How to Combine Tradition and Modernity? Regulating Customary Land Management In Ghana


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Introduction

International trends in land policy in developing countries tend to emphasize the importance of recognizing and building on customary tenure systems in order to achieve equitable land management, in the context of poverty reduction (Deininger and Binswanger 1999; DFID 1999; EU 2004; Toulmin and Quan 2000a; Whitehead and Tsikata 2003; World Bank 2003a). However in Ghana, as in other countries where land transactions have become increasingly monetized in recent years as a result of growing scarcity and increased land values, the equity of customary tenure systems is being questioned. The new developments and the changing values in land that they create result in attempts to redefine land ownership and tenure and contestation of rights to land. These processes have increasingly concentrated control of the economic benefits flowing from land in the hands of traditional chiefs, which has a direct effect on people’s livelihoods and creates high tensions in many localities. It is against this background that we want to analyze the role of the government of Ghana in customary land management. This chapter will take the example of peri-urban Ghana to explain how, to what extent, and with what objectives government policy has sought to regulate customary land management by chiefs over time, with special emphasis on the Land Administration Project Ghana (LAP), a long-term program with multi-donor support, which started in 2003 with the objective “to develop a sustainable and well functioning land administration system that is fair, efficient, cost effective, decentralized and that enhances land tenure security” (Ministry of Lands and Forestry 2003: 12). A key issue addressed by this chapter is whether or not the state, through the approach adopted under LAP is able to regulate customary land management in a way that contributes to the avowed objectives of fairness and tenure security.

After a brief discussion of land struggles in peri-urban communities in Ghana, we will discuss the history, the legal mandates, and the actual functioning of a number of governmental institutions involved in customary land management. In addition, we will study the discourse of the government on issues of customary land management and
chiefly administration in general. We will then turn our attention to the Land Administration Project Ghana, under which the government is piloting the management of customary lands by Customary Land Secretariats (CLSs) under the aegis of traditional authorities. After contextualizing this ‘model’ within the contemporary international policy trend to recognize and build on customary tenure systems, we go on to compare the aims and discourse of the CLS component of LAP to the actual processes and outcomes so far. The chapter concludes by considering the impact, risks and challenges of state intervention on local struggles for land.

The chapter draws on general literature, policy documents and data collected during field research in peri-urban Kumasi between 2002-2005 and during policy and project advice on the development and implementation of the LAP on behalf of DFID, from 2002 until the present.

Customary land management and governmental institutions in peri-urban Ghana

The 1992 Constitution vests all customary lands – which constitute approximately 80% of the land in Ghana (Alden Wily and Hammond 2001: 46-8; Kasanga and Kotey 2001: 13; Larbi, Odoi-Yemo, and Darko 1998: 1; – in the appropriate stool, skin, or land-owning family on behalf of and in trust for their people, and confirms that such lands be managed according to the fiduciary duty of the traditional authorities towards their people on the basis of customary law, which is recognized as a source of Ghanaian law (articles 267 (1), 36 (8) and 11, 1992 Constitution). In large parts of southern Ghana, customary land is referred to as stool land in reference to the carved wooden stool which is a traditional symbol of chieftainship and is believed to contain the souls of the ancestors. In the north of Ghana, customary land is defined as skin lands, for here the chiefs sit on a hide. In other areas, such as the Volta Region and Greater Accra, where family heads have jurisdiction over land, we speak of family lands. The Constitution does not however make more specific provision on how customary lands should be managed by traditional authorities, and in practice increasing land values leads to widespread disputes over the powers to allocate rights in customary land and entitlements to the proceeds of these land allocations. For instance, peri-urban areas witness severe struggles between farmers and families, on the one hand, and chiefs on the other over the right to convert farmland into residential land (Abudulai 1996, Abudulai 2002; Alden Wily and Hammond 2001; Kasanga et al. 1996; Maxwell et al. 1998). In agricultural areas similar struggles over
land and its proceeds can be witnessed (Amanor 1999, Amanor 2001, Amanor 2005; Boni 2006; Firmin-Sellers 1995; Fred-Mensah 2000; Hill 1963; Lentz 2006; Lund 2006).) describes in detail how new land pressures and commodification have led to contestations and redefinitions of rights to land and labor in the cocoa, oil palm, and forestry sectors of Ghana. Others describe how chiefs have tried to tap a ‘gateway to prosperity’ by allocating land to migrant pastoralists for substantial payments to the detriment of indigenous farmers (Tonah 2002: 53-57), and point to struggles over the right to lease out land to tomato growers (Berry 1997: 1235).

This chapter focuses on peri-urban areas, where traditional authorities are displaying a tendency to adopt landlord-like positions with regard to customary land. Alden Wily and Hammond (2001:44, 69-73) speak of the “curtailment of communal property rights, through a form of feudalization of land relations.” Research has shown that chiefs are rapidly converting farmland, in which indigenous community members or families have usufructuary rights, into residential land which they allocate to outsiders through customary leases (Berry 2002a; Gough and Yankson 2000; Kasanga and Woodman 2004; Ubink 2007), and which may or may not be registered with the Lands Commission. Although the Constitution prohibits the sale of customary land and only allows leases, nearly everyone speaks of the ‘selling’ of land and many people, ‘sellers’ as well as ‘buyers’, seem to regard land allocations for residential purposes as definitive transfers. The allocation papers seen during the field research, merely stated that plot x was allocated to person y, neither mentioning the word lease, nor specifying a time period for which the allocation would be valid.

As a result of the allocations, the original land users, with weaker bargaining power, frequently lose their land, their employment, and their income base. Kasanga and Kotey (2001: 18) even claim that “the displacement of poor and marginalized families from their land is a national disease.” Traditional authorities display little accountability in the use of monies generated, and most indigenous land users realize little or no benefit from the leasing out of land: they are rarely and then inadequately compensated for land loss; and in most villages only a meager share of the revenue is used for community improvement. Although the new lessees are benefiting from the land conversions, they are also affected by the lack of investment in community facilities, since the areas in which they are building their houses are seldom serviced with electricity, roads, and sewers. Furthermore, the numerous accounts of multiple sales of the same piece of land to different buyers and of sales of alleged residential plots on land unsuitable for residential purposes show the buyer’s vulnerable position. In sum the practice of customary land management in peri-urban Ghana differs widely
from the constitutional provision that puts the interest of the community first.

In addition to the constitutional recognition of customary land under management of traditional authorities, the state has sought over the years to regulate certain aspects of stool land management emphasizing the authority and role of formal land administration agencies over the chiefs, enabling formal registration of customarily acquired rights to provide documentary evidence of tenure, and seeking to generate government revenues from customary land transactions. Successive governments have taken piecemeal measures in the areas of land use planning, land title registration, issuance of formally registered leases, stool land revenue collection, and adjudication of land disputes. We will first turn our attention to the principal agencies involved in these fields, and their mandates, roles, and performance with regard to customary land administration in peri-urban areas.

**Office of the Administrator of Stool Lands**

The Constitution provides for an Office of the Administrator of Stool Lands (OASL), which was established by the OASL Act, 1994 (Act 481). This office is responsible for the establishment of a stool land account, and for the collection of all “rents, dues, royalties, revenue or other payments whether in the nature of income or capital from the stool lands” to be paid into this stool land account (article 267 (2), 1992 Constitution and section 2, OASL Act, 1994 (Act 481)). Of the revenue accruing from stool lands 10% shall be paid to the OASL to cover administrative expenses. The other 90% is to be disbursed in the following proportions: 25% to the stool for its maintenance; 20% to the traditional authority; and 55% to the District Assembly (sections 3 and 8, OASL Act, 1994 (Act 481)). There is no legal requirement that the 25% of the revenue received by stools is reinvested in the community. Rather, the provisions encourage chiefs to retain the revenue “for the maintenance of the stool in keeping with its status.” The use of the 20% share to the Traditional Council is not specified. According to Alden Wily and Hammond (2001: 118-9) the government in this way “endorses the perception of chiefs of themselves that they are the owners, not merely trustees acting on behalf of the real owners, the community at large.”

