

**PERI-URBANISATION AND CHANGING USUFRUCT RIGHTS IN CUSTOMARY
LAND IN GHANA – CASE STUDIES IN KUMASI AND WA**

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**A thesis submitted to the Faculty of Engineering and the Built Environment, University
of the Witwatersrand, Johannesburg, in fulfillment of the requirements for the degree
of Doctor of Philosophy**

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Declaration

I declare that the thesis is my own unaided work. It is being submitted for the degree of Doctor of Philosophy in Urban and Regional Planning to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg. The thesis has not been submitted for any degree or examination to any other university.



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(Signature of Candidate)

.....1st..... day of October..... year 2021.....

Abstract

Land tenure systems in sub-Saharan African countries have changed in different ways over time. This thesis investigates changes in land rights amid commodification of land and peri-urbanisation as processes resulting from rapid, continuous and uncontrolled expansion of cities in Ghana. The thesis focuses on ‘abusufruct’ and usufruct rights as the respective entitlements of indigenes in two cities, namely Kumasi and Wa which correspondingly represent acephalous and centralised customary land tenures in Ghana. The aim is to analyse the changes in these rights towards understanding the exclusion of indigenes as customary tenure systems change. The study takes a qualitative approach and purposively selects peri-urban case studies, Pramso in Kumasi, and Mangu and Siriyiri in Wa. The main sources of data are in-depth interviews and the review of related literature, statutory instruments, and court cases. The thesis finds the land rights of indigenes in the peri-urban Kumasi and Wa are changing to monetary forms and a focus on physical parcels of land rather than land rights. In Pramso, traditional authorities convert usufructuary land and redistribute the parcels of land according to reformulated neo-customary rules. Indigenes in Pramso agitated against traditional authorities’ attempts to exclude them from the processes and value of land commodification using these rules. Due to matrilineal family structure of Pramso in Kumasi, women were not found to be more vulnerable than men in the commodification of usufruct rights. In acephalous Wa, the passive role of traditional authorities ensures that indigenes transact their own entitlements at will and for their own purposes in the context of growing demand for land. Therefore, the research found indigenes rather than traditional authorities mismanaging the potentials of the commodified value. However, various dynamics in Wa, including patriarchy, ensure that categories of indigenes, particularly women, are still losers. There is convergence for the cases in Wa and Kumasi regarding unsustainability of indigene entitlements as their livelihoods, necessitating a focus on sustainable management of land commodification. The thesis recommends a policy that emphasises a rights-based approach to protecting the land rights and livelihoods of indigenes in the context of the widespread changing tenure in sub-Saharan Africa.

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Dedication

To the mystery of my life.

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Table of Contents

Declaration.....	ii
Abstract.....	iii
Dedication.....	iv
Acknowledgements.....	v
Table of Contents.....	vii
List of Figures.....	xii
List of Tables.....	xiv
List of Abbreviations.....	xv
1 INTRODUCTION.....	1
1.2 Background on changes in customary land tenure.....	2
1.3 Problem statement and rationale.....	5
1.4 Aims and objectives.....	6
1.5 Research questions.....	7
1.6 Working hypothesis.....	7
1.7 Contributions of the thesis.....	7
1.8 National context, scope of the research and overview of the research methods.....	8
1.9 Organisation of the thesis.....	9
2 CHANGES IN CUSTOMARY LAND TENURE IN SUB-SAHARAN AFRICA: CONCEPTUAL AND EMPIRICAL REVIEW.....	12
2.1 Introduction.....	12
2.2 Land tenure in sub-Saharan Africa: duality or pluralism?.....	12
2.2.1 Customary land tenure in sub-Saharan Africa.....	13
<i>The formation of customary land tenure.....</i>	14
<i>Land reform changes in customary land tenure in Sub-Saharan Africa.....</i>	16
2.2.2 Neo-customary land tenure.....	17
2.2.3 Formal and individual land tenures.....	19
2.3 Situating changes in customary land tenure in land-reform motives and theories.....	21
<i>Evolutionary accounts of land rights.....</i>	23
<i>Modernisation perspectives.....</i>	24
<i>Neo-liberal perspectives.....</i>	26
2.4 Peri-urbanisation as a driver of changes in customary land tenure.....	28
2.4.1 Peri-urbanisation.....	28
2.4.2 Peri-urban area.....	29

2.5 Acephalous and centralised societies	31
2.5.1 Centralised societies.....	32
2.5.2 Acephalous societies	33
2.6 Property theory: many bundles of rights, one owning entity?	34
2.7 Power and gender in changes in customary land tenure	38
2.8 The agency of indigenes in neo-customary land delivery.....	42
2.10 Changes in customary land tenure imply changes in usufruct rights: conceptual framework	47
2.10.1 Changes in the customary land tenure system in the context land tenure reform	47
2.10.2 Peri-urbanisation and land commodification as drivers of changes in customary land tenure ..	48
2.10.3 Contextualising changes in usufruct rights	49
2.11 Conclusion	51
3 CHANGES IN CUSTOMARY LAND TENURE IN THE GHANAIAN CONTEXT.....	52
3.1 Introduction.....	52
3.2 Land tenure and governance in Ghana: historical context	52
3.3 Interests in land under the customary law of Ghana	56
3.3.1 Bundles of rights in customary land in Ghana.....	57
3.3.2 Nature of ‘historical’ usufruct rights of indigenes	61
3.3.3 ‘Ownership’ in customary land in Ghana	64
3.4 Contestations over commodified customary land in peri-urban areas of Ghana	66
3.4.1 Traditional authorities’ claims of ownership of customary land.....	68
3.4.2 The response of indigenes as an avenue for inclusion	70
3.4.3 Power and gender in contestations over land value	72
3.5 Contextualising acephalous Wa and centralised Kumasi.....	75
3.5.1 The acephalousness of Wa in Upper Western Ghana	75
<i>Leadership in acephalous communities</i>	<i>77</i>
<i>Texts and court judgements on land ownership in acephalous parts of Northern Ghana</i>	<i>79</i>
3.5.2 The centralised nature of Kumasi in the Ashanti Region of Ghana.....	84
3.6 Refined theoretical and conceptual framework.....	87
3.7 Conclusion	89
4 RESEARCH METHODS, CASE STUDIES AND CONTEXT OF WA AND KUMASI	90
4.1 Introduction.....	90
4.2 Summary of the research process.....	90
4.3 Interpretive research paradigm and qualitative case study approach	93
4.4 Case study cities in Ghana	95

4.4.1 Settings of acephalous Wa and centralised Kumasi.....	95
<i>General context of Wa Municipality in the Upper West Region of Ghana</i>	96
<i>General context of the metropolis of Kumasi in the Ashanti Region of Ghana</i>	100
4.4.2 Case study communities	102
<i>Selection of Pramso in Kumasi</i>	103
<i>Selection of Mangu and Siriyiri in Wa</i>	106
4.5 Data sources and sampling.....	110
4.6 Implementation of desk review and interviews.....	113
4.7 Data analysis	114
4.8 Ethical considerations	116
4.9 Limitations	117
4.10 Summary of methods chapter	117
5 PERI-URBAN LAND COMMODIFICATION AND THE COLLAPSE OF TRADITIONAL USUFRUCT RIGHTS IN KUMASI	119
5.1 Introduction.....	119
5.2 Rapid expansion of peri-urban Kumasi	119
5.3 Peri-urban land commodification in Pramso.....	123
5.4 The conversion of traditional usufruct rights to leaseholds in Kumasi.....	128
5.4.1 Creation of usufruct rights during the formation of Pramso	129
5.4.2 Ambiguities in entitlements of indigenes in neo-customary land.....	132
5.4.3 The remnants of conversion of usufructuary land.....	135
<i>Benefits from the conversion of usufruct rights</i>	136
<i>Unaffected usufruct rights</i>	143
<i>Other marginal remnants</i>	145
5.4.4 Adverse changes to original usufruct rights.....	145
5.5 The roles and powers of key stakeholders in the conversion of usufruct rights	148
5.5.1 Traditional authorities as the main decision-makers in the conversion of usufruct rights.....	150
5.5.2 The diminutive powers of indigenes in changing usufruct rights	152
5.5.3 Limited de jure interference by the state land management institutions in conversion of usufruct rights	154
5.6 Responses of indigenes to exclusion from processes and the benefits of commodification.....	158
5.6.1 Indigene diplomacy and radicalism in Pramso and in peri-urban Kumasi	159
5.6.2 Reasons for agitations and the beneficial outcomes	161
5.6.3 Outcomes of indigenes responses in Pramso	163
5.7 Conclusion	164

6 PERI-URBAN LAND COMMODIFICATION AND INDISCRIMINATE INDIGENE LAND TRANSACTIONS IN MANGU AND SIRIYIRI, WA	167
6.1 Introduction.....	167
6.2 Rapid expansion of peri-urban Wa	168
6.3 Peri-urban land commodification in Mangu and Siriyiri	171
6.4 The bases of indigene land entitlements in Mangu and Siriyiri.....	174
6.4.1 The origin of the Mangu community by settlement of related people	174
6.4.2 The origin of the Siriyiri community by relocation	177
6.4.3 Enhanced control over land by indigenes in Mangu and Siriyiri.....	180
6.5 The unusual interests in respect of land in Mangu and Siriyiri.....	182
6.5.1 The interests of the <i>tindaana</i> and <i>naah</i>	182
6.5.2 The interests of indigenes in Mangu and Siriyiri	186
6.6 Commodification as the major change to indigene entitlements	190
6.6.1 Land management institutions involved in commodification of land.....	190
6.6.2 Indigene land transaction for everyday expenditure in Mangu and Siriyiri.....	192
<i>Remnants or benefits in the form of converted value</i>	192
<i>Remnants in the form of physical parcels of land</i>	197
<i>Benefits from expansion of the community</i>	199
6.6.3 Uncoordinated transaction of land by indigenes in Mangu and Siriyiri	201
<i>Reduction of indigene entitlements in respect of land</i>	201
6.7 The freedom of indigenes to transact land in Mangu and Siriyiri.....	209
6.7.1 The role of indigene freedom and youth stratagem in transaction of land.....	209
6.7.2 Passive roles of traditional authorities	211
6.7.3 The diminutive role of state land management institutions	213
6.7.4 The inferior role and entitlement of women in Mangu and Siriyiri	215
6.8 Conclusion	218
7 THE STATUS OF INDIGENE ENTITLEMENTS: CONTRADICTIONS AND IMPLICATIONS FOR EXCLUSION AND SUSTAINABILITY	221
7. 1 Introduction.....	221
7.2 Reflections on research methods.....	221
7.3 Synthesis of findings.....	223
7.3.1 Contradictions in the commodification of customary land	224
<i>Opposing claims of indigenes and traditional authorities over who 'owns' land</i>	224
<i>Pluralistic conceptualisation of ownership</i>	225
<i>The tindaana as 'owner of land' contradicted by the Mangu and Siriyiri cases</i>	228

7.3.2 The status of indigene entitlements and their resulting exclusion	229
7.3.3 Implications for the sustainability of indigene entitlements	233
7.4 Contributions of the thesis	235
7.5 Recommendation for land policy	238
7.6 Recommendation for further studies.....	240
References.....	242
List of colonial laws.....	265
List of court cases	265
Appendix A: Ethics clearance certificate.....	267
Appendix B: Sample participant information sheet.....	268
Appendix C: Sample consent form	269
Appendix D: Index of interviews.....	270
Appendix E: Interview guides.....	271

List of Figures

Figure	Page
Figure 2.1: Timeline of changes in customary land tenure showing pluralism of tenure	21
Figure 2.2: Timeline of changes in land tenure: an initial conceptual framework	50
Figure 3.1: Bundles of rights in customary land in Ghana	61
Figure 3.2: Interconnections of paramountcy, ownership, allegiance and tribute	66
Figure 3.3: A typical hierarchy of leadership in the centralised state system	85
Figure 3.4: Final theoretical and conceptual framework	88
Figure 4.1: Summary of the research process	92
Figure 4.2: Administrative regions of Ghana	96
Figure 4.3: Wa <i>Naah</i> in the company of Chiefs and <i>Tindamba</i> of other communities	99
Figure 4.4: Frontage of Wa <i>Naah</i> 's palace on the first day of dumba festival	99
Figure 4.5: Pramsohene, sub-Chiefs and other royal duty bearers seated during an annual festival.....	102
Figure 4.6: Location of Pramso case study	105
Figure 4.7: Location of Mangu and Siriyiri case studies	107
Figure 4.8: Satellite images of Pramso in 2002 and 2018	108
Figure 4.9: Satellite images of Siriyiri in 2005 and 2019	109
Figure 4.10: Satellite Images of Mangu in 2005 and 2018	110
Figure 5.1: Expansion of consolidated built-up boundaries of Kumasi, 1984–2016.....	121
Figure 5.2: Expansion of incipient-intermediate peri-urban boundaries of Kumasi, 1984–2016	122
Figure 5.3: Peri-urban Pramso	123

Figure 5.4: Map of incipient Pramso community	125
Figure 5.5: Examples of site plans.....	127
Figure 5.6: Pollution of Biakwa and Subi streams.....	128
Figure 5.7: Structure of leadership in Pramso	130
Figure 5.8: A communal toilet facility built on converted usufructuary land through leasing of a one-fourth share for community development	140
Figure 5.9: Water project lobbied for by Pramso using one-fourth share of land for community development	141
Figure 5.10: Kenkey making and petty trading in Pramso	142
Figure 6.1: Growth of consolidated built-up boundaries of Wa, 1984–2016.....	169
Figure 6.2: Growth of incipient-intermediate built-up boundaries of Wa, 1984–2016.....	170
Figure 6.3: Rapid-emergence of standard block houses in Mangu and Siriyiri; spots starred as ‘P’ on figures 6.4 and 6.5	171
Figure 6.4: Map showing the most consolidated area of Mangu	175
Figure 6.5: Map of incipient Siriyiri community	178
Figure 6.6: A picture showing the shrine of the Earth God at Kokoyiri	183
Figure 6.7: Diagrammatic representation of the triple meaning of ‘land’	184
Figure 6.8 Disused car acquired from land transactions and an abandoned broken-down community borehole in need of servicing	194
Figure 6.9: Family land registration form	196
Figure 6.10: Food gardens in Mangu and Siriyiri also serving as strategies to reserve land	198
Figure 6.11: Distant farmlands in Siriyiri and Mangu.....	199
Figure 6.12: Surviving shea trees, shea butter making, cloth weaving and splitting of tree stumps for firewood	217

List of Tables

Table	Page
Table 2.1: Summary of land reform theories and motives	22
Table 2.2: Indigene agitations over land in electronic media reports	71
Table 4.1: Groups of respondents.....	112
Table 5.1: Phrases and terminologies indicating peri-urbanisation in Pramso	124
Table 6.1: Phrases from respondents indicating peri-urbanisation in Mangu and Siriyiri	172
Table 6.2: Uses of land-transaction revenues among respondents in Mangu and Siriyiri.....	193
Table 6.3: Litigations over land in Mangu and Siriyiri	204

List of Abbreviations

CLSs	Customary Land Secretariats
GoG	Government of Ghana
GSS	Ghana Statistical Service
LAP	Land Administration Project
OASL	Office of the Administrator of Stool Lands
PPD	Physical Planning Department
SDGs	Sustainable Development Goals
UN DESA	United Nations Department of Economic and Social Affairs

List of Recurring Local Terminologies

Terminology	Meaning
<i>Ohene</i>	King in the centralised native state in Asante. Also spelt as Ohene.
<i>Asantehene</i>	King of the Ashanti Kingdom.
<i>Aseda</i>	Thanks giving money that grantees of land presented to land owners during grant of land in the period before the commodification of in centralised areas.
<i>Assinhene</i>	The chief of Assin people.
<i>Autochthones</i>	Birth-right members of a community or ‘sons of the soil’.
<i>Beposo</i>	Hilly land in Pramso which the Chief of Pramso declared as stool land for chief.
<i>Bong-Na</i>	A term in acephalous Chekali society translated as War Chief.
<i>Brempong</i>	Civil chief in the centralised state system.
<i>Dawadawa</i>	A local spice made from the beans of African locust tree.
<i>Destool</i>	A term used to describe the removal of a centralised traditional authority from office.
<i>Gate</i>	Gate is the term that many indigenes use to refer to a traditional sections of a community in Mangu and Siriyiri. It is a direct translation of <i>dinɔɔre</i> in waale or <i>dingɔɔre</i> in Dagaare.
<i>Gara</i>	The term that indigenes in acephalous case studies use to describe the land over which they hunted for game. It is also called <i>moɔ</i> .
<i>Koala</i>	The distant fallow land of families in acephalous case studies.
<i>Krodadaa</i>	A term that Pramso people use to describe the land in the original community that they migrated from. The chief has declared this land as his stool land.
<i>Krontihene</i>	The sub-chief next in command to <i>Pramsohene</i> .
<i>Kydomhene</i>	The sub-chief in charge of the rear flank of the chief of Pramso.
<i>Naah</i>	The chief of an acephalous community.
<i>Nabiihi</i>	The section or gate of an acephalous community where the existing chief is selected.
<i>Nkosuohene</i>	Sub-chief in charge of development of a Pramso community.
<i>Obusuapanyin</i>	Family head or head-man in the centralised system. Plural is <i>abusuapanyin</i> .
<i>Odikro</i>	The substantive chief at the centralised community level.
<i>Oman</i>	The subjects in a centralised community.
<i>Omanhene</i>	A chief in charge of several villages in the centralised state system.
<i>Pito</i>	A local beer drink made from fermented guinea corn or sorghum. Also called <i>daangzeɛ</i> , <i>daangyeɛ</i> or <i>dagara daang</i> in Dagaare, Waale and Dagara dialects respectively.
<i>Pramsohene</i>	The chief of Pramso community.
<i>Samanpɔmu</i>	An old cemetery land in Pramso which the chief declared as his stool land.

<i>Sarfonehene</i>	War chief in the centralised the system.
<i>Stool</i>	A wooden stool that is symbolic of the office of the traditional authority such as a chief or a king, however it is used interchangeably for the entire customary community or state.
<i>Taotina</i>	Translated as owner of the village. Village here tantamounts to <i>tinga</i> ₃
<i>Tindaana</i>	The caretaker of the ‘land’ as the community (<i>tinga</i> ₃) and ‘land’ as the Earth God (<i>tinga</i> ₂) in acephalous communities. His role over management of ‘land’ as physical parcel of land (<i>tinga</i> ₁) is very limited in effect (see <i>tinga</i> below). <i>Tindaana</i> is also spelt as <i>Tendaana</i> or <i>Tindana</i> or <i>Tengan sob</i> in Dagara dialect.
<i>Tindamba</i>	The section or gate of an acephalous community wherein the <i>Tindaana</i> is selected. Also spelt as <i>Tendamba</i> , <i>Tindemee</i> , <i>Tendemee</i> or <i>Tengan dem</i> in Dagara dialect.
<i>Tindanas</i>	Plural of <i>Tindaana</i> .
<i>Tindemee</i>	
<i>Tinga</i>	A local acephalous word which translates into three meanings. <i>Tinga</i> ₁ , as physical parcel of land, <i>Tinga</i> ₂ , derived from <i>tingan</i> as Earth God or Earth Shrine and <i>Tinga</i> ₃ , as the community, settlement or village itself.
<i>Tingama</i>	Plural of <i>Tingan</i> .
<i>Tingan</i>	A term which translates from local Dagaare dialect as Earth God or Earth shrine. Also spelt as <i>Tengan</i> .
<i>Tingantuu</i>	A sacred grove in which the powers of the <i>Tingan</i> are localized.
<i>Wεo</i>	The term that members in the acephalous case studies use to refer to their distant farm.
<i>Yɔga</i>	The farmland near the settlements in acephalous case studies in Upper West Region.
<i>Yidaana</i>	The head of the gate in acephalous case study communities.

1 INTRODUCTION

1.1 Introduction

Rapid urban transition in Africa induces extensive expansion of the built-up areas of cities and conversion of land rights. This urbanisation and land commodification – a process that gives market value to land – influence changes to the dominant customary land tenure in Ghana and in Africa at large (Cotula, 2007). Customary land tenure is land tenure that is regulated by indigenous customs and land is usually held in common by the community (Kalabamu, 2000; Agbosu, 2000). The changes to customary land tenure in peri-urban areas mostly tend to affect indigene land access (Maxwell, Larbi, Lamptey, Zakariah and Armar-Klemesu, 1998; Nyasulu, 2012; Ubink, 2008a). Indigenes are the birth-right residents or ‘autochthones’ of a community (Joireman, 2011: 300; Owusu, 2008). In customary land tenure in Ghana generally, the head of the community, is mostly a chief or of the Kingdom, a king who are collectively called traditional authorities, hold the principal interest in customary land termed as allodial title. In this thesis, areas in which chiefs perform this land management function are called centralised areas, whereas other localities in Ghana in general where chiefs do not control land are acephalous areas. Indigenes in both areas are perceived as holding land-use rights known as usufruct rights (Ollenu, 1962) although I find evidence of indigenes holding ‘abusufruct’ rights (see Chapter 2) in my case studies in acephalous areas.

Many studies have investigated the effects of changing tenure on indigene access to land (Adam, 2014; Chauveau, Colin, Jacob, Delville and Meur, 2006; Chitonge, Mfuné, Umar, Kajoba, Banda and Ntebeza, 2017b; Cotula, 2007; Nyasulu, 2012; Peters, 2004; Ubink, 2008a;), but ambiguities in land relations tend to obscure the specificities of how indigenes are excluded from customary land amid the conversion of land rights. For instance, in respect of state land ownership in Ethiopia, Adam (2014) find local peri-urban residents losing their usufruct rights. In Zambia, Chitonge *et al.* (2017b) similarly find ordinary members of communities losing access to land to the elites through privatisation of land. In Ghana in particular, one strong ambiguity amid changes in land tenure is that traditional authorities in centralised areas argue that they own community land (cf. Yaro, 2010; 2012). Hence, one line of argument is that indigenes cannot be said to be excluded from land they do not own in the first place. This thesis draws on the concept of bundles of rights as articulated in property theory, which denotes a multiplicity of entitlements and of ‘owners’ in the same land, to

explore changes to usufruct rights. Using a review of customary land tenure principles in Ghana, and of historical and contemporary narratives of indigenes in the case studies, this thesis has established that indigenes of centralised communities are entitled to usufruct rights in customary land in Ghana. The thesis revealed that prior to transactions in land, indigenes in the case studies in peri-urban Wa held usufruct rights which are higher in substance whereas traditional authorities hold interests inferior in substance to the traditional allodial title to land existing in centralised areas as mentioned above. By exploring the manner in which these entitlements of indigenes are changing, the thesis adds to the understanding of how indigenes are excluded from customary land amid changes in customary land tenure in both acephalous and centralised land tenures.

This thesis gives insights on the collapse of the traditional form of usufruct rights and a simultaneous birthing of its neo-customary equivalent as its remnant, which is expressed in terms of physical parcels of land and in monetary forms in the case study in peri-urban Kumasi. The findings show that traditional authorities in this case study are the main beneficiaries of this process whereas indigenes tend to lose. In the case studies in Wa, male indigenes of various families and households and not traditional authorities are mainly in control of the processes and benefits of the conversion of land rights. Women in particular, who, prior to the conversion held, interests akin to the centralised usufruct right, were found to be the worst of losers in these case studies, because acephalous tradition forbids women from transacting in land. Knowledge of these changes and many other dynamics, which the thesis shows across the case studies, bring to fore clear indications of the nature in which indigenes entitlements in land have changed and therefore the manner in which indigenes are excluded.

1.2 Background on changes in customary land tenure

Most of the demographic data for Africa implies the irreversibility of urbanisation and urban growth in the regions' foreseeable future. In Africa, urbanisation rates are among the highest for the globe (UN-Habitat, 2011; UN DESA, 2015). The UN DESA (2015) projects that over 50 per cent of Africa's people will live in settlements classified as cities and towns by 2035. This percentage will rise to about 60 per cent, representing about 1.3 billion people, by 2050 (ibid). Other sources have foreseen the majority urban-rural demography in Africa as happening sooner (UN-Habitat, 2010). In 2006 more than half of this urban population was reported to reside in smaller cities with populations less than 200 000 (Kessides, 2006) but UN-Habitat (2010) finds that in an interval of a few years many such small cities will join

those with at least a million people. Potts (2012) argues that these urbanisation trends are actually much slower but acknowledges that the expectation is that urbanisation and urban growth in Africa will continue. Urbanisation in Ghana is similarly rapid, due on the one hand to the trends in growth in the number of urban settlements, and on the other the increase in population within the cities (Naab, Dinye and Kasanga, 2013). An urban settlement is defined in Ghana as having a population of no less than 5 000 inhabitants. The urban population in Ghana increased from 0.6 million in 1941 to 12.6 million in 2010, which is the latest census year. Again, the total number of urban settlements in 1948 was 41, increasing to 636 in 2010, and based on this, higher figures are expected from the results of Ghana's 2021 census (Ghana Statistical Service (GSS), 2012; Songsore, 2009).

In this rapid urbanisation, cities expand and transform their peripheries through various stages of settlement formation, a process referred to as peri-urbanisation (Barros, Tavares, Monteiro and Santos, 2018; Wamukaya and Mbathi, 2019). This then implies rapid conversion of land rights and changes to customary land tenure because land scarcity resulting from peri-urbanisation is often met with a supply of converted hitherto rural and customary land (Cobbinah and Amoako, 2014; Nyasulu, 2012). Peri-urbanisation tends to intensify competition in land access (Adomako, 2013), to rapidly raise the value of rural land (Cobbinah and Amoako, 2014) and to promote land sales (Owusu, 2008). The irreversible nature of the urbanisation of African countries in the near future will therefore perpetuate the peri-urbanisation of the rural landscape, the conversion of customary land rights and the changes to the customary land tenure.

Land tenure systems in sub-Saharan Africa have evolved in response to colonialism, land reform, rapid urbanisation, high incidence of land commodification and the high demand for land (Platteau, 1996; Toulmin and Quan, 2000; Wamukaya and Mbathi, 2019). These and other forces have placed the classical customary tenure 'under siege' (Yaro, 2010: 2012) and have thus presented conspicuous changes to customary land tenure systems (Cotula, 2007; Wily, 2011). The changes result in a 'new customary tenure' (Chimhowu, 2019: 897) or neo-customary land tenure system in sub-Saharan Africa (Durand-Lasserve and Mattingly, 2003) and an adjusted and adapted customary tenure system (Wamukaya and Mbathi, 2019). In sub-Saharan Africa, the dominant customary land tenure is the very fabric that directly provides a livelihood system for most people (Adams and Turner, 2005; Toulmin and Quan, 2000). Land is considered an 'inexhaustible source of sustenance and the provider of man's most basic needs' (Asante, 1965: 852). Yet, as I will show as this thesis unfolds, many authors

raise concerns over inequity in the neo-customary tenure, which has newly arranged ‘institutional bricolage’ (Cleaver, 2002: 11).

Urbanisation and peri-urban transformation engender changes in customary land tenure in sub-Saharan Africa, hence changes to usufruct rights in centralised areas or usufruct rights in acephalous areas (see Chapter 6). However, in part the changes result from individualisation reform – changes from group to individual ownership. Therefore, the changes are rooted in the plural land tenure structure in sub-Saharan Africa (see Chapter 2). Scholars view individual and formal land tenures in sub-Saharan Africa as a product of deliberate land reform, and as operating concurrently with customary land tenure system, which is the traditional land tenure of Africa (Benjaminsen, Holden, Lund and Sjaastad, 2009; Besteman, 1994; Chimhowu, 2019). The literature on this land tenure debate often revolves around which of the two tenure systems support Africa’s land development agenda and whether individualisation of Africa’s customary tenure produces the desired results (see Besteman, 1994; Migot-Adholla, Hazell, Blarel and Place, 1991). This thesis does not take a position on either of the sides, but the debate shapes this research in two ways. First, aspects of my contrasting case studies (see below) shed light on the manner in which customary land tenure is individualising in certain parts of Ghana. Secondly, this thesis shows the influence of land reform on changes in land tenure. This thesis is therefore placed within the changing customary land tenure discourse because it is this change that is understood to possibly exclude indigenes.

Within the decade up to 2030, the Sustainable Development Goals (SDGs) are important guides to development policy. SDGs, 10 and 11 respectively call for an end to poverty, reduction in inequality and a building of inclusive cities. Access to land and property has the potential to reduce the twin problems of inequality and poverty. Target 1.4 of the SDG 1 particularly stresses equal rights to economic opportunities and ownership and control over land as means of ending poverty (United Nations, 2015). Understanding changing usufruct rights is a step towards ensuring the need for ‘continuous enjoyment of land rights of indigenes and their descendants ... without jeopardizing economic development of peri-urban communities’ (Akrofi, 2013: 221). In consideration of the diversity of customary tenure systems (Migot-Adholla, *et al.* 1991), the fieldwork of this thesis was conducted in peri-urban Kumasi and Wa. The Kumasi cases represent centralised land tenure systems, whereas the Wa cases are acephalous. These form part of the thesis’ rationale, which I present in the next section on the problem statement.

1.3 Problem statement and rationale

Amid the change in customary land tenure, land individualisation ensures that group interests in customary land are converted to individual land holdings, whereby land rights undergo transformation as mentioned above. Nonetheless, what also emerges out of the changes in customary land tenure and the transformation of land rights is a market value. The distribution and redistribution of this value is, however, the matter of contestations in the neo-customary land tenure system (Ubink and Amanor, 2008). In ‘dysfunctional’ customary land tenure communities (Akrofi, 2013: XIX) for instance, indigenes have to contest with traditional authorities to obtain some benefits from land conversions (ibid.; Ubink, 2008c; Ubink and Amanor, 2008). Research has portrayed traditional authorities who possess recognised power as the main influencers and beneficiaries of neo-customary land tenure and position indigenes as indirectly excluded in the change process (Chimhowu and Woodhouse, 2006; Ubink and Amanor, 2008; Yaro, 2012). Chitonge, *et al.* (2017b) suggest that in Zambia conversion of customary land rights into leaseholds presents opportunities to urban elites, traditional authorities and international investors, but simultaneously pose land-access challenges to the majority of people in local communities. Yaro (2012: 351) argues that in Ghana ‘allodial titleholders appropriate peri-urban lands by re-codifying tradition’, and that inequalities in land access and control are increasing to the detriment of the majority (Yaro, 2010). Indigene access to hitherto common interests in customary land is generally presented as waning and no longer guaranteed. These arguments reinforce earlier research, such as Peters’ (2004) call for the identification of processes of exclusion inherent in neo-customary land tenure.

Besides the accumulation of neo-customary land value in social groups is an accompanying claim by traditional authorities of ‘owning’ community land (Akaateba, 2018: 145; Amanor, 2008: 56; Yaro, 2012: 366). This claim consolidates customary legitimacy in their land dealings but it also serves as a justification that reduced indigene benefits in neo-customary land tenure do not constitute exclusion since indigenes do not own land. Nonetheless, indigenes are entitled to usufruct rights in centralised customary land law in Ghana, and indeed in property theory, as I argue in Chapter 3. Therefore, using this entitlement of indigenes as a main framework for investigating the diminishing land access of indigenes amid changes in customary land tenure is useful in interrogating their exclusion. Deepening the understanding of the change to this entitlement of indigenes presents further indication of their exclusion. The changes to usufruct rights or abusufruct rights help to emphasise ‘who

benefits and who loses' amid contestations and negotiations in shifts in customary land tenure (Peters, 2004: 270; Ubink, 2008b). The thesis therefore seeks to contribute towards addressing the uncertainties of the exclusion of indigene from neo-customary land tenure.

In general it is important to state that customary land tenure seems to persist especially in rural areas despite mid-twentieth century beliefs of its eminent disappearance (Wily, 2011). In many countries in sub-Saharan Africa, land policy now pays attention to customary land in terms of legal recognition, for instance through formalisation of community property (Wily, 2018). In the context of irreversible urbanisation, the force of commodification trends and the continuous implementation of individualistic land reforms changes in the customary land tenure system and its outcomes may perpetuate. The rationale of this thesis is threefold. Firstly, it identifies usufruct rights as rightful indigene entitlement to land in centralised customary land and presents empirical evidence on how this entitlement is affected. This specifies and deepens the discourse on possible exclusion of indigenes amid changes in customary land tenure. Secondly, empirical evidence on changes to usufruct rights of indigenes is limited. Consequently, what constitutes the usufruct rights of indigenes in neo-customary land tenure in Ghana is barely known. Finally, anthropologists categorise traditional African societies as either centralised or acephalous (Fortes and Evans-Pritchard, 1940). Another essential social distinction in land tenure research is in fact patrilineal/matrilineal family structures (Akrofi, 2013). Among the many studies on the unbalanced benefits and contestations amid changing customary land tenure, little evidence has been gathered regarding typical acephalous polities. The case studies in my thesis consider both acephalous-centralised and patrilineal/matrilineal contrasts, in particular building on the bundles of rights in the contrasting customary land tenures in Ghana.

1.4 Aims and objectives

The aim of the research is to understand the changes in land rights of indigenes in peri-urban communities as a guide to their exclusion amid changes in customary land tenure. The status of usufruct rights in terms of landed benefits in neo-customary land tenure as compared to its classical nature in customary land tenure serves as a measure of exclusion, or otherwise, of indigenes. The main research objective proceeding out this aim is to understand changing usufruct rights of indigenes in neo-customary land tenure in peri-urban communities. The specific objectives are to:

1. appraise the status of usufruct rights in customary land;

2. understand how traditional authorities, indigenes and state land-management institutions influence the changes in usufruct rights in customary land;
3. assess how usufructuary benefits and practices are (co-)produced from interactions between traditional authorities and indigenes in changing usufruct rights; and
4. analyse how the changes in usufruct rights can guide the sustainability of same.

1.5 Research questions

The key research question is as follows: how are land rights of indigenes in peri-urban communities changing amid shifts in customary land tenure? Within the scope of the study, this translates into the following sub-questions:

1. How do the entitlements of indigenes with respect to customary land presently manifest themselves amid changing customary land tenure?
2. What role do traditional authorities, state land-management institutions and indigenes in particular play in changing usufruct rights in customary land?
3. How are benefits and practices co-produced from interactions between indigenes and traditional authorities amid exclusion in changing usufruct rights?
4. How does knowledge of changes in indigene entitlements inform their sustainability?

1.6 Working hypothesis

Peri-urbanisation transforms land rights in customary land tenure in hitherto rural communities but the transformation of land rights also produces a market value. The working hypothesis of the thesis is that usufruct rights in customary land continue to exist in various forms, albeit that its remnants differ in acephalous and centralised systems. The presumed existence of usufructuary benefits indicates that they can be optimised to continue to serve as the primary livelihoods of indigenes in a manner similar to the purpose of ‘historical’ usufruct rights.

1.7 Contributions of the thesis

The thesis makes four main contributions to the literature on customary land tenure as discussed in detail in Chapter 7. Firstly, the evidence suggests that the influence of adaptation or of a hybrid approach to land tenure reform in relation to traditional authorities differs between centralised and acephalous forms of land tenure. The thesis finds in line with

literature on the nexus between peri-urbanisation and changing land tenure (see section 2.9) that traditional authorities in the case study of centralised Pramso tend to exercise a dominant role in the processes and benefits of peri-urban land commodification. However, their counterparts in the acephalous case studies do not practice such roles in relation to the conversion of land rights. This adds to the limited existing literature that explores the relationship between peri-urbanisation and changing tenure in acephalous areas in Ghana. Secondly, the thesis builds on and contributes to the literature on customary land tenure principles in Ghana. This body of literature (see section 2.9), which barely touches on the appraisal of interests in customary land in Ghana after 2000 tends to concentrate on centralised areas and not acephalous land tenure in Ghana as discussed in Chapters 2 and 3. The thesis has undertaken a unique in-depth analysis of the office of the *tindaana* in the acephalous case studies and this evidence contradicts a conventional view of the *tindaana* as ‘owner of land’ in acephalous land tenure. The second specific contribution of this thesis to the principles of land tenure in Ghana is that it establishes the interests in respect of land for various categories of indigenes in acephalous land tenure in the Upper West Region of Ghana. It goes further to show how these interests are undermined by the processes of peri-urbanisation and land commodification.

1.8 National context, scope of the research and overview of the research methods

Contextually, the thesis is framed by the changes in customary land tenure in sub-Saharan Africa. Although interests in customary land are transforming amid the changes in customary land tenure (Ensminger, 1997), the focus of this research is on usufruct and abusufruct rights. This is particularly because these rights constitute the livelihood base of the majority of indigenes (Agbosu, 2000). Related research shows that the entitlements of traditional authorities, for instance, are ‘enhancing’ (Yaro, 2012). Comparatively, traditional authorities in a given community are fewer than indigenes. My research does not describe changes across the entire range of customary land tenures but rather narrows its focus specifically to changes in usufruct rights and abusufruct rights as entitlements of indigenes.

In seeking to understand changing land rights in Ghana, as mentioned the diversity in customary tenure has to be considered. For this reason, Wa and Kumasi have been respectively chosen as examples of contrasting acephalous and centralised and also patrilineal and matrilineal societies. The study is based on one empirical case study complimented by a literature review in Kumasi and two empirical case studies in Wa. The cases studies were

selected for their peri-urban contrast, the one settlement in the process of beginning to peri-urbanise (incipient) and the other already peri-urbanised (consolidated) (Wamukaya and Mbathi, 2019) in both cities. The incipient case study in Wa is Siriyiri and the consolidated case study is Mangu. In Kumasi the incipient case study is Pramso, coupled with secondary data involving 17 peri-urban communities.

The data sources for the research are both primary, mostly in the form of interviews relating to the case studies and court cases, and secondary, as in drawn from existing literature. In the interviews, the respondents comprised of two broad categories: institutional respondents and household respondents. Institutional respondents are representatives of state land-management institutions, with traditional authorities as customary institutional representatives. Household respondents consist of selected indigenous household members and stranger settlers in each community. I conducted a total of 66 interviews within four separate phases (spread from November 2018 to August 2019), during which I personally visited the case-study communities. I collected the secondary data, which includes academic literature and selected judicial cases, electronically. For facts from unreported court cases, I collected them in hard copy through my field engagements. I then analysed both the interview transcripts and the secondary literature texts from literature manually using tables in Microsoft Word. The topics that eventually led to the themes emerged from recurring subject matters and atypical issues.

1.9 Organisation of the thesis

The remainder of the thesis is structured into seven chapters. The next two chapters lay the conceptual and theoretical foundations for the research. Chapter 2 starts by discussing key changes to customary land tenure in the context of land tenure reforms and theories and the motives of land reform in sub-Saharan Africa. The chapter argues that land reform and peri-urbanisation act in combination in driving changes in customary land tenure in Ghana. Chapter 3 builds on Chapter 2 by presenting the context of changes in customary land tenure in Ghana. The chapter argues that an interpretation of ‘ownership’ of land in both customary land tenure and in property theory forms a basis for contestations between traditional authorities and indigenes over peri-urban land value. Chapter 3 also lays out the contrasting backgrounds to the two identified social systems, thus providing a foundation for the subsequent analysis of the contrasting research case studies. This differentiation is vital because the two contrasting case studies present disparate implications regarding changes in

entitlements of indigenes and present them, as a group, with both opportunities and challenges. Chapter 3 introduces the argument that a *tindaana* (plural, *tindaanas*) – a traditional authority in acephalous Wa – is not synonymous with a centralised Chief in terms of their individual land-management functions. Based on this argument, the entitlement of indigenes in acephalous Wa represent more than usufruct rights, which belong rather to women and long-term stranger settlers. Chapter 4 deals with the research approach, case study profile, and selection and methods.

The latter part of the thesis turns to the empirical discussions. Chapters 5 and 6 present the analysis of the case studies in Kumasi and Wa respectively. Overall, Chapter 5 provides evidence of the changes to usufruct rights as bundles of rights in customary land in Pramso, Kumasi. In this chapter, I establish that usufruct rights in land in Kumasi still continue to exist in various forms but could be made sustainable if conscious attention is given to their relevance at the point of land conversion. Focusing on the physical dimension of land which indigenes do not ‘own’, as is the situation in Pramso and in the literature on peri-urban Kumasi, negates indigene entitlements to land. The chapter presents historical evidence from Pramso pointing to the vesting of usufruct rights in indigenes when the community first originated. Chapter 6 presents evidence emerging from the case studies in Wa that the bundling of rights and the holders of these rights, and hence the entitlement of indigenes, are different to centralised Kumasi. Again, Chapter 6 shows that relaxed control of land by traditional authorities in Wa leads to indigenes self-mismanaging their own land entitlements. Taken together, and despite the contrasts in land tenure arrangements between Wa and Kumasi, the evidence in both Chapters 5 and 6 therefore demonstrates a common and underlying unsustainable management of the commodified value of indigenes entitlements.

The thesis concludes with Chapter 7, presenting three key contradictions that emerge in the process of the commodification of peri-urban land and their implications for the discourse on indigene exclusion in neo-customary land tenure. The chapter concludes that the status of entitlements of indigenes in both Wa and Kumasi is characterised by poorly managed commodified value, albeit it existing in various forms. Whereas the status of usufruct rights in Pramso shows that indigenes are excluded because of the collapse of usufruct rights, in Wa indigenes cannot be described as excluded, even though their ‘abusufruct’ rights are also being depleted. Based on these findings I then argue for the need for a sustainable management of the processes and value of commodification of land. Finally the chapter also sets out how the findings and analysis in the thesis feeds into the current literature on changes

in customary land tenure systems in sub-Saharan Africa, as well as on the bundle of rights in customary land tenure in Ghana in particular. The chapter draws the thesis to a close by formulating recommendations for policy and further research.

2 CHANGES IN CUSTOMARY LAND TENURE IN SUB-SAHARAN AFRICA: CONCEPTUAL AND EMPIRICAL REVIEW

2.1 Introduction

The indigenous land tenure system in Africa has experienced numerous changes. The classical ‘customary’ tenure system of the pre-colonial period in sub-Saharan Africa subsequently changed to a customary tenure system during colonialism and then to a new customary tenure system in the post-colonial era (Chimhowu, 2019). Accompanying this, there have also been shifts in group and informal-fashion land holding towards individualised and formalised land tenures. More than a simple duality of individual and customary land tenure exists in fact, reflecting a pluralism of land tenure in sub-Saharan Africa. This chapter presents the theoretical and conceptual aspects of these land tenure changes and by extension in usufruct rights in sub-Saharan Africa. The chapter begins with the argument that the evolution of land systems in sub-Saharan Africa constitutes changes in land tenure. The motives and theoretical perspectives influencing these changes in land tenure are then discussed, flanked by a review and identification of the concept of peri-urbanisation as a transformational motor in customary land tenure in sub-Saharan Africa. Following this I introduce the categories of societies in Africa, namely acephalous and centralised societies, that influence land tenure administration. Subsequently, property theory is discussed as a background to the concept of ownership in customary land tenure. Finally I address the gender dynamics and power imbalances in land tenure changes in sub-Saharan Africa, ending with a summary of the conceptual and theoretical framework in the form of a diagram.

2.2 Land tenure in sub-Saharan Africa: duality or pluralism?

Land tenure is made up of relationships between people and land (Payne, Durand-Lasserve and Rakodi, 2009). These relationships are usually defined legally or customarily. The legal approach is based on statute, whereas the customary approach deals with informal de-facto rules (Hull, Babalola and Whittal, 2019). Similarly the Food and Agriculture Organisation of the United Nations (2002: 3) defines land tenure as ‘the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land’. Thus one popular view of sub-Saharan Africa’s land tenure is that it involves a duality of formal and

customary land tenure. Peters (2004) argues that this duality is not a neat parallel of tenure forms. According to Peters (2004) customary and formal systems are mutually combined and competing and should not be seen in their separate forms. In view of this, other authors, such as UN-Habitat (2012) and Barry (2015), see the tenure system in sub-Saharan Africa in the form of a continuum. This continuum portrays land tenure as ranging from informal, such as customary land tenure, to formal land tenures, such as registered freeholds. Thus, ranging between the poles of the continuum are other tenure types with various levels of formality and informality (ibid.).

There are other ways of representing diversity in land tenure systems. A separate approach, which is framed in the context of changes to customary land tenure, views it as either customary or neo-customary, which is mostly in peri-urban areas (Wamukaya and Mbathi, 2019) and therefore conceptualises land tenure types as neo-customary, customary and individualised (ibid.). Another distinction is whether land tenure is held in a group form, that is communal or individual. With regards to this distinction, Cousins (2008) argues that customary land tenure is not necessarily communal although the two are sometimes used interchangeably. Agbosu (2000) and Chimhowu (2019) for instance portray a collective land holding in customary land tenure. In the context of South Africa, Cousins (2008) contends that equating customary to communal tenure is not realistic but rather a colonial misconception aimed at easing the appropriation of land. The foregoing discussion indicates that land tenure in sub-Saharan Africa can be categorised on three bases: by transformations – ‘classical’ customary, customary and neo-customary; by formalisation – statutory/formal and customary/informal; and by mode of holding – individual and communal. Each of these classifications is important and land tenure therefore reflects more a pluralism than duality. As I discuss later in this chapter, there is another categorisation of customary land tenure as either acephalous or centralised.

2.2.1 Customary land tenure in sub-Saharan Africa

In customary land tenure the relationship between people and land is based on customs (Kalabamu, 2000; Cotula, 2007). From the customary law perspective, Cotula (2007) defines customary land tenure in sub-Saharan Africa as land tenure regulated by rules which find their legitimacy in traditions that claim to have been applied since time immemorial. Wily (2011: 1) defines customary land tenure as ‘the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and

transfer.’ Wily (2011) further indicates that the norms of customary land tenure emerge from the community and not from state laws. According to Chimhowu (2019: 898) customary land tenure basically means ‘collectively owned land usually under the authority of traditional leadership.’ These definitions show that the customs and traditions which regulate customary land tenures are mostly unwritten and differ from one community to the other (Kalabamu, 2000; Cotula, 2007). Unique variations in the nature of such customary land tenure systems therefore exist across the continent and globe (Delville, 2007). The unwritten nature of such customs also means that they allow room for discretion and ambiguity (Ubink, 2008a). Moreover, custom- and tradition-based land tenure implies that the system is essentially dynamic. Traditions and customary land tenure change in response to internal and external influences such as a shift in prevailing norms (Asante, 1965; Berry, 2013). Cotula (2007) similarly finds the customary land tenure in sub-Saharan Africa to be responsive to several factors.

Customary tenure systems may be communal, yet the usufruct rights in them are alienable to individuals and transferable within the group (Agbosu, 2000). The importance of usufruct rights to indigenes reflects in the livelihood purpose they serve (Adam, 2014; Maxwell, *et al.*, 1998; Ubink, 2008c). Maxwell, *et al.* (1998) show that indigenes obtain diverse benefits, such as settlement, farming, economic rent, firewood and water, from customary land that they hold usufruct rights over. Indigene livelihoods are thus linked with usufruct rights (Ubink, 2008). The customary land tenure system is widespread in sub-Saharan Africa with, for example, about 94 per cent of land in Zambia and 80 per cent in Ghana being managed in this way (Chitonge, Mfunne, Kafwamba and Kajoba, 2017; Kasanga and Kotey, 2001). Importantly, as Amanor (2008) has already emphasised, the use of the term ‘customary’ in land tenure does not necessarily imply that it is based on indigenous norms. I discuss the emergence of customary land tenure in the next sub-section.

The formation of customary land tenure

The dominant land tenure system in sub-Saharan Africa is often referred to in academia and policy discourse as ‘customary land tenure’. However, conventional reference to the term customary land tenure in sub-Saharan Africa does not meet the criteria for this designation as ‘customary’. So-called customary land tenure in sub-Saharan Africa is never purely traditional, that is, it is not based on pure indigenous practice. Instead, customary law in Africa is widely regarded as a colonial creation (Colson, 1971; Chanock, 1991). From a

Central and Southern African perspective, Chanock (1991) describes how colonial states and European private mercantile interests ultimately established what is termed customary law and land tenure. According to Chanock (1991) Africans resisted these constructions because they regarded the formulations as strategies of colonial appropriation. But in attempts to resist such customary formulations, Africans ended up consolidating the customary (ibid). Another instance of this formulation of customary rules is the institution of landlords in sub-Saharan Africa where using land was more important than holding land (Pottier, 2005). Colson (1971) argues that the impact of European colonialism ensured that ritual leaders were turned into landlords on the basis of their being community leaders, and hence the imperative holders of community land rights. Accordingly, customary land tenure came under the dominant control of such leaders. According to Pottier (2005) this bestowing of land control to leaders was a dangerous departure from land tenure in pre-colonial Central Africa. The formation of customary features in West Africa was expressed in the case *Amodu Tijani vs Secretary Southern Provinces, Nigeria*, wherein it was declared that the 'land belongs to the community, the village or the family and never to the individual' (Asante, 1965: 868). From the Ghanaian perspective, Amanor (2008) portrays the customary tenure and its principles in Ghana as artificial and having been 'formalised' by indigenous elites. According to Amanor (2008: 57) customary land tenure in Ghana is a formulation of the early colonial period, arising from the colonial government's failure to vest land in itself and from the establishment of indirect rule. Further to this point, in Chapter 3 I discuss an example of a possible misrepresentation of the land management function of the *tindaana*, a ritual leader in Upper Western Ghana.

Based on the above I use the term 'customary land tenure' to refer to the post-colonial land tenure systems mostly involving communities and their traditional leaders as key stakeholders administering community land with little state influence. Such systems are usually found in rural and peri-urban areas. I use the term 'classical customary land tenure' where I mean a system that predates colonialism and which no longer exists. In this thesis, '(neo-) customary' implies a mixture of both neo-customary land tenure and customary land tenure. Thus, in establishing the basis of usufruct rights in order to study their changes, my thesis refers to 'historical' usufruct rights as per the principles of customary land tenure. The 'historical' nature of usufruct rights (discussed in Chapter 3) is not considered from the perspective of classical customary land tenure, which is ordinarily historical: on the contrary, contemporary usufruct rights occur in the context of (neo-) customary land tenure.

Land reform changes in customary land tenure in Sub-Saharan Africa

Over recent decades there have been various perceptions of the qualities of customary land tenure in sub-Saharan Africa. In the 1950s the customary land tenure system in Kenya, for instance, was viewed as insecure and in need of securing to enable Africans to obtain titles to land as a basis for credit facilities (Swynnerton, 1954). On an economic basis, research backed by international development partners in the mid-twentieth century presented customary land tenure in sub-Saharan Africa as a hindrance to agricultural production (Dorner, 1972; Nyamu-Musembi, 2006; Payne, 1996; Peters, 2004). These perceptions of the actually existing customary tenure system at the time led to radical land reforms between the 1970s and 1980s, which Bassett (1993) refers to as the ‘land reform decades’. These land reforms sought to establish formal/individual and private property rights as a solution to increase agricultural investment (Elahi, 2013). This view of customary land tenure systems subsequently changed when another set of research studies (Migot-Adholla and Bruce, 1994; Migot-Adholla, *et al.*, 1991) found that the formal/individual land reforms programmes barely achieved their purposes. In fact, other studies (Boserup, 1965; Bruce, 1988; Kasanga, 1996) offered a positive view of customary tenure as adaptable, secure, negotiable and capable of evolving under changing circumstances. Bruce (1988), for instance, argues that change to customary land tenure systems in sub-Saharan Africa needed few radical reforms and deliberate decisions because indigenous tenure systems unfold following their own logic. On land tenure security and in the Ghanaian context, Kasanga (1996: 89) states that ‘Ghanaian customary tenure systems are therefore a source of social security and continuity. The full enjoyment of the fruits of one’s labour and efforts are guaranteed’ Supporting this, my own case studies show a degree of flexibility and negotiability in customary management but that the manner of land redistribution in centralised case studies are counter-equitable, at least per a redistribution formula. Yet, Hernando de Soto’s *Mystery of Capital* (2000), although highly critiqued, was compelling in making the point that formal individual land tenure, if established in developing countries, in fact engenders capital in property, leading him to brush aside earlier reservations about the adoption of individual land reform in sub-Saharan Africa as mentioned above (Nyamu-Musembi, 2006). Land formalisation and individualisation subsequently re-emerged in sub-Saharan Africa (Benjaminsen, *et al.*, 2009), but the current approach to land formalisation/individualisation is a revised one that is less direct and influential, although it does continue to create formal/individual tenures out of customary systems.

The active land-reform agenda in sub-Saharan Africa entails an enabling approach to customary land tenure (Akaateba, 2018). According to this approach, the capacity of customary land tenure should be nurtured and built to enable it to function with little interference. This ‘enabling’ land-reform agenda establishes a hybrid land-management regime known as ‘hybrid adaption’, which strengthens the power of traditional authorities (ibid.). In sub-Saharan African countries, such as Nigeria, Mozambique and South Africa, this hybrid adaption model is reflected in land policies (Hull, *et al.*, 2019). Nonetheless, Hull, *et al.* (2019) argue that the successfully implemented land reform policies in these countries continue to be systematic titling approaches, effectively replacing customary tenure systems rather than adapting or conserving them. In Ghana, a land reform project named the Land Administration Project (LAP), which began in 2005, is an example of the enabling approach (World Bank, 2011). The LAP established Customary Land Secretariats (CLS) to build the capacity of traditional authorities in the management of customary land, thereby enabling the customary land tenure system in an adaptive fashion. However, traditional authorities have been shown to take advantage of the enhanced authority bestowed by this enabling approach. Research into the enabling approach in the LAP and post- LAP era in Ghana shows evidence of possible exclusion of indigenes and contestation emerging between indigenes and traditional authorities (see Akaateba, 2018; Ubink, 2008c; Ubink and Amanor, 2008). This is a finding that is also reflected in my case studies, whereby Chapter 5 discusses how the uncompromising demands of traditional authorities in terms of neo-customary land delivery in the centralised case study in Kumasi ultimately led to agitations among indigenes.

2.2.2 Neo-customary land tenure

In urban and peri-urban areas in sub-Saharan Africa, customary land tenure as described above operates in a different fashion. As already mentioned in the introduction, this system is referred to as a ‘neo-customary’ land tenure system (Durrand-Lasserve and Mattingly, 2003: 3). Neo-customary tenure operates through ‘a mixture of reinterpreted customary practices with other informal and formal practices’ (Wamukaya and Mbathi, 2019: 80). Similarly, Cleaver (2002: 11) characterises neo-customary systems as possessing a newly arranged ‘institutional bricolage’, different from the institutional setup in a typical customary land tenure system. Recently, Chimhowu (2019: 897) refers to a broader tenure system possessing this neo-customary character as the ‘new’ customary tenure in sub-Saharan Africa, the ‘new’ being the result of the changes brought about by land reforms and comprising of an

amalgamation of the other tenure types. Chimhowu (2019) perceives this tenure system as a product of an overall neo-liberal policy in sub-Saharan Africa. Chimhowu's (2019) review finds that these land tenure systems are characterised by hybrid leadership and more pluralistic pathways of access to land, i.e. as opposed to 'free' birthright qualifications in the customary and especially in the classical-customary tenure system. In neo-customary tenure systems access to land is gendered but increasingly gained through market transactions (ibid).

Neo-customary tenure is spatially defined because it prevails mostly in urban and peri-urban areas (Adam, 2014; Durand-Lasserve and Mattingly, 2003; Wamukaya and Mbathi, 2019). Socio-economic and demographic changes intensify land transactions in peri-urban areas and engender neo-customary land tenure systems (Adam, 2014). Peri-urban land tenure studies that do not give this system a name have often found that the practice under this peri-urban customary land tenure is in fact a reinterpretation of customs that regulated land historically (see Akaateba, 2018; Ubink, 2008a; Yaro, 2010; 2012). Yaro (2012: 366), for instance, argues that 'chiefs and *tendamba* [ritual heads of Earth Shrines] ... contradict the intentions of the nation's constitution by reinterpreting their stewardship roles' in customary land management into ownership roles in relation to 'the land they manage'. Yaro (2010) implies that in customary land tenure, chiefs and *tendamba* merely manage land for the benefit of their people, but that as customary changes to neo-customary land tenure chiefs and *tendamba* manage land as if they were 'owners'. This change of management has implications for other lesser rights in land management, such as the usufruct indigene rights. Another feature of the peri-urban neo-customary land tenure system is that land rights become commodities (Durand-Lasserve and Mattingly, 2003). Wamukaya and Mbathi (2019) find that neo-customary land tenure in Kenya operates within a monetary framework, which was absent in customary tenure systems. Nonetheless, the transactions in these commodified land rights achieve a level of security that other informal land transactions fail to offer (ibid).

Commodification describes the process by which things previously without economic value attain such a value (Levesque, 2015). This process equally applies to land, as it has the potential to be transformed from a primarily holding use value to holding value in market terms (Payne, *et al.*, 1997). Land commodification is thus a transformation of land and land resources into commodities, which in turn become items capable of exchange and therefore attain an economic value (Appadurai, 2005). Besides the neo-liberal push factor, commodification of land is a result of perceived or actual land scarcity (Platteau, 1996; Owusu, 2008). Usage of land in 'primitive' societies was mostly on a group basis, where

tribes of hunters and gatherers exerted control over particular areas for their activities (Deininger and Feder, 2000). As society changed and population increased in pre-colonial times, fallow agriculture emerged and ultimately resulted in communal rights systems (Hill, 1963). Wamukaya and Mbathi (2019) therefore argue that in Kisumu, Kenya, the commodification of customary land rights in neo-customary land markets was foreign to customary land norms. Similarly in Ghana, a general right of using group land without payment of valuable consideration (with money or other means) was inseparable from the membership of the group (Gyasi, 1994).

2.2.3 Formal and individual land tenures

Although generally interchangeable, formal and individual tenures do exhibit overlaps. Formalisation itself is a contested term. It is usually used to refer to documentation that is made official by virtue of statute (Benjaminsen, *et al.*, 2009), meaning that formal land tenure is therefore land tenure that is created by statute (Bruce, 1998). De Soto (2000), who is one of the advocates of formalisation, offers another form of the concept. De Soto's (2000) formalisation goes beyond recording land rights in title registers and backing them with law. For de Soto (2000) the separate registers and formal general systems of a country have to be integrated. Three ingredients of de Soto's kind of formalisation include: first, establishment of legal representation of property, such as title deeds and licenses; second, these documentary representations of property must be sanctioned by state authority; and finally the property representations must be integrated in an accessible nationalised register (*ibid*). Another feature of de Soto's (2000) formalisation which is different from traditional (*i.e.* pre-de Soto) formalisation is the formalisation of *de facto* use of land as opposed to the formalisation of implanted rights (*ibid*). According to de Soto (2000) this kind of formalisation enables property to acquire a second existence as capital. While property such as land is used, for instance, for farming, its legal representation in document form can be used for a loan, thus generating capital. Referring to the period up to 2008, Benjaminsen, *et al.* (2009: 29) argue that 'no de Soto-led formalisation has been fully tested' in Africa.

It is a fact that individual land tenure or individualisation often goes hand-in-hand with formal land tenure or land formalisation. Elahi (2013) generally defines individual land tenure as land tenure that permits individuals to own land privately. The representations of individual holdings are in turn made legal through formalisation. Therefore, both formalisation and individualisation work in tandem to produce individualised land tenure, in

turn tending towards privatisation of land rights (Benjaminsen, *et al.*, 2009). Traditional land formalisation therefore entails formal individual titles which prevent communal rights and engender individualisation of land rights (Benjaminsen, *et al.*, 2009). Besteman (1994) states that land individualisations in numerous African countries are always in the form of title registration. In many studies, individual land tenure is often equated with formal land tenure reform and rarely defined (cf. Kisamba-Mugerwa, Penda and Kato, 2006; Migot-Adholla, *et al.*, 1991). Bruce's (1986: 52) definition of land individualisation offers clues of the overlap between formal and individual tenures, defining land individualisation from the perspective of sub-Saharan Africa as 'a reduction of community controls over land use and distribution, enhancing the rights of the individual landholder/farmer'. Migot-Adholla, *et al.* (1991: 155) similarly infer this form of individualisation among indigenes when they state that

'there is a spontaneous individualization of land rights over time, whereby farm households acquire a broader and more powerful set of transfer and exclusion rights over their land as population pressure and agricultural commercialization proceed.'

Bruce's (1986: 52) definition indicates that while land holding and associated rights are recognised under formal land tenure, land holding becomes individual rather than communal. For Kisumu in Kenya, Wamukaya and Mbathi (2019: 85) state that land tenure systems have adjusted and adapted from a 'communal control stage, through to the family control stage, and lastly to the stage of individual titles and land dealings.' One unsettled matter is that individualisation is defined to cover two scenarios. First, there is a scenario of individualisation in respect of the splitting of land holdings among community members (Bruce, 1986; Migot-Adholla, *et al.*, 1991). The second scenario is individualisation as the indiscriminate splitting of land holdings among community members and strangers (Wamukaya and Mbathi, 2019). Several sources show transfer of land outside land-owning communities or groups (Cotula, 2007; Owusu, 2008). In peri-urban areas, transfers of land for financial considerations do indeed confer to strangers rather than to indigenes (Owusu, 2008). These transfers constitute a de-communalisation of communal customary land and therefore a form of 'individualisation'. I term the distribution of land and land rights among indigenes as the 'personalisation' of customary land, a subsidiary form of individualisation. Individualisation represents the broader disintegration of communal holdings without discriminating between land-owning groups and stranger-inmigrants in sub-Saharan Africa.

The discussion of the various categorisation of customary land tenures; by formalisation, by transformation and by manner of holding above and the diverse nature of each typology points to a pluralism in land tenure in sub-Saharan Africa as opposed to duality. In line with this diversity of systems, Hull, *et al.* (2019: 2) argue that legal pluralism ensures that observance of customary and statutory law aligns with needs, thus giving ‘different combinations of both’, i.e. customary and formal tenures. The following timeline illustrates the changes in customary land tenure, pluralism in land tenure and the scope of the changes in usufruct rights under study in this thesis, whereby the presumption is that pluralism in land tenure existed in the colonial period but that it became more plural in the post-colonial period.

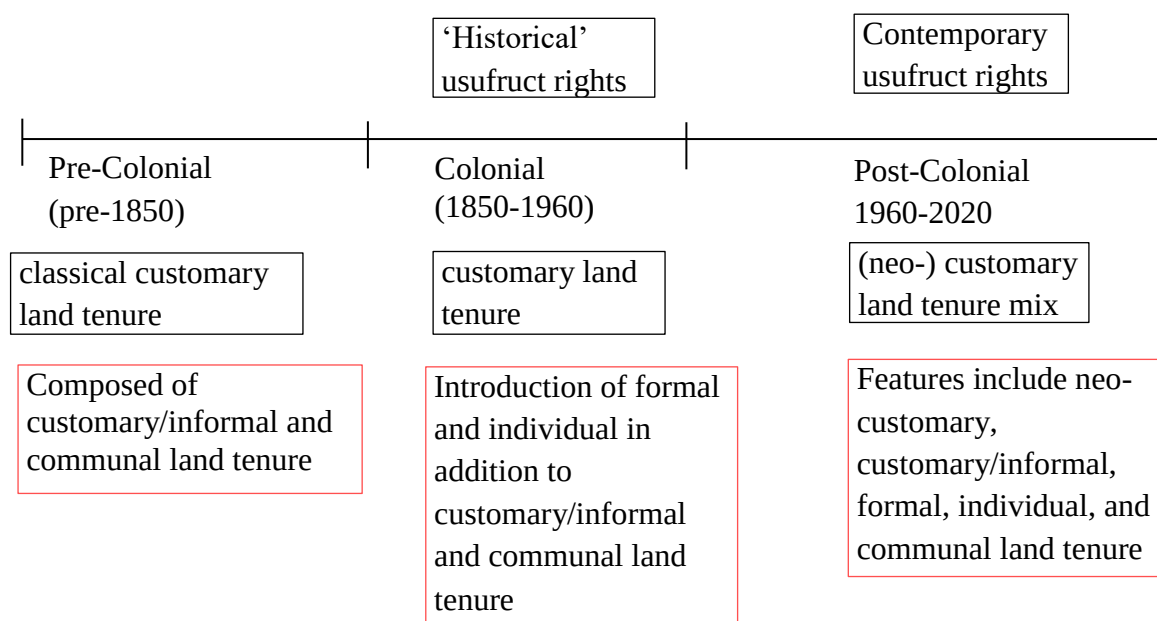


Figure 2.1: Timeline of changes in customary land tenure showing pluralism of tenure

Source: author's own construction

2.3 Situating changes in customary land tenure in land-reform motives and theories

The implementational aims behind land-reform policy in sub-Saharan Africa can be classified within a wide spectrum of motives, centred on replacement, adaptation and conservative (Hull, *et al.*, 2019). As such, land reforms involve a choice to retain, replace or adapt customary land tenure. The indicators of the various motivations of land reform from a sub-Saharan Africa viewpoint are collated from Hull, *et al.* (2019) and displayed below in Table 2.1.

Theory	Possible indicators
Conservative	- Preservation of customary tenure - Broadly African view of land - Traditional leaders prominent in land administration
Democratic adaptation	- Respecting and clarifying existing, legitimate land rights - Improving gender equity, accountability and democracy - Building on existing customary practices
Hybrid adaptation	- Combination of statutory and customary arrangements - Participatory approach: communities decide which rights are recorded
Incremental adaptation	- Titles are a long-term objective - Extra-legal, off-register practices recognised as legitimate - Spontaneous titling according to need
Incremental replacement	- Titles are the desired end state - Customary tenure provides sufficient tenure security - Legal recognition of customary tenure and adjudication practices
Evolutionary replacement	- Land rights spontaneously evolve towards individualisation - Titles are required for tenure security
Collective replacement	- Nationalisation of all land/collective farming villages - Equitable distribution of resources and services - Democratisation of traditional leadership - Improved productivity and self-reliance
Systematic titling	- Titles are required for tenure security - Titling leads to economic development - Customary tenure must be replaced

Table 2.1: Summary of land reform theories and motives

Source: Hull, *et al.*, 2019: 6

Replacement theories of land reform influence the establishment of ‘land administration and cadastral systems’ in formal and individual tenures and are overly relied on for land reform in Southern Africa (Hull, *et al.*, 2019: 6). Because formal and individual land reform is a gradual process, customary tenure systems exist alongside individual and formal systems.

Customary tenures exist in areas where individual and formal tenures are not yet implemented and the latter in areas where they are implemented. This is different from hybrid tenure systems where de facto land holdings are formalised. Adaptation ideas of land reform advocate hybrid tenure systems and are minimally implemented in sub-Saharan Africa, with its practice in Mozambique being a typical case in Southern Africa. Conservative perspectives are against individual and formal systems (ibid.). Both replacement and adaption perspectives lean towards land formalisation and individualisation. Hull, *et al.* (2019: 15) find that in Nigeria land reform ‘tends towards replacement theories ... [which] is not in the interest of customary land rights-holders.’ Thus, Hull, *et al.* (2019) argue that the motives of land reform do not fall in line with the lived experiences of the customary rights holders. Therefore it is only conservative views of land reforms that continue to preserve customary land tenure systems and envisage the least changes to it. The replacement and adaption motives underlying land reform are in turn influenced by various theoretical stances, including evolutionary, neo-liberal and modernisation perspectives.

Evolutionary accounts of land rights

Property rights, including land rights, are widely believed to have ‘evolved’ (Krier, 2009; Platteau, 1996). Evolutionism is a ‘theory which proposes that long-term social change happens in stages, that it is linear, gradual and irreversible, and that it is progressive’ (Le Roux and Graaff, 2001: 46). In describing evolution as a gradual progression, Krier (2009: 8) states that ‘primitive rights emerged at some point, and they were followed eventually by developments that culminated in the full-blown property systems of modern times.’ This account understands primitive rights that existed before influences such as colonialism as undeveloped. Generally, the evolutionary perspectives of property rights depict communal land holding in the classical customary and customary tenures as exhibiting inner limitations (Alchian and Demsetz, 1973; Coase, 1960; Demsetz, 1967). From the perspective of pre-colonial and unrestricted communal land use, both Hardin (1968) and Demsetz (1967) hold the view that communally held resources tend to be inefficient amid increasing pressure and therefore tend to evolve towards private property (see Barry, 2015). Hardin (1968) exemplifies the tragedy in such common use with the example of sustained group pasture, where the impact of adding one single cow by one herdsman is carried by the herdsmen as a collective and is insignificant. But when all the herdsmen try to keep as many cattle as possible, each adding cows to the pasture for their self-interest, the impact of the competition is massive and destroys the common pasture, leading to calls for private ownership. This kind

of evolution of rights towards private ownership may be the result either of an unaided self-response or of a deliberate effort (Bruce, 1988; Krier, 2009; Platteau, 1996). Nevertheless, communities may feature heterogeneity, and in such cases communal ownership is practiced within sub-groups. Thus in the context of individualisation tendencies in my case studies in Wa, indigene families, households and even individuals within the communities began controlling land independently not the larger sections anymore, due to quests to retain benefits of land commodification.

In Ghana and other sub-Saharan African countries, the customary land tenure system may be viewed as self-evolving towards individual tenure. As Asante (1965) mentions, the introduction of cash crops in Ghana led to a practice of perennial agriculture and changed the nature of usufruct rights to a mere occupation and use right to a permanent possession. This permanent possession in turn tends towards individualisation. On this point, others argue that African land tenure systems are dynamic, suggesting that individual ownership emerges as the need arises (Abdulai, 2006; Agbosu, 1982; Platteau, 1996). However, a limitation of this evolutionary theory is that as individual holding inevitably emerges, contestations over and agency of households amid changes in land holding are similarly inevitable. It is in line with this weakness of the evolutionary approach that historically Locke (1690) argues that commoners would disregard individual claims thereby resulting in a state of war. Besides, this limitation, Cousins, Hornby, Kingwell, Royston and Trench (2005) and Whittal (2014) critique the unidirectional view of the all of evolutionary thinking as problematic because land relations tend to be multidirectional and multidimensional. Hence a major problem in evolutionary thinking on land individualisation reform is that economic gain is overemphasised, thus disregarding the social, cultural, religious and political dimensions of land tenure, especially in sub-Saharan Africa (Barry, 2015; Joireman, 2011).

Modernisation perspectives

Related to the evolutionary accounts of property rights discussed above is the broader notion of development as modernisation. In modernisation thinking, society is said to inevitably progress from traditional society towards a modern society with modern or western socio-economic and political attributes (Barry, 2015; Coetzee, 2001). Hence land tenure characteristics that are indigenous – including in this sense the classical customary and even customary tenure systems – are regarded as regressive and requiring replacement with modern principles (Coetzee, 2001; Nkwae, 2006). The modernisation theory thus relates to

the evolutionary view in that both entail an inherent inevitability in the shift from the 'traditional' to the 'modern'. At the same time modernisation theory implies individualisation and social differentiation and the commodification and integration of cultures (Le Roux and Graaff, 2001). Coetzee (2001) criticises that this modernisation perspective is over-simplified since 'modern' and 'traditional' are ultimately relative, highlighting that the realisation of a perfect (i.e. modern) world is now understood to be unrealistic. Nonetheless, changes occurring in customary land tenure in sub-Saharan Africa can, in part, be identified as caused by land reforms underpinned by this modernisation theory.

