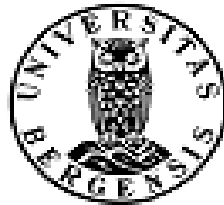


UNIVERSITY OF BERGEN

Department of Administration and Organization Theory



**ANALYSIS OF STATE INSTITUTIONAL CAPACITY
FOR LAND ACQUISITION IN GHANA: A CASE
STUDY OF THE PUBLIC LAND BUREAUCRACY**

BY

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DEDICATION

I fail to find the words to express my gratitude to the man who through his patience, expert guidance, extraordinary intellectual support, and inspiration have placed me at an academic juncture where I can walk confidently with my acquired knowledge in institutional theory in Political Science. Frankly, I would have abandoned this research work if not for your support. I count myself lucky to have been your student. Perhaps, I have also become a fervent disciple of your pals, Searle and Tilly. I dedicate this work to you;

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ABSTRACT

Gaining access to land is a problem that confronts both Government and non state capitalist agents in Ghana. The study examined why the state lacks an effective institutional capacity with the political and technical competence to mediate conflict of interests in its domestic land polity for land acquisition. It was interesting to observe that even Governments faced problems of land acquisition within the sovereign boundaries of the state. The investigative searchlight was therefore put on the competence of the public land bureaucracy to mediate conflict of interests among autonomous rational actors in two empirical cases of government land acquisition.

From the perspective of the rational institutional political theory, the study discovered that the public land bureaucracy lack any formal obligations with traditional land owners and land tenants for these actors to collectively engage Government in a rational discourse of land acquisition. On the contrary, the public land bureaucracy has not shed off its post-colonial cloth as an institution of violence used by Governments to deconstruct rival traditional land institutions. The traditional land institutions however own about 80% of the country's available land. Moreover, traditional land institutions continue to receive social legitimacy and among the general populace. Conversely, the power status of the public land bureaucracy have seen continued decline in line with its negative productive efficiency.

Underlying the problems of government land acquisition is a constitutionally bifurcated state with divided sovereignty over its land and people; whose public land bureaucracy lacks the political competence to mediate conflict of interests among Government, Traditional Authorities, and Land Tenants in discourses of land acquisition. The traditional state makers who laid the foundations of the state through war-making are in conflict over land ownership with the modern state makers who also inherited the state from colonial mercantilist powers. The emerging hypothesis from the study is that; a political institution with strong institutionalized obligatory relationships with relevant autonomous rational actors is more likely to competently mediate conflict of interests in a discursive object or issue, than a political institution that has weak or no institutionalized obligations with relevant autonomous rational actors within its institutionalized environment.

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ABBREVIATIONS

AGOA	Africa Growth and Opportunity Act
ALS	Asantehene's Lands Secretariat
ARPS	Aborigines Rights Protection Society
BRRI	Building and Road Research Institute
CID	Criminal Investigations Department
CPP	Convention Peoples Party
CSIR	Centre for Scientific and Industrial Research
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GFZB	Ghana Free Zones Board
GPHA	Ghana Ports and Harbours Authority
GSC	Ghana Shippers Council
HIPC	Highly Indebted Poor Country
IMF	International Monetary Fund
LAP	Land Administration Project
LC	Lands Commission
LTR	Land Title Registry
LVB	Land Valuation Board
MoU	Memorandum of Understanding
MP	Member of Parliament
NDC	National Democratic Congress
NGGL	Newmont Ghana Gold Limited
NLC	National Liberation Council
NLM	National Liberation Movement
NPP	New Patriotic Party
OASL	Office of the Administrator of Stool Lands
PNDC	Provisional National Defence Council
SAP	Structural Adjustment Programme
SD	Survey Department
UGCC	United Gold Coast Convention

CHAPTER 1

1.0 THE PROBLEM OF LAND ACQUISITION IN GHANA

The success story of economic growth in the fast growing economies is often attributed to one kind of investment: a high level of domestic private fixed-capital formation in the form of equipment acquisition. Feng (2003:157) put it this way: “Investment has been found to be one of the most robust determinants for growth among all potential factors that may be conducive to economic development, with the fast growing economies of the world almost invariably experiencing a high level of investment share of GDP”. Inversely, the failure of countries in their quest for economic development has been linked to the ineffectiveness of their institutions to promote fixed capital investment (De Soto 2000). Succinctly put by Leftwich and Sen (2007:5), “a central characteristic (and common cause) of failed states and failing economies is the absence of both agreed and appropriate institutions to govern both political and economic interactions”. The institutional capacity of states is therefore very important for their economic and political development.

Fixed capital investment depends on the effectiveness of property right institutions to deliver land to investors. A secure land ownership regime is the cornerstone of industrial capitalism and political stability. Without well functioning property right institutions, the capacity of the state to provide secure access to land is in jeopardy. The importance of land for a country’s economic development cannot be over stated here. In Latin America and Asia, countries such as Bolivia, El Salvador, Nicaragua, Brazil, Thailand, Philippines, Laos and Indonesia among many others embarked on land reform policies; to tackle the more deeply rooted structural problems of land acquisition and bring extralegal property into the legal property system so as to reap potential economic and political benefit (De Soto 2000, Holstein 1996).

In recent times, Ghana has implemented structural adjustment programmes (SAPs), the Highly Indebted Poor Country Initiative (HIPC), and the African Growth and Opportunities Act (AGOA) in a desperate attempt to promote economic development. However, the capability of the country to achieve economic development through

fixed capital investment is hampered by one big problem. Gaining access to available land in a timely, conflict-free, and cost efficient manner is a serious problem faced by investors (Berry 2001, Crook 2005, Kasanga 2000, Ray 1999). The problem of land acquisition has affected Ghana's potential to fully reap the economic opportunities that are falling off the fast moving wheels of global capitalism.

Many scholars, land administrators, local and foreign investors, and the media lay the problems on dysfunctional property rights institutions for land acquisition. The Financial Times of London in an editorial on Ghana's 'Golden Age of Business' economic initiative commented that the initiative had failed to deliver the expected economic results as many had hoped due to serious institutional problems among which is land acquisition (The Financial Times, London, 31 October, 2005). The editorial commented that over 80% of the country's land is owned by local community leaders called Chiefs and their traditional institutions that constitute a powerful and non transparent local political actors existing alongside the trappings of a modern democratic state. The editorial noted "since most land is vested in local chiefs, transactions are often messy and uncertain" (ibid).

A Malaysian High Commissioner to Ghana lamented to his host that "several Malaysian investors were willing to establish plantations and to invest in the housing sector in Ghana, but were unable to do so due to problems with land acquisition" (Ghana News Agency, 27 January 2006). The diplomat is reported to have said that land reforms in his country had given a higher commercial value to land previously controlled by tribal groups, and now making land accessible to foreign investors. The diplomat extended an invitation to Ghana to understudy Malaysia's Land Reform Programme which began more than 40 years ago, in a bid to improve land acquisition in Ghana (ibid). The problem of land acquisition is so pervasive in the country that one cannot finish recounting them since each new day presents fresh cases.

Lack of high quality staff, inadequate financial and material resources, bureaucratic opportunism and lack of inter-organizational coordination are some of the problems that have been identified as impacting on the competence of public land bureaucrats to facilitate access to land for investors (Antwi, 2001, Somevi, 2002, Kasanga and Kotey 2001). It is true that no administrative system can function rationally without technical

and human resources. Are there enough empirical grounds to believe that given enough funds, personnel, and adequate logistics, the public land bureaucracy can guarantee timely, transparent, conflict free, and cost efficient access to land?

Another problem identified by scholars is a prevailing environment of legal pluralism that makes it difficult to resolve problems that relates to land ownership disputes (Berry 2001, Kasanga and Kotey 2001, Ray 1999). According to Ray (1999:126), “traditional conflict-resolution mechanisms can also involve recourse to the courts of the Ghanaian state...investors faced the prospects of their capital and initiative being tied up for years in legal disputes without producing any profit”. If legal pluralism is the key problem affecting land acquisition then, it means that the actual problems lie deeper within the character of the state rather than just a simple matter of legality.

On the whole, there seem to be divergent opinions regarding the actual problems that account for the institutional failure of the state to facilitate access to land for investors to pursue economic investment. It is through the empirical analysis of some prominent cases of institutional failures behind land acquisition between prospective investors, land owners, and the intervening state institutional structures that the underlying institutional problems affecting access to land can be laid bare. For a country that is implementing almost every IMF/World Bank initiated economic reform policy instrument in an effort to develop, when direct capital investors find it difficult to gain access to land in a manner supportive of capital production, then it is a serious issue that warrants critical examination.

But, private capital investors are not alone in the quagmire of land acquisition in Ghana. Government after government were also caught in the quagmire of land acquisition when the country attempted to construct an inland port to facilitate its international trade. With all its monopoly over legalized institutions of organized violence, governments faced difficulties in land acquisition. The failure of public land institutions of a state to effectively mediate land politics within the domestic polity brings into sharp focus questions about the sovereignty of the state over organized actors. From a Political Science perspective, this is interesting and a more serious dimension to the problem of land acquisition. The study would rather problematize and critically examine why government encounter problems in land acquisition.

1.1 THE RESEARCH PROBLEM

In 1981, the Provisional National Defence Council (PNDC) took over political power through a military coup. Under the PNDC military Government, Ghana implemented series of IMF and World Bank structural adjustment programmes (SAPs). The economic liberalization programmes focused on transforming the country into a manufacturing and value added processing hub through privatization of state owned enterprises, simplification of customs and exercise procedures, establishment of free trade and export processing zones, and infrastructural development to facilitate trade.

Soon, the military government realized that the country's heavy reliance on its two sea ports for trade was hindering Ghana's economic development objectives. This was because the volume of goods passing through the sea ports was more than its capacity could contain, leading to long delays in the processing of trade. Moreover, the sea ports were far away from the hinterlands, and even more remote from the country's northern land locked neighbouring countries (Burkina Faso, Niger, and Mali) that channel much of their international trade through Ghana's coastal borders. Government decided to construct an inland port¹ in Ashanti region - the middle belt of the country - to serve as a hub of free trade.

The following were Government's objectives for the inland port project²:

- Ease congestion at the country two existing sea ports (Takoradi and Tema):
- Create job opportunities for the unemployed youth living in and around the inland port;
- Reduce the aggregate transport cost of international cargo to importers and exporters from the middle and northern parts of Ghana;
- Facilitate the use of the Ghana Corridor by the landlocked countries of Burkina Faso, Mali and Niger; and

¹. The term "inland port" refers to an import-export processing centre located away from traditional coastal borders with the main vision to "facilitate and process international trade through strategic investment in multi-modal transportation assets and by promoting value-added services as goods move through the supply chain" (Harrison et al 2002:1).

² Official Report of the Parliamentary Debates on the inland port project. Fourth Series, Vol. 23. No. 7, pp. 395-396

- Enhance and facilitate customs examination, duty payment and cargo clearance and also to promote the establishment of export processing zones in the vicinity of the inland port.

The project was evaluated as “economically viable and financially profitable”; and estimated to cost US\$ 10.3 million. The construction of an inland port does not only require huge capital investment, but being a fixed capital investment, the foremost requirement is access to a suitable land. Obtaining access to these two crucial resources became a problem. In a Government report, the port project “run into difficulties as a result of lack of finance and the acquisition of a suitable land for the project”³. Therefore it remained on the drawing board. In 1992 the PNDC military government returned the country to multi-party democratic rule after its political party, the National Democratic Congress (NDC), had won power. With enhanced political stability and modest economic achievement, Ghana’s economy became a beacon of hope for local and foreign investors.

Around 1995, the NDC Government, through the Ministry of Roads and Transport mandated the Ghana Shippers Council (GSC) to reactivate the inland port project. The GSC identified suitable land in three communities with proximity to Kumasi- the capital of the Ashanti Region. The three communities, arranged in order of priority are Fumesua, Boankra and Ampabame. With financial capital secured and suitable land identified, all was now set for Government to acquire land in any of the three communities for the implementation of the project.

Fortunately for the NDC Government, the state, through its public land institutions, had previously compulsorily acquired vast suitable land in Fumesua, much of which lay idle. However, between 1995 and 2000, Government could not gain access to the statutorily acquired land for this important private sector development project. This is notwithstanding the fact that Government used its monopoly over the state institutions of organized violence against local land owners and other property owners with conflict of interest. The NDC Government failed to gain access to the land until it lost political power through universal adult suffrage to the main opposition political party- the New Patriotic Party (NPP).

³ ibid

The newly elected Government, with its immense support base in the Ashanti region, could also not renegotiate the acquisition of the land from local land owners. In 2001, the NPP Government was therefore compelled to relocate the sitting of the Project to the second priority area, that is, the Boankra local community. In Boankra, Government was met with fresh problems of land acquisition from local community leaders, other actors outside the community, and farmers. It was not until 2003 that Government was able to negotiate its way through the many problems of land acquisition, and gained access to the identified land for the take off of the project.

It is within the above land politics that the study seeks to analyse the institutional capacity of the state for land acquisition; and, to find out how this capacity impacts on the competence of public land organizations to mediate conflict of interests among autonomous rational actors involved in the discursive process. It is interesting that government after government encountered problems of land acquisition within the geographical boundaries over which the state claims legal sovereignty. One therefore wonders kind of problems could render legal monopoly over the state institutions of organized violence so powerless and almost useless.

The failure of governments, both military and civilian, to gain access to land through their unique monopoly over organized state institutions of violence raises serious questions over the character of the Ghanaian state, its domestic land politics, and the power status functions imposed on the public land bureaucracy. Perhaps, the power status functions imposed on the public land bureaucracy to mediate conflict of interests in government land acquisition are inadequate to secure collective agreement, support, and action for the process. Or worse, the political sovereignty of the state over organized local communities and other groups within the domestic polity is questionable. These issues shall be looked at within the confines of the study.

1.2 RESEARCH OBJECTIVE

The objective of the study is to critically analyze how the institutional capacity of the state for land acquisition impacts on the competence of the public land bureaucracy to mediate conflict of interests among autonomous rational actors to gain their collective agreement, support, and action for government land acquisition.

1.3 RESEARCH QUESTIONS

In furtherance of the above objective, the following questions are researched:

1. What is the institutional capacity of the public land bureaucracy for land acquisition in Ghana?
2. How does the institutional capacity of the public land bureaucracy impacts on the competence of bureaucrats to mediate conflict of interests among relevant autonomous rational actors in a discourse of government land acquisition?

It is hoped that these two questions will help to empirically analyze the two cases of government land acquisition to unearth the institutional problems that affects the on competence of relevant officials to facilitate access to land for government.

1.4 CONCEPTUAL ISSUES

Before proceeding further, there is the need to define certain conceptual terms that will be used extensively in this study. The concepts are Land, Land Acquisition, Institution, and Traditional Authority.

1.4.1 LAND

Land is defined, basically, as the physical area of the earth that makes possible agricultural production, real estate development, infrastructural development, and domestic fixed capital investment. For clarity, other associated meanings of land such as air, water, and trees are excluded from the definition for the purpose of this study. The definition of land used in this study is therefore restricted to the physical immovable portion of the earth that is owned by an individual, family, corporate group, or the state as their property. Land ownership means that a person is recognized by other relevant autonomous actors with conflict of interest in the land as the legitimate and legal owner of that plot of land. The conflict of interest generated in land is necessitated by the fact that it is a scarce resource that has value and meaning to social forces or actors.

1.4.2 LAND ACQUISITION

Land acquisition in this study thus refers to the situation whereby an agent gain access to a well defined portion of the physical land within a particular geographical area of the earth. In modern times, usually, the ownership of land is evidenced by the possession of a legal document called land title obtained after going through a process of formal registration of the terms of the acquisition.

The acquisition of land is the outcome of an institutional procedure that is collectively agreed upon by relevant landed interests or actors within the state. The outcome of the process depends on the context of land ownership and the obligations that must be fulfilled in order to gain access to a piece of land. Having acquired the land, the owner decides what to do with his acquired property within the terms of the acquisition and the development requirements specified by local development planning agencies.

1.4.3 INSTITUTION

It is almost impossible to understand institutions from a single disciplinary orientation. This is because political scientists, sociologists, anthropologists, organization theorists, economists, and other disciplines stress different aspects of it. It is however well accepted among the various social science disciplines that without people, language, and collective intentionality an institution can never exist.

From the institution of human language to the political institutions of the state, it is not an exaggeration to say that human beings live in an institutionalized world. The study of institutions is the study of power relationships and influence- the substance of the discipline of politics. In spite of its pervasiveness, and the growing consensus in the social sciences that 'institutions matter' for rational human action and social interaction outcomes (Gran 2005a, 2007, March and Olsen 2004, Searle 1995, 2001) the definition of an institution is one of the most contested areas in social science.

The concern of the study is to understand the effects of a particular type of institution, namely, the public land bureaucracy, on conflicts of interests among autonomous rational actors, and on rational collective action. The definition we seek for is therefore geared towards the understanding of how the political administrative

institutions of the state are created, evolve, and function to regulate diverse conflicts of interests. It is imperative that the definition of an institution accounts for the formal and the informal constitutive elements; as well as their relational linkages in social interactions. Two famous definitions of an institution from North (1990) and March and Olsen (2004) receives attention here to further our understanding about how institutions affect human action and outcomes.

In the famous definition provided by Douglas North (1990:1), “Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether political, social and economic”. North’s definition is useful for its coverage of both the formal and informal aspects of institutions. Harris (2006:4) correctly notes that “formal institutions, like legal rules, are always and necessarily embedded in deep, informal social structures, involving such factors as trust, duty, and obligation, which have to be studied substantively”.

A useful example of the formal-informal institutional duality is provided by Leftwich (2006:1): “Laws which grant, recognize, and protect individual land ownership establish formal institutions governing property rights in land. Communal systems of land tenure, on the other hand, may be thought of as informal, embodying rules which have been established by custom and convention and do not permit private ownership, purchase or sale. Both institutional arrangements have different implications”. The proper integration of informal institutions into formal institutional structures is the political challenge for institutional designers.

North’s famous definition of institutions leans heavily on the regulative aspects of an institution and suppresses the developmental collective intentionality behind the creation of institutions. Beyond the incentives structured by institutional constraints, the definition does not go far enough in clarifying why human actors who have no need for the promised incentives should follow institutional rules seen as “constraints”. The capacity of institutions to exert wilful compliance in the face of undesirable outcomes is an important aspect of political institutions that is missing.