This provision has a long history pre-dating the current 1994 Act. It dates back to the Local Government Ordinance, 1951 (Cap 64) and its original purpose was to be the first step in depriving the big chiefs of any role in land management and eventually of ownership and their claims to have the right to collect land ‘rents’ (Rathbone 2000: 30). Chiefs, therefore, have always resisted handing over ‘their’ income to
the OASL. Since in peri-urban areas the conversion from agricultural to residential land accounts for most land revenue, chiefs in these areas centre their resistance on the definition of stool land revenue. They claim that the money they receive for the allocation of land is not purchase money but ‘drink money’ or ‘drinks.’ They refer to the custom of bringing some drinks to the chief when acquiring land from him as an acknowledgement of the ownership of the land, to show allegiance towards the chief, and for the customary pouring of libations on the ground to seek the Gods’ blessings for the transaction. Whereas a bottle of Schnapps was sufficient in times of land abundance, when land became more valuable a small amount of cash money was added to the Schnapps. In peri-urban Ghana and other areas where land is highly valued and demand is increasing, the amount of cash demanded has gradually risen and now effectively constitutes a market price for the purchase of land leases (Alden Wily and Hammond 2001; Edusah and Simon 2001; Kasanga and Kotey 2001; McCaskie 2000a). The chiefs continue to call this payment ‘drinks’ and claim that it should therefore not be regarded as ‘stool land revenue’ in the sense of the OASL Act, and they resist the disclosure of the sums collected. In peri-urban areas the only land revenues that flow to the OASL consist of ground rents – annual governmental fees payable on land leases – which are distributed according to the constitutional formula. These rents are small compared to the sums of ‘drink money’ collected directly by the chiefs in selling land leases. The total amount of ground rent on a ninety-nine year residential lease adds up to about 5% of the amount of ‘drink money.’ Because ‘drink-money’ is portrayed by the chiefs as a ritual device rather than the means of exchange in a sales transaction, it is not collected by the OASL, and so not subject to distribution under the constitutional formula, and thus becomes, effectively part of the income of the chief.

Contrary to Kasanga and Woodman (2004: 185), who for unclear reasons claim that “it has been accepted by everyone concerned that those (sums in ‘drinks’) do not amount to revenue from stool lands within the meaning of the statute law”, most officials interviewed consider that the law meant to include this ‘drink money’ in the definition of ‘stool land revenue’ (interviews at the Regional Lands Commission Kumasi, 9 April 2003; Regional OASL Kumasi, 27 June 2003; Ejisu Juaben District Assembly, September 2003). This interpretation seems to square with the very broad definition of stool land revenues provided in the OASL Act, as quoted above. This issue has, however, never been tested in the courts. In the highly personalized society of Ghana, if a case were brought to court by an officer of the OASL, this would not be considered an action on behalf of the government, the ruling political party, or even of the OASL in general, but as a personal action of
that particular officer. Such an action would surely provoke the wrath of all chiefs. According to the District Chief Executive of Ejisu-Juaben district, “The one who does it will become an enemy of the chiefs,” and this can pose serious dangers to the career of the official concerned (interview 9 September 2003). In a number of cases officials have been ‘transferred’ after standing up to a powerful paramount chief or the Asantehene. According to the District Chief Executive of Ejisu-Juaben district “careless statements by land officials could be dangerous. They may have to pay a price for discourtesy” (interview 12 January 2004). Furthermore, as the Deputy Regional Lands Officer in Kumasi explains, every official is also “subject of a stool and subordinate to the chief” and such an action would be considered as an act of disloyalty towards him (interview 9 April 2003). The one official we encountered who did want to go to court over a sum of ‘drink money’ of Cedis 3 billion (at the time of sale the equivalent of approximately €300,000.) claimed that he was stopped by ‘the government’, because “the President does not want to pay for such an action” (interview District Chief Executive Ejisu-Juaben district, 9 September 2003).

The lack of an effective political mandate for OASL to exercise the role intended by the Constitution is however only part of the story. A lack of funds, qualified staff, equipment, and vehicles on the one hand, and mismanagement, corruption, and a lack of accountability in OASL’s own use of land revenues on the other (Grant 2004: 20-21, 40-41; Kasanga and Kotey 2001: iii; Kasanga and Woodman 2004: 185) also severely hamper the functioning of OASL and affect its legitimacy in the eyes of the people. To date the revenues collected and distributed by the OASL have never been publicly disclosed, and the use of land revenues received by all parties remains unaccounted for and non-transparent. Accusations of irregularities in both spheres are rampant.

Lands Commission

The Lands Commission (LC) first came into existence following the 1969 Constitution, under the Lands Commission Act, 1971 (Act 362) and since the advent of the 1992 Constitution operates under the Lands Commission Act, 1994 (Act 483). The LC is responsible for the management of all public and vested lands,1 is meant to advise and make recommendations on policies with respect to land use and development, and advise on and assist in the execution of the registration of land titles (section 2, Lands Commission Act, 1994 (Act 483)). With regard to stool land, section 4 of Act 483 states: “There shall be no disposition or development of any stool land by any person unless the Regional Lands Commission (...) has certified that the disposition or development is consistent with the development plan drawn up or approved
by the planning authority” (cf. article 267 (3) of the 1992 Constitution). The stated government objectives behind this intervention include (1) the correction of anomalies and problems in the customary sector such as litigation, land disputes, inimical agricultural tenancies etc; (2) the introduction of written records to confer security and promote investment in landed property through the use of registered documents for collateral purposes; and (3) the acceleration of the pace of development by easing land acquisition and documentation procedures (Kasanga 1996: 93). This section continues the practice begun in 1962 by the Administration of Lands Act, 1962 (Act 123) to require the consent of the state to the alienation of stool land (Kasanga and Kotey 2001: 3). Thus if a stool wants to dispose of land, it has to ask the LC for its consent and concurrence.

In practice, consent before an allocation of stool land is never sought. Concurrence after the allocation is sometimes sought, although not by the chief, but by lessees who want to formalize their acquisition, and this is still quite rare. Typically only the more educated people or people with connections in the bureaucracy go through the long, cumbersome and expensive process of formalization. In our survey among 242 people in peri-urban Kumasi, 123 people (50.8%) answered they had never heard of the LC. Of the 119 (49.2%) that had heard of the LC, 65 (27%) were not aware of its tasks and functions. It takes on average between six months and two years to process a document submitted to the Lands Commission (Grant 2004: 95).

The provision of consent and concurrence is not enforced by the LC and therefore does not in practice provide an effective check upon the administration of lands by chiefs. Like the OASL, the LC is hampered by a shortage of trained and motivated staff, lack of basic logistics and support services, poor remuneration and incentive packages, low morale, and endemic corruption (Centre for Democracy and Development 2000: 99-105; Grant 2004: 21-21, 40-41, 95; Report on the Beneficiary Assessment Survey of the Lands Commission – Ghana, 1997, quoted in Hueber and de Veer 2001: 195; Kasanga 2000b: 14; Kasanga and Kotey 2001: iii, 8; cf. interviews with Deputy Regional Lands Officer Kumasi, 9 April 2003; and Technical Director Forestry, Ministry of Lands and Forestry, 15 August 2003). According to Antwi and Adams (2003: 2090), the fact that bureaucrats still insist on the concurrence procedure despite the fact that only a few people seek formal documentation – in their survey among 286 housing land purchasing households in Accra, 76.9% had not even attempted to seek any formal documentation of their title – can only be explained by the rent seeking opportunities the procedures provide.
District Assembly

The Local Government Act, 1993 (Act 462) designates District Assemblies (DAs), which have been created since 1986 but which only received constitutional backing in 1992, as the main planning authority charged with the overall development of the district. With regard to land administration, they have legislative powers to make by-laws with respect to building, sanitation, and the environment. The preparation and approval of planning schemes, the granting of building permits, and the enforcement of regulations and sanctions for non-compliance all rest with the DA (Kasanga and Kotey 2001: 9). District level government is dominated by the District Chief Executive, who is the single most powerful local government official. Villages and towns are supposed to draw up a land use planning scheme, with help of the Town and Country Planning Department (TCPD) of the DA. Such a planning scheme designates the uses of the various areas, and shows the boundaries of the individual plots. When a prospective developer applies for a building permit, the TCPD is to check whether the site plan conforms to the planning scheme, and whether the allocation paper is signed by the local chief.

