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DECENTRALISATION AND LAND ADMINISTRATION IN THE UPPER WEST REGION OF GHANA: A SPATIAL EXPLORATION OF LAW IN DEVELOPMENT

BENJAMIN BEWA-NYOG KUNBUOR

Thesis Submitted to the University of Warwick for fulfilment of the Degree of Doctor of Philosophy in Law

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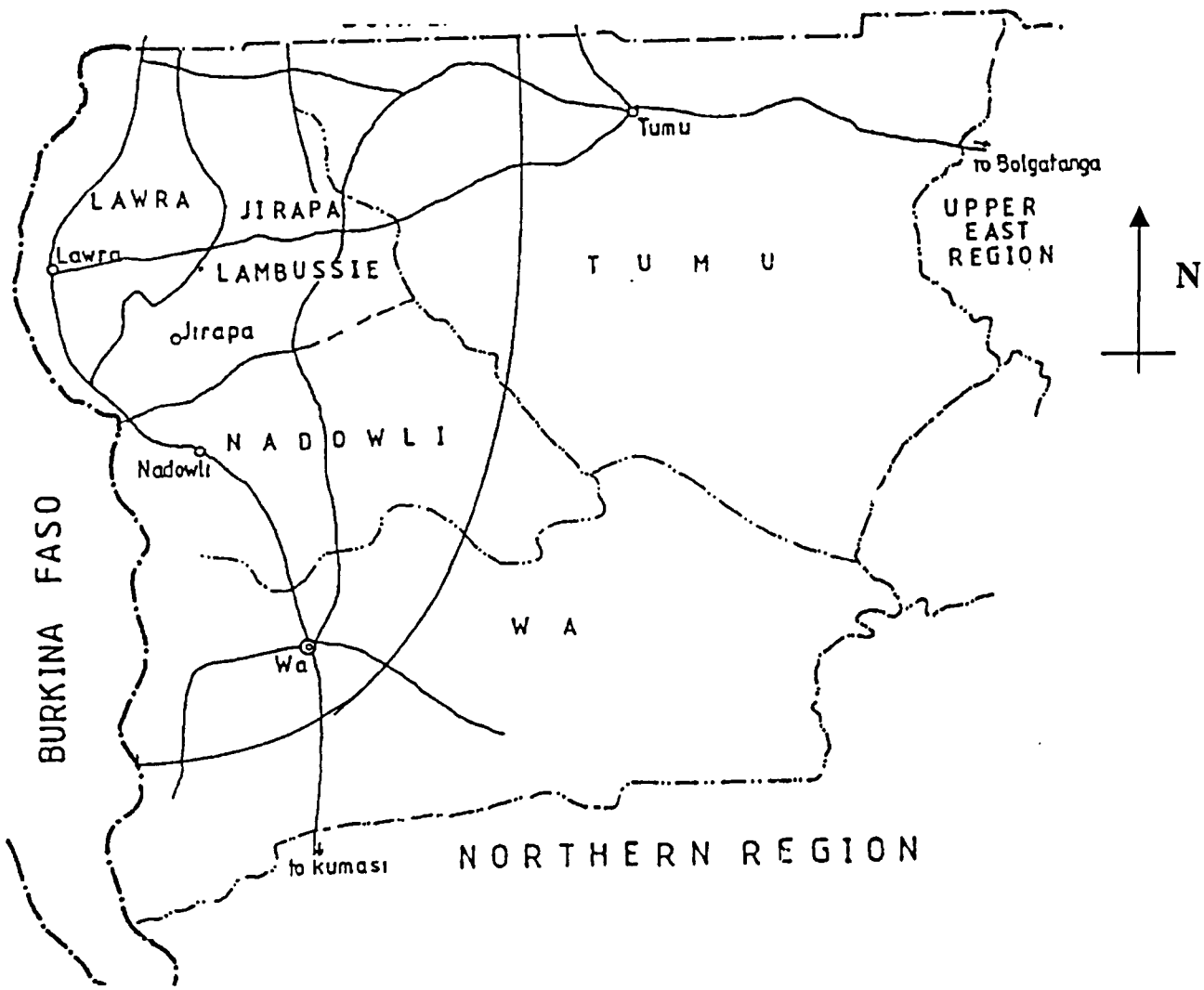
MAP OF THE ADMINISTRATIVE DISTRICTS OF THE UPPER WEST REGION OF GHANA



KEY

_•_•_•_ International Boundary

_••_••_••_ Regional Boundary

_•••_•••_•••_ District Boundary

_____ Main Road

Source: Regional Planning and Co-ordinating Unit, Wa Upper West Region

SYNOPSIS

Decentralisation for local community development has become the new paradigm of development discourse in Ghana in the present times. There is currently an elaborate legal framework in Ghana on decentralisation as a means for addressing local community development. The role of law in development is therefore implicated in the discourse. This study raises provocative, startling and challenging questions not only on the decentralisation programme, but the appropriate theoretical framework for reading the role of law in development. The study argues that decentralisation in Ghana is a spatial strategy of the state for addressing the crisis of its political economy and not one necessarily for local community development. Taking its starting point in land administration in the Upper West Region of Ghana (predominantly agrarian communities), the study explores how the objectives of decentralisation in Ghana address the subjectivity of development needs of local communities in Ghana. The study's contention is that the legal regime of the decentralisation programme and its praxis fail to address a pertinent development concern (land) of the Upper West communities. The study argues that if local community development were the object of the programme, it would perforce address the problematic of land administration that is an important concern for predominantly subsistence farming communities. The study also demonstrates how a spatial reading of social phenomenon provides critical insights to an understanding of the role of law in development.

The study is based on a field study conducted in Ghana and among the communities of the Upper West Region, through interviews with officials of institutions, traditional authorities and civil society organisations. The interviews were complemented by written primary and secondary sources. Primary sources include documents from the National Archives in Ghana and from decentralised institutions in the Upper West Region. Secondary sources include unpublished essays and theses, books, articles, reported cases in the Ghana Law Reports, unreported and/or pending cases in the Ghanaian courts.

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I extend my gratitude to the *tengan dem*, chiefs and communities of the Upper West region for making my field study an exciting one. However, any errors of judgment, fact, and style, and any omissions remain entirely mine.

GLOSSARY

Bagr - A secret cult of the Dagara

Bagr bure - A diviner of the Dagara

Bekuone)

Birifuole)

Dikpielle)

Kpielle)

Kusielle) - Names of patriclans of the Dagara

Gbaane)

Naayiile)

Botina - Custodian of the earthshrine of the Sissala of Wellembelle

Doglo - Blood descent group

Kyiru - A taboo

Kar - Land not suitable for farming around the settlement

Kakube - Traditional festival of the Nandom traditional area

Kobine - Traditional festival of the Lawra traditional area

Kuoro - A chief of the Sissala

Maalu zie - Place for sacrifices

Naa - A chief of the Dagara

Naalo - Institution of chieftancy among the Dagara

Puo - Farm

Saa sob - Custodian of the raingod

Saakum bom - Activity of the ancestors

Siman - A farm around a compound house

Suo sob - The person who actually performs the physical acts during sacrifices

Tendamba - Custodian of the earthshrine of the Wala and South Dagara

Tengan - Jurisdictional area of the *tengan sob* or location of the earthshrine of the Dagara

Tengan sob - Custodian of the earthshrine of the Dagara

Tendaalun - Institution over which the tengan sob presides

Tiedeme - A general term for the Dikpielle clan (meaning descendants of the tree or monkey)

Tindana (tendana) - General term used in the literature to refer to the custodian of the earthshrine in Northern Ghana

Totina - Custodian of the earthshrine of the Sissala of Tumu and Lambussie

Vene - Location of the earthshrine among the Sissala of Tumu

Waja - Uncultivated land of a settlement

Wie - A farm located away from the settlement

Wie sob (gara dana) - The spiritual leader of hunting expeditions on land

Yielu - General designation of the patriclan

Yir - Depending on the context, could refer to a building, patriclan or family

Yikpen (Yikura) - Oldest house in a Dagara settlement

DEDICATED TO:

My father the Late Edward Tuodekun Kunbuor,
my Sister the Late Dorothy Dekunwine Kunbuor, and my brother the Late Hillary Nwinwulme Kunbuor

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ABBREVIATIONS

AFRC- Armed Forces Revolutionary Council.

ARPS- Aborigines Rights Protection Society.

CEPS- Customs, Excise and Preventive Service.

CO- Colonial Office

CPP- Convention Peoples Party.

DA- District Assembly.

DISEC- District Security Committee.

DPCU- District Planning and Co-ordinating Unit.

31 DWM- 31 December Women's Movement.

DFID- Department for International Development.

DCE- District Chief Executive.

DPA- District Planning Authority.

ERP- Economic Recovery Programme.

EPA- Environmental Protection Agency.

GLQJ- Ghana Law Quarterly Journal

GLRD- Ghana Law Report Digest.

GLR- Ghana Law Report

GTZ- German Institute for Technical Co-operation.

IMF- International Monetary Fund.

IFAD- International Fund for Agricultural Development.

ISSER- Insitute for Statistical, Social and Economic Research.

IWDU- Issaw West Development Union.

JAYDA- Jirapa Youth and Development Association.

KAF- Konrad Adenauer Foundation

LAPYA- Lawra Paramountcy Area Youth and Development Association.

LVB- Land Valuation Board.

LACOSREP- Land Conservation and Smallholder Rehabilitation Project.

MOFA- Ministry for Food and Agriculture.

ML&F- Ministry for Lands and Forestry.

MLG&RD- Ministry for Local Government and Rural Development.

NDPC- National Development and Planning Commission.

NAGT- National Archives of Ghana, Tamale.

NTs- Northern Territories.

NYDA- Nandom Youth and Development Association.

NTC- Northern Territorial Council.

NYA- Northern Youth Association.

NLM- National Liberation Movement.

NLC- National Liberation Council

NPP- Northern Peoples Party.

NRC- National Redemption Council.

PAMSCAD- Programme of Action to Mitigate the Social Costs of Adjustment.

PIP- Public Investment Programme.

PNDC- Provisional National Defence Council.

PM- Presiding Member.

PACIPE- Programme for Information and Awareness Creation for the Protection of the Environment.

RCC- Regional Co-ordinating Council.

RGL- Review of Ghana Law.

RPCU- Regional Planning and Co-ordinating Unit.

RLC- Regional Lands Commission.

OASL- Office of the Administrator of Stool Lands.

SSC- Site Selection Committee.

SD- Survey Department.

Sar. F. C. L. - Sarbah Fanti Customary Law.

SAP- Structural Adjustment Programme.

SSNIT- Social Security and National Insurance Trust.

SNRD- Work Group on Decentralisation and Rural Development.

SDLYA- South Dagaaba *Langburi* Youth Association.

SMC- Supreme Military Council.

T&CP- Town and Country Planning.

UER- Upper East Region.

UGCC- United Gold Coast Convention.

UGLJ- University of Ghana Law Journal.

UWR- Upper West Region.

UWRCC- Upper West Regional Co-ordinating Council.

UWYA- Upper West Youth Association.

UWRHCs- Upper West Regional House of Chiefs.

VISION 2020- Co-ordinated Programme of Social and Economic Development Policies: 1996-2020.

WACA- West African Court of Appeal.

WAYA- Wala Youth Association.

WIAD- Women in Agricultural Development.

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CHAPTER 1

DECENTRALISATION AND LAND ADMINISTRATION IN THE UPPER WEST REGION: INTRODUCTION AND BACKGROUND

An important dimension in evolving structures for local level governance in Ghana for decades has been the development of local communities. Yet these communities remain underdeveloped notwithstanding these policies. In the case of communities of Northern Ghana and for that matter the Upper West Region, this issue becomes all the more problematic due to current attempts by the government at decentralisation for local community development.

The question we ask is: why is decentralisation policy normally expressed in legal form? Such a question strikes local government practitioners as well as *lawpersons* as odd. It is taken for granted what has always been the case and therefore remains so. In the case of Ghana, it has witnessed eighteen principal legislations and numerous subsidiary legislations on decentralisation between independence in 1957 and 1993 (see Appendix "A"). It therefore becomes important to explore how the law has become an important mechanism for addressing local community development by the Ghanaian State.

The role of law in development is implicated in the central themes of our study: (decentralisation, land administration and development). A deeper appreciation of the role of law in development requires focus on a legal regime in the development context of a community. Narratives on the role of law in general on development, and on society at large fail to address other legal possibilities and alternative stories that can be told about the role of

law in development. As it happens, such narratives make a number of assumptions that are held to be applicable to all communities. We will consider some of these assumptions in detail in chapter 2.

The issue of decentralisation for local community development in Ghana has also assumed conceptual significance. Local government in Ghana has witnessed a shift in its legal representation; as it is no longer limited to *local government*, previously understood as one of administrative deconcentration but is characterised as *decentralization* as well[1]. Decentralization as a concept raises issues of devolution of power and local level autonomy. The import of the shift from deconcentration to devolution according to official discourse is to ensure that local communities participate in decisions that affect them (MLG&RD, 1996).

There is also now an explicit link between local level governance and development that had been implicit in previous legislations. The current legal regime of decentralisation in Ghana suggests that its *architects* have got it right this time round as it is entrenched in the 1992 Constitution. An elaborate procedure is required for its amendment; extending to a national referendum in which 40 per cent of registered voters must vote with 75 per cent voting in support (Article 290, 1992 Constitution). As stated by the then Minister for Local Government and Rural Development;

> This is the first time in Ghana's history that decentralisation has been included in the constitutional agenda of this country. It is now part of the fundamental and supreme law of the land. Foot-dragging civil servants who in the past employed pussy footing strategies to derail the decentralisation agenda must now be aware that if they continue in this manner,

[1] Decentralization is an umbrella term used to denote devolution, deconcentration, delegation and privatisation of central government institutions and functions, in administrative, political and fiscal contexts. Administrative deconcentration on the other hand, denotes handing over some amount of administrative authority or responsibility to lower levels within government ministries or agencies (see Meenakshisundaram, 1994: 11).

they will be undermining the Constitution and likely be breaching the provisions, for which they may be liable to high crime under Article 2 of the Constitution (Ahwoi, 1995: 28).

Notwithstanding these unique features of the current programme, there are visible continuities with previous local government legislations. These continuities can be tracked from the political and economic contexts from which they issued. Dating back to the colonial era, local government legislations in Ghana have been implicated in its political economy. Given the intensely political character of such legislation they tend to exclude some interests and perspectives on development as well as segments of local communities. Similar features abound in the current legal regime of the decentralisation programme.

The bane of decentralisation as a development approach by the Ghanaian State is often attributed to the fact that previous decentralisation policies failed to learn from historical experience. Ayee (1994) observes that the "complexity of joint action and implementation as evolution" explains the under-achievement of decentralisation in Ghana (also see Massing, 1994; Saaka, 1978). Policy documents on decentralisation in Ghana also justify the need to restructure local government on the basis of the poor performance of previous local government initiatives (see NCD Report, 1991 and MLG&RD, 1996). These scholarly narratives and policy positions do not consider the issue whether the dismal performance of decentralisation in Ghana might be attributable to its spatial diversity as well. The people of the present-day Ghana belonged to independent and diverse political formations in pre-colonial times, with different notions of governance and socio-political institutions. They therefore respond differently to the modern state decentralised institutions and its development praxis.

Though historical accounts on decentralisation in Ghana provide useful lessons for the present, a historical *geography*, to borrow Blomley's (1994) term, of decentralisation offer deeper insights to an understanding of its problems and fortunes. Our study therefore seeks to explore both the historicity and spatiality of decentralisation in Ghana. The very notions of decentering governmental power, its institutions, and development initiatives evoke the spatially contingent nature of decentralisation programmes over time.

However, as argued by Harvey (1996: 266), academic disciplines constitute their distinctive objects of enquiry through a particular "spatio-temporal framing of the world, which accepts a conventional spatio-temporal frame and amounts to an acceptance of existing patterns of social relations, without necessarily knowing it". Harvey's view is particularly characteristic of legal discourse, which as legal ideology and science define *space* and *time* in their own terms and negate other forms of spatio-temporality (von Benda-Beckmann, 1999: 131). We are wary of this pitfall in our study and as such we do not seek to conflate social and physical spaces that could result in ambiguity or exclude the interrelationships between them. In this context, we adopt a three-dimensional approach, which refers to the cognitive and normative boundaries of social relations, physical boundaries in which these relations are actually located, and their interrelationships (von Benda-Beckmann, 1999: 132).

A further issue that narratives on decentralisation in Ghana fail to engage relates to their material implications. The fact that these programmes have material consequences in terms of social production and reproduction processes is hardly explored. According to Benda-Beckmann (1999), legal notions of *space* and *place* are produced and reproduced in different contexts. Discourses on decentralisation in Ghana focus on only administrative and institutional structures without any consideration of how these structures and institutions

operate to affect social relations of local communities. In exploring these issues in our study, we use land administration in the Upper West Region as a relevant example of the material question decentralisation programmes over the years have failed to address. We see the Upper West Region as a historically and socially produced space through local government legislation. It is also a space within which state law structures particular land relations that are reproduced through the current legal regime of decentralisation. The land question in the Upper West Region is critical to the material existence of its communities that are predominantly agrarian.

In this chapter we trace the legal development of decentralisation in Ghana over the years with a focus on the Upper West Region. We take particular note of the political economy framework from which local government legislations issued. There are, however, undeveloped narratives on the issue concerning whether there were pre-colonial forms of decentralisation within traditional political structures. We make a brief observation on these forms of decentralisation and how they relate to Ghana's attempts at modern forms of local governance. It is our view that differences between traditional forms of governance and the modern attempts have implications not only for political negotiations between local communities and the state, but also the former's material existence.

Though the land question is implicated in Ghana's decentralisation, its *presence* in official discourse is one of *absence*. Decentralised institutions regulate land relations of local communities to a considerable extent and yet the decentralisation development discourse fails to articulate the land question. By this silence, the land question remains outside the political negotiation processes that decentralisation engenders. We will trace the links between decentralisation and land administration over the years in Ghana to put the focus of our study

in perspective. Before exploring the decentralisation/land administration relationship we offer tentative definitions and explanations on key concepts of our study. In addition, we provide general information on the Upper West region in terms of its location, population, size, people, and social structure. In other words, its spatiality vis-à-vis the rest of the country.

1.1 Definitions and explanations of key concepts

Land Administration is given a broad meaning in our study to include both statutory regulations of the state and traditional normative mechanisms governing land use, its control and access, its management, and interests in land.

Law in our study refers to state law as stipulated in either legislations, constitutional provisions or enunciated by the courts of law except where it is expressly stated to have a contrary meaning.

Decentralization is understood in both conceptual and statutory terms. Conceptually it includes devolution, deconcentration and delegation (the three Ds)[2] in its political, administrative and fiscal forms. Where it is used with particular reference to Ghana's programme, it refers also to local government.

Development is understood in our study as the struggles of local communities for autonomy to improve their life chances in social, economic and political relationships. It is also used interchangeably with social change.

The term ***tendana*** is rendered differently by the various ethnic groups of Northern Ghana, as ***tengan sob***, ***tendamba***, ***totina*** or ***botina***. Consistency would require the use of one term throughout the study. However, it remains a highly contested concept as to its character. We would maintain the use of *tendana* where it relates to the literature on Northern Ghana in

[2] These three Ds will be explained in subsequent chapters.

general and use *tengan sob*, *tendamba* and *totina* in the specific contexts of the Dagara, Wala and Sissala ethnic groups of the Upper West Region respectively.

Local Communities: For the purposes of our study we consider *local communities* tentatively to mean the people *ordinarily resident* in a district assembly area. We will revisit this issue in chapter 8.

1.2 A Brief History of the Upper West Region

As a distinct administrative and political region in Ghana, the Upper West Region is of recent creation. In the colonial era it formed part of the Northern Territories[3]; in 1960 it became part of the then Upper Region and remained so up to 1983 when it was created as a separate administrative and political region (see Ordinance No. 1 (Northern Territories) 1902; C. A. 11 of 1960; and PNDCL 41 respectively). Therefore, reference to the Northern Territories and the Upper Region before 1983 also apply to the Upper West Region.

The Upper West and Upper East Regions are the youngest of the ten regions of Ghana. The Upper West Region is further divided into five administrative and political districts made up of the: Wa, Nadowli, Jirapa/Lambussie, Lawra, and Sissala district assembly areas. The regional capital is located in Wa in the southern most part of the region[4]. It is made up of the Wala, the Sissala, and the Dagara ethnic groups; each of which has its language. Some historical accounts suggest that all these ethnic groups can be subsumed under one broad linguistic group of *mole-speaking*; having all migrated from *Tinkorogo* or *Tenkor* in Mossi

[3] The colonisation of Ghana by the British involved a number of stages. Legal dominion was first established with the coastal communities of the Fanti in 1874 as a British Protectorate. By an Order-in-Council in 1901, all coastal states were annexed to Her Majesty's Dominion and declared the Gold Coast Colony. After the defeat of Ashanti in 1895, it was annexed to the colony as a British possession by right of conquest in 1901. It was in 1902 that an Order-in-Council declared the North of Ghana as a Protectorate of the British empire. Therefore, different legislation applied to the administration of the Colony, Ashanti and the Northern Territories until 1950 when the latter became part of the Colony with representation in the Legislative Council.

(Moshie) land in the present day Republic of Burkina Faso (Tuurey, 1982). Rattray (1932) sees most of these communities as having been resident in or near their present localities as autochthonous segmentary groups; and upon them descended small bands of strangers within comparatively recent historical times. The invaders were mostly from the traditional kingdoms of Mamprugu, Dagbon, and Gonja.

More specifically, the Wala and Dagara (*gur speaking*) trace their origin to the Mossi through the early political mass formations of Mamprugu or Dagbon. The Sissala (*guan speaking*; except the Lambussie group) indicate that their ancestors were of the Vagala and Tampolense ethnic group who were overrun by the Gonja; an offshoot of Mende Chiefdoms that emerged around the confluence of the Niger River (see Wilks, 1976 and Levtzion, 1968). The origin of the Dagara ethnic group is however contested. Apart from the Dagbon/Mamprugu theory, another theory indicates that some Dagara migrated northwards from the present vicinity of Accra and Cape Coast in southern Ghana (Lentz, 1994; 1997). There are as many stories on the Dagara origins as storytellers. These stories as observed by Lentz range from those of "the hunter and his neighbours, "a dispute between brothers", conquest and inter-marriages", "a Dagara rebellion against Dagbon" to the "Mossi and Accra/Cape Coast" theories. The Dagomba/Mamprugu theory, however, is dominant in the discourse on Dagara ontology.

As the name suggests, the Upper West Region lies in the North-western corner of Ghana. It borders the Republic of Burkina Faso to the North and West; the Upper East Region to the East; and the Northern region to the South. It covers a total land area of 18 476 square kilometres and with a 1995 population estimate of 580 000 people. It is 89 per cent rural with subsistence food crop farming as the predominant occupation of its inhabitants (UWRCC,

[4] See attached map for its spatial location.

1996). Together with the Upper East and Northern Regions, it lies within the Guinea Savannah belt. Its rainfall patterns are characterised not only by seasonality but variability and unreliability as well. These uncertain climatic conditions for farming get worse towards the extreme northern frontier with the Sahelian Republic of Burkina Faso (Dickson, 1970).

The main economic activity of the region being agriculture, land is of importance to its communities. A common view held is that land is abundant in the Upper West Region and as such it is not the subject of much social conflict (see Kasanga, 1988; 1993; Benneh, *et al* 1995). However, such abundance of land is not uniformly distributed across the region in terms of its population. While the eastern parts of the Wa, Nadowli, Jirapa, and Sissala districts have large expanses of uninhabited lands, the Western half with relatively higher population density experience pressure on the land (see Bourret, 1963: 84). Population pressure on land is particularly acute around the north-western corridor along the Hamile/Wa axis (Songsore and Denkabe, 1995: 34).

In legal terms, the local communities are said to have absolute titles to their lands (see article 257 of the 1992 Constitution). However, administrative and institutional practices of state land administration agencies render such titles only symbolic; as the state continues to exercise a monopoly over important land administration functions. As rightly noted, it is necessary to make a distinction between "simple legal title to land" such as is held by peasant producers in the region and the "ultimate control over the land and its resources which may rest in the hands of interests lying outside these communities" (Songsore and Denkabe: 35).

Part I

1.3 Decentralisation: A historical overview of legislations on Northern Ghana

1.3.1 *The Precolonial Era*

It may appear odd to be exploring a pre-colonial legislative framework on decentralisation in a society that historically did not have writing. We are, however, exploring normative regulatory mechanisms and structures of traditional pre-colonial political formations that relate to decentralised forms of governance. They might not have been reduced into a legal code but nonetheless provide useful insights into the social matrix upon which modern state legislation on local government is scripted. The earlier forms of modern local government in Northern Ghana claim to have tried to approximate pre-colonial forms of decentralised political administration (see Rattray, 1932; Eyre-Smith, 1933). Therefore, an understanding of the pre-colonial forms of decentralised governance assists a better reading of the modern attempts.

An assertion one comes across in the literature on decentralization in Ghana is that local government or forms of devolved political authority are not an entirely British creation. The view is that communities of the present day Ghana have practised decentralization in one form or another under their pre-colonial political formations. Ayee (1994) sees in Ghana surviving traditional political structures of ethnic groups such as the Asante, Ewe, Ga and Fanti, which suggest that pre-political indigenous administration was bureaucratic in the Weberian sense. An important element he sees in such bureacratization is the relatively high degree of decentralization in which village administration enjoyed considerable autonomy within the chief's hierarchical administration. Example in the case of the Ashanti include; the *krontihene* and the *Akwamuhene* (sub-chiefs of Ashanti), *adontehene* (commander of the

main body of the troops of Ashanti), *nifahene* (commander of the left wing of the army, and the *benkumhene* who led the left wing of its Army. In addition, there are also the *okyeame* (speaker of the chief), and the *asafo* (a designation for youngmen and other social groupings used in contradistinction to the chiefs and elders; Ayee, 1994: 7-12).

However, beyond these centralized traditional pre-colonial political formations in today's Ghana, there were non-centralized or decentralized political formations often referred to by anthropologists as *acephalous* systems. Examples in Northern Ghana include the Dagara or Lobi, Tallensi, Konkomba, Frafra and Sissala (see Fortes, 1949; Rattray, 1932; Hawkins, 1996). Iroko (1997) observes that by the extreme simplicity of these traditional decentralised polities, their structure and functioning had democratic forms of expression far more advanced than those of the centralised polities did. The traditional political formations of the communities of our study area (Upper West Region) being predominantly typical examples of *acephalousness*, we explore lineaments of its characteristic features briefly.

Literature on these acephalous or so-called *stateless* communities is confusing. We can therefore only indicate broad features of their socio-political organisation. While there are many typologies in the literature on these communities, three broad features are discernible. These are the: *segmented lineage systems*, *dispersed territorially defined communities*, and *large compact villages* (see Horton, 1976: 78-91). Though some of these communities are pastoralists, our focus is on the sedentary agricultural communities. Land being important for their livelihood, ecological and demographic factors influence their social organisation. As subsistence economies, labour recruitment through reciprocal aid and land inheritance becomes important for social reproduction. The members of these communities therefore tend to settle close to each other genealogically (Horton, 1976: 71).

As observed by Horton, their socio-political organisation exhibits features of the *relativity of political grouping*, *equivalence of segments*, and *predominance of leadership over authority* (1976: 83-85). The individual lineage units come together in bigger units to act in concert to ward off external intrusions but revert to their smaller units when the threat is over. To that extent no form of enduring central authority is sustained; as the units consider themselves to have equivalent status. An important feature of this socio-political arrangement is that *spatial distance* becomes one of the most important determinants of *social distance* (Horton, 1976: 80). We will revisit this issue in detail in Chapter 5.

Among the communities of the Upper West Region, only the Malala and Wala are known historically to have practised a form of centralised political organisation during the pre-colonial era. The Wala ethnic group being the last offshoot of the Dagbon empire, brought with them such a political arrangement now understood as chieftancy (see Wilks, 1976; 1989 and Songsore, 1975). However, the evidence shows that the princely (*Nabihi*) clans of Wa were not the first settlers. The *tendamba* of *Suuriyiri* were first to arrive and settle in the area though they met the Dagara (*Lobis*); who were driven further westwards along the Black Volta River (see Levtzion, 1968 and Dougah, 1966). The *tendamba* of the Wala community like those of the Dagara and Sissala did not have a centralised form of political administration.

The Sissala and the Dagara on the other hand, were organised into small autonomous political units mostly made up of lineage groups. Unlike the typical segmentary lineages (referred to earlier) the shortage of land often occasions migration, which leads to a division of the lineages into *landowners* and *latecomers*, to borrow Kopytoff's phraseology (1987b).

Therefore a form of authority developed around the custodian of the *earthshrine* (*tengan sob*) as head of the landowning lineage (see Goody, 1954 and Tengan, 1991). They however had no chiefs or a centralised political organisation as in centralised communities. The *tengan sob* or *totina* as the case might be was the leader in both a spiritual and a secular sense. The bonds that united these autonomous groups were either a common *earthshrine* or *totemic avoidance.* Many anthropological narratives exist on these pre-colonial traditional structures and we do not intend to go into the details (see Rattray, 1932; Goody, 1956; Hawkins, 1996). Significant however, is the fact that the *tengan* institution exercised and still today exercises its authority with particular reference to land. The *tengan sob* or *totina* is often the most senior male descendant of the first settlers on the land.

1.3.2 *The Colonial Era*

The present Upper West Region in the early 19th century was a site of struggle between French and British colonial interests. Each struggled for influence over the communities that culminated in treaties; initially with communities who had a form of chieftancy and later with colonial chiefs (see Bourret, 1963; Arhin, 1974 and Thomas, 1972). British interest won out after the Berlin Conference of 1888 and settled the respective extent and spheres of influence of Britain and France in the area[5].

The enactment of an Order-in-Council in 1901 (which came into force in 1902) made the Upper West area a Protectorate of the British Empire[6]. This marked the beginning of the legal dominion of Britain over the area and of local government as well (Saaka, 1978). The head of the protectorate was the Chief Commissioner who was assisted at the district level by District

[5] See Laws of the Gold Coast, (1951 Rev.) Vol. 3; Foreign Jurisdiction Acts 1878, 41 & 42 Vict. C 67; 1890 53 & 54; and 1913, 3 & 4 Geo., C 16.

Commissioners. Unlike other parts of the Gold Coast colony (the previous name of Ghana), there were two phases of modern local government in Northern Ghana during colonial rule. There was the period of *Direct Rule* from 1899 to 1931 and the period of *Indirect Rule* from 1932 to 1951 (see Ayee, 1994; Saaka, 1978; Massing, 1994).

Under *direct rule*, three administrative districts (Southern, north-eastern and north-western) were created in 1908[7]. The Upper West area belonged to the north-west district. In the initial period of colonial rule all administrators were military officers who undertook periodic armed patrols round the districts to check what the Commissioners termed *truculence and independence among the natives* (Saaka, 1978). However, the purpose of these visits was to demonstrate to the people the new political presence. In the later part of direct rule, civilian administrators replaced military officers (Bourret, 1963: 83).

The direct form of colonial rule proved more difficult than anticipated by the colonial administrators. They subsequently realised that traditional institutions had viability and significance in governing the communities. This was the case with the Dagara and the Sissala who unaccustomed to central rule, resisted the colonial administrators. In response, the colonial administration universalised the institution of chieftancy practised by Southern and some Northern communities of Ghana to the Upper West communities (NAGT, ADM/56/1/50). This was a case of correcting one political mistake with another, as chieftancy was not known among most communities of the Upper West area.

By the early 1930s local government had made a transition from direct rule to indirect rule with the promulgation of a Native Administration Ordinance (Cap.121). In the new local

[6] Northern Territories Order-in-Council, (Ordinance No. 1, 1902).

government structure under the Ordinance the Northern Territories was divided into two Provinces (Southern and Northern). The Upper West area formed part of the Northern Province. Within the provinces were districts further divided into Native Authority areas as basic administrative units. Section 2 of the Ordinance defined a native authority to include: "a chief, other native or group of natives appointed to be a native authority". In practice, chiefs were the only category considered competent to constitute or lead native authorities (Saaka, 1978).

In 1935 two legislations (Native Treasuries Ordinance and Native Jurisdiction Ordinance) were passed to complete the indirect rule system[8]. By the Native Treasuries Ordinance the Chief Commissioner was given authority to establish Native Authority Treasuries and to define their sources of revenue. In 1936 the people of the Upper West area were directly taxed for the first time. Customary tribute previously paid to the *tengan dem* (plural of *tengan sob*) by the communities became an important revenue source for native authorities under local government (see Ferguson and Wilks, 1970: 335-338). As a result, chiefs of previously non-chiefly communities were given added economic power to enhance their new political power, status, and dominance within the communities.

The Native Jurisdiction Ordinance, on the other hand, created a hierarchy of chiefs (Paramount Chiefs, Divisional Chiefs, Sub-divisional Chiefs, and Village Headmen). However, this was only a formality, as the pacification of Northern Ghana went along with the institutionalisation of chieftancy (see Lentz, 1998: 1-17). The first two categories of chiefs were given jurisdiction to adjudicate on disputes within their areas. The Ordinance made it a criminal offence to undermine the authority or position of a chief. They were given

[7] See Ordinance No. 3 and No. 5 of 1908.

the additional function to declare from time to time and when necessary, whatever they might consider to be the prevailing customary law on a given subject within their jurisdictional areas; only subject to the Governor's approval (Elias, 1962: 91). Judicial precedent strengthened the chief's new jurisdiction in *Oppon* v. *Ackinnie* (1887 2G & G 4), which held that the establishment of the Supreme Court Ordinance No. 4 of 1876 had not taken away the traditional jurisdiction of the Chiefs to hold their Courts according to immemorial custom. Though chiefs in the Upper West area in some communities could lay no claim to such *immemorial customs*; as chiefs, their jurisdictional basis has never been challenged.

In essence, both *Direct* and *Indirect* rule were neither aimed at improving local governance in any participatory way nor were traditional institutions assisted in evolving customary rules of governance. As noted, they were "nothing but pragmatic ways of cheaply maintaining colonial rule" (Saaka, 1978: 26). Of interest to the colonial administration was revenue accruing from direct taxation (see Bourret, 1968: 95-96). The jurisdiction of chiefs on customary law, as in most parts of colonial Africa, was subject to a proviso that it should not be "contrary to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any Ordinance for the time being in force" (Cap. 4, 1951 Rev.). Therefore, the customary law of the local communities had to meet the standards of law as understood in western jurisprudence regardless of the differences in social settings. There were no significant changes in local government up to the 1940s.

By the mid-1940s nationalist agitation and civil unrest had become rampant in the country (see Austin, 1964: 49-102 and Apter, 1963: 159-174). In the face of these political upheavals the colonial government appointed an All-African Committee (the Coussey Committee) to

[8] The Native Treasuries (Northern Ghana) Ordinance, 1935 (Ordinance No. 10) and the Native Jurisdiction

draft a new Constitution that would address the limitations of the 1946 Burns Constitution[9]. An issue the Committee gave serious consideration was local government; the need for a sound and democratic local government that would serve as a foundation for a central democratic structure. The Committee's Report formed the basis of the beginning of a uniform modern local government system for Ghana (Nsarkoh, 1964). For the first time, local government functions were separated from the traditional councils that operated under the Native Authorities in rural areas. Paragraph 182 of the Coussey Committee Report (1949) recommended that traditional councils should have the power to make declarations having only the force of law on all customary constitutional matters and on subjects affecting the social and the cultural life of the people. In the Committee's opinion;

> The complexity and stress of modern life, the desire for change and the progressive outlook which are now pervading even the remotest villages call for more efficient organs of local administration. We therefore recommend entirely new councils democratic in composition which should prove more efficient and effective in discharge of greater responsibilities for the society's welfare and well-being of their local communes[10].

By 1951 the political situation in Ghana had changed considerably. Ghana was now self-governing though not yet independent under Kwame Nkrumah and the CPP government. One of the first legislations the government passed was the Local Government Ordinance No.29 of 1951 (Cap. 64). Except in matters of detail, the Ordinance followed closely the recommendations of the Coussey Committee. In introducing the Bill to the National Assembly, the Minister for Local Government argued that the objective of the government was to provide a system which would enable the people (operating through popularly elected

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(Northern Ghana) Ordinance, 1935 (Ordinance No. 31)

[9] The Burns Constitution of 1946 did not contain a provision for an elected African majority in the Legislative Council; as demanded by the nationalists' movements. It was described by one of the nationalist leaders (J. B. Danquah), as "still born at birth".

[10] See Paragraph 182 of the Coussey Committee Report of 1949.

councils) to decide for themselves what their needs were and how to provide for them (Wood, 1971).

Saaka (1978) is of the view that such a preface by the Minister was a reiteration of the CPP government's commitment to a sound local government that was participatory. Such a commitment, he asserts, arose from a feeling that the masses of the people had been deprived for a long time of the right to speak for themselves and they could best be introduced to government through local authorities accessible to them. As he sees it, the efficacy of local government is dependent on *mass participation* and *effective administration.* The former, he contends, was provided through the process of electing candidates to the councils; and the latter by the element of a permanent body of officials employed to run their day-to-day business (Saaka, 1978: 32).

However, the colonial government had also used the interests of the *masses of the people* as an ideology in legitimising its local government policies and the CPP Government was not different. It is not clear from a reading of the 1951 Local Ordinance what the *masses* were, nor in what and how, they were to participate? Subsequent developments in local government in Ghana show that the CPP Government's interest was how councils (under the local government system) could provide municipal works cheaply and not one for democratic participation (Massing, 1994).

By 1956 when it was realised that service delivery by these councils were as poor as well as costly to the state, the Greenwood Commission was set up to consider a number of issues on local government. The issues for consideration were:

(i) the reduction of the number of local councils;

(ii) methods of local revenue collection and expenditure control; and

(iii) prospects of raising the level of rates by imposing other forms of taxation.

By an extension of the Greenwood Commission's terms of reference in 1957, it was required to further consider the functions of local authorities and the division of responsibilities between central, regional, and local government. This additional term de-emphasises the importance of mass participation and self-rule at the local level. The CPP Government was of the view that the only local authorities worth having were those with the financial strength to support themselves (Saaka, 1978). The importance government was to attach to local government authorities was therefore dependent on their viability, measured by their level of economic efficiency.

The Greenwood Commission proposed two models of local government structures that came to be known as *Plan A* and *Plan B*. Plan "A" model was to produce large local government units based on district councils where they existed and smaller units of local authorities where they did not exist. Existing urban and municipal councils with adequate resources were however to be retained. In Plan "B" model, the principal unit for provision of local government services was to be the Regional Authority while lesser services were to be provided by urban and local councils. Though these seemed alternative plans, a reading of the Report suggests that both plans could be used but for different regions of the country or there could be a combination of features from both for the entire country. The CPP Government which had over the years been opposing in Ashanti the agitation for federalism, saw regional autonomy in Plan "B" as lending itself to such demands and therefore opted for Plan "A" (see Saaka, 1978; Massing, 1994). This plan was, however, not implemented before Ghana achieved independence in 1957.

1.3.3 *The Postcolonial Era*

A substantive legislation was passed in 1961 to implement the new local government system proposed in the Greenwood Report Plan "A" (Act 54, 1961). The importance of this legislation lies in the fact that it finally removed the direct influence of traditional authorities (chiefs) on local government in Ghana; as local authorities were to be composed of elected members through electoral colleges. There was a distinction in the legislation between *traditional councils* that dealt with customary affairs and *local authorities* that dealt with secular local political affairs. The Greenwood Report Proposals, even now, continue to influence the structure of local government in Ghana; as either Plan "A" or "B" is adopted as governments change. It is rightly considered the *magna carta* of Ghana local government. This will be evident when we consider Ghana's current decentralisation programme.

Some amendments worthy of note were made in 1962 to the 1961 local government legislation. The idea of having large and viable local units was disregarded as the number of district councils was increased from 70 to 150. At the same time, district councils were constituted as parliamentary constituencies for purposes of electing representatives to the national legislature. While arguments are raised to indicate that these amendments were to enhance local community participation (see Saaka, 1978), it was the case for only CPP members (see MLG&RD, 1996).

By 1962 Ghana had become a *de facto* one party state. District councils were multiplied daily and packed with CPP faithfuls to complete its dominance in all local communities in the country. There was no fundamental change in this structure of local government up to the overthrow of the Nkrumah Government by the military coup of the National Liberation

Council (NLC) in 1966. The NLC regime disbanded all district councils and all local government affairs were administered by the most senior civil servants in the districts.

Between 1967 and 1968, Ghana witnessed yet two further Commissions of Inquiry (Mills-Odoi and Siriboe Commissions) to look into the problems of local government. The recommendations of these Commissions formed the substance of chapter 16 of the 1969 Constitution and the then Local Government Act as subsequently amended[11]. The object of these constitutional and legislative provisions was to make local government units in essence local agencies of central government. There was no attempt this time to even pay lip-service to local autonomy or participation. Local government was a four-tier structure of regional councils, district councils, municipal/urban/local councils, and town/area councils. In addition, there were town and village development committees that were not part of the local government structure but established by the CPP government to operate alongside local government institutions in rural areas (MLG, 1975). Regional councils were composed of two representatives from each district council in the region and the regional heads of state departments. Regional Commissioners appointed by the government chaired them. The Councils acted as agents of central government in respect of national programmes and development projects.

District Councils were the basic units of administration at the local level. Government nominated two-thirds of the district councils from the locality and local authorities nominated one-third of the membership. There was no provision for either direct or indirect election of members as in the previous situations. This marked retrogression in democratic local government development in Ghana. The Office of the DCE (District Chief Executive) was

introduced at this point. Real power in the district resided in the DCE as he was head of the Civil Service in the district; and by the integration of local government agencies into central government, he controlled all employees who were by then all civil servants. No significant development occurred in local government from 1974 up to the PNDC decentralisation programme in the mid-1980s.

From the preceding account of the emergence and development of modern local government in both the colonial and post-colonial periods in Ghana, the political and economic factors that gave rise to legal changes in local government are obvious. Legal changes became necessary as a response to manifold factors: rivalry between colonial powers, the demand for additional sources of government revenue, the need to curtail general civil unrest, or political advantage in a multi-party system. All these local government reforms also used the "welfare" of the people, "participation", "democracy" and "development" arguments as ideological forms in legitimising their policies contrary to these very notions.

Northern Ghana and for that matter the Upper West area, in the twists and turns of local government, were continually marginalized in development terms. We explore this issue later in the chapter, when we come to trace the emergence and development of state control of Northern Ghana lands. For now, it would suffice to say that the excess baggage (to borrow Mamdani's phrase) of isolation and neglect of Northern Ghana by the colonial state was carried into the postcolonial era. We will also indicate shortly that the legal regime of colonial forms of local government gave rise to the systematic underdevelopment of Northern Ghana. The current attempts at local level governance are held to be a fundamental departure

[11]See Act 359; Local Administration (Amendment) Decree, 1972, (NRCD 138); and Local Administration (Amendment) Decree, 1974 (NRCD 258). These amendments like similar situations in Ghana was to re-orient enactments in tune with the philosophy of the military regime that had seized political power in 1972.

from previous local government arrangements. We next sketch its main features to ascertain whether it is indeed a *departure* from the previous attempts.

1.3.4 *Ghana's Current Decentralisation Programme*

The current decentralisation programme was mooted in the early 1980s but was implemented between 1988 and 1989 (see Government of Ghana, 1984). Its discourse focuses on a number of related factors as the basis on which it was conceptualised. The first relates to the centralised development approach of the Ghanaian state over the years. This development approach, it is argued, privileged the state as the sole agent of development to the neglect of the local communities and civil society. It is a development approach that focuses on economic growth to the neglect of the social and the human dimensions of development. As such it adversely affected local/central government relationship and gave rise to demands by local communities for participation in decisions affecting them (see Crook and Manor, 1998; GTZ, 1996 and Diaw, 1994).

The second explanation sees decentralisation as part of the policy package of the Ghana Government's economic reform and structural adjustment. Two phases of reform are noted. The first phase was the ERP (Economic Recovery Programme) between 1983 to 1986, which was one of economic stabilisation to halt years of economic decline and known as the Public Investment Programme (PIP). The second phase of reform commenced in 1987 as the SAP (Structural Adjustment Programme) with its emphasis on the provision of social services and institutional reform. It is said to be within the latter phase of reform that Ghana's current decentralisation programme issued (see Green, 1995; Massing, 1994; Sarris and Shams, 1991).

A third view suggests that the erstwhile PNDC government was committed to a philosophy of empowering local communities. Therefore the current decentralisation programme is seen as that government's commitment to addressing the issue of rural development through local community participation (see NCD Report, 1991 and MLG&RD, 1996), the origin of the programme is therefore traceable to a number of converging factors:

(i) Macro-economic policies pursued under ERP.

(ii) Urging by international donor community to establish democratic structures for greater participation in development as a SAP conditionality.

(iii) Internal demands for devolution of power to the local level for resource mobilisation and utilisation for sustainable development.

(iv) The shortcomings of the pre-and immediate post-independence local government systems; and

(v) a favourable political environment by the PNDC government's genuine commitment to decentralisation and grassroots participation in development.

The Local Government Law of 1988 (PNDCL 207) was enacted to regulate the decentralisation programme.

The said legislation was the most comprehensive local government legislation Ghana ever experienced. It is now superseded by the current Local Government Act of 1993 (Act 462). There are however very minor differences between the two legislations. The differences are in terms of new designations to conform to the 1992 Constitution (see Crook and Manor, 1998). However, the Supreme Court in *New Patriotic Party v. The Electoral Commission and Another (No.2)*[12] is of the view that the DAs as constituted under article 242 of the 1992

[12] [1992-93 Ghana Bar Report].

Constitution are legally different from those established under PNDCL 207. Abban JSC (as he then was) observes as follows:

> [T]he present district assemblies as established by PNDCL 207 are completely different bodies or entities from the district assemblies to be established in the future under article 242 of the Constitution[13].

The issue before the court was whether the district assemblies under PNDCL 207 in addition to their functions set out in section 6 thereto had also the authority to approve District Chief Executives. The position of the court, in our view, seems to be based on statistical differences in the composition of the DA. The 1992 Constitution provides that *30 per cent* of the membership of the district assembly be appointed by the President; while PNDCL 207 provided for *one-third* of such membership to be appointed by the President. In substance however, the powers and functions of the assemblies in PNDCL 207 are retained in both the 1992 Constitution and the Local Act of 1993 pursuant to it (see section 6 of PNDCL 207, and chapter 21 of the 1992 Constitution and sections 10 and 41 of Act 462 respectively). We are therefore of the view that the current DAs are not different from those created by PNDCL 207 in 1988.

As a jurisprudential question, it may be argued that the 1988 DA system had its legal validity from the PNDC revolutionary order, while the current system is rooted in the 1992 Constitution. However, it has to be noted that the 1992 Constitution itself was promulgated as a schedule to a PNDC Law (PNDCL 282[14]; also see Ahwoi, 1985: 139-167)[15]. To that extent one can discern continuity between the two constitutional regimes, and for that matter the DA system.

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[13] Ibid. [p. 11].
[14] Constitution of the Fourth Republic of Ghana (Promulgation) Law, 1992.
[15] Ahwoi raises this argument in relation to the basis of validity of the 1979 Constitution, which was promulgated as a schedule to an AFRC Decree.

Structurally, Ghana's current decentralisation programme adopts the Greenwood Commission's 1960 Report *Plan A* with slight modifications. At the top of the decentralisation structure is an un-elected Regional Co-ordinating Council (RCC). Below it is the district assembly (DA) and sub-district structures of Town/Area Councils and Unit Committees (see Appendix 'B'). This structure is informed by the programme's objective of devolution of government machinery to the local level. Within a second objective, (democratization of state power) structures below the regional level for the first time are to be partly directly elected by local communities[16] (70 per cent of DA membership); with 30 per cent nominated by the President in consultation with traditional authorities and other interests groups in the district. In addition, the DCE appointed by the President and approved by a two-thirds vote of all members of the DA; and the member(s) of the national parliament from the district without the right to vote in proceedings, are members[17].

A central function of the DA is its responsibility to ensure the *overall development* of the district (Article 245, 1992 Constitution). To achieve this objective it is designated the District Planning Authority (DPA) with the power to prepare and implement development plans. The D-plan making functions and powers of the DA are within the legal stipulations of another objective of the programme (the *bottom-up* approach to development planning) under Act 479 and Act 480.

[16] Previous elections to district authorities were through electoral colleges of traditional authorities or local councils.
[17] Sections 3, 5, 7 and 140 of Act 462.

Part II

1.4 *Historicity of the Relationships between Decentralisation and Land Administration in Northern Ghana*

Decentralisation and Land Administration are often considered as different or disparate discursive regimes. In conceptualising this study, we have been wary of the need to connect these two seemingly disparate discursive regimes in a more convincing way. We acknowledge the large terrain within which these discursive regimes have been conveniently separated from each other. The attempt by Montgomery (1988: 1-26) to make the connection between decentralisation and land administration, ends in making the former the dominant discursive regime, with the latter only as a proxy to it.

However, if one adopts a broad-based relational conception of dialectics embodied in what Harvey (2000: 15) calls *historical-geographical materialism*, we see how land administration is internalised and implicated in decentralisation in Ghana. Relational dialectics provides a good example of how, to borrow the striking words of Harvey, "exercising an optimism of the intellect in order to open up ways of thinking that have for too long remained foreclosed" (2000: 17). Therefore, a brief history of the decentralisation/ land administration nexus in Northern Ghana, provides a useful context to our study.

Land administration, very much like local government, has a chequered legal history in Ghana. Though the focus of our study is on the current form of decentralisation, the legacy of past local government legal structures continue to affect and inform the current administrative practices pertaining to land. As Chanock (1991: 61) argues, the land question was crucial to the politics of the colonial period and vital in many parts of Africa to indirect rule. We therefore indicate briefly these historical antecedents in Northern Ghana.

1.4.1 *The Colonial Period*

Prior to legislating to constitute Northern Ghana into a Protectorate of the British Empire, the then Governor drafted a proclamation laying down the conditions and procedures for granting land rights in the area. Though the Governor's proclamation was ostensibly to provide for the grant of concessions to mineral prospectors it had the effect of controlling the lands of local communities.

To obtain a land concession for mineral prospecting in Northern Ghana under the governor's proclamation, a person applied for and was granted for six months an exclusive licence on the basis of the area it covers. During the term of the licence, its holder could apply and be granted rights of option over the whole or part of the area included in it. During the term of the rights of option, its holder could further apply for and be granted a lease over the whole or part of the area over which those rights extended. The lease was a valid title for the period not exceeding ninety years; and for each year a payment for it will be made to the Government[18].

This procedure, however, differed from the rules that governed concession grants in the Colony and Ashanti. As observed by Kimble (1965: 355-357), under the 1900 Concessions Ordinance for the Colony and Ashanti, there was no interference with African landowners to make concession grants, and mining concessions were to be limited to five or twenty acres. In the case of Northern Ghana, grants were to be made directly by the government and not native authorities. There was further no prescribed limit on the size of Concessions as obtained in the South of the Gold Coast colony. As the governor saw it, there were large

[18] Public Record Office (PRO), CO 96/381: 327. First Report of Captain Moutray Read to the Chief Commissioner of the Northern Territories, 1 May 1901 on Laws and Customs of the Northern Province.

tracts of uninhabited land in the Northern Territories that appear to be sparsely populated by *nude savages* without recognised head-chiefs or central form of government and that the Gold Coast system would be incapable of dealing with such tracts of land (CO, 96/381).

Such reasoning by the Governor drew an implicit link between interests in land, chieftancy, and a centralised form of government. We can agree with Meek (1968: 10) and Chanock (1991: 64) that the vesting of land control and allocation in colonial chiefs was the general paradigm of British *Indirect Rule*. The colonial administration did not realise that such a role for chiefs did not exist within traditional modes of land administration of the Upper West communities; as some neither had chiefs nor central government but nonetheless had structures which administered land.

To provide a legal basis for the Governor's proclamation, the Order-in-Council that annexed the Northern Territories as a British Protectorate served as such a basis. It is significant to note that it was the same legislation that introduced modern forms of local government in Northern Ghana as well (Ordinance No. 1, 1902). Section 5 of the Ordinance empowered the Chief Commissioner or his lawful agent to enter onto any land and take as much of it as was required for any public service. No compensation was to be paid for the land except for growing crops and interference with buildings. Section 7 declared ownership in all lands, premises, and buildings, which were on the 31 December 1901 held and occupied as government property to be vested in the Queen.

The next major intervention by the colonial state in land administration in the North of Ghana was the proposed Lands and Natives Rights Ordinance of 1927. It did not however come into force before it was re-enacted in 1931 (Cap. 147). This Ordinance required rents accruing

from land to be paid into the Native Treasuries created as part of the local government system (section 4). This was an effective way the colonial administration controlled lands of the natives. As Chanock argues:

> The authority of the chiefs was maintained by their role as allocators of land, and so was the dependence of their subjects. Exploitation was to be curbed by not allowing the chiefs the right to sell land, and, by the same means, curbs were to be put on the freedom of the subjects, by preventing them from buying land (1991: 64).

Thus, proceeds from lands of the communities became a major revenue source for local administration in which the chiefs presided. The 1931 Ordinance with minor amendments in 1932[19] controlled land administration in the North of Ghana for the remaining years of colonial rule.

1.4.2 *The Postcolonial Period*

In 1960 the State Property and Contracts Act was passed. It had the effect of continuing to vest lands in Northern Ghana in the President of the Republic of Ghana (C. A. 6). This was followed by the Administration of Lands Act and State Lands Act in 1962 (Act 123 and Act 125 respectively). These legislations gave power to the President to declare any stool land he considered to be in the public interest to be vested in the President in trust for the people. Stool land is defined in the legislation to include lands in Northern Ghana not vested in the President but controlled by any person (section 31, Act 123). Revenue accruing from the administration of the said lands was to be paid into a stool land account. The Minister with administrative responsibility for the account was to determine and order the same to be paid to local authorities from whose areas such land revenue accrued. The collection and disbursement of stool lands revenue is currently undertaken by the newly established Office

[19] The Lands and Native Rights Further Amendment Ordinance (No.12, 1932).

of the Stool Lands Administrator (see Article 267 of the 1992 Constitution and Act 481). This legislation provides that 25 per cent of land revenue collected in an area, be paid to the DA (successor to the former local authorities or councils).

Pursuant to Act 123, an Executive Instrument was passed in 1963 vesting all lands in the then Upper Region in the President of the Republic of Ghana (E.I., 87). The instrument did not indicate the nature of the public interest to be served by such vesting. The Executive Instrument provided that:

> The *Stool Lands* within the areas of authority of the councils specified in the schedule hereto are hereby declared to be vested in the President in trust[20] (emphasis added.)