Moreover, the definition limits our understanding of the basis, nature, and effects of the power conferred on political administrative institutions to shape social interactions. What exactly enables institutions like public bureaucracies to shape social interactions through coercive instrument? This remains unanswered in the definition. Even more importantly, formal institutions of the state go beyond enactment of the rules of the game. Rules, by themselves cannot have any impact on developmental goals if they are not embedded in human and material resources.

March and Olsen provides a more comprehensive definition of an institution that fills some of the missing gaps in North's definition: I their perspective, "An institution is a relatively stable collection of rules and practices, embedded in structures of *resources* that make action possible- organizational, financial and staff capabilities, and structures of *meaning*, that explain and justify behavior – roles, identities and belongings, common purposes, and causal and normative beliefs" (March and Olsen 2004:5).

One can infer from March and Olsen's definition that beyond incentives rational actors are more likely to follow institutional rules that even limit their own opportunities because institutions weave together identities, common purposes, and normative beliefs to make collective action possible among actors with conflict of interests in a common object. Their definition clearly separates the rules and shared meanings of institutions from the resources that make action possible. But March and Olsen also take institutions as given or "stable collections". What remain unaccounted for are the origin, basis, and nature of the power embedded in political institutions.

The study improves on the two definitions and tries to define institutions in a way that accounts for their origin, nature of their power status, and the basis of their resources. *An institution is a relatively stable and meaningful system of constitutive rules of obligations discursively imposed on entities, people, and structures of resources through the collective intentionality of rational human actors; to interact in systematic relationships that explain and justify rational behaviour, action, or outcome.* When actors collectively impose power status functions on organizational structures to function as institutions, there is reason to believe that they will subject themselves to the constitutive demands of their own obligations. Every institution is

normatively meaningful to the creators. Institutional survival may have nothing to do with the efficiency imperative stressed by transaction cost theorists. Also, institutional change may be inevitable when an institution loses the power status imposed on it.

The origin and nature of the institutional power of political institutions in having an effect on rational human action is founded on institutional obligations. “Everything we value in civilization requires the creation and maintenance of institutional power relations through collectively imposed status-functions. These require constant monitoring and adjusting to create and preserve fairness, efficiency, flexibility, and creativity, not to mention such traditional values as justice, liberty, and dignity. Institutional power -massive, pervasive, and typically invisible- permeates every nook and cranny of our social lives, and as such it is not a threat to liberal values but rather the precondition of their existence” (Searle 1995:94).

The fundamental feature in the creation of an institution is not merely the structures of resources, rules, or practices; but the collective intentionality of rational actors in the imposition of power status on such structures of resources. The process makes it possible for those structures, rules and resources to have power status and also interact meaningfully with autonomous rational actors. The type of power status imposed by actors on institutions differs across institutional sectors. This explains the difference between political, religious, economic, and academic institutions. For instance, the state differs from the church because it creators imposes upon the state a power status as a legal instrument of organized violence that may be used by governments to shape behaviour, structure incentives, and against enemies. The church, as a religious institution, does not have such a power status to legally use violence on members.

Institutional differences notwithstanding, the fundamental principle underlying the initial creation of political and religious institutions does not take a different path aside collective intentionality, “we agree”. When an institution enjoys a high power status-function from relevant actors within the institutional field, the institution enjoys strong feelings of identification from it political subject actors. The expansion and survival of a political institution may however take a different approach aside collective intentionality of individual members. This is because a political institution, once created, may use violence against individuals in the name of collective interests.

1.4.4 TRADITIONAL AUTHORITY

Conceptual terms such as Native Authority, Customary Rule, and Indigenous Authority are used by some scholars (Dia 1996, Kimble 1963) in reference to the same type of political authority labelled Traditional Authority. In fact, the British colonial state preferred to use the term 'Native Authority' in reference to the system of authority which they met in the Gold Coast (now Ghana). Traditional authority is a form of political institution at the local community level of governance in Ghana. The institutional basis of the system of traditional governance predates the modern Ghanaian state. Therefore traditional authorities and their political institutions largely derive their power and legitimacy from sources outside those conferred by the modern state makers. The political legitimacy of traditional authorities in Ghana is deeply embedded within cultural and historical contexts which even the modern Ghanaian state lacks (Ray 1999). The modern state and Traditional Authority political relations have implications for claims to the land occupied by the Ghanaian state.

In the Ghanaian society, traditional authorities are generally called Chiefs and the traditional political institution is known as 'Chieftaincy'. The 1992 constitution of Ghana defines a chief as "a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled⁴, enskinned or installed as a chief or queen mother⁵ in accordance with the relevant customary law and usage". The governance structure of the chieftaincy institution extends deeply to reach the doorstep of the ordinary native in the community. Every citizen of Ghana comes from a family, which constitute the basic structure of the traditional authority system of governance. Traditional authorities are always quick to point out this fact to their errant political subjects of the danger of being sanctioned for any behaviour that contradict the traditional norms of society.

⁴ The seat of authority of a chief in southern Ghana is a stool which is normally made of wood. Enstoolment is a process through which the selected royal becomes a chief. In northern Ghana, the seat of authority is the skin of an animal. A land that is communally owned is called Stool Land or customary land

⁵ A queen mother refers to a woman who is installed from the royal family as "the senior female royal officeholder, not necessarily being literally, physically the mother of the chief" (Ray 1999:142).

Traditional Authorities therefore occupies powerful political institutions existing at the local level of the Ghanaian state that claims control over a defined territorial boundary that is constitutive of the people as subjects and also usually the land. “Such a territory has clear-cut boundaries and the ruler’s authority is supported by well developed administrative machinery and clearly defined judicial institutions” (Nukunya 1992:5). Within academic discourses, the defined geographical territory over which traditional authorities exercise political power is referred to as the traditional state. In the pre-colonial days traditional authorities performed the executive, legislative, and the judicial functions of the state through well structured offices. Traditional states like the Asante state, the Denkyira state, the Fante state, and the Dagomba state had their own police security networks and armed forces for the defence and protection of the state. Traditional authorities collected taxes from subjects and also conducted foreign policies beyond their geographical territories.

The highest level of the traditional authority system of governance is occupied by paramount Chiefs who manage a number of local communities, with each headed by a sub chief. By their historical access to revenue from land and taxes, the members of royal families, usually, have received the best of formal education from prestigious educational institutions both within and outside Ghana. It is less surprising that today people who assume the position of paramount Chiefs are those who have also distinguished themselves in their former careers in politics, business, and public service as top government statisticians, top police and army officers, national legislators, banking officials and many other areas. They were part of the *crème de la crème* found in all sectors of the domestic and international political economy.

The territory over which traditional authorities exercise political power normally comprise a homogenous ethnic group sharing common language, culture, and a sense of nationhood. They are bounded by the performance of a number of rituals to maintain and protect their traditional institutions. Some of the traditional states like Asante are highly centralized in the sense that it has an overlord chief whose authority is recognized throughout the territory that falls under his political domain.

The unique set of shared culture, language, and nationhood in the traditional society combine to form an important capital that makes the chieftaincy institution a powerful

political force in Ghana; and play pivotal roles in the development of local communities. Even more importantly, the role played by traditional authorities in customary land administration makes their political organizations important agencies in processes of land acquisition. If it is true that “36000 towns and villages in Ghana are being directly governed by Chiefs and that only 12000 are directly served by central government” (CDD 2001:38), then one can imagine the extent of the power, authority and role of traditional political institutions in land acquisition.

One therefore sees parallels of the traditional state with the modern state as both exercise political claims over institutions of organized violence within their respective territories. Traditional authorities based their sources of legitimacy on some religiously defined, culturally accepted, and historically honoured divine right to rule. This divine right is used for making authoritative decisions regarding the maintenance of law and order, the behaviour of subjects, the use of land, and also the protection of societal values. Traditional authorities in Ghana today, hold custom-sanctioned high power status in local communities and continue to perform many crucial functions particularly in customary land acquisition. The important role of traditional authorities and their institutions will be seen the discourses of government land acquisition.

1.5 OVERVIEW OF THE STUDY

The study is organized into ten chapters. In chapter 2, the discourse analysis research methodology used for the study is discussed.

Chapter 3 presents the theoretical framework through which the two empirical cases of government land acquisition are analyzed and the findings understood.

In chapter 4, the study delineates the institutional framework for land acquisition in Ghana by tracing its historical emergence through the political process of state making and state formation. The nature, character, and power status functions of the emergent public land bureaucracy for land acquisition are then presented in chapter 5.

Chapter 6 provides the context for rational action by autonomous actors with conflict of interests in government land acquisition. The subject positions of the discursive

actors, the obligations they have committed themselves to as political subjects, and the political agencies they use to achieve their interests are discussed as the background for rational analysis of actions.

The narratives of the two empirical cases of government land acquisition occupy chapters 7 and 8. In chapter 7, the discourse of compulsory government land acquisition that took place in Fumesua is presented. The discourse of the interaction regarding how government tried to compulsorily acquire the land, the opposition generated from other actors, the problems encountered by the discursive actors, and the failure of government to acquire the land, are narrated. Chapter 8 follows a similar narrative format. Here, how the discursive actors collectively managed to agree in the discourse of government land acquisition are captured. The differences and similarities of the problems encountered and the competence of the public land bureaucracy in mediating conflicts of interests in government land acquisition becomes clear.

Chapter 9 delves into a theoretical analysis of the two cases of land acquisition to critically examine how the institutional capacity of the public land bureaucracy affects its competence to mediate conflict of interests among Government, Traditional Authorities, and Land Tenants in public land acquisition.

The study ends with chapter 10 where the findings from the empirical analysis are summarized and the final conclusion made.

1.6 CONCLUSION

The institutional capacity of the Ghanaian state to create a sound property rights regime that effectively facilitate access to land is very important for the development of the state. Creating such institutional capacity is the problem facing government, investors, land owners, and land bureaucratic elites. The rest of the study focuses on how the institutional capacity of the state for land acquisition impacts on the competence of public land bureaucrats to mediate conflicts of interests among autonomous rational actors such as traditional authorities in a discourse of government land acquisition.

CHAPTER 2

2.0 RESEARCH METHODOLOGY

The appropriateness of research methodology is very important for the scientific evaluation of the claims made by a study. This chapter discusses discourse analysis as a research methodology used for the study. Issues bordering on the appropriateness of the methodology, the data collection processes, the method of data analysis, and challenges encountered on the field are presented here.

As Silverman (2006:280) correctly emphasizes, “It is an increasingly accepted view that work becomes scientific by adopting methods of study *appropriate* to its subject matter. Social science is thus scientific to the extent that it uses appropriate methods and is rigorous, critical and objective in its handling of data.” The choice of a methodological approach, as always in scientific research, depends on what the study tries to do and where it seems that one may be able to make progress.

2.1 APPROPRIATENESS OF THE RESEARCH METHODOLOGY

Any methodological approach that is considered for research also has implications even for the theoretical models that might be used for the interpretation of research data. Alker (1996) suggests that political researchers reconnect their research methodology with communicatively oriented political phenomenologies or with critically interpretive logics of political inquiry into central political concerns of power and influence, systems of such relationships, and justifications for collective action. Qualitative discursive strategies are therefore suggested. Many other scholars also suggest critically interpretive logics for understanding institutional effect on rational action (Searle 1995, Rydin 2003).

In the opinion of Alker, quantitative political methodologies are not appropriate for studying the substance of power and influence in institutional political relations. Alker (1996:788) takes an extremist position in describing quantitative political methodology as a package of “used, or remodelled tools developed by other methodologists for other disciplines’ key substantive problems” rather than for the

authentic study of the substance of power and influence in politics. In a research environment where the research population is not well defined and some of the actors under study are elusive, qualitative research methodology thrives better in comparison to the quantitative research approach.

Communicative approaches enable the institutional analysts to unravel the normative values and obligations that influence the positions of practical actors, rational analysis of the choice of strategies, and the outcomes produced. Understanding the normative values that underlie institutional obligations entails a qualitative research endeavour. The qualitative research domain thus offered a more appropriate research approach for studying fundamental issues of power relations, subjective positions of actors, the choice of political agencies, and the rationality of actions in the discourses of government land acquisition.

The qualitative approach offered by the methodology also helped in dealing with specification uncertainties regarding the identification of discursive participants involved in the discourse of government land acquisition. Discourse analysis enabled the construction of the discursive actors, their subjective positions, and also the political subject within the institutional elements of the public land bureaucracy. These laid the grounds for the rational analysis of actions taken by actors. Also important was the fact that, the methodology enabled the continuous modification of the research questions according to the dictates of logical clarity. Now the discussion looks at the substance of the methodological approach.

2.2 INSTITUTIONAL DISCOURSE ANALYSIS

Discourses “refer to systems of meaningful practices that form the identities of subjects and objects. At this lower level of abstraction, discourses are concrete systems of social relations and practices that are intrinsically *political*, as their formation is an act of radical institution, which involves the construction of antagonisms and the drawing of political frontiers between ‘insiders’ and ‘outsiders’. In addition, discourses always involve the exercise of *power*, as their constitution involves the exclusion of certain possibilities and a consequent structuring of the relations between different social agents. Moreover, discourses are *contingent* and

historical constructions, which are always vulnerable to those political forces excluded in their production, as well as the dislocatory effects of events beyond their control” (Howarth and Stavrakakis (2004:3).

According to Howarth and Stavrakakis (2000:4) “Discourse analysis refers to the practice of analysing empirical raw materials and information as discursive forms.... empirical data are viewed as sets of signifying practices that constitute a discourse and its reality, thus providing the conditions which enable subjects to experience the world of objects, words and practices. This enables discourse theorists to draw upon and develop a number of techniques and methods in linguistic and literary theory commensurate with its ontological assumptions”. Institutional discourse analysis is driven by a theory that assumes that all objects and actions are meaningful, and that their meaning is conferred by historically specific systems of rules.

Discourse analysis of social interaction and institutional effects on human action requires the analysts to find answers to some basic questions. First and foremost one must identify who the discursive are. The analysts must then clearly specify the object of social interaction. This is because the object of institutional discourse is the centre around which the discursive participants define their positions. The identification of the participants and the object of discursive focus then enables the analysts to socially construct the discursive positions of the actors in order for one to appropriately understand the actions taken by the interactive participants.

Gran (2004:36) also notes that “a discursive practice gives form to a field in society, the objects in the field and their order, their relations”. Institutional discourse analysis examines how participants, objects, discursive practices, and their relations all “enter or are parts of a structuration process giving continuously new form to social (or natural) reality” (Gran 2004:36). It is only when the actors, their discursive positions, the actual actions taken by the actors, and the outcomes produced from their interactions have been empirically accounted for, that the analyst can draw logical conclusions about the impacts of institutions on the actions of autonomous actors.

Discursive positions articulated by actors with conflict of interests in the two cases of land acquisition were analyzed to find out the problems that affect the competence of

public land bureaucrats in facilitating access to land for government. It was noted that land as a discursive object has different meanings for the different interests involved in the social interactions. For capital investors, the value of land lies in its conversion into profitable investment activities such as for real estate development, commercial agriculture, and anything supportive of fixed capital investment. Land is thus meaningful to capitalists in economic terms. For government, the possession of land signifies political power, and control over subjects and everything on, under, or above land. Government discourse of land is weaved around power, authority, and political control. Traditional authorities also articulate similar discourse as government, but their position is also coloured by cultural and religious meanings of land.

In the discursive positions of government and traditional rulers land therefore signifies something more than economic investment. One can therefore expect that in social interaction over land acquisition capital investors, government, and traditional authorities articulate conflicting discourses. Unravelling how such conflicting discourses are peacefully mediated by the public bureaucracy to pave way for rational collective action was important to understanding any institutional problems that were encountered in the process of land acquisition. The task of unravelling the discourse of land politics articulated by government, traditional authorities, and other actors with conflict of interests in the process of government land acquisition were made possible through the discourse analysis research methodology.

Discourse analysis, as a research methodology, “is not a closed system which has already defined all its rules and categories, but an open-ended programme of research whose contours and aims are still very much in the making. A number of the discursive dimensions that have progressively emerged as important are still not sufficiently developed”. Notwithstanding this fact, it has also been noted that this speech act theoretic methodological approach offers promising new avenues for research (Howarth et. al. 2000).

2.3 UNIT OF ANALYSIS

The study undertakes a micro-level institutional analysis of the impact of institutions on rational action. The unit of analysis focus at the level of social interaction or the

action arena where “two holons- participants and an action situation- interact as they are affected by exogenous variables and produce outcomes that in turn affect the participants and the action situation” (Ostron 2005:13). The reaction of autonomous actors to exogenous variables offset by the discourse of land acquisition will help to understand the institutional problems that impacts on the competence of the public land bureaucracy to effectively mediate conflict of interests among autonomous rational actors and facilitate access to land for government.

According to Searle (1995:100-1); If we take as our primary target of analysis not the organizational structures, like governments, but the agents who operate on and within those structures, “then the great divide in the categorization of institutional reality is between what the agent *can* do and what the agent *must* (and must not) do, between what the agent is *enabled* to do and what he or she is *required* to do as a result of the assignment of status”.

At the level of social interaction one is able to know the subjective discursive obligations that are articulated by relevant discursive participants (government, land owners, and land tenants) and how such subjective discourses are politically accommodated within or excluded from the political agency for land acquisition to produce collective action or outcomes. The factors that impacts on the competence of the public land bureaucracy as a collective organizational actor in mediating conflicts of interests in land acquisition can then be empirically appreciated.

2.4 METHOD OF DATA ANALYSIS

Searle (1995) provides the theoretical formula that underlies the collective intentionality of autonomous rational actors in the creation of institutions or institutional facts. The Searlean theoretical principle is expressed in the form: (We agree (X counts as Y) in context C)). This theoretical formula was used by the study to analyze the competence of the public land bureaucracy to mediate conflict of interests among autonomous rational actors in a discourse of government land acquisition. The application of the formula thus took the form: (We (Government) (Traditional Authority) (Land Tenant) Agree (X counts as Land Acquisition) C))))

The study empirically analyzed two cases of government land acquisition. A 2 x 2 word table was created from the above analytical formula to find out the similarities and differences in the two cases that accounted for the different discursive outcomes. A cross-case synthesis is an analytic technique supported by some social science research methodologists (Creswell 2007, Yin 2003) as a reliable method of analysis where the research studies two or more cases.

