUCTION¹

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University of Mainz

Studies on African land tenure all agree that land ownership is a complex bundle of rights that are socially and politically embedded. Property is ‘not about things’, as Sally Falk Moore recently summarized, ‘but about relationships between and among persons with regard to things’ (1998: 33). Rights over land are nested, pertain to different economic and ritual activities (hunting and gathering, harvesting, planting or felling trees, cultivating food crops, sacrifices, building, burials etc.), cover different time spans and differ in territorial reach, ranging from allegedly inalienable ‘allodial’ ownership of larger village territories, to long-standing heritable proprietorship of family lands and finally to temporary use rights to specific fields. Rights to land are intimately tied to membership in specific communities, be it the nuclear or extended family, the larger descent group (clan), the ethnic group, or, as is the case in modern property regimes, the nation-state. Membership in these groups, however, is not ‘a given’, as a number of recent studies have shown (cf. Chauveau 2000, Berry 2001, Hammar 2002, Lentz 2002 and 2003a). It is contested. It is negotiable. And, it can change over time.

The contributions in this book look at the ways in which the boundaries of property-holding groups have been constructed and subject to continual redefinition. They analyze conflicts over belonging, authority and land rights within the family that have often pitted fathers against sons and, occasionally, men against women, as well as analogous conflicts between lineages and clans, between chiefs

¹ I am indebted to Andreas Däfinger, Richard Kuba, Keebet von Benda-Beckmann and Sara Berry for their perceptive comments on the first draft of this introduction. During the writing-up of this introduction, I was a fellow at the Max Planck Institute for Social Anthropology whose directors I thank for providing me with an excellent working environment.

and earth priests, between ethnic groups or 'first-comers' and 'late-comers', and between local people and state institutions. In short: The book explores the politics of belonging, both at the local and the national level and how this is intimately linked with access to land.

If claims to land are linked to group membership, the reverse is also true: control over land has been and is still used as a way of defining belonging and, in some parts of West Africa, as an instrument to control the labor and/or taxes of those who live on the land. Landlessness may once have been a rewarding strategy for such groups as pastoralists or migrants, but this is no longer the case. In recent West African politics, non-territorial strategies of belonging have lost considerable ground (cf. van Dijk 1996, Bierschenk 1997: 29–109, Diallo 2001, Traoré 2002). Everybody must be able to point to a 'home land' or a 'home village', if he or she wishes to participate fully and have a say in the local decision-making process or be heard in the national political arena. This book therefore also explores the dynamics of converting control over land into social and political capital—a dynamic which can work in both directions, with immigrants or 'strangers' using all available avenues to gain access to land in order to become 'sons of the soil', and with locals struggling to exclude newcomers from fuller control over land, precisely in order to minimize their political rights in the community.

West African states, like all modern polities, claim to exercise some form of control over their national territory (in the Francophone legal tradition the state 'estate'). National citizenship therefore implies, at least in principle, the right to reside and participate in the political decision-making process anywhere in the country. However, in many cases this concept of the nation as a community of rights and duties shared amongst equal citizens has been challenged by the concept of nations as a federation of communities defined by descent or by some form of essential 'primordial' membership, as, for instance, the recent conflicts in Côte d'Ivoire over the land rights of Burkinabè and internal migrants show (Chauveau 2000, Geschiere and Nyamnjoh 2000). Of course, all constitutional definitions of national citizenship invoke notions of descent, and everywhere descent is the primary way of obtaining citizenship. But there are differences in the degree to which descent is used to exclude 'strangers' (or, rather, aliens) and severely restrict their rights, and how difficult it is for strangers to obtain national citizenship. Furthermore, there are differences in how

effective shared national citizenship is for obtaining rights at the local level. In some cases, the concept of the nation as shared rights and duties prevails at the national level, while descent-based notions of community dominate the definition of local citizenship (Mamdani 1996). It is in such contexts, which are made even more delicate by a 'scramble for land' that has become more desperate due to demographic pressure and anthropogenic desertification, that host/stranger or first-comer/late-comer relations have been redefined, and the former processes whereby immigrants were gradually 'autochthonized' have come under pressure. Moreover, bureaucratic decentralization and the international debate on the rights of 'indigenous peoples' have contributed to the growing importance of land in the on-going struggle to assert belonging and political rights.²

This book, then, will address the issue of land rights with a particular focus on their political implications, at the local as well as at the supra-local level. This also brings to our attention the spiritual dimension of land rights, which has been somewhat neglected by much of the recent, more policy-oriented literature, or at least, was relegated to anthropological studies. Several articles in this book show how land is at the same time a ritual, political and economic resource, and how ritual control can be converted into economic prerogatives and political power.

An important feature that characterizes this book is its historical perspective. Most case studies pay particular attention to long-term processes, starting in the eighteenth and nineteenth centuries and spanning the colonial and postcolonial periods, without neglecting more recent changes. We must not only recognize that today's land rights are negotiable and politically embedded, but also see that this was the case in the pre-colonial past, too. This is precisely what many articles in the present book do, by adopting a *longue durée* perspective. They point to the colonial origins of much of what came to be viewed as 'customary' tenure and emphasize that pre-colonial tenure arrangements were already characterized by legal pluralism. Finally, they examine pre-colonial (or early colonial) commercial transactions in land, paying close attention to the question of what precisely was being transferred.

² For a general discussion of ethno-nationality, land rights and territorial sovereignty and a collection of illuminating case studies from various parts of the world, see Engerman and Metzger 2004.

It is high time to inject historical depth, but also regional specificity into the debates on African land tenure. Despite many similarities, the ways in which land and power are connected, dynamics of legal pluralism, tenure reform projects and popular strategies seem to be somewhat different in different parts of the continent. All case studies in this book focus on (more or less) rural settings in West Africa, some in Ghana, with an Anglophone legal tradition, and others in Côte d'Ivoire and Burkina Faso, both of which are steeped in the Francophone colonial and legal tradition. They deal with land tenure in the savanna and in the forest belt, with their different natural environments and historical trajectories. They study land claims in different economic contexts, in areas of predominantly subsistence-oriented agriculture as well as areas of cash-crop production, in annual or perennial plantations, and of gold mining. And, finally, they discuss historical developments as well as recent transformations of access to land in societies with pre-colonial traditions of statehood as well as in segmentary, decentralized societies. The processes explored in the different case studies are in many ways interconnected. Pioneers on the historical cocoa frontier, for instance, developed institutional arrangements of land and tree tenure and labor regimes that were later 'copied' by other groups. Sharecroppers and laborers from the savanna regions who had worked in the cocoa plantations often returned to their original villages with new ideas on property and the value of land. The increasing rigidity of the boundary between 'autochthones' and immigrants in the cash-crop producing areas of Southern and Western Côte d'Ivoire, which culminated in the expulsion of many migrants from Burkina Faso, has intensified the competition over land and the debates over the land rights of 'strangers' in the migrants' home regions. Although the case studies come from only three countries, the different axes—forest versus savanna, state versus segmentary societies, and Anglo- versus Francophone legal traditions—provide ample opportunity for comparison which may eventually help to develop regionally and historically specific hypotheses of typical trends and constellations. In the remainder of this introduction, I will discuss some of the findings of the case studies—on the dynamics of pre-colonial land tenure, the changing relations between first-comers and late-comers, and the contested meanings of land transfers in changing political and economic contexts.

The dynamics of 'customary' land tenure

Despite all emphasis on the resilience of legal pluralism in land matters, 'customary' land tenure itself and, more specifically, the pre-colonial dynamics of property regimes have received relatively little attention in the recent literature on African land rights. Some policy-oriented studies still seem to share, albeit perhaps mainly for strategic reasons (Li 1996), the rather romanticist view of pre-colonial land tenure that early colonial officials developed, in cooperation with African chiefs.³ Their perspective on indigenous land tenure was guided by the axioms that Africans associate land with deep religious meaning, that land is held for them in trusteeship by the chiefs and is owned communally and that land is ultimately inalienable. These rather 'naïve' (though certainly not innocent) early conceptions of African land tenure, however, were soon revised and refined. By the mid 1940s, C.K. Meek (1946: 11–31), drawing on anthropological expertise, was able to present a quite nuanced picture of 'native systems of tenure' that did justice to the complex web of interlocking communal and individual rights to land, and customary practices of pledging, if not outright 'selling' of land. Whether the insights of Meek and others actually changed colonial land policies premised on the axiom of inalienable 'communal tenure' is another matter,⁴ but what interests me here is that even Meek, and the anthropologists of his time, continued to think of traditional land tenure in terms of a coherent, homogenous, and stable system of rules and beliefs. Legal pluralism (although this term was not yet used) was not regarded as intrinsic to indigenous systems of tenure, but as a result of the incorporation of traditional African societies into modern market economies and the colonial political order. That Africans could have debated, and held opposing views, about property rights even before the advent of colonial rule, did not enter the colonial officers' and early scholars' minds.

One of the first substantial critiques of European views of African land tenure was advanced by Paul Bohannon (1963) who argued that indigenous systems were the products of a 'folk geography' not

³ For a recent example of a rather simplistic view of 'customary' tenure, see Ensminger 1997: 168–70.

⁴ On the history of British land policies in West Africa, see Phillips 1989, chs. 4 and 6.

of Western grid-type maps that are made up of bounded pieces of land, but of a rather flexible, rubber-type map of social relations, characterized by 'short term farm tenure', a system that differed radically from Western notions of property. In Bohannan's view, the axiom of communal ownership of village territories was an erroneous colonial translation of complex indigenous systems, but at least one which allowed local communities to continue their traditional practices of farm tenure. Elizabeth Colson held a less benign view of the colonial 'invention' of communal tenure, vested in the chiefs, and emphasized the problematic consequences of the transformation of land that was previously merely a community's 'territory or domain' into an 'economic holding', and of 'the confusion of sovereignty with proprietary ownership' (1971: 197–8). Informed by her research among Central African shifting cultivators, Colson argued, as did Bohannan, that notions of property were conspicuously absent from traditional tenure regimes, at least under conditions of surplus land, and that villages were descent-based, mobile communities, but 'did not claim land' (*ibid.*: 202).

Later writers have taken Colson's critique of colonial customary law further, arguing that the 'invention' of communal ownership of land, held in trust by the chiefs, was a joint venture between the latter and colonial administrators that furthered the chiefs' power and revenues while also serving European interests in land for state or private use (see, for example, Coquery-Vidrovitch 1982; Chanock 1985, 1991). Amanor, Austin and Boni⁵ provide examples of the unholy alliance between paramount chiefs on the cocoa frontier in Southern Ghana and the colonial state in the 'invention' of traditional tenure that altogether suppressed the dynamic land market which had developed in the nineteenth century, or transformed it to suit the interests of the chiefs, thus weakening the rights of immigrant farmers. Lund analyzes the postcolonial legacies of such alliances in Northern Ghana. Unlike Chanock (1985), however, the case studies in this book leave no doubt that the colonial codification of 'customary law' did not put an end to debate and conflict, but rather institutionalized unceasing negotiations of and contest over chiefly hierarchies and boundaries of the property-holding communities (cf. Berry 1992).

⁵ References to authors without years refer to chapters in this book.

Thomas Spear has recently contended that the case for the colonial 'invention of tradition' has often 'overstated colonial power and the ability to manipulate African institutions to establish hegemony', and overlooked the historical roots of some of these institutions (2003: 3). 'The source of many Western ideas about Africa', Spear insists, 'lay in African discourses', not European models (*ibid.*: 7). He develops his argument with respect to chieftaincy and ethnicity, but it also applies to land tenure. I read it as an invitation to look further than just the colonial period in examining contested land claims, competing arguments legitimizing property rights or conflicting interpretations of boundaries. In fact, a closer analysis of the pre-colonial dynamics of land rights and land access will allow us to better understand the re-interpretations of indigenous tenure systems as well as the dimensions of conflict under the colonial and, more recently, the postcolonial regimes.

Both images of the pre-colonial past—the colonial idea of inalienable, uncontested communal property, held in trust by chiefs or earth priests, as well as Bohannan's and Colson's concept of ritual territories with flexible farm tenure, but without property rights (and hence similarly inalienable)—seem to be misleading, or, are at the very least, grossly simplified. A number of studies have shown that at least since the early nineteenth century, land in agricultural frontier zones, with emerging cash-crop economies, became more and more highly valued, and that land markets developed (even Colson observed this much). These land 'sales' were later, when power constellations changed, sometimes re-interpreted as redeemable pledges or mere leases, but originally they appear to have been intended as sales, as Amanor, Austin, and Boni show. Pre-colonial land transactions in 'backwater' savanna regions have, so far, received much less attention. There is a problem of sources, of course, because there exist virtually no contemporary written sources, and oral traditions regarding settlement have become powerful arguments in recent land conflicts. However, the degree to which history has more recently been subject to the politics of memory does not imply that all statements about the past are of recent 'invention'. Our findings on the agricultural expansion of segmentary societies in the Black Volta region, for instance, point to the importance the pioneers attached to the material and ritual control of the new territories into which they moved, and to a long history of contestation over whether earth shrines, which invest allodial property rights, can be transferred to

newcomers or are always to remain the inalienable property of the first-comers (cf. Kuba, Lentz; also Kuba, Lentz and Werthmann 2001; Kuba and Lentz 2002).

More generally, the dominant paradigm that land in Africa was a free and plentiful good, that political control tended to be over people rather than over land and that Africans were indifferent to rootedness in physical space,⁶ needs to be reassessed. Competition over resources such as land, water, pasture and trees, between 'first-comers' and 'late-comers' and between agriculturalists and pastoralists, sometimes articulated in the idiom of ethnic difference, seems to be a phenomenon of *longue durée*. It is, therefore, necessary to apply the concept of 'legal pluralism', of ambiguity, negotiability and political embeddedness of land rights to the pre-colonial past also.

Three basic features of indigenous tenure regimes allow for multiple local interpretations and contestations. The first concerns the boundaries of the property-holding group, or the composition of the 'bundle of owners', as Geisler and Daneke (2000: xiii) aptly put it. Access to land was, and still is, mediated by membership in specific communities or groups, which is based on descent, shared histories of migration or flight, physical proximity and political allegiance. The boundaries of these groups, however, were and continue to be notoriously fuzzy, meaning that membership needs to be negotiated. In many areas of West Africa, the most important group claiming allodial property rights are the pioneers or 'first-comers' to a specific region, and claiming to belong, by virtue of descent or some other criterion, to the community of first-comers is the most widespread strategy to legitimate land rights. First-comers are believed to have established a special relationship with the spirits of the land, often symbolized by shrines at which regular sacrifices are offered in order to ensure the fertility of the land and the well-being of the community. First-comers and their descendants distributed land to later immigrants, they grant the right to build houses and bury the dead, and often still mediate in conflicts over land boundaries and land use. However, first-comer claims are far from unambiguous (cf. Boni, Kuba, Lentz and Lund). The first issue that presents room for maneuver concerns what is considered to be the 'pivotal historical event'

⁶ See Goody 1971: 29–30 and Kopytoff 1987: 22, 41, for classical formulations of these conventional assumptions.

(Murphy and Bledsoe 1989: 124–5) as this determines who is recognized as first-comer: Was it the discovery of the site of the new village, the actual clearing of the bush or some form of conquest? The second issue is the delineation of the territorial and social reach of the group that claims first-comer status. A group may insist on having been the founders of a village, including its various subsequently established sections and satellite settlements. However, the founders of these sections and satellite settlements may in turn claim to be first-comers in their own right, particularly vis-à-vis late-comers in their sections. The relative chronology of the foundation of settlements can thus be manipulated in multiple ways. In addition, first-comer claims can be extended from a single lineage to the lineage's entire ethnic group, thus conferring first-comer status to all members of the ethnic group, even if some could actually be regarded as late-comers.

The second feature of indigenous tenure regimes concerns the fuzzy geographical boundaries of the territories which the property-holding groups claim to own. The kind of boundaries Africans traditionally set, be they linear or otherwise, has been subject to debate among scholars, but there is consensus that linear boundaries between fields and construction lots—owned by different lineages and within the lineages by different individuals—were indeed usually marked off, by ditches, paths, hedges of shrubs or marks on trees. By contrast, the nature of the 'borders' of earth-shrine areas or stool lands (lands controlled by Southern Ghanaian chiefs) was, and often still is, more difficult to define. When land was plentiful, earth-shrine areas, and similarly the lands of a chiefdom, were probably perceived not as flat homogenous territories, but as fields of ritual or political power, with a well-defined center (the shrine or the stool) in the inhabited and regularly cultivated space surrounded by concentric circles of influence, thinning out towards the uncultivated bush or forest beyond which the neighboring settlements lay. The 'territories' controlled by first-comers also were not necessarily continuous, but consisted of various stretches of land, interspersed with areas 'owned' by neighboring communities. The bush or forest, in any case, was a zone of contact rather than separation. Furthermore, where first-comers engaged in hunting, they were interested in controlling rather vast areas and were little concerned with fixing boundaries (Ingold 1986: 222–42, Barnard and Woodburn 1997, Jacob 2002). As more and more bush was cultivated, the boundaries between

neighboring territories needed to be defined more precisely. In the border zones, the allegiance of houses and fields was usually defined according to which earth priest or chief had originally given the permission to cultivate or build. This process is still going on, and, under the increasing population pressure, contains potential for conflict, in which competing interpretations of past land grants and oral agreements are brought into play (cf. Berry 2001).

The third feature, finally, concerns the multiple layers of rights to natural resources, or the characteristic 'bundle of rights', as Meek (1946: 1) put it. These layers have a socio-spatial dimension, that is, several different persons or groups hold some kind of interest in any given piece of land. And, they have a temporal dimension, namely that these rights may have different 'expiry dates', so to speak, or that some resources are used by different right-holders at different times. In the savanna area for instance, earth priests claim allodial rights to all resources, including farmland, water and uncultivated bush as well as gold or other minerals, lost objects or stray cattle. They assign usufruct rights to villagers and 'strangers', often varying according to the resources in question. It is possible to allow someone to grow annual crops on a field, while at the same time reserving the right to harvest whatever trees there are. Also, earth priests often retain certain rights over water bodies, even though they may have given perennial rights to farm and build on the land around the water. Even in an urban setting, with surveyed and registered building lots, an earth priest may still claim to be ritually responsible for cleansing the earth after a suicide. Again, these bundles of rights are complex and negotiable, and contain numerous opportunities for competition and conflict, as Chauveau, Hagberg, Lund and Werthmann show.

One may ask whether these bundles of rights are adequately described in terms of 'property'. Bell (1998) has recently proposed to reserve the concept of 'property' for things that can be alienated and acquired in a market situation, in contrast to resources accessed through membership in social groups. While this may help to gauge more carefully the historical transformation of property rights towards capitalist forms of private, individualized ownership, it does so at the expense of unnecessarily 'othering' non-capitalist societies. A wider concept of property, which emphasizes the social and political embeddedness of ownership and allows for a continuum of rights (ranging from mere access to complete alienation) as well as right holders

(from individuals to extended families and larger communities), seems more useful (cf. Hann 1998, Lund 2002, Benda-Beckmann 1999). Hobhouse's early elucidation of the minimal conditions under which control over an object, in our case land, may be understood as property, provides a useful starting point: this control 'must in some sort be recognized, in some sort independent of immediate physical enjoyment, and at some point exclusive of control of other persons' (1915: 7, quoted in Ingold 1986: 229), or, in other words: property implies social recognition, long-term control and some kind of exclusivity. And although most indigenous languages do not make the distinction that, for instance, English Common Law does, between allodial title, freehold, leasehold and lesser rights (Kunbuor 2000, 2003), there are indeed elaborate local discourses on these different and sometimes competing layers of rights.

One may also ask whether a focus on entitlements and property rights does not underestimate the role of violence and relations of power in people's actual access to resources (Ribot and Peluso 2003). Violence, coercion, trickery, material wealth and other 'extra-legal' mechanisms certainly play a role in gaining access to, and control over, land and other 'natural' resources, as Werthmann's study of gold mining shows. However, long-term uninterrupted use of landed resources cannot rely on violence and coercion alone, but requires strengthening one's claims to access through building consensus and recognition—i.e. through establishing property (Lund 2002: 12–3). Furthermore, law and property are in themselves important sources of power and can establish power differentials. It is important, then, to look at property as a 'bundle of powers', as Katherine Verdery (1998: 161) proposes, but we should also explore the ways in which images of community and legitimate ownership provide 'a vocabulary of legitimation for requests to be made and pressure to be exerted' (Li 1996: 509).

The ambiguities of indigenous property rights are intrinsically related to the socio-historical context of mobility that has been, and still is, characteristic of West Africa (De Bruijn et al. 2001). Establishing control over immobile resources such as land in a region where the people, including the agriculturalists, have been continually on the move, constituted a particular challenge. The multiple opportunities to redefine first-comer status described above provided the flexibility needed to continually adapt the landscape of property rights to accommodate new arrivals (and departures) while preserving the

repertoire of legitimate arguments and property-constituting rituals. The ambiguities are, of course, also related to the characteristics of an oral culture, which lacks maps, written titles and cadastres, and in which the 'bundles of owners', 'bundles of rights' and territorial boundaries have to be constantly interpreted and reaffirmed through narratives and rituals. Indeed, narratives are central to the constitution of property, as Carol Rose (1994) has convincingly argued, because they help to build consensus. Yet narratives are also crucial for articulating challenges to existing property rights, and help to 'define alternatives' (Fortmann 1995: 1054).

In a nutshell, 'customary' tenure rules were, and continue to be, subject to multiple interpretations and claims, and are in themselves characterized by legal pluralism. Even in pre-colonial times, most people could turn to a plurality of authorities in order to have their property claims acknowledged. 'Forum shopping' and 'shopping forums' (Benda-Beckmann 1981) were certainly more restricted than they are today, but they do seem to have been used, though probably more in a 'horizontal' than in a 'vertical' sense. Landseeking late-comers, for instance, had options to 'secede' from one earth priest and approach a neighboring one, if they were dissatisfied with the former's services; conversely, earth priests competed with each other for clients, or competed with chiefs who also offered support and recognition of property rights. Furthermore, in some areas, new cults or religions, such as Islam, challenged existing spiritual authorities and provided protection that could make it easier for enterprising strong men to engage in novel forms of land transactions. It is evident that the arena became all the more complicated when the colonial (and postcolonial) state entered the scene, creating even more layers of rights, institutions, perceptions, interests and strategies with respect to land.

First-comers and late-comers, natives and strangers

In recent years, discourses on autochthony and 'primary patriotism' (Geschiere and Gugler 1998), i.e. on belonging to a community rooted in a particular territory, have become increasingly important in West Africa (cf. Geschiere and Nyamnjoh 2000). The boundary between 'autochthones' and 'immigrants', or, in British colonial parlance, between 'natives' and 'strangers', is brought into play in the

political arena. In multiethnic cities or rural regions with large groups of immigrants, for instance, the democratic principle of one (wo)man one vote, irrespective of specific identities, has often given rise to fears among less numerous 'autochthones' that they could be marginalized by 'strangers'. Ruling political elites have sometimes exploited such fears in order to discredit opposition parties, as in Côte d'Ivoire where the battle cry of 'Ivoirité' became a strategy of political exclusion during recent presidential elections (Chauveau 2000, Chauveau and Bobo 2003).⁷ In Bobo-Dioulasso (Burkina Faso), violent conflicts erupted when a 'non-native' was nominated to run for mayor. Discourses of autochthony are also increasingly invoked in the economic and social arena, mainly to legitimize exclusive control over land, forest and other natural resources. New programs of community-based natural resource management and registration of collective rights to land have often challenged the rights of immigrants. Both aspects of the discourse on autochthony—the political and economic claims they support—are indeed interconnected.

The question of who precisely is 'indigenous', and where, has given rise to intense debate and negotiation. Sometimes, as Chauveau shows for the Gban region (Côte d'Ivoire), immigrant groups are unambiguously and consistently defined as 'strangers', by everybody, including themselves. Here, the debate concerns the definition of the rights that follow from this categorization. In other cases, however, a long history of immigration and assimilation of new arrivals produced more subtle and contested distinctions. In Sefwi Wiawso in Southern Ghana, for instance, the boundaries defining who is a 'real Sefwi' have been redrawn, and defined ever more narrowly, as the economic stakes of 'autochthony' rose, as Boni shows. Furthermore, the discourse on autochthony rarely defines the territorial and social reach of its various claims with much precision. Thus, the home territory and community, where one can claim 'native' status, can be as narrowly conceived as the village or even the first-comer lineage within the village, or as widely defined as the chiefdom or the entire ethnic group. As Austin shows in his study of the relations between Asante and Northerners, fellow Asante, though from different villages and even chiefdoms, were often regarded as close allies and

⁷ For a pertinent Cameroonian example, see Konings 2001.

could gain access to, and control over, land for cocoa plantations, while Northern migrants were principally excluded from ownership of Asante lands. The power of autochthony discourse rests precisely on the latitude it offers in redefining boundaries according to changing contexts and interests or, in other words, on its 'combination of staggering plasticity and celebration of seemingly self-evident "natural givens"' (Geschiere and Nyamnjoh 2000: 448).

According to some authors, the recent flurry in the discourses of autochthony is an expression of the quest for security and for a sense of local belonging in response to the global trends of deterritorialization and homogenization (Appadurai 1996, chs. 2, 7). The historical roots of autochthony discourses, Geschiere and Nyamnjoh argue, lie in the dialectics of the 'liberation' of labor in African capitalism. Plantation and mine owners, in co-operation with colonial administrators, uprooted migrants from their traditional ways of life in order to recruit the necessary labor, while enforcing ethnic classifications and stabilizing home ties for purposes of tighter control. This 'seesaw . . . between mobilizing and hegemonizing the labor force on the one hand and formalizing the difference on the other may help to explain the inherent link between globalization and communalism' (2000: 247). Such connections between colonial *divide-et-impera* strategies and current identity politics are certainly relevant. The case studies in this book, however, suggest that the boundary between 'natives' and 'strangers' is also drawn in areas where capitalist enterprise played little or no role, and that autochthony discourses are not purely of colonial origin, but also arise out of (and transform) pre-colonial configurations of first-comers and late-comers.

Historically, the distinction between first-comers and late-comers served to organize mobility and settlement frontiers, as Kopytoff (1987) has convincingly shown. By (re)defining the frontier as an 'institutional vacuum', the frontiersmen who ventured into uninhabited or scarcely populated areas and sealed a special pact with the spirits of the land, established themselves as 'first-comers' and claimed authority over the land and later immigrants. However, as we have seen in the previous section, first-comer status does not reflect an absolute chronology, but is rather a cultural and political construct. Frontiers were seldom completely 'empty', and it depended on the numerical strength and organizational capacities of the previous inhabitants whether they managed to persevere as first-comers in their

own right or whether they were displaced, absorbed or relegated to some inferior status by the new immigrants. Once entrenched as 'first-comers', these new frontiersmen had to recruit a critical mass of people to join them in the new settlement in order to cope with an environment of overwhelming insecurity. Preferred adherents were usually kinfolk as well as, in some societies, slaves, but in addition, non kin-related 'late-comers' of free status were welcome as long as they respected the first-comers' authority. These newcomers were sometimes refugees from armed conflicts, or frustrated aspirants for political office in their home polities, or simply families attracted by the unexploited resources in the vicinity of the new settlement, such as fertile farm land and plentiful game, or, as was the case from the nineteenth century onwards, by the opportunities of cash-cropping.⁸

A variety of institutional arrangements organized relations between these later immigrants and the first-comers, depending on the numerical strength and degree of cohesion of the former as well as the political organization of the latter (cf. Colson 1970, Fortes 1975, Shack 1979). In segmentary societies, new arrivals were usually socially and culturally assimilated, and thus gradually included in the group of 'autochthones', though the order of arrival was often preserved in collective memory. It was kept alive through narration in times of conflict and ritual enactment, for instance, when powerful late-comers were appointed as the holders of the sacrificial knife in earth-shrine rituals. If fuller incorporation was, for one reason or another, not possible or not desirable, late-comers were granted their own settlements, territorially separate, but ritually dependent, unless they eventually rallied enough strength to claim equal status with their former hosts (cf. Kuba and Lentz 2002). In chiefdoms, similar processes of incorporation could be effective, as Amanor and Boni show, but shared political allegiance made it less necessary to exert control, and, conversely, achieve access, through cultural assimilation. Here, some immigrant groups maintained, and could even draw considerable prestige from their status as 'strangers', who differed from their hosts in terms of economic specialization, religion, cultural practices, and sometimes also language (cf. Schlottner 2000). In both political settings, however, the incorporation of strangers was not irreversible,

⁸ For a recent discussion of the usefulness of Kopytoff's concept of the internal frontier, see Chauveau et al., 2004.

as Boni's case study of increasingly narrow definitions of Sefwi identity and Amanor's discussion of Akyem identity show.

During the colonial period, relations between first-comers and late-comers changed in response to two related developments. The first was more of an economic, the second of a more political nature. Where new opportunities for cash-crop production arose, the immigration of 'strangers' took on unprecedented dimensions, partly facilitated by colonial pacification which generally enhanced mobility. As long as land was abundant, the local chiefs were usually quite willing to accommodate these immigrants, provided they were able to assert themselves as allodial land owners and could extract revenues from the 'strangers'. However, as Boni, Austin and Amanor demonstrate, paramount chiefs, subordinate chiefs and local lineage heads did not always agree on the question of who had which rights to the revenues from different resources, and who should benefit from the new immigrants. Should cocoa and other commercial trees, for instance, be treated like subsistence crops, which were normally not taxed, because their cultivation also required labor, or should they instead be regarded like non-renewable resources such as gold, rubber and timber which were held in common under the trusteeship of the chiefs? Usually, chiefs enjoyed colonial support in their attempts to extend their control over all resources, and sometimes even doing so by redefining some of the longer-established late-comers as 'strangers', thereby reclassifying them under those who had to pay revenues for land use. However, as Austin and Amanor also show, the actual relations between chiefs, lineage heads and immigrants, and the definition of their respective rights, depended on the availability of labor. Only with abundant labor supplies could local landowners and chiefs impose their conditions; otherwise they had to accept sharecropping arrangements which strengthened the rights of the immigrants to the piece of land they planted.

The second development which transformed relations between first-comers and late-comers was their increasing politicization. According to the British 'native authorities' model, which was not unlike the French *politique de races*, legitimate political authority was based on shared ethnicity, so that ideally the chief and his subjects belonged to the same ethnic group. But what was to be done in multi-ethnic contexts? Here it was, in principle, necessary to define a particular group as 'natives', who were to be accorded the right to furnish the chief, and the others as 'strangers', who could, at best, be repre-

sented by subordinate headmen. In pre-colonial centralized polities, colonial administrators usually acted in keeping with indigenous hierarchies, regardless of whether the African rulers defined themselves as 'first-comers' or as prestigious conquerors who had once come as strangers, but they did establish intimate links between control over land and political authority, as the case studies of Amanor and Boni show. In segmentary societies, native status was tied more closely to first-comership, but not surprisingly, British and French administrators had enormous difficulties in defining precisely where the boundary between 'natives' and 'strangers' lay. In the Northern Territories of the Gold Coast, for instance, a district commissioner mused that only those who had lived in a locality for more than six generations should be considered true 'natives', a criterion which not a single family in this particular district happened to fulfill.⁹ The Chief Commissioner eventually settled for the pragmatic definition that everybody whose parents belonged to one of the 'indigenous tribes' of the Northern Territories was a 'native', a definition that provided sufficient leeway for maneuver and interpretation.¹⁰ Colonial administrators thus radically simplified matters, at least on paper—and some local actors used this to their advantage in future contestation—, by collapsing first and late-comer status with ethnic boundaries. They were content to attach the label of 'natives' to an entire ethnic group in a given area, and left it to the chiefs and lineage heads to sort out the micro-politics of belonging.

Although these micro-politics were an on-going process, or were even given new impetus by particular economic and political incentives, colonial rule did in some ways contribute to the reification of the boundaries between first-comers and late-comers which had been established by the early twentieth century. There were cases, as some chapters in this book show, in which the most recently incorporated immigrants were redefined as 'strangers', but the reverse, i.e. the conversion of strangers into autochthones that had once been such common practice, rarely occurred. In the Black Volta region, for instance, where allodial land rights and autochthonous status are

⁹ Native Land Tenure, 1924; National Archives of Ghana, Accra, ADM 56/1/375: 12.

¹⁰ Northern Territories Land and Native Rights Ordinance, 1931; Public Record Office, London, CO 96/702/7187.

symbolized by the control of an independent earth shrine, narratives about the pre-colonial period often relate how Dagara or Birifor immigrants, typically following a violent first encounter, exchanged cowries and animals to acquire an earth shrine from 'first-comer' groups such as the Phuo and Sisala, who subsequently resettled further into the bush (cf. Lentz 2001, Kuba and Lentz 2002). After the 1920s, such earth-shrine transfers no longer took place, or, as in the case of the Phuo, the Dagara were merely given minor shrines that conferred no ritual autonomy. Colonial pacification had thus shifted the balance of power in favor of the smaller 'first-comer' groups, in this case the Phuo and Sisala. At the same time, the exit options of the first-comers were considerably reduced, because open, uninhabited land was no longer available. Thus withdrawal was no longer an alternative for the Phuo and Sisala, and the two main pre-colonial Dagara strategies of land appropriation and autochthonization, namely demographic pressure and open conflict, ceased to be effective. Dagara expansion continued, and still continues, at an impressive rate, but the immigrants now had to accept the ritual sovereignty, allodial land rights and political authority of their hosts, as well as their classification as 'strangers' or 'settlers'. On British territory, where chiefly office was more attractive than in the neighboring French colony, some Sisala chiefs even attempted to challenge the legitimacy of past transfers of earth shrines and allodial land rights to the Dagara, in order to expand their territorial and political sovereignty.

More generally, two distinct developments led to the proliferation of claims to the customary entitlement to land: colonial policy that tied political privilege to native status, which in turn was dependent on holding allodial title to the land, and the increased stakes of landownership as a result of new opportunities presented by cash-cropping, the extraction of timber and minerals, and the increased demand for urban building land. And despite the unwillingness of colonial administrators to involve themselves in the micro-politics of belonging, competing claimants often tried to enlist their support and thus confronted them with countless conflicting versions of 'tradition' (cf. Berry 1992). The losing parties often kept temporarily 'defeated' versions alive, and brought them back into play when circumstances changed, for instance, when a new administrator took office or a powerful earth priest or chief died. If native-stranger boundaries were 'frozen' and processes of autochthonization halted, then this ensued

from particular local configurations of power, and was not the automatic result of colonial policy, even though the colonial administration was an important source of power.

More recently, the relations between 'autochthones' and immigrants have, in many areas, been affected by the increasing scarcity of land and the conflict-ridden dynamics of the intergenerational transfer of resources. In the Gban region studied by Chauveau, for instance, immigrants were controlled by land-holding lineages, in a patron-client type institution, the *tutorat*, and the 'gifts' and services which the strangers were expected to present in gratitude for their access to land went directly to their hosts.¹¹ This eliminated one cause of conflict that was prevalent in other areas, namely conflicts between chiefs or earth priests and lineage heads over the distribution of revenues collected from the immigrants. However, the *tutorat* could not prevent severe conflicts within the host families over the allocation of land to strangers when surplus land was gradually exhausted and urban employment opportunities, which once provided attractive alternatives to a rural livelihood, diminished. Young Gban now depended more than ever on access to land for their survival, and they reprimanded their elders for having parceled out lineage lands to strangers for their immediate personal benefit, instead of safe-guarding it for the next generation. Hagberg's case study of an earth-priest lineage in Western Burkina Faso recounts similar intergenerational and intra-family disputes about land 'sales'. In both cases, it is young men who invoke powerful discourses on 'autochthony', much more so than their fathers, who continue to insist that well-intentioned strangers should not be refused land if they need it for their subsistence.

Tension amongst immigrants themselves, as Amanor and Boni show, is also increasing. Particularly the younger generation, who

¹¹ The prevalence of the *tutorat* in the Francophone countries of West Africa may be due to the fact that the French colonial government, and its postcolonial successors, relied much less than the British on chiefs as land administrators, but rather made the individual lineages responsible for the management of the land that ultimately belonged to the state ('state domain') (Firmin-Sellers 2000). However, it would be misleading to oppose French and British colonial land policies too strictly; in Western Nigeria and parts of Northern Ghana, for instance, the British found a system of land ownership based on lineages, rather than chiefs in place and preserved it, while in some parts of French (ex) colonies, chiefs have played an important role in land administration.

were born in the new environment and shared some of their childhood experiences with the sons of the land-givers, now often claim that they, too, are actually 'sons of the soil' and should enjoy the same rights as 'autochthones'. These young men resent their fathers' subservience and gratitude towards their patrons as much as the latter's attempts to prevent them from planting trees, or freely inheriting or transferring parts of the original land grant. In my own research in Dagara villages on Sisala land, too, I found that violent confrontations over property rights and political privilege developed between the sons of Sisala 'first-comers' and Dagara 'settlers', while their fathers continued to evoke discourses of mutual respect, hospitality and even friendship, and united in an effort to 'discipline' their unruly offspring (Lentz 2003b). The bitterness of these confrontations goes beyond that of 'normal' intergenerational conflicts, and is indicative of the changing context in which 'native'-'stranger' relations are embedded, namely increasing pressure on land as well as growing political awareness, self-conscious assertion of claims and new organizational skills brought home by returned migrants.

The intergenerational and intra-familial tensions point to the fact that the dividing line between 'strangers' and 'autochthones' is often cross-cut by other alliances. Autochthones, for instance, often allocate land to immigrants in order to stake their territorial claims vis-à-vis other family members, lineage segments or neighboring communities. Conversely, immigrants will support their hosts in such conflicts if this helps them consolidate their own rights to land and their status within the host community. Berry's example from the periphery of Kumasi where rich strangers and 'natives' joined together in developing the local infrastructure as well as holding the chief accountable for the rents and tributes he collected, is a case in point. Werthmann's study of the reactions of villages in Southwestern Burkina Faso to the recent invasion of gold miners demonstrates, on the other hand, how immigrants may attempt to exploit the cleavages in local communities to further their own cause. Thus, even in the context of increasing competition over land, it is by no means given that this will inevitably result in the exclusion of immigrants.

How relations between 'autochthones' and immigrants actually develop, depends not only on local configurations of power, but also on the larger political context. I have already mentioned the ambiguous role of colonial governments which, on the one hand, contributed to the reification of holdings to allodial titles by politicizing the dis-

inction between 'natives' and 'strangers' and generally supporting the property claims of chiefs, but, on the other hand, exercised 'hegemony on a shoe string', as Berry (1992: 345) put it, and left the micro-politics of belonging largely in the hands of the local communities. The policies of postcolonial governments vis-à-vis the rights of immigrants have been similarly varied. Many West African countries have introduced distinctions between 'national' and 'foreign' migrants, and generally weakened the land rights of non-national migrants, if they have not altogether decided to evict them (cf. Peil 1979, Shack 1979). There are, however, important exceptions. In Côte d'Ivoire, for instance, immigrant farmers from Burkina Faso were strongly encouraged by the state, despite reservations on the part of 'autochthones', because the migrants helped boost the cash-crop economy and were expected to vote for the ruling party (cf. Chauveau; Chauveau 2000). It was only recently that this historic arrangement came under pressure, and gave way to xenophobia 'from above' as well as 'from below', resulting in the expulsion of thousands of Burkinabè and increasing hostility even towards domestic migrants.

In Ghana and Burkina Faso, after the early years of colonial rule during which labor was extremely scarce and the influx of migrants welcome, immigration from neighboring countries was not actively encouraged, perhaps at best tolerated. Domestic migrants, however, received implicit government support for their claims to land during the 'revolutionary' regimes of Sankara and Rawlings. The latter's dictum that the land should belong to the one who works it encouraged many migrants to denounce the gifts which autochthonous landowners expected as 'exploitation', and to demand free access to land. The success of their attempts to institutionalize their rights depended very much on local power configurations, such as on the relations of the *delegué* or the representative in the Committee for the Defense of the Revolution with the family of the local earth priest or chief.¹² The argument that national citizens, regardless of their ethnic identity, should have unencumbered access to land throughout the country is still invoked by many migrants and sometimes supported by local government institutions, when they want to

¹² For examples from Burkina Faso, see Laurent et al. 1994 and Hagberg 1998: 97–101, 197–200.

assert their own role against chiefs and earth priests. However, on the whole, the policies of the Ghanaian and Burkinabè governments have shifted back towards the recognition of the important role of earth priests and chiefs in the administration of land. That the latter are quite cognizant of the powers that be and of existing land legislation, and attempt to work the system to their own benefit, is illustrated by Lund's case study on the stiff competition between Northern Ghanaian chiefs and earth priests over the compensation for land used by public institutions, which under colonial rule had been vested in the state, but was later divested and returned to its 'original owners'. More generally, we can conclude that although African states are often too 'weak' to enforce national land legislation down to the grassroots level, the knowledge that such legislation exists, as well as the possibility to resort to state authorities or courts for enforcement at certain points, can influence local tenure conflicts, and the relations between 'autochthones' and immigrants (cf. Benjaminsen and Lund 2003: 1–3).

Finally, relations between landowners and immigrants are also shaped by urban elites, urban-based ethno-political associations, and returned migrants who introduce new terminologies into local land disputes (Shipton and Goheen 1992: 311). Hagberg's example of a new association of autochthones which wants to set down formal rules for land transactions with 'strangers', and Lund's study of the recently founded association of earth priests in Bolgatanga are cases in point. Land-seeking migrants and their educated relatives, too, have formed associations to defend their interests (cf. Lentz 1995, 2002). Such groups may attempt, for instance, to draw the attention of the national media and even of international NGOs to the violation of 'human rights', while the associations of the 'autochthones' sometimes invoke United Nations discourses on the rights of 'indigenous peoples'.

Land transfers in changing contexts

The legitimate modes of land transfer are often controversial even among 'first-comers', but the arrival of immigrants usually intensifies debates. Faced with claims of immigrants, who, for obvious reasons, tend to see the exertion of labor, such as the clearing and planting of a field, as the decisive property-constituting act, 'first-comers' must

define their understanding of property rights much more precisely. Since in only very few cases the original frontiersmen are still alive, they have to trace their property rights, be they allodial or freehold, over communal or family lands, to the deeds of their ancestors, via inheritance or some other mechanism of inclusion in the pioneers' group. But which ancestors and which of their deeds? Do their rights trace from their discovery of the land, or from its conquest? Or do these rights stem from the indispensable services they rendered to the new settlement, for which they were rewarded with full control over part of the territory? Or did they once win allodial title by ruse or by exchanging women or cows and cowries for an earth shrine? Apart from the famous pact with the gods or spirits, all of these property-constituting acts already involve aspects of a land transfer between humans, whether by force, voluntary gift or exchange. These therefore beg potentially contentious questions regarding not only which lands, but also precisely which rights have been transferred: rights to use, to administer, or to further transfer the land, definitively or temporarily, only within one's own lineage or to third parties, for free, or in exchange for goods and services, etc. Such questions also arise when the rights of individuals or smaller lineage segments over particular fields belonging to lineage lands have to be defined. In African agricultural societies, Shipton and Goheen argue (1992: 311–2), 'unevenly distributed rights in land are adjusted by an infinity of arrangements, often *ad hoc* and sometimes unnamed, for seasonal or longer-term transfers that may include land loans, entrustments, or share contracts'. Obviously, these arrangements can give rise to competing interpretations, particularly in the generation of heirs, and competing heirs may invoke a labor theory of property in order to strengthen their claims to a particular piece of land which they, or their fathers, have worked (cf. Chauveau), while others may call on the idea that village and lineage lands are indivisible and that individual use rights should not be inherited. In short, the questions of who has the authority to transfer rights and over which parts of a given property, who are the legitimate recipients of transferred rights, the nature of the rights transferred, and the temporal dimension of the transfer . . .—all of these questions must be settled. They become particularly acute when land transfers to 'strangers' are on the increase (cf. Lavigne Delville et al. 2002).

Although there is little evidence for any clear-cut evolutionary trend (cf. Saul 1988, Platteau 1996), there clearly have been changes

in the nature of land transfers, as the case studies in this book show, particularly in transactions between ‘autochthones’ and ‘strangers’. In order to better understand such changes, Berry argues, we need to disentangle convenient notions such as ‘privatization’, which has become such a powerful buzz word in policy discourses, but actually conflates a variety of potentially contradictory processes. I suggest that when looking at the changes in land transfers a distinction be made between three different processes: the individualization of property rights, the commercialization (and monetization) of land transfers, and the formalization of land transactions, by recourse to titles, *petits papiers* or court procedure. These processes may occur jointly, but this is not necessarily so. On the contrary, the more frequently quasi or outright commercial land transactions with ‘outsiders’ occur, the more often chiefs or earth priests seem to activate dormant allodial rights and challenge the right of individual families to transfer land to third parties, without reference to their ‘superior’ authority (cf. Lund; Berry 2001, ch. 4).

That such an intervention may be resented by the families who feel that it is their perfect right to deal directly with ‘their strangers’, was brought home to me when I acquired a plot in order to construct a house in a village in Southwestern Burkina Faso. Without prior consultation with his family, my immediate host showed me a piece of lineage land which, because unsuitable for cultivation, was not assigned to anyone personally. Only later did he inform the head of the family of where I was going to build. When I asked whether I should consult the earth priest before starting the construction, my hosts insisted that it was not obligatory to obtain his permission, because their ancestor had gained full control over the land, but that if I wished I could ‘inform’ the earth priest about my plans. When I did, the earth priest did not interpret this as a mere act of politeness, as intended by my hosts, but of compliance with ‘custom’ and asked me to give some specified amount of money, in order to ensure that the spirits of the land would grant me and my house peace. Were I a civil servant who intended later to sell the house, the requested sum would have been much higher. When I reported this to my hosts, they were surprised that the earth priest, who had just assumed office, had demanded more than a chicken and a few coins for a sacrifice, which was what they had expected based on their experience with his predecessor. They criticized the new earth priest’s action as ‘uncustomary’, and as a sign that land was now being com-

mercialized. Obviously, they also felt that I should not have gone to the earth priest in the first place, because this potentially weakened their own rights, but surmised that I had been led by my professional curiosity as an anthropologist. However, had I not gone to the earth priest, and were I, or a member of the family, to become ill, or had my house fallen down, the earth priest would certainly have attributed such misfortune to my failure to respect 'custom', an explanation my hosts may have accepted, because even as Christians they are careful not to invoke the anger of the earth god and the ancestors of the earth priest.

This case is typical of the ambiguities in many current land transactions, and illustrates how difficult it is for the analyst to decide whether there is a clear-cut trend towards increasing individualization of land rights or not. The cases presented in this book suggest that within the confines of the larger property-holding groups, the use rights and rights of inheritance of sub-units (lineage segments as well as individuals), with reference to specific fields or plots, have indeed become more individualized. But the trend is not so clear when it comes to transactions with outsiders, and it is particularly here, as Hagberg's, Lund's and my own study show, that spiritual sanctions against the rights of individuals to transfer land, without consulting the lineage heads and holders of allodial title, are most forcefully invoked.

The picture is similarly unclear regarding the question of the commercialization of land rights, or more specifically: the commoditization of land, i.e. the exchange of rights over land for money. In estimating the importance of such transactions, we should also pay attention to the monetization of land rights within families and lineages, where well-connected and well-endowed commercial farmers consolidate their holdings by 'buying' land from poorer relatives. These internal transactions are usually less visible (and less vulnerable to moral criticism) than exchanges with outsiders, because they often occur under the guise of kinship solidarity. Taken together with the transactions with 'strangers', commercial land transfers seem to have increased considerably, and many authors have attested the development of land markets (cf. Ensminger 1997: 170–5, Lavigne Delville 1998: 119–22, Benjaminsen and Lund 2003, Mathieu et al. 2003). However, this does not represent a straightforward historical development from the 'traditional' prohibition of monetized land transfers to 'modern' land sales. Rather, we find pendulum-like move-

ments, beginning with quite vibrant land markets in some parts of the forest belt in the second half of the nineteenth and the beginning of the twentieth centuries, increasing limitations of such transfers under colonial rule, and a re-opening of more or less open commercial transactions since the 1980s and 1990s.

As with individualization, the commercialization of land transfers is multifarious. Although the sums to be paid may be quite specific, the actual rights exchanged are often less precisely defined. The content of the contract may be self-evident to both parties, but as soon as the circumstances change—for instance, if the right of the land-giver to have authorized the transaction is challenged, or if the land-receiver decides to use the plot for a purpose different from what was at first expected—it must often be renegotiated. In addition, as the chapters by Berry and Hagberg make particularly clear, even commercial land transfers are firmly embedded in social relations which specify the conditions and consequences of the transaction. They often occur in the guise of services between friends or patrons and clients. This social embeddedness can be used, as Hagberg shows, to the advantage of the politically and economically better positioned party, but it can also provide leverage by which the weaker party may extract additional services and goods (cf. Berry; Peters 2002: 58–9). One may interpret this embeddedness as a hindrance to the development of true markets, but conversely, one may also regard it as one of the ways in which the trust necessary for the functioning of any market is created—a point to which I will return below.

That state-led attempts at standardization and formalization of land transfers, through titling programs and the like, have been rather disappointing, is a fact recognized by all scholars (cf. Bruce 1993, Ensminger 1997, Lavigne Delville 1998, Toulmin et al. 2002). The reasons for this failure have been sought in the inadequacies of state land administration (too distant, slow, cumbersome, etc.) and the prohibitive transaction costs of registration, but also in the difficulties of translating the bundles of owners and bundles of rights over pieces of land that are often circumscribed by rather vague boundaries into clear-cut written titles. In addition, corruption and political networking often undermine the formal rules of land transactions, and render state formalization rather ‘informal’, as Benjaminsen and Lund (2003: 3) have pointed out. By contrast, complex forms of ‘informal formalization’ (ibid.) have gained increasing popularity in many areas, including contracts between individuals, simply scribbled on sheets

of notebook paper; contracts validated by a signature of the customary or administrative authority (*certificats de palabre*); or certificates of land allocation by the chief or the rural council (see Lavigne Delville 2003, Mathieu et al. 2003). '[W]e are witnessing', write Benjaminsen and Lund, 'competing forms of institutionalization: one backed by state law and the bureaucracy, . . . the other . . . more or less grounded in institutions seen as distinct from the colonial and postcolonial state. . . . The irony of such informal formalization is that distinctions at one and the same time get increasingly blurred (who is exercising state authority?) and become increasingly important (who can produce formal proof of rights?)' (2003: 2–3). Several case studies in this book explore the competition between these competing practices of recognition.

The document reproduced in Hagberg's chapter clearly shows that such informal forms of formalization rarely specify the nature of the rights transferred (the word 'sale' was not even mentioned), and are hardly able to put an end to debate, but rather open a new arena of contestation (see also Kunbuor 2000). In an oral context, land transfers were usually marked by ritual offerings made in the presence of the land-giver, the land-receiver and, in most cases, the holder of the allodial title, who would invoke the wrath of the earth deity against any wrong-doers. Boundaries of the transferred land were sometimes indicated by cutting marks in trees. All of these rituals and landmarks were, to a certain extent, multivocal, and had to be elucidated by narratives, which could compete and which in case of conflict could be validated by invoking more than one authority, as Kuba's case of the multiplication of earth priests in Phuo villages or Jacob's (2002) study among the Winye in Burkina Faso show. In principle, these ambiguities are carried over into written procedures, be they state-backed or informal, further multiplying the number of validating authorities (cf. Lund 2002).¹³ The invocation of the earth priest's ritual power does not prevent the claimants, as Hagberg convincingly demonstrates, from taking their case to the district head. Or, as in Lund's case, the earth priests themselves may form an association and employ a lawyer in order to defend their 'customary' claims. It will also be important to study how informal

¹³ For an interesting early discussion of the effect of writing on 'customary law' and land tenure in Ghana, see Allott 1960: 242–82.

formalization works out in the long run; what happens, for instance, when one of the contracting parties dies and the heirs attempt to undo the 'informal' agreement?

There seems to be an interesting difference in the avenues of 'informal formalization' that predominate in Anglophone and Francophone countries. While the flurry of 'small papers' seems to be characteristic of the latter, people in the former more often resort to the courts (although here, too, land transfers are now often documented, and these documents then presented in court). The difference may be due to differences in administrative and judicial cultures, between the formalities of the French *Code Civil*, and the importance of rule by judicial precedent in English Common Law. Taking conflicts over land transfers to court, whether in a Francophone or an Anglophone setting, forces defendants and plaintiffs to translate their concepts of ownership of and interests in land in European terms (e.g. allodial title, freehold, leasehold etc.), and it is interesting to observe what is and what is not admitted as evidence by the judges. As Kunbuor has shown for Ghanaian courts, for instance, knowledge gleaned from anthropological or historical 'textbooks' may be admitted as proof for the relevance of particular rules of 'customary law', but only if they are supported 'by evidence of living people of facts within their own knowledge' (2000: 10). However, this preference for oral tradition is not necessarily as straightforward as it appears, as Kunbuor (2003) observes, particularly not in Northern Ghana, because the judicial precedents which guide the court's deliberations are usually strongly influenced by Akan traditions of the allodial property rights of the stools and not local oral tenure rules. To a certain extent, then, court procedure homogenizes claims and legitimating arguments. Still, this standardization of customary tenure in the court room (or at the district head's office) does not put an end to debate, on the contrary: courts have become a convenient way of registering and, if initially unsuccessful, 'parking' one's claims, until one day when conditions for reopening the case look more promising.

One should, however, be careful not to exaggerate: court cases have proliferated only where the stakes were relatively high and at least one party was wealthy enough to pay a lawyer and take matters to court. In many rural backwater areas courts have, so far, rarely intervened in land transactions, and matters only came to the attention of the state authorities when land conflicts coincided with disputes over political boundaries between districts and provinces.

Still, even in these 'marginal' areas, the educated relatives of autochthones and migrants have spread an awareness of the necessity to arm oneself with written arguments, and have, for instance, written up local histories or similar documents for future use.

To conclude, I wish to return to the question of the embeddedness of emerging land markets,¹⁴ which is also closely connected with the politics of belonging discussed in the last section. There are many examples in this book that point to sustained efforts on the part of 'autochthones' as well as immigrants to constrain the outright commercialization of land. Part of these efforts is the invocation of the spiritual dangers of 'selling' land, considered detrimental to its fertility and to the community. If this belief is widely enough shared—and Werthmann's extreme case of the violent invasion of gold miners shows this to be so—it can be quite powerful. Similarly important is the introduction of subtle differences in land transfers depending on the use to which the land will be put: most communities studied in this book are convinced that land may not be refused to a well-intentioned stranger who needs it to survive, but that sufficient land must be reserved for the following generation of one's family, and secondly, that persons intending to cultivate the land or plant trees in order to earn money fall into a different category. These considerations are complemented by debates over to which ends and by whom money from land transactions may be used. Finally, the vagueness in oral as well as written transactions regarding precisely which rights over the land have been transferred may well be intentional, on the part of both sides, since it leaves room for future reinterpretation or renegotiation. Whether this embeddedness of land markets slows down or intensifies the commercialization (and/or individualization) of land in the long run, seems to be an open question and may also depend on the future interaction between these markets and new attempts at tenure reform (*gestion des terroirs*, the registration of customary titles, community-based natural resources management, etc.).

Pauline Peters has recently criticized the exaggerated emphasis of the new literature on African land tenure on the negotiability and indeterminacy of land rights, and argues that ambiguity may well

¹⁴ For a new institutional economics perspective on this, see Ensminger 1997.

'be a cloak for privilege and class as much as a space for action by the powerless' (2002: 56). She pleads that we investigate 'more carefully how access to landed resources intersects with broader processes of socio-economic differentiation and class formation' (ibid.: 59). Her point is well taken, and all chapters in this volume do indeed take questions of power as seriously as the discussion of rights. But class formation through differences in land access seems to be more a feature of the settler and ex-settler countries of Eastern and Southern Africa than of West Africa.¹⁵ It appears that where rural inequality in West Africa develops, it certainly does not stem from increasing differentiation between a landless rural proletariat and large landowners, but rather from the manipulation of 'customary' tenure by urban political elites, investing in commercial agriculture,¹⁶ and along the lines of increasingly exclusive boundaries between 'natives' and 'strangers'. However, the question whether inequality, based on differential access to land, is really 'on the rise throughout Africa', as Peters (2002: 47) assures, is far from being settled. Camilla Toulmin, Lavigne Delville and Samba Traoré (2002: 22) take a stance similar to that of Peters, but like Peters have difficulties to present clear-cut examples from West Africa that would support their assumption that weaker groups are indeed systematically denied secure access to land.¹⁷ In this book, authors are not agreed on the direction of the dominant trend, and the answer seems to depend very much on the specific ecological, economic and political context. All case studies do agree, however, that land is a special 'substance': it is not increasable, non-renewable, and central to both material livelihood and the politics of belonging.

¹⁵ Peters' perspective is strongly influenced by her own, meticulously documented study (1994) on the history of water and land rights among pastoralists in Southern Botswana which does indeed support her argument. More generally on land tenure in Southern Africa, see the literature cited in Peters 2002 and Berry 2002; for a discussion of South African land reform, Cousins 2002.