The relevant councils in the said schedule included the Tumu, Lawra, and Wa Councils areas. In effect it covered the entire area currently designated as the Upper West Region.

The vesting of Northern lands in the state remained up to the 1979 Constitution, which provided for their divestiture (Article 188, 1979 Constitution). Before 1979 the situation never arose for any further legal requirement to acquire lands in Northern Ghana for purposes of state use. These lands for both central and local government projects were for the taking as the state exercised *de facto* rights of ownership over the lands. Through the Lands Commission, the Stool Land Administrator and T&CP department the state administered Northern lands by disposing of it, using it, and benefiting from the revenue accruing therefrom. As Woodman (1968: 85) argues the effect of the Administration of Lands Act of 1962 (Act 123) creates situations in which the holders of allodial titles have lost or are liable to lose them.

[20] E.I. 87 of 1963.

1.4.3 *The current legal regime of decentralisation and land administration*

The land tenure regime in Northern Ghana is even more complicated with the divestiture of the lands from state control as it is not certain who had what legal interests in which piece of land at custom before they were vested in the state. The relevant provisions read as follows:

> (2) For the purposes of this article, and subject to clause (3) of this article, *public lands* includes any land which, immediately before the coming into force of this Constitution, was vested in the Government of Ghana on behalf of, and in trust for, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the Government of Ghana before, on or after that date.
>
> (3) For the avoidance of doubt, it is hereby declared that all lands in the *Northern, Upper East* and *Upper West* regions of Ghana which immediately before the coming into force of this constitution were vested in the Government of Ghana are not public lands within the meaning of clauses.
>
> (4) Subject to the provisions of this Constitution, all lands referred to in clause (3) of this article shall vest in *any person* who was the owner of the land before the vesting, or in the appropriate skin without further assurance than this clause.
>
> (Article 257, 1992 Constitution; emphasis added).

The definition of *any person* has become contentious in the Upper West Region as dominant social groups struggle to fit themselves within its purview. A further difficulty for communities in the Upper West Region is: which lands are excluded or included in the above clauses? From the constitutional definition of *public lands* in clause 2 above, it is not clear as to the lands in Northern Ghana, which are or are not public lands. Given the poor procedures and documentation on lands acquired by state agencies in Northern Ghana, it is difficult to determine who were and are the holders of interests' in particular lands.

With these fundamental questions on land administration being far from settled it is problematic to see how the programme of decentralisation can implement its *overall development* package in the Upper West Region. It is in the light of this problematic that we consider the land question ought to be the focus and starting point of any meaningful devolution, democratization, and development planning. We will explore these issues in detail in chapters 5, 6 and 7.

The legal framework of the current decentralisation programme suggests further implications for land administration. Firstly, the DAs (district assemblies) are represented in the membership of the Regional Lands Commission (RLC), which is an important institution of the state in land administration. It is currently only decentralised to the regional level (see Article 260, 1992 Constitution). By the representation of the DAs in the Commission, it is expected that local concerns on land would inform its work. Also, as a state agency in the Upper West Region it would be subject to the monitoring and co-ordinating roles assigned to the RCC (Regional Co-ordinating Council) under the local government Act (sections 140-146 of Act 462). The T&CP (Town and Country Planning) department which implements government land use policy is decentralised and reconstituted as a department of the DA[21]. It is expected that in its functions of preparing schemes, layouts, and the determination of land use priorities it will take into account local community concerns. Further, the whole of Part II of the Local Government Act (Act 462) is devoted to the planning functions of the DA. As stated by one of the Deputy Ministers for Local Government and Rural Development, district level development planning is quite comprehensive and includes spatial planning, which makes the district assembly an agent of land administration (Korbieh, 1996).

[21] See First and Eighth Schedules of Act 462.

A recent seminar on land and water management in Ghana underscores the anticipated role of DAs in land administration[22]. Speaking at the said seminar, the Greater Accra Regional Minister observed that previous and on-going efforts at land conservation show that though attempts have been made in the past to introduce land management practices into the farming system, the impact have been lower than expected. This, he said, was because of the top-down approach used to facilitate the programmes.

The relationship between decentralisation and land administration in Northern Ghana is also beginning to engage the attention of development agencies. There are currently commissioned studies on the issue. Examples relevant to Northern Ghana are two studies by a Firm of Solicitors commissioned by the MOFA/IFAD (Ministry of Food and Agriculture/International Fund for Agricultural Development) under the LACOSREP (Land Conservation and Small Holder Rehabilitation Project) project on the Upper East and Upper West Regions (see Dery, 1997; 1998).

However, the current policy interests on decentralisation and land administration are based on a particular development paradigm; one in which the alienation of land by the state for agribusiness and large-scale agriculture cannot be separated from developments at the community level. As Amanor argues:

> In the present period of globalisation and market liberalisation, the process of land alienation is increasingly driven by foreign capital. In the process of reorganising the economy, the state continually defines and redefines what constitutes the traditional community and refashions the levers that link the rural areas to national administration (1999: 19).

[22] See "Awareness Creation for District Assemblies and their Role and involvement in land and water management activities in the consolidation phase". http://www.ghanaweb.com/GhanaHomePage/ Downloaded

In the legal context, interest in decentralisation and the land question at the local level, is concerned with the appropriate regulatory mechanism that ensures local community integration with capital through the state; hence the populist theories of *participatory development* and *people-centred development* (see Amanor, 1999: 11-21). The issue whether the law itself could be the problem is not considered.

In our use of a spatial framework as basis for reading the legal regime of decentralisation in Ghana, we seek to address three perspectives. We give attention to the legal constructions of physical space. Secondly, we draw attention to the actual "localization", or material embodiment of law and rights of the Upper West communities and their interactions in physical space. Thirdly, we open up questions concerning the social significance of specific spatial constellations of law and rights. These perspectives will be addressed in the context of the three objectives of decentralisation in Ghana (devolution, democratisation, and development planning).

1.5 Summary of chapters

The entire study is in four broad parts. Chapters 1 and 2 present the background and context of the study. Chapters 3 and 4 define the scope of study in terms of method, with a report on the findings of the field study conducted. Chapters 5, 6 and 7 are detailed analyses of the findings reported in chapter 4. Chapters 8 and 9 summarise and conclude the study, with a focus on the main themes explored in previous chapters.

In chapter 2 we consider scholarly narratives that seek to explain the role of law in development. Over the years scholars have attempted to offer explanations on the law/society relationship in general and the role of law in development in particular. We engage some of

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these narratives critically in terms of the limitations and potentials they offer to an understanding of the legal regime of decentralisation in Ghana. Given the inter-disciplinary approach in our study, we consider relevant narratives from other social science disciplines and how they account for the role decentralisation plays in the development of local communities in Ghana. We specifically explore spatial narratives on social processes as an alternative methodological and theoretical framework within which to read decentralisation in Ghana.

In chapter 3 we outline the processes of data collection in our field study and its analysis. We critically examine some epistemological *canons* that are said to guide and shape the ways in which science should be conducted and how they define what constitutes legitimate problems, solutions and criteria of proof in a scientific enterprise. In considering these issues, we indicate the methodological perspective we bring to our study and how it informs our data collection, analysis, and our form of reporting the findings. In the main, this chapter provides the context of our study and its relevance to scholarship and the development initiatives of communities of the Upper West Region.

In chapter 4 we present a report of findings from our field study without much analytical rigour. Where appropriate we provide a background as context to our findings. This is a *thin* analysis of the data. By this approach we allow as much as possible the various actors in the social drama of Ghana's decentralisation programme to speak. We do not intend to foreclose any story line at this stage. The three macro-objectives of Ghana's programme, which foreshadowed the conceptualisation of our study will be used as an organising framework in presenting our findings. Given the overlap of these objectives this arrangement should

present the areas of focus of each objective[23]. We will identify some issues arising from the findings as the basis for a *thick* analysis of the data in subsequent chapters[24].

In chapter 5 we show the extent to which the government land machinery in the Upper West Region is devolved. We argue that there are traditional forms of devolution known to local communities of the region with particular reference to land administration that the legal regime of decentralisation ignores. We argue further that by ignoring traditional institutions of land administration, the state through both centralised and decentralised institutions of land administration continues to exercise monopoly over important land administration functions and powers. As a result, local communities in the Upper West Region neither participate nor are they consulted in matters of land administration. We also indicate the extent to which devolution operates as part of the wider spatial strategy of the Ghanaian State to dominate local communities with a view to reproducing existing social relations of Ghana's political economy.

In chapter 6 we consider the issue of democratisation of state power in terms of land administration. Having considered the state land machinery in chapter 5, our focus will be on the functions and associated powers of the state land machinery. As the legal basis for the exercise of state power in land administration dates back to the colonial era, we trace the emergence and development over the years of this state power and how it impacts on current land administrative practices at the local level. We argue that the decentralisation programme excludes the land question from the wider political negotiation processes, which excludes

[23] We also provide case illustrations of land disputes across the districts of the Upper West Region in terms of attempts by decentralised institutions at resolving them (see appendix G).

[24] The distinction between *thin* and *thick* analysis is borrowed from Gibbard, A. and Blackburn, S. "Morality and Thick Concepts", in *Proceedings of the Aristotelian Society*. Supplementary Vol. (1992); used in another context.

large segments of the communities from participation in the exercise of power over an important communal resource (land).

In chapter 7 we consider the issue of the new development planning approach and its implications for land administration in the region. This objective is central to the entire decentralisation programme as it serves as the means through which local level development programmes are implemented. We argue that this objective of decentralisation serves the purpose of legitimating only the state development perspective. This is achieved through forms of representation in the development discourse.

We also consider previous experiences of development planning in Ghana in other to ascertain the extent to which the present development approach can be considered an innovation. Lastly, we offer explanations as to why the Upper West Region remains underdeveloped notwithstanding years of development planning.

Chapter 8 revisits the main themes explored in previous chapters. Using a spatial theoretical framework that seeks to re-imagine social reality, we offer an alternative way of looking at the law/society or development relationship. We specifically consider how the legal regime of decentralisation in Ghana serves as a mode of ideology for reproducing existing social relations. We illustrate this with the subjectivity of development needs and praxis of the Upper West communities. A central theme that this chapter addresses is how state law seeks to *create*, *represent*, *appropriate* and *dominate* local communities in Ghana through decentralisation. We will further show how this strategy has led to contradictory outcomes in the Upper West Region. A situation in which local communities contest and at the same time

appropriate aspects of the decentralisation discourse to serve the particular context of their struggle.

CHAPTER 2

THE LAW AND DEVELOPMENT PROBLEMATIC

2.0 Introduction

This chapter addresses discourses on the role of law in development, primarily by way of a literature review. We use the phrase *literature review* cautiously as it might turn out to be cold comfort for epistemological purists. Our notion of a literature review denotes a conversation with existing stories that seek to produce knowledge about the role of law, decentralisation, and land administration in development.

To attempt a review of the related literature on the main themes of our study is a near impossibility as the literature on *development* alone can take up the entire study. We therefore make observations on lineaments of a few narratives representative of broad trends in law and/in development scholarship. More significantly, this chapter is the beginning of a (*un-*) *learning process* to understand how discourses define development problems, what explanations they offer as solutions, that which they reject in the texts, and what does not even appear.

We particularly seek in this chapter to inform ourselves on the debates on the role of law in society or development. This chapter is divided into two parts. In Part I, we present an overview on the questions that have engaged scholars on the subject, with a focus on narratives that address these questions with specific reference to the Ghanaian context. We also provide a thematic critique of these narratives. In Part II, we raise an issue that has received little attention from law and development scholarship. This issue is the relevance of the *spatial turn* in reading social processes. We make brief notes on the precursors to the

spatial reading of law in society and also indicate critical perspectives that have emerged on the spatial attributes of law. It is our view that the latter perspectives provide critical insights to an understanding of the role of law in society or development.

Part I

2.1 Law and Development Discourse: An Overview

Law is a useful point of entry in engaging knowledge produced about development. In a sense it crafts development discourse as a basis for its legitimacy in the modern state. Ghana, like most African states, defines what is *legitimate or illegitimate* development discourse through law (the legal and non-legal basis of development knowledge production). We acknowledge the pitfalls of this assumed centrality of law in development as well as its levels of contestation but it has not yet *withered away*. On the contrary it is blossoming in some spheres of social interaction. As observed by Hunt (1987: 149), despite the underachievement and attendant crises of law, the system lives; its image may be more tarnished but it is not anyway in imminent danger of collapse or overthrow.

Law in/and development (hereinafter referred to as law and development) discourses, though of recent vintage, have experienced a number of permutations; having its roots in: *Law as Behavioural Science, The Sociology of Law, Law and Social Change*, and *Socio-legal Studies*. There have been attempts at viewing these approaches as representing different schools of thought or as paradigms (England, 1995). We have elsewhere uncritically followed this notion of *Law and Development Paradigms* (Kunbuor, 1997). Upon reflection, paradigms of law and development discourse are a construct that cannot be theoretically

sustained[25]. The various approaches to Law and Development, in our view, are better considered as intellectual framework such as discourse.

Much of the discourse on Law and Development is well known and we have explored this elsewhere[26]; it will therefore not be desirable to re-invent the wheel. In this chapter we seek to provide a trajectory of the socio-political contexts in which ideas on law and development emerged and with a focus on the attempts at explaining the law/development nexus in Ghana.

The context for theorizing the law/society relationship was the felt need to elevate the *social* within the framework of legal reference. Theorisation on law and society attempts to break out from legal individualism and to provide a coherent and compelling account of its social context (Hunt, 1987: 135). In its development over the years, a central theme in law and society scholarship has been how to address the social problematic of the times through law (see Friedman and Macaulay, 1977; Dror, 1959; Sawyerr, 1974). As noted by Hunt (1987: 135), analytical jurisprudence had rested upon the Hobbesian assumption that the social imperative of adherence to law was located in an individualistic view of human nature. This view of law became unsustainable in the extended period of the democratic bourgeois revolution that changed the social problematic. As he argues;

> No longer was it sufficient to demonstrate that the law was the command of the sovereign; the question had now become, who was to be the sovereign? That is, it posed the issue of the source of the legitimacy of the political order (1987: 135)

In response to these socio-political developments, analytical jurisprudence moved to a transition by articulating the legal order's utilitarian characteristics, in which its legitimacy

[25] A paradigm in the Kuhnian sense refers to the explanatory power of a theoretical model and its institutional ramifications for the structure and organisation of science (Kuhn, 1962). A paradigm has to meet three conditions; the provision of a meta-theory, its acceptance by a community of practitioners, and the provision of exemplars as a body of successful practice (Santos and Smith, 1996).

was held to reside in the extent to which the legal system was capable of satisfying the desperate and competing claims of the citizen on the state (see Pound, 1921).

In line with juristic and social thinking of the time, previously colonised countries on attaining independence were confronted with a new social problematic (development). In addressing this issue, post-colonial states sought to re-align their legal systems to indigenous jurisprudence. This was in part to establish their identity as independent nations in a cultural context. With development as an imperative of the national agenda, *customary* legal rules were considered as offering an alternative to legal thought of advanced industrialised countries for achieving social change or development (see Seidman, 1968; 1978). Attempts at codification and integration of customary law by colonial governments in Africa were adopted by the post-colonial states as part of the discourse on law and development (see Amanor, 1999: 45-83). In African states, the codification or integration of customary law rules formed part of a broad *indigenization* policy (Moore, 1978). This approach to customary law jurisprudence in Ghana was succinctly captured by its first President (Kwame Nkrumah) in a speech on the occasion of laying the foundation stone for the Ghana Law School. Some excerpts of his speech are instructive:

> We do not agree with those who say we have too many lawyers. May be we have too many bad lawyers ...One of the unfortunate inheritances of colonialism is an out-of date and often unsuitable code of laws ... We are out to chart a revolutionary course and one of the main obstacles in the way of our forward march is our legal system that we must purge and bring in conformity with our needs and aspirations ...The building up of a modern code of laws suitable to Ghana's new circumstances and aspirations cannot, however, be achieved unless there is a group of people engaged in the teaching and the study of existing law. I hope that the time will also come when we shall do research into *African customary laws and customs*

[26] See Kunbuor, B. B. (1997) supra [chapter 2).

so that suitable adaptations can be made to conform with modern thought (Nkrumah, 1960: 40-43; emphasis added).

Juristic thinking on customary law has its mutations as well; as either: *legal anthropology*, *ethno-jurisprudence*, *legal pluralism* (in its strong and weak forms) or *unofficial law*. A central theme to the customary law approach to development in Africa is the suitability or otherwise of jurisprudence from the perspectives of industrialised countries to the development of African countries. The question often posed is: whether law and development discourse as articulated in legal thought of industrialised countries is applicable to African cultures? As suggested by Ghai (1991: 13-16), African societies are characterised by pluralist legal systems; a public consciousness unmarked by discourse of rights, democracy or justice; a fluidity of class relations, which lack cohesion and are compounded by ethnic divisions. He sees the law itself as a resource only the state can mobilise and manipulate. He is therefore of the view that legal thinking of industrialised countries fails to address the peculiarities of developing countries. Ghai's view introduces a useful *geography* of the role of law in development. Is it not also likely that beyond the differences in *international geographies* of law there might as well be differences within *national legal geographies*?

In exploring the Ghanaian experience, we see a *geography of law* and rights as an integral element in the study of law in society. As Benda-Beckmann (1999: 131) argues, law's reality is construed by its relation to the normative claims of the legal system, in which the existence of other rules in time and space are obfuscated. We add that such normative claims also serve as a basis for appropriating and redefining other normative structures in society. In the case of Ghana this is through the process of defining what constitutes *customary law* applicable to particular communities within the state. And by implication, what is considered not to be part

of such customary law. The standard legal formulation of this view in Ghana reads as follows:

> 11 (1). The Laws of Ghana shall comprise ... the Common Law of Ghana, the rules generally known as the rules of equity and the rules of *customary law* including those determined by the Superior Courts of Judicature
>
> (3) For the purposes of this article, *customary law* means the *rules of law, which by custom are applicable to particular communities in Ghana* (Article 11, 1992 Constitution; emphasis added.)

From such a formulation, a principle of custom only becomes *law* if the Superior Courts pursuant to the Courts Act so pronounce it. Given the heterogeneous nature of the Ghanaian society the issue of a general standard for ascertaining applicable customary law is problematic. In *Golightly and Tettey Gbeke II v. Ashrifi* (14 WACA 676, Gold Coast 1955) for example, there was at issue the right of an individual to sell land in an area in Accra that was rapidly developing into housing estates. The trial court found as a matter of fact, based upon evidence of chiefs and linguists, that the customary law of the family owning the land forbade any effective alienation of stool land except a stool debt was in existence. The appellate court reversed on this point. As observed by Seidman the appellate court relied on:

> Very old works of Redwar and Casely Hayford that had no specific reference to the stool in question; a 1909 Lagos case that concerned land in Lagos; and another Nigerian case of 1930, ... the court's inquiry, presumably a factual one concerning the existence of a custom among the people involved was really normative in character (1968: 29).

Nonetheless legal discourse in Ghana strives to find objective criteria as a basis for a uniform customary law applicable to all communities.

As argued by Clammer (1973), the insertion of clearly demarcated spatial boundaries into traditional and customary notions of space was an important, though often overlooked, aspect

in what has been called the "creation" of customary law. As Mertz (1994) sees it, this is not simply an unconscious misinterpretation of local legal concepts through translating them in ethnocentric European legal discourse, but was also a conscious reinterpretation with specific political and economic objectives.

The spatial dimension of laws and rights is a neglected area of legal anthropological and sociological studies. At the present one can only discern the use of spatial metaphors as analytical or methodological frameworks such as *semi-autonomous social fields* (Moore, 1973), *rooms and landscapes* (Galanter, 1983), and *structural places* (De Sousa Santos, 1995).

Given the plurality of legal rules in Ghana, the diverging notions of space and their constraints or potentials for resource access are particularly large and require attention. Colonisation and the introduction of European notions of bounded space created a situation of legal pluralism, where the legal status of spaces and boundaries could be defined differently and in contradictory ways, in local traditional laws. This has led to social conflict engendered by not only diverging notions of political and legal space, but also the restatement of local rights and obligations (based on local ideas of space) in terms of European constructions (see Orlove, 1991). It is in this regard that we seek to read the law/society discourse in its spatiality as well. Before revisiting the law/space nexus, we consider some narratives that seek to explain the law/society or development relationship on Ghana.

2.2 The Genres of Law and Development Discourse on Ghana

2.2.1 *The National context*

The works of Sarbah (1897; 1968), Danquah (1928), Bensti-Enchill (1964) and Ollennu (1966; 1985) can be said to have laid the foundation for later discourse on law and development in Ghana. Their contributions however, are restatements of customary law as they understood it or as it was developed in the courts of law. The works of Sarbah and Danquah focus on the customary law of particular ethnic communities in Ghana (Fante and Akan respectively) while Bentsi-Enchill and Ollennu generalise customary law principles as stated by the courts across the different ethnic groups of Ghana. There was however no attempt in their narratives to systematically develop these rules within a framework of development discourse. Where such an attempt was made as in Bentsi-Enchill's study it was not explicit.

Harvey's study, *Law and Social Change in Ghana* (1966) marks the beginning of a systematic approach to law and society or development discourse on Ghana. The study seeks to address the wider theoretical question: what is law and does it imply a necessary value content? Using the Ghanaian legal order as subject of study, Harvey addresses the related questions: what are the sources of value acceptances in various legal orders in Ghana? What is the role that law has to play in altering critical value perceptions to be an instrument of planned social change?

He accepts unproblematically a *positivist* position on the nature of law[27]. His study looks at the evolution of the Ghana legal order in a linear way. Harvey's study assumes values of a certain kind that are expected in a legal order and which can be uncovered only in legal institutions, legislations and Constitutions. But as Asante (1966) observes, a study in law and social change should range over decision-making at all levels- national, regional and local. In other words, the discourse on law and social change should encompass the spatiality of the entire Ghana polity.

Harvey's study maintains that a number of *antinomies* underlie the multitude of enactments that are ordered as social values. The viability of the Ghana legal system is said to be dependent on the extent to which antinomic tension is controlled by a process of compromise and adjustments between social groups and the elite who exercise power in shaping the laws. Harvey identifies four antinomies as significant: the small law-government units of *traditional localism* and that of *nationhood*; *African Unity* and *nationhood*; opposition between *individualist* and *collectivist* values; and the opposition between *democracy* and *autocracy*. He observes that the latter antinomy (chieftancy) is more strongly autocratic in the Northern Territories than in Ashanti and the colony.

While Harvey's study is a useful pioneering effort on law and society in Ghana, he had preconceived notions of what counted as social values. He tried to find these in the rather limited social setting he delineated in Ghana. The polity he descended upon as modern Ghana has not always been a unitary one but a collection of independent polities brought together under colonial rule (Bening, 1999).

[27] He defines to mean "a technique of social ordering deriving its essential characteristics from the ultimate

The value opposition Harvey seems to see between traditional political structures and the nation state is an antithesis. It is not a tension arising from unfamiliarity with a nation concept as understood by the communities but one of the inability of the modern Ghanaian state to occupy and monopolise the whole political turf in all *places* and *spaces*. The antinomic tension between traditional political structures and the modern state of Ghana arises from the over-ambitious nature of the ahistorical national project of the Ghanaian State; a project of national integration that remains uninformed by the spatial diversity of its constituent parts. We will revisit this issue shortly. The current struggles of communities in Ghana to have regional boundaries coincide with traditional pre-colonial polities or ethnic grouping is testimony to how Ghanaian communities view the artificial character of the modern Ghanaian state (Bening, 1999).

As the study of Lentz (1997) on the Dagara communities of the Upper West Region shows, her interview partners (educated elite, labour migrants and farmers alike) usually arranged their identities in layers of increasingly inclusive group membership of: patriclan, village, chiefdom, dialect area, tribe, Northerners and Ghanaians. This suggests that the modern Ghanaian State is ranked lowest in the hierarchy of socio-political values as a basis of state legitimacy for the community in question.

Harvey's assertion that chieftancy is more strongly autocratic in the Northern Territories is contestable; as the assertion fails to tell us what he considers to be the *Northern Territories*. Beyond the historical mass formations of Mamprugu, Dagbon, Gonja and later Nanum as pre-colonial kingdoms, most parts of the North of Ghana did not practise chieftancy in the form Harvey met it in the 1960s. In most cases chiefs were created by the colonial

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reliance on the observed monopoly of systematically threatened or applied force in politically organised society"

administration. That the institution of chieftancy is viewed today as autocratic, has more to do with the basis of its legitimacy than the fact that it is indigenous to Northern Ghana communities (see Rattray, 1932).

Harvey's study concludes that legal developments in Ghana tend to show an increasing aggrandisement of the values of *nationhood*, *collectivism*, *autocracy* and *change* over their antinomic competitors; a victory he sees not to be total. The indigenous legal order as well as British legacy, he observes, tends to instil an appreciation of democratic values that reflect the structuring of law-government powers. Social change according to Harvey has been effected by the legal order as it demonstrates its capacity to respond to the development needs of the people.

Harvey's study however, did open up issues for further consideration by subsequent scholars. Its central weakness is the predetermined criteria he sought to verify through local experience in Ghana. As rightly noted by Asante (1966) this led to high levels of "abstractions" that were inadequate to unravel the depth of Ghanaian value acceptances.

Critical of Harvey's study, Asante (1966; 1968) subsequently revisited the issue of law and social change in Ghana in his major study: *Property Law and Social Goals in Ghana: 1844-1966* (1975). Property law, in Asante's study, relates to landed property. After a general theoretical discussion on competing ideas on property he poses the central question of his study: what then should be the role of ownership of property in a developing Ghana? (Asante, 1975: xiv.) In answer to this central question the notion of basic property as *ancestral trust* is a central theme. The idea of *trusteeship*, he suggests, "suitably trimmed to suit modern

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(Harvey, 1966: 343).

conditions and duly purged of its esoteric associations may well furnish an adequate system of *values* which Ghanaian customary law of property could promote with profit" (1975: xiv). Asante employs the terms *trusteeship* and *fiduciary* interchangeably while noting that they are not to be understood in the sense of the principles of equity in Anglo-Saxon jurisprudence.

He is of the view that the *trusteeship* idea traditionally is characterised by a prohibition of an absolutist conception of property. Private property cannot be used exclusively in the interest of the individual as it is impressed with a distinct social obligation to a group. The group may be an entire traditional state, the family or an ancestral patrimony. Therefore the head of the group, be he a chief, a head of family or a customary successor stands in a fiduciary position to the appropriate group in land relations. This fiduciary relationship creates an obligation on its head to administer landed property in the primary interest of the entire group (Asante, 1975: 24-25).

Asante recommends a scheme of land ownership that will hopefully translate into Ghanaian juristic thinking, a body of selected goal values revolving around the *trusteeship* idea. An essential prerequisite to his formulation of policy objectives for a regime of land ownership is the articulation of preferred goal values for all Ghanaian communities. His value preferences include: wealth, co-operation, stability of family, development of the individual personality, and the guarantee of personal liberty. Obstacles he sees to the implementation of his scheme of preferred social values are the beclouding of African social values with views he considers as *Marxism* and the difficulty in constructing a uniform customary law applicable to all ethnic groups in Ghana.

Asante expresses his anti-Marxist sentiments to the extent of speaking for others. This is illustrated by what he considers a misinterpretation of a Ghanaian lawyer and statesman's (Sarbah) views by others on the "communistic" African social system. He asserts that:

> To invoke Sarbah's conception of African communistic social system as a herald of Marxism does injustice to a man who profoundly proclaimed the particular genius of African culture. Sarbah will most certainly have emphatically rejected the *Marxist pretension* to *universal validity*; he would have dismissed the *Marxist gospel* as irrelevant to African society (Ibid: 19; emphasis added).

The unlived experience often produces its images of nostalgia. We are not certain what Sarbah's position on his anti-Marxist accolades as suggested by Asante would have been. We can infer from Sarbah's writings however, that if it were the case as Asante sees it, Sarbah could have equally *certainly and emphatically* rejected the use of the term *communistic*, being aware of the possible interpretations it could arouse. One is thereby not saying Sarbah was in any way *Marxist* (whatever the term means to Asante). It is however a far cry to represent Sarbah as proclaiming a *particular genius of African culture* that is by necessary implication anti-Marxist. Later developments in Ghana show that what was passed off in the writings of nationalist scholars such as Sarbah (as customary law) was sufficiently influenced by the political contingencies of the time and the social and economic interests they represented (see Chanock, 1991). As Amanor points out, many of these nationalist scholars (members of the Aborigines Rights Protection Society) had interests in concessions, either as "contractors" and "brokers" of concessions or as "concession lawyers", who were concerned with protecting both their rights of unimpeded access to land and to engage in the commercial transactions of land (199: 49-50)[28].

[28] Is it anybody's story (including both Young and Old Marx) that Marxism seeks to proclaim a *gospel* that is of *universal validity*? The *internationalism* of informed Marxist thought is a political manifesto that seeks to develop solidarity among all exploited working peoples the world over. It has as its object the revolutionary overthrow of oppressive structures in society as a basis for the reconstruction of a new social order dominated

Having conceptualised an African culture that is considered patently non-Marxist, Asante turns to the construction of a uniform Ghanaian customary law of landed property. While he acknowledges the heterogeneity of Ghanaian communities, he nonetheless sees broad themes in the range of customary jurisprudence as the basis for constructing a uniform body of Ghanaian customary land law. In the non-centralised communities of the North of Ghana, he sees the institution of the *tendaana* and a corporate factor of group interests in land ownership as basis of homogeneity with customary rules of other communities in Ghana.

Alluding to Hoebel's views on the Ashanti traditional political formation, he sees political systems (particularly those in the North) as not characterised by a degree of *centralization* and *sophistication* (Asante, 1975: xvii). By implication, the *degree of centralization* and *sophistication* of the traditional Ashanti political system should form the basis for the search for common solutions to problems posed by customary jurisprudence. Thus, the Ashanti traditional political formation for Asante, is an ideal model for other communities in Ghana.

Asante concludes his study with a detailed illustration of traditional values that are needed for the realisation of development potentials of Ghana. These values include the family (which he gives a position of privilege and prominence), cult of ancestors, deference to age, and the value of the human being (1975: 190). However, one can observe possible conflicts arising from these values. For instance, it is problematic to translate the notion of "modern co-operatives" as meaning "traditional spirit of co-operation"? as Asante suggests. How does the commercial notion of co-operatives fit into the concept of "extended family" solidarity?

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by the producers of social wealth. It does however, acknowledge that working people in different parts of the

Apart from an initial reference to the *tendana* institution, we do not see any further accounts on it as a traditional land administration institution in Asante's study. In most communities of Northern Ghana, chieftancy is neither a landholding entity nor has it any traditional role in land administration. Thus the focus of Asante's study on the Akan concept of stool (chief) remains unintelligible in the context of the communities of Northern Ghana. This issue will be revisited in detail in subsequent chapters.

Though Asante acknowledges social differentiation in land relations in Ghana, this is limited to the binary of *young members* as against *old members* of the society. The farm labourer exploited on the cocoa farms through the *abusa and abunu*[29] farming practices is not considered vulnerable. Social differentiation, as Asante notes, do not give rise to a "Marxist fetish of class warfare; where economic inequality exists, traditional norms emphasize a levelling up and not a liquidation of the haves" (1975: 20). The question Asante's assertion fails to raise is why the Ghanaian society continues to be characterised by inequalities despite his benign schema of levelling up? Our argument is that traditional society in Ghana is differentiated and therefore its discourse on social change must acknowledge this fact (Amanor, 1999: 19-21). It is our view that traditional property relations must be sufficiently problematized in development discourse instead of rationalisations through notions such as *levelling-up*. We will revisit this issue in detail in chapter 6.

Asante's contribution to legal scholarship in Ghana by his study remains invaluable, as it is often a starting point of scholarly work on law and society or for students of customary land law jurisprudence. He has developed some of the arguments that Harvey failed to engage as

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world would follow different paths to achieving the new social order (see Marx, 1983; Lenin, 1965)

[29] These are sharecropping arrangements in which landless peasants agree to till the land of their landlords in return for a share of the produce.

well as attempting to locate the discourse within the Ghanaian social matrix in detail. The study however remains focused on the customary law of Akan communities and cannot be generalised to all communities in Ghana.

A more sophisticated attempt and a different *genre* of law and development discourse on Ghana is the study by Modibo Ocran (1978) in his work: *Law in Aid of Development: Issues in Legal Theory, Institution Building and Economic Development in Africa.* We see Ocran's study as a different *genre* because of the special attention devoted to clarifying some conceptual issues such as the concepts of law and economic development as well as the methodological approaches to law and development absent in Harvey and Asante's studies. A main point of departure in Ocran's study is the rejection of what he sees as the exaggerated role customary values are held to play in societal development. He observes that:

> Customary principles and ideas must be seen as a superstructure of traditional African social and economic organizations and not as norms so immanently African that one ceases to be a true African the moment one abandons them. It is no lack of patriotism for an African to assert that all these principles and ideas should find their validity not in their status as custom but in terms of their relevance to development and modernity (1978: 37).

Modernity, however, is not necessarily the panacea to the social problems of Africa or Ghana for that matter. Like customary law of African societies modern law has its mythological sources as well[30].

Having established a conceptual linkage between law and development, Ocran poses the central question of his study: what do we know about the relationship between law and development? In other words, what does it mean to talk of the function of law as social

[30] As Fitzpatrick (1992) notes, modern ideology is reflected in the mythology of modern law that is presented as progress in contradistinction to simple *savagery of native law.* Also see Adelman and Paliwala (1993: 16).

engineering? In addressing these related questions he grounds them in two methodological approaches- the *idiographic* and *nomothetic.* According to Ocran, the *idiographic* approach seeks to examine a small number of laws governing various economic institutions established for development purposes. These institutions are investigated intensively with a view to evaluating their efficacy and implications for economic development. The object of their investigation is to ascertain the possibility of replicating such experiences in the design and structure of similar institutions. The *nomothetic* approach on the other hand seeks *generalisations, laws, hypotheses* and *correlations* between variables that enter the study of law and society. Ocran adopts the *nomothetic* approach in his main study while illustrating the *idiographic* approach in a case study as an appendix to the main study (1978: 189-234). Case studies on several legal topics are used by Ocran to connect law, society and development. The topics range from the Ombudsman institution, Commissions of Inquiry, extra-judicial institutions to *coup d,etats* (he considers a legal pathology).

A major limitation of Ocran's otherwise valuable study, is the failure to problematize concepts such as law, society, and development. Law is explicitly stated by Ocran to be the only normative order the contemporary state is likely to resort to for the creation of new institutions needed for development. He limits law to legislation, as he discounts the potential of customary law to address development issues of the contemporary state. The state is also viewed as the only institution that should direct and define development. This position fails to anticipate non-state actors who seek to define development outside state perceptions.

His notion of the society into which law deploys its development paraphernalia is not typical of the modern African state. It is one without fission as it remains undifferentiated. There is no gender and generational differences as well as urban/rural differentials. The problematic

of the history and materiality of development efforts by African states remains inarticulate. In other words, why most African states remain underdeveloped notwithstanding the years of attempts to use law as an instrument for achieving development?

2.2.2 *The context of Northern Ghana*

A study by Agbosu (1980) on Northern Ghana, addresses the issue of law and development from the perspective of land administration. The study has generated much controversy from both students of Northern land law as well as a number of activists of the *Northern Cause.* The reactions to Agbosu's study, however, seem more of sentiment than an engagement with the issues that the study raises. He seeks to show how the vesting of lands in the northern part of Ghana in the state was an efficient or had the potential for an efficient land administration for Ghana. He traces the legal genealogy of the vesting processes from the abortive Lands Bills of 1894 and 1897 up to the Constitutional Proposals of 1978 that proposed that lands in the three regions of the North be divested from state control.

A central theme in Agosu's study is that some uniformity in land administration was achieved in the north of Ghana by the vesting of the lands in the state. He is of the view that the Lands Commission that administered vested Northern lands on behalf of the President of Ghana, followed very much the traditional forms of land administration known in the area. He asserts that land in Northern Ghana is not saleable at custom and a person requiring land consults either the chief or the *tendana* as the case may be; presents him with kola nuts and obtains the land. The land so obtained is subject only to the observation of certain customary injunctions and the acquirer also gives a small portion of the harvests to the landowner. Agbosu sees the Lands Commission as assuming this role in the performance of its land administration functions in respect of northern lands. The only difference he notes is that the

Lands Commission requires the payment of monetary consideration for land grants, a requirement he does not consider as a feature of land relations in Northern Ghana. He contends that this should not lead to complaints from the communities, as it is through such rents that the state confers benefits on the community (1980: 125).

The above assertions by Agbosu are a gross understatement of traditional forms of land administration and the practices of the Lands Commission in land matters in Northern Ghana. The assumption is that *tendanas* and chiefs are the only players in land matters in the North of Ghana. Though the allodial title to land may be vested in them in appropriate cases, the traditional family has beneficial interest in the land and are those immediately expropriated by land grants of the Lands Commission. In a predominantly subsistence economy (as in the case of the Upper West Region) the implications of vesting northern lands in the state are wider than Agbosu's account suggests (see Kasanga, 1988; 1992).

The benefits listed by Agbosu as arising from the vesting of lands in the North of Ghana also includes inter alia: a non-recognition of inter-tribal boundaries between the various ethnic groups which harmonises the system of land administration; certainty of land title as the state is the only title holder; and the enjoyment of rights in land based on Ghanaian citizenship and not by membership of a particular community or family (1980: 129).

He concludes his study by suggesting that the struggle by Northern Ghana communities over the years to divest lands from state control and its subsequent divestiture under the 1979 Constitution are ill-informed. To him, the divestiture has the effect of plunging land administration in the North into the chaos associated with land tenure systems in the south of Ghana. His proposed way out for a uniform land policy for Ghana is not to divest Northern

lands from state control but rather vests all lands in the country in the state in the same way as the North of Ghana (1980: 133). A view that falls short of the "nationalisation of land" argument that was topical in the 1960s in Ghana.

Agbosu's understanding of "benefits" to Northern communities by the vesting of their lands in the state suggests a level of unfamiliarity with the history of the politics of vesting such lands in both the colonial and post-colonial sate. His narrative assumes that the dual land administration regimes thereby created in the country between the North and South of Ghana did not adversely affect the development of the former. The control of land by southern communities to a large measure accounts for the rapid development of the cocoa industry with its attendant capital accumulation. This was particularly the case in the Ashanti, Krobo, and Akim-Abuakwa communities (see Hill, 1963). While it is not our argument that cocoa cultivation could have occurred in the North, other cash crops associated with its description as the *grain basket* of Ghana could have been developed on a commercial scale or at the very least provided food security.

The historical landscape sketched by Agbosu to assign reasons for the vesting of Northern lands in the state is a rather limited one; as it is focused on only legislative interventions from 1894. Central to the legislative activity are issues of the wider Ghanaian political economy. The reason for vesting Northern lands in the colonial state was to free labour that was desparately needed for the capitalist economy of the South of Ghana in cocoa farms, mines and the construction of the railway system (Songsore, 1989).

The postcolonial state did not repeal the legislation that vested northern lands in the colonial state. To the contrary it assumed further control over Northern Ghana lands by enacting legal

instruments to that effect (Executive Instrument No. 87; 1963). Therefore, large-scale cultivation of land by peasant communities needed approval from the state land administration agencies. The experience of some communities in Northern Ghana shows that the allocation of land for large scale farming ventures by the state is characterised by nepotism and favouritism. Konings's (1984) study of the Builsa community in Northern Ghana attests to this fact. According to the study, government allocation of land in the *Fumbisi valley* for commercial rice cultivation favoured absentee farmers, the urban elites, and persons connected to the holders of high political office. Peasants who could not compete with these powerful social forces for land allocation, migrated to the south of Ghana to earn a living as labourers in the mines or the industrial sector. In effect, the vesting of northern lands in the state was a means through which a proletariat was created out of the peasant communities of Northern Ghana.

The study by England (1995) on the Bongo community of north-east Ghana is most relevant to the issue of decentralisation and land administration in Northern Ghana; as well as the role of law in development. It is focused on "Tree Planting" as a form of sustainable development in the Bongo community. England sees three "paradigms" of law as having special relevance to debates on African development. These are the *instrumental, pluralist and customary law* models. In her view, the instrumental analysis of law in Africa argues that appropriate laws can help make development occur. In particular, law can induce changes in behaviour that will facilitate social and economic development (1995: 139).

The pluralist model is seen as embracing a number of critical perspectives on law and development discourse. These perspectives shelter under a diverse umbrella of legal analyses such as *elite theory*, *conflict pluralism* and *instrumental Marxism*. The pluralist model is also

said to be in line with the thinking of social scientists that have exposed relations of dependency and underdevelopment as critical to any and all development studies (1995: 140).

The customary law model, she indicates, is less a model than an emphasis on the study of diversity, fluidity and the continuing significance of customary law in modern African societies. She contests the notion of a "primordial and unchanging" customary law. To the contrary, she sees customary law as adaptive to changing conditions of modernising societies and it is "surprisingly resilient" as it continues to regulate the day-to-day disputes of many Africans. The attempts therefore to describe and codify customary law is seen as a "cultural/ideological agenda to preserve, invigorate and celebrate the richness of African culture" (1995: 141). This cultural ideology, to her, is a means of fighting off the penetration of Western cultures and values. She contends that if this agenda is a battle against Western hegemony and a protector of the customary smallholder of land, it is complementary to the call for *Another Development* based on grassroots participatory processes and basic needs development priorities. However, if it is a call to use law to promote *Another Development* the agenda becomes an instrumental one (1995: 141). England observes that in focusing on one paradigm of law and development, the complex interplay of different theoretical models is neglected. This fails to do justice to the complex nature of law in African societies, which in the case of the Bongo community is seen as uncertain and fluid.

It is doubtful whether attempts at describing and codifying customary law in Africa are about preserving or celebrating the richness of African culture as England suggests. In many cases, it is more about reconstructing what is considered as customary law to meet the immediate interest of the modern African State (see Mamdani, 1996). Also, as most modern African states began romancing with Western jurisprudential concepts such as the *rule of law*, the

codification of customary law was a mechanism for achieving the ostensible *certainty* of the law as an essence of the concept (see Martin, 1985). For instance, in the codification of customary law rules in Ethiopia, David (1963) was of the view that in the interests of certainty, the diversity of the customary law rules rendered them inadequate as true principles of law.

In the case of the first attempts at codifying customary law of the communities of the Upper West area by the colonial state, the main object was to institute forms of local administration around colonial chiefs in the Native Administration system of indirect rule (see Eyre-Smith, 1933a). Lentz (1997) observes that the colonial administration in Northern Ghana had preconceived ideas of seeing African communities in terms of traditional kingdoms of tribes. Not finding such political formations among the acephalous communities of north-western Ghana, they set about constructing them by introducing the institution of chieftancy. Due to the resistance to such unfamiliar and autocratic political structures, the colonial administration sought to legitimise them as institutions traditional to the communities. This led to the construction of rules as codified versions of the customary laws of the communities.

We have in an earlier part of this chapter, indicated the problematic nature of conceptualising discourse on law and development as schools of thought or paradigms. We have equally indicated the dearth of exemplars and a body of successful practice that render such a construct doubtful. In addition, it is not certain how these conflicting law models can be "synthesized" in terms of their "most valuable elements" as England suggests. For instance, the most valuable elements of the pluralist model (conflict pluralism and instrumental Marxism) as articulated (Collins, 1982; Ghai and others 1987; Howard, 1978) attacks the

very foundation of the instrumental model (Galanter, 1977; Seidman, 1968). The pluralist model (despite its diversity) has as a common theme to elevate the central importance of the role of competing interests groups in determining the character and content of the legal order. This is an issue the instrumental model assumes as unproblematic. As Ghai (1991) elsewhere suggests the law itself could be a resource that the African state could monopolise and manipulate to its advantage.

In our view therefore, approaches to law and development are better considered as discourse. Such an approach captures the stories that are or can be told in terms of the role law plays in development. As a methodological approach, the *dung beetle method* advocated by the gender movement in pursuing grounded theory on Africa serves the purpose (see Hellum and Stewart, 1998). It is a research process similar to the *snow ball* method used in Western countries, in which the researcher collects data, sifts and analyses it; considers the implications of the findings; determines what next to collect to meet her needs; and continues the collection and analyses cycle. Having little or no snow in Africa, the metaphor of the *dung beetle* in the African bush is considered apposite metaphor; as the beetles constantly pile balls of animal dung in which they lay their eggs (1998: 17-20). Given the fluidity of the African experience (England acknowledges) research studies on Africa should be a process of *piling up* the multiplicity of stories; as the findings would remain contestable.

On decentralisation and land administration, England's sees the enactment of bye-laws by the Bongo district assembly to prohibit farming rights of the community around the Vea Irrigation Dam, as an example of the instrumental use of law. The conflict model is also seen as applicable to the Bongo land drama in as much as the ruling class and powerful interests support the use of law to impose their will on peasant farmers. As she observes:

> The fact that the local government law requires district assemblies to comply with the policy of government, is evidence of the systematic use of law to support these powerful interests (1995: 149).

However, this provision in the previous local government legislation (PNDCL 207) has been repealed in the new local government Act (Act 462).

A pertinent issue her study raises is that of land and farming rights of the peasant community in question; and how this conflicts with the Ghanaian state and the international capitalist order (within which the UNDP operates) notions of development. She notes that:

> The fundamental problem is that, whatever benefits the dam has brought to the rest of society, these farmers have lost more than they have gained from the construction of the dam. In the final analysis, should the dam silt up and the whole project fail, the affected farmers no doubt believe that personally they would be no worse off than the present time (1995: 148).

Related to the above issue are the economic and social effects of vesting Northern lands in the state on farming rights of the local communities. An issue the study touched on tangentially. At the time of constructing the dam, lands in the Bongo area (like all Northern lands) were vested in the state. In the process of acquiring the land for the project in question, compensation was paid for only houses and crops affected and not the land. The project did not also consider the inter-generational rights in land as an important aspect of land relations of the community (Konings, 1985). About thirty years after the project the younger generation of the Bongo community rightly see this as unfair; as their only security in life is the right to farm their family lands whenever they wish to do so without the payment of rent (England, 1995: 147).

The use of the bye-laws by the district assembly to legitimise the previous acquisition of the land by the state, shows how decentralised power of land administration is exercised. It is therefore an issue of contemporary relevance and the context in which our study seeks to explore in some detail the implications of Ghana's decentralisation programme for land administration. England's study is particularly relevant to our study in as much as it raises the issue of land administration in a community of Northern Ghana that has significant similarities in land relations to those of the Upper West Region.

2.3 A Thematic Critique of the Discourse on Law and Development

A number of assumptions underlie the law and development discourse on Ghana. These assumptions arise from theoretical suppositions of mainstream legal thinking from which the discourse issues. While there are significant differences in the discourse that render their categorisation as *mainstream* problematic, it is possible to discern some common features. Three of such features we discern are: the notion of legal rationality, the justification of the rightness and inevitability of law, and a legal boundary and its closure.

Law and legal activities are considered as a coherent system of social ordering that *makes sense*. Thus, legal exercises such as lawmaking and legal interpretation are seen as not irrational and random acts but structured by a logic of regularity and predictable outcomes. Unger characterises this feature of law as *formalism*:

> A commitment to and therefore also a belief in the possibility of a method of legal justification that can be clearly contrasted with open-ended disputes about the basic terms of social life, disputes that people call ideological, philosophical or visionary ... [T]he formalism I have in mind characteristically invokes impersonal purposes, policies and principles as an indispensable component of legal reasoning (1983: 321).

It is in the context of legal formalism that Harvey sees law from a positivist perspective and as an instrument of social change in Ghana, a view of law that suggests the reliance on or monopoly of force as the ultimate basis of its validity. Both Harvey and Asante's narratives are premised on the supposition that law is a coherent system of social ordering as well. In that regard, they see law as capable of articulating certain social values that can effect social change. These values for Harvey are a number of *antinomic tensions* in the Ghanaian society and for Asante, the fiduciary obligations arising from a traditional conception of *trusteeship* of landholding group heads to their members.

Law is also presented in the development discourse not only as rational and reasonable but also as consistent with some conception of *rightness*. Thus, normative alternatives to law are presented as either pre-legal or the brutish Hobbesian normative regime. Wider issues of the social environment are considered so unpredictable that only the certainties of law can provide the requisite orientation for ordering social life. This legal supposition is echoed by Ocran, in the context that customary law belongs to a tribal-communal socio-economic formation of primordial social groups. Customary law is therefore held to be incapable of addressing exotic areas of economic life in contract law of the modern state (1978: 37-41).

The third and most significant legal supposition in the law and development discourse is that of *legal closure*. A legal precept that sees law to be divorced from the value-laden, politicized and mercurial conditions of social life (Blomley, 1994). Legal closure seeks to delineate a boundary of social life as a domain of legal discourse removed from political, economic and wider social issues. Within the legal boundary are border sign-posts that indicate what aspects of discourse are considered legal and therefore persuasive. Thus, social relations can only be

considered legal on only law's terms. As Cotterell puts it, "birth, death, human actions ... enter legal discourse only insofar as the normative qualities of these occurrences are given to them by this discourse" (1986: 16).

Legal closure is a supposition shared by all the narratives on law and development on Ghana. They seek to bring within the purview of law, social and traditional values or structures. They see such values or structures as effecting social change or development as legal categories; be they traditional institutions, values or structures, or of modern state violence. The implication is that these structures and values are incapable of effecting change outside the realm of law.

Such mainstream legal thinking has been challenged and contested from two fronts; one *internal* to law and the other *external* to it. Internal critiques seek to unravel and contest legal discourse on its terms (see Peller, 1985; Unger, 1975). The external approach on the other hand, challenges legal closure by situating law's claims in society as having separate boundaries from society as a myth. A useful feature of the external approaches to critiquing mainstream legal discourse is the fact that they stay outside the hermeneutics of law. That is to say, they do not resort to only legal rules as basis of their critiques, but also employ wider issues of the social environment that inform the legal rules. While external critiques of mainstream legal thinking vary, the most influential have come from historical legal sources. Blomley (1994) subsumes such critiques under two categories of *diachronic* or developmental histories of law and a *synchronic* form of historicity of legal knowledge and practice.

The diachronic approach questions the historical vision of legal scholarship that casts the past as a privileged source of normative values. Kelman (1987) sees such a historical vision as a

nostalgic glorification of historical constitutional texts or values of its drafters. As he observes, contemporary law is said to be rooted in the determinate values of the *forefathers*, whether in the *magna carta* or the Constitution and is thus held to have a profound stability. Narratives of the diachronic approach pose a number of fundamental questions: what if the legal history does not reveal a benign narrative? If the legal principles of the past are now seen as indefensible with valued principles of today (e.g. slavery)? or if the legal history reveals that the law of the past was underlain not by an impartial rule of law but by social and political forces such as class rule, selective enforcement and corruption that intersects with the present? (Blomley, 1994).

The synchronic historical critiques on the other hand, dispute the notion that the legal system is able to resolve, arbitrate or otherwise make sense of social life. Beyond the legal texts, they see society as supplying various inputs to legal processes. As Gordon (1981: 1056) indicates, these in the judicial process include "the social context through the facts of the case, though narrowly defined but never less present". To Gordon, legal texts are longitudinal, as for instance constitutional documents are specific to the conceptual universe of its drafters that could be several years distant from the present.

The usefulness of historical critiques to legal projects of development or social change is that they assists conceptualisation of other possible systems of social ordering and legality over time. Legal histories as seen by these critiques are histories of *difference*. These critical histories of law tell us of the contingent nature of legal culture. As noted by Gordon (1984: 100) elsewhere "legal histories tell us that the difficulties we have imagining social life different from and better than those we are accustomed to may be due to limits in our conceptions of reality than the limits inherent in reality itself".

While such critical histories of law prove insightful to our understanding of the contingent nature of law in society, it is our view that beyond such temporal contingency are spatial attributes of law as well. As social and political life occur in *time* and *space*, might the politics of *space* not prove useful in appreciating contemporary social processes as in the politics of *time*? In other words, if we assume that law is both temporal and spatial (the spatiality of law) then might not *legal geographies* (to borrow Blomley's phrase), *representation of spaces* of social and political life be as vital to a legal critique as the construction of contingent histories? Blomley (1994) argues that as with the *vertical* differences revealed by legal history, the multiple and heterogeneous ways in which law is understood *horizontally* in diverse spatial settings of social life could also prove critically potent in critiquing mainstream legal discourse.

Part II

2.4 The Spatiality of Law in Social Processes

Our conception of the spatiality of law relates to the legal regimes associated with spatial practices in terms of the processes of social production and the transformation of social relations. Our conception is informed by a number of considerations. Firstly, that there is a relationship between *law*, *space* and *society*. This relationship is not only of cause and effect but of reciprocity as well. Secondly, space like law, is socially produced and therefore implicated in social relations and its reproduction. And thirdly, we understand spatiality in terms of the *spaces of representation* (physical and material flows, transfers and interactions that occur in social production and reproduction) and *representation of spaces* (mental inventions of codes, signs, imaginary, new meanings or possibilities for social practices;

Lefebvre, 1991). In other words, by *spaces of representation* we designate physical spaces and material practices while *representation of spaces* refers to cognitive maps or mental inventions of physical spaces.

As we will indicate further in chapters 3 and 8, Soja (1996) adds to the above, *lived spaces* as a third category in which spatiality is viewed in terms of three inter-related categories. These are physical or conceived spaces he designates as *Firstspace*, imagined or perceived spaces as *Secondspace*, and lived or social spaces as the *Thirdspace*. The first and second spatial categories of Soja correspond to Lefebvre's *spaces of representation* and *representation of spaces* respectively. An important point to note of these spatial categories (as Soja indicates) is that they are not exclusive categories as they recombine in complex and multiple ways in social life.

An issue that would be elaborated in chapters 3 and 8 but worth raising at this point is that, our notion of the spatiality of law is not ahistorical. With the regeneration of scholarly interests in a spatial reading of social phenomena, scholars are divided as to whether *history* (time) or *geography* (space) should be its privileged theoretical premise. In a critical reading of social processes, however, both *time* and *space* are implicated. Soja (1989; 1996) has gone at length to demonstrate that social being is a *trialectic* of "histocality-spatiality-sociality" (1996: 71). A critical reading of social processes, therefore, is not any more aided by privileging space over time or vice versa. Indeed, not much theoretical insights can be gained by pitting as it were space against time.