In studies of changes in customary land tenure systems in sub-Saharan Africa, there is evidence that implementation of registration, titling and individualisation regimes are replacing hitherto customary land rights and social access mechanisms (Chimhowu, 2019; Chitonge, *et al.*, 2017b; Cotula, 2007; Kasanga and Kotey, 2001; Wily, 2011). Nevertheless, other factors such as the emergence of land markets and peri-urbanisation complement policies of modernisation to drive changes in customary land tenure. Customary laws have undergone transformation and reinterpretation, resulting, for instance, from the responses by traditional authorities to the opportunities inherent in commodification and land markets (Cotula, 2007; Yaro, 2012). Thus, according to Amanor (2008: 75) the perceptions of chiefs as rightful entities to sell customary land are 'very modern notions, which could only occur in the context of the development of land markets.' Crook (2008: 134) states that replacement and adaption land tenure reforms view 'modernising measures such as mapping and documentation of title' as more certain policy alternatives in responding to land conflicts in customary tenure that arise from pressures of urbanisation. Nonetheless, modernisation theory is understood as influencing changes in customary land tenure and in societies in Sub-Saharan Africa. In reinterprative case studies in Mali, Niger and South Africa, Benjaminsen, *et al.* (2009: 28) state that 'formalisation [of customary land] was not merely an aid to solve particular problems, but an essential part of the transition towards structured governance, order, and ultimately civilisation.'

Neo-liberal perspectives

Unlike evolutionary and modernisation theories, neo-liberal theory proposes the advancement of human well-being through entrepreneurial freedoms. Harvey (2006: 145) defines neo-liberalism as

‘a theory of political economic practices which proposes that human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, free markets and free trade.’

Neo-liberal development paradigms focus, among other things, on the efficiency of market mechanisms and reducing governments’ direct influence in order to promote competition for enhanced and less costly productivity (Toulmin and Quan, 2000). Slater (2004: 53) describes neo-liberalism as the ‘combined significance attached to privatization, market relations, open economies, commodification, and possessive individualism.’ Slater (2004) argues that the mainstream argument for neo-liberalism is usually framed in terms of the efficiency of the market as opposed to inefficient and costly government interventions. In terms of state interference, Harvey (2006: 145) points out that a major role of the state in ensuring market efficiency is to ‘create and preserve an institutional framework’ that supports the neo-liberal agenda. For instance, the state has to ensure the integrity of money, provide functioning security services to protect private property, and, if necessary, create markets where they do not yet exist. In many respects neo-liberal policy essentially promotes private ownership of property, hence individualisation (Harvey, 2006; Obeng-Odoom, 2012; Slater, 2004). Important underlying features of neo-liberalism are therefore a removal of market restrictions and minimal government intervention and costs (Slater, 2004). Neo-liberalism aims at achieving market efficiency: in terms of land, market efficiency is therefore understood to be achievable within a regime of private property rights (Migot-Adholla, *et al.*, 1991). Harvey (2006: 145,146) critiques this neo-liberalist agenda as destructive of ‘prior institutional frameworks’, such as classical customary and customary land tenures. Moreover, these changes have social, welfare and psychological implications for society.

More recently neo-liberal policy has been widely understood as influencing land tenure reforms, and hence changes in customary land tenure systems in sub-Saharan Africa, whereby neo-liberalism has led to the titling and privatisation of customary land rights (Liverman and Vilas, 2006). While neo-liberalism has informed international development

agencies to implement land titling and privatisation in sub-Saharan Africa, the commodification of customary land has aided its privatisation (Benjaminsen, *et al.*, 2009; Chitonge, *et al.*, 2017b). For example, proponents of the neo-liberal agenda, such as the World Bank, increased pressure on Zambia to commodify land and led to the creation of laws to allow leaseholds in customary land (Chitonge, *et al.*, 2017b). As mentioned above, these proponents view land as a factor of production that needs to be efficiently allocated, just like other factors of production, and that the imperative is that this be ensured through private property that can be subject to market transaction (*ibid.*). In Zambia's case, Chitonge, *et al.* (2017b) argue that the commodification of customary land has led to the silent privatisation of customary land, while Chimhowu (2019) finds that these neo-liberal reforms have brought about privatisation, marketisation, deregulation, re-regulation and the creation of supporting mechanisms such as civil society organisations involved in consultancy on land claims in customary land tenure. The neo-liberal policy has a similar influence on land reform in West Africa. Zackaria (2010: 116) observes that neo-liberal policies in West Africa may have 'engendered commodification of land, titling and privatisation of property rights in land.' In general the implementation of Structural Adjustment Programmes and other land reforms in many sub-Saharan African countries was based on the neo-liberal agenda and it has been a major driving force for changes to customary tenure systems in most of Africa (Zackaria, 2010).

In these processes traditional authorities position themselves as overseers of the changes occurring in customary land tenure. Chimhowu (2019: 899) argues that in sub-Saharan African countries such as South Africa, Zimbabwe and Zambia neo-liberal reforms see state legal authority over customary land as devolvable to self-governing units, whereby these units may be collective or individuals. Traditional authorities in sub-Saharan Africa are recognised as such governing bodies, i.e. as controlling land resources, and amid changes such as the formation of land markets, traditional authorities assume entrenched and more beneficial positions to the detriment of wider indigenous masses (Chitonge, *et al.*, 2017a; 2017b). Evidence from the behaviour of these traditional authorities amid the emergence of land markets has led researchers to argue against romanticising customary land tenure systems (Kingwill, Hornby, Royston and Cousins, 2017; Ubink and Quan, 2008).

2.4 Peri-urbanisation as a driver of changes in customary land tenure

(Neo-) customary land tenure as the emergent land tenure arrangement in sub-Saharan Africa (as shown in figure 2.1) occurs mostly in peri-urban areas. Peri-urban areas and peri-urbanisation are complex but relevant to the thesis since it seeks to understand contemporary usufruct rights in neo-customary land tenure, therefore requiring an explanation as key concepts in my thesis. The review of peri-urban areas guided the selection of my case studies, whereas the concept of peri-urbanisation shapes the discussion on demands and pressures on peri-urban neo-customary land, whereby I will begin with the latter factor.

2.4.1 Peri-urbanisation

According to Putta and Ravadi (2014) the United Kingdom's Office of Rural and Institutional Development first used the term 'peri-urban' in the 1980s, although related terms emerged earlier. The office used the term peri-urban in relation to priority areas for development assistance (ibid). Therefore peri-urban is often used in spatial regards, hence the term 'peri-urban area'. As already set out in Chapter 1, peri-urbanisation denotes a process involving the emergence and/or growth of peri-urban and urban areas. Simon (2008: 171) provides the following synopsis of peri-urbanisation as a process involving

‘the progressive incorporation of new areas into the urban sphere of influence ...[including] changing land uses, the reach of infrastructure, access to services and markets, and exposure to the impacts of urban production processes and pollution.’

As already mentioned in Chapter 1, peri-urbanisation can also generally be defined as the expansion of cities through various stages of settlement formation (Barros, *et al.*, 2018; Wamukaya and Mbathi, 2019). Cadene (2005) defines peri-urbanisation as a dynamic process involving the transformation of rural areas at the boundaries of cities to areas with an urban character in physical and socio-economic terms. According to Cadene (2005) agrarian communities, which are usually small, adapt to an urban lifestyle, resulting in rapid social change. Similarly, Webster (2002: 5) defines peri-urbanisation as ‘a process in which rural areas located on the outskirts of established cities become more urban ... in physical, economic and social terms.’ Importantly, Webster (2002) observes that peri-urbanisation occurs in a piecemeal manner. Certain definitions of peri-urbanisation characterise it as very close to urban and thus infer the existence of a clear distinction between urban and rural. For

instance Abass, Adanu and Agyemang (2018: 471) define peri-urbanisation as ‘a process by which hitherto rural and non-urban areas become urbanised.’

The concepts of peri-urbanisation above imply conversion of rural to urban land uses, which in turn infer changes in land rights and in who holds them. Hence, peri-urbanisation serves as a driver of changes in customary land tenure. As Webster and Muller (2004) argue, peri-urbanisation encompasses change of rural land uses to urban uses, which entails unavoidable changes in land-holding patterns. Peri-urbanisation, and by extension changes to land tenure, is more rapid in the developing regions like Africa than in the developed world (Adam, 2014). This rapid transformation results in higher demand for land, which is supplied by surrounding customary land in adjoining communities. Adam (2014) further argues that rapid peri-urbanisation causes land grabbing and speculation in peri-urban areas. As noted above, it is this pressure that complements commodification and transactions in customary land by traditional authorities. Adam (2014: 22) therefore states land transactions are concentrated in peri-urban areas and ‘most new land rights are expected to emerge there.’ This is also why neo-customary land tenure exists in peri-urban areas (Wamukaya and Mbathi, 2019). Hence peri-urbanisation constitutes an a driving force of changes in land tenure and the peri-urbanisation concept serves as an important lens for understanding changes in land rights such as usufruct rights. In general the concept of peri-urbanisation and its associated effects are far clearer than the question of which area in the city region is peri-urban and which area is not. This matter is discussed in the subsection that follows.

2.4.2 Peri-urban area

The definition of peri-urbanisation above already gives some clues as to what a peri-urban area is. These include an area that is ‘more urban in character’ (Webster, 2005) and an area that is at the ‘boundaries of cities’ (Cadene, 2005). But peri-urban areas are essentially diverse, based on context, and it is difficult to reach a true definition of the peri-urban concept, and in that sense what follows is a review its possible meanings to give further guidance regarding my case study selections. This complication increases when peri-urban areas are compared to related terms such as urban fringe, rural urban fringe, and urban transition zone (Putta and Ravadi, 2014), others including the suburban, rurban or semi-urban (Jaquinta and Drescher, 2000). Nonetheless, all these words are used to describe various processes situated and occurring between cities and villages (Putta and Ravadi, 2014). The lack of consensus on the definition of what constitutes a peri-urban area is also a result of the

fact that there is no universal definition of urban areas (Lerner and Eakin, 2011). Accordingly, Iaquina and Drescher (2000) argue that researchers from different perspectives use the term peri-urban in ways that seemingly contradict one another, highlighting the difficulty in conceptualising a uniform peri-urban area. However, the two broad ways that peri-urban areas are conceptualised are: a peri-urban area as not rural and not urban, and a peri-urban area as an unstable and moving landscape.

Lerner and Eakin (2011) state that researchers traditionally viewed urban and rural areas as a dichotomy and argue that the understanding of these places as a fusion of spaces challenged the rural-urban dichotomy, a conceptual challenge that was bridged by the emergence of the term peri-urban (Adam, 2014). Thus, peri-urban area is an 'exurban' area, which is 'not rural but not yet urban' (Lerner and Eakin, 2011: 313). But there are other terms which also refer to places that are neither urban nor rural. For instance Iaquina and Drescher's (2000: 6) argue that alternative terms such as 'suburban have been used variously to describe environments which are in some meaningful way neither rural nor urban yet embodying elements of both.' Similarly, villages that are supposed to be rural are sometimes associated with peri-urban areas. An example is the 'village peri-urban', which Iaquina and Drescher (2000: 6) define as an area that is not proximate to an urban area but experiencing 'social psychological dimensions of urbanisation', and hence, certain peri-urban areas may not be physically built-up in the context of urban areas. Antrop (2000: 258) corroborates this lesser physicality defining a peri-urban area by describing it as 'cultural and sociological change caused by the transformation of rural life styles into urban like ones.' These changes in lifestyles in turn cause changes in the way the residents view their traditions and values (ibid.). Accordingly, peri-urban areas can be sub-categorised as inner areas of direct impact and outer zones of influence (Simon, McGregor and Nsiah-Gyabaa, 2004; Simon, McGregor and Thompson, 2006). The consciousness of what constitutes urban, and by implication what is not rural, also falls under the idea of peri-urban as not rural and not urban, hence having a socio-psychological component (Fischer, 1984).

Peri-urban areas are unstable and permanently shifting, i.e. as initially peri-urban areas become urban, new peri-urban areas are formed from hitherto rural areas. This is in line with the description of peri-urban areas as transition areas moving strictly from rural to urban by Council of Europe's Conference of Ministers responsible for Spatial/Regional Planning (2007). Similarly, Simon (2008: 171) views peri-urban area as moving from urban to rural,

thus as rural areas become peri-urban, peri-urban areas become absorbed into urban areas. Either way, peri-urban areas are dynamic rather than predefined areas (Rauws and de Roo, 2011). In particular this explains why peri-urban places are also classified based on phases of settlement formation as incipient, intermediate and consolidated. Thus, Wamukaya and Mbathi (2019: 171) argue that it is ‘more useful to conceive of an urban-rural continuum or gradient outwards from the city across the peri-urban interface.’

In this thesis, I use the term peri-urban area as places which are ‘in some meaningful way neither rural nor urban yet embodying elements of both’ and include peri-urban villages (Jaquinta and Drescher, 2000: 6). In West African countries, peri-urban areas include land on the outskirts of urban areas (Nyasulu, 2012), while Simon, *et al.* (2004) and Brook and Davilla (2000) likewise adopt a definition of peri-urban communities to include villages. The reason for this definition is because these villages have fallow agricultural lands subject to competition from people wishing to use it for non-agricultural purposes (Brook and Davilla, 2000; Holland, Kasanga and Lewcock, 1996). Thus peri-urbanisation and suburbanisation also represents ‘all manner of peripheral growth’ involving competitive demand on hitherto rural land (Ekers, Hamel and Keil, 2012: 407). According to Abass, *et al.* (2018) this competition for peri-urban land is because land value diminishes with increasing distance from the city, which has implications for changes to customary land tenure and indigene usufruct rights (Wamukaya and Mbathi, 2019). Thus although they look urban, my case studies, Mangu in Wa and Pramso in Kumasi, have other peri-urban characteristics such as availability of fallow agricultural land and lack of services such as roads. In contrast, Siriyiri in Wa, though rural in appearance, falls within the outer zone of influence of Wa. The case studies in my thesis are therefore examples of the innate diversity of peri-urban areas, likewise aligning with Wamukaya and Mbathi’s (2019) categorisation of peri-urban areas as incipient, intermediate and consolidated, representing fair, medium and high peri-urban areas respectively. This is discussed in Chapter 4 on case study selection.

2.5 Acephalous and centralised societies

Anthropologists have identified two main typologies of African societies, namely those with indigenous governance structures and the others which do not have such structures as an integral part of their historical set-up (Daannaa, 1994). However, few researchers so far have used this distinction in land tenure analysis, even though the substantial difference between

these societies in terms of their leadership structures has implications for their respective systems of land tenure and control over land-related resources. This section discusses these societies and how this distinction nears another identifiable land tenure type, in addition to those discussed in section 2.2.

2.5.1 Centralised societies

Scholars have used many terms to represent societies with governance structures. These include ‘chiefly’, ‘state’ and ‘centralised’ (Abioye, 2011; Daannaa, 1994). From an anthropological perspective, Fortes and Evans-Pritchard (1940) describe the chiefly African civilisations as ‘those societies which have centralised authority, administrative machinery, judicial institutions, in short, government’ (Fortes and Evans-Pritchard, 1940: 5, cited in Daannaa, 1994: 61). Most importantly, in this category of societies, wealth, privilege and status are distributed in accordance with the distribution of power and authority (Fortes and Evans-Pritchard, 1940: 5, cited in Daannaa, 1994: 61). Examples of historically centralised societies in Africa include the Dagbon, Mamprugu, Nanumba, and Gonja in the Northern Region of Ghana (Bening, 1995), the Fanti of Ghana, the Yoruba of Nigeria, the Zulus and Pedi of South Africa, the Bayankole of Uganda and the Bemba of Zimbabwe (Falola, 2000: 151). The Shongai Empire in West Africa is another typical centralised system (Michalopoulos and Papaioannou, 2013). According to Iweriebor (1982: 507), from a pre-colonial perspective a ‘distinguishing feature of this [centralised] system is the existence of one ruler as the focus of power and source of authority’. Examples of these centralised rulers are the *Obi*, *Sarki*, *Oba* and *Aku* in pre-colonial Nigeria and *Ohene* or *Ohene* in Ghana (Hayford, 1903; Iweriebor, 1982). The initial point at which these leaders assumed power is often not known with certainty, the explanations being shrouded in myths and legends through which these rulers secure their legitimacy. Centralised state leadership in these societies is hierarchical with subordinate leaders appointed by those at the top. Subordinate leaders may also be pre-existing in outlying areas but are incorporated into the state system over time (Iweriebor, 1982). The existence of a ruler directly indicates the existence of others having the status of being ruled, and as discussed in Chapter 3, in centralised areas of Ghana, the chiefs are considered rulers and the indigenes their subjects.

2.5.2 Acephalous societies

Contrary to centralised societies, acephalous societies historically had no governance structures and consequently there is no sharp division in wealth, status or rank (Daannaa, 1994 citing Fortes and Evans-Pritchard, 1940). Such societies are also referred as chiefless, stateless, non-centralised or acephalous (Murphy, 2015; Yaro, 2010). According to Daannaa (1994: 62) an acephalous society has ‘no government in the sense of a group able to exercise effective control over both the people and their territory’. These types of societies evolved in such a way that they had neither chiefs as leaders nor a defined political hierarchy. Examples of these societies are the Dagaaba and Sissala of North Western Ghana, and the Grune, Kusasi, and Tallensi tribes in the Upper East Region (Bening, 1995; Yelapaala, 1983). Others include the Ibos of Nigeria, Masai of Kenya and the Nuer of Sudan (Ayittey, 1991). Although both pre-colonially and in the present day acephalous societies have leaders, the leadership structure is unlike rulers in centralised societies who wield power over their people (Yelapaala, 1983).

The leadership structure in acephalous societies is usually less vertical and can even be horizontal. In pre-colonial Nigeria, acephalous societies did not ‘have a single identifiable ruler’ at all and the oldest members of the society governed (Iweriebor, 1982: 508). Decision-making in pre-colonial acephalous societies was undertaken through assembling of community members (ibid.). For Kulere in Central Nigeria, Frank (1990) reports of the existence of men’s associations in the acephalous community with members of the associations representing their clans or lineages. These associations take decisions on community matters, unlike the single leaders acting in centralised societies. Yelapaala (1992) finds that the central authority among the acephalous Dagaaba in North Western Ghana is vested in the elders of various kin-based groups in the area. These groups of elders who are co-equals except for the superior *tindaana* (caretaker of the Earth God) address issues of community interest. Thus acephalousness is not entirely synonymous with absence of leadership. The common features of acephalous systems are autonomy of communities, limited vertical structures of authority and practice of patriarchy (Frank, 1990; Michalopoulos and Papaioannou, 2013; Yelapaala, 1983; Yelapaala, 1992).

As stated earlier (see 2.2.1), land tenure in sub-Saharan Africa revolves around leaders. Given that the centralised and acephalous categories of societies have different leadership configurations, land tenure systems can similarly be categorised as acephalous or centralised.

This supports the notion of pluralism in tenure systems, as discussed above. I briefly review the contributions of small number studies which have acknowledged this distinction in land tenure in the Ghanaian context. Asante (1965) is one of the authors on customary land law principles in Ghana who acknowledged this acephalous and centralised distinction in Ghana. While using complexity as the basis for discussing interests in customary land in centralised areas, Asante acknowledged that acephalous and centralised land tenures are different. Asante (1965: 850) states that his ‘article will deal exclusively with the scheme of interests in the centralised states – a much more complex phenomenon than the scheme in the less centralised states.’ More recently, Yaro (2010) compares the consequence of the reinvention of traditional land tenure in peri-urban communities of Northern Ghana, selecting (Yaro 2010: 206) centralised cases in the Northern Region and acephalous cases in Upper Eastern Ghana to show how modes of accessing land depend on the type of community, either ‘centralised’ or ‘acephalous’. Other studies that touch on the acephalous and centralised polity comparatively include Abdulai and Ndekugri (2007) and Kasanga and Kotey (2001). Abdulai and Ndekugri (2007) studied the support of each of these systems in Kumasi and Wa for housing development as a contribution to the argument that customary land tenure systems do not support individual ownership. Kasanga and Kotey (2001), in investigating changes in customary tenure systems in Ghana, draw cases from mostly acephalous Northern Ghana and centralised Southern Ghana. In their study, they found traditional authorities disregarding indigene entitlements to customary land in peri-urban areas in centralised areas and chiefs and *Tindamba* agitating over land ownership in acephalous areas. Kasanga and Kotey (2001: 27) state that ‘the current urban and peri-urban land market is a rat race, in which most indigenous families, particularly the most vulnerable groups are generally excluded.’

2.6 Property theory: many bundles of rights, one owning entity?

The concept of ownership and property are complex, but are applied in many aspects of life, including land tenure. Cohen (1954: 378) argues that ‘private property is a fact, and not simply a word.’ There are many ways that scholars try to theorise property. Before discussing the theories of property, it is important to state that no matter what the particular theory of property, it is often viewed as an economic asset, a commodity that can be exchanged or applied in settlement of debt. Nonetheless, Cohen (1954: 378) argues that there are facts in life which are ‘valueless property and propertyless value’, thus making the definition of

property as a thing of economic value problematic, albeit that most property has economic value.

A common theory of property is that based on exclusion. This school of thought believes that property rights precede formal law and were based only on exclusion. Thus 'primitive' property rights were de facto before rights became de jure (Krier, 2009: 6). In other words, there was property because possessors of assets could choose to exclude others and not because there was law regulating property (Bowles, 2004). In this concept, the ability to exclude others from the enjoyment of benefits is the overriding feature of property. Thus, Cohen (1954) argues that there is no property if there is only one person since property involves relations between people. Shared possession as the dominant manner of holding in pre-colonial times did not mean an absence of property rights, because individuals sharing possession in common could exclude any person external to the group holding it. In this context, co-owned possession constitutes private 'property' so long as there are external parties to exclude, based on the right of the co-'owners' to exclude non-'owners' (Krier, 2009). This form of group private ownership is termed 'limited-access commons' and is used communally within the group but privately outside the group (Rose, 1998). In contrast to limited-access commons, open-access commons apply in cases where no one has a right to exclude any other person, in which case there is no property (Krier, 2009).

Apart from the exclusion theory of property, there is the view that property and law move hand-in-hand and that property ceases to exist prior to the birth and following the death of law. This view supports the idea of exclusion but bases the power of exclusion in law. For instance Bentham (1882, cited in Krier, 2009: 6) argues that 'before laws were made there was no property; take away laws, and property ceases.' While the concept of property based on exclusion and not law assumes the use of physical force to exclude, the position that law gives birth to property premises exclusion based on state power. Cohen (1954) states that the type of power to exclude is not derived from physical but state power, thus implying that law has to exist for property to arise. Bentham (1882) placed importance on state power by commenting that any power over resources based on only physical strength is tenuous since others can team up against the strongest man, arguing (Bentham, 1882, cited in Cohen, 1954: 372) that 'strong and permanent expectation can result only from the law.' This therefore suggests that property is a function of sovereignty and government, and that in a 'purely communistic state' there can be no private property (Cohen, 1954: 371).

A power theory of property conceives property as dominion over resources backed by the power of exclusion (Eleftheriadis, 1996; Yelapaala, 2000). In absolute ownership, the probability of the owner's dominance over the rights and choice of actual use is attributed to the digit one (1), indicating absolute probability in ownership (Alchian and Demsetz, 1973). Both Eleftheriadis (1996) and Yelapaala (2000) attribute this view of property largely to Sir William Blackstone's commentaries on English Law. Blackstone (1765, cited in Yelapaala, 2000: 6) described property as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.' This power theory of property is inferred from the notion of dominium, which entails '*usus* – the rights to use; *fructus* – the right to the fruits; and *abusus* the right to destroy [dispose of]' (Barry, 2015: 16). The right to destroy, which may or may not mean for profit purposes, means 'the right to completely consume a thing and therefore end its effective existence' (Yelapaala, 2000: 6). Ownership as bundles of rights denotes the possibility that many parties hold different incidents in the same physical resource, but only the entity who holds all these rights at the same time is the owner (Alchian and Demsetz, 1973). The term 'usufruct' rights, derived from *usus* plus *fructus*, refers to a situation in which an entity holds incomplete collection of two of the three rights – to use and to the fruits arising from the use, but not to destroy. In this thesis I use the term 'abusufruct' rights in relation to the notion of dominium to describe the entitlement of indigenes in respect of land in the acephalous case studies. Abusufruct is composed of all the three bundles of rights to dispose for profit (*abusus*), to use (*usus*) and to the fruit of use (*fructus*) but not equivalent to the sum of their individual rights because it is burdened by a ritual role of the *tindaana*. It is worthy to mention at this point that the term 'abusufruct' (ab + usu + fruct) is not in academic use but is not also used here for the first time. The term abusufruct has been used differently in a blog post (<https://culanth.org/fieldsights/high-frequency-gleaning-and-usufruct-freedom>) implying the combination *fructus* and *abusus* (abusu + fruct), that is the rights to use and to dispose but not to manage.

One obvious limitation of Blackstone's view of property is that it narrows property to physical objects (Yelapaala, 2000). The power of absolute exclusion in this definition is also overly excessive and rarely exists (ibid.). Nonetheless, the power to exclude has often formed an important feature of property. According to Justice Holmes (1918) it is the power of exclusion that offers property a legal character. Similarly, Cohen (1954: 374) defines property as that which can be labelled 'keep off X unless you have my permission, which I

may grant or withhold.’ However, Cohen (1954) observes that an essential component of exclusion with regards to property is that a right to exclude may be held exclusively or it may be shared with others. This denotes that there can be a group of owners of the same property. At the same time, the notion of bundles of rights means that there can equally be many holders of various bundles of rights in the same property.

The Hohfeldian approach to property relates to property as bundles of rights but does not emphasise absolute exclusion. Hohfeld (1964) underscores that power and dominion is not attributable to all property rights, rather property rights fall within a continuum ranging from dominion and exclusivity to lack of dominion and exclusivity (*ibid.*). According to Honoré (1961) this conception of property represents modern liberal property theory. Honoré (1961) argues that in the modern liberal approach to property rights, if a thing belongs to a person that person has a total of 11 standard ‘incidents’ of ownership but added that there can be cases in which an ‘owner’ do not have all 11 incidents. On this basis, ownership is a collection of most, not necessarily complete, incidents or bundles of rights contained in an asset. The list of 11 incidents or bundles of rights are the rights to possess, to use, to manage, to the income, to the capital, to security, the incident of transmissibility, the incident of absence of term (no appropriate term to describe a right), the prohibition of harmful use, the liability to execution (in settlement of a debt) and the incident of residuary (reversionary interest) (Barry, 2015).

These discussions above indicate that property rights are capable of residing in different people at a point in time in line with the notion of bundles of rights. But none of these people can be called owners, except if they hold all the rights per the power theory or an adequate number of these rights, as according to the Hohfeldian theory. Therefore the use of the terms ‘owning’ or ‘ownership’ in ordinary communication masks the complexity of ownership (Alchian and Demsetz, 1973). The discussions also show that ownership relates more to the rights and not the physical objects. According to Alchian and Demsetz (1973) it is rights and not physical things that are owned. This is why ‘no one can see property’ (de Soto, 2000: 47). The discussions above again suggest that to defuse confusions over ownership, ownership should be viewed as the highest form of property relation unless applied to a specific right in property. This hierarchical conception of property is a Western notion. The notion of bundles of rights of property ownership in which different entities hold different interests can be applied to the customary land law in Ghana as constructed during colonialism. Ownership under customary land law in Ghana is discussed in the next chapter. Contestations amid

commodification of and changes in customary land tenure revolve around ownership and who has the right to sell land and the right to the revenue (Ubink and Amanor, 2008). The concept of property as bundles of rights is thus a helpful framework in understanding the agency of traditional authorities and households.

2.7 Power and gender in changes in customary land tenure

Manifestations of power imbalances and gender discrimination have often formed an integral part of land tenure studies, and studies on changes to customary tenure are no exception. In this section I discuss these aspects by beginning with power. The general meaning of power is the capacity to cause effects. This is termed ‘power as impact’ in which a person or group causes others to do things they would otherwise not do (Turner, 2005). Power as impact relates to things and people. ‘Power through’ is when people act in unity to have an impact on others or to act through others (ibid.: 6). Power through is differentiated from ‘power with’ in which individuals form teams against autocratic negative power (Gaventa, 2005). Power through is further divided into ‘power as influence’ and ‘power as control’ (Turner, 2005: 6). On the one hand, power as influence is based on the target’s volition, which arises from persuasion through the ‘correctness of some belief or the rightness of some action’ (ibid: 6). On the other hand, power as control is a power exercised through people who act on one’s behalf without being persuaded of the correctness of a belief or the values. Power as control can either take a legitimate form, as authority, or an illegitimate form, as coercion. It is legitimate where the target, though not persuaded of the belief or act itself, is persuaded by the prescriber’s position in the group and by the collective will of the group. Coercion is control in which an agent attempts to let others act against their will and interest but in the will and interest of the agent. Coercion is the least effective exercise of power and is used in the absence of power as influence and as authority. Similarly, one exercises power as impact when one does not have power through. The description of influence and legitimate control clarifies that persuasion is the power to let people believe that things are correct, whereas authority is the power to influence members within a particular group as a result of their belief that it is rightful for a particular person to control them (ibid.).

Two theories of power can be identified: the standard theory and the three-process theory of power. The latter is associated with Turner (2005) and is mainly based in social psychology. Contrarily, several authors identify with the standard theory of power. This defines power as

the capacity for an agent to influence a target and this capacity to influence is in turn based on the agent's control of resources that the target desires (Festinger, 1953). In this regard, dependency is a basis of submission to influence and therefore influence flows from one direction from haves to have-nots (ibid). Turner, Hogg, Oakes, Reicher and Whetherel (1987) sequence the standard theory of power as flowing from resources to power to influence and finally to psychological group formation. Hence Turner, *et al.* (1987) view control of resources as giving power to people to influence, whereby mutual influence between people who depend on each other produces shared values, leading to cohesion and group formation. According to Turner (2005) one of the important problems with the standard theory of power is that it cannot explain certain historical events and social changes in which influence precedes control of resources and power. An example is new social movements, such as Christianity gaining adherents despite initially lacking resources and prestige. Turner (2005: 10) therefore theorises power inversely to the standard theory that

‘the development of a shared social identity, gives rise to influence between group members, that mutual influence is the basis of power (the capacity to persuade and/or control others to carry out one's will) and that it is power which enables people to gain and control resources.’

For Turner (2005), power involves three processes of persuasion (influence), authority and coercion with shared interests and group formation as the basis of power. Turner (2005) argues that except for power in the form of coercion, power (as persuasion and authority) is not oppressive or a detriment in itself to social cohesion. Nonetheless, there is an opportunity for those with authority to be tempted to use coercion, to differentiate themselves from their followers and to develop self-interests. A dominant group, which has differentiated itself and developed self-interests, will then have to engage in dishonesty through deception, manipulation and coercion because of the lack of a common good in their motives (ibid.).

In sub-Saharan Africa, traditional authorities wield power and are at the forefront of land management and administration (Delville, 2007). According to Delville (2007) territorial control and land tenure principles in sub-Saharan Africa reside with traditional authorities because they have a legitimacy that is derived from founding lineage and their alliance with religious and political forces. The control of land by traditional authorities is seen as a source of power for them. Thus Chitonge (2017b) suggests that privatisation of customary land in Zambia undermines the power and future of chiefs. According to Iweriebor (1982) another

source of power for traditional authorities besides land is either the higher economic position of traditional authorities compared to their subjects or the manipulation of their subjects' religious and spiritual beliefs. These arguments concerning the sources of power of traditional authorities reflects both the standard theory of power and the three process theories of power – resource control gives rise to power or power allows control over resources. In relation to property theory, as discussed above but in a broader sense, bundles of power give access to resources, but not only as ownership of bundles of rights. Thus Ribot and Peluso (2003: 153) define access as the 'ability to derive benefits from things.' As I discuss in my next chapter, certain factors such as gender and position in leadership in Ghana ensure that individuals assume advantaged positions in accessing benefits in land while others do not. I now turn to the discussion of gender discrimination in changes in customary land tenure.

Usually, gender as a lens is simply considered as separately understanding the role and experience of men and women (Archambault and Zoomers, 2015). Gender is an important dimension in land access and it continues to be a serious consideration in studies of changes in customary land tenure. Archambault and Zoomers (2015: 1) argue that 'transformations in land governance are having widespread gendered impacts as they reconfigure men's and women's rights and access to land.' Although this position of Archambault and Zoomers (2015) is impartial, research often focuses on understanding women's limited access to land and the insecurity of their tenure. It is common to see the category 'women' instead of gender in land tenure studies (Kark, 2005; Kevane and Leslie, 2008). This may be a result of the general perception that women occupy a disadvantaged position in society, but the facts do point to the disadvantaged position of women in access to land. International census data as reported by the Food and Agriculture Organisation of the United Nations (2010) show that only 20 percent of women are holders of agricultural land. Kark (2005: 12) states that 'women's rights to arable land are weaker than those of men in developing countries. With regards to the size of physical parcels of land women hold, Archambault and Zoomers (2015) find that in Central, Western and Northern Africa women hold less than 10 per cent of land in a country. This is a very small quantity of land under the control of women. Yet in another respect, women hold only certain rights in parcels of land and not ownership. For instance, Moore and Vaughan (1994) argue that women are generally considered owners of the fruits of their labour on land and not of land itself. Similarly Kark (2005) states that although women may be able to secure leaseholds, women's right to land in Africa is limited to use

rights. In relation to the property theory discussed above, women are holders of bundles of rights and not owners in the sense of ability to absolutely exclude others.

According to Namubiru-Mwaura (2014), women's access to land is disadvantaged by social recognisability although it often meets legal recognition and external enforceability. Whereas policies are crafted to secure the land rights of women, there is often no accompanying social acceptance of those policies (Namubiru-Mwaura, 2014). One important issue of social recognisability of women's rights in land is patriarchy. Kameri-Mbote (2006: 11) states that '[t]he predominance of patriarchy in law, policy, and practice ensures that the land has owners but that they are not women'. Kevane and Leslie (2008) find that women's access to land and the prevalence of exercising their land rights in many sub-Saharan African countries are diminishing over time. This limited access to land by women is, however, dependent on other factors and differs from one locality to the other. For instance Cotula, *et al.* (2004) argue that women in Africa enjoy limited rights to land although this limitation is less in matrilineal systems. Chilivumbo (1971) reveals an exception in Malawi where women own land whereas men take care of it.

The nature of marriage regime in a locality also determines the nature of women's land rights. According to Namubiru-Mwaura (2014), most countries either have separation of property in marriage or joint ownership of property in marriage. In areas with patrilineal rules or patrilocal areas, women often relocate to their husbands' communities. China is an example of this setup where daughters do not have land rights in their parents communities and they do not receive same in communities that they get married to. As a result of this custom, husbands, and not wives possess the control over land (*ibid*). In the acephalous areas of Upper West Region of Ghana where two of my case studies are located, the situation is similar to the Chinese example presented in Namubiru-Mwaura (2014). Kuusaana *et al.* (2013: 71) reveal that unmarried women in Wa, the capital of the Upper West Region are regarded as 'non-permanent members of their natal homes', and are therefore expected to move out of the family upon marriage. At the same time, married women at their marital homes are regarded as property of the husband and therefore cannot own property (*ibid*). As a result, Kuusaana *et al.* (2013) found that in 2009 only 38 percent of women in the Wa Municipality owning land. This margin of women's land ownership may even have increased up to this 38 percent due to commodification of land which favours ability to pay for land. My case studies in Wa show that women's access to land is still mediated to varying degrees

by tradition. Due to her socio-economic standing the acephalous woman is therefore very limited in her ability to access land for ownership.

In the centralised Ashanti society in Ghana, the position of women is different from that of their acephalous counterparts in the foregoing. In Ashanti, women play pivotal roles in society including leadership (chieftaincy), inheritance and the continuity of the lineage (Asiama, 1997). The societal system in Kumasi and Ashanti is matrilineal and the maternal family succeeds a deceased property. Asiama (1997) recalls a tradition during marriage in Ashanti whereby the bride's family informs the groom that any property (including children) acquired by the bride belongs to the extended maternal family of the bride. Yet the woman has an additional advantage of benefiting from the husband through inheritance of his property (ibid). Women therefore determine the continuity of the lineage and are at the centre of the family in Ashanti. This conspicuous role of women in the centralised land tenure system in the Ashanti region shows that their access to property including land is relatively advantaged compared with the acephalous woman. My case studies in both Kumasi and Wa show ways in which gender forms an important considerations in changes in usufruct rights amid changes in customary land tenure.

2.8 The agency of indigenes in neo-customary land delivery

This section discusses co-production as a possible response to social exclusion and adverse incorporation in neo-customary land tenure. A simple definition of co-production is 'working together' (Wilson, 1992: 83). According to Wilson (1992: 83) this definition of co-production, although simple, is highly analogous to 'asking how long is a string?' Defining co-production in this way also makes it difficult to distinguish co-production from collaboration or partnership. This indicates the essentially complicated nature of co-production, but the goal here is not to clarify this uncertainty. Instead, in my thesis I draw on the term co-production to try to explain the emergent activism of indigenes against traditional authorities to accrue benefits such as basic amenities. The funding of these services results from peri-urban land value that emerges from conversion of usufruct rights to market value. In short, I try to apply co-production to native land management. In much of the literature on co-production this concept involves the state or state agencies as the focus of resource or power flow, hence the relation of co-production with public services. However, a limited

number of studies apply co-production in the informal sense, for instance as involving traditional authorities as native governing bodies and their subjects as the citizens.

The term co-production first emerged in the 1970s and is often attributed to Ostrom (1972) (see Poocharoen and Ting, 2015; Watson, 2014). Ostrom (1996: 1073) defines co-production as ‘a process through which inputs from individuals who are not “in” the same organisation are transformed into goods and services.’ As a term first applied in economics and public administration, co-production concerns the provision of public services, whereby state actors and citizens contribute in different but complementary ways to deliver these services (Galuszka, 2019; Watson, 2014). Therefore, traditionally, co-production involves a direct relation between communities and the state in what Watson (2014: 63) terms ‘state-society engagement’. Co-production in this context excludes non-governmental organisations as actors (*ibid.*). Decades later co-production was applied in development studies and urban governance with the aim of reorganising the relationship between urban dwellers and urban powers (Galuszka, 2019). For instance Mitlin (2008) applies co-production to the activities of social movements in cities in the Global South. Social movements are mobilised groups that undertake collective action to change socio-economic and political systems through protests and networks (Bebbington, Mitlin, Mogaladi, Scurrah and Bielich, 2010). This form of co-production involves non-governmental organisational. According to Mitlin (2008: 339) co-production through social movements ‘enable individual members and their associations to secure effective relations with state institutions that address both immediate basic needs and enable them to negotiate for greater benefits.’ On this basis, more recently co-production (social movement-initiated) generally reflects processes of ‘civil society activism’ (Galuszka, 2019: 1). Co-production in urban governance is considered a key factor that engenders change in urban governance structures, as opposed to the narrow project-based engagements.

In applying co-production to the study of customary land management, I substitute the state or government in co-production with the traditional governance structures overseen by traditional authorities and the citizens with indigenes as subjects of traditional authorities. In this sense co-production is used in the logic of a general ‘engagement by different stakeholders’ (Galuszka, 2018: 2) and therefore as a grassroots approach to meet ‘immediate needs ... and greater control over resources’ (Akaateba, 2018: 37). This can be termed co-production for inclusion. In many studies of changes in customary land tenure in urban and peri-urban environments, traditional authorities are shown to be experiencing increasing opposition from indigenes over their exclusion from the emergent market value of mostly

neo-customary land. In numerous instances this indigene activism produces certain desired outcomes that otherwise, in the absence of indigene agency, would not accrue (Ubink, 2008c). Therefore activism and agency constitutes a response to exclusion or adverse incorporation.

On one hand, the idea of social exclusion focuses on the ways in which institutions enhance or restrict people's access to resources. De Haan and Zoomers (2005) define social exclusion as the monopolisation of power and opportunities to the advantage of the few and to the detriment of others through several processes. According to de Haan and Zoomers (2005) those who exclude justify their actions by referring to factors such as the rule of law. In essence, social exclusion involves depriving people of their rights and opportunities through denial of equal citizenship among groups (Berry, 1993). Adverse incorporation, on the other hand, concerns deprivation of people by wrongful inclusion. Sen (2000) defines adverse incorporation as the inclusion of people in systems but an inclusion on unfavourable terms and conditions and usually against the will of the included. This implies that the terms under which people are included in systems are as important as the act of inclusion itself (Nyasulu, 2012). Adverse incorporation therefore compliments social exclusion in explaining exclusion, and both concepts are therefore important in this study.

2.9 The state of knowledge in relation to changing customary land tenure and its nexus with peri-urbanisation

This section highlights the state of knowledge for two important themes in the thesis and thereby presents gaps in the literature to which the thesis makes contributions. I begin with the land tenure literature before discussing the changes in customary land tenure and its connection with peri-urbanisation. As discussed in chapter three, the authorships of Gold Coast's (now Ghana) elites that sought to resist colonial appropriation of land, form important literature that documented customary land tenure principles during colonialism in Ghana. The works of John Mensah Sarbah (1897) and Casely Hayford (1898; 1903) are particularly notable for the colonial era. After independence, the works of Asante (1965), Bentsi-Enchill (1964), Ollenu (1962), Woodman (1967; 1968), and later Agbosu (1982) among others constitute an appraisal of the earlier literature on customary land tenure principles in colonial Ghana. In depth as this literature is, it concentrates on centralised areas in Southern Ghana and has not covered the interests in land in acephalous areas, which are

mostly in the northern parts of Ghana. Emerging literature on the construction of land tenure in the acephalous areas of northern Ghana, including Agbosu (1980), Bening (1995), Kasanga and Kotey (2001), Kunbuor (2002), and Lentz (2010), has as yet neither identified consolidated principles of customary land tenure applicable to these acephalous areas nor compared these with customary land tenure principles in the centralised counterpart. Abdulai (1986) who has presented a systematic account of land tenure for the northern part of Ghana focused on the people of Dagomba who are historically centralised to a large extent. The existing literature to date is therefore largely silent on matters relating to acephalous land tenure in Ghana. This gap is expected because land in northern Ghana generally was not subject to pressures such as colonial appropriation, rush for concession and litigations that contributed to the formation of customary land tenure principles during colonial rule in centralised areas of the south of Ghana (Agbosu, 1980). Indeed, the northern parts of Ghana were the last to be added to the early colonial Gold Coast colony as northern territories (ibid). In addition, in the acephalous and even centralised areas of the north ‘attitudes to land rights were completely different’ from that of the centralised southern Ghana (ibid: 110).

As a result of the inadequate attention to the construction of land tenure in acephalous areas as discussed above, a few pieces of literature (Abdulai and Ndekugri, 2006; Yaro, 2012; Kasanga and Kotey, 2001) on customary land tenure analyses, relate centralised land tenure to acephalous land tenure. In the specific aspect of changes in usufruct rights, no single literature has been found comparing the two land tenure typology in Ghana. My review of this literature has shown that very little has been published on the appraisal of interests in respect of customary land in Ghana after the fourth republic of Ghana in 1993. The body of literature that analyses changes in customary land tenure does utilise the bundle of rights framework, however, it does not set out to understand its status in the neo-customary land tenure of the contemporary fourth republic (see Kasanga and Kotey, 2001; Akrofi, 2013; Ubink, 2008a; 2008b; 2008c; Amanor, 2008; Nyasulu, 2012). The manner in which the status of interests in respect of land in customary land tenure including usufruct rights relates to exclusion needs a dedicated focus. This thesis contributes in these regards by making an attempt to form the interests in land in acephalous Wa and by presenting an appraisal of usufruct rights in centralised Kumasi using the narratives in the case studies.

The second important body of literature relevant to this thesis is that which borders on the links between peri-urbanisation and changes in customary land tenure in sub-Saharan Africa. It has already been established in this Chapter that colonial rule and land reform are

important drivers of change in the customary land tenure systems in sub-Saharan Africa. The twin-factors of commodification of land and peri-urbanisation constitute other influences that attract recent attention with respect to changes in customary land tenure. Literature related to this has been discussed in this Chapter and in chapter three. This has analysed relationships in this nexus between peri-urbanisation (and related land commodification) and changes in customary land tenure. In relation to Ghana, key among this literature is Akaateba (2018), Akaateba (2019), Akrofi and Whittal (2011a; 2011b), Akrofi (2013), Kasanga and Kotey (2001), Maxwell *et al.* (1998), Nyasulu (2012), Owusu (2008), Ubink (2008a; 2008c), Ubink and Amanor (2008), and Yaro (2012). In relation to this theme elsewhere in sub-Saharan Africa, Adam (2014), Chimhowu (2019), Chitonge *et al.* (2017a; 2017b), Cotula (2007), Durand-Lasserve and Mattingly (2003), Wamukaya and Mbathi (2019) among others have built on this theme.

In this body of literature in the paragraph above, it is clear that changes to land rights are most prominent in peri-urban communities which also experience rapid commodification of land, exclusionary tendencies and contestations over access to land and the rules governing access. Across this literature, authors point to the fact that tensions persist in the conversion of rural land to urban uses. These pressures in the neo-customary land tenure are evidence that does not support earlier thesis that customary tenure systems are negotiable (see Kasanga, 1996). The consensus in the recent literature discussed above is that customary land tenure systems may be flexible due to their reliance on unwritten customs, yet that very feature allows them to be manipulated by customary power holders to their benefit but to the detriment of the majority with less power to negotiate favourably (Akaateba, 2018; Akaateba, 2019; Akrofi, 2013; Nyasulu, 2012; Ubink, 2008a; 2008c; Ubink and Amanor, 2008; Yaro, 2012). This current evidence emerges against the prevailing hybrid adaptation land reform model in sub-Saharan Africa which I discuss in section 2.3 above (Akaateba, 2018; 2019; Hull *et al.* 2019). However, again with the exception of Yaro (2012), this body of literature does not analyse the peri-urban and land rights transformation convergence in relation to acephalous societies. Therefore, this thesis with case studies in acephalous Wa contributes an important component to this broad body of knowledge that investigates the vibrant relation between peri-urban land commodification and changes in customary land tenure.

2.10 Changes in customary land tenure imply changes in usufruct rights: conceptual framework

As discussed in section 2.2, one of the first shifts in land tenure in sub-Saharan Africa was that its classical customary land tenure system altered amid colonisation to become the customary land tenure system as practised in rural areas of Africa today. Post-colonial land reforms – informed by evolutionary, modernisation and neo-liberal theories, among others – then brought changes to the customary land tenure system. The latter changes express themselves as the co-existence of individual and/or formal land tenure with customary land tenure. This blend of land tenures constitutes what has been described in the literature as the dual land tenure system in Sub-Saharan Africa. In turn, within the last two decades up to the period of my research (2018–2020), the idea of neo-customary land tenure, mostly in peri-urban areas, has been understood to co-exist with dual land tenure in sub-Saharan Africa implying that a pluralistic and not a dual land tenure system is in operation. These changes in customary land tenure also imply changes in usufruct rights, which the majority of ‘ordinary’ indigenes hold in land in sub-Saharan Africa. The changes in customary land tenure, and hence in usufruct rights, are ultimately influenced by land reform theories and fuelled by socio-political and economic factors, such as peri-urbanisation. This section synthesises the theoretical and conceptual framework (represented diagrammatically in figure 2.2 below) that guides the investigation of the changes in usufruct rights amid changes in customary land tenure.

2.10.1 Changes in the customary land tenure system in the context land tenure reform

As discussed in section 2.3, land tenure reforms informed by modernisation, evolutionary and neo-liberal theories constitute changes in customary land tenure in Sub-Saharan Africa. Based on empirical research and the logics of evolutionary, modernisation and neo-liberal theories, the nature of the classical customary and the customary (i.e. as formed in the colonial period) land tenure systems were thought to hinder economic progress in sub-Saharan Africa countries. Land individualisation and formalisation reforms that aligned with these theories were undertaken to address weaknesses that were thought to exist in these systems, yet many studies which have evaluated the outcomes of these specific types of reforms found little merit to support the stated land-reform aims. As a result attention on land reform then returned to building on customary tenure systems, and hence the current land tenure reform agenda tends towards the adaptation and even preservation of customary land

tenure systems as against their replacement (Akaateba, 2018; Hull, *et al.*, 2019). Nonetheless, this step-forward-step-backwards fashion of land reforms in fact causes irreversible changes to the customary land tenure system in sub-Saharan Africa (Chimhowu, 2019). As such, the theories which informed land reform and have ultimately influenced the changes in customary land tenure in sub-Saharan Africa are useful in investigating the changes to the usufruct rights in customary land tenure.

2.10.2 Peri-urbanisation and land commodification as drivers of changes in customary land tenure

High demand for land in peri-urban areas subject land to physical transformations and concurrently converts customary land rights from communal to individual and from informal to formal rights (Akaateba, 2018; Nyasulu, 2012; Ubink, 2008a). Peri-urbanisation also leads to the creation of neo-customary land tenures (Wamukaya and Mbathi, 2019). Thus as peri-urbanisation occurs in time and space, land rights transform. Moreover, commodification of customary land per se represents a change to customary land tenure because prior to it the classical customary land tenures did not have a market value (Chitonge, *et al.*, 2017a). Again, just like peri-urbanisation, commodification fuels conversion of customary land rights to individual and formal land rights, although this conversion is accentuated by reforms entailing individualisation and formalisation. Amid the conversion of customary rights, customary land that does not have a market value changes to neo-customary land, against which rights are held that allow the rights-holder to reap a market value. Amid the change of communal land rights to individual and/or formal land rights, one expects a conversion process, which ensures that valueless land-right holders become holders of the proportionate market value of their commodified and individualised rights. However, as noted in Chapter 1 traditional authorities are accused of accumulating such value to the detriment of indigenes. Therefore, apart from land reforms, ongoing peri-urbanisation and land commodification processes inevitably constitute socio-political and economic drivers of the changes in customary land tenure, and hence in changes in usufruct rights. Peri-urbanisation and land commodification are therefore central in the conceptual framework for this study, as represented in figure 2.2 below. In this framework, the usufruct rights of indigenes as a component of customary land as property are the focus of change and are conceptualised as undergoing transformations that are inherent in the changes of the customary land tenure system.

2.10.3 Contextualising changes in usufruct rights

Property as bundles of rights presents a possibility for several people to have rights in the same parcel of land. As demonstrated in Chapter 3, property theory as applied to Ghana shows that customary law follows the bundles-of-rights logic and recognises that indigenes are entitled to usufruct rights. Thus property theory, as discussed in section 2.6, serves as a background to indigene entitlements in customary land. I draw on the notion of bundles of rights in property theory in tandem with the interests in customary land law in Ghana to position usufruct rights as indigene entitlements in customary land. Positive and adverse changes to usufruct rights amid changes in customary land tenure then serves as the basis of the plausibility of indigene exclusion from access to neo-customary land. In this thesis, changes in usufruct rights include changes in its commodification, individualisation, conversion into leases and value, and changes in who holds them. One important object is to understand whether usufruct rights only change their form, such as from non-commodified and communal to commodified and individualised, in which case the resultant market value remains with indigenes.

In doing so, I draw on concepts of power, gender and co-production as other determinants of differential access to land by indigenes and therefore the plausibility of exclusion of indigenes amid changes in usufruct rights. Power imbalances and gender discriminations influence who gains and who loses amid changes in usufruct rights. The roles of stakeholders (co-production) in customary land management shape changes in usufruct rights. In particular, contestations between indigenes and traditional authorities point to possible co-production and reflect the involvement or otherwise of indigenes in the changes in usufruct rights. Contradictions over what constitutes ‘ownership’ engender contestations over emergent market value in neo-customary land tenure, although in customary law principles the entitlements of indigenes and of traditional authorities are less contradictory. These aspects are discussed in the refined conceptual framework in Chapter 3. The decline or enhancement of usufruct rights is dependent on the nature of contemporary usufruct rights, together with the three exclusionary tendencies of power, gender and co-production.

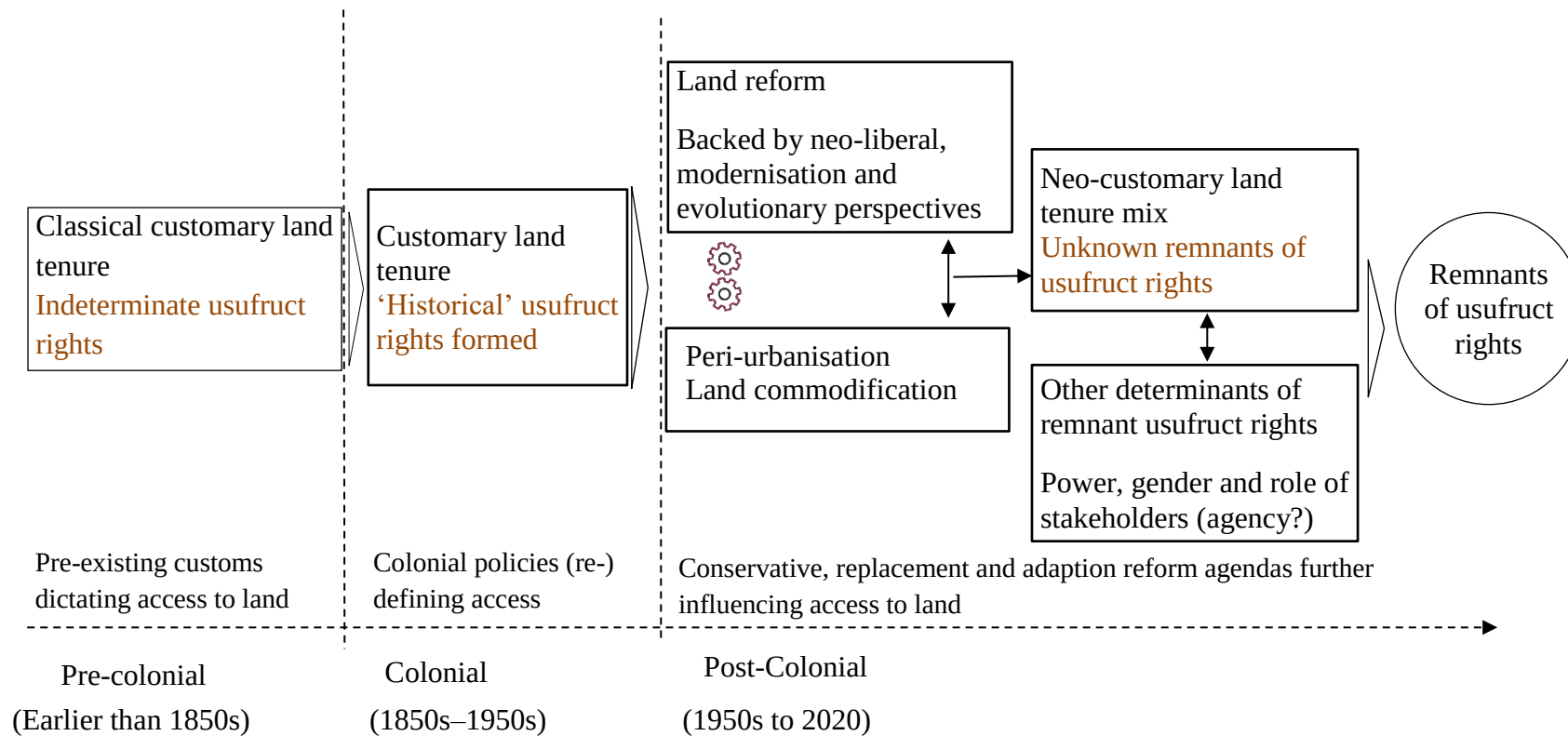


Figure 2.2: Timeline of changes in land tenure: an initial conceptual framework

Source: Author's own construction

2.11 Conclusion

The discussions in this chapter present the theoretical and conceptual frameworks for changes in customary land tenure and the attendant changes to usufruct rights. In section 2.2 it emerges that customary land tenure in sub-Saharan Africa reflects pluralism more so than dualism. The changes of land tenure from classical customary to customary and to neo-customary, and from informal and communal holdings to individual and formal forms of tenure, mean that usufruct rights have also changed, albeit not necessarily proportionally. Nonetheless, I do not base the benchmark of usufruct rights on the classical customary but on the customary (as formed in the colonial period) land tenure system, due to limited knowledge of the nature of usufruct rights in the classical customary land tenure system. My thesis considers contemporary usufruct rights in the context of neo-customary, individual and formal tenures. Given that customary land and usufruct rights are not only individualising but also personalising, there is a need to understand the factors that influence who gains and who loses in the personalisation process. Power imbalances, gender, and the roles of stakeholders amid the changes in usufruct rights are indicators of the inclusions or exclusions of indigenes in the neo-customary land tenure system in peri-urban areas. Thus, contemporary usufruct rights are not only dependent on the changes in customary land tenure but also on these same conceptual factors of power imbalances, gender and role of stakeholders. Overall, the chapter serves as a background for discussing what drives changes in usufruct rights. It subsequently forms a theoretical framework for clarifying whether indigenes are excluded amid changes in customary land tenure, and if so to what extent.

3 CHANGES IN CUSTOMARY LAND TENURE IN THE GHANAIAN CONTEXT

3.1 Introduction

This chapter builds on the previous chapter by extending the theoretical and conceptual framework to the Ghanaian context. It begins with a historical examination of land holding and governance in Ghana. Through this, it contextualises property theory in Ghana by discussing the interests in customary land in Ghana in relation to the bundles-of-rights notion and by unpacking a customary notion of ownership in Ghana. The section contends that usufruct rights constitute an entitlement of indigenes in customary land in Ghana, and, subsequently, present their ‘historical’ nature as a basis for the comparison of the changes that occur to them. The chapter then argues that peri-urbanisation and land commodification constitute important drivers of change in customary land tenure in Ghana. The chapter presents a section on contestations between indigenes and traditional authorities over neo-customary land value. As mentioned in Chapter 1, customary land tenure systems are diverse, and this study drew case studies from acephalous and centralised areas in Ghana, therefore Chapter 3 ends with a detailed account of the nature of acephalous Wa and centralised Kumasi, indicating the uniqueness of each and a brief section on an enhanced theoretical and conceptual framework.

3.2 Land tenure and governance in Ghana: historical context

Land tenure in Ghana is often described as a legally plural system because land holding is regulated by both custom and statute (Larbi, 2005; Nyasulu, 2012). Land in Ghana is consequently categorised as either statutory land (20 per cent) or customary land (80 per cent) (Kasanga and Kotey, 2001). This division is less to do with custom not being law in Ghana, and instead more because the state fails to enforce customary land law. Article 11 of the Constitution of the Republic of Ghana, 1992 defines the laws of Ghana to include the rules of customary law as a subsidiary of the common law of Ghana (Government of Ghana (GoG), 1992). Although customary law is not written, the Constitution of the Republic of Ghana, 1992 states that the existing law of Ghana is comprised of both written and unwritten laws predating the constitution (GoG, 1992). Therefore all land in Ghana is regulated by law, and since states create laws, states are expected to enforce laws whether customary or statutory.

The pluralistic tenure in Ghana therefore is rooted more in the multiplicity of both customary and statutory land laws than in legality and extra-legality.

In Ghana customary law alone is as diverse as the number of communities or groups in Ghana. This is because the 1992 Constitution defines customary law as the rules of law applicable to particular communities in Ghana, and many localities have their own customary laws. Since customary law dictates the actors in customary land tenure, the actors are also multiple. For instance, the actors in customary land in centralised areas differ from those in acephalous areas in Ghana. The written laws, such as acts and the institutions, are also multiple, especially in the colonial and post-colonial eras. In the pre-colonial era, land access in Ghana centred on social and political relations. Access to land was based on first settlement or occupation claims (Nyasulu, 2012). Nyasulu (2012) argues that acquisition of land before independence was through social relations amongst clan members, overseen by family heads, chiefs and clan heads. Land acquisition involved simple processes of a mandatory presenting of drinks and in some instances thanks-giving money (*aseda*) to land owners. Complications in land holding and access intensified in the colonial and post-colonial periods.

Colonial authorities introduced deed registration in 1883 as a reform to secure transactions in land amid confusions during rampant large-scale land acquisitions and grants of concessions for mining (Amanor, 1999; Kuntu-Mensah, 2006). Not long after deed registration, the colonial administration again attempted to introduce two ordinances that aimed at appropriating indigenous land for the British Crown. The ordinances were a Crown Lands Ordinance of 1894 and a Public Lands Bill of 1897, both of which failed due to opposition (Agbosu, 1982; Aryeetey, Ayee, Ninsin and Tsikata, 2007). Another strategy the colonial administration used to control land is the codification of customary laws, which influenced the hitherto much simpler indigenous land administration (Amanor, 1999). As discussed in Chapter 2, this led to the formation of so-called customary land tenure that then continued through to the post-colonial period.

After the failed ordinances, a system of indirect rule became an avenue for the colonial administration to gain control over the land and its resources. Through a Native Administration Ordinance, 1928 land was placed under the management of chiefs who in turn accounted to colonial District Commissioners (Amanor, 2008). Proceeds from land dealings were distributed among chiefs, the district authority and the colonial state. This system

enhanced the authority of chiefs on land matters including the selling of land (ibid.). Nonetheless, rather than truly delegating, the District Commissioners maintained supervision over all land-management roles of the chiefs. Nyasulu (2012) accounts how the Native Authority Law of 1932 was then replaced by a State Council Law of 1952 due to agitations by various chiefs' subjects over poor land management by the latter in mining areas such as Ashanti.¹ The State Council Law established a council made up of representatives of various interests groups and lower-hierarchy chiefs, presided over by a paramount chief (ibid.). It must be noted that British rule in the history of Ghana occurred in temporal and geographical phases. The three political entities are the Gold Coast colony in coastal Ghana, the colony of Ashanti in the middle belt and the Protectorate of the Northern Territories in the northern part of Ghana (Bening, 1995). A Land and Native Rights Ordinance, no. 1 of 1927 and no. 2 of 1931 vested all land in Ghana as public lands under the control of the colonial Governor (Amanor, 2008). Under the same ordinance, rents for occupation of land were paid into the treasury and half of it remitted to the chief of the town for development. The Land and Native Rights Ordinance no. 2 of 1931 vested land in the Northern Territories in similar effect to the earlier system in the Ashanti and Gold Coast colonies but the remittances went to other native authorities administering land instead of the chiefs. In 1932 the Ordinance no. 2 was amended, giving land control back to native authorities in the Northern Territories (Bening, 1995). Other notable colonial legislations include the Land Transactions (Restriction on Operation) Ordinance of 1926 which prevented grants to non-indigenes and Mineral Rights Ordinance of 1904 which regulated grants of land for mining.

After Ghana gained independence in 1957 and republican status in 1960, a State Property and Contracts Act of 1960 transferred land administration from the British Crown to the state of Ghana. An Administration of Lands Act 123 of 1962, placed all stool-land administration under the Minister responsible for land. The term stool as explained further in section 3.3.1 refers to a wooden stool that is symbolic of the office of the traditional authority such as a chief or a king, however it is used interchangeably for the entire customary community or state. The Administration of Lands Act defined stool land as 'land controlled by any person for the stool, clan, company or community ... and all land in the Upper and Northern Regions other than land vested in the President'. This meant almost all unencumbered land in Ghana, except family land and land vested in the president (Asante, 1965; GoG, 1962a). As the

¹ The term *Asante* describes the ethnic group of people in Ghana whereas *Ashanti* refers to the area they occupy.

president was the trustee of stool land, any compensation for deprivation of land use (based on value and benefits derived by indigenes) in respect of stool land was payable to those deprived. In addition, all monies from land transactions were paid into a stool-land account and disbursed to local authorities for the maintenance of stools and traditional councils. Monies were also disbursed for development projects and for scholarships for the benefit of the people in the locality concerned (Bening, 1995). To provide land for national purposes, a State Lands Act 125 of 1962, was enacted to empower the president to compulsorily acquire land subject to payment of compensation. However, owing to the abuse this power of compulsory land acquisition being used for individual than public interests, a Constitutional Commission of 1968 proposed a Lands Commission be established to manage public land (Bening, 1995; GoG, 1962b).

To deprive traditional authorities such as chiefs of their traditional holding of land, a Stool Lands Act 27 of 1960, was enacted to apply to all southern Ghana and Ashanti (Bening, 1995; GoG, 1960). With time, it emerged that the administration of stool land by the state affected the revenue of local councils, and that the concessionaires and grantees of stool land acted in ways that affected natives who had little say. For instance, since the President of Ghana and not traditional authorities or indigenes granted concessions, concessionaires were able to destroy indigene farms without compensation (*ibid.*). The Constitution of the Republic of Ghana, 1969 established the Lands Commission and stool-land accounts, and all stool land was vested back to the appropriate stools instead of the president, save for in the Northern and Upper Regions of Ghana, where instead of reverting to traditional authorities it remained vested in the president, and as such as public land. As a corollary, this also meant that no stool-land accounts were established in the Upper and Northern Regions as a protection for the indigenes there. Parliamentary debates took place with the aim of establishing a parity in land laws, but before this discrimination was corrected a military takeover occurred in 1972 (*ibid.*; GoG, 1969).

The Constitution of the Republic of Ghana, 1979 likewise provided for a Lands Commission and an Office of the Administrator of Stool Lands (OASL), which took over the collection and disbursement of stool-land revenue from chiefs for the first time (GoG, 1979; Nyasulu, 2012). The Constitution of the Republic of Ghana, 1979 then returned land in the northern territories back to the native authorities, rectifying the situation to parallel the previous return of stool land to the chiefs in southern Ghana (Bening, 1995). The current Constitution of the Republic of Ghana, 1992, continues this trend of land being administered by traditional

authorities (GoG, 1992), except land acquired under the State Lands Act and the Administration of Lands Act, which are managed by the Lands Commission (GoG, 1962a; 1962b). Article 267 (1) of the Constitution of the Republic of Ghana, 1992, gave back land management powers to all traditional authorities ‘on behalf of and in trust for the subjects of the stool in accordance with customary law and usage’. The OASL continues to exist under the current constitution, and still collects and disburses stool-land revenue. What is noticeably historically lacking in this constellation of land administration in Ghana is any attention to, or indeed statutes governing, the administration of family land revenue for the benefit of family members in areas where families rather than stool (and skins) control land. Skins are animal skins that are symbolic of the office of the Chief in northern Ghana as the equivalent of the stool in southern Ghana. As shown in my case studies in acephalous Wa, where families control land the regional Lands Commission collects and disburses family land revenue at its own discretion as an improvise.

3.3 Interests in land under the customary law of Ghana

As discussed in the previous chapter, customary land tenure in Ghana is an invention in the colonial period. To successfully vest land itself, the colonial government attempted passing a Crown Lands Ordinance in 1894 and a Lands Bill in 1897. In the late 19th and early 20th Centuries, the indigenous elites of the Gold Coast (now Ghana) authored a number of books to serve as ‘customary’ rules on land and as evidence to challenge these appropriating colonial land laws. These elites were among the few educated indigenes of the then Gold Coast, with backgrounds in law and journalism, and as such able to represent indigenous voices. Their books include those by John Mensah Sarbah (1897) and Casely Hayford (1898; 1903), and this body of elite literature codified ‘indigenous’ practices as forming customary law (Amanor, 2008). Opposition to the failed laws also came from the Aborigines Rights Protection Society, which was a group formed by indigenes against British imperial rule in Ghana (Amanor, 2008). The Aborigines Rights Protection Society also opposed these ordinances by appealing to traditional African land rights, but this was a pseudo-argument, their real target being the fact that the vesting of land in the British Crown would prevent the elites’ engagement in land transactions (Howard, 1978).

As stated in Chapter 2, indirect rule by colonial powers also influenced the formulation of customary land tenure. Amanor (2008: 59) explains that indirect rule was ultimately adopted

as a liberal policy to push West African colonies to produce raw materials for European markets as opposed to the ‘constructivist imperialism’ of direct investment in the African economy. Under indirect rule, colonial administration, including land management, was organised through native authorities who composed mostly of chiefs as native rulers. Based on this Amanor (2008: 60) argues that a ‘theory of African communal tenure was developed, in which land was vested in chiefs to manage on behalf of the communities.’ One might assume that it is this vesting of land control in chiefs that creates a perception of chiefs’ ownership of land under existing customary land tenure in Ghana, but my thesis suggests that it is an inconsistent application of the term ‘ownership’ of land that partly creates this perception. In the sub-section that follows I discuss customary land law in centralised areas and the customary entitlements of indigenes and traditional authorities as representing bundles of rights. Later, in section 3.4, I attempt to demonstrate that ownership is inappropriately applied in neo-customary land tenure, thereby engendering contestations.

3.3.1 Bundles of rights in customary land in Ghana

The basis for bundles of rights in customary land tenure in West Africa and in Ghana is rooted in a seminal court case of *Amodu Tijani vs Secretary, Southern Provinces, Nigeria* (1921). In this case, the West African Court of Appeal ruled that land belongs to the community and is entrusted to the chief for the benefit of the community but not for the chief as an individual (Bening, 1995). In the case, the court did not place emphasis on any physical parcel of land by, for instance, designating portions to the chief and portions to the community. The rule was subsequently widely applied in litigation, and out of that a good number of authors compiled the rules arising from judicial precedents to form customary land-law principles. Therefore the customary bundles of rights and the customary land-law principles in Ghana today indirectly rely on these judicial decisions, since customary law in Ghana is unwritten, as stated earlier (Ubink and Amanor, 2008). I draw on the literature of the early writers of Ghana’s customary law such as Hayford (1903) and early post-colonial writers such as Agbosu (1982), Asante (1965), Bentsi-Enchill (1964), Ollenu (1962), and Woodman (1967; 1968) to present the interests in land held under customary law in relation to bundles of rights. The problem is that the judicial decisions that form customary land-law principles in Ghana concerned centralised southern Ghana. I therefore argue that the bundles of rights in customary land in Ghana, as discussed below, are biased towards centralised societies in Ghana. In Chapter 6, I discuss empirical findings in the Wa case studies in

acephalous Upper Western Ghana suggesting that the bundles of rights there are inconsistent with these centrally formed bundles of rights.