¹⁶ See Konings 1986, Saul 1988, Goheen 1992 and Faure 1993 for some examples; more generally on big-men strategies in commercial agriculture, see Downs and Reyna 1988.

¹⁷ Whether the 'logic' of capitalist accumulation would eventually penetrate the African countryside, and which role state intervention played in the capitalist transformation of African land rights, was intensely discussed in the 1970s and 1980s; see Le Bris et al. 1982 and Crousse et al. 1986 for typical examples of this debate. Since the 1990s, faith in the capability of African governments to change, and control, land tenure systems has considerably diminished. See also Berry 2002: 640–53 for an overview of the changing agendas of both land policies and scholarly debates.

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FIRST-COMERS AND LATE-COMERS:
INDIGENOUS THEORIES OF LANDOWNERSHIP
IN WEST AFRICA

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This chapter explores indigenous theories of, and debates about, landownership, using the historical example of the expansion of Dagara agriculturalists, who immigrated into territory formerly controlled by Phuo-, Sisala- and Nuni-speaking groups, in what is now Southwestern Burkina Faso and Northwestern Ghana (cf. Kuba and Lentz 2002). As discussed in the introduction to this book, early anthropological research, but also a number of more recent studies of land rights in West Africa tend to share the rather romantic view of pre-colonial tenure regimes that colonial officials developed, often in cooperation with African chiefs. As such it was generally thought that Africans held land communally (if they did not reject the concept of property as altogether inappropriate), that ultimate ownership of land was vested in the ancestors of the first-comer lineage and that land was therefore inalienable (cf. Biebuyck 1963: 35–41, Bohannan 1963, Colson 1971, Bachelet 1982, Kouassigan 1982, Le Roy 1982). These studies also assumed that traditional land rights formed a coherent, homogenous and stable system of rules and beliefs. These views make it difficult to understand the dynamic nature of landownership in the past, and to explore the legacy of conflict that continues to have an impact on current land transfers and interactions between ‘autochthones’ and ‘settlers’. If, for instance, land is held to be principally inalienable, how have expansionist groups been able to gain access to and legitimize control over land previously held by other groups who also claim to be first-comers? This chapter argues that current configurations, negotiations and conflicts can only be understood if we part with simplistic dichotomies that pit dynamic ‘modern’ against static ‘traditional’ tenure regimes, and instead start from the assumption that land rights have always been ambiguous, negotiable and politically embedded, in the pre-colonial past just as under the colonial regime and in present times.

This chapter focuses on the question of land transfers between ‘autochthones’ and immigrants, particularly in pre-colonial times, and on their repercussions in current conflicts over landownership. In the Black Volta region, violence certainly played an important role in the *de facto* appropriation of land, but so did the ritual appropriation of new territories, among other things through the transfer of earth shrines—and together with them: property rights—from the earlier inhabitants to the newcomers, transfers that were accompanied by the narration of ‘good stories’ (Jacob 2002, 2003). More generally, property rights reflected power relations, but also needed (and still need) to be strengthened by ‘persuasion’, as the historian of law Carol Rose (1994) has succinctly argued, because violence *per se* cannot provide the legitimacy that is needed for the continuous access to a resource. Among the Sisala, Nuni and Dagara, the case for the legitimate initial establishment and the transmission of property rights is stated implicitly in the form of migration-and-settlement histories, which elders narrate in order to explain local boundaries, justify the distribution of land, and advance claims to the earth priest. Throughout the region particular episodes and topoi play an important role in these narratives—for example that of the hunter, who initially believed himself to be alone in the region, until one day at a nearby pond he did happen to meet another hunter, and the matter of who had come to the area first had to be subjected to a test (one hunter threw a stone and the other only a mud brick into the river); or the episode about the widow of an earth priest killed in battle, who out of gratitude for her rescue initiated the new-comers into the secrets of the earth shrine. Such topoi can of course not be taken literally, but they do suggest very real historical experiences. These narrative devices bundle a multiplicity of diffuse events into a single account that is easily remembered and understood by listeners, condensing protracted processes into a single event (Miller 1980: 5–21, Vansina 1985: 160–73). Such accounts also contain important arguments regarding property rights. The first set of arguments concerns ideas about the legitimate initial appropriation of land, while the second set concerns ideas regarding what constitutes legitimate modes of land transfer from one group to another. Within this second set of arguments, one can discern a third set, namely ideas concerning reparation, that is, concerning issues of how long and in which form rectification of and reparations for the ‘illegitimate’ transfer of resources and rights should be expected.

Sisala, Nuni and Dagara generally agree that first-comer status confers special rights over land, but they disagree considerably about the precise definition of first-comership and the meaning of specific acts of transfer, such as the exchange of cowries and animals for an earth-shrine stone. This disagreement is probably as old as the phenomenon of expanding agricultural frontiers itself, reflecting the different perspectives of pioneers and subsequent immigrants. However it has certainly been compounded by the historical transformations which relations between first-comers and late-comers have undergone more recently, transformations that have arisen from shrinking land reserves and, more importantly, from new political implications of 'native' status (Lentz 2003). In the early phase of expansion, late-comers were usually welcome and incorporated into the frontier community, because they strengthened these vulnerable new settlements, at least as long as they accepted the first-comers' ritual sovereignty. Sometimes, however, established hierarchies were contested, and powerful late-comers attempted to establish themselves as 'first-comers', that is, as earth priests in their own right. However, most disputes about the prerogatives of the frontiersmen were resolved by the departure of one of the groups, which then founded a new settlement, thus transforming itself once again into 'first-comers' elsewhere. This process of fission or autochthonisation through incorporation, however, came to a halt in the colonial period; and in many cases, immigrants were no longer integrated into the local ritual community but remained as 'strangers', even into subsequent generations. It is with respect to this new emphasis on the distinction between 'natives' and 'strangers' that Sisala and Nuni earth priests nowadays tend to project the inalienability of earth shrines and land into the past, while the Dagara generally insist that they acquired their earth shrines from 'first-comers', usually in exchange for women or cowries, up until as late as the 1920s.

This chapter will focus on a recent land conflict to explore these competing interpretations and indigenous theories of property. The conflict concerned land in Baadaateng, a settlement near the Black Volta which was established probably towards the end of the nineteenth century, and later abandoned for almost fifty years, only to be resettled in the 1980s. This conflict serves as a 'diagnostic event': it forced the different parties to make their underlying interpretations of legitimate property rights, first-comer status and land transfer explicit. My analysis, however, also includes material from a more

extensive study, of which the case of Baadateng is only one small part—a study of the construction, contestation and transformation of first-comer claims in a West African savanna region along the Black Volta, in which people, and more specifically agriculturalists, have moved around extensively and continue to do so.

When attempting to reconstruct pre-colonial tenure regimes in this and many other West African ‘back-water’ regions, we are faced with a problem of sources. In most cases, there are no contemporary written sources available that predate the 1890s. Mostly one has to rely on oral traditions, the interpretation of which inevitably entails methodological problems, since such traditions about ‘coming first’ are part of current strategies to legitimate claims to land rights, and are thus strongly biased (cf. Lentz 2000). I have therefore complemented my findings from interviews, informal conversations and participant observation with non-narrative material, such as place names, the territorial distribution (and relationship) of patrilineal clans and earth shrines, and the history of trees (Lentz 2001, Lentz and Sturm 2001). In addition, the sheer number of interviews conducted—over the years almost two hundred in more than eighty Dagara and Sisala as well as some few Nuni villages—is helpful in identifying dominant trends and in reconstructing the history of expansion, including the corresponding property ideologies. In addition, this survey-type material was complemented by more detailed case studies in selected villages, which exhaustively document the conflicting versions of village history presented by different families. And finally, wherever possible, I studied both Dagara and Sisala (as well as Nuni) perspectives on the settlement history and current conflicts.

Before entering into the case study a final introductory remark is in order concerning the term ‘indigenous’, a term which I use heuristically. Making dichotomous distinctions between modern versus traditional law, or indigenous versus exogenous land rights, would be misleading here, because Africans have for quite some time incorporated elements of ‘modern’ or colonially introduced land rights into what they conceive of as their ‘tradition’.¹ In my argument, therefore, the term ‘indigenous’ does not refer to the actual histor-

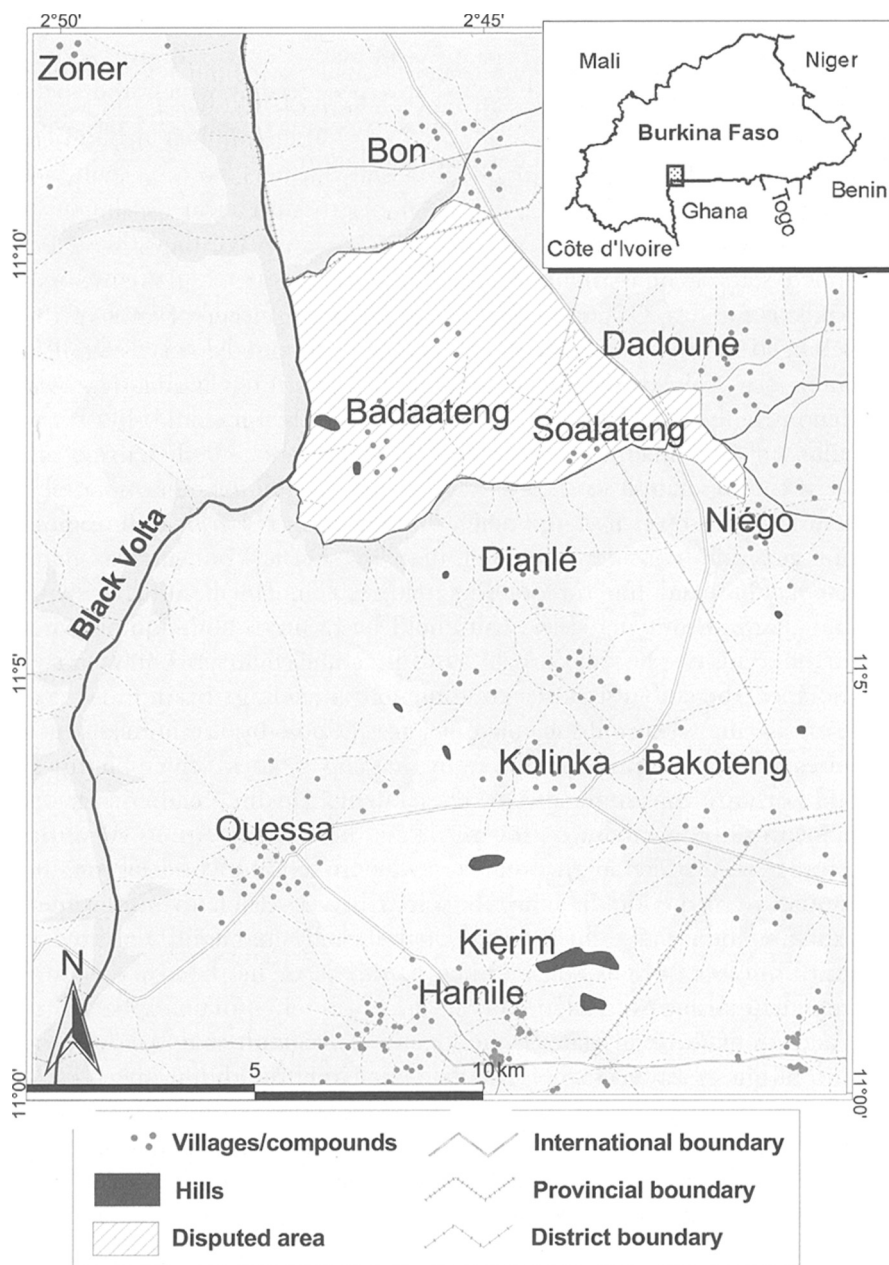
¹ On the colonial ‘invention’ of customary law, see the discussion in the introduction to this volume.

ical origins of legal principles, which can very well be partly exogenous, but merely to the locus of legitimacy. Thus, in my understanding, 'indigenous' land rights are those rights which the local actors justify with reference to local norms and beliefs, and not with reference to the state and national legislation.

DISPUTED PROPERTY RIGHTS: THE CASE OF BAADAATENG

Baadaateng is a Dagara village located on the eastern banks of the Black Volta (see map) which was probably founded towards the latter part of the nineteenth century. Until the 1920s, Baadaateng and some neighboring settlements were quite densely populated. But gradually, colonial taxation and forced labor as well as military recruitment took their toll on able-bodied men. In addition, many families fled from the French to the neighboring British colony whose regime was generally considered gentler than the French one under which Baadaateng and the surrounding villages fell. Fewer adult men in the village meant that less bush could be cleared, both immediately surrounding the houses as well as further afield, an important activity since thicket and bush are potential breeding grounds for the tsetse fly that transmits sleeping sickness. Thus, by the late 1920s, a series of vicious epidemics brought sleeping sickness, river blindness and perhaps also meningitis to Baadaateng and the neighboring settlements, striking them so severely that the few remaining survivors resettled elsewhere in the region, away from the river. Among the victims were the old Baadaa, the first Dagara settler in the disputed area and hence the earth priest of the village named after him, as well as several of his sons. Other members of his family fled, and the earth shrine was left behind.

Who was the legitimate 'owner' of these abandoned lands? Answers to this question necessarily had to define the decisive property-constituting act: Was it the discovery and ritual pacification of the area, or the active clearing and working the land? Which rights of *usus*, *fructus* and *abusus* are to be derived from any of these activities? And to whom and by which means are these rights transferred? Unsurprisingly, these questions only became critical when some enterprising peasants resumed farming the abandoned lands in the late 1970s.



Resettlement under the protection of the earth shrine of Ouessa

Since the mid-1970s, the government of what was then Upper Volta has as part of its campaign to eradicate river blindness and other diseases sprayed the valleys of the Black Volta and its tributaries. This made it possible for individual Dagara farmers from surrounding settlements such as Bakoteng and Dianlé to start clearing the bush and establish new farms in the area of what was until then the abandoned settlement of Baadaateng. The first group to farm on these lands came in 1978–79, from Bakoteng. These Dagara farmers belonged to the Berwuole patriclan, a clan closely related to the Gane clan, of which Baadaa was a member. The eldest of these Berwuole farmers had settled in Baadaateng as a child, before the epidemics broke out, and was now claiming that he and his group were only resuming work on what had once been family land, which meant that it was not necessary to ask permission from an earth priest to do so. Most of the group were Christians, and even the few non-Christians felt sufficiently protected against potential spiritual dangers by the fact that the land had once been tilled by their ancestors, and, in addition, by the fact that they were relatives of the earth priest's clan, albeit distant ones.

However, when a problem arose concerning stray animals, which are generally regarded as earth-shrine property, the Dagara farmers did not dare to handle the matter alone. They felt that they would risk severe punishment by the earth god and therefore turned to the Dagara earth priest of Ouessa, the village which hosts the oldest and most powerful Dagara earth shrine in the entire area east of the Black Volta and north of the 11th parallel. Furthermore, the Ouessa earth-priest family belongs to the same Gane patriclan as Baadaa and therefore has considered itself to be the legitimate custodian of Baadaateng land, ever since the local Gane earth priest Baadaa died and all his potential successors fled the area. In addition, the Ouessa earth priest also ritually controls Bakoteng, the home village of the group of Berwuole who started to farm in Baadaateng.

When these settlers now consulted him, the Ouessa earth priest sacrificed some of the stray animals at the earth shrine in Ouessa and gave some back to the Berwuole family to be sacrificed at a new auxiliary or 'minor', earth shrine which he established for the new Dagara settlers of Baadaateng. The Berwuole therefore now act as earth priests in Baadaateng, conducting regular sacrifices at the

shrine and taking care of the day-to-day affairs related to land, such as the allocation of farms to new, incoming Dagara settlers or the granting of permission to build houses. However, major problems, such as suicide or other exceptional disturbances of peace and fertility, have to be brought before the Ouessa earth shrine.

Nuni claims to allodial title

Not long after the Berwuole and other Dagara farmers from Bakoteng had cleared the land in Baadaateng, the Nuni earth priests from nearby Bon (see map) challenged their right to do so. They also questioned the authority of the Ouessa earth priests to carry out sacrifices in Baadaateng and claimed that in fact they were the true owners of Baadaateng lands. Their ancestor, the Nuni elders asserted, had been a great hunter and the very first person to discover and subsequently settle in the entire area, long before the arrival of Baadaa. They insisted that Baadaa had indeed asked their ancestors for permission to settle in Bon. Baadaa eventually became a good friend of their grandfather, who therefore gave him some land and his own earth shrine, but also instructed him that serious matters still had to be taken to the major earth shrine in Bon. The Nuni were convinced that this earth shrine and the corresponding property rights had automatically returned to Bon when Baadaateng was abandoned. Comparing the earth-shrine stone to a woman, they explained: 'When someone gives his daughter [i.e.: the earth shrine] in marriage to a person and that person dies and the girl does not have another man, doesn't he take the daughter back into his house?'² Consequently, the Dagara from Bakoteng should have asked the Nuni and not the Ouessa earth priest for permission to cultivate what had once been Baadaateng lands.

However, my various Dagara interlocutors presented a completely different story regarding the origins of the Baadaateng earth shrine. According to them, it was in fact the Nuni of Bon who had received the earth shrine from Baadaa and not the other way around. The eventful history of the Nuni earth shrine of Bon is too complex and controversial to be presented here in detail. Suffice it to mention that my Nuni interview partners were adamant in their claim that

² Interview with Nabie Danlo (earth priest) et al., Bon, 22 Nov. 2001.

there were 'no boundaries' between Ouessa and Bon, and that Bon owned all lands down to the Sompar hill, an important place of spiritual power on the eastern banks of the Black Volta, on the fringes of Baadaateng. In their eyes decisive evidence that neither the Berwuole nor Ouessa had any rights over the disputed land was provided by the fact that the former Ouessa earth priest died a few weeks after a visit to Bon, after the Nuni elders had led him into the presence of their earth shrine. The Ouessa earth priest, of course, did not see any connection between this visit to Baadaateng and Bon and his predecessor's death.

In any case, claim stood against claim, but not much seems to have happened for the next few years. The Nuni had stated their property claims, and the Dagara ignored them, continuing to farm and taking more serious matters to the earth priest of Ouessa—a common strategy of conflict 'resolution', namely 'letting sleeping dogs lie'. In general, earth priests are convinced that the earth god himself will eventually punish wrongdoers with death or infertility.

Mossi immigration

Matters took on more urgency with the arrival of a new group of farmers looking for land, namely Mossi immigrants. Small groups of Mossi have been settling in the Southwest for many decades, but in the 1970s and 1980s their numbers increased considerably, due to pressure on land and droughts in their home areas. For many earth priests in the Black Volta region, the Mossi are interesting clients because they often give substantial gifts in order to overcome the reluctance with which their massive immigration is generally treated by the local population.

Since 1983, a few Mossi families have come to establish themselves in Bon. The Nuni earth priest has given them land on the fringes of Bon, bordering on the old Baadaateng lands, and told them to farm in the direction of Baadaateng. Evidently, he used the Mossi in order to secure Nuni control over the disputed land—again, a typical strategy amongst first-comers, or those who claim to be first-comers, to defend their property rights against their neighbors or incursions by strangers. The Dagara of Baadaateng clearly understood the message. The first confrontation, which almost became violent, developed when a Dagara farmer, settled by the Dagara earth

priest of Baadaateng, and a Mossi, who had been given the land by the Nuni earth priest, literally 'met' in the bush, when clearing their fields. They challenged the boundaries of each other's farms and called on their respective land-givers to settle the matter. The encounter of the Berwuole of Baadaateng, the Ouessa earth priest and the Nuni ended, after a heated exchange of harsh words, with the pragmatic drawing of a boundary between the two farms. But this did not, of course, solve the basic question of who was the legitimate owner of Baadaateng lands and therefore authorized to allocate use rights to these lands.

The Mossi continued to pay allegiance to Bon and the Dagara to Ouessa, because neither earth priest was able, or willing, to enforce his claims against the wishes of the new farmers. Apart from ritual-magic resources, such as the threat to invoke the earth god's wrath, the earth priests indeed have few means to compel others to adopt their interpretations of local boundaries and property rights. At the time of the confrontation between the earth priests of Ouessa and Bon, it was not advisable for the holders of traditional office to involve local government authorities in land conflicts, because the 1984 agrarian reform law (RAF), promulgated by the revolutionary régime of Thomas Sankara, had declared all lands in Burkina Faso to be 'national estate'. Although the government was unable to implement these legal prescriptions at the local level and had to tolerate, in some form or another, the continuation of traditional tenure arrangements, the revolutionary impetus of 'the-land-belongs-to-those-who-work-it' slogans was not lost on Mossi immigrants and other farmers in search of land. In a climate of political radicalization no earth priest could hope that local political authorities, let alone politicians at the national level, would support his traditionalist claims based on first-come status.

A competing Dagara earth priest

In 1987, the Sankara régime was replaced by a reformist government. The agrarian reform law was amended twice, in 1991 and 1996, and although the new law held fast to the 'national estate' principle and exhibited traces of the old revolutionary intentions, the general political climate has become more accommodating of traditional authorities, such as earth priests and chiefs. This may have encouraged the involvement of a third player in the 1990s who took issue with the earth priests of Ouessa and Bon.

More generally, claims to legitimate ownership of land tend to multiply not only because new settlers have a vested interest in finding earth priests who can guarantee their continuous access to farm land, fertility and well-being, but also because the earth priests of the surrounding villages are themselves looking for opportunities to enlist additional clients. While on the one hand, the office of the earth priest is surrounded with numerous ritual sanctions (according to the dominant traditionalist discourse, office bearers are afraid to be punished by the earth god with illness and, eventually, death if they usurp land or sacrificial gifts), on the other hand, earth priests and their families 'want to eat', as the local population expresses it, and, more importantly, preserve land for future generations of their own group, and therefore need to maximize their historical claims to land. Moreover, even if a particular office bearer may be reluctant to express his claims, his family will push the matter.

The third party to raise claims to Baadaateng and neighboring Soalateng lands was the Dagara earth priest of Dadoune (see map). According to my informants in Ouessa and Baadaateng, this earth priest came to the newly built compounds and demanded of the Berwuole settlers that they transfer to Dadoune the millet and fowl, which they customarily collected after the harvest for sacrifices at the earth shrine, because in fact neither Ouessa nor Bon, but Dadoune was ostensibly the legitimate owner of Baadaateng and Soalateng territory. In addition, the Dadoune earth priest started assigning land to newcomers in his own right, although not in Baadaateng, but in Soalateng, closer to Dadoune, claiming that this land was part of Dadoune territory. He derived the entitlement to his actions from his historical connections with Baadaa, who had been the maternal uncle of the present Dadoune earth priest's grandfather and allegedly established the Dadoune earth shrine, originally as a *tengankubile* (a minor shrine), while the major sacrifices continued to take place in Baadaateng. After Baadaa's death, the Dadoune earth priest carried out all sacrifices concerning their own village, including the big ones, at the earth shrine in Dadoune, thereby making it an autonomous 'major' shrine. When the Baadaateng lands were eventually resettled, Dadoune probably resented that only Ouessa and Bon benefited from new clients, and it even attempted to appropriate the original shrine stones, presumably still lying in Baadaateng, in order to unequivocally establish itself as the legitimate heir of Baadaateng lands.

As was to be expected, Dadoune's actions provoked protest from the Gane in Ouessa as well as the Berwuole in Baadaateng. The latter told me that they went, armed with bows and arrows, to Dadoune to confront the earth priest. They argued that Dadoune was unlawfully usurping the rights of their uncles, namely the Ouessa earth priests. Allegedly, the earth priest of Dadoune responded meekly that Ouessa was right and that Dadoune had only 'forgotten' to inform them of his intention to allocate land to strangers. If this conversation ever took place in this way, the Dadoune earth priests had obviously been caught in their own logic. They had claimed rights to Baadaa's property by invoking their status as sisters' sons, which allowed Baadaa's senior brothers to assert in turn that the rights of brothers were superior to those of nephews.

Baadaa's grandson's claims

Dadoune's intervention, ultimately, brought a fourth contender into play, namely the only surviving direct descendant of Baadaa. This grandson, appropriately named Kuu-nume, 'sweet death', after the massive toll the epidemics had once taken in the family, had first lived in Bon with his grandmother's family, which happened to also be closely related to the Nuni earth priests of Bon. Later he was brought to live with Gane relatives in Zoner, across the Black Volta. In 1999, when we interviewed him, Kuu-nume considered himself 'too young' and inexperienced in traditional matters to resettle in Baadaateng and assume the office of the earth priest as the legitimate heir of his grandfather. Also, his wife had recently died, and he insisted that no earth priest could perform his duties without a wife to brew the sorghum beer necessary for the sacrifices.

However, Kuu-nume left no doubt that he was not willing to relinquish his right to the original shrine and ultimate ownership of the Baadaateng lands. In the interview, he deliberately avoided any mention of the Berwuole earth priests that by the consent of the Ouessa earth priests held office in Baadaateng. According to him, Ouessa would not dare sacrifice at Baadaa's original shrine, but only performed sacrifices on the new settlers' fields. He insisted that the earth priests of Ouessa merely represented him, until he would finally be able to return to his grandfather's lands. 'When somebody is the first to establish himself somewhere', he stated confidently, 'those

who come later can never become the owners of this land. It is always the first-comer who is the land owner and the earth priest'.³

Of course, the Berwuole earth priests of Baadaateng told a different story, although they did not insist that they were indeed sacrificing at Baadaa's old shrine. For them, the important matter was not the authenticity of the shrine as such, but the clan-based claims to property. They felt that once the Berwuole had invested their labour and ritual skills in the re-establishment of the abandoned village, the run-away grandson had no right to come and claim the fruits of these efforts as his own. And, while Baadaa's grandson insisted on the rights of his particular lineage, the Gane earth priests from Ouessa and the Berwuole emphasize the rights of the entire clan and even of related clans to Baadaa's old property.

District boundaries

Again, not much changed as a result of these competing claims to ownership—the different parties publicly stated their points of view, and the *de facto* exploitation of the disputed land by the Mossi, on the one hand, and by the Dagara from Bakoteng and Dianlé on the other, continued as before. As in many other cases, the contentious question was not (yet) the actual exploitation of the natural resources, but rather the right to allocate these to interested users, and the right to collect various 'fees' for the ritual services that the earth priests provide, such as the opening of the land for the construction of houses and the burial of the deceased.

Recently, however, the conflict was politicized in the context of the delimitation of new administrative provinces. Until the mid 1990s, the districts of Ouessa and Niégo as well as that of Bourra, to which Bon belongs, had formed part of Sissili province. The new provinces set up in 1996 shifted Ouessa and Niégo to the predominately Dagara Ioba province, while Bourra remained with Sisala-dominated Sissili province. Phuo, Nuni and Sisala are linguistically related and generally claim to stem from one historical source and to share some cultural practices. Bon's Nuni earth-priest family, in any case, always felt culturally and politically closer to the Sisala than to the Dagara,

³ Interview with Kuunume Kpoda and Hien Vure, Zoner, 26 April 1999.

and had managed to stay administratively linked to Bourra, throughout the colonial and postcolonial periods, despite the fact that in terms of proximity Niégo would have been a much more convenient administrative center.

So, from an administrative point of view where did the newly resettled Baadaateng belong? In the 1920s, Baadaateng was ruled by the chief of Dianlé, the *chef de canton* (paramount chief) of the Dagara, mainly for ethnic reasons. The new residents of Baadaateng took it for granted that they, too, politically belonged to Dianlé and hence Ouessa district. The Nuni, on the other hand, claimed that because they were the true allodial owners of Baadaateng lands, Baadaateng was naturally part of their district and hence of Sissili province.

Matters came to a head when the young men belonging to the Nuni earth-priest family uprooted a 'welcome-to-Ioba province' sign-board on the road between Niégo and Bon, and re-planted it three or four kilometers further towards Niégo—at the small river which they considered to be the actual territorial boundary. The Dagara called in the district head, a public meeting was held, and the Nuni youths were eventually imprisoned until their family put the sign-board back where it had originally been. Although for all practical matters Baadaateng continues to be treated as part of Ioba province, the conflict remains to be resolved.

What becomes evident here is that for the Nuni, as for many land-owning groups in the region, property is the basis of political belonging and political rights—a concept of autochthony that combines an older discourse on host-stranger relations with the colonial notion that allodial title to land constitutes the basis of the exercise of political authority.⁴

COMPETING DISCOURSES TO LEGITIMIZE PROPERTY RIGHTS

What can we learn from the Baadaateng case and similar disputes (cf. Werthmann 1999; Kunbuor 2000, 2003; Lentz 2000, 2001; Kuba, Werthmann and Lentz 2001; Jacob 2002; Kuba, Hagberg and Lund in this volume) about indigenous theories of property?⁵ Two sets of

⁴ For a more detailed discussion of the transformation of 'native'-'stranger' relations, see the introduction to this book.

⁵ For a minimal definition of 'property' and a discussion of the usefulness of this

arguments on property rights can be discerned from the accounts of migration-and-settlement and the narratives about the establishment of earth shrines which the adversaries articulated in Baadaateng and comparable conflicts in order to substantiate their claims. The first set concerns ideas about the legitimate earliest possession of land, that is the original constitution of property; while the second set regards ideas about the legitimate modes of land transfer—or more precisely: the transfer of certain (or all) rights over land—from one group to another.

First possession

Generally, the Dagara and their Nuni and Sisala neighbors share the argument that first-comer status confers the most comprehensive rights over land. First-comers, be they individuals or, more commonly, a group of frontiersmen, are believed to have established a special relationship with the spirits of the land, thus playing a crucial role in ‘opening up’ the wild bush or forest for human settlement, even if they did not themselves invest labor in agriculture. First-comers established shrines at which regular sacrifices are offered to the earth god in order to ensure the fertility of the land and the well-being of the community (Eyre-Smith 1933, Goody 1957). The office of the earth priest, the custodian of the shrine, is usually vested in the lineage of the first-comers, at least according to widespread norms. Yet even where the office was appropriated by a powerful group of late-comers, these often still present their claims in the idiom of first-comership by re-interpreting the settlement history. First-comers and their descendants allocated land to later immigrants, granted (and still do grant) the right to build houses and bury the dead, and mediate in conflicts over territorial boundaries and land use. First-comer lineages are often considered to be the allodial owners of the land, even though what this entails in practical terms it is often highly controversial. But in most cases, first-comers believe that in addition to the rights over land derived from active cultivation (a right which late-comers also enjoy) they are entitled to all benefits from natural resources and territorial control, including those

concept for understanding local land rights, see the relevant sections in the introduction to this book.

which can be appropriated without investing agricultural labor, i.e. fish, game, wild fruits, stray animals and 'ownerless' objects, as well as the income (usually in the form of sacrificial animals) they derive from their land-related ritual services they provide to others and from expiatory payments for violations against the laws of the earth god (cf. Boutillier 1964: 39–53, Jacob 2002).

First-comer narratives constitute a widespread social and cultural grammar, shared by all groups in the Black Volta region, despite other cultural and linguistic differences, and have provided the framework in which mobility and contact, competition and cooperation, assimilation and segregation could be negotiated. First-comer claims were and continue to be widely accepted as the basis of land rights, but they are malleable (Kopytoff 1989: 52–61). First, the question of who is recognized as first-comer depends on what is considered to be the 'pivotal historical event' (Murphy and Bledsoe 1989: 124–5). Secondly, the delineation of the territorial and social reach of the group which is claiming first-comer status is open to debate. While a lineage may insist on being the founders of a village, including its various satellite settlements that were established later, the founders of the latter may in turn claim to be first-comers in their own right, for instance vis-à-vis the late-comers residing in their sections. Hierarchies between senior and junior earth shrines can be played off against each other, and the relative chronology of the foundation of settlements manipulated in multiple ways.

In Baadaateng and in other cases, we find two major argumentative strategies concerning the 'pivotal event' that constitutes first-comer status. The first is similar to the *res nullius* argument that also helped legitimate European expansion in North America (Pagden 1995, Ch. 3) according to which the new territory is defined as empty, possible traces of earlier inhabitation are ignored, whereby the discoverers become legitimate owners. This is the argument that the Nuni of Bon presented. It is even quite possible that historically their ancestors were indeed the 'first' to discover the area around Baadaateng on one of their hunting expeditions along the Black Volta. They did not settle in Baadaateng or cultivate the land (and also did not claim that they did), but derived their property rights from their old hunting territory. Hunting rights were originally oriented at securing rather large territories for communal hunting expeditions, defining spheres of interest or zones beyond which wounded game would no longer be pursued. Such zones did not have linear

and exclusive boundaries, but vague and open ones, usually marked by ritually charged landmarks such as rocks, rivers or unusually large trees. However, from these rights over hunting lands the Nuni also derived property rights over agricultural land: in their eyes ultimate spiritual and administrative control over the whole area has always rested with them. They also claimed that when Baada asked them for permission to settle and cultivate the land, he himself recognized these property rights. The Nuni thus presented a set of arguments that in some ways resembles a combination of the *res nullum* and consensus theories of property, introduced into European thinking by Hugo Grotius (cf. Schlatter 1951: Chs. 5, 6; Tully 1980: 69ff; Rose 1994: 11–23).

The second line of argument is very much reminiscent of John Locke's labor theory of property or the Common Law idea of ownership derived from continued possession (cf. Locke 2002 [1690], Ch. 5; Tully 1980; Reeve 1986, Ch. 5). This is basically the argument used by the Dagara in Baadaateng, and it is an argument typically invoked by 'late-comers'. The group that actually takes possession of a territory, by cutting down the bush, fighting wild animals, building houses and cultivating the earth, and finally also establishing an earth shrine, by these very acts becomes its legitimate owner.

In practice, however, the two argumentative strategies—possession through discovery and possession through labor—often intertwine. In the Baadaateng case, for example, the Dagara emphasized their role in opening the bush, but at the same time also claimed that the Nuni had not yet arrived on the scene and that Baadaa originally settled in empty territory. However, their emphasis on what constitutes the ultimately the decisive 'pivotal event' differed from that of the Nuni earth priests.

In the dispute between the Nuni of Bon and the Dagara of Baadaateng as well as the more or less implicit disagreement between the earth priest of Ouessa and Baada's grandson, the previously mentioned malleability of the first-comer argument becomes evident. Depending on whether the territory that is to be regarded the spiritual domain of the earth shrine area is defined more extensively or restrictively, immigrants can be regarded as either first-comers or late-comers. It was no coincidence that the dispute over Baadaateng centered on the boundaries along the Volta tributaries, which are often not traversable during the rainy season. These delineated not only hunting grounds, but also the territorial expanse over which

spiritual services could be provided. In the eyes of the Nuni earth priests Baadaa's earth shrine was a subordinate one, which they had granted him out of friendship so that neither he nor they would always have to make the arduous trip across the stream. However, it is possible that because of the refusal of certain spiritual services, Baada and his lineage subsequently reinterpreted and transformed their shrine into an autonomous major shrine. Or—a strategy that has been used in other Dagara settlements—they obtained from elsewhere an even more powerful shrine, perhaps even from Dagara kin in Ouessa. The versions of accounts presented to me contain too many contradictions to be able to glean a more precise idea of the events as they may have actually occurred.

In any event, Baada and his supporters (and today the peasants coming from Bakoteng) presented themselves as first-comers *vis-à-vis* all other late-comers in Baadaateng and thus as the legitimate owners of the entire territory. In doing so, they also claimed to control lands that they had themselves never actively cultivated. It is here that it becomes clear that the various means of substantiating claimed property rights—rights based on discovery and spiritual pact versus the right to ownership through labour—have nothing to do with ethnicity, but rather emerge from the dynamics of settlement history. This is also evident from the manner in which the Dagara earth priests argued their case, since they, like the Nuni, regard Baadaa's settlement as part of their spiritual field of influence. The only difference here is that the Dagara settlers of Baadaateng themselves seek protection from the earth priest of Ouessa, while they flatly reject such protection from the Nuni.

The transfer of property rights

As is to be expected, first-comers and late-comers also hold different ideas about legitimate forms of the transfer of landed property. Most importantly, they do not agree on whether allodial property can be transferred at all. Some believe that only more or less comprehensive rights to use land can be ceded, but not full property rights, which would include the right to spiritual control and the allocation of land to third parties. In the eyes of the Nuni earth priests of Bon, for instance, the Nuni have always retained ultimate control over Baadaateng land, even though they granted very extensive rights to the Dagara by giving them an earth-shrine stone. They also claimed

that these rights had not expired, even though the land had neither been cultivated nor sacrificially propitiated for several decades.

Not the Dagara in Baadaateng, but those in other villages sometimes admit that they are in fact late-comers and that the Sisala or Nuni settled there earlier. But then they go on to insist that their ancestors had actually 'bought' an earth shrine (using the word *da*, which is also applied to market transactions) and all its secrets from the previous inhabitants and that they thereby acquired all allodial rights over the land, with no further obligations towards the original owners. The Nuni and Sisala deny that this is even possible and claim that an earth shrine, and hence the land, is in principle inalienable. If they do concede that a transfer of an earth-shrine stone has taken place, they compare it to a marriage, much as the Nuni elders did in the Baadaateng dispute: they regard the land as a woman for whom one can receive a dowry, but who always remains a member of her original family to which she can return at any time, particularly after the husband and his family died, as was the case with Baadaa.

Nuni, Sisala and Dagara agree, however, that allodial property of land can be inherited within the first-comers' own group. But here again, the exact boundaries of this property-holding group are disputed: Is it the restricted lineage, the whole clan or even the whole ethnic group that is eligible to inherit the land title and the shrine? In the Baadaateng case, for instance, the different Dagara groups or actors advanced three different interpretations of legitimate heirship, whereby such interpretations never stand alone, but are always presented in combination with other arguments. Thus, the Berwuole from Bakoteng could not trace direct descent from Baadaa, but argued that they did belong to the same clan. Their supporting argument was that they were simply heirs to the fields that their own fathers had already cultivated. In other words, use rights were surreptitiously redefined as pseudo-allodial property rights.

In making his own case the earth priest of Ouessa drew on his ties to the Gane patriclan as the legitimate corporate owner of the land as well as the seniority of the Ouessa earth shrine. Because the Gane clan insists that in general it was the first to settle the region and because Baadaa was a member of this clan, his land ultimately belongs to his 'fathers', the earth priests of Ouessa. Baadaa's only surviving grandson, however, defined the community of eligible heirs

in a much more restricted manner: only he, as Baadaa's direct descendent and member of a specific lineage, was the true owner of Baadaateng land.

CONCLUSION: PROPERTY, PERSUASION AND POWER

In practice, people are pragmatic and present arguments from an entire repertoire of locally acceptable discourses that legitimate property and property transfer. What is important is that there is no dominant institution accepted by all contestants that could justify one 'good history' being accepted over another. Neither does the reference to sanctions by the earth god or to an oath to be sworn on the earth provide a final solution. As the controversial interpretation of the death of the Ouessa earth priest after his visit to the Nuni earth shrine in Bon shows, it is a question of power and persuasion whether such an event will be regarded as convincing proof of one of the competing property narratives. What counts, then, are the social networks and the political power that can be brought into play to support one's own story.

As mentioned above, most conflicts do not concern use rights as such, but the right to allocate use rights, i.e. the ultimate control over territory. In most cases, people will therefore continue to farm for many years while the disagreement about allodial land rights simmers, or even lies dormant for decades, before it is brought to the fore again, generally at a moment when power relations shift and the revival of old claims promises fruitful results. Recently, it has quite often been the new policy of decentralization, with its concomitant modification of political boundaries, that has been conducive to such a shift. In this politicized context, however, the institutional configuration in which property narratives are constructed, presented and evaluated constitutes new challenges and may affect argumentative strategies. In a local setting, the narratives invoked to support one's claims speak of individual ancestors and patrilineages, but when it comes to justifying politico-territorial claims within the modern state, as is the case in conflicts over district boundaries, the interested parties often argue with the migration of entire 'tribes'. However, the influence of urban actors and international discourses on the rights of 'indigenous peoples' on local property narratives brings us too far beyond the scope of the present chapter, the pri-

mary aim of which was to examine the *longue durée* of basic argumentative strategies concerning property.

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 Bon, 22.11. 2001: Boureima Ouedraogo.
 Dadoune, 28.11. 1997: Somé Gerard (Dadoune Naa), Dabiré Tuoni Moru (earth priest)
 Dadoune, 28.2. 1999: Somé Robert; Somé Gerard (Dadoune Naa) et al.
 Dianlé-Soalateng, 25.4. 1999, 23.11. 2001: Somé Yelhang; Somda Sienatiin; Somé Guy.
 Ouessa, 8.10. 1998, 10.2. 1999: Hien Daniel (earth priest), et al.
 Ouessa, 24.2. 1999, 5.6. 2000: Meda Casimir, Meda Be-yiire bere.
 Ouessa, 22.11. 2001: Gompag Samson (new earth priest).
 Sossoré, 29.4. 1999: Somé Tieryuor.
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SPIRITUAL HIERARCHIES AND UNHOLY ALLIANCES: COMPETING EARTH PRIESTS IN A CONTEXT OF MIGRATION IN SOUTHWESTERN BURKINA FASO¹

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Introduction

The Phuo in Southwestern Burkina Faso, a minority group without centralized political institutions (and who are generally referred to as ‘Pougouli’, an exonym), like many people in Southwestern Burkina Faso, live in a rural area largely untouched by administrative land legislation and recent decentralization reforms. Until recently farm land was a comparatively abundant resource and access to it is still regulated by the village earth priest and a few lineage elders. This chapter reflects upon how in the past local hierarchies—and through them, the access to natural resources—were negotiated in a Phuo village and how recent developments, especially the settlement of strangers, intensified latent conflicts.

A central issue on which the entitlement to land rights rests is membership in one of the long established local lineages. Yet among the Phuo there is a second, no less important way through which local hierarchies and through this the power to allocate and exercise specific rights to land are established: spiritual competence and ritual power. In this field the earth priest’s lineage has a privileged standing, and it is not surprising that the office of the earth priest is the focus of competition between lineages. Local settlement history and inherited spiritual power are central resources in negotiat-

¹ A preliminary version of this paper has been published under the title ‘La grammaire rituelle des hiérarchies: migrations et chefs de terre dans une société segmentaire (Burkina Faso)’ in *Autrepart*, 30 (2004): 63–76. I would like to thank the *Deutsche Forschungsgemeinschaft* and the Special Research Project 268 ‘West African Savanna’ for their financial support of my field research in Burkina Faso and thank the participants of the workshop ‘Land Rights and the Politics of Belonging in West Africa’ for their most stimulating comments.

ing local hierarchies and can be converted into political power and economic benefits. The fact that there are several ways to legitimate the office holder illustrates the high degree of normative plurality that exists under so called 'customary law'. In recent years, increasing pressure on land resources exerted by incoming Dagara farmers, and more recently by Mossi agriculturalists has given new impetus to latent conflicts among the Phuo, thus initiating new discussions about autochthony, hereditary rights and commercialization.

The *chefs de terre*, or earth priests, as they are called in Anglophone West Africa, continue to play an important role in large parts of the continent even today, particularly in discourses regarding autochthony and access to resources. This is particularly the case in societies that during pre-colonial times did not have centralized political institutions, as those in Southwestern Burkina Faso. Irrespective of linguistic and cultural boundaries, ideas regarding land rights are closely linked to the concept of earth-shrine territories, which are under the protection of local earth deities to whom sacrifices are made at local earth shrines. Fertility and prosperity depend to a great extent on these sacrifices. The custodians of these shrines, earth priests, are ideally descendents of the settlement's founder, who was the first to make a pact with the local earth god.

In contrast to neighboring Ghana, we find that in Southwestern Burkina Faso offices like *chef de canton* and *chef de village*, institutions produced by the colonial regime, never became important political factors at the local level,² but rather lost practically all meaning after independence. The institution of earth priest has, however, despite the changes and reinterpretations it has undergone, survived the colonial and post-colonial period. One colonial official's prognosis, voiced at the beginning of the twentieth century, that earth priests would soon be a thing of the past, in fact did not come to pass, and initial attempts to incorporate them into administrative practice failed miserably.³ With a few exceptions earth priests generally refused to

² On Northwest Ghana see Lentz 1998 and 2000a.

³ Lieutenant Quégniaux, who from 1905 to 1912 served several years as *commandant de la circonscription de Diébougou*, wrote the following regarding the institution of the earth priest: '... c'est une vieille coutume qui s'en va' (Archives Nationales de la Côte d'Ivoire 5 EE 11 2/1, Rapport politique de la circonscription de Diébougou, Septembre 1909). Despite this he tried to integrate the earth priests into the new political hierarchy, a move which one of his successors soberly assessed

issue orders to villagers, and in an almost desperate attempt to find candidates for their newly created political offices, colonial officials finally had to rely on other members of earth priest families. However, the latter's authority always rested on the threat of force and lacked any sort of legitimacy.⁴ Independence and the post-colonial period did little to threaten the vitality of the earth priest institution. Attempts during the revolutionary regime of President Thomas Sankara in the 1980s to stigmatize earth priests and other 'traditional' authorities as remnants of feudal structures and efforts to replace them with *délégués* and *responsables administratifs villageois* elected by local village councils could not seriously diminish the office's vigor.

Today most land conflicts are largely resolved locally without the intervention of state authorities. In the event that one of the disputing parties does call on the *préfet*, the government-appointed head of a department, the latter—generally an outsider only stationed at his post for two to five years and very much aware of the complex and potentially explosive nature of land disputes—generally avoids publicly taking sides. He thus tries to involve local dignitaries, heads of families, *responsables administratifs*, but particularly relies on the earth priests to find a solution that is in keeping with local norms and practices. Written documents such as the *procès verbal* are not usually produced. Thus, in resolving land conflicts parties largely rely on local settlement history and on local concepts regarding the legitimate appropriation of land and other resources. Earth priests therefore continue to play a key role in issues regarding access to land in rural Southwestern Burkina Faso.⁵

as follows: 'Les tentatives faites par le Lt. Quégniaux dans la circonscription de Diébougou pour utiliser de personnages religieux dits "chefs de la terre" comme chefs politiques durent être abandonnées. Il ne trouva malheureusement que des vieillards indifférent et passifs, soucieux de ne pas s'engager dans des responsabilités' (Archives Nationales de la Côte d'Ivoire 5 EE 10 1/1, Labouret, Rapport de l'Administrateur du cercle du Lobi sur les commandements indigènes, 29. August 1918).

⁴ Labouret op. cit.: 'Ainsi leur autorité d'ailleurs toute relative s'établit, mais assez lentement. Une pareille hiérarchie, qui n'a pas son fondement dans une utilité sociale reconnue des indigènes, qui ne se base ni sur la conquête, ni sur l'histoire, ni sur la tradition est forcément précaire . . .'

⁵ See also Engberg-Pedersen (1995); Lund (2001: 198–9); Jacob (2003).

Earth priests and local hierarchies

So, who are these functionaries and how do they legitimize their position? It is first important to understand in what ways they differ from 'traditional' political office-holders in more hierarchically organized societies. The candidates for succession, usually brothers or other close patrilineal relatives of the former earth priest, generally do not compete over the office, which is regarded to be time-consuming, not terribly profitable and spiritually quite dangerous. The following statements quite aptly reflect the discourse regarding the difficulties involved in carrying out an earth priest's duties:

'The duties of a *tengansob* [earth priest in Dagara] are pretty difficult. If a selected candidate is not very old, he will try to demur.'

'If one is chosen, one can grumble, but must accept the office. One can't really be terribly happy about it, since it is such a burden. There may be food [the sacrificial meat], but death is always eating with you.'

'Death is your constant companion; if you sacrifice a chicken the wrong way, you've dug your own grave.'

'One is not happy about the job, but you also know the major taboos. When you walk a prescribed path, you are aware of the thorns that await you, should you leave it.'⁶

The real competition takes place between different kinship groups, patrilineal⁷ or lineages, which might have some claim to the earth priest office.

In most societies that in pre-colonial times functioned without centralized political institutions hierarchies within the local community are established according to the order in which individual clans arrived at the area of settlement. The logic of this 'first-comer ideology' is that to ensure the continued fertility of the land the first settlers made an important pact with the local earth deity, which is regarded as the most important of all super-natural powers. From then on, contact with this deity was mediated by the local earth priest, a descendent of the settlement's founder. This earth priest is

⁶ Excerpts from interviews with Phuo and Dagara earth priests in Ouorpon (08. December 1998), Pouleba (21. January 1998), Badiere (08. February 1998) and Batiene (07. December 1998).

⁷ Patrilineal here refers to an exogamous group of patrilineages that shares a name and certain tabus. This is not so much an agnatic group as a group of political allies presenting themselves as sharing kinship ties.

the only one with the legitimate authority to perform sacrifices to the earth, which means that the first-come lineage exercises a monopoly over the local community's most important spiritual resource. In Southwestern Burkina Faso this fact makes itself felt in a variety of contexts.⁸ For our present discussion two situations are of particular importance, both of which illuminate the political aspect of the earth priest office: for one the earth sacrifice carried out before sowing that is one of the most important annual agricultural rites (the *Dagara tengen daa*,⁹ or the *Phuo thepala*), and for another the sacrifice carried out when there has been a death, the circumstances of which are regarded to be an offense against the 'earth' (e.g. when there has been an 'impure' death, such as a suicide). In the latter case, the earth priest must perform purifying rites for the deceased, who can otherwise not be properly laid to rest. The earth priest may attach certain demands to the performance of this service, for example that the family of the deceased perform expensive sacrifices to the earth. Since the relatives have no desire to keep the rapidly decomposing corpse any longer than necessary, they are usually quite ready to compromise and accept the earth priest's conditions. Such situations always boil down to confrontations between two kinship groups, one lineage being that of the earth priest and the other being that of the deceased's relatives. These confrontations can entail significant implications for the local hierarchy in as far as they reveal which lineage is in the weaker position. In extreme cases it may be that the earth priest will for certain reasons entirely refuse to carry out the purification rites for the deceased and thus prevent the latter from being buried in the appropriate manner.¹⁰ In pre-colonial

⁸ For more details regarding the various roles of earth priests in the region, see for example the comprehensive comparative study by Zwernemann (1968) as well as the regional studies by Bayili (1998), Capron (1973), Dacher (1997), Dittmer (1961), Goody (1957) and Liberski-Bagnoud (2002).

⁹ See for example Tauxier (1912: 775) and Goody (1956: 92). Labouret (1923: 53) viewed these seasonal religious celebrations as the only occasions, on which all kinship groups in a given community put aside their particular interests and came together: 'Les seules manifestations unissant les familles (. . .), présidées par le vieillard, le chef de terre . . .'.

¹⁰ Today such cases are rare, but they were probably more common one hundred years ago. A 1913 report written by the colonial administration in Diébougou expresses surprise that a *tribunal indigène* found an earth priest's refusal to conduct a burial to be entirely justifiable and only subjected him to (relatively light) punishment once pressured to do so: 'Dans un but de vengeance le maître de la terre du village de Baforo refuse de laisser enterrer une femme qui vient de mourir. Le

times such refusal was a signal that the affected lineage should leave the settlement altogether, and even today such a refusal continues to be quite effective as a potential means of exerting pressure on the respective parties.

Hierarchy and access to land among the Phuo

Matters regarding access to land in rural Southwestern Burkina Faso continue to be settled to a large extent by 'traditional' authorities, earth priests and lineage elders. Although land is still a comparatively abundant resource, it is rapidly becoming an important factor in intra-village disputes and thus so is the question of 'belonging'.¹¹ This development has to do with both the growth in population as well as the much discussed migration of Mossi farmers from the central plateau and Northern provinces into southern Burkina Faso, where the annual rainfall is much more favorable. Being confronted with the fact that land can be a scarce resource is a relatively recent phenomenon. Historically most of Burkina's Southwest was relatively sparsely populated, its population extremely mobile and unoccupied savanna bush land plentiful.¹² This was particularly true for the area settled by the Phuo, a small ethnic group currently numbering about ten thousand persons, who are settled on the periphery of Ioba, Tuy-and Bougouriba-Province in Southwest Burkina Faso. Decimated by wars and epidemics in the late nineteenth and early twentieth centuries, Phuo clans had an almost insatiable demand for people (Kuba 2003). Even today, they, like many other ethnic groups in the region,

cadavre reste pendant sept jours dans une habitation risquant de propager une épidémie. Il est enfin enseveli par les soins de la résidence. Le chef de la terre est traduit devant le tribunal [indigène] de la subdivision qui estime qu'il a agi dans la plénitude de ses droits, toutefois pour ne pas donner tort au Résident [français] qui a traduit l'accusé devant le tribunal un juge propose un jour, un autre huit et finalement on s'arrête à quinze jours [d'arrêt]' (Archives du CNRST, Ouagadougou, Cercle de Gaoua, Sér. A IV, Circ. de Diébougou, Rapport politique, October 1913).

¹¹ See for example Laurent et al. (1994); Hagberg (1998); Werthmann (1999); Gray and Kevane (2001).

¹² At the beginning of the twentieth century the population density of the Circonscription de Diébougou was estimated to be about 3 persons/km² (Archives Nationales de la Côte d'Ivoire: 5 EE 11 (2/3) Annexe au rapport politique, May 1912). Around 1960 the most populated parts of the region numbered between 5 and 35 inhabitants/km² (Brasseur and le Moal 1963). On the pre-colonial settlement history and on mobility in the region see Kuba and Lentz (2003).

believe it to be a major offense to deny a well-meaning outsider access to land. However, in the last few decades the Phuo have, because of their hospitality, become a minority in most of their villages. In the most extreme cases the village is populated entirely by Dagara, Mossi and Fulbe, except for the earth priest and his family, who continue to be Phuo. Yet in a context of increasing land scarcity and imminent loss of identity, access to land, social status and group membership (between Phuo and non-Phuo, but in particular between individual Phuo lineages) are becoming more closely linked, i.e. access to land is increasingly being made a means by which social status and group membership are defined and vice-versa.¹³ At the center of such disputes is the office of the earth priest, since the kinship group which can lay claim to this office occupies a powerful position when it comes to intra-village conflicts. This group can exert pressure on competing kinship groups by refusing to perform certain ritual duties and, in extreme cases, can even, as we have seen, threaten expulsion from the local community. In matters regarding the allocation of land to strangers it has the most advantageous position: the settlement of strangers strengthens the position of the host-lineage, which wins followers and buttresses their claims to the newly settled piece of land vis-à-vis any competing claims put forth (see also Jacob 2003 and Chauveau in this volume).

Institutional pluralism and the legitimization of the earth priest

Defining the earth priest as the representative of the founding lineage seems to provide a clear framework for determining which clan is entitled to the office. However, time and again we are witnesses to conflicts over the powers of individual earth priests, and this not only amongst the Phuo. In many cases these disputes can be traced back to debates over competing versions of the settlement history and to the question of which lineage arrived first. But, oftentimes the real causes are more complex. Thus, for example, we find that in the past certain powers of the earth priest office were for a time

¹³ Sara Berry (1989), Shipton and Goheen (1992) and others have pointed out that there is a direct correlation between belonging to specific social groups and the access to resources.

ceded to other lineages or even 'sold'—a rather derogatory characterization, which plays a role in certain conflicts, as we shall see. The possible reasons for such a move are the lack of suitable candidates for succession within the actual earth priest lineage, this lineage's impoverishment or its temporary or even permanent departure from the area. In a context of high mobility among individuals and families, the control over an immobile resource such as land was subject to a series of modalities regarding its transfer and cession. Disagreements which arise out of the transfer of the earth cult are for subsequent generations and outsiders often difficult to follow and often spark heated debates regarding the responsibilities of individual earth priests and their relative positions in the hierarchy.

The Phuo have only a very small intellectual elite and virtually no representatives in national politics. For this reason such conflicts are much less politicized than similar conflicts in other regions. The fact that state institutions almost never play a role in intra-village conflicts is also to be explained by the fundamental skepticism with which the Phuo regard the administration, which at the *département* (i.e. district) and provincial level is dominated by Dagara, who on the basis of population comprise by far the strongest ethnic group in the region. Moreover, materially speaking there is relatively little at stake. For instance, in the village where the case study was conducted, there are no major development projects underway, and, like everywhere else in the region, the cultivation of cotton, the only cash crop, is conducted on a rather modest scale. But what *is* at stake is nothing less than the lineage's position in the village hierarchy and its spiritual well-being. In the ensuing debates actors draw on numerous possible lines of argumentation and engage in a kind of 'forum' and 'idiom shopping'¹⁴ within the local community. In fact, I would even propose that institutional pluralism, at least as we encounter it in the present case, is not an outgrowth of the interplay between 'traditional' and 'state' law, but is innate to the so-called 'traditional' sphere.

The competing accounts of the settlement history and the narratives relating the transfer of power between earth priests are linked to another form of collective memory. Internal hierarchies amongst the Phuo are often inscribed according to a kind of ritual grammar:

¹⁴ Benda-Beckmann, K. von (1981) and Benda-Beckmann, F. von (1994).

the earth priest and prominent heads of family together publicly perform the *thepala* sacrifice to ensure the settlement's well-being. Those participating all must perform specific ritual duties, meaning that the sacrifice represents an important forum, in which certain rights and social positions are communicated to the village public, both Phuo and non-Phuo. Thanks to these public sacrifices, which take place at least once a year, the position of the earth priest and that of his lineage is sanctioned by super-natural powers and sustained by the regular repetition of the ceremony, so that this status cannot so easily be cast in doubt. Thus although tradition and custom are pluralistic resources which actors may selectively deploy to further their own interests, they cannot be manipulated entirely at will (cf. Appadurai 1981).