2.4.1 *The Precursors to the spatiality of law*

Earlier attempts at theorizing the law/space nexus in society were at the level of *regional* and *impact* studies. The regional approach saw law as a discontinuous and a regionally geographical social phenomenon. The spatial diversity of law and legal systems are *mapped* out and analysed in terms of the human and physical environment. Jean Bodin and Montesquieu are said to have foreshadowed this approach in reading social processes. Bodin as early as the 16th century attempted a systematic study of law and legislation by arranging laws that govern the states of all the most famous commonwealths. As observed by Franklin:

> Bodin's program is a classification of those essential peculiarities of character or polity to which a nation's laws must be accommodated. The types of character, or *naturels*, of people are systematically derived from the influence of climate or geography ... And since the effects of the natural environment are moral as well as physiological, they shape every area of human culture, including legal institutions (1977: 77).

The impact approach is the inverse of the regional approach, in which law is seen as modifying space and not a situation in which law is the structuring effect of space. Whittlersey's (1935) study is often considered precursor to this approach. He notes that:

> Examples of cultural impress of effective central authority upon landscape can be multiplied indefinitely ... phenomenon engendered by political forces should have a recognized place as elements in the geographic structure of every region (Whittlersey, 1935: 97).

The difference between the two approaches as in other narratives on law and society is one of causality. Both however share a common view that law and space interacts in one of two ways. As Blomley (1994: 33) observes:

> Causality in the impact literature runs from *law* to space. The action of law is assumed to engender certain spatial out comes such as changes in urban land use. Conversely, the regional literature reads from *space* to law. At an extreme, variable environmental factors

such as climate or migratory propensities are assumed to call up certain legal forms (emphasis added).

A common limitation of both approaches to the law/space nexus in society is that the two spheres (law and space) are seen as removed from social life. Law is seen as detached from society and hence not implicated in the social dynamics, just as space is presented as removed from social life. Such disembbededness (of law and space) from society, fails to uncover the extent to which law and space are implicated in social relations. As Soja observes, space (very much like law) is socially produced (1989; 1996).

Blomley (1994) suggests that embedded within law are rich and complex sets of *maps* of social life. As legal categories, these maps are used to construct and differentiate material spaces, which in turn acquire legal potency that have direct bearing on those using and traversing them. It is our view that, as critical historicity provides a useful analytical critique to liberal notions of law, a critical legal geography can equally provide a critical reading of law in its spatial context.

The space/law nexus on African communities remains an area that has not received much attention from legal scholars. The ways in which physical spaces, boundaries, borderlands are conceived and made legally relevant varies considerably within and across cultures and states of Africa. However, anthropologists have engaged the relation between space and political and economic organisation in terms of territoriality and land tenure. Bohannan (1967) can be considered to be the first to explore the relevance of such a relationship for an understanding of material relations in African communities. He pointed to the need for understanding the different *folk geographies*, of people's representations of the country in which they live and

their ways of correlating man and society with the physical environment (1967: 54-55; also see Schott, 1987; 1981b).

The studies by the two Tengans (Edward and Alexis) in 1991 and 2000 respectively, mark a systematic attempt to theorise the space society relations among the Upper West communities. A common theme both studies address is the relationship between the cosmos (*space above*) and human society (*space below*). For Edward Tengan (1991), the Sissala conceive of land as female that is constantly being courted by cosmic *beings* such as the sun, moon, stars, and rain. And as such one cannot appreciate land relations among the Sissala outside their conception of the interplay between the space above and the space below. Alexis Tengan (2000) sees this interplay as more vividly expressed in *hoe-farming* as a basis of social relations among the Dagara of North-western Ghana. They both see the traditional jural rules of land relations of the said communities as rooted in their peculiar conceptions of space. We will revisit this issue in chapter 8.

2.4.2 *Critical Geographies of Law*

Santos (1995) sees law in its written and unwritten forms as a *map*. Either cartographical as in the case of the written law or mental as in the case of the unwritten law. As a map, law is held to distort reality through the mechanisms of *scale, projection and symbolization.* Though autonomous in terms of procedure, the three mechanisms of law are also held to be interdependent. A permanent tension is said to exist in a map between its *representation* and *orientation* of reality; as too much representation may hinder orientation and very accurate orientation may result in elementary or poor representation of reality.

The implication of the *scale* metaphor of law for Santos is the effect of *inter-legality* and regulation patterns associated with different scales of legality. He sees law as characterised by *large, medium* and *small* scale legalities that correspond with *local law, nation state law*, and *transnational law* respectively in society (1995: 465). He asserts that large-scale legality captures matters of social detail more vividly as it contextualizes the immediate environment; while small scale-legality on the other hand, is poor in detail as it reduces them to general types.

The conception of law as a form of *projection* in Santos's schema indicates the procedure by which the legal order defines the limits of its operation and organises the spaces of regulation. As argued by Santos, a useful effect of legal projection is the creation of a *centre* and a *periphery* in terms of resource distribution. Central legal spaces tend to have a higher resource concentration with a detailed mapping of the space; while periphery legal spaces are roughly mapped with scanty resources. The legal *centre/periphery* effect of mapping social reality is the difference in the degree of distortion engendered. For Santos, social reality tends to be more distorted as one moves away from the centre (1995: 467).

The third regulatory mechanism of Santos on law as map, is *symbolization.* Legal symbolisation is said to be the visible side of both the *scale* and *projection* mechanisms of law. He identifies two ideal forms of such symbolization- the *homeric* and *biblical* styles of law. The homeric style of law denotes the conversion of daily experiences into a succession of disparate *solemn moments* as abstract legal categories; while the biblical style invites *expressive* and *emotive* operation of the law (1995: 471).

More significantly, Santos view these mechanisms not as neutral procedures; as choices made within each of them promotes the expression of certain types of interests and suppresses others. As he argues, " we can only speak of the autonomy of law as a specific way of representing, distorting and imagining reality in relation to these procedures and the choices they make" (1995: 472)[31].

There are compelling accounts by Soja (1989; 1996) on the importance of spatiality in social relations generally. However, his *Afterword* at a conference in Stanford University on *Surveying Law and Borders* is most insightful. Soja suggests a methodology of *Critical Thirding-as-Othering*. A methodology that suggests:

> When faced with a binary choice, with an either/or option, one should reject the imposed binary, deconstruct and disorder it, and force it open to a multiplicity of alternative choices (1996: 1421).

Soja considers this methodology as giving rise to a *thirdspace* analytical framework for reading social processes. The important contribution that the *thirdspace* makes to critical legal scholarship on society is that:

> Ways need to be found to use law to reshape the social production of space in more socially beneficial ways; to restructure the relations between space, knowledge, and power; to deal more effectively with the problems of [...] class, gender, and all forms of oppression, subjugation, and exploitation; to create a more forceful notion of the traditional functions of law: to crystallize collective conversations about core values (1996: 1459).

While Soja's text is a rich source for theoretical exploration, empirical investigation as well as a political agenda, we identify two of its themes as pertinent to our study.

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[31] For further views on the *critical geographies of law* see Peter Kropotkin (1921: 1-43; 1968: 195-218).

Firstly, Soja's *thirdspace* enables us not only to document the legal geography of decentralisation in Ghana but to contest it as well. In other words, we are not forever ruminating on the oppressive and exploitative nature of the Ghanaian state's spatial politics through decentralisation but seek to reshape decentralisation in more beneficial ways. Secondly, decentralisation should not only be seen as a process of (re-)structuring administrative institutions but also as having material consequences for local communities. In the context of the explicit link between decentralisation and the development of local communities in Ghana, it becomes important to identify and explore how the decentralisation programme addresses material questions of local communities.

In our study, we see the land question of the communities of the Upper West Region as a good example. We reject the argument that decentralisation is a purely administrative process rather than one dealing with land matters. At the same time we argue that the decentralisation discourse should stay within its commitment to local community development concerns. More significantly, we are not forced to make a *binary choice* on whether the legal regime of decentralisation in Ghana is achieving development or not, we open it up to a multiplicity of interpretations. As noted by Susan and Austin (1987), we need to move our activity into *places* and *spaces* in the social environment we have not previously considered in other to reconceive the relationship between law and society.

2.5 Conclusion

In this chapter we have considered a number of narratives on law and development in general as well as narratives on Ghana specifically. In keeping faith with our critical approach we have not taken any narrative, methodological or theoretical as a given. We have however shared the views of some narratives in as much as they assist our critical project. We

are minded of the possible pitfalls in our approach but the paths to emancipatory understanding have neither been easy victories or even difficult ones. Our approach however presents a point of departure for a different reading of social reality.

CHAPTER 3

DEFINING THE SCOPE AND METHODOLOGY OF THE STUDY

3.0 Introduction

This chapter discusses the research method and strategy employed in collecting data from various sources in Ghana and particularly among the communities of the Upper West Region. It also addresses a number of perspectives that inform our study. It further seeks to clarify issues arising from our approach in this study.

3.1 Critical Methodological Approaches

We adopt a critical and an inter-disciplinary approach in exploring the central themes of our study. Harvey (1991: 1) characterises and distinguishes this approach in the following way:

> Critical social research is underpinned by a critical-dialectical perspective that attempts to dig beneath the surface of historically specific oppressive social structures. This is contrasted with positivistic concerns to discover the factors that cause observed phenomenon or build grand theoretical edifices and phenomenological attempts to interpret the meanings of social actors or attempt close analysis of symbolic processes.

While there are variations within the critical methodological tradition, a number of central assumptions are discernible. Prevailing knowledge is viewed as being structured by existing sets of social relations between groups in society in which certain groups exercise power over others. Such inequality in power relations and oppression is said to be rooted in social differentiation. The aim of critical analysis is to avoid taking prevailing knowledge for granted or treating it as some sort of *Truth*; but to trace back such knowledge to structural inequalities of particular intersections in history (Sapsford and Jupp, 1996: 304).

However, social relations between groups in society do not have only a historical dimension. Structural inequalities in society have their intersections in history as well as their *places* in spaces. In what we call the *spatialization* of critical studies, there is growing interest in the theoretical importance of spatial narratives. This is an interpretive framework not just of the contemporary world but of dealing with critical questions of all kinds- including those addressed by critical legal scholarship. This spatial turn as Soja (1996: 1423) observes:

> [G]ives increasing attention to problems of the city, urban and regional issues, to locality, to body, to place, to the relationship between the local and global, to boundaries, to borders, to what can most broadly be described as the spatiality of human life.

A study on decentralisation and land administration is very much a discourse on the spatiality of human life. It is more so where the study encompasses a geographical area (the Upper West Region) and addresses the material question of the right spatial sense of development. Ways of speaking (discourse) create zones of inarticulation, a discursive mode we earlier referred to as *silence*. The essence of dominant discourse is to make other experiences invisible. How else can we make *silence* speak, than to share Soja's *spatiality of human life* and Harvey's *spaces of hope* (2000).

However, as a methodological question, it is important to indicate from the onset that we do not seek to pit as it were, *geography* or *space* against *history* or *time*. Our methodological approach is not one of *either/or* but *both/and also* (to borrow Soja's words). As Soja (1989: 129) succinctly recomposes Marx's dictum:

> We make our history and geography, but not just as we please; we do not make them under circumstances chosen by ourselves but under circumstances directly encountered, given and transmitted from historical geographies produced in the past.

This clarification is necessary as contemporary scholarly discourse on society turns on a binary choice between *history* or *geography* (time or space). The urban sociologist Peter Saunders is of the view that:

> Ever since the work of Robert Park early in this century, urban sociologists have been developing theoretical insights that have been undermined by the insistent attempt to mould them to a concern with space. It is time to rid ourselves of this theoretical straight jacket. *It is time to put space in its place* as an essential factor to be addressed in empirical investigations rather than as an essential factor to be theorized in terms of generalities. It is time in short, to develop a non-spatial urban sociology which while recognizing the empirical significance of spatial arrangements does not seek to elevate these arrangements to the status of distinct theoretical object (1989: 287-88; emphasis added).

Mills (1967) *maps* out a sociological imagination that is deeply rooted in historical rationality; one that resonates with an alluring logic of meaning and action to the temporal constitution and experience of social being:

> The sociological imagination enables us to grasp *history* and *biography* and the relations of the two in society. That is its task and its promise. To recognise this task and this promise is the mark of the classic social analyst ... *No social study that does not come back to the problems of biography, of history and of their intersections within society has completed its intellectual journey* (Mills, 1967: 6, emphasis added).

There are also social theorists who privilege space over time in their narratives. The ambivalent spatiality of Foucault sees heterogeneous spaces of sites and relations. His carceral spaces of the *cemetery* and the *church*, the *theatre* and the *garden*, the *library* and the *museum*, the *brothel* and the *colony* (1986: 23) cannot be considered ahistorical spaces. These *heterotopias* are constituted in every society but take quite different forms and change over

time. The central position space takes in Foucault's thinking is more explicit where he observes that:

> In any case I believe that the anxiety of our era has to do with space no doubt more than time. Time probably appears to us only as one of the various distributive operations that are possible for the elements that are spread out in space (1986: 23).

We can add to Foucault, Berger who gives a central position to space to the point of declaring the end of historicism. His spatialized and politicised aesthetic concludes that "prophecy now involves a geographical rather than a historical projection, it is space not time that hides consequences from us" (1970: 40).

It is in the light of these controversies that we see Soja's *thirdspace* as providing a useful methodological framework for reading social processes. Derrida (1972) observes that the *either/or* binary in scholarship is a *method* in Western metaphysical discourse that drives to ground *truth* in a single ultimate point- an ultimate *origin*. To achieve this, binary opposition of key terms such as *time or space* is set up as the foundation for such discourse. The first term is privileged or given priority as positive; the second term is subordinated as a negative or just a derivative of the first; and a procedure is established to always move from the first to the second in the discourse. To avoid playing this metaphysical foundationalist binary game, Derrida suggests an *overturn* of the metaphysical binary hierarchy by privileging the second term; or a *displacement* of the binary terms by taking no sides or not allowing the discourse to be *fixed down* (see also Norris, 1982 and Culler, 1983).

The echoes of Derrida's *overturn* and *displacement* of metaphysical binaries can be heard in Soja's rejection of an *either/or* binary and his preference for an *either/or and also* approach in the pursuit of social theory. Though both scholars do not see their approach as a *method*, it

does provide a useful framework for reading social processes. This framework enables us not only to explore the historical context of the spatial implications of decentralisation in Ghana but *also*, how these shape the well-being of the communities who traverse the socially produced Upper West space. In other words, we do not seek to explore the central themes of study in only a *centre* and *local* dichotomy but *also* how development discourse of the centre gets replicated in the local; and is appropriated and contested at the same time by different social forces.

Critical approaches to law like those in other disciplines vary as well. However, three broad approaches can be identified as the most influential in contemporary critical legal scholarship. These are views associated with the American critical legal tradition (Kairy, 1982; Hutchinson and Monahan, 1984), Marxist structuralist views on law (Baxi, 1993; Gramsci, 1971; Fine and Picciotto, 1992), and views for want of an appropriate term, we consider as postmodernist narratives on law (Douzinas and Warrington, 1994; Frug, 1992)[32]. The central focus of the three approaches is to explore the manner in which legal doctrine and practices of legal institutions work to buttress and support a pervasive system of oppressive social relations. Critical legal scholarship therefore seeks to develop and explore radical theoretical alternatives of the role of law in the creation of social, political and economic relations that would advance human emancipation. For further views on critical legal theory see the works of Pashukanis (1983), Kelman (1987), Fine (1987), and Fitzpatrick and Hunt (1987).

In our study, we explore the legal mechanisms in Ghana's decentralisation programme used to maintain oppression and control of local communities. At the same time we explore the

ways in which social processes and institutions of the decentralisation programme operate to legitimate the Ghanaian State's notion of development priorities of local communities in the Upper West Region. In these contexts, the *geography* of political and economic rights provides an additional explanatory power that cannot be derived from only general statements on law and society, nor from an analysis in terms of social categories and networks. As Long and Roberts (1994: 4) have argued, the socio-spatial variable enables the researcher to identify patterns of activity that result from the spatial distribution of economic resources, settlements and social classes; and in our context, of political and economic rights over land use. To that extent our study seeks to give attention to how spaces in the physical environment are legally constructed and the material consequences engendered by it.

3.2 Research Strategy

Given that our study addresses a contemporary phenomenon in its spatial context, it is exploratory by nature. We therefore adopt the *case study* method as strategy for our data collection. While researchers, to investigate a social phenomenon, often use *surveys* and *experimental* methods, it is our view that the case study strategy suits our purposes at a number of levels. Firstly, it is:

> An empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between *phenomenon* and *context* are not clearly evident; and in which multiple sources of evidence are used (Yin, 1989: 23; emphasis added)

As argued, an experimental strategy often divorces a phenomenon from its context, as it focuses on a few variables. The survey strategy on the other hand, is limited in its ability to investigate the context of a phenomenon; as it operates with limited respondents to approximate the number of variables to be analysed (see Yin, 1989: 21-23).

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[32] We note that the respective scholars might not take kindly to our rather resistant categorisation of them, as these categories are themselves fluid. However, we consider their social thinking as approximate to the respective categories.

The case study strategy, though having its limitations as well, overcomes the weaknesses of the survey and experimental strategies. It is able to examine phenomena in contexts where the variables cannot be manipulated; and deals with a variety of evidence such as documents, interviews and historical records.

Secondly, the aim of our study is to develop pertinent hypotheses and propositions for further enquiry. We therefore seek in our study to ask and answer "what" and "how" questions, in a situation in which we have little or no control over the events. As can be discerned from chapters 1 and 2, our study raises rather provocative, challenging and startling questions from the onset. A spatial reading of decentralisation in Ghana with a focus on land administration, offers challenges to the time honoured views on what decentralisation is assumed to be about. It is in this light that the *context* of decentralisation in Ghana proves useful, and which a case study strategy can assist us to explore.

Thirdly, the case study strategy enables us to narrow the focus of study. Decentralisation and land questions are large fields that attract diverse scholarly interests. Through the case study approach, we delineate the focus by a definition of the "Case" to be investigated (the legal regime of the objectives of decentralisation in Ghana) with land administration in the Upper West Region as its "Unit of Analysis" (Yin, 1989).

3.3 The gap in legal discourse on development of the Upper West Region

A major problem that confronts our study is the lack of relevant primary data specific to the Upper West Region. Available information is dated and relates to development issues of the region within the context of Ghana as a whole or as part of Northern Ghana. The only source of demographic data on the Upper West Region is the 1984 population census of the

Department of Statistical Services (Ghana Statistical Service, 1984)[33]. The current relevance of such data as a guide to understanding social processes or development issues in the region is doubtful. For example, while the census publications are expected to assist in the government's programme of decentralisation (1984: ix), they are based on local authority areas that have since been re-demarcated. The publications show that Wa, Nadowli-Funsi, Lawra-Jirapa, Nandom-Lambussie, and Tumu are local authority areas of the Upper West Region. However as we will show in chapter 4, these have currently been re-designated as Wa, Nadowli, Jirapa-Lambussie, Lawra and Tumu district assembly areas.

In terms of legal research and publications (secondary data) on the Upper West Region, the gap is particularly visible. There is no single published comprehensive legal study on the communities of the Upper West Region. As at the time of this study there was also no reported case from the decisions of the High Court in Wa in any of the Ghana Law Reports. The only sources of literature on the Upper West Region are those from colonial and missionary anthropological sites and current studies by other social scientists. We will indicate in subsequent chapters the difficulty in using some of such narratives as a basis for reading legal rules. As Woodman indicates:

> The northern part of Ghana formerly the Northern, *Upper West* and Upper East Regions presents a special case for legal research. There are few judicial decisions available from the area. Some social scientific writings are useful but it is difficult to predict which of the practices they describe will be used to create legal rules and they are not comprehensive for the entire area (1996: 48; emphasis added).

[33] The 2000 Census has taken place but only provisional figures for 9 of the 10 regions have been published. Figures for the Upper West Region as at the time of finalising our study were not yet available.

An explanation for this state of legal scholarship on Northern Ghana lies in the colonial educational policy towards the area and its general underdevelopment. While suggestions are made that the slow start of education in the area lies in restrictions placed by the colonial state on missionary activity and the reluctance of parents to send their children to school (Ladouceur, 1979), a more plausible argument lies in the nature of the colonial political economy. During the colonial period, Northern Ghana served as a labour reserve for the capitalist economy of southern Ghana. As Jones (the then Chief Commissioner of the Northern Territories) observed in his 1937 Annual Report, the people of Northern Ghana are:

> Regarded as an amiable but backward people; useful as soldiers, policemen and labourers in the mines and cocoa farms. In short fit only to be hewers of wood and drawers of water for their brothers in the colony and Ashanti (NAGT, ADM 1/56:3).

The need therefore to expand education from Southern Ghana to the North of Ghana was not considered a development priority of the colonial state (Bening, 1990). As is the case, the first Northern Ghanaian to have University education graduated from Cambridge in 1953 and the first to pass through the University of Ghana graduated in 1960 (Bening, 1975). In terms of legal education, the first lawyer from Northern Ghana (R. I. Alhassan) was admitted to the English Bar in 1961 (Ghana Bar Directory, 1999). This contrasts sharply with the situation in Southern Ghana where the first Barrister (John Mensah Sarbah) graduated in 1887 from Lincoln's Inn (Sarbah, 1968). In the case of the Upper West Region, the statistics show that as at 1984 there were only 5 people in an occupation designated as *jurists* (Ghana Statistical Service, 1984)[34]; a term we understand as referring to lawyers though not defined[35].

[34] The figures for lawpersons in Northern Ghana and the Upper West Region have increased since 1984, but it is still the case that there is no parity even in relative terms with the South of Ghana.

[35] Though conducting research on Northern Ghana need not necessarily be by Northern Ghana Scholars, it is our argument that they are more likely to address pertinent issues on the subjectivity of development needs of Northern Ghana communities.

Due to development efforts of local communities, legal research interests in the area have been generated in recent years (see Agbosu, 1980; Kotey, 1993; England, 1995). In the particular case of decentralisation and land administration, a number of state institutions and international NGOs have developed interests in how decentralisation and land administration turn on development issues of Northern Ghana through seminars and workshops[36]. I presented a paper in one of the seminars (Kunbuor, 1996) and I was part of the Working Group on decentralisation and land administration on Northern Ghana. Our study arises from the interest of stakeholders in land generated in these seminars. It is also our modest contribution towards bridging the gap in legal discourse on Northern Ghana, albeit from a development perspective.

3.4 Personal location in the study

I am member of one of the communities under study (Dagara) from Nandom and a *Bekuone* (a chiefly clan of the Nandom traditional area). I have also acted as Member/Solicitor of the Lawra District Assembly. The Law Firm (Bimi, Dery and Co.) in which I did private legal practice from 1989 to 1993, was involved in the legal drafting of the bye-laws for most of the DAs in the Upper East and Upper West Regions[37]. My personal and professional attachment to these communities and the decentralisation programme in the Upper West Region, raises issues of bias that might affect our study.

[36] Examples are The Workshop on Savannah Resources Management for Opinion Leaders in the Upper West Region, organised by the Steering Committee on Savannah Resources Management Programme under the Ministry of Lands and Forestry, 24-26 June, 1998, Wa. And Seminar on Decentralisation, Land Tenure and Land Administration in Northern Ghana, organised by the Regional Houses of Chiefs of the Northern Regions, The University of Development Studies and the Konrad-Adenuar Foundation of Germany, 28-30 May, 1996.

[37] I add that I was a member of the legal team that commenced legal proceedings in one of the case illustrations (*Kabanye case*) in chapter 4 of this study.

In my case however, such a possible weakness is a strength in exploring a number of issues in our study. It has not denied me the reflexivity needed for a critical engagement with the issues. Our study can be considered a self-critical assessment of the nature of legal services we have offered the DA system over the years and why it has not improved the living conditions of local communities as the stated beneficiaries of the programme. These and other related issues generated our interest in seeking an alternative interpretation of the decentralisation programme in Ghana. This interpretation seeks to question official discourse of the programme in terms of its stated objectives. My personal location in the study brings actual knowledge to issues that are hardly considered as important; but nonetheless have consequences for local communities in decentralisation praxis in Ghana.

As we indicated in chapter 2, I have elsewhere explored Ghana's decentralisation programme as a form of *Another Development* for empowering local communities in Northern Ghana (see Kunbuor, 1997). The present study is a sequel to the first, in which I isolate one development variable (land) for a detailed exploration. As Chanock (1991: 62) points out, in terms of methodology, general studies should precede particular ones, not follow them. It is my hope that these studies would generate theoretical questions for reconsideration in the future.

3.5 Limitations and Strengths of the Study

Our study addresses only a small aspect of wider issues on decentralisation in Ghana. It is focused on land administration as it obtains among the communities of the Upper West Region- one among the ten regions of Ghana. Our findings therefore do not claim to be generalisable to other communities or other development concerns in Ghana. Some communities of Northern Ghana such as the Dagomba, Mamprusi, Gonja and Nanumba have

land relations that revolve around the institution of chieftancy; while those of the Upper West and East Regions are rooted in the institution of the *tendana*. The implications of decentralisation on land administration are bound to vary between these different communities. The institutions of health and education are part of decentralised institutions of the decentralisation programme. Findings on the institutions of land administration that remain centralised may not be of much relevance to health and education as development concerns of local communities.

Our study, however, provides a useful framework for analysing how the legal regime of decentralisation seeks to address development concerns of local communities. By isolating a single issue (land administration) one is able to consider in some detail the social, political and economic ramifications of Ghana's decentralisation programme. In the same way, our focus on a particular geographical region, raises peculiar questions to it that are hardly considered in decentralisation discourse that focus on Ghana as a whole. The geographical location of the Upper West Region also reveals the spatial context for reading decentralisation in Ghana. The cultural diversity of the Ghanaian polity creates differential responses to national development programmes. Decentralisation being one such programme, it is important to track such responses among local communities of the Upper West Region, which in relative terms are geographically, historically, economically and culturally homogenous.

3.6 Purpose of Study

Our study seeks to explore the question: how the macro-objectives of Ghana's decentralisation programme address matters of land administration in the Upper West Region. As one of the youngest regions in the country as well as having most of its

settlements characterised as rural (Songsore and Denkabe, 1995; UWRCC, 1996), the land question assumes importance in the social relations of its communities. As Bekye's (1998: 11-23) study of peasant development in Northern Ghana points out, the communities are still simple subsistence hoe-farmers for whom land and its resources are everything; "land is their most valuable asset in every respect" (1998: 23).

3.7 Data Collection

Data was collected over a period of ten months (from April to September, 1998 and June to September, 1999). Two levels were involved in the process of data collection- the national and regional. Data at the national level relates to information on decentralisation and land administration from national level institutions in Ghana; while data at the regional level relates to institutions and local communities of the Upper West Region. The data at the regional level relates to information collected in discussions with representatives of the various institutional actors and documents of these institutions where these were available. The field study also offered us the opportunity to have discussions with a number of scholars in Ghanaian Universities, who have carried out studies relevant to the main themes of our study[38].

Law students in Ghana assisted me to administer a semi-structured questionnaire to a "sample" of 790 traditional family farming household units over the study period. By this "sample" however, our goal was not to enumerate frequencies but to obtain a broad regional profile of these units. These figures are not intended to quantitatively measure indicators but to illustrate the knowledge family farming units across the districts have of both centralised

[38] We make particular mention of Professors Ben Deri, R.K. Kasanga and R.B. Bening and Mr. Fui Tsikata of the Universities of Cape Coast, The Institute of Land Management and Development of the University of

and decentralised land administration agencies in the Upper West Region; as well as levels of participation and consultation in decision-making on land matters (see chapter 4). As a case study, the conclusions we draw from these findings are not generalised to a particular population or universe but to theoretical propositions (Yin, 1989: 21) we will make from them. Though *participant observation* was not a focus of our field study, time was also made for the observation of some DAs in session in the Upper West Region as well as the campaigns by candidates seeking election to the DAs and Unit Committees at the time. It was a coincidence that the assemblies were in session or the elections were being conducted at the time. The institutions from which data was collected at the national level include:

(a) the Ministry of Local Government and Rural Development;

(b) the Ministry of Lands and Forestry;

(c) the Ministry of Finance;

(d) the Office of the Administrator of Stool Lands;

(e) the Office of the Administrator of District Assemblies Common Fund;

(f) the National Development and Planning Commission;

(g) the Attorney-Generals Department and the

(h) National Archives of Ghana (Accra and Tamale Offices).

While the above institutions are by no means exhaustive of institutions that deal with issues of decentralisation, land administration, and development in Ghana; they are the most relevant in terms of the focus of our study. The Land Deeds and Title Registry is relevant to issues of land administration in Ghana, however, *titling* of interests in land that is its most important current function has not reached the study area as yet. We also preferred to hold discussions with officials of the Regional office of the Lands Commission instead of the National Lands Commission in Accra, as the former was more likely to have relevant

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Science and Technology, University for Development Studies and the Faculty of Law of the University of

information on the local setting. While courts of law are not the focus our study, we have visited courts in Accra, Wa and Lawra for legal documents on decided (unreported) and pending cases relevant to our study.

In the Upper West Region data was collected from the following institutions:

(I) Decentralised state institutions;

(a) The five DAs in the region (Wa, Nadowli, Jirapa/Lambussie, Lawra and Sissala) districts.

(b) T&CP departments of the above districts.

(c) Regional Co-ordinating Council at Wa.

(d) Sub-district structures (10 Town/Area Councils and 50 Unit Committees)[39].

(ii) Centralised State Institutions;

(a) Regional Lands Commission.

(b) Survey Department.

(c) Land Valuation Board.

(d) Office of the Administrator of Stool Lands.

(d) Environmental Protection Agency.

(iii) Traditional Institutions;

(a) The Paramount Chiefs of Lawra, Nandom, Lambussie, Kaleo, Nadowli, Wellembelle and Tumu[40].

(b) The Tendaanas of the traditional areas of (a) above.

(c) Traditional Family Farming Household Units[41].

Ghana- Legon respectively.

[39] There are 51 Town/Area Councils and 618 Unit Committees in the Upper West Region. Our sample involve 2 Councils and 10 Unit Committees in each of the five district assemblies.

[40] The Chief of Wa was deceased at the time of the study, discussions were held with the Council of Elders. The Jirapa Naa was terminally ill and the elders will not discuss land matters in his absence and given his condition.

(d) Migrant Farmers[42].

(iv) Civil Society;

(a) Youth and Development Associations.

(b) Women Farming Associations.

3.7.1 *Interviews*

Beyond the semi-structured questionnaire administered to traditional family farming units, data from other institutions was obtained through both formal and informal discussions with officials or heads of the institutions. Formal discussions refer to situations in which discussions were based on predetermined themes in a semi-structured questionnaire and scheduled times. This was the approach for officials of state institutions and the chiefs. Informal discussions refer to the situations in which research sites were visited without previous arrangements. In the latter case, no recordings or notes were taken during discussions. Notes were made immediately after that. Informal discussions were adopted in the case of the tendaanas, migrant farmers, youth associations and women farming associations[43]. Informal discussions were adopted after an initial experience of using pre-determined themes in the questionnaire and recording proved difficult. An executive member of one association was frank to indicate to us that "not all issues are good for either your note book or your recorder. If you want us to tell you what is good for record purposes we will do so; but if you want the truth of our position on land and development matters then let us

[41] Given the fact that reliable data was not available, the total number of settlements for each district was considered; out of which a random sample of 50% was selected. 10% of the Family Units for each settlement of each district were surveyed. Variations in the sample sizes of the districts is accounted for by the differences in the number of settlements for the districts. Figures for the number of settlements were taken from the D-Plans of each district; as such reliability cannot be guaranteed.

[42] There is no pattern of the settlements of this category; they are found in clusters in only some districts. We identified Lambussie, Fielmuo and Funsi areas as having higher concentrations of migrant farmers; and these were the areas covered.

[43] See appendix "F" for the semi-structured questionnaire on the themes that guided interviews and discussions with the various institutions.

chat"[44]. We were sufficiently guided by the clue and chose to *chat*. Apart from the tendaanas most groups had written records. Where this was permitted we borrowed them for photocopying, otherwise we read them closely and made some notes afterwards on relevant issues. These documentary sources proved useful in other areas as we were on the look out for them.

3.7.2 *Documents*

Documents constitute an important source of our data. In well-structured organisations, they supplemented as well as limited the times for discussions. Issues such as the powers, aims, functions and objectives of institutions were available in documents. These were obtained prior to discussions and also served as a useful sounding board on the issues to focus in later discussions. These documents later served as basis for *triangulation* with other data sources to ascertain the extent of reliance or weight to place on some aspects of the data. While documents collected in the field are many and varied (to be listed), we mention the Development Plans of the five DAs in the region and the Regionally Co-ordinated Programme as most comprehensive and invaluable in terms of decentralised development praxis.

3.8 Observations and Comments on the institutional Categories

Given the fluidity of the social matrix in Ghana, our institutional categories are by no means watertight compartments. They only serve the purpose of organising the data in some order; as any order is better than no order at all. It is by no means a representation of how the communities organise their reality, which is also the case for both centralised and decentralised state institutions. In the same vein, our study is not an ethnography of these

[44] From Field Notes in an interview with a leader of the Issaw West Development Union in Lambussie in July

institutions, but a social analysis that combines approaches via relationships, via resources, and via representations (see Moore, 1990: 9). For instance, the RLC and the EPA can be considered decentralised institutions in a broad sense of the word; we however categorise them as centralised institutions given the fact that the legal framework of the decentralisation programme does not provide for them as such. The T&CP department is considered legally decentralised to the district level, but its affairs are still been directed by a hierarchy of national institutions and legislations in a central state setting. We place it under decentralised institutions based on the fact that the local government Act of 1993 provides for it as a decentralised department of the DA.

We also clarify our choice of traditional institutions as well as organisations we consider to be part of civil society. The notion of a chief in Ghana goes beyond the paramountcy level to include divisional chiefs, sub-divisional chiefs, and village headmen. The last three categories of chiefs do not encounter state institutions without consultation or advice from their Paramount Chiefs. They are for practical purposes (in land matters) deputies of the former and have little power or discretion of their own. Given the fact that the institution of chieftancy is not a land owning entity among communities of the Upper West Region, lower level chiefs need the approval of their politically visible Paramount Chief before involving themselves in land matters. We have therefore limited our choice of chiefs to the paramountcy level.

We further clarify our notion of *migrant farmers* and whether they can be considered as part of traditional institutions? We do not use the term *migrant farmers* as understood in the studies of Polly Hill (1963) and Arhin (1985) on *migrant cocoa farmers* of Krobo/Akim

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1998.

Abuakwa and the Central and Western Regions of Ghana respectively. While migrant cocoa farmers in Ghana refer to commercial cash crop producers that were involved in land speculation, our notion of migrant farmers refer to peasant households who due to population pressure move into other communities for purposes of subsistent farming. The relationship of migrant farmers to land (so far in the Upper West Region) is within differing definitions of the customary law. They cannot be considered as legal tenants in a strict sense of the word, as there is no formalisation of their relationship to the land as well as with their landowners. Their relationship to land is dependent on either the benevolence or caprice of their respective landowners (Goody, 1980). We however consider them to be part of traditional institutions, given the fact these farmers see their migration as part of traditional farming practices (see Tengan, 2000).

In the particular case of acephalous communities of the region, migration arises from a shortage of peripheral land supply. They undertake what Horton characterises as *disjunctive migration*; first passing through territories they acknowledge as having distant genealogical ties and if that fails to other areas where they have no such ties (1976: 89). Therefore, migration for purposes of farming among these communities is seen as part of their traditional reality.

There are also many social groups in the Upper West Region that can be characterised as part of civil society, we however identify Youth and Development Associations and Women Farming Associations for consideration in our study. Apart from their recent topicality in development discourse they serve as sites of struggle over land access and its administration; against either chiefs or both decentralised and centralised state land agencies. We also note the legal difficulty associated with the concept of *family* in Ghana customary law

jurisprudence. For our purposes, family is used to denote the traditional family farming unit as a productive economic unit in land relations in the Upper West Region. We will elaborate on this issue in chapter 5.

3.9 Data Analysis

While in this chapter we state data collection and analysis separately, they have not been separated in the study. Much more reflexion guided both data collection and its analysis from the study conceptualisation, interaction with institutions and local communities in the field, to reporting the findings. In the field we took time off to examine and question the data collected at each point. In examining the data we asked the questions: what is the nature of the information collected? What is it communicating? What is its intended objective? and who is the author? The idea behind the questioning was to identify possible alternate readings beyond what the data says of itself. A summary of the information was made with some comments in a field notebook. These summaries and comments assisted us find out what were the *happenings* in the political, economic and other related contexts from which the documents issued.

At the end of the field exercise we sorted the information under institutional headings of *decentralised, centralised, traditional* and *civil society.* This was to ascertain the various sources of the information. The information at the institutional level was put respectively under the five districts (Wa, Lawra, Nadowli, Jirapa/Lambussie and Sissala) to enable us identify similarities and differences across the districts of the Upper West Region. The objectives of Ghana's decentralisation (devolution, democratisation, participation, consultation and development planning) being the premises around which our study was conceptualised, we further categorised the data under these headings. We then presented the data as a report in a descriptive narrative form, by indicating how the objectives of the

decentralisation programme address questions of land administration in the Upper West Region (see chapter 4). In other chapters (chapters 5, 6 and 7) we subject the data to a more rigorous analysis, which presents critical insights into Ghana's decentralisation policy processes in terms of their operation in the Upper West Region.

3.10 The Question of Research Ethics

It has become part of dominant epistemology for field studies to observe some canons of scientificity as *research ethics*. Some institutions have *Good Practice Guides and Charters* for researchers or would-be researchers. While the rules vary across disciplines, the central idea is to prevent some *harm* to individuals or groups in the course of fieldwork and in reporting the findings. Field research thus strives to maintain varying levels of *confidentiality* and *anonymity*. Confidentiality refers to situations in which a respondent in a research study would not be identified or presented in an identifiable form; while anonymity refers to a situation in which the researcher will not be able to tell which responses came from which respondents (Sapsford and Jupp, 1996).

While ethical concerns in field studies can be appreciated, they do raise further questions as to the considerations that inform the definition of the ethical. What amounts to *harm* and from whose perspective is it defined? Do researchers consider the politics and policy implications of their work as falling within the domain of the ethical? Is it ethical that after performing the ethical *ritual* scientists are absolved from responsibility for the consequences of their research?

What we seek to register here is the fact that research studies whether guided by *ethical* considerations or otherwise are not neutral or innocent enterprises. Research studies more

often than not are based on a number of political assumptions of the researcher; and as such one cannot divert problematic political issues as scientific discourse governed by set rules. To accept such amenability of social reality to scientific solutions as observed by Foucault (1982), is to empower *experts* to act for people and determine what is in their best interests.

We do not bring contemplative and uninvolved spectator knowledge to our study. Our ethical consideration is our participation in the actions of subaltern movements, the struggles of victims, excluded and vulnerable groups within the communities in question. We see this study as an integral part of such struggles. As the battle lines are drawn, it is clear which column we will follow. It is as well our ethical consideration to ensure that this study does not become yet another tool for the victimisation of vulnerable social groups.

In our field experience with the local communities of the Upper West Region, issues of confidentiality hardly arose. It was a common experience in the household discussions to have other members of the family and by-standers answering questions or contributing to answers. The reason for others seeking to participate in offering answers to our questions was because important issues such as land for these communities concerned all. The smallness of the communities and the close ties between them make what one might consider in other cultures as private matters, communal ones.

CHAPTER 4

DECENTRALIZED DEVELOPMENT AND LAND ADMINISTRATION IN THE UPPER WEST REGION: OUR FINDINGS

4.0 Introduction

In chapter 3 we outlined the method adopted for the entire study with a focus on data collection and its analysis. The central question our study sought to answer, is how decentralisation as a development approach addresses the spatial contexts of local communities in the Upper West Region of Ghana. Several questions are raised by the theme of our study. However, those we considered important research questions, and which provided the focus for the field study are related to the following themes:

(a) Devolution as an objective of decentralisation in Ghana and the centralised character of the state machinery of land administration.

(b) Democratic decentralisation and local community participation and consultation in matters of land administration.

(c) The *bottom-up* approach to development planning and issues of land administration[45].

These themes are closely inter-linked, and together they present a close context, which reflects the importance of land administration in decentralised development.

[45] A fourth objective of decentralisation in Ghana is the transfer of *means* and *competence* to the local level for an even and balanced development of the entire. This objective focuses on issues of fiscal decentralisation. I have addressed this aspect of decentralisation in an article titled: "The legal Regime for the Transfer of *Means* and *Competence* to the local level: The Case of Decentralization in the Upper West Region of Ghana", which has been forwarded to the Editors of *Local Government Studies* of the University of Birmingham.

Our study being exploratory, it does not have clear-cut study propositions or hypotheses (see Yin, 1989: 30-31). The purpose of the study (as we stated in chapter 3) is to explore how the objectives of Ghana's decentralisation programme address matters of land administration in the Upper West Region (UWR). Given that the decentralisation programme is said to be for the *overall development* of local communities in Ghana, we see the land question as an important development concern in the Upper West Region that ought to be addressed by decentralised development.

This Chapter reports the findings of our field study conducted in Ghana and among the Upper West communities. It indicates the extent to which the objectives of Ghana's decentralization programme address the land question in the Upper West Region. The central themes that the chapter addresses are: devolution of the state land machinery, democratisation of state power in land administration, and the extent to which decentralised planning is implicated in land administration. As part of our finding, we illustrate with specific cases, the nature of land conflicts and the involvement of decentralised institutions in them in the Upper West Region (see appendix G).

4.1 The Objectives of Decentralisation and Land Administration

4.1.1 *Devolution and Land Machinery*

Ghana's decentralisation programme extends beyond the district level to include sub-district structures of Town/Area Councils and Unit Committees (L. I. 1589). In the Upper West Region, there are 51 Area Councils and 618 Unit Committees[46]. Our findings show that these sub-district institutions are not assigned statutory functions in

land administration. Of the sample of 10 Town/Area Councils and 50 Unit Committees visited in our field study, there was no evidence of deliberations in any of them pertaining to land administration. We found that they are basically revenue collecting outlets of the DAs. The quarterly reports of the Town/Area Councils visited, all focus on efforts at revenue collection. An example from one of these Councils illustrates the point. The 1998 Quarterly Report (July to September) of the Ko Area Council of the Lawra district assembly, indicates that poor revenue collection, malpractices of revenue collectors and the difficulty of paying the allowances of chiefs are its main problems. The report specifically notes that:

> The area is likely to suffer from food shortage because of the poor rains. The poor harvest this year has also made farmers face a lot of problems in getting money to pay their taxes ..... The council hopes to intensify her education on revenue collection to be able to meet if not all but some of her commitments; especially allowances for chiefs[47].

There are five DAs created by legislative instruments to perform a number of functions in the Upper West Region[48]. These assemblies include the: Wa, Lawra, Sissala, Jirapa/Lambussie, and Nadowli DA areas. At the district level there are 23 previously centralised departments now incorporated into 10 departments of each DA as decentralised departments[49].

Of the 23 decentralised departments of the DAs in the UWR, only the T&CP department addresses matters of land administration directly. Its functions include the

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[46] Records from the Electoral Commission of the Upper West Region collected during field study in July 1999.
[47] Ko Area Council, Reference file No. G. 512 [p. 1].
[48] See Local Government (Wa, Lawra, Sissala, Jirapa/Lambussie and Nadowli) (Establishment) Instruments, 1988 (L. Is 1433, 1434, 1435, 1436 and 1437)respectively.

designation of land as statutory planning areas for particular use and the preparation of schemes and layouts for land development. Though these functions of the department are part of its traditional functions under the 1945 Town and Country Planning Ordinance (Cap. 84), Act 462 incorporates them as part of its functions as a decentralised department. Other decentralised departments that deal with land use are the Forestry, Game and Wildlife and Parks and Gardens; however their requirements for land is through the T&CP department.

We found in our field study that the T&CP department did not exist in the Nadowli and Jirapa Districts (new districts). The departments in Wa and Lawra districts still provide physical planning services to these assemblies. This has led local communities in these assemblies to raise questions as to the exact jurisdictional basis of their planning activity; as they are not answerable to the Nadowli and the Jirapa DAs. We also found that apart from the Wa district, there were no professional planners in any of the other districts. The staff of the department were civil servants of the former T&CP department. While professional planners work within each DA as heads of the DPCU (District Planning and Co-ordinating Unit), they limit their activities to the co-ordination and the preparation of D-plans of the districts that focus on socio-economic development issues.

The most important function of the T&CP department of the DAs involves the preparation of *schemes* and *layouts* for land use. There are two ways in which the T&CP department prepares schemes and layouts in the districts of the Upper West Region. Firstly, within the DA D-Plan (Development Plan) they demarcate lands for

[49] See Schedules 1& 8 of the Local Government Act 1993, (Act 462).

designated uses to which all land developers will have to conform. Secondly, individual family landowners with large tracts of land contract the services of the department to prepare layouts of their private lands[50]. The latter activity of the department has become an important practice since the divestiture of Northern lands from state control[51]. This dual role of the staff of the T&CP department in the region as private contractors as well as public servants is at the core of the conflicts their activities generate. Well aware often that a particular piece of land is within the broad development scheme of the district assembly, officials of the department go ahead to prepare private layouts for individual landowning families without indicating its limited possible use. As a result third parties obtain such land from landowners for purposes that conflict with the development plan of the district assembly. Paradoxically, the T&CP department by law enforces compliance of land use to the district development plan.

The names given to site plans in schemes and layouts by the department further create conflicts within families; where there is no consultation with all members of the family. It is more the case where suspicion exists that influential members of the family want to take advantage of the others. In one example, two families belonging to the same clan but living in adjoining settlements requested the T&CP department in Wa, to prepare a layout of the Clan's lands. The Site Plan contained the name; *Part of the Property of Kpaguri/Kambali Family.* A section of the family objected to the name as they seemed excluded by it[52]. This politics of naming arises from the

[50] Layouts are physical demarcations of land into smaller parcels within a wider physical-planning scheme for a planning area. All Site Plans for development have to conform to the designated uses of the layouts.
[51] See articles 188 and 257 of the 1979 and 1992 Constitutions respectively.
[52] The adjoining settlements were Kambali and Nakori , and they would have liked " Nakori" equally reflected in the name.

differing conceptions of family between the communities and the state land administration agencies.

Committees carry out the day-to-day business of the assembly. These include the Executive Committee that is the highest administrative body of the DA and its sub-committees. The relevant sub-committees for purposes of land administration in the UWR are the *Development and Planning*, *Works*, *Environment*, and *Justice and Security* sub-committees. In addition, the Regional Co-ordinating Council (RCC) from time to time sets up a Site Selection Committee (SSC) for a DA in the acquisition of land for regional and national projects located in a district. We found that Site selection Committees are normally made up only of representatives of state institutions[53].

Beyond the district level, there are a number of institutions at the regional level that administer lands of the local communities. These are the RCC (Regional Co-ordinating Council), RLC (Regional Lands Commission), SD (Survey Department), OASL (Office of the Administrator of Stool Lands), and the EPA (Environmental Protection Agency). In discussions with officials of the RCC, they maintained that the Council has oversight responsibilities over all agencies in the region- decentralised or centralised. Centralised land control and management agencies in the region said to be answerable to the Council include the RLC, LVB, SD, OASL, and the EPA. Records of the Council confirm that it is active in matters of land administration in the region. All requests for land by public institutions pass through it; it constitutes the SSC (Site

[53] For a good example, see the composition of the Site Selection Committee of the *Yagtuuri/Lawra* land dispute in part II of this chapter.

Selection Committee) for DA land acquisitions; and it endorses all plans and minutes of a SSC.

The RLC is a land administration agency closest to the decentralisation policy at the regional level; as the 1992 Constitution provides for its establishment in the region. A write up by the RCC in response to my questionnaire on the role of the RLC in land administration in the region states as follows:

> One of the decentralised bodies as far as land issues are concerned, at least at the regional level, is the Regional Lands Commission.
>
> (i) The Upper West Regional Lands Commission is the highest governing body on land issues as far as the region is concerned. The Regional Lands Commission is expected to perform the functions of the National Lands Commission at the regional level. Its authority and mandate as derived from the relevant provisions of the 1992 Constitution of Ghana notably Article 258 and 267 clause 3 spans from land management to development control.
>
> (ii) All the five (5) District Assemblies are represented on the Regional Lands Commission. Decisions of the Commission are, therefore, expected to be passed on to the respective District Assemblies for implementation at the District level. The Department of Town & Country Planning has its Regional Head as a member of the Commission. Issues relating to planning and development as discussed at the Commission's meeting can also be easily passed on to his representative staff at the district level[54].

The SD, LVB, EPA as central government land administration agencies, do not in any way relate directly with local communities in the region. Where their activities

involve the lands of local communities they address them either through the RLC or the appropriate DA. In our discussions with officials of these institutions we observed that local communities are neither consulted nor do they participate in their decisions affecting land. As they maintained, legislations that govern their activities do not provide for local community participation.

An anomaly we found in the Upper West Region is the Office of the Stool Land Administrator (OASL) and the role it plays in land administration. It has its head office in Accra without any staff in the region. The staff of the RLC collects *stool/skin*[55] land in the districts for the Administrator. In our discussion with the Administrator of Stool Lands, she confirmed that her office collects and disburses such revenue in the region, with efforts being made to open regional and district offices in the future. What is intriguing about its role in land administration is the source of the revenue it collects in a region where *skins* do not own land. The highest interest in land in the Upper West Region vests in the *tengan dem, tendamba* or *totina* as the case might be. This is unlike other parts of Northern Ghana and the Akan Communities of Southern Ghana where Skins or Stools hold land as corporate entities.

Except chiefs, we found no evidence of consultation with or participation by traditional land administration institutions (such as the *tengan dem*, traditional family heads and migrant farmers) or civil society organisations (such as Youth and

[54] UWRCC, (1998) "Re;Research Study: Decentralisation and Land Administration in the Upper West Region" [p. 2]. This write up was given to me during discussions with the Regional Minister, Regional Co-ordinating Director, and the Regional Town & Country Planning Officer in July 1998.
[55] "Stool" refers to the office of the chief as traditional ruler among communities of southern Ghana. Its equivalent among Northern communities in Ghana is the "Skin". Legislation in Ghana referring to the former implies the latter.

Development Associations or Women Farming Associations) in the decision-making processes of both decentralised and regional level land administration agencies. We present further evidence on this issue in the next section of this chapter.

4.1.2 *Democratisation of State Power and Land Administration*

The objective of democratizing the exercise of state power at the local level is to ensure majority participation in the decision-making processes of government. This objective anticipates both *representative* and *direct* forms of local community participation in the exercise of such power.

Records of the DAs in the region revealed that they all had their full membership. Each DA comprising 70 per cent of members elected from electoral areas in the districts, 30 per cent of the members nominated by the President in consultation with traditional authorities and other interests groups in the district, the members(s) of the national parliament, and the District Chief Executive (appointed by the President and approved by two-thirds of all members of the assembly).

The day-to-day activities of land administration of the DA are through a number of sub-committees of the Executive Committee. However, our findings show that the 30 per cent of the members appointed by the government to the DAs, dominate these committees (see appendix "C" for the composition of these committees). Except for the Wa and Jirapa/Lambussie DAs, which had a total of 38 elected as against 13 appointed; 31 elected as against 27 appointed members of these committees respectively, all the other DAs had higher numbers of appointed than elected members in them (see appendix "C").

Given that land relations of the communities in question are communal, agitation for direct forms of participation in land administration is through traditional institutions and community based organisations. These institutions and organisations have over the years also demanded participation in the development initiatives of the DAs as representatives of local community interests.

4.1.2.1 *Chiefs and Tengan dem*

Chiefs are traditional political heads of their respective communities. Their functions are secular and in most cases they were created by the colonial administration; and have been maintained by the post-colonial state. There are however communities in which the chiefs emerged from the *tengan* clan. As was indicated in one community, the *Whiteman* (colonial administrators) wanted chiefs and as the head of the *tengan* could not combine both political and spiritual functions, another clan member became the chief to handle secular matters. Examples of the latter are the Lawra, Lambussie and Sissala traditional areas[56]. In some communities there is a separation between the *tengan sob* and the chief; in which case the heads of both institutions are from different clans. The Nandom, Kaleo and Nadowli traditional areas are examples.

The *teng gan* clans irrespective of the particular ethnic group are usually the first settlers within the community and therefore recognised as the holders of the highest interests in land. They perform spiritual functions such as sacrifices to and pacification of the *earthgods*. These *gods* have special clan names but the Dagara, Wala and Sissala ethnic groups designate them generally as *tengan, tengbama* and

Vene respectively. We found that contrary to the general notion that the *tengan sob* is an individual, he is the head of a traditional institution (*tendaalun*) together with other institutional actors who administer different land uses and pacify different earthgods. These are the *zongmogre* or *dachire* (responsible for market land places), *saa sob* (responsible for the raingod), and the *wie sob* or *gara dana* (responsible for hunting expeditions over land).

Currently, some chiefs under statutory powers to declare what they consider to be the customary law of their communities claim to be custodians of land. In one traditional area we collected the chief's customary land law rules. An excerpt is instructive:

> All lands in this traditional area are rental and not sold; at any rate land is acquired through three persons i.e. first the owner of the plot, the chief and the tengansob but the chief must necessarily be in the know of all lands that are to be acquired for *he is the custodian of all land within his area of jurisdiction* .... the tengansob is a fetish priest, he was the first settler in that particular area. He is entitled to make sacrifices to the land gods for everlasting peace, unity and co-operation among his people[57] (emphasis added).

The DAs and the RLC in the Upper West Region have put in place an administrative scheme in which chiefs (and not the *tengan dem*) *witness* all land transactions within their traditional areas. It is a requirement before approval is given for any form of development on the land. Evidence of this role of chiefs shows that they do not witness the transactions but rather claim to *endorse* them. An example of the standard form used for such endorsement is as follows:

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[56] A Traditional Area refers to the jurisdictional area of a Paramount Chief.
[57] From files of Nandom *Naa's* Palace, "Compilation of Customary Laws of Nandom Division". [pp. 3-4].

TRADITIONAL COUNCIL ENDORSEMENT

I confirm that, the above named *Vaare Doo* is the head of the *Vaare* family/Clan and that he by tradition and custom is authorised to make grants of the land in the Area.

.....

PARAMOUNT CHIEF

.....

REGISTRAR

(TRADITIONAL COUNCIL)[58].

The difference in consequence are obvious. While *witnessing* is one of testimony that the transaction did take place, *endorsing* connotes approval is given for the transaction. Consultations with traditional authorities by both centralised and decentralised state institutions in land matters is only with chiefs. Most *tengan dem* did not even know the assembly member of their area. Apart from the EPA, the *tengan dem* had never heard of any of the other centralised institutions of land administration.