Ammissah et al. (1990: 34, quoted in Hueber and de Veer 2001: 191) argue that “Since the main aim of the chiefs is to maximize financial returns within the shortest possible time, important land uses such as open spaces, playgrounds, schools, markets, refuse dumps, roads, etc. are sacrificed, in order to augment the supply of building plots. This is a major cause of haphazard and unauthorized development in all statutory planning areas.” By means of the land use planning process, the DA could provide some checks on the land administration by chiefs, preventing double allocations, and reserving land for public purposes or even for agriculture. Chiefs can however prevent the drawing up of a planning scheme by withholding their co-operation and not providing any information. “If a chief does not co-operate, you cannot make a planning scheme” (interview director TCPD Ejisu-Juaben district, 27 May 2003, cf. planning officer TCPD Kuntanase district, interview 7 April 2003). According to the TCPD in Ejisu, “It is in the benefit of the chief not to have an approved planning scheme. Therefore the co-operation of chiefs is not very high. Most have their own unapproved planning scheme” (interview with TCPD director, Ejisu-Juaben district, 27 May 2003). In a DFID-sponsored research project 34 of the 37 villages in peri-urban Kumasi possessed village layout plans, but the majority of these plans was prepared without reference to the statutory agencies responsible for planning (DFID 2001: D8, E13). Unapproved village layout plans, necessary because of the high awareness among buyers/lessees that upon the allocation of land they are supposed to re-
receive a site plan and an allocation paper, leave open the possibility of later changes in the plan. Furthermore, although awareness of planning schemes and building permits is increasing, it is still low and most people do not comply with the demand for a building permit, or, also due to the lengthy bureaucratic procedures and the costs involved, the building precedes the formal planning process (Edusah and Simon 2001: section 4.4; Hueber and de Veer 2001: 191; Toulmin and Longbottom 2001: 29-30). According to the law, the whole process of acquiring a building permit should not take longer than three months. But in 2003 the Ejisu-Juaben district had not seen a meeting of the Planning Committee in over two years (interview Director TCPD Ejisu-Juaben district, 27 May 2003).

Fieldwork showed that the implementation of planning regulation is often lacking, due to a lack of personnel, funds, and logistics (cf. DFID 2004: 12; Hueber and de Veer 2001: 188-9; Kasanga and Kotey 2001: 9-10) and mismanagement and corruption (cf. Kasanga 1996: 99; Kasanga and Kotey 2001: iii). And even when violations are found, severe sanctions, such as demolition of unauthorized structures, are avoided (cf. Hueber and de Veer 2001: 191). Furthermore, when the DA does not have a financial interest, it tries not to get involved in 'local affairs.' For instance, if there is more than one land-owning chief in a village, the TCPD will accept the signature of any one of the chiefs as a valid one. And if there is an agreement within a village that a Plot Allocation Committee – a locally initiated committee consisting of representatives of both the chief and the village that should sign all allocation papers and secure a percentage of the revenue for community development – is also to sign the allocation papers, this is considered an internal village affair by the TCPD and they do not check whether such a signature is found on the allocation paper. In this way, the locally agreed upon solution to problems of transparency and distribution of land revenue is not supported by the government.

While the land use planning system could in theory provide a check on chiefly land administration it also provides chiefs with additional powers in local struggles over land. The formalization of the land allocation process by the government, with the signature of the chief as a key element, gives chiefs an extra official card to play, especially those higher up in the hierarchy of traditional authorities. For instance Abdulai (2002: 85) describes how in Tamale the sub-committee of the LC attributes most of the problems in the field of land administration to the lack of documentary evidence. It therefore decided, to bring some order into the system, that divisional chiefs must countersign allocation papers. Similar actions were encountered during fieldwork, at the DA in Ejisu – where it was decided that building permits could be given only when the allocation papers bore the countersignature of the
paramount chief, so as to prevent future land disputes and litigation, not least involving the paramount chief himself – and at the LC in Kumasi – where despite a court ruling that Kaase stool lands did not fall under the authority of the Asantehene, the LC tried to convince the Kaasehene to have all land allocations countersigned by the Asantehene at the cost of one third of the purchase price (interview Deputy Regional Lands Officer Kumasi, 16 December 2003). A comparable example is found in the distribution of OASL revenues, which are usually paid to the paramount chief, who is supposed to redistribute them in his area according to the constitutional formula. These actions can be explained by a combination of ‘administrative efficiency’ – dealing with one big man instead of a whole group of people – and attempts to satisfy the person with the greatest troublemaking capacity.

Every electoral area has its own representative at the DA. In many villages, these local assembly members and the members of the Unit Committee (UC) – the lowest level of local government – are public figures, who are widely known, easily accessible, and often most actively involved in development of the community. They are aware of the fact that a lot of money for town development could be generated by stool land allocations. It is therefore not surprising that where chiefs are unwilling to distribute land revenues, UC and DA members are often in direct confrontation with the chief, or lead the public actions against him. Yet while the UC and DA members are a local force to be reckoned with, they are not always backed by the district authorities. The District Chief Executive (DCE) of Ejisu, for instance, while acknowledging the negative effects of chiefly land conversions in his district, went no further than the occasional public statement that chiefs should spend part of the land revenues on community development. When we proposed the idea to back up local Plot Allocation Committees (PACs) by providing building permits only when allocation papers carry the PAC’s signature, he rejected the proposal because land revenue would then be spent by the UC and fall outside his own responsibility (interviews District Chief Executive Ejisu-Juaben district, 9 September 2003 and 12 January 2004). More generally, during UC and DA inauguration ceremonies members are often instructed to refrain from interfering in chieftaincy and land matters (interview District Chief Executive Ejisu-Juaben district, 9 September 2003). This is directly in line with the national government’s informal ‘policy of non-interference’ in chieftaincy affairs.

**State Courts**

As regards the position of state courts in the field of customary land management, chiefly re-appropriations and conversions of stool lands
in which community members have a usufructuary interest are not supported by court decisions (Ubink 2002-2004). Although a trend can be discerned in judicial customary law towards more power to the chief as administrator, to ensure sound town planning and more equal distribution of land, this cannot be interpreted to mean that the chief has the power to deal with land as he wishes, without regard for community interests or compensation for farmers. Customary law in the Ghanaian courts rather conveys an image of protection of usufructuary rights against the chiefs’ attempts to re-appropriate stool lands for ‘development’ purposes. First, usufructuary rights are quite secure. Second, the transfer of the usufructuary title does not need the consent of the allodial title holder. This seems even to apply when farmland is transferred for non-farm purposes, such as housing or cemetery plots. And even if a chiefly grant were needed to change land use from agricultural to residential, as was stated in one court case (unreported judgment, no. 5/97 of 13 May 1997), it seems that the community member has a right to receive this grant unless overriding communal interests prohibit it. Thirdly, chiefs can be held accountable for the way they use stool land revenues, since there is a “statutory imperative that monies from stool land acquisitions should be lodged in a designated fund” (Owusu v. Agyei [1991] 2 G.L.R. 493, at 506).