Before discussing the bundles of rights, I present *de facto* physical categorisation of pre-colonial customary land at the time. Hayford (1903), writing from the perspective of the Akan centralised state system, in for instance Ashanti in Ghana, categorises the land of a community or of the native state into three physical land divisions. The first category is land belonging to a traditional authority, such as a chief, as the ancestral property of the chief. The chief can deal in this land with the sanction of his family. The second category of land is the land attached to the stool. The traditional authority as the occupant of the stool can deal in this land with the consent of his/her councillors. The third category is the general land of the state or of the community, which the traditional authority rules over. It is this third category of land that indigenes at the time owned (*ibid.*) but hold use rights over today. Centralised indigene ownership of this third category of land can be likened to indigenes control over land in the acephalous land holding arrangement. However, because today's centralised indigenes are viewed as holding usufruct rights in the third category of land it indicates that traditional authorities have interest in this third category of land as typical of centralised land tenure.

I discuss the customary bundles of rights in the context of the third category of land because, crucially, they are subject to the rights of multiple entities – i.e. both indigene families and traditional authorities. The discussion focuses on these third-category lands also because Hayford (1903) explains that paramountcy, as exercised by traditional authorities over such land, does not carry ownership as discussed below. This third category of land is therefore the land over which indigenes have entitlements. The second category of land is the proper stool land, as stated earlier (*ibid.*). Nonetheless, land tenure literature in Ghana often uses stool land interchangeably for the entire customary land of a community in centralised Ghanaian communities such as Kumasi. Ubink (2008a: 30), for instance, uses stool land interchangeably with customary land, thus inferring that the entire community or native state land is stool land. This is consistent with the definition of stool land by the Administration of Lands Act, as stated in section 3.2 above (GoG, 1962a). However, as Ubink (2008a) states, the term stool also refers to the office of the chief, thus stool land also means land belonging to the office of the chief or king as the case may be. The definition of stool land is therefore very important to the centralised land tenure system but was nonetheless not a well-conceptualised aspect in the formation of customary land tenure principles.

In an appraisal of the bundles of rights in land in customary land of Ghana, Asante (1965: 853) states that title to customary land ‘was one and indivisible and it was exclusively vested in the stool.’ However, over time indigenes, after settlement and commencement of cultivation, established usufruct rights which were not a form of ownership but a perpetual right of beneficial user. Above the usufructuary interest of the indigene is the allodial title belonging to the chief or king as the occupant of, respectively, community or state stool (ibid.). There is also a customary freehold, which a divisional chief or a sub-chief holds (Asante, 1965; Kumbun-Naah, 2006). But Woodman (1968) equates the customary freehold in Ghana to usufruct rights. Regarding the substance, Bentsi-Enchill (1964) states that the allodial interest of the traditional authority does not carry with it any beneficial interest, unlike indigenes who draw benefits and livelihoods from their usufruct rights. The allodial interest is superior or ultimate because it was not granted by another landlord (ibid.). This latter statement by Bentsi-Enchill (1964) suggests that the allodial title of traditional authorities is not superior because of enhanced value.

Both Bentsi-Enchill (1964) and Ollenu (1962) describe these customary land law bundles of rights in a similar manner to Asante (1965) but they rely more on judicial decisions at the time. Asante (1965) combines judicial decisions with practices emerging from socio-economic changes, arguing that commercial agriculture and other permanent land occupations engender changes to the hitherto temporal nature of usufruct rights in Ghana. This body of literature is in agreement that complete fiduciary control over community land resides in traditional authorities and that beneficial or usufructuary control is enjoyed by the indigenes for a potentially perpetual period (Asante, 1962; Ollenu, 1962). Woodman (1968: 80) similarly placed importance on usufruct rights as being a right of possession of part of the community land that ‘citizens’ of the community create and hold to the exclusion of the whole world, including the rest of the community. From the perspective that exclusion constitutes an overriding feature of ownership, as discussed in Chapter 2, indigenes own the usufruct rights. The Land Act 1036 of 2020, has acknowledged six main interests in land in Ghana, namely the allodial title, common law freehold, customary law freehold, usufructuary interest, leasehold interest and customary tenancy. The Land Act describes two ways in which usufruct rights can arise. First is by the exercise of the inherent right by a member of a stool, family or clan. The second means of acquisition of usufruct rights is by non-indigenes settling on land with the permission of the allodial title holder for not less than 50 years,

except where there are agreements that the settlement would not amount to usufruct rights (GoG, 2020).

Recent land tenure studies often rely on the distinction between allodial and usufruct rights in customary land in Ghana in exploring customary tenure issues, such as control of land by chiefs (Ubink, 2008b), accountability in customary land management (Nyasulu, 2012), and peri-urban land rights transformation (Akaateba, 2018). This application of the bundles of rights notion in such studies, and especially the usufruct rights in studies of indigene access to customary land, is relevant because the bundles of rights notion of property is what exists in the customary tenure system in Ghana. Due to the complex customary land tenure arrangements, basing access on physical parcels of land engenders uncertainty and confusion in control over land. For instance, if traditional authorities own the physical parcel of community land, it is plausible and acceptable for indigenes to lose land since indigenes do not own land except that they are co-owners. However, it is not acceptable for indigenes to lose usufruct rights as their entitlement, even if they do not own the land. In discussions of restricted indigene access to land amid changes in customary land tenure, emphasis on usufruct rights as the entitlements of indigenes is important. For instance, stating that there is complete dispossession of usufruct rights of indigenes instead of saying that indigenes ‘lost land’ (Kasanga and Kotey, 2001: 17) serves to clarify the manner of indigene exclusion. Thus changes occurring to the usufruct rights are implicitly inherent in land tenure studies although these studies focus on physical portions of land. A deeper understanding of the manner in which usufruct rights are affected and therefore the manner in which indigenes are excluded is not available in the literature. The usufruct rights approach to exclusion is particularly important in the context of traditional authorities’ claims to own customary land.

The bundles of rights metaphor is illustrated in figure 3.1. The scenario of ownership as bundles of rights and ownership of a physical parcel of land are parallel to each other and can be viewed as literally on top of each other. When treating ownership in land as physical parcel of land (B), the bundles of rights are less important, and when viewing ownership of land as bundles of rights (A), land itself attracts little attention:

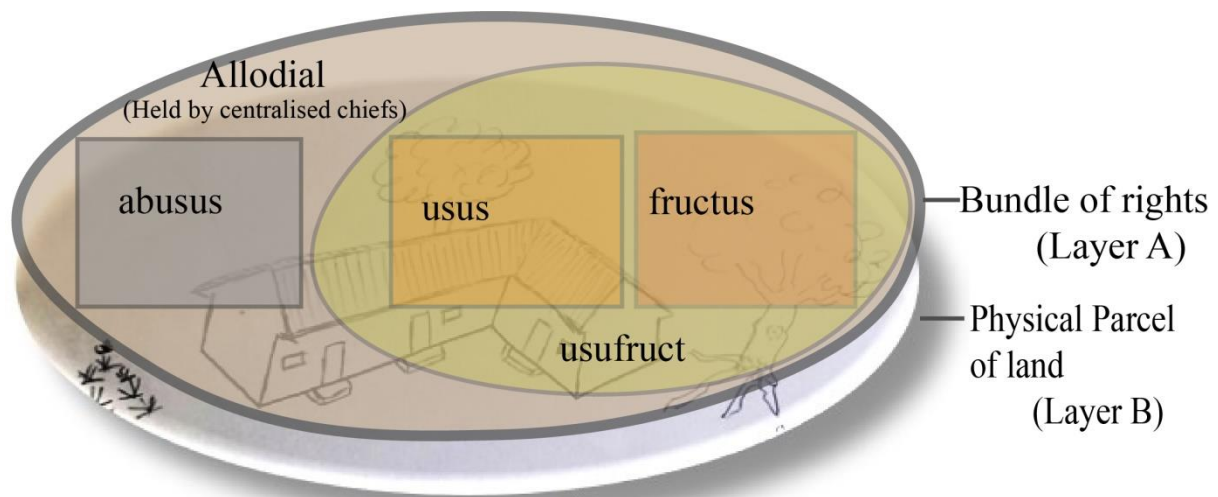


Figure 3.1: Bundles of rights in customary land in Ghana

Source: Author, based on the literature on interests in customary land law in Ghana

3.3.2 Nature of ‘historical’ usufruct rights of indigenes

The basis for usufruct rights of indigenes in ‘customary’ land law in Ghana emerged from the case of *Amodu Tijani vs Secretary, Southern Provinces, Nigeria* (1921) (Ubink and Amanor, 2008). In this case a Chief claimed compensation for the state’s acquisition of community land which he regarded as his personal property. However, the court held that individual ownership was foreign to native custom and that community members hold use rights, whereas the chief was merely a trustee of community land. In order for the chief to succeed, he amended his petition to the British Privy Council to align with the court’s interpretation of communal tenure (ibid.). The second judgement ruled in favour of the chief, and by so doing a precedent was set declaring that community land is managed by the chief for the benefit of the community members who hold use rights. As noted above, the court did not consider the physical parcel of land but the rights of indigenes and of traditional authorities in respect to community land. Usufructs rights did not affect the interest of the traditional authority in community land. Commenting on this, Woodman (1967: 457) argues that ‘the usufruct is an interest normally owned by an individual or a small community, which burdens without extinguishing the ultimate or allodial title vested in a larger community.’

The nature of indigene usufruct rights relates to the origin or acquisition of customary land in Ghana. It is recounted that when tribes settled a particular piece of land – either through conquest, express grant, or settlement by discovery, or by other means (Ollenu, 1962; Sarbah, 1897) – ‘every member of the tribe had equal rights to wander over and hunt upon land which

belonged to the group' (Rattray, 1929: 340, cited in Asante, 1965: 853). This is indicative of a kind of ownership in common, as indicated earlier. In any of these types of acquisition of customary land, indigenes made various sacrifices (Hayford, 1903). For instance in the case of settlement, indigenes expended energy and contributed resources to purchase the group land or to clear larger portions of land so as to increase the territory. Conquest, on the other hand, entailed war and expense of indigene lives (Ollenu, 1962). This scenario is well represented by the Ashanti proverb in Ghana, as noted in Ollenu (1962: 30) that '[i]n the fight, to secure the land and save the [community], no person's ancestor carried two swords, each carried one.' This implies that ancestors of the current indigenes and the traditional authorities as occupants of the stool may have made equal endeavours to acquire the community land, thus representing one source of rightful indigene benefit in respect of customary land in the form of usufruct rights. Woodman (1967: 461) argues that 'the usufruct is a device for apportioning the use of land among members of the stool community'.

The usufruct right of indigenes was therefore a right carved out of vacant community land by a citizen of the community through farming or cultivation on it (see Woodman, 1968). To establish this right, the indigene must actively occupy a portion of community land by for instance farming or building on it (Woodman, 1967). Usufruct rights were either expressly granted where land became scarce or taken in discretion by the indigene through effective occupation and use in communities where land was abundant (Asante, 1962; Woodman, 1967). The following quote from Woodman (1968) summarises the nature of the 'historical' usufruct right.

'[Indigene] membership [in a community] confers legally enforceable privileges on them. The most important privilege is the right to take possession of any vacant land and by cultivating it or building on it, to acquire a title which is maintainable against the whole world, including the community. This title, called here the "usufruct," confers substantial rights of user, and is inheritable, alienable and potentially perpetual.' (Woodman, 1968: 80)

Woodman (1967) emphasised that the Ghanaian usufruct rights conferred more rights on the indigene over and above the rights that the English *usufructus* confers as stated in Chapter 2. The usufruct rights in customary land tenure in Ghana therefore bases on the idea but different from the *usufructus* in Roman law.

Other issues related to the nature of the 'historical' usufruct rights include the following. First, indigenes enjoyed usufruct rights on the condition that they had to acknowledge the presence of the superior allodial title of the traditional authority (Ollenu, 1962). Secondly, usufruct rights were inheritable and were only terminated upon abandonment by indigenes or by an absence of their successors (ibid.), whereby Woodman (1967) argues that although Ollenu (1962) describes usufruct rights as terminable, the termination is similar to the termination of other interests in land, such as the allodial interest. Thirdly, traditional authorities could not alienate usufruct rights without the consent of the indigenes, except for a public cause. This was upheld in the case of *Robertson vs Nii Akramah II* (1973) (Ollenu, 1962). The security of usufruct rights was therefore reasonably assured (Kasanga and Kotey, 2001). As Ollenu (1962) argues, although usufruct rights did not constitute ownership, they consisted perpetual indigene rights to beneficial use in customary land. The fourth factor is that the indigene does not have to cultivate the entire physical parcel of land over which the usufructs are vested in, therefore the general area of land is reserved for the indigene. Fifthly, it was possible for indigenes to grant long term leases and pledge their usufruct rights for a loan, and if defaulted on, the usufruct rights were forfeited. The sixth aspect is that the community did not have power to make grants of land rights that conflict with the usufruct rights of the indigene. Finally, indigenes offered to the traditional authority first fruits harvested from or portions of game killed on the land in every year as a sign of kinship ties (Ollenu, 1962) or allegiance, but not as rent for the use of the land per se (Hayford, 1903). The Land Act, states that usufruct rights are inheritable and alienable and also takes a position on the issue of consent by saying that transfers to non-indigenes require the consent of the allodial title holder (GoG, 2020).

In comparison with usufruct rights, the allodial interest which the traditional authority held in community land was 'as insubstantial as the English Crown's ultimate ownership of all English land' so long as indigenes created usufruct rights on community land (Woodman, 1968: 99). Asante (1965: 856) supports this view when he states that where an indigene created a usufruct right over land, 'ownership [by the chief] connoted a sort of doctrinal myth, rigorously asserted and respectfully acknowledged, but bereft of all significant economic content.' The usufructuary interest was therefore enhanced over the allodial interest.

3.3.3 'Ownership' in customary land in Ghana

Customary land in Ghana is mostly owned by a community as a group (Amanor, 2008). This communal landholding arrangement is likened to the notion of limited-access commons, as discussed in Chapter 2. In accordance with this, community members as co-owners may not be excluded but non-owners such as stranger settlers may be excluded (Joireman, 2011; Krier, 2009). Nonetheless, traditional authorities in centralised communities in Ghana claim to own the community land, as discussed in section 3.4.1, in the context of being able to exclude other community members as co-owners (Ubink, 2008b). Yet indigenes as co-owners hold usufruct rights. Again, the power theory of property and even Honoré's (1961) modern liberal property theory does not support this claim of ownership by traditional authorities. These theories of property tie ownership with the capacity to exclude, yet usufruct rights encumber the interests of traditional authorities who cannot therefore exclude indigenes as holders of usufruct rights. Therefore neither traditional authorities nor indigenes may claim ownership of the community land. In Kumasi, Ubink (2008b) reports examples of contestations between traditional authorities and indigenous families over the right to grant leases out of customary land and over the right to rents.

In this section I attempt to show the contradictions in ownership of physical land and of bundles of rights. The section makes use of the seminal work by Hayford (1903) in order to show how the term 'ownership' was applied historically in customary land tenure among the Akans (including Ashanti) in Ghana. There are very few authors who have written up the history of pre-colonial and colonial customary land tenure in Ghana, leaving Hayford (1903) as a particularly valuable source with regards to the manner of ownership in the precolonial time. This discussion serves as a background to the dialogue on the entitlement of indigenes in customary land tenure. Chapter 5 of my thesis shows the mixed indigene perceptions of what constitutes their entitlements at the time the research was undertaken, whereas Chapter 7 discusses the ambiguities over abstract and physical ownership. This helps in understanding changes in usufruct rights and the manner of exclusion of indigenes.

Paramountcy has long been understood to precede ownership (Hayford, 1903) and therefore needs to be explained here. Whereas ownership refers to a property relation, paramountcy refers to a kinship relationship in which occupants of land pay allegiance to the grantor of the land they occupy. In this regard it is necessary to recall the first and third categories of customary land as mentioned above, namely land belonging to the traditional authority and

land belonging to the community in general. In a typical centralised native state such as Ashanti, land acquired by conquest or settlement is distributed such that

‘...the Chief Military Commander, who subsequently becomes the king, would have his requisite share [of the land, that is the first category], and so would every member of the community down to the lowest ranks of the fighting men. Thus, each man’s land would be his own special property and that of his family though the king, as overlord of all, would, undoubtedly, exercise sovereignty over the whole land, every inch of which, however, would have an individual family owning it [that is the third category].’ (Hayford, 1903: 46)

In respect of all three categories of land, as mentioned above, the king exercises paramountcy as a sovereign oversight and may ratify indigene grants of the second category of land, but he neither exercises ownership of any portion of that land nor grants it. The indigenes and their families, as the units of land holders thus collectively hold the second category of land. On this basis: Who is entitled to tribute as rent that accrues from these categories of land? Is it the king who exercises paramountcy over the entire native state? For the first question, Hayford (1903) indicates that any indigene holding land, be it the head of a family or not, receives tribute due in respect of the extent of land held.

Concerning the second question, the answer is a straight yes and this generally applies to the community level where the chief locally exercises paramountcy over the community. Thus when a user or licensee uses land owned by the traditional authority (king or chief) the traditional authority receives tribute and is also paramount to the licensee, and by virtue of his paramountcy the user may customarily present an allegiance contribution to the king. Allegiance and not tribute is therefore a test of paramountcy, whereas tribute is the test of ownership. Hayford (1903) mentions an example of a licensee presenting a portion of meat out of game killed to his licensor as tribute, who in turn presented a leg to the village chief as allegiance. This important distinction between ownership and paramountcy, and their respective incidents of tribute and allegiance fee, clearly contribute to understanding the land relations that existed between indigenes and their traditional authorities. Indigenes may have been regarded as owners of the land they held, as Hayford consistently refers to them as such. Thus at one juncture Hayford (1903: 201) proposed that ‘[a]ll Natives, who are entitled by the customary law to rights in land, may make valid grants’ in land. Based on this distinction Hayford argues that court rulings that traditional authorities must necessarily offer consent in

all land transfers was based on a mistaken belief, namely the belief that receipt of allegiance by a chief implied ownership when in fact it indicated paramountcy. Figure 3.2 below illustrates the relation between ownership, allegiance, paramountcy and tribute.

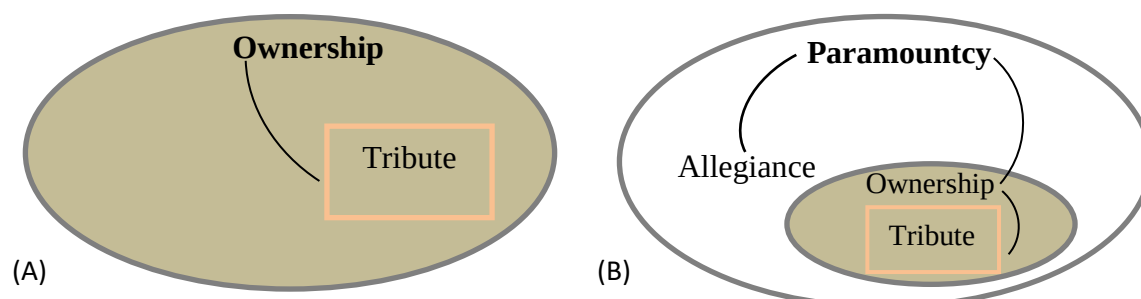


Figure 3.2: Interconnections of paramountcy, ownership, allegiance and tribute

Source: Author, based on Hayford's (1903) interpretations of decided court cases

Consequently, ownership must always inure tribute (rent) if bundle(s) of right(s) are granted out (see A and B) but does not necessarily entail allegiance such as an outright purchase where the purchaser has no future relation whatsoever with the traditional authority (see A). Paramountcy, on the other hand, does not necessarily imply ownership and paramountcy without ownership cannot demand tribute because it cannot grant any rights but always commands allegiance (denoted with the unshaded area in B). Paramountcy that has ownership also has tribute if rights are granted out of the ownership (shaded area in B) in addition to the default allegiance. The rectangles in the diagram above indicate granted rights out of ownership, whereas the shaded ovals indicate bundles of rights in ownership. The fact that indigenes received rents (tribute) for category three parcels of land as discussed above meant that they customarily owned such land, although allegiance went to the traditional authority.

3.4 Contestations over commodified customary land in peri-urban areas of Ghana

Rapid, unregulated peri-urbanisation in sub-Saharan African countries converts customary land, which is mostly agricultural, to urban uses, especially for residential purposes (Cotula and Neves, 2007). This puts pressure on customary land and 'customary chiefs' in Africa may be tempted to dispose of community land without regard to those farming on the land, that is the indigenes as usufruct right holders (ibid.: 21). Thus from a Ghanaian perspective, Cobbinah and Amoako (2014) state that urbanisation processes such as peri-urbanisation

serve as a catalyst to the rapid encroachment of city peripheries. This urban expansion has brought with it research into land use and tenure changes in the peri-urban interfaces in Ghana and in sub-Saharan Africa at large (Mabin, Butcher and Bloch, 2013). Peri-urban land conversion is portrayed in these studies as triggering the commodification of customary land, resulting in complex negotiations and competitions (Chitonge, *et al.*, 2017a; 2017b; Trefon, 2009). It is amid this competition for peri-urban land that traditional authorities undertake customary land transactions and justify land sales with the need to supply land for urban development (Nyasulu, 2012). These transactions in peri-urban customary land are monetary and the new rights created gradually lead to the creation of individual and formal tenures in neo-customary land (Owusu, 2008).

To give more detail to commodification of customary land in Ghana, in precolonial times in many African countries had no market value (Asante, 1965; Chitonge, *et al.*, 2017a). For instance in the Ashanti Kingdom in Ghana, the tradition frowned upon the sale of land because it was deemed as a betrayal of ancestral trust. The common form of access to land at the time was such that those who first settled on a particular parcel of land had claims over the land and had the right to live and produce on that land (Danquah, 1928, cited in Asante, 1965). But socio-economic changes led to land scarcity, land rental within groups, and later land transfers outside groups for financial or other gains (Bentsi-Enchill, 1964). In the conversion of customary land to urban uses, a bottle of schnapps, which was used in exchange for land in Ghana, changes to drink money and then finally to the market value of piece of land (Nyasulu, 2012; Pomevor, 2014). Land reforms, as discussed in Chapter 2, arrived with commodification of customary land in Ghana. First, the immediate post-independence governments introduced the Administration of Lands Act and the Land Registry Act 122 of 1962 to record and secure land transactions (GoG, 1962a; 1962c). Again, Kuusaana and Gerber (2015: 845) state that ‘following the World Bank’s land registration programme, Ghana promulgated the Land Title Registration Law [of] 1986 to aid in land privatisation.’ This perceived security in land transactions plays a role in commodification and individualisation of customary land. These, together with reconfigurations in customary land tenure through which traditional authorities act as if they were owners and not fiduciaries of customary land, promote commodification of customary land (Chauveau and Colin, 2007; Ubink, 2008a). Commodification therefore brings customary land into a land market which peri-urbanisation promotes through increased demand. Both peri-urbanisation and commodification of land constitute important drivers in changes in customary land

tenure. These are relevant for my case studies and empirical evidence regarding both factors is discussed in Chapters 5 and 6.

In Chapter 2 I briefly discussed the concepts of social exclusion and adverse incorporation and how indigene activism serves as a reaction to exclusion. Studies on changes in customary tenure in sub-Saharan Africa often report emerging inequities in the contemporary tenure system. In a departure from either romanticising customary land tenure or arguing for individual land tenure, Peters (2004) argues that research needs to focus on understanding emergent contestations and negotiations in the context of the changing customary land tenure. A number of studies which subscribe to this agenda tend to portray privileged social classes, such as traditional authorities, as the main beneficiaries of market value in changes in customary land tenure, and conversely mostly portray the majority indigenes to be losers in the emergent value of neo-customary land tenure (see Akaateba, 2018; Amanor, 2008; Joireman, 2011; Nyasulu, 2012; Ubink, 2008a; Yaro, 2010; 2012). In my study, exclusion of indigenes is expressly discussed to compliment this literature by comparing the original and existing entitlements of indigenes. In the next sub-section, I review the literature on attempts by traditional authorities to exclude indigenes, and a resultant response of indigenes in neo-customary land tenure in the Ghanaian context.

3.4.1 Traditional authorities' claims of ownership of customary land

Customary land tenure in Ghana supports individual ownership in certain regards, as manifested in the physical categorisation of the customary, as discussed earlier. In support of this, 17th-century Philosophers such as Hobbes asserted that in common ownership, anything taken from the commons is deemed to rightly belong to the one who takes, if there is enough quantity and quality for everyone else in the group. Hobbes, however, foresaw long ongoing contestation over the commons due to regular disregard for such a principle and that a 'state of war' would be a likely consequence (Hobbes, 1651 cited in Krier, 2009: 12). Arising out of this assertion is the understanding that classical customary tenure supports private property.

In the Ghanaian context, Agbosu (1982) states that customary tenure 'comfortably accommodates' new social orders, such as a quest for individual ownership. In Ghana possession and development of assets on community land by indigenes create ownership for the indigenes and their families in the parcel of land so developed (ibid), as can be seen in colonial court cases. The following extract from the case of *Kodadja vs Tekpo* (1931), which

applied the precedent set in *Lokko vs Konklofi* (1907), illustrates the weight attached to potential indigene entitlement in customary land.

‘And I am of opinion further that even if it was stool land given to him, by his father, his possession, continued over a period exceeding 30 years during which he has had the undisturbed and exclusive possession of this land and has made it into a valuable cocoa farm, has now ripened into “ownership” of the land.’ (Agbosu, 1982: 44, citing Chief Justice Deane in *Kodadja vs Tekpo*)

Based on this rule, usufruct rights of indigenes in customary land mature into individual entitlements depending on duration of possession and establishment of valuable assets on the land. Amid changes in customary land tenure this entitlement is contradicted as the usufruct rights of indigenes shift to become a subject of grants by traditional authorities who assert that they own the community land (Ubink, 2008b).

In neo-customary land tenure, traditional authorities offer arbitrary reparation to indigenes for dispossessing them of their usufruct rights (Kasanga and Kotey, 2001; Akaateba, 2018). Indeed, there are instances when traditional authorities do not give compensation at all to indigenes (Ubink, 2008a; Nyasulu, 2012). Access to usufruct rights by indigenes for livelihood activities, mostly farming, is affected (Amanor, 2008; Pomevor, 2014). Thus indigenes do not receive much from the market value of land emerging from land commodification (Yaro, 2012). Owusu (2008) argues that stranger settlers and indigenes in a community are now barely differentiated in terms of access to land-use rights in peri-urban Accra because the ability to pay is the key factor in access to land.

In a good number of studies on changes in customary land tenure, traditional authorities are found to make claims that they own community land, contrary to legal ruling quoted above. These arguments by traditional authorities casts doubt on whether it is proper to describe indigenes as excluded from neo-customary land, since indigenes cannot be excluded from land they do not own. Ubink (2008c), for instance, quotes a Chief in peri-urban Kumasi as saying:

‘[i]t is a law that when the town is growing and it comes to your farm, you [indigene] do not have any land. Because the land is for the Chief...land belongs to the royal family, since it was members of the royal family who fought for the land.’ (Ubink, 2008c: 157)

The Asante proverb quoted in section 3.3.2 runs contrary to this assertion that only the royal family members fought for land. The quotation above also shows that traditional authorities cite land supply for community growth as reason to dispossess indigenes. This was also seen in the case of *Robertson vs Nii Akramah II* (1973) cited in section 3.3.2. Both Yaro (2012) and Akaateba (2018) illustrate similar claims in which chiefs use various means to demonstrate their ownership of land and their liberty to deal with at will. According to Yaro (2012) traditional authorities contradict Ghana's constitution because they reinterpret their trusteeship roles as owners. In the findings of Akaateba (2018), a chief used three aspects of the existence of a community to justify how the chief owns community land and can dispose of it as he wishes: a community exists on a land, the community has a title for a chief, and the chief as owner of the title takes control over the land, hence owns the land (ibid.). The claims of chiefs to own customary land and the consequent offer of arbitrary or no compensation to indigenes indicates an exclusion of indigenes from neo-customary land. In addition, Chiefs consistent references to 'land' in their ownership claims suggests that chiefs ignore the legal and abstract bundles of rights in customary land, as discussed earlier.

These claims by chiefs to own community land are advancing in practice but current land policy fails to address this issue and its exclusionary consequences. In the context of land policy and administration, Amanor (2008: 56) states that '[t]he claims of Chiefs to own and to be able to transact land are not seen [by state institutions] as problematic.' Nonetheless, these exclusionary decisions and actions by traditional authorities have not gone wholly unquestioned. Thus at least in the literature on changes in customary land tenure, the legitimacy of traditional authorities to dispossess indigenes and profit more than the latter is indeed challenged (cf. Maxwell, *et al.*, 1998; Nyasulu, 2012; Ubink, 2008c; Yaro, 2012). Moreover, indigenes themselves are also shown to respond to the actions of traditional authorities in various ways (Abass, *et al.*, 2018; Chiron, 2016; Ubink, 2008c; Ubink and Amanor, 2008. See also Table 2.1).

3.4.2 The response of indigenes as an avenue for inclusion

The exclusionary claims and actions of traditional authorities affect indigene interests and wellbeing and as such result in agitations of indigenes in Ghana. Peters (2004) has comprehensively synthesised competition and conflict over land, the emergent deepening of social inequalities and the expropriation of land by local and non-local elites elsewhere in Sub-Saharan Africa. These contestations of neo-customary land value are reflective of

conflicts of interests as an integral feature of the ‘new political economy’ of land (Akinola, Kaseeram and Jili, 2020). In this sub-section, I briefly discuss how the agitations of indigenes serve as an avenue for their inclusion in neo-customary land delivery. Empirical evidence of the agency of indigenes is discussed in my case study chapters, but as an illustrative introduction to the topic. I gathered indications of agitations of indigenes from electronic media in Ghana, as given in Table 2.2 below.

CAPTION	MEDIA	YEAR
Takoradi Youth protest against city authorities over indiscriminate sale of land	<i>Modern Ghana</i>	2012
Angry Apedwa residents protest against chief over compensation for lost farms	<i>Myjoyonline</i>	2014
Tafo residents demonstrate against sale of land	<i>Graphic Online</i>	2014
Police clash with irate youth over sale of Ejisu market	<i>Citifmonline</i>	2015
Ga Dangme Youth Protest Against ‘Stolen’ Lands	<i>Daily Guide</i>	2016
Demo Hits Pramso Chief	<i>Daily Guide</i>	2017
Nkoranza Youth Protest Sale of Town Market Lands	<i>Daily Guide</i>	2017
Dawhenya youth threaten demonstration against chief [over sale of family lands]	<i>Ghana News Agency</i>	2017
Farmers protest forceful takeover of farm lands by Ejisumanhene (Chief of Ejisu)	<i>Graphic Online</i>	2017

Table 2.2: Indigene agitations over land in electronic media reports

Source: Author

The emerging practices amid conversions and leasing of usufruct rights of indigenes include traditional authorities recompensing indigenes. Compensation, where it is offered, is often in the form of a share of a physical parcel of land granted to indigene households or the provision of social amenities and infrastructure for the community (Akrofi, 2013). Set against their land ownership claims, these gestures from traditional authorities infer that the compensation serves to gain acceptance in further conversion and grant of usufruct rights of indigenes. First, this inference and the compensation in itself indicate the existence of entitlements in customary land, in one form or another, for indigenes. Second, co-operation between indigenes and traditional authorities must be centre stage in the conversion of

customary land and leasing of neo-customary land. In this regard, Asante (1965: 874 citing *Ohimen vs Adjei*, 1957) argues that where appropriation of usufruct rights is necessary for public purposes, 'co-operation between the stool and the [indigene] family to be dispossessed is the best method of approach, not high-handed action.' In more recent times, co-operation can be seen to be lacking in the appropriation of usufruct rights in neo-customary land. For instance Ubink (2008b) outlines a number of hard-handed decisions by traditional authorities in peri-urban Kumasi. There are cases where indigenes responded to these decisions and actions with similarly vocal agitation, such as chanting for removal of the chief as their leader (ibid). Therefore Yaro (2010: 199) argues for 'a new architecture of land rights' negotiated by a participatory process amid peri-urbanisation-induced land commodification. The need for co-operation and lack thereof, which engender contestations, brings the relevance of some aspects of co-production to the forefront.

3.4.3 Power and gender in contestations over land value

As discussed in Chapter 2, power dynamics and gender discrimination are important considerations in land tenure studies, and investigations into changes in usufruct rights are no exception. In this section I discuss the power dynamics and gender discrimination in changes in customary land tenure. As Lund (2008: 2) asserts '[t]he openness and contingency of land issues in Africa make absolutely central the questions of who has the capacity to endorse or enforce ... negotiations, and how and by whom they are challenged.' With respect to the role of power in changes in customary land tenure, matters often revolve around the legitimacy of the power that traditional authorities exercise (Nyasulu, 2012). With regards to the legitimacy of the active role of traditional authorities in conversion and leasing of customary land and usufruct rights, certain land mark cases which centred on this issue are worth mentioning. In the cases of *Ashiemoa vs Bani* (1959) and *Donkor vs Danso* (1959), as cited in Asante (1965), it was held that traditional authorities are trustees. As such they are not allowed to appropriate indigene interests in customary land even when that land becomes part of a growing urban area. This is because such appropriation, even if was customary, was deemed to be 'repugnant to natural justice, equity and good conscience' (Asante, 1965: 875 citing *Ashiemoa vs Bani*, 1959). This may seem settled in theory but is far from settled in practice, especially in neo-customary tenure, because of unbalanced power dynamics between indigenes and traditional authorities.

The second issue of power is the unbalanced influence of actors in customary tenure (Ubink, 2008b; Wily, 2011). Unbalanced power among actors in land tenure prompt multi-level exclusion attempts, as found within the political economy of land (Byres, 2001; da Costa, 2008). In the neo-customary land tenure practices, actors have differentially defined, negotiating and contesting powers (Wily, 2011). There is an increasing resort to monetary rewards and power to exchange land rather than use of social networks in kinship and social processes of negotiation over neo-customary land (Nyasulu and Ampadu, 2011). High-ranking political players and rich individuals are able to relegate indigenes as *de jure* rights holders and acquire peri-urban land to the detriment of the usufruct rights of indigenes (Narh, Lambini, Sabbi, Pham and Nguyen, 2016; Nyasulu, 2012; Ubink, 2008b). As noted by Ribot and Peluso (2003), access is composed of not only rights but also a web of abilities. This explains why individuals with certain rights may not benefit from a resource while those without rights, but with power, may benefit. According to Obala (2012), from the perspective of land conflicts in Kenya, elite manipulation and corruption leads to uncontrolled land commodification at the expense of the poor. Yaro (2012) views traditional authorities in both acephalous and centralised systems as having a superior role to that of indigenes. Yaro (2012: 352) argues that '[ex]isting social inequalities and asymmetries of power have led to the hijacking of processes transforming customary tenure.'

The superior role of traditional authorities compared with that of indigenes, as discussed in the paragraph above, results from two main factors: failing traditional checks and loose state control of traditional rule. Firstly, indigenes have representation in Traditional Councils which are customary governing boards and the main traditional source of checks of power. But research shows that Traditional Councils tend to align with traditional authorities against the interests of indigenes (Nyasulu and Ampadu, 2011; Nyasulu 2012; Ubink and Amanor, 2008). Thus traditional checks and balances are ineffective in curtailing the power of chiefs. Secondly, the state's colonial, post-colonial and current attempts to control the land-management functions of traditional authorities in Ghana have failed (Nyasulu, 2012). Ironically, state land policies and bureaucracies further enable the role of traditional authorities in neo-customary land tenure (Amanor, 2008; Ubink, 2008a; 2008b, Yaro, 2012). Amanor (2008: 77) argues that '[t]he empowerment of chiefs by the state to control land serves to enable chiefs to transform or re-invent tenure systems to serve the interests of elites.' Yaro (2012) presents a similar argument, namely that the state's land policies enable traditional authorities as allodial title holders to appropriate peri-urban land. In the midst of

changes in customary land tenure, state institutions strategically collaborate with traditional authorities to ensure that customary land sub-division, conversion and leasing is successful (Akaateba, 2018). However, the emergent value of successful conversion often serves their ‘private interests’ at the expense of the majority of community members (ibid.: 89; see also Yaro, 2012). Moreover, even state indifference may produce an enabling effect. According to Ubink and Amanor (2008: 23) the government’s present ‘policy of non-interference’ on chieftaincy matters is a key factor that creates power imbalances at the local level.

The findings on women’s access to land amid changes in customary land tenure are also mixed. According to Nyasulu (2012) women have a weaker position compared to men and experience insecure access to land amid emerging practices. But other researchers hold a contrary view, namely that changes in customary land tenure may ensure that access to land is less gendered, since access is now based on ability to pay (Bonye and Kpieta, 2012; Owusu, 2008). Bonye and Kpieta (2012: 73) for instance find that in the Upper East Region of Ghana which is patrilineal and partly acephalous, commodification of land and its allocation to women for use is now a ‘regular affair’. But outright ownership is still restricted to few women with certain opportunities (ibid.). This is unlike previous exclusion of women in access to land based on tradition, meaning that the discrimination has increasingly become socio-economic than gender-based (Bonye and Kpieta, 2012; Nyasulu and Ampadu, 2011). Nonetheless there is a general decline in land accessibility and security for both men and women (cf. Kasanga and Kotey, 2001; Nyasulu, 2012). Nyasulu (2012: 127) finds that

‘...the upshot is that young men, as well as young women, are finding customary rights to a share of the communal resource un-rewarded or at least a good deal more costly to secure from their elders.’

As a social group, women can be subcategorised as poor or better-off, immigrants or indigenes, or young or elderly, amongst others (Mamdani, 1996; Kevane and Leslie, 2008). The fact that women do not form a homogenous whole indicates that their access to land may also be stratified. Chapters 5 and 6 include a discussion of gender dynamics in changes in usufruct rights in my case study areas.

At this point it is important to state that the bundles of rights, the nature of ‘historical’ usufruct rights, ownership and even the contestations over commodified land, as discussed in this section, are more akin to those in the centralised areas such as Kumasi and Ashanti than those in acephalous areas such as Wa in Ghana. An important example is that land in

acephalous areas such as Wa is not stool land although administered by various traditional authorities. The section that follows expands on the acephalous/centralised distinction in land tenure in Ghana by discussing the nature of land tenure in acephalous Wa and centralised Kumasi.

3.5 Contextualising acephalous Wa and centralised Kumasi

In Chapter 2 I discussed acephalous and centralised societies as a categorisation of the nature of societies in Africa. I argue that the differences between the leadership structures in these societies indicate that the tenure systems in these societies are significantly distinct. This gives rise to acephalous and centralised as typologies of land tenure. In this section I discuss the acephalous nature of the society of Wa and the centralised nature of that of Kumasi. I introduce evidence that the traditional authorities and therefore the holders of the bundles of rights in acephalous Wa are different from those in centralised Kumasi. This argument is relevant for changes in usufruct rights in my case studies.

3.5.1 The acephalousness of Wa in Upper Western Ghana

Community leadership and governance in Wa and its surrounding communities in the Upper Western part of Ghana is both a complex and remarkable arrangement. The main distinctive feature of acephalous Wa is the existence of two different community leadership figures with dissimilar roles. These are a chief, called a *naah*, the head of most traditional communities in Ghana, and a *tindaana*, a ritual leader found mostly in acephalous communities only in northern Ghana. In the absence of a large body of literature on the acephalousness of societies in Wa and north-western Ghana in general, I rely on a few pieces of related historical literature. These include Yelapaala's (1983) exposition on statelessness and the Dagaaba or Dagara people, Daannaa's (1994) study of the acephalous society and colonial policy of indirect rule, and Kunbuor's (2002) work on the customary law of the Dagara. The Upper West Region of Ghana is made up of three main interrelated sub-ethnic groups, namely the Waala, who mostly live in the regional capital Wa, the Dagaaba in the north to North-Western most parts, and the Sisaala on the north to north-eastern side (Ghana Statistical Service (GSS), 2014a). Within each group, and especially amongst the Dagaaba, there are variations in language, which entails contentions over who actually belongs to the Dagaaba (Yelapaala, 1983), although the variations in language a difference in dialect as minimal as the sound of the consonants. Nevertheless, the acephalousness runs through all sub-groups,

although Daannaa (1994) and Yelapaala (1983) have divergent views on the nature of Waala and Dagaaba. Daannaa (1994) finds elements of centrality among the Waala, whereas Yelapaala (1983) finds Dagaaba and Waala as acephalous but both changing towards centralised systems.

Daannaa (1994) compares case studies of acephalous Chakali society, a sub-group near Wa, and centralised Waala, both in the Upper West Region of Ghana, and has determined the effect of indirect rule in the colonial-era on the two groups. According to Daannaa (1994) each village in pre-colonial acephalous Chakali society was governed by councils of elders and the councils were in turn headed by a *Taotina*, owner of the village. The *Taotina* of the Chakali society is a descendant of the first settlers of the community, hence equivalent to the *tindaana* in the case of the acephalous society, which I discuss below. Another notable leadership position in pre-colonial Chakali was a *Bong-Na*, or a war-chief, who is the equivalent of the *Naa* in acephalous society (also discussed in more detail below). The *Bong-Na* held a powerful position in relation to wars but did not rule the village or control the land of the village (ibid.). In the Dagaaba sub-group further north of Wa, there is also a *Polonaa*, a powerful leader of the youth who is an equivalent of the *Bong-Na* (Yelapaala, 1983: 363). In commenting on the acephalousness of the Chakali in Upper Western Ghana, Daannaa states that:

‘Although it is possible for us to talk of some kind of government in the pre-colonial [village], in so far as the entire pre-colonial Chakali society [of villages] was concerned there was no government in the sense of a group able to exercise effective control over both the people and their territory. Each village was independent in its own right. In a nutshell, pre-colonial Chakali was ... a society of acephalous villages which cooperated through common kinship ties or some other kind of relationship linking up the villages.’ (Daannaa, 1994: 62)

In line with this, Yelapaala (1983: 368) states that ‘every village is as autonomous and independent as the next.’ This therefore connotes that pre-colonial acephalous communities were not naturally allegiant to one another by virtue of demands of state-like coercion. But this traditional form of acephalousness became affected by the British colonial system of indirect rule, as discussed in the paragraph that follows.

In indirect rule, colonial government made use of existing and newly created native leadership structures to enforce their policies (Ladouceur, 1979). According to Yaro (2012: 361) colonial powers attempted and succeeded in reorganising acephalous societies to resemble centralised societies and ‘created chiefs for administrative purposes’. It is therefore not surprising that in the case of the acephalous Chakali, and by extension in many communities in Upper Western Ghana, chiefs are considered a colonial creation (Daannaa, 1994). Indeed, this imposition was made possible through the Native Lands and Authority (Northern Territories) Ordinance of 1932, an enactment of the colonial government. The ordinance states, *inter alia*, that the Chief Commissioner may appoint any chief or other native or any group of natives to be a native authority for any area. As Daannaa (1994) recounts, under colonial-era indirect rule, each *Bong-Na* of Chakali communities was appointed as a chief of the community. This marginalises the position of the *Taotina* as traditional head of the pre-colonial acephalous community. It is therefore a replacement of tradition. Kunbuor (2002:4) terms this a ‘social power configuration’ whereupon new players took up positions as chiefs. This position of chief did not exist before colonialism (ibid; see also Mamdani, 1996). The colonial government’s return of land control to native authorities in the northern territories fails to specify whether the imposed chiefs constitute native authorities (Bening, 1995). This contributes to the chiefs’ lack of control in land matters in acephalous Upper Western Ghana.

Leadership in acephalous communities

Traditional African societies may show features of either acephalousness or of centrality, as described in Chapter 2, but in the case of contemporary African societies as in Ghana this is perhaps too simplistic since there is hardly a society without leadership or hierarchy. Yelapaala (1983), for instance, disputes that the Dagaaba people have been stateless from the beginning, arguing instead that they transitioned back and forth between having a state and being stateless in a cycle. He indicates that Dagaaba *sinsile* (oral narratives) usually portray a *naah* as unwise and a *Bɛdɛre*, a trickster spider, as wise (ibid.), thereby indicating the existence of a pre-colonial chief and hence centrality. Yelapaala (1983: 362) argues that ‘it is hard to think that these narratives [about chiefs] are mere abstractions developed out of a vacuum, without reference to any concrete prior experience, no matter how distant in time.’ Yelapaala (1983) believes pre-colonial chiefs existed in certain communities in North Western Ghana. In the existing structures of most communities in North Western Ghana, the two sets

of leaders, that is the *tindaana* and the *naah* as mentioned above, continue to exist. I discuss these in detail in the next two paragraphs.

The office of the *tindaana* is a ritual one and cannot be well explained without first invoking understanding of a *tingan*, an Earth God or Shrine, although the concept of *tingan* is in fact more complicated than its literal earth-god denotation. Hagberg (2006) who comprehensively describes the Earth Shrine or Earth God concept in neighbouring Burkina Faso refers to the phenomenon as peculiar to West African Savana. In respect of the acephalous and savanna area in the Upper West Region of Ghana, Yelapaala (1983: 369) renders the Earth God idea clearly by explaining that every community was founded by a family or household who established a ‘mystical supernatural force’ called *tingan* that controls the fertility and productivity of the soil within the defined territory of the village. The forces of the main *tingan* and the caretaker *tingama* (plural) in other village sections are believed to be localised within *tingantuu*, a grove, that protects its people and the *tindaana* is the only rightful person to consult these forces (ibid.) Thus Kunbuor (2002: 3) argues that ‘the *Tengan dem* [or *Tindamba*] are custodians of Earth Shrines around which traditional rules of land administration revolve.’ From the perspective that the *tindaana* established and controls the forces that determine the productivity of the land and is a descendant of the founding household or family, the *tindaana* can be considered in one instance as ‘owning’ the land of the village. But as discussed below, the translation of land into local dialect has multiple meanings and complicates the *tindaana*’s role in land matters.

The roles of other ritual leaders in the acephalous Upper Western Ghana casts doubt on the *tindaana*’s ownership of the community land. Depending on the community, different individuals perform different roles regarding the worshipping of the Earth God. Kunbuor (2002: 9) states that:

‘the *tengan sob* is the head of a ritual structural arrangement together with other institutional actors. There is the *suo sob* or knife owner that performs the actual acts of slaughtering animals to the Earth God; the *zongmogre* who performs the same role in relation to sacrifices at market land places; and the *gara dana* or *wie sob* in respect of hunting expeditions over land.’

Nonetheless, from my own experience as an indigene of the Dagaaba sub-group, those individuals who exercise their respective ritual roles do not claim any ownership rights in land in their areas of responsibility. The *zongmogre* does not ‘own’ the market land of the

community and the *gara dana* or *wie sob* does not own the hunting land of the community. By extension, the *tindaana* or *tengan sob* would not own the community land.

The *naah*, on the other hand, is a straight-forward position, as he was established or in certain cases popularised based on the idea of chieftainship in centralised areas, as has already mentioned. As Kumado (1990) indicates, the colonial authorities' desire for hierarchical structures led to the invention of leadership positions that had no root in tradition. In support of this Yelapaala (1983: 372) states that 'before the advent of the British rule, most Dagaaba villages had never been ruled by anybody with political power centralized entirely in that person.' The role of the chief in acephalous parts of the Upper West Region of Ghana is administrative and judicial, but colonial and immediate post-colonial chiefs in this area proved to have been oppressive to the extent of commanding free labour from indigenes (ibid.). This is because they were the tools that the colonial masters used to collect taxes and other resources from communities. As already discussed in section 3.2, chiefs in acephalous areas administered stool land, which at the time included acephalous land. This, in turn, is contrary to the current lack of control in land matters by acephalous chiefs in North-Western Ghana after the reversal of land in the Northern Territories to traditional authorities, as discussed in section 3.2. In contrast to the acephalous chief, the position of chief in the centralised areas of Ghana, such as Ashanti (to which I turn in section 3.5.2), was not imposed, therefore allowing more continuity from pre-colonial systems through to present constitutional rule in Ghana.

Texts and court judgements on land ownership in acephalous parts of Northern Ghana

In Chapter 2 I discussed how colonialism led to the formation of customary land tenure, which in certain cases was based on inaccurate assumptions about ritual leaders controlling land. As stated in Chapter 2, one of these assumptions was that African ritual leaders were land owners (Colson, 1971). In this section I discuss the *tindaana* as an example of a ritual leader in acephalous parts of North Western Ghana who authoritative texts and court judgements have identified as the holder of allodial rights to acephalous land. Eminent texts, in the first instance anthropological research and court proceedings, seem to have (erroneously) adapted and applied the concept of bundles of rights in centralised land to acephalous areas. These bundles of rights have been determined in centralised areas based on centralised custom consolidated by mostly centralised court decisions, as discussed in Chapter 2. In particular, the role of the *tindaana* in land management seems to involve the

assumption that as a centralised Chief controls all community land, so a particular figure must control land in acephalous areas. Anthropologist Robert Sutherland Rattray (1881–1938) is quoted in a court case making such a point:

‘[T]he Tindana in all his religious and spiritual activities was the exact prototype of an Ashanti chief in his capacity as *Asase wura* [writing in Ashanti language] (owner of land), and custodian of the ancestral spirits of the land.’ (Rattray, n.d., cited in *Yakubu Awabego vs Tindana Agongo*, 2016: 9)

A review of two settled court cases, one each in the acephalous Upper East and Upper West Regions of Ghana, reveal the courts favouring the *tindaana* as holding the allodial title in community land. In the recent case of *Yakubu Awabego vs Tindana Agongo* (2016) in Kalbeo in the Upper East Region, the matter to be legally determined was whether the allodial title to land vested in Yakubu as family head or in Agongo as the *Tindaana* of Kalbeo. Agongo in this matter is the *tindaana* of the Tindonsoblgo community while at the same time exercising the role of a *tindaana* in Kalbeo, a different community. The court referred to eminent texts by the anthropologist Rattray and a work by Pogucki (1955), who both portrayed the *tindaana* as landlord and decided that the *tindaana* is the holder of the allodial title to land in both communities. The conclusion was that:

‘The appellant is the Tindanana of Tindonsoblgo and performs the functions of Tindana² in respect of Kalbeo lands also which are claimed by the respondent family as theirs, it follows that since a Tindana holds the land in trust for the community of which he is the Tindana, the appellant is the Tindana of Kalbeo also and consequently the allodial owner of Kalbeo land in trust for them. It follows also that the respondent family can only have usufructuary title over such of Kalbeo lands as have been reduced into their possession as customary free holders thereof.’ (*Yakubu Awabego vs Tindana Agongo*, 2016: 17)

This reference to the *tindaana* as allodial owner and custodian of the land may be a fact or may relate to the assumption that the *tindaana* must hold a function similar to the centralised Chief as mentioned above. Chapter 5 provides evidence that contradict the *tindaana* as an

² *Tindaana* (singular) and *tindamba* (plural) are spelt differently – such as *tendana*, *tindana* and *tingdaana* (singular) and *tendemba*, *tindaama*, and *tingdaama* (plural) – by different authors and are pronounced differently among different sub-groups in acephalous communities.

allodial owner of the community land. On the second possibility, it can be ruled out that the courts reference to the *tindaana* as allodial owner is an exception in the Upper East Region because in the Upper West Region, the court again regards the *tindaana* as the allodial title holder. The second case, *Iddrisu Tifuuro Tatali vs Alhaji Saaka Yakubu* (2018) in Wa of the Upper West Region concerned countering claims to land by the two parties. Iddrisu, as family head, claimed allodial title to land based on his predecessors granting farming licence in the said land to Alhaji Saaka. Alhaji Saaka counter-claimed ownership of the same land based on land granted him by a different party. Iddrisu also argued that his family performed ritual purification of the area on two incidents of rape and suicide on the disputed land and that the purification signifies that they are the *tindamba*. The Supreme Court found in favour of Iddrisu and his family as *tindamba*, grantors of land and allodial title holders. This is similar to the first case, where the spiritual head of the community is regarded (based on erroneous assumption or by an exceptional fact) as the actual allodial owner of community land.

Therefore in both cases the courts found that the *tindaana*'s ritual role extends to land control. Court cases such as these and their reference to eminent texts have an impact on the customary land tenure system by virtue of seeing the *tindaana* as the landlord in acephalous areas of Ghana. The following extract from a court judgement illustrates this point: 'one always finds the term "*tindaana*" translated into English as meaning "landlord" or "landowner" this role of a Tindaana is not put in doubt in these courts' (Pogucki, 1955, cited in *Yakubu Awabego vs Tindana Agongo*, 2016: 8).

The term 'landlord' or 'land owner' is then directly translated from the Dagaare term, *tinga soba*, 'owner of land'. Interestingly, the term *tinga* has an ambiguous triple meaning; firstly as *tinga*₁ as in a physical parcel of 'land', secondly as *tinga*₂ (derived from *tingan*) as in 'Earth God', and thirdly as *tinga*₃ as in the community or settlement itself. Tait (1961) identifies two of these meanings of land as physical land and land as Earth Shrine. Tait (1961) therefore prefers to designate the *Tindaana* as 'owner of the Earth Shrine' to 'owner of the land'. Researchers unfamiliar with these multiple-dimensions especially non-indigenes of the acephalous area in the Upper West Region of Ghana can easily misconstrue this complex interpretation of land. In relation to this conceptual problem and in the context of the Dagaaba people in the same area, Yelapaala (1992: 431) argues that:

'it should be noticed that part of the difficulty of the study of normative concepts lies in the ethnocentricity of outside investigators. While the native has been the object

of anthropological endeavors, the native himself [or herself] has rarely been the investigator of his own reality.’

In the case of *Yakubu Awabego vs Tindana Agongo* (2016: 8) the citing of ‘leading and eminent texts’ portraying the *tindaana* as owner of the land was actually based on responses of research participants. The research, which involved the ascertainment and codification of customary law concerning land and family in Ghana, was conducted by the National House of Chiefs and Law Reform Commission in 2011 (cited in *Yakubu Awabego vs Tindana Agongo*, 2016). Thus this potential ambiguity could have been narrowly or incorrectly translated by the non-indigenous researchers leading to the misconception that finds its way in the courts. If the *tinga* as earth god was used for the ritual role of the *tindaana* – according to Agbosu (1980), Yelapaala (1983) and Kunbuor’s (2002) studies – instead of *tinga* as land, *tindaana* would mean owner of the earth god or shrine (see also Tait, 1961) and is not translatable as the owner of land. This means that the *tindaana* would neither be the land owner nor the landlord. Nonetheless, the case of *Yakubu Awabego vs Tindana Agongo* (2016) concerns the Upper East Region and this differs in certain regards from the acephalous upper western Wa area. In Navrongo and its environs in Upper Eastern Ghana for instance, there are reported cases of certain *tindanas* (or *tengnyam* as are called in that area) contesting the land ownership claim by *Navro-pio*, the paramount chief (Tonah, 2008). One of the differences between *tindaana* in Upper Western Ghana and *tindaana* in Upper Eastern Ghana is that in the latter, such as in Mamprusi and Builsa, there are many *tindanas* in one community, whereas in Upper West Ghana, there is only one (Kotey, 1995).

In respect of Upper Western Ghana, Kasanga and Kotey (2001: 14) explicitly mention the ‘ritual ownership of land’ in discussing the land-allocation function of the *tindaana*, thus illustrating the ritual role of the *tindaana* in land matters. In this regard the *tindaana* has a ritual role in land allocation but may not be the actual entity allocating land (ibid.). Yaro (2010: 205) however, who also portrays the *tindaana* as executing land grants, mentions that the *tindaana* ‘may direct the [land-seeking] stranger to a group or to an individual holding the right to use a particular piece of land and willing to transfer a part of the land to the newcomer.’ With this use of the expression ‘willing’, if the land holder is not obligated by the *tindaana*’s directive then does the *tindaana* actually have an absolute interest in the land? Or does it not far more insinuate a form of ritual directive of or introduction of the stranger by

the *tindaana*? Agbosu (1980), one of the leading authors referred to in the case of *Yakubu Awabego vs Tindana Agongo* (2016), states that

‘A religious leader called the Tindana administered the lands in “trust” for the community. He was not the owner of the land. His role was mainly concerned with the performance of religious rites which were considered necessary to appease the spirits to ensure plentiful harvest.’ (Agbosu, 1980: 110).

Although Agbosu (1980) shows the *tindaana*’s non-ownership from the perspective of trust, he does express the ritual role of the *tindaana*. Agbosu’s (1980) use of ‘trust’ is not inferred as allodial ownership but the courts quoted above in *Yakubu Awabego vs Tindana Agongo* (2016) relates trust to ownership. Nevertheless, the latter conclusion part of the court in *Yakubu Awabego vs Tindana Agongo* (2016) quotes a passage from Fynn and Fening’s (1991: 492) *History for Senior Secondary School*, indicating that the *tindaana* ‘never actually own the land’ but a custodian of it on behalf of the community, hence qualifying the *tindaana* as allodial owner.

The matters of control over land, ritual authority and territorial sovereignty can be ambiguous and confusing. As Peters (2004: 272, citing Colson, 1971) argues, in the creation of customary law in Africa colonial rulers confused ‘African ritual roles, whose authority lay in rain-making or fertility of the land, with political roles exerting authority.’ Plural roles vested in one individual and the claims over land based on those multiple roles were glossed over by the standard term ‘communal tenure’ (ibid.). Overall, the matter of the role of the *tindaana* in land revolves around three possibilities. Firstly, the *tindaana* may hold just a ritual role, secondly the *tindaana*’s role in land matters differs between the Upper West and Upper East Regions but is generalised across the two regions in anthropological texts and in court proceedings. In relation to this second possibility, Bening (1995: 250) argues that land tenure in the Northern Territories vary among the ethnic groups. And, thirdly, the *tindaana* held an allodial interest in land that has now diminished or been turned over to various families. This overall argument on the unique position and role of the *tindaana* and acephalous traditional authorities in general forms the basis for my two empirical case studies in Wa. My thesis does not resolve this confusion as set out in this section, but nonetheless my studies have found empirical evidence of the *tindaana* tenuously claiming ownership of the entire land in the acephalous case studies in Wa. This evidence therefore sets an argument in motion

concerning the possibility of this erroneous effect on the indigenous land tenure in acephalous areas of Northern Ghana.

3.5.2 The centralised nature of Kumasi in the Ashanti Region of Ghana

The centralised, chiefly or state-like nature of the governance structure of the Kumasi and Ashanti Region is a well organised system that pivots around natural allegiance. As there is a large body of literature on the state system of the Ashanti Kingdom and given that each community simply has a chief as head, this section is shorter than the section on Wa. Nyasulu (2012) draws from historical narratives of Hayford (1903), Bennett (1975) and McCaskie (1983), who in turn drew on and complimented the writings of the anthropologist Rattray, McCaskie in particular including Rattray's writings from 1916 to 1936. Hayford (1903) drew on the Asante or Akan system to write on the nature of Gold Coast's (now Ghana's) native institutions, while Ivor (1975) used the nature of the Kingdom of Asante in the 1800s to trace the evolution of political order within that system. McCaskie (1983) in turn appraised Rattray's construction of the history of Asante. In this section I mainly rely on these key writings about the Asante history, together with other authors' writing on the centralised nature of Kumasi and Ashanti such as Asante (1965), Ollenu (1962) and Ubink (2008a; 2008b; 2008c).

Hayford (1903: 19) succinctly describes a typical state in the then Gold Coast where 'the native state in its highest development is to be found where a number of considerably important communities combine and owe allegiance to one central authority, the King properly so called.' Thus, societies such as Ga, Nzema, Asante, Fanti, Ahanta and Wassa, among others, are indigenous states in Ghana (ibid.). In terms of the Ashanti state, McCaskie (1983: 193) indicates that many 'territorial divisions', such as Bekwae, Kumasi, Asumegya, Dwaben or Juaben, Kokofu, Kumawu, Mampon and Nsuta, came together to create the Asante Kingdom. This was in the second half of the 18th century after the famous Battle of Feyiase of 1701 in which the Asante defeated the Denkyira who then became the overlords (ibid; GSS, 2014b). From then onwards the Kumasi stool was acknowledged as the head of a kind of confederacy composed of territorial divisions (McCaskie, 1983, citing Rattray, 1923, and Hayford, 1903) and therefore Kumasi became the capital of the newly created kingdom. Beside the convergence of allegiance from different communities, there exists both a vertical structure of leadership as well as an 'evolutionary continuum' of family-clan-tribe-nation hierarchy in the complex Asante society (McCaskie, 1983: 196). This clearly shows that

Kumasi and Ashanti is a state or centralised society, although colonial rule has also influenced it to some extent. The centralised Ashanti Region is so highly organised that Hayford (1903) uses terms such as ‘parliament’, ‘court’, ‘sovereignty’ and ‘nations’ to refer to its components, likening it to modern state (see also Ivor, 1975). The hierarchy of indigenous authorities in centralised Kumasi is such that it descends from the king or *ohene*, to the chief, encompassing the war chief or *Sarfohene* and civil chief or *Brempong*, the councillors, the head-man or *obusuapanyin* and down to the people or *oman* (ibid.). According to GSS (2014b) there is also an *omanhene* who is in charge of a group of villages. The *oman* are therefore properly regarded as subjects of the higher hierarchy leaders and are referred to in this study as ‘indigenes’. In this instant, the chief is of interest. Figure 3.3 below illustrates the hierarchy of leaders in the centralised state system.

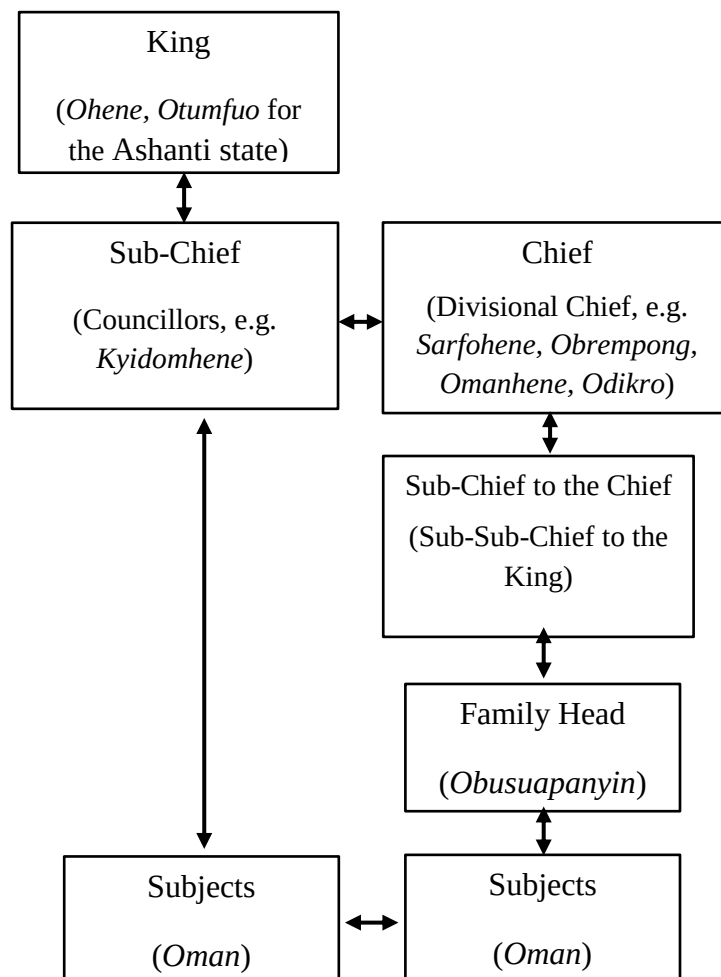


Figure 3.3: A typical hierarchy of leadership in the centralised state system

Source: Author, with facts from Hayford, 1903; Nyasulu, 2012; GSS, 2014b; Akaateba, 2018)

The chief is a leader next to the king in the hierarchy of Asante's indigenous authorities, although the position of the chief is also ranked. There are levels of chiefs who rank in terms of importance in centralised Kumasi and Akan generally, both in the past and the present day (Hayford, 1903; Nyasulu, 2012). The king, as head of the state, has sub-chiefs as councillors who are also in charge of separate duties, and divisional chiefs who are heads of communities under the king's jurisdiction. Divisional chiefs of communities can be assigned as sub-chiefs to the king simultaneously (ibid.). The same order is replicated at the community level where a sub- or divisional-chief to the king is substantive chief of the community or *odikro* (Akaateba, 2018; GSS, 2014b; Nyasulu, 2012). The chief of the community also commands sub-chiefs, but his councillors comprise of sub-chiefs and elders (Ubink, 2008a). To correctly understand this lower-level arrangement, it is proper to call this chief the chief of the community or village chief and his sub-chiefs the sub-sub-chiefs. Together the councillors of the village chief or king respectively constitute the decision-making body of the village or of the state. In principle the king or village chief acts with the counsel and/or approval of the councillors. The traditional function of a chief was to lead a portion of the king's army as a captain (Hayford, 1903). In the present day this captainship involves civil duties rather than military actions, but the duties continue to involve protection of the king or chief and are still reflected in the titles of today's chiefs (Ubink, 2008b). For instance the title *kyidomehene*, as given to a sub-chief, indicates that the sub-chief is the captain of the rear flank of the chief's army or nowadays the protector of the chief's back, especially during gatherings (Hayford, 1903; Ubink, 2008a).

As discussed in section 3.3, the role and interest of the centralised chief is established in customary land law in Ghana. The centralised chief is regarded as a trustee of the community land and it is his job to manage it for the benefit of the community. This is irrespective of the categories of stool land identified in section 3.3.3. In (neo-)customary land delivery the centralised chief leases community land, although this role is contested by indigenes in certain communities, such as Besease near Kumasi (Ubink, 2008a). This contestation involves land in relation to which indigenes exercise usufruct rights (ibid.). However, Besease is an isolated case where there are contestations and conflicts in the traditional leadership and community members have taken advantage of the situation and were able to sell land (Ubink, 2008a). In my empirical case study in Kumasi, indigenes do not contest the chiefs' right to lease their usufruct rights per se, instead agitating for a share of land and compensation.

3.6 Refined theoretical and conceptual framework

A refining of the theoretical and conceptual framework is relevant at this point, because I have established in this Chapter that the traditional authorities, bundles of rights in land and ownership in customary land tenure are different in centralised and acephalous areas in Ghana. The discussions on the nature of acephalous Wa indicates that the role of traditional authorities regarding land matters is an imitation of centralised areas. Hence the bundles of rights and those entitled to these rights in acephalous Wa are barely empirical. Indeed, the entitlement of indigenes in Wa is not a usufruct right. Since neither the *tindaana* nor *naah* (acephalous chief) has actual control over land, indigenous households have more liberty in dealing with land than in centralised areas. Empirical evidence on this gap is discussed in my case studies in Chapter 6. Given the differential nature of acephalous and centralised systems in Ghana, as discussed in section 3.5, the ‘historical’ usufruct rights (input of change), ‘other determinants of remnant usufruct rights’ and the remnant usufruct rights (outputs of change) in the refined conceptual framework are differentiated (as indicated by dotted line in figure 3.4 below). Nonetheless, all other linkages in the conceptual framework in Chapter 2 remain the same.

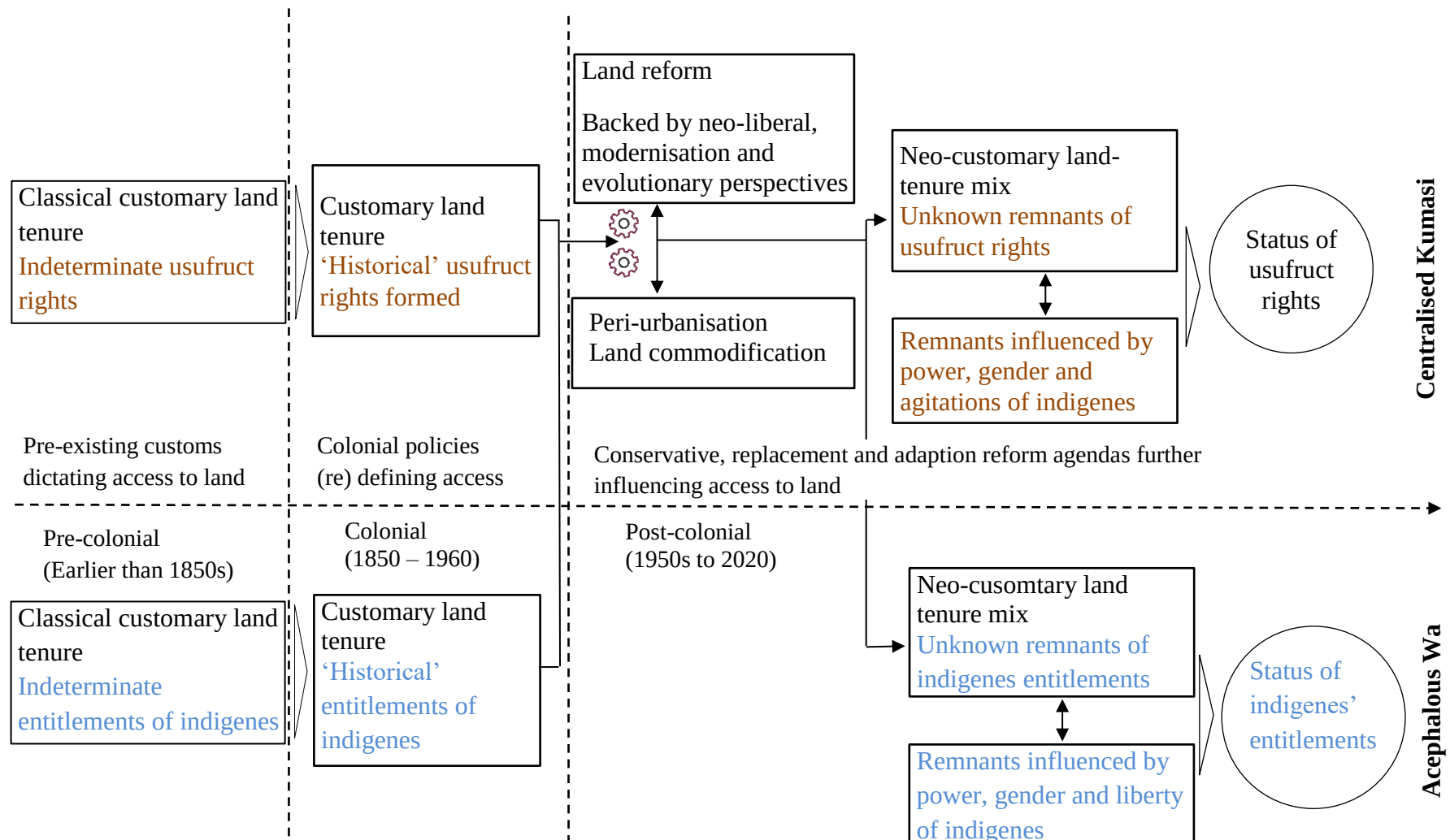


Figure 3.4: Final theoretical and conceptual framework
Source: Author's own construction

3.7 Conclusion

This chapter presents the Ghanaian context of changes in customary land tenure for this study. Land tenure and administration in pre-colonial Ghana was less complicated than in the colonial and post-colonial periods, and I use the pre-colonial period as the era of classical customary land tenure of Ghana, although the scope of changes in usufruct rights dealt with in my thesis does not cover pre-colonial customary tenure. I argue that the colonial authorities and land policies highly affected the classical customary land tenure system through various legislations. These, together with post-colonial land reforms, constitute changes to the customary land tenure in Ghana. Largely through colonialism and later through judicial decisions, the formation of customary land tenure in Ghana vested land control in chiefs and usufruct rights in indigenes. This gave rise to the bundles of rights in customary land tenure in Ghana, which co-exist with ownership claims in relation to physical parcels of land. The co-existence of these two modes of land-holding arrangements creates ambiguities, especially amid commodification of customary land, and contributes to contestations between traditional authorities and indigenes. Nonetheless, the contestations also arise as a result of indigene responses to their exclusion from or improper inclusion in neo-customary land. There is evidence showing that the societal setups, land tenures, bundles of rights in land, and for that matter the entitlements of indigenes in acephalous and centralised areas in Ghana, are dissimilar, and hence the reason for selecting case studies from acephalous Wa and centralised Kumasi in Ghana for my study.