4.1.2.2 *Traditional Family Farming Units*

A semi-structured questionnaire we administered to family farming units reveals that they have a high level knowledge of the existence of the DAs. The sampled units record figures as high as 100 per cent in the Nadowli district and the lowest being the Sissala district with 88 percent. All the sampled units across the region have neither

[58] Town & Country Planning Department, Lawra "Site Plan of Plot No. 57 Block for Mr. Anthony Kavur Dakorah (Lawra Residential Area), made on the 18/4/98.

been consulted nor participated in decisions of the DAs in land matters. See table 4.1 below.

TABLE 4.1: *Knowledge of District Assembly, Consultation and Participation in its decisions on Land Matters by Traditional Family Farming units.*

District	*Sample size 100%*	*Knowledge*	*Consultation*	*Participation*
Sissala	160	88%	-	-
Lawra	100	98%	-	-
Nadowli	200	100%	-	-
Jirapa	230	96%	-	-
Wa[59]	100	100%	-	-

The conclusion we draw from the data is that, while the DA concept might have drawn some amount of awareness to itself, local community participation in decision-making processes pertaining to land is not part of the political negotiation processes under the decentralisation programme.

Knowledge of the existence of centralised state institutions of land administration by the family units is lower than that of the DAs. Our findings record a percentage of 72 per cent for centralised state institutions for the Lawra district as against 98 per cent for the DA; while the Nadowli district recorded the lowest percentage of 10 per cent for centralised state institutions as against 100% for the DA (See tables 4.2a and 4.2b below).

[59] The settlement pattern in the Wa district was not evenly distributed. Settlements tended to be concentrated in Wa town and Peri-urban Wa, as such this affected the representativeness of the sample. Rural communities could not be captured by it to the extent of detail required. As such it shows an anomaly in terms of local community knowledge of institutions and consultation and participation in the decision making processes of these institutions.

TABLE 4.2a: *State institutions: Knowledge of, Consultation by, and Participation in its decisions on Land Matters by Traditional Family Farming Units- LAWRA DISTRICT*

Institution	*Knowledge*	*Consultation*	*Participation*
Town & Country Planning Department	89%	17%	10%
Survey Department	85%	7%	-
Regional Lands Commission	61%	-	-
Office of the Administrator of Stool Lands	69%	-	-
Environmental Protection Agency	80%	2%	1%
Land Valuation Board	50%	-	-

Sample size: 100: 100%

TABLE 4.2b: *State institutions: Knowledge of, Consultation by, and Participation in its decisions on Land Matters by Traditional Family Farming Units- NADOWLI DISTRICT*

Institution	*Knowledge*	*Consultation*	*Participation*
Town & Country Planning Department	16%	-	-
Survey Department	11%	-	-
Regional Lands Commission	11%	-	-
Office of the Administrator of Stool Lands	6%	-	-
Environmental Protection Agency	11%	11%	4%
Land Valuation Board	5%	-	-

Sample size: 200: 100%

The above figures show a pattern, which suggests that knowledge of the existence of centralised state institutions of land administration is related to how long a district has been in existence. Lower percentages of 10 per cent and 17 per cent are recorded for Nadowli and Jirapa/Lambussie (new districts) respectively; while the Sissala, Lawra and Wa (old districts) recorded percentages of 22 per cent, 72 per cent and 35 per cent respectively.

The proximity of centralised institutions to local communities is not a determinant factor of the community's knowledge of their existence. A plausible inference we draw from the data is that the level of interventions made by the institutions in the exercise of their land administrative functions in a community is determinant. Interventions by state institutions tend to be higher in communities where there is pressure on the land due to population increase. This explains the higher figures for the Lawra district as against the Wa district (see tables 4.2a and 4.2e). Though Wa is the oldest district in the region and where all centralised state institutions are located, the Lawra district has a population density of 97 persons per square kilometre as against 32 for the Wa district[60].

Consultation with local communities by centralised institutions and their participation in the decision-making processes of land administration is generally low but higher than that of the DAs. The Wa district shows the highest figures of 12 per cent and 9 per cent for consultation and participation respectively; while the Nadowli district recorded the lowest figures of 2 per cent and 0.6 per cent respectively for the same indicators. These figures suggest that the levels of consultation and participation

[60] See *Medium-Term Development Plans* of the respective DAs for population density.

varied according to the age of the DA. Old districts tended to record higher figures than the new ones (See tables 4.2a, 4.2b, 4. 2c, 4.2d and 4.2e respectively).

TABLE 4.2c: *State institutions: Knowledge of, Consultation and Participation in its decisions on Land Matters by Traditional Family Farming Units- SISSALA DISTRICT*

Institution	*Knowledge*	*Consultation*	*Participation*
Town & Country Planning Department	55%	10%	-
Survey Department	25%	-	-
Regional Lands Commission	10%	-	-
Office of the Administrator of Stool Lands	10%	-	-
Environmental Protection Agency	15%	8%	-
Land Valuation Board	15%	-	-

Sample size: 160:100%

TABLE 4.2d: *State institutions: Knowledge of, Consultation and Participation in its decisions on Land Matters by Traditional Family Farming Units- JIRAPA/LAMBUSSIE*

Institution	*Knowledge*	*Consultation*	*Participation*
Town & Country Planning Department	21%	8%	1%
Survey Department	16%	1%	-
Regional Lands Commission	11%	-	-
Office of the Administrator of Stool Lands	-	-	-
Environmental Protection Agency	37%	9%	5%
Land Valuation Board	14%	-	-

Sample size: 230: 100%

TABLE 4.2e: *State institutions: Knowledge of, Consultation and Participation in its decisions on Land Matters by Traditional Family Farming Units-* ****WA DISTRICT***

Institution	*Knowledge*	*Consultation*	*Participation*
Town & Country Planning Department	50%	5%	2%
Survey Department	70%	-	-
Regional Lands Commission	17%	10%	8%
Office of the Administrator of Stool Lands	9%	-	-
Environmental Protection Agency	42%	40%	43%
Land Valuation Board	19%	15%	3%

*Sample size: 100: 100%

The anomaly of a lower knowledge of centralised state institutions with a relatively higher consultation and participation rates for the Wa district is due to its peculiar demographic structure. Population is more concentrated in and around the Wa township as against other parts of the district (WDA, 1996). Therefore knowledge of institutions, participation and consultation tends to be higher in and around the township and lower as you move outside it. This is unlike other districts of the region that have a relatively uniform population distribution. Our sample for the Wa district was based on the number of settlements. Though its population is concentrated in the Wa township, the Wa town is considered as one settlement. Our sample sought to capture a broad spectrum of the settlements in the district and not one relative to its population, this accounts for the anomaly.

4.1.2.3 *Migrant Farmers*

In earlier times, migrant farmers were welcomed to other communities in the Upper West Region. The view was that the more people you have working on the land the more abundant will be food for everybody. As indicated by the *tengan sob* of Lawra, its name came from a plant known as *Lura-* with many seeds. According to the legend, when their ancestor first settled on the land he found that this plant extensively covered it. He named the settlement *Lura* (anglicised as Lawra) and said "may this land attract as many people as the seeds of *lura* to join us on this fertile land".

Given the complex web of *matri-* and *patri-clans* within these communities, no migrant farmer could be considered a stranger (as in the present times). Among the Dagara and Sissala, interclan play groups accompany these clan networks (to the present time). The situation of a stranger in terms of land for farming in earlier times therefore hardly arose. The *tengan sob* of the *Dikpielle* clan of Nandom illustrated this clan network as follows:

> In earlier times, if I went to Lawra as a person from the *Dikpielle* clan for land to farm, I would be given land by my patriclan. If there is none my mother's patriclan would give me land as their *arbille* [nephew]. If that fails, I would find my *bello* [matriclan] and they will give me land as their uterine son. All these failing, I would certainly find our *diendienbe* [patriclan play group] and ridicule them as *blind people* [basis for the inter-clan jokes between the *Dikpielle* and the *Birifuole* clans of the Dagara] and ask them to give me land to farm and feed their *young masters* [his family].

At the present times, migrant farmers are tolerated in other communities in terms of financial gains that landowners can obtain from them. They are welcomed into other communities on condition that they agree to pay high rents or tributes and allegiance to the traditional political head of the landowning community. In some communities migrant farmers are required in addition not to pay traditional allegiance to more than one paramount chief (to that of their ethnic communities and the communities in which they now have their farms).

When we asked in one community why migrant farmers do not complain to their representative in the DA? A farmer indicated; "We do not have the power, the assemblyman comes from this area. We are not permitted by the chief to contest elections against the people who come from the area to the DA. If we contest them for power our lands would be taken away from us so we keep mute". Another added; "this is not the first time people have heard and written about our problems in *big books*, when they leave that is the end of the matter"[61]. Our discussions with these farmers reveal that both decentralised and centralised state institutions of land administration have no contact with them. There was also no evidence in any of the five district assemblies of records on migrant farmers kept as provided for in their respective legislative instruments.

[61] From Field Notes, in discussions with Migrant farmers at Samuo in the Lambussie Traditional area, August, 1998.

4.1.2.4 *Youth and Development Associations*

We focused our data collection on the six umbrella Youth and Development Associations in the Upper West Region. These are the: Wala Youth Association (WYA), South Dagaba *Langburi* Youth Association (SDLYA), Jirapa Area Youth and Development Association (JAYDA), Lawra Area Paramountcy Youth Association (LAPYA), Nandom Youth and Development Association (NYDA), and the Issaw West Development Union (IWDU). A common feature of these associations is that their membership is drawn from their respective traditional areas. In some cases membership is based on ethnicity but more often it corresponds with dialect groups.

The politics of Youth and Development Associations in land matters in the region is best illustrated by the acrimony between NYDA and IWDU on the one hand, and NYDA and the Regional Co-ordinating Council on the other hand. NYDA petitioned the government in 1989 for the creation of a Nandom/Lambussie DA it considered economically viable given the proximity between the two communities. IWDU opposed the petition and indicated that the Sissala of Lambussie did not want to form one district with the Dagara of Nandom. Among other issues raised by IWDU, is the difference in ethnic backgrounds (Dagara and Sissala) of the two communities and the numerical advantage of the Dagara of Nandom. The Dagara to the detriment of Sissala interests, IWDU maintained, would control such a district.

Significant to IWDU's opposition, however, is the land question between the two traditional areas. As stated in official correspondence of the RCC:

> In this case there was clear and uncontroversial evidence that the Sissala of Lambussie are totally opposed to being in the same district with the Dagaaba [another term for Dagara] of Nandom Traditional Area. They foresee such a situation as the thin edge of the wedge that will inevitably be followed by the loss of their lands that the Dagaaba covet and their identity because of the numerical advantage of the Dagaba[62].

Though the politics of Youth and Development Associations in land matters vary across the region, two broad trends are discernible from our interactions in the field with them. In areas where there is population pressure on the land, associations are very active and less so in communities with abundant land. This position needs some qualification as associations from the latter communities could be equally active if they share a common boundary with the former communities[63]. In the latter situation, associations become the *defenders* of the lands of the community.

Beyond the differences in inter-ethnic encounter of youth associations in land matters, they also encounter state land administration institutions differently. In new districts where there are no layouts and schemes of the lands, the associations tend to lobby state institutions to have this done. They maintain that in doing so, they seek to protect local community rights in land and expect to be consulted by state institutions on matters of land use planning. An association leader indicated that they were learning from the experiences of older districts where state institutions *criminally* demarcate and sell community lands to outsiders leaving families landless.

[62] UWRCC, file reference No. UWCR. 14/5/2, dated 10/5/89.
[63] See the *Namaala/Taalipuo case* illustration in Part II of this chapter.

Relations between youth associations and state institutions of land administration in old districts is less harmonious. The general view held by the associations is that the DAs together with centralised state agencies of land administration are responsible for the increase in the number of land disputes. In addition, the DAs in all the five districts were accused by these associations of appropriating lands of the communities. An activity of DAs all the associations complained about is the collection of levies by the DAs from sandwinners on local community lands. Apart from denying local communities of the proceeds therefrom, they are also of the view that sandwinning activities are encouraged by the DAs, which adversely affect farmlands. The state agencies on their part accuse the associations as trouble makers, who instigate communities against public officers performing their lawful duties.

The main objectives of youth associations in the Upper West Region revolves around issues of *development*, *progress*, and *protection of the rights* of their respective communities. The preamble to the Constitution of one association is instructive:

> We the Youth of Nandom [.....] declare that, conscious of our responsibility toward the promotion of social, economic and cultural development of our people; aware of the fact that we are the torchbearers of our people [....] and eager to mobilise our people and provide the much needed leadership; have hereby resolved to form an association[....]
>
> The aims and objectives of the Association shall include among others the following:-
>
> (I) To promote social, economic, educational and cultural development of Nandom.
>
> [.....]
>
> (iv) To encourage the propagation and progressive development of the traditions of the Dagara of the area.
>
> [.....]

(vi) To protect the rights and interest of the people in the area as *they may be affected by national legislation, proposed, enacted or otherwise*[64](emphasis added).

It is in the context of the above last stated objective that youth associations engage in their struggles with state land administration institutions. We will revisit this issue in Part II of this chapter and in chapters 6 and 7.

4.1.2.5 *Women Farming Associations*

Fifteen women farming associations in the Upper West Region were selected in our study. These are associations that focus their activities exclusively on farming and as such are involved in issues of gender land relations. The distribution of our selected associations across the districts are:

- 2 for the Wa district,
- 5 for the Nadowli district ,
- 2 for the Sissala district, and
- 3 each for the Jirapa/Lambussie and Lawra districts[65].

These associations are registered with either the National Council for Women and Development (NCWD), Northern Ghana Network for Development, and/or the Women in Agricultural Development (WIAD) project under the Ministry of Agriculture.

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[64] From the Constitution of Nandome Youth and Development Association, 1978.

[65] They include: the 31 DWM; Dzudzeidayiri Women and Pogba Yelwontaa associations for Wa district; Kaleo Women, Nadowli Christian Mothers, Kaleo Baptist Women, Konkonpare Women and Sombo/Fian Women associations for Nadowli district; Sissala Women and Nanbichola women associations for Sissala district; Nyani Women, Galayiiri Suntaa and Tizza Women associations for Jirapa/Lambussie district; and Nandom Women Food Farmers, Lawra Women and Hamile Area Widows associations for Lawra district. The figures for each district were in proportion to the number of associations.

Contrary to findings in Benneh *et al* (1995) that gender rights in land is not a problem in the Upper West Region, our findings show that such a statement is an over generalisation. The problem of gender access to land is also not peculiar to areas with population pressure on land either. Common problems *Women Farming Associations* in the Upper West Region have in their farming activities are access to farmlands and financial credit. The women's association in Kaleo indicated how landowners, male household heads, and at times husbands discriminate against them in terms of access to land for farming. They further indicated that where they are given lands for farming such lands are over-used and require a lot of investment to be productive. Where the lands are suitable for crops they are often far away from the settlements and crops are prone to pilfering and destruction by animals[66].

Among the women farming associations we studied, it was found that there was hardly any interaction between them and their respective district assemblies. Apart from the Nandom Women Food Farmers, none of the members of the other associations were members of their DA (see appendix D for the gender profile of the DAs in the region).

4.1.3 *The Bottom-up Approach to Development Planning*

The first development planning exercise of all DAs in the Upper West Region (as for other parts of the country) started in 1996. The D-plans are to cover the period from 1996 to 2000 as the first Medium-Term Plans.

[66] From Field Notes in a discussion with the Kaleo Women Farming Association on Kaleo in August 1998. We note that Kaleo was one of the case study areas of Benneh and his team.

The decentralised planning process is expected to start from the Unit Committee level in each district, where development constraints and potentials of local communities are to be collated through public fora. The Unit Committees had just been established as at the time of our study and we did not have the experience of the planning process at this level. In our discussions with officials of the DPCUs and examination of the five D-plans of the districts, we observed that all the districts in preparing the D-plans adopted the same approach. This was a sequence which involved reviewing existing files of the DA over the past five years; collecting base line data from selected villages and towns; and taking into consideration national level development policy documents such as the *Vision 2020* document.

The information collected from the selected communities and official documents were analysed by the DPCUs and referred to the appropriate sub-committees of the DAs for consideration. The sub-committees defined and prioritised the issues for further consideration by the Executive Committees. Emergency meetings of the DAs were convened at which the D-plan of each district was adopted. However, the adopted D-plan remained a proposal to be submitted to the RCC for further co-ordination and harmonization. Attached to each district D-plan is an appendix illustrating both the fact of a public hearing and the participants. We have extracted figures from the appendices of all the D-plans of the five districts in the region and reduced them to tabular form for easy comparison of the numbers involved in the public hearing and the interests they represent. See table 4.3 below.

TABLE 4.3: *Participants to the 1996 Public Hearing on Medium Term Development Plans of District Assemblies in the Upper West Region.*

District	*Pop.(1995)*	*Participants*	*DA Members*	*Women*	*State Employees*
Lawra	103 983	40	3	4	33
Jirapa	103 381	120	11	5	104
Sissala	77 000	57	11	2	44
Wa	199 680	45	21	1	23
Nadowli	102 260	37	15	2	20
TOTAL	**586 304**	**299**	**61**	**14**	**224**

SOURCE: Compiled from appendices of the respective District Assemblies Medium Term Development Plans.

The figures in table 4.3 above show that out of a regional population estimate of 586 304 as at 1995, a total number of 299 people participated in the public hearing for all the districts in the region. Out of which 61 of the participants were DA members representing electoral areas; with 224 participants being employees of state institutions; and 14 women.

After the district D-plans were adopted, they were sent to the RCC for harmonization into a *Regionally Co-ordinated Programme.* The process of *harmonization* of the district D-plans (as indicated in the regional plan) involved:

> A meeting of the RCC with officials from the NDPC where D-Plans of all the districts were considered and common development issues identified. After a lengthy deliberation on a number of issues in the district plans the RCC was able to amicably iron out intricate issues involved in the interest of all the parties concerned (UWRCC, 1996: 6).

What was striking in the D-plans of the districts was their similarity in terms of chapter contents, development potentials, constraints and priorities; as well as the absence of issues of land administration. At the same time, the D-plans reveal contrasts in the land/person ratio in the districts of the Upper West Region. For example, the D-plan of the Lawra district shows a land/person ratio of 97 persons per square kilometre while the Sissala district D-plan shows a similar ratio of 10 persons per square kilometre (see LDA, 1996 and SDA, 1996 respectively). Therefore, one will not expect land to be unproblematic for both areas in their development plans.

The land question paradoxically, comes up in the national medium-term D-plan as the main determinant for rural development. The relevant paragraph states that:

> Policies and decisions on all aspects of rural development ultimately manifest themselves directly or indirectly in the use of land and its management. Access to land, *land administration and land management systems are therefore important determinants of the form and structure of rural development* (Republic of Ghana, 1998: 199; emphasis added).

In our discussions with officials of the NDPC (National Development and Planning Commission, the sole regulatory body of decentralised planning), it was revealed that districts of the Upper West Region have the best D-Plans in the country; as there was evidence of participation and a close adherence to the format and contents prescribed by it. These guidelines are said to ensure a process by which local communities through *good governance*, take part in a number of development processes which translates into physical and economic goods. This notion of development, the officials maintained, was broad enough to cover *development administration* as defined in the *Vision 2020* document.

The NDPC officials agreed that participation in matters of land administration is a most relevant issue to development of the Upper West Region. The explanation they offer for the absence of the land question in the D-Plans is that the DAs viewed development planning at two levels (social/economic development and physical development). Social/Economic development is held to involve economic, social and human development issues- the focus of the D-Plans; while physical development planning deals with matters of sustainable development through land use. The failure to incorporate the two development activities into one Plan is said to be due to the different legal basis of the two activities. Socio-economic development is said to be governed by Act 462 (the local government Act) while physical development is based on the T&CP Ordinance of 1945 (Cap. 84). The manner of participation by local communities provided in the two legal regimes are said to vary. The T&CP Ordinance provides for participation in terms of a scheme of land use prepared and published for public comment; while participation in the local government Act is intended to make people part of the planning process through its various stages to implementation.

During our field study we came across a number of cynical statements of the Upper West communities on decentralised planning, however, two such statements are a good summary of how they view the new development planning approach:

> I now do not know anymore whether the *grassroots* are at the bottom or the top, because if you uproot the grass and turn it upside down the roots are at the top[67].

And further:

[67]From Field Notes in an interview conducted with a Youth and Development Association, in the Upper West Region in July 1998.

> All they [DAs] know about development is the construction of KVIP (Kumasi Ventilated Improved Pit) toilets, without even finding out whether people eat in the first place to need a toilet. Any village you visit the most impressive building is the toilet among thatched and mud houses and often the only building with corrugated-iron- sheets[68].

While our study is not on land conflicts per se, we came across a rather large number of them during our field study. Decentralised institutions (to varying degrees) were involved in these conflicts. We therefore exhibit five of them (one for each DA area) to illustrate the importance of the land question in decentralised development (see appendix G).

4.2 Conclusion

The question that arises from our findings is: if decentralisation is about development how come the development activities of decentralised institutions remain uninformed by an important development concern such as the land question? Perhaps the real objective of Ghana's decentralisation programme lies elsewhere than the development of local communities. Be that as it may, the notion of development the decentralisation programme seeks to pursue could also be in only the interest of dominant segments of the Ghanaian society other than the peasants of local communities in Ghana.

In subsequent chapters we will take a closer look at our findings with the view to offering an alternative interpretation on the decentralisation programme in Ghana. The hunches that prompted our field study on decentralisation suggest that there are alternative stories that can be told about Ghana's programme. It is our view that such

[68] Ibid.

stories can be tracked by a rigorous and critical interpretation of our findings reported in this chapter. We will therefore devote chapters 5, 6 and 7 to such an exercise.

CHAPTER 5

DEVOLUTION AND LAND ADMINISTRATION

5.0 Introduction

Devolution as an objective of Ghana's decentralisation programme, symbolises a new era in its development discourse and a strategy in its socio-economic and spatial relations. A significant feature of devolution in Ghana's decentralisation programme is that there are rights at stake in socio-political processes of conflict and negotiation. The arbiters of these processes are politico-legal institutions established by the state. For local communities these rights turn on the issue of resource (land) access. In Ghana there is a multiplicity of rules for land administration that affects access of local communities to land. The state implements these rules through local government structures (previously through local councils and now through the current district assemblies). The focus of this chapter is on the machinery(ies) of land administration[69].

We argue that the state land machinery monopolises land management and control functions in the Upper West Region to the neglect of its traditional structures. And that these structures of land administration among the Upper West communities constitute alternative land administration machinery better suited to their circumstances.

[69] This refers to the traditional machinery of land administration and the state machinery at the local level.

5.1 The discourse on Devolution: An Overview

Devolution as a form of decentralisation in Ghana seeks to cede control of such agencies and resources to political actors and institutions at lower levels. It is a form of power sharing between central government and sub-national units (see Crook and Manor, 1998: 7). To achieve this objective it further seeks to devolve central administrative authority and governmental agencies to the district or locality. The assumption of this policy is that-

> (a) development is that which responds to people's problems and represents their goals, objectives and priorities;
>
> (b) development is a shared responsibility between central government, local government ... non-governmental organisations and the people- the ultimate beneficiaries of development- all of whom must be closely linked;
>
> (c) virile local government institutions are necessary to provide focal points or nuclei of local energies, enthusiasm, initiative and organization to demonstrate new skills and leadership (MLG&RD, 1996: 7).

There are a number of approaches in conceptualising devolution as a form of decentralisation. According to Meenakshisundaram (1994: 11), devolution involves the creation and strengthening of sub-national units of government, activities of which are substantially outside the direct control of the central government. Vosloo *et al* (1974: 10) see devolution as the most extensive form of decentralisation which involves the conferment of rule-making and executive powers of a specified or residual nature on formally constituted sub-national units. For Hibbard (1999: 75), devolution arises from the belief that top-down approaches have not been effective in addressing local community issues and that local communities are themselves an

important source of solutions. The classical form of devolution according to Cameron (1995: 397) has the following characteristics:

- Local authorities should be constitutionally separate from central government and be responsible for a significant range of services.
- They should have their own treasury, separate budget and accounts and their own taxes to produce a significant part of their revenue.
- Local authorities should have their own personnel, with the right to hire and fire such staff.
- Policy should be decided by local councils, consisting predominantly of elected representatives.
- Central government administrators should only play an indirect advisory, supervisory and inspectorate role.

However, three broad approaches are discernible in current literature on the subject. These approaches are *public choice theory*, *public policy* and *integrated political economy framework*. These approaches are well known and we do not intent to repeat them[70].

Legislation being the mechanism through which the state expresses devolution as a political act, the legal construction of devolution in Ghana's decentralisation discourse is a good point of entry for reading and appreciating the state conception of devolution.

[70] For detailed discussions on these approaches see Nicholson (1981: 17-42) and Moe (1984: 3-25) as representative of public choice theory; Nicholson et al (1981) on the public policy approach; and Rondinelli (1989), Rondinelli et al (1989), Slater (1989) and Samoff (1990) on the political economy approaches.

5.2 The Legal Regime of Devolution in Ghana

Article 240 of the 1992 Constitution of Ghana and the Local Government Act of 1993 (Act 462) provide the legal basis for devolution in Ghana. The Constitution specifically provides that Ghana shall have a system of local government and administration that shall as far as practicable be decentralised (Article 240). The salient features of devolution envisaged by the provisions include the following:

- Functions and responsibilities of state institutions that can be better performed at the local level should be transferred from the central government to local government units;
- Measures should be taken to enhance the capacity of local government authorities to plan, initiate, co-ordinate, manage and execute policies in respect of matters affecting local people;
- Local government staff must be controlled by local authorities; and
- There should be popular participation in local level decision-making (MLG&RD, 1996).

Devolution in Ghana is a four-tier structure of government, involving the RCC at the regional level, DAs at the district level, Town/Area Councils, and Unit Committees at the sub-district level (see Appendix "B"). We have elaborated on this structure in chapter 4 and do not intend to repeat it here.

This legal construction of devolution in Ghana, in our view, is a spatial strategy of the state that demarcates spheres of activities for devolved administrative structures and detaches devolution from the wider socio-political and economic issues. Devolution as understood by the official discourse addresses institutional reform by conceiving the political setting as sufficiently separate and distinct from the process itself. To

achieve this objective the legal regime seeks to insulate devolved institutions from partisan national politics. Article 248 of the 1992 Constitution provides that:

> (1) A candidate seeking election to a District Assembly or any lower local government unit shall present himself to the electorate as an individual, and shall not use any symbol associated with any political party.
>
> (2) A political party shall not endorse, sponsor, offer a political platform to or in anyway campaign for or against a candidate seeking election to a District Assembly or any lower local government unit.

The effect of such a strategy is to depoliticize public life and to persuade local communities that promoting the public good through devolution need not require political struggle. To seek to protect devolved structures from the germs of politics and ideology is to foreclose alternative discourse on devolution (see Slater, 1989; Samoff, 1990).

As we indicated in chapter 2, discourse on law and development premised on mainstream legal thinking fails to uncover the essence of the legal regime of decentralisation in Ghana. Historical critiques of such mainstream thinking also fail to uncover the deceptive ideological veils that reify and obscure this restructured instrumentality (decentralisation) of state power. Cameron's study of devolution in apartheid South Africa underscores this point. He concludes that:

> Successive NP governments' attitude to autonomous local authorities has been dictated by national political considerations. The major reason for centralisation of local government powers from Union in 1910 to 1979 was the need to ensure the successful implementation of apartheid ... However, in the 1980s, it suited the NP to devolve powers to local government units. Devolution was the mechanism through

> which group rights could be protected, and also depoliticise highly contentious issues by transferring them from central government to local level (1995: 414).

While devolution in Ghana dates back to the colonial era, the present attempts reveal a fundamental restructuring. Therefore, while a critical historicity on devolution in Ghana reveals its character as an instrument of class exploitation over time, we miss out its spatial fix. As Soja (1989: 6) cautions critical social theorists:

> We must be insistently aware of how space can be made to hide consequences from us. How relations of power and discipline are inscribed into apparently innocent spatiality of social life [and] how human geographies become filled with politics and ideology.

Through the legal regime of devolution, the Ghanaian State reconstructs local community spaces, which in official discourse are said to be necessary for local community development. At the same time, the legal regime indicates the permitted areas that count for local development activity. Partisan political activity is considered external to the development concerns of local communities. The consequence of such a strategy is that local communities are excluded from questioning power relations at the level of national politics and how this affects their development efforts. But as Soja (1989: 35) observes the modern state was itself a socially produced space actively involved in the reproduction of a particular social spatialization.

Having explored devolution in general terms in previous sections of this chapter, our focus in subsequent sections will be on the legal regime of devolution and its implications for land administration. It enables us see further what consequence devolution as a state spatial strategy hides from us. Our view is that, it is on the land

question we can appreciate how devolution in Ghana reproduces existing social relations. We will consider firstly, the central state land machinery and secondly the land machinery at the local level. This separation is for analytical purposes as in practice there is a replication of the central state land administration machinery at the local level.

5.3 Central State Land Machinery

There is a conscious effort in discourse on land administration in Ghana to construct a *public* and a *private* dichotomy of land relations. Policy documents and scholarly narratives on land administration categorise land holdings as either public or state ownership, vested lands, or private customary ownership (ML&F, 1999; Kasanga, 1996). Public lands are said to be lands compulsorily acquired by the state through legislation for public purposes or benefit; while private lands are communally held by particular groups; be it a stool, skin, clan or family. Sandwiched between the two are vested lands that are a split ownership between the state and traditional authorities. The Head of State holds vested lands in trust for the entire population by legislation (ML&F, 1999: 1-2).

Related to the notion of traditional/customary land relations as a private sphere is the view that such relations lend themselves to free market conditions. Land then becomes a private commodity like other commodities that can be traded in a market. This view of land (as a commodity) seeks to erode the traditional notion that land is not *saleable* in some Ghanaian communities (see Danquah, 1928; Fortes, 1949; Goody, 1962; Ollennu, 1962;1985). The notion of a *land market* has also been introduced into the terminology of state institutions of land administration in which

some policy documents have gone as far as constructing a *state land market* and *a private/customary land market* (ML&F, 1994: 44-48).

The state machinery of land administration is therefore seen as an agent of the state in land transactions in this market. The representation of land as a saleable *object* has implications for land relations in the Upper West Region. The saleability of land in Northern Ghana (as in other rural communities) has the effect of extinguishing inter-generational rights in land that are an important incidence of traditional land relations (see *Kokomlemle Consolidated Cases*[71]). As Amanor (1999: 146) argues, the concept of an endogenous land market is an illusion, as agriculture and land markets are dominated by processes of capital penetration and integration into the world market.

At the level of state law however, there is no such neat distinction between *public* and *private/customary* rules of land administration. The control and management of private/customary land relations are dominated by public institutions through a multiplicity of legislations. These institutions of land administration in Ghana range from sector ministries to statutory organisations. Of relevance to the Upper West Region (as our findings in chapter 4 show) are the Ministry of Lands and Forestry, the Regional Lands Commission, the Land Valuation Board, the Survey Department, the Environmental Protection Agency and the Stool Land Administrator. The functions of these institutions include the:

(a) administration of public and vested lands;

(b) the collection and disbursement of stool (skin) lands revenue;

(c) determination of land values; and

[71] 1951 D. C. (Land) '48-'51, 312.

(d) co-ordination of land development activities such as settlements, development plans and lands development standards (ML&F, 1999: 2-3).

A number of constitutional provisions and legislations form the bases for the exercise of these functions[72].

The legal regime of land administration (as we indicated in chapter 1) provides for two forms of state acquisition of land- acquisition of land for *public purposes* and the acquisition in the *public interest.* Though related, the former requires that there must be a specific purpose for the land acquisition such as the building of schools, hospitals or for the construction of other public infrastructure. In the latter, the acquisition need not be for a public purpose, but nonetheless, must be considered to be in the public interest (section 1, Act 123; section 7, Act, 125). The interpretation of the *public interest* by public land administrators in Ghana varies in practice from the interests of statutory corporations to private companies and individuals (see Kasanga, 2000: 1-21). An example will clarify the point.

In 1977, the then SMC (Supreme Military Council) enacted Executive Instrument No.82 pursuant to the State Lands Act to acquire lands popularly known as *Ofankor Lands* in a suburb of Accra. The acquisition was stated to be in the public interest. The victims of the expropriation got to know about the government's acquisition only when they saw prisoners and other developers cutting land boundaries in the area. By the early 1990s, when the *Ofankor* community started various forms of resistance against the land developers and protests to the Lands Commission, plots had been

[72] See Articles 36 and 267 of the 1992 Constitution, The Administration of Lands Act, 1962 (Act 123) as amended; State Lands Act 1962 (Act 125); Lands Commission Act 1994, (Act 483) and Office of the Administrator of Stool Lands Act, 1994 (Act 481).

allocated to outsiders by the Commission and the area had become a sprawling modern estate (ML&F, 1994: 44).

The beneficiaries of these lands are private firms and organisations, influential government officials, business executives, public land administrators and the top echelons of the Civil Service. The Report of the Lands Commission (1994: 44) on the issue shows that none of the expropriated community members were allocated land. The remaining plots of land are earmarked for a sports complex, quarters for retired army personnel, a police depot, and a timber market. This is an example of how the state land machinery defines the public interest. The Ofankor example is not unique in Ghana (also see Amanor, 1999 and Kasanga, 2000).

In the Upper West Region, the *Kabanye* disputed land (we referred to in appendix G) on which is situated the SSNIT Housing Scheme is another example. As at the time of our field study the relevant Executive Instrument had not been passed nor had compensation been paid to the owners of the land by the state[73]. Tenants of the housing scheme meanwhile, have been occupying the land for the past four years. The *Lawra/Yagtuuri* land dispute we also referred to in appendix G is yet another example in the region. The negative effect state land acquisitions have on local communities is confirmed by the recent national land policy document. It observes that the land sector is beset by problems and constraints involving:

> Compulsory acquisition by the government of large tracts of land that have not been utilised and for which compensation has been delayed. Landowners have been left landless and have become tenants on their own lands giving

[73] This was confirmed by the Secretary to the Upper West Regional Lands Commission in our discussions with him in July 1998.

rise to poverty and disputes between state and stools as well as within the private land sector (ML&F, 1999: 3).

We next explore the *local level* land machinery at the levels of the traditional land administration machinery and the land machinery of devolved institutional structures of the decentralisation programme.

5.4 Local Level Land Machinery

5.4.1 *Traditional Land Administration Machinery*

In chapter 1, we indicated the socio-political arrangement of *acephalous* communities in general terms. However, to understand how it operates as land administration machinery in the Upper West Region we illustrate this in graphic form (see figure 1 below).

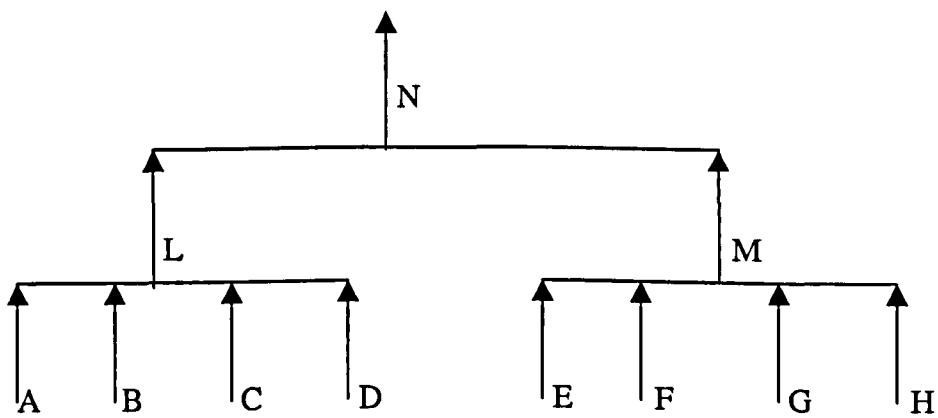

Figure 1. Source: Horton (1976: 83).

In figure 1 above, letters A to H represent autonomous lineage political groups. In the absence of threat to their lands, lineage segments A, B, C and D act as autonomous units. But if someone from spatially distant lineage E tries to appropriate farm lands from lineage D; A, B, C, D will unite into a larger unit L in concert against E. When

this happens, E will call upon F, G, H to also form a larger lineage M to combat unit L. But if members of M are threatened by a more distant lineage, L will join with M to form a still larger unit (N) to ward it off. When the conflict subsides the reverse process takes place (see Horton, 1976: 84).

5.4.1.1 *Tendaalun*

The highest institutional structure of traditional land administration in the Upper West Region is *tendaalun* (Rattray, 1932; Pogucki, 1955). Its head is the *tengan sob* or *tendamba* among the Dagara and Wala dialect groups and *totina* or *botina* among the Sissala of Lambussie, Tumu and Wellembelle respectively. As in figure 1 above, the *tengan sob* is often the most senior male of each autonomous unit. The legal conception of *tendaalun* remains undeveloped in the land law jurisprudence on Northern Ghana as scholarly works make generalisations as to its character and legal incidence. It is often represented only in terms of its head (an individual) without consideration of its location in the wider social matrix of particular communities. Rattray (1932) sees the *tengan sob* as a *Priest-King*; Goody (1956) sees him as the *custodian of the earth shrine*; and for Pogucki (1955) he is the holder of an office as either a *ritual officer, landlord or land owner.* However, the institution *tendaalun* cannot be understood outside the complex networks of clanship and its articulation with other institutional forms such as the traditional family. We illustrate these inter-relationships with the Dagara ethnic group of the Upper West Region.

The most senior male descendant of a patrilineage that first settled in an area is often referred to in the literature as the *tengan sob.* As such, he is erroneously held to be *owner* of the land or hold the highest interest in land. In Ghana land law jurisprudence

this interest in land is variously characterized as either the *allodial, indeterminable, radical* or *absolute* interest (see Woodman, 1968: 79-144). This is an interest in land beyond which there is no superior interest at customary law (section 19 of PNDCL 152 and ML&F, 1999: 29). However, our findings show that the *tengan sob* acts as representative of the clan and not as an individual. He takes decisions in land matters only after consultation with members of his generation within the clan (see Goody, 1956 and Tengan, 2000). Conceptually, it is a traditional landholding institution in which there are a number of institutional actors. The institutional practices of the various actors together constitute what we term *tendaalun* as understood by the Dagara communities of the Upper West Region.

We found that the institutional actors involved in the performance of the spiritual functions of *tendaalun* include the *suo sob* and the *zongmogre*. The *suo sob* performs the actual acts of the sacrifice while the *zongmogre* performs the same duties in sacrifices that involve a market land place. An indication that different actors administer different land uses; be they places for public meetings, commerce, hunting as in *gara* or a source of water. All these role actors or office holders make up *tendaalun* as an institution within which the most senior male of the patriclan acts as the head[74].

In the context of traditional land administration, there are the *maximal* and *minimal* lineages (Goody, 1958) due to migration. The maximal lineage for the Dagara, refers to dispersed groups located in different areas in the Upper West Region but trace a common origin to an agnatic ancestor unknown. What holds such a group together is a

[74] Interview with the *tendaanas* of Lawra, Kaleo and Jirapa, August 1998.

common *totem*. The Dagara notion of totem is *kyiru*; a concept Rattray refers to as meaning an "avoidance" or a "taboo" (1932: 405). However, the Dagara conception of *kyiru* goes beyond the notion of *avoidance* or *taboo*. Among the Dagara clans, the symbol of the totem is one considered to have saved the founding fathers of the clan from some calamity. The survival of the entire clan is therefore traced to such divine intervention. A patriclan is identified regardless of its spatial location by its common totem (Tengan, 2000: 163).

For instance, the Bekuone clan of the Dagara wherever you find one, has the *bule puo zum* (fish of the well) as totem. As one *tengan sob* informed us, the Bekuone *kyiru* does not refer to a fish in a well literally speaking but a species of mud fish found in water of any size that does not flow. A pond, lake or other enclosed water body will be included; while rivers, streams and other moving bodies of water will be excluded. Tengan's (2000) study on the Dagara of both the Upper West of Ghana and the Southwest of Burkina Faso supports our finding (also see Tengan, 1991 on the Sissala).

5.4.1.2 *The Traditional Family*

Given its dispersal, the patriclan as a maximal lineage is not of much significance in traditional land administration. The minimal lineage is central in land matters among the Dagara. Members at this level are held together not only by a common totem but a common earthshrine they worship within a shared space. It is when members of this lineage first settle in an area that they become the *tengan dem* (Rattray, 1932; Goody, 1956). This explains why a clan are *tengan dem* in one community and not in others among the Dagara of the Upper West Region.

A difficulty with the characterisation of the patriclan by earlier anthropologists (see Rattray, 1932 and Goody, 1956; 1958) is their focus on *doglo* without an in-depth consideration of *yirlo*. *Doglo* refers to blood descent groups while *yirlo*, though often used in a similar sense, does have other meanings in particular contexts. The contexts in which the term *yir* is used have primary, secondary and tertiary levels of meaning. It is these different contexts of *yir* that links the patriclan and the traditional family in the hierarchy of the traditional land administration machinery. Goody (1958) characterises family among the Dagara as either the *extended, elementary or expanded family* as against the *nuclear family* as understood in Western cultures.

This dichotomy of *nuclear* as against *extended* or *expanded* family that narratives on African cultures seek to make is unhelpful as the social contexts of these communities hardly lend themselves to such a categorisation. The context in which the term *yir* is used has a particular signification. As noted by Kuukure, the Dagara do not have the term designating the elementary or nuclear family:

> By means of the term *yir* the Dagao [Dagara] designates simultaneously the family grouping which live in the interior of a house and the house itself- the physical building. The husbands and wives with children are the constitutive elements of the *yir* whose members are subject to the authority of the *yir sob*. The elementary units occupy different quarters of the house called *dio* [room] or *logr* [section or gate] (1985: 33).

The above quotation refers to *yir* (family) in a primary sense. Within a Dagara community, the individual primary *yie* (plural of *yir*) in a village settlement, form another *yir* in a secondary sense. In the latter sense, members of a *yir* trace their descent to a common great grandfather, often to a third generation or within living

memory. The most senior male among them acts as its head. He addresses problems that cannot be solved at the level of the primary *yie* (see Tengan, 1997 and Tengan, 2000).

The term *yir* is used further in a tertiary sense to designate the wider patriclan within a settlement. It is at the tertiary level of *yir* that we have its head as the *tengan sob.* In this sense we are dealing with a situation in which the first settler arrived with younger brothers and with time they moved out to build separate compounds that further split into separate households. The original house is often designated *Yikpen* or *Yikura* (big or old house) - a common feature in Dagara settlements (Tengan, 2000). The house in which funerals are celebrated is a way of identifying this original house within a Dagara community[75]. Tengan (2000) identifies four broad names of *yir* in this context, which stand in contra position to one another and are further divided into many cluster names. The four principal *yie* are the: *Kpiele, Gbaane, Naayiili,* and the *Bekuone* (2000: 166-167), which are also names of patriclans.

Tengan summarises the Dagara notion of family (*yir*) in the following way:

> To conclude our attempt to define family/house, we can say that, though the notion *yir* is the closest translation of the term family, it is so polyvalent in meaning and signification that we always have to look at the context to see whether the term refers to the total patri-House (*yiilu*), a patrihouse (*yir*), a segment of the house (*logr*) or the married couple and their children (*die*). For the Dagara, these four levels of the house are interconnected and ultimately form one reality (1997: 51).

[75] From notes of interviews held with the *tengan dem* of Lawra and Nandom in August, 1998.

In traditional land administration, *yir* in the tertiary sense holds the highest interest in land where its members are the first settlers within the community (see Goody, 1956 and Pogucki, 1955). Later arrivals are settled-in by them on various parts of the land, be they of the same clan or not. The latter in all communities always recognise the former as holders of the allodial interests in land. Where new farms are needed or a house is to be built, it is the first settler clan that performs the traditional rituals for farming or lays the foundation stone in the case of a building. It is however not an economic unit in terms of daily activities of the production process.

The productive economic unit in terms of land relations is the family in the sense of the primary *yir* and to a lesser extent the secondary. If the members of the primary *yir* are of the landowning group, their lands are those portions they have taken possession of as members of the wider clan and handed down from one generation to another. In *Joseph Nobert Peryagah v. Yadoo*, the head of the family in the secondary *yir* leased out land belonging to the plaintiffs (family in the primary *yir*) to the defendants without consulting them. The court held:

> According to Dagara custom even though Sensin was head of the family [in the secondary sense] he was not head of all farmlands in the family since other members of the wider family own the farmlands they work on. It was therefore wrong for Sensin to lease out the plaintiffs' father's land to the defendant without first consulting the plaintiff and his brothers[76].

The interest the primary *yir* have in land is the customary freehold interest or *usufruct* as understood in Ghana land law jurisprudence (see Woodman, 1968 and ML&F, 1999: 29). An incidence of the customary freehold interest in land is that, unless there is failure of succession or the land has been abandoned, the clan cannot take it away

from the family (Pogucki, 1955: 11). There are however rare situations where protracted disputes over the land between family members force the clan head to retake possession as a way of resolving the dispute. This is the case where the dispute gets physically violent and there is fear it could lead to *shedding* human blood on the land. The shedding of human blood on land is considered a major taboo in the use of land among the Dagara (Rattray, 1932: 429 and Tengan, 2000).

There is some conflict in the case law of Ghana as to the incidence and interrelationship between the allodial title and the customary freehold. In the old cases of *Lokko* v. *Konklofi*[77] and *Sam* v. *Tham*[78], the view was that when a citizen occupied vacant communal land, his interest eventually "ripened into full ownership", ousting the community's allodial title altogether. More recent cases such as *Thompson* v. *Mensah*[79] makes it clear that the community retains its allodial title[80]. In the context of land relations in Northern Ghana, we agree with the position of Griffith CJ (as he then was) but for a different reason than judicial realism. The debate seems to focus only on the proprietary interests in land. But if one considers that land for most Northern Ghana communities has also a religious significance (earthshrines), which the *tengan sob* as custodian continuously pacify, then the importance of retaining the allodial title in the community becomes clear.

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[76] Suit No. 2/78, District Court Grade II, Lawra. Delivered on 24 September, 1978.
[77] (1907) Renn. 450 (D.C and F.C).
[78] (1924) D.C '21-'25, 63.
[79] (1957) 3 W.A.L.R. 240 (C.A).
[80] Asante, S.K.B. (1965) "Interests in Land in the Customary Law of Ghana- A New Appraisal" Yale L.J. 848, suggests that the early cases were the result of a "realist" policy of Griffith C.J to make the customary law of the courts comply with the realities of the people's behaviour. But Woodman (1968: 90) is of the view that even if the community retains the allodial title in theory, this means in practice it retains nothing.

5.4.1.3 *Lesser Interests in Land*

Customary tenancies and other lesser interests in land relations such as *abunu, abusa* and *dibimadibi* (practised among communities in Southern Ghana) are often assumed to be applicable to all communities in Ghana. These lesser interests in land are considered as part of the customary rules of Ghana land law and by that are viewed as part of the traditional practices of the communities (see Woodman, 1996; Da Rocha and Lodoh, 1995). What is however discernible in such land relations is that they are sharecropping arrangements associated with the emergence of cash-crop production in Southern communities of Ghana. Though the pre-cash crop traditional basis of such arrangements awaits further in-depth study, the current practices suggests that they may have been modified with the commercialisation of agricultural production if ever they were traditional farming practices (see Hill, 1963 and Amanor, 1999).

As our findings on migrant farmers in the Upper West Region show, the payment of *rents* and *tributes* for the use of land have no historical antecedents in their traditional land relations (see chapter 4). To that extent, no elaborate institutional structure through which such arrangements are made exists among the communities. As we indicated in chapter 4, lesser interests in land historically were obtained by migrant farmers from either the *tengan sob* or head of the traditional family of vacant or unused land under their control. The overriding consideration for giving out such lands was that the migrant farmer would observe the traditional practices associated with the use of the land and make small contributions towards religious ceremonies for pacification of the earthgods. Our findings confirm Goody's (1956: 34-37) study on the socio-economic structures of the Lowiili (Dagara) of the Upper West Region.

5.4.1.4 Traditional Land Uses

Related to the above traditional institutions of land administration are associated forms of land use among the Dagara. The heads at the various institutional levels enforce the rules of land use. A farm that is distant from the physical building is known as a *puo*; as against *siman* that is a farm around the compound. Where a *puo* or *siman* is abandoned or allowed to fallow or not needed immediately by a family member it is known as a *puo kora* (old farm). *Puo, siman* and *puo kora* are controlled and managed by the head of the primary *yir*. There are also uncultivated lands that go by a number of designations as either: *muo puo* (uncultivated but cultivable grasslands), *waja* (remote bushes but still part of the clan land) mostly used for hunting or grazing livestock, and *kar* (infertile land near the settlement). *Kar* is used for either grazing livestock, as a public recreation ground or for a market place. The right to the use of *kar* or *waja* is communal and can be likened to the *commons* of other jurisdictions. One does not have to belong to a land owning entity to enjoy the use of such lands. It is customary to have people from other settlements grazing animals, picking wild fruits or fishing on such lands without committing trespass (Tengan, 2000). *Kar* and *waja* are administered by the *tengan sob*. Given that most fertile lands are reduced to family possession in the Upper West Region, the *tengan dem* duties are now more pronounced in the administration of *kar* and *waja* (also see Rattray, 1932).

As this brief narrative on institutional structures of land relations among the Dagara shows, its land administration machinery is not as simple as it is often represented in official discourse. Land law jurisprudence on Northern Ghana remains uninformed by

this social matrix and its relevance to local communities. Hence the notion in some scholarly narratives that land in Northern Ghana is *owned* by the *tendana* (see Rattray, 1932 and Ollennu, 1985). As Goody (1956: 35) points out, the ritual position of the *tengan sob* (as representative of his lineage) gives him nor his siblings any special land rights of tillage against the entire lineage.

5.4.2 *Decentralised State institutions and Land Administration*

As our findings in chapter 4 show, chiefs are considered as custodians of land by state land administration institutions. Though in traditional land tenure they are not associated with matters of land administration, state institutions at both the centralised and decentralised levels assign them such a role. Any transaction affecting land, requires the paramount chief to *endorse* it before state institutions can accord it validity. Therefore, in a sense we can say that the institution of chieftancy has become part of the state apparatuses of land administration. It is more the case as the institution has been formalised and integrated with the state through the National House and Regional Houses of Chiefs (see Articles 270-277 of the 1992 Constitution).

The role of chiefs as custodians of land and for that matter land administrators is a subject of much controversy. This role of chiefs (as we will indicate in chapter 6) in Northern Ghana was assigned them by the colonial administration under *Indirect rule*. This created a so-called traditional land tenure regime of multiple land rights in which farmers have *user-rights* in agricultural land and chiefs have *de jure* rights in land. But as Amanor argues:

> While these rights are defined with recourse to tradition, the [...] system, through which these resources are granted to national and international firms for production for the world market, has nothing to do with tradition. In this setting, traditional rights are anachronisms and through the authority of the chief the world of preordained status and tradition's chains is transformed into the world of free markets, in which commodities become *antiquated before they can ossify* (1999: 19; original emphasis).

The DA through the T&CP department is also actively involved in land matters at the local level. Its involvement in land administration is through elaborate procedures required before a building permit is issued and the designation of land for particular uses in schemes and layouts. As the district planning authority, no development of land can take place without its permission. The RLC is decentralised only to the regional level but is involved in land administration at the district level as well. Under the 1992 Constitution and the current Lands Commission Act (Act 483), the RLC performs the functions of the National Lands Commission and any other functions assigned to it by the Minister for Lands and Forestry. The five DAs in the Upper West Region are each represented in the Upper West Regional Lands Commission (see Articles 260-264 of the 1992 Constitution).

These new players (DA and RLC) ignore traditional forms of land administration and in some cases consider them to be standing in the way of development. This has generated conflicts between the local communities and decentralised land

administration agencies due to different perceptions of land administration in the Upper West Region[81].

Land use designation by the DA is the most contested issue of land administration in the Upper West Region. As indicated by a family head during our field study, the DAs do not consider the traditions of local communities in setting their development projects. Projects are often located on sacred areas or on fertile farmlands of the communities. As he observed, if the DAs were to consult with the appropriate land holding entities they would be shown infertile lands that can conveniently take development projects with little friction with the communities.

Amanor argues that the rise of new paradigms for development based on *decentralised and participatory* models, also seeks to create new modes of integrating rural communities engaged in peasant production into a modern agricultural service sector. And that the land tenure perspective which stresses the capacity of local community development organisations to manage the administration of land, reflects this new paradigm (1999: 15).

As Goody (1980) has argued about the Builsa community of Northern Ghana, the burning of rice fields is essentially a reaction to the development of inequality arising from modern uses of land:

> The burners are the excluded: not the dispossessed so much as the joiners, the believers ... it is a form of protest based on an emergent inequality in the rural areas, an inequality that is linked to, though distinct from, that which emerged in the

[81] From notes of interviews held with officials of the five DAs of the region from June to August, 1998.

bureaucratic, political and military spheres during the colonial period, as well as in the earlier activities of big merchants and local chiefs (1980: 151).

5.5 The Spatial Politics of Devolution

Discourse of the state on devolution should be viewed as a transcript of power. In its veiled form, state power through devolution is represented as benign structural arrangement of government machinery at the local level. The character of the state machinery being devolved is hardly considered as an issue. In seeking to understand Ghana's devolution script, it is useful to unmask the power locations within the state machinery to see the segments of the society who hold power. How it is deployed? And for whose benefit? As argued by Harvey (1996: 44), ideas of space are not value neutral but politically, economically or ecologically loaded, and often become instrumentalised in social interaction.

Relations between central and local government units in Northern Ghana have a chequered constitutional and administrative history. It has been the subject of Committees of Inquiry that have made a number of recommendations[82]. A common feature of these recommendations is a design of a system of local government that forestalls partisan political party activity at the local level and the promotion of bureaucratic dominance of the local government machinery[83]. Issues of decentralisation and development are often left in the hands of local bureaucratic machinery held to be above partisan politics. Ironically, the decentralised bureaucracy is one entrenched within the centralized state administrative apparatuses (see Crook

[82] Notable are the Coussey Committee of 1949; Greenwood Commission of 1957; Mills-Odoi Committee of 1967, and the Siriboe Commission of 1968 (supra).

and Manor, 1998: 236-240). The lineaments of such bureaucratic entrenchment in local government date back to the colonial period and have implications for the current attempts at devolution in Ghana.