The effect of such court decisions on land practices is, however, limited. Notwithstanding the large number of land cases in the courts, many more land conflicts never reach them, either because of aggrieved parties’ lack of access or interest, or because the land conflicts are embedded in ‘chieftaincy affairs’ for which state courts have no jurisdiction. Moreover court decisions seem to have little effect on land disputes beyond the specific cases on which the court decides. This can be explained by a number of factors. Firstly, people have minimal knowledge of court decisions. During fieldwork people hardly referred to case law or legislation and when they did they often misunderstood it or invented their own provisions. Secondly, the fact that chiefs are regarded in the localities and by the government as authorities in the field of customary law and guardians of stool land offers them a powerful position to define custom in a way that confers and legitimates their powers over land (Chanock 1998; Firmin-Sellers 1995; Mamdani 1996; Oomen 2002). Combined with an erosion of local checks and balances, and a lack of control by the government, it is not surprising that chiefs do not comply with the rules of customary law as set out by the courts that protect the interests of the usufructuary (Ubink 2002-2004).
A policy of non-interference

In the sections above a number of examples display a lack of political willingness to enhance the functioning of Land Sector Agencies (LSAs) such as the OASL and the LC and strengthen their checks on chiefly land management: the unwillingness of the political establishment to bring before the court the question whether ‘drink money’ is stool land revenue in the sense of the OASL Act; the instructions to DA and UC members to abstain from chieftaincy affairs; and the refusal of the TCPD to check land allocation papers for a signature of the Plot Allocation Committee, where such committees exist. Abudulai (2002: 81) describes a further example in peri-urban Tamale where “there are apparent sales of plots to wealthier people who ‘can put up a building the next day. When that happens, you lose everything, and you have nobody to complain to. The LC will tell you that they solve issues involving land disputes, but not houses already built.”

This lack of political support – which results in large part from a deference to chiefly authority and power amongst local government officials – is also mirrored in the policy discourse of the present government. In the media, government officials at all levels regularly and vehemently proclaim that they will not ‘meddle in chieftaincy affairs’ (see for instance Daily Graphic 25 August 2003: 3; Ghanaian Times 5 August 2003: 1, 25 August 2003: 3). According to Boafo-Arthur (2003: 138), President Kufuor himself “has made it clear that the current ruling party is not interested in meddling in chieftaincy affairs.” These ‘non-interference’ statements are sometimes made in reaction to chieftaincy disputes, for which section 15 (1) of the Chieftaincy Act, 1971 (Act 370) declares the government has no jurisdiction, but also to express in more general terms that the government will not interfere in chiefly administration such as in the field of land management, which is not dictated by any legislative provision whatsoever. The former Minister of Lands and Forestry, Professor Kasanga, argued that “The state should not attempt to enforce local checks and balances. This should be done by the citizens themselves” (interview 3 December 2005). The bureaucracy, and those charged with directing reform under LAP, tend to adopt a similar perspective. For instance, the former coordinator of LAP at the Ministry of Lands and Forestry, asked in an interview: “Is it the business of the government to address the accountability of chiefs? Within the local system there exists accountability, they can ‘destool’ a chief, or remove his authority. We do not want to impose accountability on the chiefs, since land is essentially a chief’s thing” (interview 19 August 2003). Obviously, such state discourse, together with what we refer to as government’s ‘policy of non-interference’ provides chiefs with
ample room to manoeuvre, and gives them little reason to fear state intervention in land matters.

The primary basis for the present government’s policy of non-interference appears to be a deliberate political alliance with powerful chiefs, coupled with a recognition of chiefs’ considerable local political power and influence, and their roles as the key vote-brokers, especially in the rural areas. In addition, the current tendency to fill chieftaincy positions with highly educated professionals blurs the traditional distinction between governmental elite and chiefs, and creates new alliances between these two groups (Ray 1992; Bierschenk 1993 describes the same phenomenon for Benin). The elite of the party presently in power, the NPP, is especially closely connected to the chiefs. Not only does it have its stronghold in the Ashanti Region, with its powerful chiefs, but president Kufuor himself is through marriage connected to the royal family of the Asantehene. Many members of the current government, up to high levels, are chiefs or royal family members in their hometown.

It should also be noted that rampant irregularities and mismanagement by state institutions in procedures of compulsory acquisition of land do not give the state a strong moral position from which to judge the quality of chiefly land administration (Kotey 1996; Daily Graphic, 22 August 2002: 17). Moreover, when the state needs to make new land acquisitions itself, a cooperative relationship with chiefs will be useful.

Chiefs seek to capitalize on the government’s current support for chieftaincy by rekindling discussions on certain subjects, such as: the creation of a second chamber of parliament consisting of chiefs; the representation of chiefs on DAs; the referral of all proposals for legislation to the National House of Chiefs for comment as an integral part of the legislative process; the de-vesting and return of former stool lands vested in the president; and an increase of the percentage of stool land revenue to be disbursed by the OASL to the chiefs (see for instance the welcome address of the president of the national House of Chiefs, Odeneho Gyapong Ababio II, at the conference on African traditional leaders, held in Kumasi, on August 3, 2003; and the speech entitled “African traditional systems and the growth of democracy and good governance” given by the paramount chief of Ashanti Asokore, S. K.B. Asante, at the same conference). Chiefly statements and demands on these issues at workshops and policy meetings generally go unchallenged by government representatives.

The overall picture of governmental intervention in customary land throughout most of the post independence period is one of piecemeal attempts to control the management of stool lands, motivated by a wish to rein in the power of the chiefs and enforce the power of the
state. To do this the government has utilized the laws and institutions for land management and institutions bequeathed by colonialism, further developing these through successive legislation - notably the 1992 Constitution which created OASL – but in a fragmentary rather than a comprehensive way.

We have seen that the institutions created and mandated to act as a check on stool land management do not in reality exercise effective control upon the chiefly administration of land due to a combination of factors: a lack of chiefly co-operation with the tasks and duties of LSAs; the LSAs’ lack of funds, staff and material, and their problems of mismanagement and corruption; and the difficulties for and unwillingness of officials to challenge chiefly behavior. In this context, the lack of political interest by the present administration to contest the authority of the chiefs by tackling their frequent lack of co-operation in land matters is so pervasive that we can speak of a policy of non-interference. The formal system, however, has also proved incapable of delivering effective land management and security of tenure for the majority of land users.

**Land Administration Project**

Against this background of state institutions and discourse, the government of Ghana, after decades of piecemeal legislative and state management measures, formulated its first comprehensive National Land Policy in 1999 (Ministry of Lands and Forestry 1999) and has embarked, with multi-donor support, upon a Land Administration Project (LAP) intended to reform land institutions and develop land policy so as to provide greater certainty of land rights for ordinary land users and enable greater efficiency and fairness in the land market (Ministry of Lands and Forestry 2003; World Bank 2003a). The underlying problems that LAP was designed to address include the high level of land disputes in the country and cumbersome land administration procedures involving various statutory agencies as well as customary institutions. Recent research in Ghana has shown how difficult it can be for people to obtain documentary evidence of tenure through existing registration mechanisms (Alhassan and Manuh 2005; Kanji et al. 2005). Instead, land transactions take place increasingly through locally witnessed agreements of little legal value, pointing towards the need to incorporate customary systems of documentation within a broader, inclusive land administration system.

Under the LAP the medium to long-term plan is that government should divest itself of responsibility for the management of stool lands. This should proceed incrementally, on the basis of the satisfaction of
certain criteria, including the setting up of Customary Land Secretariats (CLSs) with appropriate governance structures to assure institutionalized community-level participation and accountability in the use of stool land and the revenue it generates.

The transfer of responsibility for the management of stool lands from LSAs to CLSs in the LAP reflects the problems of delivering tenure security in Ghana through statutory mechanisms, but is also very much in line with the renewed policy emphasis on the importance of recognizing and building on customary tenure systems. This policy trend is, however, subject to critique because customary land rights are the outcomes of negotiations, struggles, disputes, and implicit agreements embedded in social relations of family, kinship and community. These social relations are also inherently unequal, involving power relations between ordinary land users and customary authorities, whose powers and opportunities to redefine customary “law” in their own interests may increase as a result of the formalization of customary tenure systems and institutions over which they exert significant influence and control (Bassett 1993: 20-21; Berry 1993; Shipton and Goheen 1992). As noted above, the phenomenon of local elites using their power to capture the value of customary land has been identified in a variety of African countries (Chauveau et al. 2006; Juul and Lund 2002a; Lavigne Delville 2000: 113-5; Rose 1992; Woodhouse 2003). Also in Ghana, as we have seen, customary authorities frequently do not manage lands in the interests of the holders of customary rights because of the opportunities to generate revenues from sales and transactions in land. Whereas these circumstances do not in our opinion lead necessarily to an outright disqualification of attempts by LAP to transfer responsibility for the management of stool lands to CLSs at the local level (contrary to Whitehead and Tsikata 2003 who do criticize these attempts and argue instead for the replacement of customary land management by more democratic land administration systems under the control of district authorities), they do show that LAP’s twin goals of greater certainty for ordinary land users and gains in efficiency and fairness in the land market will only occur if the CLS as an institution is designed in such a way as to promote the land rights of smallholders.