Three earth priests in Gnimi

The following case study outlines a complex series of transfers of earth priest powers in the Phuo village of Gnimi (Département de Dano, Province du Ioba), which between 1997 to 2001 lead to a two-fold split: three earth priests contended one earth-shrine parish—a situation most villagers felt was both burdensome and potentially dangerous. The earth is regarded to be fundamentally indivisible so that a split in the earth cult threatens the cohesion and social harmony in the local community. In the words of one villager:

They (the competing earth priests) are in the process of destroying the village. If the village were at least a very large one, then one might reach a consensus and divide it . . . (H. Nouma, Gnimi 20.03.01)

In the following I will provide my own 'unified account' of the events that led to the split and will try to determine on what bases the competing claims to legitimacy presented by the various earth priests rest.¹⁵

¹⁵ This information is based on two dozen interviews and many informal conversations that took place during a three month stay in Gnimi early in 2001 as well as during many visits to Gnimi and neighbouring villages between 1997 and 2002.

Social organization of the Phuo

Some background information regarding Phuo social organization is in order, if we are to understand the conflict in Gnimi. At first glance the institution of earth priest as it exists among the Phuo seems to fit the 'classical' model of this institution.¹⁶ However, what distinguishes the Phuo from many other groups is how the officeholder is legitimized. Although he should ideally be a descendent of the settlement founder, it is more important that he belong to one of the clans known to be specialists in the earth cult. The first-come principle is in this respect secondary. The Pwie term for earth priest, *therotie*, is literally translated as 'owner of the earth'. Yet, the earth priest is at the same time *sirrotie* ('owner of the knife') i.e. he owns the earth cult's (sacrificial) knife *thero siro* ('earth knife'). This term does not so much refer to a literal knife as to the holding of the sacred office, whose most important manifestation is the performance of the sacrifice. *Thero* may be translated both as 'earth' and as 'village' and thus delineates the earth priest's domain: a cluster of scattered compounds including surrounding fields and bush land.

The Phuo distinguish among seven large clan groups. These are each comprised of several exogamous clans with different religious specializations, i.e. they each can perform sacrifices to a specific deity in the name of the local community. Ideally each clan group is made up of three clans, to which different ritual spheres are assigned: the earth (*thero*), the bush (*kamu*) and the forge (*lue*). In the distribution of sacrificial meat these three clans have reciprocal rights. Ideally they jointly establish an earth shrine and assist the earth priest in conducting public sacrifices to the earth deity. Ritual powers are inherited in the patriline, but can also be passed on to matrilineal or affinal kin. However, with the help of personal friendships, these powers can even be passed from one clan to another or be conferred to neighboring ethnic groups. This has given rise to the development of two categories of earth cult, the 'real' (i.e. the inherited ones) and those cults that were appropriated by other means. Only four of the seven Phuo clan groups have a 'real' earth priest clan.¹⁷

¹⁶ See for example Dittmer (1961); Boutillier (1964); Verdier (1965); Zwernemann (1968).

¹⁷ These are the Nyona (Bana-Bara), Phekpoha (Barabalia/Dinkebalia), Phèna (Phèna-Bara) and Wulugo (Pologa-Nyanabalia). Of course this status is not undisputed, but the controversy not great, since it is in fact only within these families that a certain funerary song (*baaru zin bié*) is played.

The village of Gnimi is located on territory belonging to the Wulugo clan group. This is a comparatively large area, since the clan is comprised of two sub-groups (Kpanthina and Djama). These consist of three clans each, some of which are subdivided into further patrilineages. Amongst the Wulugo the members of only one patrilineage, the Pologa-Nyanabalia, are regarded to be 'real' earth priests. Only they have *baro*, a supernatural power that is passed on in the patriline and is necessary for performing earth-cult duties properly. Wherever a member of this lineage settles, he can perform his sacrifices to the earth deity autonomously and does not have to consult the local earth priest. In contrast to this inherited power, earth cults found among other Wulugo clans are based on rights that have been transferred. In principle these clans may only perform minor sacrifices for their own families. The 'real' earth priests, however, reserve the more important powers for themselves, particularly the power to carry out the complex purification sacrifices that are performed when there has been a serious taboo violation, such as a suicide (*buon*). However, over the course of time, ritual dependency may be backgrounded and a member of a non-earth priest clan may *de facto* perform all sacrifices to the earth deity required by the settlement. While the power of real earth priest clans is uncontested, the appropriation of ritual powers by clans not designated earth priest clans often provokes controversy.

Gnimi village history

In what follows I shall present the case of Gnimi, one of the oldest Phuo villages. According to historical accounts and genealogies, the first Phuo, belonging to the Djama, probably settled near Gnimi in the second half of the eighteenth century. The Pologa-Nyanabalia, who settled further on in the same general vicinity and who were the only 'real' earth priests in the Wulugo clan group, probably at that time took on the ritual duties of the earth priest for all Wulugo clans, and so also for the Djama. In the course of time, the latter split into three clans, which took on religious specialties of their own. One of these clans, under circumstances that are not entirely clear, came to be vested with the powers of the earth cult. In the first half of the nineteenth century the Dagara, who were the Phuo's southern neighbors, began to expand their territory, pressuring most Phuo families to leave the region and migrate further north (Kuba 1998). Only one clan, which happened to belong to the Djama (the Kpoa),

remained in the area and founded the village of Gnimi. When the other Djama clans left the Kpoa, who were originally a forge-clan, the latter were conferred the Djama earth knife, so that they could perform sacrifices to the earth deity themselves and not have to depend on Djama earth priests living twenty kilometers away.

From the west three more clans soon came to Gnimi. Since the village's establishment there has been a general consensus that the Kpoa, being the village founders, should furnish the earth priest. The uncontested position of the Kpoa during this time, is evidenced by the fact that at the end of the nineteenth century they granted permission to a group of Dagara allies to settle near Gnimi. From a ritual perspective these Dagara were dependents, since the Kpoa carried out the requisite sacrifices to the earth for them.

Then in the early twentieth century a Kpoa woman was killed by some Dagara from a neighboring village, whereupon the majority of the Kpoa left Gnimi to settle further north. Much like in Gnimi, here, too, they exercised the office of earth priest. The earth priest family remaining in Gnimi suffered economic decline and soon consisted of only a few aged members. Since those few remaining behind were not able to come up with the resources necessary to carry out costly burial rituals, one of the Phuo clans that had subsequently migrated into the area performed the funerary ceremonies for them. There was a similar arrangement when the last Kpoa earth priest passed away. However, as compensation for the costs of the funeral the latter, prior to his death, apparently gave one of his in-laws, a Yeno, the earth knife.

And so it came to be that the office of earth priest passed from the Kpoa to the Yeno, who furnished the next two earth priests. Then in the 1960s, a Pologa-Nyanabalia succeeded to the office, i.e. a member of a clan that had *baro*, the 'real' ritual power to perform the duties of the earth cult. His mother had fled famine and come to seek refuge amongst the Yeno in Gnimi. The boy grew up in a Yeno family, and it was thus that upon reaching the requisite age that he was naturally conferred the office of earth priest. However, he himself had no descendents, and so, just before his death, he requested his earth knife once again return to the Yeno. The current Yeno earth priest now had two 'earth knives'¹⁸: that of the

¹⁸ This term does not refer to specific knives in the material sense, but is rather

Kpoa, in Yeno possession ever since the passing of the last Kpoa earth priest, and now in addition to this the knife formerly belonging to the Pologa-Nyanabalia.

However, this did nothing to solve the fundamental problem of legitimacy: the Yeno are neither first-comers, nor are they heirs to 'real' earth priest power. The Yeno's right to the office was thus called into question as early as the 1950s, when a number of Kpoa returned to Gnimi, their ancestral village, and demanded that the earth knife be returned to them. The Yeno earth priest, however, refused to cede his office as long as the Kpoa did not repay the debt incurred for the burial of their ancestors. This argument entails a kind of commercial logic, which, although in conflict with the general maxim that the earth and the earth knife are inalienable, is gaining popularity (cf. Hagberg in this volume). Consequently it is quite understandable why the Kpoa derogatorily refer to the Yeno earth-knife as having been 'bought' and conduct the required sacrifices concerning their own lineage themselves. Nevertheless, for a long time, the Kpoa still participated in the annual *thepala* sacrifices that were conducted by the Yeno earth priests on behalf of the entire village. However, because of a personal conflict between the current Yeno earth priest and the head of a Kpoa family, relations have cooled. And so for some years now the Kpoa have been conducting their own *thepala*. Moreover, they began to settle Dagara families on their land and carry out the necessary sacrifices to the earth on their behalf, all without informing the Yeno earth priest.¹⁹

a Phuo figure of speech that expresses the fact that the earth cult's legitimacy derives from two sources.

¹⁹ The settlement of strangers is usually achieved by means of friendship ties. In principle every lineage head can settle strangers on his lineage's lands. He shows the land-seeking outsider the spot on which he may build his house and where he may plant his crops. In order for this arrangement to become valid it must receive the earth priest's blessing. The latter informs him of the area's most important rules of behavior and tabus, the violation of which would bring the wrath of the earth deity. The earth priest is then charged with performing all major sacrifices on behalf of the new-comer: rites that must accompany the building of a house, purification rites after an offence against the earth or the sacrifice required before a grave is to be dug. Only when there are serious reservations may the earth priest hinder an outsider's settlement. Early in the colonial period certain new-comers still had to pass the much feared test consisting of drinking the village's earth diluted in water in order to allay any suspicions that they may in fact be a witch. Fulbe pastoralists are subject to different rules, since with respect to land ownership and ritual they are not regarded to be members of the local community.

The manner in which the Yeno legitimize their claim to being the rightful earth priests of Gnimi is also called into question by the 'real' holders of that office, the Pologa-Nyanabalia. Although none live in Gnimi, their power became apparent as early as the 1960s when a dispute between the Phuoa and the Dagara broke out near Gnimi. There, the Dagara had settled on Phuoa land. With respect to ritual they were first dependent on the Kpoa, and later on the Yeno earth priest in Gnimi. With a keen sense for tensions amongst their hosts, the Dagara went directly to the Pologa-Nyanabalia residing roughly twenty kilometers further north in Kukumomole and requested that they be allowed to install their own earth shrine. The earth priest of this 'real' earth priest clan granted the request, and since then the Dagara, who are settled only a few kilometers away, have been ritually independent of Gnimi, a fact they openly demonstrated, much to the displeasure of Gnimi residents: a number of years ago a conflict over fields arose, fields to which the Gnimi have voiced a claim, but which the Dagara had been cultivating without permission. The Yeno earth priest of Gnimi thus planted several *kakapomie* on the incriminating fields—i.e. branches of a particular tree (*Gardenia ternifolia*), whose magical powers make further cultivation impossible. The Pologa-Nyanabalia earth priest, upon whom the Dagara called for assistance, then demonstrated his power by simply ripping out the dreaded *kakapomie*.

The same earth priest once again became involved in Gnimi affairs in the year 2000, after a dispute had broken out between the Yeno earth priest and the head of a Gnimi family, the Pologa-Thubalia. These Pologa descend from a line that has not inherited a claim to the earth cult and in the past had always turned to the Yeno earth priest for ritual services. The latter now suddenly demanded the repayment of some old debts²⁰ and refused to perform an urgent sacrifice for a member of the Pologa-Thubalia. Not knowing where else to turn, the Pologa, who regarded this demand for payment to be unjustified, turned to the Pologa-Nyanabalia earth priest of Kukumomole. It is he who has since then carried out all the earth sacrifices for his fellow clansmen in Gnimi.

²⁰ Although 'traditional' logic might lead one to think that at issue was an expiatory sacrifice, which was carried out after a offence against the earth was committed; what was actually at issue was a personal dispute over a cow killed when it was accidentally hit by a gunshot.

Since then, the village population has in matters regarding the earth cult been divided into three camps. The Kpoa carried out their own sacrifices, the Pologa-Thubalia turned to the Pologa-Nyanabalia earth priest from Kukumomole, while the majority of village inhabitants continued to consult the Yeno earth priest. Near the end of 2000 the situation became more critical. Much like in the dispute with the Pologa-Thubalia, the Yeno earth priest suddenly demanded that the Muo, one of the wealthiest and most populous Phuo clans in Gnimi, repay debts supposedly incurred in the past. After the Yeno earth priest refused to sacrifice on the Muo's behalf, the latter turned to the Kpoa and have since then taken part in sacrifices with them. Currently new troubles are brewing on the horizon: a relatively large group of Dagara have for some time now been cultivating fertile clan lands belonging to the Muo. The Muo are now threatening to take these fields from the Dagara, if they do not also join the Kpoa earth cult. In this case the Yeno earth priest not only lacks the power of disposal over the land, but now this very land is being used against him in an effort to exert political pressure. In response to this serious threat the Yeno earth priest announced that he would expel the Muo, who do not belong to the Wulugo clan group, from the village—an act that, while it would entail no material consequences, is still a serious threat, since it harbors potential spiritual dangers for the Muo.

Why should the Yeno earth priest suddenly demand the repayment of old debts and risk that once loyal clans turn their backs on him? Underlying the recent conflicts seems to be the settlement of a number of Mossi families, immigrants from overpopulated central regions of Burkina Faso. According to rumors, in the year 2000, the Yeno earth priest agreed to their settlement in exchange for a number of sheep and other gifts. However, these gifts were neither sacrificed to the earth, nor were they shared with the other clans as custom stipulates. Thus, in order to forestall any accusations of having lined his own pockets, the Yeno earth priest went on the offensive and accused his critics of not having repaid their outstanding debts to him.

Conclusion

The general picture held by some anthropologists and by many development experts of the role of the earth priests for 'customary land tenure' in the savanna area is grossly simplified. In the case outlined above the numerous means become apparent by which the office of earth priest may be transferred and legitimized. Although the right of first-comership is important as a basis of legitimacy, it is by no means the only one. In the case of the Phuo, earth priests are accorded a type of territorial jurisdiction on the basis of their being first-comers and having made a pact with the spirits of the earth in a particular area. Yet they also maintain a network of loyalties constituted by the exchange of gifts and services, since earth priests legitimated by *baro* can offer their services anywhere, regardless of settlement history.

The seemingly straightforward first-comer principle is also breached by complex, multifaceted processes of migration and settlement, which on the one hand demand a flexible system for the appropriation of territorially anchored ritual powers, but which on the other hand do not permit a simple answer to the question of which clan was first where and when. Particularly in societies without a traditional political center that controlled the interpretation of historical accounts, we are confronted with many different versions of the settlement history. Furthermore, interpretations vary as to when a settlement may be regarded as truly permanent (Lentz 2000b; Kuba et al. 2001).

All this leads to a situation in which the legitimation of an earth priest is just as context-dependent and negotiable as the extent of his powers within any given community. Despite the plasticity of this office, it is no easy matter to unseat one earth priest and replace him with another, as the case of Gnimi shows. Not only did the Yeno earth priest for many years successfully perform communal sacrifices to the earth deity, it is considered extremely dangerous to take miscalculated actions when it comes to earth-cult related matters—this applies not only to the earth priest himself, but to everyone else as well. The death of one of the actors involved in the conflict (the contending Kpoa earth priest died in 2001) is naturally regarded as being connected with specific transgressions (cf. Jacob 2003). Thus amongst the most important arguments cited by the Yeno are the mere survival of their venerable earth priest and the

fact that the clan has been carrying out the duties of this office successfully for quite some time.

Legitimizing settlement histories, inherited ritual powers, the *de facto* exercise of the earth cult over an extended period of time—this variety of argumentative strategies available to a lineage in order to legitimize its performing the duties of the earth cult permits us to speak of institutional pluralism without state institutions actually being involved. However, this very much local ‘earth priest system’ is at the same time embedded in the larger political context. While it used to be that strangers were routinely integrated into local lineages and quickly assimilated, this strategy, which for the Phuo presented a very effective means of strengthening their own lineage, is slowly being taken out of their hands. As a tiny minority in a modern nation-state, the pressure on strangers in Phuo villages to assimilate can no longer be sustained, so that in almost all of these settlements strangers now constitute a majority that is becoming increasingly difficult to keep in check. Moreover, the instrumentalization of strangers in internal rivalries is becoming more important and is to some extent even used as a strategy to challenge existing hierarchies.

In the case of Gnimi, what counts against the Yeno earth priest is that when it came to the settlement of Mossi farmers he did not act as many would have expected of an earth priest. It is likely that the critical discourse about the alleged ‘corrupt’ practice of the earth priest is an attempt to counter the imminent loss of control brought on by the settlement of large numbers of non-Phuo strangers and commercialization of the land (i.e. the ceding of fields against ‘presents’). However, this criticism would not have led to such dramatic consequences as half the village boycotting his *thepala* had he not tried to abuse his most important duty, the performance of ritual services on behalf of the members of the local community, by using it as a means to exert political pressure. The case of the Phuo can raise awareness about the role earth priests can play even today and that the performance of communal sacrifices and ritual services are highly political acts, which have considerable effect on the local balance of power and on the access to resources in a local community. It is this spiritual dimension of the negotiation of hierarchies that is often given insufficient attention.

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WHO OWNS BOLGATANGA?¹

A STORY OF INCONCLUSIVE ENCOUNTERS

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Introduction

Property rights in Bolgatanga and Northern Ghana² have changed dramatically during the past three decades. In 1927, the Land and Native Rights Ordinance (cap. 143) had declared all lands in the Northern Territories, whether occupied or unoccupied, to be native lands and placed them under the control of the Governor, a legal situation that basically continued after independence. When the 1979 constitution divested the state of its trusteeship over most lands in the Northern and Upper Regions, the question of to whom these lands were to be given became acute. The new legal situation provided an opportunity for reassessing the past, resettling old accounts, reasserting belonging, in terms of prerogatives and jurisdictions, and renegotiating ownership to land. Chiefs and earth priests (*tindambas*³) intensified their competition over the control of the land.

This chapter deals with the history of land ownership in Bolgatanga as a story of competing claims to customary authority and clashes between public and private interests in land. The chapter starts with

¹ This chapter is based on fieldwork carried out in Bolgatanga from October to November 2001, and March as well as October to November 2002. This work could not have been possible without the people in Bolgatanga who helped me collect the data and patiently tried to explain the predicaments involving land in the town. Administrators, civil servants, politicians, customary authorities, lawyers and citizens all provided valuable assistance. In particular the Regional Director of Lands Commission UER, Mr. Bakari Nyari was helpful in numerous ways. Three persons deserve special mention; Philip Ayamba, Joseph Ayembilla, and Moses Aduko who guided me through my first encounters with Bolgatanga.

² Northern Ghana (or the Northern Region) was essentially the former Protectorate of the Northern Territories of the Gold Coast. In 1960, the Upper Region was carved out of the Northern Region, with Bolgatanga as its capital; in 1983 the Upper Region was subdivided into the Upper West and Upper East Regions, with the regional capitals of Wa and Bolgatanga respectively.

³ *Tindana*, sing., *tindambas* pl. in Frafra.

a brief glimpse into a report of the Lands Commissioner, from 1948, which illustrates the evolutionary perspective on customary land tenure promoted by both anthropologists and administrators during the colonial period. It also shows the difficulties which the Commissioner (and other observers) encountered in assigning traditional land ownership, to the earth priests or to the chiefs. I shall then discuss some of the relevant legal stipulations and administrative practices concerning land that have prevailed since independence. The legal controversies that developed since the 1980s, which I will subsequently analyze, demonstrate that the evolutionary sequence of customary tenure—shifting the control over from earth priests to chiefs—is not as inevitable as suggested. Rather, contemporary conflicts show that we are dealing with negotiations whose outcome depends on the political context and the organization or interests of the contestants. Moreover, the cases suggest that we are not only witnessing competition between different customary authorities, but also between the customary authorities and the actual land holders. The controversies illustrate how claims of belonging are used to justify property rights and, more generally, how stakeholders attempt to exploit the fluidity of property rights as well as fix them to their own advantage.

Land tenure in the Upper Regions

In most of Ghana, the customary offices are occupied by the chieftaincy institution—the *stool* in the South and the *skin* in the North. However, in what are now the Upper East and Upper West Regions, they also comprise the *tindana*, the custodian of the earth or the earth priest (Pogucki 1955: 8). The roles of chief and earth priest appear to be complementary, the chief constituting the political authority while the *tindana* fulfills more religious or spiritual functions. Indeed, prior to each season of cultivation, the *tindana* must propitiate the land and sacrifice to the gods, and it is also he who must appease the gods in the event of sacrileges committed against the earth (Kasanga 1996: 8). Generally, the *tindana* is a descendant of the first settler in an area and belongs to the senior segment of the first-comer lineage (Fortes 1940, 1945; Pogucki 1951, 1955). However, the homology and complementarity between the offices of the chief and the earth priest that Fortes emphasized (1940: 255) do not nec-

essarily prevail in spatial terms (Lentz 2003). In Bolgatanga, for instance, four different *tindambas* are responsible for the ritual initiation of the land before cultivation while only one chief, the Bolganaba, constitutes the political customary authority.

In Bolgatanga, as in other parts of Northern Ghana, chiefs and earth priests disagree over the question as to who holds the allodial rights to the land. The allodial title is regarded as the strongest customary title to land, subject only to limitations and obligations imposed by the general laws of the country (Rocha and Lodoh 1995: 3) and therefore also known as 'absolute' or 'ultimate' title (Woodman 1996: 56).⁴ Allodial title is essentially communal, and was established through discovery or first settlement as well as conquest and subsequent settlement, as Woodman (1996) and Rocha and Lodoh (1995) argue. While this is obviously no longer an option in modern Ghana, Pogucki (1955) believed that historically, allodial ownership of Northern Ghanaian lands was vested in kin groups or clans (and hence under the control of the *tindana*), but in many cases later taken over by conquering groups, resulting in what Pogucki termed the 'tribalization' of land ownership, a process which was furthered by British policies of indirect rule:

It is . . . interesting to note that in all these areas the tribal basis, if one may speak of it as such, is being stressed by members of the ruling groups, whereas representatives of the subject groups usually . . . express the opinion, that land from the point of view of allodial ownership is still vested in the kinship groups. In all such instances where this process of tribalisation proceeds, the usually expressed opinion is, that allodial rights to land are vested in the paramount chief as a representative of all his people . . . [T]hese purported tribal rights, claimed by members of the ruling tribe, exist in a large number of places simultaneously with the rights claimed by kinship groups of the first settlers of the subject tribe. They do not operate, however, concurrently, but rather side by side. Usually the form of operation of these rights consists of a stranger approaching the chief for permission to use land for farming. But simultaneously the same stranger, perhaps in order to be on the safe side, would approach the Tindana in order to obtain his approval as a representative of the originally land

⁴ In Osborn's *Concise Law Dictionary*, allodium is described as lands 'not held of any superior, in which, therefore, the owner had an absolute title and not a mere estate' (1964: 23).

owning kinship. The extent of the exercise of allodial rights depends upon the strength of the community of the subject tribe in a particular locality. (1955: 19–21)

While Pogucki seemed to be in doubt about the validity or justice of chiefly claims to land, he recognized that allodial rights were in fact successfully vindicated by paramount chiefs, even in areas of the Upper Regions where *tindambas* existed and still exist.

This ambiguity of the allodial rights was already observed by the Commissioner of Lands who toured the Northern Territories in 1948 and, on the basis of his observations on the ground, recommended certain amendments to the legislation of 1927. Some of his remarks are similar to Pogucki's later findings:

Throughout the Protectorate the control of land is in the hands of one or other of the land priests known as Tindana . . . These priests are in absolute control of the land under their jurisdiction both as regards tenure and the practical rules of agriculture, and can eject an occupier who is unsuitable or who farms in an unhusbandlike manner. I would here mention that the Tindanas are usually unwilling to enter into any negotiations with Government. They appear to keep in the background but have a strong influence and are strong minded obstinate men. (Northern Regional Archives Ghana, 8/1/57 *Land Tenure in the Protectorate and its Development under the Land and Native Rights Ordinance*, 1948: § 4–5)

However, the Commissioner was not convinced of the immutability of this situation and foresaw that the native authorities, i.e. the chiefs, would one day control the land:

Such incidental matters as for instance the embrace of Christianity are also sapping the old powers of the Tindanas . . . Government and economic and social pressure are both tending to raise the Native Authority to a point of influence in land matters, which at least for practical purposes, will in the normal course cause the Native Authority to be regarded as the land owners, or at least as being in control of the land, and much of the mysticism attached to the existing tenure to be forgotten. . . . [I]n some areas African applicants for land make their applications to the Chief who himself makes the necessary arrangements with the Tindana, while whenever Government acquires compulsorily a piece of land for public purposes arrangements are made with a Chief and his Council who themselves consult the Tindana. . . . [I]t will be accepted, I think, that continual pressure will tend to create the general impression and later acceptance of the fact that all land will be under the control of the Native Authority' (ibid.: § 15–17)

These observations bore witness to long-standing frictions between *tindambas* and chiefs, and to their overlapping jurisdictions. They also showed that in the daily administrative practice, the colonial personnel in fact recognized customary land rights and, though with some trepidation, actively involved customary authorities in land matters, although this was clearly at variance with the Land and Native Rights Ordinance that boldly declared all lands, whether occupied or unoccupied, to be native lands under the control of the Governor.

The Commissioner's and Pogucki's findings, and particularly their hypothesis of the irreversible erosion of the earth priests' power to the benefit of the power of the chiefs, is typical of much of the older literature on land tenure in Northern Ghana. It may well also reflect the opinion of many stakeholders, since such 'authoritative texts' often fed back into the society. However, as recent research on colonial ethnography has shown, the image of an original 'egalitarian, spiritually legitimated, democratic, decentralized society', under the authority of the earth priests, that inevitably evolves into a hierarchical centralized polity based on chiefs, was challenged already during the colonial period, when some of the British administrators forwarded alternative images of the pre-colonial past (Lentz 1999: 166). The earth priests themselves, as we shall see, were (and are) not always willing to be marginalized, nor do they necessarily represent egalitarian and inclusive principles of land rights.

Legislation and politics

When Ghana became an independent republic, the State Property and Contract Act of 1960 confirmed that the land in the previous Northern Territories, now Northern Region, was vested in the government. Two significant acts were passed in 1962, the Administration of Lands Act (123) and the State Lands Act (125). The first confirmed and extended the state's power to acquire stool and skin lands, and it is on the basis of this Act that the control and management of all lands in the Northern and Upper Region were vested in the state in 1963.⁵ The second made a subtle distinction between land vested

⁵ Stool Lands (Upper Region) Instrument 1963 (EI 87) and Stool Lands (Northern Region) Instrument (EI 109). The executive instruments provided that in the event of any acquisition of land by the state, the state did not have to pay compensa-

in the state and land owned by it, and stipulated that land could be vested in the state 'free from any encumbrance whatsoever' only through the publication of a specific law or executive instrument. By contrast, land merely vested in the state, under Act 123, was still 'owned' by the former allodial titleholder.⁶ When in the 1960s the capital of the new Upper Region was set up in Bolgatanga, government facilities were needed urgently. Because most such projects were executed under crash programs, the legal formalities of a proper acquisition of the construction sites by the state were rarely completed. And as land was already managed by the state, in accordance with Act 123, government institutions assumed that there would be no problems with their occupancy even when no appropriate Executive Instruments were published. Subsequent developments were to prove the opposite.

In the 1970s, the Northern elite actively campaigned for the divestiture of the land, and a committee was set up to study the various land tenure systems in the region and determine the traditional landowners.⁷ When a new national constitution was drafted in 1979, the committee's findings were taken into consideration, and the lands of the Northern and Upper Regions were indeed divested from the state, but without any further specification, except that these were now vested 'in any [...] person who was the owner of any such land before any such vesting or [vested] in the appropriate skin without further assurance than this clause' (Article 18 (3)) (here from Kasanga 1992: 25). The divestiture did not affect land that had been properly acquired by the state, but it did embrace all plots that had been developed by the government without any formal acquisition. Such cases were indeed numerous, comprising ministerial buildings, police stations, schools, government owned companies, government staff bungalows, power transmission lines etc.⁸

tion for the land itself but only for 'unexhausted improvements and economic trees and other works on the land'.

⁶ Thus Woodman's (1996: 58) dictum that the 1963 compulsory acquisition of land in the Upper and Northern Regions by the state extinguished all allodial titles needs to be qualified: although the rights that such titles bestowed were certainly dramatically curtailed, they were completely extinguished only when land was acquired as state land—i.e. state *property* (i.e.)—through Act 125.

⁷ The Committee was headed by Lawyer Roland Issifu Alhassan.

⁸ The Upper East Region Lands Commission has listed some forty plots of varying size, mainly located in Bolga, which are proposed acquisitions by the state in

As significant a milestone the constitutional clauses were, they are also significant in what they omitted, namely any clarification of who the owners of the land were or who was authorized to engage in legal transactions concerning land. The 1992 Constitution (Article 257) only confirmed the general thrust of the 1979 constitution, again without further specifications of the owners of Northern lands, but now adding that the traditional authorities and the district assemblies were to receive some sort of income from land leases.⁹ Two interrelated issues were now on the agenda, namely who holds the allodial title and to whom accrues the land rent destined to the 'stool'? And, to what extent and how could people claim land back or receive compensation for land which should have been handed back to them, but upon which various government structures had been built.

The re-negotiation of land rights

The legal changes created new opportunities for various groups to renegotiate their status and entitlements. This renegotiation took place in a variety of different fora and by different means, ranging from court cases, political networking and lobbying, over conspicuous manifestations like large meetings to more subtle practices like the actual occupation and sale of land. The following cases may appear disparate, but taken together, they demonstrate that customary land ownership does not develop according to any predetermined evolutionary pattern, nor are we witnessing a mere pendular movement between chiefs and earth priests.

the Upper East Region, and an unknown number of plots have not even been proposed for acquisition. These lands are not properly acquired, but merely occupied by public institutions. The list was established around 2000 long after the occupation of the land by Government was a fact. Interview with the Regional Director of the Lands Commission, Upper East Region, Mr. Nyari, 14 November 2001.

⁹ According to Article 267 (6) of the 1992 Constitution, '[t]en per cent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions: (a) twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status; (b) twenty percent to the traditional authority; and (c) fifty-five percent to the District Assembly within the area of authority of which the stool lands are situated'.

Defamation of character

During the first years after the adoption of the 1979 constitution, the *tindambas* did not figure anywhere in the official administration of land. Hitherto, leases of land that had been issued contained the wording that the land was held in trust by the government for the Bolganaba, the paramount chief and skin of the Frafra area. The latter was also entitled to all land revenue destined to the 'traditional authority'.¹⁰ However, the number of leases endorsed and hence the income accruing from this function were limited. After 1979, when land was no longer held in trust by the state, it was not clear who could actually lease out land or endorse such leases—a situation that offered opportunities for the *tindambas* to reactivate old claims. Already in the early 1970s, two literate members of one of the *tindamba* clans—Asam Suo, a teacher, and Michael Atongo, a retired policeman working as Commissioner of Oaths and active in the district council—began to agitate for the *tindambas'* cause. In a series of letters and petitions to various authorities they pitted themselves against the Bolganaba. For example, they complained to the Regional Commissioner that the Bolganaba had usurped their authority not only in land, but also in religious matters:

The Bolganaba should refund back the land revenue collected and . . . refrain from making sacrifice to the gods of the land and proven . . . protectors of the lives of the people. We are the tindambas and landowners of the Bolgatanga canton and responsible for all land questions in Bolga town area. From . . . time immemorial all land questions and acquisition was directed to us, the tindambas, which fact cannot be denied by the Bolganaba as he or his ancestors own no land and knows [sic] nothing about our land questions. Grandfathers of the Bolganaba never interfered with our matters and customs, but the Bolganaba Martin A. Abilba III has been interfering with our land matters by collecting the land revenue and making sacrifices and pouring libation whenever the need arises which is against custom. Bolganaba should refund all monies collected as land revenue from 1954 up to date. (Bolgatanga Tindambas to Regional Commissioner, Upper Region, 11 August, 1978, in File FCD/8/SF.1; quoted in Konings 1986: 244)

¹⁰ The name Frafra is derived from the greeting of the Gruni people and has remained a common generic sobriquet for all people of the Bolgatanga area (Thomas 1983: 69). Frafra Traditional Council covers Bolgatanga district.

During the first years after Rawlings' second coup d'état in 1982, the political rhetoric was in favor of the 'downtrodden and exploited', and the political apparatus dominated by radicals (Nugent 1995). Emboldened by this atmosphere of revolution and reversals, Asam Suo began to sign and endorse leases to land—or rather, to assist the *tindambas* to do so. The unpredictability of the regime made the Bolganaba, and the chiefs in general, lie low. Thus, for some years both the *tindambas* and the Bolganaba signed and endorsed leases as if the land was their property. However, although the revolutionary period allowed the *tindambas* to voice their interests, the administration was hardly operating and never recognized their claims or effectively dismissed the claims of the chiefs. During the first years, 1982–83, the land administration was virtually suspended; until 1997 the National Lands Commission did not operate on a regional level, and the local communities were not granted any representation.¹¹ In this open-ended situation, both sides, the chiefs and the earth priests, attempted to institutionalize their claims of ownership.

In December 1987 the Bolganaba sent a petition on the 'Bolgatanga Tindanaship' to various political authorities such as the PNDC District Secretary, the police, the Regional Lands Officer, the Regional Town and Country Planning Officer, the Traditional Council, and to the Tindana of Dapooretindongo, one of the four earth-priestly sections of Bolgatanga, in which he accused the latter of being a fake. A few weeks later, a second petition, 'Bolgatanga Tindambaship Affairs; Petition for Recognition and Redress', was sent to the same addressees by Mr. Agyre Abanga.¹² Both petitions challenged the legitimacy of the Tindana of Dapooretindongo, arguing that that latter became *tindana* only by looting the 'Gods', i.e. the fetishes and 'jujus' connected with the earth-priestly office, from Mr. Agyre Abanga's house. Moreover, they claimed that the Tindana of Dapooretindongo had forged a petition of the *tindambas*. And finally, as the Bolganaba pointed out, whenever the *tindana* performed certain rites and poured

¹¹ Interview with Regional Director of Lands Commission Upper East Region, Mr. Bakari Nyari (13 March 2002).

¹² I was unable to locate copies of these two petitions in the court archives or with the persons to whom they were addressed in Bolgatanga. However, extensive references are made to them in two cases of defamation of character in the archives of the High Court of Bolgatanga: 1) *Tindana Adingo Ayure vs. Bolganaba Martin Adongo Abilba* (1988), and 2) *Tindana of Dapooretindongo vs. Mr. Agyere Abanga* (1989).

libation before official functions, as for example the Centenary Celebration of the Public Works Department, the 'Gods of the Bolgatanga skin' rejected 'his sacrifices and libations'. Indeed, this had become a 'cause of concern and embarrassment to the Bolganaba, the elders and the people of the Frafra traditional area'.¹³ In short, the petitions described the *tindana* as an impostor who had usurped the office of the earth priest, an accusation allegedly corroborated by the supernatural refusal of the earth priest's performance of rites.

These petitions prompted the *tindana* to file suit against the Bolganaba and Mr. Abanga, claiming compensation for defamation of character. The *tindana* argued that ever since he took office, he had been recognized and held in high esteem by the Regional Council, the Frafra Traditional Council Office, the police, the other *tindambas*, and not least the Department of Lands. He also emphasized his 'important role in the processing and grant of leases of lands by the Lands Commission in the Bolga area'. Moreover, he mocked the Bolganaba for his ignorance of earth-priestly matters, asserting that the *tindana* 'sacrifices to the "Gods" of Bolgatanga lands, "Gods" unknown to the defendant [the Bolganaba] and does not sacrifice and pour libation to the "Gods" of Bolgatanga skin which plaintiff [the *tindana*] has nothing to do with'. In addition, he asserted that the making and unmaking of earth priests in the Frafra Traditional Area was not the chief's business.¹⁴

The *tindana*'s law suit against the Bolganaba and Mr. Abanga were met, in turn, with counterclaims in which, for instance, Mr. Abanga insisted that *he*, and not the *tindana* 'played and plays an important role in the processing and grant of leases of lands by the Lands Commission in the Bolga area', and that he was 'held in high esteem by the Lands Department'.¹⁵ Mr. Abanga also alluded to the involvement of the Bolganaba in the selection of the *Tindana* of Dapoo-retindongo. Normally, when a *tindana* dies, the successor is selected by a diviner who is not from the area and who chooses one from various stones which represent the family's candidates. On the occasion of the election of a new *tindana* in Dapooretindongo in 1976,

¹³ High Court of Bolgatanga: *Tindana Adingo Ayure vs. Bolganaba Martin Adongo Abilba* (1988).

¹⁴ Statement of claim, 12 April, 1988.

¹⁵ Statement of defense, 10 June 1988.

the Bolganaba had supported, albeit unsuccessfully, Mr. Abanga whom he expected to be less hostile to the chief than the above mentioned Michael Atongo and Asam Suo. According to Adingo Ayure's followers, the Bolganaba and Mr. Abanga attempted to sabotage the divination procedure, for which they considered the latter's accession to office invalid.¹⁶

Both cases, the Tindana's claims as well as the Bolganaba's counterclaims, were not concluded, but adjourned for more than a decade. Mr. Adingo Ayure continued to be the *tindana* of the area, and when the first district assemblies were inaugurated in 1989, Asam Suo was elected assemblyman. Whether this played a role or not, is not clear, but from that time onwards, the Lands Commission in Accra no longer processed leases in the name of the Bolganaba but in the name of the land holder leasing out his land. However, the royalties accruing to allodial title holders, according to the 1992 constitution, went to the Bolganaba as the representative of the skin and in conformity with what was the practice in the South of the country.

Petitions, letters and lawsuits are a public commemoration of political claims which are never easily relinquished (Moore 1992: 29, Rose 1994). The Bolganaba recently bolstered his claim to allodial title by referring to the chiefs' conquest of the Frafra area, and it cannot to be ruled out that his claim may one day prevail.¹⁷ Similarly, the *tindana*'s case for damages for defamation of character and his indirect claim to allodial title may, under the appropriate circumstances, be one day successful. As Moore observes, '[i]t is a question whether what happens in the court is to be defined in terms of the ebb and flow of local micro-politics or in terms of a central government standard, a rule oriented, delegating judicial/bureaucratic model' (Moore 1992: 32). In our case, the 1979 constitution created not a standard procedure, but rather an open moment in which competing claims to allodial title could be asserted. The ebb and flow of micro-politics were ambiguous, and neither the Bolganaba

¹⁶ Interview with family members of the Tindana of Dapooretindongo. Among the people present were the teacher Francis Amiyinne; Robert Abiro, the Assemblyman of Dapooretindongo; Asofo Akumamme, a brother of Adingo Ayure; and Agyre Abanga, a son of Agyre Abanga (14 March 2002).

¹⁷ Bolganaba, Petition Against the Role of the Tindana in the Bolgatanga Land Tenure System, 3 November 2000.

nor the *tindanas* were able to impose their interests definitely. The latter's position as allodial titleholders, however, was to be consolidated by a number of quite different cases.

*SSNIT Affordables, Ghana Water and Sewerage
and the organization of interests*

The Social Security and National Insurance Trust (SSNIT) makes a variety of investments to ensure its solvency, some of which are in real estate; and in 1989 the Bolgatanga branch of SSNIT applied to the then Bolgatanga District Council for land along the Tamale road. A site plan was drawn up which effectively earmarked the land that was to be acquired by SSNIT to the exclusion of any other person.¹⁸ However, SSNIT never acquired the land properly; it never paid compensation but simply began to erect affordable houses on the premises.

During the first few years, nothing much happened. The military regime did not exactly encourage people to take on the established institutions such as the SSNIT, in particular since the appropriation of the land had followed the long established pattern of incomplete acquisitions by government. By 1995, however, three years into the latest democratic phase and sixteen years after the constitutional divestiture of the land, the Tindana of Tindansobliogo and Anaho Azane, the head of the family whose land was primarily concerned, engaged a lawyer and filed a case for compensation against SSNIT. Though protracted, the case was eventually closed in 1999 and decided in favor of the plaintiffs, who received 228 million *cedis* in compensation. This amount was divided proportionally between land holders in Tindansobliogo and neighboring Kalbeo, who had both been affected by the establishment of SSNIT Affordables.

Around the same time, a similar case was conducted against Ghana Water and Sewerage by the Tindana of Tindanmoligo. As structural adjustment policies promoted the privatization of public sector enterprises, Ghana Water and Sewerage (GWS) was sold off in the late 1990s. One of the immediate consequences was that GWS discharged

¹⁸ High Court of Bolgatanga, Tindana of Tindansobliogo and Anaho Azane vs. SSNIT, 1/2/99.

a good part of its employees. Like in other privatizing state enterprises, discharged staff was to receive severance pay (Appiah-Kubi 2001), which, in the case of Bolgatanga, was given in the form of land, by simply parcelling out plots of the GWS grounds that were not taken up by GWS installations. It was only when construction of residential houses began that the local population reacted. The families of Tindanmoligo and Kalbeo, whose lands GWS was using, were for the most part still living on the land, but had, of course, abandoned farming where GWS structures had been erected.¹⁹ These sixty families and the Tindanmoglo Tindana now engaged a lawyer²⁰ and filed suit against GWS. Basically they claimed they were due an annual rent for the land beginning in 1980 (the year after the adoption of the 1979 constitution) and compensation for the land occupied by GWS structures. They filed for compensation because GWS had never properly acquired the land, and because both the 1979 and the 1992 constitutions stipulated that the allodial title holders' control over the land was to be restored. It took the court only a year to decide in favor of the plaintiffs who were awarded compensation in the amount of 227 million cedis for the entire area.

These two cases were followed with keen interest by many, because they were the first to deal with the issue of compensation and because the court, in accepting the claims, recognized the *tindana* as the allodial titleholder.²¹ As a result, the Lands Commission decided that the income from the ground tax destined to the allodial title holders should henceforth go to the local *tindambas* who signed the lease

¹⁹ It is worth noting that when the government acquired land for various development it generally took much more than was immediately required (see Kasanga and Kotey 2001: 24). This precautionary measure was obviously wise, but it also lead to huge areas not being developed. In many instances, government institutions tolerated that local inhabitants continued to occupy and cultivate land that was not immediately needed. This created grounds for expectations to continue using the land.

²⁰ The very same who had been the *tindana's* lawyer in the two cases of defamation of character.

²¹ Interestingly, the local population was obviously not fully aware of the consequences of their victory in court. Receiving the compensation for the entire area meant that it now belonged to GWS and that they had to vacate it. They went from *tolerated locals*, over *land owners* to *squatters* in one swift move, so to say. When they realised this, the affected families and the *tindana* refused to accept the compensation, which to this date is sitting in the safe of the High Court of Bolgatanga. GWS and the people still both occupy and use the GWS grounds.

and no longer to the Bolganaba.²² Not inclined to acquiesce, the latter mounted a campaign with petitions, deploring the management of land royalties and pointing out that older documents stated that the land was held by the state in trust for the skin and not the *tindana*. Since the 1992 constitution explicitly recognized the chiefs with their traditional councils and not the *tindambas*, the latter enjoyed no official status.²³

Obviously, the Bolganaba would not let the allodial title slip away that easily after having enjoyed it for so long. For their part, the *tindambas* were not about to take this lying down either, but formed, in 1997, the Association of Tindambas of Bolgatanga and held a big gathering in town at which earth priests from many places of the Upper Regions were present. The Bolganaba, as was to be expected, did not attend. The association also asked the director of the Regional Lands Commission to attend the inaugural meeting and thereby imbue the event with official recognition, but the invitation was declined. Nonetheless, at the inauguration of the Regional Lands Commission in 2000, the chairman of the Tindambas' Association was allowed to present a speech, addressed to the Minister of Lands and Forestry, the members of the Lands Commission and their 'distinguished entourage' which neatly summarized the aspirations of the association:

We . . . wish to place on record that other traditional rulers and state agencies have exploited us for a long time and strongly warn that such exploiters no longer have a chance left. . . . Some traditional rulers with their positions and links with certain government agencies sideline, ignore, undermine and exploit us. . . . People cannot just pretend that we do not exist. . . . To arrest the above-mentioned problems, we humbly wish to appeal to the Minister to initiate appropriate legislation to include the Tindaamas in the Regional Lands Commission. . . . We further re-iterate that appropriate legislation be enacted quickly enough

²² The Bolganaba would continue to receive income from the ground tax for the leases issued in his name up to that date. A letter from the Lands Commission Secretariat in 1996 to one of the *tindambas* in Bolgatanga demonstrates the uneasy position held before the court's decision on the GWS case: 'The department has no legal or customary right to determine ownership right over land under dispute, you are therefore advised to re-direct your petition to the Upper East Regional House of Chiefs to ascertain the rightful allodial title holder of the subject land' (Reference 9507, 3 June, 1996).

²³ Petition Against the Role of the Tindana in the Bolgatanga Land Tenure System, 3 November 2000.

to allow Tindaamas to be part of the Traditional Council. Also it is our wish and desire that planning committees for festivals and commemorative days such as NAFAC, Independence days etc. always exclude us [*sic!* this should, no doubt, read *include us*].²⁴

The desire for recognition is obvious from this speech, and was confirmed in my interviews with the members of the association. In fact, the official recognition of the *tindambas* is a priority of the association's activities. In addition to official addresses and formal claims of recognition, the association also let it be known that, as a response to the Bolganaba's recent petition which was directed against their aspirations, the *tindambas* would not perform the customary funeral rites for the chiefly house—a serious humiliation. Finally, the association began to be more vigilant with respect to leases of land issued by subordinate chiefs and other persons, notifying the District Assembly of cases in which the chiefs still attempted to control land (and probably got away with it from time to time).

The cases of the Tindana of Tindansobliogo *versus* SSNIT and the Tindana of Tindanmoligo *versus* GWS changed the balance of power in favor of the earth priests. For the *tindambas* and their supporters, securing the allodial title meant that the office of the Bolganaba no longer covered land issues as before. He was considered a 'stranger', created and implanted by the British, and not a genuine authority in land matters. However, while the Lands Commission's disbursement of land revenue to the *tindambas* consolidated their position, it would be premature to write off the chieftaincy and naïve to consider the current situation in any way as finally settled.

Tindanas versus land holders

Paradoxically, taking the Bolganaba out of the property equation did not make the question of ownership much clearer. The hopes of those who thought that land rights were now finally settled, were dashed when new disputes developed, this time between the *tindambas* and local land users. In 2001 the Bolgatanga District Assembly came up with plans to relocate the charcoal sellers from the center of town

²⁴ Speech by the Chairman of the Tindaama's Association of the Occasion of the Inauguration of the Regional Lands Commission, 12 April 2000.

to an area laid out as 'Light Industrial Zone', along the Tamale road, and these plans set in motion a series of negotiations.

The area in question is known as Kalbeo—bordering on, or part of, Tindansobliogo. In fact, that is one of the contentious issues. It is commonly held that the ancestors of the people of Kalbeo were settled there over one hundred years ago by the Tindana of Tindansobliogo who has since then been responsible for all land-related sacrifices and the shrines in Kalbeo. When the District Assembly identified the area of Kalbeo which it wanted to develop, it asked the Assemblyman from Kalbeo to contact the local chief, the land owners and the Tindana of Tindansobliogo. However, when the assemblyman from neighboring Winkongo got wind of the District Assembly's plans, he informed the District Chief Executive (DCE) that the ownership of the lands in question was disputed. In 1998, there were even violent confrontations between the people of Winkongo and the people of Kalbeo over the access to a quarry from which sand and gravel were extracted. The police had issued an injunction against the people of Kalbeo, but, according to the Assemblyman from Winkongo, politically influential people managed to have the case transferred to the High Court where the injunction was overturned. The case was then taken to the Court of Appeal where it was still pending. With this information, the DCE called a meeting, in January 2002, to ascertain the ownership of the land of the future industrial zone. The Kalbeo Assemblyman and the Tindana from Tindansobliogo assured the DCE that the land was not within the bounds of Winkongo. On the contrary, the inhabitants of the area had been settled there by people from Kalbeo—a distinct proof of the fact that they controlled the land. Even families from Tindansobliogo who had wanted land in Kalbeo had been obliged to ask for it in Kalbeo. The people of Kalbeo had indeed requested the Town and Country Planning Department to draw up a site plan, and over the years, individual landholders in Kalbeo had leased out plots to a number of small entrepreneurs. As one of my informants explained, 'land along the Tamale road is selling like hot cake'. The Tindana of Tindansobliogo had endorsed these leases and received 100,000 Cedis from both the lessor and lessee for his services. The transaction itself, however, was not between the Tindana and the lessee, but between the plot holder from Kalbeo and the lessee. The fact that the Tindana had endorsed the leases implied that he had recognized the plot holder's right to lease out his land rights in

exchange for money. To underscore their harmonious relationship with the Tindana of Tindansobliogo, the representatives of Kalbeo also pointed out that the SSNIT compensation had been shared between the two communities in proportion to the land affected by the SSNIT project, giving the people of Kalbeo 31% of the total of 228 million Cedis. The DCE was satisfied, and scheduled a further meeting to actually mark out the plots for the charcoal sellers.

During this meeting it transpired that the District Assembly wanted forty plots of 100 square yards each. Normally, in this area plots of this size would fetch 3 million Cedis, but this price was far beyond the means of the municipality. The DCE offered a sum of 500,000 Cedis per plot, arguing that this was a fair price if one considered all the side benefits, in terms of jobs and other economic activities, that the local population was going to enjoy. Since the offer was not immediately accepted, another meeting at the Assembly Hall was scheduled. Meanwhile, the people of Kalbeo decided to accept the offer, provided that the owners received a written promise from the DCE stating the price of the plots. However, during the subsequent meeting, the DCE withdrew his former offer and argued that people should give up their plots for free, considering the general development of the town.

Subsequently, another community meeting was organized in Kalbeo, this time with the participation of the Tindana of Tindansobliogo and members of Tindansobliogo Youth, the community association of Tindansobliogo. While the plot holders of Kabeo were adamant not to relinquish their land without compensation, the Tindana began to argue that people should give it up. The District Assembly, he argued, would compensate in kind, namely through the construction of a community centre. However, this center would be located in Tindansobliogo, and the people of Kalbeo accused the Tindana and the Tindansobliogo Youth of conducting parallel negotiations with the District Assembly and selling out Kalbeo interests for their own benefit. The arguments soon became very heated. The Tindana and the Tindansobliogo Youth denied having negotiated with the DCE, and argued instead that it was the Tindana, not the people from Kalbeo, who was the legitimate owner of the disputed plots. The present Tindana, who only recently took office, had been properly selected by divination, they explained, while his predecessor, who had allowed the people from Kalbeo to lease out land, had only been acting as deputy following his father's death, until a substantial

tindana could be installed. Against all custom, this 'interim-tindana' had sold out Tindansobliogo interests in Kalbeo, by allowing the people of Kalbeo to lease out the land, and the new Tindana now declared that from this moment would retract all such previous transactions made by the people in Kalbeo.

During the following days, a series of smaller confrontations between Tindansobliogo Youth and young people from Kalbeo occurred. The latter claimed that members of the Tindansobliogo Youth were erecting road blocks and preventing them from reaching Bolgatanga; the Tindansobliogo Youth, on the other hand, claimed that they only took the people of Kalbeo to task because of the latter's lack of respect for tradition and 'for only wanting to chop'.²⁵ A week later, a delegation of elders from Kalbeo paid a visit to the Tindana of Tindansobliogo in order to iron out the differences and have the Tindana recall his threat to confiscate the land. However, this was to no avail. The delegation was met by a crowd from the four founding communities of Bolgatanga, namely Tindansobliogo, Tindanmolgo, Dapooretindongo and Soe, who insisted that they owned the land and could retract it, if the people of Kalbeo attempted to transfer it to others in order to make undue profit out of what had initially been given to them only as a usufructuary right. The following day, the Tindana of Tindansobliogo announced on local radio that all leases to land in Kalbeo were illegal and invalid, and that the lease holders should report to him in order to have the leases rectified, stating that the land was leased by him, the Tindana, and not some 'settler'.

The question was now whether the Tindana of Tindansobliogo, supported by the Tindansobliogo Youth and the Tindanas' Association, would be able to assert his status as land owner in Kalbeo with the liberty to expel truculent tenants and grant land to the District Assembly? Or would the interests of the inhabitants of Kalbeo prevail, as their rights to settle other people on the land and to lease it to small entrepreneurs had been confirmed by a former Tindana of Tindansobliogo and by virtue of the SSNIT compensation paid to them? There was consensus that the Tindana of Tindansobliogo did in fact perform all land-related rituals in Kalbeo, but there was

²⁵ Interviews with youth of Kalbeo, 14 November 2002, and interviews with Tindansobliogo Youth leadership, 15 November 2002.

disagreement on the tenurial implications. Similarly, there was agreement that the people of Kalbeo could use the land as long as they wished and that this could even be bequeathed within the family. However, no consensus was reached whether they also had the right to lease out the land. In October 2002, the DCE set up a three-member committee to unravel the affair,²⁶ but the committee's work has not yet been concluded.

Conclusion

That customary tenure is not immutable comes as no surprise to students of Ghanaian and African land tenure (Berry 2001, Chanock 1985; Comaroff and Roberts 1981; Dunn and Robertson 1973; Juul and Lund 2002; Lentz 1998, 1999, 2003; Moore 1986). The history of property claims in the Upper East of Ghana illustrates this clearly. Questions of property and the authority to determine it have been negotiated in words, law and action in the Bolgatanga area, as in Ghana in general. Chiefs and *tindambas* have, on the one hand, schemed, acted and debated to vindicate their claims to allodial title and the ensuing benefits. The state, on the other hand, has reduced or denied these rights at various points in time, at least on paper. In practice, however, governments were often forced to let customary authorities exercise some authority. In addition, government policies have been far from consistent, and different agencies have pursued very different philosophies. When the state divested itself from the Northern lands in 1979 and—out of ignorance, negligence or design—left it to be fought out as to who the allodial titleholders were, a long-standing dispute was reanimated. The potential compensations at stake were—and continue to be—considerable, as government institutions became squatters at the stroke of a pen, and planning was upset as people aspired to reclaim past entitlements.

²⁶ The committee was asked to 1) determine whether land in the disputed area had been designed (earmarked?) for any purpose, 2) find out if leases had been granted by the Lands Commission; 3) to identify who granted and signed such leases; 4) to determine the actual owner of the land [sic!]. Inaugural address delivered by the District Chief Executive in the Land Dispute between the People of Kalbeo and Tindansobliogo in the Conference Hall of the Assembly on 8 October 2002.

The conflicts over land between the colonial government and the population, between the chiefs and *tindambas*, and between customary authorities and land users illustrate the ambiguity of land rights and the concurrent difficulties of terminology. On the one hand, land rights are manifold, nested within each other, and often enjoyed by different actors. The rights to cultivate, transfer, tax, settle strangers, etc. are not necessarily vested in the same person. On the other hand, however, as opportunities arise, the various actors, be they government, chiefs, *tindambas* or land users, tend to claim rights wholesale—a strategic simplification of the tenure system. The divestiture of land to the original owners spurred on a contest between chiefs and *tindambas* over the allodial title, not least because this ‘ownership’ now included rights to land rent and to receive compensations and therefore became economically interesting. Furthermore, and partly as a result of the *tindambas*’ success in court and the compensation paid to the land holders in Kalbeo, the rise in the value of urban land propelled the competition between different *tindambas* (and their respective communities) over the right to sell land and reap the profits from development.

In all the cases discussed here, belonging plays a central role. In the competition between chiefs and *tindambas*, the respective prerogatives were called into question by challenging the legitimacy of the opponent’s investiture into office. The setback of the Bolganaba even provoked the reopening of an older case against his enskinment, by the family of the candidate to chiefly office with whom he had competed in 1972.²⁷ The case is still pending, but the loss of the allodial title may eventually further undermine the current holder’s title in general as well as the legitimacy of his claim to office. In the case of the population of Kalbeo *versus* the Tindana of Tindansobliogo, the qualification of ownership obviously also goes through first arrival, belonging and the capacity to settle strangers. However, politics and legal circumstance make the criteria seem malleable.

Viewed in isolation, the competition between chiefs and *tindambas* may appear to be a movement, back and forth, between alternative claimants of customary authority. However, the stakes and the circumstances have changed, and keep changing. As a consequence,

²⁷ Proceedings in the Matter of Appeal, *Asingbe Agana, Adongo Awogeya and twenty others vs. Martin Adongo Abilba*. 1/AJ/80; National House of Chiefs, Kumasi.

entitlements have been lost and gained with political winds and a lot of political elbow grease. The various instances described above show that claims are not extinct just because rights are. And when political opportunity arises, rights will be asserted anew. It would seem that as long as political circumstances, administrative procedures or economic opportunities are likely to change, new hands will be dealt, and few will be able to say who owns Bolgatanga with any degree of certainty. What seems to be of a more enduring character is *how* Bolga is owned. No single domain is in itself decisive, but those who master successful ownership have juggled legal, economic and political strategies, and have timed them to take advantage of opportunities presented by national legislation and political circumstance, and have been known to persevere. At least for some time.