5.5.1 *Under the Colonial State*

In the case of Northern Ghana, the administration of Colonel Northcott marks the inception of modern local government (Bening, 1975). The north of Ghana was annexed to the then Gold Coast as a protectorate of the British empire and divided into provinces administered by a Chief Commissioner. Each province was further divided into districts and administered by District and Assistant-District Commissioners (Ayee, 1994). Within this devolved spatial framework, the establishment of a military administration in the Northern Territories was advocated, urging that all officers employed be capable of exercising military command and that each District Officer should be provided with:

> An armed detachment of sufficient strength to ensure his personal safety in any possible contingency to support the dignity of his position and enable him [to] quell any minor disturbances with exemplary promptitude (Bening, 1977: 62).

This command model of local level administration was instituted at the regional, provincial and district levels and linked to the central colonial state administration. It concentrated all powers of decision-making in the military commander of the province and the districts. The propensity of commanders to undertake punitive expeditions alienated the people and created an atmosphere of distrust for local government. Contact of the people with the local administration as observed by

[83] A good example is the Mills-Odoi Report that focused on the restructuring of local government as

Bening (1977: 63) was one of raids and withdrawal of troops as was deemed fit. Problems arising from this model of administration culminated in a number of administrative reforms to *indirect rule* under native authorities.

Under *indirect rule*, the colonial power sought to perpetuate its rule by co-opting and propping up the institution of chieftancy as a more effective and less problematic form of administering local communities. Chiefs were the main agents disseminating instructions from the colonial administration and ensuring compliance to them. As observed, they recruited labour gangs for the mines on behalf of the colonial administration for the construction of roads and public works and raised revenue through direct taxation (Songsore and Denkabe, 1995; Nii-Plange, 1979; 1984). This administrative machinery was meant to reinforce the power of the colonial state in its extractive functions of resources of the colony. At the same time, it privileged only one traditional institution (chieftancy) as against others such as *tendaalun* (Rattray, 1932).

The above historical sketch of devolution in the colonial era in Ghana is embedded with spatial imagery that had consequences for the communities of the Upper West Region (as part of Northern Ghana); with their location in the colonial political economy. Firstly, communities of Northern Ghana experienced colonial forms of devolution as a *protectorate*. As subjects of a protectorate of the British Empire, they did not enjoy the same legal rights as the subjects of the Gold Coast colony of Ashanti and the coastal communities. As we indicated in chapter 1, Northern Ghana became a British protectorate in 1901 but it was not until 1951 that it was represented on the

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part of the Public Service.

legislative council. As a result, the communities neither participated in the legislative process of law-making nor in the exercise of the executive power of the colonial state as against Ashanti and the colony proper[84]. Yet laws passed by the legislative council and policy decisions of the executive council applied to them all the same.

As a protectorate, Northern Ghana suffered the derogatory spatial representation by colonial administrators and anthropologists as the *hinterland* of Ashanti (Rattray, 1932). In the eyes of colonial administrators and anthropologists, the people of Northern Ghana did not have an independent identity and could only be visible through Ashanti. Associated with their *hinterland* status, communities of northern Ghana were seen as a *naked, backward* and above all *lawless* people with no forms of government (Armitage, 1914, Goody, 1956). To introduce them to *civilisation*, as it were, they experienced a *direct* form of colonial rule as against the general *indirect rule* policy for the rest of the Gold Coast. This direct form of colonial rule (as we indicated earlier), was the most repressive form of colonial domination in the Gold Coast; as it was essentially based on a military form of discipline.

A second consequence of the spatial representation of the communities of Northern Ghana in the colonial political economy was its designation as a *labour reserve*, in which its peasants were removed from the land to become a proletariat in Southern Ghana as workers on cocoa farms, mines and timber sectors of the colonial economy (Nii-Plange, 1979; 1984). This marked the beginning of Northern Ghana as a source of migrant labour for the capitalist economy of Southern Ghana. It was also the onset

[84] As at 1901, the "colony proper" covered only the coastal communities. Ashanti was a British possession by conquest, while the Northern Territories was a protectorate. Different laws applied to these three categories in British Administration.

of low food production and associated near famine situations that persist to the present time (see Nabila, 1972, Konings, 1986; Hilton, 1966).

A third consequence of the colonial spatial representation was the vesting of Northern Ghana lands in the colonial state as against lands of Southern Ghana that remained in the ownership of the communities. The colonial administration saw large tracts of *uninhabited* lands of *naked savages* that were equally considered as *ownerless* and could therefore be appropriated by the colonial state (Sarbah, 1897; Woodman, 1968; Bentsi-Enchill, 1964). The vesting of Northern Ghana lands in the colonial state complemented its policy of designating the area as a labour reserve; as labour was freed from the land for the economy of Southern Ghana.

A point to note in all the above instances is that the legal regime of local government was used to structure and maintain such a political economy (Native Administration (Northern Territories) Ordinance No. 1). Firstly, the Ordinance designated the area as a protectorate of the British empire and instituted the first form of local government that provided the legal basis for colonial penetration into the communities. Secondly, it provided the legal basis for the colonial state assumption of control over the lands of the communities. Thirdly, through the native administration system (as a form of local government) it created chiefs who recruited labour gangs for the mines in Southern Ghana.

Narratives on Northern Ghana in general or on local government in particular, focus only on the historical dimension of its political economy (Saaka, 1978; Massing, 1994). However, embedded in the historicity of the colonial encounter with the

communities, is a spatial dimension with material and ideological consequences as well. Through colonial intervention, new spatial and political units were established as basis of administration. These brought in its trail new notions of territoriality and property rights that were different from the original notions of the communities in question. Even where the new administrative boundaries attempted to follow local jurisdictions, the abstract lines of demarcation often were at odds with local political *geographies*. We can agree with Benda-Beckmann (1999: 135) that legal rules localize people's rights and obligations in space, whether for purposes of state citizenship or organising tax obligations; as they attach normative consequences, rights and obligations to such spatial constructions. But this does not mean that all people within this construction experience it in the same way.

The entire present day Ghana experienced the colonial encounter, however, its impact on the communities varied. Narratives that touch on the spatiality of Northern Ghana view it only as a geographical *physical space*; that this space is socially produced as well as being a space of *cognition* or *representation* is hardly considered. The overlap of the *social, physical* and *cognitive* spaces provides a useful framework for a materialist reading of the spatial politics of the modern state through decentralisation.

As observed by Soja, the generative source for a materialist conception and interpretation of space is the "recognition that spatiality is socially produced" (1989: 120). Space like society itself is physical as well as constituting a set of relations between individuals and groups. It is an embodiment and medium of social life itself:

> In their appropriate interpretive context, the *material space of physical nature* and the *ideational space of human nature* have to be seen as socially produced and reproduced (Soja, 1989: 120; emphasis added).

The overlap of the social, ideational, and physical forms of spatiality is discernible from the legal regime of local government (devolution) in the colonial period. By the 1901 Ordinance, Northern Ghana was designated the *Northern Territories*. This larger space was further fragmented into *provinces, districts* and *sub-districts* (sections 3 and 4 of the Ordinance). These provinces and districts were administered by a Chief Commissioner, District Commissioners and Assistant District Commissioners respectively. This introduced a new political presence the communities had never encountered.

These physical spaces, however, were not mechanically produced. Their production was informed by cognitive maps of the colonial state. Firstly, the colonial mental map of Africa was one of tribal kingdoms of centralised polities. In some communities of Northern Ghana where such political formations did not exist, they were created by the colonial administration (Lentz, 1993; 1997). This colonial mental map further informed the structure of the native administration system of local government in which acephalous communities were grouped under chiefs who pre-existed the colonial encounter or were created by the colonial administration (see Massing, 1994; Daanaa, 1994).

The British colonial home experience of *empire* was yet another cognitive map. The notion of an *Ashanti empire* was familiar ground for colonial administrators and hence Northern Ghana could only be visualised as a *hinterland* of Ashanti. Ranger's study

(1995: 211-262) on the invention of tradition in colonial Africa provides compelling accounts on the ideology of *Empire* as a means for legitimising colonial rule. As he argues:

> Colonial governments in Africa did not wish to rule by constant exercise of military force and needed a wider range of collaborators ... In particular, they needed to collaborate with chiefs, headmen and elders in rural areas ... the colonial rulers felt the need for a shared ideology of *Empire* which could embrace whites and blacks alike, dignify the practicalities of collaboration found and justify white rule (1995: 229; emphasis added).

The socially produced space of Northern Ghana by the colonial administration, incorporated and transformed within it both physical and ideational spatial forms. That is to say, Northern Ghana as a geographical area is associated with mental maps of backwardness and as lacking resources. The interplay of these spatial forms has material consequences for the communities of the area. These communities in precolonial times, were vigorous centres of the Trans-Saharan trade, where itinerant traders met in commercial centres such as Salaga to trade their wares. They were also highly skilled artisans and craftsmen (Nii-Plange, 1979). Having been worked over by the colonial intrusion, they were incorporated into the colonial economy and transformed as *backward, resource lacking* and *naked savages*. As the colonial period wore on, communities of Northern Ghana were further characterised as *hewers of wood and drawers of water* (Jones, 1937) and a *Cinderella* (Guggisberg, 1928) of Gold Coast politics. The biblical images of servitude in Jones' statement and the patriarchal and paternalistic images of domination of Guggisberg summarise the colonial mental images of the communities of Northern Ghana. Images that indicate their *place* in the colonial political economy.

Having considered the materiality of the spatial politics of devolution under the colonial era, it would be instructive to see how this is reproduced in the current legal regime of devolution in Ghana. It is our argument that the institutional relations established under colonial rule is the *architecture* around which the post-colonial development discourse on Northern Ghana revolves.

5.5.2 *Under the Postcolonial State*

In the post-colonial era, and up to Ghana's current decentralisation programme, local administration has followed the *musical chairs* of the national politics between civilian and military politicians. Both civilian and military regimes in Ghana have been characterised by the pre-eminence of a bureaucratic model of administration at the local level in which all powers of control, supervision and implementation of decisions are concentrated in the hands of bureaucrats acting on behalf of a military or civilian head at the regional and national levels (Songsore and Denkabe, 1995). In practical terms there is continuity with the colonial practice of local government buttressing the control of the coercive functions of the state; as well as legitimising national governments. While attempts have been made in the current decentralisation programme at forms of elective representation, both the district and regional government apparatuses still show a tendency to represent positions of central government rather than serving as vehicles for channelling local pressures and initiatives to central government (1995: 96). However, the rhetoric and basis of legitimising the state through decentralisation has assumed new forms.

An important spatial mechanism of the postcolonial state for the reproduction of existing social relations is through *restructuring*. A notion, which in a broad sense evokes a *brake* (if not break) in secular trends and a shift towards a significantly different order and configuration of social life. Restructuring involves a sequential combination of "falling apart, building up again, deconstruction and attempted reconstitution; as the older order is sufficiently strained to preclude conventional patch-work adaptation and demands a significant structural change instead" (Soja, 1989: 159).

Narratives on restructuring processes in Ghana continue to be buried under idealised schemata- change just seems to happen (see Adarkwa, 1992; Nabila, 1992; Kendie, 1992). However, restructuring is not a mechanical or automatic process:

> Restructuring must be seen as originating in and responding to severe shocks in pre-existing social conditions and practices and as triggering and intensification of competitive struggles to control the forces which shape material life. It thus implies a flux and transition, offensive and defensive postures; a complex and irresolute mix of continuity and change. As such restructuring falls between piecemeal reform and revolutionary transformation, between business- as-usual and something completely different (Soja, 1989: 159).

The current legal regime of devolution in Ghana displays the contradictions Soja so succinctly captures in the above quote.

As a spatial strategy of the Ghanaian state, restructuring through devolution is a mix of change and continuity, piecemeal reform and revolutionary transformation and business-as-usual. In chapter 1 we indicated the *revolutionary* currents that the entire decentralisation programme in Ghana seeks to swim against; as well as the shocks to

the political economy and the crisis of government legitimacy from which it issued. That apart, under the legal regime of devolution, institutional structures are composed by partly elected representatives of local communities and partly appointed members by the government. At the same time, devolved institutions are legally barred from engaging in partisan national politics.

The government through its appointees in the DA maintains control over devolved institutions. As we indicated in chapter 4, the government appointees constitute a hegemonic bloc in the DA scheme of things. Their presence in the DA erodes whatever potential exists for elected members to address local community concerns.

In the case of communities of the Upper West Region, the paradox of devolution is particularly evident in the arena of development. It is in this arena that the spatial politics of the state (in terms of the material consequences of devolution) become apparent and engender both continuity and change.

Firstly, as our findings in chapter 4 show, the Upper West communities are predominantly agrarian and as such they consider the land question a primary concern to their development. However, the land administration machinery of the state notwithstanding devolution remains essentially centralised. Though the T&CP department and the RLC are decentralised to the district and regional levels respectively, they continue to address only issues of national land policy. At the same time, traditional structures of land administration at the local level are marginalized. Issues of land administration even under devolution continue to be the preserve and

monopoly of state institutions. This is against the fact that local communities are said to have legal titles to their lands.

It is instructive to note that the very legal rules the colonial state used to control local community lands are still being used by the current devolved institutions of land administration (Cap. 84). The only difference between the colonial land administration regime and the current regime is the fact that, lands of the communities not already acquired by the state are no longer vested in the state as in the former case. The current district assemblies also have elected representatives from local communities. The institutions under Ghana's decentralisation programme in essence maintain existing social relations. This, in our view, reproduces such relations as such maintenance is not static but has change as its important ingredient.

An issue that is peculiar to devolution in the Upper West Region is that its communities historically were decentralised polities. The colonial state in 1901 brought them under a centralised Gold Coast colonial state and turned round to fragment them again under native authorities as units of local government. Under the current legal regime of devolution, these communities have been further restructured and fragmented into yet smaller units extending from the regional, through the district to Unit Committees.

What we discern from these restructuring processes is a dynamic landscape and contradiction-filled "trialectic of space, time, human agency or structural constraint" (Soja, 1996). In other words it is a historical geography that is played out at different scales. We can agree with Harvey that it is in the essence of a capitalist state to:

> [N]egotiate a knife-edge between preserving the values of the past commitments made at a particular place and time or devaluing them to open fresh room for accumulation ... [As the capitalist state] perpetually strives to create a social and physical landscape in its own image and requisite to its needs at a particular point in time only just as certainly to undermine, disrupt or even destroy that landscape at a later point in time. The inner contradictions of the [capitalist state] are expressed through the restless formation and reformation of geographical landscape (1985c: 150).

As can be noted from the current legal regime of devolution, Northern Ghana as a physical space is no longer a *protectorate* but perhaps still a *hinterland.* It is fragmented into the Northern, Upper East and Upper West Regions. However, as a socially produced space, the Upper West Region still suffers the material privations of its status in the Northern Territories under colonial rule. It is still a net labour out-migration region; ranked tenth out of the ten regions of Ghana on all official poverty indicators; and referred to as the *Upper Worse* Region. At the cognitive spatial level it is characterised as *backward* and as a *distant rural space* (Songsore, 1992).

As scholars on the underdevelopment of Northern Ghana have argued, it was not the lack of resources in the North, which led to the low investment in social services and general infrastructure; neither was it due to the lack of interest in agricultural ventures. Rather, Northern underdevelopment was a by-product of the vital need for Northern labour by the mining and cocoa interests in the South (see Bening, 1971, Nabila, 1974, Songsore, 1975). As Songsore succinctly sums it up:

> A correct explanation of the crisis and poverty in Northern Ghana must be based on concrete historical analysis of the process of spatial and regional structuralization of

> the national space economy in response to the requirements of capital accumulation in the colonial and post-colonial periods and in the contemporary crisis of imperialism. The underdevelopment of the productive forces in Northern Ghana has to be understood in the context of internal contradictions arising out of its colonial incorporation into the world capitalist sphere as a regional periphery of a peripheral capitalist state (Songsore, 1992: 156).

This issue will be revisited in chapter 7 on development planning and the underdevelopment of the Upper West Region in particular.

5.6 Conclusion

This chapter has focused on the devolution of government machinery as an objective of Ghana's decentralisation programme. Devolution discourse as articulated in the decentralisation programme from the perspective of the state has been problematized, noting the different possible meanings devolution can take in the Ghanaian context. We have tried to show how the state enframes devolution within a particular discursive context. A context that suggests that devolution is an apolitical arrangement of administrative structures at the local level.

Using the machinery of land administration in Ghana (as part of the state machinery) we have tracked the extent to which its authority and machinery are devolved within the decentralisation programme. As our narrative shows, it remains substantially centralised. It is our view that devolution as a means for achieving development cannot be intelligible to local peasant communities where the state machinery of land administration remains centralized in a state bureaucracy.

CHAPTER 6

DEMOCRATIZATION AND LAND ADMINISTRATION

6.0 Introduction

A second objective of Ghana's decentralisation programme is the democratization of state power for majority participation in decision-making processes. Ghana's recent attempt at democratizing its political system started with the establishment of district assemblies in 1988/89. As the NCD Report for evolving a *true* democracy for Ghana notes, the establishment of these assemblies was a commitment by the PNDC government to involve ordinary people in the process of taking decisions that affect their daily lives (NCD, 1991: 12).

6.1 Notions on Democratization

Scholarly narratives see democratization as political changes moving in a *democratic direction.* Though the democratic direction remains contestable, recent narratives suggests it is a trajectory from less accountable to more accountable forms of government; less competitive (non-existent) elections to freer and fairer elections; from severely restricted to better protected civil and political rights; and from weak autonomous associations to more autonomous and numerous associations of civil society (Potter et al, 1997; Held, 1997; Dahl, 1989). Dahl characterises forms of government as either *authoritarian, partial democratic* or *liberal democratic* on a continuum of good democratic practices (1989: 221), which suggest that the direction of movement of democratisation processes over time is towards liberal democracy.

Ghana's democratic decentralisation entails a degree of local community participation in the exercise of state power. Therefore, its discourse involves *representative* and

direct forms of participation (see Crook and Manor: 216-224). In this chapter, we explore the ways in which these forms of participation translate in practice in the Upper West Region of Ghana. Our focus is on the democratization of state power of land control and management for the participation of local communities.

The relationships between democratization and land administration have received little attention from both policy and scholarship on decentralisation in Ghana. We argue that democratic decentralisation is not entirely an administrative process but also a socio-political one implicated in the material relations of people in society. We see the land question as providing such a material context; as land is not only an economic factor of production but also one of power and social meaning among the Upper West communities, and therefore implicated in the politics of decentralisation.

Scholarly narratives also present democratization as part of the modernization of governance in which elites of various political persuasions contest for political power. We contends that democratization is a *historical* as well as a *geographical* process of change with continuities and discontinuities. The trajectories of its dialectics need not necessarily be towards liberal democracy in all places. In some communities, there are differentiated structures of power, which change over time. Embedded in these group divisions (ethnic, tribal, linguistic, religion or other cultural criteria) are intermediate-level institutions that provide explanatory factors for political movements (Moore, 1990: 329). It is our view that such institutions ought to be considered in the wider debate on democratisation. In our view, democratic transition processes are sites of struggle of social forces and not only a privileged terrain for elite political power gamesmanship.

While Herbert Kitschelt (1992) sees theories of democratization processes as divided into structural and process driven approaches, we consider the structural approach as further divided between two schools of thought (transition and structural schools)[85]. The literature on democratization processes is large and well known and we do not intend to repeat[86].

With the exception of Moore's study, and those on the local level in Africa, the other approaches also conceive democratisation processes as only *sequential* events. We are therefore to read democratic transition processes only in terms of the lessons we learn from history. However, we can appreciate democratisation processes better in both their *sequences* and *simultaneities*. Social phenomenon occurs both in time and space, which presents dilemmas for the author of a text to represent both its *sequence* and *simultaneity* in language that dictates only a sequential succession- a linear flow of sentences. This linguistic dilemma is one of despair for Luis Borges (1973), as he agonises in his study of the Aleph. His despair sets challenges for spatial narratives in critical scholarship and is worth reproducing at length:

> Then I saw the Aleph [...] And here begins my despair as a writer. All language is a set of symbols whose use among its speakers assumes a shared past. How, then, can I translate into words the limitless Aleph, which my floundering mind can scarcely encompass? [...] Really, what I want to do is impossible, for any listing of an endless series is doomed to be infinitesimal. In that single gigantic instant I saw millions of

[85] It is problematic to subsume the modernisation approach under the structural approach as Kitschelt does. For our purposes we consider the theoretical approaches on democratisation as falling within three broad streams of thought- modernization, transition and structural approaches.

[86] See Lipset (1983), Beetham (1994d), Diamond (1992) for the modernisation approaches; Rustow (1970), O'Donnell et al (1986), Shain et al (1995), and Charlick (2000) for the transition approaches; and Moore (1973), Rueschemeyer et al (1992) for the structuralists approaches. For Democratizaion

> acts ... not one of them amazed me more than the fact that all of them occupied the same point in *space*, without overlapping or transparency. What my eyes beheld was *simultaneous*, but what I shall write down will be *successive* (1973: 19-20; emphasis added).

This linguistic dilemma of Borges is appreciated, but as Soja (1989: 2) suggests, all we can do is "recollect and creatively juxtapose experimenting with assertions and insertions of the spatial against the prevailing grain of time. In the end, interpretation can be no more than a beginning". We therefore *experiment* with Soja's suggestion in subsequent sections of this chapter.

The totalizing view of democratisation processes as only a historical movement towards liberal democracy is not a text we share. Democratisation processes are as much geographical as they are historical. A useful lesson we can learn from geographical accounts on democratisation processes is that liberal democracy is not the only or a privileged form of ordering political life. If we spatialize our discourse on democratisation (by localizing it) we will discern the geographically contingent nature of democratic transition processes. As we will show shortly in succeeding sections of this chapter, democratic struggles of most communities in Africa are informed by particular spatial contexts. These contexts are related to material conditions of their existence. The land question is an important arena of democratic struggles of peasant communities in Ghana. To these communities, liberal democratic philosophy and institutional practices remain alien art if they are not linked to material issues such as the democratic content of land relations. In the next section of this chapter, we indicate the legal framework of democratic decentralisation in Ghana.

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processes at local levels in Africa, see Siegmar (1997), Cameron (1995; 1996) Crook (1994; 1996), and Crook and Manor (1998).

6.2 The Legal Regime of Democratic Decentralisation

The legal regime for democratic decentralisation in Ghana is contained in its 1992 Constitution and in the Local Government Act of 1993 (Act 462). Though democratic participation is provided for in the decentralised planning functions (see chapter 7) of the DAs, they have their legal basis in the above constitutional and legislative provisions. The salient features of these provisions are:

- The election of 70 per cent of assembly members from each local government electoral area within the district by universal adult suffrage (Article 242 and section 5 of Act 462).
- A District Chief Executive for the DA appointed by the President with the prior approval of not less than two-thirds majority of members of the assembly present and voting at the meeting (Article 243 and section 20 of Act 462)
- A Presiding Member for each DA elected by at least two-thirds majority of all members of the assembly (Article 244 and section 17 of Act 462).
- The power of the electorate to revoke the mandate of a member of the assembly by way of a petition by 25 per cent or more registered voters in the electoral area (Article 249 and section 9 of Act 462).

In addition to the above provisions, the Directive Principles of State Policy enjoin the state to take appropriate measures:

> To make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government (Article 35).

Commenting on these constitutional and legislative provisions, Nkrumah (1995: 44) is of the view that democratisation lies at the centre of decentralisation. For, it ensures that a representative body, appropriately elected through popular demonstration of the citizens freedom of choice, is vested with the authority to determine the basic needs of the people in localities carefully demarcated, using various criteria, including community local interests, geography, and economic viability.

6.3 Democratisation of Power and Land Relations: An Overview

While the land question remains inarticulate in discourses on African democratic transitions, current trends show that it is becoming the centre stage of what Shivji (1997) terms the struggle for second independence:

> The struggle for land rights by peasants and pastoralists is likely to intensify [as] the struggle for land is evidently a linchpin in the larger battle for democracy. For many African countries the terrain of democratic struggle is indeed land (1997: 4).

The Land Tenure Reform Report of Zimbabwe (1994), also notes that land reform encompasses change that redistributes property rights, wealth, social status and political power; and as such all forms of land reform are political in nature (1994: 15). On the relationship between land administration and local governance, the Report observes that:

> The current highly centralised levels of governance combined with bureaucratic top-down decision making systems tend to impose decisions on people at the grassroots levels. This system of governance is also weak in terms of effectiveness, impact, accountability and transparency as it denies the people the chance to be self innovative (1994: 7).

It recommends a decentralised system of governance in terms of land relations between central government and local authorities.

Shivji (1991) elsewhere on the relationship between the African state to the *autonomous* citizen observes that:

> Democracy here relates essentially to the level of the central state. Other organs of the state at the local level and the exercise of state power at that level are then a species of extension of the central state. The debate usually revolves around questions such as *de-centralisation* and *de-concentration* of the state at the local level (1991: 36; emphasis added).

The exercise of power by the state over land has been an important aspect of Ghana's political economy. The nationalist politics around the abortive colonial Crown Lands Bill and the Lands Bill of 1894 and 1897 respectively (we referred to in chapter 2) are precursors to this development (also see Amanor, 1999: 45-53). More significantly, the enactment of the Ashanti Stools Act (No. 8; 1958) and the Akim-Abuakwa (Stool Revenue) Act (No. 28; 1958) had political undertones. The Chiefs of the two areas covered by the legislation (Sir Agyemang Prempeh II and Nana Ofori Atta II), were accused by the CPP Government of using revenue accruing from their stool lands to support the United Party that was in violent opposition to Nkrumah's Convention Peoples Party government. As Amankwah (1989: 104) argues, the above legislation had the effect of curtailing such a source of funding to the political opposition; as the legislation vested the power of collection and use of land revenue in the President for the benefit of the entire community.

In Northern Ghana, the land question has been a unifying force. As we indicated in chapters 1 and 2, unlike the southern part of Ghana, lands in Northern Ghana were vested in the state from the colonial period up to 1979. This situation created a common identity of a *northern-ness* among the communities of the area and in Ghanaian politics. It is one issue that had always been present in political struggles of communities of Northern Ghana. The issue was in the Northern Territorial Council in the run-off to independence in 1954 (Ladouceur, 1979); the Northern Peoples Party formed as a response to perceived discrimination against Northern Ghana and used it as part of its political platform (Austin, 1964); and it was always on the agenda of deliberations of the Northern and Upper Regional Houses of Chiefs (see Alhassan Committee's Report, 1978). In the latter case, a strongly worded petition by the chiefs to the Constitutional Commission on the issue in 1978, culminated in the divestiture of Northern lands from state control under the 1979 Constitution (see Constitutional Commission Report, 1978: 108).

Therefore, the extent to which the exercise of power by the state over land is subject to local community participation is important. As it has been echoed time and again, the struggle of the African peasantry for independence was a struggle for control of their lands as well (see Tanzania, 1994). There can therefore be no meaningful discourse of democracy or democratization within African communities outside land relations.

6.4 State Power and Land Administration

State power over land administration in Ghana (as we indicated in chapter 5) is derived from legislations and constitutional provisions. The failure to consolidate

these laws makes it difficult even for land law practitioners to identify and challenge the lawfulness of the exercise of power by the state over land. Before these legal intricacies are considered, we indicate peculiar features and historical antecedents of the exercise of state power in land administration in Northern Ghana; and for that matter the UWR.

6.4.1 *The Colonial Period*

The first attempt to define state control over land in Northern Ghana (as we indicated in chapter 1) dates back to the colonial period and specifically in 1901. This was prompted by activities of mining companies that wanted to develop mineral resources in the North of the present day Ghana. Of particular relevance to the UWR, are the activities of the British Company (Wa Syndicate Limited of London) formed by Major Burnham (Der, 1975). The syndicate was seeking to exploit gold deposits in Western Gonja and the vicinity west of Wa. The need to grant concessions for such mining activities raised the question of the government's title to the land, as British administration in the area had barely started. The then Chief Commissioner (Major Morris), however, saw no difficulty in asserting control over the lands by the colonial state. He was of the view that the *Dagara* people inhabiting that part of the protectorate were a *wild* and *naked* tribe not using money and having no kings or central power of government. To him, the mining rights to the company would not interfere with their lands or villages but would be a benefit to them (CO, 96/381).

The Minerals Rights Ordinance of 1904 was enacted[87] based on the above assumption. This legislation laid the basis of the colonial government's land policy in the Northern Territories. It had the effect of dispossessing the people of their lands as neither the *tendamba* nor traditional families had any say in the grant of concessions to foreign firms. As observed by Bentsi-Enchill, by this legislation like subsequent ones;

> The crown did assume certain general rights concerning title to land, the entire property in and control of all minerals in, under, or upon and lands in the Protectorate, and all rivers, streams, water-courses throughout the Protectorate were declared to reside in the crown (1964: 17).

District Commissioners legitimised the colonial state land policy by asserting that the people had surrendered their rights over land to the British Government, arising from treaties of protection they signed with the British Crown (NAGA, ADM 56/105).

An observation made by Governor Guggisberg on assuming office in 1919 on the Northern Territories is revealing, as it was later to have consequences for land administration in the area:

> [F]inally, I should like to send a message to the Northern Territories that I hope within the next few years to see trains heavily loaded with groundnuts, shea-butter, corn and cattle steaming forth across the Volta. The career of the Northern Territories as the *Cinderella* of the Gold Coast is nearing its end; as *Cinderella* she has done some good and unobtrusive work; her reward for that and the gallantry of her soldiers is in sight (CO, 96/614: 8-9); emphasis added).

[87] Minerals Rights Ordinance No. 2 of 1904. Also see Kingdon, D. (1920) "The Laws of the Northern Territories of the Gold Coast". London, [pp. 52-64] for detailed comments on the 1904 Minerals Ordinance.

He had in mind the construction of a railway from Kumasi to the North. The need for land for the railway project culminated in a practical seizure of lands in the North with the enactment of an Ordinance in 1923[88]. By the Ordinance, it became lawful for the Chief Commissioner or his agent to enter any land; take as much of it as was needed; marked out with a notice posted at a conspicuous place to read, *Taken for the Government.* Once this was done the land was automatically vested in the Crown. An amendment to the 1923 Ordinance in 1926, authorised that no compensation be allowed for any lands so taken, except for growing crops, disturbance or interference with buildings. Minor amendments to the 1926 amendment continued until 1931 when the colonial state exercise of power over lands in the area was concluded by the Lands and Native Rights Ordinance (Cap. 147).

This Ordinance proclaimed that the whole of the lands of the protectorate at its commencement were to be declared *public lands.* It provided further that any person in occupation of such lands after the expiration of six months from the commencement of the Ordinance, without a valid title, was deemed to be in unlawful occupation. The Governor assumed the power to grant rights of occupancy to natives and non-natives alike. Section 3 of Ordinance (as we indicated in chapter 1) was amended in 1932, declaring all Northern Ghana lands as no more *public lands* but *native lands.* The reason for this as suggested by Der (1975: 139), was in no way to democratize government power over land but to redirect revenues from lands to the newly established native treasuries. This legal framework of land administration controlled the colonial government's land policy and its power over land in the Northern Territories throughout the remaining years to independence in 1957.

[88] Gold Coast Gazette, (1923) "Ordinance for the Acquisition of Land for Public Services in the

6.4.2 *The Postcolonial Period*

The State Property and Contracts Act of 1960 (C.A. 6) provides continuity between the colonial and post-colonial state exercise of power over Northern lands. Though the general objective of the legislation was to bring statutory laws of Ghana in conformity with its republican status, it had the effect of continuing to vest Northern Ghana lands in the President of the Republic of Ghana. The relevant provision states:

> Where in any Act provision is made that property shall be controlled or surrendered to or become absolutely or otherwise in and held by the crown that property shall vest in the President in trust for the public service of the Republic of Ghana; and accordingly in any such Act reference to Her Majesty the Queen, Her Majesty the Queen in trust for Ghana, crown ownership and governor-general shall be construed as reference to the President in trust for the public service of the Republic or Republic ownership as the case may be (section 2 of C.A. 6).

This Act was closely followed in 1962 by the Administration of Lands Act and State Lands Act (Act 123 and Act 125 respectively). Act 123 consolidates and amends legislation relating to all lands throughout the country. Under this Act, the state assumed responsibility for all transactions concerning land and disbursement of revenues accruing therefrom (see Kasanga, 2000). It renders void grants of land by entities such as the stool, skin and other land owning groups, to non-members for valuable consideration without the consent of the state (Act 123, section 8).

Act 125 cleared any residual doubts of state control over land not covered by Act 123. It vested in the state the power to acquire any land for the public interests or any

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Northern Territories". Though the railway was never constructed, this legislation remained in force and

purpose connected therewith. Once an Executive Instrument is passed, no further assurance is needed to vest land in the President free of any encumbrance (section 1). Provision was made in Act 125 for payment of compensation and the basis for its assessment. This has been superseded by article 20 of the 1992 Constitution. Though these two legislations seek to harmonise land administration rules for the entire country, the dichotomy between the North and South of Ghana remained up to 1979.

Amankwah (1989) sees these legislations as the most *revolutionary* in terms of land administration in Ghana. To him, they constitute a bold effort to control land use in the interest of the nation as a whole as land will be used in accordance with the political, economic and social policy of the state (1989: 105-109). While we appreciate the nationalists concerns of the Nkrumah Government in passing these laws, they remain problematic in terms of the character of the Ghanaian State and its exercise of power in land matters. The *Ofankor case* (see chapter 5) illustrates how state power under these legislations is exercised. We indicate shortly how they particularly affected and continue to affect local communities in Northern Ghana.

In 1963, Executive Instrument number 87 was enacted, which had the effect of vesting all lands under the Lawra, Tumu and Wa council areas in the President[89]. From this point on, all lands in the Upper West Region again became public lands. These lands were administered on behalf of the President by a number of state agencies controlled by the Ministry of Lands and Forestry through the National Lands Commission. Kasanga (1992) and Der (1975) suggest that these legislations did not

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regulated land administration in Northern Ghana.

[89] At the time Jirapa/Lambussie and Nadowli belonged to Lawra and Wa Councils respectively. The same legislation vested lands in the then existing council areas in the present Upper East Region; while

substantially affect land relations of the communities of Northern Ghana; as they were unaware of them and continued to follow their time-honoured practices. However, as Bening (1975: 70) observes, the need for land to provide public infrastructure over the years, have brought untold hardship to many; as families have been dispossessed of their farmlands at regional and districts administrative headquarters.

A significant addition to state power of land administration made in the 1992 Constitution is the creation of the Regional Lands Commission. Its functions include managing vested and public lands, advising government and other agencies on land use; and developing and making recommendations to government on land use policy (see Article 258, 1992 Constitution). While the Commission is said not to be subject to the direction and control of any person or authority in the performance of its functions, article 258 clause (2) gives the Minister for Lands and Forestry a general power of direction in its functions to which it must comply (also see section 2 of the Lands Commission Act of 1994, Act 483). As Kasanga (2000: 10) points out, the independence of the commission have been seriously compromised, as government "for refusal to act on ministerial directives" recently dismissed its Executive Secretary.

The legal powers of the state in land matters (as enumerated above) have not substantially changed in many ways. The Administration of Lands Act and State Lands Act with slight amendments[90] are still in force; and so are the institutional practices associated with their implementation. Evidence from our field study in the

a separate instrument (E.I. 109) had a similar effect on lands in present Northern Region. The two instruments in effect covered all lands in the area we refer to generally as Northern Ghana.

Upper West Region show that the centralisation of these powers has resulted in their excessive and arbitrary use (see chapter 4). Beyond the capricious use of these powers, studies by Kasanga conclude that state land agencies in the Upper West Region are inefficient and have a lukewarm attitude towards land service delivery. They continue to use obsolete statutory schemes that are incapable of dealing with current environmental, sanitation and waste management problems of the communities (Kasanga, 1994: 14-15; Kasanga, 1996: 58-59).

In our consideration of the various legislations through which the state exercises its power of land administration, there is a consistent absence of democratic content. Both the colonial and post-colonial laws have not in any way addressed the issue of local community participation in the exercise of this power. For most rural communities this is an area of much concern. A common question we asked during our field study was, issues respondents consider important for a study on land administration and development? The common responses were that the state was taking over their best farmlands for development projects and that land administration should involve the participation of traditional landowning entities.

A case study conducted by Kasanga (1996) on the acquisition of land for a Game Reserve in Duang-Namuago in the Nadowli district of the Upper West Region, sums up the undemocratic nature of state administrative practices pertaining to land. The story has it that, in the late 1970s, the community in question woke up one morning to find that state officials from Wa were measuring up and planting pegs on parts of their land. The community alarmed by this development, reported the matter to their chief

[90] Administration of Lands Act (Amendment) Decree, 1968 (NLCD 233); State Lands Act

who invited the officials for questioning. The message of the state officials was that the population of wildlife in the area was dwindling and government had decided to create a Wildlife Reserve in the area. The pegs planted, as indicated by the officials, denoted the boundary line and all occupants of lands within the boundary were to move. But to where? the officials did not indicate. The response of the chief and the community is instructive and we reproduce the relevant portion of the report:

> The Paramount chief and his people contended that if animals were more important than human beings, then the government was at liberty to exterminate all the people and repopulate the neighbourhood with wild animals (1996: 65).

The community leaders asked the officials to remove their pegs and leave the village. The Game Reserve was eventuality created in the 1980s, when the officials returned with an opinion leader from the village, this time seeking to discuss with the community the possibility of obtaining land for the project. The officials were shown a vast area of unoccupied land ten kilometres from the settlement (previously unknown to them) in which there is now located a flourishing Game and Wildlife Reserve.

6.5 Local Level Power Structure and Land Administration

A way into appreciating power relations of local communities is to explore how such societies are structured and reproduced. In the case of communities in Ghana, the level of social differentiation offers useful insights into its power relations. To consider how power is exercised over land at the local level in Ghana we explore firstly, traditional forms of social organisation and secondly, how the creation of decentralised political and administrative structures and the emerging civil society

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(Amendment) Decree, 1968 (NLCD 234); and Administration of Lands Decree (Amendment) Decree,

organisations present new dynamics to the local level power configuration. It is our view that the articulation of power among and between the various groups, determine the trajectory of social development and the possibilities and imperatives for change.

6.5.1 *Traditional Power Structure*

The notion that all of tropical Africa before colonial rule lived in a communal economy with a characteristic feature of communal cum family ownership of land, befogs the issue whether such communities had forms of social differentiation (Tayo, 1982). Though poverty can be said to be a common denominator for the mass of the Upper West population, there is value in analysing its level of social differentiation. Class, gender and other status differences have a bearing on power positions and its exercise within the communities. Social differentiation does not only determine access to resources such as land but also who defines the rules that govern resource access and its use (Amanor, 1999: 19).

Though the distinction between *centralized* and *segmented* traditional political formations are not exclusive and exact categories, and may represent the extremes of a spectrum (Skalnik, 1987), it still presents a useful analytical framework in distinguishing types of traditional polities in Africa. Apart from the Malala and Wala communities, the Upper West Region before the 14th and 15th centuries were characterised by autonomous village societies with the *tengan sob* or *totina* serving as mediator between the society and the land. Tendaanaship or *tendaalun* was the earliest sphere of authority to develop based on access to the *earthgod* (see Goody, 1980: 145 and Songsore, 1975). According to Rattray (1932), but for external influence which

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1979 (AFRCD 61).

greatly changed the constitutional systems of communities of Northern Ghana, *tendaalun* was in the process of evolving types of rulers who were not only highpriests and custodians of land; but who were territorially based and whose sanctions were physical rather than spiritual. It is a moot point, however, whether given the strict adherence to certain injunctions and taboos associated with *tendaalun*, it could function as a secular institution of chieftancy as we understand it today.

However, Yelpaala (1992) is of the view that the political organisation of the Dagara under *tendaalun*, exhibited a certain degree of centralisation of authority with a very limited vertical structure. He argues that;

> The society was at the same time centralized at the unit level and decentralized at the total societal level. Centralization within the small units provided the basis of social cohesion, while decentralization provided the useful check on the abuses or excesses in the use of centralized political power (1992: 432).

Among the Wala and the Malala, tribal society at about the same time was developing a class society based on the institution of *naalo* (chieftancy) and the use of coercion. The machinery of domination was the traditional state, set up by bands of worriers from Mossi and Dagbon/Mamprugu, respectively (see Wilks, 1989 and Songsore and Denkabe, 1995). A peasantry emerged within these communities with a ruling class that maintained itself through taxes, fines, tributes and direct purchase of slaves who did the farming. The ruling class meanwhile preoccupied itself with administration, learning and trading (Levtzion, 1968: 139-143).

A feature common to both centralised and non-centralised polities in the Upper West Region, is the fact that the household (traditional family) political economy was and

continues to be based on patriarchal relations, exogamous marriages and polygamy. At the level of the larger polity, the offices of *Tengan sob* and *Naa* (chief) are ascribed to men and not women. Such an ascription provides mechanisms for the exclusion of women and their subordination through resource control, gender division of labour and participation in civil and political affairs. Thus, men control an important resource of social production (land; see Meer: 1997). The basis for this exclusion in land relations as noted by Manuh *et al* is the fact that:

> It was men not women who founded clans, fought for the land or in the process of hunting discovered the village boundary. Men as heads of households and as those responsible for clearing the land for cultivation on virgin or fallow lands, established permanent use-rights on any piece of clan land by being first to cultivate it (1993: 39).

Granted without conceding that men indeed founded the clan, fought for the land, cleared and cultivated it, do such acts alone justify the exclusion of women's interests in land? Given the new insights Mamdani's (1996) study provides on the historical context within which the customary laws of contemporary African communities were constructed, there might well be other interpretations that pre-date the current gender lands relations. The current gender land relations might as well be the *invented traditions* of these communities during the colonial period (to borrow Ranger's phrase).

Given the fact that the Upper West communities were not literate, records that exists about their precolonial reality are those of early missionaries, colonial administrators and anthropologists. Coming from patriarchal social relations of Europe at the time, the cultural *situatedness* of these "scribes" influenced to a large extent scripts

produced on the social organisation of the Upper West communities (see Ranger, 1995: 212). The most detailed of such scripts on Northern Ghana, came from British and French missionary and colonial *sites* (see Tauxier, 1912; Guiness, 1932; Rattray, 1932; Eyre-Smith, 1933; Duncan-Johnstone, 1918; Goody, 1956). They recruited interpreters from the communities who were mostly male and with doubtful proficiency in either English or French. As such, the data from which accounts were based tended to reflect the interests of only dominant male members of the communities (see Lentz; forthcoming). However, these accounts and their postcolonial appropriations continue to have great influence in gender land relations' discourse on Northern Ghana.

That being the case, we argue that these traditional institutional structures are not benign, as they have victims within them. In the context of land administration, students of customary land law jurisprudence often set up a binary between tradition and modernity in black and white colours. Tradition (as invented) is then seen as an innocent absolute good whose blood is being sought after by the hounds of modernity. But as West and Kloeck-Jenson (1999: 483) argue, tradition is best seen not as black and white but in shades of grey (also see Amanor, 1999: 20).

Beyond gender differentials among the Upper West communities, other forms of social differentiation are *age-grades*, *secret societies*, and *landowners* and *latecomers*. Age-grades divide the society into old men and younger adult men in which the former enjoy some privileges over land resources; while the latter are expected to wait for their turn. Secret societies on the other hand, divide the community into the *initiated* or *qualified* as against the *uninitiated* or *unqualified* in community affairs.

The latter category plays important roles in land dispute resolution and is one of the criteria for nominating the *tengan sob* (see Tengan, 2000 Horton, 1976: 93-98). The distinction between *landowners* and *latecomers* is significant in land administration. Though in present times this distinction generates conflicts, in earlier times it was one of *complementarity*. Latecomers needed land and the landowners needed them to help hold the land against invaders. Such differentiation therefore gave rise to co-operation and not conflict.

6.5.2 *Decentralised State Power Structure*

Like most African governments, in the 1980s the government of Ghana adopted a package of policies aimed at decentralising and democratizing the political system. Between 1988 and 1989, one hundred and ten DAs were established throughout the country; five of which are in the Upper West Region. This process of democratic decentralisation was completed in 1998, with the establishment of sub-district political and administrative structures[91]. In pursuing these policies, the government of Ghana was by implication accepting a number of propositions in a wider debate on the relationship between the modern state and its citizens.

One such proposition argues that decentralisation to democratic local government authorities will give rise to a number of benefits such as greater participation by the citizen in local development decisions, greater accountability of government to the population and better mobilisation of local resources (Adamolukun, 1991; Conyers, 1990; Smith, 1985). Democratic decentralisation was also part of the *good governance* policy promoted by the World Bank and Donor Agencies since the late

1980s. The Bank's perspective on democratic decentralisation is a characteristic feature of Ghana's programme; in as much as decentralization and SAP/ERP are seen as complementing each other. This policy of incorporating a liberal political agenda at the local level into a national framework of structural adjustments is said to enhance accountability and transparency of government (World Bank, 1992; Moore, 1992). Accountability and transparency in decision-making are goals that structural reforms such as decentralization and democratization are expected to achieve. However, as Charlick (2000) stresses, these democratic initiatives as inspired by the neo-liberal conception of economy promotion, in which "local level, or popular (read 'mass') participation is the realization that those with power beyond the local level need the support, and particularly the financial contribution of rural people" (2000: 2)

Development is a notion the Ghana government and scholarly interests in Ghana share on decentralisation. But in one way or another, this has to take place in a spatial context and is therefore implicated in Ghana's spatial relations and politics. Yet this is one area that awaits serious engagement by both policy and scholarly narratives. The conflicts engendered by the proper sense of spatial rules that should regulate social life and give meaning to abstract ideas such as *democracy* and *decentralization* remains unexplored. It is within such a discursive context that the land question becomes important in the politics of democratic decentralisation.

Our narrative in chapter 5 shows that the state machinery of land administration remains centralized in a number of institutions co-ordinated by the National Lands Commission and the ML&F. This centralization is replicated at the regional level

[91] Town/Area Councils and Unit Committees.

through the RCC, the RLC, the LVB and the SD. With decentralization, the DAs have become key players in land administration at the district level. Though the 1992 Constitution and the Local Government Act of 1993 expressly provide for local community participation in decision-making processes, the Administration of Lands Act and the State Lands Act do not provide for such participation. This presents a legal paradox in which the decentralized "participatory" RCC is co-ordinating and monitoring centralised non-participatory land administrative agencies in the Upper West region. The inability of these agencies to resolve this contradiction, accounts for the tensions between them and local communities in the region.

Evidence from our field study in chapter 4, confirms that local communities are neither consulted nor do they participate in the exercise of state power by these institutions in land administration. The evidence further shows that some communities have no knowledge of the existence of these institutions in the Upper West Region. Those who have knowledge of their existence, recount their bitter experiences of encounters with them. Examples of such experiences include the: sitting of development projects on their best farm lands without consulting them; the requirement that they pay a development charge for a permit to enable them built on their own land; and the fact that DAs collect levies from sandwinners who win sand from their lands[92].

Kotey succinctly captures the undemocratic nature of public land administration practices in the following way:

[92] From field notes of interviews with traditional family farming units in the Lawra, Nadowli and Sissala districts, July/August, 1998.

> [It makes] little or no provision for meaningful consultation with the owner(s) of the land or persons whose interests will be affected by the acquisition. They are also not involved in the process of site selection even after the decision to compulsorily acquire has been taken ... Neither the community in which the land is situate nor the wider public is in any way consulted or offered an opportunity to express a position ... Indeed, usually the first time the owner of the land, or a person who has an interests in the land, becomes aware that the land has been compulsorily acquired ... is when he sees some workmen enter unto the land pursuant to an executive instrument (1996: 254).

The DA (the most strategic institutional structure of the decentralisation programme) has the T&CP department as its main land administration agency. The department exercises the powers of the DA in development and physical planning under the Local Government Act and other subsidiary legislations (see Part II, Act 462). It also continues to exercise its functions under the 1945 Ordinance (Cap. 84), which dates back to the colonial era. It is also vested with enormous powers by the Ordinance in land matters. The exercise of these powers are the subject of many years of abuse. We therefore consider the provisions under the Ordinance in some detail as they affect land relations at the local level more directly.

Under section 10 of the T&CP Ordinance, the district planning authority has power to declare any land as a planning area, in which no person is permitted to carry out any development on the land until a final scheme is approved. Both rural and urban lands are subject to declaration as planning areas. Under section 16, a scheme of an area so declared is prepared with the object of controlling development on the land and its uses. The scheme can also provide for redistribution of land or readjustment of its

boundaries. Section 24 empowers the competent authority (district planning authority) to enter onto any land in a planning area to which a scheme relates; and to do acts that are necessary for carrying out development activities or enforcing the scheme. Penal provisions are contained in section 26 of the Ordinance against contravention of the provisions of the law or obstruction to its enforcement. When a scheme is completed, section 19 requires that the scheme be deposited at a specified place and a notice published to that effect. Persons affected by the scheme can make representations in respect of its content at this stage. Such representations by affected persons are to be taken into consideration in its implementation by the Minister (section 10).

The Local Government Act of 1993, has continued in force the provisions of the Ordinance. In addition, all physical development carried out within the district must have the prior approval (by way of a written permit) from the district planning authority. Subsistence farming and other activities on land in rural communities are exempted as long as they do not obstruct or interfere with community right of space (see sections 49-50, Act 462). A significant provision in Act 462 provides that any land allocation is null and void if the purpose of allocation or use contravenes the approved development plan of the district (section 61). A landowner is not permitted to sub-divide or allocate any land for use in a town, city or suburb without the concurrence of the planning authority (section 16). These provisions have been elaborated in a number of bye-laws and regulations of the DAs with penal provisions to ensure compliance. Such penal provisions as argued by Shivji (1991: 31) is an important *indicium* of an authoritarian legal system and law; which establish, reinforce and reproduce civil/economic relations. Examples include the Building

Regulations, Cemetery and Burial Places bye-laws and Land Use Plan Regulations of the DAs.

The above legal framework of land administration vests enormous powers in the DA and its land agencies, which have implications for local communities' use of their lands. The constitutional provision that the DA is the highest political authority in the district; with legislative, executive and deliberative powers is to be read in the light of these enormous powers of land administration.

6.6 The Spatial Politics of State Power and Land Administration

The objective of democratizing state power for local community participation raises issues of spatial importance. The essence of the modern state is to concentrate as much power as it can in itself and Ghana is not an exception (see Okoth-Ogendo, 1991). How then do we interpret the seemingly benevolent gesture of the Ghanaian state's objective to devolve and democratize the exercise of power for local community participation? What is the nature of the power the state seeks to devolve and democratise? Who are the beneficiaries of the exercise of such power? These questions are useful to legal scholarship that seeks to understand social phenomena from the standpoint of a geographical imagination.

Geography, as Soja notes has always been a fundamental aspect of legal development and the law has always involved itself with the location of things, with disputes over turf, territories, boundaries, borders or jurisdictions. Law also serves the useful function of "crystalizing collective conversation about core social values" (1996: 1426). While Soja's other functions of law in society reflects jurisprudential questions

internal to law, the last function opens the scope for critical legal thinking as well as an arena for rethinking the relationship between law and space.

Nicos Poulantzas has observed that the material and ideological spatialization of social production accounts for the development and survival of capitalism. The survival of the capitalist state, he observes, is intimately bound up with the social division of labour, the institutional materiality of the state and the expressions of economic, political and ideological power (1978: 37-56). We are of the view that the essence of democratization in Ghana is to dominate local communities as an integral part of the state instrumentality of power. As Soja observes:

> Conceptions of representation of space in social thought cannot be understood as projections of models of thinking hypothetically [...] independent of socio-material conditions no matter where or when they are found. Whether they emanate from the collective minds of a band of hunters or gatherers or from the institutionalised citizenry of the advanced capitalist state (1989: 126).

As a spatial strategy of the Ghanaian state, democratic decentralisation creates spaces of local community participation in development that seeks to persuade them that the power playing field is open to all. At the same time, the social inequality or levels of differentiation that render such participation illusory is masked. Escobar characterises such a phenomenon as a *discursive space* of development discourse, which establishes a system of relations that allow a systematic creation of objects, concepts and strategies and determines what can be thought and said as development discourse (1995: 40). In the case of the exercise of power over land, the inability for meaningful local community participation is evident at a number of levels.

Firstly, the form of participation provided for in the Town and Country Planning Ordinance (Cap. 84) is based on an assumption that local communities are all literate and will appreciate a technical scheme and make representations on it. Given the low functional literacy rate among the Upper West communities, large segments of these communities are practically excluded in the exercise of state power in physical planning. Also, local communities are not part of the process of declaring lands as planning areas as well as making a contribution to the factors to be considered in the scheme preparation. To ask them to make representations at the final stage of the scheme is to ask them to legitimise a pre-determined land use plan that might not necessarily be in their interest. The effect any representations by local communities on a scheme will have at the final stage of its preparation is doubtful; as the minister and the district planning authority still retain the power to consider or reject such representations.

The communication of legislations, government policies and intended projects to communities that would be affected by them, continue not to be an important consideration of the Ghanaian State (Kotey, 1996). Though a number institutions and agencies that could carry such information to local communities exist, recourse to them by the state is often not the case. As Kasanga's study of acquisition of land for the Vea and Tono Irrigation Projects illustrates:

> An overwhelming majority of the respondents surveyed (71 percent) were made aware of the of the two projects only during the construction stage- when the machines had moved in. Indeed one of the local authority respondents who was both the "tendana" and chief of the village (Gowrie) during the construction stage, lamented during the surveys that he approached the "contractors" and "government officials" to ask what was happening, and whether they knew the owners of the land.

> He was told they were not interested in his questions; it was a government project which had to go ahead irrespective of what a village chief thought (1992: 11; original emphasis)

Secondly, the Development and Planning and Justice and Security sub-committees through the Executive Committee, exercise the DA's power of land administration. As we indicated in chapter 4, not all members of the assembly are represented in these committees of the DA (see appendix 'C')[93]. There is then a further exclusion of large segments of community representatives in the exercise of this power. As Crook's study (1998: 224- 232) of the East Mamprusi DA of Northern Ghana demonstrates, farmers who formed 80 per cent of the adult male population were under-represented in the assembly. Therefore, the participation of stakeholders in land in decision-making and the potential for accountability and transparency in the exercise of the power of land administration is thereby substantially eroded.

Thirdly, the legal regime of land administration only privilege the DA as the only institution local communities should relate to. Traditional institutions of land administration through the *tengan dem*, clan, and the family heads are not in any way provided for. Yet these institutions are landowning entities that have sufficient interests that are affected by the exercise of the DA's power of land administration.