4 RESEARCH METHODS, CASE STUDIES AND CONTEXT OF WA AND KUMASI

4.1 Introduction

Ontological, epistemological and methodological considerations are important aspects in any research (Denscombe, 2010). Denscombe (2010) describes ontology as the nature of reality and epistemology as regarding the ‘tools for studying reality. Whereas ontology and epistemology respectively concern the nature of reality and tools for studying reality, research methodology is the way of handling the research problem systematically (Kothari, 2004). According to Kothari (2004), research methodology involves the steps that a researcher adopts to study a research problem and the justifications for those steps. This chapter presents how the above-mentioned aspects of research guided my investigation of changes in usufruct rights. The chapter begins with a summary of the stages in my research, the rationale behind my choice of the interpretive research paradigm and the case study research approach, brief backgrounds on the municipality of Wa and the metropolis of Kumasi. Subsequently, I discuss the selection of the case studies, the processes of sampling, desk review and interviews and data analysis. At the last sections I discuss the factors that have influenced the research outcomes and ethical matters. It is important to briefly mention here that my first-hand knowledge about the acephalous Upper West Region as a native present challenges in terms of subjectivity. However, I have attempted to minimise this potential bias in my analysis of the case studies (see section 4.9).

4.2 Summary of the research process

Processes in scientific research are innumerable but can be grouped into stages. Kumar (2011) summarises important stages in research into three phases, namely deciding what to research, planning the research study and conducting the research. According to Kumar (2011), each of these phases comprises various steps which in turn can be divided into many processes. Kothari’s (2004) list, for instance, includes defining research problem, literature review, hypothesis formulation, research design, execution, analysis of data and interpretation, and reporting. In this section, I present a summary of my research stages and how I conducted the activities in the stages of my research. The main phases of my research include the formulation of a research problem, further literature review and conceptual framing, planning and conducting the empirical research, analysing the data, and finally writing the research report.

After formulating my research problem I reviewed the literature in relation to conceptual and theoretical framing of changes in customary land tenure and in the context of Ghana's situation. In this stage I based changes in usufruct rights on changes in customary land tenure in sub-Saharan Africa and the idea that land reform constitutes one of the main changes to customary land tenure. Changes to customary land tenure as influenced by land reform must be viewed in the context of land commodification and peri-urbanisation as socio-economic factors that engender demand for and transactions in customary land. On this basis I reviewed the theories and motives of land reform and the concepts of land commodification and peri-urbanisation.

The next stages in the research covered the design and planning of the research, the carrying out the empirical research and the analysis of the data. I discuss aspects of these in this section and the other aspects in the sub-sections that follow. Figure 4.1 illustrates a summary of my research process.

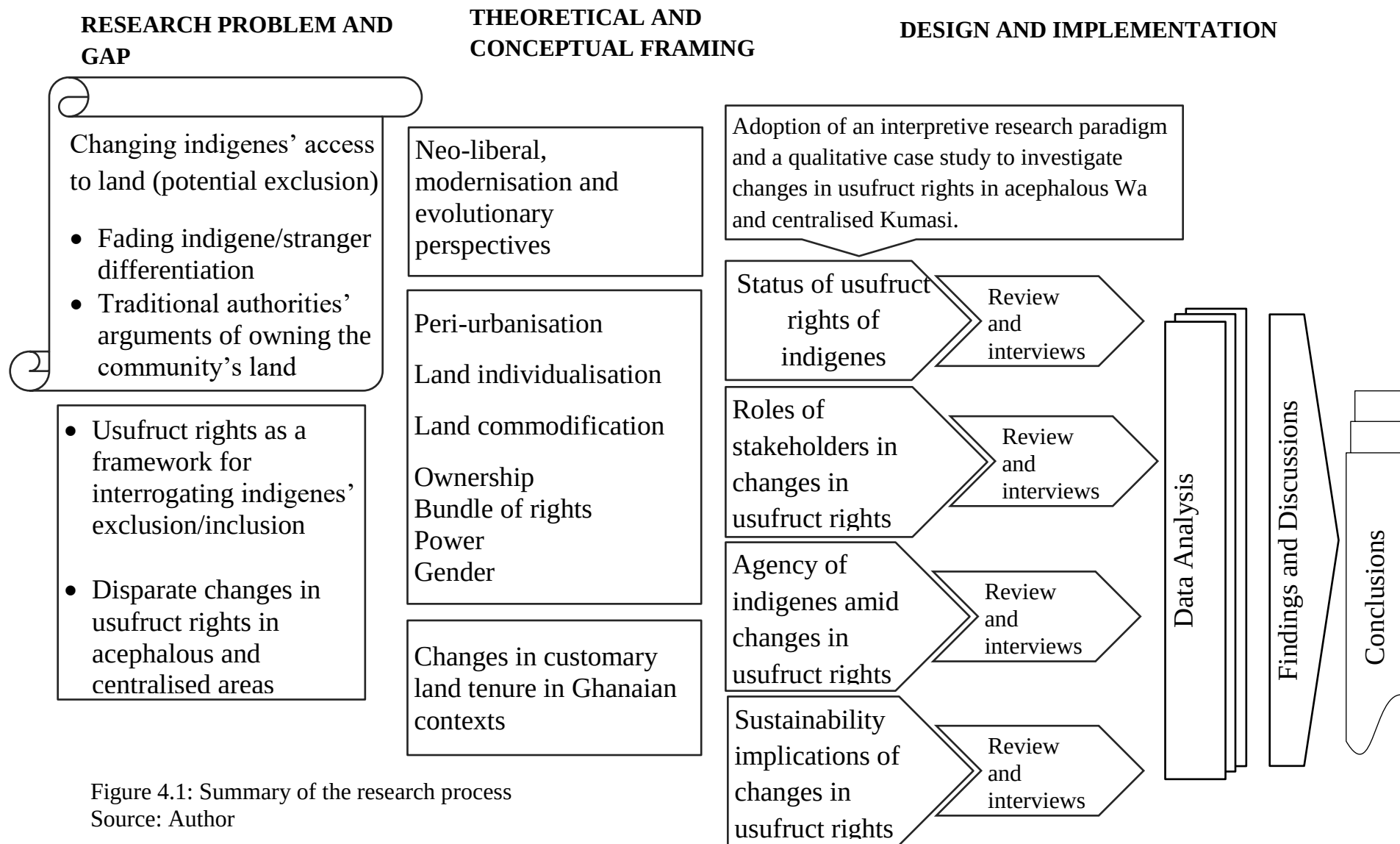


Figure 4.1: Summary of the research process
Source: Author

4.3 Interpretive research paradigm and qualitative case study approach

This study is based on an interpretative research paradigm as an approach to knowing reality. The interpretative worldview is an approach to knowledge through social construction of reality (Lincoln, Lynham and Guba, 2011). Construction of reality is based on discourse that is assembled from different resources, such as words, metaphors and idioms. These resources together produce stable representations of reality (ibid.). The assumption in this worldview is that individuals tend to form personal meaning from and about their experiences of certain events and entities. These meanings tend to be diverse and multiple and the researcher's work involves the complexity of views rather than placing a narrow meaning through a few categories or ideas (Creswell, 2014).

Dimensions of complexity are embedded in the subject of inquiry and the nature of the construction of human subjectivity (Lincoln, *et al.*, 2011). According to Rosenthal (2018), interpretive social research involves understanding these subjective meanings in order to reconstruct their latent meanings. Reconstructing latent meaning is important because individuals such as research respondents produce meanings in addition to those that they are aware of in their actions or speech processes (Rosenthal, 2018). By understanding the intended meanings of respondents and finding their unintended or objective implications, the researcher interprets the overall social importance of textual data to construct social reality (ibid.). Research on land tenure often resorts to the interpretive paradigm. Akrofi (2013: 217) observes that:

‘Most of the works on formalisation of customary tenure, usually through conversion to registered cadastral systems, suggests a positivist theoretical framework while discussions on land tenure have been based on interpretivist philosophy.’

Akrofi (2013) therefore adopts the interpretive paradigm to assess customary land tenure systems in peri-urban Kumasi and Accra in Ghana.

The interpretive research paradigm explores multidimensionality and ontological importance of relationships in research while avoiding thin reductionist description of isolated issues (Lincoln, *et al.*, 2011), and as such the interpretive worldview of reality often aligns to qualitative research (Rosenthal, 2018). Due to the fact that my study sought to understand changes in usufruct rights which are held in respect of land through complex human relations

(Benda-Beckmann, von Benda-Beckmann and Wiber, 2006), I adopted this world view. Initial field visits and conversations at the case study sites showed that the term ‘usufruct rights’ is not a term in the everyday vocabulary of the potential household respondents, making both questions and responses open to my interpretation. It therefore became clear that the interpretive world view would be useful in reconstructing the latent usufruct right discussions from the subjective responses.

In line with the interpretive research paradigm I adopted a qualitative research approach, the main justification being the focus of the research on relationships embedded in land tenure. As already mentioned, land tenure is rooted in relations between people and land and these relationships are better understood through a qualitative approach which focuses on interpretation and construction of reality in depth rather than on breadth (Kothari, 2004). In qualitative social research ‘interpretations and generalizations are not based on the frequency of occurrence of certain social phenomena but on the logic of generalizing from an individual case’ (Rosenthal, 2018: 13). Similarly, Kumar (2011) explains that in qualitative research the central notion is to describe views, experiences, meanings, feelings and perceptions of multiple issues based on a limited number of case studies and respondents. The described objects are highly subjective and can better be understood through narratives rather than quantitative analysis (ibid).

The choice of the case study research design in this research forms part of the qualitative research approach in investigating changes in usufruct rights. Yin (1984: 23) defines a case study research design ‘as an empirical inquiry that investigates a contemporary phenomenon within its real-life context.’ The case study design is applicable where an in-depth investigation of social processes, events and activities is required (Creswell, 2014). Case studies have therefore been an important tool in the social sciences where social issues are understood by rigorous real-life investigations. According to Burns (1997: 364) it is important that a case study focuses on a bounded subject matter which spatially is ‘either representative or extremely typical.’ In my own work I have adopted similar yet contrasting case studies. Both case studies are of peri-urban areas undergoing land commodification, but they are representative of different tenure forms. As explained in Chapter 3, Kumasi falls within a region that is subject to centralised customary land delivery, whereas Wa falls within a region of acephalous customary land delivery. Apart from this difference in land tenure, which from the outset constituted a motivation for comparative case studies, within the regions of Ghana where centralised and acephalous systems are practiced there are variations

and exceptions of each. I therefore adopted in-depth case studies to discuss the nuances of the selected case studies in Kumasi and Wa.

4.4 Case study cities in Ghana

Here an outline of the case study selection covers the justifications for and the particular opportunities and challenges that they pose. Studies of changes in customary land tenure usually place such changes in the context of rapid peri-urbanisation, and for this reason my thesis targeted large urban areas. The first motivation for selection of the metropolis of Kumasi and municipality of Wa is the distinction between them as centralised and acephalous land tenure respectively, as discussed in the previous chapters. As such, in seeking understanding of changes in usufruct rights in Ghana it is important to draw cases from both societal setups. Wa is the only large urban centre in acephalous Upper Western Ghana and since the research sought to understand the influence of peri-urbanisation on changes in usufruct rights, Wa was the good fit. In southern Ghana several cities exist with centralised customary tenure systems, but Kumasi was selected because it is the capital of the native state of Asante and a predominantly indigenous city (Ghana Statistical Service (GSS), 2014b). As the capital of the indigenous state, the highest typical vertical hierarchy of a centralised system exists in Kumasi. Kumasi is the core of Ashanti culture and the practice of centralised land tenure is widespread. Kumasi is therefore both typical and unique (due to the apex level) as a case of a centralised society.

4.4.1 Settings of acephalous Wa and centralised Kumasi

In Chapter 3 I discussed the acephalous and centralised contexts of Wa and Kumasi respectively. In this section, I present the socio-economic and political contexts of the two cities. The discussions in this section are drawn mainly from my field notes and my experiences in and reflections on the study areas. Ghana has been divided into administrative regions, which up until 2019 were 10 in number when a sub-division into six further regions was proposed, all of them being adopted through a referendum. Under the current 16 regions, the Upper West and Ashanti Regions with their respective capitals of Wa and Kumasi have maintained their original boundaries and remain acephalous and centralised respectively. Figure 4.2 below shows two maps of Ghana with the hitherto 10 (left) and the now 16 (right) administrative regions.

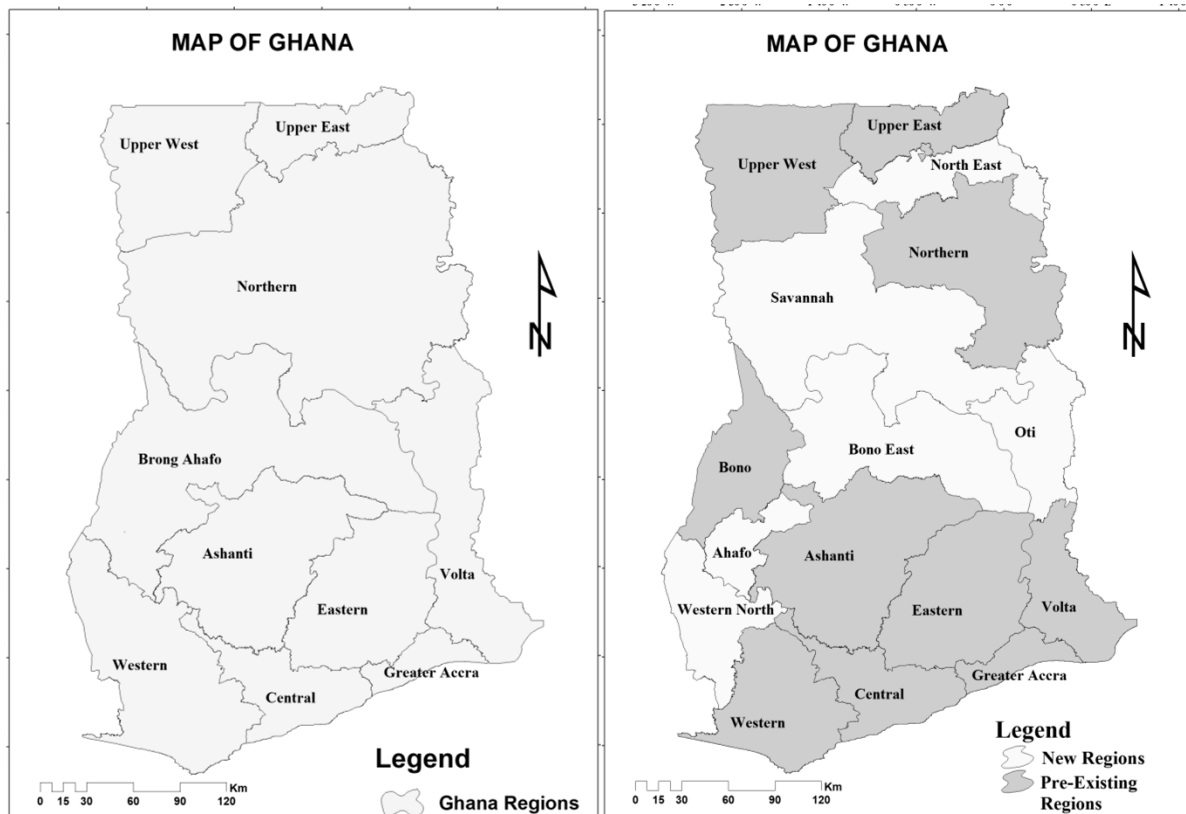


Figure 4.2: Administrative regions of Ghana

Source: Author

General context of Wa Municipality in the Upper West Region of Ghana

The Ministry of Local Government reclassified Wa district into a municipality in 2004 through a Legislative Instrument (L.I. 1800) (GSS, 2014a), making the city of Wa both the capital of the municipality and of the Upper West Region. The municipality, like the region, encompass many towns and villages and is therefore not synonymous with the city of Wa. In 2010 the population of the municipality was 107,214, representing 15.3 per cent of the region's population (GSS, 2014a). The municipality has a land area of 579.86 km², is located about 450 km north of Kumasi and has a low overall population density of 185 persons/sq. km. Wa municipality has a gentle undulating topography with average altitude ranging between 160 and 300 m above sea level. The municipality and the Upper West Region in general have savannah vegetation (ibid.).

The GSS (2014c) regards the Upper West Region in general as the poorest region among the then 10 regions of Ghana. This assertion stems directly from household income in consumption and expenditure terms (ibid.). It is not based on the natural resource stocks. In

fact there is an abundance of economic trees which are mainly wild shea trees (*Vitellaria paradoxia*) and dawadawa /African locust trees (*Parkia biglobosa*) as well as food crop farming, animal rearing and mineral reserves in the municipality and region at large. The famous gold-bearing Birimian rock seam passes through the municipality and the region (Eisenlohr and Hirdes, 1992). Azumah Resources Limited, an Australian firm, has been preparing to mine gold in its Wa Gold Project (Azumah Resources, 2017). Dapilah, Neilsen and Akongbangre (2018) find that the majority of peri-urban dwellers in Wa rely mainly on agriculture. The GSS (2014a) reveals that out of the 30.9 per cent of households who engage in agriculture in the municipality, 82.9 per cent cultivate crops and 48.5 per cent rear livestock, whereby most of the residents also have other incomes sources due related to the urbanising city. In line with this, residents I interviewed see food crop farming to be gradually declining due to various factors, including reduced yields and adoption of urban lifestyles. These narratives corroborate my observation as an indigene of the region. For instance I have observed that in the past the large livestock population improved soil fertility since kraals are rotated yearly around the community farmlands or *yɔga*, as they are referred to in the local Waale and Dagaare languages (My Field Notes and experience as an indigene of the Upper West Region).

The city of Wa has seen on-going and rapid expansion during the last decade (Dapilah, *et al.*, 2018), which is in line with the rapid urbanisation of Ghana and sub-Saharan Africa in general, as introduced in Chapter 1. Many factors are propelling the urban growth of Wa municipality. The municipality is the commercial hub of the Upper West Region. The commodities market and service industry serve most parts of the region, as evidenced by the daily commute of market women and men to and from Wa for transactions (SIR-INDOG01). Market days in Wa and many communities in the Upper West Region rotate in six traditional calendar days different from the western calendar. Other attractions that have ensured the rapid growth of Wa include the Wa regional hospital and the regional offices of ministries, departments and agencies, the Simon Diedong Dombo University of Business and Integrated Development Studies (previously a campus of the University for Development Studies – UDS), an intercity airport and banks. Banking in the region is accessible solely in Wa, with the exception of credit unions and a few branch banks located in towns such as Jirapa and Nadowli (60 km and 40 km respectively off the N12 route), Daffiama (45 km), Tumu (140 km), Hain (80 km), and Lawra (85 km). The city is about 120 km from the border to Burkina Faso and on the N12 route, therefore facilitating cross-border trade and supporting the urban

economy (My field Notes). These attractions have implications for land demand, mostly at the periphery of Wa where unused as well as agricultural land is transacted at comparatively low prices.

The indigenes of Wa municipality and the Upper West Region speak three main languages, namely Dagaare or Dagara, Waale and Sisaale. These languages represent three sub-ethnic groups, with the first two being closely related. The residents of Wa and the Upper West Region are related and are conjectured to have migrated from the Mole-Dagbani ethnic group in the northern and north-eastern part of Ghana (Lentz, 1994). These three sub-groups enjoy good relations and are knitted closely through inter-marriages and education, although the Waala are mostly Muslims whereas the Dagaaba are mostly Christians and pagans (GSS, 2014a). Also, wars in the pre-colonial periods ensured that these groups joined forces to survive (Holden, 1965; Yelapaala, 1983) in that they saw the splitting or resettlement of these sub-groups but also created close bonds between communities. Relations between Daffiama and Busa, and Mangu and Bulenga, are typical of this brotherhood. In the Wa municipality and the Upper West Region in general, celebration of annual festivals – including the *Dumba* festival of Wa people, the *Zumbenti* of Kaleo, the *Kakube* of Nandom, the *Duuyee* of Daffiama and the *Kobina* of Lawra – usually display the rich culture of the area. Figure 4.3 and 4.4 are picture of Wa *Naah* in the company of leaders and visitors from different communities and ethnic groups during the *Dumba* festival and the Wa *Naah*'s palace. As I state in Chapters 2 and 3, the acephalousness of Wa ensures that the communities in the Upper West Region are autonomous and that community leadership is less vertical than in Kumasi. These features imply a relative independence of the communities and families in the commodification of land in the urbanising municipality. For instance a respondent from the Lands Commission in Wa states that the commission deals with family heads as rightful holders of land within communities and not the *tindaana* and *naah* of the communities (LC-REP2). I discuss the peri-urban context of Wa in Chapter 6.



Figure 4.3: Wa Naah in the company of Chiefs and *Tindamba* of other communities

Source: Author's photograph taken during field visit in November 2018



Figure 4.4: Frontage of Wa Naah's palace on the first day of *Dumba* festival

Source: Author's photograph taken during field visit in November 2018

General context of the metropolis of Kumasi in the Ashanti Region of Ghana

The relative high population of Kumasi gives it a metropolitan status as per the provisions of the Local Governance Act 936 of 2016 and it is far more urbanised than Wa municipality. The metropolis has a population of 1,730,249 people, representing 36.2 per cent of the region's population and a land area 214.3 km² representing 0.9 per cent of the region's land mass (GSS, 2014b). The smaller land area and higher population of the metropolis of Kumasi as compared to the municipality of Wa gives a relatively high population density of 8,074 persons/km². Kumasi is located at a higher elevation than Wa, ranging between 250 to 300 m above sea level, and in an area that more frequently undulates than Wa. Kumasi metropolis is located in the central area of Ghana and 250 km north of Accra. Kumasi and the Ashanti Region fall within the forest transition zone and is traversed by several rivers and their tributaries. The soil in Kumasi and the Ashanti Region is more fertile than that in Wa and most parts of the Upper West Region (ibid.).

Kumasi has a vibrant economy, predominantly wholesale and retail activities, as is evident at first glance. The city's daytime population is far above the recorded residential population due to the relative high incidences of daily non-resident commuters. The rhythm in Kumasi is similar to the pattern of commuting to and from Wa but involves higher volumes, generating higher demands for almost everything in Kumasi, especially space, than in Wa. This in turn results in wider and more rapid expansion in Kumasi than in Wa, as discussed in the next two chapters. The GSS documents that the wholesale and retail sectors dominate the economy of Kumasi and generate 38.4 per cent of Kumasi's employment (GSS, 2014b). The volume of trading activities in Kumasi far exceeds that in Wa and is reflected in its more numerous markets (My Field Notes and experience as resident of Kumasi). The market days in Kumasi are fixed on the western calendar days. Other key features that support the economy and rapid growth of Kumasi are the local manufacturing industry, a myriad of commercial and rural banks, several regional administrative structures and large universities such as the Kwame Nkrumah University of Science and Technology. Kumasi's central location in Ghana also ensures that its economy serves many other geographical parts, especially the northern parts of Ghana including Wa (GSS, 2014b). The larger economy of Kumasi has more far-reaching implications for its peri-urban area than that in Wa, and uncontrolled expansion of its peri-

urban areas and demand for and commodification of land are more widespread. As I will show in my case studies in Chapter 5, these dynamics have shaped changes in usufruct rights.

Socio-culturally Kumasi is the seat of government of the King of the Ashanti State or Kingdom, and as such it holds important cultural significance in Ashanti, in Ghana and in Sub-Saharan Africa in general. Like Wa, Kumasi's society is traditional in nature in terms of its indigenous status and of its practice of a centralised state system. 'The Asantes holds in high esteem their traditional values, attitudes and practices' (GSS, 2014b: 5). Although it is becoming cosmopolitan, Kumasi maintains a high degree of adherence to its cultural practices and is less diverse in ethnicity as a metropolis than other Accra, the nation's capital. The GSS (2014b) reports that 80.7 per cent of the inhabitants are indigenous Asantes, followed by the migrant Mole-Dagbani and Ewes of the Northern and Volta areas of Ghana respectively. The people of Kumasi and Asantes in general celebrate *Odwira* as the notable festival, or *afahye* in Twi dialect. The Asantes celebrate the festival eight times in a year as *Akwasidae* every 42 days and the ninth time as *Odwira* to remember the spirits of their ancestors (Adam, 2010). Apart from *Odwira*, various communities in Kumasi celebrate annual festivals for different reasons. Figure 4.5 shows the people of Pramso celebrating an annual *afahye* to foster unity in the city. The peri-urban context of Kumasi is discussed in Chapter 5.



Figure 4.5: Pramsohene, sub-chiefs and other royal duty bearers seated during an annual festival

Source: Author's photograph taken during field visit in February, 2019

4.4.2 Case study communities

In selecting cases studies within each city, the level of peri-urbanisation or the phase of settlement formation – namely incipient, intermediate or consolidated – was considered (see Wamukaya and Mbathi, 2019) with the aim of identifying case studies that spanned all three to give evidence on the early and advanced stages of conversion of usufruct rights and related matters. According to Wamukaya and Mbathi (2019), in incipient peri-urban communities there is an active conversion of rural agricultural land to urban use and rapid sub-division of land but with remarkable infrastructure deficits. Consolidated settlements are highly built-up communities which are cosmopolitan in nature and in which there is a sense of order in physical development. Intermediate settlements are sandwiched between incipient and consolidated settlements with a chaotic mix of new and old buildings making up an expanding built-up area (*ibid.*). In Kumasi I selected one case study community with the characteristics of incipient peri-urban settlements. Unlike in Wa, where I undertook two

empirical case studies of my own, in Kumasi I selected one empirical incipient case study of my own because various studies have reported on changes in customary land tenure in peri-urban communities in Kumasi. I then analysed this body of literature, although limited, to represent the consolidated (including intermediate communities in certain literature) case study to complement the Pramso case. I then extracted relevant data from this literature, and analysed alongside the empirical data from my incipient case in Chapter 5. With regards to the identification of cases, the processes followed were as follows.

To obtain a general impression of the growth of the built-up areas and to help me identify prospective communities, I used historical satellite imagery from Google Earth and compared the growth of the built-up area of each community over time (earliest 2002 and latest 2019). This comparison revealed visible contrasts between the size of farmlands and built-up areas of the prospective communities in time. The expansion of built-up areas rapidly reduced the abundance of farmland in early 2000s to less farmland in the images of the latter years (see figures 4.8, 4.9 and 4.10).

Selection of Pramso in Kumasi

In Kumasi the prospective communities were the following: Kotei, Appiadu, Kenyasi, Pramso and Jachie. Based on the general idea of the growth of the built-up areas, I made a preliminary visit to all the prospective communities to familiarise myself with them and identify issues relevant to my research. My visit to Kenyasi and Jachie in January 2018 revealed that the ruling chiefs had passed on in these communities. Thus, Kenyasi and Jachie were eliminated because it is the chiefs that usually convert usufruct rights. In communities where there is leasing of customary land during a vacancy created by the passing of a ruling chief, the conversions of usufruct rights do not take the natural trajectories (Ubink, 2008a). In addition, vacancies of chiefs in Ghana are not filled immediately, especially when the selection of a prospective chief is challenged by opposing candidates. In Kotei and Appiadu almost all usufructuary land had been long converted to non-customary holdings, such as leaseholds, due its proximity to Kwame Nkrumah University of Science and Technology and are hence more urban than peri-urban in respect of usufruct rights conversion. Pramso became the incipient peri-urban case study in Kumasi. The motivations for selection of Pramso are discussed below.

Apart from the suitability of Pramso as my empirical case study based on the physical expansion factor described above, there was a chief in Pramso and preliminary issues relating

to the research problem were identified. First, the first visits to Pramso revealed agitations by the indigenes of Pramso against the chief for certain of his community decisions and actions. The current chief, who was installed in 2016, had established a land redistribution rule (as discussed Chapter 5) which the indigenes were not satisfied with. Secondly, the chief was involved in clearing indigene crops and the mining of sand for sale with little or no compensation paid to indigenes. Within the same period, the chief banned all forms of building construction in Pramso as a way of enforcing his rules (as mentioned by various respondents in Pramso). Finally, the chief sought to stop indigenes from exercising usufruct rights on particular pieces of land after the then farming season to allow him take full control and demarcate the land for urban uses (as narrated by a sub-Chief of Pramso). Indigenes of Pramso objected to these actions of the chief in various forms as presented in Chapter 5. As discussed in Chapter 3, this contestation amid changes in customary land tenure were coupled by the counteractions of indigenes in Pramso and thus represented a rich opportunity for my research. Another opportunity in Pramso is that land conversion was on-going and current and I would not have to rely on past or more distant memories thereof. However, an obstacle in my research in Pramso was that of rivalry between a family and the current chief. The head of the contending family did not allow me to select any household under that family and cautioned household members not to grant me interviews. Luckily, however, three indigenes in a household under this family had already granted me interviews. To address this situation I selected a different but suitable household and interviewed its members as a replacement.

The selected case, Pramso in Kumasi, which is at the incipient phase of its peri-urbanisation, falls within peri-urban Kumasi but outside Kumasi's metropolitan boundaries. According to the GSS (2014b), the Kumasi metropolitan area is completely urban and hence it has no peri-urban land of its own. Therefore peri-urban Kumasi in the context of my study refers to urban-rural transition zones, which exist in the districts that adjoin the Kumasi metropolis. In the land tenure literature in Ghana, peri-urban Kumasi has been studied in relation to communities outside the Kumasi metropolis where urban and rural characteristics co-exist (see Ubink, 2008c; Akrofi and Whittal, 2011; Adomako, 2013). Pramso is located in Bosomtwe district adjoining Kumasi metropolis and close to the famous natural Lake Bosomtwe. Pramso is about 22 km south-east of Kumasi and along the Kumasi–Lake Bosomtwe road. Figure 4.6 shows the location of Pramso case relative to the Bosomtwe district, Kumasi metropolis and Ghana.

The consolidated or intermediate case in Kumasi is represented by a review of literature covering 17 communities (see figure 4.6). For these communities I did not study their physical expansion using satellite images, as I described above, because their inclusion was predetermined by the literature that I selected. In section 4.6 I describe the details of the literature review.

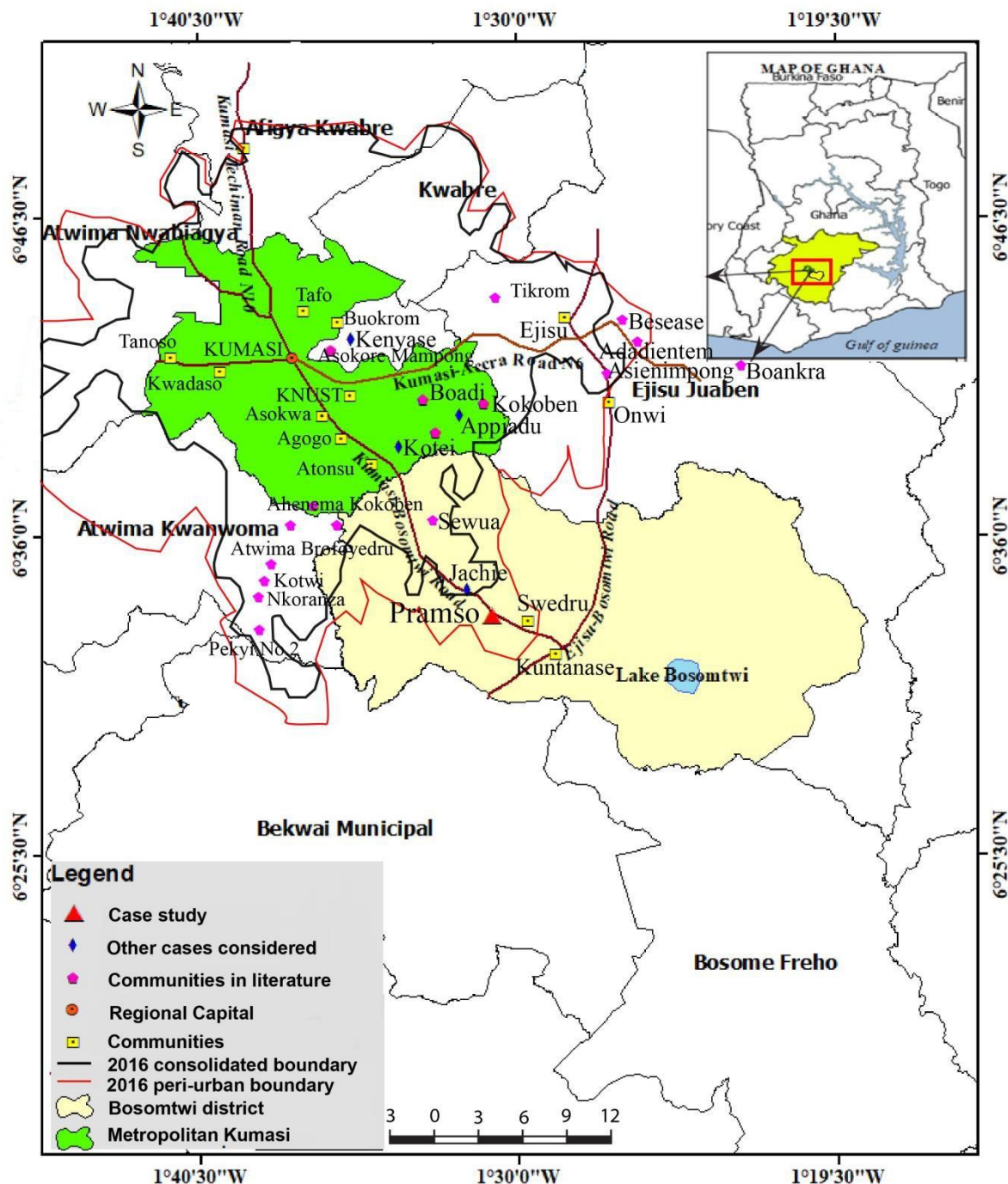


Figure 4.6: Location of the Pramso case study and the other communities in the literature

Source: Author's own construction

Selection of Mangu and Siriyiri in Wa

In Wa, the prospective case studies were Loho, Kperisi and Siriyiri, from which an incipient peri-urban community was to be selected to contrast with Mangu and Sombo, where an consolidated case was to be selected. By making use of knowledge of the level and rate of peri-urbanisation from the Google imagery, I made initial field visits to ascertain whether the communities met other criteria for my research. In Loho the visits revealed that there was an active chieftaincy dispute between various sections of the community due to the recent demise of the ruling chief and this was affecting land dealings and usual conversion of usufruct rights. Kperisi had a chief, but I found out that there was a protracted land dispute. Later an interview with an official of the Lands Commission revealed that the courts had placed an injunction on the stretch of land between Wa and Kperisi as a result of the land dispute. This occurrence shielded the area from the normal influence of urban expansion (LC-REP2). Siriyiri falls outside the municipal boundary of Wa. It is in Wa West district, which shares boundaries with Wa municipality. In Siriyiri there is a chief and active transaction of land. Siriyiri was therefore a relevant incipient case for my research. With regards to the consolidated case in Wa, I selected Mangu although Sombo was also suitable. The built-up area of Sombo was also beginning to consolidate but land conversion was more active in Sombo than in Mangu. A visit to Mangu showed that it presented an ideal consolidated or intermediate case study as most of its land had been converted. Mangu became more relevant for understanding the aftermath of the conversion of indigene interests in land. There are two rival chiefs in Mangu but this did not present itself as an active chieftaincy dispute in the community and I therefore selected Mangu for the research (My Field Notes). Figure 4.7 shows the location of Siriyiri and Mangu case studies in relation to Wa West District and Wa municipality respectively.

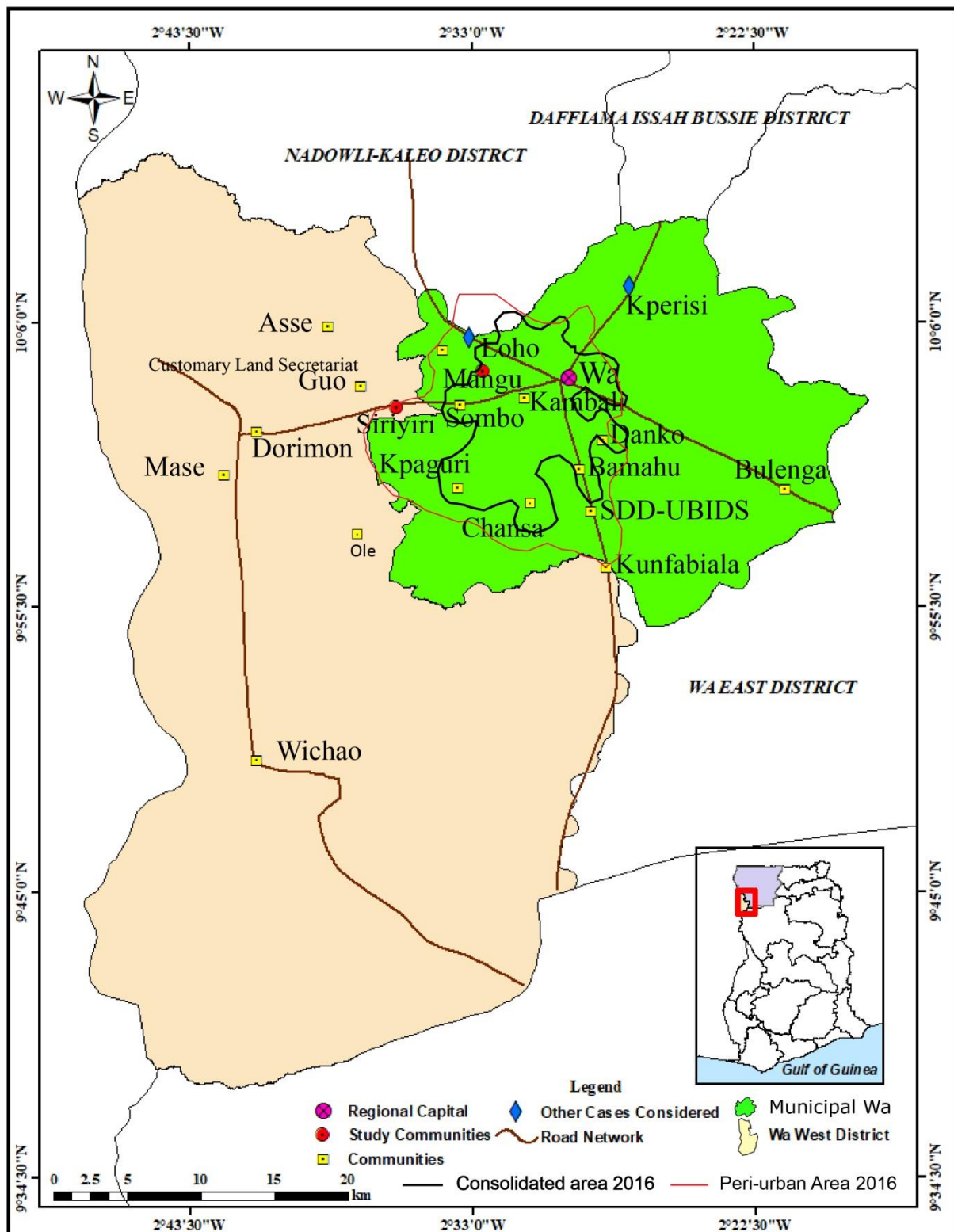


Figure 4.7: Location of Mangu and Siriyiri case studies

Source: Author's own construction

The choice of the incipient and consolidated cases has significance for my research. The incipient cases, Siriyiri and Pramso) serve as a mirror of what possibly happened in the past of the now intermediate or consolidated cases. On the other hand the consolidated or

intermediate case, Mangu in Wa and the review findings in Kumasi, presented similar analysis at advanced stages of changes to usufruct rights and offered a mirrored effect of what may happen in the incipient cases in the future. The historical contexts of the cases are discussed in Chapters 5 and 6.



Figure 4.8: Satellite images of Pramso in 2002 (top) and 2018 (bottom)

Source: Google Earth Pro



Figure 4.9: Satellite images of Siriyiri in 2005 (top) and 2019 (bottom)

Source: Google Earth Pro

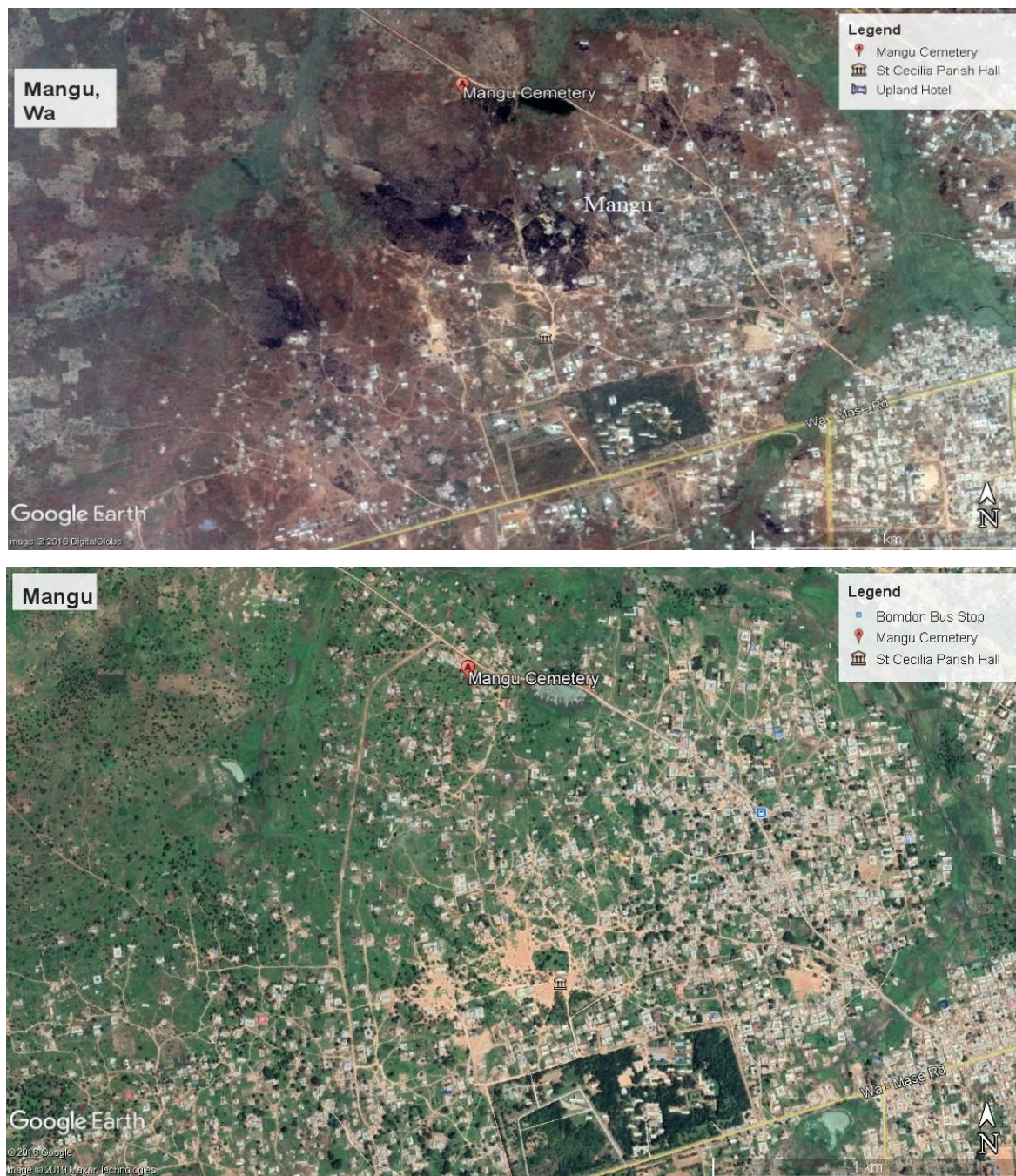


Figure 4.10: Satellite Images of Mangu in 2005 (top) and 2018 (bottom)

Source: Google Earth Pro

4.5 Data sources and sampling

The sources of data for the research are both secondary and primary. The secondary data was in the form of a literature, court documents, the Constitution of Ghana and statutory instruments, and satellite images. Primary sources consisted of transcripts of interviews I conducted. There were two broad categories of respondents, namely institutional respondents and household respondents. Institutional respondents comprised representatives of

institutions involved in customary land management, further divided between state land-management institutions with functions in customary land management and traditional authorities. Traditional authorities include selected chiefs and *tindanas* in the case studies. With regards to Pramso in peri-urban Kumasi, the *Krontihene* and the *Nkosuohene* sub-chiefs represented the Chief of Pramso community. In peri-urban Wa both the chief and the *Tindaana* of Mangu and Siriyiri were selected for the study. State-land management institutions included: one representative each of the Physical Planning Department (PPD) in Wa and in Kuntanase, which is district capital of the Bosomtwe district; one representative each of Lands Commission in Wa and Kumasi; one representative of the Office of the Administrator of Stool Lands (OASL) in Kumasi; one representative of the Customary Land Secretariat (CLS) in Wa; and one representative of the Ministry of Lands and Natural Resources, Accra. Because most of the land in Wa and the Upper West Region is family land, there is no OASL and I therefore included the CLS as a quasi-state institution involved in customary land management. The institutional respondents numbered 14 in total and Table 4.1 below shows the detailed number of respondents in each category.

Household respondents consisted of indigenous household members and stranger settlers in the selected communities in peri-urban Kumasi and peri-urban Wa. Particular attention was paid to indigene households who had their usufruct rights converted for urban uses. In Wa, four indigenous households were selected from each of the two cases. In each household an elderly female, a male and female youth and the head of the household, who is usually an elderly male by custom, constituted the respondents. In Pramso, Kumasi, three households were selected and the same four categories of respondents as in Wa were selected. This adds up to 44 household respondents in total in Wa and Kumasi. In each of the three communities I also purposively selected the Assemblymen who are representatives of districts (local government authorities) as key informants. Also I selected two stranger settlers in each of the three empirical cases and interviewed them to obtain non-indigenous perspectives on changes in usufruct rights. In sum total all the respondents numbered 66.

For the qualitative research I used a purposive non-probability technique for sampling all these respondents based on the interest groups and their knowledge in and relevance to the subject matter. In the actual selection of households and respondents, I relied on the guidance of the Assemblymen as local government representatives of each community, who were knowledgeable in community matters.

Wa			Kumasi		
Mangu	Data sources	No. of respondents	Pramso	Data sources	No. of respondents
	Household interviews	16		Household interviews	12
	Assemblyman	1		Assemblyman	1
	Chief (Mangu)	1		Sub-chiefs (Pramso)	2
	<i>Tindaana</i> (Mangu)	1	State Land-Management Institutions, Kumasi	Lands Commission	1
	Strangers Settlers	2		Office of the Administrator of Stool Lands	1
	Sub-total	21		Physical Planning Department, Kuntanase	1
Siriyiri	Data Sources	No.		Stranger settlers	2
	Household interviews	16		Sub-total	20
	Assemblyman	1		Literature review	
	Chief (Siriyiri)	1			
	<i>Tindaana</i> (Siriyiri)	1			
	Stranger settlers	2			
	Sub-total	21			
State Land-Management Institutions, Wa	Lands Commission, Wa	1			
	Customary Land Secretariat, Wa	1			
	Physical Planning Department, Wa	1			
	Total in Wa	45			
	Ministry of Lands and Natural Resources, Accra	1		Total in Kumasi	20
	Overall Total		66		

Table 4.1: Groups of respondents

Source: Author

4.6 Implementation of desk review and interviews

The data collection involved literature sourcing and primary data collection through semi-structured interview guides that were delivered in an unstructured manner. According to Denscombe (2010) unstructured interviews, unlike structured interviews, allow more room to move discussions to areas that the researcher deems relevant. For judicial judgements I obtained court cases related to usufruct rights from an online portal of the Ghana Legal Information Institute (ghalii.org) whereas I acquired summaries of ongoing cases which are unreported from Wa High Court. I sourced statutory instruments, namely, the Constitution of the Republic of Ghana, 1992 (GoG, 1992), the Land Title Registration Law (PNDC Law 152), 1986 (GoG, 1986) and the State Lands Act from the web (GoG, 1962b). Concerning the academic literature, the goal was to acquire data on changes in usufruct rights from research related to changes in neo-customary tenure in peri-urban Kumasi. I searched for both published and unpublished studies for the review using search terms such as ‘customary land’, ‘exclusion’, ‘inclusion’, ‘access’, ‘usufruct rights’, ‘changes in or changing customary tenure’, ‘peri-urban’, ‘Kumasi’, ‘Ghana’. I manually filtered the search results based on relevance and applicability to Kumasi. The final six documents were Kasanga and Kotey (2001), Ubink (2008a), Ubink (2008b), Akrofi (2013), Akrofi and Whittal (2011a; 2011b). Most of these authors employed qualitative research to investigate topics related to the phenomenon of changes in customary land tenure and the associated consequences in peri-urban Kumasi.

Primary data collection involved mainly interviews, which I conducted within five phases of contact to the case study communities. I undertook the first phase in Kumasi in January 2018 to identify the communities and relevant research issues. I carried out the second visit in July 2018 to finally identify the suitability of case study communities and potential respondents and to pretest the interview guides and refine my research questions. I conducted the actual in-depth interviews during my third visit to the case studies, which spanned from November 2018 to April 2019. The fourth round of fieldwork in July and August 2019 comprised six first-hand interviews and follow-up interviews with selected respondents. The follow-up was necessitated by preliminary analysis of the first primary data sets. My final field visit was in December 2019 when I undertook a validation exercise to firm up the findings.

Recruitment of participants and scheduling of interviews preceded the actual interviews. In the main data collection phases I recruited the majority of the respondents before the day of

the interviews. During recruitment I collected contact numbers of respondents purposely to confirm their availability on the interview day and to reduce time losses and costs. Upon recruiting the respondents, I carried out familiarisation visits to the communities and with respondents through which I further explained the essence of the research to the participants. Afterwards I obtained confirmation of participation and scheduled interviews. The language for the interviews was mostly the local dialects of the case study communities, namely Twi in Pramso and Waala or Dagaare in Siriyiri and Mangu. I am fluent in all three languages. For the interviews with the state land management institutions involved in customary land management and the two sub-chiefs of Pramso I used English.

On the scheduled days I undertook interviews with respondents using a semi-structured interview guide. However, I avoided any particular order of questioning so as to shape the conversation based on relevance to the research and responses. During interviews I voice-recorded responses while taking notes and observing body language. I also observed deviations of responses and decided on the need for and timing of re-questionings. In a few instances where respondents were not willing to be recorded, I wrote responses in a field note book, which meant that interviews in these cases extended longer than planned. The longest interview took 1 hour and 24 minutes, whereas the shortest was 16 minutes. Apart from the interviews I made general field notes during discussions, familiarization visits and during my observations throughout the data collection period. I took consented photos where physical occurrences in the field could complement the narratives.

4.7 Data analysis

As with the data collection, the secondary and primary data were analysed differently but using similar manual procedures. With regards to the court cases and statutory instruments, I reviewed only relevant sections in detail. For the academic literature I reviewed the findings and compiled relevant texts relating to changes in usufruct rights for re-analysis from the perspective of usufruct rights. I condensed the relevant texts into a single document while maintaining their individual sources. I developed colour codes based on the objectives of the review, repeating subject matter and atypically relevant information. I then applied the codes to the entire texts generated in the new document and further extracted these colour-coded texts into a two-column tabulation in a separate document file for analysis. Column one contained recurring subject matter, including atypical texts, and column two held emergent topics during data processing and analysis. The remainder of the analysis techniques for the

secondary data are the same as that for the primary data described in the following paragraphs.

In respect of the analysis of primary interview data, all voice recordings were transcribed and organised according to data source, type and case study. Thus I had data on household respondents and institutional respondents and their sub-categories. Sub-categories of household data are indigene interview data and that of stranger settlers, whereas those concerning institutional data were traditional authorities and Assemblymen and state land-management institutions. My field notes constituted another category of primary data. The data processing and thematic analysis followed the same procedures as the secondary data described above except that I tabulated the data for each data category and sub-category applicable to each case study, and the colour and underline codes were broader. I applied colour and underline codes to all transcripts while reviewing and annotating commentaries. I then extracted coded texts to create four two-column tables. In both Kumasi and Wa the four tables contained separate data for the four interview categories, namely indigenous households, stranger settlers, traditional authorities and state's land management institutions. The primary data were therefore contained in eight tables for Kumasi and Wa together.

Each row of column one of each table (for instance that of household interview data) contained all extracted texts of a particular coded colour and therefore of distinct coded texts. The rows in column one included texts relating to status of usufruct rights, role of stakeholders, indications of interactions and activism of indigenes, peri-urbanisation and commodification, 'historical' usufruct rights, gender, acephalous-centralised differentiation and quotable responses, while the final row held emerging follow-up issues. This step reduced the data chunk, and to ensure that the context and source was maintained or traceable I attached pseudonyms representing each transcript to the extracted data in the table. The next stage involved reviewing and analysing the extracted texts on the first column of each table and noting down emerging topics and interpretations in the second column of each table. In this analysis stage, any texts I reviewed were underlined differently with an underline-code based on the topic or interpretation that emerged and then de-highlighted to default white, except for those texts that did not yet fit into any topics and interpretation. The emerging topics which were subjective and with derived latent meanings were refined over and over and their interrelationships noted. Based on this procedure the analysis processes can be classed as interpretive and deductive-based on the broad sub-topics and objective but

inductive within each sub-topic. During the writing of the thesis I discussed the emerged topics using descriptive narratives, direct quotes and literature.

4.8 Ethical considerations

The research involved collection of data from human subjects: hence in conducting the research I aimed to minimise any potential effects on the respondents to the greatest extent possible. In Pramso, the sub-chief and the Assemblyman granted me permission to enter their community and conduct my research. In Siriyiri and Mangu I gained entry through the *tindamba* and Assemblymen. My initial fieldwork experience showed that it is not advisable in acephalous Wa to gain entry to the community through chiefs who hold political positions and who in many communities attract rivalry from other sections of the community. The *tindaana* is more appropriate in this regard, since his position is rarely contested once selected (MAN-KOKIN03). With respect to consent for respondents' participation in the research, I incorporated permission into the introduction letters to community leaders and consent forms for all respondents. I administered formal consent forms to institutional respondents, traditional authorities and Assemblymen, whereas I translated standard informal consent statements to most household respondents. I issued and explained participant information sheets to all respondent. Participation in the research was optional and respondents were allowed to opt out at any point in time even after having given consent to participate. Respondents were advised to ignore questions they consider irritating and/or harmful to them or which for any reason they did not wish to respond to. No remuneration was given to any respondent to induce participation.

Anonymity and confidentiality of respondents were very important in the research. In situations where complete anonymity – for instance of institutional heads, traditional authorities and Assemblymen – could not be guaranteed by virtue of their positions, I discussed this with the respondent to ensure their awareness and ease before proceeding with the interview. Contact numbers that I collected for recruitment of respondents did not contain actual names of respondents and are not reported in the research, while photos are captioned in a manner that does not reveal the identity of any of the respondent. Overall, no information from household respondents was described in a manner that could reveal their real identity and I used pseudonyms to reference respondents in my thesis. With regards to confidentiality, I took all steps necessary to preserve sensitive data that I collected from all respondents,

especially those whose anonymity was compromised by their positions. I sought the consent of respondents regarding data storage, reporting, and publication and reuse of the research data. Further I sought consent from participants where I voice-recorded interviews. My research complied with foreseeable ethical requirements and was ethically cleared by the Human Research Ethics Committee (Non-medical) of the University of the Witwatersrand (see Appendix A).

4.9 Limitations

This section captures unavoidable factors that influenced my research outcomes. First, the aim of the study to examine changes in usufruct rights related to the management of revenue from land transactions by traditional authorities. However, I deemed this a sensitive matter because traditional authorities might misunderstand this as questioning their accountability. In the interviews I was therefore cautious about this and it limited the scope of information gathered in that regard. Secondly, Kumasi and Wa represent typical case studies of pure centralised and acephalous societies in Ghana. The findings of my thesis are therefore specific to these contexts and are not intended to be generalised. Thirdly, the scope of the research in relation to changes in customary land tenure is restricted to changes in rights entitled to indigenes. Allodial interests of traditional authorities, for instance, as different bundles of rights in customary land tenure in Ghana, did not form the core of my thesis. The final factor is my prior knowledge, especially of the Upper West Region. To reduce any bias I used the evidence as it emerged from the case studies and have therefore not allowed this factor to influence my analysis of the case studies. Besides, I critically reflected on areas of potential bias, and where findings existed in the literature I used these to complement my analysis.

4.10 Summary of methods chapter

This chapter discusses the adoption of a research paradigm, the qualitative case study approach, selection of case studies and the methods. As a land tenure study, I adopted the interpretive research worldview because land tenure comprises of social relations between people and land. This also justifies the choice of the qualitative case study approach in my research. The selection of Kumasi and Wa and the specific case studies were justified based, among other factors, on the contrasting land tenures they represent. The chapter also sets out a justification for the research methods and describes the procedures involved. The final part

of this chapter discusses various ethical considerations in my research and acknowledges factors affecting the research findings. Overall, the chapter outlines the epistemology, ontology, and methodology of the research, and serves to lay a background to the empirical Chapters 5 and 6, which I turn next.

5 PERI-URBAN LAND COMMODIFICATION AND THE COLLAPSE OF TRADITIONAL USUFRUCT RIGHTS IN KUMASI

5.1 Introduction

As discussed in Chapters 2 and 3, changes have occurred to the customary land tenure system in sub-Saharan Africa and this reflects in changes in usufruct rights in Ghana. This chapter discusses these changes in neo-customary land tenure in the Pramso case study in Kumasi. I present case study insights that suggest that the changes in usufruct rights are tantamount to a collapse of the original usufruct rights. These changes affect indigene livelihoods due to two main factors: restricted indigenes access to usufructuary land and their receipt of a converted remnant value that is not commensurate with their original usufruct rights. My finding in this chapter is that the changes in usufruct rights are a good reflection of the extent of exclusion of indigenes from the conversion of customary land in Pramso. The chapter begins with how peri-urbanisation and associated land commodification have influenced changes in usufruct rights. I then discuss the history of usufruct rights and the extent to which indigenes are entitled to these rights in Pramso. The next sections present the nature of changes in usufruct rights, the central roles of traditional authorities, and responses of indigenes to tendencies of exclusion from the processes of conversion of customary land.

5.2 Rapid expansion of peri-urban Kumasi

In the outset it is important to mention that peri-urban Kumasi as a place is a matter of interpretation because of two factors. First, municipal towns near the metropolis have peri-urban areas of their own, overlapping with the peri-urban area of Kumasi. Secondly, the Ghana Statistical Service (GSS) (2014b: 72) reports that ‘Kumasi metropolis is completely urbanized’. As figure 5.1 illustrates, the metropolitan area is also fully consolidated, hence the peri-urban area of Kumasi falls outside its metropolitan boundaries. As a result peri-urban Kumasi qualifies as the peri-urban areas of other suburban towns such as Ejisu, Agogo, Asokwa, Kwadaso, Atonsu, Tanoso and Offinsu (see figure 4.6). Peri-urban Kumasi is therefore expanding in a suburban context to the extent that major towns have great influence on the growth of the city’s region.

In this section, I discuss the rapid growth of consolidated built-up areas and the peri-urban areas of Kumasi based on analysis of historical Google Earth Landsat images of 1984, 2005 and 2016. The Consolidated built-up area of Kumasi has a relatively high density of buildings and structures and therefore is mostly urban, whereas the peri-urban area composes intermediate and incipient areas with relatively low density. Intermediate peri-urban areas have more farmland than the consolidated areas but less farmland than areas that are beginning to peri-urbanise (incipient areas). The patterns that emerge mirror findings in Briggs and Mwamfupe (2000) about Dar es Salaam, namely that urban expansion depends on physical accessibility. In particular, ease of road access to the centre of the city influences urban expansion but is also impacted by geomorphological obstacles such as streams (Briggs and Mwamfupe, 2000). In Kumasi the boundaries of the consolidated built-up area are influenced by the ease of access that arterial roads offer. Growth is therefore pronounced on the major roads, including the Kumasi–Sunyani, Bekwai, Accra and Lake Bosomtwe roads. In Kumasi the accessibility factor in relation to major roads ensures that people are prepared to acquire affordable land even if at great distances from the city centre, thus accounting for rapid expansion along more accessible areas than in the interior (see also Simon, *et al.*, 2004 on peri-urban Kumasi). This trend has produced octopus-like area boundaries with fewer limbs in 1984 and 2005 due to fewer major roads. As the growth expanded to areas where major roads split, more limbs emerge in the 2016 boundary (see figure 5.1). Infilling of the area between the roads gives Kumasi's growth a non-uniform but circumferential and consolidated form.

Figures 5.1 and 5.2 below show the rapid expansion of the metropolis of Kumasi and corroborate the findings of Abass, *et al.* (2018) who calculated a 261 per cent increase in the built-up area of Kumasi from 1986 to 2016. As Abass, *et al.* (2018: 475) find, the built-up area of Kumasi had also become denser by 2016 compared to the previous years as the population increases had depleted almost all arable land. Intermediate or incipient peri-urban areas of Kumasi are wider than the consolidated sites. Pramso only really became part of the intermediate peri-urban area between 2005 and 2016 (figure 5.2) but is now about adding to the consolidated growth boundary as touched by the boundary (figure 5.1). Intermediate and even incipient areas are expected to follow growth patterns similar to those in the consolidated areas of Kumasi. As figure 5.2 shows, the growth of intermediate boundaries often takes place as an extension and widening of the edges of consolidated areas. With this rapid growth trend and in the absence of effective policy intervention, in a decade the city

and its peri-urban zone will expand as far as the Lake Bosomtwe areas, which at the time of the fieldwork in 2019 were still mostly farming areas.

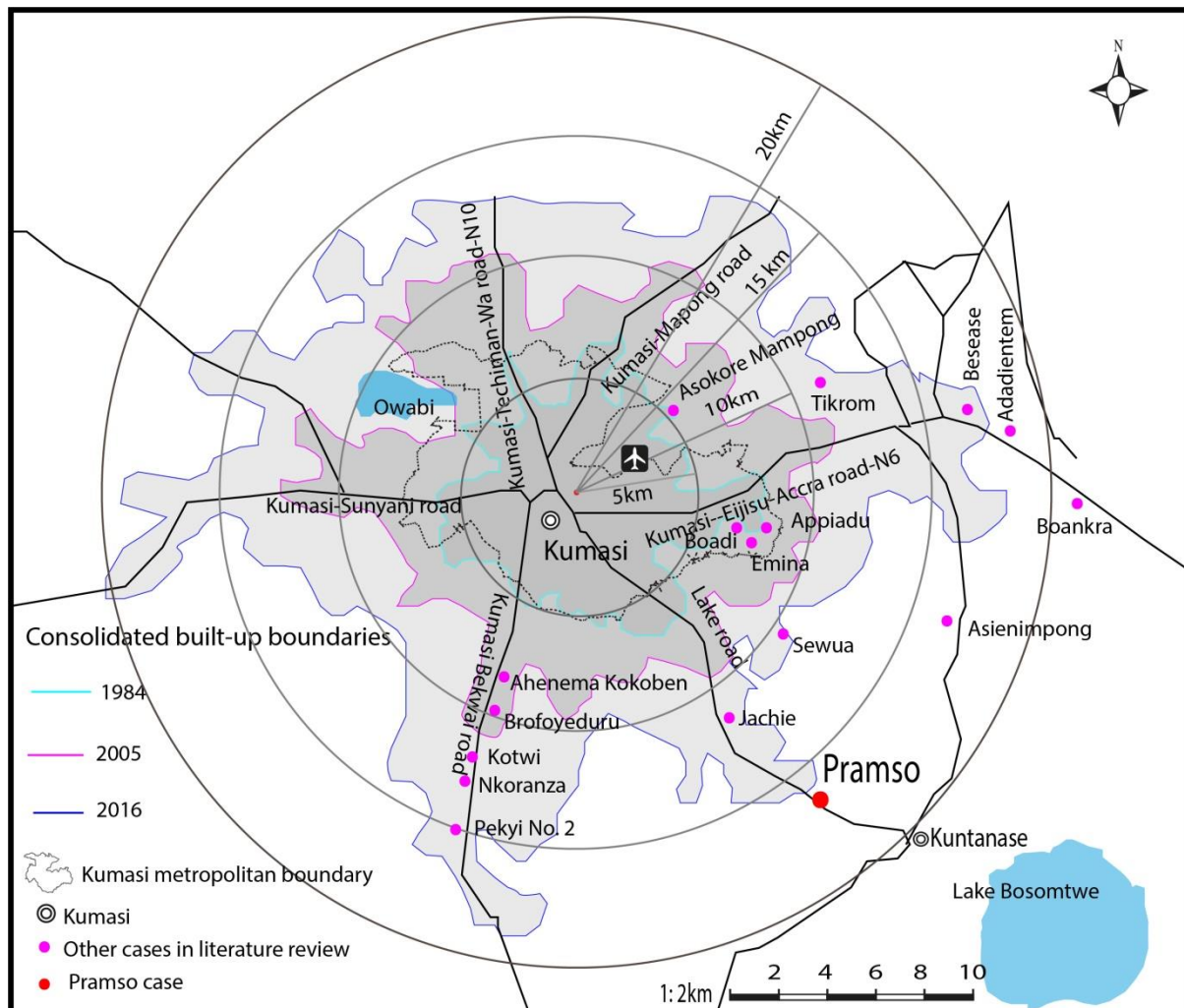


Figure 5.1: Expansion of consolidated built-up boundaries of Kumasi, 1984–2016

Source: Author's visualisation based on Google Earth images

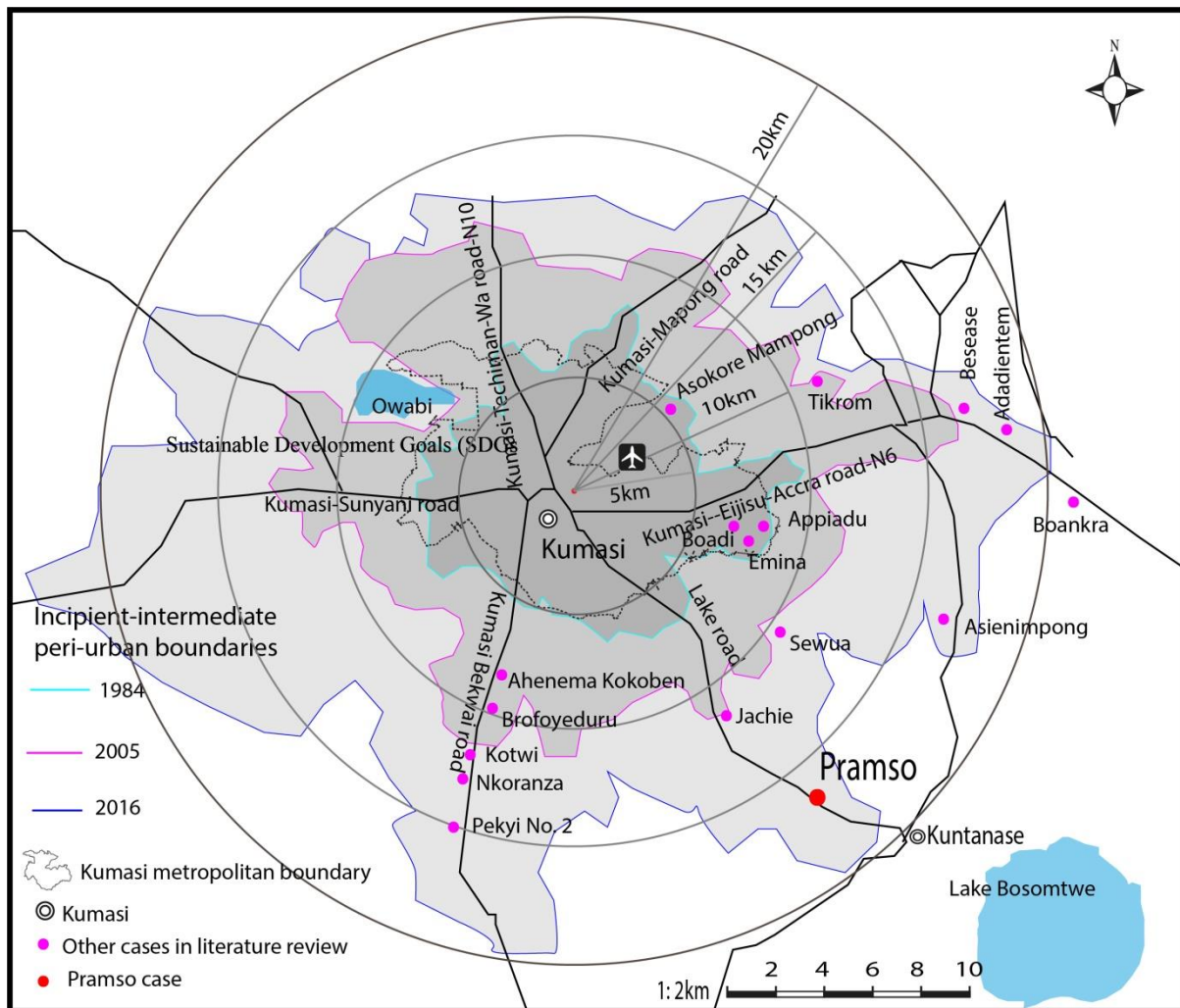


Figure 5.2: Expansion of incipient-intermediate peri-urban boundaries of Kumasi, 1984–2016

Source: Author's visualisation based on Google Earth images

A feature of peri-urban Kumasi is the distinctive contrast between new settlements (popularly called ‘new sites’) surrounding the hitherto village communities as the traditional settlement. In incipient and intermediate peri-urban areas, the old/traditional settlements are usually more accessible than the new settlements because the main road from the city links the former. Access roads in new sites are usually not tarred and are in bad condition. In the new sites the feeder roads and other services, including electricity and water, are usually co-produced incrementally by the residents and state agencies (My Field Notes; see similar processes described in Bartels, Bruns and Alba (2018) for peri-urban Accra). Typical new sites are dominated by uncompleted buildings, because housing supply is by incremental self-provisioning and also because partial construction is a strategy that lessees of land use to secure plots. As they partly develop the land, it becomes unlikely for the land to be transacted in, a second time. As construction progresses and stranger settlers move into the incipient and

intermediate areas, demand for goods and services increases. For instance, construction workers buy food, water and working equipment from the old settlements, whose women and men also supply labour.