The cross-case analytical approach helps to establish patterns of relationships in social interaction, looks for correspondence between two or more categories, and helps to display the data from individual cases according to some uniform framework. Howarth and Stavrakakis (2000:4) noted that discourse analysis “enables discourse theorists to draw upon and develop a number of techniques and methods in linguistic and literary theory commensurate with its ontological assumptions”. The constructivist analytical approach “offers novel ways to think about the relationship between social structures and political agency, the role of interests and identities in explaining social action, the interweaving of meanings and practices, and the character of social and historical change” (Howarth and Stavrakakis 2000:5).

2.5 DATA COLLECTION

The study relied extensively on naturally occurring data and where necessary used interview data, or what Silverman calls “researcher-provoked data” for elaboration and clarification of interesting issues raised by the former type of data. These two types of data collected are discussed below.

2.5.1 NATURALLY OCCURRING DATA

Natural occurring data constitute a wide range of linguistic and non-linguistic data – speeches, reports, manifestoes, historical events, policy documents and many others - that are created independent of the researcher’s interest. These empirical data are viewed as “sets of signifying practices that constitute a discourse and its reality, thus providing the conditions which enable subjects to experience the world of objects, words and practices” (Howarth and Stavrakakis 2000:4).

The articulation of various discourses by the relevant actors with conflict of interests in the process of government land acquisition left in its path varieties of naturally occurring data. The Ghana Shippers Council (GSC), as the main project implementing agency, became the centre of attraction for land owners and land tenants. Letters, petitions, writ of sermons from private legal practitioners, were all directed by various actors to the GSC. The GSC sometimes also used press conferences to articulate its position on the challenges and pertinent issues raised by land tenants and land owners.

Land tenants and traditional authorities had also left behind interesting texts particularly in the media through press conferences, violent confrontations, and demonstrations. Some of these interesting discursive data were collected for analysis. The acrimony from the social interaction over the acquisition of land by government raised concerns in the national House of Parliament. A written text over the unfolding deliberations in the legislative house was also collected. In the end, all these discursive texts enriched the empirical analysis of the cases under the study.

2.5.2 INTERVIEW DATA

Since the written texts created by discursive actors exist without the intervention of a researcher, most often they tend to leave out some crucial information which the researcher is interested in. This calls for researcher provoked data to fill in information gaps. Researcher-provoked data constitute the type of data created through the actual intervention of the researcher through research methods like interviews and observation. With this approach the researcher create data which would not exist independently apart from the researcher's intervention. Qualitatively oriented non structured focused interviews were conducted with purposively selected relevant actors for such purposes. The interview data is presented in table 1.

Table 1: Fieldwork Interview Participants

POSITION	AGENT/SUBJECT-ACTOR	NUMBER
GOVERNMENT	Ghana Shippers Council	6
PUBLIC LAND BUREAUCRACY	Regional Lands Commission	5
	Land Title Registry	2
	Land Valuation Board	1
TRADITIONAL AUTHORITY	Asantehene's Lands Secretariat	3
	Boankra Traditional Authorities	3
LAND TENANT	Affected Farmers in Boankra	8
Total		26

(Source: Author, June-August 2006)

Due to the many actors involved in the social interactions over land acquisition inadequate time made it impossible to interview land tenants and traditional land owners involved in the interaction over access to land in Fumesua. However, their discursive positions in the institutional interaction over land acquisition were captured through natural occurring data that were collected for analysis.

2.6 RESEARCH CHALLENGES

With high expectations I began my interviews by focusing on the Ghana Shippers Council since it was the agency mandated by Government to implement the inland port project. After official clearance had been given by the Deputy Chief Executive of the GSC, I began the institutional data collection process. To my surprise, it turned out that the land acquisition in Boankra was far from over because of conflict between the land owners in the sharing of money from the lease of the land. The conflict had courted media interest. I was therefore competing with local journalists for information on the same issue.

Due to the political twist which the land acquisition process had taken, both in the media and within traditional institutions, the relevant officials who had the required information were reluctant to release it. In the view of one GSC official, “the politics of the civil service” in Ghana was a reality that threatens the tenure of a civil servant in the unfortunate event that the media put a negative political spin on information that they give out to the public.

Initially, on countless occasions, I was told by my interviewees not to record or write some important accounts that were considered to be “secrets” surrounding the interaction process. The event that finally made some officials of the GSC to release the required information was the shared experience between researcher and some officials who had received formal higher education in Norwegian Universities. Three out of six officials interviewed within the GSC had received higher education from Norwegian tertiary institutions.

The problem of accessibility to relevant actors for interviewing was even worse with the traditional authorities. The Asantehene’s Lands Secretariat intimated that the process of facilitating access to the land far from over; and given the background of their bitter experiences with claimants to the land, it was undesirable to release information regarding the role of the Asantehene in the land transactions. Gaining access to the higher offices of traditional authorities became a problem for a ‘commoner’. Interviewed officials at the Asantehene Land Secretariat usually laughed off the idea of interviewing the occupant of the golden stool by a commoner. It was less surprising that a commoner with no institutional obligations with higher traditional authorities should encounter an iron curtain that separated him from traditional rulers customarily considered by their subjects as irreproachable.

Traditional Authorities and land tenants in Boankra were forthcoming with their version of what had transpired in the discourse of government land acquisition. Their willingness and cooperative attitude may be explained by the fact that they were still feeling aggrieved for having been cheated by their higher traditional authorities and government. A day prior to my interview with the Boankra Traditional Authorities, they had travelled to Kumasi to attend a scheduled meeting with the Asantehene and

the Ejisumanhene to deliberate over some chieftaincy problems that had stalled the disbursement of money paid by the GSC for the acquisition of the land.

The data collection process was later to made headway with the initially reluctant public officials. In spite of the speed with which naturally occurring data were collected, the data were not collected on a silver platter. For instance, seeking basic information regarding how much money was paid for the lease of land was enough to trigger consultations among junior and senior officials at the Kumasi branch of the GSC as to whether or not to release this information. One should not assume that when relying on naturally occurring data, there is always free access to information or that some naturally occurring data have been stacked neatly under some file begging to be collected. Access to information did not just depend on the mere production of an introduction letter from a research department that assures the information provider of his anonymity or the academic usage of the information to be provided.

The feet dragging behaviour of public servants in releasing public information was hardly surprising. At the time of the research, Members of Parliament were locked in debate over the passage of the Free Access to Public Information Bill. Whiles the opposition supported the passage of the bill, government had put the process on hold with the excuse that “the passage of the bill could be expensive if not well managed”; and that the country had not reached a stage where it needs and can successfully implement a Freedom of Information Law⁶. Some officials of the public land institutions had also claimed that their internal documents were not meant for public scrutiny. In the opinion of an official of the Lands Valuation Board, yearly administrative reports of the Board were not even available to junior staff members but kept under a lock by the boss.

The initial apprehension exhibited by public officials in the release of the naturally occurring data, and the limited time available, forced the data collection process to begin with the interview of relevant actors involved in the discourse. The precedence

⁶ This was the position of the President of the Republic which he was reported to have stated during an interaction with delegates to the 41st Ordinary Session of the African Commission on Human and Peoples Rights in Accra. The President’s position was also supported by the Attorney-General’s Office where the Bill had been sent for further studies.
<http://www.myjoyonline.com/archives/news/200705/4702.asp> (18/05/2007)

given to researcher provoked data over natural occurring data was later to have an effect on the use of the interview data in the study. As confidence was gradually built with officials leading to the release of the required naturally occurring data, it came to light that much of the interview data was covered by the naturally occurring data. As Silverman (2006:202) remarked, “Indeed, if we can, at least to some extent, study what people are actually doing in naturally occurring situations, why should we ever want to work with researcher-provoked data?”. The reliance on naturally occurring data helped deal with issues of reliability of research data and interviewer anonymity.

In spite of the numerous challenges encountered in the process of data collection, the interview data and the naturally occurring data that were collected complemented each other to provide a coherent picture of what transpired in the two arenas of social interaction over land acquisition. Particularly, the information collected through naturally occurring data proved to be more than enough on its own for the study analysis of the cases. Although not much used in the entire study, the researcher provoked data was also important as it elaborated and confirmed the authenticity of media reports, organizational reports, legal documents, and other official documents that were naturally produced from the social interactions.

2.7 CONCLUSION

Discourse methodology suggests that qualitative researchers recognize the advantage of using naturally occurring data over research provoked data in situations where the former exists. However, both sources of data complemented each other in the institutional analysis of the empirical cases of social interaction over government land acquisition. In the field research, the collection of naturally occurring data proved advantageous over researcher-provoked data with regards to speed, and access to information. It is however advisable that a researcher also gives adequate consideration to researcher-provoked data where interview participants are ready and willing to provide the required information without looking over their shoulders. Where naturally occurring data and researcher provoked data complement each other, it helps to enrich a qualitative case study. With our methodological strategy and its theoretical orientation discussed, the next chapter discussed the theoretical perspective constructed for the analytical understanding of the study.

CHAPTER 3

3.0 THEORETICAL PERSPECTIVE

Analyzing the institutional capacity of states in managing conflicts of interests among organized actors in society through political administrative institutions takes the analyst to the heart of the substantive issues of power relations in political science. This issue is an old institutional theoretical problem in political science. At the centre of the theoretical discussion is the question of how it is possible for political institutions to manage common resources in society among autonomous rational actors with conflict of interests. Dunn (1980) put the theoretical problem this way: how far do human beings have good reason to rationally place their property and behaviour under political institutions of the state and be rationally committed to sustain these institutions even in the face of hazard?

The political institution of research focus is Ghana's public land bureaucracy and the object of discourse among the autonomous rational actors is land. Attempt by Government to gain access to land for development is the discursive issue among the actors. Discussion of the theoretical perspective will therefore be contextualized within the focus of the research study. The theoretical problem is therefore contextualized as follows: Under what circumstances can the public land bureaucracy competently manage conflict of interests among autonomous rational actors in the discourse of government land acquisition? The theoretical analysis therefore targets a micro-level analysis of the social interaction arena to find out how the institutional capacity of the public land bureaucracy impacts on its competence in mediating conflicts of interests among actors in the process of government land acquisition.

The theoretical problem of how best political institutions can manage conflict of interests has received considerable attention from rational choice theorists (Ostrom 1999, 2005, Shepsle 1996). But a critical appraisal of the rational choice theoretical perspective informs the pragmatist that the theory is not up to the task for explaining collective action among autonomous rational actors. The rational choice institutional school though focus a micro level institutional analysis but with idealistic conceptions of human rationality that are far removed from practical human rationality in action.

Rational choice theorists assume that “actors have complete and well-ordered preferences and that they maximize the net value of expected returns to themselves” (Ostrom 1999:44-45). From such an idealistic conception, all that the rational choice school can offer on the origin of institutions is that institutions are rules-in-use created through some commands of ‘boundedly rational’ actors that is expressed in the form “let there be an X” (Ostrom 2005:138). How such commands lead to the magical appearance of institutional rules is a mystery. If an institutional rule magically appears from the command, how does the rule help the institutional analyst to understand the power relations between practical actors? Clearly, rational choice theoretical assumptions fail to address the concerns of this research.

An alternative theoretical perspective is therefore constructed to understand the impact on the institutional capacity of the public land bureaucracy on institutional competence in resolving conflict of interests in a discursive object of land. The alternative theoretical perspective is labelled *Rational Institutional Political Theory*. The rational institutional political perspective takes an actor-centred functionalist approach to the understanding of institutions. Simply put by Pierson (2004:107), “More generally, actor-centered functionalist arguments take the following form: outcome X (an institution, policy, or organization, for instance) exists because those who design it expect it to serve the function Y”. The discursive outcome is a momentous institutional reality created through collective intentionality and action. We turn to the discussion of the rational institutional political theory.

3.1 THE RATIONAL INSTITUTIONAL POLITICAL THEORY: INSTITUTIONAL OBLIGATION IS THE BASIS FOR RATIONAL COLLECTIVE ACTION

The theoretical construction takes a mainstream political science perspective that expands on the institutional perspectives of Searle (1995, 2001) and Gran (2005, 2007a, b). The concept of *institutional obligations* is the central thread of the theory. In fact, it is a fundamental concept in theoretical studies of politics (Shepsle 1996). Shepsle (1996:227) refers to institutional obligations as ‘Political Deals in Institutional Settings’ that explains “the making of governments”, or as in Tilly’s terminology ‘State Making’ (Tilly 1985). The theory invokes practical rationality as

its ontological assumption about individual rationality. ‘Practical rationality’, ‘collective intentionality’ and ‘power status assignment’ are the tools with which the theory constructs the basic structure of institutions to account for the origin and effects of institutions on rational collective action.

On the subject of rationality, Searle (2001:95-96), argue that “rationality is not formal argument structures, much less is it marginal utility and indifference curves. ...the subject matter of the philosophy of rationality is the activity of reasoning, a goal directed activity of conscious selves”. In the political science tradition, practical rationality presume that “ethical appraisal is in part a fully cognitive activity, that it is irretrievably a part of the human condition to be exposed to the vicissitudes of politics and that what it is rational for human beings to do in relation to the political domain depends both upon ethical understanding and upon practical judgement of social and political causality” (Dunn 1980:2). Moral absolutism is therefore rejected as inconsistent with the profound historicity of human nature.

Intentionality, “refers to that aspect of mental states by which they are directed at, or about, or of states of affairs in the world beyond themselves” (Searle 2001:34). Collective intentionality simply means the contents of an actor’s position which are directed at satisfying some conditions that exist, or are believed to exist. Power status assignment refers to the distinctive capacity of rational human beings to freely assign a special status to objects, phenomena to function at a higher level in ways that are meaningful to the actor. This distinctive human capacity to assign status-functions to objects is expressed in the form: X counts as Y in context C. Practically, land can be assigned a status as public land or customary land within a specific context.

Laying the explanatory grounds for the creation of institutional structures, Searle emphasize that the key element in the move from the collective imposition of function to the creation of institutional facts is the imposition of a collectively recognized *status* to which a function is attached. As long as the people continue to recognize the institution as having a power status with assigned functions to perform, the institutional fact is created and maintained. An institution is considered as having public authority because “collective agreement about the possession of the status is constitutive of having the status, and having the status is essential to the performance

of the function assigned to that status” (Searle 1995:51). According to Searle, “The central span on the bridge from physics to society is collective intentionality, and the decisive movement on that bridge in the creation of social reality is the collective intentional imposition of function on entities that cannot perform those functions without that imposition” (Searle 1995:41) .

The collective imposition of status-functions on an object of discourse according to the formula: “We agree, X counts as Y in context C” (Searle 1995), explains the origin of institutional realities, whether formal or informal institutions. The underlying assumption is that, the acceptance of the statement that ‘X counts as Y’ also implies recognition that ‘X has power to function as Y’. The creation of political institutions therefore involves the imposition of power, meaning, and values on objects or phenomena. Institutions are not created through the desires, beliefs, or authoritative command of an individual.

Thus, institutions are fundamentally constitutive rules of agreement through which regulative rules are imposed as obligations to shape human behaviour in future discourses. The fundamental argument of the theory is best captured in the following words of Gran (2007a): “The institutionalist perspective implies that institutions are built through agreements. The agreements create collective intentions (we have agreed). The status of the agreements is continually evaluated through practice by all parties to the agreement. Any person usually acts in a maze of agreements. The institutions deliver materials to the acting person”.

Under norms of rationality, citizens have a wide freedom or choice over their actions. Obligation with institutionalized organizations provides desire independent reasons to autonomous rational actors for collective action. “There is always an element of freedom and therefore responsibility in the chosen act (except when external force or physical disability eliminates the experience of a choice situation). In this sense the institutionalist perspective implies agreements (obligations), freedom of choice and (therefore) an element of responsibility” (Gran 2007a:5).

On the plane of practical rationality, an institution is constitutive of obligations that enable rational action but never constrain rational action. The collective acceptance of

The obligations that actors impose on organizational structures determine the “distinctive competence or inadequacy that an organization has acquired” (Selznick 1957:42); and also defines the institutional character of the organization from other institutionalized organizations. The power status functions or institutionalized obligations imposed on political institutions gives it a distinctive character from economic institutions; and provide political institutions with the competence to distribute power and values among contentious actors. Acquired competence is what bureaucrats articulate in the discursive process of mediating collective action dilemmas among autonomous rational actors.

The institutional capacity of an organization to mediate in conflict of interests among autonomous rational actors is a function of the prior imposition of this distinctive competence upon the organization by relevant rational actors. This type of distinctive competence imposed on organizations is given the name ‘*Political Competence*’. It is independent from the ‘*Technical Competence*’ that rational actors provide institutionalized organizations in the form of administrative personnel, financial resources, logistics, and structures to perform specific status functions. Put together, political competence and technical makes up the *bureaucratic competence* of political institutions that enable collective action. Whiles *political competence* and *technical competence* are not new concepts; they are given a new theoretical clothing here.

Political institutions are not like any other social institution. Political institutions are organizational instruments created by rational actors for the distribution of power, values, and resources among organized actors in society. “Politics is fundamentally about the exercise of public authority and the struggle to gain control over it” (Moe 1990:221). Rational actors are therefore as much concerned with the effectiveness of political agency for the attainment of objectives as much as they are with the substance of political power relationships. Rational actors will find no reason to impose legitimacy and resources on organizations that fail to fulfil the power status functions imposed on them.

Where the state successfully welds together different interests into its political agencies, there is reason to believe that the institutionalized bureaucratic organizations will also enjoy higher power status-assignment and resources from constituent

political subjects. It also becomes practically difficult to change or reform an institution that enjoys a high power status assignment in society especially when it's institutionalized values homogeneously eliminates destructive opposition and conflicts. The danger, however, is that, an institution with higher status with its network members risk becoming a conservative tool in the hands of members to oppress and suppress opposition groups.

Autonomous rational actors who feel threatened by existing political institutions will also try to create insulationist devices to protect themselves and their properties from the political winners. Such insulationist devices might take the form of creating rival institutions to cater for their own interests or to overthrow existing coercive institutions. Long ago, Weber (1947:338) made similar observations in the following remark: "When those subject to bureaucratic control seek to escape the influence of the existing bureaucratic apparatus, this is normally possible only by creating an organization of their own which is equally subject to the process of bureaucratization". Actors who create rival institutions within the state to oppose government policies enjoy little toleration from the political regime (Tilly 2005).