Studies by scholars and land tenure reports, have offered suggestions on how local communities can participate in land administration. In respect of the Upper West Region, Kasanga recommends that to prevent excessive abuse of state power, there is the need to establish community land secretariats in every village, to oversee and

[93] Also see Sections 19 (2) and 24 (2) of Act 462 for the composition of these committees.

manage the lands for each community (1996: 76). He suggests that the membership of the secretariats should comprise: allodial title holders, village elders, women, youth groups, and village development committees (also see Tanzania, 1994: 151-158; Zimbabwe, 1994: 122-133).

The Ghanaian State through decentralisation, produces political administrative spaces by claiming to decentre the exercise of power for local community participation. At the same time, the state *appropriates* local community spaces by occupying them with dominant social forces that serve the interest of the state. This is through the composition of the DA and its structures that administer land at the local level. By both legal and extra legal means, these forces *dominate* local communities by the greater degree of control they have over DA resources. A statement by the Minister for local government on the relationship between the Ghanaian state and local government units is instructive:

> It has never been intended to make Ghana's local government structure politically autonomous. Mindful of the fact that the struggle for independence had been fought on the platform of *unitarism* vrs *federalism*, care has to be take to design a local government system that will deliver on the development aspirations of the people and that will reflect the *democratic* expression of the people, but that will also retain the essentially unitary character of the Ghanaian state (Ahwoi, 1995: 262; emphasis added).

Notwithstanding the strategy of the Ghanaian State, the ideological elements of participation, transparency and accountability provide a language for questioning the exercise of power in land administration. Emerging local civil society organisations in the Upper West Region, appropriate the language of democratic decentralisation

discourse for particular contexts of their struggles against state institutions of land administration. We take up this issue in the next section of this chapter.

6.7 The Role of Local Civil Society Organisations in the Politics of Land Administration

The involvement of community based associations in the politics of land relations has increased considerably in Northern Ghana in recent times. The classical case is that of the Builsa Youth Association (BYA) of the Upper East Region, in its struggles with commercial rice farmers over land rights in the *Fumbisi* rice-valley (see Konings, 1975 and Goody, 1980). As Goody shows, the BYA set out to "streamline all agricultural grants and to see that there was some reasonable returns to the local community" (1980: 147). They therefore recommended that the land allocated to non-tribesmen be limited to fifty acres for individuals and hundred acres for groups. As he observes "the BYA hoped to safeguard the interests of the many poor peasant farmers rather than give in to the few individualistic capitalist from the rural communities" (1980: 148).

Ghana's decentralisation programme (as our findings in chapter 4 show) has given rise to the emergence and development of civil society organisations at the local level. In the case of the Upper West Region, these organisations operate within the local communities. The potential of their advocacy for more participatory forms of both national and local level governance cannot be underestimated. While all civil society organisations do not necessarily share the suffering of vulnerable groups within these communities, their emergence on the local scene is a healthy development. As our case illustrations in chapter 4 show, some organisations have engaged decentralized

institutions in struggles of one form or another. Their "nuisance" value if for nothing at all, offers something to local power brokers and elites to worry about.

In the context of land administration, ethnically based youth and development associations offer leadership to their immediate communities in encounters with state land agencies. The consciousness of the social and political implications of power over land, has increased due to the activities of local civil society organisations. The rise in the number of land and land related disputes in the Upper West Region over the last decade are partly accounted for by the emergence and strengthening of these organisations.

The increase in the number of organisations devoted solely to gender farming issues is yet another feature of this development. As early as the late 1970s, one could hardly perceive of women organisations beyond religious groups in the Upper West Region. Within a decade, one DA alone records thirty-seven gender organisations involved in farming; with a total of four hundred and ninety-five members, cultivating a total of ninety-one acres of land[94]. Through these gender organisations, pressure will be exerted for change of the *status quo* in gender land relations.

Our argument is that debates on democratization and local level governance, must shift from a focus on institutional structures and engage the question of power more fundamentally. We are by this not talking about power in the abstract sense but power exercised over important social resources such as land. Discourse on participation and empowerment of vulnerable groups would remain at the level of scholarly

[94] See LDA, (1996) supra [p.20].

romanticism, if not linked to the material basis of their sustenance. We can conclude with Charlick that:

> Most local associations in Africa still seem to seek two things of the state- resources to take over activities which they cannot afford to sustain with their own meagre economy, or disengagement so that they can be left to provide whatever they can on their own and with whatever external assistance they can manage to attract (2000: 5).

6.8 Conclusion

A central theme to our discussion in this chapter, has been the question of power: who exercises power within the community and how the exercise of such power affects vulnerable groups? While acknowledging power articulations in other spheres of the Ghanaian political landscape, we have focused on the exercise of power over land relations in the Upper West Region.

CHAPTER 7

DEVELOPMENT PLANNING AND LAND ADMINISTRATION

7.0 Introduction

A third policy objective of Ghana's decentralization programme is the new approach to development planning. This development approach is stated in official discourse as the *bottom-up* approach to development planning. It is said to be a departure from previous approaches; as D-plans are now to originate from local communities and not the previous *top-down*, *national* and *sectoral* approaches (MLG&RD, 1996). The felt needs of local communities are said to inform development plans under this policy objective; and ensure local community participation in their formulation and implementation.

In this chapter, we argue that for a proper understanding of such a social technology (planning), the important question to ask is: why D-plans remain attractive notwithstanding their numerous "successes" in failures? In addressing this question, new tools of interpretation and a different way of viewing planning processes are required. We view Ghana's new development planning approach under the decentralization programme as both *discourse* and a form of *representation* of social reality. This is the case with how official discourse constructs the development problems of local communities in the Upper West Region.

7.1 Development Planning as Discourse of Representation

As suggested by James Duncan, representation of places and regions partakes of a dualism of *sites of representation* (1993: 39). Such dualism involves the site to be represented (a geographical place) and the site from which the representation emanates (the cultural, geographical, political and theoretical viewpoint). Duncan's analytical approach though used in a different context[95], provides a useful framework in exploring development planning as a form of representation in the Upper West Region. Following this dualism, we view the site represented in the development discourse as the local communities of the Upper West and the site from which representation emanates as that of the policy and legal framework of the decentralization programme.

7.2 Policy Objectives and Legal Framework of Development Planning

The policy objective of the new planning approach sees development planning as:

> The process of preparing and implementing a set of decisions and actions at the local, district, regional, and national levels to effect a transformation of the people of an area and their environment in ways that that will improve their existing economic and social conditions and circumstances; their physical surroundings and existing institutions (MLG&RD, 1996: 36).

This policy objective is stipulated in Ghana's 1992 Constitution, the Local Government Act of 1993, and other legislations (Act 479, 1994; Act 480, 1994). We make a brief sketch on the salient features of the legal regime of development planning. The relevant constitutional provisions state that:

(1) Ghana shall have a system of local government and administration that shall as far as practicable be decentralized.

(2) The system of decentralized local government shall have the following features ... Parliament shall by law provide for the taking of such measures as are necessary to enhance the capacity of local government authorities to *plan*, initiate, co-ordinate, manage and execute policies in respect of all matters affecting the people within their areas, with a view to *localization* of those activities... to ensure the accountability of local government authorities, people in particular local government areas shall as far as practicable be afforded the opportunity to *participate* effectively in their governance (Article 240, 1992 Constitution; emphasis added.)

Pursuant to the 1992 constitutional provision, the local government Act establishes the DA as planning authority (DPA) within its area of jurisdiction (section 46, Act 462). It is to perform any planning duties conferred on it by existing laws. A district planning and co-ordinating unit (DPCU) is also established for each DA, to act as a secretariat for its development planning functions. A significant provision of relevance to matters of land administration in the Local Government Act states that:

> A District Planning Authority may for the purpose of enforcing an approved development plan... prohibit the use of any land or building for a purpose or in a manner contrary to any provisions of an approved plan (section 53, Act 462).

As part of the legal framework for development planning are the: National Development Planning Commission Act (Act 479, 1994) and the National Development Planning (Systems) Act (Act 480, 1994). These legislations provide for the institutional structures, their powers and procedures in the planning processes.

[95] His context is one of the colonial representations of previously colonized African communities as the

They also provide the linkages between these structures from the district through the regional to the national level (section 2, Act 479). The latter legislations have implications for the general planning process and local community development activity.

Beyond the DA, the RCC and the NDPC are part of the decentralized planning structure. The RCC co-ordinates, monitors and evaluates the planning processes of all DAs in the region. The equivalent of the DPCU is replicated at the regional level as the regional planning and co-ordinating unit (RPCU; section 143). The NDPC on the other hand, is the sole regulatory and approval body at the national level in the planning system. It is part of the Office of the President and prescribes the format and content of D-plans for all the districts in Ghana (sections 3 and 11, Act 480). The new planning system is therefore made up of the DPA at the district level, the RCC at the regional level, and NDPC at the national/sectoral level (see appendix "E").

As noted by Duncan, to understand how representational sites are articulated, we must understand how they are socially *colonized* as sites of desire, power and weakness (1993: 13). As he argues, representations always operate within discursive fields focused around institutions. In society, there are discursive fields around law, science or politics that contain a range of competing discourses constituted by a set of narratives, concepts and ideologies relevant to a particular reality of social practice (1993: 13).

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other, with exotic cultures.

In the context of the Upper West Region, the discourse of development planning as concept and ideology are contradictory; being hegemonic but at the same time potentially contestatory. In the former situation development planning reinforces the existing power structure; and in the latter it offers a potential platform for debate on competing development discourses. In sum, it simultaneously defines the social framework of intelligibility within which development practices are communicated or negotiated, while serving as a resource to be used by dominant social groups in pursuit of political power. The contradictory nature of this process will be further illuminated when we consider the experiences of the Upper West Region in D-plan making in a subsequent section of this chapter. For now, we note how local communities in the Upper West region are represented in terms of development problems, solutions and how these are arrived at. We will also indicate the state hegemony in the development planning processes and the potential for contesting its development ideology.

7.3 Forms of Representation in the Development Planning Process

A basic form of representing local communities in the planning discourse is through the plant metaphor of *grassroots*[96]. This presents an imagery of a hierarchy of *positionality* with local communities occupying a lower level. Within this hierarchy you have the national, regional, and district administrative units as state spatial locations *up there* and the grassroots *down there*. The higher you are on this socially calibrated scale, the more you are held to appreciate development problems and

[96] There is a monthly official publication of the Ministry of Local Government entitled; *From the Center to the Grassroots* (emphasis added).

related solutions for those lower down the scale. You then become competent to formulate *formats* and *contents* of D-plans for the lower level.

The implication of such a representation, excludes a number of fundamental questions. Whether in the first place local communities consider it relevant to their lives that they be so structured, co-ordinated, monitored and evaluated through a D-plan? From whose perspective and interest are they considered *grassroots* and for what purpose? Why such issues cannot be part of the development discourse will be made clear shortly.

Associated with the representation of local communities, as the *grassroots* is the image of the Upper West region in the D-plans of the districts and Regionally Co-ordinated Plan as one of *poverty*. The factors accounting for such a characterization being the fact that it is located wholly in the rural savanna zone of the country, is largely rural, and predominantly a food growing area (UWRCC, 1996: 4). The nature of the relationship between the physical spatial location of the Upper West Region and its underdevelopment remains unexplained in the discourse. It is our view, however, that the underdevelopment of the Upper West Region continues to be accounted for as due to the lack of natural resources; a development view that has its antecedents from the colonial state and is characterized by Nii-Plange as a *naturalistic fallacy* (1979: 5).

The indicators used by the development *experts* in Ghana to characterize the Upper West Region as an area of poverty are based on average standard of living (incidence and depth of poverty). These indicators for the Upper West Region are 151 400 cedis

(the equivalent of £34) per annum and 55.8 per cent and 17.6 per cent respectively as at 1992 (UWRCC, 1996). Such labelling, turns poverty into a statistical and technocratic problem that can only be deciphered and solutions prescribed by the professional planner. The effect of such a construction of development problems in the planning processes as Escobar notes, is their translation into professional and institutional categories through which people's lives at the local level are transcended and objectified. Local realities then come to be greatly determined by these non-local institutional practices (1997: 140).

Related to the grassroots metaphor, is yet another representational form- the *bottom-up*. While both share a common imagery, the latter in addition plays a legitimizing role in the planning process. A close reading of all the five D-plans in the districts of the Upper West Region and the regional plan, show similarities in this form of representation. Two examples from the D-plans of the districts illustrates the point:

> As a departure from previous planning processes, the district ultimately involved local communities through community fora. These revealed community problems and aspirations. These were followed by a District forum to harmonize community decisions. The fora constituted the major source of information for the plan formulation (LDA, 1996: 2).

In another district the planning process is said to be:

> An innovation and a departure from previous planning approaches, the local communities were involved through the organization of community fora from which community problems and aspirations were identified. These were followed by a district forum during which community decisions were harmonized (SDA, 1996: 2).

Similar formulations can be found in all the other D-plans[97]. A curious aspect of the D-plans is that the above formulations are found on the same page number (page 2) of all the plans; a situation that suggest a common authorship. By such formulation, each D-plan concludes that "the plan is indeed the People's Plan"[98].

The regional plan is more elaborate in its representation of the *bottom-up*. In the process it reveals the real interests at stake. The position is that all D-plans must be seen to be complying with planning guidelines of the NDPC as well as the legal requirements of prevailing development planning laws. The Regional Plan indicates a number of drawbacks of an overcentralised decision-making process that marginalized the intended beneficiaries of development at the community level in past planning attempts in Ghana. This has necessitated the decision to institute a *bottom-up*, decentralized planning system, with the DA as its basic unit (UWRCC, 1996: 1). The plan observes (as in the case of the district plans) that two public hearings were held during the plan preparation. At the first hearing, local communities were presented with an analysis of the existing situation of the districts in terms of development problems, constraints and potentials. At the second hearing, local communities were presented the development aspirations of the districts in terms of specific projects and their role in the plan implementation (UWRCC, 1996: 1-26). However, the regional plan unlike the district plans, did not indicate the segments of the local communities who participated in the public hearing at that level.

As we indicated in chapter 4, there are three principles that inform the guidelines for preparation of the district D-plans. Firstly, D-plans are to be within the context of

[97] See 1996 Medium-Term Development Plans of Wa, Nadowli and Jirapa/Lambussie District

development principles as stated in the *Vision 2020* document. Secondly, there should be evidence of local community participation through plan formulation to the public hearing stage. And thirdly, all district plans are to be harmonized by the RCC (1996: 2). The Vision 2020 document sets out the national development goals and medium term objectives as *good governance*, *economic growth* and *poverty alleviation* (Ghana, 1998: 6). Good governance is said to create the right climate for investments and therefore economic growth, which in turn is seen as not necessarily a precondition for poverty reduction but unlikely without it.

The alleviation of poverty then becomes a central objective of the medium term development initiatives, to be addressed through human development and economic growth. Human development (as understood in the planning discourse) refers to the enhancement of human resources such as increased employment, leisure opportunities, and strengthening the provision of social infrastructure and services by decentralized institutions. Economic growth is to be achieved through an increase in GDP to over 8 per cent and income per capita to a little over US$500 by the year 2000. A significant way to achieving the projected economic growth rate, as suggested, is to deepen the restructuring exercise of the public administration system to increase its effectiveness and output. To this end, development planning will foster a dynamic, promotional and co-operative approach to private sector initiatives. Attitudes within the public sector operations would be overhauled as well (see Ghana, 1998).

Assemblies.
[98] Ibid.

If the intended objective of the new planning process was ever in doubt, the prescribed content of guidelines under vision 2020 is sufficient to clear it. The logic of the *bottom-up* and *community participation* in the planning process becomes obvious. Attitudes likely to inhibit private sector initiatives and operations are more entrenched at the local level and hence the need to overhaul them. As Hagan (1992: 57-71) argues, planning in Ghana often focus on market forces outside its cultural context as basis for private sector growth. On the traditional conception of the market he contends that:

> In Africa, a traditional market is a total social fact ... The central ethos of sellers is a simple, cultural one. In many ethnic societies an aggressive competitive spirit is hated. This aversion to competition is sustained by the idea that it is wrong to bring another person to ruin. Cooperation among people who market the same kind of commodity is therefore explained not by fear of collective loss but by the prospect of maximizing profits for all sellers (1992: 66-67).

In a subsequent section of this chapter it would be instructive to see how the Ghanaian State's vision of development is translated in D-plan making in the Upper West region.

The regional plan indicates that the Upper West Region is 89 per cent rural and ranked tenth out of the ten regions in Ghana for each measure of the average living standard indicators (incidence and depth of poverty), using the higher poverty line (UWRCC, 1996: 4). The logical development priority then becomes *poverty reduction* with emphasis on:

- Investments in human resources by providing equitable access to education, health care and social services.

- Promotion of efficient and sustainable growth through improvement of the agricultural system and development of a marketing system (1996: 5-6).

The regional plan sees an important traditional marketing system along the "Techiman-Wa-Hamile transportation corridor" that has to be further developed (1996: 6).

Economic growth through the private sector and under free market conditions is held to be solutions to the region's poverty. The Upper West Region is said to be a region of low incomes due to low agricultural output. It is indeed said to be a net importer of food (1996: 5). It therefore becomes obvious that within a free market system, local communities of the region would enter it as net buyers.

How the free market idea is filtered through the planning process, has to do with yet another form of representation (harmonization) in the D-plans. Though the legal regime suggests that *harmonization* of the D-plans is only at the regional level, the evidence suggests its replication at the district and national levels through the DAs and the NDPC respectively. What goes into this seemingly harmless process is not clear, however, if one considers the district, regional and national medium term plans together, they are expected to be in *harmony* with vision 2020.

Evidence in some district D-plans shows that beyond information from local communities, part of the inputs for the D-plans came from other sources (regional and district line departments). This multiplicity of interests are bound to articulate *non-vision 2020* visions and hence the need for harmonization. The provision in the legal framework for harmonization of the district D-plans into a regional plan, suggests that

a particular state of *harmony* needs to exist in development planning. The difficulty of seeking harmony within conflicting societal interests is obvious as some interests are bound to lose out. As Escobar observes:

> Institutional practices such as project planning and implementation [...] gives the impression that policy is the result of discrete, rational acts and not a process of coming to terms with conflicting interests; a process in which choices are made, exclusions effected and world views imposed (1997: 140).

By representing the role of the state and its agencies in the planning process as that of harmonization, the authorship of, and responsibility for, the plans is presented as those of local communities. Yet at every turn in the planning process the state is directing, defining and manipulating the authorship of the D-plans[99]. As figures from our field study in table 4 of chapter 4 show, out of a population estimate of 586 306 for 1995 in the region, only 299 people across all its districts participated in the public hearing of the district plans. Out of this total number, 61 were DA members, 14 women and 224 being state employees.

The nature of what local communities are to participate in and whether it makes any difference to the pre-determined state development agenda is anybody's guess. As noted:

> A preliminary problem of public participation is that the phrase is misleading in so far as it suggests that all that has to be done is to inject into the decision- making process an element of general citizen involvement. The injection of a new element into the

[99] This is through the formulation of Guidelines by the NDPC to be followed by all DAs in preparing the D-plans, the involvement of its officials in the harmonization process at the regional level, and the dominance of government employees in the planning process.

> decision-making process is likely to be successful if it is realized that the whole process will change, whether it is planned to change or not (McAuslan, 1975: 97).

The experience of development planning through local community participation in the Upper West Region, indicates that apart from its inability to effect positive change, it serves the purpose of excluding other development concerns as well as giving legitimacy to the state's technocratic development exercise. While findings from our field study suggest the question of land administration is uppermost as development priority concern of the local communities, neither the district plans nor the regional plan consider the issue important. The fact that poverty occasioned by low agricultural output may have a bearing on land relations is not considered. We next consider possible reasons for this exclusion and the implications it has for the entire development planning process in the Upper West Region.

7.4 Representation as a Form of Exclusion in Development Planning

We have in a previous section of this chapter indicated what the development *experts* consider as development priorities for communities of the Upper West Region. It is useful to now explore what is excluded and how this affects local communities. Related to the process of exclusion of relevant development concerns, is the exclusion of segments of local communities from the process of participation in the formulation of development plans as well.

Our findings in chapter 4 show that official discourse does not consider land administration as a development problem in the Upper West Region. We have illustrated with evidence from our field study and supported by other findings that the

land question constitutes a significant aspect of development thinking of local communities in the region. We now sketch possible explanations for its exclusion in the district D-plans and the regional plan.

It is our argument that the absence of the land question in the planning process is deliberate to prevent any debate or negotiation with local communities on the issue. The manipulation of the planning process by the state prevented real concerns of the communities from being articulated. By such manipulation, the land question remains a given and maintains the *status quo* of the location of communities of the Upper West Region in Ghana's political economy.

This process of exclusion is achieved through another social technology characterized as *development administration*; in its contemporary rendition as either *policy analysis* or *managerialism* (Turner and Hulme, 1997: 1-21). It sees development as the administrative activities of an enlightened bureaucracy that is committed to transforming its society into replicas of the modern Western nation-state. Thus, all forms of culture (including traditional land relations) are seen as impediments to the smooth functioning of western tools and dominant models of development. As we illustrated in chapters 5 and 6, traditional institutions and their modes of land administration are marginalized by the decentralization programme. This is particularly the case with the institution of *tendaalun* that is not consulted on land matters by both centralized and decentralized land administration agencies. Yet it is the most important traditional institution in land relations of the communities of the Upper West Region.

The decentralized planning system in Ghana, also sees development in separate spheres of social/economic development planning and physical development planning. This compartmentalization of the planning process has the effect of masking spatial issues implicated in the development process and thereby excludes the question of land relations from development discourse in the Upper West Region. As we indicated in chapter 4, the technocrats at various levels of the planning system account for this compartmentalization of development activity as arising from the legal regime. Physical development is held to be governed by legal rules that pre-date the decentralization programme; while social and economic development come under the purview of the legal framework of the current approach to development planning[100]. However, there is continuity between the legal regime of physical development and the current legislation on the so-called social and economic development. We will indicate the point of intersection of the two legal regimes to show why the argument is untenable.

As we indicated in chapter 6, the 1945 Town and Country Planning Ordinance (Cap. 84; as amended) constitutes the basic legal framework for physical development planning at the district level. It has not been repealed by the local Government Act of 1993 (Act 462). The local government Act establishes DAs as district planning authorities to perform planning functions conferred on them by any enactment for the time being in force. We submit that the planning Ordinance of 1945 is an enactment still in force and regulates physical development, which is defined under the local government Act of 1993 to include activities overland, material change in existing use of land and sub-division of land (section 162, Act 462). Thus, physical development

[100] From field notes in discussion held with officials of the NDPC in Accra; May, 1998. In their view,

activities under the Ordinance, fall under the legal purview of development activities as defined by the local government Act. Besides, the policy conception of development planning is said to include the "transformation of the people of an area and their environment" as well as "improving their physical surroundings and existing institutions" (MLG&RD, 1996: 36). It is our view that if the local government Act is read as a whole it will not lend itself to an interpretation of discrete and exclusive categories of "social/economic" development and "physical" development.

In addition, the National Development Planning (System) Act of 1994 provides for decentralized planning as follows:

> 2 (1) A District Planning Authority established under the Local Government Act, 1993 (Act 462) shall-
>
> (a) initiate and prepare district development plans and settlement structure plans in the manner prescribed by the Commission and ensure that the plans are prepared with full participation of the local community;
>
> (b) Carry out studies on-
>
> (i) development planning matters in the district including studies on economic, social, *spatial*, environmental, sectoral and *human settlement* issues and policies ... (Act 480; emphasis added).

A more plausible explanation for the absence of the land question in the development plans is that, the NDPC did not include it in the prescribed guidelines for the district level planning process. The development plans of all five districts in the region attest to this fact. An illustrative example reads as follows:

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physical development planning is governed by Cap. 84 (as amended); while Social/Economic development planning is governed by Acts 462, 479 and 480.

> The NDPC provided policy guidelines for the formulation of the Medium-Term Development plans (1996-2000). These plans are to support the long-term *vision* of Ghana as *enshrined* in Vision 2020 (the first step) whose ultimate goal is to reduce poverty and make Ghana a high-end-middle income country by the year 2020 (SAD, 1996: 1, emphasis added).

A related effect of excluding the land question, is the exclusion of large segments of local communities from participating in the planning process. Local communities in the Upper West Region may be "poor" but they do not see their poverty in terms of statistical figures of GDP per capita and standard of living indicators. It is unrealistic therefore to expect that peasants will be interested in fora and public hearing in development planning that turn on technical issues and economic models of the kind contained in the D-plans. On the other hand, if they were invited to participate in decisions on land use, land management and land control, they will have a lot to teach the planning technocrats their *subaltern* notions of development.

While the planning process fail to address the land question, all the D-plans nonetheless provide for *spatial organization* in implementing the plans[101]. The spatial organization of the plans focuses on distribution of specific projects at locations across the districts. These projects include the construction of roads, clinics, residential and office accommodation, and the creation of market places. Lands for the implementation of these projects, and who will be affected by land acquisitions are not considered priority issues in the planning process. In the same vein, traditional

[101] The relevant sections of *spatial organization* in the D-plans can be found in pages 29 of all district plans.

land administrators and land users would be expected to make lands available for the plan implementation, and yet they are not part of the planning process.

7.5 The Spatiality of Development Planning and Regional Underdevelopment

The very notion of *development* has become an institutional space for the systematic creation of concepts, theories and practices. Its organizing premise historically, as argued by Escobar (1995: 39), was the belief in the role of modernization as the only force capable of destroying archaic superstitions and relations at whatever social, cultural and political costs. Industrialization and urbanization were seen as inevitable and necessarily progressive routes to modernization. To achieve development through industrialization and urbanization, capital investment was considered an essential ingredient. The development of poor countries was therefore seen from the onset as depending on supplies of capital to provide infrastructure, industrialization and overall modernization of society. Due to the *poverty* of developing countries, this capital could only come from outside as they could hardly raise it from domestic savings.

The elements that therefore went into the formulation of development thinking, were the process of capital formation through technology, monetary and fiscal policies, industrialization and agricultural development, commerce and trade; cultural change through education and fostering modern cultural values; and the creation of institutions of development (both national and international) such as planning and technical agencies of many kinds.

As argued by Escobar, to understand development as a discourse, one must not look at the elements themselves but at the *system of relations* among them. That is to say, the

interplay between capital formation, cultural change and institutional structures. As he argues:

> Development discourse was constituted not by the array of possible objects under its domain but the way in which, thanks to this set of relations, it was able to form systematically the objects of which it spoke, to group them and arrange them in certain ways to give them a unity of their own (Escobar, 1995; 40).

Though this discourse has gone through a series of changes, the *architecture* of the discursive formation laid down over the years has remained unchanged; therefore allowing the discourse to adapt to new conditions. The result has been the succession of development strategies up to the present, always within the confines of the same discursive space (1995: 40).

To understand the spatiality of development planning in Ghana and its attendant underdevelopment of the Upper West Region, one needs to understand the sets of relations formed in D-planning processes between the communities of Northern Ghana and the rest of the country over the years. We next present a historical sketch of D-planning exercises of the Ghanaian State and the location of Northern Ghana in them at the relevant material times.

Issues of underdevelopment of the UWR, cannot be considered in isolation from the general underdevelopment of Northern Ghana. As we indicated in chapter 1, in 1901 when the North of Ghana became a British dominion, the Upper West formed part of the then Northern Territories. At independence and in 1960, an Upper Region was created out of the Northern Territories, and the Upper West became part of it. It was only in 1983 that the present UWR was created as a political and administrative region. Except on specific issues in which it is referred to as the Northwest of Ghana,

there was hardly any focus on it in development discourse until after 1983. Development issues on the area were often considered within the larger context of Northern Ghana or the Upper Region. Our reference in the succeeding sections of this chapter to the Northern Territories and Upper Region before 1983 on development planning, therefore applies to the UWR as well.

If Okonjo is right, the Gold Coast (now Ghana) is said to have the singular distinction of being the first country in colonial Africa to produce a modern national development plan (1986: 6). Yet, its planning processes have a checkered history. Development planning by both the colonial and postcolonial Ghanaian State, has been characterized by formulating, reformulating or outright abandonment of D-plans. Apart from the first colonial ten-year Development Plan from 1920-1930, no other plan has run its full life span. As such a periodization of development planning experiences in Ghana is problematic. For purposes of our analysis, however, we consider two broad periods of development planning: 1920 to 1970 marking the "old" planning approach; and the "new" planning approach as commencing in 1996 under the decentralization programme to the present. Though some development programmes were initiated between 1971 to 1995, they were never systematized into comprehensive development plans. This was partly due to the rapid turnover of governments occasioned by military interventions and a lack of governmental consensus on a national development framework[102].

[102] See Republic of Ghana, (1972) "National Redemption Council, Budget Statement, 1972-73". Ministry for Finance: Accra; and Republic of Ghana, (1974) "Guidelines for the 5-Year Development Plan: 1975-80". Ghana Publishing Corporation: Accra.

7.5.1 *Development Planing in Ghana: 1920-1970*

Colonial development policy towards the North of Ghana prior to its first development plan, was one of deliberate neglect and isolation. Development expenditure was limited to what was necessary to maintain a colonial administrative presence in the north of Ghana and to promote such development as was thought beneficial to Ashanti and the Colony in terms of trade and labour power (see Nii-Plange, 1979; 1984; Bening, 1975; 1990; 1999; Ladouceur, 1979). Statements of successive governors (at the time) illustrate the point. Sir Frederick Hodgson's dispatch to Chamberlain in 1898 foreshadowed the general colonial policy towards the Northern Territories:

> I cannot too strongly urge the employment of all available resources of the government upon the development of the country south of Kintampo ... I would not at present spend upon the northern territories - upon in fact the hinterland of the colony - a single penny more than is absolutely necessary for their suitable administration and the enlargement of the transit trade [103].

As Governor Clifford was to note before the legislative Council in 1913, the Northern Territories was to be content to wait for its turn while government devoted its attention to the development of the South. As he observed, the small population of the Northern Territories had been rescued from tyranny of slave-raiders, horrors of inter-tribal conflicts and the miseries and privations attendant with such events. He was therefore of the view that the meaning of peace and security was only beginning to dawn upon the understanding of the majority of the people of the Northern Territories (see MetCalfe, 1964: 546).

[103] PRO CO.96/346, Confidential Dispatch, Hodgson to Chamberlain, 20 December 1899.

The expansion of groundnut production in Northern Nigeria, due to the construction of a railway line and its geographical similarities with the Northern Territories, led to a reconsideration of the colonial policy of neglect and isolation towards the area. The First ten-year Development Plan of Governor Guggisberg, accepted a proposal to extend a railway to the North to open up the area for economic development (see Bourret, 1963: 26-35 and Ladouceur, 1979: 47). However, there was nothing spectacular about extending the railway to the North. As Botchie argues "the main objective of the plan was the development of basic infrastructure such as railways, ports, schools and hospitals ... the infrastructure developments were concentrated where resources could be tapped very easily for the colonial economy" (1986: 192).

The need for land to construct the railway led Guggisberg to enact a Lands Ordinance (Gold Coast Gazette, 1923), Der (1975) describes as having the practical effect of seizing the land in the Northern Territories for the government. That the vesting of Northern lands under state control to a large measure account for its underdevelopment, has its antecedents from the Guggisberg development plan.

The Guggisberg plan is still today hailed as the most successful development plan that laid the foundation for Ghana's subsequent development (see Bourret, 1963). Its basic tenets continue to guide development planning in Ghana to the present times (Botchie, 1986). Later development plans, like the Guggisberg plan, still see economic growth as the dominant objective of development. The maximization of GDP receives considerable attention, while other non-quantifiable variables are ignored or at best considered proxies to economic growth. As Botchie observes:

> Even the final plans seems nothing more spectacular than public expenditure programs dressed up as plans for the economy as a whole. While *spatial* inequalities between different parts of the country can hardly be considered irrelevant ... Yet it usually receives meager or no attention in the formulation of planning objectives (1986: 195; emphasis added).

The Guggisberg plan was followed by a second ten-year Plan intended to cover the period 1950-1960; often referred to as the *shopping lists* technique of development planning (Gold Coast, 1951). This D-plan involved assembling information of all government departments concerning projects they would like to see implemented during the plan period. The projects were aggregated and compared with available resources (1951: 192). It was abandoned when Nkrumah won elections in 1954 and Ghana was on its way to independence.

With independence in 1957, a new consolidation plan to run up to 1959 was adopted. This plan was also abandoned in place of the seven-year Plan for National Reconstruction and Development from 1963-1970, which is normally referred to as the *magna carta* of development planning in Ghana. It was the most significant plan after the Guggisberg plan in terms of its comprehensiveness and the dominant role of the state and the public sector in the development process.

If colonial plans were considered by the communities of Northern Ghana to have marginalized them, the hope was that the situation would be different with an independence plan. To their dismay, the North figured only briefly in the plan. As Ladouceur (1979: 204) observes, to the planners the North was above all a rural area

of low productivity that accounted for its depressed standard of living. The D-plan articulated this view in the following words:

> Government is not satisfied with the present standard of living in the rural areas and especially in the *Northern and Upper Regions*. Ghana cannot consider itself really modern or progressives until standards in the villages have been raised above what they are now. This cannot be done by pouring money into the villages to construct social amenities; since the rural population forms by far the bulk of the total population and other parts of the economy are yet little developed. The money for such village improvement can come from nowhere except the villages themselves (Ghana, 1964: 62, emphasis added).

The plan went further to propose that these underdeveloped areas should concentrate on producing foodstuffs for consumption in the more advanced areas. It specifically states that "it is the intention of government to assist the less developed areas of Ghana so that they can produce foodstuffs to meet the growing demands in wealthier areas" (1964: 62).

Such a division of labour within Ghana's political economy, relegated the North to the production of rice, legumes, oil seeds, vegetables, industrial fiber and livestock. State run industries such as oil and rice mills and a meat processing factory were built in the north of Ghana to process its agricultural output (1964: 118-9). The net returns to the North of Ghana in this arrangement were minimal. Low prices paid for agricultural produce of the area, led to low incomes for the peasants that were involved in such production. Agricultural production also moved away from foodcrops to cash crops. This national division of labour, constitutes the onset of poverty, hunger and the near famine situations that have come to characterize Northern Ghana.

This period of development planning is what current practitioners of development in Ghana, characterize as national, sectoral and non-participatory. It is in contradistinction with it that official development discourse articulates the so-called new *bottom-up* approach to planning. Therefore, if the old development planning order did not improve the life chances of local communities in Northern Ghana, it is instructive to explore how the new approach achieves this.

7.5.2 *Development Planning under the Decentralisation Programme*

The imagery in development literature of Third World societies as less developed, is replicated in the literature on local level development in Ghana. There are already indications of how development images and language on the Third World circulates at the local level. As Mitchell's (1991) study of Egypt shows, it is portrayed in terms of the *trope* "the overcrowded Nile River Valley". As he points out, development reports on Egypt start with the description of 98 per cent of the population crammed into 4 per cent of the land along the Nile River. The result of this description is an understanding of the *development problem* in terms of natural limits, topography, physical space and social reproduction; calling for solutions such as improved management, new technologies and population control. Mitchell sees in this trope a subtle ideological operation at play:

> Questions of power and inequality... will nowhere be discussed. To remain silent on such questions in which its own existence is involved, development discourse needs an object that appears to stand outside itself. What more natural object could there be for such a purpose than the image of a narrow river valley, hemmed in by the desert, crowded with multiplying millions of inhabitants (1991: 33).

While Mitchell's findings are specific to the Egyptian contexts, similar tropes are discernible in the official reasons assigned for the underdevelopment of Northern Ghana and for that matter the Upper West Region. Northern Ghana underdevelopment is often attributed to its *low GDP per capita, inhospitable environment, the lack of resources* or general *backwardness* of its people (see UWRCC, 1996; Nii-Plange, 1979; 1984). Defining development constrains this way, continues to be for most part- a top-down, and technocratic approach that treat people and cultures as abstract concepts or statistical figures to be moved up and down in the *charts of progress* (Escobar, 1995: 44).

As we will indicate shortly, the development priorities of Upper West local communities under Ghana's decentralization programme continue to be defined by technocrats as "poverty"; to be addressed by economic growth (capital formation). Its underdevelopment continues to be attributed to its physical spatial location and attendant natural limits. The question of power and social inequality is in no way raised as an important cause of its underdevelopment.

7.5.3 *Development Priorities of Local Communities in D-plans*

As we indicated earlier in this chapter, development *experts* see the main development priority of communities of the Upper West Region as one of poverty alleviation. However, the issues they fail to address are: how vulnerable groups themselves within the Upper West Region account for their circumstances and define poverty? How they come to be perceived and perceive themselves as poor? As noted by Rahnema (1997: 163), this is a particular discourse that assumes that the poor are deprived of the capacity to define their own interests. It is then up to those who claim superior power

and knowledge, to assist them and that people's participation is then welcomed whenever that could manifest their support for professionally designed development programmes.

Vernacular societies historically, had developed their own ways of defining and treating *poverty* that accommodated visions of community, frugality and sufficiency. As observed:

> It is true that massive poverty in the modern sense appeared only when the spread of the market economy broke down community ties and deprived millions of people access to *land* water and other resources. With the consolidation of capitalism, systematic pauperization became inevitable (Escobar, 1995: 22; emphasis added).

Systematic pauperization of the Upper West communities began with the onset of the Trans-Saharan trade and was aggravated by colonial rule[104]. The policy of isolation and neglect of the colonial state aggravated this pre-colonial situation. The dominant views that informed the role of the colonial state in the development of Northern Ghana was the *myth* that it did not possess resources worthy of development; and the constraints arising out of its physical environment. The colonial state saw resources in the north of Ghana, from the point of view of the needs and interests of capital in mining and cocoa production in Southern Ghana. As Songsore and Denkabe argue:

> The overall combination of policies pursued by the colonial government meant the subordination of the interests of Northern development to those of capital located in

[104] Before the Trans-Saharan trade these communities were active mining centers with highly developed artisans and craftsmen (see Levtzion, 1968 and Wilks, 1976). They were important trade routes centers for itinerant traders traversing the coast to the Sahara (Nii-Plange, 1979; 1984). The activities of major slave raiders (Samori, Babatu, Amhari) turned the Trans-Saharan trade in goods into one for "human merchandise" (Wilks, 1989). The consequence of slave raids was the slow down of the growth of the productive base, namely agriculture and trade. The atmosphere of fear created by slave

southern Ghana. The range of policies extended from forced labour migration policies, obstructing educational advancement, neglecting the development of infrastructure (education, health, transport) to the neglect of the development of the agricultural resources of the area e.g. shea, cotton, rice, groundnuts and livestock (1995: 10).

However, the local stories of the Dagara (very much like those of the Wala and Sissala communities), show that poverty historically was not viewed in terms of the lack of material things. The Dagara terminology that approximates modern views of *poverty* and *wealth* are context specific. The poor may be rendered in Dagara as either *nibaal* (the physically weak or socially vulnerable), *nang sob* (one not having cattle or other livestock) or *nibetere*(a person not having "people"); as against *nikpen*(bigman or elder), *tuornaa*(chief of the mortar), *tera sob*(a person with wealth- cattle or a large family head), or *fang sob*(the spiritually or physically powerful; see Levtzion, 1968 and Lentz, 1993). The "not having" and the "having" in the Dagara terminology of poverty and wealth respectively, needs to be contextualized. As Rahnema (1997) observes of other similar vernacular terminology, they acquire particular meanings relative to their socio-cultural space and are a part and parcel of the subject's wider perception of the world and their place in it.

Common features embedded in the Dagara terminology of poverty and wealth, include the notions of social solidarity, access to communal wealth and the size of family as a productive economic unit (see Yelpaala, 1992: 454-459). A person is a *nikpen*, *tuornaa*, and *tera sob* or *nibaal*, *nang sob* and *nibetere* depending on how

raids also led to crowding of the population into watersheds and the abandonment of fertile river valleys to tsetse fly infestation (see Songsore and Denkabe, 1995; Bening, 1977; Der, 1983).

much food he obtains from his farm or the number of people he can feed from his harvest. The beneficiaries of such bounty from the *nikpen*, *tuornaa* or *tera sob* need not be members of his family. Reference to the poor traditionally by the Dagara, is not one of contempt, embarrassment or violence; but in terms of the social obligations owed them or responsibility to them by the entire community. Such obligations and responsibilities include organizing *kuorbe* (farming gangs of the youth) to assist the *nirbetere* during peak farming periods and coming to their aid generally in times of distress. These forms of social solidarity abound in the folklore, social mores as well in the socialization processes of the Dagara (see Kuukure, 1985; Tengan, 1997).

The above local definitions of poverty are in no way addressed by all the D-plans of the five districts in the region. Poverty, as seen by the D-plan of the Lawra DA (very much like the other districts) is a result of:

> Low income, low productivity and generally low level of application of science and technology to economic production. The low mean annual household and per capita incomes for the region at 442, 000 cedis and 76, 000 cedis (compared to the national averages of 480, 000 and 107, 000 cedis) is a reflection of the level of incomes in the district (LDA, 1996: vii)[105].

There is no indication in any of the said D-plans of the socio-cultural contexts of the communities within which these plans were being crafted and in which they would be implemented. The existing situation of the districts in the plans focused on only physical characteristics such as: *location and size*, *relief and drainage*, *soils*, *climate and vegetation*, and *geology*. The bonds of social solidarity through clan and family networks in the communities in question, which is an important element in their social

production and reproduction processes is in no way considered a development potential in the planning process.

As Hagan (1992: 69) points out, in the Ghanaian's scale of values, he or she attaches great importance to ritual or religious events; he next considers his social obligations before considering mundane economic activity or obligation. He concludes that:

> It is the collective experiences, social institutions, modalities and habits of reflection, exchange of ideas and information that must inevitably influence the outcome of planning that aims at transforming the quality of life of people; and they differ from one ethnic group to another (1992: 69)

While colonial D-plans peripherised the north of Ghana as a *hinterland*, post-colonial and current development planning processes see it as one of *poverty* arising from its inhospitable spatial location. Like previous plans, the current planning process is preoccupied with sectoral issues without any consideration of how they relate to each other. On the social sector, focus is on health, education, water and sanitation. A catalogue of the existence or non-existence of relevant facilities is seen as either development constraints or potentials. While the non-availability of these facilities to majority of the communities is acknowledged in the D-plans, the question is not asked why it is the case? Projections are nonetheless made to provide for them in the future. A future dependent on local revenue generation and the benevolence of a *distant* central state. The economic sector identifies low agricultural output, undeveloped marketing facilities and non-existent large-scale industries as development

[105] The exchange rate of the cedi (local currency) as at 1996 was about 4 000 to a pound sterling, which works out to approximately £100 and £14 for household income and per capita incomes for the region; and £120 and £16 respectively for the national averages.

constraints. A list of projects are proposed to address these constraints (see UWRCC, 1996).

All the above development constraints, in our view, are common to most rural communities in Ghana. There is no indication in the D-plans of peculiarly Upper West development problems and potentials; or how these general problems take local forms of manifestation. We next explore some of these issues that are not articulated by the planning process but in a measure account for the region's underdevelopment.

It is our view that the Upper West Region is neither poor in resources nor output but in their distribution. The failure of the planning process to plan distribution is at the core of the regions continued underdevelopment. As evidenced in the development plans, resources are been targeted at only selected communities as *growth points.* These areas, ironically, are the regional and district centres that have relatively improved social facilities. Where resources are not directed at these growth points they go to communities that generate higher revenues based on the principle *of matching-contributions.* To this, we add the patronage and the clientelist networks that form unofficial but significant basis for decisions on resource allocation. The well-connected members of the DA, tend to attract undeserving projects to their areas to enhance their social status and political careers. Dunn and Robertson's (1973: 310) study of the Brong-Ahafo Region of Ghana, characterize this form of local politics over resources as "politics of communal aggrandizement".

In addition, government appointees to the DA dominate its deliberations and determine where resources should go. The findings of Ayee on the Keta and the Ho district assemblies in Ghana support this position. He observes that:

> Discussions in the DAs showed that all the elected members tried to put across the needs of their electoral areas ... Despite putting across the needs of one area, one had to be in the *good books* of the DSs [DCEs] presiding members and the nominated members. There were times during the Keta and Ho DAs, for instance, when elected members were shut down by either presiding members or the nominated members because they were *wasting the time* of the assembly for bringing up *unimportant issues* (1996: 8, original emphasis.)

The reason for this skewdness of resource allocation against less privileged communities, have to do with the related issues of popular participation, accountability and transparency of local government *praxis*. The allegiance of the dominant forces within the DA system to central government, render local scrutiny of their activities problematic[106]. Community participation in the planning process is also interpreted to mean the holding of public fora at the formulation stage and a public hearing when the plan is finalized. Development planning that ought to evolve as a dynamic process overtime, become events at two hops. Besides, the fora were conducted in only selected areas while the public hearing occurred only in the district centres.

We also have in the planning process a form of participation in which local communities can only endorse a particular vision (ERP/SAP) of development. It does

not include the right to say *no* to such a vision or its framework. It is also a development vision that makes a number of financial demands on the communities under the policy of cost-sharing. These demands include: contributions by local communities towards the costs of provision of social facilities, matching-contributions for development projects, cash-and-carry in health delivery, development levies for permits, and parental contribution in education (see Crook and Manor, 1998: 241-246). We can add to this list, basic rates, assorted fees and charges communities encounter daily with the DAs[107].

To the Upper West communities, the DA system ought to be avoided like a plague and not a partner in development. Decisions on these financial burdens are not considered as areas local communities should participate in. It is in this light that the Ghana Human Development Report suggests that participation under the decentralization programme should encompass all political decisions ranging from freedom of expression, equality of opportunity, accountability, transparency and openness in local level governance (UNDP, 1997: 47).

7.5.4 *The Spatial Politics of Development Planning*

The bottom-up approach to development planning captures the state spatial politics vividly, if viewed within the wider context of current attempts at national development. Firstly, it has to be noted that ERP/SAP as national development programmes commenced in 1983/84 before the first DAs were in place in 1988/89.

[106] These dominant forces include the DCE appointed by the president; 30% of membership nominated by the President; and the un-elected RCC that co-ordinate and monitor the DAs and is answerable to the President.
[107] See section 86 and Schedule six of Act 462, for details of the district assembly sources of revenue.

Development planning activities of the DAs did not start until 1996. Secondly, the legal regime of the new development planning approach requires that district plans would be harmonized at the regional level and subsequently integrated within a national D-plan. Thirdly, the first national medium term D-plan that is a consolidation of the district and regional plans was only ready in 1998 and is yet to be implemented (Ghana, 1998). Yet both the districts and regional plans have a life span of four years (1996 to 2000).

The sincerity of local community concerns informing national development becomes questionable. As is the case, the ERP/SAP predates the district level development planning and is still vigorously pursued. It is therefore clear that whatever local community development concerns may be, they would not be permitted to contradict the ERP/SAP strategy. The need to have a bottom-up approach to planning, therefore, is to co-opt local communities onto the bandwagon of the state development agenda.

As Caiden and Wildavsky (1990) cynically view development planning, perhaps it is about "promising miracles" that the Ghanaian state cannot produce. But it certainly "can produce a plan of a rosy future". Hence the elaborate legal framework on development planning with the medium term D-plans of the DAs as the outcome. As is currently the case, "the charts and graphs" of the D-plans "stay resplendent but day-to-day they curl at the edges" (1990: ii). It is therefore not surprising that the *presence* of the land question in development planning is one of *absence*. By the tenets of the state development strategy, land relations are not development potentials.

A central issue to the Upper West Region's underdevelopment is the failure of successive planning regimes to address the question of land relations. All the DAs share the simplistic notion that local communities own the land and should they require land, they will invoke the appropriate legislation to acquire it. In one vein, they seem to acknowledge local community rights over land but in another vein, fail to follow the necessary logic that land acquisitions should then be one of negotiation with them.

The land question therefore remains a given and outside the scope of development planning processes. It is our argument that the competing uses of land by the local communities and state institutions in the Upper West Region engender conflicts. Thus, it amounts to *developing* underdevelopment if state legal power is deployed to resolve such conflicts against local communities. As our discussion on the exercise of state power of land administration in chapters 5 and 6 shows, there are enough precedents in previous development experiences in Northern Ghana that ought to dissuade DAs from going down a similar development path.

The exclusion of the land question from the planning process is further accounted for by two factors. These are the vesting of Northern Ghana lands in the state from 1927 to 1979 and the notion of abundant and available land in the Upper West Region. Firstly, the vesting of land in the state made it easier for state institutions to acquire land for projects without consulting the affected communities. As is the case, the need for making land relations a part of the development process did not arise. A good example is the contrasts between acquisition of land for the construction of dams in Vea and Tono in the North and a similar project at Dawhenya in the South. While the

appropriate legal procedures for public acquisition was followed and compensation paid to affected persons in the latter case; in the former, the state forcibly ejected the communities on the land and only paid them nominal ground rents (see Kasanga, 1992 and Konings, 1986).

With divestiture of the land from the state control, new problems have emerged. Social and political changes have led to a loss of memory in some communities as to the nature of land interests held by individuals and groups before their vesting in the state. State land agencies take advantage of the situation and continue to administer such lands as if no legal changes have occurred. The complaint by these agencies that title to land is difficult to ascertain in the Upper West Region; as everybody claim to be a landowner support our findings.

The land/development nexus in scholarly narratives on northern Ghana remains undeveloped. A typical approach is to pose the question, whether or not customary land tenure is an obstacle to development? Traditional land tenure is held to mean "the various laws, rules and obligations governing the holding and/or ownership rights and interests in land" (Kasanga, 1988: 2). Development is viewed as economic growth or social progress (whatever that means). By this, land is presented as just one factor of development among others (labour, capital, technological and natural factors). The central issue then becomes whether customary land tenure is decisive or not in the development process. This issue divides students of Northern Ghana land tenure into two schools of thought. One school sees traditional land tenure as obsolete and needs reform if development is to be achieved (see Ferguson, 1958; La Anyane, 1967) and

the other sees traditional land tenure as progressive and should form the basis of development (see Benneh, 1976; Dadson, 1983; Kasanga, 1988).

Secondly, policy makers and development *experts* on the North of Ghana, hold the view that land tenure assures full employment on the land to all locals and most strangers if they are willing and able to farm or build. Kasanga's recommendation in his study on the Upper West Region reads as follows:

> The main conclusion from this study is that there is no apparent significant problem (for a majority of people) in regard to existing tenural systems [...] land is equitably distributed and most people are fairly treated (1988: 90).

Such a conclusion is based on a focus on so-called traditional customary rules (whether invented or not) while ignoring the state regulatory framework that is extensive and has substantially altered the traditional milieu. The constraints imposed on land relations by state law, range from: land use policy, physical development regulation, to the exercise of the state's power of *eminent domain.* The extents to which these constraints affect the non-availability of land to local communities' farming activities are considerable.

The dominant discourse that land relations in the Upper West Region is secure, stable and tension free is erroneous; as there is a perceptible increase in social fission over land among the communities. As our case illustrations in appendix G indicate, land has become a terrain of struggle of local communities in the Upper West Region. As Dale (1995) argues, defects in land tenure systems and the agrarian structure generally do not develop like mushrooms in the night. They have been there, latent but not inactive, for years or even generations before a crisis flares up. Sometimes they are

well known and simply disregarded; sometimes they have been seen by a few officials and students of agrarian affairs and duly reported to government that however did nothing, because action necessarily runs counter to established public policy.

In the case of the Upper West Region, the problems associated with land relations are well known to government officials; but once it is counter to the state vision of development it is hardly addressed. The Regional Minister for the region was reported in the *Daily Graphic* under the caption "Land Litigation increase in the UWR"; as having expressed concern about the rising spate of land litigation in the region[108]. It is therefore problematic in the face of such evidence, to have development discourse on the region that is silent on the land issue. As indicated by Hagan:

> Planning is culture-bound. Not only is a planning process situated in a particular cultural context in respect of *place* and *time*. It is also self-evident that without a cultural reference, the planning process has no orientation and is quite meaningless; a plan that has no cultural reference is an abstraction that does not and cannot take on or reflect the experience, the capacities nor the aspirations of a people (1992: 70; emphasis added)

It is our view, that land relations in the context of development in Ghana, be subsumed under a broad analytical category of *land administration*, by which we mean the legal rules and institutional practices that govern interests in land, land use, land management and control. This is sufficiently broad to capture the customary rules as well as statutory interventions in land relations. Institutional practices in land relations, establish and reinforce the reproduction of existing social relations. The concept *land administration* assists a better understanding of the aspects of land

relations that are an obstacle to or enabling of development. To isolate customary tenure for consideration in terms of development, fails to acknowledge the role of the state and as such excludes it from the debate.

This issue is at the core of the problematic nature of Ghana land law jurisprudence. The land question is presented only in terms of legal rules of private property law; however, in land relations the rules of public law are implicated to a considerable extent. The land law of Ghana does not only establish rights and obligations between individuals but between groups and the state as well. Examples of the latter can be found in both legislations and constitutional provisions (see Act 123, Act 125, Act 481 and Articles 20 and 257-269 of the 1992 Constitution).

7.6 Conclusion

In this chapter we have considered three related themes of development planning as an objective of Ghana's decentralization program. We have argued that the policy and legal framework of decentralized planning is a form of representation of social reality. The state and its agencies being the site from which such representation emanates; while local communities in the Upper West region is the site being represented. Using praxis of the decentralized planning processes in the region, we have illustrated the concrete forms such representation takes. Its effect, as we have argued, is to exclude important development concerns of the communities and large segments of them from participating in the planning process. The land question in the Upper West Region and vulnerable groups are the object and victims of such exclusion.

[108] Daily Graphic No. 147373, Tuesday edition of August 11, 1998.

We have also indicated the extent to which development planning is a spatial strategy for implementing only the state vision of development. Notwithstanding the legal stipulation that D-plans should originate from local communities, their participation has come to be interpreted in the planning process as that of endorsing the national development vision.

Taking the three objectives of decentralization considered in chapters 5, 6 and 7 together, one can see a consistent pattern of the state spatial politics at play. Through devolution the state creates institutional structures at the local level; within a second objective of democratizing the exercise of state power, local community spaces are occupied and dominated by groups who represent state interest. This spatial circuit is closed through the development planning mechanism, where only the state vision of development is articulated. The spatial diversity of development needs of local communities, is thereby effaced in the development discourse and its praxis.

CHAPTER 8

THE *GEOGRAPHIES* OF DECENTRALISED DEVELOPMENT IN THE UPPER WEST REGION

8.0 Introduction

This chapter seeks to draw together the main themes so far explored. It is therefore a restatement of the focus of our study. As we noted in chapter 6, a tension exists between the *sequential* nature in which the author represents social reality and the *simultaneity* of what he perceives. This chapter seeks to attempt to address that tension that is rather too obvious in the structure of our study up to this point. The chapter is divided into two parts. Part I revisits Ghana's social problematic that the legal regime of decentralisation seeks to address. It also addresses the political economy framework at the national and local levels in which the legal regime of decentralisation is embedded and disembedded at the same time. Part II resonates with theoretical issues on a spatial reading of social processes explored in chapter 2. It problematizes the spatial contexts of decentralised development by indicating the subjectivity of the development needs of the Upper West communities.