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MONEY, RITUAL AND THE POLITICS OF BELONGING IN LAND TRANSACTIONS IN WESTERN BURKINA FASO

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This chapter explores how land transactions are practiced at the interface of economy, cosmology and identity politics in Western Burkina Faso. According to local cosmologies in most Burkinabè rural societies, it is unthinkable to sell land. Land cannot be divided, and to sell off ancestral lands is a 'violation of ritual'. In daily practice, however, one can observe that in many localities land transactions are increasingly based on money and that a certain market for rural land emerges. Earth priests and other key actors give away land to resourceful persons in exchange for various kinds of 'gifts', in money or kind. Yet land is not sold on an 'open' market, because 'clients' have to establish and maintain good relations with these key actors. In addition, parallel to the increasing 'commodification' of rural land there is a growing awareness among first-comers (or 'autochthones') that land should be kept within the group. A moral discourse aims to prevent poor family members from selling off ancestral lands to solve immediate financial needs, holding that sooner or later there will simply not be enough land for the children and grandchildren. The interests of the first-comers, so the argument goes, must be protected and have priority over those of late-comers. This moral discourse of 'autochthony' thus introduces a socio-political barrier to land sales. Intellectuals, such as civil servants and politicians, often play a significant role in formulating this discourse of 'autochthony'. However, earth priests and local elders also subscribe to it because they regard the earth as a divinity and fear that the violation of rituals may endanger not merely the individual's well-being but community life in general. Land transactions, then, entail fundamental conflicts of interest with respect to economic investment, identity politics, state administration, and ritual knowledge and power.

This chapter explores the struggles over land rights within a fam-

ily of 'autochthones' in Western Burkina Faso.¹ While recent studies have looked at land conflicts in the context of power relations between autochthones and allochthones (e.g. Chauveau 2003; Faure 1996; Hagberg 1998, 2001; Lentz 2001, 2003a, 2003b; Laurent et al. 1994), less attention has been paid to internal struggles among autochthones. The following case study concerns a man, Bwa, who acts as earth priest in a rural town of Western Burkina Faso and who has been giving away land to 'strangers' in exchange for significant sums of money. While members of his family felt that this 'violated the rituals', Bwa relied on his position as a broker who mediates between resourceful outsiders' need for land and the control over land that tradition has conferred to him. However, in recent years Bwa's authority has been challenged. Firstly, he is criticized for selling off farmland that should be reserved for future generations. Secondly, he is accused of not putting to good use the money he has received for the land. And thirdly, family members challenge his legitimacy as earth priest. They insist that the legitimate office holder is actually Moussa, an elder 'brother' of Bwa, but one who—unlike Bwa—is a fervent Muslim and therefore cannot involve himself in the rituals an earth priest is expected to perform.

In this chapter I will first discuss how to study land transactions in a context of competing normative orders, and argue for the need to explore the linkages between political, economic and cultural dimensions of such transactions. I will then present the dispute between Bwa and Moussa, concentrating on some instances of the dispute that occurred in 2001–2002. Subsequently, I shall explore the political, economic and cultural contexts in which the dispute between Bwa and Moussa needs to be understood and look at different moral discourses with respect to current land transactions.

Conceptualizing land transactions

Land and control over land matter both as a material basis for a decent life and for a sense of belonging, or, as Parker Shipton puts

¹ This chapter is based on fieldwork conducted in Western Burkina since 1988, for a total of more than five years. The material for the case study was collected in shorter fieldwork periods in 2001–2002. Several people have commented on earlier drafts. I am particularly grateful to Sara Berry, Philip Burnham, Richard Fardon, Richard Kuba, Murray Last, Carola Lentz and Christian Lund.

it, land 'can mean soil and sand, a piece of a map, a political power base, an aspect of divinity, or a resource to be exploited' (1994: 348). For an understanding of the use, transfer and administration of land rights, it is important to take these multiple meanings into consideration. Although the material dimensions of land are critical for rural people, they alone cannot explain why different actors are eager to control land.

Based on neo-Malthusian notions of population and the environment, notably the 'tragedy of the commons' theory (Hardin 1968), postcolonial states in Africa have sought to assert authority in land matters, and have repeatedly emphasized that the overall resource base would otherwise be depleted. However, despite several generations of land reform, land rights have remained fluid and access often needs to be negotiated (Bassett and Crummey 1993; Berry 1993; Crousse et al. 1986; Juul and Lund 2002; Lavigne Delville et al. 2002; Shipton and Goheen 1992). The gap between state land legislation and the realities lived in the village is a characteristic feature of land tenure in West Africa. Until recently, governments passed land-related laws that either simply reproduced or modified the colonial legacy, in an attempt to legislate away previous land tenure regimes, but paid no serious attention to the actual rules governing local tenure practices. Since the 1990s, however, some governments have adopted a more adaptive approach that aims to incorporate local tenure regimes in the national land legislation (Juul and Lund 2002). Still, more attention needs to be paid to actual local tenure practices, instead of simply opposing 'customary land tenure' and 'modern state law'.

'In agricultural societies nearly everywhere across Africa', as Shipton and Goheen (1992: 311–2) observe, 'unevenly distributed rights in land are adjusted by an infinity of arrangements, often *ad hoc* and sometimes unnamed, for seasonal or longer-term transfers that may include *land loans*, *entrustments*, or *share contracts*.' These arrangements, they contend, 'are not necessarily "market" transactions and may not be based on money'. In rural Burkina Faso, too, the outright sale of land is generally condemned, but land rights are nevertheless transferred to individuals against money and/or gifts as well as services. Here, I am interested in those transfers of land rights that involve 'market' transactions, and I use the term 'land transactions' to underline the commercial aspect of land transfers from autochthones to 'new actors'. According to the *Encyclopaedia Britannica*, all com-

mercial transactions 'serve to transmit economic values such as materials, products, and services from those who want to exchange them for another value, usually money, to those who need them and are willing to pay a counter value' (*Encyclopaedia Britannica On-line* 2002). The land transactions which I am discussing here differ from traditional arrangements of land loans, entrustments and share contracts in that they are understood to involve money (even though money may be replaced by goods or services) and, though not legally binding contracts, to be of a commercial nature. The arrangement between those who have land (autochthones) and those who have money (new actors) are usually flexible, and the precise content of the land rights often has to be negotiated.

For rural people who dispose of scarce financial resources and who have no access to legal procedures these land transaction have increased insecurity in legal and sometimes also real terms (Lavigne Delville et al. 2002). But there have also been 'winners' who are able to take advantage of the eagerness of resourceful persons to invest in land. The transactions have often been 'formalized', by the use of hand-made receipts (*petits papiers*) (Lavigne Delville et al. 2002; Lavigne Delville 2003; Mathieu et al. 2003) or as *procès-verbal de palabre* (Zougouri and Mathieu 2001).

At the center of concern in this chapter are what has been called 'derived rights', that is, 'all temporary rights obtained by delegation from holders of rights of first occupancy and which include both traditional forms of open-ended loan and more monetarized arrangements like rental or share-cropping' (Lavigne Delville et al. 2002: 1).

My basic assumption is that the emergence of land transactions based on money does not result from an irreversible change from 'tradition' to 'modernity', with its evolutionary underpinnings, but that the current land transactions represent one form of modernity, and claims for 'autochthony' and the politics of belonging manifest another. The concept of 'autochthony' has been coined to grasp the emerging political articulation of first-comer status or 'primary patriotism' (Geschiere and Gugler 1998; Lentz 2001, 2003a; Nyamnjoh and Rowlands 1998). In some cases discourses of 'autochthony' overlap with nationalist discourses, related to international political boundaries (Chauveau and Bobo 2003; Hagberg and Tengan 2000; Lentz 2003). In our case, discourses of autochthony are part of the resources on which people draw when actively engaging in making sense of the use of money in land transactions. The rule that 'the host' should

be respected by 'the stranger' (Hagberg 1998, 2000, 2001) is one example of this engagement. Another is that land claims are not only legitimized with reference to the person's family origin and status, but also discussed with respect to what the person wants to do with a particular piece of land. While subsistence farming is generally accepted, access to land for cash cropping and tree plantation is more restricted.

In Burkina Faso, the most important institution in land matters is the earth priest (or master of the earth). Ideally, the earth priest is the eldest living agnatic descendant of the first settler of a site, who is believed to have established the initial alliance with the spirits of the site. In many village legends, the first settler was a hunter who crossed the forest and discovered the place. The first settler and his descendants enjoy a privileged position, granted to them through the very act of domesticating the land, and a particular responsibility to maintain the community's relations with the earth. The earth priest is in charge of conducting sacrifices to the spirits of the earth and to the ancestors to ensure fertility. He distributes land to strangers who want to settle and is consulted in settling disputes and purification rituals. His power is not primarily political, but spiritual and religious. Although religious power does not exclude political authority, the distinction between first-comers ('people of earth') and late-comers ('people of power') is common in agrarian societies of the West African savanna, and the exercise of political power usually requires an alliance between the 'people of earth' and the 'people of power' (Amselle 1990; Bazin 1985; Hagberg 1998, 2003; Izard 1985; Kuba 2003).

In his study on land tenure in Upper Volta at the time of national independence, Jean-Louis Boutillier (1964: 40–1) drew attention to the fact that there can be overlapping land masteries (*chefferies de terre*), in the same geographical space, due to situations of conquest, when one first group of settlers left and was replaced by another group, or when the first-comers acquired power over such large areas that their earth priest only maintains the supreme responsibility to the spirits of the earth and delegated some of his powers to the different lineages settled in the area. Through such an arrival of later-comers, the authority of the earth priest both increases (more people to receive) and decreases (less direct influence). Furthermore, first-comers may actually have been preceded by a series of peoples, and claims to first occupancy include elements of ruse (cf. Hagberg et al. 1996; Schott 1993).

A common principle of the earth-priest institution, and one widely known to rural people, is that land cannot be sold or divided. It is an offense to the earth to indicate the boundaries in the bush, although people may know the boundary perfectly well. To sell land is a violation of rituals and, ultimately, of the ancestors and of the earth itself. The sale of land may cause the premature death of the person who committed the act. To get access to a piece of land, traditional sacrificial requirements must be fulfilled, including, in many places, cocks, hens, a goat and *dolo* (sorghum beer). Usually, the cock is sacrificed for the bush, the hen for the field and the goat for 'dirty actions' (principally human sexual intercourse in the bush).² At harvest farmers are expected to bring grains to thank the earth priest. Even though the specific rituals and sacrificial requirements may vary, traditional transfers of land rights are regarded as having nothing to do with commercial transactions. Jean-Louis Boutillier (1964) showed that lending and rental arrangements were quite common already in the early 1960s, but the 'sale' of land was regarded as a sacrilege.

Yet despite these rules against commercial transactions of land, land markets have emerged in rural Burkina, as recent studies indicate. They are embedded in dense social networks, and land transactions are often couched in the idiom of friendly social relations (Lavigne Delville 2002 et al.; Mathieu et al. 2003) or made possible by the manipulation of host-stranger relations, thus creating legitimacy for otherwise illegitimate actions (Hagberg 1998, 2000, 2001). Most earth priests, however, still reject the outright sale of land and believe that an earth priest who sells land will not 'finish the year'. How, then, is the sale of land handled, socially and ritually? Generally, land transactions embrace a continuum, ranging from traditional arrangements for the transfer of use rights to the outright sale of land. The specific forms that land transactions take depend on historical processes, economic conditions and the socio-political agency of the key actors. In this vein, land transactions based on money need to be contextualized as any other transfer of land rights. While economic and political aspects of the emerging land markets have received some attention (Mathieu et al. 2003; Zougouri and Mathieu

² It is worth noting that Fulbe agro-pastoralists who are moving through the bush are not concerned by this interdiction; they are regarded as 'different' (Hagberg 2000).

2001), the ritual implications of land 'sales' have not been sufficiently explored—a task that I set myself for the remainder of this chapter.

The dispute between Bwa³ and Moussa

In the following case study about disputes on land transactions between the two 'brothers' Bwa and Moussa, from a family of autochthones in Western Burkina, I want to explore the interrelations between two apparently contradictory processes: the commodification of 'sacred' land, through sales to wealthy farmers and other 'new actors'; and the growing awareness among the autochthones of the need to strengthen their community by respecting the land rituals and interdiction on land sales. Land should, it is argued, not be sold, but merely entrusted to those who need it. In particular, I want to analyze the ways in which different actors seek to negotiate between the political, economic and symbolic aspects of land transactions.

Bwa is an autochthonous farmer in his fifties, and he is often referred to as *chef de terre* or *chef coutumier*. Anyone who comes to the rural town to get a piece of land will soon learn that he⁴ has to contact Bwa. He is acting as earth priest, although he is not the oldest living agnatic descendant. He is related to the locality through his mother's lineage. She got pregnant with a man originating from elsewhere, but the relationship was occasional, and Bwa was raised by his maternal uncle, a powerful *chef de canton* in the 1950s and 1960s. Bwa's elder 'brother' Moussa, who resides in the same locality, is this chief's direct son and the one who should normally occupy the position of earth priest.

The fact that Bwa, and not Moussa, is acting as earth priest seems to be due to several reasons. To begin with, sacrifices to the earth are regarded to 'spoil the prayers', that is to be *against* Islam. Moussa prays five times a day and avoids alcoholic beverages. He believes that the sacrifices to the spirits of the earth, which he would have to conduct as earth priest, are not compatible with Islam. Secondly,

³ Given the fact that the case study focuses on a single family of first-comers I have chosen to change the names of the actors and not identify the rural town.

⁴ While women may acquire access to land in a man's name, the present case study only concerns men's purchase of land.

Moussa has been working as a State employed male nurse, away from home, where he returned only upon retirement. Bwa, on the other hand, stayed home since he was a boy and acquired considerable ritual knowledge. He knows how to act in all agricultural rites and how to make 'reparations' (purifying rituals) in case of bloodshed. Bwa acquired this ritual knowledge from his uncle, the *chef de canton*. Finally, Bwa has demonstrated a strong personal capacity to defend the interests of autochthones, even in front of the state administration.

That the right to administer and distribute land is delegated in this way, as between Moussa and Bwa, is quite common and not problematic *per se*. Tasks to be carried out by a specific family are often shared among its members. Yet it has been known for long time that Bwa has used his position to enrich himself. Already in 1996, a local government official in the district told me that Bwa was 'an illuminated land owner who has understood the value of land and who exploits it at maximum'. But it was not until 2001 that a series of events led to an open dispute over the 'land sales'.

In 2001, members of Bwa's family discovered that Bwa had 'sold' land in at least twenty cases and that he had used papers, taken from a bloc note, to document the transactions. In these documents the name of Moussa's son—let us call him Issa—figured as the witness, despite the fact that he had not signed the document. One of these documents, mimicking the many documents produced by the state administration, is copied below:

AA [Village] le 26/avril/2001

Convension de terre

Monssieur XX [Bwa] déclare avoir donné une partie de sa terre de 30 hectares à Monssieur YY né vers 1955, Monssieur YY doit payé une avance de 80.000 F.

Signé

Signé

YY

XX [Bwa]

Temoin:

Temoin:

ZZ

VV [Issa]

Apart from the many spelling errors, this document had no legal value. It was written on a *papier volant* ('flying paper'), and, more importantly, one of the witnesses (Issa) had not signed it. It is also worth noting that the term 'sale' (*vente*) is absent. The transaction is seen as an act of 'giving land' for which the 'buyer' has to pay something. While YY had to 'advance' a fixed sum of money (80,000 FCFA), the total sum of the transaction was nowhere indicated. Moreover, it is not indicated where the land is located, which is surprising when one knows that Bwa has been responsible for a large territory including many villages. When other family members discovered this and other cases, the 'sale of land' was cancelled. Moussa and his son told the 'buyer' that he could pursue Bwa to give the money back, but that the land had not been sold. They told the 'buyer' to leave the area altogether, and this is what in fact he did.

Another land transaction, that was revealed in 2001, had resulted in a land dispute between farmers and agro-pastoralists. Fulbe agro-pastoralists had been living in a particular site for more than a decade, where a family of Karaboro farmers had now made a cashew plantation. The latter claimed that the piece of land had been given to them by Bwa who confirmed this and told the Fulbe to leave. The land is no longer for Fulbe, he argued. Obviously, as a younger member of the family explained, Bwa had taken money from the Karaboro farmers. He 'sold the land to the Karaboro' who planted cashew trees on the site, the young man continued, 'Bwa sold the land for 100,000 FCFA [appr. \$US 170] plus one chicken, one goat and *dolo* [sorghum beer]'. He complained that Bwa had, by this act, endangered social peace. For the Fulbe, the new distribution of land hindered their cattle's access to water, while the Karaboro insisted that by giving money to Bwa they had obtained the right to farm. This dispute made the problem public. When Moussa and his children were informed they told Karaboro farmers to abandon the site, but the latter refused, insisting that that they had not only paid money for the land, but also provided the traditional sacrificial requirements (the chicken, the goat and *dolo*), and could therefore not be chased away.

The *préfet* (district head) in charge of the area was informed about the dispute and asked Moussa and Bwa to come to his office to solve the problem. However, when Moussa, Moussa's son Issa and Bwa were sitting at his office, the *préfet* told them that before set-

ting the problem between the Fulbe and the Karaboro, he himself had another problem to solve. He told Moussa and Issa that Bwa had also sold him a piece of land, six hectares for making a tree plantation, in exchange for 60,000 FCFA. The *préfet* had given Bwa the money, who never informed his family about this transaction. When now asked by the *préfet*, in the presence of Moussa and Issa, Bwa had to acknowledge that he had indeed taken money for this land without informing the other family members. The land on which the *préfet* wanted to establish his plantation was part of the land reserved for future generations. When the *préfet* asked what to do, Bwa suggested that the land could be divided, but Moussa immediately rejected this. Issa wanted to cancel the sale altogether, but his father told the *préfet* to keep the piece of land, without any further financial compensation and without pursuing Bwa to give the money back. The *préfet* accepted this solution and proposed to establish a *procès-verbal de palabre* in order to legalize the land transaction. Bwa, Moussa and Issa had to sign a document that stipulated that the land had been given to the *préfet*. Issa was against signing this document, but he could not publicly challenge the authority of his father in front of the *préfet*. Later, he regretted this and commented: 'You see how Bwa puts us in difficult situations'.

In late 2001, these different events resulted in a public declaration by Moussa, stating that as the legitimate heir of the first settler and hence the earth priest, he would no longer allow his 'brother' Bwa to have anything to do with land matters. Moussa decided upon a new division of labor within the family, taking back the overall responsibility for land matters himself and making his son Issa responsible for all practical land matters, including indicating the land to be entrusted to people who ask for it. A younger, non-Muslim brother of Moussa was to conduct the rituals, and for the very act of sacrificing, a man from a neighboring ethnic group should continue to be the sacrificer. This man also lives in the original site of the family and does not 'pray' (that is, he does not practice Islam). Another actor critical to the removal of Bwa's power was a second younger brother of Moussa, who, as a civil servant, 'knows the paper'. Moussa's declaration completely sidestepped Bwa, and the latter's reaction to Moussa's declaration led to a family quarrel. Bwa did not greet his elder brother for almost one month, despite the fact that they live in the same part of town. In addition, he accused Moussa's children,

and particularly Issa, of denying him due respect. 'Should the son decide over the father now?', he asked rhetorically in response to the challenge to his authority.

Bwa had been into the 'land business' for a long time, and some people believed that he had earned roughly four million FCFA (7,000 \$US) on land transactions. His land transactions were tolerated for long time. His power was only broken when he transgressed the limits of the acceptable and when his actions threatened to endanger the social peace of the community. Some family members, however, thought that despite Moussa's declaration, Bwa would continue to 'sell' land and that they could only limit the disaster.

Changing contexts of land transactions

The dispute between Bwa and Moussa may be seen as a mere family quarrel that will pass with time. Time is working in favor of the restoration of relations between the two 'brothers', and the dispute is only one dimension of the relations between them, who are obliged to coexist and are well aware of it. Although Bwa has lost his power to decide in land matters, he is still informed and consulted, and his ritual knowledge is regarded as important. As Issa told me, 'we associate Bwa but he no longer decides'. Bwa has proved to be a strong defender of family interests. He was a member of the district court in the 1990s and was never afraid to tell the truth to everybody, including the *préfet* and other civil servants. In such situations, he enjoyed full support from his family, although his land business has made them somewhat more reluctant. If Bwa's land transactions had been known for such a long time, as they had, it is worthwhile to ask why the dispute broke out precisely when it did, and why it was articulated in the way it was. In order to answer these questions, we have to look at the wider political, economic and socio-cultural context in which the dispute occurred.

An important element of this wider context are the structural adjustment policies of the 1990s and the ensuing wave of privatization that replaced earlier 'revolutionary', state-driven economic policy (Zagré 1994). The economic liberalization policies in the agricultural sector directed attention to new actors, such as private entrepreneurs. Tenure security emerged as a key issue in policy debates. For the civil servants and professionals who increasingly invest in agribusiness,

tenure security is usually established both through ritual recognition and through written documents.⁵ Who are these 'new actors'? In Bwa's and Moussa's town they comprised three different categories of persons: first, those who are more or less closely linked to the state as civil servants and/or politicians; secondly, traders and other wealthy business people; and, thirdly, people originating from the region but residing in the Côte d'Ivoire who are seeking to establish a base at 'home'. In what follows I will focus on the first two categories.

Civil servants who live in an area for a few years are often interested in getting a piece of land. It is relatively easy for them, as for anybody else, to obtain a piece of land for subsistence farming (sorghum, millet, maize and so on). They only need to ask and provide the earth priest with the sacrificial requirements, particularly chicken. Money is generally not required if the person only wants land in order to feed his household, because it is generally believed that no human being, including the earth priest, has the right to prevent anyone else from farming for his living. After harvest, the land taker is expected to bring grains to the earth priest, usually two *tines* (15–20 kg) of sorghum, but if he refuses to comply with this 'payment', the earth priests do not seem to enforce it. Bwa, however, even took money for giving land for subsistence production, and in order to avoid misfortune of all sorts, his family had to ask the earth to forgive them for this breach of norms.

When someone wants to plant cash crops or commercial trees, such as cashew and mango, it is much more difficult to get a piece of land. People will plant to get money, it is argued, and they must therefore give something to the person on whose land they plant as well as pay respect and provide substantial gifts to the earth priest. The autochthones disapprove that 'buyers' later sell the plantations, because they still consider the land 'theirs'. In general, social relations are crucial for 'strangers' to secure access to farming land (Hagberg 1998, 2000); Mathieu et al. 2001; Mathieu and Zougouri 2001), and it is against this background that we have to analyze the

⁵ Although the increase in land transactions based on money seems to coincide with liberalized economic policies, Mahir Şaul (1988) reported already in the 1980s that absentee farmers had the largest farm size in the village of Bare in Western Burkina.

strategies of the new actors. Civil servants, who represent the Burkinabè state, use their official position to obtain personal advantages, and have bought land for themselves. Even ministers have acquired large tracts of land from brokers like Bwa. Issa summarized the situation quite pointedly:

The civil servants have understood that land is wealth. But the peasants have not understood this. That is why the civil servants buy land. There is not one *préfet* who has passed here [i.e. serving at this duty-station] who has not searched to buy a piece of land. These people have understood. But instead of sensitizing people they profit from it. It is like school. The peasants did not want to put their children in school. But now when they have understood, the school is no longer like that [i.e. it is no longer good].

The dispute between Bwa and Moussa is a conflict of interest within a family of autochthones, but also calls into question the janus-faced civil servants and their skilful play with different registers of power and legitimacy. Issa's observation that the civil servants 'have understood' urges us to take a closer look at the interplay of different normative orders. That the *préfet* first wanted his own land problem settled before dealing with the dispute between Karaboro farmers and Fulbe agro-pastoralists is an example of how a civil servant used the power of state administration for his personal interests, even establishing a legal document. Yet the fundamental problem of how to mediate between resourceful persons willing to invest in land and autochthonous farmers and, ultimately, the earth priests, without any financial capacity or the necessary networks to develop agriculture, remains.

Traders are the second category of buyers of land. The 'flying paper' discussed in the case study was an agreement between a trader and Bwa. Many traders do not reside in the area but have a relative living and working there. Usually, they have not been to school, and constitute quite a different social category than the civil servants. However, the reliance on personal networks and local brokers for the access to land is not fundamentally different from the strategies of civil servants. More generally, such deals, as Bwa has struck, between people with money and power, and people with land are common in present-day Burkina Faso. Although the agreements may differ in detail—exchanging land for money or various forms of gifts—, significant economic means and political power are being invested in getting land.

Bwa's relatives not only condemned his 'land sales', but also criticized him for the little he had done with the money which he was said to have used for 'the beautiful life' (*la belle vie*). In addition to his two wives in the rural town, he supports one woman in Banfora, another one in Bobo-Dioulasso and a third one in another locality. For the latter he has even built a house, which, according to a young relative, 'does not benefit the family'. In other words, Bwa used the money from the land sales in ways that do not serve family interests. If at least, the young man continued, Bwa had invested in farming (plough, draft animals, fertilizers) the money would have helped to develop something. But all was used for 'women and drinking'. This statement reveals an interesting aspect of the moral economy at work in land transactions. While the 'sale' of land is always condemnable because it violates the rituals, the money could still be used in morally acceptable ways. But Bwa failed to turn his immoral behavior (selling land) into morally legitimate acts (developing the family farms).

Another important aspect of the wider political and socio-cultural context of the dispute between Bwa and Moussa touches on the relationship between the individual and the community. The dispute between Bwa and Moussa was used by the home-area association (*association de ressortissants*) to remind autochthones of the need to defend their interests (Hagberg 2004). In April 2001, the association held a meeting with representatives of all autochthones of the area. It was decided that land was generally not to be sold but only lent. The leaders suggested that any stranger, who had established a tree plantation and wanted to abandon it, should not be allowed to claim any compensation and the land should be taken back by the autochthones. In July 2002, another association meeting was held to settle a land dispute that had partially emerged through Bwa's business, and it was decided that a particular ritual should be carried out to confirm the autochthones' rights to land. The initiator of these meetings was a dynamic intellectual in his forties, who campaigned to become a member of parliament. Although he failed in the elections of May 2002, he is a prominent figure in the home-area association and a strong defender of the rights of the autochthones. In his view, the dispute between Bwa and Moussa expresses a general conflict of interest, and he insists that 'our land' should not be sold off, leaving future generations without the means of subsistence. He regards the 'sale' of land as immoral and illegal, and believes that

even powerful people such as *préfets* and ministers have to respect their hosts and must be resisted when they try to accumulate land by fooling the autochthones, who are in need of money.

The leaders of the home-area association are not against land transactions *per se*, but try to render them morally appropriate. They do not cling to tradition as a static and archaic institution, but suggest new forms of control over the land. In line with Christian Lund's contention that 'the process of recognition of property rights by a politico-legal institution simultaneously constitutes a process of recognition of the legitimacy of this institution' (2002: 14), I would argue that when the leaders of the home-area association reformulate the means by which to pursue social change they simultaneously legitimize the association's position as a public authority. They have to establish themselves as legitimate defenders of the autochthones' right not only vis-à-vis the local state agents, for instance by regularly paying courtesy visits to the *préfet*, but also vis-à-vis the local population itself. When I asked Issa about the association's role in land matters and particularly regarding Bwa's land 'sales', he answered that the association was indeed important for defending the autochthones' cause. 'I can be supported by the association, and with that support I will have much more weight', he explained, but also qualified that it was 'especially the leaders of the association who may support me and not the association in general. I have to meet them *tête-à-tête*'.

The interesting point here is that Issa cannot challenge his uncle Bwa unless the leaders of the association support him. In principle, Issa should stay quiet while the elders settle land matters, but the dispute between Bwa and Moussa has made it necessary as well as possible for Issa and others of the younger generation to demand a reversal of the current practice of land transactions. Although ritually they do not yet have much of a say in land matters, the association helps them to make legitimate claims. Issa and others act in the name of development and suggest that 'modernity' can also be based on procedures other than those based on commercial land transactions. The association suggests that land should not be sold, but entrusted to a person who will have the right to farm, but will not enjoy property rights. By contrast, if someone wants to plant trees, he could be able to 'buy' the land, at a price of 20,000 FCFA (35 \$US) per hectare which makes it much more difficult to get a piece of land for tree planting than for subsistence farming. The apparent contradiction between taking land from abandoned fruit

tree plantations back and the outright land sale at a fixed price is solved by making the immoral act of selling land socially acceptable. In other words, the home area association seeks to combine the respect for the ancestors ('not to sell land') with the promotion of development ('allowing specific land transactions for commercial tree planting').

There is one village in the region, however, where it is impossible to buy land at all. As a young man explained to me, the villagers say that in order to farm, 'you have cut down trees and now you have planted. If you leave the place you cannot sell the land. It is the rituals that forbid it'. This statement points to the wider ritual context in which the dispute between Bwa and Moussa needs to be placed. Land matters are regarded as ritually dangerous, and any mistake may kill the person who distributes the land. Earth priests have a certain power, but are also subject to the powers of the earth. In serious land disputes between two persons, who both claim first-comer status for the same piece of land, a specific ritual may be carried out. Soil from the contested land is put in a calabash and mixed with water. The two disputants have to drink the liquid and submit themselves to the judgment of the Earth. The one who has falsely claimed first occupancy 'will not finish the year', that is, he will die from an incurable disease. Alternatively, a less fatal ritual can be conducted, through which the person falsely claiming land will not die, but have a difficult time, with insomnia and nightmares, until he finally recognizes his fault and asks to be forgiven.

Bwa acted as earth priest, but he is only related to the land through his mother's lineage. In the course of his dispute with Moussa, his legitimacy as earth priest was questioned. 'He does not belong to the family', a young man said, 'because he is not related to the shrine of the father's lineage'. Although this position is played down in public, kin boundaries were articulated in the dispute. The young man continued: 'If we were to divide the land Bwa has not even the right to pee here'. Issa once told me that he himself could never act the way Bwa did. 'The land is so strong that it would kill me. But Bwa's father does not originate here. That is why he can continue to do so'. Bwa bases his legitimacy on his mother's lineage, and is therefore less vulnerable to the judgment of the Earth. He consciously avoids challenging the earth and has not carried out the above mentioned rituals in order to confirm the rights of the first-

comers in land disputes. Issa said that the reason for this was that Bwa had taken money for the land, and that the ritual could turn against him.

Bwa's 'violation of rituals' worries other family members, because it may 'spoil the land'. If rituals are not properly carried out, the fertility of the land may be endangered. Because of his knowledge, Bwa was better suited to conduct the necessary earth-priestly rituals than most other members of the family, but he used this power to enrich himself. When he went beyond all acceptable limits and even sold land for subsistence farming, purification rituals had to be carried out because Bwa's acts could have spoiled the land altogether.

Conclusion

In this chapter I have sought to demonstrate how money, ritual and the politics of belonging all play an important role in land transactions. An exclusive focus on only one dimension is likely to misrepresent the ways in which current land sales are practiced and perceived by the actors. While the need to integrate aspects of power, wealth and meaning had already been emphasized in Shipton and Goheen's (1992) seminal text on landholding in Africa, the findings presented here suggest that debates over land are also intimately linked to ritual practice. Bwa's unwillingness to conduct certain rituals was related to his land business. Because Islam discourages rituals to the earth, crucial local ritual knowledge is disappearing. This is why the rituals have even lost their former power, many people claim. The case of Bwa and Moussa further demonstrates that any simple dichotomy of 'tradition' and 'modernity' prevents us from understanding the complex processes at work in land transactions. These transactions are driven by wealthier people's interests to invest in land and by the autochthonous farmers' financial needs. Cosmologically, however, land transactions based on money violate the rituals, and may, ultimately, spoil the earth—a belief that curbs the trend towards commercialization. It is the sale of land itself that is regarded as cosmologically dangerous, not the exchange of wealth against land rights. In fact, traditional arrangements have always included some form of compensation. In addition to sacrificial requirements farmers were, and continue to be, expected to bring grains to the earth priest after harvest. Ideally, the stranger should 'see' his host, and intervene to

help solve his problems (not least financial ones). While the stranger depends on good relations with his host, the latter may also badly need the strangers' material support.⁶

Rituals are handled with great care, especially when land transactions based on money are concerned. A false step made on the part of the earth priest may turn the ritual, and thus the earth, against him. My findings suggest that when outright land sales occur, we have to pay close attention to the key actors and their bases of legitimacy. In our case, Bwa differed from other earth priests in that he was linked to the land through his matrilineage. Although other family members questioned his legitimacy, this made him less vulnerable to the judgment of the earth. Moussa, on the other hand, was a retired civil servant and a fervent Muslim who remained rather ignorant of local ritual practices. These and other specific circumstances in the case of Bwa and Moussa have favored the emergence of land transactions based on money. More generally, where land sales are a common occurrence, we need to look at the context very carefully. The dispute between Bwa and Moussa was exceptional, to some extent, but it helps us to specify the conditions which favor land transactions based on money.

Land transactions also call into question the politics of belonging. In our case, we could observe an increase in the importance of a discourse of 'autochthony'. Intellectuals, who are particularly active in shaping this discourse, claim that the rights derived from first-comer status should be recognized, and the sale of ancestral land condemned. However, rather than merely clinging to 'tradition', the home-area association attempts to assert the autochthones' authority in land matters while simultaneously aiming to promote development.

The two processes described in this chapter—the commodification of rural land and the increasing emphasis on autochthony—seem to come into conflict with one another in land transactions. Yet both processes shape the space in which the politically significant, economically rewarding and cosmologically dangerous land transactions take place.

⁶ See also the contribution of Chauveau in this volume.

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GOLD DIGGERS, EARTH PRIESTS, AND DISTRICT HEADS: LAND RIGHTS AND GOLD MINING IN SOUTHWESTERN BURKINA FASO

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This paper explores how rural communities in Southwestern Burkina Faso that were affected by gold mining dealt with the sudden influx of fortune seekers and the intrusion onto their land. The comparison of several cases points to three possible options: toleration, negotiation, or expulsion. Which of these options is realized depends upon the interests and relative power of the various parties involved, especially gold diggers, earth priests, and district heads.¹

In Southwestern Burkina Faso, rural communities have a long history of competing over access to land as 'first-comers' or 'late-comers' (Kopytoff 1987: 22; Kuba and Lentz 2002, Kuba, Lentz, Werthmann 2001). While some versions of settlement histories suggest the violent expulsion of previous settlers, others make reference to arrangements between first-comers and late-comers. In spite of the introduction of state legislation concerning land rights since the colonial period, access to individual plots of land for cultivation is still often regulated according to local concepts of land tenure. Since the 1970s, however, 'customary' land law has come under pressure due to an increase in spontaneous and state-sponsored agricultural immigration, accompanied by efforts to diminish the role of 'traditional authorities'. Moreover, violent confrontations between farmers and pastoralists that have sometimes led to homicides seem to have become more frequent in recent years (see for instance Hagberg 1998).

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In this context, the massive influx of gold diggers into the Southwest since the 1990s represents a further threat to the environmental and economic resources of local agricultural communities. This problem is compounded by the fact that land and gold are not only considered to be 'natural', but also 'supernatural' resources whose unmediated exploitation may threaten the well-being of local communities. To whom land and gold 'belong' is a question that has specific consequences for the way in which the local population and gold diggers compete for the control of these resources.

Beliefs about gold in Burkina Faso

The present-day inhabitants of Southwestern Burkina Faso started immigrating into the area during the eighteenth century. The historical processes by which these mostly segmentary societies (today known as Birifor, Bwaba, Dagara, Dyan, Lobi, Phuo, Sisala) settled in Southwestern Burkina Faso included peaceful cohabitation, assimilation, or the gradual displacement of previous inhabitants by immigrants, as well as the violent appropriation of certain areas and local shrines. Nevertheless there is a consensus, irrespective of linguistic and cultural boundaries, regarding the spiritual dimensions of land and land claims. The settlement of previously uninhabited 'bushland' or the appropriation of land in an area that has already been settled by other groups requires ritual negotiation by the earth priests. Even those immigrants who have since the eighteenth century expanded into the territories of previous inhabitants continue to comply with these norms, taking over existing or installing their own earth shrines in order to ensure the well-being of their community (Kuba and Lentz 2002, Kuba, Lentz, Werthmann 2001). Most of these groups seem not to have practiced gold mining except as forced labour during colonial rule, with the exception of Lobi and Birifor women in the Gaoua region who still perform seasonal small-scale shallow-pit mining and panning (Schneider 1993).

Gold is thought of as endowed with supernatural properties. A commonly held view is that gold is a living creature, which moves and can suddenly appear or disappear, accompanied by strange lights or sounds. Gold 'belongs' to the bush spirits and is both attracted and appeased by blood. Gold can make a person blind, lame or crazy and can even kill. Some groups or certain clans are forbid-

den to even come near gold: 'Even today the prohibition still holds. If one of our children were to go to a gold-mining area, it would be all over; the ancestors would kill it' (Sou Sami Dassanga, Moulé, 20.02.2001).

If one happens to find 'living' gold while in the bush or working in the fields, one must first 'kill' it before it can be taken (Labouret 1931: 81, Schneider 1993, Dumett 1998: 60, Werthmann 2003a: 86–90). Sprinkling it with blood or urine kills gold; but the corresponding body part will 'die' too. However, it is not the gold itself that brings bad luck, but rather the hill, tree and water spirits to whom the gold 'belongs'. Found gold is treated like other objects that one finds above ground or underground. It must be presented to the head of the family, who will hand over the found object to the earth priest. Because gold is believed to possess special powers, it is incorporated by a number of communities into medicine shrines or into altars dedicated to the ancestors. Even in this case, the proceeds from the sale of gold cannot be used for certain social or ritual payments. Among the Dagara, for instance, the cowries or cash that are exchanged for gold are 'bitter money' and must under no circumstances constitute part of a bride price (Werthmann 2001, Werthmann 2003b).

Such beliefs exist not only in Southwestern Burkina Faso, but also in other regions of the country from where many gold diggers originate. Members of Mossi and Gurunsi groups, for example, claim that all household property must first be moved into the courtyard before gold can be brought in. Only then can gold attract further wealth. A failure to take such precautionary measures before bringing the gold into the house will have the opposite effect of attracting misfortune (Kiéthéga 1983: 187).

Even some gold miners, of whom the majority are Mossi, share the view that gold is dangerous. These gold diggers confirm that when gold was first discovered in their provinces, they too were afraid of gold, because it was believed that one could not find gold without a relative falling ill or dying. They too say that gold 'belongs' to the spirits: 'Some say that it is this thing which moves . . . Others say it is like a serpent, and when it moves you see fire. If you see gold and you have a strong heart, then you take a machete and cut it to pieces. You can take it, but not just like that. Since it belongs to the spirits, it instills fear' (Dabilgou Pawanda, V3 Dimouon, 10.3.2000). Anyone who discovers a gold deposit runs the risk of

dying, because he has uncovered the spirits' secret. On occasion, spirits appear in the mines, manifesting themselves in human or serpent form. Accidents in the mines are frequently explained by these spirits' 'thirst for blood'.

These notions regarding the origin and nature of gold are by no means extraordinary. Similar ideas regarding nature spirits or 'local demons' may be found throughout Africa (Zwernemann 1968: 388f.). Moreover, the 'genuine miners' complex of ideas about the mountain spirit' (Heilfurth 1981: 209) characterizes mining folklore all over the world. The 'belief in spiritual powers residing in the mines' (ibid., 208) can be found in many regions and in many historical periods. Particularly in Latin America, mountain spirits gradually became devils as the Christian influence spread (Harris 2000, Heilfurth 1981: 215; Nash 1979, Sallnow 2000, Taussig 1980). A recent gold discovery in Papua New Guinea was integrated into the local cosmology by interpreting it as the excrements of a mythical snake (Biersack 1999, Clark 1993). In Southwestern Burkina Faso, gold is 'guarded' by the earth deity and the bush spirits. Thus, when people intrude into these spheres, it is regarded to be just as potentially dangerous as other interferences with nature.

Land and Mining Rights

In Burkina Faso, as in other African countries, different layers of sometimes contradictory claims to land co-exist. The conception of the earth as a deity and of the earth priest as the custodian of its shrine is wide-spread in the West African savannah and is recognized by many societies in Burkina Faso, except in the predominantly Muslim North (Zwernemann 1968). Generally speaking, there were no individual rights to land in pre-colonial times. Corporate groups based on kinship, such as localized patrilineages, held land-use rights. In many cases, assertions to be 'first-comers' who have privileged access to natural resources such as land or trees are actually held by groups who arrived later but managed to attain a superior status over the original settlers. Lineage or settlement representatives, such as earth priests and lineage elders, conferred land-use rights on newcomers to the area (cf. Boutillier 1964, Stamm 1996).

Since the colonial period, state legislation (such as the *Réorganisation Agraire et Foncière* since 1984) and national development schemes superseded customary forms of land rights and land use. However, national

laws never really supplanted pre-existing forms of land tenure. On a local level, the prerogatives of earth priests and 'first-comer' lineages continue to remain valid—or have even been revived—despite the sometimes massive intervention of state institutions or development agencies (Fahrenhorst 1988, Faure 1996, Kuba, Lentz, Werthmann 2001, Kuba et al. 2004; see also Hagberg in this volume). The actual appropriation of land rights is often negotiated at the local level. Generally, an immigrant farmer asks the earth priest or the representative of a land-holding lineage for a plot of land and he will normally not be refused; however, it is understood that the receiver of the land is not the 'owner' as long as members of the local community exercise rights that predate this.

In theory, the earth priest is also the custodian of what is found lying on or underneath the surface of the earth, including stray animals, cowry hoards, Neolithic adzes, etc. Therefore, the same procedure of asking for use rights to land should apply to mining rights, as it did in many areas of West African prior to the colonial period (see for instance Dumett 1998: 68–70, Zwernemann 1968: 127). In practice, the present-day appropriation and exploitation of ore deposits varies according to the circumstances. Most gold diggers do not bother to ask anybody's permission to mine, because they are generally not interested in a long-term commitment to a particular territory or local community. Instead their relation to the land in which gold is found tends to be characterized by a hit-and-run attitude.

Gold mining first began in the Northern and Central regions of Burkina Faso during a drought in the 1980s and was initially an activity of last resort in regions where the soil could no longer be cultivated and many cattle had died. Since then, work in the gold mines and camps has become a permanent occupation for many men and women. Today, gold digging is pursued both as a dry-season activity by farmers and as a full-time occupation by professional itinerant gold diggers who move from mine to mine, sometimes staying up to several years in one location. Mining camps also attract an assortment of providers of goods and services. According to IMF estimates for the year 2000, 75,000 people were working in 200 non-industrial gold mines in Burkina Faso. Estimates in other sources range from 100,000 to 200,000 persons.²

² IMF Staff Country Report 00/103, August 2000; Barry 1996: 8; Carbonnel

The organization of gold extraction varies according to the type of deposit. Whereas alluvial (or placer) gold can be worked individually or in small teams by washing, panning or shallow-pit surface mining, lode (or reef) gold requires deep shaft mining. Modern non-industrial gold mines resemble the pre-colonial mines in Ghana described by Dumett (1998: 57): 'Shafts came in a variety of shapes and sizes, ranging from the chimney type, large enough for one man (the most common form), to a rectangular type, to sloping types with steps cut in, and long snakelike tubes that bent to follow the line of the reef'. If the gold deposit forms an underground 'mat', the surface above the deposit is pierced by narrow tubular shafts that may branch out into underground galleries. If the gold deposit takes the form of a linear vein, tubular or rectangular shafts along the vein will eventually merge to form one large open mine. In some gold mines in Burkina Faso, vertical shafts reach a depth of more than 100 m.

Although access to mineral resources is officially regulated by a Mining Code, non-industrial gold-mining often starts spontaneously and prior to any agreement between gold miners and rural communities or state authorities. According to the Mining Code, all 'natural deposits of mineral substances located either on the surface or underground' are government property.³ Both industrial exploration and exploitation of minerals require a mining title. Artisanal mining is legal without a mining title and only requires a licence issued by the administrative authorities, except in protected zones like national parks, near property enclosed by a wall, or in areas considered sacred by the local population (Art. 56, Burkina Minier 98–99: 150). The Mining Code stipulates that mining administration agents may act as criminal investigation police to search for and prosecute infractions of the Code (Art. 89, Burkina Minier 98–99: 161). In the majority of non-industrial gold mines, this function is carried out by the agents of the parastatal gold marketing company *Comptoir Burkinabè des Métaux Précieux* (C.B.M.P.) in cooperation with the *gendarmérie* and the police. Representatives of the state marketing company super-

1991: 126. There is, however, no information about how these figures were calculated. Obviously, it is difficult to obtain reliable figures about the migratory movement of a highly mobile and fluctuating population that also varies seasonally.

³ Décret n° 97–549 PRES. promulguant la loi n° 023/97/11 AN du 22 octobre 1997, portant code minier, Art. 4; Burkina Minier 98–99: 134.

vise the gold processing and buy gold from licensed gold traders. Through these agents the state tries to control the gold trade, but it is estimated that 40 to 60 percent of the gold is sold on the black market (Badolo 1988: 55, Butterman 1996, Englebert 1996: 96).

Theoretically, a percentage of the gold revenues from a particular area should flow back into the budget of the province where the gold mine is located and should be used in part to improve working conditions in the gold mines. The C.B.M.P. representatives may suggest adequate measures, such as the drilling of wells for drinking water. In practice, however, such co-operation between the C.B.M.P. representatives, the province and the district authorities does not always occur.

The Mining Code states explicitly that 'the beneficiary of an artisanal exploitation permit may not, except under an amicable agreement with the owners, carry out any work in a farmers' fields or hamper the normal irrigation of farms. He must return the fields to their original state and repair any damage to the farm's irrigation networks caused by his works; he owes reparation to the farmers' (Art. 41, Burkina Minier 98-99: 146). However, there is little enforcement of this paragraph, because gold-bearing sites are often discovered without the knowledge of the authorities. Moreover, many farmers are not aware of these rights, and the immigrating gold diggers care little about official regulations.

The discovery of gold may lead to the immigration of tens of thousands of people into one area in a very short period of time. Especially in the initial, very dynamic phase, fortune seekers may appropriate claims by force. When gold was discovered near a small village in the Southwestern Burkina Faso in 1998, the discovery soon attracted about 5,000 fortune seekers. For two months, a small group of criminals terrorized the mining camp and the neighboring village. Eventually a military unit was sent in, and four men were shot (an incident that was reported by Amnesty International as extralegal execution). Clearly, an 'invasion' of several thousand people into villages with barely a few hundred inhabitants leaves little room for the negotiation of access to the village land and its mineral resources. But even in less dramatic cases, tension and sometimes violent clashes did and do occur between gold diggers and local populations. On the other hand, there were also cases where a compromise was reached.

Toleration

In the Central and Northern parts of Burkina Faso non-industrial gold mining started in the 1980s, yet the Southwest of the country was not affected until 1998. In that year, a gold vein was discovered on the land of a village in the province of Ioba where Dagara and Mossi farmers co-reside (Werthmann 2000 a, b). Within a few weeks, gold diggers, traders, and adventurers of all sorts from Burkina Faso and the neighboring countries by far outnumbered the inhabitants of the surrounding villages. The majority of these fortune seekers were Mossi, but many also came from other regions or from the neighboring countries Niger, Mali, Côte d'Ivoire, Ghana and Benin. A kind of Wild West boomtown sprang up right next to the village. This influx of a large number of strangers raised anxieties among the local people, but it also brought about alternative economic opportunities for both men and women, as well as access to commodities hitherto limited to more urban areas.

Although the local responses to the gold rush were not entirely negative, some considered the exploitation of gold on the territory of this village to be an offence against the earth deity. The Dagara earth priest asked the gold diggers to sacrifice a number of animals and cowries at the earth shrine in order to appease the earth and the bush spirits, who could otherwise withhold the gold. The speaker of the gold diggers, however, kept postponing the sacrifice on the grounds that in other places a sacrifice had actually made the gold disappear. In order to avoid difficulties, the earth priest took to performing an annual sacrifice in the name of the entire village, imploring the earth to forgive the strangers who did not know how to behave. Three years later, in November 2001, a huge landslide occurred and about sixty persons were buried alive. One common interpretation of this event was that the gold, which is associated with the earth, the bush spirits, and the spirits of the ancestors, had 'wanted blood', and that the death of these persons corresponded to the sacrifice that had initially been required but never performed.

The discovery and exploitation of gold in this village was a case of (involuntary) toleration. The villagers were surprised by the sudden and massive arrival of the gold diggers, which they compared to a 'swarm of locusts' (Werthmann 2003). They hesitated to intervene or to call on the authorities for help. The rather reserved attitude of the villagers can be explained partly by the fact that the

village had only been founded in 1978 as part of the agricultural resettlement scheme *Aménagement des Vallées des Voltas* (A.V.V.). Half of its inhabitants do not originate from the area but are Mossi migrants from the Central Burkina, as are most of the gold diggers. The other inhabitants of the village are Dagara who consider themselves 'autochthones' of the region. In this artificial village, disagreement about land rights and about the status of the Dagara earth priest had existed long before the arrival of the fortune seekers (Werthmann 1999). Therefore, the villagers could not agree on a common strategy for dealing with the intruders. The Mossi farmers could not directly oppose the Mossi gold diggers without offending the norms of hospitality and ethnic solidarity. The Dagara settlers, who originated from different villages and patrilineages, were undecided amongst themselves as to how to respond. Moreover, the large number of immigrants and the violence that accompanied the appropriation of the land made resistance less feasible. This gold mine proved to be one of the most productive and long-lived since the beginning of the mining boom in the 1980s and only ceased to operate five years after its discovery. At times, the sojourners in the mining camp outnumbered the inhabitants of the provincial capital (about 10,000).

In fact, many villagers welcomed the economic opportunities that were opened up by the gold miners' presence. Some Mossi and Dagara farmers, however, were negatively affected by gold mining. The gold vein crossed the fields of four different farmers. Two other fields had to be abandoned by their owners because they were used by gold diggers as a public toilet and a cemetery respectively. Although the damage was reported to the district administration, none of the farmers was compensated. But what really angered the villagers was the incident in which some gold diggers started selling small plots of land at ridiculously high prices to newcomers, thereby completely disregarding the fact that nobody had given or sold the land to them in the first place. When one gold digger finally began planting trees and growing vegetables on a plot of land next to the mine that used to be communal village land, the villagers were unanimous in their outrage and, supported by the speaker of the gold diggers who wanted to avoid an open conflict, forced the gold digger to abandon the plot. This case was considered especially scandalous, because according to customary land law all over Burkina Faso, the planting or cutting down of trees is generally seen as a claim to ownership.

In spite of these misgivings, several inhabitants of the mining camp borrowed fields from villagers for cultivation, since not all of them were returning home during the rainy season when gold mining is impossible. Altogether, forty-eight gold diggers and petty traders were cultivating fields in the year 2001 where they mainly grew maize, some of them already doing so for a second season. Those who had given them the fields were mainly Mossi, but some were Dagara.⁴ In compensation, some farmers had asked for a portion of the harvest or for money. Others stressed that they had not asked for money in order to avoid a claim that the fields had been bought.⁵ Nevertheless, they expected gifts of grain or cash after the harvest, and the borrowers would occasionally greet the farmers with kola nuts or buy them a drink when they met in the mining camp.

Negotiation

In some cases where the number of immigrating gold diggers was less massive, local communities and the gold miners eventually reached agreements. In May 1999, several dozen gold diggers arrived in a Vigué village in the province of Houet, about fifty km east of Bobo Dioulasso. There, a Mossi farmer from a neighboring village had discovered a gold deposit. It turned out that the gold vein ran through an ancient graveyard where the ancestors of the local people were buried. The inhabitants of the village feared that their village elders would die and that the rains would not come if the place were desecrated. They blocked the way to the sacred grove in order to prevent the gold diggers from working there.

The *préfet* (district head) and the son of the former *chef de canton* (canton chief) who was considered a local authority intervened. They arranged a meeting between village elders and representatives of the gold diggers, but the villagers categorically refused to allow gold to

⁴ In 1978, seventy-five farmers had been recruited to this A.V.V. village, each of whom had been given ten ha land. In the year 2000, there were about ninety compound heads. The fields given to gold diggers were partly fallows, partly plots that could not otherwise be cultivated due to a lack of manpower.

⁵ For the emerging commercialisation of agricultural land in Southwestern Burkina Faso, see also Mathieu 2001.

be mined on the sacred territory. Tensions between the village where the gold had been found and the village where the earth shrine was located complicated the matter. Whereas the first village claimed to be ritually independent, the earth priest of the latter considered it to be merely a satellite of his own village. A second meeting also failed, but during the third meeting, at which representatives of the state gold marketing company were also present, the gold diggers agreed with the locals that the sacred area remain untouched and that a part of the gold mine be reserved for the villagers. They also agreed to contribute money for a sacrifice at the earth shrine.

Meanwhile, however, the man who had discovered the deposit had informed a professional gold digger called 'Elhadj Mercedes', who was notorious for his recklessness. He came with about 400 men and they resumed gold digging near the sacred grove. In order to defend the place, the son of the *chef de canton* mobilized the regional hunters' association, a multi-ethnic vigilante organization (cf. Hagberg 1998: 121–126), of which he was the leader. About one hundred hunters with firearms surrounded the gold diggers, took their tools, seized the sacks of ore that had already been produced, and chased the gold diggers away. Elhadj Mercedes went to Bobo Dioulasso and called the *gendarmerie*. After the investigation, however, the *gendarmes* demanded Elhadj Mercedes not undertake any further steps without official permission. So finally he gave up and left.

In this case, the district head acted as a mediator between the village elders and the gold diggers, and finally managed to reach an agreement. He rhetorically emphasized the similarities between the farmers who sell cotton to the national cotton marketing company *Société Burkinabè des Fibres Textiles* (SO.FI.TEX) and the gold diggers who are selling gold to the national gold marketing company *Comptoir Burkinabè des Métaux Précieux* (C.B.M.P.). He also reminded the villagers that gold diggers, like farmers, could not be denied the right to work in order to feed themselves. At the same time he wanted to make sure that his district would eventually profit from the gold diggers' activity, because a certain percentage of the gold revenues should return to the concerned province.

Apart from the district head, several people tried to manipulate the events and were eventually forced to negotiate. The man who had discovered the gold deposit and his friend Elhadj Mercedes simply wanted to exploit the gold as soon as possible. The district head

and the unofficial *chef de canton* wanted to protect the villagers but were also interested in the financial returns that gold mining brought. The local population was divided: some feared their ancestors' vengeance as well as the negative social impact of a gold mining camp next to the village, others wanted to participate in the boom. The representatives of the gold marketing company C.B.M.P. wanted gold mining to operate without too much interference from national or local authorities.

The interested parties mobilized different sources of power and authority in order to attain their goals. The local population invoked the supernatural powers of the earth and the ancestors, some of the gold diggers relied on physical force, the son of the *chef de canton* represented the remnants of the colonial power as well as the physical and spiritual force of the hunters. He was supported by the district head, who thus demonstrated his awareness of the beliefs and anxieties of the local people. At the same time, the district head drew on the national rhetoric of cotton as 'white gold', thereby establishing a metaphorical likeness between farmers and gold diggers. In the end, none of the parties was entirely successful. Although some gold mining continued on village territory after a brief boom of about one year during which thousands of people arrived, more promising gold deposits were discovered in other parts of the region, and eventually the majority of the fortune seekers moved away.

Sometimes intervention by state authorities consists of an attempt to make the gold diggers conform to the bureaucratic procedures prescribed by the Mining Code before actual mining started. In a Dyan village near Diébougou where gold was discovered close to a sacred site, the village elders called for the intervention of the district head. The latter ordered the gold diggers to submit formal applications in order to get one of thirty-eight claims that were officially parceled out. He also demanded they re-fill the mining pits with earth after having finished their work. The latter was unacceptable to the gold diggers, who do not fix the length of their stay in a particular mine to comply with official regulations. In the end they left the area, although hundreds of applications had allegedly been submitted.

Expulsion

Some villages in the Southwest Burkina Faso have flatly refused to let any gold diggers work on their land. Those villages managed to expel the gold diggers after they had already arrived. In one Birifor village in the province of Bougouriba, the village head asked a group of about 200 gold diggers who had turned up over night to leave. In order to reinforce his demand, he assembled the young men of the village, who came armed with bows and arrows, and encircled the gold diggers. Although they were met with some resistance, the villagers finally forced the gold diggers to leave.

In several cases, confrontations between gold diggers and the local population turned into violent clashes. When gold was discovered in a sacred place near a Lobi village in the province of Nounbiel, a battle ensued that left ten gold diggers injured, two of them seriously. According to villagers, a group of gold diggers had been asked to leave twice, because gold mining on sacred ground could bring death and drought. The fight occurred when the gold diggers returned once again in spite of these demands. In this case, even the High Commissioner (head of the province) intervened and ordered the gold diggers to leave.