Meyer and Rowan (1977:352) proposed that "Organizations that incorporate societally legitimated rationalized elements in their formal structures maximize their legitimacy and increase their resources and survival capabilities". While this proposition is well accepted, the rational institutional political theory rejects the hypothesis that organizational isomorphism with highly institutionalized environment leads to the conferment of legitimacy and resources, independent of the productive efficiency of the organization (Meyer and Rowan 1977, Scott 2001). Underlying the rejected hypothesis is an assumption of human irrationality in the creation of formal institutions. It assumes that rational actors are more concerned with myths and ceremonial structures (Meyer and Rowan 1977) in their institutional environment than having a concern for the effectiveness of created political institutions.

Selznick had also theorized that 'formal cooptation' of organized forces which are able to threaten the formal authority of an organization into the leadership structure of an organization is a means of "averting threats to its stability or existence" and secure legitimacy for its avowed objectives (Selznick 1949:13). Cooptation, he points out,

reflects a state of tension between formal authority and social power. In any case, cooptation does not come without a price for the political agency. “The character of the co-opted elements will necessarily shape the modes of action available to the group which has won adaptation at the price of commitment to outside elements” (Selznick 1949:16).

One may ask how the cooptation of opposition into the organizational structure of political institutions produces institutional stability and legitimacy when “the use of formal cooptation by a leadership does not envision the transfer of actual power” (Selznick 1949:14)? Selznick acknowledged that rational actors who are co-opted into institutionalized organizations are interested in the substance of power and not necessarily in its forms (Selznick 1949:15). Formal cooptation of opposition into the leadership structure of an organization without any substantial obligation does not in itself provide reasons for rational collective action.

In the politics of statemaking, state makers have historically used organized violence to claim ownership of everything within the boundaries that defines the territorial sovereignty of the state. The process of statemaking has involved “attacking and checking competitors and challengers within the territory claimed by the state” (Tilly 1992:96). Organized violence has been historically used to even facilitate capitalism. The history of statemaking in Europe and by European colonial capitalist interests in Africa shows that “mercantile capitalism and statemaking reinforce each other” (Tilly 1985:170). Even in modern times, it has been noted that “politics (at present) seems to be based in a monopoly of legal use of violent power” (Gran 2007b).

Therefore, to speak of collective action among autonomous rational actors in a political discourse of land acquisition by Government, may empirically appear to be stupid. This is because the state is a political institution for protecting specific interests against others and not necessary a democratic collectivist instrument. Governments have normally used suppression against opposing groups in the political process of state making (Gran 1994, Tilly 1985, 1992). In normal political environments, Governments have relied on their monopoly over the concentrated institutions of organized violence within the state to achieve their objectives.

It is only under rare instances such as in moments of political disorder that weak state makers may try to pursue rational collective action with rival powerful organized elements. When faced with radical social disorder, disintegration, and dislocations, actors are compelled to (re-) align their interest with existing institutional structures that promises to fulfil their subjective positions that have been temporally dislocated. As Laclau points out, “various political forces compete in their effort to present their particular objectives as those which carry out the fulfilling of that lack. To hegemonize something is exactly to carry out this filling function” (Laclau 1996:44 in Howarth and Stavrakakis 2004:9). Howarth and Stavrakakis (2004:14) also emphasize that in a political discourse, “the political subject is neither simply determined by the structure, nor does it constitutes the structure. Rather the political subject is forced to take decisions- or identify with certain political projects and the discourses they articulate – when social identities are in crises and structures need to be recreated”. In politics, human actors act as autonomous rational actors.

The use of legalized violence by Governments to achieve political objectives does not invalidate the theoretical perspective that institutional obligations are the political strings that enable collective action among autonomous rational actors. Support is found from Tilly (1985:171) who noted the following:, “If we take legitimacy to depend on conformity to an abstract principle or on the assent of the governed (or both at once), these conditions may serve to justify, perhaps even to explain, the tendency to monopolize force; they do not contradict the fact”. The use of force or violence in a discourse does not release an individual’s faculty of rationality unless its use has the prior authorization of the individual as part of the obligations that he has already committed himself to. The theoretical challenge however is the definition of the limit of political obligations which citizens have rationally entered into with political institutions within the state.

The foregoing theoretical discussion all point to one key conclusion. That is, under norms of practical rationality, autonomous rational actors are more likely to follow institutional rules if these are recognized as having a power status that perform, symbolize, or represent their subjective positions. The inter-position of obligations between institutions and rational actors creates desire-independent reasons for rational collective action, whether beneficial or hazardous to self. When rational actors create

institutional obligations among themselves through collective intentionality, it provides bureaucrats the political competence to shape behaviour. There is also reason to believe that rational actors will equip their instrumental organization with the necessary bureaucratic resources for the performance of assigned status functions.

In a political project of institutional engineering, governments through rhetoric and practical measures have usually attempted to weave together different strands of discourses in an effort to dominate a field of meaning so as to fix the identities of objects and practices in a particular way. Whether, indeed, an emergent public land bureaucracy functions as a rational collective organizational actor in discourses of government land acquisition is an empirical issue. It is accounted for by analyzing the subjective obligations articulated by autonomous rational actors and its fulfilment within the structuration of the discursive. This is the theoretical litmus test for the public land bureaucracy within the new democratic state of Ghana.

3.2 VARIABLES THAT IMPACTS ON BUREAUCRATIC COMPETENCE

The competence of public bureaucracies to mediate conflict of interests among autonomous rational actors in order to secure their collective agreement for collective problem solving action is affected by three independent variables. These variables are first, the obligations between the autonomous actor and the bureaucracy, which is referred to as *institutional obligations*; second, the *institutional structuring* of the bureaucracy, and; third, *bureaucratic organizational resources* imposed on the institutional structure. Together, these three variables constitute the overall capacity of an institution or public bureaucracy to have effects on the behaviour of autonomous rational actors in collective problem solving dilemmas. Attention is now turned to a broad discussion of these independent variables.

3.2.1 INSTITUTIONAL OBLIGATIONS

Institutional obligations between public bureaucracies and their constituents provide bureaucrats the political competence in managing conflicts of interest around a discursive issue for collective problem solving action. Political competence is a crucial institutional resource that provides bureaucratic officials with real power and

authority to perform their status functions. Such competence, however, cannot be acquired through education or from the market. Institutional obligations, if they work in the modern democratic state, will typically reflect both the value homogeneity and the value conflicts in the larger society to make sure that a political regime can not completely eliminate rival interests and turn the public bureaucracy into opportunistic machinery for the implementation of its chosen agenda (Gran 2007a).

The institutional capacity and competence of the public bureaucracy to contain and mitigate conflicts of interests in a discourse land acquisition to effectively facilitate access to land for government is influenced the obligations that it has with the relevant contentious actors. In Ghana, a discourse of land acquisition normally involves the land owner, the prospective land developer, and any other affected party such as land tenants. The collective agreement of these actors is required for the creation of an institutional fact of land acquisition.

The theoretical argument is that the capacity of the public land bureaucracy to gain the collective acceptance and recognition of these actors to facilitate access to land depends on the fulfilment of demanded subjective obligations through the political agency. Actors with conflict of interests in a discourse of land acquisition have different interests, different preferences, different powers, and different meanings attached to the discursive object of land. Theoretically, each of these subjective positions is treated as exogenous to the political agency.

The study by Gran (2007a) 'Land Politics in the New Democratic State of South Africa' proves the point that public bureaucracies are effective in mediating conflict of interests when they are seen as fulfilling the subjective positions of autonomous rational actors. The study disclosed that "The public land elite at the provincial level became a moderating and mediating elite between state and society, between central and local government. It was a level of government the opposition valued. It was not free from corruption but it did voice strong and weaker interests and demands in the rural areas" (Gran 2007a:19). According to Gran, while the provincial land elite was loyal to Government, it was independent of Government and also had a wider spectre of development competencies that was valued in the rural areas.

To justify an action as rational, one must therefore know what subjective obligations are demanded by relevant actors from the public land bureaucracy and to what extent the subjective positions are politically institutionalized into the public land bureaucracy to enable collective agreement over government land acquisition. In other words, to what extent are the interests of investors, land owners, traditional authorities, land tenants, and the government accommodated within or excluded from the institutional framework for land acquisition? These are very important issues that need to be settled in any micro level institutional analysis of the competence of public bureaucracies to have effect on rational collective action among actors. How the state craftily interweaves the meanings and practices of relevant social actors into the public land bureaucracy will determine the political competence of bureaucratic officials to successfully secure collective action among autonomous rational actors with conflict of interests in the discourse of government land acquisition.

3.2.2 INSTITUTIONAL STRUCTURING

The creation of obligations does not automatically lead to the establishment of organizational structures that enable the fulfilment of such obligations. Rational actors create organizational structures as political agencies to perform specific status functions that fulfil their demanded obligations. March and Olsen (1984:739) noted; “Political institutions affect the distribution of resources, which in turn affects the power of political actors, and thereby affects political institutions. Wealth, social standing, reputation for power, knowledge of alternatives, and attention and are not easily described as exogenous to the political process and political institutions. Holding office provides participation rights and alters the distribution of power and access”. How public bureaucracies are structured to meet the expectations of actors is very important for the actual fulfilment or realizations of dreams.

The structuring of organizations constitute the actual process by which positions, influence, resources, and other benefits contained in obligatory relationships are distributed. Actors who lose out in the process of institutional structuring might soon discover that they have won for themselves an empty obligation that lacks an instrumental avenue for the fulfilment of expectations. Moe (1990:213) also observed that “Political institutions serve two very different purposes. On the one hand, they

help mitigate collective-action problems, particularly the commitment and enforcement problems so debilitating to political exchange, and thus allow the various actors in politics to cooperate in the realization of gains from trade. On the other hand, political institutions are also weapons of coercion and redistribution. They are the structural means by which political winners pursue their own interests, often at the great expense of political losers”. Institutional structuring of a bureaucracy is therefore an important variable that has an influence on the competence of bureaucrats to actually fulfil obligations that have been previously agreed.

Historical institutionalists (Pierson and Skocpol 2004, Thelen and Steinmo 1992) agree with discourse theorists (Howarth and Stavrakakis 2000) that important gaps in the structure of an institution might become critical junctures that might be seized by opportunists to either frustrate or obstruct overall institutional effectiveness. The structuring of institutions affects the calculations by individuals and groups of their optimal strategies and courses of action. This informs the rational actor about the logic of institutional appropriateness to the problem situation.

For Thelen and Steinmo (1992:13), “The emphasis on institutions as patterned relations that lies at the core of an institutional approach does not replace attention to other variables – the players, their interests and strategies, and the distribution of power among them. On the contrary, it puts these factors in context, showing how they relate to one another by drawing attention to the way political situations are structured”. How institutionally effective is the public land bureaucracy in its organizational structuring to coordinate and fulfil the subjective obligations articulated by actors with conflict of interests in government land acquisition?

From the discourse theoretical perspective, “The political subject is neither simply *determined* by the structure, nor does it *constitute* the structure. Rather, the political subject is forced to take decisions – or identify with certain political projects and the discourses they articulate- when social identities are in crises and structures need to be recreated. ...the emergence of political subjectivity is the result of lack in the structure. It is this lack in the structure that ‘causes’ subjects to identify with those social constructions that seem capable of suturing the rift in a symbolic order. In short, it is in the process of this *identification* that political subjectivities are created

and formed. Once formed and stabilised they become those subject positions which ‘produce’ individuals with certain characteristics and attributes”. (Howarth and Stavrakakis 2000:14).

The failure of the institutional structure, of those subject positions which are part of such a structure, compels the subject to act, and to re-assert its subjectivity. In moments of institutional dislocations, rival institutions try to weld together different positions in order to gain support from dislocated actors, including opposition groups. Moments of institutional failure induces identity crises for autonomous rational actors that were part of the failed structure. When identities are in crises it becomes difficult for the autonomous rational actors to articulate a homogenous institutional value. Dislocations in subject identities may ultimately lead to the ‘decentring’ of political power from failed institutional structures into rival or new hegemonic structures that promises to fill the lack. The institutional configuration of the public land bureaucracy will therefore shape political struggles, competences, preferences and self-identities of organized actors over resources and values in discourses of land acquisition.

3.2.3 BUREAUCRATIC ORGANIZATIONAL RESOURCES

Bureaucratic organizational capacities of institutions have received much scholarly attention in the study of institutions (March and Simon 1993, Scott 2001, 2003, Weber 1947). Until recently it looked as if the organizational resource capacity of institutions had become synonymous with the analysis of institutional capacity. There is no doubt that a developmental state will not only create organizational structures for the realization of political objectives; but will also resource the institutionalized bureaucracy with the necessary administrative personnel, financial resources, technical logistics, and other resources. Such organizational resources are necessary to equip bureaucrats with the technical competence required for a bureaucracy to function as a unified system that makes collective action possible.

The availability of technical competence within a public land bureaucracy will ensure that transactions in land are simple, less costly, and timely. According to Kasanga and Kotey (2001:6), formal land acquisition “requires high-calibre, trained and skilled administrators, lawyers, surveyors and other supporting staff. It also requires

equipment, particularly for accurate and fast surveying, production of maps and plans, and storage of information”. Without such bureaucratic resources, it is almost impossible for actors involved in a discourse of land acquisition to take collective action. Land transactions require actors to have knowledge about the size, value, ownership, and exact location of the physical land. Lack of documentary proof of ownership; the absence of maps, lack of plans of scientific accuracy to enable the identification of land boundaries; and the lack of prescribed forms to be followed in land acquisition will be serious organizational drawbacks for collective action.

Adequate organizational resources capacity will not only reduce uncertainty, opportunism, and transaction costs, but also likely to impacts on trust relations and rule following among actors who have materialist expectations. The availability or non availability of information regarding the identity of actors, the ownership of land, the history of land transfers, and the size, value, as well as proper boundaries of land, is likely to stall collective action. The negotiation of access to land can go on forever if the actors choose to religiously follow the appropriate rules of behaviour. There is no doubt that the organizational resources capacity of public bureaucracies is a crucial independent variable that is likely to have a significant influence on the discourse of land acquisition. The important issue is whether the public land bureaucracy in Ghana possesses adequate organizational resource capacity to perform the power status functions that have been imposed on them.

Unlike political obligations, bureaucratic organizational may even be acquired from the market. The organizational resource capacity of an institution therefore maintains a relative autonomy from the institutionalized obligations imposed on the structure. At the same time the organizational resources capacity of a public bureaucracy is what enables it to perform the political obligations imposed upon it. Therefore the two are not totally isolated from each other. There is a positive synergetic relationship between the institutional obligations imposed on an organization and the technical competence of bureaucratic officials to effectively mediate conflict of interests among relevant autonomous rational actors for collective action. The provision of organizational resources to a public bureaucracy to function effectively is therefore not independent from the productive efficiency of that bureaucratic organization.

3.3 CONCLUSION

The institutional capacity of public land bureaucracies to mediate conflicts of interests in domestic land economies is a function of the obligations that have politically been woven into the institutional fabric the bureaucratic structure by autonomous rational actors. Institutional obligations make it possible for actors with conflicts of interests in land to espouse a homogeneous value about the set of rules that shape expectations and action. In environments where there are no obligations among rival groups, the usual mechanisms are instruments of violence for the protection of private interests.

The actual fulfilment of institutional obligations demanded by actors however requires political agencies. Obligations cannot be fulfilled in the void. When rational actors have institutionally structured organizations as instrument to fulfil their expectations, they must also resource the organization with the necessary human and material requirements. Such technical competence does not however amount to political competence. Where organizational resources are in abundance, do autonomous rational actors also recognize the public bureaucracy as a legitimate rational collective organizational actor to use such resources effectively? The competence of public organizations to effectively mediate conflicts among autonomous rational actors depends first and foremost on the obligations that exist between institutionalized organizations and relevant autonomous actors.

In a discourse of contentious politics, rational actors may not only seek to realize their objectives but also seek to remove the interest of other contending actors from the discursive structure in order to advance their own positions. Rational actors therefore also have a concern for the structuring of institutionalized organizations as much as they have a concern for the actual fulfilment of obligations through the discursive structure. The organization of governmental institutions affects what the state bureaucracy actually does in its relations with organized interest groups. Unique patterns of organizational development may constrain or remove the fulfilment of obligations that have been institutionally structured by actors for collective action.

In sum, institutional obligations clearly specify the expectations of each actor with regards to roles, procedures for distribution of benefits, and rules specifying the conditions under which sanctions may be applied for deviant behaviour. Institutional obligations thus provide a measure of stability into social interactions between rational actors. This strengthens the institutional capacity of public bureaucracies to competently shape rational behaviour and expected outcomes. Together, institutional obligations, the structuring of political agencies and bureaucratic organizational resources will provide a public land bureaucracy with the political and technical competence to have effects on collective action among autonomous rational actors with conflict of interests in a discourse of government land acquisition.

CHAPTER 4

4.0 LAND POLITICS IN GHANA

This chapter defines how the institutional framework for land acquisition emerged within the Ghanaian State. Delineating the institutional capacity of the public land bureaucracy for land acquisition is not a simple matter of just pointing to some institutional structures and the official functions they perform. The institutional context for land acquisition is defined by political actors who created the State as a collective organizational actor. The institutional context for land acquisition is a higher institutional reality whose creation was dependent on the making of the state. The discussion looks at the historical process of state making and its impact on current land politics in Ghana.

Attention is given to how certain historical junctures defined the context of land ownership and its consequence for the competence of the public land bureaucracy to mediate conflict of interests among relevant organized actors in a discourse of government land acquisition. The extent to which discursive identities, practices, and cultures were successful in collectively imposing power status-functions on the institutional structure that emerged as the Ghanaian State is very important to understand the institutional foundations of the public land bureaucracy.

The discussion is presented along three paths: First, a discussion of land politics in the pre-colonial era of state making for the understanding of the role that competing discursive cultures and practices about land shaped the systems of land ownership in the post-colonial state. Land politics in the Ashanti traditional State is used to illustrate how the ownership, power, and control over land featured in the politics of the pre-colonial state. This will help to understand the discourses of government land acquisition for the inland port project which took place in the Ashanti region. Second, the chapter discusses how political elites who inherited the colonial state perceived and tried to deal with the problem of land ownership. And third, the discussion of the prevailing systems of landed ownership and how it shapes access to land for capitalist production concludes the chapter.