However, from the inception of LAP, it has been government’s clear political choice that CLSs should fall under the aegis of traditional authorities rather than opting for more community based approaches to the management of customary land. By placing the customary land secretariats under the aegis of the chiefs LAP ignores the fact that the notion of the “customary” powers and rights of chiefs is loaded with political inventions and endorses the roles that chiefs were accorded in land administration in the colonial period as if this were a timeless
principle of customary tenure (Amanor 2005: 110-1). This approach, which was not necessarily the donors’ intention, displays a highly skewed interpretation of the trend to recognize and build on customary tenure systems, and enhances the abovementioned risks of elite capture of increasing land revenues to the detriment of ordinary land users. These issues call for a closer look into the design and functioning of CLSs.

**CLS Objectives**

The support to customary land management under LAP is intended to strengthen the accountability of customary authorities in land management, in line with constitutional requirements. A program to establish a set of pilot CLSs intends to provide effective land management harmonized with government land agencies and DAs, so as to establish a unified, decentralized public record of land availability, use, and transactions. Research linked to the CLS piloting process was intended to identify improvements to the institutional, policy, and legal framework for customary land administration, including alternative dispute resolution, clarification of the nature of usufructuary rights, and to build on the diverse interests and settings found within Ghana (DFID 2004, CLS Project Memorandum para 5).

The CLS piloting process, linked to debate and learning amongst LSAs, traditional authorities, and DAs, was expected to “bring benefits in terms of: lower costs and simpler methods for confirming claims to land; easier public access to information regarding land use and holdings; improved boundary dispute resolution; and opening up of debate at local level regarding the procedures and norms which should guide land administration” (DFID 2004: para 39). Successful establishment of CLSs has also been anticipated to lead to increased land market transactions and generate additional land revenues for community use. The principal beneficiaries were expected to be the majority of people for whom the current land administration system is effectively inoperable, due to the lack of transparency in the land allocation process, uncertain tenure rights, high costs, and slow, complex bureaucratic procedures (DFID 2004: para 6).

Guaranteeing security of title of small land owners in peri-urban Ghana against powerful chiefs and elders requires a clarification of the nature of usufructuary rights and a protection of these rights against the chiefs’ conversion drive (cf. DFID 2004: 19; Ministry of Lands and Forestry 2003: 13; World Bank 2003a: 37). Alden Wily and Hammond (2001: 28, 54) show, however, that during the LAP conception and design process there was no wide and open discussion of the role of chiefs in the administration of stool land – including the tendency of
chiefs to behave like private landlords – or of the possible checks and balances the state could place on stool land administration. This situation was confirmed in discussion with the DFID rural livelihoods advisor, responsible for moving DFID’s support to LAP forward to implementation: “Government doesn’t like to include words like accountability, equity and transparency. It wants DFID to tone down the language (of the CLS project design document)” (interview 27 January 2004). Although the lack of open discussion of the role of chiefs can partly be explained by tactical considerations – government’s wish not to antagonize the chiefs – it may also be the case that the ‘policy of non-interference’ is currently so pervasive that the problems involved in chiefs’ jurisdiction over land and their possible solutions are not open for public discussion.

Although the program is still at too early a stage to provide systematic evidence of the effectiveness of establishing CLSs as a policy intervention, we now consider the emerging evidence regarding the performance, potential, and risks of CLS establishment within a framework of the changing political economic relations and incentives between state, chiefs, and citizenry.

Establishment of Pilot CLSs

Since the end of 2004, ten pilot CLSs have been established with the object of enhancing the quality of the management of customary land in the area under their jurisdiction. The initial selection was made by the government of one CLS in each of the ten administrative regions of Ghana, so as to provide a representative spread. In addition, a rolling program to identify and establish further pilot CLSs is underway. Of the ten initial pilot CLSs, some were in peri-urban areas, either in major cities such as Accra (Gbawe) and Kumasi (Asantehene’s Land Secretariat), or in growing rural towns, such as Kyebi. Others operate in more rural areas, including Wassan Emenfi in the Western Region and Tabiae in the Upper East. These CLSs operate either at stool level, under a chief or paramount chief, or under land-owning families, as in the Greater Accra area, where family heads (the principal elders of lineage groups) are the operative customary authorities with jurisdiction over land.

Gbawe in Greater Accra is generally regarded as the paradigm of CLS good practice (Kasanga and Kotey 2001). It is a fully functioning CLS avant la lettre which was installed by the Gbawe elders prior to LAP, and provided a source of inspiration for the design of the CLS component of LAP. In Gbawe, LAP is working to help consolidate better rent collection systems, improved land and financial records, including published accounts, the provision of secure, registered rights
to settlers, and the use of land revenues to support community facilities. The existence of an organized land allocation system, which facilitates settlers’ access to documented land rights, alongside investments in local infrastructure undertaken by the land owners, are reflected in a high level of demand for residential plots. In 2005 the family elders explained compensation arrangements for farmers who lose agricultural land including the provision of a residential plot, new farm land where available, and entitlement to the proceeds of sale of an additional residential plot (interview with Gbawe Kwatey family elders, 11 August 2005). The elders noted that a number of displaced farmers were able to use compensation money to invest in more intensive snail, mushroom, and poultry production ventures. Within a year, however, the family head pointed out that no more agricultural land was available, having been lost to residential development including encroachment by neighboring groups, and that Gbawe was “engulfed by Accra.”

The development of the CLS was cited by the elders as an important factor stimulating the demand for residential land in Gbawe and leading to increased income for the family, as well as resources for investment in community infrastructure. Examples of new community investment underway since the previous year included construction of a police station, a youth employment project, plans to improve sanitation, street lighting and provide public toilet facilities (interview Gbawe Kwatey family head Nii Adom Kwatey and elders, 9 June 2006). The CLS does not, however, record or disclose payments of ‘drink money’ to the family head as initial down payments on land leases, which, as noted earlier, constitutes the greater part of all land revenues. Despite this sizeable limitation, the Gbawe CLS provides an example of progressive practice in land management as a spontaneous innovation by customary authorities. It must be asked, however, to what extent these innovations are replicable elsewhere under LAP.

In contrast, in other pilot CLSs linked to large and powerful stools, the orientation of traditional authorities has been to use the CLS to consolidate the centralized control of the stool over leasehold transactions. In Kumasi, the capital of Asante Region and Kyebi in Central Region, land secretariats were originally established during the colonial period under the aegis of powerful paramount chiefs, then aligned to the colonial regime. In Kyebi, as in Kumasi, the paramount chief is concerned with reining in local chiefs who transact in land without authorization and without accounting fully to the paramount stool. In both of these cases the paramount chiefs have adopted a system whereby “caretaker chiefs” are responsible to the paramount chief for documenting and authorizing land transactions. The Okyenhene, or Kyebi paramount chief, has sought to control any local land transactions involving commercial investment such as development of plantation
crops and residential land, including the conversion to new uses of cocoa plantations established by tenant farmers under long standing sharecropping arrangements with local families. The ‘drink money’ or customary fees collected are then divided between the local chiefs and the Okyenhene. Five per-cent is intended to go to the land user who has sought to dispose of the land or has been required to give it up, but the use to which the money is put by the chiefs is not disclosed (interview Kyebi CLS registrar, Kyebi, 15 August 2005). In Kumasi the Asantehene’s Land Secretariat has operated since colonial times a system for registering land transactions in the Kumasi traditional council area, facilitating the stool’s centralized collection and management of ‘drink money’ (alongside a fee element to support the Land Secretariat itself) and the Asantehene’s authorization of development plans, thus enabling official registration of leases at the Land Commission by the lessees of residential properties (interview Asantehene’s Land Secretariat, Kumasi, 16 August 2005). Here, LAP has been perceived as an opportunity for the traditional authorities to regain the official support and authority over land they formerly enjoyed under British control. In both of these cases the expectations expressed by CLS staff appointed by the chiefs and members of their traditional councils were that government would provide financial, technical and material support to facilitate sales of residential plots to outsiders and improve centralized control of land revenues on behalf of the stool. In Kyebi, the response of the LAP CLS facilitator team was to organize systematic inventories of existing land occupation so as to document the land claims of indigenous land users, tenant farmers and urban settlers. This exercise may in turn provide a basis for the eventual formal registration of land rights and an orderly process of land use change in which the tenure rights of all are respected. In Kumasi, the LAP has not reached an agreement with the traditional authorities yet and no concrete actions have been taken, apart from the initial supply of computer equipment and furniture.