Violent opposition, however, does not work if the gold diggers come by the thousands. In that case, the local population might opt for different strategies: to mobilize the help of the authorities, or to invoke the threat of supernatural sanctions. The fear of gold is a notion that is shared by many gold diggers. In the mining camps, a whole range of protective medicines and charms, as well as a variety of drugs that help to sustain courage and stamina, are available. When gold was discovered in a Phuo village in the province of Tuy, about 10,000 gold diggers arrived on hearing a rumour that one person had made a fortune there in only one day. They left again only a few weeks later. Although there were some rational explanations for this sudden departure, such as for instance the lack of water and an outbreak of measles, some gold diggers confirmed having been told by the village people that the spirit of the hill that contained the gold required the death of many persons. Seven days after the arrival of the gold diggers, three people had already died. After further deaths, most gold diggers left, although some of them had in fact struck it rich in the meantime.

Conclusion

Looking at land rights and gold-mining in Burkina Faso, one can discern several distinct perspectives on 'natural' resources. According to legislation, both land and mineral resources belong to the state. According to the concerned rural communities, land and gold are 'supernatural' resources that 'belong to' or are 'guarded by' the earth deity, the bush spirits, and the ancestors. First-comers and late-comers have varying use rights to land that rarely remain unchanged for generations. Gold diggers for their part care neither about state legislation nor 'customary' land tenure as long as they can pursue their work. According to them, the gold belongs to whoever extracts and sells it. Because some of them agree that gold originally 'belongs to' the bush spirits, they may be willing to pay for sacrifices and spare sacred areas in order to protect themselves. For others, sacrifices at the earth shrine simply represent a diplomatic effort to gain the good-will of the village people in order to avoid open confrontation.

For the local populations of Southwestern Burkina Faso, modern non-industrial gold mining is an unexpected and unmediated appropriation of the land and of what it contains. These rural communities have to find ways of dealing with the sudden influx of a large number of strangers who threaten their livelihoods. Some options are toleration, negotiation, or expulsion. These three options, however, are not the only possible responses. In other parts of Burkina Faso or in neighbouring countries, there are cases where the local population manages to control the mineral resources on their land and to participate in the exploitation, or to enforce a kind of lease, which entitles them to a share of the profits (Grätz 2002).

Faced with the massive immigration of fortune seekers and the sometimes violent appropriation of land, the options of the local people may seem limited, but they do nevertheless exist. The cases presented here confirm that the competition over natural resources creates an 'arena' where the competing parties mobilize different sources of power, derived from spiritual forces, former colonial offices, current administrative positions, powerful informal networks, or violence, in order to secure access to or to defend these resources (cf. Alber 2000, Benjaminsen and Lund 2001, Bierschenk and Olivier de Sardan 1999, 2003, Grätz 2002, Laurent 2000, Le Meur 1997, Lentz 2002, Werthmann 2003c).

Although land and mining rights are subject to state legislation, representatives of the state are not necessarily the most powerful of the various parties who compete about the appropriation and exploitation of natural resources on the local level. The role of official authorities varies from case to case. When gold deposits are found in national parks, for instance, police, *gendarmerie* and forestry agents cooperate in order to expel the gold diggers. Discoveries on village territory are handled more on a case by case basis. Whether the concerned district head supports one group, acts as a mediator between the different parties or does not intervene at all depends very much on each individual's interest and character, as in disputes over land rights elsewhere.

The district head is not necessarily an advocate of local concerns. In the first case described above, the head of the concerned district did not care much about what was going on in the village, not even after a delegation of farmers came to him in order to file a complaint concerning the unauthorized appropriation of fields by the gold diggers. The district head who acted as mediator in the second case probably did not do so on purely altruistic grounds. At least according to rumors, he 'ate' considerable portions of the money that had been collected by the gold diggers instead of distributing it between the two concerned villages and the hunting organization. But whenever money is involved, the concerned persons are suspected of 'wanting to eat', even earth priests. As in other disputes about land rights, there is always more than one version about what actually happened.

In contrast with other cases of conflicting claims to land, violence is a much more salient feature of confrontations between villagers and gold diggers. In many cases, the arrival of the gold diggers resembles an invasion. They appear over night, and the next morning the villagers are surprised to find them digging up their land without having asked the earth priest or any other authority for permission. Faced with a large number of immigrants, many of them armed with machetes and knives, the local population may have no other option than to let them have their way. If the 'invaders' do not outnumber the village inhabitants, however, those may resort to violent attacks themselves in order to expel the intruders.

In other cases, negotiation is possible and a kind of bargain may be struck in which the gold diggers agree to respect some conditions

imposed by the local population. These conditions, such as the delimitation of sacred zones or compensation for damage to fields, are in fact prescribed by the Mining Code, but since the discovery and exploitation of gold deposits often occurs prior to the intervention of state or local authorities, it is rarely possible to enforce these stipulations before gold mining actually starts. The agreements between villagers and gold diggers, mediated by state authorities, rather represent a post-hoc acknowledgement of local land rights and often include sacrifices at the earth shrine. However, the role of earth priests is viewed rather critically by some gold diggers. Although miners may agree to sacrifice at the earth shrine in order to obtain spiritual protection or the goodwill of the village people, earth priests are at the same time suspected of having the power to make the gold disappear.

In several cases, the local populations were clearly less interested in the economic potential of gold mining than afraid of the possible destruction of other natural resources (such as fields or trees) as well as of deleterious consequences for village life in general. This may, however, change with time as it did in other areas of Burkina Faso where gold mining began in the 1980s.

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CUSTOMARY LAND, MOBILE LABOR AND ALIENATION IN THE EASTERN REGION OF GHANA

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Customary land tenure supposedly embodies and guarantees local rights to land. Much research on land idealizes the customary, placing it in the realm of spiritual and cultural values rooted in a moral order of people and the earth, in which the chief is seen as the custodian of this tradition and holds trusteeship over the land to ensure sustainable and equitable use, and preserve it for future generations. Other researchers have problematized the notion of custom, arguing that it is essentially flexible, pragmatic and negotiated. The customary is seen as the site of conflict and negotiations in which different actors invest in social networks to influence the outcome and stake their claims to land (Berry 1993). However, this tradition tends to draw its case studies from conflicts between the powerful within society and people of similar status, rather than between people with unequal status or access to power. It has also been assumed that the flexibility of the customary is a positive attribute that enables it to adapt to changing conditions (Lavigne Delville 2000). However, Shivji (2002) has argued that this flexibility of the customary undermines the rights of peasant cultivators and has been manipulated by both colonial and postcolonial states to appropriate land.

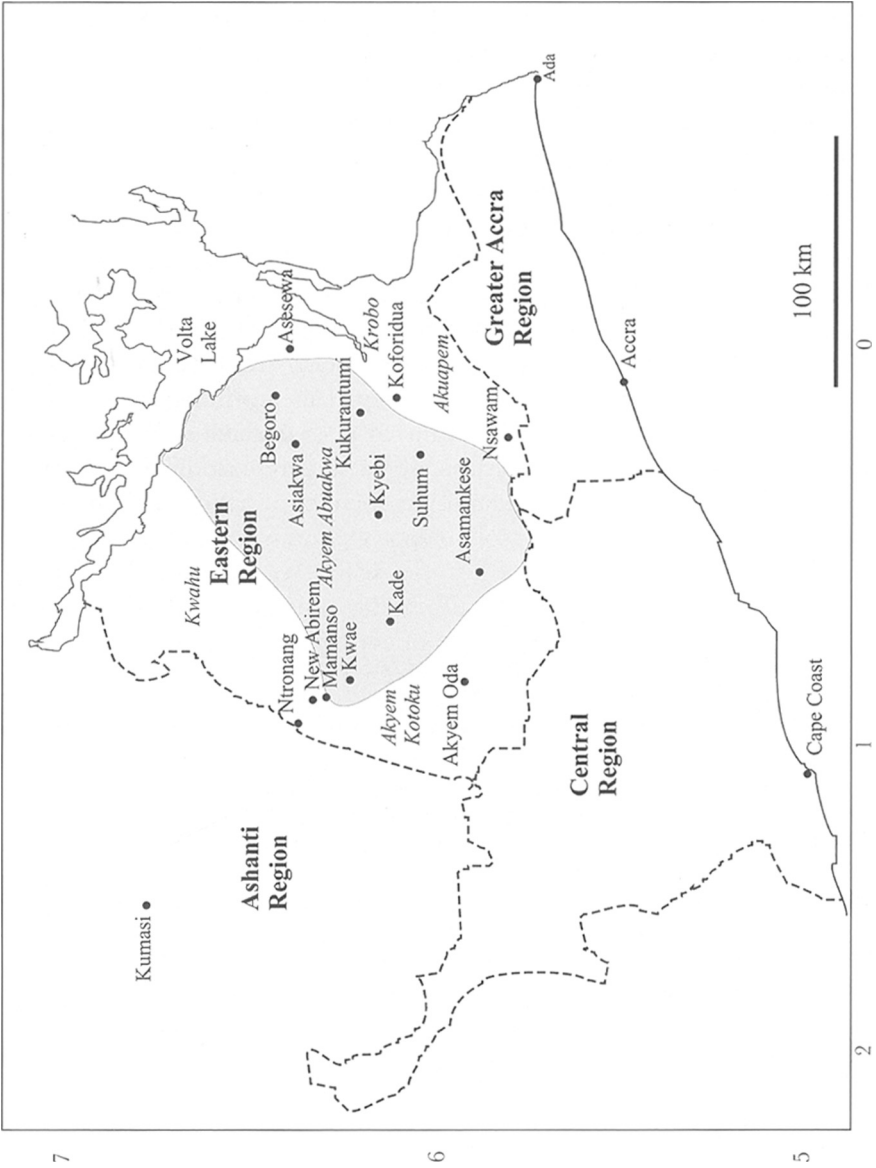
A significant historical body of work also shows how the customary was essentially a creation of the colonial period and of the alliance between colonial power and chiefs which came to constitute the system of Native Administration (Ranger 1983 and 1993; Chanock 1985 and 1991). In the version of customary land law which developed throughout the British colonies and which was sanctioned by the Privy Council in London, rights in land were seen as flowing downwards, as derived from a superior political authority rather than residing in the peasantry (Chanock 1991; Cowen and Shenton 1994). A series of domains existed in which allodial rights were invested in chiefs and user rights in cultivators. User rights were bestowed as a result of citizenship, and to hold these rights citizens had to perform

obligations to their chiefs, which included labor services and payment of taxes.

Migration has always been common in West African societies. However, under colonial rule, migration became central to securing the necessary labor force required for the functioning of the colonial enclave sectors and for the expansion of export crop production. In Ghana, the migrant farmer and the migrant laborer have been central to the expansion of cocoa production. What came to constitute customary land relations were increasingly defined by relations between migrants, citizens and chiefs. It is the contention of the paper that the structural relations between citizens, migrant and chiefs have not led to secure land rights for citizens or migrants, but have undermined the rights of the rural poor. This paper traces changing land rights in Ghana during the nineteenth and twentieth century and the impact of commodification in agricultural production, integration into world markets, social differentiation and governance on the conceptualization of land tenure.

The Setting

The largest traditional state in the Eastern Region of Ghana is Akyem Abuakwa, which rose to prominence in the 1730s when it defeated Akwamu and laid claim to the Akwamu empire. But its power was short lived for in 1742 Akyem was defeated by Asante. From then until the colonial period the whole history of Abuakwa was marked by conflicts and tensions and the failure of a central power to establish control over its territories. Abuakwa was home to a diverse population, which included Adanse migrants from the Asona clan, which the ruling Ofori Panyin dynasty belonged to, Oyoko clans also from the Adanse area who established towns in the western area of Abuakwa, including Begoro and Asiakwa, and many original Akwamu towns in the south with nominal allegiance to the Okyenhene (the paramount chief of Abuakwa). The Abuakwa state was held together by fragile alliances. For instance, in the early nineteenth century the chief of Begoro refused to surrender an elephant tusk, which resulted in a war between Begoro and the Okyenhene in which the Begoro and their Kamana subjects migrated to Gyakiti and only returned under an Asante guarantee of protection. The Asiakwa united with



Map 1: The Akyem area

the Asante against the Okyenhene in the Asante invasion of 1811 (Addo-Fening 1997). The southern Akwamu towns were renown for their 'lawlessness' and the inability of the Abuakwa dynasty to establish control over this area (Reindorf 1885; Wilks 1958).

During much of the nineteenth century Abuakwa was in decline, and the significant economic developments were happening to the south in Krobo and Akuapem, where palm oil was produced for the export trade. The Krobo emerged as the major oil palm producing area in the Gold Coast in the nineteenth century, accounting for about 60 percent of oil palm exports (Wolfson 1953; Amanor 1994). With inland ports on the Volta river the Krobo were able to ship palm oil down the Volta to the port of Ada. The Krobo also benefited from the large numbers of slaves that were being transacted in Volta river trade. A lucrative river trade developed in the nineteenth century in which salt went upstream from Ada to Salaga and beyond, slaves came southwards, and palm oil went overseas. Rich Krobo and Akuapem purchased slaves and put them to work on their palm plantations. The areas under oil palms expanded rapidly. This is well documented in Krobo oral histories which have been published. Thomas Odonkor (who lived during the nineteenth century and was a witness to many of the events he writes about or heard about them from his parents' generation) commented:

Odonkor Azu [who eventually became the paramount ruler in Manya Krobo] brought his family and relatives to his new village [Odumase, now the capital of Manya Krobo]. He was a good farmer and producer of corn. The sister at Kpong did the selling of his crop, and the money went into buying slaves. Odonkor Azu became a prosperous farmer. He was the financial backbone and right-hand man of King Muala (Odonkor 1971: 12).

The Krobo suffered from land shortage and began to seize land from their neighbors, moving from the grasslands of the Accra plains into the more fertile wooded country of the semi-deciduous dry forest. Odonkor (1971: 18–19) writes:

The Krobo had taken up seriously the question of acquiring land for farming. Unfortunately they got it into their heads that the means of acquisition could be fair or foul—one can imagine the series of conflicts and free fight which were common features of this era. Yilo [Krobo] people claimed tracts of land from the Apirede and Adukrom people. The neighboring people owned the land before the arrivals of the Krobo. These people who had been weakened by the wars which caused their southward trek, and so the Kotropeli and the Akrades on

the Manya [Krobo] side could afford no great resistance to the Krobo scramble for land.

This process of land seizure was organized by a class of newly emergent agrarian lords in Krobo. They organized a Krobo military to seize and defend agricultural land from neighboring people, and they introduced new forms of secular chiefly rule based on Akan models (Amanor 1994). They eventually displaced a previously dominant theocracy. With the development of considerable assets in agriculture, the new ruling class sought to establish peace with their neighbors. They negotiated payment for land they had seized and offered to purchase any other land their neighbors were willing to sell. Again, Odonkor (1971: 10) vividly captures this process:

During the reign of King Odonkor Azu the state of land reached a chaotic state. Quarrels and free fights continued to be the common feature of these undertakings. Indeed there were murders among the Krobo themselves in land disputes. The king therefore made friends with King Bamforo of the Kotropelis and the chief priest of Akrade. On the occasion of the Akrade Mantche [chief] fetish festival, Azu regularly gave them presents of drinks and rolls of cloth, and was represented by his brother Tei Wayo. At the height of their friendship, Odonkor suggested to the Akrades that they should in a fair deal, sell their lands occupied for farming, so as to stop the brawls. They took up the suggestion and the Krobos were able to buy land. Peace was firmly established.

By the 1860s Akyem Abuakwa chiefs became the main land vendors for the Krobo:

Later in 1862, Fenning, the Chief of Begoro (Akan), who had heard that the Krobo were on the lookout for fertile land, came down himself, through Dawa to Odumase and Sra to arrange trade agreements. The agreement was effected with the drinking of fetish between the Begoro chief on the one hand and Ologo and Azu on the other. The Krobo now penetrated into the upper country and bought land freely from the Akan (Odonkor 1971: 21).

Similar developments occurred in Akuapem, where large amounts of palm oil were carried down to the coast in pots, produced in small hamlets by bonded labor: 'the inhabitants of the plantations are mostly slaves, who never or very seldom visit the main town'.¹

¹ In *Magazin für die Neueste Geschichte der Evangelischen Missions- und Bibel-Gesellschaften*, 56/3, 1845 (quoted in Johnson 1964: 20).

From a base in Nsakyi, Akuapem farmers began to move into Akyem territory purchasing land beyond the Densu river from Akyem town chiefs (Hill 1963).

In 1874, the British rulers of the Gold Coast Protectorate abolished domestic slavery. This event created a major economic, social and political crisis in Kyebi, headquarters of the Abuakwa dynasty, as many retainers and bonded labor claimed their freedom.² Many of the slaves in Akyem were native Akyems who had been pawned into slavery and who returned to their villages.³ Addo-Fening (1997) is keen to depict slavery in Abuakwa as benign, and argues that 'only a few slaves in Akyem Abuakwa showed eagerness initially to avail themselves of the Slave Emancipation Act' (: 30). However, he admits that: 'The exodus of freed slaves from the state capital reduced its population drastically and worsened the problem of scarcity of food supply' (: 75) and that 'with the loss of their main economic support, most of the inhabitants of Kyebi abandoned the town to live on their farmlands, while the king's wives took up residence at Apedwa. Trading activity and gold-mining almost ground to a halt' (*ibid.*). Traveler accounts of Akyem Abuakwa in the second half of the nineteenth century depict the area in decline.⁴

Deprived of their labor force, many Akyem nobles fell into debt. This particularly affected chiefs who were expected to exhibit largesse and support festivals. Unable to recruit labor for farming or other economic enterprises, many chiefs took to selling land to alleviate their debt. Oral evidence provided in an enquiry into the destoolment (deposition) of Ohene Gyamara of Begoro in 1913 narrated: 'When Jamara came to the stool he borrowed £33 from Konor E. Mate Kole [the paramount chief of Manya Krobo] to keep the yam custom and agreed to sell him the Dabetan land to settle the debt'.⁵

McSheffrey (1983) argues that while the abolishment of slavery produced a crisis in Akyem, this was not the case in Krobo and

² See Eisenschmid to Basel-Mission, 25 January 1875 (quoted in Jenkins 1970: 585).

³ See Asante, Mohr and Weisner to the Slave Emancipation Commission of the Basel Mission on the Gold Coast, 26 June 1875 (quoted in Jenkins 1970: 585).

⁴ See for instance Ghana National Archives, ADM1/645, Captain Brandon Kirby's 'Journey through Eastern Akyem'. Itinerary of Brandon Kirby 24th January 1882, Despatch no. 14, Dispatches from Governor to Secretary of State, January to March 1882.

⁵ Ghana National Archives 11/457 1913 Enquiry into charges against Chief Jamara, Ohene of Begoro, case no. 21 of 1913.

Akuapem, where slaves were more integrated into the family as junior dependent family lines. This is brought out in the recorded Krobo oral traditions. For instance, Noah Azu (1928: 22) writes:

Ba Asare, in order to provide his loyalty to his benefactor gave one of his sisters and two maids servants to one Djebiam prince to marry all those three together. He again allowed Kofi Asare, who was the son of his own slave to marry his daughter. Such actions caused Ba Asare and his people to be loved and honoured more by the Krobo.

In the late nineteenth century wealthy Krobo and Akuapem farmers were able to purchase large tracts of land in Akyem, since Akyem lacked the necessary farm labor force to move into commercial agricultural production. The movement of Krobo and Akuapem migrants into Akyem was intensified by the depression in oil palm trade. The opening up of oil palm production on capitalist plantations in south-east Asia, and the replacement of palm oil by petroleum products led to overproduction of palm oil on world markets, falling prices, and a slump in trade. Unable to produce palm oil competitively, Akuapem and Krobo farmers turned to cocoa. However, cocoa thrives in moist forests and not in the dry forests that characterize the land of these polities. Thus migrant Akuapem and Krobo farmers now moved into the Akyem heartlands in Begoro and beyond the Densu, converting them into cocoa plantations.

Akyem land and Native Administration

In the late nineteenth century, relations between the colonial state and the Okyenhene Amoako Atta were tense, particularly since colonial legislation on slavery had undermined the position of the Akyem royal family. In 1880 the colonial government intervened into Akyem politics and charges of arson, slave-dealing and murder were brought against the Okyenhene. Amoako Atta was convicted of arson and sentenced to five years imprisonment (Addo-Fening 1997). Following his death in 1887, the colonial government was instrumental in appointing the new Okyenhene, a fourteen year old boy, who was made to swear an oath of allegiance to the District Commissioner. By the early twentieth century Akyem Abuakwa had a Christian educated chief in Sir Nana Ofori Atta, and Abuakwa emerged as a model Native Authority. Ofori Atta was a major ally of British colonial rule and was instrumental in drafting the Native Administration

Bill. He was able to 'use the law skillfully within the Indirect Rule structure . . . to ordain what was and was not "customary"' (Rathbone 1993: 62).

With the adoption of the Native Administration system, the colonial authority saw its main political allies in the chiefs, who were given powers to establish customary courts, and make bye-laws. Rural administration was concerned with preserving the culture of the people against disrupting modern influences, and administration and legal judgments were based on interpretations of customary principles. This, however, failed to take into consideration the turmoil, instability and rapid change that had characterized the nineteenth century. Instead of attempting to base customary land tenure on historical considerations and empirical realities, the empirical reality was taken as an aberration of what ought to exist. The 'real' customary conditions were those endorsed by the Privy Council in London. In the case of *Amodu Tijani v. Secretary, Southern Nigeria* of 1921, basing its deliberations on C.J. Rayner's 1989 *Report on Land Tenure in West Africa*, the Privy Council established the precedent that land sales and individual ownership of land was an aberration in West Africa, an introduction of English ideas, and that under 'pure native custom' land lay under the control of chiefs, headmen or family heads, who held the land in trusteeship for the use of the community (Cowen and Shenton 1994).

In the southern Gold Coast a significant number of land sales had taken place from the 1830s and particular local customs had grown up to seal these transactions. In the *guaha* transaction a leaf was cut into two, one half going to the seller and the other to the buyer. Libations were poured on the land and the empty bottle left next to a stone to signify the alienation of the land to the purchaser.

On the eve of the Native Authority system, the Okyenhene found himself heir to a vast land, of which considerable areas had been sold to migrants. Most of this land lay under the authority of town chiefs, and the Okyenhene had very little land under his direct control. With new found powers granted by the Native Administration Bill, the Okyenhene sought to recreate a new highly centralized Akyem state, in which land came directly under its paramount chief. Rathbone (1993: 56) writes that Ofori Atta:

sought to create a command economy in which the centre would be control not only taxation but also resource allocation. He tried to control land sales and entrepreneurial activity. In this, too, he made ene-

mies; and because of this the potential support of the colonial state was an important element in his arsenal.

Central to the recreation of Abuakwa was the symbol of the ancestors of the Okyenhenne as the great conquerors of Akyem and the town chiefs as violators of Akyem custom. In his discourses on land, the Okyenhenne presented a scenario in which customary land tenure was breaking down in Akyem as a result of the selfishness of town chiefs who had sold large tracts of land to migrants. This threatened the needs of future generations of Akyem citizens. Moreover, these land sales were a violation of the customary rights of the Okyenhenne to control land. As the heir to Ofori Panyin, who had defeated the Akwamu and distributed the land under his control to his Akyem followers, the Okyenhenne had ultimate rights of ownership and the Akyem settlers only had user rights. However, this narrative failed to take into account the largely autonomous Akwamu settlements which had continued to exist in southern Akyem Abuakwa after the defeat of Akwamu, the Akwamu settlements that had been incorporated into Abuakwa administration without defeat, and the large number of Oyoko towns which had not been fully incorporated into the Abuakwa state.

In 1901 a state council (*Okyeman*) meeting prohibited the alienation of land without the consent of the paramount stool and declared that one quarter of all revenues realized through land sales were to go to the paramount stool (Addo-Fening 1997). Under the rule of Ofori Atta, in 1915 the Okyeman Council banned further land sales to migrants without the prior consent of the Okyenhenne and reserved mining and timber rights for the Okyenhenne. Migrant farmers were declared to be tenants of the local stool and subject to local chiefs who as their landlords had the rights to one third of their produce (Rathbone 1996). This effectively transformed migrant landowners who had purchased land into sharecropping tenants. These bye-laws conformed to the colonial objectives of limiting the development of land markets.

The land policy which emanated from this ideological conception of customary rights was disputed by several of the town chiefs, particularly those of Akwamu origin, including Tafo, Asamankese and Akwatia. Relations between Ofori Atta and the chief of Asamankese were tense as a result of the Ofori Atta's attempts to gain control over Asamankese lands. Matters came to a crisis when the Okyenhenne attempted to impose a farm tax on migrant farmers in Akyem

Abuakwa. Significant parts of the population of Asamankese consisted of migrants who had close ties with the Asamankese people, including Dwaben and Anum (close allies of the Akwamu from the seventeenth century). The chief of Asamankese was himself married to a Dwaben woman. The chief of Asamankese refused to comply with the collection of the tax and a fine was imposed upon him by the Okyeman Council. As relations worsened between Asamankese and the Okyenhene, diamonds were discovered at Akwatia, then a village under Asamankese. The Okyenhene attempted to establish rights to the concessions in the area. The chiefs of Asamankese and Akwatia responded by declaring their secession from Akyem Abuakwa. They took this course, since under colonial administration they could only appeal to the court of the Okyenhene. This secession was not accepted by the colonial administration and a protracted legal case took place which was drawn out for nearly twenty years (Rathbone 1993; Addo-Fening 1997).

While the Okyenhene made a great show of defending Akyem lands against an invasion of land buying migrants, he was not averse to signing vast tracts of land as concessions, or agreeing to land sales when he gained a significant part of the revenues. The insistence that land in Akyem was not customarily sold thus served as a device through which the Okyenhene could frustrate land sales by the town chiefs and gain part of the revenues by giving his seal of approval. The exactions that the Okyenhene attempted to impose upon his subjects and migrants were extremely unpopular, and this led to the rise of popular organization in which both commoners and migrants united against the extortions of chiefs.

The main popular opposition against the Okyenhene was organized through the *asafo* companies. The *asafo* were originally military companies, through which the various settlements provided military recruits for state campaigns. In peace time the *asafo* companies played important roles in maintaining the social infrastructure of the settlements, maintaining its transport routes and sanitary facilities, and carrying out communal labor. During the colonial period the *asafo* began to be used by commoners to mobilize opposition to chiefs and to hold them accountable, particularly for misappropriation of stool land revenues, land sales, timber and mining concession, cocoa revenues, special levies and forced labor (Simensen 1975; Asiamah 2000).

In Abuakwa the Asafo moved to destool the Okyenhene in 1918 and 1932. In 1932 the Okyenhene was only saved by the military force the colonial government sent to defend him (Simensen 1975; Rathbone 1993; Addo-Fening 1997). The *asafo* also turned against the town chiefs: between 1904 and 1944 35 divisional chiefs were destooled in Abuakwa. By the 1940s the *asafo* in Akyem became integrated into the anti-colonial movement, the grievances against chiefs and the Native Administrative turning against the colonial authority which supported this undemocratic system (Amamoo 1958; Simensen 1975).

By the late 1940s it had become evident that social and economic life had been transformed on the Gold Coast and that the institutional structures of the Native Authorities were largely anachronistic. Following riots in urban centers in 1948 a Commission of Enquiry was set up under Aitken Watson to examine the underlying causes of the disturbances. Many of the representations of commoners or young men complained of the system of Native Administration, the autocratic impositions made by chiefs and elders on the population at large, and the lack of any democratic representation of the commoners. They called for the establishment of a system of local democracy and the reduction of the role of chiefs to an ornamental figure.

The contradictions within the system of Indirect Rule were highlighted by Macmillan in the Gold Coast with reference to Akyem:

The Akim country, in particular, has not only scattered aliens as individual owners but whole village communities of 'alien' occupants. In many market towns, of which Suhum is an often quoted type, the aliens are definitely in the majority (. . .) and yet the only local tribunals are those of the home tribe, with appeal to the local tribal Paramount. The worst feature of all this is that anything up to 20 per cent of the population of such towns are Northern Territories labourers (. . .). But the labourers must look for redress of grievances in the first instances to a tribal court, which is certainly not their own, and may very often be composed if not of their actual employers then of their employers' friends and relatives (. . .). In some of the cocoa country, and certainly in the towns, one-tribe courts are therefore an anachronism. It is a fair inference that successful government in the Gold Coast demands a revision by the Colonial Office of its exclusive devotion to a doctrine of Indirect Rule based on tribal institution. The confusion, finally, as it concerns both land-ownership and those questions of tribal jurisdiction, is constantly spreading to any area newly brought under cocoa, especially in the Western Province, but also in Asante and Togoland (1946: 90-91).

Indirect Rule lay in tatters and reforms introduced in the 1950s paved the way for elected local councils and independence.

The postcolonial state, land and the chiefs

The anti-colonial movement, which was led by the Convention People's Party (CPP) under Nkrumah, had an important rural constituency which was against chiefly rule in the Native Administration system and against the control of land by chiefs and the impositions they made on tenant farmers (Owusu 1970). The CPP also had aspiring capitalist supporters who had been frustrated by colonial rule and looked to self-rule as developing the conditions for a golden age of African business. The CPP used popular anti-chief sentiment to gain some control of the resources that chiefs held. It vested administration of natural and landed resources in the state, to be carried out on behalf of the chiefs. No consistent policy of land reform was followed. The state began to assume the role of the landlord and paramount chief of the nation, and Nkrumah developed symbols of chieftaincy around the presidency, even taking the chiefly title *Osagyefo*.

The powers of chiefs over landed resources actually increased. For instance, during the late 1940s and 1950s timber exploitation was one of the fastest growing sectors, fuelled by large demands in Europe for timber for postwar reconstruction. The growth of the timber industry led to the necessity to create a new regulatory framework for concessions. This involved the creation of a new layer of tradition which invested timber rights exclusively in chiefs. During the 1920s and 1930s farmers had rights to exploit timber on their land. They only had obligations to remit a percentage of the wealth realized from timber exploitation to the chiefs. The 1962 Concessions Act invested the timber resources of Ghana in the hands of the President, to manage on behalf of the chiefs. While this appeared to erode the power of chiefs, it also created the fiction that timber resources belonged to the chiefs exclusively, thus strengthening the revenue base of chiefs in timber royalties. The farmers who nurtured timber trees on their land were the ultimate losers (Amanor 1999).

The 1962 State Lands Act enabled government to acquire any land in the 'public interest' and established the modalities for the process of compulsory acquisition. This has been instrumental in cre-

ating the conditions through which the state can expropriate land for state economic ventures and also for the private economic ventures of their business allies. There has been a postcolonial alliance between the state, capitalist interests (albeit with close ties to the political regime) and the chiefs. The ideology of chieftaincy justifies the expropriation of natural resources into exclusive hands in the 'national interest'. In return for sanctifying and mysticizing the process of expropriation and giving it the veneer of customary right, the chiefs gain valuable revenues in rents, royalties and concession fees. The peasantry merely have user rights of cultivation. When their land is expropriated, they need only be compensated for the crops they are growing at the time of compulsory acquisition. The ideological framework for land administration that has evolved in the postcolonial period involves a concept of the overriding rights of the state to expropriate and disburse land through appeal to 'national interest', 'public interest', and 'the interest of development'. Chiefs reinforce the customary rights of peasant cultivators *not to* own property. While the Native Administration system was replaced by a system of elected local government, a third of the seats in local government were retained for members appointed by chiefs and the government. Chiefs retain *de facto* control over land and natural resources. Thus, to this day a democratic system of local government has only been partially achieved, since significant numbers of officers, including the Chief Executive are appointed rather than elected. The district assemblies have very limited powers to make policies on land and natural resources which are the preserve of the chief and the alliance between central government and the chiefs.

During the Nkrumah regime, the main focus was on promoting state investment in agriculture. After the overthrow of Nkrumah, under the Busia led Progress Party, the state began to promote private sector investment in agriculture. This reached its zenith in the Acheampong regime, where subsidized inputs, credit facilities, and easy access to state expropriated land was made available to indigenous capitalist farmers but also to agribusiness. Government schemes that made use of farmers as outgrowers, contracting them to produce specific crops under specific directives for marketing by government parastatals were also popular in this period (Konings 1986). Those who did not comply with project directives were expelled. Konings (1986) vividly captures this process of expropriation of land

and the central role played by chiefs, who frequently threatened resisting farmers with violence.

In Abuakwa, significant expropriations of land have taken place for private capital and state projects. The most significant one has been for the creation of Ghana Oil Palm Development Corporation (GOPDC), a World Bank and Government of Ghana project which was divested in the early 1990s. The Government approached the Okyenhene for suitable land and the Okyenhene identified a concession in the Kwae area, which consisted of 9,000 hectares (Gyasi 1992; Daddieh and Jonah 1987). To make way for the project about 7,000 farmers were expropriated under the Stool Lands Act of 1960, which gives chiefs the power to expropriate land for government. While many empty promises were made about the advantages the project would bring, farmers were only compensated for crops on their farms, since they did not own the allodial rights of the land. Compensation for the land was to be paid to the chiefs. However, this compensation never was paid because there were disputes between the various town chiefs and the Okyenhene about who was entitled to compensation.

The rise of the migrant sharecropper under colonialism

The early farm migrants into Abuakwa were relatively wealthy: they invested in land, controlled large networks of labor, and hired wage labor. Once they had opened up the cocoa frontier, they were followed by less wealthy laborers, who were looking for work rather than ownership of land. This second wave of migrants threatened the niche of the land purchasers, since they provided Akyem landowners with labor to develop their own lucrative cocoa plantations rather than sell land outright. By the 1920s the land purchasing frontier was undermined by the influx of a large number of laborers, firstly from the Volta Region, Krobo, Shai, Ada and Akuapem areas, and later by the influx of northern migrants from areas which were often subject to concerted labor recruitment policies. Migrants without sufficient capital often worked on sharecropping arrangements. They transformed mature forest into cocoa plantations, which were divided between the landowner and the tenant. Through these arrangements, known as *abusa* ('third shares'), Akyem landlords were able to gain cocoa plantations without making large outlays for labor and seed. The *abusa* arrangement enabled town chiefs to enter into arrange-

ments with migrants for the expropriation of land, without violating the new customs being created by the Okyenhene that Akyem land was not saleable.

Three variants of the share contracts (*abusa*) developed in Abuakwa. In the first variant, forest land was released to a tenant. The tenant undertook to create cocoa plantations. The tenant could cultivate food crops freely on the land while establishing the cocoa farm. When the cocoa plantations became fully bearing, they were divided into three: the tenants retained one third of the plantation as their own land and two thirds was taken over by the landlords as their share. The landlords were now responsible for providing their own labor to weed and maintain their plantation. In the second variant, mature forest land was given to a tenant to create a cocoa plantation. The tenants continued to work the whole plantation when the cocoa matured and received two thirds of the cocoa they harvested. The third variant was the *abusa* laborer system, in which a caretaker worked on an already established plantation and was remunerated for the labor in weeding and harvesting with one third of the crop (Hill 1956). These various systems were informed by an underlying economic rationale: one third went to the owner of the land, one third for the provision of farm capital and one third for farm labor. In the first variant the landlord gained a two-third share, one third for the land and one third for the labor brought to maintain the cocoa plantation. In the second variant the tenant received two thirds, one third for the capital (and capitalized labor) involved in creating the cocoa plantation and one third for the labor involved in maintaining the plantation. In the third variant the *abusa* laborer received a third share of the cocoa harvest for the labor in maintaining an already established plantation.

By the 1920s Akyem landlords had transformed themselves into owners of large cocoa estates worked by migrant labor. *Abusa* became a dominant relation of production in the cocoa industry, replacing the more monetized land sale and labor hiring arrangements, which had characterized the cocoa industry in the pre-1910 period.⁶ The first variant of the *abusa* system tended to prevail in the early cocoa era, with the main tenants originating from southern Ghana, from the Volta Region, Krobo, Shai, Ada and Akuapem areas. With the

⁶ Austin (1987) notes similar developments in southern Asante in the 1920s and 1930s in which monetized production relations were increasingly replaced by *abusa*.

influx of laborers from the north during the 1920s the other two systems of *abusa* became more prevalent. Northern migrants usually worked as *abusa* caretakers on the plantations that were established by earlier migrants and had accrued to the landowners. With assets in cocoa plantations and a large influx of cheap labor into Akyem, farmers would now hire labor to complement family labor in establishing plantations and then place the established plantations under *abusa* caretakers. In addition to the *abusa* laborer, annual laborers were common. The annual laborers spent a year away from their hometowns. They were given land by their employer on which they could freely cultivate foodstuffs. The landlord provided them with implements, clothing and food. In return, the laborers ran many errands for their employer in addition to maintaining the cocoa plantation, such as fetching water for the household, pounding *fufu*, etc. They were remunerated for their services at the end of the major harvest season. The annual laborers preferred this arrangement since it assured that they returned home with money and goods rather than dissipating their wages (Hill 1956; Adomako-Sarfoh 1974). The *nkotokoano* system was another laboring system, which was most common among Akuapem cocoa farmers. In this system laborers were paid a fixed sum for every bag of cocoa they harvested. This was one of the earliest contractual wage system in cocoa and had preceded the development of *abusa* (Hill 1956). Long-term migrants were most frequently employed as *abusa* caretakers, looking after the farms of their landlords from year to year and receiving a third of the value of the harvest for remuneration.

In the 1920s and 1930s Akyem Abuakwa was the largest producer of cocoa in the world and this was achieved by a labor force drawn from throughout West Africa. Many Akyem Abuakwa towns began to have large sections of people from northern Ghana, Kotokoli people from Togo, Baasare from German Togo (which later became incorporated into Ghana after the First World War) and French Togo, Zaberma from Niger, Mossi from Haute Volta, and Songhay from Mali. The southern area of Akyem Abuakwa was dominated by Krobo, Akuapem, Shai and Ewe settlers and many areas were dominated by Dwaben settlers, including Koforidua, the present day capital of the Eastern Region. That Akyem was a land of migrants was confirmed by the 1948 Population census which recorded more than 60 percent of its population as strangers. In an economic survey of Akyem Abuakwa, Hill and McGlade (1957) found that the

majority of cocoa was tended by *abusa* caretakers and that the majority of *abusa* caretakers were migrants. Over 90 percent of cocoa farms in Kwaben, Bansa and Anyinam were tended by *abusa* caretakers, but only 15 percent of the caretakers were Akyem. The majority were from the Sahelian region of West Africa, the Northern Territories of the Gold Coast, Northern Trans-Volta and Togo, and from the Ewe and Krobo areas. In the early 1960s Hunter (1963) estimated that 98.6 percent of the land in the New Suhum District of Akyem Abuakwa was cultivated by migrants.

The rise of the sharecropping citizen

The influx of migrant labor into Akyem, and their utilization as sharecrop labor, enabled rich and powerful chiefs and lineage elders to appropriate large areas of land and convert them into cocoa plantations as their own individual property (*agyapade*). Freed from reliance on family dependents elders could play off their dependents against each other and maximize profits by the way in which they used family and migrant labor. By the late 1950s and 1960s land shortage became evident among youth in some Akyem towns, such as Enyiresi and the environs of Asamankese where many youth moved into cane basket weaving in this era because of difficulties in gaining farm land. With the decline of uncleared forest land, youth became increasingly dependent upon their elders for access to land. Elders could impose many conditionalities upon them related to service on farms. Okali (1983), depicts the bitter conflicts and disappointment which occurred as sons, nephews, and wives who had spent considerable time in working on the plantation of their father or mother's brother found their claims to land usurped by junior brothers of their farm owner. Under these conditions many young men refused to work on family land and sought work as sharecrop farmers or laborers. But here they found themselves frustrated by intense competition with migrant farmers who often worked for cheap wages.

In the late 1960s, the economic recession in Ghana and growing unemployment was blamed upon 'aliens', a term which refers to migrants from neighboring West African nations. The main brunt of attacks were against immigrants in informal-sector petty-trading enterprises. In 1969 an Aliens Compliance Act was enacted and

hundreds of thousands of West African immigrants were expelled. The expulsions rapidly moved into the agricultural sector and thousands of laborers on cocoa plantations were harassed, to the concern of large cocoa farmers and government:

Mr Kofi Gyemfi III, MP for Atwima Amansie, yesterday called on the government to make it abundantly clear that alien farm labourers were privileged to stay in Ghana. Mr Gyemfi said it appeared the Government Compliance Order was being misapplied by some unscrupulous people in the rural areas. Addressing a news conference in Kumasi, Mr Gyemfi said he had received complaints from some farmers that there were people going around the villages asking farm labourers to leave the country. As a result many labourers have left for their countries and this has put some farmers in a difficult position. "If the Government does nothing to arrest the alarming situation which is rearing its head, the cocoa industry will seriously be at stake" he said.⁷

In Akyem local youth had taken advantage of the xenophobia to oust migrant labor, who they felt were being used by their elders to undermine their economic position. Adomako-Sarfoh (1974) reports that following the overthrow of the Busia government, the National Redemption Council attempted to rescind the Alien Compliance Order, and encourage Sahelian migrants back, but many rural youth demonstrated against this.

Rural youth have replaced the long-distance migrants as laborers and sharecroppers, but the conditions of labor have changed. Annual labor contracts have been largely replaced by daily hired labor and job contract labor. Farm labor is more expensive and farmers who cannot afford to pay for labor are forced to release their land to youth on share contracts. Youth increasingly work independently of their seniors as laborers and sharecroppers. Agriculture has become increasingly commodified with farmers investing in hired labor rather than relying on the labor of their children and nephews. Access to land and labor is increasingly defined by commodity relations rather than family relations. While Abuakwa continues to have a heterogeneous population, with many long established migrants drawn from throughout West Africa, whose descendants have essentially become integrated into Akyem society, it no longer possesses the long-distance mobile migrant labor networks, which relocated to the Côte d'Ivoire.

⁷ *Daily Graphic*, 28 January 1970 'Police Probe Aliens Bribe Report'.

The family as a farming unit has largely been replaced by individuals using hired labor. Inheritance in this matrilineal society is often a messy affair characterized by disputes between lines of brothers, nephews and sons. Disputes between elders and juniors are rife. Seniors claim that the youth are lazy and do not want to do farm work and young men claim that the elders do not meet their responsibilities to their kin. Women attempt to define a category of female land which can only pass from mothers to daughter, trying to preserve their access to farmland in a highly commoditized and competitive world (Amanor 2001).

Land shortage is most evident in the Kwae area where the GOPDC expropriated a 9,000 hectare concession. The hybrid oil palm plantations that have been introduced by GOPDC have proved to be highly profitable and oil palm plantations have spread widely into the peasant farm sector. However, the costs of establishing an oil palm plantation are high and beyond the means of many farmers. Farmers can enter into out grower contracts with GOPDC. This is widely perceived as exploitative, since the farmers are forced to sell their fruits to GOPDC at prices dictated by the company which are often below local market prices for oil palm fruits. Moreover, the GOPDC charges compound interest in the loans in kind it provides to the farmers, which embroils them in debt (Amanor 1999). The alternative arrangement is for landlords and family heads to release family land to rich tenant farmers. The tenant farmer creates an oil palm plantation which is then divided into half (*abunu*) and shared between the landlord and the tenant. The tenant's share of the plantation remains in his/her possession for the duration of the fruiting trees, after which the land reverts to the matrilineage.

The demand for share tenancies has become high. As a consequence, youth with capital are now contracting share contracts with their own family members. For instance, at Mamanso, share contracts can be found between fathers and sons, fathers and daughters, mothers and sons, maternal uncles and nephews, and husbands and wives for oil palm and citrus (Amanor and Kude Dideretuah 2001). This expropriation of land from kinsfolk to family members with capital and non-family members is veiled by the elaboration of custom. In the past when a senior presented a junior with land in return for service, the junior made a counter-prestation before the lineage elders, known as *aseda* ('thanks'), which sealed the transfer of ownership. There were variants of this *aseda* payment, but it usually

consisted of a token payment of a sheep and drink and possibly some cloth. Today *aseda* payments have been monetized and are so inflated that they are beyond the means of most small-scale food crop farmers. Those who cannot pay cannot gain land. Land goes to the wealthy. The youth are increasingly socially differentiated, between emerging capitalist tenant farmers, who are able to purchase farm inputs and hire labor, and a dispossessed casual-laboring and mobile underclass.

In contrast with the Kwae area, agriculture in settlements to the south around the Atewa Forest range is in decline, with no really viable alternative replacing the moribund cocoa economy.⁸ Land is also scarce, particularly since the creation of this large forest reserve deprived the forest edge communities of land. Youth are reluctant to work for their fathers and mother's brothers since they are not guaranteed land or only receive small plots, which will not provide them with satisfactory incomes. Most of the youth tend to drift into informal sector gold mining or diamond winning, chainsaw activities that have recently been made illegal by the state, and casual labor. Many of them regularly move between rural and urban areas desperately looking for work opportunities and cash to tide them over the hard times. Many of the elders attempt to sell land, since they do not have family labor to work the land. While this is regarded as against customary norms, there are provisos for selling land which can be manipulated, such as the need to meet the costs of medical bills or funeral expenses. Gradually a small class of modern plantation investors from outside the area are acquiring land for investments in citrus, oil palm and coffee plantations.

This sale of land takes place behind a background of disputes between elders and youth and males and women about rights in land, rights to service, rights to support, and reciprocal obligations. As one male youth at Dwenease candidly stated: 'If you ask your parents for school fees and they refuse, you may have to do *by-day* [casual farm labor] to get the fees. The next time your parents call you to do something you may refuse to attend to their call'. The elderly men castigate the youth as lazy and not worthy of inheriting land. One old man at Dwenease stated: 'I will share my land according to the service and attendance given me'. Women argue

⁸ This research is written up in Amanor (2001).

that they are the true custodians of matrilineal land and that the land should be in their care since the men marry outside of the matrilineage and give their land to their sons or sell off the land (Amanor 2001).

Conclusion

Received wisdom holds that 'the traditional system of land tenure guarantees each member of the community the right to access to land for farming and housing' (Kassanga 2000: 28). This study of changing custom and land relations, however, shows that concepts of community, land rights of citizens and the politics of belonging have always been problematic. In Abuakwa, the eighteenth and nineteenth centuries were characterized by war, conquest and resistance, and the tense coexistence of a heterogeneous population. The early twentieth century was bound up with colonialism, the Native Administration system and the imposition of a paramount chief upon the people of Abuakwa, who was given powers by the colonial authority to create a new Abuakwa and renew and codify its customs to fit the pragmatic requirements of a wealthy mineral and export agriculture enclave. The major structural determinants of identity in this period revolved around mobile migrants and citizens, but the strictures placed on both created much dissent in Abuakwa. Migrant labor has facilitated the expropriation of much land in Abuakwa by the powerful, resulting in land shortage for the peasantry. While the large numbers of long-distance seasonal migrant laborers are no longer to be found, a significant proportion of youth in Abuakwa are now dispossessed and mobile, moving between various Akyem towns and between their hometowns and urban areas looking for work, sustenance and a source of livelihood. Customary tenure has alienated them, produced rootlessness and a desperate vision of a difficult world in which everything 'is money matter' (*eye sika asem*). As one young woman at Dwenease commented: 'the *abusua* (matrilineal) system only works when you are dead [i.e. kin will come around to your funeral] but when you are sick no one will care for you. This is because everyone is thinking of their own self'. These bleak perceptions of the present are disconcertingly incongruent with the world of community development—just as the Privy Council's pronouncements on West African land tenure were back in the 1920s.

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INDIGENOUS BLOOD AND FOREIGN LABOR:
THE 'ANCESTRALIZATION' OF LAND RIGHTS IN
SEFWI (GHANA)

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This paper provides an overview of the dynamic interplay between the recourse to ethnic identity and the allocation of land rights in the Sefwi Wiawso and Juabeso Bia districts of the Western Region of Ghana. The issue under scrutiny is a classical one and has attracted the attention of legal analysts, anthropologists, geographers and historians working in the Akan area of West Africa.¹ My contribution is centered upon three issues. First, my focus is on an area of limited size—what was recognized as the Sefwi Wiawso kingdom—in which I have followed different archival traces (national, regional, palace archives, private contracts) concerning a relatively long time span. This detailed ethnographic history reveals crucial shifts in key local notions, suggests reasons for such alterations and explores the consequences in terms of regulations concerning the granting of agricultural rights to 'strangers'. Second, I explore the interplay between national and local edicts regulating foreigners' access to agricultural land. 'Ethnic' decrees concerning land tenure have often been ignored in favor of the study on national legislation or simply considered contemporary translations of traditional custom. I show that norms governing land tenure passed by Sefwi 'traditional rulers', the body of recognized chiefs, have been very dynamic and have often challenged national legislation. Third, I examine the social repercussions of transformations in the legal framework. Local legislation has been extremely relevant in the daily practice of ethnic relations shaping both the involvement of different groups in the productive process and inter-ethnic tension.

¹ See Bentsi-Enchill (1964); Chauveau and Dozon (1985); Bennet (1988); Kasanga (1988); Rathbone (1996); Woodman (1996); Berry (2000).

The emergence and fixation of a defining label: generating Sefwi ethnicity

What is now the Sefwi area was not identified as an ethnic unit in the first part of the eighteenth century and contradictory information was provided concerning the territory lying directly west of Asante. A Sefwi political and ethnic identity is first documented in the middle of the eighteenth century with the emergence of partly autonomous political units sharing some distinctive cultural and linguistic features. The rise of Sefwi chiefs is probably to be attributed to a rebalancing of power sponsored by the Asante empire towards its western frontier after the ultimate defeat and demise of the previous hegemonic powers in the area, namely Aowin and Denkyira. The name, to my current knowledge, first appears in an agreement stipulated between 1754 and 1758: the Asante, as part of a peace treaty asked that 'the king and countries' of 'Seigwi' and others 'who are now obedient to Assiantijn . . . should never be attacked' (Yarak 1977). Bowdich (1819) mentioned the name 'Sawee' with some doubts.² From then onwards, however, most studies restated the name, offered further details or simply reproduced Bowdich's account.³ The maps of the Gold Coast and of Guinea began to include this ethnic-geographical label as a consequence of Bowdich's mission.⁴ In the course of the nineteenth century, the chief of Wiawso expanded his territorial domains northwards and westwards by establishing a network of relations of dependence with less important political heads (Boni 2001). By the late nineteenth century a Sefwi identity was well founded but there is evidence that the political power exercised by Wiawso was probably limited in size and highly instable (Boni 1999). Chiefs continuously challenged one another's claim over tracts of land and constant military campaigns, political strategies and ritual

² In 1821, Bowdich published *An Essay on the Geography of North-Western Africa*. In the map facing the title, both 'Sawee' and 'Moinsan', which probably refers to the northern part of the Sefwi area, where the village of Boinsan was and is positioned, are followed by a question mark.

³ See Hutton (1821: 335); Dupuis (1824: 242, XXVII, XXVIII, XXIX, LVI); Cruickshank (1853: 41); Ramseyer and Kühne (1875: 143–144, 213).

⁴ Hutton does not include the name 'Sefwi' in his map (map facing page vi). Dupuis includes in his map the names 'Showy' and 'Sumah' in an area corresponding to the present Sefwi area (map facing page I). 'Sawee' and 'Moinsan' are included in the *Map of the West Coast of Africa comprising Guinea and the British Possessions . . . compiled mostly from the map of John Arrowsmith* (1842). The cartography does not provide detailed information on the Sefwi area until the first expeditions to the interior in the late 1870s and 1880s.

agreements were needed to maintain taxation rights over the territory and the subordination of its inhabitants.

The consolidation of an 'ethnic kingdom' must be largely attributed to British intervention in the early twentieth century. Two inter-related processes occurred. The first transformation was political: a network of fragile, dynamic, negotiable power relations centered on the prominent chief of Wiawso was transformed into a kingdom. British rule projected and imposed onto the area its model of what should be an African centralized state. For classificatory and administrative purposes the kingdom of Sefwi Wiawso had to have precise boundaries, a capital and a set of subordinate chiefs with clear duties and rights. This required a process of codification: British administrators fixed offices, ranks and frontiers thus turning a volatile political structure into a rigid, static kingdom (Boni 1999).

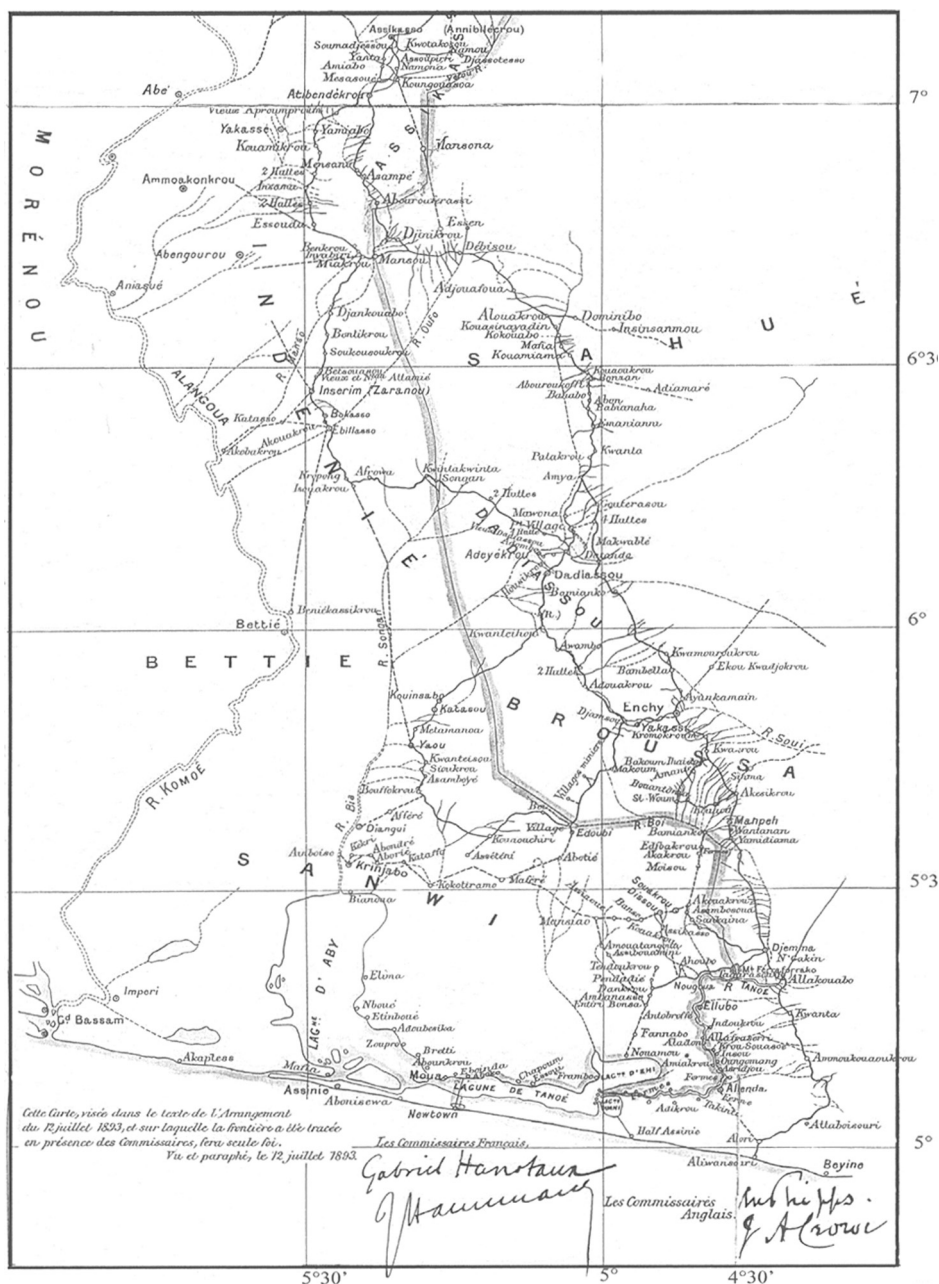
The second, related process concerned the perception of identity. In 1885 the Berlin Act set the criteria for the acquisition of colonies. In 1887 what was recognized as the king of Wiawso signed a treaty with a British envoy stating that 'Sefwhi' was 'under the protection of Great Britain' (Claridge 1916: II, 306–307). Soon after, the governments of France and Great Britain started negotiations to delimit their colonies in West Africa. The Anglo-French Arrangement of 1889 and its continuation in 1890 fixed the frontier between the Gold Coast and the Ivory Coast only in the immediate proximity of the coast while, further to the interior, 'the task of determining the respective spheres of influences of the two countries' was left to two 'commissioners' (Hertslet 1896: 572; 558–59). The territorial division between colonial powers rested on the assumption that the area was occupied by 'tribes', organized in political units. Major units included sub-units. It was also presumed that the 'tribal' hierarchy of units and sub-units was well defined. The inclusion of a 'tribe' in French or British territory was determined by the signing of a treaty between the 'recognized' chief of the area and a representative of the colonial administration or by the fact that the chief displayed the flag of a European nation. Colonial officials classified communities according to political affiliation and thus assumed that the validity of any treaty signed by the chief of a tribe would be extended to the whole 'tribe' he represented, including all the sub-tribes and village heads in his domain.⁵

⁵ The two colonial powers advanced diverse interpretations of the ethnic config-

An ethnic, rather than topographic, criterion was thus chosen to establish the southern portion of the Gold Coast-Ivory Coast border. In 1893 a map showing the provisional border was drawn: Sefwi or 'Sahué', as well as 'Dadiassou' and 'Broussa' were within the British possessions, 'Indenié', 'Bettié' and 'Sanwi' were part of the French ones (map 1). It was therefore crucial to determine who the 'Sefwi' were and what was 'Sefwi' land in order to draw the ultimate demarcation line. From 1901 to 1903 a joint Anglo-French expedition toured the area to discover the ethnic configuration and thus establish the colonial borders. The idea guiding the envoys was apparently clear: Sefwi were all those under a chief who was part of the kingdom of Wiawso. However, on the ground, colonial surveyors found that tribal—what social studies would nowadays term 'ethnic'—identities had no precise territorial and social reach because ethnic, just as political belonging, was largely undefined. The criterion of political allegiance was certainly one of those on which identities were structured but colonial officials underestimated the complexity of the geography of power. The assumptions of European-like, well-defined political units with fixed boundaries did not correspond to the ambiguous and dynamic situation of the region. This caused serious problems to those who had to fix the border but an agreement was eventually found and the frontier line established (Delafosse 1908). One of the results of this colonial division of space was that the Wiawso kingdom was presented as an 'ethnic' kingdom including Sefwi land and villages, alongside two smaller Sefwi states those of Bekwai and Anwhiaso. With the drawing of regional and district boundaries in the early twentieth century, the territorial definition of an ethnic Sefwi kingdom was established and it has maintained its geographical features almost unaltered up to now.