5.3 Peri-urban land commodification in Pramso

As discussed in Chapter 2, peri-urbanisation and commodification of customary land co-occur. In this section I discuss these concepts in relation to the Pramso case study in Kumasi. A marker of peri-urbanisation in Pramso is the emergence of new development sites (see figure 5.3) that are less dense than the core traditional settlement of Pramso, which by comparison is congested (see figure 5.4). According to an indigene respondent, the emergence of new sites in Pramso began in about 10 years ago (PRA-IN02). In Pramso different respondents used various phrases (as displayed in Table 5.1) to distinguish the settlement's rural past from its present expanded peri-urban status. The major factors that influence peri-urbanisation of Pramso include population growth through immigration and natural increase and the siting of development projects. In terms of natural increase in population, an elderly male respondent remembered that when he was very young the number of indigenous people in Pramso was very small but now 'all of us have given birth to children' (PRA-IN01). Population migration into Pramso mainly involves students and public-sector workers, such as staff of hospitals and schools (My Field Notes). The establishment of St. Michael's Hospital in Pramso in 1960, a senior high school in 1970, and later a midwifery training school, and a vocational school has similarly fuelled immigration in Pramso (PRA-IN09; PHY-REP1).

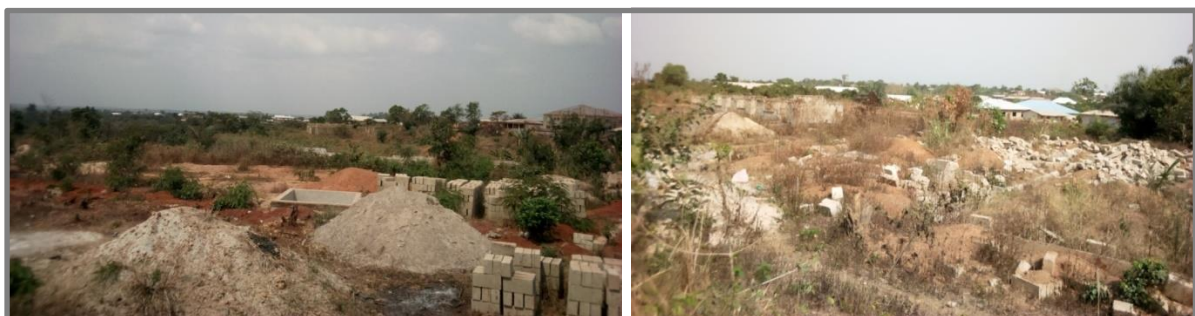


Figure 5.3: Peri-urban Pramso (left starred as A and right as B on figure 5.4 below)

Source: Photographs taken during field visit in 2019

Phrase	Interviews
Pramso was big but not as big as this	PRA-IN08
Many people in the community now	PRA-IN01
New sites have come and added to Pramso	PRA-IN01;04;10
Now you cannot count the number of houses in Pramso	PRA-IN01
It is now that Pramso has become big	PRA-IN01
Pramso was very small	PRA-IN01;05
This house was the last house in Pramso	PRA-IN05
Buildings began springing up in the new sites	PRA-IN08
The community is now developed	PRA-IN01

Table 5.1: Phrases and terminologies indicating peri-urbanisation in Pramso

Source: Interviews conducted in Pramso, January and February 2019

The decision to undertake development projects in addition to the increased housing development in Pramso indicates demand for land and a pull factor in further peri-urbanisation. An example of such a development project, according to a sub-Chief of Pramso is a gas cylinder-manufacturing factory, which the government plans to construct in Pramso. This decision is already attracting people to acquire land in the areas near the factory site (PRA-KRO). Another project is the small vocational school that is located near the road from Pramso to Swedru that is being relocated to a bigger site within Pramso for expansion. The sub-chief was of the opinion that the expansion of the vocational school into a National Vocational Training Institute similarly attracts demand for land and is an indication of future population growth (ibid.). Finally, the Kumasi–Lake Bosomtwe road, which passes through Pramso, was being reconstructed from Feyiase towards Pramso at the time of my field work in 2019 (My Field Notes). The Assemblyman of Pramso was of the opinion that because people anticipate the accessibility that the reconstructed road will offer when completed, there is speculative demand for land in anticipation of future investment opportunities (PRA-ASS). Further, an indigene respondent (PRA-IN11) and the planner at the Bosomtwe district’s Physical Planning Department (PPD) (PHY-REP1) both voiced the perception that development projects and established facilities in Pramso contribute to its rapid expansion relative to other communities in the Bosomtwe district. According to the planner, Pramso is among the 10 largest communities in the district due to its rapid growth.

One result of the peri-urbanisation process was the increased commodification of land and development of rental housing. One respondent felt that the effective operation of the midwifery training school was the cause of an evident demand for housing and rent increases (PRA-IN01). A resident stranger settler and a sub-Chief of Pramso both pointed out that final-year student midwives are required to annually rent rooms outside of the school premises, thereby leading to increased demand for accommodation, the commodification of housing and increase in rent (PRA-KRO; PRA-ST02). The sub-chief further indicated that both indigenes and stranger settlers who have the means often rush to lease land near areas where important infrastructure is developed. Respondents were aware that the processes of peri-urbanisation and commodification of land bring opportunities, for which both indigenes and strangers compete.

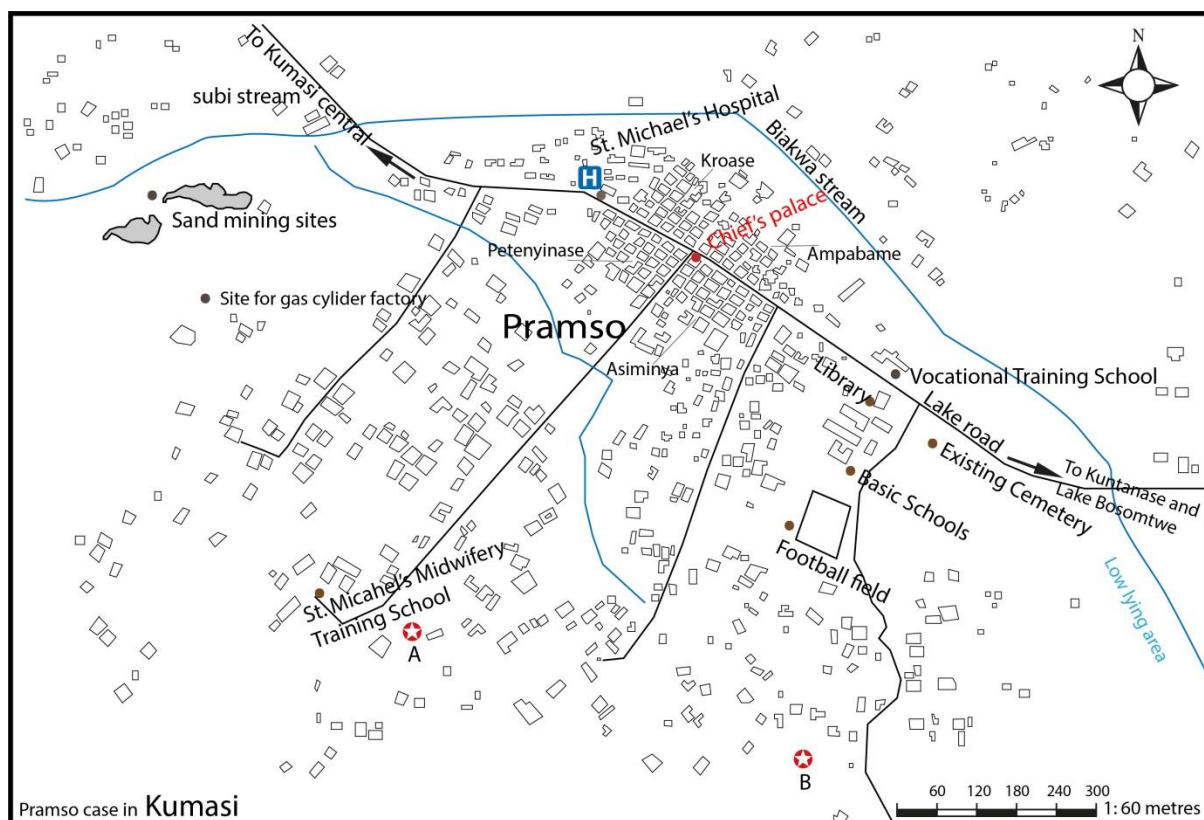


Figure 5.4: Map of incipient Pramso community

Source: Visualisation based on Google Earth images

Transaction in customary land is not a recent phenomenon in Pramso, although it has become rampant within the past decade. Respondents could not identify the point at which land began to be commodified, but an elderly indigene said that his grandfather had purchased a parcel of land over 50 years ago which he himself had inherited not more than 10 years ago (PRA-

IN02). This evidence indicates that land commodification is an old occurrence in Pramso, although it was infrequent. This account is in line with Asante (1965) who reports on commodification of land in cocoa-growing and mineral-rich southern parts of Ghana in the colonial era. In Pramso I observed that commodification of land is evident in the sub-division and transaction of hitherto usufructuary land in respect of which indigenes exercised usufruct rights. Respondents refer to land commodification as land sales, but in official discourse ‘stool land’ in Ghana can only be leased for up to 99 years and not sold outright (GoG, 1992). As a lease, the original lessee can renew the reversionary interest or the lessor can transfer it to a different party upon the 99-year expiry. The sub-division and transacting of usufructuary land is therefore a conversion of customary rights in land to neo-customary rights.

Conversions of usufruct rights in Pramso are not formal in terms of the state’s recognition and regulation, although chiefs issue site plans (see figure 5.5 below) and allocation notes to lessees as evidence of the transaction. During the transaction of sub-divided land between traditional authorities and ‘lessees’, a lease is not signed, therefore it is not a formal lease. But both parties understand that the transaction constitutes a leasehold and the ‘lessee’ can then go to the Lands Commission to prepare a formal lease document, which both parties then sign as a formal lease. In Ghana few people acquire this lease due to many obstacles (Baffour-Awuah and Hammond, 2013). As Owusu (2008) reports for peri-urban Kasoa near Accra, this ‘leasing’ of converted usufruct rights in Ghana is mostly to stranger settlers. One reason for this, based on my own observations, is that most indigenes presently hold land adjacent to their dwellings and do not actively seek to acquire land for housing as strangers settlers do.

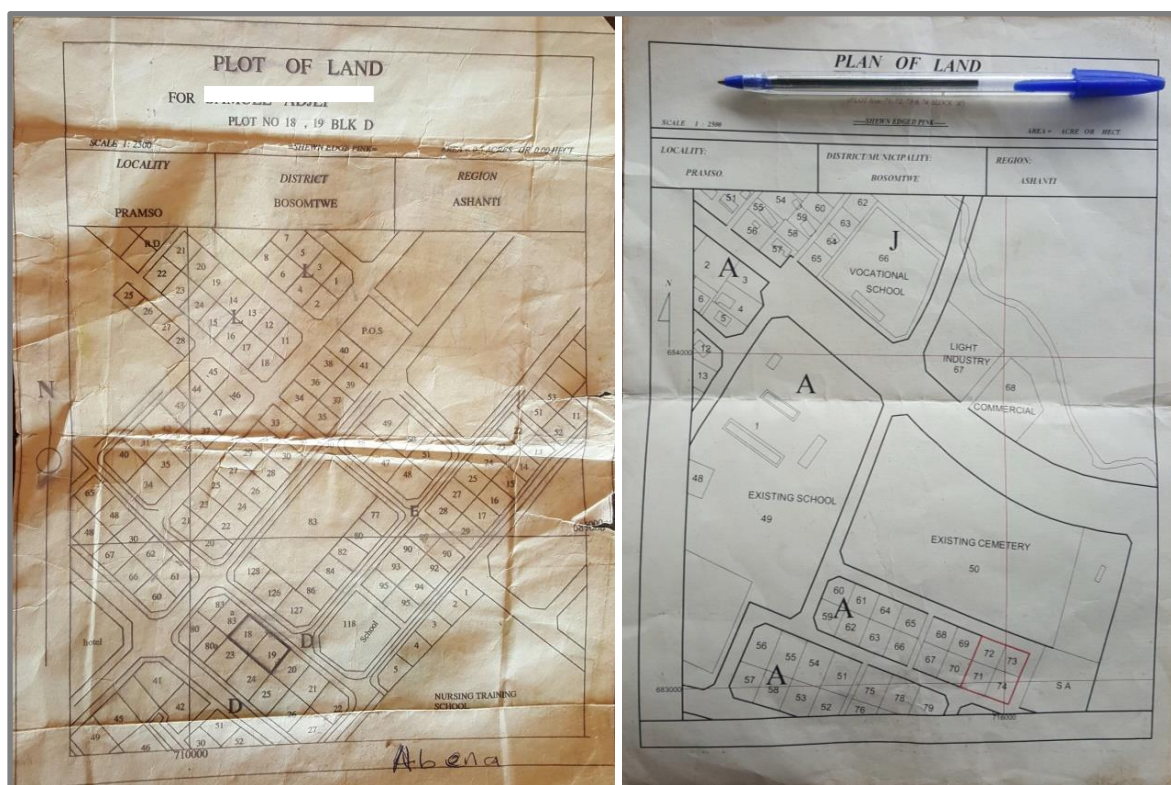


Figure 5.5: Examples of site plans, showing the land of the midwifery training school (left), current cemetery, and the basic and vocational schools (right)

Source: Author's photographs of site plans held by sub-Chiefs in Pramso

As the conversion of customary land progresses in Pramso, traditional authorities redistribute usufructuary land according to a formula based on the hierarchy of indigenes (details in section 5.4 below). I use the term 'redistribution' because according to the *Krontihene* sub-chief (KRO-PRA), and as discussed in section 5.4.1 below, the chief originally distributed usufructuary land in Pramso. It is when this conversion and redistribution happens that the land is technically no longer customary land but falls under what Durrand-Lasserve and Mattingly (2003) term as 'neo-customary'. The commodification, sub-division and leasing processes involve the Chief of Pramso and surveyors first creating a layout of the usufructuary land that they wish to sub-divide. The traditional authorities send the layout to the state PPD for approval. Afterwards surveyors plant concrete pillars on the boundaries of building plots as a physical demarcation (KRO-PRA; KUN-PHY).

In discussions, respondents depict peri-urbanisation as a cause of land commodification. But there is another set of opinions by indigenes that suggests that the community cannot expand without converting usufruct rights and leasing the same to indigenes and strangers settlers (PRA-IN01; PRA-KRO). This latter dimension points to a perception that, vice versa, it is the

commodification of land that causes peri-urbanisation in Pramso. Either way, the causally related concepts of peri-urbanisation and land commodification are together two key drivers of sub-division and conversion of usufruct rights in Pramso. Apart from land commodification, peri-urbanisation also produces effects such as the pollution of water bodies and reduction of farming activity. Indigenes link the expansion of Pramso to the destruction of water sources, for instance, by construction activities, farming near water bodies and improper waste disposal (see figure 5.6) (PRA-IN04; PRA-IN11). When asked what determines that a particular land parcel is ready for conversion, a sub-chief responded that

‘... nothing determines when your land is converted, it is just how close buildings are getting to the land you are farming [usufruct rights]. For instance, if the school here is the last building and if your land is next to it, you just know that this place is ripe for building so better be looking for farm land in a farther place.’ (PRA-KRO)

For indigenes to have access to farming land when they are displaced in this manner, they either plead for land, enter into share-cropping arrangements to use other people’s land or those who have land at distant places commute daily to cultivate them. The discussions in this section show that in the commodification of peri-urban land in Pramso, indigenes are beginning to pay in order to exercise usufruct rights.

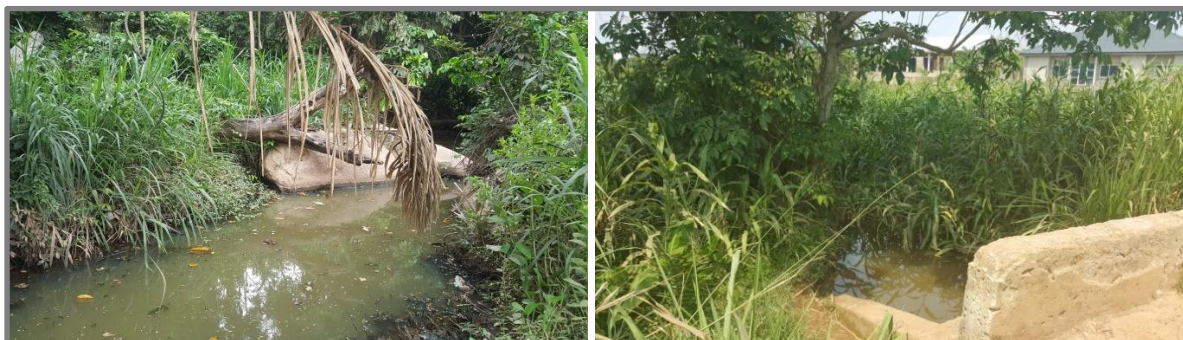


Figure 5.6: Pollution of Biakwa and Subi streams (mapped in figure 5.3)

Source: Author’s photograph taken during field visit in February 2019

5.4 The conversion of traditional usufruct rights to leaseholds in Kumasi

Change to usufruct rights is evident both in Pramso and in the literature that presents case studies of intermediate and consolidated settlements in Kumasi. In the conversion of usufructuary land in Pramso, remnant usufruct rights deviate from their original nature and

deteriorate. In this section I attempt to establish the status of usufruct rights in customary land. To achieve this I discuss the origin of usufruct rights through the history of Pramso, indigenes' perception of their entitlement in customary land, and positive and adverse changes to usufruct rights.

5.4.1 Creation of usufruct rights during the formation of Pramso

In terms of land, a sub-chief mentioned that Pramso shares boundaries with Jachie to the north and west, Swedru to the south and Kuntanse-Onwi to the west (PRA-KOK). Indigenes' narratives on the history of Pramso show that present-day Pramso has its origins in the colonial period. It was formed by the relocation of indigenes from Afiduase to the side of the lake road, which was then under construction. Two similar narratives emerged in the interviews on the founding of present-day Pramso. According to an indigene of Pramso, the community started in 1926 when the road was constructed by a contractor called Blantine. During that time, a palm wine tapper called Efoh made a shed (*prama*) along the road where he sold his palm wine. The people of Afiduase referred to the location of the palm wine stand as Efoh's *pramaso* and latter Pramso, which literally means the area of the shed. The road contractor advised the people of Afiduase to relocate to the roadside since Afiduase was not near any access road. The then Afiduase community obliged (PRA-RIN03). The *Krontihene* narrative of Pramso has the same detail, except that the shed was made by a hunter. Residents now refer to land of then Afiduase community as *krodaada* or old town.

As set out in Chapter 3, in the centralised land tenure in Asante, traditional authorities hold land on behalf of their territories. Pramso is typical of this land tenure system as land ownership is arranged in such a way that the sub-chiefs hold land rights for their respective clans and for the chief and the chief for the community (see figure 5.7). Nonetheless, ambiguities surround the manner of land-holding rights of the traditional authorities and indigenes in Pramso and I return to this in sub-section 5.4.2 below. The *Krontihene* mentioned that during the resettlement to present day Pramso in the colonial period, there were only four sub-chiefs, namely *Krontihene* (sub-chief, township), *Akwamuhene* (sub-chief, Akwamu clan), *Gyaasehene* (sub-Chief of the Ankobea clan and of chief's kitchen) and *Kyidomehene* (sub-chief, rear wing). As Nyasulu (2012) explains, sub-chiefs were originally warriors and protected the various flanks of the chief as commander in times of war. The then Chief of Pramso obtained land eventually from the *Asantehene* (King of the Ashanti Kingdom) and distributed it amongst the four sub-chiefs. Therefore, the root of land

ownership in Pramso can be traced to the *Asantehene* and, as will be seen in section 5.4.3, in the advent of land conversion the land of Pramso is redistributed in a reverse manner up to the *Asantehene*. There are now many more sub-chiefs in Pramso. The chief and his council created their positions based on subsequent settlement of indigenes in the town and on functions that emerged as a result of the expansion of the community (PRA-KRO; PRA-NKO). Any time groups of people came to settle in Pramso, the chief referred them to one of the original sub-chiefs based on lineage or clan of the arriving group to provide the latter with usufructuary land. As time went on the usufruct rights thus created become vested in the latecomer indigenes (PRA-IN08). The traditional Pramso community can be divided into four sections, namely Petenyinase, Ampabame, Kroase and Asimenya (see figure 5.3 above) which are distinct from the clans and from the subjects of the four original sub-chiefs.

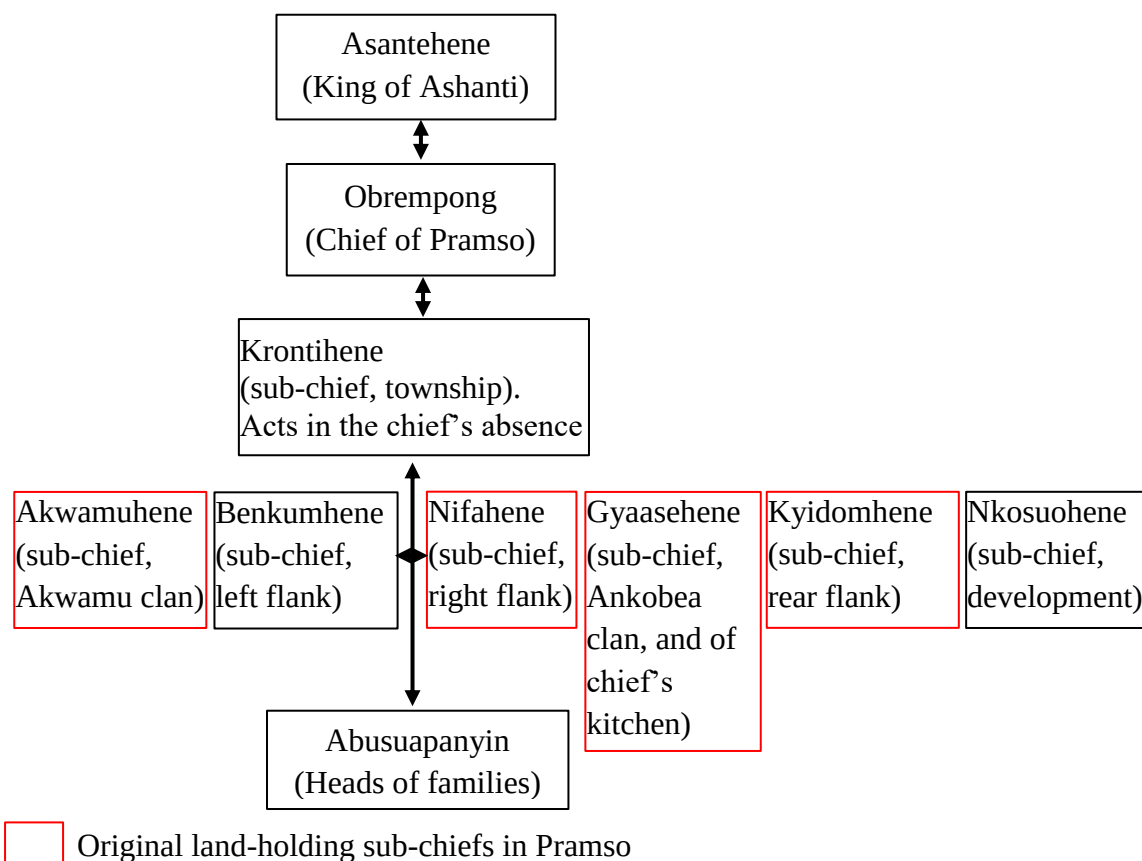


Figure 5.7: Structure of leadership in Pramso

Source: Author, based on interviews with Krontihene and Nkosuohene sub-chiefs

The origin of usufruct rights in Pramso relates to the relocation of the community as discussed above. As mentioned, in the narratives of sub-chiefs, *Asantehene* gave a part of the land of *Assinhene* (Chief of Assin) to the Chief and indigenes of Pramso to settle on and farm

(*usus*) and to feed (*fructus*) themselves (PRA-KRO). The phrase ‘settle, farm and feed’ is indicative of the creation of usufruct rights in Pramso. An elderly indigene informed me that the Chief of Pramso then distributed these rights in respect of land to the sub-chiefs, who in turn distributed the same rights among their subjects (PRA-IN01). Apart from this distribution mode, a further principle is applied. A female youth deduced that a sub-chief who mobilised men and fought for the cause of the chief was entitled to more land for his people (PRA-IN08). With respect to indigenes as subjects, the labour strength of an indigene-family in terms of farming and the corresponding expansion of a family’s farming area determine the size of land they control and use (*ibid*). Indigenes then passed on these usufruct rights through inheritance based on matrilineal rules from one generation to the other up to the present (PRA-IN01). A sub-Chief of Pramso gave a similar account;

‘when *Pramsohene* [Chief of Pramso] came to Pramso (in 1926), *Otumfuo* introduced him to *Assinhene*, Chief of Assin (a town in Ashanti Kingdom). So it was *Assinhene* who gave out his land to *Pramsohene* to come and settle here with his people. So if you go to Otumfuo’s palace even now, where *Assinhene* sits, he sits around with *Pramsohene* and the chiefs of communities along this road because he [*Assinhene*] ruled this land.’ (PRA-KRO)

The latter part of the quote above shows an example of relationships that are built through land tenure although a tenant-landlord relation may not exist between traditional authorities and indigenes. The nature of the creation of usufruct rights in Pramso as discussed above does not imply a tenant-like relation between the indigenes and the chief or the sub-chiefs. An indigene holds the view that indigenes are not obligated to either part with a portion of produce (*fructus*) or pay rent to the chief. ‘Unless you wish to give some to him.... If I like I can give some tubers of yam to *Nana* [Chief of Pramso], please take, cook and eat.’ (PRA-IN01)

There is another dimension that supports the view that indigenes are not tenants and traditional authorities are not owners of the land. Early stranger settlers in Pramso did not pay to acquire land. Stranger settlers presented a bottle of alcoholic drink, ‘schnapps’ in particular, for libation to signify open evidence to indigenes that the stranger can never claim ownership over the land in future. The interview extract below illustrates this point.

‘At first those who wanted to build did not buy land. Even if a person were a stranger what they did was to bring a drink and pour it on the land witnessing that

they have come to take this land so that in future the stranger [settler] will not claim that the land is theirs.’ (PRA-IN12)

In essence, stranger settlers did not pay rent to access a building plot but they were deemed as tenants and never owners of the plots, and thus tenants at the will of the grantees. This kind of witnessing using a drink was not required of indigenes during the creation of usufruct rights and acquisition of building plots. It suggests that the chief and sub-chiefs did not consider indigenes as tenants, unlike stranger settlers. Indigenes could therefore claim ownership or at least co-ownership of the community land, first of all by virtue of the traditional authorities not treating them as tenants.

The second way that the entitlements of indigenes in respect of land can be implied is the nature of benefits that accrue to only indigenes (and even certain stranger settlers) because of the right to exercise usufruct. The interviews indicate that the indigenes of Pramso were the main beneficiaries of the distributed usufructuary land until the conversion of usufruct rights. Apart from keeping the *fructus* of the usufructuary land, indigenes are able to grant share-cropping rights to stranger settlers on a temporary basis and receive the rent without seeking the consent of the sub-chief or the chief. In share-cropping arrangements, the stranger settler uses the land of an indigene on condition that the farm produce will be shared between the two (Amanor, 2008). Indigenes and stranger settlers enter into the share-cropping arrangements for up to only three years, but they can be renewed after the initial agreement (ibid). In Pramso indigenes receive the rent or share of produce from the share cropping arrangement and are not obliged to give a portion of these proceeds to either the sub-chief or the chief (PRA-IN01; PRA-IN12; PRA-KRO). This arrangement is a common practice, as many indigene respondents and one stranger settler respondent were involved in the practice. With increasing peri-urbanisation of Pramso, indigenes who have lost usufruct rights are beginning to enter into share-cropping arrangements with indigenes of other communities in order to access land when decades back it was they who granted these rights (PRA-IN12). The nature of the usufruct rights created in the manner discussed above sheds light on how indigenes are entitled to the usufruct rights prior to conversion and what relationship existed between them and the traditional authorities in respect of land.

5.4.2 Ambiguities in entitlements of indigenes in neo-customary land

As discussed in Chapter 3, chiefs in Kumasi claim to own the land in their communities (see Ubink, 2008b). The two sub-chiefs that I interviewed claimed that the land in the community

belongs to the sub-chiefs and the chief and not all indigenes. Indigene respondents on the other hand did not hold a uniform view on their entitlement in land. The opinion of indigenes in relation to this claim is important but is often missing in the literature in peri-urban Kumasi. In Techiman, a city in the Bono East Region of Ghana, where centralised land tenure is also practiced, Akaateba (2018) finds that 92.5 percent of respondents perceived the chief as owner and allocator of land. In Pramso one set of elderly indigenes describe their entitlements to the land of Pramso, or specifically the land of their family, as usufructuary and not ownership of land or soil per se. For instance, one elderly male indigene (PRA-IN09) indicated that indigenes are caretakers of the land on behalf of the traditional authorities. On the basis of being caretakers, these indigene-respondents believe that they are entitled to forms of benefits during conversion of usufruct rights (for instance sub-division and leasing of usufructuary land) although they do not consider themselves owners of the land (PRA-IN11). Another indigene emphasised that the land belongs to the chief who gave it to indigenes to farm on and feed themselves (PRA-IN09). This position portrays indigenes as entitled to usufruct rights.

Another set of indigenes, in this case two middle-aged women and a male youth, perceived themselves as owners of the land (PRA-IN07; PRA-IN11; PRA-IN12). One of the middle-aged women argued that the chief comes into office when indigenes were already cultivating the land to feed themselves (PRA-IN12). The young male similarly contended that until the sub-division and leasing of an indigenous family's land, the family takes care of and owns the land and the family, not the chief or sub-chief, usually receives proceeds of share-cropping arrangements (PRA-IN07). In relation to the share-cropping, a stranger settler explained that where share-cropping involves food-crop farming, indigene families receive one-third of the produce, whereas cocoa farm produce is shared equally between the stranger share-cropper and the indigene (PRA-ST02). The same respondent revealed a shift that may relate to the increasing peri-urbanisation process. He stated that some indigenes charge up to GhC500 for two years of use of their land instead of receiving a share of produce. In his understanding indigenes do not give any portion of this income to the chief or sub-chief.

The argument put forward by the indigenes I interviewed, as presented above, runs contrary to claims by traditional authorities, both as recorded the literature and in my own interviews in Pramso. A sub-Chief of Pramso maintains that 'the land ownership system in this community is that land belongs to chiefs [including sub-chiefs and not all indigenes]' (PRA-KRO). Similarly, in the review of literature in peri-urban Kumasi, traditional authorities

make similar claims of owning the community land, as discussed in Chapter 3 (see Amanor, 2008; Ubink, 2008c). As Ubink (2008) finds in the Besease community in peri-urban Kumasi, chiefs claimed that ownership rested either with themselves or with the royal family.

These conflicting claims of indigenes and traditional authorities over ownership becomes more pronounced as the community peri-urbanises than in its rural form. As will be seen in the sections that follow, traditional authorities succeed in the struggle over ownership and in essence sub-divide and lease land. This reality means a change in usufruct rights and a shift from customary to neo-customary tenure. The character of neo-customary tenure in Pramso can be seen by comparing the evidence in section 5.4.1 with this ambiguity and the practicalities that arise from the introduction of market value due to peri-urbanisation, including: turning over of benefits in and control of land from indigenes to traditional authorities; change in the perception of land as bundles of rights to viewing it as physical commodity and an asset of traditional authorities; and the latter's attempts to crystallise their ownership of the land. For instance in almost all land in Pramso occupied and cultivated by indigenes, usufruct rights before the sub-division and leasing of land translate into substantial economic benefits for indigenes. However, the interests of Pramso's traditional authorities in land before the land conversion yielded little economic benefits to them. After conversion of the land, traditional authorities reap the majority of benefits, as I discuss in section 5.4.3 below. It is therefore not strange that indigenes complain about chiefs squandering benefits in land sub-division (PRA-IN06; PRA-IN11). I argue that the bundles-of-rights framework can help clarify this overall ambiguity. That is, if indigene holding of usufruct rights and chiefs' entitlement to the allodial interest as the arrangement in customary tenure is allowed to continue in the neo-customary tenure, the ambiguity is resolved. In that case each party is entitled to the market value of their previous entitlements and ownership of physical parcel of land is less material. In the remainder of this chapter I provide evidence that in practice neither indigenes nor traditional authorities are able to exclude the other in Pramso. As discussed in Chapter 2, exclusion is an important feature of property ownership. This further suggests that traditional authorities' claims of ownership are tenuous.

State land-management institutions in Ghana have officially adopted the customary law principle that indigenes hold usufruct rights while traditional authorities hold allodial management functions. This is contrary to the interpretation of the authorities that everything in land is vested in them. All three representatives of state land-management institutions that I interviewed in Kumasi and the representative of the Ministry of Lands and Natural

Resources in Accra held the view that indigene entitlement in customary land in Ghana is restricted to usufruct rights. Nonetheless, the respondents of the state land management institutions are not oblivious to the exercise of ownership behaviour by traditional authorities that relegates usufruct rights. The respondent of the Office of Administrator of Stool Land (OASL) (OASL-REP) in Kumasi explained that chiefs may be legal land owners as customary managers but that equitable beneficial ownership resides with the indigenes. The respondent of the Lands Commission in Kumasi, while expressing the same point, gave the straight forward response that ‘...yes, the chiefs do not see that they are holding the land in trust for his people.’ (LC-REP) Therefore the original nature and purpose of usufruct rights, as seen in sub-section 5.4.1 above and which are in accordance with the customary land law principles in Ghana (discussed in Chapter 3), change upon the commodification of land. In its pre-conversion form, ownership reflects the Hohfeldian approach, which does not emphasise absolute exclusion. However, at the point of conversion of land, traditional authorities interpret ownership as akin to the power theory of total exclusion. These changes have important implications for the livelihoods of indigenes and the peri-urbanisation of Pramso which has largely influenced them. I now turn to discuss the implications of the change in the form of the depletion of usufruct right and what remains of them.

5.4.3 The remnants of conversion of usufructuary land

In this section I discuss implications of changes in usufruct rights in terms of benefits that flow to indigenes as a result of the conversion of usufruct rights. Peri-urban land commodification changes customary land tenure practices. As I briefly mentioned above, when peri-urbanisation and land commodification occur, traditional authorities assume control over land and greater benefits in the market value of land. By doing this traditional authorities view land as their physical asset instead of bundles of rights in which indigenes hold a part. These practices by the traditional authorities trigger changes in customary land rights, including in usufruct rights held by indigenes. An indication of the current status of usufruct rights in peri-urban Pramso is the varied forms that usufructuary land has been converted to and the continuing presence of unconverted usufructuary land and unchanged circumstances, which in turn constitutes remnants of usufruct rights. The remnants are composed of both direct and indirect ways by which indigenes derive benefits from community land by virtue of being indigenes. There are certain benefits that are not

differentiated in terms of indigenous status and other remnants are not usufructuary in nature, although indigenes receive these benefits due to previous holding of usufruct rights.

Benefits from the conversion of usufruct rights

One of the important remnants of converted usufruct rights is a share of usufructuary land that the chief gives to each sub-chief and his indigene subjects during sub-division and leasing. The review of the literature on peri-urban Kumasi shows a sharing formula in which every 15 plots that are converted are shared as follows; Golden Stool (represented by Asantehene) – 5/15, Local Stool (represented by village chief) – 2/15, Local Chief (village chief) – 2/15, Elders – 2/15, indigenes – 2/15, Community Development – 2/15 (Akrofi, 2013: 137) (Akrofi, 2013). According to Akrofi (2013) the formula originates from *Asantehene's* office and is applied in various communities such as in Sewua and Asokore Mampong.

It emerged from the interviews that the agitations of indigenes in Pramso (as discussed in section 5.6 below) influenced the chief to institute a one-fourth rule in the redistribution of converted land in Pramso. In administering this rule, surveyors sub-divide active farm land and uncultivated land into building plots at the instruction of the chief. This sub-division happens after the PPD approves a base map of proposed land uses. In any sub-division the chief divides the total number of building plots, usually measuring 100 x 70 ft. (30.48 x 21.34 m) or larger, into four parts. The chief retains one-fourth for *Asantehene*, the King who originally gave the land to the Pramso Chief and his people, one-fourth for the personal development of the chief and another one-fourth for the development of the community. The chief gives the remaining one-fourth to the sub-chief concerned and his *obusuapanyin* or family head to share with their indigene subjects. This one-fourth usufructuary land, which the chief redistributes down to indigenes, constitutes the main remnant of converted usufruct rights.

In one instance the total number of plots that the chief gave to one particular sub-chief and his subjects in Pramso were 160. The sub-chief kept five plots to himself, gave four plots to the sub-stool, which the sub-chief must not lease until a successive sub-chief comes or unless there is a very important need. The sub-chief gave three plots to the *obusuapanyin* and distributed the remaining 148 plots to the families so that each woman in a family got two plots to hold for her household. Two plots out of 160 plots are far below the share for indigenes in the formula that Akrofi (2013) reports in other parts of peri-urban Kumasi. The

rationale for giving the plots to women is because women constitute the family in matrilineal centralised Kumasi. Households may receive more plots in the future because the conversion can be multiple times depending on the size of land under the control of a sub-chief, family or household and households may receive plots at each subdivision. One shortcoming is that indigenes who decide to formalise their share of land into formal leaseholds obtain interests which are inferior to perpetual usufruct rights, although the leaseholds may be more secure.

These formulas for redistributing land are in contravention of the importance of both customary land law principles and property theory's bundles of rights. This is because the redistribution treats land in its physical state and not as interests in respect of land such as usufruct rights. In other words, at the point of conversion usufructuary land is not viewed as intangible rights but as a tangible land. The attention to the physical parcel of land mimics the idea of ownership, as documented by Hayford (1903), and constitutes a departure from the customary land tenure system that emerged from colonialism. Under this arrangement, the colonially formed 'custom' no longer determines any bundles of rights for the fragmented pieces of land redistributed among indigenes and traditional authorities. The emphasis on physical parcel of land as against social, ritual and abstract rights also reinforces the effect of neo-liberalism on land tenure as discussed in Chapter 2. Traditional authorities no longer have any defined control over the parcels redistributed to indigenes. The *Krontihene* of Pramso stated, in my first interview with him, that indigenes can deal with redistributed land they receive in any manner (PRA-KRO). The manner of redistribution of physical parcels of land in Pramso therefore suggests that all customary bundles of rights (such as usufruct rights) are coalesced and redistributed. Therefore indigenes may own, absolutely (subject to state power) and perpetually, the fractions of converted land that they receive after agitating.

Another remnant of usufruct rights is various non-standardised forms of attempted reparations given to indigenes that the conversion of usufruct rights affected. Literature on peri-urban Kumasi shows that traditional authorities in certain communities have paid compensation, financial and otherwise to indigenes, when depriving them of land on which they had enjoyed usufruct rights. Akrofi and Whittal (2011b) find that the Chief in Asokore Mampong gave financial compensation to indigenes to invest. The chief does not consider these categories of indigenes to be capable of developing building plots if the compensation were to be plots of land. Kasanga and Kotey (2001) recorded a few instances of payment of compensations to more women than men. This is in line with the matrilineal system, but men receiving compensation is not necessarily an exception. One reason is that men are family

heads and cannot be neglected completely in the same way that women are completely excluded in patrilineal Wa. Chiefs do not consider the few instance of compensating farmers to be obligatory. The position of traditional authorities regarding compensation is that they are only morally obligated to compensate indigenes upon conversion of usufruct rights, with one chief saying ‘You must compensate the farmer for his loss of livelihood if he approaches you with respect’ (Ubink, 2008b: 157). In Pramso the interviews did not reveal any instances of this form of financial compensation to affected indigenes.

The only form of compensation that chiefs deem fit for indigenes in peri-urban communities in Kumasi is in respect of improvements on land, such as crops (Akrofi, 2013). According to Akrofi (2013), chiefs in certain communities claim that indigenes are only entitled to compensation for the crops grown on the land during conversion. This is the case, for instance, in Boadi where the chief indicated that all settlers in the community are strangers and not indigenes, and hence the former are entitled to compensation for crops only (ibid.). In Pramso this form of compensation (as little as GhC20) was paid to affected indigenes for destruction of crops during sand mining (PRA-ASS). Yet in the short term the land becomes unsuitable for cultivation of crops after the mining of sand. However, the assertion by chiefs that stranger settlers are not entitled to compensation implies conversely that indigenes are entitled to compensation during conversion of their usufruct rights. The arbitrary nature of these forms of ‘compensation’ does not come close to the standard compensation for land use deprivation as used by the state during compulsory acquisitions of land. This aspect is discussed by Kidido, Ayitey, Kuusaana and Gavu (2015), who examined this subject in respect to acquisition of land for mining purposes and argue that the users of land, mostly indigenes, are entitled to compensation for land use deprivation. The findings of Kidido, *et al.* (2015) from the Akyem Kotoku centralised land tenure system in the Eastern Region of Ghana uses the bundles of rights framework to show that indigenes are entitled to usufruct right and are the rightful recipients of compensation for land use deprivation. This is discussed further in Chapter 7 of the thesis.

The conversion of usufruct rights gives rise to the development of projects such as toilets and waste disposal sites as benefits for the urbanising customary communities concerned. Several authors have reported the building of facilities in peri-urban communities, such as Sewua, Appiadu, Asokore Mampong and Besease in Kumasi (Akrofi and Whittal, 2011a; 2011b; Ubink and Amanor, 2008; Akrofi, 2013). Other communities in peri-urban Kumasi covered in the literature reserve two out of every 15 plots for projects in the community (Akrofi,

2013). In Pramso, projects that benefit from usufructuary land include basic schools, an old vocational school, the upcoming national vocational training institute, the midwifery training school, hospital, a forthcoming gas-cylinder manufacturing company, the toilet facility, community centre, and a community library. The Chief of Pramso allocates one-fourth of converted usufructuary land for projects that are to benefit the community of Pramso at large. In Pramso the community development committee can lease these reserved parcels to cover expenditure for community-initiated projects. Sub-chiefs in Pramso, the Assemblyman and several indigenes I interviewed confirmed this arrangement (PRA-KRO; PRA-ONK; PRA-IN011; PRA-IN01; PRA-ASS). The chief has reserved

‘...one fourth of the converted land to the village for development. So if you go down this street, there is a new toilet we are building there. It is the lands for the community development that we have sold and have used the money to build the toilets.’ (PRA-IN01)

The toilet facility has been built and was being finished at the time of data collection in 2019 (see figure 5.8) and according to the sub-chiefs and other indigenes, the source of funds is the one-fourth share of redistributed land dedicated to community development. A sub-chief in Pramso mentioned that the one-fourth share allocated to *Asantehene* can also be used in addition to the one-fourth for community development (PRA-KRO). However, not every respondent in Pramso agreed that the chief used only revenue of land sales for the toilet project. An indigene (PRA-09) said that the toilet project was started with contributions from community members and attendees of their annual festival (*afahyɛ*). The next project after the completion of the toilet will be the resumption of a community centre project, which had been started by a Non-Governmental Organisation and abandoned for over two decades. In addition to these two projects, the community constructs the projects on parcels of usufructuary land that they have converted.



Figure 5.8: A communal toilet facility built on converted usufructuary land through leasing of a one-fourth share for community development

Source: Author's photographs taken during fieldwork in July 2019

Traditional authorities also use leased usufructuary land and used the revenue to lobby for projects. In Sewua, a community covered in the literature on peri-urban Kumasi, the chief was able to lobby for the state to build the Ashanti regional hospital in the community by providing land to the government (Akrofi, 2013). In the narratives in Pramso, the former Chief of Pramso realised that Pramso only had a chance to obtain a water project if the community's contribution to the internally generated fund of the district assembly (the local government authority) was more than that of other communities in the district. To ensure that the community in Pramso met the target and benefited from the project, the then chief leased a portion of the land for community development and paid the revenues to the district assembly as intentionally generated fund (PRA-KRO). The district assembly then awarded the water project in Pramso (see figure 5.9).

Still related to community development as a remnant in Pramso is the reservation of redistributed land for providing services such as roads, playgrounds and open spaces. These provisions are made during the approval of the layout by the PPD and they serve the community generally.



Figure 5.9: Water project lobbied for by Pramso using revenue from the one-fourth share of land for community development

Source: Author's photographs taken during fieldwork in February 2019

Historically, indigenes of centralised communities provide for the needs of their chief and the chief in turn provides for the needs of the king (Hayford, 1903). The traditional function of the people of the Boadi community in peri-urban Kumasi was to supply firewood, pepper and other food stuffs for the king's palace and the Chief of Boadi is also the palm wine tapper of the king (Akrofi, 2013). However, the Pramso case revealed how urbanisation is threatening this practice. A Pramso sub-chief indicated that the traditional function of the Pramso community to *Asantehene* is to provide palm oil for the *Asantehene* kitchen. He then complained that 'the land that we were planting the palm trees on, we are giving it out for building, so you see...' (PRA-NKO). These services therefore remain the responsibility of the subjects but they are unable to perform them now, for instance because of the depletion of resources. In the present day, the quarter of converted land that the chief reserves for his personal development now caters for these functions and the chief no longer has to rely on indigenes. This may then be an indirect usufructuary remnant, since indigenes would otherwise be required to contribute to taking care of their chief. Related to the remnant in respect of services to the chief is the fact that the Chief of Pramso solves general and emergency problems in the community without any known source of funds. One indigene youth thought that the uses of land lease revenue may include leasing the land and using the revenue to address general problems such as the occasional replacing of street lamps (PRA-IN03).

The final benefit accruing to indigenes as a result of the conversion of usufruct rights is that the peri-urbanisation of Pramso creates alternative livelihood opportunities. Interviews in

Pramso show that its peri-urbanisation comes with alternative livelihood opportunities in the form of jobs, markets for trade, the rental market, and service industries, among others. In certain households, conversion of usufruct rights also provides capital for them to engage in alternative livelihood activities. If usufruct rights are not converted, the built-up area of a community's territory will not expand and the alternative livelihood opportunities do not arise. The building of facilities and housing, and the settling strangers influences Pramso in many positive ways. The majority of indigene respondents and the representative of the PPD (KUN-PHY) believe that the establishment of the institutions which attract stranger settlers into the community also helps to develop Pramso. Indeed, my analysis of Google Earth satellite images show that the new site in Pramso that stranger settlers mostly occupy is many times the size of the traditional settlement occupied by indigenes. An indigene (PRA-IN04) said 'when we farm, we plant maize, harvest and use it to make *Kenkey* (a staple food made with fermented corn) and sell' (see figure 5.10). Similarly, the first indigene I interviewed in Pramso explained that

'Even though the land was there and we used it for free, when we get many people in our community and the land finishes ... we get jobs to do and buy food. Because the community is developed, people come to trade and we can also engage in trade due to the demand.' (PRA-IN01)



Figure 5.10: Kenkey making and petty trading in Pramso

Source: Author's photographs taken during fieldwork in January 2019

In the opinion of the PPD representative, a solely agrarian economy does not improve the quality of life of the inhabitants (KUN-PHY). KUN-PHY argues that 'when a community's land is converted it ensures that they have access to healthcare, education and others.' In terms of employment, indigenes are usually the beneficiaries of jobs that emerge from the development projects, such as becoming labourers, watchmen, cooks and cleaners. One

indigene (PRA-IN11) states that many youth of Pramso work as masons and carpenters due to the proliferation of construction work in Pramso. A sub-chief (PRA-KRO) mentioned that while granting land for the gas-cylinder factory, the chief stipulated to the government that 20 per cent of casual employees must be indigenes. These work opportunities serve as a form of indirect compensation in lieu of the conversion of usufruct rights. Nevertheless, apart from the reservation of a quota of jobs in the case of the gas-cylinder factory, on the whole indigenes compete with stranger settlers for opportunities and there are some indigenes who do not have capital and skills to take advantage of the emerging opportunities.

Unaffected usufruct rights

The second form of remnant usufruct rights, along with the benefits of conversion as discussed above, is usufructuary customary land that is not yet converted. This involves usufruct rights that indigenes enjoy in respect of distant unconverted land, which they commute to cultivate crops. Indigenes continue to enjoy the original form of usufruct rights on such parcels of land without interference from traditional authorities, who barely have economic interests in those parcels. An indigene revealed that his family has 2 acres of land which is not yet sub-divided and on which they have planted cocoa, palm and orange trees, and cultivate food crops (PRA-IN01). Another indigene (PRA-IN02) similarly mentioned that he has four plots (1 acre) of land on which he cultivates crops for the food needs of his household. A sub-Chief of Pramso (PRA-KRO) confirmed that indigenes continue to exercise their usufruct rights on such parcels of land, noting also that they use motorized tricycles for transportation. Nonetheless, the same sub-Chief explained his fears that usufructuary land was fast diminishing and said;

‘I know by the next 20 years they will not have any land unless they go far. I can foresee that ... therefore people are now farming on land at our borders with Onwi. That place is far and not within a walking distance but because of *Aboboyaa* [tricycles], people go there to farm.’ (PRA-KRO)

Many of the respondents in Pramso said farming continues to be a major livelihood activity for them and their households.

Before the conversion of usufruct rights, indigenes had built their dwellings on usufructuary land and this constitutes a remnant usufruct right. In Pramso several of the respondents recalled that they had obtained the parcels of land for their traditional houses free of charge

(PRA-IN01; PRA-IN12). It was a usufruct right for indigenes to build on a part of the community land without being charged. An elderly indigene (PRA-IN09) indicated that the chief and elders wanted the community population to grow and they even permitted stranger settlers build houses on community land without paying for the land. An elderly female indigene respondent said indigenes could build on one another's land without compensating for this because land had been abundant (PRA-IN12). The interests and rights of indigene families in these categories of land are potentially perpetual, since it is unlikely that any Chief would displace indigenes from their traditional houses.

In Chapter 3 I discussed the categorisation of physical parcels of customary land and noted that 'stool land' by virtue of this categorisation is attached to the stool; it is not the customary land of that entire community. In this section I discuss an example of parcels of land described in Pramso as 'stool land', which is distinct from the community land. Similar to Hayford's (1903) category two customary land, which attaches to the stool (office of the traditional authority), the sub-chiefs in Pramso regarded certain categories of land as stool land or *nkonya asaase*. This category of land is attached to the stool, and the predecessor, incumbent and successive chiefs have interests in these parcels of land. In Pramso *krodadaa*, *bepɔso* and *samanpɔmu* constitute stool land. *Krodadaa* is the land covering the old settlement of historical Pramso before it moved to its present location (PRA-IN01). *Bepɔso* is a sacred area of hilly land in the community and *samanpɔmu* is cemetery land that consists of both parcels of the current and reserved cemetery land. Indigenes are permitted to use such parcels of land undisturbed until the chief is need of the land. The reference to these parcels of land as stool land affirms that stool land may not refer to the general land of the community.

Another form of temporary usufructuary benefit is converted usufructuary land that lessees are yet to develop. This temporary use of leased land by indigenes emerged in the review of literature on peri-urban Kumasi. In Appiadu, traditional authorities cautioned indigenes to reason with lessees while continuing to use land acquired by the latter (Akrofi, 2013). According to a sub-chief in Pramso (PRA-NKO), the chief and his council have instituted a rule that lessees of sub-divided land are to allow indigenes to use the land they have acquired until the lessees actually develop the land. Lessees and indigenes then develop a consensus when the former is ready to develop the land.

These constitute forms of remnants of usufructuary benefits due to conscious efforts to sustain usufruct rights and the livelihoods of indigenes temporarily. However, my interviews in Pramso revealed that this arrangement is not without challenges because most lessees, including those who do not intend to complete their projects soon, partly construct their projects on the land to avoid multiple sales. When this happens, farming on the remaining land is usually not feasible or even possible. This arrangement thus concerns lessees who ‘buy the land and in about three years they have not been able to start construction, so the farmer continues to farm on it until the buyer develops’ (PRA-IN09, 2018). The arrangement is also insecure by virtue of the uncertainty regarding when indigenes may be evicted.

Other marginal remnants

In Sewua and Asokore Mampong, Akrofi (2013) found traditional authorities leasing land at a fraction of the market value to indigenes who opted to acquire more plots over and above their redistributed share. This is similar to Pramso, except that mostly indigenes that access this benefit have cordial relationship with the particular chief or sub-chief leasing the land to them. Secondly, in Besease in peri-urban Kumasi, Ubink and Amanor (2008) report that certain indigenes were able to lease their usufructuary land and that the chief usually found it difficult to undo such transactions. In Besease this unusual practice occurred because of the disunity between traditional authorities. In Pramso two sub-chiefs said indigenous families were able to take advantage of the death of the former chief to convert and lease their usufruct rights before a new chief was installed. Although none of the indigenes I interviewed mentioned this practice, an indigene and the respondent at the PPD said that the *Krontihene*, who is the sub-chief next in command to the chief, had died two weeks before the former chief had died (PRA-IN01; KUN-PHY). As a result neither a chief nor his next in command existed in Pramso for six years and conversion of usufruct rights was indiscriminately undertaken by family heads and sub-chiefs without any organised benefit-sharing strategy (ibid.; PRA-ST01). But according to a sub-chief in Pramso, the new chief redistributed a reduced number of plots to indigenous families who converted their usufruct rights as a form of reversal of the self-conversion similar to the situation in Besease situation.

5.4.4 Adverse changes to original usufruct rights

In this sub-section I discuss ways in which the nature of the traditional usufruct rights is negatively affected. The major threats to usufruct rights resulting from peri-urban land commodification include: loss of usufruct rights over the majority of land, reduced economic

benefits from usufruct rights, restricted exercise of remnant usufruct rights, and neglect of indigenes in stool-land revenue.

Most of the land that is usufructuary prior to conversion is changed to leasehold tenure during conversion. The loss of usufruct rights in this manner appears in the literature review of other peri-urban communities in Kumasi, albeit often expressed as a reduction of land size. Kasanga and Kotey (2001) find the majority of indigenes, both men and women, losing agricultural land. According to Kasanga and Kotey (2001), agricultural landholdings cease to exist upon approval of planning schemes. Similarly Ubink (2008b) found that a majority of indigene farmers had less farmland than a decade previously. Ubink (2008a: 127) also observed that '[t]he sale of land for residential purposes automatically implies the loss of farmland for a local farmer.' The situation described in the literature is also evident in Pramso. Although the leasing of usufructuary land implies a gradual loss of usufruct rights in Pramso because of temporary indigene use of leased land, as discussed earlier, the leasing nevertheless eradicates usufruct rights. As discussed above, less than one-fourth of usufructuary land is redistributed to households who eventually retain two plots of land. In the circumstances of changing tenure, peri-urbanisation and commodification, indigenes may also convert these two plots instead of exercising usufruct rights over them. Therefore the importance that chiefs place on residential use by converting usufructuary land ultimately becomes the common practice even by indigenes.

Besides the loss of usufruct rights in a majority of converted land, with the conversion of usufruct rights in Pramso there is less or no freedom to exercise usufruct rights on remnant usufructuary land. This is partly because most of the usufructuary land has now been converted, and although converted parcels are not developed the exercise of usufruct rights by indigenes is inhibited. In Pramso both the density (see figure 5.3) and extent of physical expansion is mostly far less than the amounts of land undergoing conversion and the time interval between conversion and actual physical expansion can take several years. Nonetheless, the sub-division and leasing of land renders the exercise of usufruct rights conditional not feasible, and in certain instances impossible, as noted earlier. Also, the conversion of usufructuary land at the discretion of the traditional authorities at any point in time engenders uncertainties in the exercise of usufruct rights. As one sub-chief states, there is no special marker that shows a particular usufructuary land is ripe for conversion, it just has to be near the last piece of converted land and not necessarily near to physical development (PRA-KRO).

Another important adverse change to usufruct rights is that indigenes that are higher in the hierarchy (that is of leaders) now benefit more from converted usufruct rights than indigenes in the lower tier who previously benefited more from unconverted usufruct rights. Ordinary indigenes achieved greater economic benefits by exercising usufruct rights than traditional authorities. Before the conversion of usufruct rights, indigenes obtained benefits by cultivating the land and obtaining free resources from the forests (Ollenu, 1962). This is similar to the original usufruct rights in Pramso that I discussed above. Prior to conversion in Pramso, traditional authorities received few benefits from usufructuary land, as I have already discussed, but now these benefits have shifted largely in favour of traditional authorities. In one case in Besease a chief leased seven out of a total of eight residential plots of land on which an indigene family enjoyed their usufruct rights (Ubink and Amanor, 2008). According to Ubink and Amanor (2008: 165) ‘chiefs are the main beneficiaries of land conversion in peri-urban Kumasi.’ In communities such as Asokore Mampong, Ekyem, and Sewua, where there is functional customary land management and where indigenes benefit from the conversion of usufruct rights, traditional authorities still enjoy a larger quantum of benefits (Akrofi, 2013). As shown in the disbursement formula in Pramso, traditional authorities receive more converted parcels than indigenes because the fraction for the former emanates from conversion of every plot of indigenous usufructuary land in the community: the king receives from all communities in the Kingdom, while indigenes receive plots only in respect of family usufructuary land. The Assemblyman of Pramso (PRA-ASS) observed this transfer of benefits from indigenes to traditional authorities (see also the redistribution of converted usufructuary land above), and a sub-Chief of Pramso also mentioned that the current redistribution of land benefits those closer to traditional authorities than those who are not (PRA-KRO). A respondent at the Office of the Administrator of Stool Lands (OASL) (OASL-REP) in Kumasi also lamented that ‘chiefs are mostly getting the lion’s share and pushing their people away from their livelihoods.’ Therefore indigenes now have access to reduced benefits from usufruct rights. In communities where there is poor or according to Akrofi (2013) dysfunctional customary land management, the situation can be worse. Therefore allodial title to land which traditional authorities once held with little economic benefits, as discussed in Chapter 3, is now replaced by one enhanced with substantial economic benefits.

Respondents at the state land management institutions that are involved in customary land administration show that the decisions and actions of the state do not support actions that

would improve indigene usufructuary benefit in land. Despite acknowledging adverse changes to usufruct rights, the respondent at the OASL (OASL-REP) stated that the disbursement of stool-land revenue is not equitable because it neglects indigenes. As discussed in Chapter 3 and in detail below, the OASL was established to collect and disburse revenues of stool land. Fifty-five percent of the net revenue of the OASL is disbursed to the district assembly in charge of the particular communities where revenue is collected. But the Office of the Administrator of Stool Land Act 481 of 1994 does not specify how the district assembly should utilise the revenue (GoG, 1994; OASL-REP). Attention is paid more to the welfare of the chief of the community, who is paid 25 per cent of revenue in addition to 20 per cent paid to the stool as his office (ibid.). But the OASL-REP argues that since revenue accruing from leasing of converted usufructuary land is not collected by the OASL, it is an avenue through which indigenes may directly benefit from the conversion of their usufruct rights. However, the discussions on the sub-division and leasing of converted customary land above show that indigenes benefit less from such leasing revenue too.

The final negative change to usufruct rights is that non-decision-making younger people are the worst affected by the conversion of usufruct rights. As Akrofi and Whittal (2011b: 16) find in their examination of the conversion of usufruct rights in Asokore Mampong, ‘sometimes the ideas of the youth are disregarded and ... their future land rights are not taken into consideration.’ This minimal involvement of the youth is similar to the my findings in Pramso. The hierarchical and traditional nature of the centralised system ensures that the youth, as ordinary indigenes, not only occupy lower rungs of the hierarchy but that they are not including in the decision-making body. Nonetheless, the Pramso case also shows that youth are the ones who benefit in terms of developments and jobs created by peri-urbanisation because they have the skill sets needed in the emerging peri-urbanised economy. A youth indigene therefore said that farming in Pramso is done by the elderly and uneducated whereas the youth are encouraged to pursue an education and skills training (PRA-IN11).

5.5 The roles and powers of key stakeholders in the conversion of usufruct rights

The status of usufruct rights as indicated by the remnants and adverse changes in the previous section serves as a measure of indigene exclusion in neo/customary land tenure. In this section, I present the roles of three main stakeholder groups in customary land management, namely indigenes, traditional authorities and state land management institutions which have

functions in customary land delivery. The analysis of roles of the stakeholders serves as another indicator of exclusion of indigenes in the changes in usufruct.

Article 36(8) of the Constitution of the Republic of Ghana, 1992 entitles traditional authorities as fiduciary managers of 'stool, skins and family lands ... charged with the obligation to discharge their functions for the benefit' of their respective indigenes. This mandate is re-emphasised in Article 276(1) of Constitution of the Republic of Ghana, 1992 as discussed in Chapter 3 and which I return to below (GoG, 1992). Since usufruct rights are a component of customary land, traditional authorities are entitled to take decisions on its management including its conversion to leaseholds. For indigenes the constitution of Ghana does not directly assign them a role in the management of customary land. Their role is indirectly embedded in custom as the Article 276(1) of the Constitution directs that 'all stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage'. Also, per the current stand in the courts of Ghana as indicated by the respondent at the regional Lands Commission, the chief cannot convert and lease usufruct rights of indigenes without the latter's consent. Indigenes cannot also do the same without the consent of the chief (LC-REP). Thus, in conversion of usufruct rights cooperation between the chief and the indigenes is important. Few indigenes know about this and many out of this few feel powerless to agitate for this individually.

The roles of state institutions involved in customary land management are various. With respect to the Lands Commission, its main function relating to the management of customary land is that it is to give consent and concurrence before the transfer of any stool land in any form (GoG, 1992). The Lands Commission also undertakes formalisation of land through registration of land as provided in the Land Title Registration Act of 1986 (GoG, 1986). On the part of the OASL, its statutory functions are to open an account for revenues of stool land, and collect and disburse stool-land revenue based on Article 267(2) of the constitution. Further, the OASL is required by the OASL Act, 1994 to monitor the utilisation of the 55 per cent of revenue it disburses to the assemblies. The main function of the district PPD, according to its representative at the Kuntanase district office, is to prepare spatial plans to guide development in the country (KUN-PHY). The Land Use and Spatial Planning Act 925 of 2016, which regulates district spatial planning, seeks, among others, to provide sustainable land development and human settlements and ensure the judicious use of land (GoG, 2016). The PPD therefore has controls over or can exercise restrictions on the development of stool land but performs no active management in the conversion of usufruct rights.

5.5.1 Traditional authorities as the main decision-makers in the conversion of usufruct rights

A principal feature of centralised societies is that the leader of a community decides and acts for and on behalf of the community. The chief, the sub-chiefs and the family heads, as leaders in Pramso, respectively represent the community, clans and families in the conversion of usufruct rights. The *Asantehene*, as a leader at the top in hierarchy of leaders in the indigenous state system, plays an interventionist role in the conversion of usufruct rights, and in the case of Pramso the *Asantehene*, supported the conversion of usufruct rights. One sub-chief respondent in Pramso (PRA-KRO) states that the one-fourth redistribution rule is an order from above, implying an order from the *Asantehene*. An indigene respondent (PRA-IN01) in Pramso held the same view that it is the *Asantehene*, that is the King, who established the one-fourth redistribution rule. Although two other indigenes (PRA-IN03; PRA-IN12) said the Chief of Pramso instituted the redistribution rule, the King may actually have played a role because it was after indigene agitations, as a result of which the *Asantehene* summoned the chief, that the rule was established. It is not clear whether this redistribution formula was professionally determined. What emerges from the interviews is that the formula is not adjustable depending on the natural resource base such as naturally growing economic trees on the particular land that is subject to the redistribution.

The village chief, sub-chiefs and family heads manage the conversion of usufruct rights at the community level. In the review of literature on peri-urban Kumasi, Akrofi and Whittal (2011b) state that it is the Chief of Asokore Mampong and his council, composed of 14 sub-chiefs, who administer land. Because the sub-chiefs represent the indigenes, Akrofi and Whittal (2011b) remark that there is good engagement of community members in the delivery of land in Asokore Mampong. Nevertheless, Akrofi and Whittal (2011b) later found indigenes in Asokore Mampong who complained about the higher fraction (5/15) of the converted plots which went to *Asantehene*, thus implying less indigene influence. The narratives of indigenes in Pramso indicate that the chief, the sub-chiefs and the family heads constitute the main decision-making body regarding conversion of usufruct rights, whereby the chief instructs the sub-chiefs to sub-divide usufructuary land. Similarly it is the chief who signs allocation notes in respect of all leased land in Pramso and determines the applicable charges (PRA-KRO). These charges are, however, dependent on the costs that the chief incurs in engaging surveyors and planners to sub-divide usufructuary land (PRA-KRO;

KUN-PHY). In the same way, the application of the rule that the chief himself retains one-fourth of converted parcels is not subject to anybody's consent or interference. However, the chief must also give consent to the town development committee to make use of the one-fourth share of redistributed land retained for community development (PRA-KRO; My Field Notes). According to the respondent from the regional Lands Commission in Kumasi (LC-REP), the dominant role of chiefs in the management of customary land is justified by the constitution but should be fiduciary in nature.

Sub-chiefs are second in the hierarchy with regards to their role in conversion of usufruct rights. In Pramso the sub-chiefs and the chief enjoy a close alliance. An indigene (PRA-IN09) said that the *Krontihene* sub-Chief of Pramso, for instance, leases land and sends the proceeds to the chief. According to this indigene, the chief himself may not know the boundaries of the land, so he puts the sub-chiefs in charge of the sub-division and the sub-chief then accounts to the chief. A stranger settler in Pramso also stated that the new chief relies on the knowledge of the sub-chiefs of his predecessor to be able to differentiate between parcels of land that are already converted and those that are not (PRA-ST01). Following a sub-chief's support for the chief in the conversion process, he receives the plots for his people and informs them on many plots (out of the one-fourth for him and his people) he will keep for himself and for his stool. Indigenes cannot object to the one-fourth rule that the chief administers, but they can challenge the number of plots the sub-chief keeps (out of the one-fourth) and undertake negotiations with him (PRA-IN01). The chief therefore deals with sub-chiefs during conversion of usufruct rights, who in turn deal with family heads, and family heads deal with indigenous households. According to one sub-chief (PRA-KRO), in the absence of the chief, such as in the case of illness or death, the *Krontihene* sub-chief (of the township) is in charge and in the latter's absence sub-chiefs generally deal in land conversion. Several respondents said sub-chiefs had been actively involved in land sub-division when the previous Chief of Pramso passed away.

Family heads are not usually involved in the actual conversion and leasing of usufructuary land, but rather in the redistribution of converted land. In Pramso the *abusuapanyin* (family heads), like the sub-chiefs, retain an arbitrary number of plots (out of the one-fourth the chief gives to a sub-chief and his people) and distributes the remaining to the households within the larger family. One exception was a narrative from a family head who took advantage of the demise of both the previous chief and the previous *Krontihene* and leased land by himself. The hierarchy of traditional leaders, that is the chief, sub-chiefs and family heads in Pramso,

therefore played leading roles and obtained a greater number of self-determined plots in the redistribution of hitherto usufructuary land. Therefore in terms of management functions, traditional authorities comply with constitutional provision as discussed above, but in terms of managing affairs for the benefit of indigenes they depart from the law. By comparing the role of indigenes in the original usufructs in Pramso and in the literature, it is intriguing that indigenes were able to deal with usufructuary land in the manner they wanted to but that at the onset of land conversion they are not the main beneficiaries.

5.5.2 The diminutive powers of indigenes in changing usufruct rights

The roles of individual indigenes in the conversion of their usufruct rights in Pramso are generally passive or reactive. The only liberty that indigenes have is in respect of their share of redistributed land. Apart from this liberty, indigenes do also sometimes resort to group action in response to the exclusionary processes during conversion of land. I discuss this in section 5.6 below apart from which three other ways in which indigenes play minor roles in the conversion of usufruct rights are as follows. Firstly, in certain instances families initiate conversion of usufruct rights. In Besease in peri-urban Kumasi, Ubink (2008b) found that certain families succeeded in converting their usufruct rights and received the revenues, and that families have different negotiation powers and abilities to persistently resist the chief's counter-directives (ibid.). In another way, families and indigenes who are able to convert their usufruct rights to leases hold and keep the market value to themselves when the office of the chief is vacant, as was the case in the Boankra community (ibid.). As discussed in section 5.6, family heads and indigenes in Pramso self-converted their usufruct rights when the former chief passed away, and given that indigenes are closer to their family heads than to the chief and sub-chiefs, benefits from conversion of usufructuary land flowed primarily to indigenes during the demise of the Chief and *Krotinhene* of Pramso and not to the sub-chiefs and the chief (PRA-NKO; PRA-KRO). It is also usual in Pramso for indigenes, through the *abusuapanyin* or family heads, to initiate the conversion and sub-division of their usufruct rights by suggesting this to the chief (PRA-IN01).

Secondly, in Pramso indigenes who enjoy a particular relation with the chief are able to convert and sub-divide their own usufruct rights. One indigene respondent stated that he is a family member of a sub-chief and therefore had the ability to convert and lease his own usufruct rights as he wished (PRA-IN02). This type of relations between certain indigenes and traditional authorities means that indigenes are not to be regarded as homogenous in

terms of analysing exclusion. Finally, in Pramso, there are indications that the chief holds talks with the family head concerned before sub-dividing their land. According to PRA-KRO, the usual process involves the chief sub-dividing, distributing and leasing the usufruct rights of indigenes in consultation with the sub-chief under whom the particular rights are exercised. The interviews with indigene respondents showed that the chief also involves family heads (PRA-IN01; PRA-IN09). Other indigenes said that when indigenes did not cooperate by vacating their usufructuary land for purposes of re-allocation, the chief invites them to a meeting for discussion (PRA-IN08; PRA-IN12). In one of these meetings, which I happened to witness, rather than being a free expression of indigene views the discussions were mostly unilateral and top-down. Therefore, the chief's consultation with indigenes becomes a communication of the former's instructions (I return to this in section 5.6). Apart from the above instance, indigenes do not play definite roles regarding decisions and actions on sub-division and leasing of converted usufruct rights in Pramso. Therefore traditional authorities in Pramso are likely to exclude passive indigenes from the processes and benefits of conversion of their usufruct rights.