4.1 LAND POLITICS IN THE TRADITIONAL STATE

The Asante State (*Asanteman*) is made up of territorial divisions (*aman*) with its capital in Kumase (usually spelt Kumasi). The Asante State is presided over by a King called *Asantehene* who exercises control over the disposition of subjects within the political nation. A territorial division is made up of a number of towns that are also ruled by sub-chiefs who owe allegiance to the Paramount Chief (*Omanhene*). A village under a township is headed by another sub-chief called *Odikro* (*Adikrofu* in plural). The sub-chiefs owe allegiance to the paramount chief. All the paramount chiefs in turn owe allegiance to the overlord of the Asante State, the *Asantehene*- who symbolizes the soul and spirit of the Asante State. The *Asantehene* is first and foremost a paramount chief ruling the Kumasi territorial division. The *Asantehene* is both the president of the Kumasi Traditional Council (made up of all sub-chiefs under the *Asantehene's* territorial division) and the Asante Traditional Council (made up of all paramount chiefs in the Asante State).

The traditional chiefs in Asante hold enormous custom-sanctioned power, authority and high status within local communities over subjects and land. Berry (2001: xix) observes that negotiating access to land in Asante is “much about power and the control of people as about access to land as a factor of production”. MacCaskie (1984:175-76) also argues that “authority over subjects and land was the quintessential feature of the political economy of power in the Asante State.... Subjects and land were socio-political rather than economic resources. The acquisition of both served as an indicator of achievement and status. Indeed, accumulation or loss in this area constituted a ready benchmark for the measurement of upward or downward mobility”. It was also not unusual for chiefs to present a number of their subjects or villages as gifts to other chiefs during important occasions such as the installation of a new *Asantehene*.

Mostly through military warfare, traditional rulers in Kumase subjugated the surrounding chiefships and incorporated them into the Asante union. MacCaskie notes that, “In the 1760s, the authority of the *Asantehene* Osei Kwadwo was such that he was able to execute the immensely powerful Bantamahene Adu Gyamera and his son Opoku Tia, and to strip the Bantama stool of no less than 77 villages”. Through

finances imposed by customary law, other towns and villages with their subjects and land were also added to the Asante State. It was also common for paramount chiefs to sell portions of their territories to defray stool debt (MacCaskie 1984).

However, by 1874, the once powerful Asante empire “had completely broken up”; and all the divisional states had reasserted their independence (Webster and Boahen 1967:129). At present, therefore, the control of the Asantehene over the administration of lands within the Asante State is limited. Each paramount chief now has autonomous control over the administration of land under his divisional territory. The Asantehene intervenes in the land affairs of paramount chiefs only when there is a dispute over land between two paramount chiefs⁷. In instances of such land conflict the Asante Traditional Council, with the Asantehene as president, tries to resolve the conflict. How come that the powerful Asantehene have lost his power over land and subjects within the boundaries of the empire?

The decline of the power of the Asantehene and the Asante Empire has been attributed by scholars to internal weakness of the Asante provincial system of administration and largely to the intervention of the British colonial forces (MacCaskie 1984, Ray 1999, Webster and Boahen 1967). Ray (1999:128-29) observed that “After Britain’s defeat of the Asante state in 1874, Britain moved decisively by means of conquest or treaty to impose its colonial state and certain aspects of capitalism over the political authorities who, in large measure, had run the pre-colonial states in what is now Ghana. In the main, the British colonial state did not extinguish these political authorities, but rather transformed them from kings into ‘chiefs’ otherwise called traditional authorities or traditional leaders”. The defeat of Ashanti shattered the power of metropolitan Asante over the divisional states.

MacCaskie (1984) recounts the historical events of 1888-89 that perpetually limited the power of the Asantehene over land and subjects within the declined empire⁸. According to MacCaskie, internal bickering and violent conflicts for the control of

⁷ This state of land politics in the Asante Traditional state was reiterated by officials of the Asantehene’s Land Secretariat who were interviewed during the fieldwork.

⁸ The historical validity of MacCaskie’s account appears very plausible although history is subject to different interpretations and contestations over time. The position of interviewed officials with the Asantehene’s Lands Office that the King does not have power over “*Amanhene nsaase*” or lands under paramount chiefs also lends credence to MacCaskie’s research account.

the royal dynasty in the metropolis in the aftermath of the decline of the empire led to power trade offs between the Asantehene and his divisional chiefs. Two candidates, Yaw Twereboanna and Agyeman Prempeh, contended for the Golden Stool. As a result of this power struggle, the *Asantehemaa* (Queen-mother of Asante) who was the mother of Agyeman Prempeh promised to restore to all who would help her son their lost properties which included villages, servants, and political positions among others. This desperate vital concession was seized by many chiefs. The end of the battle produced two results- the victory of Agyeman Prempeh and the loss of the Asantehene's power over land and subjects under his divisional chiefs. Members of the victorious coalition gained back the independence of their land and subjects.

Like many other chiefs of the victorious coalition, the Ejisuhene was not only advanced to the status of *Omanhene*, but “most importantly, he had restored to him some twenty to thirty villages” (MacCaskie 1984:183). In 1889, the now Ejisumanhene “insisted upon an act of reassurance- a solemn oath to be taken between his and Agyeman Prempeh's representatives guaranteeing in perpetuity the irreversibility of all the restitutions made.... This oath was administered at *Ahyiamu* (a place of meeting), a piece of land lying between Ejisu and Krapa” (MacCaskie 1984: 184).

The events of 1888-89 marked a critical juncture in the institutional distribution of power within the Asante State. This historical path defined the future land-power relationships between subsequent occupants of the Golden Stool and their divisional chiefs. MacCaskie (1984: 186) notes the strenuous, though intermittent, attempts by occupants of the Golden stool “to restore the *status quo ante* that obtained prior to the Ahyiamu Oath. *Amanhene* and provincial chiefs have equally strenuously resisted these encroachments”.

One can see that traditional authorities have since the pre-colonial era articulated their discourses of political power around the object of land and everything on that land. Land was the subject of power trade offs between higher and lower chiefs, as well as between colonial imperial powers and local chiefs. The role of chiefs was later to take a nose dive when western educated organized groups emerged to joined forces with colonial interests to make the modern state and subjugate the power of chiefs.

Notwithstanding the fact that the power of chiefs have declined in the modern state, the discursive cultures and practices of traditional land institutions that have gained deeper roots in the mindset of the people. The discursive cultures and practices of traditional land institutions was to subsequently affect the power of post colonial governments in claiming legal sovereignty of the modern state over land and people.

4.2 THE MAKING OF THE GHANAIAN STATE: 1800 - 1992

The British colonial powers who arrived on the political scene found well organized traditional political institutions through which they introduced the system of indirect rule to effectively pursue their strategic and commercial interests. The colonial government passed various laws that included the Native Jurisdiction Ordinance of 1883, the Native Administrative Ordinance of 1927, and the Native Authorities Ordinance of 1944 as a political mechanism to enhance the power of Traditional institutions and make it the linchpin of indirect rule.

With regards to the system of land administration, Ninsin (1989:3) commented that the colonial government pursued “a deliberate policy of sustaining not just the communal basis of government but also the primordial basis of social solidarity and territorial organization”. One cannot relegate to the background the important role played by local organized groups in protecting traditional land institutions from the colonial state. As early as 1897, traditional authorities together with some educated elites had formed the Aborigines Rights Protection Society (ARPS) to successfully oppose the Lands Bill of 1894 that had sought to take over the land in the whole country as Crown land, and administer it along European based individual property right system (Kimble 1963:332). With the basic structure of customary land administration left intact by the British, the subsequent introduction of export-oriented cash crops like cocoa by the colonial administration increased the economic power of traditional rulers due to their control over customary land rights (Ray 1986).

By 1934, British colonial officers had used persuasion and military conquest to create the Gold Coast out of the indigenous political units. The territorial boundaries and the political basis for the future Ghanaian state were therefore laid. The presence of the British on the Gold Coast saw the gradual emergence of a new, largely western

educated, political class who challenged the colonial administration and also resented the dominant power of traditional authorities. As partners of colonial rule, traditional authorities were seen by the rising western educated class as collaborators of a system of foreign domination. Traditional authorities on the other hand advocated for the restoration of political independence to the indigenous rulers of the people rather than a radical shift of political governance to the new western oriented organized class. These two indigenous political forces competed for power from the colonial administration and also sought political support from the broad masses.

The World War periods saw the gradual rise of a more organized nationalist movement in the Gold Coast to oppose British rule. The Western educated class were divided into two main political parties namely the United Gold Coast Convention (UGCC) and the Convention Peoples Party (CPP). The UGCC represented the old class of Western educated elite largely made up of lawyers, doctors, businessmen, and senior civil servants who pressed for political independence within the shortest possible time. The mainly youthful CPP led by Dr. Kwame Nkrumah, who had broken away from the UGCC, appealed to the broad masses such as farmers, fishermen, petty traders, and low class civil servants to demand self government now. Meanwhile, powerful traditional rulers used their traditional institutions to organize political activities such as street demonstrations and the boycotts of European goods to protests against high inflation, unemployment, and colonial rule.

The ideological competition for political space in the Gold Coast witnessed a gradual reduction in the power and influence of the disparate traditional rulers and a simultaneous rise in the power of the more organized class of western educated elites. The intensity of opposition to colonial administration in the aftermath of World War II, forced the British colonial authorities to reluctantly hasten arrangements for the transfer of political power to the indigenous people of the Gold Coast. The discourse of power transfer articulated by Traditional Authorities was vehemently opposed by the CPP and the UGCC. These two organized political parties felt that the old apparatus of government was out of date (Kimble 1963). The British colonial government bowed to the demands from the organized political parties for general elections to be held and political power transferred to the victorious party.

Consequently, in the 1951 general elections the CPP won a majority of seats in the legislature. The party was asked to form the government for a joint rule with the British colonial government until the country was granted final political independence. The transfer of political power to indigenous elite also formally marked the beginning of the process of institutional structural choice for land administration by Ghanaian governments. However, traditional authorities were not going to lose their central political role without a fight.

Shortly before the British granted political independence some traditional authorities re-organized themselves to protect their power over land and subjects. In Ashanti region, Traditional Authorities joined forces with some disgruntled politicians who had lost the 1951 elections to form a new nationalist movement called the National Liberation Movement (NLM) to demand a federal form of government as opposed to the CPP's unitary political ideology. A federal governance system would guarantee a greater measure of political autonomy to traditional authorities over their land and subjects. The CPP government had clearly signalled its intentions to deal ruthlessly with chiefs who refuse to cooperate with the new political regime. Once again, the political ideological conflict was settled through general elections in 1954 and 1956 all of which the CPP emerged victorious with a unitary executive government. Not surprisingly, the 1957 Constitution banned chiefs from active participation in multi-party politics. It is not surprising that the overthrow of the CPP government in 1966 was happily welcomed by traditional rulers who in fact readily joined the new government, the National Liberation Council (NLC), to overturn their misfortunes.

Between 1966-1981, as one political regime was toppled by another in rapid succession, political elites and traditional authorities were constantly found at each others throat over the structuring of the appropriate institutional framework for political governance and especially over land administration. Neither side could command the necessary power to ensure outright victory over the other, as traditional authorities remained stronger in their societies, and political elites in control of state power could also not ignore the social legitimacy of chiefs in the bid to broaden the base of their political power. The Provisional National Defence Council (PNDC) took over political power in 1981 through the barrel of the gun. The military regime ruled the country until 1992 when they returned Ghana to multi-party democratic politics.

The contentious politics between Traditional Authorities and the modern state makers in the post-colonial state extended to the making of the 1992 Constitution. The drafters of the 1992 constitution tried to accommodate the discursive cultures and practices of the traditional state makers and the modern state makers within the new democratic state. From the presidential advisory “Council of State” to the creation of the “Houses of Chiefs” system, the constitutional designers tried to integrate traditional institutions of authority into the governance structures of the modern state. Significantly, “this contention between these political forces within the Ghanaian state reveals a deeper rooted debate over the degree to which traditional authorities have claims not only to their own bases of legitimacy, but even to remnants of their pre-colonial sovereignty. This in turn has further implications for the continued survival of the customary land tenure in Ghana” (Ray 1999:131).

It is paradoxical that under the democratic state the people are not only recognized as free citizens but also as subjects to their traditional authorities. The divided sovereignty of the state over land and subjects is manifested under the following constitutional provisions. Under chapter 1 of the 1992 Constitution, article 1 (1) stated: “The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution”. In Chapter 22, article 270 (1) of the same Constitution is stated: “The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed”.

An important insulationist mechanism for Traditional Authorities is provided under the following provision: “Parliament shall have no power to enact any law which- (a) confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever; or (b) in any way detracts or derogates from the honour and dignity of the institution of chieftaincy” (Article 270 (2a, b)). Significantly, however, the power of chiefs to formally influence legislative political decision making or participate in multi-party democratic politics was severed with the following clause: “A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin” (Article 276 (1)). One therefore has a constitutionally bifurcated state that will have consequences for institutional accountability between the rival political institutions.

4.3 THE QUESTION OF LAND OWNERSHIP

The above politics surrounding the making of the Ghanaian state has translated into unique patterns of land ownership in the country. Two major forms of land ownership tensely co-exist with implications for different institutional processes for gaining access to land under each land ownership system. At one extreme is the system of customary land ownership whereby the ultimate or allodial title in land is vested in traditional authorities (stools/skin, families, lineages and clans). As custodians of customary land, traditional rulers have certain rights in the land, and also certain responsibilities towards their communities.

It is estimated that 80% of the land in Ghana is owned by traditional authorities (Hammond 2005, Kasanga and Kotey 2001). Customary lands are managed under a system of customary law whereby members of the communal group are allowed to use portions of the available land (usufructuary right) for purposes such as farming. Although usufructuary right is heritable, it is not proprietary right. In other words, the member's right of usage does not become a permanent right of appropriation whereby he can legally sell or dispose off his inheritance. Upon the extinction of the original owner's family, the land reverts back to the traditional authority (Ninsin 1989, Hammond 2005). Only the traditional authority has the legal right to lease land to non members of the family, clan or lineage.

Public land ownership accounts for the remaining 20% of land within the state. Public land is land owned by government. Post independent governments have also used legal instruments of compulsory acquisition to acquire customary land in the name of public interest. Whichever system of land ownership under which an investor successfully negotiates access to land is subject to a process of legal formalization by the state land institutions. Government commuted the judicial and administrative roles of traditional rulers to ceremonial ones and took steps to limit the legal force of customary rules and practices as well" (Berry 2001: xxviii). Through legal racketeering on customary land transactions, the state is able to obtain revenue from the payment of taxes on formal land acquisitions. With the prevailing contradictory claims over land within the state, the question of land ownership has been vaguely defined and its acquisition takes a complex institutional path.

Not surprisingly, traditional authorities and communities whose lands had been compulsorily acquired by the state are now using sections of the 1992 Constitution that require government to return to original land owners all public lands for which the state has not used as originally planned. The state has also established the Office of the Administrator of Stool Lands to collect and manage rents and royalties in respect of stool lands which it disburses to the appropriate traditional authorities according to the following prescribed formula.

The Office of the Administrator of Stool Lands (OASL) takes 10% to cover administrative expenses. Of the remaining revenue, 25% is paid to the landholding stool; 20% to the traditional authority; and 55% to the District Assembly (Kasanga). Traditional authorities have questioned why government institutions should get a disproportionate share of the disbursement (Kasanga 2000). “Worse still, the Administrator of Stool Lands could withhold payment of any amount due to a stool if (a) there was a dispute regarding the occupancy of the stool or ownership of the stool lands, and (b) he had reason to believe the monies will be frivolously dissipated” (Kasanga 2000: 5).

Moreover, the legitimacy of government land institutions in managing rents and royalties from stool land is also challenged by traditional authorities. In the opinion of traditional authorities, “they are perfectly capable of managing their lands based on their long standing customary land laws and procedures” (Kasanga and Kotey, 2001:7). Traditional authorities also accuse the OASL of even failing to promptly distribute stool land rents and royalties back to the appropriate traditional authorities.

As to whether the public land bureaucracy that emerged actually possess the competence to facilitate access to land for capital investment is seriously questioned because the relevant actors with conflict of interests in land have failed to collectively impose power status-functions on the public land bureaucracy created by the state for land acquisition. Traditional land owners, modern political elites, and subject-citizens who have interest in land articulate different discursive positions on what should be the proper legal institutional framework for land ownership and its acquisition.

It is not impossible for government to weld together autonomous subjective discursive positions into the bureaucratic apparatus for land acquisition so as to gain political support, social legitimacy, and material resources for the public land bureaucracy. This will give public land bureaucrats the distinctive competence to mediate conflict of interests in land acquisition. The type of power status imposed on the public land bureaucracy to function as a rational collective actor would be significant in determining its capacity in mediating conflicts of interests in land acquisition.

4.4 LAND POLITICS AND TYPES OF LAND ACQUISITION UNDER THE MODERN DEMOCRATIC STATE

The contentious claims of modern state makers and traditional state makers over the same land have given rise to three types of land acquisition in Ghana. These are (a) customary land acquisition, (b) compulsory state land acquisition, and (c) public land acquisition. Each system provides the appropriate linguistic symbolic powers that define the institutional obligations and procedural ways to the creation of an institutional fact of land acquisition. The institutional procedural ways to the acquisition of land under each system are discussed in turn.

4.4.1 CUSTOMARY LAND ACQUISITION

The institution of customary land tenure is defined by the discursive cultures and practices of traditional systems of authority. Customary land is communally owned and the chief or family head is the custodian of the land. “Kinship, reverence for the ancestors, and belief in the spiritual power of the earth” have combined to give customary land tenure its unique character (Busia 1968:40). Customary land acquisition is the dominant form of land acquisition within the state due to the large area of land held under customary land tenure.

A person interested in leasing a piece of customary land is expected to find the real traditional authority or family that owns the allodial title to the land. There are different types of traditional authorities performing different functions within the system of traditional governance. Not all traditional authorities therefore own allodial titles to land. Some traditional authorities have been assigned caretaking

responsibilities over portions of land whose allodial title is held by other traditional authorities, usually paramount chiefs. In principle, even the paramount chief manages the communal land on behalf of the royal family and each member of the royal family can claim ownership of the same piece of land.