Colonial administrators defined the territorial but not the social reach of Sefwi ethnicity: the geographical extent of Sefwi was precisely defined by setting and recording boundaries while the colonial administration declined competence over the issue of individual

uration with the obvious intention of expanding the area under their control. See Public Record Office London (PRO), CO 879/37, African (West) No. 435, Colonial Office, January 1894 'Further Correspondence respecting the Assinie Boundary, Gaman, and neighboring territories', Encl. 2 in No. 10, Gold Coast Colony—Anglo-French Boundary Commission, 1892, p. 16 and No. 19 Foreign office to Colonial Office, Enclosure in No. 19, E.C.H. Phipps to The Marquis of Dufferin and Ava, K.P., Paris December 29, 1892, pp. 58–59.



Source: adapted from NAG, MFA 4/8

Map 1: The Gold Coast-Ivory Coast boundary according to the 1893 agreement

membership. The territorial definition was urgent as it was directly linked to the market-oriented exploitation of this territory sponsored by the British, meanwhile the social codification of ethnic belonging seemed, in the early twentieth century, a relatively minor issue. Once the political affiliation of chiefs was established and land titles distributed, the necessary premises for the area's 'development' were set. The question of who was Sefwi and who was not was left to be determined, if such need arose, through indigenous procedures and standards.

After all, early twentieth-century Sefwi society was based on the assimilation of foreigners: immigrant groups were received and inserted within the structure of power in subordinate positions. Even slaves were often incorporated within domestic groups and acquired a Sefwi identity. In 1902, for example, an issue arose concerning more than one hundred Dwaben slaves bought by Sefwis in 1875.⁶ The colonial government ordered that the slaves be returned to their home towns. The king of Wiawso lamented that:

the Sefwis are a very mixed race consisting of Juarbins, Mampongs, Akems, Assins, Denkeras, N'koranzas, Wassas, etc: etc: [sic] and that he [the king] fears [that] if the Juarbins are allowed to take their own people away regardless of their own desire to stay in Sefwi, other people will then adopt a similar course, and the whole of his [the king's] people will thus disappear.⁷

Dwaben slaves were therefore assimilated into Sefwi society and, when asked whether they preferred to return to their home town or remain in Sefwi, 'comparatively few' left as, according to colonial sources, 'they have lived in Sefwhi all their lives and they have, moreover, been very well treated by the Sefwhis'.⁸ Besides the Dwaben case, in the early twentieth century, the return of slaves from Sefwi was demanded by the chiefs of a number of neighboring areas including Mampon, Nkawie, Nkoranza, Nsuta and Wassa.⁹ Some slave

⁶ National Archives Ghana (NAG), Accra, ADM 48/1/2, November 1902 to February 1904. The slaves were the result of Dwaben's secession and the consequent occupation by the army of the Asantehene Mensa Bonsu. In the records the war is dated in 1872, while Wilks (1975: 513–516) dates the invasion in 1875.

⁷ NAG Accra, ADM 48/1/2, Claridge to H.C.S., 18 September 1903.

⁸ NAG Accra, ADM 48/1/2, Claridge to Yao Japon, 3 February 1904. See also Daaku 1974: 15, 61; Perrot 1975.

⁹ NAG Kumasi, ARG 1/2/5/13; NAG Accra, ADM 11/1/1130, Forwarding a letter, 12 October 1891; NAG Kumasi, ARG 1/2/12/1; NAG Kumasi, ARG 1/2/3/4; NAG Accra, ADM 48/1/3, pp. 362–397; NAG Kumasi, ARG 1/2/2/10.

women had married 'village headmen' and their children were considered part of the family household; the king of Wiawso alone had married four Dwaben captives.¹⁰ In the early twentieth century chiefs and domestic heads practiced and benefited from an inclusive politics of belonging and there was obviously no claim to an ethnic 'purity' of the Sefwi. The colonial settlement of territorial Sefwi, although arbitrary at the time when ethnic kingdoms were established, gained widespread currency in subsequent decades when it was coupled with a criterion of social classification.

*The monetarization of an inclusive practice: ancestry and farming
in the early twentieth century*

Pre-colonial land utilization was mostly for domestic use and based principally on slash and burn farming as well as gathering and hunting. Even though gold, ivory and skins were exported, in the early twentieth century the size of this trade was limited. Chiefly control on land use was both ideological (chiefs were recognized as the owners of the land and of its products) and economic (chiefs drew a share of the produce). Those who dug for gold had to set part of their produce aside for the chief in recognition of their joint title over the ore: the right of the one who produced the labor needed to extract the mineral, and the prerogative of the chief as guardian of the land (cf. Arhin 1978: 93; Perrot 1978: 119–120). In pre-colonial Sefwi and in the first half of the twentieth century chiefs expected a tribute from snail collection and parts, normally the legs, of larger animals hunted (from the size of antelopes upwards). Rubber was probably the first major link of Sefwi to the European markets: in the last decades of the nineteenth century a consistent trade in rubber developed and chiefs taxed collection either by charging an amount for granting permission to tap for a fixed period of time or by demanding a share of the produce.¹¹ In nineteenth-century Sefwi,

¹⁰ NAG Accra, ADM 48/1/2, Breckenbridge to Chief Commissioner, Kumasi 26 November 1902 and Claridge to Chief Commissioner, Kumasi, Asafu 31 October 1903.

¹¹ See PRO, CO 96/320; NAG Accra, ADM 11/1/1130; NAG Accra, ADM 48/4/2, Kujo Wuo vs. Kobina Aduhene, 7 March 1905. See also cf. Dumett 1971: 96; Arhin 1972: 35, 1980: 52.

a common criterion of sharing was the *abusa*, literally, that which is divided into three parts as chiefs often demanded a one third share of the ore extracted or of the rubber output.¹²

At the beginning of the century colonial rule and the introduction of cocoa farming led to a redefinition of the relationship between land rights and the management of identity. The colonial administration allocated land titles over what was defined as Sefwi land to the Sefwi chiefly establishment—headed by the king—as part of its policy of indirect rule. With the expansion of the market economy, chiefs altered their criteria of land revenue collection: they stopped collecting a share of the produce and gradually imposed monetary tributes, thus receiving unprecedented benefits from the administration of land tenure. In the early twentieth century the gold rush reached Sefwi and mineral extraction was largely taken over by European firms: the sharing agreement that characterized divisions with indigenous miners was replaced by annual payments in cash. The king and chiefs were offered thousands of pounds to release mining concessions: an initial sum to acquire the right to operate as well as a yearly rent, regardless of the amount of ore extracted.¹³ Timber felling began in Sefwi in the early twentieth century on a limited scale due to transport difficulties and resumed in an industrial fashion in the 1940s. In this latter period, concessions similar to those granted to mining firms were allotted to timber merchants.¹⁴

Chiefly prerogatives over mineral and timber resources were the rights least contested locally and produced very consistent incomes. Farmers, both Sefwi and immigrant, have never had any title to timber and mineral resources found on the land they cultivate. The chiefly establishment was and is still considered, the rightful owner of the 'soil'. This notion includes both timber and mineral wealth as these resources are inherent to the land and just extracted by men and women. Rather than generating a new produce, the miner

¹² On pre-colonial tribute collection in Sefwi see NAG Kumasi, ARG 1/3/185.

¹³ The gold rush in the Sefwi district, consisting in the initial period mostly of concession-seeking, seems to have occurred in the years 1900 and 1901. See Ilegbune (1976); Dumett (1998); Rhodes House: MSS. Afr. s. 2037, British Records Association 'Leases relating to mining companies in the Gold Coast: 1900–1902' and NAG Accra, ADM 11/1/1130.

¹⁴ NAG Accra, ADM 5/3/81, 47/1/10, 48/1/8; NAG Kumasi, ARG 1/5/3/21; NAG Sekondi, WRG 13/2/6, 13/2/7. See also Agbosu 1983.

or rubber-tapper exploited an asset furnished by the land, and thus belonging to the chief.¹⁵

Farming was perceived as being rather different. Its produce was obtained through a process that created resources not offered spontaneously by the land as labor was necessary to render the soil's fertility productive. Farming activities, up to the early twentieth century, were limited to food crop farming and were not taxed, or only a symbolic token was collected. The first information available on Sefwi management of farming rights suggests that chiefs placed few restrictions on farmers, regardless of their ancestral background. In 1904 the District Commissioner described a system of unconstrained access to land for agriculture.

Here in Sefwi the land all belongs to the stool and the right of use is free to all. Any person—be he the uttermost stranger—may take his cutlass and axe, go to the bush and make a clearing for a farm. He pays absolutely nothing for the right to do this. His farm, when made, may be taxed to the extent of one bunch of plantain a year, but it is most unlikely. There is no outlay—no return is expected.¹⁶

Up to the introduction of the cocoa industry ownership of farm land was not an issue and no monetary payment was expected from indigenous or foreign farmers in Sefwi and in neighboring areas. In the first half of the century, the local population never reached a figure close to that identified as a 'critical density' by Wilks (1993: 54): the area was so sparsely populated that new settlements seldom disturbed neighboring villages' access to agricultural land.

With the gradual establishment of the cocoa industry there was a growing demand for agricultural rights. While mining and timber concessions were being alienated to foreign firms unproblematically, as natural resources were thought to belong to chiefs, agricultural rights underwent a redefinition in order to adjust to cash crop farming. The chiefly establishment decided that the title to farm could still be acquired for free by the indigenous population while immigrant farmers—who were rapidly pouring into the district in search

¹⁵ A land tenure survey carried out in the neighbouring Wassa in 1895 area mentions game, quartz and rubber as the produce on which chiefs demanded tribute NAG Accra, 5/3/9, 'Report upon the Customs relating to the Tenure of Land', 12 October 1895.

¹⁶ NAG Accra, ADM 48/1/2, Breckenbridge to Commissioner Western Province, Asafu 8 August 1904.

of fertile land—would have to pay for their agricultural rights. The increased commercialization of the title to farm led to the ancestralization of land tenure: ancestral origin became the crucial criterion regulating access to land.

Ethnic relationships between what came to be understood as the ‘indigenous’ population and those classified as ‘foreigners’, in Sefwi as elsewhere, generated intriguing dynamics which merit a more thorough consideration. Before proceeding, however, it is useful to insert ethnicity within local notions of genealogical and historical continuity. The relationship between identity and land title allocation is not played out only in terms of ethnicity: rights of land access are associated, more broadly, to one’s ancestral origin. Ancestral origin is here intended as the constant and strategic process of forging one’s ancestry and its deeds rather than the ‘true’ reconstruction of one’s genealogical tree. I argue that negotiations concerning land rights evoke the multifaceted and complex notion of ancestry, rather than solely its ethnic dimension. Ancestry is therefore a useful tool to examine patterns of land title allocation as it enables to insert ethnicity within a more comprehensive paradigm. This stimulates what one could term a holistic perspective on the politics of belonging and thus facilitates a perception of ethnicity as one, amongst several, ancestral determinants in rights attribution.

Ancestry acts as the common canon used to delimit multiple circuits of membership and to attribute status and titles to the resulting social aggregates. At the level of collective identities, for example, ancestry is the criterion that sanctions a Sefwi ethnicity as well as the principle which enables to rank groups *within* the Sefwi ‘traditional’ political structure. Ancestral origin generates, on the one hand, collective, ethnic distinctions and, on the other, it delimits—using matrilineal descent—parental aggregates within Sefwi society. In the attempt to frame and order ‘traditional’ land tenure, colonial and post-colonial governments have allocated conspicuous land rights to these kin groups (Boni 1998). The diverse status and thus the amount of land allocated to such groups are justified by the deeds of the matrilineal ancestors such as the first occupation of a tract of land, the services rendered to the king or success in war. Thus, ancestral origin—here in the idiom of unilineal, uterine ‘descent’ rather than in its ‘ethnic’ variant—became crucial to claim membership to a prominent and land-wealthy matrilineage, which greatly facilitates access to agricultural land. Turning from collective identities to indi-

vidual positioning, one's ancestral line often determines the size and quality of land gifts. The relative status, land wealth and seniority of parents and grandparents (both maternal and paternal) within the larger kin group clearly facilitates or impedes access to farmland.

Ancestral origin reveals that the dichotomous ethnic separation (indigenous/foreigners) is one facet of a complex framework of identity construction shaping the politics of belonging in relation to land titles. The idea of ancestral origin is, I believe, also more in line with local understandings of agricultural rights allocation. A fundamental criterion ordering society is a historical one: every person exercises prerogatives as a continuation of ancestral deeds and privileges. Genealogical memory lends itself to diverse interpretations while confirming the widespread acceptance of ancestry as a criterion determining title attribution. The ancestral paradigm derives its legitimacy from a retrospective reading of procreative links irreducible to any biological mapping. Ancestry is therefore intended as the social representation of descent, strategically redefined within the limits of what is thought to be collectively credible. Successful processes of manipulation, as we shall see, necessarily rest on the crafty reconfiguration of accepted genealogical charts (Boni 2003).

The shift from subsistence to cash agriculture marked a change in the understanding and practice of farming rights. In the first decade of the twentieth century, when what were termed 'economic crops' were introduced in Sefwi, chiefs adapted their role as landlords to this ongoing transformation in two principal ways. First, agriculture became an activity subject to taxation. Cash-crops could be classified according to their mode of production or their market potential. The production process indicated that cocoa required labor to generate the crop, just as in subsistence agriculture, and should therefore be considered non-taxable. The market potential of cocoa was, however, much greater than that of food crops and compared favorably with gold mining and rubber tapping on which duties were levied. The choice, unsurprisingly, fell on the latter principle: access to farm land for 'economic crops' began to be taxed. Second, chiefs proclaimed themselves owners of farming rights over all uncleared portions, that is all virgin forest land. The title to farm was, up to that point, defined only through practice: whoever occupied and cleared a plot held the sole title to the crops produced thereon. Access to farm land, therefore, used to be potentially accessible and free for all, provided consent was given by the office-holder. The

king and chiefs, as we shall see, used their innovative and self-attributed status of owners of farming rights over forest areas, to sell access to agricultural land to strangers. These two transformations in the understanding of chiefs' role as landlords were backed legally by the colonial administration and shaped twentieth-century land tenure practices by positioning the chiefly establishment in a crucial tenurial position.

Once these norms were implicitly defined and accepted by the colonial administration, in the course of the first decades of the twentieth century, ethnic distinctions became a crucial criterion in the organization of the cocoa industry. An ancestral criterion decided who would be at the giving and receiving ends of land tributes. Chiefs recognized that Sefwi villagers had the 'ancestral' right to clear any portion of virgin forest within their domain and thus acquire the title to farm without payment. While Sefwi had free access to agricultural land, those who were classified as 'foreigners' had to pay chiefs an initial sum before beginning their farm and a yearly tribute every farming season. All portions of virgin forest, which formed the majority of land in Sefwi, therefore had two potential types of owners of the agricultural title: the local chief who could sell the farming rights to an immigrant; or the chief's subjects who could acquire a permanent agricultural title by clearing the virgin forest (Boni, forthcoming).

*Cocoa and the retrospective hardening of boundaries:
foreigners' farming contracts*

Since the 1940s the division of Sefwi residents along ethnic lines was determined principally by the need to diversify their involvement in the new productive activities. Ethnicity became largely a legal issue and thus assumed a static and essentialistic dimension. In the process, memory of the pre-colonial dynamic construction of identities was simply obliterated by those who gained the privileged status of Sefwi and recalled only by the victims, by those who did not meet the standards of an 'authentic' pedigree. While it was easy to label as 'foreigners' those who migrated as a consequence of the cocoa rush, the ethnic definition of the descendants of those who had settled in Sefwi in the late nineteenth and early twentieth century was more ambiguous. They had been assimilated within local communities but their ancestry, when closely scrutinized, revealed what could be

identified as alien elements: these peculiar foreigners were at times termed 'squatters' and asked to pay the one third tribute on cocoa production. The following petition was put forward by a Sefwi resident who claimed an indigenous identity in order to stop the local chief, who classified him as a 'stranger', from imposing yearly tolls.

I make Oath and say as follows. . . . That to the best of my knowledge, information and belief both my mother and . . . uncle are Sefwis and direct subjects of Sefwi Wiawso Paramount Stool and automatically I acclaim [sic] birth-right and privilege as a pure Sefwi born, in accordance with [the] existing custom of the Land. . . .

That having observed that . . . Nana Yao Ntaadu [the chief of Boinzan] was considering me as a stranger, by demanding one-third share of the proceeds from the . . . cocoa farms, I formally introduced myself by offering him a customary rum of £5 as my Overlord.

That during the present cocoa season the said Nana Yao Ntaadu visited my village . . . and demanded a share of one third proceeds for the past three seasons at three loads of cocoa each season, and a further and continuous [sic] similar shares in the years to be[,] which I feel reluctant so to do since[,] to my knowledge[,] the demand appears a drastic innovation of custom never practiced in [the] history of Sefwi Wiawso State.¹⁷

As ethnic membership was not registered, the retrospective classification of residents' ethnicity was based on memories and narratives that lend themselves to manipulation while maintaining a claim to historic legitimacy. Chiefs, who were Sefwi by definition and held the recognized knowledge of the past, decided who was to be classified as a stranger. In the late 1940s and early 1950s several petitions were forwarded to the government by farmers who claimed a Sefwi ethnic membership but had been classified as foreigners by chiefs. Kwaku Kyre, for example, lived in the village of Pintimpikrom for sixty years from the age of 'puberty' but was asked to pay the one-third toll by the chief who described him as 'a squatter on this land or in other words a stranger' who arrived from Ashanti 'a few years ago'.¹⁸ In 1983 the chief of Sui wrote to a farmer he considered to be a foreign tenant: 'I want to assure you that you can not choose your tribe to be a Sefwi'.¹⁹

¹⁷ NAG Sekondi, WRG 13/2/23, Affidavit of Kojo Kwarteng, 10 March 1954.

¹⁸ NAG Accra, ADM 47/1/1, The humble Petition, 28 January 1949; Petition of J.K.D. Owusu, 23 March 1949.

¹⁹ Sefwi Wiawso Traditional Council Archives (SWTCA), 26 Tenant Farmers, Mr. Opare, 23 March 1983.

Besides the yearly toll on immigrant cocoa farmers, another crucial domain on which ethnic membership became decisive was the transferal of strangers' estates at death, especially since foreigners began to leave behind valuable cocoa farms. Chiefs have had the right to demand one third of the property of 'strangers' who die in Sefwi. In 1952, Boateng complained to the king of Sefwi Anhwiaso who had confiscated his deceased's brother cocoa farm.

It is not right to think of me as a stranger in your state. On the contrary, I have a big claim to full citizenship of Sehwi land considering the fact that my late brother Kwaku Nnuro, as well as myself, was born and brought up in that state and can prove our direct descent from the Sehwi tribe.²⁰

Similar disputes arose in the following decades. In 1974, the following petition was sent to a government official for action.

Here are my problems:—Both my Grand-father and Grand-mother hail from Ajumako-Biseasi, in [the] Central Region of Ghana, traveled all along the way to Chori-chori a village in Sefwi Wiawso Traditional Area about hundred years ago to work. They did not return to their home town again and died at the village and were buried there as well. Before their death, they left behind two children. There were Kofi Asunsu and Kofi Nkoah. . . . After his [Kofi Asunsu's] death the Chief of the Village called me and Kofi Nkoah, the late Asunsu's successor, and put before us that my late Grand-father was a stranger in Sefwi District and his property must be divided into three parts equally, and that one third must be given to the Chief and the other two thirds also be given to us. . . . Upon this, I humbly put my humble petition before you . . . to determine whether it is legal that a person who was born in the district, and resided in the same district for over 85 years and also had a status as a linguist during his life time, and left behind 15 children in the same district could be termed as a stranger?²¹

To date the issue of ethnic belonging is still a locus of intense confrontation. In the course of the late 1990s Stephen, a man with a foreign paternal grandmother, who had probably immigrated in the

²⁰ NAG Accra, ADM 47/1/1, R.N. Boateng to Omanhene Anhwiaso, 25 February 1952. Cfr. SWTCA, 26 Tenant Farmers, Adjei to Nana Aduhene, 7 July 1983; SWTCA, 26 Tenant Farmers, In the matter of Amma Kyeiwah, 4 May 1984. Cfr. with Pepe Robert's Papers, Sefwi Native Tribunal Court Archives, Kwesi Armah vs. Nana Kweku Asante, 25 June 1958 and 30 January 1959. This latter case involves a slave, besides foreign, origin.

²¹ NAG Sekondi, WRG 13/2/60, 'A Petition', 7 January 1974.

early twentieth century, was trying to convince his father to transfer all farming titles to him before his death. Stephen's father, in his youth, had been nominated chief—perhaps the maximum expression of 'Sefwiness'—but Stephen feared that, upon his father's death, his alien ancestry would be recalled and part of his father's estate confiscated.

Ethnic ancestry, besides structuring relations of agricultural taxation, has defined the allocation of labor. One can roughly classify those who migrated into Sefwi since the 1940s in two categories, both of which were described by Hill and McGlade (1957) as 'hard-working', in comparison to the more relaxed local farmers. Those who migrated with insufficient cash to acquire a land title have formed the bulk of a massive hired labor force working in Sefwi as elsewhere in the forest belt of West Africa. The terms of their contracts and their living conditions are well described by numerous studies that do not differ substantially from data recorded in Sefwi.²² Others arrived in Sefwi with a capital that enabled them to purchase agricultural rights and thus became 'tenant farmers'. Tenants, at times, had and still have other agricultural enterprises in other parts of the forest belt and are thus also termed 'circular farmers' as they move periodically to supervise plantation work. Immigrants who purchased land rights around the middle of the century often had cocoa farms in their hometowns where they maintained important ties in the hope of returning, after decades, with the capital generated by their Sefwi cocoa farms. I examine the 'legal' conditions under which foreigners managed to purchase their title to farm in Sefwi as these were revealingly complex and their metamorphosis has been little studied.

Since the late 1940s, the acquisition of land in Sefwi was regulated by written contracts with clauses that evolved in the course of time (cf. Benjaminsen and Lund 2003). Not all tenants have sanctioned written contracts and land rights have not always been played out according to the norms contained in the agreements. These documents are, however, crucial sources in the analysis of the transformation of land titles from a legal and a practical viewpoint. As the terms of the contracts were decided upon by the body of chiefs, that

²² Cf. Hill 1963; Addo 1974; Okali 1975; Bouet 1977; Garceau 1982; Van Hear 1982; Robertson 1982; Arhin 1986; Konings 1986; Austin 1987.

is the Sefwi Wiawso State (and then Traditional) Council, alterations in the clauses express chiefly preoccupations concerning the alienation of farming rights in a context of increasing land scarcity. Moreover, the state, chiefs and tenants negotiate their prerogatives with reference to these written agreements.²³

Table 1: Major alterations of the memorandum of agreement between the Sefwi Wiawso Traditional Council and immigrant farmers, 1910–2001

	Tenants' title	Taxation	New chiefly prerogatives
<i>1910 to early 1940s</i>	Exclusive bona fide property	One third of produce and annual tax of £1, 10 shillings	—
<i>Late 1940s to 1962</i>	Exclusive bona fide property	One third of farm and annual tax of £4, 13 shillings	—
<i>1962–1965</i>	?	5 shillings per acre	Chief's consent needed to mortgage, sell or alienate farm. King's signature needed to sanction all transfers
<i>1966–1983</i>	?	One tenth of cocoa produce and annual tax (11 Cedis in 1969; 9 New Cedis in 1974; 18 New Cedis in 1983)	Since 1969 chiefs' right to arbitrate all land disputes; since 1974 agreement subject to unspecified amendments
<i>1984–1996</i>	Peaceful and uninterrupted use and occupation of land	One tenth of cocoa, coffee, oil palm produce and annual tax (Cedis 18.60 in 1984, 400 in 1991–1994)	Since 1984 tenant to develop farm within 5 years otherwise confiscated
<i>1997–current</i>	Peaceful and uninterrupted use and occupation of land	One tenth or 100.000 Cedis or 2.000 Cedis per acre	
<i>Proposed in 2000</i>	Lease for a few years	2.000 Cedis per acre but subject to unspecified revisions	Tenant to farm within 2 years

²³ Agreements are often retrospective. One therefore finds agreements signed in the 1990s that sanction farming rights transferred in the 1970s. The 'type' of agreement stipulated was the one operating at the time of signing and not the one when farming rights were actually transferred through the customary procedure.

In the second and third decade of the twentieth century cocoa farmers were asked to pay chiefs one third of their crops as tax or an annual tax of £1, 10 shillings per annum for individuals and £7 for 'groups'.²⁴ From the late 1940s onwards the customary procedure for the transfer of farming rights was sanctioned by written documents that legally established the terms of the contract. These deals, signed by chiefs and tenants, are termed 'memorandums of agreements'. The first 'memorandum' concerning land in Sefwi that I traced, dates from 1948; several others are known from the 1950s. These contracts established the right of immigrant tenants to cultivate virgin forest land in exchange of a one third share of the farm to be handed over to the local chief when all cocoa plants reached maturation. Up to the division of the farm, chiefs collected one-third of the farm's cocoa proceeds.²⁵ In the 1950s, immigrant tenants are thus termed 'tripartite' or *abusa* farmers. These early contracts declared that, once the chief's part was handed over, the tenant acquired the 'exclusive *bona fide* property' of the land. What exactly this clause implied is unclear even though the contract mentions that tenants had no rights over timber and mineral resources.²⁶

During the Convention Peoples' Party (C.P.P.) rule, the government contested chiefs' prerogatives on land. In 1959, the C.P.P. District Commissioner explained to the State Council of chiefs that the government intended altering the 'tripartite' contract: the £4, 13 shillings annual rent would remain unchanged but a yearly acreage tribute of five shillings per acre was to replace the division into thirds; this tax was to be collected only five years after planting.²⁷ This decision did not have immediate effects but it became clear that the C.P.P. was about to pursue a land reform to favor migrants' conditions of tenure by easing the burden of chiefly tributes. In 1960

²⁴ NAG Accra, ADM 11/1/1241, Commissioner Western Province to The Honourable, The Secretary of Native Affairs, Seconded 15 September 1921. This was an extension of the '*abusa*' principle, the one third tax previously collected on gold mining and rubber collection.

²⁵ See NAG Sekondi, WRG 13/2/60, 'Robert Ata Anti to General Kotoka', 26 January 1967; 'Petition of Opanyin Samuel Kwabena', 21 December 1972. SWTCA, GF2, 'Farming Agreement', 24 November 1956; GF3, 'This Indenture', 1960, 'Farming Agreement', 15 September 1959.

²⁶ Hill and McGlade 1957: 20–21; cf. Danquah 1928: 220–221; Konings 1986: 67.

²⁷ Pepe Robert's Papers, State Council Meetings 28 September 1959 and 16 March 1961. Cf. Benneh 1970: 58.

the first farms were divided with chiefs receiving their one third share. At this stage, the tenants in the Sefwi Wiawso Traditional Area were estimated at 1.400 providing a revenue of £6.000 from their annual rent. In 1961 the Sefwi Wiawso king, who by then supervised all transactions of agricultural rights alongside local chiefs, made it clear to the government that land was not being alienated to farmers as the granting of farming rights to tenants could not be considered a land sale.²⁸ Since 1961 'farming agreements' have been standardized. In the conventional protocol, valid for all chiefs and all tenants, there was no longer any reference to the tenants' 'bona fide property' as just the title to farm was transferred. While up to 1960 the tenant farmer could 'mortgage, sell or alienate' his share after the division of the farm, this was now no longer possible, unless the chief gave his consent. In 1962 the C.P.P. government passed a reform of tenants' taxation known as the 'Rents Stabilisation Act (Act 109)' through which it introduced a new criterion for the payment of land tribute. The government decreed that the tripartite division enforced up to then was illegal and that it should be replaced by a small yearly devolution. While tenants welcomed the law, the chiefly establishment felt that its rights were being challenged. The Traditional Council was forced to accept the government's decision and a new memorandum of agreement was drafted in which the new terms were stated.²⁹

The chiefs' resentment against the C.P.P. grew and the 1966 *coup* was celebrated with jubilation by most of the Sefwi chiefly establishment (Boni 2000). In December 1966, before the new government repealed the C.P.P. agricultural rent reform (NLCD 34 in 1967), the king met tenants to negotiate a new farming agreement. The acreage system enforced by the C.P.P. was repudiated and a new 'memorandum of agreement' introduced to review the criteria of tenants' taxation. Since 1966 chiefs have no longer demanded a share of the matured cocoa farms (which, in any case, was seldom collected as the land granted to tenants was often very large and took decades to develop) but rather a one-tenth share of the annual

²⁸ SWTCA, TCA/GF3/59-61, 'Tripartite Farms-Sefwi Wiawso', 16 December 1961.

²⁹ SWTCA, Minutes Traditional Council Meeting, 22 February 1965. See also Ninsin 1989: 168-169; Benneh 1975: 58-59; Aidoo 1996: 9.

cocoa incomes.³⁰ It was established that the tribute was to be collected by revenue collectors of the Stool Lands Secretariat who were assigned certain areas and were supposed to trace tenant farmers, compile a comprehensive and adjourned record of their presence and collect the yearly rent.

The agreement used in the late 1960s was further altered by the Traditional Council in subsequent decades to increase its control over tenants. Since 1974 a new clause has been added stating that 'all farming disputes between Farmers shall first be determined by Arbitration before the Omanhene [the king] or his representatives (Other chiefs) before any further action is taken'. Since 1983 a proposition appeared at the end of the contract: 'This agreement shall be subjected to any amendment by the Sefwi Wiawso Traditional Council from time to time or any legislation by the government'. The title of the tenant was gradually weakened: under the tripartite agreement the tenant was described as 'the legal and rightful owner'; this status is no longer acknowledged in the 1960s and 1970s; and since the 1980s the tenant can expect nothing more than a 'peaceful and uninterrupted use and occupation' of the land.

Major alterations were introduced in the 1990s. First, there was an attempt to define more precisely the location and the surface of the land. Second, the one tenth division previously collected only from cocoa was expanded to all 'commercial crops including Cocoa, Coffee, Oil Palm, Rice, etc'. Since 1984, a time limit, usually five years, was introduced within which the farm was to be planted; if the tenant was unable to perform her/his work in time, the plot was considered abandoned and reverted to the stool.³¹ This last clause was probably implicit in earlier agreements and is stated in works concerning neighboring areas (cf. Ollennu 1962: 60–61; Bentsi-Enchill 1964: 109; Woodman 1996: 110–113). The fact that a precise time limit was introduced in written contracts and the chiefly establishment's willingness to enforce it became a major point of contention when chiefs sought to reappropriate portions of uncultivated land granted to tenants. Finally, in 1996 the government proposed the replacement of the one tenth share paid by tenants with a yearly

³⁰ SWTCA, Minutes Traditional Council Meeting, 19 December 1966. The king negotiated the agreement with J.W. Opoku, the official Chief Farmer; SWTCA, GF/TF 'Submissions and suggestions', n.d. but early 1990s.

³¹ SWTCA, GF/TF 'Submissions', n.d. but late 1980s, pp. 3–5.

fee of 2.000 Cedis (1,4 dollars) per acre. The acreage system was accepted in 1997 and enforced since the 1998/1999 cocoa season but only on those farmers who could produce legal contracts or maps specifying their plots' surface area.³² The majority of farmers continued to pay the one tenth share or a 100.000 Cedis (57,9 dollars) fee.

With the exhaustion of the virgin forest in the 1980s, chiefs' role as grantors of farming rights was considerably weakened as there were no longer unoccupied tracts of land on which farming rights could be sold. Immigration continues up to date but several strangers work as laborers and those who can afford to purchase access to farmland often do so from Sefwi commoners rather than chiefs. The chiefly establishment has not however lost its capacity to determine tenants' terms of tenure, which are subject to revisions. A controversial issue from a legal viewpoint is to understand exactly which agreement a 'tenant' is subject to. There are often three contracts that may be considered relevant: the written agreement that is current at the time in which a dispute arises; the written agreement that was actually signed by chiefs and tenants; the verbal, 'customary' one that was sanctioned when the farming title was transferred, which precedes—at times of several years—the written deal. The contents of these contracts is, almost invariably, different. Chiefly prerogatives have expanded over the years, and it appears that often chiefs believe that recent alterations in tenurial conditions apply to all tenants, regardless of the fact that many strangers acquired their title decades ago, on different and more liberal terms.

Recent alterations show that chiefly prerogatives have survived the weakening of their capacity as land grantors. A further transformation of the agreement sanctioning the transfer of farming rights to immigrants was discussed by the council of chiefs at the beginning of the twenty-first century. According to the proposed memorandum of agreement: the tenant no longer enjoys an 'uninterrupted use' of the land but only a lease for a fixed number of years (to be decided by the Traditional Council); the tenant has to farm the whole land within two years; and the annual fee demanded from the tenant is

³² Sefwi Wiawso Archives, Lands Commission Secretariat (SWLCS), Wiawso 21 November 1996; Sekondi 20 February 1997; Nana Nkuah Okundom II, 2 June 1997.

subject to unspecified revisions.³³ The overall trend of the agreements shows that, once the ethnic distinction is activated, it can be associated with an ever-increasing set of privileges for some and duties for others.

Towards the end: exhaustion of resources in a context of ethnic tension

A combination of colonial, post-colonial and chiefly policies produced what can be termed an economy of extraction. This was based on the removal and export of non-renewable natural resources (minerals, rubber, timber and soil fertility) and on the utilization of immigrant farmers' labor and wealth by their indigenous landlords. In this context, ethnicity became a crucial regulator of the mode of involvement in the productive process: landless immigrants offered labor as share croppers, share tenants and hired laborers while foreign farm owners were taxed and subjected to an incredible variety of land swindles, besides the forms of taxation considered above (Boni, forthcoming).

An economy of extraction is doomed to be short-lived and to create tension in the long term. By the end of the twentieth century some contradictions became apparent. To begin with, as a consequence of rapid population growth and the exhaustion of available agricultural land, conflicts between the indigenous population and immigrants over the issue of agricultural taxation turned violent. Sefwi chiefs felt that the majority of tenants evaded their yearly tariffs and tried to rationalize taxation. In 1986, chiefs began a new and more serious operation of registration of tenants' farms. Immigrant farmers saw this exercise as the latest strategy to extort money. They feared that portions of their land on which cocoa had not yet been planted would be expropriated and re-allotted to Sefwi in application of the clause that prescribed that the farm was to be completely cultivated within a few years, even though such clause was not explicitly stated in the agreements signed by most farmers. Tenants firmly refused to comply with the ordinance. The king intimated tenants to submit or stop farming altogether. Immigrants disregarded the

³³ See SWTCA, 'Report of the Committee on tenant/settler farmers', appendix V.

order and continued their agricultural activities. Widespread violence, which was inevitably perceived as having an 'ethnic' dimension, ensued as Sefwi chiefs sent villagers to dispossess stranger farmers of what the former considered land illegally occupied.³⁴ The government hastily formed the Asare Committee to investigate the matter. An association formed to defend Sefwi interests appealed to the Committee, invoking a fixed, essentialist, discriminatory view of ethnicity based on ancestral origin: birth and blood justified Sefwi's role as landlords.

We wish to bring to the notice of the [Asare] Committee that the lands so brotherly and generously leased out to Tenant Farmers for the production of food, cocoa and other valuable crops, remain the inalienable birth rights of the Sefwi Ghanaians whose ancestors fought with their sweat and blood and that the present generation will never toy with the land so bequeathed to us.³⁵

Secondly, the outlook of Sefwi economy seems grim (Amanor 2001). Cocoa yields decrease and the timber industry suffers from the exhaustion of trees. The separation of timber and farming titles led to the depletion of timber resources. Timber rights were sold to firms on the same land on which farmers practiced slash-and-burn agriculture. As farmers had no stake in the timber standing on their farm, they systematically destroyed it. Recent attempts to induce farmers to reforest by granting the ownership of the timber to the one who planted it would imply a major revolution in the Ghanaian land tenure system in which chiefs have always been the recognized owners of mineral and timber resources. Timber farming may open up a new—environmentally sustainable and economically viable—future in an area in which the process of extraction is about to end due to the exhaustion of resources. The new legislation (Act 547 'The Timber Resources Management Act, 1997' and the consequent Legislative Instrument 1649, the 'Timber Resources Management Regulations, 1998') is however ambiguous on foreigners' title to planted timber and while there are talks underway to assign the ownership of timber to indigenous farmers, once again an 'ethnic' distinction is drawn and there is resistance to include foreign tenants in the scheme.

³⁴ On the events of 1986 and 1987 see various documents in NAG Sekondi, WRG 13/2/138.

³⁵ NAG Sekondi, WRG 13/2/138, 'Memo', 12 November 1986.

In the course of the twentieth century the hardening of boundaries of belonging, resulted, at least in part, from the need to distinguish groups' access to scarce resources. In the twenty-first century, 'ethnic' distinctions, as the resistance to include foreigners in reforestation projects shows, may also impede or retard the generation of new resources. The fate that is approaching Sefwi reveals one of the failures of anthropology. The early twentieth-century division of Africa into 'tribes' was required by the colonial administration, sponsored by the discipline and influenced local perceptions and classifications. Anthropology contributed to forging an image of Africa as a mosaic of isolated and well-defined 'tribal' units which was readily taken over and employed by various actors. On the contrary, the late twentieth-century critique of essentialist and static readings of ethnicity, the awareness that identities are constructed, dynamic and continuously contaminated has remained caged in academic circles and has had a very limited practical influence on both government policies and social practice. In Sefwi, and in almost everywhere else, identities are played out—regardless of scholarly discourses on cultural hybridization (Amselle 1998) and global identities (Appadurai 1992)—on reassuring and effective paradigms of exclusiveness, especially when the management of scarce resources is at stake.

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THE POLITICAL ECONOMY OF THE NATURAL
ENVIRONMENT IN WEST AFRICAN HISTORY:
ASANTE AND ITS SAVANNA NEIGHBORS IN THE
NINETEENTH AND TWENTIETH CENTURIES¹

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This essay focuses on the same territory under three successive polities: the forest heartland of the pre-colonial kingdom of Asante (founded c. 1700), which became the British colony of Ashanti (from 1896), and now comprises the Brong-Ahafo and Ashanti regions of the Republic of Ghana. For convenience the same word, 'Asante', will be used to refer to the area, whatever the constitutional dispensation in the period concerned. The history of land tenure in rural Asante deserves treatment at length.² This chapter reflects selectively upon this history, in order to contribute to the discussions presented in this volume in four ways. First, to emphasize the need to take systematic account of variation in the economic significance of particular lands over space and time. Second, to argue that the evolution of land rights in West Africa must be seen in the context of the fact that, until well into the twentieth century, property—rights to use resources in particular ways—meant property in people as well as in things. Third, to suggest that a conceptual framework based on a typology of 'rents' provides a useful way of thinking about the economic consequences of property in both people and natural resources. Finally, the historical argument developed here highlights the links between the twin geographical arenas examined in this volume, the forest zone and the savanna, and the consequences of this for acquisition of property, in people and farms. Who

¹ I thank the organizers and other participants in the Frankfurt workshop for helpful comments on the original version of this substantially rewritten paper. Any errors are mine.

² A task which I have attempted elsewhere for the period 1807–1956 (Austin 2005).

acquired such property in Asante has been closely related to the politics of exclusion and inclusion.

The next section introduces some key aspects of the Asante case, including the basic principle of Asante land tenure, which showed remarkable continuity from pre-colonial through colonial times. This is followed by a section which pursues the implications of difference in the characteristics of land over space and time in relation to cocoa cultivation—the major cash-earner of the colonial period and since—in the perspective of François Ruf's concept of 'forest rent'. Here, attention is focused on the implications of the forest rent thesis for the welfare of members of the farming community, differentiated by gender and generation. The subsequent sections extend the discussion to consider the implications of the respective natural resource endowments of the Asante forest zone and of the savanna to the north, over a longer period: the century before the adoption of cocoa (the nineteenth century) as well as the 'cocoa century' (the twentieth). This discussion of the longer run is framed by the notions of 'broad forest rent' and 'economic rent'. The analysis highlights the effects of the interaction of state power, economic change, and conflict and negotiation at local community and individual level, on the terms on which migrants from the northern savannas could obtain access to the market opportunities presented by the natural environment of the forest zone.

Land tenure in pre-colonial and colonial Asante: an introduction

Asante land tenure was described in detail in the classic ethnography of R.S. Rattray, in the 1920s. Rattray stressed what he saw as the religious attachment of Asantes to the land, which entailed an extreme reluctance to alienate its ownership (Rattray 1923, 1929). Yet, as historians later underlined, Rattray himself recorded examples of lands being sold to pay debts under the pre-colonial kingdom (Wilks 1975: 106–9; McCaskie 1984). Arguably Rattray's most important insight was contained in his last book on Asante, where he noted that Asantes drew a fundamental distinction between the land itself and its use or occupation. Hence ownership of the soil itself was considered separate from the ownership of what stood on it, including forest trees, gold deposits, planted crops and buildings (Rattray 1929).

The practical significance of this distinction becomes clearer when viewed in the context of the economic constraints and opportunities facing nineteenth-century Asantes, and of the centralizing monarchy which ruled over them for most of that century. Asante was labor-scarce and land-surplus in the strict economic sense that the expansion of output was constrained by the supply of labor rather than of cultivable land.³ In this setting, there was no economic reason why cultivation rights would have a market value. This helps to explain why, in this period, there was no market in such rights. Both subjects of a land-owning stool (chieftaincy), and new arrivals from outside, were able to obtain land to till in return for mere token payment, followed by periodic acknowledgement of the fact that the land itself belonged to the stool.

The land transfers in settlement of debt did not necessarily affect the use rights of the cultivators at all. They were transfers, not of cultivation rights, but of what might be called superior rights: in effect, of chiefship over the communities settled on the lands concerned. This would include authority to allocate unoccupied chieftaincy land to people wanting to farm it, which in this period would be on the easy terms mentioned above. These debt-induced alienations did not represent a market (Austin 2005: 100–102). Rather, they reflected the political predominance of the central government, under the Asantehene, whose fines it was which forced certain provincial chieftaincies into debt. The resultant redistribution of land was part of a broader pattern of accumulation of subjects and the lands they had settled by the central government (the Asantehene and the overlapping categories of Kumasi chiefs and government office-holders) at the expense of provincial chiefs—a process which was set into reverse by the settlement which concluded the Asante civil war of 1883–8 (McCaskie 1984).

What was scarce in the nineteenth-century economy was certain natural products: gold deposits, and kola nut and rubber trees. Gold was not only prized as a form of wealth. In the form of gold dust

³ Elsewhere, I argue that this formulation should be seriously qualified, to reflect the role of capital goods in this rural economy and to take systematic account of the seasonality of demands for labor (Austin 2005: 73–7). But these issues do not affect the point under discussion here. For a geographically more wide-ranging discussion of the interaction between land supply and aspects of the ‘politics of belonging’ in African history see Austin 2004.

it was the only legal currency within Asante itself, and with the ending of the Atlantic slave trade, it became again the major export commodity in Asante's dealings, direct and indirect, with European merchants. Kola nuts were Asante's major export to the savanna societies, particularly in this period to Kano and the rest of the Sokoto Caliphate via Hausa merchants, with whom Asante sellers traded in transit markets in the southern savanna, such as Salaga. Rubber trees became valuable when an overseas demand for their produce appeared in the early 1880s. Land-owning chiefs charged rent of one third or two-thirds of the proceeds to people to whom they gave permission to exploit these resources, unless the people were their own subjects (and even then, in some cases). There is no definite evidence of either kola or rubber trees being planted before the colonial period. Though food was grown around Kumasi for sale in the capital, it is not clear that this was yet on a scale sufficient to make land scarce even there.⁴

It was only in the colonial period that demand for agricultural products began to make cultivation rights commercially valuable. This demand took two forms. Overseas demand for cocoa beans encouraged Asantes to experiment with planting cocoa from c. 1900 (importing planting materials from what is now the Eastern Region of Ghana). This was followed by a rapid expansion of output into the 1920s, primarily at indigenous initiative. In 1943 Asante became the largest contributor to colonial Ghana's cocoa exports. Meanwhile, partly as a result of immigration stimulated by the cocoa economy, increasing population expanded food consumption and created large urban markets for foodstuffs, especially in Kumasi—the center of commerce and administration—and in the mining towns of Obuasi and Konongo, which served European-owned gold mines (Austin 2005: 49–56; see also Clark 1994).

These changes had major effects on land tenure, rural and urban. The latter is not the concern of this essay (see, rather, Brown 1972, McCaskie 1978 and 2000, Berry 2001). In the countryside cocoa farms soon began to be transferred by sale. From the depression of the early 1930s this was overtaken by the transfer of farms via the market for long-term credit: cocoa farms being taken over by cred-

⁴ On the last point see Johnson 1981. The paragraph as a whole is based on LaTorre 1978; Austin 1995 and 2005.

itors until the loan was repaid, or in some cases auctioned when it was not. Cocoa gave cultivation rights an economic value for the first time, and chiefs hastened—by the early 1910s—to apply to cocoa farming the rent (or ‘tribute’) that they had long imposed on kola and gold. Some chiefs sought to apply this to their own subjects, but the colonial administration insisted that it be restricted to non-subjects. For the first time it became important to define chieftaincy boundaries precisely. Many farmers found that some or all of their cocoa farms were on land now adjudged to belong to a neighboring chieftaincy, rather than to the one they themselves ‘served’ (Kyerematen, n.d.; Austin 1987 and 2004a).

The process which Stefano Boni, with reference to Sefwi, has called ‘the emergence of the permanent “stranger”’, occurred also in Asante, and from earlier in the twentieth century—reflecting the earlier date of adoption of cocoa (Boni 1999; cf. Boni, in this volume). Before cocoa, free migrants—who came, in practice at least, from other parts of Asante—would be welcomed and, providing they continued to accept that the land they were allocated belonged to the chieftaincy, in the course of perhaps a generation or two become subjects (accepted members of the community), albeit relatively junior ones on account of their late arrival. Specific examples of this seem to be lacking in the cocoa era. Rather, ‘strangers’ tended to remain exactly that, both because it suited the chief to continue to levy cocoa rent on them (which he could not if they were subjects), and because existing subjects began to fear for their future supply of cultivable land, for cocoa and for food-growing (Austin 2005: 338–9).

One might have thought that the principle of distinguishing between ownership of the soil and of what stood on it would have been abandoned in the twentieth century: either because it might have been regarded as meaningless in relation to a ‘permanent’ tree crop, which would occupy the plot for thirty years or more; or because the European rulers might impose a system of land titling which could cut across the traditional distinction. Despite a long-running policy dispute within the colonial regime (Phillips 1989), the British never introduced compulsory land titling, perhaps most obviously because it was unnecessary for the encouragement of agricultural investment, as had been demonstrated by the widespread planting of cocoa trees. Moreover, the colonial administration took advantage of the distinction between the ownership of farms and the ownership of the lands beneath, to reiterate the security of the property rights of the

farmer in the trees that he or she had planted, irrespective of the protracted litigation over chieftaincy boundaries (Austin 2005: 270–77, 339–47). In the colonial period, as under the pre-colonial kingdom, the fundamental Asante maxim applied: ‘the farm is my property, the land is the king’s’ (Wilks 1993: 99; Rattray 1929: 342).

‘Forest rent’ and the cocoa revolution: trade-offs by generation and gender

Development economists have considered the implications of the characteristic resource endowments of ‘land-abundant’ tropical regions (Binswanger and McIntire 1987). It is necessary, though, to consider how much, and how importantly, the composition of ‘land’ varies in the geographical and historical context concerned. Quality and substitutability can matter. From this perspective a promising tool of analysis is Ruf’s concept of ‘forest rent’; which, appropriately for our Asante case, he formulated in relation to cocoa cultivation. Ruf argues that the history of cocoa, worldwide, shows that it has always been more profitable when planted on land freshly cleared from forest than when replanted on existing cocoa farms. The basis of a cocoa boom, he maintains, is always the exploitation of ‘forest rent’, the non-renewable reserve of soil fertility and related ‘agronomic benefits provided by the forest’. Specifically, forest rent is the difference in the cost of producing a given volume of cocoa by planting ‘after forest clearance’ rather than by ‘replanting on fallow land or after felling of the first plantation’ (Ruf 1995a: 6–7; cf. Ruf 1995b; Clarence-Smith and Ruf 1996). The analytical value of ‘forest rent’ is not confined to the analysis of sources of competitiveness in the international cocoa market (in this case, the sources of West Africa’s—long-term but not permanent—comparative advantage in cocoa growing). It also points to trade-offs between the interests of the first generation of cocoa farm proprietors and their successors, especially if the activities of the former meant that the latter had to plant on already degraded land.

With forest rent, what one generation uses, the next cannot have. From the 1940s there were signs that fertile land was indeed beginning to run short, at least in the oldest cocoa-growing areas. From one such locality there were reports that young men were having to choose between working as sharecroppers on their elders’ cocoa farms or migrating to plant cocoa elsewhere, because there was no land available locally on which they could establish their own cocoa farms.

For the same decade there is evidence for Amansie district, due south of Kumasi, that fertile land was becoming scarce enough to induce a change in diet, as farmers planted cassava in place of plantain, because cassava was more tolerant of less fertile soil. Indeed, it was the implications of incipient land scarcity for food security, rather than for cash incomes, that was the prime concern of Asante chiefs as they worried about the consequences of the spread of cocoa production for future generations. In 1919 Nana Kwabina Foli, the paramount chief of Adanse (the district south of Amansie), banned his subjects from planting more cocoa trees. He was over-ruled by the colonial administration, but in 1938 his wish became the by-law throughout Asante: with effect from 1939, the Ashanti Confederacy Council of Chiefs prohibited the creation or extension of cocoa farms. As it happens, real cocoa prices were to be exceptionally low during the Second World War, and it is not clear that the ban had much effect. It was relaxed in 1946, and soon effectively discontinued. This was in time for Asante farmers, many of them traveling to plant in the western districts (notably Ahafo, and to the south of Asante in Sefwi), to lead a further massive surge of Ghanaian cocoa planting, which peaked in the later 1950s. Because plantain and cocoyam were planted regularly as shade crops on immature cocoa farms, this planting boom alleviated rather than accentuated fears about food security—if only while it lasted. The boom also proved that, as of the 1940s, in fact there had been plenty of fresh forest available to be converted into cocoa farms in Asante as a whole, if not in the oldest cocoa-growing districts. Finally, the pessimistic implication of diminishing forest rent for the next generation was offset, in the colonial era, by the willingness of cocoa farmers to spend their savings on the education of their children, often equipping them to leave cocoa farming (Austin 2005: 310–12, 325–33).

There is also a gender aspect. The first generation of cocoa farm owners consisted mostly of men; notwithstanding their wives' contribution to the establishment of farms, notably by growing food crops on the same plot, which provided shade for the young cocoa plants.⁵ There is evidence that the proportion of cocoa farms owned

⁵ The demands of women for a share in the cocoa farms they had helped to create, demands made especially when the marriage was ended by divorce or by the husband's death, have received considerable attention: see Allman and Tashjian 2000; also Austin 2005: 374–81.

by women rose, to the 1940s and indeed beyond (Austin 2005: 304–9). This presumably reflected the fact that women tended to acquire farms on divorce or widowhood, or once they themselves had reached a stage in their lives when they had more time than before to work for themselves rather than for husband and young children (Okali 1983; see also Legge 1994). By itself, the existence of this trend suggests that women may have been catching up with male ownership rates but only after the forest rent was already substantially exhausted. However, the growth of female farm-ownership was so slow, and the land surplus so long-lasting, that any such effect seems to have been minor, at least during well after the colonial period. A 1974 survey, using samples from three of the older cocoa-growing areas of Asante (the ‘zones’ of Bekwai, Kumasi and Mampong), reported that in the three zones, respectively, women owned only 25, 24 and 27 per cent of the cocoa farms. They accounted for still less of the cocoa acreage: 22, 17 and 17 per cent. On the other hand, few cocoa farms had been replanted (Okali, Gyekye and Mabey 1974: 61). In short, the depletion of the forest rent was—as yet—a relatively minor aspect of the disadvantaged position of women in Asante cocoa farming. The longer the growth of women’s share in cocoa farm-ownership continues, though, the more likely it is that the additional farms will be less productive, given the progressive diminution of the finite resource which is forest rent.

*Broad forest rent and economic rent: property in people and
natural-resource monopoly in a ‘land-abundant’ setting*

Let us now broaden the scope of the discussion, from the distribution of cocoa wealth within Asante society to the distribution of the natural resources of the forest zone over a longer period, between the ‘indigenous’ inhabitants of that zone⁶ and their northern neighbors. The rest of this paper focuses upon three major historical observations. First, in the whole period under review, in this part of West Africa, the natural resources of the forest zone were much more valuable commercially than those of the savanna. Second, through-

⁶ ‘Indigenous’ on a scale of a few centuries at least, i.e. without going into the question of the provenance of the Akan peoples, including those communities which became the Asante. See Wilks 1993.

out this period laborers moved from the savanna to the forest: the same zone from which slaves were obtained in the nineteenth century furnished free migrant workers in the twentieth. Third, despite the ending of slavery, the northern laborers were very rarely able to acquire farms of their own in the forest zone (Austin 2005: 426, 429–30). This requires explanation, because it contrasts with what happened in Ghana's western neighbor, Côte d'Ivoire, where during the Ivorien cocoa boom of the 1950s–80s, savanna migrants frequently became (or thought they had become) tree-crop proprietors (Chauveau and Léonard 1996; Chauveau, this volume). Let us begin by elaborating some concepts which may help in analyzing these specific themes in the history of property relations in what, at a general economic level, was the land-surplus environment of Asante, and of its neighborhood, in the pre-colonial nineteenth century—a condition which, as we have seen, lasted in some areas at least well into the twentieth century.

Cocoa, the mainstay of commerce in colonial Ghana, would grow only in the forest zone (as did the timber trees which enabled logs to become a major supplementary export from Asante, especially from the 1950s). In this respect the advent of cocoa simply reinforced the pattern of the preceding centuries, in that the Akan forests were also the sole site of local supplies of kola and rubber, and the main source of gold deposits within the region. Asantes (and the southern Akan states to the south) imported various commodities from the northern savanna, notably cattle and cattle-related products, and some textiles. But the major import in the nineteenth century was captives.⁷ When it came to commercially-valuable natural resources, the forest zone had a huge advantage, long before it was multiplied by the adoption of cocoa.

In this context, while Ruf coined the term 'forest rent' specifically with reference to cocoa production, it is useful to extend it. In related work, I use the term 'broad forest rent' to denote the market value of all the non-renewable productive assets provided by the Asante forest zone (Austin 2005: 11). These mainly comprised spontaneously growing kola, rubber and 'timber', and gold deposits. The value of the broad forest rent may be defined as the saving in production cost from the fact that the trees did not have to be re-planted (or,

⁷ On nineteenth-century trade see Arhin 1979; Lovejoy 1980; Austin 1995.

unlike with cocoa, planted at all). In the case of a non-cultivable commodity such as gold, the value of the 'gift of nature' may be taken as the full difference between price and production cost. In the period under review Asante was part of a relatively land-abundant region of the tropics; but, more, it was in a specific ecological niche which confronted its inhabitants with corresponding possibilities and constraints. The notion of forest rent is a tool for encapsulating the temporary (though not necessarily short-term) nature of these opportunities, based as they were on the contestable control of non-renewable resources.

It would be anachronistic to discuss property in natural resources in the nineteenth century, and in the early twentieth, without relating it to property in people: most clearly in the forms of slavery and pawning. Asante was one of the major participants in a widespread, but geographically and communally very uneven, expansion in slave-holding in nineteenth-century West Africa, during and following the closing of the trans-Atlantic slave market (e.g. Lovejoy 1983: 159–219; Law 1995). This was facilitated by the decline in effective demand for slaves from overseas, which reduced the price of slaves in West Africa (e.g. LaTorre 1978: 440). It is also partly attributable to increased demand for labor within West African economies. While this is usually associated with the coastal 'economy of legitimate commerce', supplying palm oil and groundnuts for Europe, in the Asante case the exports comprised not only gold, for sale ultimately to Europe, but also the kola nuts traded to the Nigerian savanna (Austin 1995).