The various reasons that explain the minimal roles of indigenes in changes in usufruct rights in Pramso include. Firstly, the nature of the five-tier hierarchy of citizenship in the centralised indigenous state, as discussed in Chapters 2 and 3, indicates that power is concentrated more in traditional authorities than in the ordinary indigene. During an in-depth interview, an indigene respondent in Pramso stated for instance that '... you [an indigene] cannot compete with the chief. He [the chief] is more powerful' (PRA-IN12). Indigenes believe that they cannot individually oppose the chief's decisions, including his decision to convert and sub-divide their usufruct rights.

Secondly, it is difficult for indigenes to refuse their consent to the chief to sub-divide usufruct rights due to indigene reverence for the chief and the high concentration of power in traditional authorities, as discussed above. In the initial conversion of usufruct rights, the chief proceeded to convert usufruct rights even without the consent of the indigenes in Pramso. But many indigenes dare not convert their usufruct rights with or without the consent of the chief (PRA-IN09). All indigene respondents answered in the negative as to whether they had converted and leased their own usufruct rights, except the rival indigenes and the second indigene I interviewed, who said he could lease land because of his relation with the chief. Many indigene respondents in Pramso were unaware that they have an entitlement in the court of law to give the chief consent to convert their usufruct rights (LC-REP; My Field

Notes). A comment of one indigene who stated that ‘the four parts that they divide it into does not help us, it is not good, but we cannot talk’ illustrates their powerlessness (PRA-IN12). Another indigene complained that ‘as for our land, the chief has taken it and if he brings surveyors to divide the land, we cannot say anything ...’ (PRA-04). Many indigenes have little to do with and are ignorant about the processes in the sub-division and leasing of their usufructuary land (My Field Notes). As an indigene youth put it, ‘I do not even know anything about it [the process of converting usufruct rights]. There are even elders who could not get land to sell, what about me?’ (PRA-IN10). Although the family heads gave the share of converted land for the household to women to hold for the household, women do not have an enhanced role in the process of conversion. One indigene woman stated that:

‘I live here but when they are subdividing the land, the matters are handled at the chief’s palace. So if I do not happen to go there and see or hear it, I would not know ... unless someone tells me.’ (PRA-IN08)

Indigenes therefore claim that the chief and his council do not seek their opinion in decisions on the conversion of usufructuary land. In addition, indigenes perceive the decisions and rules of the chief and elders to be difficult to overturn by they themselves, individually (PRA-ST01; My Field Notes).

5.5.3 Limited de jure interference by the state land management institutions in conversion of usufruct rights

The de jure influence of state land management institutions in the conversion of usufruct rights are limited, and even more limited in practice. This should, however, not be interpreted as a lessening of the overall role of these institutions in the conversion processes, because in reality they informally enable these processes. As Akaateba (2018) has noted, traditional authorities request and fund the private services of personnel of the Survey and Mapping Division of the Lands Commission, the Town and Country Planning Department (now Physical Planning Department (PPD)) and private surveyors to survey, map and subdivide land. The Land Registration Division of the Lands Commission registers leaseholds for lessees who proceed to formalise the informal leaseholds they acquire. However, these institutions see customary land management by traditional authorities as a private matter and very rarely interfere in the actual decision-taking in the conversion of usufruct rights. Therefore state officials deliberately adopt an approach of non-interference in customary land management (Ubink, 2008c). Both the respondents I interviewed at the Lands Commission

(LC-REP) and the OASLs (OASL-REP) mentioned that the laws of Ghana restrict their functions regarding stool-land management. The LC-REP, for instance, referred to Article 267(1) of the constitution which states that ‘all stool land shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage’ (GoG, 1992). According to LC-REP, land administrators interpret this provision to mean that the state land management institutions cannot interfere in the management of stool land by traditional authorities. However, this interpretation would mean that if traditional authorities, as occupants of stools, violate customary law in the process of customary land management, the state cannot interfere. Yet, whether customary or statutory, it would still be a violation of law. Therefore this provision cannot be read as a prohibition of state interference in the management of customary land.

With regards to the consent and concurrence that the Lands Commission is required to grant prior to a transaction in customary land, the respondent at the Ashanti regional Lands Commission (LC-REP) said the Lands Commission inspects conditions, such as lease terms between lessees and chiefs as lessors. This respondent at the Lands Commission went so far as to express his disapproval of this inspection of contracts since it represents interference in a private contract between the chief and lessees (LC-REP). In order to perform this function without interfering, the Lands Commission is only supposed to advise the parties on the terms of the contract. The respondent therefore viewed this provision as conferring a very limited role on the Lands Commission in the conversion of usufruct rights. According to this respondent, the Lands Commission could instead rely on Article 258(1) (c) of the Constitution to influence the conversion of usufruct rights for the benefit of indigenes (ibid). This provision mandates the Lands Commission to ‘formulate and submit to government recommendations on national policy with respect to land use and capability’ (GoG, 1992).

The Land Registration division of the Lands Commission registers interests in land as a form of formalisation to secure tenure, as discussed in Chapter 2. According to the representative of the Lands Commission, usufruct rights can be registered (LC-REP). Indeed, section 19(1) (b) of Land Title Registration Law of 1986 permits registration of usufructuary interest (GoG, 1986). Registration of land is an opportunity to formalise and institutionalise usufruct rights. The respondent at the Lands Commission said that during his many years of service in Kumasi, however he had never encountered a case of an indigene seeking to register usufruct right. He sees non-registration of usufruct rights as one of the main causes of indigene loss of usufruct rights. To register usufruct rights, an indigene has to undertake a statutory

declaration explaining the nature of the interest in respect of the land and the physical extent of the usufructuary land (LC-REP). During interviews many indigenes said they do not register their land and are not aware that usufructuary land can also be registered. An indigene youth who I interviewed stated that ‘the land that we are farming on, we usually do not register it’ (PRA-IN03). Section 5 (p) of the Lands Commission Act 767 of 2008 seeks to ‘promote community participation and public awareness at all levels in sustainable land management and development practices to ensure the highest and best use of land’ (GoG, 2008). But the act has not assigned this function to any of the divisions of the commission, and the respondent I interviewed said this function is not being operationalised.

The matter of indigenes registering usufruct rights has a further complication. As already discussed, traditional authorities are the only persons mandated with the management of customary land. Indigene registration of usufruct entitles them to management of the rights. The implication is that traditional authorities, as managers of customary land, are not able to convert usufruct rights, although the law has not explicitly spelt this out. In a similar way the sub-chief’s (PRA-KRO) claim that land belongs to the chiefs in Pramso signals that traditional authorities in Pramso would not allow indigenes to register usufruct rights. This is because a formal entitlement of indigenes to usufruct rights through registration would deprive traditional authorities of their liberty in the conversion of usufruct rights. Finally, at the point of conversion traditional authorities view land as tangible parcel and not intangible rights, as discussed in section 5.4.3 and Chapter 7.

In my interview with a respondent of the OASL, it was evident that the office performs its stool-land collection and disbursement functions, but that it does not directly influence the conversion of usufruct rights. Revenue that the office collects includes annual rents on leased stool land (leased converted usufruct rights), mineral royalties from mining companies and timber royalties from timber resource exploration (OASL-REP). Another potential source of revenue is land leasing revenue from traditional authorities, but which the OASL is unable to collect (ibid.). Many studies have reported that chiefs in peri-urban areas in Ghana often do not disclose revenue from land leasing to the OASL (Akaateba, 2018; Ubink, and Amanor, 2008). Akaateba (2018) found one chief who argued that revenue from the leasing of land has customary significance and cannot be collected by the OASL. Ubink (2008b) argues that whether the so-called *drink-money* constitutes stool-land revenue collectable by OASL is a matter of law, which state institutions are unwilling to address through the courts. My respondent at the OASL mentioned that chiefs had resisted its attempts to collect lease values

by arguing that land leasing revenues are customary *drink-money*, and as such not revenue collectable by the OASL (OASL-REP). The case of Pramso also shows that chiefs lease land discreetly so as not to attract the anger of indigenes, making it difficult for the OASL to notice or collect this revenue (OASL-REP).

The disbursement of collected stool-land revenues by the OASL is in strict adherence to a disbursement formula. The OASL retains 10 per cent of all revenue for its administrative expenses and the remaining revenue is converted back to 100 per cent and disbursed as follows: 25 per cent disbursed to the king's stool through the traditional authority, 20 per cent to the village stool, and the remaining 55 per cent to the district assembly as the local authority of the area where the revenue accrues from (OASL-REP). The disbursement of the 25 per cent to the king's stool implies that the traditional council in Kumasi receives disbursements in respect of revenue accruing from its local area and an additional 25 per cent disbursement from all the numerous local communities, such as Pramso, that fall under the Kumasi traditional council. This in turn relates to the concentration of power and resources in the capital of the indigenous state as a feature of the centralised system in Kumasi and as promoted by colonial powers (Hayford, 1903). As the formula shows, the OASL does not disburse any revenue directly to indigenes and the revenues it disburses to traditional authorities are not meant to be passed onto indigenes as beneficiaries (OASL-REP).

The respondent at the OASL said that the amount of stool-land rents that it disburses to the district assemblies is small but that of mineral royalties, where applicable, is substantial and that the OASL Act requires strict monitoring of its utilisation. Thus, prior to disbursement, district assemblies submit bills of quantities for proposed projects to the OASL before the latter disburses revenue to the former. Finally, the OASL, in consultation with the Lands Commission, is required to provide information and prepare policies for the rational development of stool land (OASL-REP). This function is open and could indeed serve as an instrument to enhance the role of both the Lands Commission and the OASL in relation to the conversion of usufruct rights and possibly enhance the sustainability of usufructuary interests. However, according to the respondent at OASL, this function has not been utilised to date.

On the part of the PPD, the respondent I interviewed (KUN-PHY) stated that the PPD has a statutory role in undertaking planning in the department's area of jurisdiction. However, due to deficiencies of the department in terms of logistics and finance, it is the traditional authorities who initiate the sub-division of land and incur the costs thereof (Akaateba, 2018).

In the Pramso case, ‘the Department helps traditional authorities in the preparation of local plans to guide the development of their land ... to prevent haphazard development’ during sub-division of usufructuary land (KUN-PHY). The Krontihene sub-chief in Pramso (PRA-KRO) mentioned that in addition to the collection of signing fees to finance the cost of surveying, plans and sub-division, converted plots of land are offered to planners and surveyors as part of the payment (see also Akaateba, 2018, regarding the Northern and Bono East Regions). Therefore, because parcels of converted usufructuary land have to be set aside to defray these costs, this function of the department in fact depletes the value of usufruct rights rather than supporting the accruing of its benefits to indigenes.

One of the activities of the PPD that supports usufruct rights is that of securing land through plans for urban agriculture (KUN-PHY). This provision for urban agriculture is intended to be permanent, but the respondent at the PPD complained that traditional authorities are unwilling to adhere to land-use plans. For instance, traditional authorities gradually convert agricultural land that is preserved in official plans for other uses (KUN-PHY). The functions of the state land management institutions do not effectively regulate the conversion of usufruct rights in a way that treats land as a source of indigenes’ livelihoods. In order to guide the conversion of usufruct rights, state land management institutions must however treat indigenes livelihood activities in peri-urban areas as non-static, and consider their urban forms relative to the urbanisation process. However, the separation of municipal planning authority from traditional leadership appears to be a challenge in itself that contributes to the non-compliance of traditional authorities with plans. As Mamdani (1996) reports about Africa, executive, judicial and administrative powers were vested in colonial traditional authorities in Africa. Traditional authorities therefore tend to perceive themselves as all powerful even in this post-colonial period and this seem to pose challenges under the current separation of municipal and traditional authority.

5.6 Responses of indigenes to exclusion from processes and the benefits of commodification

In Chapter 3, I discussed contestations amid changes in customary land tenure and the possible agency of indigenes in this process. The literature I reviewed suggests that indigene agitations mirror aspects of ‘social-movement-initiated co-production’ (Galuszka, 2018: 8) because the agency of indigenes involves advocacy for inclusion in the conversion of

usufruct rights. In this section I explain that this activism for inclusion by indigenes led to very limited agency in the form of the reversal of certain decisions that were detrimental to indigenes and the offer the one-fourth parcel of converted usufructuary land to indigenes.

5.6.1 Indigene diplomacy and radicalism in Pramso and in peri-urban Kumasi

The review of literature concerning peri-urban Kumasi shows two main forms of interactions between indigenes and traditional authorities in the context of the conversion of usufruct rights, namely diplomacy and radicalism. Firstly, when land conversions begin during the onset of peri-urbanisation, indigenes have usually been found attempting to diplomatically convince chiefs to allow them to subdivide and lease their usufruct rights (Ubink, 2008b). In Ubink's (2008b) study, indigenes and traditional authorities therefore engage in negotiations to convert usufructuary land. In certain communities in peri-urban Kumasi traditional authorities initiate this diplomatic process. In the same way, Kasanga and Kotey (2001: 17) states that in the Esereso and Emina communities in peri-urban Kumasi, 'public forums were held [by chiefs] to brief community members on the impending conversion of their farm lands.' For Ubink (2008c), when these initial dialogues fail to arrive at a consensus, indigenes seek higher-level negotiations. This comes in the form of 'bringing in other people or agencies ... such as elders, royal family members, local government representatives or one or more of the farmers or families who were losing their farmland, to persuade the Chief' (ibid: 158). Ubink (2008b), as well as Akrofi (2013), indicate that these negotiations usually fail, especially in non-functional customary management structures such as in Ejisu in near Kumasi.

Radicalism arises when peaceful negotiations fail to serve their purpose in securing better benefits in land conversion. Radical behaviour of indigenes in peri-urban Kumasi is reported in various forms in the literature. Kasanga and Kotey (2001: 17) state that within most of the villages 'local people are battling with the customary custodians of land for accountability in respect of land disposals.' Likewise Ubink (2008c: 159), who describes hostilities arising between indigenes, traditional authorities and developers because indigenes were 'angered by land sales by the chief or frustrated with a lack of progress in negotiations.' In severe agitations, aggrieved indigenes are reported to have gone to the extent of physically attacking the chief or calling for his removal from office (*destoolment*), which is an extreme demand in the culture of a centralised state system such as in Kumasi (Ubink, 2008c). Ubink (2008c)

reports such extreme responses, both by individual families, as in Besease, or by entire communities, as in Peki No. 2, in peri-urban Kumasi.

The responses of indigenes in Pramso are similar to accounts in the literature in peri-urban Kumasi, except that in Pramso radical actions emerged prior to negotiations. My Pramso interviews indicate that when the chief came into office in 2017 he began converting usufructuary land unilaterally minus any intention that the benefits flow to the indigenes. This, in conjunction with other factors discussed below, ultimately led to indigene protests against the actions and decisions of the chief. From the narratives of indigenes, the manner in which the chief executed decisions, such as concerning the mining of sand and rampant leasing of usufructuary land, shows that he initially adopted a non-collaborative approach to land conversion. In Pramso the first form of indigene agitation amid the conversion of usufruct rights was a violent demonstration against the chief, which was captured by UTV News (2017). The Assemblyman of Pramso (PRA-ASS) narrated that the actions of the chief, especially with respect to converting usufruct rights, had generated a controversy in the community, and as a result people had mobilised to stop the detrimental acts of the chief. A stranger settler in Pramso described the event as follows:

‘Yes, they wanted to *destool* him and there were lots of riots in the town. People were singing war songs. When I went to the chief’s palace everything was in chaos. They broke the door to the entrance of the palace with anger. Then the police came in from Jachie but they could not withstand it and had to call for reinforcement from Asokwa before they could control the mob and took the chief away. For two to three days the chief was not able to come to the town, then later he came.’ (PRA-ST01)

The majority of the respondents I interviewed in Pramso described this demonstration as a response by the indigenes against the chief’s attempt to exclude them from the benefits of the conversion of usufruct rights. One indigene disclosed that the intention had been to use the demonstration to *destool* the chief or remove him from office (PRA-IN12). When calm was restored, the *Asantehene* summoned the chief and found fault with him and the matter was settled at that level (PRA-IN01).

A meeting between the chief and a group of aggrieved indigenes was a second and separate event in Pramso. It involved a group of indigenes who had been farming on the *krodadaa*, *Bepɔso* and *samanpɔmu* parcels of ‘stool land until the chief announced that they should cease after the 2019 farming season. According to indigenes and a sub-chief, these indigenes, who

numbered about 100, refused to agree to cease farming and the chief summoned them to a meeting. In the meeting on 23rd July 2019, which I was fortunate to witness, over 50 indigenes booed at the chief and would not allow him to talk. When calm was restored and the chief took his turn, he would not allow indigenes to present their arguments and those who sounded outspoken were stopped altogether from talking. There was an elderly family head who vowed not to agree with the chief's demands, and I could see the family members of the former supporting him with loud applause. The meeting ended without a conclusive agreement but the chief told the affected indigenes that it was an order that indigenes must not use the 'stool lands' and that no one must violate the order. The indigenes dispersed amid general grumblings of disapproval about the order (My Field Notes).

Beyond protests and the robust discussion, unhappiness among indigenes was evident in women cursing the chief and how indigene respondents grumbled about the chief during interviews. One indigene mentioned that in a separate event and prior to the meeting, a group of about 40 women had gathered at the chief's palace and cursed the chief for destroying their crops and for mining sand (PRA-IN07). However, these responses against the chief produced limited desired results for indigenes (as discussed in section 5.6.3 below). In Pramso, none of my respondents mentioned resorting to the courts to address these matters potentially due to the many bottlenecks in the Ghanaian court system (Crook, 2003).

5.6.2 Reasons for agitations and the beneficial outcomes

Numerous reasons ultimately led to the counteractions of indigenes in Pramso. The first reason for indigene agitations in Pramso was a lack of consultation with them prior to the conversion of usufruct rights. Many indigene respondents in Pramso recounted that when the chief had acquired office he did not consult them and began converting their usufructuary land and mining sand on cultivated usufructuary land (PRA-IN011; PRA-ASS; PRA-IN03). A stranger settler in Pramso believes that the indigenes agitated because the chief did not brief the indigenes on matters of land conversion (PRA-ST02). Indigenes who had their crops cleared for sand mining were not given prior notice by the chief or the sand miners. In addition to clearing crops, the chief neither gave indigenes any share of the converted usufructuary land nor accounted for revenue accruing from the conversion and sand mining (PRA-IN11). Another stranger settler in Pramso, who witnessed the events, stated that:

‘At times the chief will go and bring a bulldozer to come and fetch sand, thereby destroying the crops on the farms of the people. So that brought the confusion and they nearly *destooled* the chief.’ (PRA-ST01)

One indigene (PRA-IN09) also stated that:

‘So before we realize, someone has bought it [land] and the people who feed on the produce from the land may not get a *pesewa* [the lowest currency denomination in Ghana].... So if you planted crops on the land you have to watch and harvest your crops. When you finish harvesting you are no more part.’ (PRA-09)

The second reason is that the chief did not include indigenes in the benefits of conversion of their usufructuary land. According to PRA-IN08, a few people received compensation of as little as Gh¢20, but merely for their crops that had been cleared and not for depriving them of the future exercise of their usufruct rights. Similarly, the Assemblyman of Pramso (PRA-ASS) mentioned that initial conversions of usufruct rights and destruction of crops did not come with any compensation. He said that the chief gave notices to indigenes, but that the notices were impromptu. The Assemblyman recounted that ‘the chief gave affected indigenes something [compensation], which was just peanuts, instead of going through the laid down procedure for compensating crops such as palm trees’ (PRA-ASS).

Other causes of indigene agitations in Pramso are the suspension of their jobs in construction works, calls for top-up payments from lessees, and lack of full support for the new chief. Thus the new chief gave orders to all lessees of converted usufructuary land who had acquired their land from the former chief in Pramso to make a Gh¢200 top-up for each plot of land, and those who refused to comply risked having their land taken back by the new chief (PRA-ST01; PRA-ASS). This meant that sub-chiefs and indigenes who had sub-divided and leased their usufruct rights in the absence of the chief were irked because lessees would demand refunds from them if the chief were to seize the plots of land. To enforce his order the chief issued a follow-up directive that all construction work on converted land in Pramso be ceased until further notice (PRA-IN11; PRA-ASS). This displeased both construction workers and indigenes. According to PRA-IN11, this ban on construction activities affected many youth in the community because it was this segment that had predominantly engaged in these emerging new jobs. The problem was that their livelihood-dependent usufruct rights were being converted and simultaneously their new livelihoods were put on halt. The third reason is the chief’s seizure of ‘stool’ land from indigenes. It will be recalled (see section

5.6.1) that the chief ordered indigenes to stop farming on the *Bepɔso*, *krodadaa*, and *samanpɔmu* parcels of ‘stool land’, which the affected indigenes did not agree with (PRA-KRO; PRA-NKO). The final reason for indigenes’ agitations in Pramso indigenes were divided because of the chieftaincy rivalry, as discussed above in section 5.5.2, and this, coupled with the other factors, empowered indigenes to agitate against the chief.

5.6.3 Outcomes of indigenes responses in Pramso

The agitations of indigenes and the outcomes in Pramso emphasise the need for cooperation between the chief and indigenes in the conversion of usufruct rights. The evidence suggests that indigene agitations amid changes in usufruct rights in Pramso produced certain benefits. Firstly, the one-fourth redistribution rule was only instituted after the demonstration against the chief. Nonetheless, there are indigenes who were not comfortable with the one-fourth rule. PRA-IN12 for instance complained that it would be preferable that the redistribution formula be one-half for the indigenes and one-half for the chief. This would allow indigenes to use a quarter to develop housing and the remaining quarter to invest in alternative livelihoods. Secondly, the chief involved indigenes in land conversion after the demonstration and meetings in Pramso. One indigene (PRA-IN01) and a sub-chief (PRA-KRO) both said the chief now met with sub-chiefs and elders every Tuesday to deliberate conversion of usufruct rights. Many indigenes stated that after their reactions to his initial activities there had been a general change in the way the chief dealt with indigenes in the conversion of their usufruct rights. Thirdly, after the agitations the Assemblyman and an elderly indigene stated, during my second field-work trip in July 2019, that the chief had later agreed to apply the one-fourth rule to indigenes affected by the seizure of *krodadaa*, *Bepɔso* and *samanpɔmu* ‘stool land’ (PRA-IN01: PRA-ASS). Further, the first stranger settler I interviewed in Pramso said that the chief had reduced the amount that he had demanded as repayment from lessees of the former chief, while many indigene-lessees refused to pay altogether without the chief having sanctioned them (PRA-ST01). Finally, after the responses of indigenes the chief suspended the ban on construction activities in Pramso and the youth had their jobs reinstated.

Overall, the outcomes from indigene agitations against the decisions of the chief and sub-chiefs in the conversion of usufruct rights in Pramso amount to agency, albeit limited as compared to that in the literature on other communities in peri-urban Kumasi. The agency of indigenes can be shown to have led to the introduction of cooperative approach among the

chiefs and sub-chiefs in Pramso. In the same way, the incorporation of community development in the one-fourth rule which emerged from the indigene agitations show the recognition of the need for a sustainable commodification of land. As discussed above, one-fourth of the share of the converted land was dedicated to the development of Pramso. In terms of the agitations and the outcomes, the agitations of indigenes in Pramso reflect their quest for co-operation in the processes and benefits of the conversion of usufruct rights, as well as represent a response to social exclusion, as discussed in Chapters 2 and 3. It can be concluded that the failure of traditional authorities to collaborate with indigenes in the conversion of usufruct rights, coupled with suitable contributory factors, will usually trigger indigene agitations during conversion of usufructuary land in peri-urban Kumasi. Through the thesis's lens of bundles of rights and usufruct rights, indigene demands take on a greater legitimacy because of the focus on their entitlement to usufruct rights than if the focus was on physical parcels of land, which indigenes do not have control over.

5.7 Conclusion

This chapter presents discussions on the nature of usufruct rights in customary land tenure and on changes to its traditional form in peri-urban Kumasi. As discussed in Chapter 3, in the case of Pramso ambiguities arise at the point of converting usufruct rights, and these relate largely to what indigenes are entitled to in customary land. However, three main factors in Pramso indicate indigene entitlement to usufruct rights. First, the history of land holding in Pramso, as discussed in section 5.4.1, above shows that the then Chief of Pramso distributed usufruct rights over land in the community to indigenes. However, this manner of creation of usufruct rights diffuses the claims of indigenes to own land and implies that their rights to that land relate to usufruct rights. Secondly, indigenes' exercise of a landlord-like relation over stranger share-croppers as their (and not the chief's) tenants, coupled with their entitlement to the rents in the share-cropping arrangements, support the idea of indigene entitlement to usufruct rights. Thirdly, in place of eradicating indigene usufruct rights, the Chief of Pramso offered indigenes a fourth of any converted parcel of land over which indigenes exercised these rights. This gesture indicates recognition of prior indigene entitlement to the usufruct rights and as well as serving to prevent continuous agitations. Therefore the claims of traditional authorities that they 'own' land may in actual fact be claims to ownership of certain bundles of rights on that land, such as the allodial interest. Alternatively, traditional authorities reinterpret 'ownership' in relation to outright exclusion

at the point of commodification of land differently to the manner of 'ownership' as bundles of rights or co-ownership before the conversion of usufruct rights. The evidence in Pramso therefore suggests that customary land is jointly held by indigenes and the traditional authorities.

Rapid peri-urbanisation in Kumasi and the attendant commodification of land have triggered the conversion of customary land rights to neo-customary rights. At the outset of this conversion of land, physical plots of land become subject to redistribution among indigenes and traditional authorities, and this splinters the traditional bundles of rights in customary land tenure, including usufruct rights. This breakdown of the traditional form of usufruct rights undermines indigene usufruct rights and is a source of their exclusion from the direct benefits of commodification, because usufruct rights are the only ones that indigenes held up to that point. During the conversion and leasing of usufructuary land, indigene usufruct rights remain only in relation to yet-to-be converted usufructuary land. The indigene share in the one-fourth parcels of land from the chief take the form of terminal leaseholds. As the chief is the only lessor of the converted neo-customary land after transfer or 'redistribution' to indigenes and stranger lessees, it is solely the chief who controls the community land upon expiry of the leaseholds 99 years from the date of transfer. The Pramso case adds to the literature on changes in land tenure in peri-urban Kumasi that portray indigenes as the losers in the conversion of land rights. However, unlike the accounts in the literature, the Pramso case shows that a focus on physical parcels of land at the outset of commodification of land is the source of exclusion of indigenes.

The collapse of usufruct rights in exchange for commodified value indicates that usufruct rights continue to exist in monetary forms. The peri-urbanisation process brings opportunities to exercise alternative livelihoods after conversion of usufructuary land. The vast parcels of land under conversion therefore suggest that if the conversion of usufruct rights is managed with more emphasis on the livelihoods of indigenes, it still has the potential of producing capital for indigenes to recapture the benefits that once derived from their usufruct rights in new forms. Thus the traditional form of usufruct rights may be depleted but livelihoods could be sustained through prudent management of the conversion of land rights. In Pramso, traditional authorities exercised a central role in the conversion of usufructuary land, whereas state land management institutions barely influenced the actual processes of commodification, although the Lands Commission in particular has unexplored existing statutory opportunities that could be deployed to guide conversion of usufruct rights. For

indigenes, their responses to exclusion suggest the importance of cooperation between indigenes and traditional authorities in the conversion of usufruct rights.

6 PERI-URBAN LAND COMMODIFICATION AND INDISCRIMINATE INDIGENE LAND TRANSACTIONS IN MANGU AND SIRIYIRI, WA

6.1 Introduction

In Chapter 3 I discussed the co-existence of colonially formed land ownership based on bundles of rights and customary ownership based on physical parcels of land. These two modes of land-holding arrangements, which exist largely in centralised land tenure, create ambiguities and, amid commodification of customary land, contribute to contestations between traditional authorities and indigenes. As seen in Chapters 3 and 5, traditional authorities generally argue that they own community land to the exclusion of indigenes. Nevertheless, the interviews show evidence of indigenes holding usufruct rights which are substantial encumbrances on the same parcel of land. Indeed, certain indigenes in Pramso argued that they own the land under their occupation. This ambiguity is important for analysis of indigene exclusion because they cannot be said to be excluded from land they do not have stakes in the first place. Contrary to the uncertainty over who owns land in Pramso, the contradiction in the case studies in Wa has no bearing on ownership over land because traditional authorities do not claim to own the community land. In the Mangu and Siriyiri case studies in Wa, it is the nature of the interests of the *tindaana* (Earth Priest) in respect of land that is a matter of uncertainty.

In the analysis presented in this chapter, I find that indigenes in these two cases are not excluded by virtue of the land management roles of traditional authorities. In areas of Ghana where the state recognises families and not chiefs as managers of land (such as in Wa), statutes permit transacting land for a perpetual period, as opposed to the transfer of terminable leaseholds as in Kumasi. Therefore in this chapter I tend to use terms indicating outright transfer of land, namely ‘conveyance’ and ‘disposal’ rather than leasing. The chapter begins by analysing the recent rapid expansion of peri-urban Wa as a force propelling commodification and the disposal of land. The analysis then shifts to the unique interests in respect of land in Mangu and Siriyiri, before delving into the origin of and changes to interests in land and the roles of stakeholders occasioning the changes.

6.2 Rapid expansion of peri-urban Wa

As discussed in Chapter 2, peri-urban areas differ from one city to the other, and the peri-urban area of Wa has certain features that are different from other peri-urban areas, especially those in larger cities in Ghana such as Kumasi. In peri-urban Wa there is no significantly urbanised town that have expanded and merged with Wa, as it usually occurs in other larger cities. However, as Osumanu, Akongbangre, Tuu and Owusu-Sekyere (2019: 65) state, the city of Wa formed through the integration of ‘patches of villages’ and these define settlement patterns in Wa’s peri-urban areas. The closest officially designated urban areas in the Upper West Region, such as Jirapa and Lawra, are 50 km and more away from Wa’s municipal boundary. My analysis of satellite images therefore shows that the peri-urbanisation of Wa is primarily a result of the urbanisation of Wa itself. Nevertheless, the city of Wa is beginning to experience what looks like spontaneous growth, as my analysis of satellite images indicate and as reported by Osumanu, *et al.* (2019). The growth I analyse in this section involves consolidated built-up areas such as Mangu and incipient-intermediate peri-urban areas, as represented by the Siriyiri case.

Rapid peri-urbanisation of Wa is discernible through the extent of built-up areas and rate of their continuous expansion into surrounding areas. A general impression of the rapid expansion of Wa can be inferred from Osumanu, *et al.* (2019), who found that the built-up surface area of Wa expanded 1,130 times in size between 1986 and 2016. This expansion trend is in line with Korah, Nunbogu and Akanbang (2018), who determined that the annual growth rate of surface area in Wa was 5.9 per cent. The outward expansion of the consolidated built-up area of Wa, when examined in terms of perimeter, shows an exponential increase. This exponential growth, as I observed from Google Earth Landsat images, is more rapid between 2005 and 2016 than during previous decades (see figure 6.1). In 1984 the consolidated built-up area of Wa fell within a 1-km radius and was visibly less dense. By 2005 Wa had become denser and the built-up area had increased from 1 km to an average of 3 km, further enlarging to between 3.6 and 7.5 km in 2016 in the eastern and western areas respectively. Between 2005 and 2016, the expanding nearby villages and location of key institutions tended to influence the growth of the built-up areas. For instance the expansion of the Chansa, Kpaguri and Bamaho areas to the south by up to 9 km in period between 2005 and 2016 can be attributed to the location of Wa polytechnic and the Simon Diedong Dombo University of Business and Integrated Development Studies. Unlike in

Kumasi, where all the current consolidated as well as peri-urban change lies beyond the metropolitan boundaries, most of the consolidated built-up areas in Wa are still within them. The exceptions in terms of consolidated areas in Wa are the airport and Sombo, which are expanding beyond the boundaries of the Wa municipality into the Nadowli-Kaleo and Wa West districts respectively. However, their expansion beyond the municipal boundary is because the central business district of Wa is not centrally located in the municipality, as can be seen in the lopsided urban segment to the southeast.

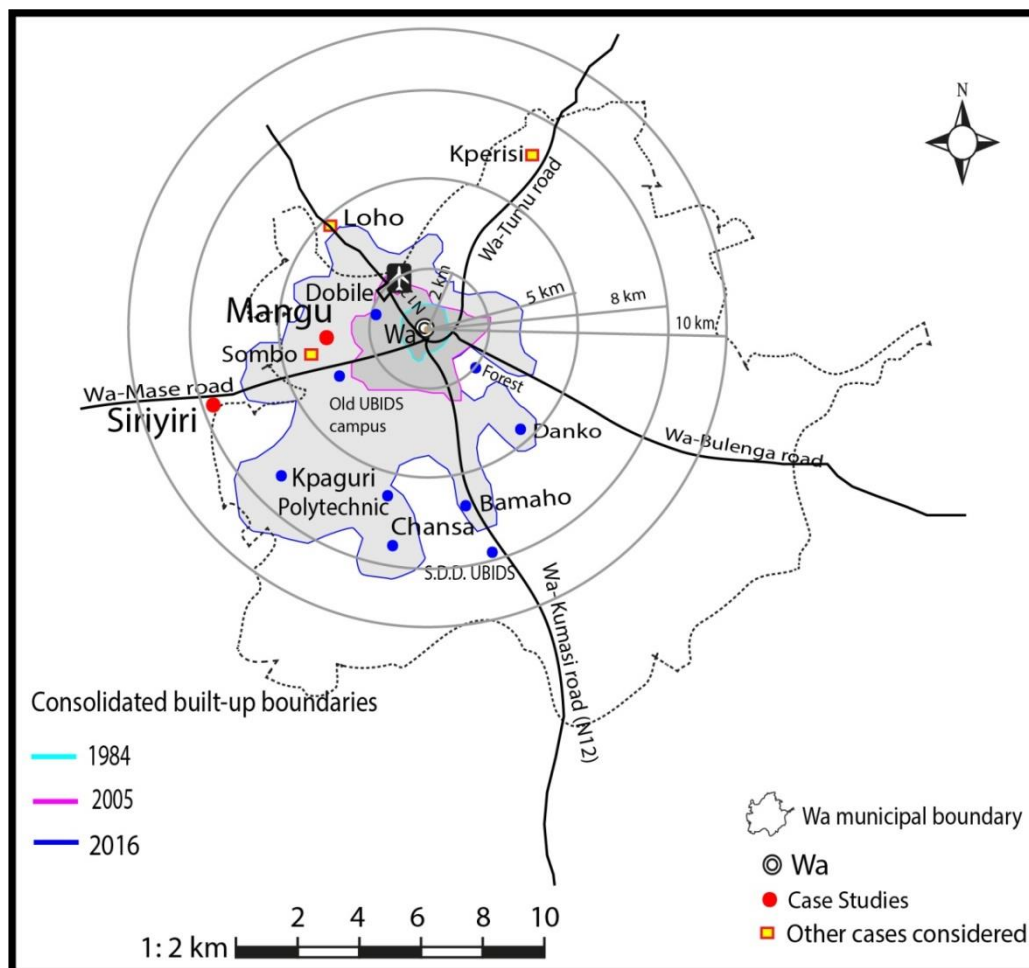


Figure 6.1: Growth of consolidated built-up boundaries of Wa, 1984–2016

Source: Author's visualisation based on Google Earth satellite images

In terms of the incipient-intermediate built-up areas, which are less consolidated, the greatest growth occurred between 1984 (2 km) and 2005 (with boundaries reaching beyond 9 km). Most of the incipient-intermediate peri-urban areas experienced minimal growth between 2005 and 2016, and it appears that there was more infilling than outward growth, which in turn accounts for the growth of the consolidated area within the same period, as noted above. The highest expansion of incipient-intermediate peri-urban boundaries between 2005 and

2016 occurred in the Siriyiri (7–10 km), Simon Diedong Dombo University of Business and Integrated Development Studies (6–10.2 km) and Loho (2.5–5 km) areas. These areas are along major roads and, like in peri-urban Kumasi, they contradict the relatively slow growth of other localities because of accessibility and availability of services such as electricity. About half of the land area within the Wa municipality, mostly in the southeast, is predominantly rural and farmland. Like the expansion of the consolidated areas of the airport and Sombo, the incipient-intermediate areas of Siriyiri and Loho have extended outside the municipal boundaries. Figure 6.2 shows a map of digitised images of the incipient-intermediate peri-urban boundaries indicating this growth. Traditional village settlements that are influenced by but at the same time co-influence the expansion of Wa exhibit a rapid emergence of standard-cement-block and modern-style buildings in or surrounding them (see figure 6.3).

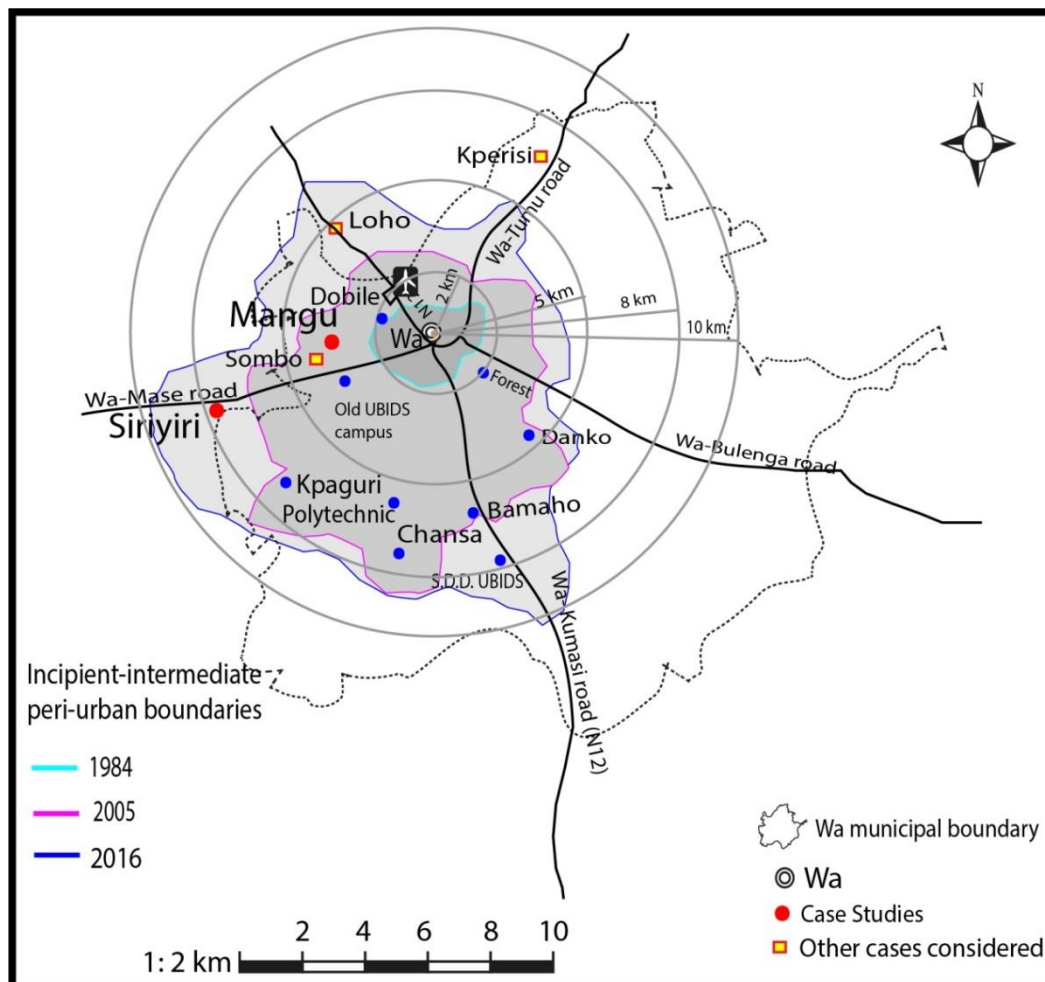


Figure 6.2: Growth of incipient-intermediate built-up boundaries of Wa, 1984–2016

Source: Author's visualisation based on Google Earth satellite images



Figure 6.3: Rapid emergence of standard block houses in Mangu (top) and Siriyiri (bottom) – locations starred as ‘P’ on figures 6.4 and 6.5 below

Source: Author’s photograph taken during field visit in March 2019

6.3 Peri-urban land commodification in Mangu and Siriyiri

Commodification of land in Mangu and Siriyiri emerged from increasing demand for land by stranger settlers and the realisation by indigenes that the introduction of money in transfers of land brings direct income. The Mangu and Siriyiri cases in Wa show that the combined effect of peri-urbanisation and commodification and actual transaction of land lead to changes in land rights similar to the situation in Kumasi. As in Pramso, the incipient case of Siriyiri shows that both commodification and actual transaction of land long precede physical expansion. The consolidated case of Mangu did not provide evidence of this pre-dating as physical expansion had already advanced. In the incipient case of Siriyiri, the emerging new sites were not yet distinct from the general growth of the indigenous community, yet there were frequent and extensive transactions of land, and a proliferation of uncompleted structures, which I will return to in section 6.5.2 below. In Mangu the interviews did not particularly reveal any special factors that might contribute to land commodification and peri-urban expansion. A male respondent in the Kokoyiri gate (the *tindamba* section) of Mangu mentioned that land in Mangu was commodified because it had become the next community to supply land after land in nearby communities, such as Dobile, had become exhausted (MAN-KOK03). Availability of cheap land in Siriyiri and the siting of a private university campus near the community are factors that respondents identified as contributing to the rapid disposal of land, factors that also point to a future rapid expansion of the community.

The rapid expansion of Mangu is a recent phenomenon that occurred within the past two decades. As figures 6.1 and 6.2 show, Mangu only became peri-urban after 1984 and consolidated after 2005. Many indigene respondents, including middle-aged men and women,

vividly described their recollection of its rural status in comparison to its present consolidated form. The respondents likened the total number of houses then in all four sections of Mangu to the number in just one section of present day Mangu. A middle-aged indigene respondent in the Dograyiri section of Mangu stated that

‘At first if there was a funeral in Kokoyiri or Tadaanayiri gate, a child could not go there alone. Your father will not allow you. There was very thick grassland between the gates. This is unlike today when it has all been cleared and built up. Mangu was very small.’ (MAN-DOGIN03)

In Siriyiri several factors – as revealed by interview content, satellite imagery analysis and observations during fieldwork – all indicate a process of peri-urbanisation, although less manifest compared to Mangu. These factors include increasing numbers of stranger settlers, youth commuting to engage in urban jobs in Wa, emerging markets for previously non-existent goods and services, and decline of farming activity. According to respondents, the number of houses in Siriyiri has also increased. Depending on their ages and how long they had been in the community, several respondents mentioned the number of houses in Siriyiri in the 1980s and 1990s as between one and 10 (SIR-NABIN01;04;05;08; SIR-TININ01;05). In Siriyiri there is no established ‘new site’, except for settlements along the road towards Wa in the east (see figure 6.4). Terms that respondents used to describe forms of peri-urbanisation in both Mangu and Siriyiri are presented in Table 6.1.

Phrase or terminology in Mangu	Phrase or terminology in Siriyiri
Increase in population	Siriyiri is opening up faster than Guo
Grassland cleared up and built	Siriyiri was a bush
Buildings are more congested	Siriyiri’s community has opened up
Mangu has expanded more	Siriyiri has become bigger
People were not as many as presently	Siriyiri has now expanded towards Wa
It was very small	The community has grown
Increase in built-up area	Right now many strangers have joined us

Table 6.1: Phrases from respondents indicating peri-urbanisation in Mangu and Siriyiri
Source: Author, based on analysis of author’s interview sets from Mangu and Siriyiri

Commodification of land in Mangu and Siriyiri is similarly a contemporary phenomenon. The interviews in both Mangu and Siriyiri show that roughly three decades ago (i.e. in the

1980s) indigenes commonly granted land to strangers free of charge for housing, farming and for other use. Examples of free grants of land in Mangu are portions granted to long-term stranger settlers and to missionaries and their schools, such as the Methodist School. In both Mangu and Siriyiri, indigene respondents mentioned that land at that time was lying idle and readily available for free to both indigenes and strangers. An elderly man from the Dograyiri section of Mangu recalled that stranger land-seekers presented no more than kola nuts to indigenes that offered land to them. The indigene family head then shared the kola nuts among the elders in their gate to inform them of the grant of land to the stranger (MAN-DOGIN02). This form of witnessing secured the tenure of the stranger settler. The kola nuts are means to an end, but not necessarily the requirement. This particular respondent revealed that the requirement is for family heads to inform elders in the gate about the transfer of land. However, to see an elder on any matter, it is customary to go along with kola nuts as a present, and in the case of transfer of land the stranger settler had to provide it. The kola nuts therefore, do not depend on the size of land granted and are not meant as consideration in exchange for the land (Agbosu, 1980). The kola nuts also served a ritual purpose as the respondent explained that ‘when they brought the Kola nuts we add two chickens and pour libation to our forefathers so that such a relative will settle well in our land’ (ibid.).

As more strangers acquired free land, the trend changed and indigenes introduced money into land transactions in the 1990s. The quote below from my interview with a middle-aged indigene at Mangu (extracts of which I’ve already reported upon above) illustrates the commodification of land in Mangu.

‘In those days land used to lie idle and as if inexhaustible and no one sells it.... Our ancestors never knew that land could become something that can bring money directly. Therefore, while they were farming on the land, any stranger who came brought kola nuts to come for land.... However, later, when strangers came, the elders saw that the land was reducing and when the person they were giving it to is not an indigene, they did not take only kola nuts. They started asking for money before giving out land. So land began to produce direct income.’ (MAN-DOGIN01)

An indigene from the *nabiihi* section of Siriyiri said ‘the kola nuts that we collected are what we have turned into the money’ (SIR-NABIN03). Although a similar commodification process applies to Siriyiri, the phenomenon was more impulsive there. This is partly because

demand for land, and with it commodification, emerged later at a time when receiving money for land had already gained acceptance in other communities in Wa and was a known common practice. Thus like Mangu, Siriyiri community actively waited for demand of their land to begin disposing it for money. Similar to Pramso in Kumasi, in both Mangu and Siriyiri the price of land is not professionally determined. However, unlike in Pramso, in Mangu and Siriyiri there is no uniform price for land and there are no rules on pricing. In Pramso only the traditional authorities transact land, hence there is relative uniformity in pricing and conditions of leasing to stranger settlers. The interviews show that in the absence of this role of traditional authorities in the Wa cases, pricing of land is undertaken by the indigenes themselves. In Mangu and Siriyiri this pricing depends more on the nature or urgency of the need which the individual or family is transacting the land to meet (MAN-KOKIN03; SIR-TININ01). The price of land although determined by the demand and supply in the local informal market does not mimic pricing of land in the formal market where the usual determination of price are arrived at by comparing the prices of similar plots of land in similar locations. I return to section 6.5.1 to discuss the transaction of land as an important livelihood for indigenes.

6.4 The bases of indigene land entitlements in Mangu and Siriyiri

There are many ways of acquiring interests in respect of land. These include conquest, settlement (resulting from migration), discovery (of unoccupied land by new settlers) and gifting (Bentsi-Enchill, 1964; Hayford, 1903). The origin of indigenes interests in land in Mangu and Siriyiri is mainly through discovery and settlement.

6.4.1 The origin of the Mangu community by settlement of related people

The Mangu community is located in the western part of Wa municipality (see figure 4.7). Its neighbouring communities are Kambali to its east and south, Sombo to the west and Charee or *Kyarɛɛ* to the north. In terms of ritual control or *tinga*₂, a family head stated that the boundaries of Mangu extend far further than the control of a physical parcel of land (*tinga*₁) (MAN-KOKIN03). In figure 6.4 below the area bounded by the three roads is the main consolidated built-up area of Mangu (also showing parts of Sombo) and not its land ownership boundaries. In figure 6.4 the main traditional settlement is enclosed within the dotted line and as can be seen it is much smaller compared to the rest of the community, which is mostly occupied by stranger settlers. According to interviews with indigenes, there

are different activities that indicate the boundaries of the land over which the Mangu community has control, and these activities apply generally to acephalous communities of Wa. First is farming on distant land (*wɛo*) and in the immediate vicinity of the community (*yɔga*), which are the active farmlands of the acephalous indigenes. The second is gathering of fruits, firewood from wild trees such as shea trees, and other resources on the fallow land (*koala*) of the community. The third is hunting on the general area of the community. This hunting land is called *gara* or *moɔ*. In respect of *koala* and *gara*, Mangu shares boundaries with communities farther away, such as Gbegru and Jingu (see figure 4.7) (MAN-KOKIN03).

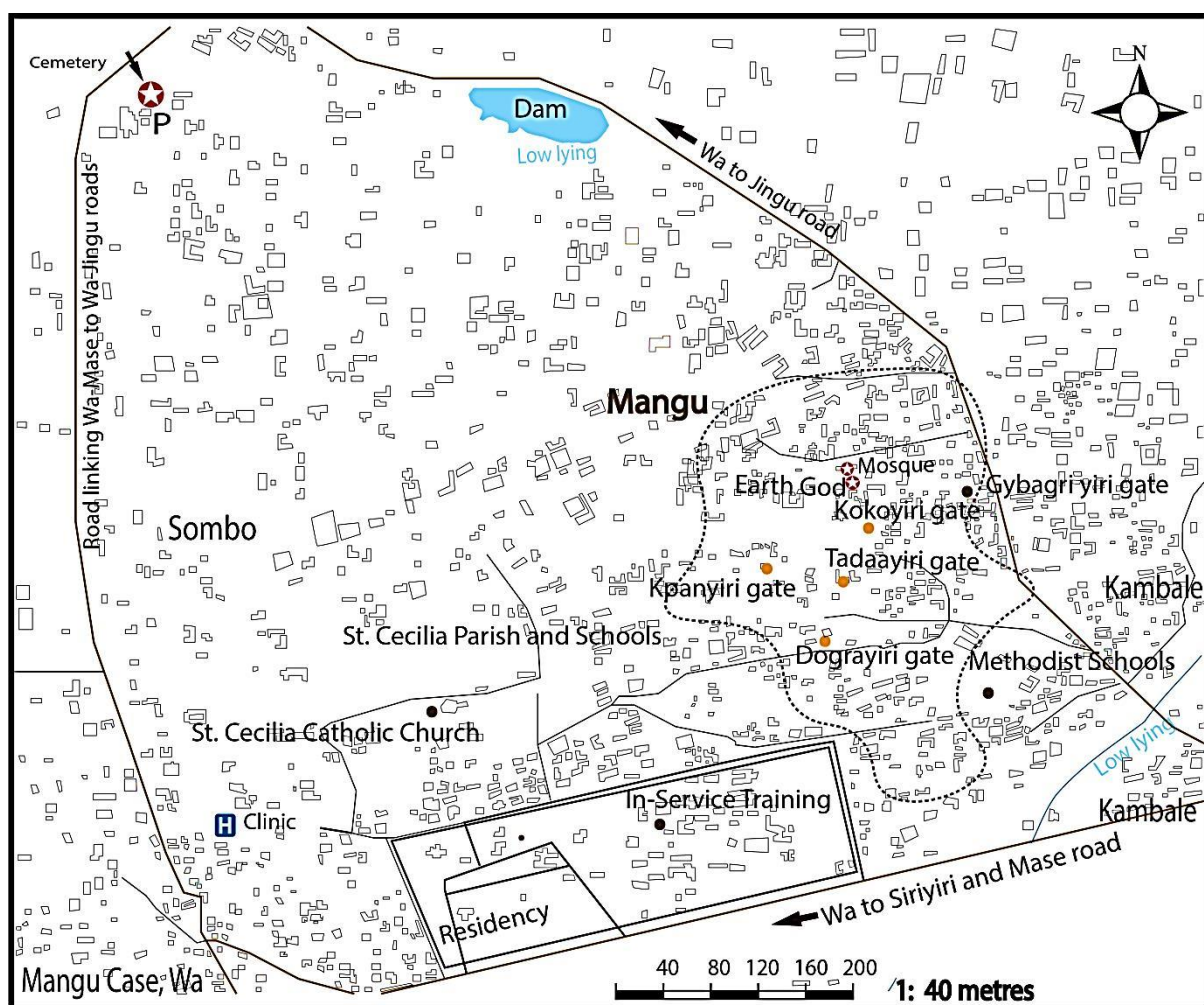


Figure 6.4: Map showing the most consolidated area of Mangu

Source: Author's visualisation on Google Earth satellite images from 2019

The first settlers and their relatives built the traditional Mangu community through gradual establishment of gates over 300 years ago (MAN-KOKIN01). There are four main indigene sections, or gates, making up the traditional settlement of Mangu, consisting of one first-

settlers' gate and three other gates that are related to the first settlers through their migration history. Gate is the term that many indigenes use to refer to a traditional section of a community and it is a direct translation of *dinoɔre* in waale or *dingdɔre* in Dagaare. These terms mean the frontage or front yard of a house and are named such because each section was made up of a compound house with one main entrance. Nowadays gates consist of existing traditional houses and several rebuilt-separate houses belonging to the members of the gate and, in few instances, to the stranger settlers surrounding the main traditional gate. At the time of the field visits the traditional gates were undergoing gradual reconstruction, with modern materials replacing the traditional architecture. Interviews with indigenes in Mangu show that the Kokoyiri gate first settled in the community and that the other three gates, namely, Dograyiri, Kpanyiri and Tadaanayiri, joined later (MAN-KOKIN02; MAN-TADIN01). There is another gate in Mangu, Gyabagreyiri, which is not an indigenous gate but counts as the fifth gate. It is made of strangers who settled in Mangu over 300 years ago (MAN-KOKIN01; MAN-GYAST01). In accordance with the Lands Act, Act 1036 (2020), these long-term stranger settlers have acquired usufruct rights by occupying the land over 50 years.

According to the narrative of an elderly family head in Kokoyiri gate, the origin of Mangu traces back to three men who in an undisclosed time migrated from Dagomba land in the Northern Region of Ghana and first settled at Bulenga. However, Daannaa (1994) indicates that Bulenga was already well-established before the advent of British colonial rule in Ghana in 1901. Later, two of the men split and each settled either at Holomuni or Mangu, again at an unknown time (MAN-KOKIN02). With respect to Mangu, the man and his family settled in Kokoyiri and formed the *tindamba* (the people of the *tindaana*'s gate). Therefore the *Tindaana* of Mangu is in the Kokoyiri gate and he pacifies the Earth God or *tinga*₂ (often this is referred to as cleansing of 'land') when forbidden acts such as murder occur. After the man settled and created the Kokoyiri, Kpanyiri or Gboreyiri people came as brothers of the former and lived with the Kokoyiri people, thereby creating the second gate. Then, in a later unrecorded time, Tadaanayiri people arrived from the Dagomba land and Gboriyiri introduced the former to the Kokoyiri people as the latter's brothers and they settled on a nearby land. Finally, when the Dograyiri people arrived much later, again at an unknown time, the Gboreyiri introduced them as their sons and the former settled. Therefore, genealogically, all the four gates of Mangu are related (ibid.).

In terms of the land relations between the gates, three scenarios can be derived indirectly from the narratives of the history of Mangu, although indigenes could not expressly state them. Firstly, since Kokoyiri people are the first settlers on what was vacant land, they may own the ultimate or allodial title in all Mangu land. For this reason the latter delineation to the other three indigene gates and one stranger-gate constituted unidentified lesser interests, such as usufruct rights. Secondly, Kokoyiri people may have granted absolute ownership in the parcels of land to the other three gates, since it is not prohibited to grant allodial title to family land, as opposed to say acephalous Wa,³ as stated above. This explains why the three gates also own absolute interests in the size of land that the first-settler Kokoyiri gate granted to them. The third scenario, which is factual and supports the second scenario, is that in the advent of land disposals each gate and each family under each gate transact in their land as if each has ‘ownership’ of the land (MAN-KPAIN01; MAN-KOKIN01), and the first stranger settler I interviewed at the Gyabagreyiri disclosed that even stranger settlers were able to transact parcels of land surrounding their settlements (MAN-GYAST01).

With regards to planning, Mangu community, like a large portion of Wa municipality, is unplanned but has supply of public water and electricity. The interviewee at the Physical Planning Department (PPD) in Wa observed that:

‘The picture at Mangu is not very good. Mangu is like an indigenous neighborhood that grew by itself, and my understanding is that it grew before the plan and unfortunately implementation of the plan has been very minimal at Mangu. So it does not have character in spatial terms. It is just a whole bunch of developments with very limited amount of clear cut roads.’ (PHY-REP2)

There are several basic schools and a health facility; however, the road network is still poor in Mangu.

6.4.2 The origin of the Siriyiri community by relocation

The Siriyiri community can be described as an offspring of the Guo and Ole communities. Siriyiri is located along the Wa–Mase road west of Mangu and Wa municipality (see figure 4.7), after Sombo but before Dorimon. Although Siriyiri is located in the Wa West district

³ Article 267(5) of the Constitution of the Republic of Ghana, 1992 prohibits transfer of allodial or freehold interests in respect of stool land, such as in Kumasi.

and outside the Wa municipality, the municipality largely affects the transaction of its land with little or no influence from the Wa West district (My Field Notes). Indigenes of Siriyiri narrated that Siriyiri has vast land and shares boundaries with communities such as Sombo and Nakore eastwards, Ase to the west and Wichao to the south (SIR-NABIN07). Guo is north-west of Siriyiri, about 2 km away, whereas Ole is about 4 km south of Siriyiri. The map in figure 6.5 therefore covers only part of the land of Siriyiri, which surrounds the community and is under transaction.

Siriyiri is a relatively new community which begun in the 1970s or 1980s based on narratives from indigenes (SIR-NABIN01). Historical narratives from indigenes in Siriyiri revealed that a man called Siri moved from the Guo community and settled along the Wa–Mase road. Within the same decade his brothers joined him and the community became known as Siriyiri, that is Siri’s house or settlement. With time other relations relocated from the Ole community. Due to its advantageous position along the road and closer to Wa, Siriyiri has grown bigger than Guo. Siriyiri, like Mangu, is officially unplanned and faces water-access problems, but despite lacking public water supply has electricity and a health facility. There is a site for the construction of a basic school, but the project was yet to start at the time of my final fieldwork in 2019.

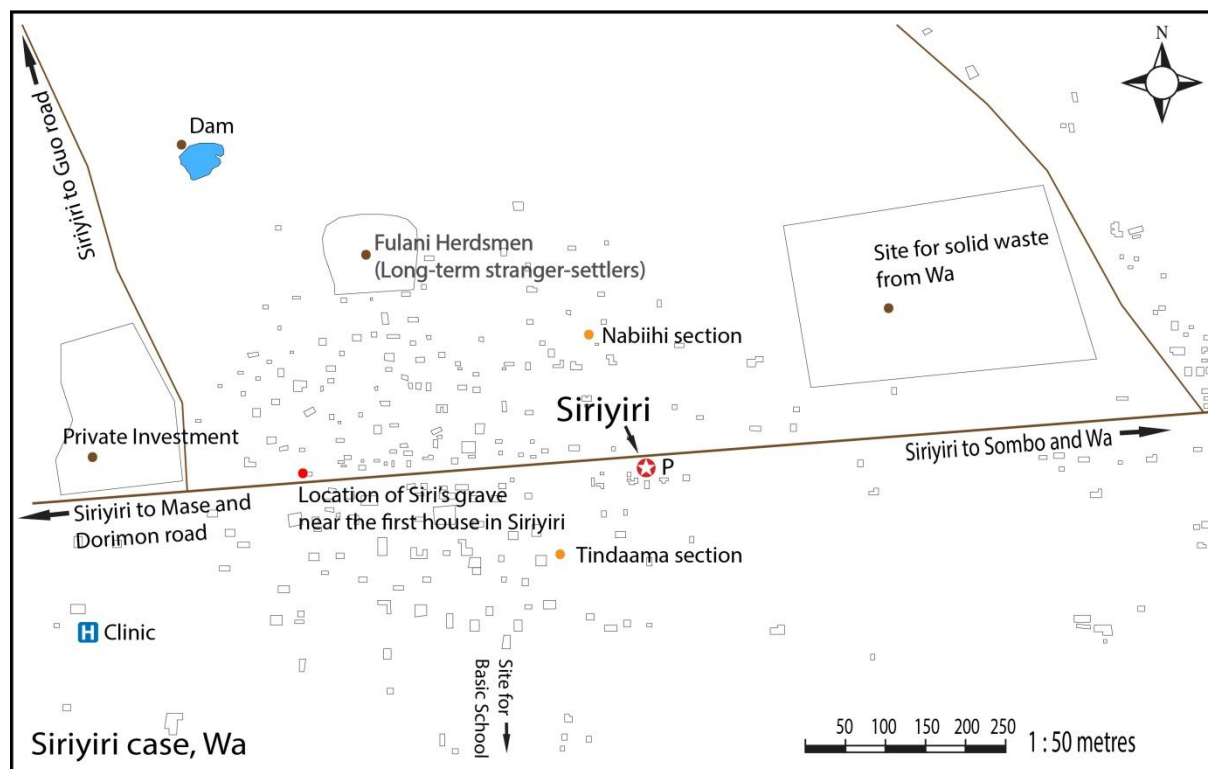


Figure 6.5: Map of incipient Siriyiri community

Source: Author's visualisation based on Google Earth satellite images from 2019

Siriyiri has two gates, namely *nabiihi* for those who qualify to become chiefs and *tindaama*, or *tindemee* as indigenes of Siriyiri frequently pronounced it. The *tindemee* section produces the *tindaana*, a role which, in line with acephalous customs, none of the members of the *nabiihi* qualifies to take on. An exception in Siriyiri is that these sections do not go by the norm of *tindemee* as first settlers. In typical Dagaaba or Waala communities in the Upper West Region, the first settlers are the *tindamba*, as seen in the case of Mangu. Indigenes consider Siri, who founded Siriyiri, including his brothers and his section, as the *nabiihi* and not the *tindaama*. This unusual arrangement has created disagreements and agitations between the two sections in the wake of commodification and transaction of land in Siriyiri. The *tindemee* claimed to have the right to convert and transact land because they are *tindamba*, but in practice they settled later in Siriyiri and, according to an elderly indigene in the *nabiihi* section, should not be called *tindamba* at all (SIR-NABIN01). The counter-claim by the *nabiihi*, framed in similar but reverse terms, was to have the authority to transact land because they settled first in Siriyiri although they are the *nabiihi*. The same elderly indigene from the *nabiihi* section (SIR-NABIN01) tried to explain this controversy. According to him, the *tindamba* who settled later in Siriyiri succeeded in creating ties with the original *tindamba* in Guo, hence became *tindamba* through that connection and not by first settlement in what became Siriyiri. This implies that Siri resettled on a piece of land already having a *tinga*₂ and its *tindaana* at Guo. Siri could not have become a *tindaana* since no new *tinga*₂ was established in Siriyiri. Thus in principle neither the ‘*nabiihi*’ section nor the ‘*tindamba*’ sections of Siriyiri are customarily *tindamba* or *nabiihi*.

This abnormality can be traced back beyond Siriyiri to Guo, the parent community. The interview with an elderly indigene in the *nabiihi* section revealed that Ningoro, the first person to settle at Guo, was a ‘*nabie*’, singular of *nabiihi*. After Ningoro settled, a ‘*tindaana*’ joined him, thereby deviating from the usual custom (SIR-NABIN01). The puzzle is somehow resolved if one considers the fact that both sections refer to each other as brothers (SIR-NABIN01; SIR-NAAH) who once migrated from Yendi in the Northern Region to their present location and holding the titles *nabie* and *tindaana* in their original settlements. Today they merely retain these titles after having migrating to Guo and Siriyiri. In this regard, the *nabiihi* should have become the *tindamba* of Guo and Siriyiri because they settled first. However, presumably because of their original designation as *nabiihi*, they preferred to maintain their identity as *nabiihi*. The *tindamba* who came later maintained their original

identity as *tindamba* in the same way. Another dimension that emerged from an informal informant discussion that supported this anomaly is that in certain communities in the acephalous Upper West Region, after migrants settle the titles *tindamba* and *nabiihi* are shared among or between the sections because of brotherly relations and not based on the order of settlement in time. Therefore the Siriyiri case shows that basing the office of the *tindaana* on first settlement in a community has no universal application in acephalous areas.

6.4.3 Enhanced control over land by indigenes in Mangu and Siriyiri

The processes leading to the origin of Mangu and Siriyiri, as discussed above, form the bases for indigene entitlements to land. In Mangu respondents from all gates claim ownership of their gate's land because their ancestors settled on the land, used it and passed it on them. For instance, in Kpanyiri the head of the gate said they settled on the land and it became theirs (MAN-KPAIN02). In Dograyiri a middle-aged man similarly stated that they own their gate's land through settlement (MAN-DOG01). In the other two gates, Tadaanayiri and Kokoyiri, similar narratives emerged from respondents that their great grandfathers acquired their gate's land by first settlement (MAN-TADIN01, MAN-KPAIN02; MAN-KOKIN02). Therefore gates do not consider the *tindamba* status of Kokoyiri, whether by first settlement or otherwise, to be relevant in control of land (*tinga*₂). Each gate controls the land in its gate and not that of entire Mangu. Even the Kokoyiri gate does not prevent other gates from transacting in their gate's land. At the family level, creation of entitlement to land in both nuclear and extended families is by first occupation, mainly through farming, and with time it becomes established by popular knowledge that a particular family possesses a particular portion of land within the community. Another way through which interests in land become entitled to indigenes is by continuous use of land that originally belonged to another community. There are families in the Kpanyiri gate of Mangu who became entitled to land through farming on land originally under the entitlement of the Sombo people (MAN-KPAIN02). When land transactions began, the Sombo people gifted part of it to the Kpanyiri people who then farmed on it (ibid.).

As I briefly discussed above, three different events determine control over land in Mangu, and this applies to Siriyiri too. A young indigene in the Kokoyiri narrated that the boundaries of the *gara* (hunting land) of a particular community was established where members of the community usually return when they meet another community during group hunting (MAN-KOKIN03). Each community therefore has hunting entitlement in land to that extent, and the

community or the gates that go hunting together collectively hold this land. The *gara* is mostly the largest in size, followed by the *koala*, the *wεε* or *wεo*, and the smallest in size is the *yɔga*. The extended family holds the *koala* and any nuclear family which is actively farming on a particular portion of land is entitled to the *yɔga* and *wεo*. The *gara* and the *koala* are not constantly in use and indigene control over its boundaries is more flexible. Again, another community may temporally use part of the *gara* of a community for farming purposes. This outside community may ultimately become entitled to that land, and in the wake of a transaction over that piece of land the user community transacts it and retains the proceeds. However, in terms of ritual control, especially in terms of ritual cleansing, the user community still consults those formerly entitled to the *gara* (ibid.). According to this respondent and the *Tindaana* of Mangu, the people of Duore and Sombo, who are autonomous communities, usually consult Kokoyiri of Mangu for ritual cleansing of their land (MAN-KOKIN03; MAN-TIN). Nonetheless, it is this kind of ritual cleansing that the courts construe as ownership, as I discussed in Chapter 3. This form of land relation usually occurs when the *gara* of a community is big but the *koala* is small and the *koala* of the user community covers almost their entire *gara*. The latter may then extend their use and occupation across the former's *gara* and gradually expresses ownership over it (MAN-KOKIN03).

Indigene entitlement to land in Siriyiri is by settlement and relates to its origin, as discussed above. At the time that Siri first settled in present-day Siriyiri and his relations later joined him to form the community, land was used in common by all the settlers of Siriyiri (SIR-NABIN01). However, in the wake of transactions of land in recent years, every family tends to protect the land currently under their control in terms of *yɔga* (active farmland near the settlement), *wεo* (active but distant farmland) and *koala* (distant fallow land). Families' creation of entitlement in respect to land is through use of the land for farming over the years of settlement in Siriyiri. In terms of creation of usufruct rights, which become vested in long-term stranger settlers in Mangu and Siriyiri, this occurred mainly through strangers pleading for land from indigenes for use (LC-REP2; MAN-GYAST01). From the Mangu and Siriyiri cases it becomes clear, unlike the case of Pramso in Kumasi, that indigene entitlements to land in this area did not take the form of distribution of land by traditional authorities.

6.5 The unusual interests in respect of land in Mangu and Siriyiri

The entitlements of indigenes in both Mangu and Siriyiri do not reflect usufructuary interest, whereas the *tindaana* and *naah* as traditional authorities hold divergent entitlements that do not conform to the arrangements in the case of Pramso. On the one hand, the beneficial interests of the chiefs of Mangu and Siriyiri are not more than those of the indigenes. On the other hand, the *Tindaana* of both Mangu and Siriyiri hold beneficial interests in respect of their family land just as other indigenes do. In addition the *tindaana* holds a ritual allodialship over land in the community, and this role transcends to other communities. Chapter 3 of my thesis presents the interests held by indigenes and traditional authorities in respect of land and argues that representation of these interests are biased towards centralised land tenure, which is regarded as the general customary land law principles in Ghana. This sub-section presents findings that the interests held by traditional authorities and those of indigenes are inconsistent with the general customary land principles in Ghana as developed and applied in land administration and in the law courts. I therefore use the term ‘ritual allodial interest’ to describe an absolute right held and exercised solely by the respective *tindaanas* as ritual leaders of Mangu and Siriyiri. Ritual allodial interest is therefore distinct from traditional allodial interest in centralised land tenure, such as in Kumasi.

6.5.1 The interests of the *tindaana* and *naah*

In both Mangu and Siriyiri the data shows evidence that, contrary to the Chief in Pramso, the *tindaana* and *naah* do not regard themselves as allodial interest holders of the land (in an economic sense and in property theory) of their communities. The allodial interest is a collection of all the bundles of rights in property, and therefore the highest interest in property as discussed in Chapter 2 (Barry, 2015). The respective *Tindaanas* of Mangu and Siriyiri hold an interest that is bereft of economic benefits but carries ritual significance in all of the land of the community and beyond. As discussed in section 3.5.1, relevance of this ritual role of the *tindaana* lies in the establishment and administration of the Earth God. In Mangu the interviews showed that the *Tindaana* of Mangu performs ritual duties for all four gates of Mangu and other settlements outside Mangu (MAN-KOKIN03). When ritual matters, such as desecration of the land through death, occurs on a farmland, the matter is reported to the *tindaana* for pacification. The *tindaana* also consults the *tinga*₂ or Earth God (as indicated in figure 6.6 and grey colour in figure 6.7) in cases of theft, to expose the perpetrators and present sacrifices to the *tinga*₂ when the perpetrators are found. As discussed

in section 3.5.1, land in the acephalous case studies has a triple meaning of land or *tinga*₁ as physical parcel of land, *tinga*₂ as Earth God and *tinga*₃ as the community or village. The *tindaana* may benefit economically from such activities: for instance he may keep stolen items that were found but whose owners cannot be traced (ibid.).