In Wassa Emenfi in Western Region, a predominantly rural area with a high incidence of migrant sharecropping principally for cocoa, where access to land is now becoming more competitive, resulting in tension and disputes between indigenous and migrant groups, government’s proposal to establish a CLS was welcomed by the chief. At first the stool’s objectives in developing a CLS were not clear, but it soon became evident that the CLS was seen as a way to seek to maximize land availability for profitable disposals and for allocation within their own communities through changing long standing land allocations to strangers. A first proposal of the local CLS coordinator, appointed by the chief, was to use the CLS to convert the secure tenure arrangements of migrants created through long established oral and sometimes written
sharecropping contracts with land holding families (Alden Wily and Hammond 2001; Amanor and Diderutuh 2001), arguably equivalent to land purchases, into fixed term leaseholds subject to rent collection and eventual discretionary renewal by the CLS (interview with head of Wassa Emenfi CLS, Wassa Akropong, 18 August 2005). LAP project staff – consisting of Ghanaians employed at the Ministry of Lands, Forestry and Mines – disabused the CLS of the legitimacy and legality of such a move. The principles under which LAP operated, with the support of the donors, were to encourage CLSs to document the full range of land claims on the ground, without discrimination, including the established customary rights of both indigenes, which become vulnerable when chiefs sell their land, and tenants, who are vulnerable where indigenous groups try to repossess their land. Following dialogue with the Wassa chief and subchiefs, and a public ‘durbar’, it was agreed that the CLS should seek to document land rights and support the management of land transactions in the interests of all land users, and the CLS is now registering indigenes’ land rights, which should be followed by the registration of migrants. However, as the inventory of land occupation proceeded (a process coordinated by LAP project staff as a pilot CLS activity) LAP enumerators and visiting evaluators were firmly directed away from migrant cocoa farmer settlements by local subchiefs, apparently because of sensitivities surrounding the competing land claims of indigenous and migrant groups.

Elsewhere, pilot CLSs have been inaugurated in areas where customary political and land management systems are less centralized. In Kate Krache in Volta Region a number of land-owning families have come together to establish a CLS. In parts of Upper East, including in peri-urban areas of Bolgatanga, the regional capital, where the customary jurisdiction of traditional land priests (Tindana or Tendamba) over land allocation is frequently now disputed by chiefs, the establishment of CLS has been regarded as a non-starter by the ministry.

**Difficulties in CLS Practice**

The process of establishing pilot CLSs under LAP as a wider program to reform land administration in Ghana has raised a number of issues and difficulties that display similarities with problems of customary land management by state institutions discussed earlier. These concern transparency in customary land management, resistance to CLSs by the formal Land Sector Agencies, efficiency problems in project delivery, the position of the state in relation to accountability of chiefs, and hazards inherent in the CLS experiment. After discussing these in turn, we summarize the risks for CLS.
i. Chiefs and elders prefer opacity
We have seen that in peri-urban Ghana, the chiefs and elders of certain communities have coalesced into an interest group that is reinterpreting customary land law to support today’s opaque, inequitable, and somewhat convoluted system of customary land administration. In this system, chiefs’ administrative roles in land rights transactions enable them to appropriate community members’ interests for purely economic motives. The CLS objectives of enhancing transparency of land transactions and ensuring accountable and equitable land administration thus run counter to those of this interest group.

Since the present NPP government under Kufour is broadly pro-chieftaincy in its orientation, and politically committed to the introduction of CLSs, powerful chiefs have rather seen in LAP an opportunity to restore and extend their political and economic control over land (cf. World Bank 2003a: 24). They seek to use CLSs – and the opportunities this provides for centralizing the management of land transactions and the recording and formal documentation of land rights – as instruments for land disposals by the elite by concentrating on facilitating and documenting new land transactions, and failing to document the rights of indigenous land holders.

At the time of writing the processes are incomplete and the effects of improved systems of documentation remain to be seen. In peri-urban areas the CLSs could lead to faster conversion, demarcation and leasing out of farmland, as well as increased revenue generation, with prospects of increased sales revenues for the chiefs. On the other hand better documentation of existing land rights and occupation could be expected to strengthen the ability of both indigenes and tenant farmers to retain their land or to negotiate higher levels of compensation in cases where the traditional authority or land holding group redevelops or disposes of the land. Generally, where there is market demand for land access, customary authorities display tendencies to maximize revenues through leasehold disposals to outsiders – generating both ‘drink money’ as sales revenue, and regular rental incomes – and through redefining land relations with strangers. The risks are that they are able to use CLSs to facilitate both of these processes. Although comprehensive and inclusive systems of land records provide an important foundation for security of tenure and equity in land relations, the overriding need to gain the support of the chiefs themselves in establishing pilot CLSs has led to restraint in pushing for a clarification of the rights of land users in areas such as Wassa and Kyebi. CLS activities have been unable to address the need to create neutral public arenas for negotiation and settlement of conflicts of interest around land, which was part of the original rationale in developing a CLS program under LAP (DFID 2004). The importance of having officially recognized spaces
for negotiation of land rights, as a priority function of CLSs, as opposed to administrative secretariats directly controlled by the chief, has also been emphasized by authorities on customary land management in Ghana (Sara Berry personal communication 2004).

**ii. Land Sector Agencies resist decentralization**

In addition to the policy perspectives of government in relation to customary land mentioned in section 3, we should also consider the position within the land administration bureaucracy. The behavior of the LSAs in relation to the management of customary land is in line with that predicted by the economic analysis of bureaucracies (Niskanen 1975, Niskanen 1994, quoted in Antwi 2006). They operate administrative systems that are portrayed as essentially indispensable to the management of customary land rights transactions and enable them to extract rents in the process (both officially in the form of stipulated fees, and unofficially in the form of bribes to ensure that applications and transactions are actually processed) but which in fact add no value to transactions or services provided. We find evidence of this in the need for the Lands Commission’s consent and concurrence of certain customary land transactions (Antwi and Adams 2003: 2095). The CLS objectives of decentralizing land management run counter to the interests of the bureaucracy because they will reduce the involvement and thus the rents and fees generated by LSAs and their officials. Given that a major objective of LAP is to reform and modernize the LSAs themselves, and that their officials are key participants in LAP and the transferal of tasks from LSAs to CLSs, it can thus be expected that the LSA bureaucracy will attempt to employ all sorts of tactics to hinder CLS creation and functioning (cf. Grant 2004: 99). Resistance against the emergence of CLSs as decentralized land management institutions under the aegis of chiefs can however also arise from the conviction that the state has a legitimate role in tackling mismanagement and poor governance of land in the customary sector and that the LSAs were established for this purpose in the interests of Ghana’s citizens as a whole. Besides active deliberate resistance, the co-operation of LSA personnel can also be hindered by the earlier described lack of motivated staff, equipment, and personnel. However, while the LSAs’ constitutional position has become self sustaining and some of its officials will defend the agencies’ roles because they gather revenue from stool land management, allowing them to maintain their position and authority, there are also of course modernizing interests within LSAs. These align more closely with the stated objectives of LAP in recognizing the potential for new arrangements between LSAs and the customary authorities to promote CLSs as decentralized and publicly accountable land management institutions.
iii. Mainstreaming hinders CLS efficiency
The implementation of donor-supported programs as an integral aspect of an existing ministry’s business – generally referred to as ‘mainstreaming’ – risks subjecting the program to the motives of politicians and senior officials who may aim to utilize and allocate project resources in such a way as to legitimate their authority and to maximize votes, without necessarily having regard to objectives of equity and/or efficiency (Tullock 1976). Since the LAP is managed directly by the Ministry of Lands, Forestry and Mines (MLFM), the beneficiary institutions, i.e. the ministry and the various LSAs, are expected to reform themselves, build their capacity for new ways of doing business, and moreover, pilot and develop the policy and institutional framework for CLSs as new institutions intended to relieve government of direct responsibility for the management of customary land. The selection of CLS pilot locations has been heavily influenced by a political populist agenda which concedes growing influence to the institutions of chieflyancy across the country. The selection was ‘supply driven’ by political considerations, including providing visible support to powerful, politically influential chiefs, and ensuring a regional spread. The state also seeks to measure success in terms of numbers (originally aiming to establish fifty pilots in five years) rather than functionality and the ability to serve as lesson learning laboratories. Furthermore, mainstreaming is reliant on a somewhat opaque and cumbersome ministry system of procurement of goods and services (attributed by officials to the requirements of the Procurement Act, but which at the same time maintains control of key managers over procurement and scope for political influence over the award of contracts and staff selection) involving multiple levels of approval, which delays decision making and hinders the activities of CLS field officers charged with the implementation of the project.