Identifying the appropriate traditional land owner for negotiations is therefore very important otherwise the prospective investor might later discover that he has paid a non refundable 'drink money' to the wrong traditional authority. The interesting aspect of customary land acquisition is that the transaction must receive the concurrence of the authority holding the allodial title in the land, the land caretaker, and in some instances a representative of the royal family for the acquisition to be statutorily legal. Such customary leverage structures are meant to ensure transparency and accountability in customary land transactions.

When the interested agent is successful in finding the appropriate land owners, and the land has been certified by the owners as vacant, then all the parties negotiate for the fulfilment of the demanded customary obligations. According to customary norms customary land is not for sale. Whatever amount of money is negotiated and paid by the agent therefore covers not the outright purchase of the land but only a lease over a certain period of time. However, it has been observed that negotiations for access to land are conducted as if the land is being sold outright, and the amount of money demanded by traditional authorities is usually equivalent to the market value of the land (Antwi 2001, Berry 2001, Hammond 2005). According to Hammond (2005), "customary transactions are to all intents and purposes a transfer of customary freehold" and that it is the state that imposes a new status of leasehold on the "original transaction". Berry (2001: xvii) also notes, "Stools still control much of the land in Asante, but the process of allocating it has become thoroughly commercialized and formalized. Chiefs sell fifty – or ninety-nine year leaseholds to individuals or firms; plots are carefully surveyed; and records are kept at the Lands Commission to avoid mistakes or fraudulent transactions".

One particular problem that faces the interested agent at this stage is whether the land in question has not already been sold to another party. This would be difficult to verify if the land has already been sold to a previous party. As Ray (1999:125) also

noted about customary land acquisitions, “such leases were usually oral in nature, or even if they were written, were sometimes subject to disputes based on whether the person granting the lease actually had the authority to control the land, because several branches of the family might be themselves in disputes as to who had this authority, based on who was the proper occupant of the relevant traditional authority office- such offices being contested potentially by several members of the relevant family or families”. In most circumstances therefore, whether a plot of land is vacant or has already been sold can only be known at the stage of physical development on the land. At that stage, everybody can see the physical work being undertaken on the land and other claimants can legally challenge rival claimants.

After the land owners and the interested agent reaches agreement over the terms of the acquisition and demanded customary obligations are fulfilled, by traditional custom the land is legitimately and legally transferred to the lessee. However, customary land transaction at this stage is still considered “illegal” by the state unless it is formally legalized by the public land bureaucracy. It is interesting to ask whether the public land bureaucracy have the competence to enforce customary land transactions that occurs below the state formal institutional structures. When the Lands Commission is satisfied that the customary transaction is genuine, the interested agent is then asked to pay a tax on the acquisition at the office of the Internal Revenue Service (IRS). Perhaps, what now remains to be done is the conferment of title on the land transactions as legally registered and recognized by the state. This function is done by the Land Title Registry. The interested agent can now proceed to develop his plans on the land, subject to approval by the Town and Country Planning Department.

It is important to note that traditional authorities regard the collective agreement between the allodial land title chief/family head and the land caretaker chief/elders as sufficient conditions for the acquisition of customary land. This is because government land institutions have a different position on what legally counts as the institutional requirement for legal land acquisition. In fact, the two positions no doubt spring from the articulation of two powerful institutional discourses of claims to the same within the state. The inherent divided sovereignty of the state over land, and even the people, is now manifested in a situation of legal pluralism in the discourse of customary land acquisition.

Generally, the literature on customary land acquisition asserts that the process is more cumbersome when compared to public land acquisition. Crook (2005:3) notes, “even those scholars who celebrate the flexibility of local, traditional land tenures acknowledge that access to land remains ‘contested and negotiable’, and that there is real ambiguity over which judicial venues have the authority or capability to resolve continued conflict”. On the contrary, one can also argue that the inflexibility of the modern state in its ownership claims over customary land within the state is the reason for the prevailing system of legal pluralism. The alleged cumbersome nature of customary land acquisition has to do with the many traditional authorities with different functions in the local community. This makes it difficult for interested agents to identify the appropriate land owners for the negotiation and transfer of available customary land.

4.4.2 COMPULSORY LAND ACQUISITION

Article 20 of the 1992 Constitution gives legal backing to Government to compulsorily acquire land anywhere within the state. Compulsory land acquisition is the preserve of government. In compulsory land acquisition, traditional discursive claims over a piece of land are deconstructed by government through organized state institutions of violence supervised by the public land bureaucracy. Government is the sole authority to authorize the legal disposition of land to private individuals, groups, and public organizations. It is obvious that compulsory land acquisition by the state is only a re-statement of the claims of the modern state over Ghana’s land.

Kotey (1996:254 in Kasanga and Kotey 2001:23-4) observes that the law on compulsory land acquisition “made little or no provision for any meaningful consultation with the owner (s) of the land or the persons whose interests will be affected by the acquisition....Neither the community in which the land is situated nor the wider public is in any way consulted or offered an opportunity to express a position on the necessity or desirability of a proposed acquisition or on site selection. Indeed, usually the first time the owner of a land, or a person who has an interest in the land, becomes aware that his land has been compulsorily acquired is when he becomes aware of the publication of an executive instrument or when he sees some workmen enter unto the land pursuant to an executive instrument”.

Post colonial governments have used compulsory land acquisitions to acquire land for national development projects, and also to weaken powerful traditional institutions of authority. The strategic political approach of Nkrumah's CPP government to land acquisition is succinctly captured in the following observation by Ninsin (1989:168):

“By 1958 the government was strong enough to move first against the most powerful chiefs, and later on chiefs in general. It did so by undermining the independent economic base of these chiefdoms. Between 1958 and 1962 the following laws were enacted: *The Akim Abuakwa (Stool Revenue) Act, 1958 (Act 8)*, *The Ashanti Stool Act, 1958 (Act 28)*, *the Lands Control Act, 1960 (Act 79)* and *The Administration of Lands Act, 1962 (Act 123)*. These laws, in various ways, gave the state power over stool and other lands; power to authorize the acquisition and use of such lands for either private or public purposes; and to regulate the collection and use of stool revenue. In the end it succeeded in deepening the dependency of chiefs on, and their subordination to, the state”.

If the state was that strong enough it is a mystery that it did not use its acquired instruments of violence to wholly deconstruct customary claims over the same land which the modern state claims legal sovereignty and ownership. At the local level where the power of chiefs are most felt, the CPP government used a host of local government ordinances such as the *Local Government Ordinance of 1951*, to create bodies other than the chief's court to control and manage stool lands and associated revenues. The Lands Administration Act, 1962 (Act 123), also gave government the power to compulsorily appropriate large tracts of land for its large scale agricultural modernization programme.

Ninsin further noted that the CPP government, “in addition to promoting state enterprises in agriculture also attempted to respond to some of the grievances of the peasantry through the *Farm Lands (Protection) Act, 1962 (Act 107)* and the *Rents (Stabilization) Act, 1962 (Act 109)* and related instruments. The purpose of Act 107, as stated in the preamble, was ‘...to protect farmers whose titles to land are found to be defective’ (Ninsin 1989:168). The *Land Development (Protection of Purchasers) Act, 1962 (Act 2)* was also enacted “to protect purchasers of land and their successors

whose titles are found to be defective after a building has been erected on the land” (Ninsin 1989:170). Obviously, the aim of government was to weld together the interests of peasant farmers against their traditional institutions of authority.

Compulsory land acquisition by the state gives form to public land. The articulation of compulsory land acquisition by governments is contradictory to the discourse of customary land acquisition. Unless government has successfully deconstructed customary claims over a piece of land, no public land can be created or owned by the state. Once a customary land becomes a public land, how is it acquired? The institutional procedural ways to public land acquisition completes the discussion on the three types of land acquisition within the state.

4.4.3 PUBLIC LAND ACQUISITION

PNDC Law 42 defined public land to “include land over which the Government, an agency or organ of Government exercised or participated in the exercise of the power of disposition” (Kasanga 2000:5). Public lands are managed on behalf of the state by the Lands Commission. An agent who is interested in acquiring a public land is required to negotiate with the Lands Commission.

An application for public land should be backed by a banker’s reference of 1000 British pound sterling before he is allocated a government land. Kasanga (2000:9) has observed that this specific regulation guiding the acquisition of public land by interested individuals has “priced the low income, the middle income, and the silent majority generally out of the public land market”. But in theory, access to public land is open to all Ghanaians on a ‘first come, first serve basis’ (Kasanga 2000).

One should not forget that what constitutes public land was originally customary land that has been forcefully but legally seized by the state through organized state institutions of violence. Legally, therefore, a land developer with expressed interests in acquiring public land is not required to fulfil any obligations demanded by customary land institutions. It may be argued that, the acquisition of public land is backed by the state institutions of violence. The interested agent therefore may have access to coercive mechanisms to back his interest when necessary.

Notwithstanding the fact that the agent does not need the agreement of any traditional authority before he can legally and legitimately acquire public land, Hammond (2005) has observed that the agent is still required under traditional societal norms to seek the ‘blessing’ of traditional authorities in the community where the public land is situated. The agent is required and actually subject to the existing traditional norms governing land management in the particular community. The acquisition of public land may therefore not be as simple as it looks.

When one considers the fact that the creation of public land is devoid of any collective agreements between government and customary land institutions, one can imagine the potential opposition that faces the agent after he has legally and legitimately been transferred the public land. From the perspective of the state, however, the acquisition of public land depends on the fulfilment of purely statutory defined institutional obligations performed within the public land bureaucracy without any recognisance to traditional land institutions. It is assumed that the interested agent need not go through the customary institutional processes again before the acquisition of public land is legally recognized.

4.5 CONCLUSION

The legacy of the Ghanaian post-colonial state is best captured in the words of Donald (1996:210): “At one level, it comprised the colonial state, which included a variety of legal traditions, rules and administrative practices transplanted directly to the continent in a manner recognizable to Europeans themselves. Below the state were dozens of other institutions that included the remnants of some former African states, village chieftaincies, trade networks, age grade orders, secret societies, Islamic orders, and lineage units, among others”. Mamdani (1996) also aptly captured the colonial legacy of the African state as a bifurcated entity in which the ordinary person is torn in his actions between the position of the citizen articulated by the modern state and the powerful discourse of the political subject articulated by traditional authorities within the state. Thus within the same territory exist a dual state with different basis of claims over land and subjects.

The institutional engineering of the Ghanaian State was from the pre-colonial era controlled by traditional authorities who rightly claimed ownership over the land which they have carved out of war making. The question of land ownership was therefore defined along the lines of customary property interests. The traditional Nation-State was used by the very class who owned land to protect their private interests within the public sphere of power. The modern Ghanaian state that inherited the colonial legacy failed to extinguish the traditional state but superimposed its claims over the same land and people.

Land politics in the bifurcated state has therefore come to be dictated by the discursive cultures and practices articulated by the traditional state makers and the modern state makers. On one hand is the discourse of compulsory land acquisition that has been articulated by governments through legal force and organized violence supervised by a public land bureaucracy. Below the formal state institutional apparatus is the dominant discourse of customary land acquisition that enjoys patronage from local networks, and even international investors. Between the two poles, one encounters the discourse of public land acquisition where the interested agent fulfils the formal obligations demanded by the state and the informal customary obligations demanded by traditional authorities.

The contradictory institutional division over land claims is re-affirmed by the 1992 Constitution. What the constitutional designers succeeded in making is a state with divided sovereignty over its land and subjects. The loyalty of the ordinary individual within the state in social interactions over land acquisition is torn between the discourse of citizenship articulated by the modern state and the discourse of subject superimposed by traditional authorities. The constitutionally bifurcated state is pregnant with problems of institutional accountability between customary land owners and the state. The modern Ghanaian state ultimately gave birth to a public land bureaucracy that may have inadequate political competence to mediate discourses of government land acquisition unless support is found in organized state institutions of violence. Violence may not reinforce capital production when it begets violence from rival institutions of organized actors.

CHAPTER 5

5.0 THE PUBLIC LAND BUREAUCRACY

The chapter discusses the relevant organizations that make up the public land bureaucracy for government land acquisition. Attention is focused on specifying the organizational units, language, symbols, procedural rules, obligations, and organizational resources of the public land bureaucracy that defines the framework for government land acquisition in Ghana. Four public land organizations; namely the Lands Commission, the Survey Department, the Land Title Registry, and the Land Valuation Board receive attention for discussion.

The power status functions of these four organizations and their bureaucratic relationships are particularly discussed for the analysis of how its impacts on their institutional competence to mediate conflict of interests in government land acquisition. It is hoped that the analysis of the institutional character of the public land bureaucracy would help shed light on its systemic competence in a discourse government land acquisition, prior to the analysis of the actual empirical cases.

5.1 THE INSTITUTIONAL FRAMEWORK FOR LAND ACQUISITION

The institutional arrangement for land administration in Ghana is characterized a plurality of public organizational structures. According to Kasanga (2000:2), the implementation of specific legislative instruments leading to the establishment of various public land agencies suggests “*some unintended political objectives*”, notably to:

- Weaken traditional and customary institutions and authorities
- Stifle traditional and customary land management functions, their influence, and basis for economic and financial support
- Impoverish local authorities economically and financially by controlling local revenue sources

- Neutralize political opponent by acquiring and/ or vesting their lands, so that local revenues will not be channelled to opposition parties or groups, likely to destabilize the ruling government
- Reward and satisfy comrades, political cronies, top civil servants, the military and security forces to give them a stake in the sharing of the booty and to keep them quiet in the face of gross injustice to the silent majority
- Exercise absolute, negative, and corrupt power over lands, people and all productive resources in the country.

The historical institutional analysis of state making in Ghana clearly shows that Kasanga's assertion of government's 'unintended political objectives' is misplaced. The reality of the historical relations of power struggle over land between the modern state and traditional authorities leaves a big question mark over how the systematic weakening of the power of rival traditional institutions can objectively be described as "unintended political objectives". The strategic weakening of rival traditional institutions over land ownership claims within the state has been the key feature of post independent land politics in Ghana (Austin 1964, Ninsin 1989).

Military and civilian governments have sought not only to consolidate their political hold over divergent ethnic groupings in the state but also to weaken the power of the traditional state makers. Given that the deconstruction of traditional land institutions is unintended; one would expect to see genuine political attempts made by government to weld together the subjective obligations demanded by traditional authorities into the public land bureaucracy. Whether or not this is the case would soon be made clear as the study analyzes the nature of power status-functions imposed on the public land bureaucracy for facilitating government land acquisition.

The institutional framework for the general administration of land is summarized in Table 2 below.

TABLE 2: THE PUBLIC LAND BUREAUCRACY FOR LAND ADMINISTRATION

SECTOR AGENCY	STATUTORY BASIS	FUNCTIONS
Survey Department	Survey Act 1962 (Act 1127)	<ul style="list-style-type: none"> • Responsible for the provision of accurate, reliable, scientific geo-information for the socio-economic development of Ghana • Responsible for quality control in survey practice in Ghana • Regulation of practising Surveyors through the process of licensing of Surveyors and checking on quality of instruments used • Provision of large scale maps for settlement planning <p>Engages in:</p> <ul style="list-style-type: none"> • Framework Survey • Demarcation of International Boundaries • Topographic Mapping • Cadastral Mapping • Conflict Mapping
Lands Commission	Lands Commission Act 1994 (Act 483)	<ul style="list-style-type: none"> • Responsible for allocation of Public Lands for public Development • Facilitates compulsory acquisition of land for and on behalf of government • Grants and manages leases in respect of state acquired land • Grants concurrence to stool land transactions • Provides land ownership searches for the public • Manages vested lands in conjunction with land owning stools • Assist courts in conflict resolution by providing records and information
District Assembly, Town and Country Planning Department	Town and Country Planning Ordinance Cap 84 Local Gov't Act 1993 (Act 462)	<ul style="list-style-type: none"> • Ensures orderly planning for all areas of the District • Assist in determining the payment of compensation in respect of injurious affections occasioned by the implementation of a scheme

Administrator of Stool Lands	Office of the Administrator of Stool Lands Act 1994 (Act 481)	<ul style="list-style-type: none"> • Collection of rents in respect of stool lands and compensation in respect of stool lands acquired by the government • Establishment of Stool lands account • Collects minerals and forest royalties and disburse according to prescribed formula • Coordinates with the Lands Commission and other agencies to formulate policies for effective stool land management • Engages in consultations with stool land owners
Land Title Registry	Land Title Registration Law 1986 (PNDCL 152)	<ul style="list-style-type: none"> • Registration of title to land • Establishes adjudication Committees to handle conflict during the registration process
Land Valuation Board	The Constitution of the Republic of Ghana 1992	<ul style="list-style-type: none"> • Provides valuation services for and on behalf of government • Undertakes assessment of compensation payable upon (compulsory) acquisition of land

(Source: Adapted from Yeboah 2005:1)

From the above table, one can see that the state possess an extensive institutional apparatus for land administration that extends from the national level to the local level. On a critical view, however, it is clear that the Lands Commission, the Survey Department, the Land Title Registry, and the Land Valuation Board constitute the bureaucratic network for land acquisition. The power status functions of the other institutionalized organizations occur either before or after the creation of an institutional fact of land acquisition. The institutionalized organizations that constitute the identified bureaucratic framework for land acquisition are discussed in turn.

5.1.1 THE LANDS COMMISSION

The Lands Commission is the parent organization from which the Land Title Registry, the Land Valuation Board, and the Office of the Administrator of Stool Lands were created as separate bodies. The Lands Commission was first created by the 1969 Constitution of Ghana, to replace the colonial Lands Department. The Commission has travelled under different legislative acts that follow renewed politics of state-making. It was re-established in 1994 under the Lands Commission Act 483.

The Commission therefore have custody all records of deeds registration throughout the country. The Lands Commission therefore provides services of land ownership searches for the public. When necessary, the Commission also assist the country's courts in land conflict resolution through the provision of available information (Yeboah 2005). The most crucial power status function of the Lands Commission in the discourse of government land acquisition is that it facilitates the compulsory acquisition of customary lands, or more appropriately, the deconstruction of customary institutions of land ownership to create public lands.

As partners in the deconstruction of customary land ownership in the discourse of compulsory government land acquisition, the organization comes into direct confrontation with customary land owners. Traditional land owners see the Lands Commission as an agency used by government to violently seize their lands. Kasanga (2000) noted that this function has made the Lands Commission unpopular with customary land owners. The Lands Commission, not surprising, is inundated with law suits from aggrieved land owners demanding the payment of compensation or the

return of their lands. All public lands that have been compulsorily acquired by the state are managed by the Lands Commission. Gaining access to this category of land, known as public land, therefore depends on negotiations with the Lands Commission.