As discussed in Chapter 2, the establishment of the Earth God sheds light on how ritual allodial interest differs from allodial interest in centralised customary land tenure and in property theory. Both Yelapaala (1983) and Kunbuor (2002) explain that the family which founded a community sets up the *tinga*₂, which exercises control over the boundaries of the community (*tinga*₃). As figure 6.7 shows, physical land (*tinga*₂) and its ownership (coloured orange) is distinct from the Earth God's ritual protection and control of the land (over-layered in grey). Figure 6.6 shows a shrine of the Earth God in Kokoyiri, Mangu. Ritual protection and control of land (*tinga*₁), which are vested in the *tindaana*, may be exercised over the parent community (A) and over other communities (B, C and D) or it may be exercised over just one community (E). Nonetheless, the *tindaana* of community A does not exclusively control (own) the land (*tinga*₂) of communities B, C and D, as the interviews in Mangu indicate. Other communities such as B, C and D may also establish Earth Gods, but these Earth Gods remain inferior to that of community A (Yelapaala, 1983; Lentz, 2006).



Figure 6.6: A shrine of the Earth God (*tinga*₂) in Kokoyiri (starred and labelled on figure 6.4 above)

Source: Photograph taken during fieldwork in December 2019

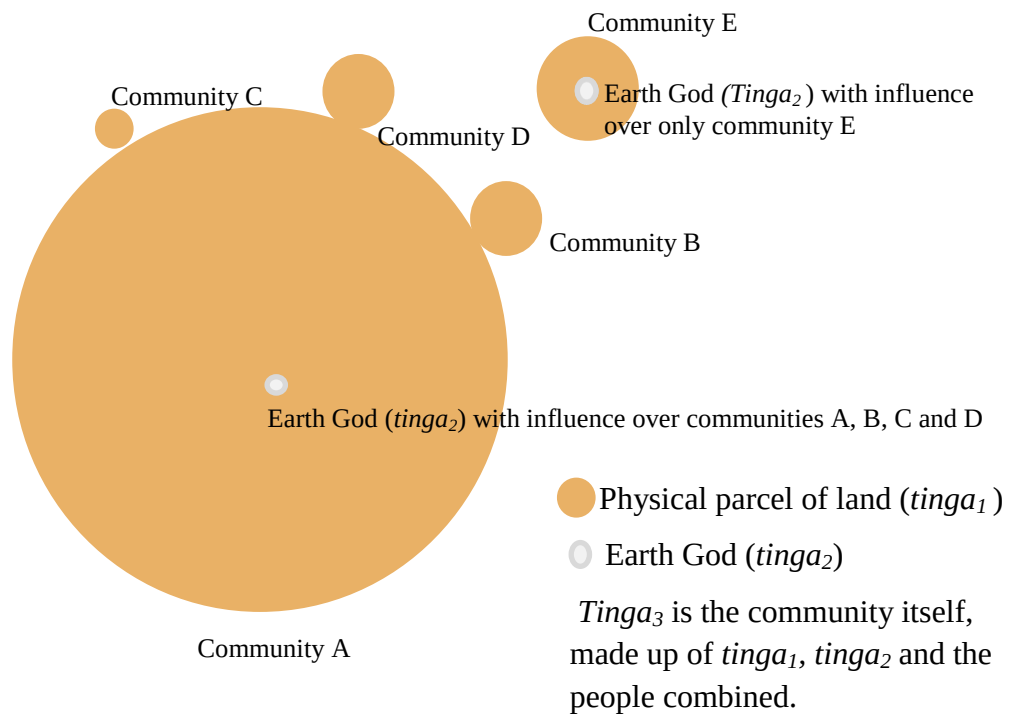


Figure 6.7: Diagrammatic representation of the triple meaning of ‘land’

Source: Visualisation based on Yelapaala (1983) and Kunbuor (2002)

Land in acephalous areas is often held to be synonymous with the Earth Shrine (Lentz, 2006). However, this illustration shows a triple meaning of ‘land’ or *tinga* in the case studies in Wa: the Earth God (*tinga*₂) is distinct from the physical land (*tinga*₁) and not synonymous with the term community (*tinga*₃). As the custodian of the Earth God (*tinga*₂), the *tindaana* does not interfere with economic and physical disposal of land. In the words of the *Tindaana* of Mangu,

‘it is not all the land of Mangu which is in my hands because as we settled here, every gate has their own land. Our section [Kokoyiri] owns all the land from here to Belle and up to our boundary with Kyarɛɛ near Kaleo. Then Kpanyiri have their land, Tadaayiri have their land and Dograyiri have their land But if there is any [ritual] problem, all of them come to us to resolve it.’ (MAN-TIN)

The narrative of the *tindaana* above corroborates Lentz’s (2010) finding that the *tindaana*’s role in certain areas of Northern Ghana is more or less confined to ritual matters. It may therefore not be a general fact that the *tindaana* is the owner of land comparable to the centralised chief as the courts have interpreted it in the cases of *Yakubu Awabego vs Tindana Agongo* (2016) and *Iddrisu Tifuuro Tatali vs Alhaji Saaka Yakubu* (2018).

The chief's or *naah*'s interest in land is inferior to that of the *Tindaana* of both Mangu and Siriyiri. The *naahs* (plural of *naah*) in both Mangu and Siriyiri stated that a chief has nothing to do with controlling or transacting the land of a community. According to the data, it is tradition that the *naah* should never deal with land, while it is equally tradition that the *tindaana* should never meddle in matters of the chief. The *naah* does not have interest in the land of the overall community or even the gate but only in his family land. For instance, during my interview with *Naah* of Mangu he consistently clarified that, contrary to the chief and sub-chiefs in Pramso, he has no control over the land in Mangu. 'By virtue of my position as the chief? No, a chief has no power to take someone's land and sell, unless the land is in my own family' (MAN-NAAH). Similarly the *Naah* of Siriyiri indicated that 'it is a rule that once you are a chief you have no power to sell land. If someone sells and gives me something out of it, fine, but I do not sell land. No, I am not supposed to sell land' (SIR-NAAH).

The inferior interest of the chief in respect to land makes it tempting to believe that the *tindaana* holds the allodial interest in the community land, as discussed in Chapter 3 (see Kasanga and Kotey, 2001: 13). It seems logical from the point of view of centralised land tenure that since the community leaders control land, the lack of control by a chief in Wa automatically means the control is vested in the *tindaana* as the other leader of the community. This uncertainty manifests itself in a number of ways. Firstly, the respondents from the Lands Commission and the Customary Land Secretariat (CLS) disagreed on who the allodial owners of land are. The representative of the CLS in Wa, and an elderly indigene in Mangu, disclosed that the CLS disbursed annual ground rent to the *tindamba* gate as the allodial title holders (MAN-KOKIN01; CLS-REP). On the other hand, as explained by the representative of the Lands Commission, the Lands Commission disburses such revenue to family heads as allodial titleholders, and not to the *tindaana* (LC-REP2). Secondly, as a young indigene from Kokoyiri noted, the '*naah* is for [controlling] living things but *tindaana* is for the land' (MAN-KOKIN03). However, if we invoke the triple meaning of land, the statement of the young indigene (MAN-KOKIN03) means the *tindaana* is for the *tinga*₂ (land), that is the Earth God, and not physical land (*tinga*₁), which is controlled by family heads in Mangu and Siriyiri. This is then contrary to the view of the CLS (and the indigene quoted above) that the *tindaana* owns the physical parcel of land (*tinga*₁), which is also the position adopted by the courts.

Siriyiri produced an empirical example of a court's opinion. At the time of the field work there was a litigation between the *nabiihi* and *tindemee* gates of Siriyiri as to which is entitled to transact land. According to the interpreter of the Wa High Court, the unreported case (*Guo Naah vs Asuma Gyemme*) was a land dispute in respect of Siriyiri and Guo lands which went through full trial, and judgement was entered for the defendants against the plaintiffs.' Thus the court ruled in favour of the *tindaana* and his section against the *naah* and his section. The unreported (report not officially made public) status of the case meant that no clues could be ascertained for the basis of the judgement, but this may be in relation to the ritual role or the first-settler principle of the *tindamba*. As already discussed, the first-settlement phenomenon in Siriyiri does not conform to the usual tradition. It is important to state that the fact that the *naah* and *tindaana* do not claim control over the community land does not mean they do not have administrative roles in relation to land matters in the community. The chief performs general administrative and judicial functions, including resolution of land conflicts in the community (Kunbuor, 2002). As shown in the court cases in section 6.5.2 below, the Chiefs of Mangu and Siriyiri represent their communities in litigating on land matters involving their communities. Yelapaala (1983) noted that the *tindaana* was the keeper of the land boundaries of the community and of various families, and witnessed transfer of use rights in occupied land to new settlers. The *tindaana* had the power to terminate the use rights of a person who desecrates the *tinga*₃. Yelapaala (1983) adds that the *tindaana* could not and did not transfer someone's land to another unilaterally. Therefore the role of the *tindaana* on land matters always stems from his ritual role, just as the physical parcel of land (*tinga*₁) is inseparable from the Earth God (*tinga*₂). The description of indigene families' entitlements and their dominant involvement in transacting land, which I turn to next, further indicate that, unlike the chief in centralised land tenure systems, the *tindaana* does not hold the traditional allodial interest.

6.5.2 The interests of indigenes in Mangu and Siriyiri

In both Siriyiri and Mangu, indigenous sections, families and individuals exercise independent decisions over the disposal of land under their occupation and use. Firstly, gates in Mangu hold land independently under their control. Although the *Yidaana* (head) of the *tindamba* gate of Mangu said that they settled first and granted land to the other gates to settle, the *tindamba* do not interfere with the land of the other three gates. Each gate is thus independent in terms of land control and the *Yidaana* of each gate signs the documents of

land transacted by families, households and individuals (MAN-KPAIN02). All indigene-respondents described this independence of the gates in respect of control of land, One indigene from the *tindamba* gate of Mangu stating that ‘every gate has their land that they sell for themselves but some gates have more land than others’ (MAN-KOKIN03).

Secondly, within each gate smaller units such as families, households and individuals independently control, occupy, use and transact the land that they possess through farming. In the Kpaniyiri gate of Mangu, families and households share land in the inner gate among themselves and each family and household is at liberty to use it by themselves or to dispose of it for income. In the Kokoyiri gate, members who have the financial capacity build houses on such land in the inner gate that is common to all members of the gate. One indigene respondent in Tadaanayiri states that ‘when our ancestors settled here, each of them had the boundary to their farms. The land they farmed on becomes theirs’ (MAN-TADIN04). Another indigene in Kokoyiri gate expressed the same opinion, while explaining that everyone (or more accurately every man – I discuss gender biases in relation to land in section 6.7.1) has benefited from land conversion in their gate.

‘Besides, each family has where they farmed on before the sale of land began, and that is also where their fathers farmed. So the family owns [so] that land by default... no one can take it from you. If you want you can sell it, if you like you keep it. You deal with it in the manner you like.’ (MAN-KOKIN03)

This is the arrangement in Mangu where transaction of land became organised following disorderly transactions at the outset of commodification of land. The word *so* in the *waale* dialect translates to a form of ownership more related to the power theory of ownership as total exclusion.

In Siriyiri, control over land based on gates is not prominent. Families and individuals transact land under their possession and even the general land of the community without recourse to consultations within the gate. According to elderly indigenes whom I interviewed, this displeases them (SIR-NABIN01; SIR-TININ03). Many respondents mentioned that individuals dispose of land in secrecy to avoid having to share proceeds with family members or family heads. This uncoordinated transaction of land contributes to the non-documentation of transactions in Siriyiri. In Siriyiri farmland is relatively abundant compared to the population of indigenes and family heads, and elders do not actively interfere even in the indiscriminate transaction of land by families and individuals. Families tend to be protective

against the disposal of land under their possession by non-family members, although there are exceptions where non-family members transact in the *koala* of other families. A son of the very first indigene settler in Siriyiri complained about other indigenes transacting his farmland without sharing the proceeds with him (SIR-INF01). The wife of Siri similarly complained about indiscriminate transactions of her late husband's farmland by other indigenes of Siriyiri (SIR-INF02). In Siriyiri conversion and transaction of land can be described as competitive grabbing by all indigenes, except women. The only factor that seems to restrain the transaction of land by indigenes is their perception of tradition and norms as a reverse of one indigene respondent who complained about large, indiscriminate transactions by other indigenes who have no regard for the norms (SIR-NABIN05).

The liberty of families and individuals in transacting land in Mangu and Siriyiri, based on their prior occupation and use, shows that the entitlements of individual can be compared more to allodial ownership than to the limited usufructuary holding of indigenes in Pramso, Kumasi. This is also because in both Mangu and Siriyiri no one particular traditional authority, such as the *naah*, the *tindaana*, the *yidaana* or even the family head, claims ownership over the land of their respective communities, gates or even families. As a young indigene in Tadaanayiri gate explained, all indigenes who farm or used to farm are entitled to land (MAN-TADIN02). The interests of ordinary indigenes, in addition to the analysis of the interests of the *tindaana* above, show that the perception of the *tindaana* as the 'owner' of land may not be a general rule in the acephalous areas of Northern Ghana, and again as contrary to the position of the courts as discussed in Chapter 3.

The interviews in both Mangu and Siriyiri show evidence that the traditional form of usufruct rights, as practiced in centralised land tenure and as discussed in Chapters 3 and 5, are vested in three sets of individuals in Mangu and Siriyiri. These kinds of individuals who hold usufruct rights are: long-term stranger settlers, such as the Ghyabagreyiri people of Mangu; indigenes who have pleaded for land of other communities for use; and women (whom I return to section 6.7.4 below). In commenting on long-term strangers, the respondent at the regional Lands Commission said that indigenes in many communities near Wa engaged the services of stranger settlers to take care of their livestock (LC-REP2). Under such circumstances, the indigenes provided land for the activities of the stranger settlers and this reflects usufruct rights exercised by the stranger settler (*ibid*). A Fulani settlement in Siriyiri is an example of this, and elderly man in the *Nabiihi* section added that indigenes will hardly take back the land settled on by the Fulani migrants (SIR-NABIN08). With time, long-term

stranger settlers can establish enhanced control over their rights to the land due to the reluctance of indigene-grantors to take over the usufructuary land. Indigenes usually know that settlers are strangers and that as strangers they are unable to establish absolute ownership over the land. However, in rare instances indigenes reclaim land from long-term stranger settlers. A long-term stranger settler in Mangu mentioned that ‘when land sales began, the Nakore people said that the land that they gave to us to settle on is for them ... and since we did not carry land from Gyabagre [our original] land to Wa to farm on, we gave it to them’ (GYA-ST01). In addition to reclaiming land from stranger settlers, the respondent at the Lands Commission stated that during state acquisition of land, indigenes do not want to recognise the usufruct rights of long-term stranger settlers in order not to merit them any compensation (LC-REP2). Thus the entitlement of long-term stranger settlers can be likened to usufruct rights comparable to the situation of indigenes in Pramso.

A similar situation applies to indigenes of a community that consensually uses the land of other communities – they are entitled to usufruct rights. The Chief of Mangu stated that:

‘Some of us plead for land from Sombo people [neighbouring to the west] and some Sombo people ask for land from some Mangu people. Yet we farm on these parcels of land knowing that they are not ours. So when it is time to sell that land they [the Sombo people] can sell it or give us permission to sell it.’ (MAN-NAAH)

To this extent such indigenes exercise usufruct right over the land of the other community but they never regard it as ownership, instead as usufructuary. If this form of usufruct rights is compared to the situation in Pramso, it further shows that the conversion of usufruct rights in the Pramso case in Kumasi needs collaboration between the users as indigenes of Pramso and the chiefs and sub-chiefs as the grantors. The Mangu and Siriyiri case studies show that the entitlements of indigenes are higher than that of usufruct rights which stranger settlers hold, and therefore incongruent with those in centralised land tenure such as in Pramso. The manner of indigenes entitlement to land can be described as usufruct rights encompassing rights to dispose for profit (*abusus*), to use (*usus*) and to the fruit of use (*fructus*) as discussed in Chapter 3. Usufruct rights although ordinarily would be the allodial interest due to its combination of all three rights, is considered as lesser than the allodial because the *tindaana*’s ritual role on the land encumbers it.

6.6 Commodification as the major change to indigene entitlements

In the previous section I discussed the creation and nature of entitlements of indigenes in Mangu and Siriyiri in Wa. In this section I discuss indigene conversion of their holdings in land to market value for their own benefit. This conversion is the main change to their entitlements in land as compared to Pramso, where the change involves both conversion and indigene loss of the majority of the converted value. Unlike in Pramso, where the converted value of indigene usufruct rights is turned over to traditional authorities, in Mangu and Siriyiri indigenes retain this value. In Mangu and Siriyiri the converted value of land becomes the main source of financing everyday expenses in a transact-as-you-go fashion. Indigenes thus retain the monetary value and this constitutes a remnant of their entitlements in respect of land. Nonetheless, there are ways in which indigenes can be understood to be losing in the commodification of land, and this constitutes adverse change for the indigenes. Analysis of these dynamics indicates the status of their entitlements in neo-customary land tenure. In the Pramso case study of the centralised system in Kumasi I used the ‘historical’ usufruct rights as a benchmark for changes, but in Mangu and Siriyiri the basis of change is the original entitlement of indigenes, which, as discussed above, is more than usufruct rights. In the sections 6.6.2 and 6.6.3, I present evidence showing that: firstly, indigenes entitlements merely change through their conversion to monetary form and not in a loss of rights to other parties since indigenes generally retain the benefits of conversions as remnants; and, secondly, that the major adverse change to the entitlements of indigenes is the unsustainable application of money from transaction of land.

6.6.1 Land management institutions involved in commodification of land

The pluralism in land management institutions in Ghana, as discussed in Chapter 3, also manifests itself in the several institutions with functions in the commodification and delivery of private family land in Wa. In this sub-section I briefly introduce these institutions and their functions relating to the transfer of land rights. To begin with, the main role of the Lands Commission relating to the management of family land is to register transactions and titles to land. Other functions relate to provision of surveying, mapping, property valuation, and acquisition and management of public land and land vested in the state. However, the respondent at the Lands Commission indicated that for Wa, the commission also registers landowning families, collects annual ground rents from lessees of those families, and disburses the said rents as family land revenue to the families and the District Assembly in

whose jurisdiction the family falls. Mangu is within the Wa Municipal Assembly, whereas Siriyiri fall under the Wa West District Assembly. This function, although not statutorily sanctioned, is an imitation of the stool-land revenue that the Office of the Administrator of Stool Land (OASL) performs in respect of centralised areas. I return to this function in section 6.7.2.

The second institution is the Wa central CLS. The CLSs in Ghana emerged out of the Land Administration Project (LAP) in Ghana, which ran between 2003 and 2011. CLSs are decentralised administrative systems of the land management function of traditional authorities that were established by the World Bank's (2011) LAP but run solely by customary communities towards efficient management of customary land (Bugri, 2012). A respondent at the Wa central CLS stated the functions of the secretariat to include: generation of revenue from rents of land transactions for landowning families, coordination of families to reduce multiple sales of parcels of land and conflicts, and sensitisation of families on the management of land (CLS-REP). According to this respondent, until around 2009 when the Lands Commission began to collect and disburse family land revenue, the secretariat performed that function. This respondent did not give the reason why the Lands Commission took over this function, but argued that it is in fact not a stipulated function of the Lands Commission to perform this role (*ibid.*). For this reason, the Wa central CLS contests this development. The constitution gives the Land Commission a consent and concurrence role over only stool and skin land, as against family in the case studies in Wa. However, as discussed in Chapter 5, the Lands Commission may be able to interfere in the management of any form of land in the country by relying on Article 258(1)(c) which gives the commission the duty of ensuring land-use capability. The third institution is the Physical Planning Department (PPD) of the Municipal Assembly. As I discussed in Chapter 5, the PPDs are, conversely, in charge of land-use planning, regulation and administration. The Land Use and Spatial Planning Act gives the PPDs the responsibility of ensuring that land owners only transact and or develop land that is zoned for planning. However, the respondent of the PPD of the Municipality of Wa mentioned that the Act is yet to come into force and as a result the department is yet to implement this proviso (GoG; 2016; PHY-REP02).

6.6.2 Indigene land transaction for everyday expenditure in Mangu and Siriyiri

As discussed in Chapter 5, in Pramso there is a formula for the redistribution of converted usufructuary land between indigenes, the community and traditional authorities. In Mangu and Siriyiri, this is not the case. Benefits from the conversion of land, which families, households and individuals control, flow to them respectively in ways that do not reflect any generally accepted formula of what portion is allocated to whom. Unlike in Pramso, no portion of the converted value of land is set aside for the development of the community in Mangu and Siriyiri. Only the general benefits such as schools, water systems and emerging jobs and markets inure to the communities. The major remnants to indigenes are discussed below.

Remnants or benefits in the form of converted value

There are two forms of monetary value that indigenes derive from the conversion and transaction of land in Mangu and Siriyiri, namely monies arising from the indigene's own transactions of land, and annual rents that the Lands Commission collects from those who acquired land from families and then disburses to the applicable families. One of the important ways in which indigenes derive benefits from their interests in land is the use of revenues from land transactions to meet various family financial demands. The general understanding among indigene respondents in Mangu and Siriyiri is that land belongs to households in the family. Thus when financial needs or problems arise in the family, the family or household transact land to take care of the expenses. Table 6.2 shows a summary of the ways indigene respondents applied revenues from land transactions. From this it is evident that it has become the norm for individuals to transact land to meet their personal expenses. But as I discussed earlier, individuals usually do this in secrecy, to prevent the elders from noticing them defying the custom that prohibits them from transacting in land.

Mangu	Siriyiri
Acquisitions of assets and chattels	
Bought commercial and private vehicles, and motor bikes	Bought a private car, motor bikes and television sets
Built a <i>Gyangu</i> (a family's meeting hall) and a mosque	
Built houses	Bought building materials and built houses
Built and invested in 'provision shops'	Used as capital for business
Addressing family's financial needs	
Took care of sick elderly indigenes	Sent the sick to hospital
Organised funeral for dead relatives	
Took care of household needs, such as food, and supported general personal expenditure	Bought food items and supported daily expenses
Supported education of children in Wa and a few abroad	Paid school fees
Paid dowry for wives or relatives' wives	
Paid bribe to prevent relatives from going to jail	Solved undisclosed family problems
Other expenditure	
Pursued land case in court	Financed a land case in court
Paid contribution to the <i>naah</i> 's palace in Wa	
Attended to emergency situations	
Paid debts	

Table 6.2: Uses of land-transaction revenues among respondents in Mangu and Siriyiri

Source: Author, based on fieldwork

In families that acceded to the commodification of their land, they select certain members of the family, who are not always elders, to transact land on behalf of the family. However, many young men in Mangu and Siriyiri transact land either openly on behalf of the elderly or secretly on their own. The ways in which the monies from transacting land are used are mixed. Certain indigenes use revenues to acquire a foothold in alternative livelihood activities, such as setting up general stores ('provision shops' as indigenes termed it), whereas others can be seen to have applied them in ways that do not produce future incomes. In general these investments constitute a response to the peri-urbanisation process and should

ideally represent a sustainable use of land revenues due to the general lack of other potential streams of income. In the Pramso case, indigenes lacked this advantage to tap the alternatives that peri-urbanisation potentially offers as very few plots finally fall to the family and even fewer full plots to the household. One elderly respondent in Kokoyiri expressed his belief that land disposals have enabled the youth to build cement blockhouses, which according to him are ‘better than mud houses’ (MAN-KOKIN02). In a similar manner, the *Tindaana* of Siriyiri said that ‘revenue from land transactions has helped us build better houses for ourselves and our grandchildren’ (SIR-NAAH). However, not every respondent I interviewed mentioned the use of land revenue. Respondents in the Dograyiri gate of Mangu complained that their land near the community was not large and, as a result, they had not transacted any part of it. Evidence of poor judgement in the application of land transaction revenues is an expensive but broken down vehicle in Siriyiri, which an indigene had bought from the proceeds of transacting land but was unable to keep serviced (SIR-INF03) (figure 6.8). Figure 6.8 also shows broken-down borehole at Siriyiri, which according to the respondent had been abandoned for lack of funds. Despite the need for water in the area, the respondent said the community is unable to mobilise any revenue from land transaction to maintain the borehole mechanism (SIR-INF03).



Figure 6.8: Disused car acquired from land transactions (left) and an abandoned broken-down community borehole in need of servicing (right)

Source: Author’s own photograph taken during field work in November 2018

The second form of converted value of land is the annual ground rent that family heads receive from the Lands Commission. This forms a remnant of indigene entitlements in land in Mangu and Siriyiri, unlike in Pramso where the OASL collects similar rents and disburses them only to traditional authorities and the District Assembly. A family head from the Kokoyiri gate of Mangu mentioned that the family receives such revenues from the Wa

central CLS (MAN-KOKIN01). This CLS is managed by the *Tindamba* of the Suuriyiri gate of Wa, who has a direct relationship with that of Kokoyiri as the *tindamba* of Mangu (MAN-KOKIN01; CLS-REP). According to the same family head, the elders in the gate usually share the amount they receive as ground rent among the family heads in Kokoyiri. Family heads deal with the revenue in the manner they wish, for instance this particular respondent saying that he uses this revenue to perform his responsibilities as a family head (MAN-KOKIN01). In elaborating on the use of the revenue, he mentioned payment of ‘pressing debts’ of the family (ibid.). In my interview with the respondent at the CLS, he confirmed that the secretariat collects and disburses this revenue, but complained that in the previous few years the Lands Commission had taken over this function of collecting and disbursing ground rent for a reason that was unclear to him (CLS-REP).

In my interview with the respondent at the regional Lands Commission, he indicated that the Lands Commission collects rents from transferees of land annually at the end of the year and then disburses it to family heads in various communities, including Mangu and Siriyiri and their respective District Assemblies (LC-REP2). According to him, the Lands Commission had registered families as land owners and recorded transactions against their names when lessees register their leases with the commission (see particulars of registration in figure 6.9 below). As a result only lessees who have registered their transactions with the Lands Commission pay this ground rent to the commission. Many others who acquire land informally without registering it do not pay ground rent.

FAMILY LANDS REGISTRATION PARTICULARS

NAME OF FAMILY:

NAME OF LAND:

POSTAL ADDRESS:

TOWN:.....DISTRICT:

WE CERTIFY THAT THE FOLLOWING ARE THE TRUE SIGNATURES AND/OR MARKS OF THE FAMILY HEAD AND OTHER PRINCIPAL MEMBERS OF THE FAMILY MANDATED TO EXECUTE LAND DOCUMENTS ON BEHALF OF THE FAMILY

SIGNATURE/THUMBPRINT MARK

.....
(FAMILY HEAD)

FULL NAME: TEL. NO:

.....
(1ST PRINCIPAL MEMBER)

FULL NAME: TEL. NO:

.....
(2ND PRINCIPAL MEMBER)

FULL NAME: TEL. NO:

.....
(3RD PRINCIPAL MEMBER)

FULL NAME: TEL. NO:

.....
(4TH PRINCIPAL MEMBER)

FULL NAME: TEL. NO:

Figure 6.9: Family land registration form

Source: Respondent at regional Lands Commission in Wa

The formula that the Lands Commission uses to disburse this revenue mimics that of the OASL, as discussed in Chapter 5. The Lands Commission retains 10 per cent of all rents collected from grantees of a particular family for administrative cost and disburses 45 per cent to the family heads. Although not ideal, family heads in Mangu and Siriyiri are not required by law to share this revenue with family members, similar to Pramso where traditional authorities fail to distribute stool-land revenue to families. Nonetheless, Pramso represents centralised land tenure and it is a usual practice. The respondent at the Lands Commission further revealed that the family heads they disburse revenues to, including those in Mangu and Siriyiri, discretely receive and personalise the revenue. Having said this, the revenue is not overly large as the total annual ground rent collected from all grantees of families in the Upper West Region for 2018 was Gh¢96,000.00 (USD 16,500 at the prevailing exchange rate) (ibid.). Nonetheless, this continues to constitute a remnant of indigene interest (as represented by their family heads) in the form of converted value of their

land amid commodification of land in Mangu and Siriyiri. The Lands Commission then disburses the remaining 45 per cent to the District Assembly where the land in respect of which they collected the rent is situated. Thus for Mangu, the 45 per cent of all such rents from transacted family land is paid to the Wa Municipal Assembly, whereas for Siriyiri it is paid to the Wa West District Assembly. The Lands Commission in Wa orders the District Assemblies as local government authorities, to use the disbursed revenue to construct access roads in the communities concerned (LC-REP2).

Remnants in the form of physical parcels of land

There is currently adequate land in the inner areas of both Mangu and Siriyiri for the housing needs of indigenes. Indigenes do not usually transact the parcels of land immediately surrounding the traditional houses of gates to stranger settlers, rather they reserve them for the housing needs of indigenes, and any indigene of the family or gate who build on these parcels of land do not pay for the land. Many indigenes in the Kokoyiri, Dograyiri and Kpanyiri gates of Mangu have built houses on parts of these parcels for owner-occupation and for rental to students and other short-term stranger settlers. Other indigenes have built provision shops on such portions of land without paying for the land. For example in Dograyiri a male respondent said that one female and one male family member had constructed provision shops on a part of the gate's land without paying for it. Therefore, at present, indigenes in many families who have the capacity to build houses do not have to purchase land; instead they build houses attached to the pre-existing traditional homes. Because of its relatively lower population, such land is far more readily available to indigenes in Siriyiri than in Mangu. Even in the Dograyiri and Kpanyiri gates of Mangu, where the land in their gates is comparatively small, respondents said the available land is adequate for their current housing needs. In the Kokoyiri gate a female respondent said that there is sufficient land for housing now but that it would become insufficient if all the indigenes were to build simultaneously (MAN-KOKIN02). In all gates indigenes use these extendable spaces, which are reserved for future land needs within the community, for food gardens adjacent to dwellings. They commonly plant vegetables like tomatoes, peppers, cereals and legumes, including peanuts and cowpeas and even tobacco. Access to these parcels of land is based on membership of the family or household in certain cases. Due to competition among family members for the vacant spaces (in anticipation of future landlessness), households and

individuals use strategies such as planting food gardens and trees and creating refuse dumps to reserve land. Figure 6.10 shows food gardens in Mangu and Siriyiri.



Figure 6.10: Food gardens in Mangu and Siriyiri, also serving as strategies to reserve land
Source: Author's photographs taken during field work in August 2019 (bottom right) and November 2018 (all others)

Closely related to remnant of vacant land near the community are the parcels of land in a distant farm (*wɛo*) where indigenes cultivate various crops. Transactions by indigenes in such plots are yet to occur, partly because demand for such distant land has not as yet arisen and/or because they deliberately reserve certain areas until they have transacted other portions of their land (MAN-KOKIN03). Apart from Dograyiri in Mangu, families in all the gates in Mangu and Siriyiri have land in distant farms that are now nearing maturity for conversion. In Mangu, families of the Kokoyiri gate have the largest vacant farmland in the *wɛo*, followed by Tadaanayiri and Kpanyiri. In Siriyiri all respondents in both the *tindemee* and *nabiihi* sections said they possess large parcels of land in the distant farms. These form part of the remnant entitlements of indigenes. Figure 6.11 below shows examples of the distant land of Mangu and Siriyiri.



Figure 6.11: Distant farmlands in Siriyiri (left) and Mangu (right)

Source: Author's photos taken during field work in November 2018 (right) and August 2019 (left)

Another form of remnant interest in respect of land, albeit only based on indigene perceptions, is that indigenes can receive land freely from other communities as a repayment for gifting land to others. Because the indigenes of Mangu and Siriyiri offer land to indigenes of certain communities free of charge, they expect members of these communities to reciprocate the gesture in the future. This arrangement is based on family relations. Respondents in the Dograyiri gate in Mangu, for instance, said that they have not transacted any part of their land except for one plot of land that a now deceased member of the gate transferred. According to an elderly man in Dograyiri, indigenes either built on the remainder of their land or donated it to relatives from other communities. They expect to benefit from these relations in many ways, including receiving land from them later in the future (MAN-DOGIN-02). According to this respondent, this arrangement was the traditional mode of transfer of land rights prior to the commodification of land. A related remnant interest in Dograyiri is that land had been granted to the Methodist Church free of charge to build a school, the reciprocity in this case being that the indigenes concerned later negotiated for their children to attend the Methodists school without paying fees (MAN-DOGIN01; MAN-ASS).

Benefits from expansion of the community

The advent of an expanding peri-urban 'land market', non-traditional peri-urban livelihoods and employment opportunities, access to water and other services have all provided alternatives to indigene transfer of their entitlements in land to stranger settlers. At the time of my research, due to its relatively advanced expansion these types of opportunities were more available in Mangu than in Siriyiri. For instance there is now a larger market for shea butter in Mangu, but the development of processing technology for shea butter and emergence of

substitutes for this product continue to ensure excess supply (MAN-TADIN02). Other products for which markets have emerged in Mangu, and are emerging in Siriyiri, are weaving of local cloth for smock and trading in basic provisions. Indigenes take advantage of the emerging market that arises from the settlement of strangers in their community to build shops for petty trading on parcels of land at vantage points in the family or gate. Apart from the market, access to water has improved in both Mangu and Siriyiri. In Mangu there are now many community boreholes and mechanised commercial water sources, and Mangu is now also connected to the Wa municipal water system. In Siriyiri boreholes have broken down, but a stranger settler has mechanised a small water system with an outlet where all residents go to draw water in return for a payment. Indigenes of different gates in Mangu and Siriyiri recount that access to water before the millennium was more difficult in terms of distance and availability than at the time of my research. This coincides with the rapid expansion of Wa. According to elderly women-indigenes in Mangu, they used to draw water from contaminated open sources, which led to guinea worm infections. Here two representative examples of such narratives:

‘Getting water in Mangu was very challenging. We used to go as far as Kambale to fetch water from hand dugouts near a stream called *gyeng-gyeng*. If we started fetching water in the morning, we only did a few rounds and noon was here.’
(MAN-DOGIN03)

‘Water was difficult to obtain here [in Siriyiri] because there was no dam and no borehole. We fetched water from a stream down there that had water only in the rainy season.... They called the stream *kompiane*. In the dry season, we went to as far as Guo or Zanko [about 2 km to the north west] where there was a borehole. (SIR-NABIN05)

Besides emergent markets and improved access to water, there has been an emergence of non-traditional jobs, this at a greater scale in Mangu than in Siriyiri. Indigenes find emerging informal jobs, like becoming auto mechanics and masons, more lucrative than farming and many therefore abandon farming or combine it with non-traditional jobs. Two male respondents (MAN-TADIN04 and MAN-KPAIN04) at Mangu are masons and farmers while another (MAN-KPAIN02) is a mechanic and a farmer. Many respondents mentioned that farming is generally declining and that indigenes were gradually replace their farming activities with non-traditional jobs, which they consider not only financially more attractive

but also less tedious. Declining soil fertility and increasingly less reliable rainfall patterns have also contributed to making farming more risky than the non-traditional jobs. Finally, in listing the benefits they have enjoyed from farming on land and later transacting it for direct income, respondents in the Dograyiri, Kpanyiri and Kokoyiri gates in Mangu also referred to their children and in turn their children's achievements. A respondent in the Kokoyiri gate of Mangu for instance stated that 'at first it was very difficult to go to the university, but I know students from Kokoyiri who went to university because of land sales and some have even gone to abroad to study' (MAN-KOKIN03). With the numerous substantial remnants of commodification and transaction of land for indigenes in Mangu and Siriyiri and their active involvement in the processes of commodification, indigenes have little reason to agitate against traditional authorities. Indeed, in Mangu and Siriyiri no respondent mentioned any agitations by indigenes except for disagreements between gates and between gates and other communities, as I discuss in section 6.6.4 below.

6.6.3 Uncoordinated transaction of land by indigenes in Mangu and Siriyiri

In Mangu and Siriyiri the absence of an actual central control, such as by the *naah* or *tindaana*, over land transactions contributes to indigene transfer of land rights in an unorganised and unrestricted manner. Despite the many direct benefits to indigenes, as discussed above, the relative freedom of indigenes in the transaction of land results in few community benefits. The same liberty also makes the transaction of indigene entitlements unsustainable in terms of the bases of their livelihoods. In this sub-section I discuss this indiscriminate transaction of land and emergent ways in which it adversely affects the entitlements of indigenes in Mangu and Siriyiri.

Reduction of indigene entitlements in respect of land

Indigenes entitlement to land diminishes in several ways because of the commodification and transfer of land rights. Firstly, the manner of transaction of land in Mangu and Siriyiri, in which both indigenes and land seekers regard many instances of informal land transfer as a perpetual conveyance of land, contributes to eradication of indigene entitlements in the long-term. It is only when the Lands Commission registers (formalises) transactions in land that transactions are regarded as leaseholds and not perpetual disposal of land. The lack of a constitutional limitation on the form of land transfer in acephalous Wa, as discussed above, ensures that indigenes and land seekers deem informal transfer of land as a complete parting

with the parcel of land transacted in this way. Many transactions of land in Mangu, and especially in Siriyiri, are undocumented and therefore the boundaries, size and duration of transfer are not formally delineated. This particular issue tends to create two noticeable problems. On the one hand, due to the general understanding of absolute transfer of land indigenes may lose their entire stake in all the parcels of their land that they informally transact. On the other, conflicts may arise in the future regarding the exact nature of the informal transactions, particularly when indigenes later understand that registered transfers are leaseholds. The narratives of indigenes show that they perceive transaction of land, either formal or informal, as having a perpetual effect with no reversion back to the indigene family, household or individual. The *Naah* of Siriyiri for instance speculated, 'I do not know about that, but I think once they sell the land to the person and he buys it, he owns it forever' (SIR-NAAH). Further, according to an indigene in Siriyiri, transacting land 'is like how you are selling your animal in the market: you bargain till you are willing at a particular price. The buyer pays and takes it' (SIR-TININ02). In Mangu one indigene respondent indicated that only parcels of land that they transacted at the beginning of commodification of land in Kokoyiri were perpetual in nature (MAN-KOKIN01). Thus it can be observed that certain indigenes are beginning to become aware of the alternative of leasing of land as opposed to perpetual transfers.

By comparison, the informal transaction of land in Pramso is beneficial because it retains indigene usufruct rights in respect of land, as discussed in Chapter 5. However, in Mangu and Siriyiri the transaction of land in an informal and perpetual fashion leads to the complete eradication of indigene interests in land. In Pramso, if lessees register (or formalise) the land rights they automatically acquire leaseholds from the chief as mandated by law. Consequently the chief receives annual stool-land revenue and becomes the only owner of the reversionary interests in community land after the expiry of the leases after 99 years, meaning that indigenes lose completely in the longer term. The opposite is true in Mangu and Siriyiri, where if lessees register (or formalise) their transactions in land as leasehold per the discretionary direction of the Lands Commission, indigenes, through their family heads, benefit from potentially perpetual ground rents and are entitled to the reversionary interest. The condition for payment of ground rent and for this revenue to accrue is registration of past and present transfers of land as leases, and this vitally protects indigenes in this regard.

Secondly, there is an ongoing reduction in farmland for indigenes in Siriyiri and Mangu. In Mangu one indigene respondent indicated that indigene farming land is now far less than a

quarter of its original size (MAN-KOKIN03). As a result indigenes now plead for land from other communities to farm on, while others farm on marginal land such as wetlands. In many parts of Wa indigenes do not transact wetlands because land seekers regard such parcels of land as undesirable since they are difficult and expensive to build on. In Mangu, where the remaining land in the inner community is fragmented, farming only takes place in the form of food gardening adjacent to the dwellings. In contrast, in Siriyiri the inner community land is large but an indigene farmer respondent said indigenes had decided to stop farming within the community in order to avoid congestion and conflicts due to destruction of crops by neighbours' livestock (SIR-NABIN08). Therefore the increase in inhabitants in the community and the gradual expansion of the community make many traditional uses such as extensive rearing of livestock and large-scale crop farming unsustainable. In Siriyiri most farms are now on distant land. Another noticeable factor in Siriyiri and Mangu is the phenomenon, as also seen in Pramso, of partially constructing of houses and other structures that lessees use to secure their land. These uncompleted structures are situated at the edges of Siriyiri and Mangu and occupy land on which indigenes would otherwise farm. The Chief of Siriyiri expressed concern over the decrease in farmland and anticipated its complete disappearance in the near future (MAN-NAAH). In the Dograyiri section of Mangu an indigene mentioned that indigenes who wish to farm large-scale relocate to other rural communities (MAN-DOGIN01). According to another indigene in Mangu, although there is still farming land for indigenes in various forms, there is neither the liberty to expand farms nor opportunities to exploit fallow land, nor are there many choices in land for farming (MAN-KOKIN03).

Thirdly, peri-urbanisation-induced demand, the introduction of market value to land and the attendant transaction of land lead to competition for, disputes in and litigations over land within Mangu and Siriyiri, as well as between them and other communities. In Dograyiri in Mangu a respondent expressed sadness over the loss of the gate's land to another community nearby due to what he saw as an injustice by the law court (MAN-DOGIN01). This respondent said that the smallness of the land size for Dograyiri is due to this factor, and he believed that the other community had cheated them. My visit to the Wa High Court revealed several decided and pending land cases, some of these involving Mangu and Siriyiri. Table 6.3 below contains brief details of examples of court cases in respect of land I obtained from the interpreter of the High Court in Wa.

Case	Year	Brief facts
Mangu		
<i>Kambali Naah Nuhu I vs the Catholic Church</i>	2009	Land disputes between the parties in respect of land situated at Kambali around the residency. This case was pending hearing at the time of my visit in 2019.
<i>Kambali Naah Nuhu I vs Langyin Kpani and 2ORS</i>	2010	Land dispute about ownership between the parties in respect of land situated around and at St. Cecilia Parish in Mangu. It is still before the court for settlement.
<i>Emmanuel Wuuri vs Sakara Waahu and ORS</i>	2017	Land dispute between the parties in respect of a parcel of land situated in Mangu which the defendants gave out to the Pentecost Church. It was in line for hearing at the time of my visit in 2019.
Siriyiri		
<i>Asua Gyemaa vs Buo kerri and ORS</i>	2017	Land dispute between the parties in respect of land situated and lying in Siriyiri. There was an injunction on the hearing on this case at the time of my visit in 2019.
<i>Guo Naah vs Asuma Gyemaa</i>	2017	Land dispute between the parties in respect of Siriyiri and Guo land. The case has gone through full hearing, and a judgement had been entered in favour of the defendants (<i>tindamba</i>) and against the plaintiffs (<i>nabiihi</i>).

Table 6.3: Litigations over land in Mangu and Siriyiri

Source: Author's tabulation based on information about unreported court cases in the High Court in Wa

Many respondents lament that amid commodification and transaction of land, conflicts, competition, exclusion, greed and individualisation had contributed to a worsening in social cohesion in both Mangu and Siriyiri, a point I return to in more detail in section 6.6.2 below. One young female respondent in her twenties in Siriyiri advised that land transaction should cease altogether and the elders should revert to the traditional granting of land free of charge (SIR-TININ03). In her opinion this would prevent the conflicts and enhance social cohesion. According to the local government representative in Mangu, as well as the Chiefs of Mangu and Siriyiri, transaction of land had brought disunity within the gates and communities, thus negatively impacting on the hitherto oneness within and between gates and communities

(MAN-ASS; MAN-NAAH; SIR-NAAH). The *Tindaana* of Siriyiri described how, unlike the current rivalry between them due to land disputes, the *nabiihi* and *tindamba* once shared game from hunting with each other. As mentioned in the previous section there is an emergent tendency of individualisation among indigenes in Mangu and in Siriyiri. Indigene respondents in Mangu and Siriyiri observed that indigene individuals and households were beginning to claim personal control over common community and family interests in land for themselves. A respondent from the *tindamba* section of Siriyiri explained that in the past indigenes had used the land in the community side by side and in a spirit of fellowship.

‘At the time that we were farming on the land, an indigene like me could be farming on a portion of land and another indigene could create his farm close to mine, but because I knew that he was only farming on the land for food and the land remained, it did bother me. However, today if an indigene has his farm and another indigene goes to create a farm even in the same area, the former will not agree although the farm of the latter is not even close to the former’s farm. So that means it is the money [commodification] that brings the problem [individual tendencies] and disunity’ (SIR-TININ01).

Further, in the midst of the competition for land in Mangu and Siriyiri, certain indigenes are often left out in terms of the emerging benefits. Women in particular, as they do not transact land, feel that those disposing of land are depriving them of hitherto common property. An elderly female in Siriyiri complained that ‘well, in land sales, you know in our tradition a woman has nothing to do with transacting land, men do have’. A woman cannot sell land. When the young men sell, they do not consider us, they use it to do their own things’ (SIR-NABIN02). This, according to another elderly woman, makes women feel inferior compared to men (SIR-NABIN06). Most female respondents made the remark that they do not benefit from the transaction of land, but upon further probing a few mentioned that they obtained money from their husbands and children who transact land. (I return to the situation of women in section 6.7.4 below.) Other indigene-groups that are unable to partake in the transaction of land are indigenes who travel away from Mangu and Siriyiri to settle elsewhere and as a result do not occupy active farmlands. Nonetheless, such indigenes can still share in using the common land in the inner community.

Finally, land commodification affects the traditional and cultural concept of land in Mangu and Siriyiri and dictates that indigene access to land is becoming dependent on ability to pay.

Although indigenes can obtain a parcel of building land without paying for it, in many instances, such as in Tadaayiri, indigenes have to pay to obtain an extra parcel of land. The second dimension is that many indigenes and strangers I interviewed state that traditionally land is a ritual entity. Hence, until recently, tradition prohibited transaction of land for income. Whereas direct income that is now derivable from the transaction of land erodes this belief, in Siriyiri certain indigenes were still sceptical about transacting land due to this belief system. In Siriyiri many indigenes narrated misfortunes that had befallen indigenes who had transacted land, and they often cited such incidents in support of this belief system. For instance an informant mentioned that many indigenes who disposed of land to purchase motor bikes had had accidents because they defied the tradition (SIR-INF03). A stranger settler was bold enough to reveal that indigenes were aware that all investments with revenue from land transaction are destined to fail and that only investments such as houses will thrive because they get fixed back on the land. In the case of Mangu, this belief system appeared to have receded as peri-urbanisation, and with it commodification, advanced. The Chief of Siriyiri in responding to why indigenes continue to transact land even though tradition prohibits said that it is due to the boldness of the youth in deviating from customs. The chief stated that:

‘We were afraid of selling the land because we saw selling land as forbidden. Deviant children emerged today who sell the land and acquire material possessions (such as television sets) that they see their colleagues buy from transacting land. Therefore, indigenes realise that others sell land and nothing happens to them, so they are also not afraid to sell land. Even up to now some are afraid to sell land but others are just deviants and are selling land ... they do not know that land is a living creature that must not be sold.’ (SIR-NAAH)

Indiscriminate transaction of land by indigenes is a noticeable concern among the elderly in Siriyiri. The elderly indigenes expressed their worry that a few indigene youths were granting large parcels of land to strangers, stating that their only hope was that the youth would be circumspect and reserve parcels of land for the future housing needs of their households. In a similar way, revenue generated from uncoordinated transaction of land are not used for general achievements and benefits of the family and community. In Siriyiri the chief said that much of the revenue goes into buying motorbikes, television sets, extravagant spending and what he described as other forms of abusive and unsustainable use (SIR-NAAH). The *Tindaana* of Siriyiri concurred that many youth directly exchange land for various

commodities (SIR-TIN). The elderly and women who are peripheral to the transaction of land often said that the youth were wasting the land and that the more interests in land are converted to money, the more land is wasted. In Siriyiri only a few use money from land transactions to build houses. Thus, the *Naah* of Siriyiri expressed feelings that the community is losing out in the on-going transaction of their land. These occurrences in Siriyiri would suggest that at the outset of land commodification in Mangu, transactions of land were of a similarly disorganised nature until they became systematised. Together, the unplanned manner of transaction of land and the perceived improper utilisation of the revenue is suggestive of a difficult future for indigenes in terms of security of livelihoods.

6.6.4 Gate, family and individual disputes in Mangu and Siriyiri

Contrary to indigene activism in Pramso, there was no evidence in Mangu and Siriyiri, of indigenes agitating against traditional authorities over the conversion of land or the distribution of the emergent value of land. Nevertheless, and again unlike in Pramso where responses of indigenes were at the general community level, relatively minimal responses had occurred at specific gate, family and individual levels in Mangu and Siriyiri. Apart from the court cases between gates and communities, as mentioned in section 6.6.3 above, that indicate land as a source of disunity among community members, there was evidence that disagreements, petty fights and minor conflicts had occurred in Mangu and Siriyiri. But, importantly, in no cases had indigenes risen up against their *tindaana*, *naah* and/or the gate head regarding conversion of their interests in respect of land, for lack of accountability or because of landlessness. Many respondents at Siriyiri and Mangu said there had never been community-wide discussion about the transaction of land, and that matters regarding transaction of land at the family, household or individual affairs remained at those levels.

Within a gate, male and elderly indigenes occasionally discuss transaction of land and associated matters. In the Dograyiri gate, for instance, respondents said members met to discuss the court case against the Kambale people about the disputed land ownership. The local government representative of Mangu stated that ‘in Mangu we have gates and each gate has its land that they sell. Therefore, it is within a gate that disagreements sometimes occur. No gate or family can say they did not get land to sell’ (ASS-MAN). The Chief of Mangu and many respondents in both communities are of the same opinion that no gate, family and household can blame the other or the *naah* or *tindaana* regarding inappropriate transaction of land or unfair distribution of its value. Therefore the possession, control and transaction of

interests in respect of land by the sub-units of the communities occur with minimum interference by traditional authorities, and the general trickledown of the benefits to many indigenes are the reason for the absence of unrest. Even among women, whom tradition forbids to transact land in certain households, they obtained indirect benefits from husbands and brothers. Absolute losers are very few in both Mangu and Siriyiri.

In Mangu and Siriyiri disagreements and arguments do however arise between gates regarding land, the disagreement between the *nabiihi* and *tindamba* gates in Siriyiri is an being an example of this exception. A respondent indicated that the *tindamba* and *nabiihi* sections had met and decided that each gate owned and transacted in land situated on their side of the road, but this decision had not taken effect and each section was continuing to transact in land across the road (SIR-NAAH). At the family level there are resentments both between and within families regarding interests in respect of land. However, the possibility of people teaming up in large numbers in the family context to respond to their dissatisfactions in the transaction of land is usually minimal. In addition to this, a respondent in Mangu narrated that the belief system, which instils respect for one another, acts as a constraint on the youth and prevents them from complaining and agitating (MAN-KPAIN04). Nevertheless, disagreements also extend to the individual level. In Siriyiri a respondent indicated that individuals fight with one another because certain indigenes transact land belonging to the extended family and fail to share the money with other family members (SIR-TININ08). In Mangu general conflicts had arisen from multiple transaction of the same parcel of land by different family members. The respondent of the Physical Planning Department (PPD) spoke from his experience in Wa and mentioned that disagreements are usually between brothers within the family (PHY-REP02). A stranger settler in Mangu similarly said that male siblings openly argue about transaction of land (MAN-ST02). The respondent from the PPD further intimated that younger indigenes, who feel that family heads transact family interests in land without considering them in the proceeds or without giving them portions of land for their future well-being, agitate against the family heads (PHY-REP02). In the same way, the respondent from the Lands Commission explained that within the family, indigenes engage in petty fights with fellow indigenes regarding inequities in sharing the proceeds of land grants (LC-REP2). The indiscriminate and individualistic grabbing of gate or family interests in respect of land is the bane of disagreements within gates, families and households.

At all levels in the community, the *naah* (chief) can attempt to resolve these disagreements regarding land, or otherwise, if the parties involved report the matter to him. If the parties disagree with the verdict of the chief of the community they may refer it to a higher-ranking *naah*. In Mangu an example is a disagreement over land in the Tadaayiri gate, which the *Naah* of Wa settled after the parties disagreed with the judgement of the *Naah* of Mangu. The issue involved was that after a parcel of converted land had been shared among the families in Tadaanayiri gate, a particular family had exhausted transacting theirs and wanted to benefit again from another family's plot. This latter family had granted their share of the land to an investor to build a school, for which sustainable benefits now accrue the family and the former family wants to benefit again from this (MAN-ASS). Unlike in Pramso, where agitations at the community level yielded general benefits for the community and for indigene-households, in Mangu and Siriyiri the agitations at gate, family, household and individual levels weaken social cohesion among indigenes and achieved very few beneficial results. As stated by the local government representative of Mangu, 'nothing good comes out of the disagreements, arguments, quarrels and petty fights' (MAN-ASS).

6.7 The freedom of indigenes to transact land in Mangu and Siriyiri

Within the scope of this research I have identified three main groups of stakeholders, namely indigenes, traditional authorities and state land management institutions, as principal players in changes in the land rights of indigenes. In this section I discuss the unrestricted role of indigenes, the permissive controls of traditional authorities and the flexible decisions of state institutions in the transaction of indigene entitlements in land in the Mangu and Siriyiri cases. Amid the transaction of land and changing rights in Mangu and Siriyiri, the data shows an active role of ordinary indigenes relative to the ritual role of the *tindaana* and an interventionist role of chiefs in both Mangu and Siriyiri. State land management institutions exercise supportive roles that in certain cases constitute extra-legal interferences in the transaction of private land. Unlike in Pramso, where women do not seem to form a special group, in Mangu and Siriyiri the data demonstrates women as having a dormant role in transaction of land, a factor I discuss separately in section 6.7.4 below.

6.7.1 The role of indigene freedom and youth stratagem in transaction of land

In the commodification and transaction of land in Mangu and Siriyiri, many elderly indigenes mentioned that family heads are customarily in charge of transacting land but that in general

practice this rule is disregarded, especially by the youth through deceitful strategies. Unlike in Pramso, where the youth have no customary influence in transaction of land, in Mangu and Siriyiri many respondents perceived the youth as directly involved in transacting land, while family heads were seen as not particularly keen on enforcing their control over the transaction of land. A family head in the Kokoyiri gate and the Chief of Mangu both indicated that the youth are part of the family and possess entitlements in the land, this being the reason family heads do not prevent the youth from transacting land (MAN-KOKIN03; MAN-NAAH). The lack of a centralised influence at the community and relaxed control at the gate and family levels offers freedom to indigenes in the transaction of interests in respect of land. In the Kokoyiri and Kpanyiri gates in Mangu elders attempted to instil order in transaction of land by vesting a power of disposal in selected groups of indigenes who then accounted to the gate and families. According to a respondent in Kokoyiri,

‘It is now that one person can just sell land in isolation. At first the elders selected two people and everybody agrees that those were the people to sell the land of Kokoyiri. Even someone who has grey hair did not sell land except the chosen people. Then there were selected people who endorsed any documents of the transaction. Then we even had people who would go and select a particular portion of land to be sold by the two people.’ (MAN-KOKIN03)

However, as already explained, this arrangement had in the meantime broken down and individuals transacted interests in the parcels of land they possessed through farming. In Mangu the chief complained that the youth at his gate allocated land without informing the family and gate heads, and indeed impersonated the elders in signing documents. Although unacceptable, the heads of families find it hard to sanction their own family members. In Siriyiri, in the midst of chaotic land transactions, elders issued a rule that no indigene should dispose of land until they had discussed the best approaches to do so. Following the introduction of this rule, the youth began to undertake land transactions with land seekers in the bush out of sight of the elders. Although the elders eventually found out about these strategies, they failed to intervene in the hope that the youth would learn lessons from the frequent misfortunes like accidents, which were seen as bad omens (SIR-INF03). The narrative of the *Tindaana* of Siriyiri suggested that the elders also expected the youth to abide by tradition through reverence for culture and the handed-down belief system. The *Tindaana* of Siriyiri stated that:

‘Right now there is enlightenment and the children do not respect the elderly. At first, if a young person did something that the elderly were not happy with, the next time they do not repeat it. Right now, this is not the case. The youth do not fear us and we the elderly just sit with our names [but without any influence].’ (SIR-NAAH)

6.7.2 Passive roles of traditional authorities

The *Tindaana* and *Naah* (chief) of Mangu and Siriyiri do not actively involve themselves in the transaction of land. Historically the *tindaana*, as a traditional authority in Mangu and Siriyiri, had customarily defined roles in the transfer of land that was free of charge. As mentioned earlier, the custom, as related by indigene respondents, was that indigene families introduced land seekers to family and gate heads who allocated land and distributed kola nuts to all elders as a form of witnessing of the allocation. The indigene who hosted the stranger settler on their land then informed the *tindaana*, who witnessed and sought peaceful settlement and productivity from the Earth God for the stranger settler (MAN-DOGIN02). The role of the *tindaana* was thus not self-beneficial but aimed at the well-being of settlers. Kasanga and Kotey (2001) report a similar witnessing role of the *Tindaana* of Ga in land transaction, and show that the transaction benefits the indigene host.

The *tindaana*, however, has in the meantime lost or is unable to enforce his role in allocation of land. In the present circumstances in Mangu and Siriyiri, indigenes no longer introduce stranger settlers to the *tindaana* during transactions of land, and in my interviews with the *Tindaanas* of Mangu and Siriyiri they both complained about this failure to inform them. Nevertheless, the *Tindaanas* of Mangu and Siriyiri do not seem to bother or to take any action in response to indigenes not including them in the value of land. This is, firstly, because they never assume ownership of the entire land (*tinga₁*) of their community. Secondly, the transaction of land does not stop them from performing their ritual functions. After transacting land, if indigenes and stranger settlers encounter a spiritual difficulty they still approach the *tindaana* to find redress. Therefore the *tindaana* does not act like an allodial landowner and does not seem comparable to the centralised chiefs, such as in Pramso. If the *tindaana* was an equivalent of the chief in Pramso, for instance, he ought to have much control over transaction of land.

The present-day loss of the *tindaana*’s role as a witness in transfer of land rights in the is partially due to the passive nature of this role, as discussed earlier, and to general social

changes. Another contributory factor of the decline of this role is revealed by the disclosure by the current *tindaanas* of Mangu and Siriyiri that they had lived in southern parts of Ghana for many years until their appointment brought them home. Consequently they are not familiar with the tradition and indigenes take advantage of this to sideline them. The general breakdown of the belief system, as mentioned earlier, also plays a contributory part in the weakening of the passive role of the *tindaana*. Furthermore, since to begin with land was not considered as a commodity the *tindaana*, including the *naah*, could not exercise a defined role regarding land transactions, and therefore any such role cannot be newly enforced except through a reinvention of custom. This therefore creates an opportunity for competition over the newly created role, which individual indigenes, in particular the youth, now visibly dominate. The elderly gate and family heads, and especially the *tindaanas* possess little knowledge of the processes let alone prices to transact land, giving the knowledgeable youth an opportunity to become the new driving force.

In terms of chiefs, the interviews with the Chiefs of Mangu and Siriyiri showed that they mainly exercise administrative and judicial functions in the running of the community. According to Kasanga and Kotey (2001), the chief in acephalous areas enjoys prestige as the ‘traditional’ head of the community and obtains very little benefits besides this reputation. As discussed above, the Chiefs of Mangu and Siriyiri clearly stated that, in keeping with tradition, they are not supposed to transact land. Therefore in Mangu and Siriyiri the roles of the *naah* have barely changed. As far as the customarily defined role of the *tindaana* as witness during transfer of land rights in the community is concerned, although disappearing in practice his ritual role nonetheless persists and the *tindaana* still holds all ritual responsibilities in the entire community and beyond, such as pacification of desecrated land, as discussed in section 6.5. The role of the *tindaana* and the *naah* in Mangu and Siriyiri do not conform to the standard theory of power in relation to an agent’s ‘capacity to influence other people that is conferred by the control of resources’ (Turner, 2005: 2), as discussed in Chapter 2. This is because neither of them controls the land in their communities, yet they still exercise power through persuasion and authority, which emanate from the shared interests of the community. The kind of power they exercise in both communities is therefore not oppressive and not detrimental to social cohesion in the communities, in line with the three process theory of power as espoused by Turner (2005). Thus the cases of Mangu and Siriyiri differ in terms of the nature of power that traditional authorities in the case of Pramso exercise, which conforms to the standard theory.

6.7.3 The diminutive role of state land management institutions

The Lands Commission, in its de facto activities, has assumed a degree of influence over family land in Wa. According to the commission respondent, these include recording and maintaining boundaries, surveying and collecting and disbursing ground rent (LC-REP2). The respondent of the regional Lands Commission explained that the commission does little in way of delineating and maintaining boundaries because of indeterminate boundaries between families (LC-REP2). Regarding the collection of ground rent the commission is active, although this function is not statutorily sanctioned, as discussed in section 6.6.1 above. The Lands Commission maintains a family land account into which it places all revenues collected from lessees. It then records the annual rents that lessees of indigene families pay to them against the applicable families. It is important to state that the Commission only has data on lessees who register their leases, and as a result only such lessees pay their rents to the commission. The collection and disbursement of family land revenue is therefore in respect of registered transactions and the Commission does not possess data on the exact extent of land under the control of families. At the end of the year it disburses the pool of revenue in the single account based on the rents collected from each family and according to the formula outlined in section 6.6.2 above. Finally, and again as discussed above, the commission representative stated that it is deliberately active in registering transactions in land as leaseholds to protect both less non-knowledgeable families and individual interests in land by creating a reversionary interest every 100th year (active leases revert only in the next year after the 99th year) (ibid.), whereby my interviews with indigenes show that many are ignorant about their entitlement to ground rent and reversionary interests.

On the part of the CLS, the respondent revealed that the Secretariat had collected ground rent and disbursed it to families until the Lands Commission took over the function (CLS-REP). According to this respondent, the disbursement by the secretariat was not based on any statutory provisions but was discretionarily carried out by a committee of the secretariat which was designated to fulfil the function based on the expertise and experience of its members. The secretariat maintained an account for the rents, a record of incoming rents for each family and disbursed monies based on revenue collected in respect of each family (ibid.). The coordinator complained that the Lands Commission has annulled a requirement for the secretariat to endorse transactions in land in the form of allocation notes, which was a required document during registration. For this reason it had become difficult for the

secretariat to record transactions and to help curb multiple sales of land. The coordinator further stated that the secretariat collaborated with indigene families to issue allocation notes to land seekers, who then sent the allocation note to the Lands Commission to register their leases. According to the coordinator, the secretariat now focuses on sensitisation programmes on matters such as the proper acquisition of land in order to minimise multiple sales of land (ibid.).

In respect of the PPD, the major activities of the department within the past five years have been the naming and addressing of existing streets and properties and updating local plans. As discussed in section 6.6.1 above, the Land Use and Spatial Planning Act is yet to be implemented. According to the representative of PPD in Wa, under its current functional operations it is unable to prevent allocation and development of unplanned land (PHY-REP02) and this contributes to the indiscriminate transactions and developments in Mangu and Siriyiri. In communities such as Mangu and Siriyiri, where transaction and development of land is ongoing without planning, the department requests data on the allocation of land from surveyors and incorporates these into their local plans. In many cases land seekers, and in fewer cases landowners, engage private surveyors to demarcate land and produce cadastral plans for the parcel of land that they transact. It is important to mention that both surveyed and non-surveyed plots are unsecured, and that partial construction serves as a strategy of securing land. Nonetheless, through surveying surveyors are in possession of uncoordinated plans of individual portions of land that landowners transact. Nonetheless, the representative of the PPD complained that such data from Siriyiri was self-conflicting and that the department could not incorporate it into their local plan. In a similar way the department coordinates with families to prepare local plans with the intention of regularising land disposal by indigenes. According to this respondent local plans serve as tools for orderly land transactions and prevent conflicts and multiple transactions of the same plots. These measures, according to him, benefit both landowners and the communities. For instance if the department can ensure that only planned land is transacted, unplanned community areas can temporarily serve as reserved land (i.e. until they are planned). The department also relies on existing data in plans to make recommendations to investors who seek land (PHY-REP02).

6.7.4 The inferior role and entitlement of women in Mangu and Siriyiri

The position of females in families in Mangu, Siriyiri, and in the patrilineal northern part of Ghana in general, is complex. The patrilineal system practiced here ensures that the indigene status of women in a particular community is ambiguous. A married woman is either not an indigene or is an indigene of more than one community. This is because under the patrilineal practice a female belongs to the community of the family and to the community she gets married to. For this reason she has little or no stake in her father's home, although she is a partial indigene there. The situation of younger women who are not married is similar. Families consider younger unmarried women as not complete indigenes because they will soon get married to another family and community. A woman who is married to an indigene of Mangu stated that, 'I can support Mangu because I no longer belong to my father's family. If I even die at my father's village, my body will be brought to Mangu for burial' (MAN-DOGIN03). Married women therefore take pride in and support their husband's family and community more than their father's community, whereas younger women await marriage to learn where their ultimate indigene home is.

At the same time the husband's family and the community that a woman marries into give the wife lower recognition and control. Husbands forbid wives from taking independent decisions regarding matters of importance. Hence in both fathers' and husbands' families and communities, women have little say in important family discussions and in many matters, including the transaction of land. As a result women do not partake in important meetings in the community. In my interviews many married women failed to respond to certain questions about land transactions, while others required their husbands' agreement to respond to my questions concerning the management of family land. A wife in the Kpanyiri gate of Mangu stated that 'only the men can speak to these matters' (MAN-KPAIN01), a sentiment that was frequently echoed by many other women respondents. This indicates a customary lack of authority on the part of women. This tradition ensures that men generally exclude women in person and women are only inclusive to the extent of the representation of their husbands and sons in important matters such as the transaction of land. However, an indigene in the Tadaanayiri gate of Mangu, mentioned that with what he termed 'enlightenment' certain categories of women, such as salaried wives, can acquire land with their personal resources and husbands allow them to transact it (MAN-TADIN02). Therefore, although the families

and communities recognise their wives and daughters as indigenes generally, the latter have less control over land and other matters.

The entitlement of women in land in Mangu and Siriyiri reflects the limitations placed on them, as outlined above. Women are entitled to usufructuary and beneficial interest in land, but not in ownership of land. The nature of women's usufruct rights and benefits depends on their relative occupation. Traditional female occupations include processing of butter from shea nut trees and *dawadawa* from African locust beans, and brewing of *pito* (a local alcoholic drink made from guinea corn). Others are producing charcoal and cultivating vegetables and grains for consumption and sale. These occupations are usually separate to the main occupation of the family. Prior to the transaction of land and the expansion of the community, an abundance of shea nut trees once provided women with sufficient nuts, which they gathered on family and household land. With a significant decline in the stock of shea trees due to urban development (Dapilah, *et al.*, 2018), shea nuts are scarce and women now gather very little. Nonetheless, indigenes narrate that shea-butter processing is still widespread, especially in Mangu (see figure 6.12 below), although women now buy majority of the nuts. With regards to firewood in the past, women gathered it for brewing *pito* and for cooking, using surplus wood for sale. Others used large dead trees to produce charcoal, mostly for sale to urban residents. A woman respondent at Mangu said that 'we used to collect dry firewood to brew *pito* and to use for cooking. But new settlers have cleared all the trees to build houses' (MAN-TADIN03.) In Mangu very few shea and *dawadawa* trees still exist on built land, whereas firewood is now reduced to the splitting of tree stumps (see figure 6.12 below). In addition these resources have become a matter of contention between the wives of people who acquire land and the wives of indigenes. Finally, farming land has diminished, as discussed above, and in families where farming land is inadequate women very rarely receive land for their personal use.



Figure 6.12: Surviving shea trees (top left), shea-butter making (top right), cloth weaving (bottom right) and splitting of tree stumps for firewood (bottom left).

Source: Photographs taken during fieldwork in 2018/2019

The land rights of women therefore involve using land and not owning it. This is consistent with the traditional usufruct rights as prevailing in centralised land tenure, such as in Pramso. As in Pramso, the transaction of land for urban uses similarly eradicates these usufruct rights of women in Mangu, and gradually so in Siriyiri. The difference between the depletion of usufruct rights in Pramso and in Mangu and Siriyiri is that in Pramso indigenes are given plots of land as compensation for loss of usufruct rights, whereas in Mangu and Siriyiri women are not compensated for the loss of their usufruct rights.

In addition to the inferior rights of women, and indeed their eradication through transaction of land, the commodification of land in Mangu and Siriyiri cannot be said to directly benefit women. Almost all female respondents in Mangu and Siriyiri mentioned that they do not obtain direct benefits from transaction of land. According to female respondent at Mangu,

‘...because I am a woman, if they sell land they do not give me anything. They will sell it and spend the money without my notice. If you get up to talk, the men will tell you that because of land you have become a stubborn woman. So we the women sit and they sell all of it.’ (MAN-TADIN03)

One of the reasons why women do not transact or benefit directly from the transaction land is the belief system. As a female respondent in Siriyiri states, ‘we know that if a woman sell land in our Dagaare tradition she will die. Women do not sell land’, adding that neither are they involved in decisions about land sales (SIR-NABIN02). The interviews provided no indication that the force of such beliefs were weakening. Another reason that emerged for women’s inability to transact land is that they came from somewhere else to marry into the community, and hence cannot own land. Nonetheless, tradition equally forbids daughters from transacting land. These practices also ensure that women do not partake in benefits from the transaction of land as a right, but if then in the form of a privileged share from men, such as husbands and sons. Men grant land to both wives and daughters with a capacity to build. As a further example, a family head in Kpanyiri gate in Mangu mentioned that men even give money from the transaction of land to daughters who are not married and are in school (MAN-KPAIN02).

Women also benefit from the general opportunities arising from the urbanisation of the community. For instance women, like men, are able to obtain jobs resulting from construction works, such as fetching water for construction and in Mangu gathering concrete stones for sale, an income they are then entitled to. Many women in Mangu and Siriyiri engage in weaving cloth (see figure 6.12 above). This is an example of livelihood diversification and comparable to indigenes in Pramso. In line with the reduced benefit of women in land transaction, Kasanga and Kotey (2001) and Dapilah *et al.* (2018) agree that women are the worse affected by commodification of land because of reduced access, and in general it can be stated that if women were to share in revenue from land transactions this would result in an improvement in their ability to establish alternative livelihoods.