Though we considered a number of theoretical perspectives on the law/development relationship in chapter 2, we see the spatial implications of law as relevant to local level development discourse. In this chapter, we show that a focus on the law at the national level alone fails to give us an in-depth understanding of its manifestation at the local level. The spatiality of the role of law in development, we argue, explains the contradictory nature of Ghana's decentralisation programme. Particular legal regimes

embedded in this context are essential to any understanding of law's role in development.

Part I

8.1 Nature of the Ghanaian Social Problematic

In the previous chapters we sketched the nature of the political and economic contingencies that the legal framework of Ghana's decentralisation programme seeks to address. We now state them more systematically considering the preceding chapters. Though the crisis of state legitimacy in Ghana has its antecedents from the colonial state, it assumed new dimensions in the late 1970s and early 1980s. Years of economic and political mismanagement (by both civilian and military rulers) left in its wake an economy and polity that was near collapse. The social fall-out engendered by it culminated in two spectacular military seizures of state power. Spectacular in the sense that, both events called for a *revolution* of the populace. Though military take-overs were not new in Ghana, this military *revolution* had an unprecedented mass support across the various strata of the Ghanaian society. An understanding for such support was that the new regime would restructure the Ghanaian society in a more fundamental way.

At the same time, there was a complete depletion of the national kitty. This tarnished Ghana's standing in international financial circles (Ghana, 1987). The dilemma of the new regime was between the *devil and the deep sea* (between external financial support and total collapse of the economy). This culminated in the ERP/SAP that began in 1984. At the core of this economic policy was the problem of how to marry economic reforms and structural adjustments with popular demands for social equity.

Previous involvement of external donor financial institutions in the economy of Ghana had had adverse effects due to increased financial debts and high rates of servicing them. Social tensions that arose from such burdens partly accounted for a number of military interventions in politics. High external debt servicing and its effect on domestic consumption also triggered off the 1979 (AFRC) and 1981 (PNDC) military take-overs (see Shillington, 1992; Nugent, 1995).

A contradiction therefore arose between the PNDC government's populist rhetoric of *people's power and democracy* and the consequences of its economic reform on the *structured* and *adjusted* communities of Ghana. How to address the internal pressures for people's power generated by the *revolution* and at the same time satisfy external donor conditionalities of a liberalised economy, became the new social problematic.

In attempting to address this problematic, the regime made recourse to ideological mechanisms such as rural development, local community participation and democratization. These ideological forms also satisfied the general external conditionality of *good governance*, advocated by the external donor community. As Crook (1994: 339) argues, advocates of decentralisation as a form of development administration, is ideologically rooted in the current orthodoxies in economic and political development thinking, and justified as a key element in building *good government*. Decentralization then became the vehicle to take on board such disparate and conflicting pressures.

The crisis of the *national space economy* engendered by years of a highly centralized system of development administration, led to a rethinking of Ghana's spatial policy

and the problems of development. As Diaw (1994: 1-3) agues, the centralized system of development over the years made districts and local regions only recipients of so-called *development handouts* from the *centre*, which failed to demonstrate a self-sustaining process of development at the local level. And worse still, it created a situation of dependency, which has further led to the neglect or under-utilization of potentials of local regions and districts (1994: 3).

The legal regime of decentralisation, starting from the Local Government Law of 1988 (PNDCL 207) to the present provisions in the 1992 Constitution and the Local Government Act of 1993 (Act 462), sets the basis for the current spatiality of law and development initiatives in Ghana. The question is: why is the law seen as an effective mechanism for implementing the *new* development spatial policy? Before exploring this question we make some comments on the development of Ghana's political economy and the location of the Upper West communities in it over time as their *spatio-temporal* reality.

8.2 The Political Economy

8.2.1 *The National Context*

A central explanation offered by political economy lies in the nature of the Ghanaian State and its relationship to her citizens. While this relationship dates back to the colonial period, there are peculiar features associated with the post-colonial period. The mission of the colonial state was to subordinate the peoples of Gold Coast (Ghana) to imperial authority in other to provide conditions as well as infrastructure for economic exploitation of the colony for British metropolitan interests. To achieve

these purposes a set of laws and practices were necessary[109]. A prerequisite for this was therefore a relatively strong state that could subdue indigenous communities to the colonial will and penetrate existing modes of economic organisation as basis for largely capitalist relations of production (Howard, 1978). Closely linked to state attempts at penetrating local communities was the market. Though both are often represented as different and conflicting interests, they had the overriding common interest of exploiting the resources of the colony to serve British metropolitan interest, as they complemented each other.

However, the penetration of local communities by both the colonial state and the market in Ghana were partial and limited. Due to the very structures of the world capitalist system at the time it prevented the formation of a fully developed capitalist mode of production within local communities in the Gold Coast. This was more the case in peripheral areas; Howard characterises this as *peripheral capitalism* (1984: 15). This situation was particularly marked in the case of communities of Northern Ghana where the colonial state adopted a deliberate policy of isolation and neglect for a greater part of the colonial period (Nii-Plange, 1979; 1984). Ironically, forms of local government were used to legitimate this process (see Massing, 1994; Saaka, 1978 and Bening, 1975).

Efforts at integration of the national economy within the wider capitalist economy continued under the post-colonial state. A common feature of this trend is a focus of development activities in selected areas endowed with the kind of resources needed

[109] Examples of such laws relevant to land administration in Northern Ghana include; Administration (Northern Territories) Ordinance, 1902 (Cap. 111), Lands and Native Rights Ordinance, 1931 (Cap. 147), Town and Country Planning Ordinance, 1945 (Cap. 84) and the Native Jurisdiction Ordinance of 1935.

for the world capitalist market (see Diaw, 1994: 18-29)[110]. By the mid-1980s and under the *revolutionary* regime of the PNDC government, years of economic mismanagement and attendant decay started to manifest in the lives of the people of Ghana, which culminated in the ERP/SAP that is currently being fine-tuned as *vision 2020.* It was at this point the policy on decentralisation was muted and subsequently enacted into law (PNDCL 207; 1988).

The law as we indicated earlier, was to address two conflicting interests, those of the external financial donor community who advocated for a minimum democracy and of the pressures of local communities for participation in decision-making. The penchant for law in restructuring the Ghanaian society was a hallmark of the PNDC regime. To show this commitment, the edicts of the regime were renamed *Law* with a capital (L). Legislation became the means for dismantling structures considered obstacles to development and for the processes of restructuring the society[111]. The Local Government Law of 1988 (PNDCL 207) was fundamental to this process at the local level.

While it had been obvious that the *polygamous marriage* of the government to these *wives* (donor community and local communities), who have conflicting interests could not be sustained for long, it was not then clear which of them would have the closest romantic attention. This has however been currently resolved in favour of external capital but in a contradictory way. This time round, not only by law but also a number

[110] This is the so-called *Golden Triangle* of Ghana with its three axis in Accra/Tema (port cities) of the Greater Accra Region, the timber enclave of Sekondi/Takoradi (Western Region), and the mineral-rich Kumasi in the Ashanti Region.

[111] It is instructive to note that most social issues previous governments hesitated in legislating on, found expression in one law or another. Notable examples are: Intestate succession Law, (PNDCL

of policies that opens up local communities to the penetration of external capital. The decentralisation programme is an important aspect of such policies. As Diaw (1994: 33) argues, contraint Ghana's structural adjustment programme have on decentralised development is that, apart from the metropolitan assemblies (Accra and Kumasi), and such relatively rich districts such as Obuasi (where Ghana's richest goldmine is situated), majority of the district assemblies in the Upper and Northern Regions have become unpopular because of the tax burdens they place on their people.

However, projects of the DAs in local communities funded by the donor community raise doubts in the minds of people as to whether government *divorce* with local communities is complete or is one going through the usual stress of married life (Green, 1995). This is against the backdrop of the electoral victories of the government party in the 1992 and 1996 elections, which were largely due to the rural support (see Bawumia, 1998; Jefferies, 1998).

The problematic that arises from the said *polygamous marriage* in terms of decentralised development is that, the very crisis of the national space economy that led to Ghana's decentralisation programme replicates itself at the local level. District assemblies are required to *stand on their own feet*; with income-generation becoming their most important role. This revenue collection role of the DAs is part of the "Ghana IMF success story" of the mid-1980s, in which run-away inflation was said to have been brought down to 25 per cent in 1989; with an annual growth rate of 5 per cent in 1988; and a reported reduction of Ghana's external debt arrears from $440 million in 1983 to $70 million in 1987 (World Development Report, 1990: 112). In

111), Marriage and Divorce Registration Law, (PNDCL 112), Head of Family Accountability Law,

effect, decentralised development integrates local communities into the international capitalist system as a means of implementing Ghana's structural adjustment. Crook's (1994) study of four years of the operation of DAs in Ghana, concludes that the explanation for the failure to implement many legal measures necessary for the success of decentralisation reform, must be sought at the level of national politics. We agree with his view that:

> The Ministry of Finance and the Office of the Head of the Civil Service were [and continue to be) principally concerned to implement an *economic recovery programme*, most of whose requirements directly contradicted the provisions of the decentralization programme (1994: 361; emphasis added).

An important issue, however, is how the "remarkable gains or achievements" under ERP/SAP are reflected in the basic socio-economic conditions of people in the districts. We next explore this issue with specific reference to the Upper West Region.

8.2.2 *The Upper West Specifica*

The Upper West Region, while the above issues of the national political economy are relevant, has its peculiar flavour. The struggle of the elite of the Upper West communities over the years was to obtain a separate political and administrative region[112]. The hope was that this would accelerate the area's development. With the stroke of a pen in 1983, the PNDC Government created the Upper West Region by law (PNDCL 41). The reason for this decision by the government is said to be one that would bring decision-making closer to the Upper West communities to enhance their development due to years of neglect (Bening, 1999). The decentralisation

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(PNDCL 114 and the Administration of Estates (Amendment) Law, PNDCL 113; all of 1985.

programme through the creation of new district centres in the region is said to complement this development effort.

In the struggles for the creation of the Upper West Region and its subsequent creation, lies a major contradiction from a *thirdspace* perspective. As we indicated in chapters 1 and 7, the location of the Upper West communities in Ghana's political economy since the colonial period has been one of a *centre-periphery* linkage in development terms. Yet the elite of the area clamoured for a closer reach of the state (through regional state apparatuses) in development language. But this is precisely because the elites of the area are *spoilt children of neo-colonialism* (to borrow a Ghanaian political cliché), who see development in terms of only how to obtain state *goods*.

Though Ghana's current decentralisation programme entails a series of measures aimed at establishing grassroots democracy for development, this is not the first time organisational changes are being made with the view to giving power to people at the local level. It had always left and continues to leave local communities no improvement in their material condition. We argue that the creation of the region and the setting up of decentralised institutions, does not only operate to reproduce the centre-periphery linkage between the state and the communities, but also stifle their development initiatives. The manner in which decentralisation currently organises the *centre-periphery* linkage in the Upper West Region, however, has assumed new forms. Local communities unlike in previous situations are now indirectly linked to the state apparatuses through the creation of a number of "poorly developed central places" (Songsore and Denkabe, 1995: 107). As they argue, the typical central place

[112] See Ghana, *Parliamentary Debates*, 20 March, 1958, col. 458 and Ghana, (1960) *Proceedings of the*

system in such underdeveloped regions is *dendritic* in structure; meaning a single overdeveloped *primate centre* stands over and above a system of poorly developed central places. This large centre organises the domination of poorer settlements via commodity flows, capital flows, information flows and labour flows, thereby ensuring their economic and political domination (1995: 107-109).

The regional capital of the Upper West Region (Wa) serves as the *primate centre*; being the highest location of political power in the region under decentralisation. It organises the domination of poorly developed *central places* such as the Lawra, Jirapa, Nadowli, and Sissala district assembly areas. It exerts sway in the region not only in terms of administration, commerce and provision of social services but in administrative and political control as well. As Songsore and Denkabe point out:

> It polarises information flow related to administrative and political control coming from outside the region. From this centre, the information and commands filter through the lower level cadres at the district level from where it peters out in different directions (1995: 109).

With regard to commodity flows, Wa is the major regional entrepot and at the top of a bulk-breaking system of manufactured items from Southern Ghana for distribution to lower level centres. In the same manner, it drains the bulk of agricultural produce flowing from district centres to other regions of Ghana (1995: 109).

It can be seen from this analysis that the character of the *centre-periphery* linkage of Ghana's current political economy is reinforced and materialised in a trialectic of *centre-periphery-other* linkage. The end product is not only the development of

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Constituent Assembly, Accra, cols. 343-356 and 405-414. Where such struggles started as campaigns for the creation of a north-western Region.

underdevelopment but also a reproduction of combined and uneven development at three levels: between the *centre* and the *region*, between the region and the *district*, and between the district and the *other*. This *other*, are the marginalized segments of local communities who are daily struggling to *remember* and *recover* their lost subaltern spaces occasioned by state-led development.

A pertinent issue in the struggles within these subaltern spaces is the land question. It is the most obvious and available endogenous development potential of these communities. Yet its *presence* in the state decentralisation development activities is an *absence*. As our findings in chapter 4 show, even under decentralisation, the land administration machinery remains that of state monopoly and lacks a democratic content in terms of local community participation in its decisions. The so-called *bottom-up* approach to development planning becomes *top-down* in terms of who defines development and its priorities for local communities. The question we ask is: why does the Ghanaian State see the law as a useful mechanism for structuring such a political economy. We explore this issue in the next section of this chapter.

8.3 Why the Law?

The mixed bag of ERP/SAP and local community demands for participation and democratization, from which decentralisation in Ghana issued, suggests the need for its further legitimacy. The additional basis for its legitimacy had be one that presents the decentralisation programme as neutral or impartial to both internal and external demands; but at the same time seen to be addressing both pressures. In other words, the legal regime of decentralisation placates local communities that government is committed to their well being while keeping its ERP/SAP on course.

Law presents itself to the state as such a useful mechanism to mediate social tensions due to its peculiar features. Law has contradictory characteristics of the capability of both coercion and consensus in society. This form of law is the domineering role it plays in society; in its repressive and ideological forms. Gramsci distinguishes this as *direct forms of domination* and *hegemony* respectively (1971: 12); exercised by *intellectuals* (as deputies) of dominant social groups. Gramsci sees hegemony as the means through which dominant groups in society obtain the *spontaneous* consent of the great mass of the population by their imposition of a general direction on social life. This arises from the historical prestige and confidence, which the dominant groups enjoy because of their position and function in the world of production. Where spontaneous consent (ideological form of domination) fails, the repressive form of domination (state coercive power), which legally enforces discipline in society comes into play (1971: 12-13).

While the repressive forms of law are more visible through periodic activities by some agency within the legal system, the ideological forms are more pervasive and highly implicated in social and political processes. Therefore, to appreciate how the law addresses social issues, its ideological forms of manifestation are important.

Ideological domination signifies those activities and processes that produce and mobilize the assent of members of society. As noted by Hunt, it embraces both the ideas of "legitimacy" and "acceptance" (1993: 53). The assent of members of society is ideological in the sense that the process involves the production and dissemination of ideas that affects social practice through the determination of social consciousness of individuals and groups. It is dominating in terms of the differential ability of groups

in society to produce and communicate ideas; as these ideas have consequences with respect to the maintenance of the existing social order (1993: 53-55).

The combination of the repressive and ideological forms of domination through law is evident in the legal framework of Ghana's decentralisation programme. Notions of popular participation, democratization, accountability and transparency in local governance are the ideological forms of legitimating it. At the same time (as we indicated in chapter 6) the legal regime of decentralisation has a number of penal provisions that stand ready for deployment should the need arise.

An additional dimension of the legal regime of decentralisation is the relationship it seeks to establish between the citizen and the state in the development process. That is to say, the relationship between the state and local communities as *partners* in development. Gramsci (1971) sees this relationship in terms of two major superstructural levels of *civil society* (as private), and that of *political society* (the state). However, this distinction in the context of decentralisation in Ghana is blurred, given the increasingly diffuse role of the modern state. Althusser's (1977: 122-173) concept of *ideological state apparatuses* captures this relationship in Ghana better. The ideological state apparatuses may not necessarily be part of the state but they function to maintain power of a particular state form. As Hunt (1993: 56) argues, this brings within a single analysis both the state and nonstate features of legal systems. Althusser sums up the interplay between the *repressive state apparatus* and the *ideological state apparatuses* as:

> All State Apparatuses function both by repression and by ideology, with the difference that the (Repressive) State Apparatus functions massively and predominantly by repression, whereas the Ideological State Apparatuses functions

> massively and predominantly by ideology [...] Whereas the (Repressive) State Apparatus constitutes an organized whole whose different parts are centralized beneath a commanding unity, ... the Ideological State Apparatuses are multiple, distinct, *relatively autonomous* and capable of providing an objective field to contradictions ... (1977: 141-142; original emphasis)

As we argued in chapters 5, 6 and 7, the devolved machinery of public administration and the forces within it who define development are under the control of the Ghanaian State, which constraints local level development initiatives. As Diaw points out, decentralised development is still characterised by "a still unbroken central control and spurious decentralisation; entrenched interests and attitudes; and pressure for success by the state in other to continue receiving external donor support" (1994: 183). In sum, the legal regime of decentralisation operates as a mode for the reproduction of the social order; as it secures by force (physical or otherwise) the political conditions for continued uneven development and the political conditions for the action of the ideological state apparatuses.

8.4 *Legal ideology as a mode for the reproduction of a social order*

A set of social relations, practices and social institutions constitutes a social order. The reproduction of these sets of activities, relations and institutions ensures the persistence of society (see Hunt, 1993: 47-56). To appreciate how law operates as a mode for the reproduction of the social order, we make some theoretical clarifications.

Firstly, social relations, practices and institutions of a social order are not autonomous social processes but rather have certain structural characteristics within which these

practices and relationships take place. Therefore, to conceive of law as a mode of reproduction of the social order is not to view it only as an institution or a system of rules; but is itself a social process predicated on the functioning of other social processes (1993: 48.) Though we defined law in chapter 1 as legal stipulations of the state, we do not see it as having an independent or autonomous existence outside the social system. Such a reified view of law beclouds its social character.

Secondly, the problematic of social reproduction is both historical and geographical. Social reproduction does not involve society in general but particular societies or social formations. In the context of our study it is the *land relations* of the *Upper West Region* that we see as reproduced by law.

Thirdly, the reproduction of a social order is through its protection or maintenance; not in any static way but include the adaptive element in which change is a necessary ingredient (1993: 52). This maintenance (as we indicated earlier) is through law as a means of domination in its repressive and ideological manifestations. While the dialectic of the repressive and the ideological forms of law have proven insightful in critiques of liberal legal discourse, we can gain further insights through a reading of the distinctive ideological forms' law takes in society. Baxi makes the useful distinction between the "ideology of law" and "law as ideology":

> By *ideology of law*, I designate both the general ideology of law as well as the specific ideologies of law *informing* normative and institutional regimes of the legal order. The former will include the broad ideological formations such as the *rule of law* or *socialist legality*. The latter designates specific ideological practices characteristic of, or distinctive to, normative regimes (civil/criminal, public/private, procedural/substantive law) and institutional apparatuses (legislature, judiciary,

> police, jails, legal professions, legal education, juristic sciences) ... Law as ideology, in contrast, designates law itself as a form of ideology in general (1993: 133; original emphasis).

This distinction is useful as it assists in a clarification of the particular ideological form of law one is exploring as a mode of reproduction of the social order. The clarification is also necessary "as the relationship between legal ideology in general and specific ideologies characteristic of different law regimes and apparatuses is marked by collisions and contradictions" (1993: 133).

In the context of our study, the general ideology of law designates the political and social processes in Ghana from which decentralisation issued; while the specific ideologies of law designate legal stipulations and institutional practices of the decentralisation programme. The latter includes legal stipulations on devolution, democratisation, the *bottom-up* approach to development planning and participation; as well as the institutional practices of the RCC, DA, Town/Area Councils and Unit Committees.

A Ghanaian political context to the ideological currents of the decentralisation programme, was to turn its search for a *true* democracy into a quest to rediscover elements of traditional culture. Annan (then chair of the National Commission for Democracy) stated the guiding principles as follows:

> We in the Commission feel we must start from the fundamentals and reflect seriously in the obstacles to the achievement of true democracy in Ghana. We feel that a truly democratic system should take into consideration our tradition, history and culture ... Attention must be drawn to certain socio-cultural values such as consultation,

> voluntarism, participation, consensus and self-reliance that we cherish as a people but which seem to have failed to integrate into the political order (1985: 10-11)

The decentralisation programme was therefore a starting point for the realisation of the so-called *true* democracy. Nugent (1995) sees this Ghanaian context as a process in which the state was seeking to re-negotiate popular notions of a social contract with its citizenry (also see Crook and Manor, 1998: 204-5). In his view, the traditional basis of social contract in Ghana emanates from the precolonial Ashanti state's conception of progress, in which private accumulation was encouraged as a way of expanding the national patrimony that will thereby further the interest of the whole community. It is however problematic to see how this can be achieved within a traditionally heterogeneous society such as Ghana.

Traditional political systems in Ghana vary and their notions of social contract go beyond the Ashanti conception as stated by Nugent. There are communities in Ghana that were politically non-centralised traditional formations in which the basis of political negotiation was not based on individual wealth accumulation. In the latter political formations (as in the case of most Northern Ghana communities), communal wealth arose from the efforts of all members of the community to be enjoyed by all (see Bourret, 1968:84-85). This form of social solidarity is what has led southern communities to refer to their northern counterparts as *ntafo*; meaning people who turn to do things in groups (Lentz, 1994). If Ghana's decentralisation programme has any lesson that it can learn from traditional forms of political negotiation, the experience of non-centralised and devolved traditional political formations presents a useful starting point.

As our illustration in figure 1 of chapter 5 shows, the political arrangement of these acephalous communities suggest a *series of social contracts* on an ad hoc basis and not an enduring one as in state or centralised traditional political formations. This arises from the genealogical idioms of *relativity of the political groupings* and *equivalents of the segments* (Horton, 1976).

As rightly argued by Crook and Manor, the Ghanaian ideological flavour to its decentralisation, embodied three policy aims of government that were not entirely consistent with each other. These were the rationalisation, retrenchment and divestiture by government of its responsibilities; its commitment to a populist notion of *democracy* through community-based and self-reliant development; and the quest for a *Ghanaian* form of national democratic Constitution (1998: 204).

In chapter 2, we explored the genres of law and development scholarship on Ghana with a thematic critique. We also explored a number of narratives on the spatiality of law as an alternative framework for reading social phenomenon. In the light of our narrative in preceding chapters, we now re-orient the debate on the causality between law and society or development, to one of law seeking to address the social problematic of the times. This enables us not only to see law and development discourse as a binary of law achieving development or failing to do so. Our approach offer a discursive context for an understanding of the spatiality of the legal regime of Ghana's decentralisation programme. It is a context that rejects the forced binary choice law and development discourse often entail; but to introduce alternative story (ies) that can be told of the role of law in development.

Part II

8.5 The Trialectic of Spatiality and Social processes

Soja cautions that spatial narratives on social phenomena are "disorderly, unruly, constantly evolving, unfixed and never presentable in permanent constructions" (1996: 70). There is also the further problematic we alluded to in chapter 3, that discourse on spatiality is dismissed a priori as privileging space over time. For the abundance of caution and not to be mistaken as engaging in yet another adventure in *space*, we reiterate our spatial understanding with respect to the decentralisation development discourse in the Upper West Region.

We share Soja's grounding of spatiality in its double trialectics of the existential ontology of space and the more specific epistemology on space. Ontologically, Soja sees "Spatiality, Historicality" and "Sociality" (summary terms for social production of space, Time and Being-in-the-World) as a trialectic of *being*. These categories apply at all levels of knowledge formation from ontology to epistemology, theory building, empirical analysis and social practice (1996: 71). He is of the view that over the years scholarship has focused on historicality and sociality while tending to peripherize spatiality into the background as "reflection, container, stage, environment, or external constraint" upon human behaviour and social action. As he observes:

> All excursions into thirdspace begins with this ontological restructuring, with the presupposition that being-in-the-world [...] is existentially definable as being simultaneously historical, social, and spatial. We are first and always historical-

social-spatial beings, actively participating individually and collectively in the construction/production- the *becoming*- of histories, geographies and societies (1996: 73).

The second trialectic of Soja shifts from an existential ontology (what the world must be like in order for us to exist as social beings), to a more specific issue of how we can obtain accurate and practical knowledge of our existential spatiality. As in existential ontology on being, he sees knowledge on spatiality as a trialectic of *perceived*, *conceived* and *lived* spaces (1996: 75). Soja observes that over the years, epistemology equally brackets the accumulation of spatial knowledge within only the oscillation between *perceived* and *conceived* spaces. He characterises perceived spaces as material and materialized physical spaces that are directly comprehended in empirically measurable configurations. As we indicated in chapter 2, Soja distinguishes this spatial category as the *Firstspace*. It focuses on the absolute and relative location of things and activities, sites and situations, a multitude of materialized phenomenon across spaces and places, and concrete and mappable geographies of our lifeworlds (1996: 75).

The second spatial category of Soja is *conceived* spaces, which are devised representations of space through spatial workings of the mind. They are ideational or mental spaces made up of projections into the empirical world from conceived or imagined geographies (the *Secondspace*). It is one in which the *imagined geography* tends to become the *real geography* and with the image or representation coming to define and order reality. Actual material forms recede to the distance as "fixed, dead

signifiers that are processed, understood and explained through rational (at times irrational) workings of the human mind" (1996: 79).

Soja deconstructs and reconstitutes the *Firstspace* and the *Secondspace* duality; to include new possibilities unthought of within the spatial disciplines[113] (the *Thirdspace*). For Soja, the latter is a "possibilities machine or ... A remembrance-rethinking-recovery of spaces lost...Or [spaces] never sighted at all" (1996: 81). He does not however seek to discard *Firstspace* and *Secondspace* epistemologies but to reinvigorate their approaches to spatial knowledge with new possibilities. In sum, Soja's spatial categories are subsumable under an analytical framework of *social or lived* spaces; which inter-react and recombine in multiple ways.

From our rather caveated summary of Soja's rich spatiality on social being, the binaries of *time* or *space*, *history* or *geography* and *social* or *legal* do not arise. Within *Thirdspace* we see decentralisation praxis in the Upper West Region as *Firstspace* and *Secondspace* categories as well. In other words, the legal regime of decentralisation constructs the Upper West Region as a physical geographical entity with associated material practices (firstspace) and as an *imagined* or *conceived* space in which decentralisation development discourse represents it as *grassroots*, the *bottom*, or one of *poverty* (secondspace).

As our narrative so far demonstrates, the Upper West Region as *Firstspace* recedes to the distance in the decentralisation development discourse; as its mental images of *poverty*, *backwardness*, *low GDP per capita* assume prominence. As *Thirdspace*,

communities of the Upper West Region are located in particular social relations that are reproduced by the current legal regime of decentralisation. The Upper West Region is a *margin* of Ghana's political economy and can therefore be considered as Soja's *possibilities machine* for remembering-rethinking-recovering lost spaces or spaces never sighted at all. In other words, our perspective of *thirdspace* draws upon the traditional dualism of *material* and *mental* spaces of the Upper West Region, but extends beyond them in scope and meaning (*both and also...*). In this context, the remaining sections of this chapter address some thematic of development involving the national space economy and the subjectivity of the subaltern traditional spaces, and their inter-reactions.

8.5.1 *The Spatial Implications of the legal regime of Decentralization and Land Administration for Development in the Upper West Region*

It is our argument that the subjectivity of the communities in question presents alternatives for defining the proper framework for development under decentralisation. There are conflicting interpretations of the right spatial context of development between the state and local communities. Yet the decentralised development praxis ignores these conflicts. Local communities have time and again contested the state definition of the appropriate spatial contexts for social ordering through decentralisation. As observed by Soja, "lived spaces of representation" are the terrain for the generation of "counterspaces, spaces of resistance to the dominant order arising precisely from their subordinate, peripheral or marginalized positioning" (1996: 68). To be in the margin or periphery (as is the case of communities of the

[113] We Consider Geography, Cartography, Physical Planning and Rural and Urban Sociology to be examples of traditional spatial disciplines.

Upper West Region) is not to resign to fate or *yearn* to be in the centre. The margin offers a terrain for struggle. As succinctly put by Bell Hooks:

> I am in the margin. I make a definite distinction between that marginality that is imposed by oppressive structures and that marginality one chooses as a site of resistance-as a location of radical openness and possibility. This site of resistance is continually formed in that segregated culture of opposition that is our critical response to domination. We come to this space through suffering and pain, through struggle. We know struggle to be that which pleasures, delights, and fulfils desire. We are transformed, individually and collectively as we make radical creative space, which affirms and sustains our subjectivity, which gives us a new location from which to articulate our sense of the world (1990: 153).

The above quotation presents a discursive context for exploring the subjectivity of local community development concerns in the Upper West Region.

8.5.2 *The Spatiality of Development: The subjectivity of Local Communities*

The politics for development of the communities in the Upper West Region are intertwined with wider social issues. It therefore becomes problematic to seek to establish any boundaries between them. However, for analytical clarity we focus our observations on the spatiality of five related themes: the notions of community as the *locus* of state decentralised development praxis, traditional political structures as a form of local level governance; the politics of district political and administrative boundaries under Ghana's decentralisation programme; the politics of civil society in decentralised development; and land relations and decentralised development politics.

8.5.2.1 Concepts of Community

In chapter 1, we tentatively defined local communities to mean people ordinarily resident in a district assembly area. In the light of the preceding chapters it has become clear that there are varied concepts on community in the Upper West Region. The closest decentralisation discourse in Ghana has come to giving us a meaning of *local community* (as stated in the law) is a statement by the Minister for local government:

> For the purpose of this analysis, we will consider the central government and the RCC as the *central* and the system from the district assembly downwards as the *local.* This is justified in the sense that it is only the central government and the district assemblies that have legislative and tax powers (Ahwoi, 1995: 261).

By this definition, it is suggested that *local communities* are people located in the physical spaces designated as DA, Town/Area council and Unit committee areas. As argued by Wood, this form of spatial boundaries (he terms 'cartography') are a form of political discourse concerned with the acquisition and maintenance of power (1992: 43). For the Dagara, very much like the Sissala, community is not conceived in terms of bounded space. It involves material flows and interactions between and amongst people, which are mediated through land. People might be separated in physical space but nonetheless belong to the same social space (see Tengan, 1991 and Tengan, 2000).

The dominant discourses on the notion of community are multiple as well as conflicting. On the one hand, community is seen as a unifying concept, the expression of common interest, solidarity, integration and consensus. In short, what in

sociological theory is termed as *Gemeinschaft*. On the other hand, community is not a singular concept but represents an umbrella under which shelter a multitude of varying, competing and often conflicting interests. While the politics of the first model seeks to represent a single community with a shared interest, the second model suggests plurality of interests in which authority within the community is one of mediation of conflicting interests or management of complexity (see Willmott, 1989; Hambelton et al, 1991).

As observed by Willmott:

> Those advocating a new initiative, or those attaching or defining a particular point of view, may invoke the community in support of their case, without making it clear which community they mean, in what sense they refer to it or how far they have established what its opinions or interests are (1989: 5).

To address this difficulty, it may be helpful to distinguish between different meanings of the concept of community. This is particularly important as regards the Upper West Region in which the sense of community vary according to the interest its definition serves in time and place. In land relations in the region, the sense of community would depend on the social forces involved- whether the issue that arises is intra- or inter-ethnic or from the state/citizen relations in land matters.

Burns *et al* (1994: 225) suggest that the multiple meanings of community can be subsumed under the following features:

- The expression of a common cultural tradition drawing its legitimacy from history (heritage);
- Patterns of interrelationships reflected in kinship, mutuality and support groups (social relationships);

- An appropriate aggregation of needs or demands and the provision of local goods and services (collective production and consumption); and
- As a source of power or influence from which a group derives empowerment and representation.

Thus the sense of community is a mix of history based on sociological and anthropological traditions, economics and power or influence within the social system.

In practice, however, these various meanings of community overlap in complex and subtle ways. It is our view that where many of these factors become manifest in their overlap in place and time, the sense of community becomes stronger. Conversely, if fewer of the factors apply, the sense of community tends to be fragile. As argued by Stewart and Taylor (1993), an ethnic community in a particular town may draw on common heritage, common experience of powerlessness, kinship networks and face-to-face contact. In the context of land relations in the Upper West Region, disputes arise in contradictory ways and attempts at their resolution fail to address the particular "social charters" of community implicated by them.

In our case studies on land disputes and attempts at their resolution in the region (see appendix G), we discerned three related levels of discourses on the concept of community. These include *communities of interest*, *imagined communities* and *communities of places*, to borrow Anderson's (1991) categorisation. Dominant social forces in land disputes invoke charters of *community of interest* that seek to reflect common material concerns and characteristics of their members; often unrelated in any clear way to spatial patterns or boundaries of Ghana's decentralisation

programme. They draw their strength from their economic position vis-à-vis land use and its resources. The politics amongst youth and development associations on one hand, and chiefs on the other hand, over land rights in the Upper West Region is representative of such a discourse. The findings of Lentz in her study of land conflict in Kyetuu, and on Youth and Development Associations in the Upper West Region generally, support this thesis (see Lentz, 1995)[114].

At another level, we discerned discourses of *imagined communities* not based on common social interests but of a *common identity* in terms of social bonds of likeness and similarity. The *Taalipuo/Namaala* (see appendix G) land dispute between the Sissala of Lambussie and the Dagara of Nandom is a good example. In this context, the bond of solidarity was less for the pursuit of a common material interest but based more on ethnicity or perceived shared characteristics of Sissala and Dagara respectively. The fact that the material interests of the peasants of both Lambussie and Nandom transcend the bi-polar Lambussie/Nandom stand-off is hardly considered an issue in such discourse (see Tengan, 2000: 161-169).

Thirdly, is the discourse of *community of place* in which the functional areas of the local economy in terms of land use and the consumption and distribution of its products become decisive. As the *Kabanye/Danaayiri* and the *Charia/Loho* land disputes (see appendix G) show, the factions otherwise would have considered themselves *ethnic communities* of Wala and Dagaba respectively. However, the issue of who is to receive proceeds from the land acquisitions in the two cases, generated a sense of community based on place. Also, in the *Taalipuo/Namaala* land dispute

[114] The study on Kyetuu is forthcoming.

drama, the Dagara are of the view that the name of the *land place* (Taalipuo) gives them an identity as a community, regardless of the history of the land that may suggest other meanings of community in its holding. The Nandom Naa during the Committee's hearing of this case asked the Lambussie Kuoro whether the name *Taalipuo* was a Dagara or Sissala name?[115] By this rhetorical question, the Nandom Naa was suggesting that the *place* name confirm the Dagara title to the land.

From this brief discussion it can be seen that the notion of community is a contested site, which makes the ascertainment of the beneficiaries of decentralised development problematic. Nonetheless, the decentralisation discourse assumes this to be unproblematic and proceeds to prescribe common solutions to their development problems. As Crook (1994: 339) points out, the DA system in Ghana (as at 1992) embodied an unresolved contradiction between notions of community based on self-help and representative district level government. We add that this contradiction remains unresolved to date.

8.5.2.2 Traditional Political Structures

As we indicated in Chapters 1 and 6, apart from the Malala and Wala Communities who practised *naalo* (chieftancy) before the advent of colonial rule, all other communities in the Upper West Region were segmented and localised polities under Clans or lineages. Considering the fact that chieftancy in either its precolonial or colonial forms was introduced into the political relations of the Upper West

[115] See Lawra District Assembly, (1988) "Minutes of District Security Committee with the Lambussie Kuoro, Nandom Naa and Elders of Namaala/Taalipuo Farm Land Dispute", 25th July 1988. File Ref. No. LDC/CONF.41/SF.1/175 [p. 8].

communities from outside[116], our focus on traditional political structures is on the non-centralised or segmented communities.

Political relations in acephalous communities are hardly distinguishable from kinship relations, which revolve around land. As predominantly agricultural communities, the lineage emerges as a localized land owning group. At the head of which is the *tengan sob* or *totina* among the Dagara and Sissala respectively. He is both a spiritual and secular head; a distinction which is of only contemporary relevance. Land among the communities is considered as sacred and the abode of the *earthgod.* The material, social and spiritual well-being of the entire community is bound up with their relationship to the *earthgod.* Thus the political unit (be it a clan or patrilineage) is at the same time a *ritual parish*; to which community members (as it were) are a congregation or a liturgical committee (see Goody, 1958; Kuukure, 1985; Tengan, 1999). As we indicated in chapter 5, within each parish the *tengan sob* and other religious functionaries such as the *Suo Sob*, *Saa Sob* (priest of the rain deity) and *Bagr Bure* (diviner) administer the affairs of the community.

The conception of the clan has consequences in the jural relations of members of the communities. Beyond blood ties, an important factor that holds the clan together is land through the worship of a common *earthgod.* Even in situations where the clans are not first settlers on the land, grants of land to them go with the right to locate a clan *earthgod* on the land for purposes of worship. Among the Dagara such an area is referred to as *maalu zie* (place of worship; see Tengan, 2000).

[116] In the precolonial period chieftancy was introduced from the Kingdoms of Mamprugu, Dagbon and later Gonja into the communities. The political practices of such kingdoms and elsewhere in Southern Ghana equally informed the colonial administration's ideas of chieftancy in the creation of colonial chiefs among non-centralised communities.

The above social matrix is associated with its peculiar spatial meanings in which governance structures cannot be separated from those of economic, social and religious life. The concept of a *physical space* as understood by these communities is not a hierarchy of institutions. It is a political and social system with no juridical integration of territorial units outside the ritual parish areas. The legend in Northern Ghana has it that the Dagara revolted against the highly centralised and pyramidal political organisations of their kin among both the Mossi and Dagomba and migrated to their present settlement. As such, the name *Dagara* etymologically, refers to "a revolted man or a rebel" (Kuukure, 1985: 40).

For the Dagara of the Upper West Region, *physical space* (Firstspace) as a distinct political territory is the *teng gan* (the jurisdictional area of *tendaalun*). It is also a material space in the sense that it establishes networks for the processes of social production of the community. Land is the medium through which social relations within the *teng gan* are mediated; as it is not only an economic factor of production but also of social and religious significance (see Goody, 1980). As we indicated in chapter 5, reciprocal labour arrangements and inheritance to land gives rise to lineages settling close to their kin to maintain the genealogical/spatial/social distance relationship. Even where *disjunctive migration* occurs they try to restore this relationship as quickly as possible (Horton, 1976: 90-91).

The *teng gan* in its social and religious contexts gives rise to a second spatial meaning (Secondspace) as the ideational, symbolic or conceived space. The notion of *kyiru* (totem or avoidance) as we indicated in chapter 5, is a mental map that depicts the

teng gan. This map tells the history of a particular community, how it came to settle on the land and the genealogy of ancestors who pioneered the community's present location. As Goody's (1958) study of the *bagr* cult of the Dagara shows, this mental map constitutes an important part of the ritual incantations of the cult. Tengan argues that:

> It is expedient for every Dagara to know the non-human relatives specific to his patri-house. That knowledge serves as a passport for identifying oneself among other Dagara living a distance from one's homeland. It is enough to say that my *kyiiru* is the monkey and you are immediately identified as belonging to the social house of the *Tiedeme* (1997: 46; original emphasis).

The interplay between the *Firstspace* and *Secondspace* (the *teng gan* and its *kyiru*), presents a *Thirdspace* that is of contemporary relevance. The re-emergence of the cultural politics of the Upper West communities through youth and development associations are forms of *rethinking* and *recovering* spaces lost. As Lentz's (1994) study of the Dagara of north-western Ghana shows, the assertion is that *they must be Dagara first and any other thing second*[117]. An important element in this spatial *thirding*, to borrow Soja's phrase is the (re)-presentation of a Dagara cultural identity through traditional festivals such as *Kobine* and *Kakube* of the Lawra and the Nandom communities respectively. These festivals are based on the farming activities of the communities and have *tendaalun* as an important element in their celebrations. Thus the *teng gan* concept that had been marginalised in the social and political life of the communities by the Ghanaian State's modernization project, has re-entered their cultural politics.

The importance of *tendaalun* to these communities is vividly illustrated by Tengan's (2000: 277-281) findings on land disputes in Naawie in the Lambussie traditional area between the Dagara of Nandom and the Sissala landowners in the area. The story has it that the Dagara were given land by its owners in Naawie to built and farm on. This coincided with the creation of new DAs in the Upper West Region. The Paramount Chief of Lambussie (whose traditional jurisdiction extends to Naawie), fearing that the Dagara influx could lead to the creation of a Nandom/Lambussie district (he did no approve of), directed that the Dagara new houses be pulled down. A committee set up by the DA to resolve the dispute recommended that compensation be paid to the Dagara settlers.

The Dagara settlers refused the compensation and moved to another Sissala settlement (Samuo) and were given land to settle. The elders of Samuo also refused to take further payments from the settlers for the land. The explanation for the Dagara refusing to accept the compensation was that, "it was not the Naawie *tengan* that rejected them but the chief of Lambussie", and that, accepting compensation from the elders of Naawie amounted to accepting payments for a misdeed the latter did not commit. On the part of the Samuo elders, they did not accept further payments from the settlers because "the *tengan* cannot eat twice" (receive double sacrifices) from the same persons, and for the same requests; as the Naawie elders are their kinsmen (2000: 281).

This case does not only illustrate the respect the communities have for *tendaalun* but also how it gives rise to fair play in social interactions. It also demonstrates the

[117] This is the title she gives to her study.

ignorance (of the subtleties of traditional structures) of the DA's Committee, in resolving the dispute, by their recommendation that monetary compensation be paid to the victims. As would have been the case, the victims would have received monetary compensation and not land they desperately needed. In the same vein, if the Samuo elders had accepted further payments from the victims, they would not only be offending the *tengan* but would also be eliminating the common social space they share with their kin in Naawie, though separated in physical spatial terms. This case is also a good illustration of how local communities *remember* and *recover* their lost spaces engendered by state law led development.

8.5.2 3 The Politics of District Assembly Boundary Demarcation and Local Communities

One area in which the state conception of space is highly contested by local communities is the creation of district political and administrative boundaries. This situation reached a high point in the mid-1980s under the current decentralisation programme. Local community conception of space (as we indicated earlier) historically, has been one imbricated in the material processes of social production around land. They conceive of space not as a physical inert object that can be manipulated but a complex set of social mechanisms mediated through the use of land.

As our discussion in Chapters 4 and 7 shows, decentralisation in Ghana brought in its wake the struggles of local communities to have district boundaries re-demarcated to coincide with their traditional forms of physical spatial organisation. Examples of such struggles cut across all communities in the Upper West Region (see Lentz,

1995). However, notable examples include the South Dagara community seeking to break away from the Wa district; Nandom and Jirapa communities seeking to break away from the Lawra district; and the Dagara settlements in Sissala communities wanting either a separate district or to be made part of an existing Dagara district.

There are two related explanations for these struggles. The first relates to the material security associated with the local community's sense of space. The closer modern political administrative structures are to traditional structures, the better for local communities. Such structures are considered less threatening to their material well-being as against a situation in which they have to compete or struggle with other communities over resources. Secondly, the philosophy of the DA system is said to be one for *development, participation and democratization* and as such local communities are beginning to assert their autonomy in that regard. Beyond the provision of social infrastructure, local communities see a separate DA closer to their traditional areas as a way of influencing decisions on resource mobilisation and its distribution. Therefore, you have a situation in which the communities at the same time contest the state spatial politics and appropriate aspects of its discourse for their struggles.

The consequence of these struggles (as we indicated in chapter 6) is the emergence of civil society organisations on the local scene. A significant aspect of this development in the Upper West Region is that some of these organisations transcend traditional loyalties of the clan or ethnic group into other structural places such as gender and mutual support groups of vulnerable segments of the communities. The struggles of these organisations have been elaborated in Chapters 4 and we do not intend to

belabour the point. We therefore present a brief summary of these struggles in the next section.

8.5.2.4 Civil Society and the Politics of Space

It is not a coincidence that civil society organisations in the Upper West Region (as in other parts of Northern Ghana) assume an ethnic character. Though their aims and objectives are often stated in abstract terms as the *development and well-being* of their members, at issue is the traditional sense of associational forms. As historically segmented and localized polities, they do not see much social security in associational forms that transcend their spatial boundaries in both conceptual and material terms. Thus, even social elites of the Upper West Region who belong to professional and vocational associations, patronise their ethnic associations more (Lentz, 1994). It is in this context that youth and development associations of the Upper West Region over the years have been more active and are highly patronised in settings outside their home region. We can say without ambivalence that the Upper West communities carry their traditional notions of *space* into *places* they happen to find themselves. As Lentz observes in the case of the elite of Nandom:

> They can be simultaneously NYDA activists, staunch Catholics, lodge initiates and members of old-boys networks, professional associations ... and so forth. [however] For many issues at stake, inter-ethnic networks are decisive (1994: 166).

Another discernible feature of civil society organisations in the Upper West Region is the emergence of gender groups. The focus of our study however is on only women farming associations. The importance of this segment of civil society is that their activities have implications for gender land relations and resource access within the

communities. Resource mobilisation and its allocation (objectives of Ghana's decentralisation programme), have introduced inadvertently a form of identity politics into the local communities of the region. The emergence of struggles for gender equity in access to land would therefore have the effect of deepening as well as problematizing the ethnic spatial politics that is currently one of only male segments of the communities (see Amanor, 1999). This issue is of contemporary relevance as ethnic associations begin to assert the land rights of local communities against state intrusions. If such struggles are indeed about social justice and equity, there should be no justification for excluding struggles against intra-community violence and injustice based on gender.

The link between civil society organisations and the land question has to do with the political and administrative district boundaries of the state. As land is the only basis for the sustenance of the Upper West communities any boundary demarcation that affects farming rights or general land relations is the subject of local community resistance; in which civil society organisations play a leading role. The *Charia/Loho* and *Taalipuo/Namaala* land disputes (in our case illustrations in appendix G) are good examples. In both cases, the disputing communities previously belonged to the same district assembly area (Wa and Lawra districts respectively) and were separated into different district assembly areas (Wa and Nadowli districts; Lawra and Jirapa districts respectively) under the current decentralisation programme. At the fore of these struggles were civil society organisations championing the cause of one community or the other.

8.5.2.5 Land, Local Communities and the Spatial Politics of decentralisation

As our discussion in the preceding chapters indicates, the legal regime of Ghana's decentralisation programme is silent on local community participation in decisions on land administration. As the findings from our field study in chapter 4 show, decentralised institutions exercise regulatory powers that affects the lands of local communities. This is evident in land use planning and the compulsory acquisition of land for implementation of the D-plans of the districts. Therefore, confrontation between local communities and decentralised institutions revolves around land issues. Such confrontation arises not only because local communities are often expropriated of their best farm lands but also from the differing perceptions of the spatial meanings of land between decentralised institutions and local communities.

The focus of the DA development activities (as we indicated in chapter 7) is on economic growth in which land is seen as only an economic factor of production. The extent to which a piece of land satisfies the economic criteria of development is the focus of decentralised institutions and state agencies of land administration. On the other hand, local communities see land as one of a cultural identity, of religious significance, a boundary of traditional political authority, of social status, as well as a communal asset. Land also links the present generation with the past and the future generations (see Tengan, 1991 and Tengan, 1994). How priority is assigned to such differing perceptions between local communities and decentralised institutions, determines the nature of the politics over land in a particular district assembly area. In the *Lawra/Yagtuuri* land dispute illustration (see appendix G), the Lawra DA considered the use of a family's farmland to construct premises for a state revenue

agency as a development priority. This offended the traditional sense of land use of the family and hence the resistance it put up against the assembly.

What we have attempted to show in the entire study is that decentralisation is about power. As there is a link between the power to produce physical spaces and the exercise of power over them; the legal regime of decentralisation is deployed to appropriate the necessary spaces for the exercise of state power. The law therefore becomes an important aspect of the spatial politics of the state. The need by the state to exercise power in all local communities in Ghana as we indicated in chapter 6 varies over time. However, within the context of Ghana's current decentralisation programme, we see such a need as arising from the government policy of ERP/SAP.

An understanding of the legal regime of Ghana's decentralisation programme and its praxis in the Upper West region, lies in Ghana's space economy and its reproduction in the region. To approach this legal framework from the perspective, whether it is achieving development for local communities or not, the outcome could be one of two. Either the legal regime of decentralisation would be seen as playing no role at all or the presence of irrelevant infrastructural projects would lead to the conclusion that development is indeed taking place. Some narratives make the latter claim on decentralisation in Ghana (Kasanga, 1996; SNRD Report, 1996). If the issue, however, is engaged from the perspective of how social processes (economic and political) shape legal responses we will have useful insights into how the legal regime of decentralisation is (under)-developing local communities of the Upper West Region. We are thereby not restricted to the binary of whether law is performing a

negative or positive role as extremes of a spectrum but to go further to understand how this is done and why.

8.6 Conclusion

This chapter has drawn together the main themes of our study within a spatial analytical framework. While mainstream narratives on the role of law in development seek to draw a binary causality between law and social phenomena, our spatial framework rejects such a binary and draws a trialectic between *law/sociality*, *historicality* and *spatiality*. A trialectic that does not privilege either category. It has also uncovered the spatial diversity of Ghana's social reality that a homogenized legal regime of decentralisation seeks to regulate. Such an approach illuminates the contradictory character of the legal regime of decentralised development in Ghana more vividly.

CHAPTER 9

CONCLUSIONS AND AREAS FOR FUTURE RESEARCH

9.0 Introduction

Development discourse (in the particular context of law) conceals the *hidden experiences* of vulnerable segments of society, to borrow Meer's (1997: 2) phrase. The subjectivity of what constitutes development in particular spatial formations has generally been *hidden* and is in danger of remaining shrouded unless a spatial perspective to understanding development is adopted. This is so in a world where law defines development from only the perspective of dominant social forces and in relation to the state. In the context of our study, neither the Ghanaian space economy nor its communities are homogenous. As we have attempted to demonstrate in previous chapters, different communities in Ghana have different development priorities and interests. Unless development policy initiatives incorporate an understanding of this heterogeneity, only views of dominant segments of the Ghanaian society will continue to influence development.

Using decentralisation and land administration as our point of entry, we have explored the hidden experiences of the Upper West Communities silenced by decentralised development in Ghana. In our process of exploring the silence on the land question, we uncovered other silences[118]. Our choice of land administration as focus of study, does not seek to play down or diminish the importance of other silences. Land for the

[118] Beyond the failure to address the undemocratic practices of land administration by state agencies (both centralised and decentralised), the legal regime of decentralisation in Ghana fails to empower vulnerable segments of the society in terms of access to land. As argued by Meer (1997: 13), "[P]ower should be viewed as a social relationship between groups that determines access to, use of and control over the basic material and ideological resources in society". We see Women, Migrant Farmers and poor peasant households as good examples of vulnerable groups among the Upper West communities.

communities of the Upper West Region can be considered a development metaphor, which transcends its objectified form to include wider social relations. Therefore, it is our view that an understanding of the *silence* on the land question provides a discursive context for a proper reading of the subjectivity of local level development needs. This chapter, therefore, summarises the main themes of our study and also points (not in a prescriptive way) to other areas for future study.

9.1 On Understanding Silence

Whenever governments launch development programmes, scholarly critiques or narratives take as their starting point the stated objectives or aims of the programmes for analysis. From such a discursive premise, they assume that the aims or objectives of development programmes are themselves unproblematic. In other words, they take them as a given and thereby play according to the rules of the game or terms of discourse as set out. They hardly consider that these very rules could be telling a completely different story. Where governments reduce development programmes to legal form, such an approach is particularly typical. The discourse turns on the role of law in development with the legal stipulations taken as given.

The studies of Kumado (1994) and Ghai and Regan (1992) on decentralisation programmes in Ghana and Papua New Guinea, respectively, furnish a good illustration. We can add to them the detailed study of Ayee (1994) on decentralisation in Ghana from a political science perspective. A feature common to all these studies is that they accept notions such as *devolution*, *participation*, *democratization* and *development* (objectives of decentralisation) uncritically. They then proceed to explore the extent to which state praxis meets these objectives. In the studies of Ayee

and Kumado, focus is on the limitations and weaknesses of implementation of decentralisation programmes in Ghana based on the objectives of these programmes.

Though helpful for understanding policy of government programmes, this approach fails to uncover alternative stories we can tell about them. We have attempted to show in our study that Ghana's decentralisation programme is a form of official discourse, and therefore constitutes discursive articulations and inarticilations that form a text. A proper appreciation of such a text is not very much what it says of itself but what it does not say. Therefore, besides trying to make intelligible the *word* of the text it is important to equally consider its *silence.*

Our study shows that if we critically analyse policy objectives of government programmes, different story lines begin to emerge. These offer an alternative interpretation as to the sense we make of the objectives of these programmes. At the same time, it offers understanding of the *silence* in the text, which in our study turns out to be the more substantial one that explains decentralisation policy in Ghana[119]. In our context, the *word* of the text indicates that *overall development* of local communities is the central objective of the decentralisation programme. In furtherance of this objective: government machinery and authority is to be devolved to the local level, the exercise of state power is to be democratised, and with a *bottom-up* approach to development planning that is informed by local community concerns. We have tried to understand what these objectives mean and why the government policy considers them the paths to achieving development at the local level.

In exploring these questions, we considered the backdrop of land as an important factor of development for local communities in Ghana. From this perspective, the silence of the decentralisation programme on land became obvious. Arising from this silence is the further question: if decentralisation is about development how come its discourse fails to address an important development concern (land) of local communities? We are of the view that there might as well be an alternative objective of the decentralisation programme in Ghana. We have characterised this alternative objective as a spatial strategy of the state to produce material spaces, appropriate and dominate them as a way out of the crisis of political economy. How else can we make *silence* speak in today's reality either than to recollect, experiment and juxtapose (in an experimental way) with "assertions and insertions of the spatial against the prevailing grain of time" (Soja, 1989: 2).