Also more important for state-traditional authority relations is the consent and concurrence of the Lands Commission to all customary land transactions before any customary land is granted to non members of the stool/skin. Clearly, this function is not only to control the disposition of land by traditional authorities but also to enable the government to assert its political authority over the territorial boundaries of the sovereign state. In any case capital investors must first clear important lower level leverage structures in land acquisition before entering into the arena of formalization. “Grants of stool and family land require the consent and concurrence of the principal elders for validation prior to processing” (Somevi 2001:6).

The unique character of the Lands Commission is not just its direct partnership with government in the collective use of legalized aggression for land acquisition, but also the composition of its membership. Quiet surprisingly, aside its pool of technical expertise, the Lands Commission has membership representations nominated from the Houses of Chiefs (at national and regional levels of administrative jurisdiction), the Ghana Bar Association, the Ghana Institution of Surveyors, the Department of Town and Country Planning, the Association of Farmers and Fishermen, the Environmental Protection Agency, and the Ministry responsible for Lands and Forestry.

It is intriguing to ask, how is it possible that the co-opted representative from the House of Chiefs will consent to government deconstruction of customary land institutions without the fulfilment of obligations demanded by customary land owners? Perhaps, this is only ‘informal cooptation’ clothed under legal formalism in “response to the pressure of specific centers of power within the community” (Selznick 1949:14); rather than the formal imposition of actual power status on the co-opted representatives to make any meaningful impact in the discourse of compulsory land acquisition. As earlier questioned, will the cooptation of organized forces into the leadership structure of the Lands Commission lead to the conferment of legitimacy and resources to make the organization politically competent in mediating conflict of interests in a discourse of government land acquisition?

Whether the widespread vertical and horizontal membership network enjoyed by the Lands Commission also transforms it into a powerful collective organizational actor to mediate conflict of interests in government land acquisition is an empirical issue that will soon be settled by the study. What is known from its former chairman is that “In spite of some positive achievements the practical benefits of the Lands Commission to the silent majority (i.e. the rural, peri-urban and urban poor, the disabled, the unemployed, the low and middle-income earners etc) are not apparent. On the contrary, the evidence suggests that, in the past, interventions by the Lands Commission in respect of compulsory acquisition and the non-payment of compensation have resulted in social unrests, the displacement of helpless villagers, landlessness, and hopelessness in some affected communities” (Kasanga 2000:ii).

5.1.2 THE LAND TITLE REGISTRY

The Land Title Registry, established in 1986 (PNDCL 152), is the statutory institution responsible for land title registration and its administration in the country. The Land Title Adjudication Committee of the Registry also operates as domestic tribunals and free from technicalities to adjudicate on disputes arising from title registration before any land disputes is sent to the state judicial system. This provision is to compel contesting parties to make use of the committee in order to discourage expensive litigation through the state courts system. Whatever might be the good intentions behind the establishment of this committee, it has refused to function (Brobby 2002).

The Land Title Registry was established to undertake systematic compulsory registration of all lands in the country; and also to convert the existing registration of deeds in the custody of the Lands Commission into land titles. However, it has been noted that inter-organizational conflicts between the Lands Commission and the Land Title Registry has made the former to usually withhold its records of deeds from the latter (Somevi 2001:14). Moreover, only a handful of areas in major cities and towns have so far been declared a land title registration district and therefore the Lands Registry of the Lands Commission continues to register deeds in the rest of the country not yet brought under the land title registration system.

Within the few areas declared as registration districts, the Land Title Registry has made only limited progress (Antwi 2001, Brobby 2002, Somevi 2001). The limited progress, according to Somevi (2001:5), “stems partly from the fact that it has deviated from the internal rules for its operation. Notable deviations include the use of bad identifiers, failure to work slowly and take time to bring areas into registration systematically. Its current operations are expensive, time consuming and lack simplicity”. Land title registration, it has been noted, depends on accurate survey, base maps, and the demarcation of an entire country. This being the case, inter-organizational cooperation and coordination of functions between the Land Title Registry and the Survey Department- another separate public land organization- is imperative for successful title registration. However, the evidence suggests that the Land Title Registry is also hampered by inadequate staff and resources.

Clearly, the functional failures of the Land Title Registry is laid at the door steps of the usual administrative and organizational bottlenecks traditionally thrown about as reasons for failures encountered by public organizations. If these organizational weaknesses are corrected, is there a reason to believe that the Land Title Registry can perform its functions effectively? Will adherence to administrative procedures be enough to “puts a registry in touch with individuals, traditional authorities, and government agencies” to build “confidence, respect, trust and co-operation” as suggested by Somevi (2001:7)? How does adherence to administrative procedures build trust relations among actors with conflict of interests when the internal institutional rules does not cater for the obligations demanded by autonomous actors?

5.1.3 THE SURVEY DEPARTMENT

The Survey Department came into existence in 1901. Since the colonial era it had performed the land registration function until the Lands Department (now the Lands Commission) took over in 1947 (Somevi, 2001:14). The Survey Department is responsible for large scale mapping of settlements, training of surveyors and cartographers. The Department is also responsible for cadastral survey showing the extent, value, and ownership of land for land registration, taxation, and other purposes in land transactions. Moreover, the director of Surveys, in consultation with the Chief Land Registrar, is required to demarcate the boundaries of all lands in new land title

registration districts. In the event of government intentionality to compulsorily acquire land somewhere, the Survey Department prepares the acquisition plans.

The technical functions performed by this land organization make the organization very important in land acquisition. Fundamentally, there is no doubt that the provision of such important technical functions elucidates the conferment of power status from land developers as counting towards land acquisition. However, the purpose of land survey in land acquisition is to clearly delineate the boundaries of a plot of land from adjoining land ownership claims. Therefore, any conferment of power status on the process as one that rationally counts towards land acquisition is possible where the boundaries of land can be clearly delineated from all encumbrances and its value appropriately computed. Where land owners cannot be identified the functions of the survey department is uncalled for.

From the available literature on land registration, it appears that while there is a high level of inter-organizational cooperation between the Survey Department and the Land Title Registry, there is not much functional cooperation between the Survey Department and the Lands Commission (Somevi 2001:15). It is strange that the Advisory Board and Steering Committee of the Land Title Registry consist of each “heads of the Lands Commission, Survey Department, Town and Country Planning Department and about two other appointees” (Somevi 2001:10); yet its functional performance is stifled by some of the same represented organizations. Consequently, government public lands and private lands have been plotted to be in conflicts with each other. An investor who has been transferred a public land may find his legally acquired land already inhabited by private individuals. Notwithstanding the fact that the Survey Department is reputed to possess the best land surveyors in the country, the lack of inter-organizational functional cooperation with the Lands Commission leaves in its path problems of land acquisition for land developers.

5.1.4 THE LAND VALUATION BOARD

The 1992 Constitution imposes an obligation on the state to compensate farmers for their crops in the event of compulsory of land acquisition. The Land Valuation Board provides valuation services for and on behalf of government in public land transfers;

and also by undertaking assessment of compensation payable upon compulsory acquisition of land. In any case, the Land Valuation Board has no enabling legislation to perform its functions effectively (Kasanga 2000:6). Payment of land and crop compensation by the Board is a unilateral process defined by legalized aggression.

In customary land acquisition, the Board has no role to play. And no institutional avenues are available to help affected land tenants from receiving due compensation for the destruction of their property. Since there are no institutional obligations between affected property land lands and the Land Valuation Board with respect to the payment of compensation in customary land acquisition, capital investors are left with the responsibility of sorting claims of compensation demanded by all affected groups, including opportunists. The alternative open for dissatisfied property owners is the judiciary system since the Land Tribunals established under the State Lands Act 1962, 125, for such purposes have all collapsed (Brobbly 2002).

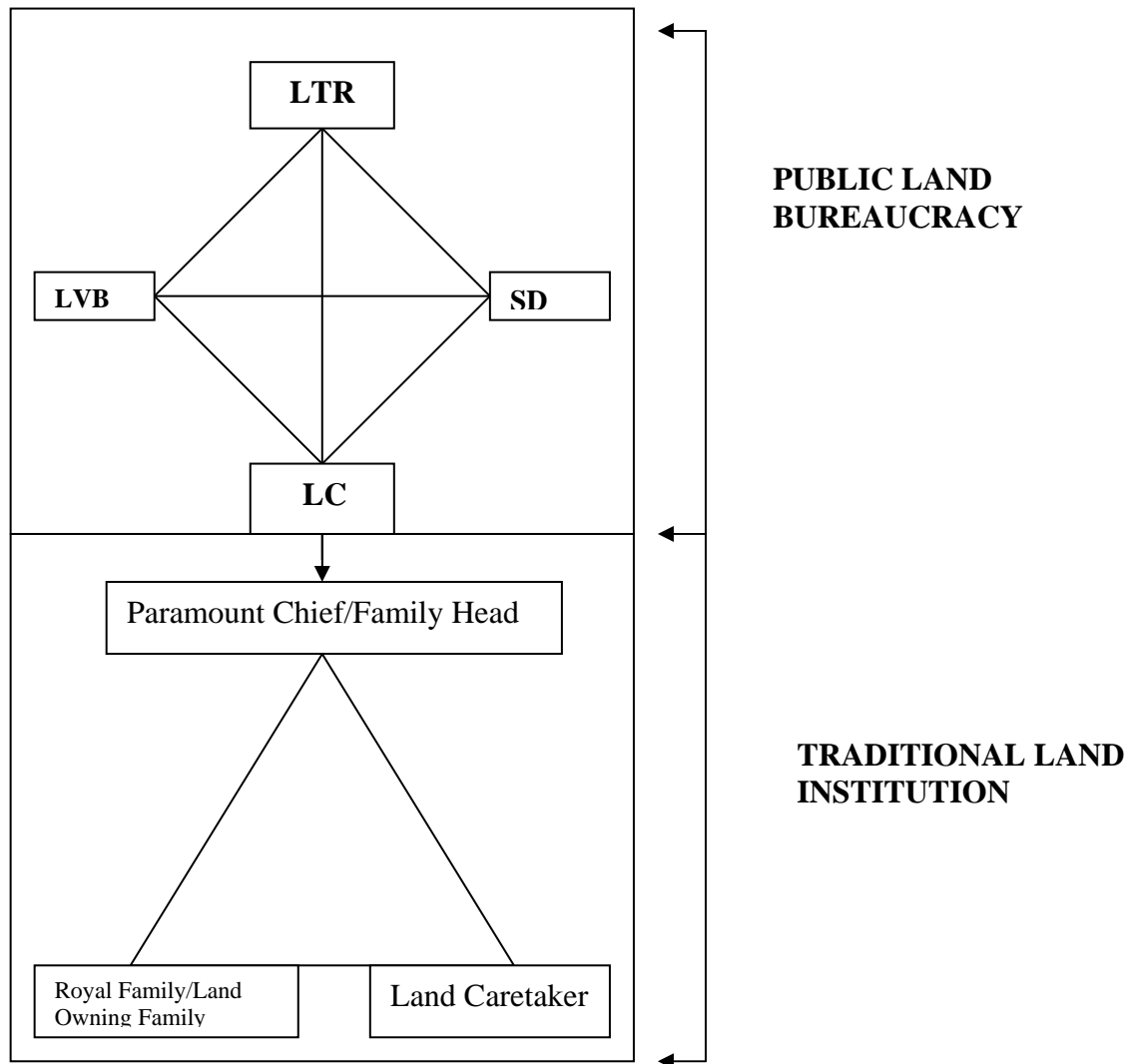
Newmont Ghana Gold Limited (NGGL), a giant mining corporation in Ghana, has made the following observation: “Mineral rights are legally defined to include the rights to reconnoiter, prospect for, and mine minerals. A mineral rights holder must compensate for any disturbance to the rights of owners or occupiers and for damage to the surface of the land, buildings, works or improvements, livestock, crops or trees in the area of mineral operations. The act does not provide compensation for the land itself. According to the Minerals and Mining Law, compensation is determined by agreement between the concerned parties, with the approval of the land valuation Board. In practice, this agreement involves a broad section of stakeholders, including affected farmers and local traditional and political leaders” (NGGL, October 2005:1). NGGL have developed its own guide to compensation for customary land acquisition as it deems appropriate. The implication of this critical juncture is that the fate of poor farmer is left hanging in a balance between their chiefs and giants capitalists.

5.3 CONCLUSION

From the theoretical point of view, institutional balkanization does not only lead to the articulation of heterogeneous values as each organizational unit jealously seek to promote and protect its core values; but also every organizations will try as much as

possible to annihilate rival institutions that threaten their survival. Conflicts among functionally related organizations within the same institutional field weakens their institutional capacity to function as a rational collective actor. The institutional framework for land acquisition in Ghana is presented in diagram 2.

Diagram 2: The Institutional Framework for Land Acquisition in Ghana



(LTR- Land Title Registry; LC- Lands Commission; LVB- Land Valuation Board; SD- Survey Department) (Source: Author)

The institutional framework for land acquisition is divided between the modern state institutional framework for land acquisition and the traditional state institutional framework for land acquisition. These two institutional networks have different institutional obligatory requirements whose fulfilment count as land acquisition.

Sitting at the upper section of the dividing line is the diamond shaped public land bureaucracy that has been unable to sparkle for private capital investors in facilitating access to land, but perhaps might glitter for government. The functional survival of the public land bureaucracy with regards to formalization of land transactions is dependant on what transpires within the informal traditional institutional sector.

Although the LTR sits at the top of the formalization process, its ability to function is dependent on the concurrence of the LC to all land acquisitions. There is also a direct technical functional relationship between the Survey Department and the Land Valuation Board in a discourse of compulsory land acquisition. The Land Title Registry, the Survey Department, and the Land Valuation Board all depend on what transpires at the Lands Commission for the performance of their status functions. However, in customary land acquisition the Lands Commission is also dependent for its survival on land transactions within the traditional institutional sector. And thus the whole public land bureaucracy is largely dependent on the transaction traditional land institutions in delivering land to capital investors because 80% of the country's physical land is customarily owned. In the politics of compulsory state land acquisition, the Lands Commission is independent from traditional land institutions.

The diagram also suggests that inter-organizational coordination and cooperation is crucial for the functional effectiveness of the public land bureaucracy in land acquisition. Formal transactions in land by prospective land investors, land owners, and land tenants involve dealing with all these agencies. Their relational linkages make effective coordination of their related functions critical to the efficient and effective acquisition of land. The powers, functional status, and institutional relationship of the Lands Commission, the Land Title Registry, the Survey Department, and the Land Valuation Board are discussed in turn.

Long before the formal acquisition of land takes place, the institutional capacity of the public land bureaucracy to cooperatively facilitate formal access to land is weakened by institutional bickering, lack of cooperation, and functional duplication. Ironically, in customary land acquisition, the functional survival of the four public land organizations is largely determined by the transactions within the relatively stable informal customary land institutional framework that exist below the legal authority

of the state land bureaucracy. As the public land organizations continue to engage each other in internal fights for survival, they have little time to pay attention to events taking place outside their environments.

Quiet strangely, the crippling effect of the institutional problems that exists within customary land institutions is usually ignored in the diagnosis of the problems that impacts on the competence of public land bureaucrats to facilitate access to customary land. The Lands Commission is taken to be the beginning of the continuum of the institutional framework for land acquisition. How traditional land institutions detract from the institutional capacity of the public land bureaucracy in land acquisition shall be fully exposed later in the empirical analysis of the study.

Looking at the fact that the 1992 Constitution bans traditional authorities from multi-party politics, they may only articulate their discourses for actual political representation in the structures of the public land bureaucracy through mechanisms that lie outside the national political decision-making legislative institutions of the state, or, perhaps, through the lobbying of political elites and elected legislators. The possibility of weaving traditional values, expectations, practices and economic interests into the fabric of the formal institutional framework for land acquisition in the future might depend on three factors.

- First, it depends on the benevolence of government political decision-making elites.
- Second, it depends on the capability of traditional authorities to marshal enough political power to penetrate the dominant coalition group that controls the discourse of land administration reforms in Ghana.
- And finally, on changes in the worldview of the country's international financial development partners, particularly the IMF/World Bank, who coincidentally have for along time opposed customary land practices.

In the absence of formal institutional obligations between traditional institutions and the public land bureaucracy, the question that remains to be settled is under what conditions would traditional authorities rationally and collectively agree with the public land bureaucracy to successfully create an institutional fact of government land

acquisition? How does the institutional capacity of the public land bureaucracy impacts on the competence of bureaucrats to mediate conflict of interests among government, traditional authorities and land tenants in a discourse of government land acquisition? This is the important issue the study now turns to seek answers.

CHAPTER 6

6.0 GOVERNMENT LAND ACQUISITIONS FOR THE INLAND PORT PROJECT: CONSTRUCTING THE DISCURSIVE ACTORS AND THEIR SUBJECTIVE POSITIONS FOR INSTITUTIONAL DISCOURSE ANALYSIS.

The chapter identifies the relevant actors that were involved in the discourses of government land acquisition. Attempt is then made to discursively construct the subjective positions of the identified actors on land ownership and its acquisition so as to analyze the impact that the public land bureaucracy had on their demanded obligations and actions. As earlier indicated, without a definition of the subjective positions of rational autonomous actors involved in a discourse, one cannot meaningfully analyze the impact of exogenous institutional variables on rational behaviour or discursive outcomes.

6.1 CONSTRUCTING THE RELEVANT DISCURSIVE ACTORS IN THE DISCOURSES OF GOVERNMENT LAND ACQUISITION

For the institutional analysis of the capacity and competence of the public land bureaucracy to mediate conflict of interests in government land acquisition, discourse analysis requires the researcher to identify the relevant actors and define their discursive positions on the object of land and what counts as land acquisition. In the discursive interactions over land acquisition by government in Femusua and in Boankra, the study identified three categories of actors whose collective action was required for the legal creation of land acquisition.

The discursive actors were Traditional Authorities (customary land owners), Land Tenants, and Government itself. The definition of land tenant in this study is inclusive of all persons, groups, and organizations that have usufructuary rights over a piece of land, acquired through contractual agreement and therefore does not own the allodial title over the land. Land tenants therefore include farmers and property owners who through usufructuary agreements with allodial title owners occupy a piece of land. If

the acquisition of land was to succeed within the institution of property rights, then the collective agreement and recognition of these three actors was legally required.