6.8 Conclusion

The Mangu and Siriyiri case studies in Wa add to what is known in the literature about the land tenure system in the acephalous Upper West Region in Ghana, in particular regarding the changes to this system in response to peri-urbanisation. The case studies build on the literature on the disposal of land by families, whereby the findings in the Mangu and Siriyiri indeed show that the bundles of rights in respect of land significantly differ from the traditional interests in land in the centralised land tenure, as is the case in Pramso. However, unlike the findings in the literature to date, which portray the *tindaana* as holding an

enhanced capacity in land over indigenes, the Mangu and Siriyiri case studies show ordinary indigenes and the *tindaana* holding similar beneficial interests in land, except that the *tindaana* holds an additional ritual function. Like the *tindaana*, indigenes do not hold usufructuary interests, except for women who do. Thus the nature of these interests in Mangu and Siriyiri are importantly established to deviate from the interpretations in the major and standard texts and decisions of the courts to perceive the *tindaana* as an allodial titleholder of the community comparable to the centralised chief. Another point of divergence between the Mangu and Siriyiri cases and the literature, as discussed in Chapter 3, is that the office of the *tindaana* does not necessarily emerge from first settlement, as the Siriyiri case shows. In effect, the designation of the *tindaana* as an allodial titleholder and owner of the community land, i.e. directly comparable to the centralised chief, needs to be more deeply considered, albeit that the Mangu case conforms to the literature on this matter.

The Mangu and Siriyiri case studies present the nature of peri-urbanisation-induced conversion of land in acephalous land tenure. By comparing this with the narratives on the centralised land tenure system, important inferences can be drawn. First, despite the freedom of indigenes, the unplanned conversion of land suggests that granting freedom to indigenes to convert and transact their usufructuary land in Pramso would not be a panacea in terms of solving unsustainability of benefits from conversion of land. The non-centralised control of land and indiscriminate transactions arising largely from the manoeuvring tactics of the youth in the Mangu and Siriyiri cases ensures that transactions of land rarely produce an accrual of benefits to the entire community. There is no cross-gate and inter-family mobilisation of resources from the transaction of land to benefit the entire community, and especially to benefit the minority groups such as women who are evidently excluded from the conversion of land. This, combined with the rapid, uncoordinated and unplanned commodification and transaction of land in Mangu and Siriyiri, points to a potential difficult future for indigene livelihoods, even despite the greater liberty of indigenes in these case studies. Indigene transaction of land to address their daily problems (i.e. a sell-as-you-go mentality) suggests hardships will occur in the future when they have transacted all their rights in respect of all lands, which is not the case with centralised land tenure in Pramso. Secondly, the acephalous cases do not support the argument that centralised control is a problem for unsustainable conversion of land in centralised peri-urban Kumasi. The convergence of the Pramso, and Mangu and Siriyiri cases is that benefits from the conversion of peri-urban land need to be fairly distributed to community members. In Mangu and Siriyiri, indigenes share in benefits

of conversion of land and this serves as a reason for zero agitations against traditional authorities; in the Pramso case, indigenes reacted because they felt they were not included in the benefits. The sustainability of indigene interests in land, as inferred from the nature of the remnants, and the general manner of transaction of land point to a bleak future in Mangu and Siriyiri. Although certain households may have utilised the proceeds from land transaction to secure a more wage-dependent urban future through education or by investing in businesses, there is a general need for conscious sustainability efforts in Mangu and Siriyiri, and in Pramso alike.

7 THE STATUS OF INDIGENE ENTITLEMENTS: CONTRADICTIONS AND IMPLICATIONS FOR EXCLUSION AND SUSTAINABILITY

7.1 Introduction

By analysing changes in land rights of indigenes amid changes in customary land tenure in the context of peri-urbanisation and commodification of land in the Ashanti and Upper West Regions of Ghana, the thesis shows the following: In both the acephalous and centralised case studies, indigene land rights convert from traditional natural-resource-based benefits to monetary forms. In Pramso, the centralised case study, traditional authorities played a key role in converting and leasing usufruct rights, despite the agitation of indigenes, whereas in Mangu and Siriyiri, as acephalous cases, indigenes mainly transacted their own land rights, and therefore had no agitations. The thesis finds that there is a need for a sustainable conversion of indigene land rights to generate future streams of incomes for indigene livelihoods. This chapter brings the thesis to a close through a discussion of these findings and their implications. The chapter starts by briefly reflecting on the methods used for this thesis. In the next sections I return to my research questions and then briefly argue that application of the bundles-of-rights framework produces useful knowledge of what indigenes are entitled to in customary land and demonstrates the manner of indigene exclusion. I then spell out the contributions to knowledge and present policy recommendations that arise from the thesis. These findings add to those by other key academic sources, including Cotula, *et al.* (2007), Chitonge, *et al.* (2017b), Kasanga and Kotey (2008), Ollenu (1962), Peters (2004), Ubink and Amanor (2008) and Yelapaala (1983). In the final section I recommend five areas for future research.

7.2 Reflections on research methods

In addressing the research questions I used a qualitative case study in line with the interpretive research paradigm, which is best suited for the analysis of the complex relationships embedded in land tenure. In this section I briefly present three essential factors that inevitably influenced the findings of the research, both positively and adversely. Firstly, my choice of theories has provided a useful lens in explaining the changes in customary land tenure in the case studies in both Kumasi and Wa. In Mangu and Siriyiri in Wa, the evidence

show that tradition prohibited land commodification and that although commodification has gradually crept into their everyday life, indigenes still transact in land with this in mind. In the Pramso case study in Kumasi, it emerged that transfer of rights in land did not come with monetary exchanges. These findings and other empirical evidence in the case studies resonate well with the modernisation and neo-liberal perspectives of land rights (see chapter two). The case studies in Wa reveal departure from land control by gates to families and households administering land, whereas in Pramso in Kumasi the redistribution of converted plots point to individualisation tendencies. These tendencies arise not from land reform efforts such as formalisation but from residents' own quest to share in the benefits of commodification of land. The evolutionary theory of land rights as discussed in chapter two and supported by other land tenure research (Abdulai, 2006; Agbosu, 1982; Platteau, 1996) explains that individual land holding emerge as the need arise. All these changes are enabled by the neo-liberal perspectives which emphasise entrepreneurial freedom thus the commodification of interests in respect of land (see Harvey, 2006 as discussed in chapter two).

The second factor is the bundles-of-rights framework, which was useful in analysing changes in usufruct rights and exclusion of indigenes and has inevitable implications for the changes to the allodial title of traditional authorities. The conceptual framework, as presented in Chapter 3, traces the changes to usufruct rights from the history of formation of the customary land tenure in colonial period, through the land-reform era to the effects of peri-urbanisation and land commodification. This helps to deepen the discussion about the exclusion of indigenes by contrasting the nature of their 'historical' and present entitlements in respect of land. One shortfall of the conceptual framework is that it fails to trace the history of usufruct rights to the original nature of pre-colonial classical customary land tenure, which is simply beyond the scope of this research.

Thirdly, as a native of the Upper West Region my fluency in the language and first-hand knowledge of the nature of acephalous communities and their land tenure system presents several advantages in the research process. At the same time, my residence in Kumasi for over five years prior to the start of this research in 2017 gave me a confident fluency in Twi, the local language of Kumasi, and adequate knowledge of the centralised land tenure system. This factor was useful in navigating the challenges during my field work, in analysing the case studies there and in making comparisons with the centralised system in Kumasi. For instance, non-native researchers investigating a similar topic in Kumasi would have to be particularly careful in approaching the community for entry and seek advice on how to avoid

being perceived as questioning the accountability and legitimacy of the centralised chiefs. For both Kumasi and Wa, it would be important for such researchers to have grasped a deeper understanding of the acephalous and centralised way of life prior to analysing the substantive research work. However, I also had to consider that this personal advantage might also have the tendency to bias the analysis and comparisons between the acephalous and centralised land tenure systems. Therefore I took certain measures (see limitation section in Chapter 4) to minimise any potential prejudices. The fourth and final issue relating to my research methods is my comparison of two primary cases in Wa to only one primary case in Kumasi. An additional primary case in Kumasi would have admittedly provided a more complete balance.

7.3 Synthesis of findings

The aim of the research was to examine changes in land rights to provide a clearer position in the discourse on the exclusion of indigenes in neo-customary land tenure. In this section I show that indigenes in centralised land tenure systems are excluded, whereas their counterparts in acephalous land tenure are key players in the transaction of their own land. In addition, this section presents answers not only to the research questions but to wider issues. It begins by discussing ambiguities over ‘ownership’ that subsist in the commodification of customary land. The next sub-section presents the current manifestation of land rights of indigenes, the roles of the selected stakeholders and the implications of these roles in the exclusion of indigenes. The third sub-section draws inferences from the status of land rights to discuss the sustainability of entitlements of indigenes in respect of land. In the final sub-section I argue that customary land is not formalised in all the case studies before it is transacted in. This has implications which I take up under the heading ‘policy recommendations’ later in this chapter.

The thesis has demonstrated that the entitlements of indigenes in the case studies in Kumasi and Wa are dissimilar. Whereas my analysis of the history of Pramso shows that indigenes hold usufruct rights (*usus plus fructus*), in Wa the conduct of indigene families and a what could be said to be lackadaisical attitude of the *naah* and *tindaana* towards land show that indigenes there have dominant control over land, an interest that is greater than usufruct rights. Indigenes in Mangu and Siriyiri can be considered to hold ‘abusufruct’ (see sections 2.6 and 6.5.2), which is greater than usufruct rights. Therefore in this section I resort to the

terms ‘usufruct’ and ‘abusufruct’ for the indigenes of Pramso (Kumasi) and Mangu and Siriyiri (Wa) respectively, and the term ‘entitlement’ to refer generally to the interests of indigenes in both Pramso and Mangu and Siriyiri.

7.3.1 Contradictions in the commodification of customary land

Three main contradictions complicate the commodification of land rights in the case studies in Kumasi and Wa, namely: claims of indigenes and traditional authorities to own land mutually exclusive of the other, the different conceptualisations of the term ownership in customary land, and the perception of the *tindaana* as owner of land. I expand on each of these contradictions in the following sub-headings.

Opposing claims of indigenes and traditional authorities over who ‘owns’ land

In the centralised Pramso case, as discussed in Chapter 5, there are opposing claims of ownership between, on the one hand, chiefs and sub-chiefs as traditional authorities, and, on the other hand, indigenes as subjects. However, there are indications in the thesis that indigenes are entitled to usufruct rights, and hence the landholding system in the Pramso case resembles co-ownership between indigenes and traditional authorities. To begin with, the literature on customary land tenure rules, which I discussed in Chapter 3 and which largely concentrates on centralised land tenure, mostly states that indigenes hold usufruct rights, whereas traditional authorities such as chiefs hold an allodial title in customary land (Asante, 1965; Bentsi-Enchill, 1964; Ollenu, 1962; Woodman, 1967). The second point is that the empirical findings relating to the creation of usufruct rights when Pramso first originated (discussed in Chapter 5) support this principle of customary land tenure, namely that indigenes are entitled to usufruct rights. Due to this entitlement, the indigenes of Pramso are landlords to share-croppers and receive rents which they do not share with the chief. In a similar way, the chief ultimately offers one-fourth of converted land to indigenes in place of the loss of their usufruct rights.

The third factor that signals the entitlement of indigenes to usufruct rights is in relation to state payments of compensation, which is different from compensation from traditional authorities, as discussed in Chapter 5. The findings of Kidido, *et al.* (2015) in relation to deprivation of the use of land by compulsory acquisition for mining purposes support this conclusion. The analysis of Kidido, *et al.* (2015) of the Akyem Kotoku centralised case revealed that compensation for deprivation of indigene use of land for mining under the

Newmont Ghana Gold (Ltd.) project was paid to indigenes as usufruct right holders. It was not given to the traditional authorities. Although traditional authorities contested this decision, the reason for paying compensation to the users of land in this project, and not the chiefs, was that compensation was paid on the premise of ‘denial, attenuation and diminution of valuable land-use rights held by individuals or groups directly occupying the land’ (Kidido, *et al.*, 2015: 26). The monetary value of this form of compensation for this project was calculated by considering the future values of investments on the land and the deprivation of future use of the land (*ibid.*). The value of the compensation that traditional authorities offer indigenes upon converting and leasing usufruct rights (see section 5.4.3) does not consider similar aspects. This further supports the argument (discussed in Chapter 3) that the allodial interest of traditional authorities is the least in terms of economic value of customary land, and that the allodial interest is only valuable in terms of virgin parcels of land on which usufruct rights have not yet been created.

The entitlement of indigenes to usufruct rights demonstrates that not only is compensation payable to indigenes upon deprivation of use by traditional authorities during conversion and leasing, but that such compensation should encompass the complete equivalence of the value of the usufruct rights indigenes held prior to the deprivation, and its future value. Traditional authorities can only rightfully lease virgin customary land over which the indigenes of the community have not created usufruct rights. Alternatively, if traditional authorities have to lease the usufruct rights of indigenes, they must pass on all proceeds to the applicable indigenes. In order for traditional authorities to receive any benefits, it has to be a matter of cooperation and not due to hard-handed actions, such as the initial unformed conversion of usufruct right by the Chief of Pramso, a matter discussed in Chapter 3 of this thesis. In effect, despite the lack of agreement between indigenes and traditional authorities over who ‘owns’ land in Pramso, at the time of conversion, as discussed in Chapter 5, the history of land distribution in Pramso, the principles of customary land tenure and the management of compensation payment indicate that indigenes hold usufruct rights.

Pluralistic conceptualisation of ownership

The second contradiction amid commodification of land concerns the different concepts of ‘ownership’ within the Pramso case study and between the Pramso and the Mangu and Siriyiri case studies. The analysis in Chapters 5 and 6 indicate that centralised and acephalous land tenures involve different approaches to the concept of ‘ownership’. In Mangu and

Siriyiri ownership extensively relates to the power theory of property, as reviewed in section 2.6 (Alchian and Demsetz, 1973; Eleftheriadis, 1996; Yelapaala, 2000), because families and households were at liberty to exclude all non-members from land under their control. In Pramso a further three dimensions emerged regarding ownership. First of all, the history of Pramso and its land tenure indicate that ownership relates to the ‘historical’ customary land tenure principles and the Hohfeldian approach to property, where neither traditional authorities nor indigenes may exclude each other from land because each of them has entitlements in the land (Barry, 2015; Hohfeld, 1964; Honoré, 1961), as reviewed in section 2.6. However, at the point of peri-urbanisation-induced conversion of land in present-day Pramso, traditional authorities tend to interpret ownership in line with the power theory of property (i.e. the second dimension) in which they have the liberty to exclude indigenes and only offer them compensation at will. I now turn to the third dimension.

Staying with the Pramso case study, as a centralised land tenure system ‘ownership’ can be interpreted based on the categorisation of the physical parcel of land that is different to the above ‘ownership’ of bundles of rights by indigenes and traditional authorities. Hayford’s (1903) three categories of customary land – land belonging to the chief as his ancestral/family property, land attached to the stool as office of chief and the general land of the community – as discussed in Chapter 3, introduce a further ambiguity to the concept of ownership and to the administration of emergent value of land. For Hayford (1903), where traditional authorities have only paramountcy over parcels of usufructuary indigene land, the former cannot benefit from such land. Evidence of the physical categorisation of land emerged in Pramso, whereby the chief attempted to completely exclude indigenes from the *Beposo*, *krodadaa*, and *samanpomu* parcels of ‘stool’ land. Apart from this, as discussed in Chapter 5, physical parcels of land became the focus at the point of commodification and conversion of usufruct rights in Pramso. As explained in section 7.3.2 below, this reliance on physical parcels of land eradicates the traditional conceptualisation of land as bundles of rights and the ‘historical’ usufruct rights, as discussed in sections 3.3.1 and 3.3.2. According to Moore (1986), ambiguities such as these emerge when customary law is separated from formal law, and these ambiguities can have the unintended effect of ‘increas[ing] the gap between official government conceptions and the realities of local affairs’ (ibid: 319). In Ghana the state policy is one of non-interference in chieftaincy (Ubink, 2008a). In deed, clause one of article 270 of the Constitution of the Republic of Ghana, 1992, guarantees the continuation of the institution of chieftaincy in Ghana, whereas clauses two and three of the same article of the

Constitution (article 270) make various provisions against legislations that may interfere with this institution. State bureaucrats in the land sector extend this non-interference in the institution of chieftaincy to non-interference in customary land law and administration, citing Article 267(1) of the Constitution as discussed in Chapter 5 to back their inactions. Thus, although chiefs are not above the law, they enjoy a significant level of independence. This policy ensures that state land management institutions, although recognising that indigenes are entitled to usufruct rights, fail to resolve this contestation over 'ownership' of customary land. Despite the claims of traditional authorities to ownership of land, the analysis of the bundles of rights show that indigenes are entitled to usufruct rights, whereas analysis of physical categorisations of land (see Chapter 3) entitle indigenes to physical parcels of land. Either way that must be taken, landholding in centralised tenure may thus be described as co-ownership between indigenes and traditional authorities.

The co-ownership of customary land, as established in the thesis, emphasises the need for collaboration between indigenes and traditional authorities at the point of commodification and conversion of usufruct rights in peri-urban areas. As Platteau (1996) indicates, perceived or actual scarcity of land triggers uncertainties in holders of land rights about their entitlements, and this tends to multiply contestations. In the Pramso case study, indigene agitations amid the conversion of their usufruct rights further prove their stake in customary land. However, indigene responses which they expressed with radicalism and diplomacy under the occurrence of various opportunities as contributory factors in Pramso led to limited agency. The agitation of indigenes is a signal of the need for co-production between indigenes and traditional authorities, and not a reflection of actual co-production, as the thesis posited in Chapter 1. The thesis considers the possible existence of co-production in two ways. On the one hand, in the involvement of indigenes in management of customary land, a role not specifically defined in customary land law in Ghana. On the other hand, the thesis links the outcomes of indigenes agitations to output-based co-production. To amount to agency or co-production, the agitations of indigenes need to result in their control over certain processes and benefits of conversion of usufruct rights (see section 2.8). As discussed in Chapter 5, despite their agitations indigenes achieved little control over the conversion of their usufruct rights in Pramso. Nevertheless, this paragraph answers the sub-question of the thesis, namely: How are benefits and practices co-produced from interactions between indigenes and traditional authorities amid exclusion in changing usufruct rights?

Indeed, the land tenure literature on peri-urban Kumasi shows that positive outcomes from indigene struggles for inclusion are limited. According to Ubink (2008c), certain indigenes may achieve successes in contestations over the right to lease land and right to revenues based on the strength of the family concerned. Nyasulu (2012) argues that as the struggles between the powerful, such as traditional authorities, and the powerless indigenes continue over land rights in Ghana, the powerless achieve results by working in groups. The Pramso case adds to this literature about indigene responses or agitations over conversion of usufruct rights and the consequences. The analysis in Chapter 5 indicates that group actions by indigenes ceased only after the chief and sub-chiefs offered them portions of the converted usufructuary land in the one-fourth sharing formula. This is evidence of the minimal beneficial outcomes, as well as a reason for traditional authorities to involve indigenes at the point of converting usufruct rights.

The tindaana as ‘owner of land’ contradicted by the Mangu and Siriyiri cases

The third contradiction amid the commodification of land relates mainly to the acephalous case studies in Mangu and Siriyiri. The discussions in Chapter 3 show that literature and the court cases relating to this area tend to equate the *tindaana* to the centralised chief as ‘owner’ of land, which the findings in Mangu and Siriyiri in fact challenge. In addition, part of the literature on acephalous land tenure (see section 3.5.1) argues that the *tindaana* may hold the allodial interest and willingly allow indigenes the liberty to deal with land as they wish. This argument is similar to what can be argued in relation to the chief allowing indigenes in Pramso to transact in their own usufruct rights. Zackaria (2010: 121), in the context of Wa, states that ‘though traditionally, *tendamba* and chiefs are the sole authorities responsible for land administration, the practical management of land is done by family heads.’ Elsewhere in the Upper East Region, Lentz (2010, citing Lund, 2006) details cases of indigenes challenging the *tindaana*’s right to be consulted before allocating land to stranger settlers. The thesis finds that the *tindaana* in the acephalous case studies in Wa is not a replica of the centralised chief. This ambiguity, although not manifest in contestations between indigenes and the *tindaanas*, has the potential to become so in the future as *tindaanas* become aware or take advantage of their favourable position as sanctioned by court judgements.

As discussed in Chapter 6, the *tindaana*’s passive attitude to land and the freedom of indigene families to transact land under their occupation and control (and thus entitling them to usufruct rights) demonstrate that the *tindaanas* do not hold the allodial title to land similar

to that in central customary land tenure principles. There was no evidence in the interviews that the *tindaana* issues directives on how land is to be transacted or that indigenes defied a directive of the *tindaana* regarding transaction of land. Neither of the two *Tindaanas* of Mangu and Siriyiri complained about indigenes excluding them, and this points to the liberty of indigenes and their families to transact in land. In relation to this, Kotey (1995) relates the *tindaana's* control in land in Upper East and West Regions to extend to only vacant communal land and that most parcels of land in agricultural and town areas are in the control of lineages and family heads. The control of farm and inner gate's land by gates, families, households and even individuals corroborates Kotey (1995), although there is no evidence of the availability of virgin land to determine whether the *tindaana* has control over it. My analysis of the triple meaning of land (*tinga*) in Chapter 6 – namely land as a physical parcel of land (*tinga*₁), land as the Earth God (*tinga*₂), and land as the community (*tinga*₃) – shows *tindaana* translating better to the 'owner' as in *tinga*₂ (Earth God) than to 'owner' as in *tinga*₁ (land). This finding challenges the perception of the *tindaana* as the 'owner' of the community land (*tinga*₁) by the courts and literature (see section 2.5.1). In the Mangu and Siriyiri cases, the interests in respect of land may be described as a ritual allodial interest vested in *tindaana*, allodial interest vested in the indigene family, usufruct vested in the individual indigene or household, and usufruct rights vested in women and long-term stranger settlers. The discussions therefore show that even if the *tindaana* holds the allodial title to land, and despite the enhanced control over the same by indigene families, his allodial title is barely valuable economically in the sense of the historical allodial interest in centralised land tenure, but also in contrast to the centralised neo-customary allodial interest.

7.3.2 The status of indigene entitlements and their resulting exclusion

This sub-section addresses two sub-questions of the thesis. These are: How do the entitlements of indigenes in respect of customary land presently manifest themselves amid changing customary land tenure? and What role do traditional authorities, state land management institutions and indigenes in particular play in changing usufruct rights in customary land? Regarding the first question, the thesis finds both usufruct rights and usufruct rights as entitlements of indigenes in the peri-urban case studies in acephalous and centralised case studies to be changing into commodified monetary forms or market-value terms in neo-customary (adapted customary) land tenure. As already discussed above, the commodification of land rights ensures that physical plots of land become an object of

importance and that this emergent focus collapses the traditional bundles of rights in customary land tenure, including usufruct rights and abusufruct. However, there are different ways in which the physical parcels of land are treated at the point of commodification in the acephalous and centralised case studies. These different applications of the conversion of usufruct rights mean that the overall effect of the conversion depends on the same dynamics across the case studies.

In Pramso converted usufructuary parcels of land are redistributed among indigenes and traditional authorities according to the one-fourth redistribution formula. As discussed in Chapter 5, traditional authorities offer one-fourth of converted plots to indigene families, whereby indigene households end up receiving barely one or two plots of land, usually measuring 100 x 70 ft. In Pramso the chief and sub-chiefs then transacted their parcels of land as leaseholds for their own benefit, whereas indigenes mostly kept their parcels because they consider them insufficient relative to their need for land. There were other general benefits, such as the provision of amenities using revenue from leasing one-third of converted land to benefit the community generally. In Mangu and Siriyiri (Wa), land is not distributed by any formula. Here indigenes transact in land either as leases or as perpetual transfers, and they use the revenue for their own benefits. Therefore, while the collapse of usufruct rights is tantamount to the exclusion of indigenes from the value of neo-customary land in Pramso, the conversion of abusufruct in Mangu and Siriyiri is a mere liquidation of land rights by indigenes. However, in Mangu and Siriyiri, in the conversion of land there were very few benefits accruing to the entire community, for instance the granting of land for public school and clinics. In both the Mangu and Pramso cases, usufruct and abusufruct rights exist as assets and monetary forms in place of transferring the rights to acquirers of these rights who are mostly stranger settlers. The thesis consequently confirms the hypothesis stated in Chapter 1 that ‘usufruct rights in customary land continue to exist in various forms, albeit its remnants differ in acephalous and centralised systems.’ As Chapters 5 and 6 show, indigenes, especially in Mangu and Siriyiri, continue to benefit substantially in direct and indirect ways.

The foregoing discussions on the status of entitlements of indigenes mean that commodification in itself does not destroy the traditional entitlements of indigenes. An exception to this implication is that the emphasis on monetary value amid commodification downplays cultural and religious aspects of land as seen in the decreasing significance of the *tindaana* and the youth’s disregard for tradition emerged in Mangu and Siriyiri. However, this reflects the perspectives of the evolutionary, modernisation and neo-liberal theories of

changing land rights. Therefore, the manner in which the remnants of indigene entitlements are managed is what poses the problem of sustainability, and not the conversion of usufruct rights. In Pramso traditional authorities together keep every one-half of the usufructuary land that is converted, and hence its market value. Indigenes therefore view the redistribution of one-fourth of converted land among indigene families as inadequate. Indeed, the focus of traditional authorities on redistributing physical parcels of land is problematic, if not unjustified, depending on the conceptualisation of land as either bundles of rights or as physical parcels. For land as bundles of rights, the expectation would be that in the commodification of land each interest holder would be entitled to the commodified value of their interests over the size of physical land they previously held. As Agbosu (2000: 7) argues, ‘if the subject did not own but held an estate in the land, those estates or intangible interests ought to be classified into various categories independent of the immovable property so as to fit into the commodity exchange economy.’ Thus usufruct rights of indigenes ought to be converted to a market value that is completely tenable to the indigene. In redistributing physical parcels of land to indigenes, the anticipation would be that indigenes retain the commodified value equivalent to the size of land under their control. The current situation of replacing one-fourth of the physical piece of the converted usufructuary land with the foregoing indigene usufruct rights over their entire usufructuary land in the Pramso case study is an unjustified measure in terms of the value of their usufruct rights. In Mangu and Siriyiri indigenes receive the commodified value of land and evidence suggests that the core problem is the need for proper management of this value to produce future streams of income.

It is not a straight-forward matter to indicate the exclusion or otherwise of indigenes in the complex (neo-) customary (i.e. the blend of customary and neo-customary) land tenure that exists in peri-urban areas. Given the dichotomy of the tenures – the acephalous and centralised forms examined in this thesis – and the dynamics in what constitutes ‘ownership’ and the different conceptions of land within and across the tenure systems, the analysis of the exclusion of indigenes amid changing land rights has to consider the spatio-contextual discrepancies. In general, the Pramso case shows that indigenes are mostly excluded based on the status of their usufruct rights, the value of which is turned over to traditional authorities, as opposed to indigenes being the main beneficiaries of the traditional usufruct rights prior to commodification. This corroborates with Ubink’s (2008c: 165) findings in peri-urban Kumasi that ‘despite fierce resistance by the citizens, chiefs are the main beneficiaries of land

conversions.’ The exclusion of indigenes in the case study in Kumasi is also evident in the inadequacies of remnant usufruct rights in serving the livelihoods of indigenes. The original usufruct rights achieved this purpose, but these rights have to a large extent been eroded and therefore so is the achievement of this purpose.

Another evidence of exclusion of indigenes in the Pramso case is the central role that traditional authorities play in the conversion of usufruct rights. This paragraph presents the answer to the second sub-question. As discussed in Chapter 5, indigenes in Pramso have little influence and the state land management institutions fail to explore provisions in law to influence the processes of conversion of usufruct rights for the benefit of indigenes. However, power imbalances and questions of illegitimacy of traditional authorities in the present-day conversion of customary land may be partly explicable. This is because traditional authorities, as leaders in the centralised systems, have always held greater power and are in control of more resources than their subjects. Traditional authorities emerged as men with ‘uncommon abilities’ and played principal roles, for instance in wars, which gave rise to their leadership role in their communities (Hayford, 1903: 39). Nyasulu (2012: 85) adds that ‘the centralised traditional authority was involved in serious cases such as war, judicial matters and cleansing of the stool’. Thus their continuous dominance over community matters, including land, makes it problematic to consider their enhanced benefits in land as proscribed. In another respect, the claim that chiefs hold higher capacities of power should not be construed to mean that indigenes are homogeneously powerless. As discovered in the Pramso case, indigenes with relatively close relationships with traditional authorities received more converted plots than those without such relations. The agitations by organized groups of indigenes against conversion of usufruct rights by traditional authorities in Pramso, as discussed above, constitute another aspect of indigene power. This matches Ubink’s (2008b) findings in peri-urban Kumasi that indigenes and families possess different capacities to influence and derive benefits from land conversions.

Generally, in Mangu and Siriyiri male indigenes retain the commodified value of their classical usufruct rights as the remnant of their entitlements. The commodified value serves as alternative income that indigenes use to resolve mostly everyday problems and they cannot be described as being excluded by the traditional authorities. However, in many instances, indigenes presumably wasted the potentials of the commodified value of land through misappropriation of the revenues of transaction of land. Female indigenes who held usufruct rights prior to transaction of land can be described as completely excluded because tradition

deprives them of land value by generally forbidding them from transacting in land. Unlike in the Pramso case study, traditional authorities in Mangu and Siriyiri did not assume a central role in the processes of disposing land.

It is important to recall that neo-customary land tenure is a product of commodification and of peri-urbanisation, which fuels the process. Commodification therefore plays a significant role in exclusionary tendencies and contestations over land, as discussed above. Yet the exclusion of indigenes from neo-customary land, as in the case of Pramso, and the seeming misapplication of commodified value in Mangu and Siriyiri may neither per se be a problem of neo-liberal commodification nor a problem of the intensification of demand for land arising from peri-urbanisation. For in the midst of both forces, land is merely translated to monetary value. It is the manner of management and distribution of this monetary value that is problematic. Therefore exclusion is a customary land management problem. The status of the entitlements of indigenes shows that the future of the discourse on exclusion of indigenes may have to focus on the management of the conversion process and the converted value of land rights.

7.3.3 Implications for the sustainability of indigene entitlements

This sub-section addresses the final sub-question of this thesis: How does knowledge of changes in indigene entitlements inform its sustainability? The uncontrolled peri-urbanisation of cities in sub-Saharan Africa, including Kumasi and Wa, and the attendant continuous conversion of land rights is a potential threat to the sustainability of indigene livelihoods, and as such is a matter of pressing concern. In this sub-section I argue that the management of the processes and value of commodification of land in the case studies is not sustainable, and discuss how indigenes can cope with, maintain or even enhance their livelihood capabilities amid the pressure to convert usufructuary land to urban uses. The discussions on adverse changes to entitlements of indigenes in Chapters 5 and 6 show that the conversion of peri-urban land rights to urban uses leads to decline in agricultural land for indigene farming, which the majority depend on for their livelihoods. Ubink (2008c), in a survey conducted in eight communities in peri-urban Kumasi, finds that about 57.4 per cent rely wholly or partly on farming for their livelihoods. The conversion of land uses, coupled with changes in land rights, affects the agriculture-dependent livelihoods of indigenes. This implies that with increasing peri-urbanisation there is an inevitable increase in change of livelihood activities from farming-related activities. The new monetary value of land has to be managed properly

in order to provide traditional livelihoods. The ‘accumulation’ of the majority of converted value of land in traditional authorities in Pramso and the abuse of this value in Mangu and Siriyiri therefore raise the question of sustainability of livelihoods in the case studies. It is important that as land rights are converted, indigenes not only gain access to their entitlements in monetary forms but that indigenes and/or their leaders manage this value for future livelihoods. For this reason I argue that if usufruct and abusufruct rights of indigenes can be maintained in non-traditional forms and be managed accountably by the stakeholders with the future in mind, indigene livelihoods can be sustained despite the changes in customary land tenure. Without the sustainable management of entitlements of indigenes the only remaining remnants are the lesser benefits discussed in Chapters 5 and 6 and peri-urbanisation will constantly erode the livelihoods of peri-urban and rural communities.

The findings in Chapters 5 and 6 on the remnants of usufruct rights portend that the commodified value of land rights, together with emerging opportunities in the peri-urban communities, represent three main potentials in terms of sustainability. Firstly, emerging job opportunities offer alternatives in terms of self-employment. It is usually a difficult task for less educated and elderly indigenes to change their livelihood strategies, and for the youth it requires time, commitment and capital (Owusu, 2008). The literature in peri-urban Kumasi shows that the main roles for youth amid changing customary tenure is often that of taking advantage of opportunities such as labour and new urban skills for emerging urban jobs in their hitherto rural areas (Amanor, 2008; Ubink, 2008c). In Pramso and Mangu and Siriyiri this was evident in that several respondents indicated their switch from traditional jobs such as farming to these new occupations such as masonry to tap into the emerging construction sector. Whereas in Mangu and Siriyiri indigenes have the opportunity to use revenues of land transactions to undertake training to acquire skills, in Pramso revenue from conversion of land failed to facilitate such opportunities for indigenes.

Secondly, all the case studies involved emerging markets that in many ways represent investment opportunities for sustained future incomes. In Mangu and Siriyiri the findings show certain respondents investing land-transaction revenues in ventures such as general stores, commercial vehicles, rental housing and other businesses that promise future incomes. However, ultimately these investment practices are small-scale in these communities. In Pramso this manner of investing using land revenue was not possible because of the few plots of land redistributed to indigenes, and which they mostly kept for their housing needs rather than leasing them for direct income. The third potential offered by the commodified value of

indigene entitlements relates to the neo-liberal logic. In the neo-liberal thinking, formalisation of land is a means through which land as an asset may be managed to generate surplus value. Therefore commodifying land through individual titling and registration of other interests, such as usufruct rights and leases, is seen as a solution in itself towards enlivening dead capital into capital at least for survival if not for the entire economy (de Soto, 2000). Land formalisation, and not land itself, is the genesis of capital formation (ibid.). Thus market values of emerging peri-urban land, as in the case studies, are merely the value of land but not an enhanced surplus value emerging from using land as, for instance, collateral. The latent value of land, if it is to be produced, must be realized through intensive formalisation and deliberate management. At this point, it must be stated that land registration regimes in sub-Saharan Africa are not necessarily in line with de Soto's (2000) logic which is based on Latin American land tenure regimes (Benjaminsen *et al.*, 2009). Therefore, following de Soto's (2000) roadmap may not produce the desired outcomes. Nonetheless, in these cases in Ghana, if converted land is formalised indigenes and traditional authorities as beneficiaries could rely on the titles to acquire capital for investment, thus making use of this latent value in addition to its commodified value. However, in both Kumasi and Wa, leases, and especially usufruct and abusufruct rights, are usually not registered and although the market value of peri-urban land is activated their surplus values are not initiated to make these rights live a double 'life'. Therefore in the case of customary land in the Pramso in Kumasi, and Mangu and Siriyiri in Wa, the benefits of de Soto's (2000) formalisation are not measurable. The case studies in Wa indicate that customary land is personalised and individualized before attempts to formalise it, because families do not even survey or register their customary land before transacting in it. This procedure raises a question of whether there could be further benefits in the reverse. One obvious benefit is that if all rights were to be formalised before sub-division, no interests, such as the usufruct rights of women in Mangu and Siriyiri and of indigenes in Pramso, would be lost in the commodification process.

7.4 Contributions of the thesis

The recent land reform agenda seeks to adapt customary land tenure in Ghana and in Sub-Saharan African countries rather than replace it. Through these reforms, traditional authorities, as the managers of customary land, have been seen to be empowered and this has consequences for customary land relations. However, this only holds for centralised land tenure, as traditional authorities in Pramso solely managed land. The case studies in

acephalous Wa showed no dominant or enhanced role of either the *tindaana* or the chief in land conversion. There was no evidence suggesting that the direct control over land by families in Wa is influenced by land policy reform. Nevertheless, the introduction of a neo-liberal individualisation agenda has produced irreversible consequences, such as the commodification of land rights. Research has found commodification to trigger processes that limit or enhance negotiations and flexibility in access to land by different groups in neo-customary land systems in peri-urban areas (Akrofi, 2013; Amanor, 2008; Chimhowu, 2019; Chitonge, *et al.*, 2017b; Durand-Lasserve, 2007; Peters, 2004; Ubink, 2008). This thesis contributes to this literature on changes occurring to customary land tenure systems first by analysing the exclusion of women in Mangu and Siriyiri in Wa, and second indigenes generally in Pramso, both cases constituting outcomes reflecting changing customary land tenure.

The thesis also contributes in micro-empirical ways to the literature on the operation of the customary land tenure in Ghana. By comparing case studies in centralised Kumasi and Wa the thesis brings empirical perspectives to the long-acknowledged differences between land management in the centralised and acephalous land tenure systems of the respective southern and northern areas of Ghana. Firstly, it indicates the manner in which the bundles of rights in land in Mangu and Siriyiri differ from the centralised customary land tenure, as discussed above. This contradicts the perception that there are similar bundles of rights across these tenure types and challenges tendencies to adapt or apply principles of centralised customary land tenure to acephalous areas. It has long been acknowledged that acephalous tenure differs from centralised tenure through the existence of a *tindaana*. However, the *tindaana* has been considered as the ‘owner’ of land in the acephalous system and hence a replica of the chief in the centralised system. The Mangu and Siriyiri case studies discussed in this thesis portray the *tindaana*’s active function in land matters as vested in his ritual role, and as such contrary to the chief and sub-chiefs of Pramso who exercise dominant actual control over land.

As a second empirical contribution, the thesis provides in-depth analysis of the office of the *tindaana* relating to ownership of land. Here the thesis supplements the key literature on acephalous land tenure, such as Daannaa (1994), Kunbuor (2002), Lentz (2006), and Yelapaala (1983; 1992). It emerged that the office of the *tindaana* does not always originate from first settlement in the community. The Wa case studies therefore add to the very few studies on the manner of disposal of land by families in acephalous land tenure. The third empirical significance of the thesis is that it challenges notions suggesting that chiefly control

over land in centralised land tenure is a cause of the unsustainable management of the processes and benefits of commodification of land (see section 3.4). The unsustainable outcomes of commodification in the case studies in both Kumasi and Wa indicate that centrality and acephalousness may not be directly linked to ensuring successes in sustainable management of the conversion of indigene entitlement in land. The commodified value of entitlements is accumulated in traditional authorities in the Pramso case, whereas this value is abused by indigenes in the Mangu and Siriyiri case studies due to a lack of central control. Sustainable management of converted value is therefore a common need in both acephalous and centralised land tenures.

Further, the thesis builds on the bundles-of-rights concept of land by analysing the ‘historical’ and contemporary nature of usufruct rights and by establishing the bundles of rights supposedly existing in the acephalous case studies to demonstrate the entitlements of indigenes. Knowledge of the changes in usufruct and abusufruct rights of indigenes and the implications for sustainability of livelihoods can serve as a basis for land reform in Ghana. For instance the Office of the Administrator of Stool Lands (OASL) places revenues of stool land in Ghana under government scrutiny and administration, but the disbursement of stool-land revenue neglects indigenes. Similarly land rights, and especially their security, have not been legislated upon in Ghana. The thesis has demonstrated that land rights of indigenes are tied to their livelihoods and the implications of the status of the entitlements of indigenes emphasises the need for sustainability of land rights, even in commodified forms. The use of the bundles-of-rights framework in this thesis clearly demonstrates the entitlement of indigenes in customary land, the exclusion of indigenes, and reinforces need of its sustainability.

In conclusion, traditional authorities in centralised land tenure exploit their empowerment by the adaption approach to land reform to their advantage. Commodification delivers an emergent market value for customary land, but this value is poorly managed in terms of its ability to serve as a replacement for the sustenance of the livelihoods of indigenes who are the majority population compared to traditional authorities. The major contributions of the thesis lie in revealing several ambiguities during the commodification of land in the centralised and acephalous cases studies and providing empirical evidence that complements principles of customary land tenure in Ghana. In addition, the thesis uses the bundles-of-rights framework to explain how traditional authorities exclude indigenes through the collapse of usufruct rights in the Pramso case study. In the Mangu and Siriyiri case studies,

the bundles-of-rights framework helps in constructing the various interests with respect to land and then go on to show how male indigenes indiscriminately transact in their usufruct rights. The bundles-of-rights framework has therefore proven to be a useful c for analysing exclusion of indigenes amid commodification of land rights in complex (neo-) customary land tenure in peri-urban environments.

The above contributions of the thesis provide two lessons for the sub-region although the findings are specific to the customary land tenure systems in Ghana and may not be generalised. First of all the concept of land as bundle of rights can be a useful framework for analysing exclusionary tendencies in the context of the changing customary land tenure in sub-Saharan Africa. The ambiguities surrounding 'ownership' of land and the tendency to view land as a physical parcel engenders exclusions. With the bundles-of-rights framework, every indigene has a stake in land and must be entitled to its commodified value. The use of the term 'ownership' would then be vague and would no longer be a measure of who wins or loses. The second important lesson for Ghana, and elsewhere in the sub-region, is that investigations into land tenure should pay attention to the diversity of the customary tenure systems even within the national context. The comparison of the case studies across acephalous and centralized land tenures in this study has revealed several important practicalities specific to each tenure system.

7.5 Recommendation for land policy

The exclusion of indigenes and women in the Kumasi and Wa cases respectively points towards a systemic problem in land management that should be addressed through land policy and land reform efforts that aim at augmenting the benefits of all indigenes in the commodification of land. Failure to streamline the commodification of land implies accumulation of the value of commodification in traditional authorities, especially through the reversion of leases upon expiry 99 years after the time of leasing. Similarly there would be perpetual undermining of indigene capacity to benefit from opportunities that urbanization offers and the potentials these represent in terms of livelihoods. In acephalous areas, lack of planning in relation to the inevitable land-commodification process means mismanagement of value and the emergence of hardships when indigenes transfer all their rights in land. Besides, in both acephalous and centralised areas the number of protracted conflicts can be expected to increase if the state fails to guide commodification of customary land through policy. The

first step that the state can take would be policy recognition of the importance of all rights in land and the entitlement of these rights or their commodified value to the rights-holders.

The recently enacted Land Act has made certain progress in this regard. Firstly, in section 1 the Land Act lists six interests in respect of land, including the usufruct rights of indigene and the allodial interests of traditional authorities. Secondly, section 12(c) of the Land Act prohibits persons from unlawfully preventing other persons with an interest in land from accessing that land. This provision clarifies that traditional authorities are not above the law and seeks to protect interest holders such as indigenes. Therefore indigenes may take action against traditional authorities if the latter deprive the former through conversion of usufructuary land. However, the state needs to build the capacity of the less powerful indigenes including women to enable them to take such legal actions against the appropriation of their rights in respect of land. Given the act's recognition of bundles of rights, stakeholders in land tenure including the state land management institutions and the customary authorities ought to refocus on a bundles-of-rights concept of land, restructure all interests in land according to the holders of these interests, and ideally register or formalise the interests conditional to conversion and transaction of land. The next step after this recognition requires moving away from 'non-interference' to an enhanced state protection of land rights. The combined effects of peri-urbanisation, land commodification and formalisation engender dispossession of land rights as shown in the case studies and the continent at large. Consequently, land reform and land tenure security efforts in sub-Saharan Africa must proactively concentrate on formalisation of de facto rights of indigenes in rural areas prior to peri-urban land commodification in their respective communities. The Lands Commission in Ghana must roll out compulsory registration of customary rights to land before granting consent and concurrence for conversion of stool land. The prior formalisation would create certainty and security for rights-holders, including indigenes in centralised Kumasi and women in acephalous Wa, and ensure that they do not lose out in commodification of customary land. This de facto registration will also serve as a foundation for subsequent pursuance of land formalisation aligned to de Soto's (2000) approach and its benefits if the state decides to take that path. The foregoing mirrors the need for a human rights-based approach to land management especially as sub-Saharan Africa moves towards neo-customary land tenure systems along with its rapid urbanisation. Therefore, rights such as usufruct and abusufruct rights of ordinary indigenes of customary communities must be formally recognised and institutionalised in land policy. The call for this right based approach

is not new, as Franco (2008) and Akaateba (2018) make similar suggestions. Franco (2008: 19) specifically recommended that people be ‘viewed as rights-holders rather than mere beneficiaries’, whereas ‘states are viewed as duty bearers’ with the responsibility to acknowledge, protect and fulfill these human rights. In Ghana, it is important for the OASL and civil-rights institutions, such as the National Commission on Civic Education to sensitise indigenes on the existing protections available to them as prescribed by the Land Act.

It is important to add that a policy framework that advocates the protection of usufruct rights by the state institutions should include a capacity-building platform for both indigenes and traditional authorities to sustainably convert usufruct rights. In addition to the economic aspects of land conversions, this policy needs to consciously consider the relevance of the social and ritualistic dimensions of land which are relevant for prosperous and inclusive sustainable development as targeted in the SDGs. In addition, the abuse of land transactions that harm the emergent value of the commodification of land in Mangu and Siriyiri especially calls for capacity building within the policy framework for indigenes to manage the processes and values of their usufruct rights. Capacity building may take the form of directly training traditional authorities and indigenes on sustainable management of commodification of land or through establishing a third-party organisation to jointly manage the processes and values of land transactions. The adaptation of customary land tenure in Sub-Saharan Africa therefore needs to be guided by state policy to prevent exploitation. In doing this, intensive investigation of the changing customary land tenure principles across the tenure types is necessary to provide solid data on which to base policy.

7.6 Recommendation for further studies

Several unanswered questions emerge from this thesis and can profitably be addressed by additional research into the topic. Further studies of the changes in customary land tenure are required in five specific areas. Firstly, the scope of the thesis was limited to the case studies in acephalous and centralised customary land tenures in the Ashanti and Upper West Regions of Ghana despite the existence of variants of each system in Ghana. Hence one recommendation is to test the bundles-of-rights framework in future investigation of changes in local specific customary land tenures in Ghana and other sub-Saharan African countries. For instance Zambia’s land tenure system has several similarities with Ghana’s and concerns have been raised there about commodification and exclusion of the masses

(Chitonge, *et al.*, 2017b). Secondly, there is the need to investigate how to sustainably manage the converted value of entitlements of indigenes in neo-customary land tenure. A study of that sort can take clues from Hill, Pert, Davies, Robinson, Walsh and Falco-Mammone (2013) on the success factors in indigenous land management in Australia. Hill, *et al.* (2013) find that indigenes' ownership of land management and investments with support from the state produced health and wellbeing, cultural and social, environmental and economic benefits in Australia.

Thirdly, further research that fully focuses on the functions of the *tindaana* in land management in acephalous areas would be desirable. It is important to re-interrogate the role of the *tindaana* in land management because of the insistence of the courts on the *tindaana* as 'owner' of the land in acephalous communities of the Upper West Region despite my own contrary findings in the Mangu and Siriyiri case studies in the same region. An outstanding question is whether the *tindaana*'s minimal control of land in Mangu and Siriyiri arises from the changing atmosphere in the context of commodification or that the *tindaana* never held an allodial interest in the entire land of the community. Research that is dedicated to investigating this phenomenon needs to include other case studies representing the diversity of land holding even within the Upper West Region. Fourthly, the thesis did not touch on the ritual or spiritual dimensions of land tenure in the Pramso case study. Further research on the topic can consider exploring this ritual aspect in the commodification of land in centralised land tenure. Finally, this thesis explored exclusion of indigenes from the perspective of the state of their entitlements in land and the perception of indigenes. Research on the state's position on exclusion of indigenes and the state's preparedness to intervene would complement the discourse on exclusion.

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Appendix A: Ethics clearance certificate



HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)
R14/49 Sumbo

CLEARANCE CERTIFICATE

PROTOCOL NUMBER: H18/06/35

PROJECT TITLE

Peri-urbanisation and changing usufruct rights in customary land in Ghana. Case studies in Kumasi and Wa

INVESTIGATOR(S)

Mr D Sumbo

SCHOOL/DEPARTMENT

Architecture and Planning/

DATE CONSIDERED

22 June 2018

DECISION OF THE COMMITTEE

Approved

EXPIRY DATE

29 August 2021

DATE

30 August 2018

CHAIRPERSON

(Professor J Knight)

cc: Supervisor : Professor M Huchzermeyer

DECLARATION OF INVESTIGATOR(S)

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

Signature _____

Date _____

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES

Appendix B: Sample participant information sheet

Participant information sheet for indigene households

Hello! Good day. My name is Dennis Kamaanaa Sumbo, a PhD Student at Wits University, South Africa. I am undertaking a study on Changing Usufruct Rights in Customary Land in Peri-Urban Ghana. I am undertaking this research to understand how indigenes' use rights in customary lands in Ghana have changed over time; the role state land management institutions, traditional authorities and indigenes play; and how benefits and practices come about in present day customary land management amid peri-urbanisation induced land competition. I would like to have a conversation with you about this study which would last between 45 minutes and 1 hour. The answers you provide me would form the basis of my PhD and the results are thus for academics purposes only. To make sure I capture the information accurately, I would like to voice record the interview. I would also like to take photos of any supporting information that may be available. If this is fine with you, I would tell you more about the research and we would start the interview afterwards. I am providing you this participant information sheet to inform you on important issues. Please do not hesitate to ask questions throughout this process.

I would generate a number to represent you. Hence, I would not be using your name in the research unless you want your name to be used. If you do not want your name to be used in the research, be assured that any personally identifiable information I collect would not be reported in the research.

I would ensure that any sensitive data I would collect would be treated with high level of confidentiality. In that case do alert me of any especially sensitive information you are telling me. I am the only one who would hold any such confidential information.

Please note that your participation in the research is absolutely voluntary. As such, you may refuse to participate, discontinue participation at any point, or you may skip questions you do not wish to answer for any reasons without any penalty. You would not receive any direct financial or other benefits by virtue of your participation. Feel free to ask me questions if you do not understand any of my questions.

The report of this research or the thesis document would be available to the public through the University Library portal. Published articles would be available through journals. None of these would contain any confidential information you provide.

Information from this interview, any photographs taken and data processed from these will be securely stored in soft and hard format for up to ten (10) years before their destruction. Afterwards, hard copy data would be burnt while soft copy data would be permanently deleted.

You may request for an electronic copy of the final research report and it would be made available to you. If you wish to request, I would collect your email address for that purpose only. Any questions regarding this research may be directed to me. Find the contact details my supervisors and me below. If you also have questions regarding the ethics in this research, please find the contact information of the Human Research Ethics Committee (Non-medical) below. Thank you.

Principal Researcher: Dennis Kamaanaa Sumbo, Wits University, Johannesburg:
1841271@students.wits.co.za, +27632350752 (South Africa); +233541581927 (Ghana).

Supervisor: Marie Huchzermeyer, Wits University, Johannesburg: marie.huchzermeyer@wits.ac.za, phone: +27834242457

Co-supervisor: Philipp Misselwits, Technische Universität Berlin, Email: misselwits@tu-berlin.de, phone: +493031421908

Ethics committee contact person: Shaun Schoeman, ph: +27117171408, shaun.schoeman@wits.ac.za

Appendix C: Sample consent form

Texts for obtaining informal consent from indigene households

Hello! Good day. My name is Dennis Kamaanaa Sumbo, a PhD Student at Wits University, South Africa. I am undertaking a study which concerns changing usufruct rights in customary land in peri-urban Ghana. I am undertaking this research to understand how indigenes' use rights in customary land in Ghana have changed over time; the role state land management institutions, traditional authorities and indigenes play; and how benefits and practices come about in present day customary land management. If you are willing to talk, I would like to have a conversation with you which would last between 45 minutes and 1 hour. This is voluntary and you may decide not to go ahead with the conversation at any time. The answers you provide me would form the basis of my PhD and the results are thus for academics purposes only. I assure you that I will not share with anybody any personal information you share with me. When I am interviewing you, I will record the conversation and make notes as well so that I do not miss any information. I would **NOT** be using your name in my research report unless you want your name to be used. If these are fine with you, I would tell you more about the research and we would start the interview. Please listen to the following and respond.

Do you agree for me to interview you?

Do you agree that I record the conversation?

Do you agree that I take pictures of supporting information which do not show your face?

Do you agree that I publish the research report online?

Do you agree for me to quote some of your speech in the research report?

Do you agree that I securely store the research data for up to 10 years?

Do you agree that the research data can be re-used within this storage period?

I will like to contact you again for further clarification, do you agree?

If yes, please provide cell phone number for this purpose only.

Please feel free to ask me any question.

On the additional sheet of paper I am giving you, I have provided additional information about my research and contact information of my supervisors and the ethics committee of Wits University. Please contact them in case you have any questions.

Appendix D: Index of interviews

Index of interviews		
Pramso (Kumasi)	Mangu (Wa)	Siriyiri (Wa)
MLNR02-09-2019		
KUN-PHY-30-07-2019	PHY-REP-27-03-2019	
OASL-REP-14-03-2019	CLS-REP-04-04-2019	
LC-REP-15-03-2019	LCREP2-04-04-2019	
PRA-ASS-20-03-2019	ASSA-MAN-21-11-2018	UNI-SIR-08-07-2019
KRO-NKO-23-07-2019	MAN-NAA-21-11-2018	SIR-NAA-11-12-2018
PRA-KRO-14-03-2019	MAN-TIN-19-11-2018	SIR-TIN-06-12-2018
PRA-IN01-19-01-2019	DOG01-15-11-2018	NAB-01-04-12-2018
PRA-IN03-20-01-2019	DOG02-15-11-2018	NAB-02-04-12-2018
PRA-IN04-20-01-2019	DOG03-15-11-2018	NAB-03-04-12-2018
PRA-IN05-20-01-2019	DOG04-15-11-2018	NAB-04-05-12-2018
PRA-IN06-20-01-2019	KOK01-19-11-2018	NAB-05-05-12-2018
PRA-IN07-20-01-2019	KOK02-20-11-2018	NAB-06-05-12-2018
PRA-IN08-21-01-2019	KOK03-20-11-2018	NAB-07-05-12-2018
PRA-IN09-07-02-2019	KOK-04-04-04-2018	NAB-08-05-12-2018
PRA-IN10-07-02-2019	KPA01-16-11-2018	TID01-10-12-2018
PRA-IN11-07-02-2019	KPA02-16-11-2018	TID02-10-12-2018
PRA-IN12-10-02-2019	KPA03-16-11-2018	TID03-10-12-2018
PRA-ST01-23-01-2019	KPA04-19-11-2018	TID04-10-12-2018
PRA-ST02-30-07-2019	TAD01-16-11-2018	TID05-10-12-2018
	TAD02-18-11-2018	TID06-10-12-2018
	TAD03-18-11-2018	TID07-10-12-2018
	TAD04-19-11-2018	TID08-10-12-2018
	MAN-ST01-26-03-2019	ST01-11-12-2018
	MAN-ST02-27-03-2019	ST01-13-12-2019

Appendix E: Interview guides

I. Interview guide for indigene-households

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes to 1hour. Please feel free to ask me any question.

Section 1: General question

1. Please tell me the extent of your family land including the one you have built on.
2. How did you acquire this land and what form of land holding you or your family hold in the land?

Section 2: Status of usufruct rights

1. Would you say you obtain benefits from family or community lands? If so, please tell me the forms of benefits.
2. What would you say makes you feel attached to this community as an indigene in terms of access to land? Please expand.
3. Are you willing to defend any community purpose related to land? If so, for what benefits will you or your family member be ready to defend this community?
4. Would you say that families should benefit from the leasing proceeds of previous land under their possession? If yes, please expand on why?
5. In current state of affairs in customary land management in this community, are indigenes able to obtain land for free or at a reduced price from the chief/family head?
6. Please tell me the ratio of portion of land given to families to that retained by traditional authorities during land conversion and leasing in this community?
7. Are the remaining portions retained by your family sufficient? Please expand your answer.
8. How is your family using the retained portion of land?
9. Did your family register the retained portions of land? If so, what interest did you register in it? Expand why.

10. Apart from the retained portions, if you need extra land will you pay the same purchase price of land as strangers pay for land in this community? Please expand.
11. Do you notice any changes occurring to your use rights in community land over time? If yes, can you tell me some of these important changes?

Section 3: Emergent benefits, practices and livelihood implications

1. Please tell me, how did this community expanded over time?
2. How did these services such as roads, electricity, water, etc., get to the community?
3. Would you say proceeds from lands leasing benefit your family or the community in any way? If so, please tell me important ways in which such proceeds benefit this community.
4. Apart from family lands you may hold, tell me any other forms of benefits that accrue to you or your family from customary lands? In your opinion are these benefits adequate?
5. Are you familiar with the rules that are applied in this community when lands are leased out? If so, please tell me about these rules?
6. In general, please explain any privilege(s) of an indigene relating to land in this community.
7. What were the main sources of livelihood for you and for your family in the past when this community was minimally expanded and land was more abundant? Can you tell me these in relation to the livelihood activities of men and women?
8. What are the main sources of livelihoods for you and for your family now? Please tell me these in relation to the livelihood activities of men and women.
9. Please tell me the reason for the changes in livelihoods activities?
10. Has any of your family member(s) migrated to other places? If so, please name such places and tell me the reason for their migration.

Section 4: Roles of indigene-household in changing usufruct rights and interactions with traditional authorities

1. Do you know how the emergent rules mentioned above (if any) constituted? If so, please tell me the process.
2. Does your family play any role in the institution of these rules? If yes, kindly expand.

3. Has your family engaged with traditional authorities regarding the conversion of your family land, the proceeds, the benefits, the practices, the rules, the compensation or related issues? If so, please tell me more about such engagement?
4. Did such engagement yield any results? If so, please expand.
5. Does this community in any way interact with the traditional authorities concerning any disagreement with customary land conversion and leasing? If yes, please expand.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

II. Interview guide for stranger settlers

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

1. How long have you resided in this community.
2. Please tell me how you acquired land to settle in this community.

Section 2: Opinion on Changing Usufruct Rights of Indigenes.

1. In your opinion, please tell me how indigenes' benefits in customary have changed and are changing ever since you settled in this community.
2. Do you see any confrontations, interactions, etc. between indigenes and traditional authorities in this community? Please expand.
3. Can you tell me important ways indigenes are losing in the conversion and leasing of customary lands in this community? Could you give concrete examples, please?
4. What would you say are the important ways in which indigene also gain in the conversion and leasing of customary lands in this community? Can you expand?
5. Do you think indigenes themselves play an active role in the change to their usufruct rights? Could you expand please?

6. What about Chiefs, Traditional council, etc., what important ways do they influence the changing usufruct rights of indigenes in this community? Please can you give specific examples?
7. Please describe how indigenes' livelihoods are becoming better off or worse off in relation to conversion and leasing of customary lands in this community.
8. Please share with me any other information you have on the processes that influence the change to land use right of indigenes in this community.
9. What other actors are involved in the conversion and leasing of usufruct rights of indigenes? Please expand on their roles.
10. Do you observe any evolving practices in the conversion and leasing of customary land within the past few years in this community?
11. If so do you think these practices emerge from interactions between indigenes and chiefs, Traditional council, Tendamba, etc.?
12. Also, do you observe any benefits to indigenes emerging from conversion and leasing of customary land? Please explain whether such benefits may be emerging from interactions between indigenes and these traditional authorities.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

III. Interview guide for traditional authorities (chiefs, sub-chiefs and *tindaanas*)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes to 1hour. Please feel free to ask me any question.

Section 1: General question

Please describe the land holding system in this community.

Section 2: Status of usufruct rights

1. Would you say indigenes have perpetual use rights in this community lands?

2. Do you convert and lease the land of families for urban development? If so, please tell me what informs the conversion and leasing of land?
3. Are there laid down arrangements that apply when converting land of families? If so, kindly expand on these rules or arrangements. Please explain these arrangements in relation to amounts of plots of lands taken from families.
4. Is compensation paid to families whose land is converted? If yes, please tell me the nature of the compensation what factors are considered in the compensation.
5. Are there laid down customs that provide specifically how indigenes are compensated for conversion of their use rights? If yes, please expand.
6. How long are the leases given out for? Please explain what happens after expiry of leases in 99 years?
7. Please tell me how revenues from leasing of community lands are utilised.
8. Do you receive any revenue from OASL? If so, how often do you receive such disbursements?
9. Would you say families benefit the sale proceeds of community lands? If so, please tell me some specific ways they benefit.
10. In current state of affairs in customary land management, would land be granted to an individual for free or at a reduced price if he/she requests it from you?
11. Would you say you are in control of conversion and leasing of community land? If so, please expand on how you are in control?
12. Are other royal members involved in leasing of customary land? If so, please briefly describe their role and how revenues of sales are accounted to you.
13. Would an indigene go through the same process of acquiring use rights in community just as an indigene? Please expand.
14. Do you notice any changes occurring to indigenes usufruct rights over time? If yes, can you tell me some of the most important changes?
15. Are there any privileges of indigenes in relation to customary lands in this community? If yes, please mention some of the important privileges.

Section 3: Emergent benefits and practices

1. Would you say proceeds from leasing of customary land benefit the community? If so, please tell me the specific benefits.
2. What portions of land is given to indigene families upon conversion of their lands? Please expand on what informs the portions given.

3. Apart the portions of land given to families upon conversion and leasing of land, please tell me any other benefits to families.
4. Please tell me what influence these benefits.
5. Are there emerging rules relating to the conversion and leasing of customary land? If so, please expand on such rules.

Section 4: Role of traditional authorities and interactions with indigenes in changing usufruct rights

1. Kindly tell me the sources of the rules mentioned above and how they are constituted?
2. Do you play any role in the institution of these rules? If so, please tell me your role in relation to the conversion, leasing of customary land, use of proceeds and compensation to families.
3. Do you engage with community members in the process of converting and leasing community land? If yes, please tell me specific ways in which you engage with them.
4. Do you encounter any disagreements or agitations from indigenes regarding the conversion of customary and leasing of customary land? If so, please expand.
5. What are the results of such agitations? Please expand.

IV. Interview guide for respondent of Physical Planning Department (PPD)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

1. As an employee of the PPD, are there other activities of the department relating to management of customary land that are not expressly stated in the statutes? Please tell me detailed examples.

Section 2: Role in changing usufruct rights

1. Does the PPD play any role in land conversion and leasing rules of customary lands in this community? Kindly expand on any such roles.

2. Is there any role of the PPD you know that relate to ensuring that indigenes benefit from conversion and leasing of customary land this community. If yes, can you explain this role? What about any results achieved in that regard?
3. Does PPD encounter any disagreements or agitations from indigenes regarding the conversion of customary and leasing of customary land in this community? Please expand.
4. Does PPD acknowledge the presence of usufruct rights in customary lands? If so can you please expand on what bases?
5. Do you realise any changes in usufruct rights of indigenes over time? If so, kindly tell me differences or similarities between the historical and current nature of the usufruct right.
6. Would you say indigenes continue to benefit from usufruct rights when lands are converted and leased for urban development? If so, please tell me indigenes existing benefits from conversion and leasing of customary lands.
7. Does the PPD put in place measures to ensure continuous existence of usufruct rights in customary land? Please expand.
8. Would you say there is a relation between the planning of peri-urban land and the nature of usufruct rights? If so, please expand on this relationship. [*Please explain how the planning of peri-urban areas affects existence of usufruct rights.*]
9. Would you say amid planning, peri-urbanisation poses any challenges relating to ensuring continuous enjoyment of usufruct rights of indigenes? Please expand.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

V. Interview guide for Assemblymen (key informants)

Hi! Good day, Honourable. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

How long have you been the Assemblyman/woman in this community?

Section 2: Knowledge on changing usufruct rights

1. Please describe in detail what you know about the manner in which land use rights of indigenes have changed over time in this community.
2. Do you see any confrontations, interactions, etc. between indigenes and traditional authorities in this community? Please expand.
3. Can you tell me important ways indigenes are losing in the conversion and leasing of customary lands in this community? Could you give concrete examples, please?
4. What would you say are the important ways in which indigene also gain in the conversion and leasing of customary lands in this community? Can you expand?
5. Do you think indigenes themselves play an active role in the change to their usufruct rights? Could you expand please?
6. What about Chiefs, Traditional council, etc., what important ways do they influence the changing usufruct rights of indigenes in this community? Please can you give specific examples?
7. Please describe how indigenes' livelihoods are becoming better off or worse off due to conversion and leasing of customary lands in this community.
8. Please share with me any other information you have on the processes that influence the change to land use right of indigenes in this community.
9. What other actors are involved in the conversion and leasing of usufruct rights of indigenes? Please expand on their roles.
10. Are you aware of any cooperation between indigenes and Chiefs, traditional council, Tendamba, etc. in the conversion and leasing of customary lands? Could you describe any examples please?
11. Do you observe any evolving practices in the conversion and leasing of customary land within the past few years in this community?
12. If so do you think these practices emerge from interactions between indigenes and chiefs, Traditional council, Tendamba, etc.?
13. Also, do you observe any benefits to indigenes emerging from conversion and leasing of customary land? Please explain whether such benefits may be emerging from interactions between indigenes and these traditional authorities.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

VI. Interview guide for Respondent of Lands Commission (LC)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

2. As an employee of the Lands Commission, are there other activities of the commission relating to management of customary land that are not expressly stated in the statutes? Please tell me detailed examples.

Section 2: Role in changing usufruct rights

1. Does the Lands Commission play any role in land conversion and leasing rules of customary lands in this community? Kindly expand on any such roles.
2. Is there any role of the Lands Commission you know that relate to ensuring that indigenes benefit from conversion and leasing of customary land this community. If yes, can you explain this role? What about any results achieved in that regard?
3. Does Lands Commission encounter any disagreements or agitations from indigenes regarding the conversion of customary and leasing of customary land in this community? Please explain.
4. Does Lands Commission acknowledge the presence of usufruct rights in customary lands? If so can you please expand on what bases?
5. Please, would you say usufruct rights are registrable interests in customary land? If yes, please tell me how widespread indigenes register usufruct rights?
6. Do you realise any changes in usufruct rights of indigenes over time? If so, kindly tell me differences or similarities between the historical and current nature of the usufruct right.

7. Are indigenes compensated for loss of usufruct rights during compulsory acquisitions? If so, how does the Lands Commission calculate/value compensation in respect of the usufruct rights for compulsorily acquired customary land?
8. Would you say indigenes continue to benefit from usufruct rights when lands are converted and leased for urban development? If so, please tell me indigenes existing benefits from conversion and leasing of customary lands.
9. Does the Lands commission put in place measures to ensure continuous existence of usufruct rights in customary land? Please expand.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

VII. Interview guide for respondent of the Office of Administrator of Stool Land (OASL)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

3. As an employee of the OASL, are there other activities of the office relating to management of customary land that are not expressly stated in the statutes? Please tell me detailed examples.

Section 2: Role, revenue disbursement of OASL and status of usufruct rights

1. Please tell me in practice the revenue collection and disbursement activities of OASL relating to customary land management.
2. How would you explain the activities of OASL in relation to that of customary land secretariats? Kindly expand on the differences and similarities.
3. Does OASL collect from and disburse any customary land revenue in respect of this community? If yes, please explain the sources or composition of the revenue that OASL collects and disburses in respect of this community. [*Revenue from land sales, rent, royalties, rent renewal, etc.*]

4. Please expand on the purposes that these revenues are disbursed for?
5. How often are revenues disbursed?
6. Would you say indigenes benefit from conversion and leasing of customary lands in this community? If so, tell me specific examples of indigenes benefit from conversion and leasing of customary lands.
7. Does OASL acknowledge the presence of usufruct rights in customary lands? If so can you please expand on what bases?
8. Do you realise any changes in usufruct rights of indigenes over time? If so, kindly tell me differences or similarities between the historical and current nature of the usufruct right.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

VIII. Interview guide for respondent of the Customary Land Secretariat (CLS)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

4. As an employee of the CLS, are there other activities of the office relating to management of customary land that are not expressly stated in the statutes? Please tell me detailed examples.

Section 2: Role, revenue disbursement of CLS and status of usufruct rights

9. Please tell me, in practice, the revenue collection and disbursement activities of CLS relating to customary land management.
10. How would you explain the activities of CLS in relation to that of Office of the Administrator of Stool Lands? Kindly expand on the differences and similarities.
11. Does CLS collects from and disburse any customary land revenue in respect of this community? If yes, please explain the sources or composition of the revenue that CLS

collects and disburses in respect of this community. [*Revenue from land sales, rent, royalties, rent renewal, etc.*]

12. Please expand on the purposes that these revenues are disbursed for?
13. How often are revenues disbursed?
14. Would you say indigenes benefit from conversion and leasing of customary lands in this community? If so, tell me specific examples of indigenes benefit from conversion and leasing of customary lands.
15. Does CLS acknowledge the presence of usufruct rights in customary lands? If so can you please expand on what bases?
16. Do you realise any changes in usufruct rights of indigenes over time? If so, kindly tell me differences or similarities between the historical and current nature of the usufruct right.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?

IX. Interview guide for respondent of Ministry of Lands and Natural Resources (MLNR)

Hi! Good day. Thank you for giving agreeing to participate in this research and for granting your consent. As I mentioned to you earlier, I am conducting this study for academic purposes to understand the change to use rights in customary lands and the role of various actors in the changes that occur to the land use rights of indigenes. If all is fine, I would like to start now and we will be done by 45 minutes. Please feel free to ask me any question.

Section 1: General question

1. As an employee of the Ministry of Lands and Natural Resources, are there other activities of the department relating to management of customary land that are not expressly stated in the statutes? Please tell me detailed examples.

Section 2: Role in changing usufruct rights

10. Does the Ministry of Lands and Natural Resources play any role in land conversion and leasing rules of customary lands? Kindly expand on any such roles.
11. Is there a broad national policy relating to usufruct of indigenes in customary lands? If you could you expand on such a policy?

12. Is there any role of the Ministry of Lands and Natural Resources you know that relate to ensuring that indigenes benefit from conversion and leasing of customary land this community. If yes, can you expand on this role? What about any results achieved in that regard?
13. Does the Ministry of Lands and Natural Resources encounter any reports of disagreements or agitations from indigenes regarding the conversion of customary and leasing of customary land in this community or in general? Please expand.
14. Does the Ministry of Lands and Natural Resources acknowledge the presence of usufruct rights in customary lands? If so can you please expand on what bases?
15. Do you realise any changes in usufruct rights of indigenes over time? If so, kindly tell me differences or similarities between the historical and current nature of the usufruct right.
16. Would you say indigenes continue to benefit from usufruct rights when lands are converted and leased for urban development? If so, please tell me indigenes existing benefits from conversion and leasing of customary lands.

I am done. Thank you very much for your time. Please is there anything you would like to comment on regarding the change of use rights of indigenes? Finally, is there anyone you would recommend to me to talk to?