iv. The state and the question of chiefly accountability
Based on past history of government interventions, chiefs were initially suspicious of government’s proposals to introduce CLSs and had to be assured that CLSs would not compromise the policy of non-interference. “At first, chiefs were afraid that the government would take away their land,” explains the World Bank’s natural resource management specialist. However, these fears were soon dispelled. “We reacted quickly and got their support. Now they like the project because we do not prescribe anything” (interview natural resource management specialist, World Bank, 19 January 2004). At the inception of LAP, and prior to recruitment of dedicated CLS development personnel, the government presented the idea of pilot CLSs to traditional leaders as packages of equipment and technical support to help resource and im-
prove efficiency in existing customary land management practices. According to DFID’s rural livelihoods advisor, in conveying this message, “LAPU (the LAP Unit at the MLFM) has done more wrong than right in its first year of the CLS project. Chiefs are now asking for their money and package” leading to expectations that government and donors will assume responsibility for meeting CLS salary costs and other recurrent expenditures (interview, 27 January 2004).

LAP documents make a clear commitment to enhancing the accountability and transparency of customary land management through CLSs and the participation of land using communities in the CLS development process. This includes efforts to clarify the nature of usufructuary rights, and provisions for legislative reform to clarify the strength of the rights held by different land users, including both members of stools and land holding families, and their lessees and tenants. The usufructuary rights of members of land holding groups are often referred to as ‘customary freeholds.’ However, the issue of whether or not customary rights held in perpetuity by members of the stools can be considered equivalent to freehold rights, and at what levels these rights might exist – stool, family, lineage, household, or individual – are widely debated in Ghana and subject to differing interpretations. Through the CLS piloting process, LAP staff also have opportunities to draw up, discuss, and introduce Memoranda of Understanding (MoUs) between the ministry and the chiefs, setting out the responsibilities on both sides and working towards the establishment of a wider regulatory framework for CLSs, which would be informed by the piloting process. However, government has not as yet made efforts to clarify the nature of usufructuary rights, or to adapt model MoUs drafted by the CLS facilitation team and have them signed as formal agreements between the Ministry and the chiefs to govern the operations of the pilot CLS. LAP has even advised against the use, in draft MoUs, of language which might be interpreted by the chiefs as imposing requirements of accountability, disclosure of revenues, or significant commitments of stool resources to supporting CLSs. Government has not so far introduced a clear policy on the purpose and responsibilities attached to CLSs, and the parameters for establishment of each pilot CLS remain somewhat ad hoc. What is clear is that, in order to secure the votes that the chiefs command, government in the short to medium term is unlikely to risk antagonizing the chiefs by requiring public disclosure of land revenues and accountability in their use, in line with government’s broader policy of non-interference in chiefly affairs. According to DFID’s rural livelihoods adviser, “Land reform is not the sort of thing you’d sensibly pursue, with the 2008 elections in your mind” (interview, 14 September 2005). He also pointed out that LAP project staff have found it difficult to speak up when not
backed up by the minister. For instance at a meeting with the National House of Chiefs in 2005, the LAP project staff was reluctant to present the content of a comprehensive expert report on the need for legislative reform (Kotey, Dowuona-Hammond, and Atuguba 2004) and to discuss their own views or how they expected to make use of the report. They simply handed it over: “As long as that doesn’t change, traditional authorities will take advantage of LAP” (id.). Recognizing the institutional and political difficulties in establishing CLSs, the customary land management objectives of LAP constitute “a high risk intervention with a modest chance for success, to put it mildly” (interview rural livelihoods advisor, DFID, 27 January 2004).

LAP includes provisions for strengthening civil society participation, and advocacy in relation to land management, but this has been slow to develop, and at the time of writing remains problematic. On the one hand Ghanaian civil society has limited pre-existing capacity and virtually none in place for the engagement and advocacy on land. It is difficult to induce this by external intervention because of widespread deference to chiefly authority and a history of cooption of civil society by both chieftaincy institutions and political parties (Amanor 2001: 112-3). On the other hand MLFM has been reluctant to give up control over funds intended to support civil society partners or to commission services from them, and there is a lack of alternative mechanisms such as independent trusts or programs capable of managing funds to meet donors’ and government’s requirements.

In general, it could thus be said that until now, the government has been reluctant to impose requirements of equity and accountability or otherwise interfere with the management and disposal of land by chiefs.

v. Moral hazards, ownership and CLS sustainability

LAP is faced with the moral hazard that traditional authorities, after having been supported with equipment and necessary training for the efficient operation of CLSs, employ the supplied resources with less care, diligence, and efficiency than they would have done if they had spent their own monies to acquire the resources (Antwi 2006: 5). Requests for the repair of equipment (for instance from the pilots at Was-sa and Tamale) imply a perception of CLSs as a state or donor initiative, rather than as an entity owned by the customary authority or the community. For some CLSs there may be general problems of affordability of or access to technical support services, in which case the appropriateness of a pre-conceived package of CLS equipment must be questioned.

Inability or unwillingness of customary authorities to pay CLS staff salaries is emerging as a common constraint to CLS development and
appears to be a key indicator of (a lack of) CLS ownership and sustainability. In cases where land market activity and land revenues are low, the establishment of a full-blown CLS may not be justified or affordable; on the other hand, in cases where the land market is more active, it is clear that chiefs are also not yet sufficiently convinced of the value of a CLS to commit additional resources. In the Asantehene’s CLS in Kumasi, which does pay salaries, LAP has faced repeated demands for funds to refurbish the building, located within the Asantehene’s palace and to provide the resources that will allow it conduct business as usual, as directed by the Asantehene. In the absence of expected higher levels of material and financial support from LAP, Kumasi CLS staff have refused to collaborate with the LAP team in discussing how they might help to improve the equity and efficiency of customary land administration (interview Asantehene’s Land Secretariat, Kumasi, 16 August 2005). It can be concluded that the sense of ownership amongst the chiefs of the model of CLSs so far developed under LAP remains limited, with CLSs perceived as an imposition of government, which, though they are not wholly unwelcome, are not fully understood, generating concerns expressed by chiefs about how the staffing, management, and equipment costs of CLSs are to be met.