Our spatial framework for reading decentralised development in Ghana, assists us to assess the extent to which local communities are indeed at the centre of development activities. Different communities, with different geographical and socio-economic milieus, evoke different development concerns. Therefore, understanding the local factors that promote self-sustaining development as perceived by the communities themselves, provides useful insights to Ghana's decentralisation programme. A spatial approach also assists a proper reading of the internal and external linkages that influence local level development decisions. We can conclude with Harvey (1982; 200) that a proper understanding of social processes (in the present times) requires understanding "geographical transformations ... *spatial fixies*, and ... uneven

[119] See chapters 5, 6 and 7, which explains in detail the silence on the land question in terms of the objectives of decentralisation in Ghana.

developments, in the long history of capitalist accumulation" (2000: 23; original emphasis).

In choosing land administration as the focus of our study, we seek to inscribe in it the critical methodology of the *Thirdspace*. By this methodology, we deconstructed and reconstituted the Ghanaian discourse on decentralisation as a development approach. We also introduced a counter-hegemonic subaltern stance into the decentralisation discourse; as the subjectivity of local communities in the Upper West Region (in terms of development) is not similar to that of ERP/SAP propagated by the Ghanaian State. By land question, we present a new discursive terrain of *radical openness* in which decentralisation can be politically *re-imagined* and practised as a development approach. By the land question, we further seek to deconstruct and disorder the Ghanaian State's hegemonic notions of decentralised development and to reconstitute the discourse by introducing the politics of material relations. This, in our view, creates new *spaces* of opportunity and action in terms of how to rediscover other spaces that geographical difference engender in Ghana; a view Harvey (2000) characterises as *spaces of hope*.

9.2 On the Implications of Land in Decentralisation

We have shown the extent to which issues of land administration are implicated in Ghana's decentralisation programme, through a focus on local communities of the Upper West Region and their lived experiences. In such a society, its members are constructed and influenced by obligations and responsibilities of both traditional social structures and regulatory regimes of state law. This often generates conflicts, as the two normative regimes are not based on a common understanding of the issues they seek to regulate. Our study shows that land administration for the communities in

question is through the clan within which customary practices of land use, management and control are articulated, maintained and enforced. At the same time, the state has over the years enacted a number of legislations that regulate the forms in which all lands in the country are to be administered. These legislations create parallel institutions (state) to those of traditional land administration structures. State institutions by their enabling legislation are privileged as sole administrators of land to the exclusion of the traditional institutions (see chapter 5). As our findings in chapter 4 show, the *tendana* institution is central to land administration among the communities in question and yet there is no legislation to date in Ghana that expressly acknowledges it as such.

Land emerges as a crucial part of the process of social production of the Upper West communities. It is not only viewed as an important factor of production but has social, political and religious significance in their lives. Land is not seen as a fixed inert object but has wider linkages; as the Upper West communities do not conceive land in isolation of the *skies* that provide rain. They see land and the skies as having a relationship in which the rain of the skies provides the needed moisture for the land that ensures food production for sustenance of the community. This is expressed in spatial terms as *saazu* (the space above) and *tengzu* (the space below). This cosmogenic unity between the *saa* (rain) and the *teng* (earth) is replicated in their social organisation with particular respect to matters of land administration (see chapter 8).

To this end, the jural relations around the institution of the *tendana* on land matters, have within its structure ritual offices of the *Saa sob* (priest of the rain deity) and the

Suo sob (the person who actually performs the physical acts of sacrifice to the earth deity). Therefore, the *tendana* institution goes beyond the notion of an individual actor as current Northern Ghana land law jurisprudence suggests.

Beyond the ritual actors who address issues of soil fertility are also the *zongmogre* or *daakyere* (administrator of a market land place) and the *gara daana* or *wie sob* (who administers hunting expeditions over land). Due to lack of knowledge on these structural subtleties, state land administrators often fail to appreciate *tendaalun* and its nuances in matters of land administration. The *tendana* structure is a good example of a decentralised form of traditional land administration that can better inform Ghana's decentralisation programme. However, this is one lesson state officials in Ghana are yet to learn. The tendency has been to declare traditional practices as backward and for that matter standing in the way of development. To officialdom, development entails a battle against traditional practices and not a process of coming to terms with its relevance to the communities in question.

Our study also shows that the lack of attention by the Ghanaian State to the land question in Northern Ghana lies in the policy of previously vesting such lands in the state. While this dates back to the colonial period, it assumed importance as a development concern under the postcolonial state. The vesting of Northern Ghana lands in the state affected and continues to affect the development of local communities in the North. State development programmes do not consider the interests of the communities in land as a priority issue. As the lands were vested in the state, conflicts of land use between state development projects and local community farming rights had always been decided and continue to be decided in favour of the

state (see chapter 6). As we illustrated with the example of the *Lawra/Yagtuuri* land dispute in appendix G, the district assembly considers the use of the disputed land for the construction of premises for a state revenue agency as a priority development concern as against the farming rights of the traditional family.

To underscore this issue, since the divestiture of Northern Ghana lands from state control under both the 1979 and 1992 Constitutions, there are no corresponding changes in land administration legislations or regulations. And as such land administrative practices continue as if such lands were still vested in the state. An example is article 267 of the 1992 Constitution (replicated in the Administrator of Stool Land Act of 1994), which provides the formula for disbursing stool land revenue to a number of traditional and state institutions to the exclusion of the *tendana* institution. The marginalization of the *tendana* institution in land administration by the decentralisation programme operates to reproduce existing material relations in the Upper West Region.

9.3 On Decentralised Governance

Our study also shows that a decentralised form of governance is neither the invention of the colonial state nor the post-colonial state. The communities of the Upper West Region in pre-colonial times, practised dispersed and autonomous forms of political organisation around the lineage or the clan. As the lineage was basically a land owning entity, there was no boundary between the wider politics and land relations. There was indeed no politics outside land relations (see chapters 1 and 5). As our findings show, in such a political formation, the *tendana* was both a spiritual and secular administrative leader with land as the basis of cohesion of the entire

community. Below the *tendana* was the head of traditional family farming unit who administered the lands of family members. As we indicated in chapter 5, there were jural rules that established the relationship between these institutions and the structures within them in land matters. What could therefore be considered as their development aspirations or material well being of its members was the degree of access to or control over land resources. Notwithstanding the levels of modern intrusions into these communities, our findings show that as predominantly agrarian communities the land question remains an important concern for them and they continue to relate to the institution of *tendana* in land matters.

Our study further shows that the history of modern forms of local government and decentralisation programmes in Ghana has failed to appreciate traditional forms of decentralised political formations. The *absence* of the land question in the development discourse of decentralisation programmes of Ghana over the years supports this conclusion. If decentralisation programmes were informed by traditional considerations of local communities, then they would perforce acknowledge the importance of land relations in evolving local level governance structures. Our study shows that for communities of the Upper West Region, there is a correlation between traditional governance structures and land relations on the one hand, and between governance and their material well being on the other hand. *Tendaalun* mediated these interests and inter-relationships of the community as both a spiritual custodian of the *earthgod* and as a secular land administration institution (see chapters 1 and 8).

Our study also shows that notwithstanding its comprehensiveness, Ghana's current decentralisation programme has marginalized the question of land administration. To

achieve its central objective of the *overall development of local communities*, the programme seeks to devolve government machinery and authority to the local level; democratize the exercise of state power; and evolve a *bottom-up* approach to development planning for local community participation in decision-making processes. Therefore, a number of development concerns such as health, education and importantly land are implicated in the programme's development discourse. For communities that are basically agrarian the land issue becomes a critical one.

As our findings in chapter 4 show, the land administration machinery of the state remains essentially centralised. Some institutions of this machinery (the RLC and the T&CP department), which are decentralised to the regional and district level respectively, paradoxically operate to *recentralize* this machinery in a national setting. This is because they still operate under legal regimes that are centralising in character and cannot address the peculiarities of land administration needs of local communities (Act 483; Act 123; Act 125 and Cap. 84).

In addition, our study shows that the exercise of state power in land administration lacks a democratic content. Though local communities are major stakeholders of land, they do not participate in decisions nor are they consulted by state land administration agencies in land matters. As such, these institutions remain unaccountable to the communities and show no transparency in the exercise of their statutory powers (see chapter 6). Our study also shows that the *bottom-up approach* to development planning fails to address development concerns pertinent to the communities. As the experiences of the Upper West communities in decentralised planning in chapters 4 and 7 show, neither the guidelines from the NDPC for the plan preparation at the

district level nor the D-plans of the district assemblies have addressed the land question. In sum, the three macro-objectives of the decentralisation programme we explored, fail to address the land question in the Upper West Region.

Our study concludes that decentralisation in Ghana is more a spatial strategy that seeks to address crisis engendered by the political economy than one seeking to improve the life chances of local communities. The law has been a significant tool for the implementation of this strategy at a number of levels. Firstly, the legal regime of decentralisation has coercive features. The principal legislation for implementation of the programme (Act 462) is littered with penal provisions to ensure compliance with its policy objectives. These range from contempt of the district assembly, obstruction of officers of the assembly to enforcing the functions of the assembly (sections 139, 147 and 43)[120].

Secondly, given the peculiarities of the legal regime of decentralisation, it structures local communities in such a way that they are at all material times linked to central state power apparatuses[121]. The effect of such a structuring is to appropriate local spaces in such a way that the state dominates them. Through such domination, the needs of particular local communities are effaced from the development agenda; as the state presents only its vision of development as that of the local communities. As our study shows, land relations that is an important development concern for local communities lost out in the development planning process. In its place is the

[120] See chapter 8 for a detailed discussion on the role of law in the spatial politics of the Ghanaian State.
[121] See chapters 1 and 4 on the main features and structure of Ghana's current decentralisation programme.

ERP/SAP state vision of development. It is presented as the panacea to ending the poverty of local communities in the Upper West Region of Ghana (see chapter 7).

Whether local communities share such a development vision is not considered an issue for political negotiation under the decentralisation programme. Law has set the rules of the game and any other consideration will be considered as offending the law and will not be tolerated. Local communities are thereby persuaded to stay within these rules as any action to the contrary can only aggravate their poverty.

Thirdly, law suits the purposes of the state strategy by its homogenizing effect in society. Our study shows that Ghana as one unitary state is a recent historical creation. It was previously made up of independent states and principalities. The colonial encounter that brought these independent polities under modern Ghana differed. Both force and treaties were used by the colonial state to forge the integration of the Upper West communities into the colonial state. This was subsequently legitimised by law and carried over to the postcolonial era. As such, the historical spatial reality of Ghana is one of diversity (see chapter 1). This is the reality the Ghanaian State over the years strives to efface. Through the law, the state constructs social concerns as broad generalisations for all communities within the polity, in which peculiar development concerns of some local communities are not captured.

The lessons from Ghana's political economy also show that social struggles over the years have been for local autonomy and equitable allocation of resources. This arises from the incomplete nature of the building of an integrated nation state. Most communities in Ghana (as in the case of the Upper West Region) continue to show

strong loyalty to their pre-colonial political formations; as well as inter-ethnic conflicts over resources (see chapter 8). Therefore a national development strategy of ERP/SAP cannot be pursued within such diversity and conflict. The law is therefore deployed to craft a policy of decentralisation that applies to all communities of the state. Law as general and abstract stipulations avoid the difficulty of having to address the spatial diversity of the Ghanaian communities. This becomes a useful strategy for the state to substitute its *vision* of development for that of the local communities. Through this strategy of homogenization of the processes of social production, issues of particular needs and alternative ways of ordering social life are ignored.

9.4 On Civil Society and Decentralisation

Decentralisation in Ghana has led to the emergence and/or the strengthening of civil society organisations at the local level. As the advocates of local community development efforts, attempts at their co-optation onto the state development strategy are proving more difficult than was anticipated. This is particularly the case where state policy pertaining to land, conflicts with the interests of local communities. Our findings in chapter 4 and our discussions in chapters 6 and 8 show that, civil society organizations have engaged state institutions in one form of struggle or another over land control and its use.

Our study also shows that there are unintended consequences of the state spatial strategy of decentralisation. While the state seeks to manipulate local communities through it, they see it as a terrain for democratic struggles with the state. The very notions of *devolution*, *democratization* and *participation* have become contested sites

as to their meaning. To local communities (and their advocates in civil society) they serve as a powerful language for their struggles that the state may not ignore.

The ambivalent notions of *devolution*, *democratization* and *participation* make it possible for local communities (through civil society) to make demands under their purview. As our case illustrations in appendix G show, the exercise of state power over land has become a site of struggle as local communities demand their participation in decisions that affect their lands. While the legal regime of decentralisation seeks to conveniently ignore the land question in the processes of political negotiation, local communities have put it on the development agenda.

9.5 Areas of Future Research

Our study has focused on only one development variable (land) and of a particular region of Ghana (Upper West Region). There is no doubt that other regions in Ghana as well as development issues need similar focus research. For example, it would be useful to explore other development concerns such as health or education within the context of the decentralisation programme. It is also important to consider the relevance of decentralisation in land administration among communities in which chieftancy (as a traditional political institution) is also a land holding entity. Given the political visibility of chiefs in Ghana (as against the institution of *tendana*) it would be important to see whether they suffer the same marginalisation by state land administration agencies. Such an issue is additionally important given that land administration agencies in the Upper West Region see chiefs as traditional land administrators though they are not recognised as such by tradition.

In the case of health and education (as development concerns) the need for research takes an additional importance. The Ministry of Health and the Ghana Education Service, are part of state institutions decentralised to the districts within the decentralisation programme. The local government Act of 1993 has abolished the two institutions as central government departments and transferred them to the district assemblies as decentralised departments (see First and Eighth Schedules of Act 462).

On the issue of health delivery, the government has instituted an elaborate programme of *primary health care* directed at the health needs of local communities. As the 1997 *Ghana Human Development Report* indicates, the primary health care programme is targeted at improving access to health services for the poor and vulnerable people living outside advantaged areas (UNDP Report, 1997).

However, as part of restructuring the social sector under ERP/SAP, the government runs a parallel programme of cost-sharing in the provision of health services. This is the cash-and-carry system where charges have been instituted for supply of drugs to patients; as outpatient consultations and inpatient care fees at public health institutions (1997: 28-33). The institution of such user-fees has seen a 50 per cent decline in outpatient attendance at health facilities in sub-districts and generally in rural areas. A decline that is in no way a reflection of improved health but the inability of people to pay user-fees. The report further indicates that the three northern regions (Northern, Upper West and Upper East Regions) together, have less than 11 per cent of all health facilities and 7 per cent of all doctors in the public sector, though they constitute over one-third of the national population (1997: 29-30). It would be important to see how the decentralisation programme addresses these health delivery issues.

It is also important to explore the extent to which the public health delivery system relates to traditional forms of health care. Traditional health practices remain an important part of the health care needs of most rural communities in Ghana. Though there are suggestions as to a possible integration of the traditional and formal health delivery systems, there exist inertia from public health institutions as to the mechanics for such integration. In isolated cases, there is collaboration with individual traditional medical practitioners, but this is only at the level of the use of traditional herbal formulations and traditional birth attendants (TBAs) in child delivery. The role the decentralisation programme can play in facilitating such integration is worth exploring. Such a study would further uncover another *silence* in terms of the subjectivity of decentralised development. That is to say an alternative (traditional health delivery system) to the state health delivery system.

The 1992 Constitution provides for the realisation of *free, compulsory and universal basic education* (FCUBE as is often called) for all as a fundamental human right (Article 25, 1992 Constitution). However, as observed, there is no area of social policy that is currently as contested in Ghana as education- from financing tertiary education to access to and quality of basic education (UNDP Report, 1997: 74). Education is one area that is critical to the long-term development fortunes of Ghana. The major educational reforms introduced in 1987 were aimed at increasing school enrolment at rates faster than population growth; strengthening the relationship between educational content and national socio-economic needs; raising the quality of education; and ensuring financial sustainability of education (Ghana Ministry of Education, 1989).

While enrolment figures in Ghana continue to rise since independence, the distribution of schools and enrolment patterns are marked by strong geographical, gender and income-based disparities. As indicated, for the rural poor and particularly those living in the northern savannah regions, these factors have telling consequences for the enjoyment of this key element of human development (Ghana Ministry of Education, 1990). Given the strategic importance of education for the long-run development of local communities in Ghana, it is one area that awaits research within the context of the decentralisation programme.

While our study and the direction for future research isolate and focus on single development concerns of particular communities, we do acknowledge the inter-relationships between these development variables and communities. However, the diversity of local communities in Ghana and the priority they give to different development concerns, suggests that a holistic approach that focuses on the national level in analysing decentralisation (as a development approach) is contradictory and has limitations. The very principle of seeking to decentralise development activity is an admission of such diversity. Therefore, a study of local level development activities from national perspectives, fails to uncover the possible divergence in responses of some local communities. There is much insight to be gained by *localising*, as it were, analysis within the context of one development concern that is all embracing for particular local communities.

It is our hope that this study will open up new areas for further study in terms of Ghana's decentralisation programme. The programme is a significant development in

socio-economic processes and spatial relations in Ghana and is likely to remain so for some time. As such, it constitutes a terrain of struggle for activists of local and rural communities. Issues of local level governance have never been considered as important in legal training in Ghana as it is often considered a less prestigious epistemological setting. However, the majority of Ghanaians live in local communities in which legal regulations of local level governance affect their daily lives. It is our hope that the present study is an initial effort that would carry legal thinking into such spaces; legal scholarship has neglected for some time. Our study has raised more questions than we have been able to address. We hope that they offer somewhat useful points of entry for future scholars concerning Ghanaian development.

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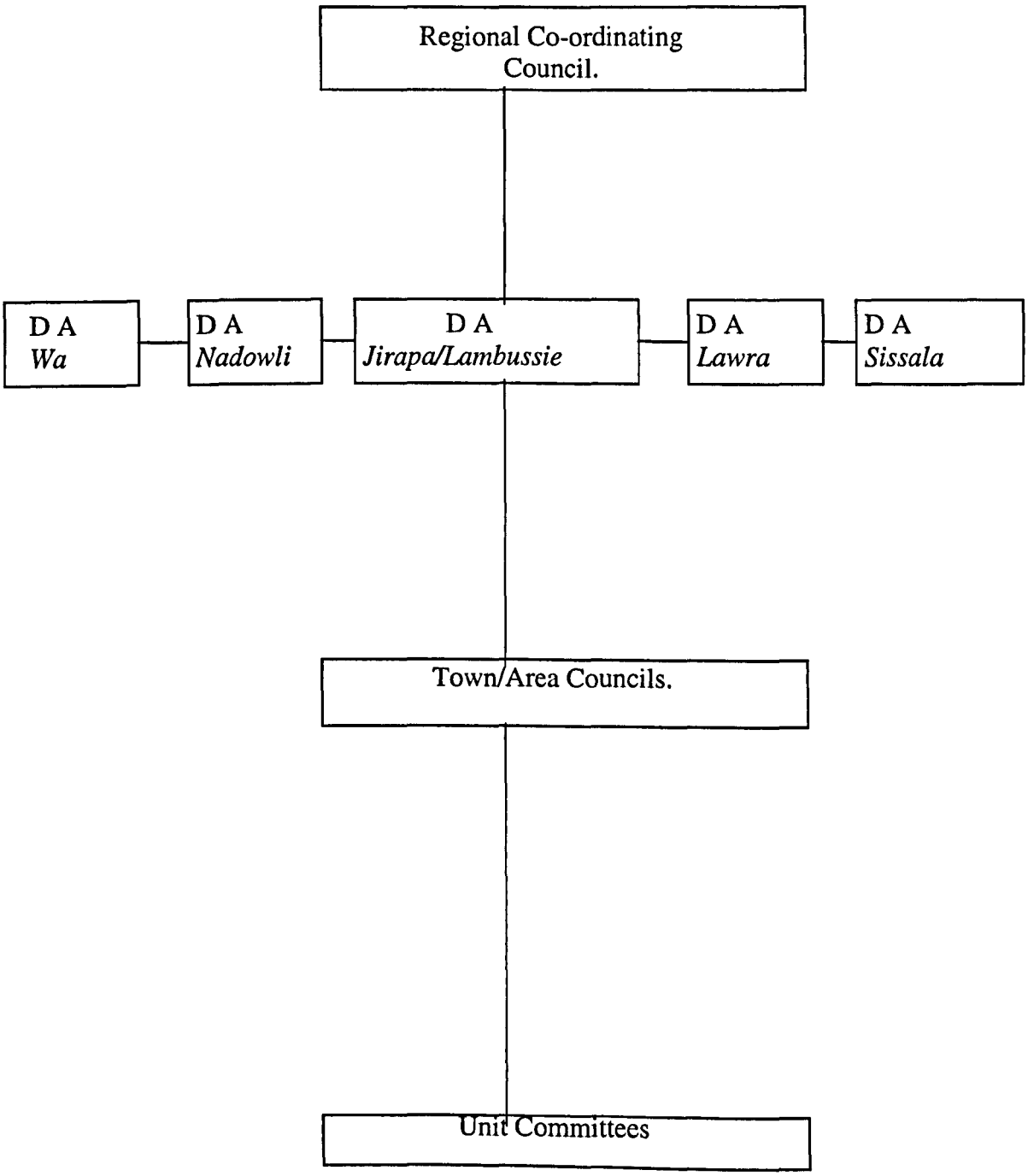
Appendix A

Local Government Legislation in Ghana, 1957-1993

Year	*Head of State*	*Regime*	*Name of Legislation*
1957	Dr. Kwame Nkrumah	CPP	1957 Constitution
1961	Dr. Kwame Nkrumah	CPP	Local Gov't Act (Act 54)
1966	General J. A. Ankrah	NLC	Local Gov't Decree (NLCD 26)
1969	General A. A. Afrifa	NLC	Local Gov't (Amendment) Decree (NLCD 299)
1969	Dr. K. A. Busia	PP	1969 Constitution
1971	Dr. K. A. Busia	PP	Local Adm. Act (Act 359)
1972	General Acheampong	NRC	Local Adm. (Amendment) Decree (NRCD 138)
1974	General Acheampong	NRC	Local Adm. (Amendment) Decree (NRCD 258)
1974	General Acheampong	NRC	Local Gov't (Est.) Decree (NRCD 290)
1976	General Acheampong	SMC I	Local Gov't (Amendment) Decree (SMCD 15)
1978	General Fred Akuffo	SMC II	Local Gov't (Amendment) Decree (SMCD 219)
1979	General Fred Akuffo	SMC II	Local Gov't (Amendment) Decree (SMCD 219)
1979	Dr. Hilla Limann	PNP	1979 Constitution
1980	Dr. Hilla Limann	PNP	Local Gov't (Amendment) Act (Act 403)
1982	Flt. Lt. Rawlings	PNDC	Local Gov't (Interim Adm.) Law (PNDCL 14)
1988	Flt. Lt. Rawlings	PNDC	Local Gov't Law (PNDCL 207)
1992	Flt. Lt. Rawlings	NDC	1992 Constitution

Appendix B

STRUCTURE OF THE NEW LOCAL GOVERNMENT SYSTEM IN THE UPPER WEST REGION



Appendix C

Composition of Land Administration Committees of the District Assemblies in the Upper West Region

Wa District

Committee	*Male*	*Female*	*Elected*	*Appointed*
Executive	23	1	23	1
Dev.& Planning	7	3	6	2
Works	11	0	3	8
Just. & Security	8	1	6	2
TOTAL	**49**	**5**	**38**	**13**

Jirapa/Lambussie District

Committee	*Male*	*Female*	*Elected*	*Appointed*
Executive	12	3	7	8
Dev. & Planning	12	1	11	4
Works	13	2	5	10
Just. & Security	12	1	8	5
TOTAL	**49**	**7**	**31**	**27**

Sissala District

Committee	*Male*	*Female*	*Elected*	*Appointed*
Executive	10	1	9	2
Dev. & Planning	9	1	2	8
Works	9	0	3	6
Just. & Security	8	0	1	7
TOTAL	**36**	**2**	**15**	**23**

Lawra District

Committee	*Male*	*Female*	*Elected*	*Appointed*
Executive	16	1	7	10
Dev. & Planning	6	1	4	3
Works	6	1	4	3
Just. & Security	8	0	3	5
TOTAL	**36**	**3**	**18**	**21**

Nadowli District

Committee	*Male*	*Female*	*Elected*	*Appointed*
Executive	11	2	3	10
Dev. & Planning	8	1	5	3
Works	8	0	2	6
Just. & Security	8	1	0	9
TOTAL	**35**	**4**	**10**	**28**

Source: Compiled from lists of Committee Members of the District Assemblies Collected during field Study, May-September, 1998.

Appendix D

Gender Profile of Decentralisation in the Upper West Region

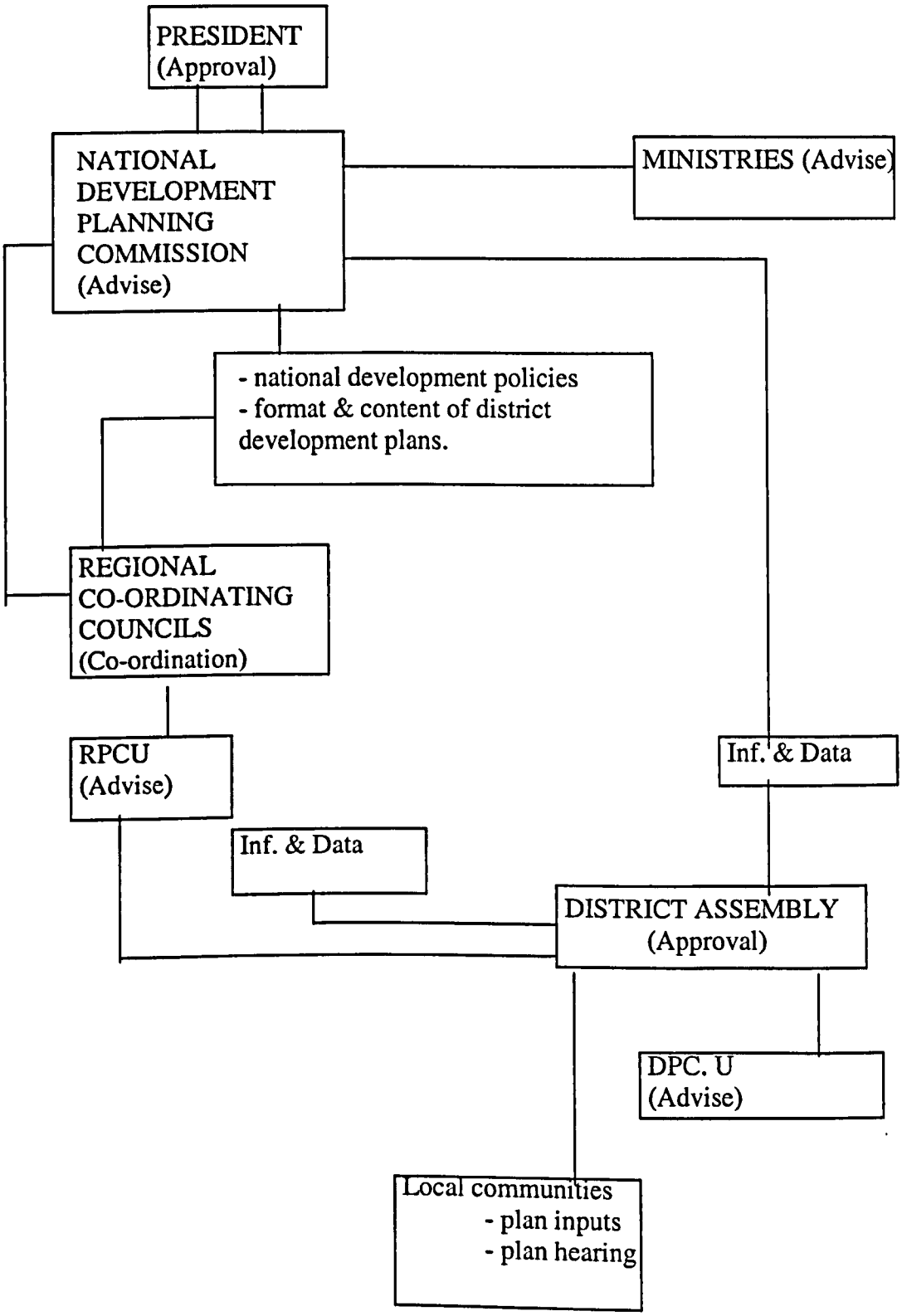
District	Female	Male	Elected	Appointed
Jirapa	8	53	42 (2)	19 (6)
Sissala	3	40	40 (2)	3 (1)
Lawra	5	47	36 (0)	16 (5)
Nadowli	5	34	23 (0)	16 (5)
Wa	7	72	55 (0)	24 (7)
TOTAL	**28**	**246**	**196 (4)**	**88 (24)**

Source: Local Government Information Digest Special Edition III, 1998: 72-74.

The figures in brackets represent elected or appointed females in the District Assembly.

Appendix E

STRUCTURE OF THE NEW PLANNING SYSTEM



Appendix F

SEMI-STRUCTURED QUESTIONNAIRE

A. STATE INSTITUTIONS

(1) What are your basic tasks in matters of land administration?

(2) What are your obligations under the law in matters of land administration?

(3) What statutory powers do you have in land administration?

(4) Are you satisfied with the powers you have in terms of your tasks?

(5) How does your institution arrive at its decisions in matters of land administration?

(6) Do you report to any authority, if so which authority?

(7) What role if any, do local communities play in your decision making processes?

(8) Are you accountable in anyway to local communities in the performance of your work, if so how is this done?

(9) If no in (7 and 8 above), will it be desirable that local communities are part of your work?

(10) What other information do you consider important to this study?

B. TRADITIONAL INSTITUTIONS

(1) District..... (2) Village.....

(3) What are the traditional forms of land interests in your area?

(4) Who are the holders of such interests?

(5) What is the main traditional land uses in this area?

(6) Who exercise control over land in this area, and how is this done?

(7) Have your views ever been asked on matters of decisions affecting land in this area; if yes by whom and when?

(8) What were the issues on which you were asked?

(9) Do you know whether your views were ever considered in arriving at decisions?

(10) If no will you want your views to be asked for and considered in such matters?

(11) Do you know of your DA, if yes, do you consider it important in land administration in this area?

(12) If no, what are your reasons?

(13) What are the common land problems in this area?

(14) How are these problems resolved and by whom?

(15) Do you have knowledge of the following land administration institutions?

Institution	**Chiefs**		***Tengan dem/Tendamba/Totina***	
	Yes	***No***	***Yes***	***No***
T&CP				
SD				
RLC				
RCC				
SLA				
LVB				
EPA				

(16) If yes, which of them asked of your views:

(a) T&CP

(b) SD

(c) RLC

(d) SLA

(e) LVB

(f) RCC

(g) EPA

(17) What were the issues on which your views were asked?

(18) What other information do you consider important to this study?

C. TRADITIONAL FAMILY FARMING UNITS

(1) Name of family..... (2) Village.....

(3) District.....

(4) Do you have any interest in land; if yes, what is the nature of the interest?

(5) How did you acquire the interest in land?

(6) What Use(s) do you put your land?

(7) Has anyone asked of your views in land matters; if yes, what were the issues on which you were asked?

(8) Do you know whether your views were considered in arriving at decisions?

(9) Do you know of your DA, if yes have its officials on land matters ever consulted you?

(10) What were the issues on which you were consulted?

(11) Do you know of the following institutions, if yes have you ever been consulted by any of them or participated in their decisions on land matters?

Institution	Knowledge		Consultation		Participation	
	Yes	No	Yes	No	Yes	No
T&CP Department						
SD						
RLC						
SLA						
LVB						
RCC						
EPA						

(12) What other information do you consider important to this study?

D. MIGRANT FARMERS

(1) District..... (2)Town/Village.....

(3) For how many years have you been farming here?

(4) How did you acquire the land?

(5) What were the terms if any, of your acquisition of the land?

(6) Have you encountered any problems in your use of the land over the years; if yes, what is the nature of the problems?

(7) Where did you originally come from to this area?

(8) Why did you have to come here to farm?

(9) Do you know the DA of this area?

(10) Have you ever been consulted by its official or participated in any of its decisions affecting land?

(11) What is the nature of the relationship between you and the owner of the land you farm?

(12)What other information do you consider important for this study?

E. WOMEN FARMING ASSOCIATIONS

(1) Name of Association..... (2) District.....

(3) Village/Town.....

(4) What are the main objectives of your association?

(5) How did you acquire land for your farming activities?

(6) What is the nature of your associations' interest in the land?

(7) Did you encounter any problems acquiring the land; if yes what were these problems?

(8) Do you know the DA of this area; if yes, have any of its officials consulted your association or has your association participated in its decisions affecting land?

(9) What were the issues on which your association was consulted or participated?

(10) Do you know of other state agencies that administer land; if yes, which agencies?

(11) Have any of these agencies consulted your association or has your association participated in their decisions on land matters?

(12) What were the issues on which you were consulted or participated?

(13) What other information do you consider important in this study?

F. YOUTH AND DEVELOPMENT ASSOCIATIONS

(1) Name of Association..... (2) District.....

(3) Town/Village.....

(4) What are the main objectives of your association?

(5) What relationships if any does your association have with the DA of this area?

(6) Has your association been involved in land matters in this area; if yes, what are the common issues of your involvement?

(7) Has your association been consulted or have you participated in decisions of land administration agencies including the DA?

(8) If yes, which were the agencies; and what were the issues of the consultation or participation?

(9) In what ways, if any does your association considers significant in the DA attempts at developing this area?

(10) What does your association consider to be the achievements and shortcomings of the DA attempts at development?

(11) What other issues do you consider important to this study?

APPENDIX G

ILLUSTRATIVE CASES ON LAND DISPUTES IN THE DISTRICTS OF THE UPPER WEST REGION

While similar cases to those we illustrate below abound in the Upper West Region, only one is selected for each DA area. These cases do not only demonstrate the problematic nature of land relations, but also the nature of land politics of the various social forces in the region. Though decentralised institutions (RCC and DAs) have been involved to varying degrees in all five cases, and they have all come before one Committee of Inquiry or another, they fall under two categories. The *Kabanye/Danaayiiri* and the *Lawra/Yagtuuri* cases are additionally being litigated in court[1]. The *Namaala/Taalipuo*, *Challu/Bandei*, and *Charia/Loho* cases went before Committees of Inquiry of the RCC or the relevant DA. We consider firstly, the cases that are being litigated in court, and secondly those that went solely before Committees of Inquiry.

Cases Pending in the Courts of Law

1. *The Kabanye/ Danaayiiri Dispute*

The parties to this dispute are both of the Wala ethnic group but of different clans. The Kabanye faction are descendants of the *Banja Clan* while the Danaayiiri faction are from the *Danaayiiri Clan*. This dispute arose over a large tract of land situating from Kunta (a suburb of Wa) along the Wa/Kumasi main road and up to the Bamaho village. A number of development projects have taken place on the land. Significant among the projects is the SSNIT (Social Security and National Insurance Trust) Housing Scheme, which triggered off the dispute.

In 1990, when the state indicated its intention to acquire part of the land for the housing scheme, the Danaayiiri clan erected bill-boards on the land claiming ownership. The Kabanye clan who claim to have over the years exercised control over and ownership of the land petitioned the Wa DA. The matter was referred to the RCC and a committee was set up to investigate the rival claims. The Kabanye clan raised an objection to the membership of *Wa Naa* (chief of Wa) on the committee, alleging that it was at his instance that the Danaayiiri clan erected the bill-boards claiming ownership of the land. The RCC refused to accede to their objection and maintained that the *Wa Naa* was an important figure in the region and it would be embarrassing to exclude him at that point[2].

The Committee recommended that the Danaayiiri clan was owner of the land and that compensation should be paid to them[3]. The Kabanye clan rejected the Committee's findings and instituted an action in court[4]. The High Court ruled in favour of the Kabanye clan and the Danaayiiri clan appealed against the decision to the Court of Appeal[5].

The High Court held that the plaintiffs (the Kabanye clan) had sufficiently discharged their burden of proof in terms of their account of their traditional history. Using the reigns of successive chiefs of Wa, the High Court held that the plaintiffs arrived in

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[1] The *Kabanye case* is pending on further appeal to the Supreme Court, while the *Lawra/Yagtuuri case* is pending in the High Court at Wa, as at the time our field study was conducted.
[2] See letter of protest from the Kabanye Clan in the *Record of Proceedings in the Kabanye Case.* High Court Wa, 4th March, 1996 [pp. 160-178].
[3] See UWRCC, (1996) "Report of the Committee of Enquiry into the Kabanye/Danaayiiri Land Dispute", September, 1991 [p. 11].
[4] Alhaji Adamu Iddrisu and others(on behalf of the Banja Clan of Wa) vrs. Daana Yakubu and Others (on behalf of the Danaayiiri Clan). L.S. No.1/93. High Court, Wa (unreported).

Wa and were granted the land by the *tendamba* of Sokpariyiri at the time of the reign of Na Pelpuo I (between 1681-1696); while the defendants arrived during the reign of Na Seidu Takora (between 1888-1897). It held further that the plaintiffs' evidence showed overt acts of ownership as they had more than one hundred compound houses on the land as against four houses by the defendants[6].

An important issue that did not emerge clearly in the judgment of the High Court was the fact that plaintiffs root of title to the land derives from the *tendamba* of Wa, holders of the allodial interest in land. The issue was however considered extensively by the Court of Appeal. Given its importance in the land law jurisprudence of Northern Ghana we reproduce the relevant section of the judgment in detail:

> In short, there are three Tendamba in Wa who as the *original owners* of the land have separate and distinct portions of land they control. Some of which they gave to other clans, families and individuals to settle on. So that a particular piece or tract of land owned by one tendamba family could only be given away by that tendamba and not two or all of them at the same time. Therefore, any traditional evidence of a later acquisition cannot be successfully investigated without finding out which particular Tendamba owned the land and consequently gave same away[7] (emphasis added.)

The issues that arise from this case are; whether the reigns of successive chiefs of Wa are a relevant historical basis for determining rights in land? And whether dispositions of land by and the number of houses a party has on land are useful bases for determining overt acts of ownership of land among the Wala community? More significantly is the manner in which the RCC as a decentralised institution handled the

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[5] Daana Yakubu and Others (on behalf of the Danaayiiri Clan) v. Alhaji Iddrisu and Others (on behalf of the Kabanye Clan). Civil Appeal No. 96/97. Judgment delivered on July 22, 1999, (Unreported).
[6] Ibid., [pp. 50-54] High Court decision.

dispute, which led to litigation in the court. These issues have been further explored in chapters 5 and 6 of the study.

2. *The Lawra/Yagtuuri Dispute*

Yagtuuri is a village three miles east of the Lawra town and a traditional division of the Lawra Paramountcy Area. The Yagtuuri and Lawra communities are both of the Dagara ethnic group but of different clans. This dispute arose over a piece of land that had been under the possession and cultivation of the *Malkone* family from the Yagtuuri village. The land became the subject of acquisition by a state revenue institution through the Lawra DA. Meanwhile, in 1982 a family from Lawra had claimed that the Yagtuuri family had encroached on parts of its land in the area. The latter family agreed to a new boundary line and trees were planted as demanded by custom to demarcate the two farms.

Cultivation of the land continued until the family of the Yagtuuri village decided to erect a dwelling house on the farm in 1995. Unknown to the family, a Site Selection Committee of the Lawra DA had allocated the farm land to a state revenue agency for construction of offices and official accommodation for its staff in the Lawra district. The Site Selection Committee did not include the elected representative of the area as it was made up of only officials representing state institutions and the acquiring institution (CEPS)[8]. The transaction was endorsed by the Paramount Chief of Lawra based on an affidavit deposed to by the head of the Lawra family. In the said affidavit,

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[7] Ibid. [p. 9] Court of Appeal decision.

[8] The Committee was made up of the: DCE of Lawra DA, District Town Planning Officer, District representative of the Northern Electrification Department (NED), District Medical Officer of Health, District Works Superintendent of PWD, District Manager of the Ghana Water and Sewerage Corporation (GWSC), Regional Lands Secretary, Regional Valuer, Regional Surveyor, Postmaster of

the Lawra family claimed to be the sole owner of all the lands in the area. Notices were erected by the revenue agency warning that the Yagtuuri family should stop trespassing on the land it had acquired.

The family from Yagtuuri resisted all attempts by the revenue agency to develop the land and instituted legal action against the revenue agency and the Lawra family[9]. In reaction to the resistance, the DA served the Yagtuuri family with a letter, which states inter alia:

> It has come to the notice of this office that some controversy has arisen over ownership of a piece of land situated in Yagtuuri which the District Assembly has set aside for the construction of offices for CEPS [the revenue agency]. It is intended that compensation for the land will be paid to the true owner when determined. DISEC decided [.....] that all parties to the disputed land should refrain from any form of encroachment on the land including farming and construction[10].

Ownership of the land meanwhile had been determined unilaterally by the DA in favour of the Lawra family. A letter from the revenue agency to the Yagtuuri family stating that confirmed this:

> The following facts established by my officer in-charge of Lawra show;
>
> 1. that you have no claim to the said plot of land in question;
>
> 2. that the fact stated in paragraph (1) above was established and endorsed by the district security committee;
>
> 3. that the plot of land said to have been encroached upon was legally allotted to us by the District Assembly, source of authority- courtesy Act of Parliament and this letter is not revoked and still valid;

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the Lawra district, Regional Consultant of the AESC, and the District Collector of CEPS; as endorsed on the Site Plan.

[9] Kpenbaar Sorbobr and another vrs. Dabuo Pagr and another , L.S. No.5/97, High Court , Wa (pending).

4. and so far as the Town and Country Planning department is concerned no permit has been issued from their office to any other person or body[11].

At the time the ban was placed on farming activities on the land by the DA, there were crops on the land which were destroyed. Lawra is a district noted in its D-Plan to have the lowest food production in the region, contributing only 4.3 per cent of the regional output and with a food deficit of 1,096 tonnes of cereals in 1995[12]. The issue that arises from this case is what the Lawra DA considers to be its development priority? This issue was further developed in chapter 7.

An important element in this case is that, both the plaintiffs and defendants in their statements of claim and defence respectively filed before the court, contested the Lawra DA (through the DCE's) grant of the land to the revenue agency. Paragraph 35 of the plaintiffs claim reads as follows:

> The plaintiffs further aver that the purported grant by the District Chief Executive to the 2nd defendant is null and void and of no effect since the Lawra District Chief Executive has no locus standi in the matter[13].

And that of the defendants is as follows:

> In further answer to paragraph 32 of the statement of claim 1st defendant avers that the District Chief Executive does not own the land in dispute and cannot make the grant to the 2nd defendant[14].

Unlike the *Kabanye* case, this case was still pending in the Court of first instance and as such our field study did not have the benefit of the court's position[15].

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[10] LDA, Reference LDA/CONF.4/SF.1/95, dated 18th June, 1997.
[11] CEPS Regional Office, Wa. File Reference No. WA/MISC./1; dated 10th June 1997.
[12] LDA, (1996) "Medium-Term Development Plan-1996-2000" [p. 21].
[13] Kpenbaar case (supra), paragraph 35 of Statement of Claim. Filed on 26/6/97.
[14] Ibid. paragraph 32 of Statement of Defence. Filed on 16/797.

Cases Investigated Solely by Committees of Inquiry

1. *The Bandei/ Challu Dispute*

Bandei and Challu are two Sissala villages in the Sissala district and are of the same ethnic background with slight variation in dialects. In 1994, the people of Challu took up arms and besieged the settlement of Bandei in a dispute over land that had lingered on between the two communities for some time. The disputed land is said to have been originally owned by Bandei and was given out to Challu as reparation over a hundred years ago. The reparation is said to be for a *spiritual debt*[16] owed Challu by Bandei.

As population increased in the area a number of Bandei farmers moved onto the disputed land for farming purposes. While the influx created tensions between the two communities, matters came to a head when the Chief of Bandei settled a farmer on the disputed land without the consent of the people of Challu. This was the last straw that broke the camel's back. The matter was reported to the RCC and a committee with membership outside the Sissala area was set-up. The Committee among others made the following relevant recommendations:

(I) that the status quo that made for peaceful co-existence in the area be restored;

(ii) that the two communities should continue to crop the land in the disputed area as they did before;

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[15] While on a short visit to Ghana from 16th May- 17th June, a visit to the Wa High Court revealed that it had just started hearing evidence on the case.

[16] While the Committee's report did not indicate what is meant by a "spiritual debt", discussions with the Assembly member of the area suggests it is related to witchcraft. A situation in which practitioners of the *art* are alleged to offer a person for the group *feasts* in turns. Where one fails to do so it becomes

(iii) that the conduct of the Assemblymember from Bandei be condemned and the issue brought to the notice of the entire Assembly; and members cautioned against instigating and meddling in land disputes and rather concern themselves with peace and development of their areas[17].

This case is significant to land relations in the Upper West Region. The notion has been that where land is abundant (as in the instant case) there is little fission within the community over land. For a community to take up arms in a land dispute in a district considered to have abundance of land suggests a re-focusing of the present development priorities of the Sissala DA. This issue was considered in detail in chapter 8 on the spatial importance of land to development in the Upper West Region.

2. *The Namaala/ Taalipuo Dispute*

Namaala is a village under the Lambussie traditional area of the Sissala or Isalla ethnic group; while Taalipuo is under the Nandom Traditional Area made up of the Dagara ethnic group. The two communities share a common boundary, which also coincides with the spheres of traditional political authority of Nandom and Lambussie.

In 1988, the Namaala *Kuoro* (chief of Naamala) made a complaint to the Lawra DA that the lands the Dagara of Taalipuo were occupying belonged to Namaala and that allegiance should be paid to him by the them. The *Dagara* of Taalipuo contested the Namaala claim maintaining that the land they occupy was first settled by their ancestors. At a meeting with the DA to resolve the rival claims, the Paramount Chiefs

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a "debt" that is due the others. In the instant case, the land in dispute was alleged to be the meeting

of Nandom and Lambussie led their respective communities in presenting claims to the land[18]. The main issue for the discussion was, whether or not the disputed land belonged to the Sissala of Namaala and was released to the Dagara of Taalipuo to settle on. This main issue could only be resolved within the contexts of other related issues, which were:

(a) whether or not the *tengan sob* of Namaala "cut the sod" for land to be released to the Dagara for settlement;

(b) whether or not lands in Nandom and Lambussie are named after *Kabir* who is a common ancestor of the people of both Nandom and Lambussie;

(c) whether the chief or *tengan sob* was the competent traditional authority to determine land boundaries; and

(d) whether or not allegiance to a Chief is relevant to the holding of an interest in land.

While these issues were under consideration by the Lawra DA, the Sissala seized a number of farms from the Dagara farmers in the area; allegedly at the instance of their paramount Chief and the IWDU (the youth and development association of Lambussie traditional area). NYDA (youth and development association of Nandom) joined the struggle on the side of the Dagara. The tense situation escalated with retaliatory measures from the Nandom Chief who banned any Dagara from Nandom from working on commercial farms in Lambussie and prevented Sissala traders from attending the weekly market in Nandom town[19]. The DA never resolved these issues.

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ground of the wizards and witches of both Bandei and Challu in historical times.

[17] UWRCC, (1995) "Report of the Committee of Enquiry into Bandei/Challu Land Dispute", 1995.

[18] The tendaanas of both areas were not invited and therefore not present at these discussions.

[19] The Sissala have elite commercial farmers with large farms in Lambussie and the Dagara of Nandom constitutes an important source of labour on these farms.

The DISEC (District Security Committee) of the Lawra DA only observed that it is the *tengan dem* (plural of *tengan sob*) of both communities who could resolve the issue of land boundaries. The *tengan dem* issue came up during the proceedings of the Committee in the following exchange:

> Nandom Na to Lambussie Kuoro: He wanted to know from Lambussie Kuoro whether he could show the exact boundary between Nandom and Lambussie?
>
> Lambussie Kuoro: I cannot show the boundary because I am a chief and not a tindana. It is only the tindana who can show the boundary[20].

An important question that this dispute poses is, whether one Kabir first settled the land in question or there is a Lambussie *Kabir* (senior) and a Nandom Kabir (junior)? The *Kabir* ontology is fundamental to the issue and needs a more in-depth study than can be handled at present. Some common story lines however, put the issue in its perspective. One story implies that the people of both communities became mixed in their migration and found themselves within the present area under a common ancestor known as *Kabir*. A younger brother of Kabir, known as *Kabirbie* moved westwards to the present Nandom from Lambussie and a *teng gan*[21] was subsequently created for him and he became independent and carried on his activities in respect of the land[22].

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[20] See Lawra District Assembly, (1988) "Minutes of District Security Committee meeting with the Lambussie Kuoro, Nandom Na and Elders of Namaala/Taalipuo Farm Land Dispute", 25th July 1988. File Ref. No. LDC/CONF.41/SF.1/175 [p. 8].

[21] This refers to the land area over which the *tengan sob* exercises his spiritual and land administration functions.

[22] From Field Notes, of an interview with Archbishop Emeritus Peter Dery at Tamale, May 1998. Archbishop Dery is considered an elder of both communities and has actual knowledge of the history of the Sissala and Dagara. He is a Dagara, but his family has settled among the Sissalas for over 70 years. He has also tried to restore peace between the two communities over the years.

Another story has it that a great hunter of the *Dikpielle* clan (a Dagara) known as *Zenuo* was the first person to arrive at the present Nandom and saw a vacant land and said *nandom ser* (meaning squat for a while); from which came the name Nandom. While Zenuo was out hunting one day his family was taken away to Lambussie by the Sissala whose presence in the area was unknown to him. In a search for his family, Zenuo came upon the Sissala community and stayed there for a while and returned to Nandom with his family. The story goes further to say that the Sissala subsequently created a tengan for Zenuo and he became the first *tengan sob* of the area. His descendants to date are the *tengan dem* of the area in Gamuoyir in *Nandom kpen* (big Nandom)[23]. The people of Nandom embrace the Zenuo legend as institutions are named after him[24]; while the Sissala of Lambussie asserts the Kabir legend. This case illustrates the complex nature of local community struggles over land, which involve traditional rulers, migrant farmers, civil society organisations and decentralised institutions.

Unlike the *Bandei/Challu* case, this dispute is in an area that experiences high population pressure on the land. Though the Lambussie area is sparsely populated (in relative terms) the influx of farmers from the Nandom area in search for farmlands aggravates the tension.

3. *The Charia/Loho Dispute*

The Charia and Loho communities are both Dagara settlements. Charia, administratively as well as traditionally falls under the Wa district and Wala

[23] Interview with the *tengan sob* in Gamuoyir; Nandom-Kpen, August, 1998.

traditional area respectively. Loho is under the Nadowli district and the traditional influence of the Paramount Chief of Kaleo[25]. The dispute arose as a result of a number of development projects on land at Gopala- three miles away from the regional capital. Negotiations were concluded between the land developers and the chief and *tendamba* of Kaleo[26] for the acquisition of the land. The people of Charia made a claim that they were the owners of the land. As in similar cases in the Upper West Region a committee was constituted by the RCC to investigate the rival claims. Though both the Loho and Charia youth consider themselves as belonging to the umbrella *South Dagaba Langburi Youth Association* (SDLYA), we observed that this dispute led to fission within the association. The youth of each village organised to counter the other before the committee.

This case is significant not only in its outcome but the level of articulation of customary rules on land relations that have often not been considered by similar committees. It is also a unique example of a chief who acknowledges the central role of the *tendamba* in land matters and works closely with them. It is significant to further note that the chairman of the Committee in this was (Lambussie Kuoro) was a faction leader in the *Namaala/Taalipuo* case. It would be important to see how he brings his previous experience in the latter case to bear on this case.

Firstly, the Committee spent some time visiting the disputed land to ascertain its extent. The visits revealed that the disputed land extended beyond Gopala to include

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[24] The Red Cross Guest House by the Nandom Hospital named *Zenuo Guest House* is an example.
[25] It should be noted, however, that by a Treaty between the Chief of Kaleo and the British in 1897 Charia was part of the Kaleo traditional Area until they joined the Wala traditional area recently.
[26] Kaleo is the seat of the Paramount Chief, with Loho as a division of the traditional area. The Chief of Loho succeeds the Kaleo Paramountcy. As a matter of fact there is hardly any distinction between the

lands at Mandouri and Matamuni areas. A resolution of the dispute based on Gopala alone would have led to further disputes over the other areas given the rapid development of the Wa township towards the area. Secondly, the Committee's Report notes that the *tendamba* are not considered leaders in land matters because of the fact that their clans were the first to arrive in the area. More significantly, it is the heritage of the risks involved in such pioneering efforts in wild bushes to locate farmlands and water sources for the sustenance of the clan and later arrivals[27]. The Report also noted that hunting (*Gara*) as a primordial occupational form of the Dagara is important in determining first settlement; and it is still used by some communities in land boundary identification with their neighbours[28]. Hunting expeditions undertaken at the present time, observed the Committee, are not solely for game but to also survey the land in other to acquaint younger generations with its extent. As confirmed by the *tendamba* of Kaleo, hunting expeditions are undertaken shortly after the farming season, which enable the community to ascertain whether or not there had been encroachments on their lands in the previous farming season.

Thirdly, the Report notes that communities of the Upper West Region are historically young traditional political mass formations. And that the Upper West communities characteristically fall under one of two categories; the princes (*Nabihi*) who disagreed with their kin in the Kingdoms of Mossi, Mamprugu, Dagbon and Gonja and moved westwards into the present Upper West Region and the original settlers they met in the area. The princely clans are always the chiefs while the original settlers are the

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people of Loho and Kaleo; the first settlement of Kaleo was in Loho; when the Skin in Kaleo becomes vacant the Loho Naa moves onto it.

[27] UWRCC, (1995) "Lambussie Kuoro Committee of Enquiry into Charia/Loho Land Dispute", Final Report. [pp. 21-23].

[28] Ibid.

tendaanas. The report however noted that both categories trace their origins to *Tengkorogo or Tenkore* in Mossi land in the present day Republic of Burkina Faso.

Fourthly, the Committee raised a rather contestable issue; as to whether conquest can be a basis for land ownership in the Upper West Region. It resolved the issue without further substantiation- that it could not be the case. It noted:

> As we have observed before, we think occupation of land in the region was not as a result of *conquest* but by peaceful settlement [....]. The Wa Naa acknowledged this fact before the committee when he said that there are two types of areas where one can come by land.... through conquest and if by conquest land falls directly under the chief [.....] if by settlement, gift or grant then the land is held in trust for the people. In the Upper West Region land is held in trust for the people (emphasis added)[29].

However, this view of the committee is not shared by some traditional rulers in the region in our discussions with them. In Lawra, Wellembelle and Nandom the Chiefs maintained that their ancestors met other groups on the lands they now occupy and *chased* them out[30].

[29] Ibid., [p. 26].

[30] It was noted in discussions with factions in the *Namaala case* and with the Lambussie Kuoro that the Dagara of Nandom often resort to conquest stories of the Sissala of Lambussie as basis of their claim to lands they now occupy. The Sissala resent this, and the Lambussie Kuoro feels passionate about it.