The standard economic explanation for the use of coerced rather than free labor is that it was a response to labor scarcity, a means of reducing the supply price of labor. This argument has been applied to West Africa generally, both for slavery and for colonial forced labor (Hopkins 1973). It might be expected to apply to Asante, as a basically land-surplus, labour-scarce economy. Elsewhere I argue that it does, and in the particularly strong form of the Domar hypothesis:⁸ that not merely was slave labor cheaper than free labor, but actually that it was only through coercion that a labor market could exist at all (Austin 2005: 155–70).

⁸ Domar 1970. Domar's immediate subject was eastern Europe.

It must be noted, however, that labor was also scarce in relation to land in the areas from which captives were recruited for sale to Asante.⁹ 'Broad forest rent' is relevant here: their possession of scarce natural resources allowed Asantes to be buyers of slaves, within a region in which slaves were both supplied and purchased. For, though thousands of those brought into Asante as slaves had been captured by Asante in what, after 1826, were only relatively occasional military victories, and many more were supplied each year by tributary states (Maier 1980), in the post-1807 era as a whole the biggest source seems to have been the market—specifically, the savanna markets. For instance, H.S. Pel, the head of a Dutch recruitment station in Kumasi buying captives for military service (after formal manumission) in what is now Indonesia, observed of the Asantes in 1842 that 'the greatest part of their slaves are purchased in various markets in the interior'.¹⁰ Relying apparently on sources other than the Dutch, the author of an early secondary-source description of Asante published a similar statement in 1857. For all the war prisoners they took themselves, wrote Rev. J. Leighton Wilson, 'much the greater proportion' of slaves owned by Asantes were 'sold' to them after capture in 'the interior' (Wilson 1856: 178). This was overwhelmingly so in the 1890s, when Samori Ture's forces were the major suppliers.¹¹ The opportunity, as well as much of the incentive, for Asante principals—including ordinary household heads and young men, as well as chiefs (Austin 1996a)—to purchase captives came from their own control of the output of commodities (especially kola and gold) derived from the non-renewable resources of the forest zone.

Both slaves and the commercially valuable natural resources of the forest zone were commodities whose supply was less than 'perfectly' elastic. That is, an increase in the price offered would produce a less than fully proportionate increase in the quantity of (as the case may be) slaves or—when natural supplies began to diminish—kola offered for sale. In this sense, the economics of slaves, and

⁹ For West Africa generally, see Hopkins 1973.

¹⁰ LaTorre 1978: 407, quoting H. Pel, *Aanteekeningen gehouden op eene Reis van S. George d'Elmina naar Coomassie* (Leiden, 1842?), 24.

¹¹ Among many sources on this see Daaku 1969. For a fuller discussion of the evidence on sources of slaves during the nineteenth century see Austin 2005: 115–17, 122–6.

even of 'broad forest rent', can be related to the concept of 'economic rent'. This is defined as the surplus of income over opportunity cost:¹² the return actually obtained from the supply of a resource minus the minimum return required to obtain the supply of that resource in its current use.¹³ Under perfect market conditions suppliers of labor or land would receive their marginal product (the extra value produced by the addition of one extra unit of their input), so the actual return would equal the opportunity cost and therefore no rent would exist. Rents stem from departures from such conditions. Specifically, they arise if the supply of the resource in question is less than perfectly responsive to price changes. Thus, economic rent is a surplus above what could be obtained in a perfectly competitive market.

The market value of the 'broad forest rent' would be determined by whether, or how far, it could be monopolized. The supply of 'broad forest rent' was, by definition, finite. Until exhaustion was approached, however, that alone would not preclude its supply from being perfectly elastic. But, to the extent that human action could establish exclusive possession over these resources, the value of this natural rent could be supplemented by the addition of an element of economic rent.

The military power of the late pre-colonial Asante kingdom, and the policy of its government, secured for Asantes the 'broad forest rent' from their lands. Following its foundation at the end of the seventeenth century, the Asante kingdom greatly expanded its territorial control through a series of conquests that extended into the 1800s. A crucial result was that Asante gained, within its immediate region, a local monopoly of kola nuts and a near-monopoly of gold. It also controlled the trade routes from the Gold Coast to what is now Northern Ghana. The Asante monopoly was at its most comprehensive between 1807, when the Asante forces reached the coast, and 1826, when the kingdom suffered its first permanent military set-back: permanent in the sense that the battle of Katamanso, against the British, Ga and Fante, ended Asante dominance of its southern

¹² 'Opportunity cost': the cost of the opportunity foregone.

¹³ Cf. Coase's definition: 'the difference between what a factor of production earns in the activity under discussion and what it could otherwise earn' (Coase 1988: 163).

hinterland. Still, as far as the northern savanna was concerned, Asante's grip on the major assets of the regional economic geography remained intact until 1874 (Lovejoy 1980: 14–17; Austin 1995: 99–100). The Kumasi government used its control over transit routes to deny savanna societies the opportunity to import European weaponry: with highly select exceptions the re-export of guns and gunpowder to the north was prohibited (Wilks 1975: 20, 55, 270, 685, 690), reinforcing the Asante advantage in relation to its northern neighbors. In 1874 the Asante kingdom's local hegemony was shaken, and its territorial edges further trimmed, when a British army occupied Kumasi for a day, doing lasting damage to the Asantehene's central authority.¹⁴ Even so, Asante military power and political cohesion recovered sufficiently rapidly to maintain exclusive control of the northern forest, i.e. the part which bordered the northern savanna.

Asante producers and traders, as well as the state, may be seen as capturing economic rent as a result of the military and political dominance of the Asante kingdom in its region. Until at least 1874, the power of the Asante state gave its subjects exclusive enjoyment of the supply of kola nuts to the northern markets. The significance of this is more apparent when one notes a partial contrast with what happened during the brief rubber boom towards the end of the century. In this case outsiders—seasonal migrants from Akyem—were able to participate as principals (rather than as agents, which in this context would have meant as slaves or other laborers) in the extraction of wild rubber in Ahafo, probably in the late 1880s and definitely in the 1890s. The relationship with the local land-owning stools was that of sharecrop tenants. This was made possible by the fact that by this time Kumasi had lost control over Ahafo, situated as it was on the western borders of the Asante heartland: which enabled the Akyem to enter and bargain with local chiefs.¹⁵ But it is significant that the Akyem were fellow Akan from the forest zone. Northern savanna-dwellers had no opportunity to emulate them in taking a share of the 'broad forest rent'. The fact that Asantes were virtually the sole suppliers of kola to the savanna markets probably added to

¹⁴ So I argue in Austin 1995. Wilks 1975 takes a more sanguine view of the damage done to the Asante state by the 1874 defeat.

¹⁵ Public Record Office, Kew, UK: CO96/293, H.M. Hull to Colonial Secretary, Cape Coast, 14 May 1897, enclosed in GCC No 212 of 27 May 1897.

their bargaining power, adding an element of economic rent to the broad forest rent. This in turn helps explain how they could afford so many slaves, giving Asante a contemporary reputation within West Africa as an exceptionally large-scale importer and user of slaves (Wilson 1856: 178).

British rule presented potential dangers, direct and indirect, for the Asante enjoyment of the local broad forest rent. By ending the Asante monopoly of Asante lands, they could ensure that the forest rent was shared with outsiders, whether African or European. By implementing their international commitment to abolish slavery, the colonial authorities could remove an institution on which many Asante producers depended for much of their labor supply.

In the event the colonial administration in Asante permitted agricultural as well as mining and timber concessions to Europeans. But any idea of an Asante economy dominated by European plantations was extinguished by the commercial failure of the European planters there, as further south within Ghana, in competition with African producers (Austin 1996b). After the fact, as it were, the administration on the spot participated in the general 'West African Lands Policy', of upholding African ownership of land (cf. Phillips 1989). In the case of Asante, the administration urged the chiefs to resist offers by non-Asante Africans to buy land. This issue emerged in the interwar period because of some purchases made by southerners, mainly Akwapims, on the southern periphery of Asante, mainly in Adanse.

On Benneh's (1970) argument, the British urging would merely have reinforced what the larger Asante chiefs, and especially the Asantehene after the partial restoration of the office in 1935, would have done anyway. For the Ghanaian cocoa belt as a whole, Benneh argues that when a community provided land for strangers, whether they did so on lease or sale terms was a function of how far the paramount chief could assert control over his sub-chiefs, preventing them from selling land for local profit, which was what happened in Akyem Abuakwa. Thus where central authority within a chieftaincy was powerful, it overrode the free-riding tendencies of the sub-chiefs. This hypothesis accounts for the fact that Adanse was the exception to the general Asante rule of not selling land as such to non-Asantes. For the authority of the Adanse stool had historically been exceptionally weak in relation to its sub-chieftaincies (Austin 2005: 334–6).

Meanwhile, the British administration, while suppressing the slave trade and thus closing the supply of new captives, tolerated slavery for twelve years. It was only in 1908 that slavery was prohibited, along with debt bondage. I argue elsewhere that this delay was a boon to the pioneer cocoa farmers of Asante, enabling them to mobilize scarce labor on a scale that would otherwise have been impossible. Conversely, when cocoa incomes began to stream in Asante principals could afford to make the transition from masters to employers. Meanwhile it gave former slaves—albeit, in the cocoa-laboring role mainly only the men—the opportunity to earn wages if they left their former owners (Austin 2005: 236–49).

Savanna workers on forest lands: struggle and change

Where did the pre-colonial importation of northern slaves fit into the politics of belonging? We should note that in nineteenth-century Asante not all slaves came from the northern savanna. There were fellow Akan-speaking slaves: usually war captives from southern Akan states, but it was even possible for an Asante subject to be reduced to slavery, as punishment. The contemporary descriptions, however, as well as later oral testimonies, leave little doubt that the overwhelming majority of first-generation slaves were from the savanna (cf. Wilks 1975: 706). Indeed, there is no evidence of a regular trade in Akan or even Ewe slaves to Asante.

First-generation northern slaves, the *nnonkofoo* (singular, *odonko*), stood out in Asante society visually and orally. They arrived with the ritual facial scars which were then characteristic of people from their area of origin (e.g., Rattray 1929: 35–6). Their command of the Twi language tended to be very limited, as Basel missionaries observed on both sides of Asante's southern border (Jenkins n.d.: 128, 143, 168, 189). T.C. McCaskie remarks that it is 'abundantly clear from reported speech and traditions, [that] the term [*odonko*] suggested a brute animality to the Asante, and connoted a non-human status' (1995: 96). On the other hand, Asante men were happy to marry northern women and to count any offspring as their own.¹⁶ Still, it is reasonable to assume that the 'othering' of north-

¹⁶ Discussed in Austin 2005: 117–19, 175–7, 185. Free woman, slave man unions were not unknown but, at least for non-Akan slaves, seem to have been much more difficult socially.

erners as *nnonkofoo* made it mentally easier to treat them as slaves. Conversely, the reciprocal association of northerners with slaves—as McCaskie remarks, the term *nnonkofoo* not only meant slaves but was also ‘generically applied to the peoples of Asante’s northern hinterland’ (McCaskie 1995: 280)—and of Asantes with slave-owners, was a legacy of the nineteenth century that took some over-coming in northerner-Asante relations in the twentieth.

In this context, the notion of northern migrants coming into Asante in the nineteenth century to ask for access to kola trees or other resources of the forest was not a serious proposition. In contrast, as we noted above, land-holding chiefs were ready to welcome Akan settlers, allocating them land for merely token payment on condition that they accepted the primacy of the ‘original’ owner’s claims over both land and office (e.g. Rattray 1923: 232).¹⁷ On these terms they could share as principals in the broad forest rent. Northerners could do so only as agents, and as coerced ones at that. The descendants of first-generation slaves—almost always the offspring of northern women and Asante men—could expect to be given, at least over a further generation or two, not only access to land, but also increasing amounts of time to work it, including the commercially-valuable natural resources.

The pattern of economic opportunities created by cocoa helped some slaves or former slaves much more than others. The result was to differentiate the process by which coercion declined on ethnic-cum-ecological as well as gender lines (Austin 2005: 243–4). Akosua Perbi (1992) has remarked that most of the slaves who left their former masters’ villages and returned to their native or ancestral homes were Akan; whereas most of the slaves from the savanna stayed on. She explains this by physical distance. Again, an Akan could return to a forest-zone home, and therefore, plan on establishing cocoa farms of his, or even of her, own. This would be much harder for people who had no land rights in the forest zone, and thus no direct access to the ‘forest rent’. So it was easier for Akan slaves rather than northern ones to achieve effective emancipation quickly (Austin 2005: 228–30, 243, 247–9).

After slavery the position of Asante recruiters of northern labor was much weaker. They continued to need labor from the savanna,

¹⁷ On the earlier settlement history of the communities which later formed the Asante kingdom, see Kea 1982; Wilks 1993: 41–126.

because while some Asantes were prepared to work for wages, this was mostly confined to the short term—because they would want to take advantage of their direct access to the forest rent, by starting cocoa farms of their own. Governor Guggisberg said in 1920, ‘during the last two or three years, the NTs [Northern Territories] native has not rushed blindly into work in the South. He wants to know where he is going and what he is going to do. In fact, he has learnt to pick and choose, *and to know his own value in the labour world*’ (Guggisberg’s emphasis).¹⁸ With many tens of thousands of potential employers to choose from, this was a genuinely competitive market in which laborers, precisely because they were free, had the chance to obtain the market value of their labor. It is important to add that this bargaining power was also based on the fact that the laborers had rights of access to land, at home in the savanna. Thus they were not proletarians. Over the decades that followed the bargaining power of the two sides was subjected to a variety of influences, including a major rise in the number of northerners offering their services (partly because of population growth), especially after the Second World War. The trend, though, was in favor of the laborers. Already from the 1930s they were able to win a higher share of the value of cocoa output, plus greater autonomy at work, by obliging farmers to accept the replacement of annual wage contracts by sharecrop terms. Thus, they gradually won a larger share of the forest rent.¹⁹ A large farm budget survey, carried out in Asante in the 1956–7 cocoa season, the last one before Ghanaian independence, provides data on laborers employed by cocoa farmers. In the sample of 1,620 families, the average number of workers hired per cocoa-farmer was 1.2 sharecroppers compared to 0.2 regular wage-workers (‘permanent labourers’).²⁰

The migrant laborers earned enough to save. This was especially so in the later 1950s, with sharecropping now the main form of regular labor and real producer prices temporarily high. From the evidence of farmers—admittedly, rather than laborers themselves—

¹⁸ Quoted in Thomas 1973: 93.

¹⁹ Why the farmers did not offer substantially higher wages to the same average value as the one-third shares they conceded, is a question begged in my original article on the matter (Austin 1987), but which I address in a fuller and more developed discussion in Austin 2005: 412–24. Sharecrop laborers, like the longer-term wage laborers, were on annual contracts: both could move.

²⁰ Ghana 1960. The data discussed in this paragraph come from Table 22.

interviewed for F.R. Bray's study of cocoa farming in Ahafo in the late 1950s, it seemed that 80 per cent of laborers' earnings were:

available for the purchase of durable assets at the end of a year. If that seems a very high proportion of savings, the cash saving motive which impelled the labourer to migrate in the first place should be recalled and so should the fact that [cash] earnings are supplemented, perhaps more than doubled in the normal case, by the value of food and lodging given (Bray 1959: 45).

This is not to say that every worker saved to the maximum to buy goods to take home, such as clothes and bicycles. In 1938 the government conducted a detailed budget survey of government workers, especially unskilled laborers, who in this study, like their counterparts on cocoa farms, came overwhelmingly from the savanna. The Chief Inspector of Labour commented:

It is surprising how the cost of living varies with the individual. One man will spend only 3d per day on food whilst another, earning the same pay, will spend 10d. Some men will spend considerable sums on luxuries, palm wine, tobacco, women and clothes, whilst others stint themselves to an unreasonable degree.²¹

By the time of Bray's study it can be said that northern laborers were able to save—or spend at their discretion—a high proportion of their earnings.

Freedom thus made a big difference to laborers' incomes and working conditions. We may ask how far the legacy of slavery affected this economic transition, and the personal and communal relations that surrounded it. In 1919 there was a riot in Bekwai against Hausas and Mossis, who were working as cocoa carriers.²² Eleven men were killed and thirteen badly wounded. All the casualties were northerners.²³ The violence was triggered by a gambling dispute,²⁴ but the rapidity and scale with which it escalated suggest that inter-com-

²¹ PRAAD (Public Records and Archives Administration Department), Kumasi: ARG 9/7/2, extract from Chief Inspector of Labour on 'wages and costs of living', Labour Department, Kumasi, 1 Oct. 1938.

²² That was their main or sole occupation, according to an elder of Bekwai who was then a young eyewitness. Austin Fieldnotes: 2nd interview with Nana Opoku Akumiah, former Krontihene of Bekwai, Bekwai, 18 Aug. 1982.

²³ PRAAD Accra ADM 53/5/1 Provincial Commissioner's Diary (Obuasi), 1918–22: entries for 15, 25 and 29 April 1919.

²⁴ Austin Fieldnotes: 2nd interview with Akumiah, Bekwai.

munal relations were already very tense—hardly surprising in view of the recent memories of slavery. But though employer-employee relations were not infrequently conflictual during the next twenty years, it is striking how little more violence there was, and how the position of the laborers had improved. As early as the 1931, when some northern laborers found themselves unpaid because the farmers' crops had rotted during the cocoa 'hold-up' of the preceding season, a number of them felt confident enough about their status in local society to take their employers to court for unpaid wages.²⁵ During the 1937–8 cocoa hold-up there were even claims that the threat of violence now came from the northern laborers rather than the Asante employers and hosts. The paramount chief of Mampong asserted that 'very often they [the laborers] threaten to kill their employers if they are not paid.' This was in 1937 at a public meeting of chiefs and massed cocoa farmers in front of the Chief Commissioner and agents of the European cocoa-buying firms. The head of the Asante farmers' association, on the same occasion, went further. 'Some people employ about 30 labourers others about 20 . . . If at the end of the month the farmer is unable to pay his labourers, in some cases he is killed by them.'²⁶ We should perhaps not take these claims too seriously, given that both speakers had a vested interest in trying to persuade the listening cocoa buyers to raise the price. But even the use of such rhetoric suggests a different world from the old one of northern slaves and Asante masters.

So, with the end of slavery and the growing market for hired labor, northern laborers were able to better themselves economically and even assert in court their right to be paid. But was their participation in the forest rent still only as agents—i.e. working for others—albeit now comparatively well-paid? Before addressing this question directly, it is worth underlining the importance of this issue of access to land suitable for cocoa-farming for individuals' career

²⁵ PRAAD Kumasi (but file so far found only before the present classification system was introduced) D133, 13 January and 19 March 1931; ARG 9/6/13, 'Native Tribunal Ohene of Essumeja', Return of Civil Cases for Feb. 1931, and DC to Asuminiahene, 31 March 1931; SCT 204/86, Bekwai Civil Record Book, 630.

²⁶ PRAAD Kumasi ARG 9/12/1, 'Notes taken at a Meeting in the Cadbury Hall', Kumasi, 7 Dec. 1937, speeches of Mamponhene and of Kojo Broni, Head Farmer of Asante. On laborers' struggle with farmowners in Ghanaian cocoa-farming generally, 1930–45, see Van Hear 1982: 132–3, 145–6, 152, 160–6.

prospects. There is a sharp contrast with the case of some men from the forest region of what is now the Volta Region of Ghana who, early in the twentieth century, worked as migrant laborers on cocoa farms in Akyem Abuakwa, to the southeast of Asante. They worked as laborers on cocoa farms before returning home with planting materials, and proceeding to establish cocoa farms of their own.²⁷ This possibility was not available to northern laborers. They could bring back cocoa seedlings, but the later would never survive in the savanna. Unless they could get land-use rights in Asante, they could access the 'forest rent' only as agents, not as principals.

By the end of the colonial period a few northern laborers had managed to become cocoa farm owners: accessing the forest rent directly. Mr. Musa Moshi, whom I interviewed in 1980 by when he was a long-standing resident of Bekwai in Asante, was one. In about 1956, after 17 years of work for the same employer as an *abusa*-caretaker on a cocoa farm in Amansie, he reminded the employer that on the latter's death he could face eviction from the farm. He asked for some land (on which to plant, i.e. the usufruct) and was granted it²⁸ (this was presumably land which the farmer had already acquired from the chieftaincy he served). Mr. Moshi went on to establish five more cocoa farms in different parts of the same locality.²⁹ A more striking case of economic and social mobility was that of a man from northern Nigeria who, in Bray's words, 'came to Ahafo over twenty years ago', implying the late 1930s at the latest.

He does not intend to go back and, in fact, he is regarded as a native. He started life as an ordinary labourer, then became an *abusa*, then "cocoa broker" and is now a cocoa receiver for Messrs. Cadbury & Fry. His annual cocoa purchase is over 240 tons. He took up farming barely six years ago; his first two farms yielded 17 loads in 1955, and three farms 47 1/2 loads in 1956. This year (1957), he hopes to get over 100 loads. . . . He has two taxis and three one ton passenger lorries.³⁰

²⁷ This observation comes from interviews which Paul Coby and myself conducted in villages in the Hohoe area in 1977 as part of research for our respective BA dissertations at the University of Cambridge. Details in Austin 2005: 429, 545n109.

²⁸ Austin Fieldnotes: interview with Mr Musa Moshi, Bekwai, 28 Aug. 1980.

²⁹ Musa Moshi interview.

³⁰ Quoted by Bray 1959: 49 (from his field assistant, Agyare?). A 'load' was 60 pounds (27.2 kg).

But these were highly exceptional cases. The 1956–7 survey enumerated nearly 18,000 male cocoa ‘farmers’. 97 per cent were Asantes.³¹ Only one per cent were from the Northern Territories.³² Moreover, it seems that not all of the one per cent were actually farm owners. For the sample of ‘cocoa producing families’ included ‘caretakers working for farmers living outside the survey area’, as a proxy for the latter (Ghana 1960: 3). Given the overwhelming predominance of northerners among the ‘caretakers’ (sharecroppers), it is a strong assumption that most of the caretakers in the sample were from the savanna. Thus most of them were probably included in the category of ‘male cocoa-farmers’ from the Northern Territories. Though they were ‘very few in number’,³³ they may well have constituted a high proportion of the one per cent concerned—meaning that northerners who actually owned cocoa farms were very few indeed.

Having earlier highlighted the bargaining power of laborers in the post-slavery era, it is necessary to emphasize that they remained at a basic disadvantage, in geography and property. Despite the gains that northern laborers had made in the cocoa-labor market by the end of the colonial period, their share of farm revenue remained substantially less than that of Asante farmers (Bray 1959).³⁴ It may be suggested that Dependency writers have targeted their criticisms of migrant labor too narrowly on the labor relation itself (e.g. Amin 1974: 98ff.). For, as the comparison above shows, the outcome of the labor contract depended crucially on the context of property and power in which it was set. These largely determined whether migrant laborers would remain exactly that.

Ghanaian independence was preceded (in 1956) by a major defeat for Asante autonomy, when the federalist National Liberation Movement eventually lost its two-year struggle against the establishment of a unitary constitution for post-colonial Ghana, as insisted

³¹ ‘Asante’ in this context meaning ‘Ashanti’, ‘Brong’ and ‘Other Ashanti’ combined; ‘cocoa farmers’ including—and mostly comprising—‘food and cocoa farmers’). See Ghana 1960: 33. The figures for female ‘cocoa farmers’ are potentially misleading, as noted in 2005. Anyway, under 2 per cent of those recorded in this category (including ‘food and cocoa farmers’) were non-Asante (Ghana 1960: 34).

³² Ghana 1960 (computed from p. 34).

³³ As last note.

³⁴ On the history of poverty and welfare in northern Ghana itself, see the pioneering Destombes 2001.

upon by Kwame Nkrumah's Convention People's Party (Allman 1993). The CPP victory ensured that expenditure of the government's share of the cocoa revenue would not be concentrated in the cocoa-growing areas. No such 'nationalization' of land rights occurred, at least in the sense that the growth of northern ownership of cocoa farms remained very slow, at least in the Asante part of the forest zone. Admittedly, there was further evidence of increasing bargaining power for laborers, in the form of the emergence and gradual spread of a new type of sharecropping contract, *yemayenke*, in which the labourer received a share, not of the proceeds of the farm but of the farm itself, i.e. the cocoa trees. To judge from the names in Tsutomu Takane's 1995 survey—which included a single village in Asante—the sharecroppers included many Akans as well as northerners (Takane 2002: 18–34).

One reason for the slow growth of 'savanna' ownership of cocoa farms may have been the political demand to exclude foreigners from the competition for economic opportunities within the domestic economy. After independence 'foreigners' meant non-Ghanaians. In 1969 the People's Party government of K.B. Busia deported en masse foreigners who lacked the official documents necessary to legitimate their presence in the country (Adomako-Sarfoh 1974). The 1969 Aliens Compliance Order left open to legitimately resident aliens, and to northern Ghanaians, the possibility of acquiring land rights in the forest zone. But as it happens, most foreign cocoa laborers would probably have left anyway in the 1970s, as cocoa output dived in Ghana and soared in Côte d'Ivoire, while immigrants to the Ivoirien cocoa belt (from inside and outside the country) were solicited by the president's promise of 'land to the tiller' (Chauveau and Léonard 1996).

Indeed, a basic, long-term source of the slowness of the growth of northern ownership of cocoa farms in the decades following independence was simply that cocoa farming was not as profitable, and therefore the acquisition of farms was not as attractive, as it had been during the 1950s and at certain periods before. The volume of Ghanaian cocoa exports declined drastically from 1964–5 to 1982–3, implying a near shutdown of planting. This was primarily the result of increasingly punitive levels of taxation of export agriculture, especially via the implicit tax of an increasingly over-valued, non-convertible currency (Austin 1996c). Structural Adjustment ended these policies, but during a time of falling prices on the international

cocoa market and in the context of diminished 'forest rent' (greater dependence on replanting). The net result has been an eventual revival of cocoa planting and output. In the post-colonial era to date, and especially before Structural Adjustment, laborers—and even existing cocoa farmers—often had more to gain by seeking occupations in the towns, or outside the country, rather than in agriculture.

The irony of the Ghanaian-Ivoirien comparison for the 1960s–80s is that the economic buoyancy and apparent proprietorial generosity in the latter was followed by tragic conflict. The expansion of cocoa and coffee planting in Côte d'Ivoire, combined with (and accelerated by) a state policy which seemed to guarantee the transfer of land rights to stranger-laborers, was followed by intense conflict between strangers and locals, tension which seems to have formed part of the context for the eventual civil war (see Chauveau, in this volume).

Conclusion

This chapter has explored the interactions of environment, power and markets in Asante, and especially in the relations between Asante landowners and outsiders, over the last two centuries. It has analyzed a major continuity: that in the era of free labor, as in that of the slave trade that preceded it, the flow of labor has been from the savanna societies to the north of Asante into the Asante forest zone. Moreover, it was only in the second half of the twentieth century, and then relatively rarely, that some northern laborers graduated to the status of owners of cash-crop farms on Asante lands. In analyzing this experience, it is helpful to extend Ruf's notion of 'forest rent', an idea from an economist which can be valuable for anthropologists and historians. It is the kind of concept that can link environmental and 'mainstream' history. In this essay, in conjunction with the notion of 'economic rent', 'forest rent' has helped to highlight a major lesson from the history of Asante-northern relations in the land and labor markets: the critical importance of the heterogeneity of land. While access to land as such may do much to ensure survival, the distribution of property rights in the *commercially-valuable* natural resources (whether mineral, silvicultural or agricultural) can be decisive in determining the division of opportunities for self-enrichment, and thus the prospects of both economic growth and inequality.

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HOW DOES AN INSTITUTION EVOLVE?
LAND, POLITICS, INTERGENERATIONAL RELATIONS
AND THE INSTITUTION OF THE *TUTORAT* AMONGST
AUTOCHTHONES AND IMMIGRANTS (GBAN REGION,
CÔTE D'IVOIRE)

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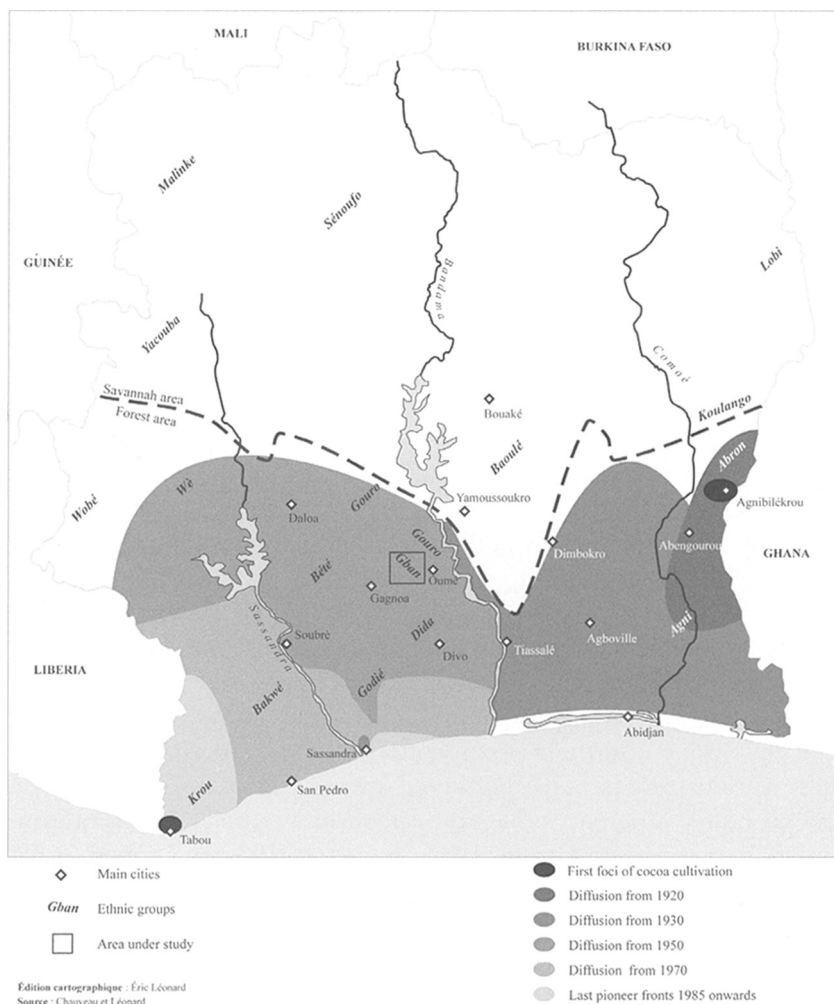
CONTEXT AND ARGUMENT¹

Since the colonial period, the agrarian history of the rain-forest belt of Côte d'Ivoire has been characterized by the widespread diffusion of perennial crops (coffee and cocoa) and the massive agricultural colonization by migrants from other regions and nearby countries. According to a 1998 census, only 22.4% of the area's population (176,000 habitants) were autochthonous (Gban and Guro), while 45.9% were from other regions of Côte d'Ivoire (mainly Bawle) and 31.7% were non-Ivorians (mainly Burkinabè). Although linked by their involvement in the Ivorian 'coffee-cocoa complex' (Losch 2000), these various groups have preserved strong cultural, social, political and economic differences that correspond to a national 'internal frontier' (Chauveau and Dozon 1985, Kopytoff 1987, Chappell 1989, Chauveau 2000).

Until the turmoil that became acute in the late 1990s, the settlement of these migrants took place under a patron-client-type relationship established between customary 'landowners' and migrants to whom the autochthonous *tuteurs* transferred land rights. This relationship of *tutorat* corresponds to an agrarian institution that is commonly found in many rural societies in Africa.² It fits into a moral

¹ I wish to express my debt towards Jean-Philippe Colin, Jean-Pierre Jacob, Koffi Samuel Bobo, Camilla Toulmin, Pierre-Yves Le Meur, Fadhila Le Meur and Carola Lentz.

² For instance, as regards historically and economically comparable forest countries (Ghana and Nigeria), see for instance the studies by Adomako-Sarfoh 1974, Arhin 1985, Berry 1975, Lloyd 1962, Robertson 1987. The capitalistic behaviour of migrant farmers, strongly underlined by Polly Hill (1970), is not in contradiction with the acknowledgement of the principle of *tutorat*.



Map 1: Area under study and the spread of cocoa cultivation in Côte d'Ivoire

economy in which there is a strong commitment to the belief that any individual or group has a right to access the means of subsistence for himself and his family (Scott 1976).³ In the western part

³ For instance, Sara Berry has 'found no real evidence that local land-holders discriminated systematically against outsiders' in the Nigerian Cocoa Belt (1975: 111).

of the forest belt of Côte d'Ivoire, however, the extent of the rights conceded by *tuteurs* and the corresponding obligations of 'their' strangers have varied. In many cases, such transfers of rights verge on, or hide, largely commercial transfers of land—however, the commercial aspect does not erase the social relation stemming from the 'gratefulness' that the migrant (or his heirs) owes to his *tuteur* (or to the latter's heirs). This is why I avoid terms such as 'landlord' and 'tenant' to designate what is really a set of ambiguous and changing social relationships between particular parties. Instead, I refer to the guardian-like relationship of the *tutorat* (guardianship) using the emic (French) term '*tuteur*' commonly used locally.

The complexity of this *tutorat*-relationship is obviously central to the current problems in Côte d'Ivoire. The Ivorian state, particularly in the forest areas, nowadays faces high levels of inter-community tension (Losch 2000, Banégas and Marshall-Fratani 2003). Moreover, new land legislation regarding the *domaine foncier rural* (December 1998) raises the problem of the formal legal translation of this relationship, particularly since the law does not recognize the right of non-nationals to acquire property and implicitly privileges autochthony as the main source of legitimate entitlement to ownership. Although not yet even formally implemented, the mere announcement of this new legislation had considerable repercussions, such as the December 1999 repatriation of more than 12,000 Burkinabè from the Tabou area. Finally, after the beginning of the civil war in September 2002, the protection of land rights acquired by Ivorian and foreign Northerners prior to the law's introduction continues to be a source of tension between the conflicting parties.

The purpose of this paper is to examine the dynamics of social relations linked to land rights within the framework of the *tutorat* throughout the last half-century in the Gban region, in which massive colonization has been taking place since independence and which can be regarded as representative for western forest zones generally. The *tutorat* is one specific institution within a broader constellation of institutions,⁴ all of which govern access to, and the effective exercise of, rights over land. The local concept of legitimating authority

⁴ By institution, I mean 'the cognitive formations (categories, typifications, scripts) entailing constitutive understandings upon which action is predicated' (DiMaggio 1994: 37).

is anchored in a cognitive system specific to local societies and stipulates what is to be considered right and proper based on conceptions of the natural order of things (Douglas 1999: 66). In the case of the *tutorat*, the moral obligation to assist anyone (or any group) needing access to the essential means of subsistence ensues from underlying principles that acknowledge 'a common mankind' and accord 'inter group equity' (Jacob 2003b). Following Mary Douglas' distinction between 'institution' and 'convention', my central argument is that the development of the *tutorat* can be regarded as an uneven and partial transformation from an institution, anchored in the self-regulating cognitive apparatus of local societies that functions by means of self-enforceable rules enabling actors to reach a consensus themselves, into a convention which embodies specific mechanisms of enforcement (Douglas 1999).

This transformation from institution to convention has been affected by two further developments, which have led to the current crisis. First, the Ivorian state's political involvement in the *de facto* regulation of the *tutorat*, and the strategies developed by local actors to circumvent it, have contributed to perpetuate the 'fiction' of an immutable traditional *tutorat* and thus blocked the emergence of an agreement between autochthonous *tuteurs* and migrants regarding clear rules. Secondly, the evolution of the *tutorat* has taken place against the background of a system of institutions that consists of a 'multi-layered traditional system of land use rights' (Benda-Beckman and Benda-Beckman 1999). In particular, two other specific customary principles or institutions govern the definition and transfer of rights within families and households.⁵ The first principle stipulates that labor creates a right, but a right which is never definitively acquired if not specifically protected. The second principle is that the present generation of land owners must guarantee young and future generations access to land that is indispensable to their subsistence (prin-

⁵ As in case of the *tutorat*, I chose to deal with these 'general founding principles' as distinct institutions (or, in the manner of Schlager and Ostrom (1992), to speak of a 'bundle of constitutional laws', of which each principle would be an element). The formalization of these principles is based on the thorough analysis of interviews and case studies on the justification and origin of land rights. Here we only consider relations between members of different generations within the household. The analysis of gender relations with respect to land rights would need another approach. In fact, the role of women concerning the allocation of land is only marginal.

ciple of 'intergenerational justice' according to Jean-Pierre Jacob 2003a). However, in the context of a growing land shortage, of strong rural-urban mobility amongst the young and of economic crisis, the actual implementation of these principles within autochthonous lineages and households has encountered more and more difficulties. The important transfers of land rights to strangers under the cover of the *tutorat* have exacerbated these contradictions and further fuelled tensions between autochthones and migrants.

The present paper is organized chronologically and will examine: (1) the period up to the end of the 1950s, during which the rush of migrants and the cash crop economy sowed the seeds for the conventionalization of land transfers to migrants; (2) the period from the 1960s to the 1980s, when the strong political pressure to promote the colonization of the western forest zone and the advantages gained from the resources distributed by the state hindered the stabilization of conventions and concealed the 'hidden transcript' (Scott 1976) of the various local stakeholders; and (3) the period since the late 1980s, when the growing economic and political crisis reduced public acceptance of official state policies, increased intra-household and intergenerational tensions, and ended the fiction of the *tutorat*. I will conclude with a general assessment of the evolution of *tutorat* based on an analytical model of institutional change.

THE ROOTS OF THE CONVENTIONALIZATION (UP TO THE 1950s)

The Gban were a politically loosely articulated segmentary society, with village chiefs and district headmen introduced during the colonial period. Access to and transfers of rights to land belonging to family elders depended on belonging to a localized exogamous patrilineage (*gligba*) and its segments. Beyond the *gligba*, or even beyond the fraction of the *gligba* corresponding to a sibling group, there was no other authority that dealt with land and the transfer of rights to it. The lineage cults related to land largely fell into disuse, although 'negligence' of them is regularly cited as one of the causes of 'misfortunes' which strike lineages or villages. There is an earth priest (*toakine*) descended from what is reputedly the oldest lineage in the area, whose largely religious function no longer plays a role in the distribution and transfer of access rights to land.

In the 1920s the first cocoa farms were established by the Bawle amongst the Guro around Oumé, who were followed by Dyula

traders and porters previously settled in the district capital (*chef lieu de circonscription*). When the first European and Syrian-Lebanese plantations were set up in 1926, Voltaic and Dyula workers came to the area to help open up further plantation land and subsequently settled there. The years of economic recovery, which followed the crisis of 1929–33, saw a new rush of migrants from Upper Volta (mostly Mossi) and Bawle. Amongst the Gban and Guro, the plantations generally belonged to village headmen and ‘big men’ whose close links to colonial authorities gave them access to the forced labor they needed. The increased mobility following the abolition of the Native Code (*Code de l’Indigénat*) and of forced labor in 1947 led to another boom in perennial crops (dominated at that time by coffee), but also the arrival of further migrants, especially Bawle. This new influx was encouraged by the RDA (Rassemblement démocratique Africain) and more particularly by its Bawle leader, Félix Houphouët-Boigny. The Bawle settled initially on Guro land, asking local ‘big men’, within the framework of the traditional *tutorat*, to provide them access to land. However, beginning in the mid-1950s, when the first plantations began to produce commercial yields, *tuteurs* demanded that the duty of ‘gratitude’ owed by migrant farmers take the form of a substantial fee. The issue took on two aspects, which directly linked the *tutorat* with the definition of property rights within the autochthonous community: What form should the migrants’ obligatory expression of gratitude take, since now their access to land was not just a means of subsistence, but also of obtaining an appreciable income? To whom and how should this compensation be given within the local community?

Until the mid-1950s only Dyula farmers had settled in the Gban region, and it remained largely untouched by Bawle migration. In accordance with the customary form of the *tutorat*, the Dyula resided in the Gban villages and to some extent married with Gban women. The first Bawle only gained access to land in 1953 (Raulin 1957).

Hostility towards the settlement of Bawle was deliberately incited by Gban chiefs and ‘big men’. The information gathered by Raulin in his study of immigrants in Côte d’Ivoire (commissioned by the colonial administration, anxious about the tensions spreading through the forested South of the colony) is very revealing:

The chief of the Boka district (...) explained to me the reasons for this resentment (...). He drew upon reason more than tradition in his

argument; perhaps he addressed me this way because this chief is a former colonial interpreter and seems to have learned the European way of thinking well. I was astonished by the contradiction between the equal rights of African people encouraged by the RDA, and the chief's hostility to the settlement of strangers in Gagou [administrative designation for Gban] traditional territory. He told me that he had on too often an occasion, throughout his long career, seen the unfortunate consequences for local people of the transfer of a significant share of its land to immigrants. 'At the beginning, the strangers come to ask you to yield a corner of the bush to them; as they are polite, one does not refuse. Then they let their "little brothers" come to help them and those also want land to settle . . . it goes on until there are more of them than people of this area. Then they become demanding and unkind. And as in Bouaké [second city of the colony, largely populated by Dyula and administered by a Dyula mayor], they want to be in control and get themselves elected. I know Felix [Houphouët-Boigny] well, if I see him, I would tell him that if he did in his region what he recommends for others, he would see the disadvantages of it. We want to remain masters in our own country and, above all, maintain agreement amongst ourselves, but this is not possible any more, for as soon as strangers arrive, even without meaning to, they "sow discord". I will do everything I can to prevent the settlement of strangers farmers in my district; but if they do not seek to obtain our lands, strangers will always be welcome here.' (Raulin 1957: 45–46; translation mine)

These reservations notwithstanding, the Bawle migrants obtained access to land by negotiating with the heads of smaller family groups. This resulted in serious disputes between villages and district chiefs (*chefs de canton*), as well as between village and family heads, like that which took place in the Guro region. It is easy to identify among the debates reported by Raulin the normative elements of the *tutorat*, which were at that time discussed publicly and which later disappeared from such discourse. These are the same elements that we see reappear in the public debates of the 1990s:

- The principle according to which one cannot refuse a stranger in search of a means of subsistence free access to land already seemed inappropriate to the *tuteurs* of that time, since a situation had developed in which land use generated an appreciable surplus.
- As land was still abundant and the boundaries circumscribing the fields assigned to migrants were imprecise, the latter were encouraged to 'carve out' significant domains of exploitation, which prompted autochthonous big men to evoke the principle of ensuring land access to future generations of the lineage.

- Yet another issue regarding the *tutorat* had focused on the legitimacy of the *tuteurs*. Who has the legitimacy to comply with the moral obligation to provide needy strangers with land? In Raulin's study, and in the files of the *sous-préfecture* of Oumé (Bonnecase 2001), it appears that in the 1950s a confrontation arose between local big men (i.e. district chiefs, village headmen and lineage elders claiming an earth-priest title), who tried to control the delegation of rights to strangers (and collect the corresponding fees), and household headmen, who denied that the latter had any authority to allocate rights involving their own forest reserves.
- The debate over the nature of social relations between autochthonous and migrant communities underscored the weakness of daily interactions between the local autochthonous community and the Bawle, who gathered in large hamlets outside the Gban villages. In contrast, no land fees were requested from most Dyula migrants, who settled in the same villages as the autochthons.

CONCEALED CONVENTIONALIZATION (FROM THE 1960s TO THE EARLY 1980s)

To begin with, I will summarize the 'official' local elucidations of the *tutorat* according to material I collected in the field in the 1970s. I will then explain why the public debates about the conditions under which the *tutorat* should be implemented outlined by Raulin in 1957 appear to have ceased in the 1960s.

The local theory of the tutorat in the 1970s: delegation of a broad bundle of rights to migrant farmers

The following data relate to the publicly evoked ideas delineating the normative nature of relations between *tuteurs* and their stranger-guests. These elucidations represent a kind of 'official local theory' of the *tutorat* and represent a timeless set of norms regarding the ideal form and content of social relations.

During the installation ceremony of a stranger on a piece of land the *tuteur* presents a symbolic gift (drinks, chickens) to the stranger and reminds him of the *tuteur's* ancestors who had invested labor in this particular parcel. He thus emphasizes the legitimacy and perpetuation of his authority, which are not to be called into question. This stranger is not expected to reciprocate the gesture with a cor-

responding return gift, but is only obliged to express his 'gratitude' by giving a voluntary gift of food, agricultural products or a portion of the earnings obtained after the sale of his coffee and cocoa. The obligation of 'gratitude' must, however, be specifically expressed by the stranger's sharing in the everyday 'suffering' of his *tuteur*. The migrant should 'look after' his *tuteur*, and be vigilant so that he may respond to his needs and suffering when life becomes difficult (death and funeral, disease, scholarship expenses, sometimes even credit). The *tuteur* reciprocates and in turn shares in his stranger's 'suffering'. Thus, the *tuteur's* delegation of land rights is accompanied by a 'social *tutorat*', aiming at facilitating the stranger's integration into local society.

The bundle of rights allocated to migrants for an undetermined period is very broad. It encompasses the whole spectrum of rights to access natural resources (with possible restrictions on access to palm trees and fishing), of use rights, rights to manage and the rights to plant, to carry out improvements, to sell the cultivated products, to include and exclude other users and to inherit. The right to transfer to another migrant is tacitly authorized, if the purchaser is presented to the seller's *tuteur*. The relationship that ensues from the *tutorat* is perpetual. In the case of the original *tuteur's* death, the heir takes over the deceased *tuteur's* role. In the event that the stranger-guest dies first, the *tuteur* re-actualizes the relation by ceremonially installing the former's heir (who must then 'go' to the *tuteur* if he did not previously live on the spot). This system is particularly suited to the needs of cocoa and coffee cultivation, whose life cycle corresponds to one human generation.

The expected advantages of welcoming strangers are the collective benefits that their arrival could bring to local communities: reinforcement of the community's political weight through the integration of new residents, better access to administrative services and infrastructure, the potential contribution strangers can make to village 'development' (shops, constructions, supply of farm workers) and the reinforcement of customary property rights vis-à-vis neighboring villages by settling migrant farmers on remote areas where the rights established through the ancestors' labor are more ambiguous and vulnerable to dispute.

The local ideas regarding the *tutorat* publicly articulated in the 1970s generally overlooked the obligations of migrants to provide labor (in the case of Burkinabè or other Northern migrants) or to

pay increasing amounts of money, obligations that I observed during this time. Moreover, the extent of the bundle of land rights granted to migrants appears therefore rather exorbitant, compared to Raulin's description, recorded fifteen years earlier, of the conflict-ridden negotiations between autochthonous *notables* and the first Bawle migrants. Two main factors can explain this discrepancy between normative rules and local practices or 'hidden transcripts': the government's implementation of a policy to colonize the western forest belt, and the positive incentives offered by customary property rights holders that also played a role in the acceptance of the settlement of migrants.

The state's pursuit of agricultural development by massive colonization

From independence onwards, the policy of agricultural growth by massive colonization of the forested areas in the West was implemented by various means. Although an attempt to weaken the powers of customary owners by a proposed land bill in 1962 was shortly after abandoned in the face of nation-wide resistance from the customary chiefs, at the national level, the *tutorat* continued to be evoked and served as a 'cultural lever' to convince local populations of the legitimacy of the state's proposed development plans. This was coupled by various government measures, especially by a policy of opening the borders to nationals of neighboring countries, particularly Upper Volta (now Burkina Faso), in order to facilitate the recruitment of agricultural labor, and, in the 1970s, a policy of regional planning that opened the Southwest to migrants.

Public awareness campaigns were addressed to the autochthonous population. The need to welcome Ivorian migrants was said to be in the national interest and centered on two arguments: a moral obligation to help compatriots coming from the poor savanna areas, and their right as citizens to gain access to land from the national land domain, of which the state claimed ownership in the absence of formal land titles. President Houphouët-Boigny's directive, 'the land belongs to the person who makes it productive', became widespread from 1963 onwards. Local government institutions systematically provided services supporting migrants coming from other parts of Côte d'Ivoire, particularly Bawle. During this time, several administrative provisions had significant consequences for the *tutorat*: the formal prohibition of dues required from migrants in exchange for

land access; the authorization granted to the *sous-préfets* in 1968 to deliver 'occupation licenses' that migrants used for themselves to force the hand of the Gban customary landowners; and the downgrading of the status of protected forest areas to allow Bawle migrants and political 'big men' to clear fields. Finally, in the event of conflicts with locals, *sous-préfets* and judges usually decided in favor of migrants or required compensation be paid to them for land taken away, payments which took into account work invested in the land and which autochthones, of course, could not afford to pay.

Up until the 1990s, village chiefs (who at the village level were recognized as state representatives), *sous-préfets*, district chiefs, PDCI⁶ members of parliament, and PDCI section and village secretaries were in charge of passing on the instructions to receive and accommodate migrants in search of land. Local courts relied on *ad hoc* arguments, based on a mix of legal provisions, government instructions, customary dispute settlements and corrupt practices. Members of the urban professional and/or political elite and their home village associations constitute another important element in the local power structure. The mediating position between their rural parents and regional or national political networks has always had implications for land issues. However, at the same time, they have their own land-tenure interests, particularly since the land question has consequences for their political strategies to obtain local support, consequences that are even more direct if they are running for political office. On the one hand, members of the urban elite, as 'sons' of a particular area, have long been involved in passing on government instructions or taking part in the negotiation of land disputes, particularly in the West and Midwest, where autochthonous communities have been in conflict with Bawle migrants. On the other hand, however, these urban elites have also paid close attention to sensitive aspects of government policy, particularly to the effects of land alienation on the local population. Up to the 1980s, the dependence of urban elites and their associations on the clientelist political system did not allow those most opposed to official policy to debate these questions openly for fear of incurring repression.

⁶ Parti démocratique de la Côte d'Ivoire, Houphouët-Boigny's party.

The cultural reference to the *tutorat* made by the administrative authorities was thus accompanied by authoritative political instructions, which, though lacking legitimacy from the autochthones' point of view, were not openly challenged. The fear of state power (particularly in the case of violent conflict with the Bawle migrants) and the fear of suffering reprisals from local government institutions which would jeopardize access to resources controlled and distributed by the state, played an undeniable role in the general submission to the official policy favoring migrants.

Positive incentives to encourage the acceptance of migrants

However, this submission was not effected solely through coercion, the cost and heaviness of which would have largely exceeded the political resources of a nation-state only superficially anchored at the local level. The following positive incentives also played a role:

- The same collective advantages expected from welcoming strangers that have been previously mentioned: reinforcement of the community's political weight through the integration of new residents; better access to administrative services and infrastructure; the potential contributions of strangers to village 'development'. The reinforcement of customary property rights vis-à-vis neighboring villages by settling migrant farmers on remote areas gained particular importance through unforeseen processes set in motion by the confluence of two factors: the state's coercive policy to integrate strangers on the one hand and the strategies pursued by the autochthones to minimize their loss of control over land on the other hand. Indeed, unable to resist the administrative protection from which the migrants, mostly Bawle, profited, the only way for the autochthones to retain a minimum of control over land was to transfer land rights under the guise of the *tutorat*. But for preserving the fiction of the traditional *tutorat*, they would have otherwise completely lost recognition of their pre-existing rights and the relative advantages they could derive from their *tuteur* status. By the same token, government pressure had a 'snow-ball effect' on the process of land alienation. Placing 'their' strangers at the periphery of their loosely defined territory, allowed autochthones to mark their land claims with respect to neighboring villages, which also engaged in this escalating transfer of land rights to strangers. The same phenomenon of 'marking' land

claims through the strategic settlement of migrants occurred within villages where there was competition between autochthonous lineages.

- In the context of a shortage of local labor, due to increasing levels of school enrolment and urban emigration, land transfers to Burkinabè migrants was clearly linked to their obligation to provide labor on their *tuteurs'* land (Chauveau and Richard 1983, Zongo 2001).
- The migrants' 'obligation of gratitude' also entailed specific advantages for the *tuteurs*. The official prohibition of collecting fees from migrant farmers was circumvented in two ways, which neither openly deviated from the normative rules of the *tutorat*, nor did they challenge the official legal principle that land belongs to the state. First, the initial right to access land, in theory reciprocated by a symbolic gift in kind, soon entailed a monetary component, which increased steadily. This development increasingly favored opportunist practices towards strangers: assignment of the same plot to several migrants, disputes raised over an assigned plot by claiming members of the same household in order to gain additional advantages, etc. Secondly, the theoretically voluntary social obligations of assistance to the *tuteur* were systematically required. Some lineage elders have undeniably taken advantage of their control over land to generate genuine rent through the systematic transfer of land to strangers under the guise of the *tutorat*.
- A final reason for autochthones to submit to the government policy of agricultural colonization under the guise of the *tutorat* is the advantages (even if very unequally divided) drawn from exceptional (but non-sustainable) economic growth. In this context of growth driven by export cash-cropping (due in particular to the agricultural colonization of the country's midwestern and western forests), i.e. the 'Ivorian miracle', gave the state the means to guarantee fixed prices to farmers, to subsidize imports and to improve the general standard of living. However, in return, the government has expected that farmers submit politically and acknowledge the legitimacy of the state party and its local agents' interference in land matters (Léonard and Ibo 1994, Chauveau 2000). This informal pact also included specific compromises between the state party and the non-Ivorian immigrants, such as protected access to land in exchange for electoral support (the majority of non-Ivorian migrants were authorized to vote). Local

youngsters' support was gained through free schooling, access to urban employment and—at least in theory—assistance once they wished to establish themselves as 'modern farmers'.

In spite of, or because of, increasing latent antagonism, the use of written paper agreements (as regards employment contracts, tenancy contracts and especially land transactions and pledging) expressed the growing desire of migrant farmers to secure their land rights (Koné and Chauveau 1999). Although they had no formal legal value, these arrangements were not only tolerated by the local administration (*sous-préfets* and local judges in particular), but even encouraged, because they served as evidence in case of dispute.

YEARS OF CRISIS: THE FICTION OF *TUTORAT* RUPTURES (FROM THE LATE 1980s TO THE PRESENT)

The crisis of political legitimacy and the growing tensions within autochthonous households and between generations regarding land access explain why the implementation of the *tutorat*, hitherto regarded by autochthones as the least distasteful means of circumventing unpopular state policy, re-appeared in the local public arena in an exacerbated form in the late 1980s, ultimately leading to the current crisis.

Crisis of political legitimacy and demands for the 're-traditionalization' of land tenure

The crisis of political legitimacy originated in the collapse of the working compromise between the state and various rural stakeholders. The government's growing external debt made it increasingly difficult to maintain support for rural producers and for rural youths more interested in attaining upward social mobility in an urban context. The political crisis resulting from these developments (the multi-party system was restored in response to public pressure in 1990, and the right of foreigners to vote was revoked) delegitimized the state's policy of protecting migrant farmers.

In the Gban region, as well as throughout the western forest area, this crisis of political legitimacy manifested itself in the politicization and 'ethnicization' of the land issue. The increasing land shortage and the loss of confidence in government policy encouraged the

urban elite and local politicians to play the ethnic card in order to ensure their own political survival locally and their continued access to government posts and finances. The ideology of autochthony and the protection of 'traditional' land rights became an increasingly effective electoral argument. For instance, one of the few higher civil servants of Gban origin, a university lecturer, demanded that the excessive land sales due to the 'free immigration' (Nguessan-Zoukou 1988) be compensated by an autonomous regional development.

However, the 'ethnicization' of land tenure issues manifested itself differently depending on the migrants' origin. Whereas previously the most acute tensions had pitted Gban autochthones against the (Ivorian) Bawle, now non-Ivorian migrants, more particularly the Burkinabè, were stigmatized. Taking advantage of an abundant pool of inexpensive migrant laborers of the same origin, they were best able to adjust to the drop in coffee and cocoa producer prices that followed from the liberalization of the agricultural sector by intensifying their production practices. Thus, they diversified their activities (tree and food crops, transport, credit, trade and various services) and benefited from distress sales or pledges by autochthones.⁷ The brutal implementation of neo-liberal reforms from the 1980s onwards further exacerbated this stigmatization. The ruthless stopping of the policies of local development support made the relative success of the Burkinabè even more visible, which allowed them to be turned into scapegoats for the rural crisis.

*The crisis in intra-household and intergenerational land
relations among autochthones*

As elsewhere in Africa, the bundle of rights to land held by an individual or a household head is embedded in the administrative and control rights held by family and lineage authorities. Their more or less exclusive nature mainly depends on how they came about (Colin 2003), that is, the way in which the authorized rights holder gained access to the land: either through first clearing, donation *inter vivos* or through inheritance. In the latter case, the inherited rights will be handled according to the circumstances that established the legacy. In the case of the Gban, the strength of rights to land is clearly

⁷ Cf. for example Léonard and Oswald 1996.

defined by the basic principle that continuous labor invested in a piece of land (in the past by an ancestor, or now by a living individual) creates such a right.⁸ Thus, for example, certain land rights ensue when a claimant has cleared the forest himself, or has helped reactivate the 'labor' invested by an ancestor on land that has been left fallow for a long time by bringing it back into production. As far as given or inherited cocoa plots are concerned, the claimant's rights are all the stronger if he himself took part in its development at his father's side, or if his own mother (in a polygynous family) had 'stabbed' the land on this particular plot. In the event that his father gave him or expressly allotted him a cocoa plot before his death, the heir's rights are all the stronger and the more assertable vis-à-vis opposing claims that may be raised by his agnatic uncles, if his father also cleared the land himself. Placing migrants' settlements at the periphery of the *gligba* landholding prolonged and reaffirmed this principle, according to which labor invested in a piece of land entitles one to certain rights over it, or helps to defend these rights. The land rights 'portfolio' held by an individual or a household head thus corresponds to a composite micro-landholding⁹ consisting of various plots, on each of which he may have different prerogatives and different bundles of rights, and which may also include plots that have been transferred to migrants within the framework of the *tutorat*. Between generations, this land rights 'portfolio' is generally recomposed.