We have seen that one of the expected benefits of CLSs is to use the secretariat as the starting point for comprehensive exercises in documenting existing land holdings, which provides both a basis for the incremental strengthening and formalization of rights and a source of evidence to avert or resolve disputes over land rights within a CLS catchment. As discussed earlier, this is being done in two CLS pilots, Wassa and Kyebi, initiated by the LAP and organized with project resources rather than by the customary land owners themselves. However it is not clear how these initiatives could be replicated elsewhere and it is unlikely that other CLSs would be able to mobilize the resources (transport, survey management, additional computer equipment, and competent personnel) to develop and manage land user databases without either sustained outside support or full commitment by the stools. In any event it is quite likely that the costs of this sort of exercise would exceed available resources, as well as the likely financial benefits even if the chiefs were willing. Moreover this sort of data collection is arguably a public land administration function which should somehow be resourced by the state. Thus there is a risk that unless a clear relationship and basis for cost sharing for CLSs is established between the state and traditional authorities, CLSs will come to depend permanently on ad hoc donor and government support to collect and manage data. This could lead to a situation in which project resources are inefficiently employed and the pilot CLSs never grow beyond their embryonic stage.
The Risks to Equity of CLS

Well functioning CLSs based on the present model could be expected to have some benefits for some groups in peri-urban areas, notably the chiefs and land-owning families themselves and those wishing to settle and develop businesses in expanding residential peri-urban areas who can afford to purchase leases. A clearer, more widely used and more efficient land allocation and registration system, based on the Gbawe model, which is decentralized and accessible to users, would lower transaction costs by making buying and selling land easier and would also reduce conflict. However, there could be serious problems of equity, in which members of indigenous land holding groups, and others who had obtained land through previous oral contracts and informal arrangements, remain vulnerable to arbitrary dispossession, with inadequate or non-existent compensation.

CLSs which strengthen the political and economic weight of the traditional authorities by providing formal recognition of their powers to administer and allocate land (cf. DFID 2004: 26) would sanction their ability to generate substantial profits from the disposal of land, over which the original land users exert legitimate claims. If government does not clearly spread the message of the legitimacy of communal interests in land, as recognized by the courts, and the need for the accountability of the chiefs, which is stated in the Constitution, then it would provide de facto support for chiefs’ claims that they can convert land in which community members have usufructuary land rights.

In conclusion, the risks to this CLS model are that traditional authorities may use enhanced and equipped CLSs to further the tendencies of dispossessing community members of lands (cf. Antwi 2006: 5). This will have the perverse effect that people are disenfranchised rather than empowered. The present approach to the management of customary land in Ghana therefore does not appear capable of combining tradition and modernity in an equitable way in the interests of all citizens, an objective espoused by LAP.

Some conclusions on the influence of the government of Ghana on customary land tenure in peri-urban areas

In this chapter we have analyzed the influence of the government of Ghana on customary land tenure. We have focused primarily on peri-urban Ghana, where traditional authorities are assuming the right to convert farmland, cultivated by community members, into residential land which they allocate to outsiders. We have seen that various governmental institutions, despite their mandate, in practice do not act as
a check upon the functioning of traditional authorities. The OASL does not control the great part of all peri-urban land revenues, as a result of the fiction of ‘drink money.’ The LC is only rarely requested for concurrence, and then not by chiefs seeking to develop and dispose of land, but by lessees who want to acquire a formal lease. The DAs’ check on chiefly land administration by means of the planning process is severely hampered by uncooperative chiefs, ignorance of planning requirements, and by mismanagement, corruption, and the lack of adequate personnel and logistics for implementation. Where local representatives of the DA and UC stand up against chiefly maladministration of land, they are not backed up politically. The planning process actually enhances the position of chiefs to a certain extent, since building permits are only issued when a land allocation paper contains the signature of the chief. The interpretation of customary law by the courts shows a similar trend towards recognition of the power of the chief as administrator, although this does not mean that the chief has the power to deal with land as he wishes, without regard for community interests or compensation for farmers. Although Ghanaian courts do protect the interests of individual land users against chiefs’ attempts to re-appropriate stool lands for ‘development’ purposes, the effect of such court decisions on land practices is limited.

All in all, governmental institutions do not provide effective checks on land management by chiefs in peri-urban Ghana, due to a combination of factors: a lack of chiefly co-operation; limited challenges to chiefs from LSA officials; a present lack of political support for administrative controls on land management by chiefs; LSAs’ lack of funds, staff, and material; and their problems of mismanagement and corruption. The lack of political support, mirrored in state discourse, constitutes a ‘policy of non-interference’ with regard to matters involving chiefs. This policy also influences the execution of the CLS component of the LAP, an explicit attempt to improve customary land management, but one which runs up against problems of chiefs’ vested interests in land disposals, misunderstandings, lack of resources, and an absence of public debate on the type of institutions required for the governance of customary lands. The above shows that the LAP’s starting point, that LSAs do not function effectively, is justified. Nevertheless, the transfer of their powers in customary land management to CLSs under the aegis of traditional authorities is disenfranchising ordinary land users. Although there are isolated cases of spontaneous good practice (such as Gbawe) and some chiefs express goodwill towards CLSs as a state and donor led innovation, land holding community members and land users themselves currently lack forms of organization capable of counterbalancing the power of chieftaincy, and there is a significant risk that government will not commit to building equitable and ac-
countable arrangements for the management of customary land. The empowerment of chiefs through the resourcing of CLSs without developing appropriate checks and balances brings significant risks in that powerful customary leaders may utilize CLSs to consolidate their political control over land, with negative consequences for poorer, less powerful land users.

The early failures of the chiefs to take responsibility and ownership of the CLSs, expectations that the state should resource them, together with their preferences that CLSs prioritize particular functions linked to generation of revenue for the stools, as well as the reluctance to see CLSs established as fully accountable institutions, suggest that an alternative approach to that adopted so far by LAP is likely needed. Simply subsidizing traditional authorities with material and technical support for CLSs and hoping for the best will not provide the basis of a sustainable approach. Any substantial change to the CLS experiment will, however, rely on clearly articulated political will and commitment to craft a partnership between state, traditional authorities and land users if it is to establish an effective framework for the governance of customary land in Ghana. Without significant political change, the possibilities of enhancing the certainty of land rights for ordinary land users – one of the main objectives of the LAP – are extremely limited.

If such political will were to exist, a road could be taken towards the creation of tripartite institutions that involve LSAs, chiefs, and local people. Such institutions would need to be differentiated according to local circumstances. The relationship between land users and traditional authorities, for instance, differs widely between a locality with strongly centralized land management under the auspices of a paramount chief and a locality where land is managed by a head of family. Chiefs can perhaps be softened and persuaded to such a new approach by governmental concessions in related areas, such as the return of or payment of compensation for vested lands, a full disclosure of the collection and allocation of stool revenues by OASL, and the establishment of a new framework for the division of powers and responsibilities in local affairs between chiefs and the District Assemblies (Quan and Antwi 2008, forthcoming). Designing the governance arrangement for such customary land management institutions, and determining how different stakeholders would be empowered and their interests represented, presents a considerable challenge, one which LAP has yet to consider. Could a role be envisaged for the courts, for the Commission on Human Rights and Administrative Justice, or an ombudsman? Whatever approach is adopted, changes need to be made. If government were to press ahead with the creation of CLSs as unregulated estate agencies run by chiefs and land holding families, the CLS experiment in improving governance and equity in land matters will be a failure.
Notes

1 Land ownership in Ghana is classified into two categories: private lands and public lands. Around twenty percent of the land area is public land (see article 257 of the 1992 Constitution), which falls into two main categories: land which has been compulsorily acquired for a public purpose or in the public interest under the State Lands Act, 1962 (Act 125) or other relevant statute; and land which has been vested in the president, in trust for the landholding community under the Administration of Lands Act, 1962 (Act 123). The rest of the land area in Ghana is private land, which consists, besides a small amount of common law interests, primarily of estates in customary communal ownership (Alden Wily and Hammond 2001: 46-48). According to Kasanga and Kotey the customary sector holds 80 to 90 percent of all undeveloped land in Ghana (Kasanga and Kotey 2001: 13).

2 In Ghana, there is an elaborate system of Houses of Chiefs. This includes several hundred traditional councils, each of which elects members to one of ten Regional Houses of Chiefs, each of which sends five members to a National House of Chiefs. Its administrative staff is provided by the Government of Ghana, which also maintains a Chieftaincy Division in the President’s Office for liaison purposes. Some of the main functions of the National House of Chiefs are to advise on matters affecting chieftaincy and to adjudicate appeal cases in chieftaincy matters (see articles 272, 273 of the 1992 Constitution).