However, intra-family transfers and the segmentation of family landholdings can over time lead to significant heterogeneity in the origin and strength of the various rights held by individuals belonging to different households and generations. In the context of increasing land shortage, the principle which states 'labor creates a right', and which plays an important role in intra- and inter-household land rivalries, can come into conflict with the principle of 'intergenerational justice' that is designed to ensure that all have effective access to family land. Life histories abundantly illustrate the accumulated resentments and frustrations within households and between gener-

⁸ The notion of work is used in a very broad sense, and at times comes close to the notion of taking a risk (Jacob 2003a).

⁹ The same *loadi* term is used for lineage, lineage segment and individual landholding.

ations, in particular between fathers and sons and between the sons of different mothers.¹⁰ These may result from disagreements over permission given to young men to plant cocoa, or from conflicts in principles governing cocoa farm inheritance, i.e. conflicts between claims ensuing from the rights of collateral principle (the right of inheritance accorded to brothers) and the generally recognized claims to inheritance held by sons. Further discord arises when young men contest their elders' transfer of land to migrants, or when young men transfer land to migrants secretly.

By returning to their village, townsmen struck by the economic crisis and the brutal implementation of the privatization program (Beauchemin 2001) exacerbated tensions within households arising from competition over lands left as part of the household head's inheritance. Once back in the village, the returnees are often at a disadvantage in claiming family land that is occupied by the 'old men', by those brothers who remained in the village, or even by migrants on plots ceded through the *tutorat*. If these returnees did not inherit a cocoa plot by name or if they did not maintain strong alliances within the household, insistence on their right to have access to land by evoking 'intergenerational justice' is the only recourse they have. It is then that the challenge begins, in which they must identify, within the household's 'land rights portfolio', a plot bearing the unquestionable marks of their own work, or that of their father or mother. In the absence of any such marks, their ability to gain access to land will depend on the goodwill of a relative, generally an old 'retired person', whose children have already been endowed with land.

*Growing conflicts between autochthones and migrants*¹¹

Tensions within households and between generations in turn fed tensions between autochthones and migrants. The young men or townsmen who went 'back to the village' exercise strong pressure on their household head to recover a portion of the land transferred to

¹⁰ Close patrilineal kinship is particularly fertile ground for witchcraft accusations.

¹¹ The observations were made before the beginning of the civil war in September 2002. For insight into the situation of a Gban village since then see Chauveau and Bobo (2003).

migrants, some of them even having tried to intimidate migrants and regain parcels by force (Bobo 2002). Furthermore, the moment they inherit land from their fathers, they are able to demand an increase in the services expected from migrants or to renegotiate the conditions of transfer.

Among autochthonous *tuteurs*, the use rights transferred to a migrant are no longer regarded to be linked to the moral principles which previously underpinned the *tutorat*: In the past, one used to give free land to the strangers so that they had a place to produce something to eat (*mambedia*). Now, they use it to make money (*lalayedia*) (Bobo 2002). The nature of transferred rights is perceived in different ways, depending on various factors, such as whether young men in the family are trying to recover plots, the length of the strangers' residence and the quality of social relations with them, the existence of 'little papers' or whether payment agreed upon at the moment of the transfer was paid in full. A few acknowledge that this in effect amounts to a sale of land. Others consider the rights transferred to migrants to be comparable to those awarded in unlimited loans, or in gifts, provided the recipient fully integrates into the community. However, autochthones generally make such full integration difficult if not impossible. Others compare the settlement of migrants to the establishment of a lease, so that the natural corollary is the application of a rental fee proportional to the surface area of the plot. A few consider that the recovery of the plantation land without payment of compensation would rectify the injustice committed over the many years since the settlement of a migrant, during which no rent was paid. Whatever interpretation is given to the nature of use rights, the bundle of rights conceded to migrant farmers is subject to in-depth public debate, which tends to center on the right to include other land users, the right to transfer to a non-resident heir and the right to sell to another migrant.

As far as migrant farmers are concerned, both Bawle and Burkinabè are becoming increasingly discontent with the escalating requests of their *tuteur's* family. The demands put forward by autochthones with respect for the 'obligation of gratitude' towards the *tuteur's* family encounter stiff opposition from migrants. Bawle are all the more restive. Some of them meticulously assess the gifts and various favors they have given in response to the numerous demands from their *tuteurs*. Furthermore, the younger generation of migrants, including Burkinabè young men, no longer wish to be regarded as strangers

in a region where many were born (according to the 1998 census, half of the Burkinabè citizens were born in Côte d'Ivoire) and to whose development they believe themselves to have contributed. When faced with a dispute on the nature of the initial rights transferred, the earliest migrants oppose the 'labor creates rights' principle and the miscellaneous sums collected by their *tuteurs*. Later migrants, mostly the Burkinabè, claim that they had indeed bought the land. However, such interpretations are more often discussed amongst Burkinabè than raised directly with autochthones. Claims and their articulation also depend on the relationship between *tuteur* and migrant. The restrictions by autochthones on the right to harvest natural resources, to include other land users and to transmit land to heirs are all subject to negotiation on a case-by-case basis.

The announcement of the passing of the 1998 law on the *domaine foncier rural*, which has not yet been officially implemented, has bolstered the claims put forward by autochthones that they are the only legitimate holders of property rights (Chauveau 2000, 2002; Koné 2001; Bobo 2002). The law actually gives priority to 'customary rights' in the process of identifying and certifying land rights prior to their registration. It aims at converting the transfer of land rights between autochthonous *tuteurs* and foreign migrants, who cannot legally hold property, into a formal lease contract. However, it is quite likely that many migrants of Ivorian citizenship will not be acknowledged as the owners of their plantations by their *tuteurs* either, since 'complete' customary rights are based on autochthony. In this context, migrants' attitudes vary according to their national and ethnic origin. As the recognition of their use rights will entirely depend on the goodwill of their *tuteurs*, the Bawle adopt a rather careful attitude of 'wait and see'. The Burkinabè and 'Dyula' (including Senufo and other groups originating from Northern Côte d'Ivoire), confronted with open xenophobia, plan 'to forgive' their *tuteurs* and to negotiate with them individually in an effort to maintain as many rights as possible on their plantations.

GENERAL ANALYSIS

In analyzing the evolution of the *tutorat*, I will use a model of institutional change based on the following concepts:

- The already mentioned distinction made by Mary Douglas between 'institution' and 'convention', which describes the nature of the game (i.e. a game with naturalized rules vs. a game with negotiated rules).
- The distinction made by Bailey (1971: 18–19) between 'normative' and 'pragmatic rules'. Normative rules are very general lines of action, which do not prescribe any particular type of action, but determine the field of possible actions according to moral criteria of good or evil. Pragmatic rules advise which tactics will be appropriate to the objectives and the situation, making it possible to gain room to maneuver, without challenging the normative rules. This distinction also helps describe the rules of the game.
- Helpful for understanding the general process of institutional change is S.F. Moore's distinction between two types of processes that run counter to each other. The 'processes of situational adjustment are those by means of which people arrange their immediate situations (and/or express their feelings and conceptions) by exploiting the indeterminacies in the situation, or by generating such indeterminacies, or by reinterpreting or redefining the rules or relations'. The 'processes of regularization are of the kind in which people try to control their situations by struggling against indeterminacy by trying to fix social reality, . . . , to give it form and order and predictability' (2000: 50).

In the following, I will also compare my analysis with observations on the transfers of land rights between autochthones and migrants made by authors who worked in nearby and historically comparable Guro, Dida and Bété zones in Côte d'Ivoire.¹² The often contradictory nature of these analyses, from one zone to another and from one period to another, reflects the uneven process of the 'social

¹² In addition to Raulin (1957) in Bété, Dida and Gban regions: Köbben (1956) worked around 1954 among the Bété and the Dida; Paulme (1962) among the Bété in 1958; Meillassoux (1964) in 1958–59 among the Guro, Hecht (1985) from 1978 to 1980 among the Dida; then, on the same field, Lewis (1991) around 1990; Dozon (1985) in the 1970s among the Bété, Nguessan-Zoukou (1988) among the Gban in the 1970s and the 1980s.

disembedding'¹³ of a property rights institution in different historical and political contexts. Indeed, it will be noted that, in the case of *tutorat*, we are confronted with a process which is the reverse of the process of institutionalization, in which anthropologists and economists are usually most interested.

Up to the beginning of the 1950s, the traditional normative rules of the *tutorat* ensured the effective regularization of land tenure relations between customary landowners and migrant farmers. However, from the 1950s onwards, the rush of migrants sowed the seeds of the *tutorat*'s conventionalization through the emergence of pragmatic rules linking the conditions under which the settlement of migrants was accepted to the commercial nature of cocoa and coffee cultivation. One can note the contrasting scenarios evident in the maintenance of the *tutorat* with respect to most former Dyula migrants and the experimentation with conventions to regulate the transfer of rights to new Bawle migrants. This experimentation with new rules (on the nature and methods of paying for land access, as well as to whom this payment should be made by virtue of his status as 'owner' of the ceded land) is regularly underlined by the authors of that time, in particular Köbben (1956: 181), who in the same Bété area already then regarded the coexistence of various forms of 'land transfer' to be indicative of the evolution of institutions in a process of learning-by-doing.

After independence, the *tutorat* as an institution served to shield actors from the creeping confrontation between the implementation of state policy and its avoidance by customary landowners, at the expense of the institution's profound alteration. The submissive attitude of local big men and of Gban household heads towards agricultural colonization can be explained by the strong political and administrative pressure and the advantages drawn from the resources distributed by the state. In this context, migrants sought to stabilize the rules of the game by evoking written 'conventions', although without much success. This phase can be regarded as the generalization of a process of situational adjustment through the aggregation of pragmatic rules vis-à-vis migrants that did not openly question

¹³ In contrast with the term 'embeddedness' as used by Karl Polanyi (1957).

the normative rules of the *tutorat*, but did evade the *de facto* regulation of the *tutorat* by local government authorities, especially the prohibition of fees. This dissimulated (non-rebellious) strategy of trickery deployed by *tuteurs* has, however, resulted in a paradoxical process. On the one hand, the generalization of these pragmatic rules gradually transformed the stranger into a client, henceforth subject to constraining, formalized conventions. Yet, on the other hand, according to a process already well described by Lucy Mair (1969), the tendency to increase and monetize social obligations in return for access to land encourages the idea among migrants that the rights acquired become more secure over the time in proportion to the money expended. If cash payments become larger and more regular, these acts not only acknowledge the *tuteur's* control over land, but also reinforce migrants' claims of having been engaged in a purchase-sale transaction.

This paradoxical situation explains the differences in the analyses by authors working in midwestern Côte d'Ivoire, differences that depend on whether they sought to represent the transfer of the rights to immigrants using universal legal categories (Köbben 1956, Hecht 1985), or whether they privileged the social and moral embeddedness of the land tenure relationship (Raulin 1957, Paulme 1962, Meillassoux 1964). The most in-depth analysis is undoubtedly that of J.-P. Dozon (1985: 276ff.), who emphasized the complex process by which land is transferred to migrants and underscored the fact that 'the movement is not "I sell because I am the landowner", but rather "I sell, therefore I am the landowner"'; and, at the same time, the 'rediscovery' of the autochthony with the massive presence of migrants and the dynamics of potential crisis.

From the 1990s onwards, the growing economic and political crisis, the delegitimatization of state authority and the politization-ethnicization of the land question ended the fiction of the *tutorat* used by the state as well by autochthonous elders. Furthermore, over time the contradictions between the principle of 'labor creates a right' and the principle of 'intergenerational justice' caused serious tensions within Gban families and between generations, and resulted in the outflanking of pragmatic rules with opportunistic strategies vis-à-vis migrants. Young men, urban elite members and politicians in local political arenas pushed for the renegotiation of the conditions under which land rights were transferred and justified their demands by evoking a return to 'autochthonous' basic principles. Their efforts

were aimed in particular at restricting the bundle of rights transferred to Burkinabè farmers who, during this period of deep economic crisis and neo-liberal reforms, had access to an abundant labor force and could continue purchasing plots. The land conflicts between communities illuminate the contradictions between the two principles of regularization: return to so-called 'autochthonous custom' and the recognition of the conventional nature of the transactions. The first is evoked by the Gban, as a tactical means of glossing over the complex political history of land transfers to migrants. The second principle is alternatively evoked by both the Gban and by migrant farmers, who reject the *tutorat* as an self-enforceable institutionalized point of reference and its transformation into a negotiated convention between individuals or small-scale family groups. But whereas the Gban (including most of the young men) are seeking to secure a source of rent, the migrant farmers are expecting an acceptable contract-based clarification of their property rights.

It is significant that B. Lewis, working ten years after R. Hecht in the same field, the Dida region, radically invalidates the analyses of the latter. Unlike R. Hecht, she underlines that '30 years of liberal policy has [*sic*] not transformed land rights into a full system of private ownership', that 'the Dida have transformed the loss of land into beneficial patron client ties' and that 'inter-ethnic groups tensions are evident, as are institutions coping with such conflict' (Lewis 1991: 7). As I did myself in earlier publications (e.g. Chauveau 1997), she underestimated the exacerbation of tensions resulting from contradictions between regularization models employed by the Gban and by migrants in a context of intense politicization of the land issue. For instance, the influence of land transfers to migrants is clearly noticeable in the political life of Gban villages. It often underlies the dealings of village chieftaincies that have a tendency to back urban elite members in the election of chiefs, because the latter are regarded as likely to be tougher with respect to the migrants and less likely to be corrupted in defense of villagers' interests, in particular in defense of the interests of young men and non-residents.

Currently, new land legislation offers the opportunity to re-negotiate land rights officially. But in the present highly politicized context, the legislation reinforces the perception of the *tutorat* held by a significant number of autochthons, including young men, who regard it to be a form of rent-seeking. It is clear that an 'enforced consensus' based on the legislation will not suffice to promote real agree-

ment on what should constitute legitimate standards of land rights security. Two types of problem complicate the process of regularization by which autochthonous *tuteurs* and migrant farmers would struggle against indeterminacy. The first involves the general conditions under which legitimate agreements emerged. The difficulty is due to the fact that 'a simple social convention would be too transparent' and that 'a naturalizing principle is necessary to give it legitimacy' (Douglas 1999: 71). In my opinion, agreement regarding the legitimate 'informal' principles of justice, on which local property institutions are based—i.e. the principle of entitlement to rights by virtue of invested labor, of intergenerational justice and of common humanity—is the *sine qua non* of a concrete implementation of the new legal framework, even if this does not sit well with the legalistic, bureaucratic spirit of the land reform. The second difficulty is the overlap between inter-community and the intra-household social relations involving property. The officialization of the right to rent or transfer family land can raise considerable controversy about which member(s) of the family or household is legitimately entitled to this right. In contrast to the situation described by Raulin in the 1950s, when debates were restricted to elders and big men, one can now expect that discontented young men and, more generally, all those victims of the economic crisis who went 'back to the village' will be very active stakeholders. Moreover, the withdrawal of land or the severe restriction of the bundle of rights granted to migrants will not significantly alleviate the tensions regarding land within households and between generations. There will always be autochthones to renew land relations with strangers; to take advantage of the settlement of migrants to reinforce their rights with respect to neighbors or relatives; to benefit from migrant labor; to benefit from renting land; and last but not least to alleviate pecuniary difficulties by selling or pledging plots, when family assistance is not forthcoming.

CONCLUSION

The widespread patron-client-type relations between customary 'landowners' and migrant farmers are the product of a history particular to the Gban region and to the western forest belt of Côte d'Ivoire. Because of the policy of agricultural growth by massive colonization implemented by the Ivorian state, the *tutorat* has turned

into an 'internal frontier' institution, which structured not only the land relations between the different local stakeholders, but also the relationship between local 'small polities' (Kopytoff 1987) and a state only weakly anchored at the local level. The uneven and incomplete transformation of the *tutorat* from a customary institution into a convention, which embodies mechanisms for the enforcement of negotiated rules, resulted on the one hand from the strategies developed by locals to circumvent state's regulation of the *tutorat* relationship and on the other hand from the *tutorat's* development being enmeshed in the conflictual dynamics of intra-household and intergenerational land relationships. So, the changing political and economic context, in particular the crisis of political legitimacy and economic turmoil, has contributed to link closely the current dramatic problem of autochthone-migrant relations not only to national and local politics but also to the question of how rights are to be constructed and claimed over time within households and between generations. That suggests that a simple legal change, such as the one that the new legislation bids, will be insufficient to promote the development of 'modern rights', ostensibly the law's main objective.

This study confirms that the definition of rights is a matter of process rather than a mechanical application of principles, a process that primarily involves a series of confrontations, negotiations and continuous (re-)interpretation (Berry 1993, Juul and Lund 2002). However, even in the very tangled situation of conflict found in the forest region of Côte d'Ivoire today, this study suggests that negotiation and multiple interpretations of rules and situations are not incompatible with the actors' ability to reflect on and clarify cognitive categories and their use to support particular actions with respect to land access. One should not confuse on-going interpretation, conflictual situations and battles of wills with a lack of or the disappearance of local codes and principles of justice. It is possible to characterize the nature of the disagreements which arise on a more reliable basis: disagreements as are found within the framework of commonly accepted norms (as with the principle of 'labor creates a right', the principle of intergenerational justice, the principle of that any individual has a right to access the means of subsistence for himself and his family); disagreements on the nature of the game being played (which lead to the conventionalization of the *tutorat*); disagreements which fall outside the rules and which tempt those concerned to solve disputes by exclusion (resulting in the uncon-

trolled politization of land issues and of the implementation of the new law).

The other lesson is that, in the Gban case, the study of the relationship between autochthones and migrant farmers paradoxically underlines the dynamics of intra-household land relationships (including intergenerational relations and gender relations) as an essential element in the understanding of the complex institutional evolution of local property rights. With few exceptions (e.g. Amanor 2001, Colin 2003), this field, unlike knowledge about intra-household labor relations and income distribution (Colin 2003), has as yet barely been explored in the current literature. It seems to me that more ethnographic-like studies on this topic are indispensable to gain a better understanding of the process of broader institutional change.

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PRIVATIZATION AND THE POLITICS OF BELONGING IN WEST AFRICA

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In a recent study of rural land claims in the Colombian Andes, Bettina Ng'weno examined the effects of a provision in Colombia's 1991 Constitution that makes it legally possible for groups of self-identified Afro-Colombians to claim land as 'ethnic territories'—a strategy that Colombia's indigenous peoples have used for some time, with varying degrees of success.¹ In attempting to take advantage of this legal opportunity, Afro-Colombian peasants have confronted questions of their own collective identity, and debated how best to organize themselves in order to make and defend their claims. In the process, Ng'weno argues, Colombia's long history of peasant struggles to wrest land away from large owners has taken a new turn, in which groups of poor rural dwellers may find themselves at loggerheads with each other across newly activated lines of 'ethnic' difference. Land, formerly seen primarily as a source of livelihood, is increasingly viewed as territory—space to be governed as well as cultivated, that stands to empower those who control it.

The story of indigenous and Afro-Colombian people's claims to collective territories has a familiar ring in West Africa, where collective rights to land have long been considered the historic norm, and many collective claims now face acute pressure from increasing land scarcity and from property rights reform. Whether they sought to preserve, transform or supplant 'traditional' systems of tenure, most colonial regimes believed that traditional tenure in Africa was collective. The dictum, pronounced by West African spokesmen in the early twentieth century, that 'land belongs to vast family, of which some are living, many are dead, and countless numbers are

¹ Ng'weno 2002. On the longer history of indigenous groups' claims in Colombia, see, e.g., Rappaport 1994.

not yet born² became firmly entrenched in official colonial discourse, leading to frequent debates over the constitution of land-holding groups and the possibility of alienating land that was held under customary tenure. After independence, many African governments chose to exercise their newly won sovereignty by nationalizing land, legally abolishing pre-existing customary claims and, in some cases, guaranteeing permanent possession to anyone who put a piece of land to productive use, or realized its commercial value. Implementation of these laws was uneven, however, and many people continued to use and claim land on the basis of customary rules and precedents. In recent years, international creditors, arguing that private ownership fosters productive resource use and economic growth, have put pressure on African governments to privatize land holdings, legally and in practice.

The question I would like to pose in this paper is whether the process that Ng'weno, Rappaport and others have observed in Latin America—where the assertion of collective claims to land has tended to politicize groups who make the claims—is being reversed by the privatization of land rights in Africa.³ If the process of claiming collective territories is creating a new kind of ethnic politics in rural areas of Colombia, does it follow that the 'privatization' of land rights in West Africa is having the opposite effect—loosening historic ties between land rights and various forms of group identity, and/or shifting the struggle over land from claims on territory to a struggle between the landed and the dispossessed? How is privatization (re)shaping the social and political map of West African countries? How are criteria of belonging—citizenship, kinship, tradition, allegiance, expertise—being reified or redefined in the process of land acquisition and/or retention? Whose authority is reinforced or diminished in the process, and what are the implications for development and democratization?

The present essay seeks to pose these questions rather than answer them, and suggest some directions in which they might be pursued.

² West Africa Lands Committee 1916. This formula has been repeated so often that its popularity has obscured its provenance.

³ For convenience, I use the term 'rights' in this paper to refer to claims that are recognized and, in principle, enforced by the state or other authoritative bodies—not to offer an implicit judgment on the merits of any particular claim. Compare Moore 1998.

After a brief discussion of what is meant by 'privatization' and what is often left out of debates over its merits and shortcomings, I cite a few examples from my own and others' research to illustrate some of the changes taking place under the rubric of privatization, and pose further questions about their implications for the politics of belonging and the protection of the public interest. My central premise is that since privatization is as much a political as an economic process, its consequences will be reflected not only in the structure of market transactions and the terms on which West Africans participate in them, but also on the shifting terrain of social relationships and political contestation. Privatization may reconfigure patterns of land use, relations of authority, and criteria of belonging—sometimes dramatically—but it is not likely to sever the connections among them.

'Privatization' in principle: some conceptual debates

In recent debates over land rights and development, the term privatization is something of a catch-all, which conflates several kinds of legal and institutional change. Proponents of market liberalization advocate privatization as a method of 'down-sizing' overextended, corrupt and/or inefficient states. By divesting the state of land and other valuable assets, both naturally occurring and man-made, privatization transfers ownership and management of scarce productive resources from the state to the market. Transferring resources from the public to the private sector, it is argued, contributes to sustainable development in two ways: reductions in overall levels of state expenditure and indebtedness promotes economic stability, and markets allocate resources more efficiently than do bureaucrats or political interest groups.

As advanced in the 1980s by Africa's international creditors and policy advisers, the case for transferring property from state to private ownership was often linked to criticisms of collective resource ownership and management in general. To promote efficient resource use, it was argued, resources should be transferred from collectivities to jural individuals (either persons or enterprises) who would allocate and manage them in response to market incentives, without interference from distracting social obligations or political pressures. Privatization was also proposed as an antidote to ambiguity. By reg-

istering and enforcing individuals' (and corporations') rights of ownership, governments would eliminate overlapping claims and reduce uncertainty, thereby increasing tenure security and giving resource holders the ability as well as the incentive to use their property productively.⁴

Whether they are writing of divestiture, individualization, or land registration, or of all three at once, authors usually justify privatization on economic grounds. Privatization of land and other forms of property increases productivity and prolongs the life of productive enterprises and resources by detaching them from the 'distorting' influence of social obligations and political interests—placing them in the hands of individuals or firms who have legal authority to make their own decisions about how to use or dispose of their property, and to capture the resulting profits. Owned and managed by agents who are free to make decisions in response to (unregulated) market incentives, resources would be allocated to their most productive uses, and society as a whole would reap the gains of market-driven economic development. Stated in this way, the case for privatization is clearly predicated on the assumption that it is not only desirable but also possible to separate economic activity from processes of political negotiation and conflict, and the practices of governance that result from and contribute to them.

Twenty years' experience with structural adjustment and privatization in Africa has given rise to an extensive literature that demonstrates the inadequacy of these arguments. Their influence lingers nonetheless, not only in the writings of policy analysts, who have neither time nor much inclination to follow academic debates, but in scholarly literature as well. A recent book by Jeffrey Herbst, *States and power in Africa*, is a case in point. Herbst attributes many of Africa's current problems to 'weak states,' and development failures to the tenacity of ancient traditions, reflected, *inter alia*, in contemporary patterns of control over land. Because African populations are sparse and geographically dispersed, he argues, African states have found it difficult to exercise effective power on a national scale. In the absence of strong centralized states, 'traditional chiefs' have

⁴ The literature on privatization, in one or more of these senses, is too vast to cite. For illustrative expositions, see World Bank 2000, especially chs. 5 & 6; Collier and Gunning 1999; Collier and Patillo 1999; Cleaver and Schreiber 1994.

retained control over land and people, especially in rural areas, and used their power to block legal and institutional changes that might weaken their authority. The survival of chiefly power has 'made it exceptionally difficult for African countries . . . to disrupt customary tenure,' and prevented African states and citizens alike from progressing very far towards economic and political modernization (Herbst 2000: 193 and ch. 6).

Herbst's evolutionary argument overlooks much of what is known about the history of land rights and politics in colonial and post-colonial Africa. As Elizabeth Colson pointed out over thirty years ago, and many others have subsequently confirmed, what were referred to for much of the twentieth century as traditional or customary laws and institutions were neither historic nor unchanging (Colson, 1971). Custom, Colson argued, developed through interactions between colonial officials and their 'subjects,' each drawing selectively on historical precedents to influence one another and make the best of changing circumstances. Reverting to the older view that custom is in fact ancient, Herbst portrays 'property rights reform,' which he does not define, as a one-way street, on which ownership and management of productive resources travel from the control of politicians to the hands of economically rational agents and stay there, creating the basis for an irreversible transformation of society from tradition to modernity. In Africa, he argues, this forward motion has stalled. Progress now awaits the emergence of strong states or leaders who, like competent mechanics, will replace obsolete laws and institutions, and get things moving again.

Property and authority

Such a vision begins to waver when one asks a few obvious questions. What happens to property after it's reformed? Who gets (or retains) control? What do they do with it? What are the implications of new patterns of ownership for the distribution and exercise of power as well as wealth? As a number of recent studies (including several essays in this volume) have shown, the free market case for privatization rests, in part, on a myth. In reality, property and authority are interdependent, and one is not likely to exist without the other. The point has been made with particular clarity by Christian Lund, in a recent article that tells the story of Daouda, a village

head of slave descent in northern Burkina Faso, who colonized a cow path.

Having attained the position of village head, Daouda began to sell plots of land to members of his village. The plots he sold lay in a corridor, adjacent to Daouda's village and several others, which farmers used to drive their cattle to the nearest pasture. Because of the location of Daouda's village, his sales blocked neighboring villagers' access to the pasture. They complained to their village heads who complained, in turn, to the prefect, who was inclined to sympathize with their cause. As descendants of noble families, the heads of the neighboring villages outranked Daouda, but he was not fazed by their claims to traditional status. Invoking Sankara's revolution, which abolished all legal distinctions between former nobles and slaves, and the current regime's UN-endorsed policy of promoting 'local participation and management of resources,' Daouda declared that 'the "state" had no business in his village,' (Lund 2002: 30) and he was free to sell the land to whomever he wished. Brushing aside the prefect's remonstrances, Daouda then appealed to his superior, an influential notable and the district's elected representative in the national assembly. The neighboring village heads were in a quandary: 'if they responded directly, they would . . . be recognizing Daouda's position as a peer . . . but if they did not respond, he would probably "get away with it" . . .' Property and authority, Lund concludes, are 'always at stake . . . at several levels simultaneously.'⁵

Such maneuvering over land and influence suggests that property and authority are not only 'always at stake,' but also mutually interdependent. As Lund has argued elsewhere, the process of acquiring and disposing of land, or defending one's holdings against the claims of others, is itself constitutive of authority, and vice versa. Claims become property when they are authorized—and the process of seeking authorization tends to affirm or even strengthen the authority of the authorizers. In a context of multiple rules and governing institutions, authorization—of claims to property and to authority itself—is a matter of on-going contestation.⁶

⁵ Lund 2002: 32. There is more to the story, and to Lund's analysis, than I have indicated in these excerpts. My apologies to the author for appropriating these details in support of the present argument!

⁶ See Lund, 'Who owns Bolgatanga?' in this volume.

Unstable categories

Lund's argument provides a useful approach for thinking about the connections between privatization and the politics of belonging. In seeking authorization for claims on land, or claiming authority on the basis of demonstrated control over particular terrain(s), West Africans often seek to legitimize their position through appeals not *only* to the past *or* to the future, but to both. In struggles over property and authority, terms such as 'custom,' 'tradition,' 'revolution,' 'local participation' serve, in part, as discursive resources—invoked, reworked, debated and fought over as people make claims to land and office. Like 'tradition' and 'community,' 'nationalization' and 'privatization' have been used by both policy makers and their intended beneficiaries (sometimes described, more candidly, as 'targets') to claim legitimacy for interests and practices that are divergent or even contradictory. State interventions designed to promote—or prevent—privatization recurred throughout the colonial and post-colonial periods, giving rise to shifting practices as people struggled to protect or enhance their control of valuable resources. In the course of these contests, the terms themselves have endured, but their meanings have often changed. Over time, 'privatization' has proved to be as unstable a category as 'custom' or 'community,' and issues of land access and control have remained closely linked to questions of authority and the interpretation of 'tradition.'

Colonial rule set the terms of debate, and created some of the contradictions that helped to keep it going. In the mid-1890s, officials in the Gold Coast Colony proposed that all 'waste land' be declared the legal property of the Crown. The suggestion was vigorously opposed by African intellectuals and merchants, who sought to protect their own future access to and control over land by arguing that there was no such thing as 'waste land' in the Colony. All land belonged to 'the natives,' who were represented by their chiefs.⁷ The proposed bill was withdrawn, but the ensuing debates shaped land tenure policies and practices for decades afterwards. Both African elites and colonial officials and judges offered shifting, sometimes contradictory interpretations of the content of customary law and

⁷ For extensive analyses of colonial land policies and African opposition to them in southern Ghana, see Amanor 1999 and his article in this volume.

the jurisdictions of traditional authorities. In 1907, for example, the Chief Justice of the Gold Coast ruled that land which had been developed, by planting crops or putting up buildings, could be attached to defray the owner's unpaid debts—a ruling that was tantamount to recognizing landed assets as private property (Asante 1975: 41–2). Nine years later, the West African Lands Committee concluded a two-year review of customary rules and practices by asserting that, under 'native customary law,' land belonged to 'communities' comprised of past and future as well as present generations and was, therefore, inalienable (West Africa Lands Committee 1916). As demand for land rose in the towns and areas of expanding cash crop production, plots of land changed hands for money with increasing frequency, while chiefs, elders and family heads denied that such transactions abrogated their continued role as land owners and custodians (Berry 1993).

By the 1920s, the collective character of 'customary' tenure had become official dogma throughout British colonial Africa, routinely cited in colonial courts and correspondence, even in the face of conflicting evidence. In 1934, the Kenya Lands Commission received over 900 petitions from dispossessed Kikuyus, who argued that the lands now held by white settlers had been taken illegally from their Kikuyu owners, and should be returned. Contrary to the official story—that the land was 'vacant and unoccupied' when the British occupied Kenya in the 1890s, and had been appropriated by the Crown 'by right of conquest'—the petitioners stated that their forebears had purchased the land individually from the original inhabitants, and had not disposed of it at the time of British occupation. Despite their number, the Commission dismissed these petitions out of hand. Since individual land ownership was unknown in 'customary' law, they declared, the Kikuyu claims were mere opportunistic inventions, concocted in the hope of turning English legal principles against their inventors (Kenya Lands Commission, 1934).

Twenty years later, scrambling to rescue the colonial enterprise from the shock of the 'Mau Mau' rebellion, the conquerors reversed their claims. Urging one another 'to strike while the iron is hot,'⁸ officials divided much of the Kikuyu reserves into individual plots, registered in the name of individual peasants, hastening to complete

⁸ Quoted from official parlance of the time in Sorrenson 1967: 113.

the task before the 'Mau Mau' rebels were released from detention. By creating a land-owning peasantry, the colonial state hoped to win the Kikuyus' loyalty and forestall the possibility of further uprisings. The Kenyan state continued the process of privatization after independence: by 1980, most of the arable land in the country had been registered in the name of individuals or private firms, and community titles issued to some grazing lands as well, and Kenya was routinely cited by advocates of land registration as the example that proved it could be done—even in Africa. Yet researchers have found wide discrepancies between land registers and practice on the ground (Haugerud 1989; Bruce and Migot-Adholla 1994: ch. 6; Berry 1993: 125ff.), and land remains subject to multiple rights and intense conflict, as Kenyans struggle to survive in their densely populated, poor and predominantly agrarian economy.⁹

Following independence, many West African governments set out to abolish colonial land laws and related structures of indirect rule. In Senegal and Côte d'Ivoire, the regimes of Senghor and Houphouët Boigny nationalized land ownership and assigned exclusive rights of possession to anyone who had cultivated a plot of land for a specified period of time. Twenty years later, Nigeria's then outgoing military regime followed suit. Nationalizing land in the name of private development, the Land Use Decree of 1978 offered 'certificates of occupancy,' guaranteeing possessory rights to individuals who had either acquired land before 1978, or could show that they had the means to develop it afterwards. In each of these cases, the new rules were explicitly stated to supersede pre-existing 'customary' tenure arrangements. As in Kenya, however, statute and practice often diverged. People who held state-sanctioned possessory claims might find themselves engaged in lengthy negotiations with both official and unofficial 'authorities' in order to exercise their rights, or even excluded altogether from land which they thought they owned—not because defenders of tradition had dug in their heels to thwart modernization, but because authorities both in and outside of the state were using tradition to gain property and power for themselves.

If indirect rule worked to ratify and/or strengthen the position of local elites in the name of 'tradition,' it also invited debate over who

⁹ Angelique Haugerud, personal communication, September 2002. See also Kanyinga 1998.

qualified for succession to customary offices, and what prerogatives and obligations were attached to their positions. By the same token, the principle that land belongs to the community both sharpened the exclusionary power of social and territorial boundaries between one community and another, and provoked intense debate over where and how such boundaries should be drawn (Crook 1986: 89). As customary rules and authorities were brought to bear on the governance of colonial territories, markets and subjects, the interpretation of tradition became a key political tactic, deployed by colonial officials, chiefs and commoners as well. Far from fading away with the end of colonial rule, such debates were prolonged and intensified after independence, as people vied for power and economic advantage in Africa's newly independent nations. Indirect rule established strong precedents for linking land rights to membership and authority within customary communities. These precedents were both challenged and defended after independence by politicians and administrators who hoped to strengthen their own positions of authority, by courts who sought to evaluate conflicting evidence and resolve conflicts between plural sets of laws, and by ordinary citizens who struggled to enlist the law, the state and/or the prestige of tradition to claim a voice in the affairs of the nation, and protect their interests vis à vis one another. The resilience of custom as a source of authority and a criterion of belonging in contemporary West Africa is as much a product of post-independence struggles over the constitution of state authority and the terms of political participation, as it is an ineradicable legacy of colonial rule.

In practice, then, criteria of belonging have proved central to the definition and exercise of land rights and authority, and a major source of instability in both. The common discursive distinction between 'citizens' (or 'natives') and 'strangers'—i.e., those who inherit claims to land because they belong to the community that controls it versus those who must pay because they do not—can cut both ways. African agrarian history is filled with examples of enterprising immigrants who have successfully established long-term claims to land and/or effective participation in local governance,¹⁰ and others who found themselves newly vulnerable when regimes changed or

¹⁰ For a recent example, see Juul 2002.

economic conditions declined. In June 2002, I had a conversation about land allocation with an Asante chief—a prominent member of the Kumase Traditional Council and close associate of the present Asantehene—whose stool land on the outskirts of Kumase is becoming crowded with suburban bungalows and villas.¹¹ Dozens of new houses had been built since I first visited the community in 1993, most of them by men and women from towns in other parts of Asante or elsewhere in Ghana. Long-term residents routinely referred to the newcomers as ‘strangers’¹² and, more strikingly, to themselves as ‘natives’—a term I rarely heard in 1993. The chief had recently made a group of building plots available to ‘natives’ at reduced prices, but denied that this decision represented any xenophobic intent. ‘Kumase was built by strangers,’ he explained, neatly telescoping three hundred years of Asante history into a sentence, and framing his own land sales to ‘strangers’ as part of an old and honorable tradition.

Residents of the community used the discourse of native and stranger to describe change as well as to court allies or followers. Strangers not only pay good money for building plots, the chief explained: they have also stimulated the community, patronizing local shops and opening new ones, demonstrating new building styles and life-ways to local residents,¹³ and (not coincidentally) dramatizing the need for both government officials and local citizens to invest in improving public services to accommodate the town’s expanding population. Both ‘natives’ and ‘strangers’ asserted the need for better

¹¹ Stool land is the land controlled by the occupant of a stool, or traditional chieftaincy office. Formally endorsed in the constitution, stool ownership of land is widespread in Ghana. Legally, a stool (or skin, as traditional rulerships are known in the northern part of the country) holds allodial, or ultimate, title over land that cannot be abrogated through land transfers. When a chief sells a plot of land, the buyer acquires a long-term leasehold, giving him or her full control over the use of the land for the duration of the lease, but the stool retains ultimate title. Some observers argue that, in practice, land buyers acquire what amounts to ‘customary freehold,’ and that stools’ allodial titles exist in name only. The intensity with which some traditional authorities are currently disputing challenges to their claims suggests that not all Ghanaians would agree. For an expert presentation of the case for customary freehold, see Woodman, 1996.

¹² A few of the grandest houses were pointed out to me as belonging to Nigerians, whom none of the Ghanaian residents appeared to know. There was no point in trying to interview them, my English-speaking assistant assured me: ‘They wouldn’t understand our language.’

¹³ ‘We used to sleep at eight o’clock,’ one man explained, but now ‘the town is lively’ and people socialize well into the evening.

services, enumerating the town's short-comings in unhesitating detail. The road to Kumase was in poor condition, public toilets were inadequate, schools were overcrowded, and standpipes that were supposed to bring water from Kumase had been dry for months. With one exception, however, neither long-term residents nor newcomers evinced anger or even impatience over the town's growing pains. Several expressed cautious optimism about the future, commenting that the chief and elders were sympathetic to their concerns and making efforts to do something about them. Above all, both 'natives' and 'strangers' emphasized that the town was peaceful. 'There are no thieves or armed robbers here,' explained a teacher who had lived in the town for four years, 'not at all! People are friendly. When they see you sitting here, they come and enjoy.'

Such comments point to an aspect of relations between land rights and the politics of belonging that has received less attention in the literature than the history of exploitation of strangers by chiefs and autochthones. As landowners, Asante chiefs have certainly done their best to extract rent, collecting tribute from immigrant farmers, timber cutters, etc., and, as land values rise, selling long-term leaseholds to anyone who is prepared to pay for them. As contestants for political influence with the state as well as with citizens and fellow chiefs, they also stand to gain by courting followers. In the town just described, the chief made a point of courting both indigenes and strangers—cultivating a reputation for even-handed civic mindedness by carefully maintaining the distinction between them.¹⁴ By the same token, 'natives' and 'strangers' both have an interest in holding chiefs accountable for their use of land rents, and enlisting them in extracting services and resources from the state. How these overlapping and conflicting processes will play out in the context of contemporary pressures for privatization is likely to vary from one particular context to another. Privatization, they remind us, is a process, not a foregone conclusion.

Whose authority?

In their enthusiasm for the restorative powers of liberalized markets, the initial architects of structural adjustment tended to forget that

¹⁴ For additional examples, see Berry 2001.

markets do not (and cannot) function in a social and political vacuum. As governments complied with their creditors' conditions, in part by beginning to divest themselves of state assets,¹⁵ many state properties were bought up by foreign individuals and firms, as well as by wealthy or well-connected nationals. Such buyers often preferred to invest in land and other natural resources, such as timber, minerals or water, which could be exploited relatively quickly and cheaply, rather than riskier ventures that would help to deepen and diversify the economy's productive base. As critics of structural adjustment were quick to point out, investors (both foreign and domestic) were realizing gains from Africa's comparative advantage in natural resource intensive industries at the expense of the environment and the poor.¹⁶

Stung by complaints that their policies were deepening poverty and despoiling the environment, international donors embarked on what has become a prolonged debate over just how privatization may best serve the public interest. Acknowledging a need to 'ameliorate the social costs of adjustment' while waiting for its long-term benefits to kick in, the World Bank began to make limited amounts of money available for subsidized social services and redistributive loans. Donors also looked for ways to bring the intended benefits of property rights reform (i.e., tenure security and unrestricted rights of transfer) to ordinary folk. With the enthusiastic support of liberal analysts and grassroots NGOs, several large-scale development and environmentalist agencies began to advocate community titling as a way to promote sustainable development by 'empowering' local people to take care of their habitat and themselves (See, e.g. Galaty 1993).

As colonial officials had discovered when they embraced the 'customary' precept that 'land belongs to a vast community,' advocates of community titling found it was not always easy to identify 'the community.' (Crook 1986: 89) Co-residence need not betoken consensus or common origins. In a study of community forestry schemes

¹⁵ Elimination of preferential treatment for nationals was, of course, part of the overall program of market liberalization, which included currency deregulation and the reduction or elimination of domestic subsidies and price controls, as well as restrictions on foreign trade and payments.

¹⁶ See, e.g., Amanor 1999; Brydon and Legge 1996; Mkandawire and Soludo 1999.

in southwestern Cameroon, where rural residents might refer to themselves as young, poor, women, etc., but rarely as ‘a community,’ Barrie Sharpe concluded that community was a result rather than a precondition for successful forest management (Sharpe 1998: 31ff.). In other cases, collective identity and resource management may both be predicated on mobility. Transhumant pastoralism is a classic example, but farmers also rely on territorially dispersed networks of contacts and activities—rotating crops and cultivated fields, and traveling frequently to engage in a variety of on- and off-farm income-generating activities.¹⁷ In such circumstances, efforts to protect people’s access to arable land and/or pasture by issuing individual or community titles may founder on, or even impede, the continual renegotiation of access to water, pasture and markets on which their livelihood depends. As Ng’weno found in her study of claims to ‘ethnic territories’ in Colombia, the process of legally securing group rights to ‘community’ membership may turn perceived social differences into instruments of exclusion, reinforcing or exacerbating inequalities of wealth and power rather than ameliorating them. As Pauline Peters demonstrated in her longitudinal study of borehole syndicates in Botswana, ‘this private form of *group* ownership has in many cases . . . allowed the reproduction of social position for some families over at least two to three generations . . . (and) squeezed out an increasing number of families unable to benefit from livestock, the main source of rural wealth.’¹⁸

Taken together, these examples suggest that titling and, to some extent, arguments for property rights reform in general tend to overlook political problems rather than solve them. Convinced that economic decline, growing foreign and domestic debts, and persistent poverty were the result of excessive and poorly designed state interventions, early advocates of structural adjustment argued, in effect, that the less government, the better—largely ignoring the question of how drastically curtailed state institutions were going to maintain political stability or manage the process of policy reform.¹⁹

By the 1990s, donors’ frustration with the uneven pace and limited effects of market liberalization led them to reconsider. Rather

¹⁷ Painter et al. 1994. For a vivid account of resource management on the move among Fulbe herders in the Sahel see Thebaud 2002.

¹⁸ Peters 2002: 59–60. My italics. See also Peters 1994.

¹⁹ World Bank, 1981. World Bank set the tenor of policy debate for the 1980s.

than simply shrink the size and scope of state institutions, they decided, it was also necessary to restructure them. Adding 'political conditionality' to the list of reforms demanded in exchange for debt refinancing and additional loans, donors pressed African states to replace military regimes and one party states with governments chosen through multi-party elections. At the same time, they expanded the agenda of privatization to include many traditional functions of government itself, such as health care, education, electricity, water and, in some cases, customs administration and security.²⁰ Political restructuring was intended to complement economic austerity and deregulation—not reverse them—by placing responsibility for their implementation into capable and willing hands.²¹ By the end of the century, international donors were actively seeking African 'partners' to help implement reform, and privatization and decentralization had come to be regarded as two sides of the liberalization coin.²²

Rediscovering traditional rule?

Donors' search for local partners was paralleled by Africans' interest in finding outside partners to provide capital, services and/or profitable points of entry into global circuits of wealth and opportunity. Whether impelled by externally imposed political conditionality, or provoked by internal pressure or unrest, political restructuring sometimes opens new avenues for personal and collective advance, and intensifies competition for access to them. Since opportunities are usually more limited than the numbers who aspire to them, people deploy every argument and advantage they can think of to gain access to resources and influence, whether these draw inspiration or legitimacy from the future or the past. The resilience—some would say increasing influence—of traditional authorities in contemporary African political economies is arguably less a result of reactionary holdouts taking advantage of weak states to block the course of mod-

²⁰ For examples, see Reno 1995 and 1998.

²¹ Decentralization and governance now take precedence even over market liberalization in World Bank prescriptions for policy reform in Africa. See, e.g., World Bank, 2000.

²² The effects of political conditionality have been analyzed, often critically, by a number of authors. In addition to Reno 1995 and 1998, see Bayart et al. 1998.

ernization, as Herbst would have it, than one of ambitious and enterprising individuals who adroitly deploy symbols of tradition to legitimate and enhance their pursuit of property and power. Rather than opposing privatization, many holders of traditional offices are actively seeking to take advantage of it. As it turns out, the symbolic leverage of tradition can be an asset in this process. The following examples are taken from Ghana, but similar cases may be found in many other places.²³

In Ghana as in many other colonial societies, indirect rule served to ratify and reinforce chiefly authority over land as well as people. Trading on the support of their colonial rulers, Akan chiefs not only claimed a substantial share of the revenues generated by cocoa farming, mining, logging and other land-based enterprises, but also resisted pressure from their subjects to use the money for public purposes. Faced with struggles over chiefly accountability toward which they were themselves ambivalent, colonial officials spent much of their time tinkering with the structures of indirect rule, with inconclusive results.²⁴ During the first decade after independence, Nkrumah sharply curtailed the power and prerogatives of traditional rulers, abolishing customary courts, removing chiefs from local administration, and making chiefly succession and destoolment subject to state approval. Like his colonial predecessors, however, Nkrumah also made use of traditional rule when it suited his political interests, lending support to chiefs who backed his party and his rule, and punishing those who opposed them (Arhin 2001; Rathbone 2000). Subsequent regimes have been more tolerant of traditional rulers: while chiefs' place in the formal apparatus of government remains largely symbolic, they have regained autonomy in matters of chiefly succession and precedence and, in some cases, have acquired even more influence than they exercised under colonial rule.

Nowhere is chiefly influence more evident, or more hotly contested, than in the realm of authority over land. In the Akan areas of southern and central Ghana, where the colonial state backed away from appropriating land directly, the principle that land belonged to traditional office holders survived Nkrumah's onslaught against chiefly autonomy, and his successors have generally tried to circumscribe

²³ See, e.g., van Dijk et al. 1999; Geschiere and Gugler 1998; Geschiere 1993.

²⁴ This argument is more fully developed in Berry 2001 and 1993.

chiefs' authority over land rather than abrogate it. Recent constitutions have reiterated the principle that 'all stool lands in Ghana shall vest in the appropriate stool,' adding in 1992, the clause 'in accordance with customary law and usage'—an amendment that Arhin suggests 'signifies the strong influence of the higher-ranked traditional rulers' (Arhin 2001: 100–101). In northern Ghana, where all land was appropriated by the Crown under colonial rule, and land ownership passed to the state at independence, the implications of these provisions were profound. In effect, the constitution of 1979 divested the Ghanaian state of land throughout the northern regions, transferring allodial title to traditional rulers at the stroke of a pen.

Not surprisingly, this legal revolution opened the door to lengthy disputes over traditional constitutions and jurisdictions in northern Ghana. Such disputes are not limited to remote or predominantly rural areas. As Christian Lund learned when he tried to find out 'who owns Bolgatanga,' the question is perhaps more vexed at the beginning of the twenty-first century than it was at any time during the twentieth.²⁵ Throughout the northern regions, the constitutional transfer of land to the 'original owners' has raised the stakes in contests over chiefly succession and jurisdictional boundaries to a level comparable with those in Asante, Brong-Ahafo and the south,²⁶ contributing perhaps to the bitterness and, in some cases, violence of recent chieftaincy disputes in Tamale, Yendi, and Wa,²⁷ and tightening links between local debates over the politics of belonging and struggles over northern representation in national politics. The link between privatization and chieftaincy politics was underscored in May 2002, when the Minister of Land and Natural Resources announced that the government was considering returning all lands

²⁵ See Lund's contribution in this volume. A court ruling in 2000 that a plot of urban land being returned to its 'original owners' by the Ghana Water and Sewerage Corporation belonged to the local *tendaana* rather than the chief of Bolgatanga cast sudden doubt on twenty-odd years of accumulated practice, and promised to delay any answer to Lund's question for some time to come.

²⁶ Unlike their Akan counterparts, chiefs in the Volta Region do not claim customary ownership of 'stool lands.' For an extensive recent discussion of traditional rule in the Volta Region, see Kludze 2000.

²⁷ Bogner 2000; Lentz 2000; Kasanga 1996. In 2002, a long-standing succession dispute in Yendi boiled over into violent clashes in which the chief of Yendi and several other people were killed. The case, and the Commission of Inquiry appointed to look into it, have been widely canvassed in the Ghanaian press. For some historical background, see Staniland 1975.

that the state had acquired but never used to their original owners. (Daily Graphic 2002)

If the Ghanaian state has largely conceded allodial title to traditional rulers, it has not given up on rent. Under Ghanaian law, all revenues derived from stool lands must be paid to the Office of Stool Land Administration, which divides them between itself, the district assemblies, the stool, and the traditional council, in proportions fixed by law. When Ghana's forestry services were reorganized in 1996, the newly established Forestry Commission was allocated 60% of timber royalties (instead of the 10% formerly assigned to the Forestry Department), leaving the stools with less than 10% (after the elders and the district assemblies have received their shares). In other words, while the state continues to uphold, or extend, traditional rulers' ownership of land and other natural resources, it has made significant inroads into their control over the resulting rents.

In their struggles to protect or regain control over land revenues, chiefs have proved as ready to invoke the cause of reform as to defend the value of tradition. In an era when, due to financial necessity as much as international pressure, Ghana is transferring public assets to private ownership, and delegating some of the responsibilities of governance to local authorities, chiefs are finding their formal exclusion from politics to be something of an advantage. Stripped of the administrative and judicial authority they exercised under indirect rule, and banned from seeking elective offices, chiefs are exploring new ways to turn custom to pecuniary advantage. Traditional festivals that had fallen into abeyance are being revived with an eye on the media and the tourist trade, and chiefly prerogatives are being converted to 'equity' in the private sector.

In 1995, the Traditional Council of Juaben, a rural town in Asante, acquired a state oil palm plantation that had been established in the 1970s on Juaben stool land.²⁸ To help cover the cost of acquiring the farm, the chiefs argued that the stool's allodial title to the land constituted 'equity' in the plantation. Government officials agreed: they accepted the Traditional Council's bid for the farm, and credited them with 30% of its market value at the time of sale (Nana Otuo Siriboe 2002). The deal provided something for everyone: the

²⁸ The following account of chieftaincy and local development in Juaben is based on fieldwork carried out in Juaben in July 2002.

government successfully divested itself of the plantation; the Juaben Traditional Council acquired a new source of revenue and took credit for contributing to the development of the community; and the Juabenhene gained a guaranteed source of supply for Juaben Oil Mills, a private oilseed crushing plant in which he and members of his family are the principal shareholders.²⁹

Encouraged by the success of this transaction, the Juaben chiefs turned their attention to the town market. Hoping to boost trade and employment opportunities in the town and surrounding villages of the Juaben Traditional Area, the Juabenhene enlisted both state and local resources in the construction of a new two-story market building containing over thirty shops, flanked by additional stores and a paved courtyard for market stalls, and equipped with toilets and space for a day care center. Completed in 2001 and formally opened soon afterwards, the market structure surpassed almost anything to be found in towns of comparable size throughout Asante. By 2002, most of the shops had been spoken for, and the traditional authorities were negotiating with the District Council over ownership and management of the new facility. Both had invested in the new market: the District Council constructed the first story of the main market building and paid for much of the adjacent paving, drains, etc., and the town built the eye-catching second story on the main structure, using 'communal labor.' Drawing on their experience with Juaben Farms, the chiefs argued that the stool's title to the land and the investment of communal labor constituted equity in the new facility.

The traditional authorities' claim amounted to a challenge to the District Council to clarify its role in the Ghanaian government's ongoing program of decentralization. By recognizing the chiefs' claim to equity, the District Council could justifiably delegate responsibility for managing the market facility and paying for maintenance and repairs. However, if local government relinquished the market completely, they would forfeit any claim to future revenue derived from

²⁹ This account is based on information supplied by the Juabenhene, Nana Otuo Siriboe II, the manager of Juaben Oil Mills, Ltd., and other Juaben residents and members of the Traditional Council. The Juabenhene, who succeeded to the stool in 1971, is nationally known for his long career of active leadership in local development. So far as I am aware, however, the transactions described here are the first in which traditional prerogatives of the stool are being converted to actual ownership shares in commercial facilities.

renting out shops and stalls, and collecting daily market tolls from vendors. Having invested in the new market structure in anticipation of expanded revenue, the District Council was as interested in retaining ownership of the market as a 'public facility,' as the traditional area was in acquiring it in the name of decentralization and local empowerment. The matter was under negotiation as of July 2002.

These examples from Juaben raise questions about privatization and political practice that go well beyond their significance to the local economy. In the case of Juaben Farms, the Traditional Council took the role of a private agent, acquiring the farm in conformity with the government's program of divestiture, and proposing to run it as a profit-making enterprise. The market, on the other hand, is a public facility, built in part with government funds, which traditional authorities were offering to manage jointly with the District Council for the benefit of the citizens of the town and surrounding rural areas. In terms of property rights, then, the Traditional Council seemed to be presenting itself as both a public and a private agency.

But what exactly is 'traditional authority'? Under the Constitution, allodial title to stool lands is vested in the stools—traditional offices of considerable antiquity which have the authority (but not necessarily the power) to mobilize their 'subjects' for communal labor. In Juaben, neither the chief nor the townspeople spoke of Juaben Farms or the market as stool property, however, nor did there appear to be consensus on precisely who the owner(s) were. When asked who owned the market, townspeople gave varied responses: some named the Traditional Council, some the Town Development Committee, and some said simply 'the chief(s).' A signboard on the main road to the town described the farm as 'A Joint Venture of the Traditional Council'—an ambiguous phrase that both evokes the status of the Traditional Council as an entity with jural standing under Ghanaian law, and suggests that the farm belongs to the community as a whole.

In Ghana as a whole, the extent to which traditional authorities may be said to represent the public interest remains unresolved.³⁰

³⁰ Kwame Arhin makes a similar point in the conclusion to *Transformations in traditional rule*. 'Traditional rule is a paradox,' he writes, 'in Ghana as elsewhere in the Republics of Africa. It divides but also provides unifying bridges for the people of Ghana.' (Arhin 2001: 138).

The ambiguity of traditional authorities' status as public agents has been compounded in recent years, not only by the government's willingness to sell them property in the name of privatization, but also by international organizations' efforts to enlist them in promoting market liberalization and sustainable development. In 2002, the World Bank launched a pilot project in Asante, 'Promoting Partnerships with Traditional Authorities,' to 'build capacity' in resource management and local governance. If the pilot scheme went well, it was intended to serve as a model to be replicated throughout the nation. Apparently, this is not the first time the Bank has shown an interest in traditional rule. Describing another recent bid to turn stool land into equity—in this case, by negotiating with a foreign company that wanted to build a factory in his town—an Asante chief explained to me that he got the idea during a trip to South Africa, where he and other West African chiefs were taken, at World Bank expense, to exchange ideas about the modern uses of traditional rule with their counterparts in some of the former Bantustans.

Conclusion

Privatization has frequently been criticized as a thinly disguised land grab by foreign firms and well-connected locals, and in some cases it has worked that way. More subtly, perhaps, efforts to transfer assets from the state to the private sector, or clarify and secure rights of ownership for individuals and other non-state agents, have sharpened divisions between those who benefit, or are suspected of doing so, and those who are, or feel themselves to be, left out. Rather than ameliorate struggles over the politics of belonging, privatization may exacerbate them. In the process, the line between public and private interests becomes blurred, and the goals of liberalization itself are subverted. It would be ironic if their search for African partners to help promote democratization and sustainable development led international donors to reinvent indirect rule.

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