6.2 CONSTRUCTING SUBJECTIVE POSITIONS OF THE ACTORS

Attempt is made to define the positions of Traditional Authorities, Land Tenants, and Government so as to analyze how their demanded obligations were mediated by the public land bureaucracy for collective action over land acquisition. The positions of rational-subjects supply the value premises that underlie rational actions. “Value premises are assumptions about what ends are preferred or desirable... The more precise and specific the value premises, the greater their impacts on the resulting decisions, since specific goals clearly distinguish acceptable from unacceptable (or more from less acceptable) alternatives” (Scott 2003:50-51).

Discourse theorists distinguish between *subject positions* and *political subjectivity* in order to capture the positioning of subjects within a discursive structure, on the one hand; and to account for the agency of subjects on the other hand. The concept of subject position accounts for the multiple forms by which discursive agents are enabled as social actors. The concept of political subjectivity, on the other hand, simply refers to an agency or institution; in this case the discursive actor’s relations with the public land bureaucracy.

It is worth noting that in discourse theory, the rational subject can have a number of subject positions, rather than particular interests, that are discursively constructed by being defined against other identities. Rational social actors, after all, draw boundaries between insiders and outsiders in the political construction of institutional hegemony. Griggs and Howarth (2000:55) thus correctly emphasized that “interests and identities are political constructs with precise discursive conditions of existence”.

The competence of bureaucratic officials within the public land bureaucracy to induce actors with conflicts of interests in land to identify with government land acquisition is not contingent on voluntarism but on the political construction of institutional obligations among discursive actors. The creation of acceptable obligations among the discursive actors within the institutional structure of the public land bureaucracy is

what provides desire independent reasons that influence rational action. When demanded obligations are politically sutured into the fabric of the public land bureaucracy it is likely to enable collective agreement and rational action among Government, Traditional Authorities, and Land Tenants in the discourse of land acquisition. Attention is now directed to the construction of the positions of Government, Traditional Authorities, and Land Tenants.

6.2.1 THE POSITION OF TRADITIONAL AUTHORITIES: POLITICAL POWER, CULTURAL VALUES AND ECONOMIC BENEFITS

According to Ashanti traditional custom, land is held by chiefs or traditional authorities in trust for their subjects (Busia 1968). Customary land is owned by the living, the dead, and the unborn. Individuals and organizations cannot buy or sell free hold interests in customary land. “Chiefs could allocate land to both subjects and strangers and collect tribute from the latter, but they could not alienate land itself” (Berry 2001: xvii). The economic value of land to traditional authorities is not a contentious subject among scholars in Ghana. The process of allocating land to local and foreign investors has become thoroughly commercialized and Traditional Authorities have usually disposed off fifty- or ninety nine year leaseholds to individuals, groups or firms (Berry 2001, Ubink 2005).

The position of traditional authorities on land is politically constructed into a determined discourse of cultural values, political power, and economic development. Traditional values underlying customary land allocation is not strictly based on a calculation of cost and benefit as is the case with the rational economic actor within the transaction cost theorem. The economic value of land to traditional authorities is welded within a cultural ritual called the ‘drink-money’. The ‘drink-money’ is money demanded by traditional authorities to purchase drinks for the performance of rites to symbolise the allocation of land. In most cases, however, the drink money demanded is equal to the market value of the negotiated land (Antwi 2001, Hammond 2005). However, members of the local community are allowed by their traditional authorities to obtain land at a lower cost of the actual market value (Ubink 2005).

Developmental motivations also seem to have a strong influence in the discourse of customary land disposition. Ubink (2005) report that some chiefs in Ashanti uses one third of the financial proceeds from land allocations to develop their community by building a school, a library or a palace. The remaining two thirds is divided among the royal family, the chief and the elders. Some traditional authorities, on the other hand, claim outright ownership of land proceeds for themselves and their royal families without any concern for the development of their community. Such opportunists justify their actions on the grounds that “land belongs to the royal family, since it was members of the royal family who fought for the land” (Ubink 2005:4). The implication is the complete extinction of the rights of land tenants who are not members of the royal family in the event of disposition of the customary interest.

The value of land to traditional authorities transcends its economic benefits. Ownership and control of land symbolizes the political power of traditional authorities. The value of land to Traditional Authorities, according to Berry (2001), lay in their ability to exercise power and control over local communities. Access to land is “much about power and the control of people as about access to land as a factor of production” (Berry 2001: xix). Traditional Authorities do not sit unconcerned for their political power in land to be usurped by rival chiefs, government or other political racketeers without a struggle.

The discursive position of traditional authorities over land ownership has been a fierce arena of political contention with government in post independent Ghanaian politics. Berry (2001: 124) reports that indigenes in land owning communities “counted on their traditional rulers to defend stool lands against challenges from rival chiefs. Land litigation often drained stools’ resources, taxed their subjects, and if successful, stood to benefit the Chief and elders more than the community, but a chief who did not fight for stool land courted accusations of incompetence, or worse”. Thus, access to and possession of land has great political value for traditional authorities beyond the apparent economic benefits that accrue from its disposition.

Discourses of customary land acquisition is not just a process of market economic exchange but more significantly is the performance of cultural rituals that reinforces the political authority and power of traditional authorities over subjects and land.

Chiefs swear to protect the norms, value and institutions of their people during their installation into traditional office. The process of negotiating access to land is littered with the obligatory performance and recognition of symbolic rites. Customary agreement by the lessee to observe cultural traditions that surround the possession of the demised land is constructed in the discourse of customary land acquisition.

The actions of traditional authorities in land transactions are shaped by the rights and responsibilities conferred on them as custodians of customary land. They seek to protect traditional values, norms, and culturally defined obligations before access to land is granted to the interested party. It is nearly impossible for traditional authorities to shirk their traditional responsibilities and institutional obligations to focus solely on their self-interest. “Agreement to delegate use rights are not simply based on economic or productive considerations. They are inextricably both economic and social, either because they are based on alliances or patronage between family groups, or because the arrangements include a certain number of non-land related clauses which refers to the demand that those gaining access to land must observe a number of social rules and obligations towards the delegating party and his family” (Delville, et. al. 2002:9). The fulfilment of customary norms centred on the object of land enables traditional authorities to legitimately claim their status.

Traditional land owners consider collective agreement between the lands owning family as sufficient grounds for land acquisition and may not even care at all as to whether the agent formalizes the transactions with the public land bureaucracy as demanded by the modern democratic state. The state requires an agent who has acquired customary interest in land to compulsorily register his title in the property before the acquisition of the interest is statutorily recognized as legal. Interestingly, the collective agreement of government and traditional authorities is crucial for an agent to gain legal land title covering land acquisition.

Considering the significant authority retained by chieftaincy institutions in Ghana, it is important to recognize the immense political, social, and economic influence they wield over access to land for investment. It is conceded that much of the functions of traditional authorities in the pre-colonial and colonial days have been taken over by the modern state. This notwithstanding, the role played by traditional rulers in land

administration within their local communities makes them crucial actors with veto powers whose institutions cannot be bypassed by ordinary agents who have interests in customary land acquisition. The land developer is mandated by a historical institutional path to obtain the consent of the relevant traditional authorities before he can gain legitimate access to customary land. Failure to recognize the historically honoured social, cultural, and political value of land to traditional authorities is bound to throw a discourse of land acquisition into chaos, conflict, and possible failure.

6.2.2 THE POSITION OF GOVERNMENT: LEGAL STATE SOVEREIGNTY OVER LAND

Legally, the entire landscape occupied by the state is legally owned by Government, the modern state maker. Located on the Atlantic coast of West Africa, Ghana shares its 2,285 km. (1,420 mls.) of boundary with Ivory Coast to the west, Burkina Faso (formerly Upper Volta) to the north and Togo to the east, as well as having 572 km. (355mls.) of coastline (Ray 1986:1). For Government, the geographical landscape that defines the territorial sovereignty of the Ghanaian state within the Commonwealth of Nations defines the extent of its political authority, power, and control over the land and citizens living under the umbrella of the democratic state.

Consequently, governments articulate a discourse of compulsory land acquisition to deconstruct all other interests and claims over a portion of land needed for national development. Public land ownership represents a discursive moment that results from the successful deconstruction of the discourse of customary and private land ownership over the discursive land. Customary obligations demanded by traditional land owners or any other affected private land owner (s), are not observed by government on the terms demanded by the affected parties. If no obligations are collectively created in compulsory land acquisition, is there any reason to believe that the creation of public land from customary land would be collectively recognized by Traditional land owners, farmers, and other property owners? And would the subsequent acquisition of public land be peacefully recognized by parties with conflict of interest in the affected land?

Clearly, the discourse of compulsory state land acquisition does not involve the creation of prior collective agreement among government, land tenants, and customary land owners because the position of government is that land is owned by the modern state. In the opinion of Government, compulsory land acquisition through legal coercion is in the interest of the public. Constitutionally stated, “the taking of possession or acquisition if necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit” (Ghana, 1992 Constitution, 20 (1a)). For the state, such important functions of government override private concerns. The interest of the state is supreme.

Public schools, hospitals, and transportation networks are all built on public land for the benefit of the public. In the opinion of Government the state cannot beg private land owners for land to pursue activities that benefit the same citizens. All law abiding, good intentioned and developmentally progressive citizens of the state are legally obliged to support the discourse of compulsory land acquisition articulated by Government or face the coercive might of the state.

Government has no bad intentions behind the compulsory acquisition of private land. So the 1992 constitutional discourse assumes. Article 20 (5)(6) of the constitution therefore states “Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired. Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall, on such reacquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the reacquisition”. It is interesting that the private property owner who received “fair and adequate compensation” for the compulsory acquisition of his property may now only redeem the same property from the state by paying for its market value. The implication for government claims over the ownership of land, as well as everything on it, is obvious.

Are there any mutual institutional obligations between Traditional Authorities and the Public Land Bureaucracy for the former to collectively agree and recognize the creation of public land from customary interests? Generally, apart from being citizens of the state, one finds no institutional obligations within the public land bureaucracy that compels customary land owners to surrender their customary interests in land to government. In overall, the institutional obligations articulated by the public land bureaucracy “relates to rent collection, rent reviews, consents, redevelopment, surrender and renewals and environmental enforcement including cleanliness of premises and drains, repairs, nuisance to adjoining premises, compliance with planning regulation, waste disposal and occupancy ratio” (Somevi 2001:6).

Within the discourse of compulsory land acquisition, Government is simultaneously positioned as the modern state maker bringing economic development to citizens; as the regulator of land acquisition within the state through its public land bureaucracy; as the promoter of capitalist interests; and finally as a collective political actor having the welfare of the poor or the public at heart. The public land bureaucracy is also aligned as a player, referee, and lineman in the discursive game of compulsory land acquisition by government. Institutional obligations and procedural matters demanded by customary land institutions are not the primary concerns of the public land bureaucracy. Government does not fulfil any customary obligations in the deconstruction of customary land ownership apart from formalizing its factual institutional creation in line with the requirement of compulsory land title registration.

6.2.3 THE POSITION OF LAND TENANTS: USUFRUCTUALISM AND PROBLEMS OF INSTITUTIONAL DISLOCATIONS

Constructing the discourses of the land tenant over land ownership and its acquisition has been quiet problematic for scholars due to the dynamism of customary land law as well as the contentious politics of land ownership between the modern state and the traditional state. Article 20 (2a) of the 1992 Constitution makes provision for “the prompt payment of fair and adequate compensation” by the state to affected land tenants. Payment of compensation is done through the public land bureaucracy. The Land Valuation Board takes up the responsibility of ensuring the payment of compensation to affected property owners.

Where the state fails to honour this obligation, again the Constitution provides “a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from other authority, for the determination of his interest or right and the amount of compensation to which he is entitled” (Ghana, 1992 Constitution, 20 (2b)). Moreover, Article 20 (3) of the Constitution states that “Where a compulsory acquisition or possession of land is effected by the State ... involves displacement of any inhabitants; the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values”. Constitutional democratic governance, if it works, might fortify the property of the land tenant against threats posed by traditional institutions under customary tenure.

However, one should also not forget that the land tenant is both a citizen of the state and a subject of a traditional authority. Both rival institutions articulate contradictory positions about their political subject in discourses of land ownership. The position of the land tenant is historically contingent on the politically subjective definitions of public law and customary law. Customary law is subject to varied interpretations depending on location, ethnic orientations, and strength of other actors with conflict of interests. The position of the land tenant in a discourse of compulsory land acquisition may therefore be explicitly undefined when one goes beyond the payment of compensation. The land tenant may support any discursive actor who helps him to fulfil his economic lack.

Unlike compulsory land acquisition, within the discourse of customary land acquisition, the farmer loses control and eventually possession of his farmland when traditional authorities lease out the land to developers (Hammond 2005, Kasanga and Kotey 2001). Does the farmer demand compensation for his crops from the traditional authority who has leased out his farmland or from the land developer? While the issue of compensation is not contentious under compulsory acquisition of land by the state, it is less clear under the discourse of customary land acquisition.

The question at this point is whether the land tenant would identify with government political deconstruction of the discourse of customary land ownership against his immediate traditional authority for his economic benefit. Or the land tenant would

weld the discourse of customary land ownership to protect his interest against the vagaries or uncertainties of “fair and adequate compensation”. Even more crucial is the fact that the land tenant does not have a political agency of his own to effectively articulate his discourse of compensation. He may therefore be easily captured as a political subject of his immediate traditional authorities or the coercive arms of the modern state during moments of contentious land politics.

The organization of farmers associations in Ghana has been orchestrated by exogenous political forces like political parties to gain political capital during campaigns for multi-party elections; rather than the endogenous development of such organizational networks by land tenants themselves to articulate their interests. Such mushroom associations are also formed by political opportunists in moments of institutional dislocations from events like military coups to garner widespread support for legitimizing undemocratic authority (Oquaye 2004). Historical experiences of the land tenant gained from previous discursive interactions with government and traditional authorities might prove decisive in determining his identity and political subjectivity within the structuration of the recurrent discourse of land acquisition.

6.3 CONCLUSION

In summary, government, traditional authorities, and land tenants all have different discursive positions on land ownership and acquisition. The political challenge for the public land bureaucracy is how to weld together these conflicting discursive positions within the land economy into a homogenous institutional discourse to strengthen its political competence in mediating conflict of interests among the three actors for collective action. In the end, whether the land bureaucracy will have any effect on collective action among these rational actors will be determined by the nature of its institutional obligations with the discursive actors. Institutions survive not because they perform some important functions but because of the power status-functions collectively imposed on them and recognized by relevant autonomous rational actors.

Without institutional obligations, trust and goodwill cannot be assumed to automatically exist among discursive actors who have conflict of interests in a discursive object or issue. It is interesting that the positions of Government,

Traditional Authorities, and land tenants, in one way or the other legally counts towards land acquisition under the 1992 constitution. Their collective agreement and action is therefore imperative for the construction of an institutional fact of land acquisition within the democratic state. Now it is time to look at the two empirical cases of land acquisition to see how the positions of government, traditional authorities, and land tenants were articulated and mediated within the institutional parameters of the public land bureaucracy for collective action over land acquisition.

CHAPTER 7

7.0 GOVERNMENT LAND ACQUISITION IN FUMESUA

The chapter narrates the case of government land acquisition in Fumesua where after years of social interaction with traditional authorities and land tenants, Government failed to gain access to land to implement the inland port project. The narrative lays out the socio-political dynamics of the discourse of public land acquisition that took place among the actors.

The central objective of the case study narrative is to examine the institutional capacity and competence of the public land bureaucracy in mediating conflict of interest in public land acquisition to secure collective action among the actors. The discourse theoretical narrative is informed by the conceptual assumptions from the Rational Institutional Political Theory.

7.1 CHARACTERISTICS OF THE DISCURSIVE LAND IN FUMESUA

SIZE OF LAND	230 Acres
OWNERSHIP	<p>Claimed by Government as Public Land acquired in 1964 through state legal instruments of compulsory land acquisition (Lands Act 123, 1960). Moreover, Article 260 of the 1992 Constitution obliges government to renegotiate compulsorily acquired lands with their original owners if government intends to use the land for a different purpose other than the purpose for which the land was compulsorily acquired.</p> <p>The claim of public ownership was contested by traditional authorities from whom the state had compulsorily acquired the land. Traditional Authorities claimed that compensation for the land had not been paid. On Customary tenure, ownership of portions of the land was the subject of litigation among about four communities.</p>
OCCUPANCY	Partly inhabited by subjects in the local communities. Thus, part of the land had already been leased out to developers by traditional authorities.
SUITABILITY FOR THE PROJECT	Described by surveyors and architects as very suitable in terms of geographical composition. Moreover, it had comparative advantage over the other identified lands in Boankra in terms of infrastructural development such as water, electricity, telephone facilities. In terms of transportation network it lay at the intersection of the rail network that links the region with the rest of the country. Land was closer to the commercial capital, Kumasi, than the land in Boankra.

Source: Fieldwork data, 2006.

7.3 PUBLIC LAND ACQUISITION FOR THE INLAND PORT PROJECT: AFFIRMING STATE SOVEREIGNTY OVER LAND OWNERSHIP

It was natural for government to look for land within its public land resources to use for the inland port project. The Ghana Shippers Council identified suitable unused public land in Fumesua. The vast stretch of land, measuring about 1530 acres, had been compulsorily acquired by the state in 1964 for the construction of a scientific village under the management of the Council for Scientific and Institutional Research (CSIR). Gaining access to a portion of the vast public land was considered a matter of formality between the CSIR and the GSC with the consent and concurrence of the public land organizations.

Following ministerial discussions between the Ministry of Road and Transport (having ministerial responsibility over the GSC) and the Ministry of Environment, Science and Technology (also having ministerial responsibility over the CSIR), 230 acres of land was transferred to the GSC. Government, acting through the Ghana Free Zones Board (GFZB), declared the land a Free Zone area. Within a Free Zone area, all imports for trade, production, and construction activities are exempt from direct and indirect taxes and duties.

Under huge political razzmatazz, a sod-cutting ceremony was organized by the GSC and the Ministry of Trade and Transport on the transferred land for the commencement of the project. Recounting the events of the ceremony, a Member of Parliament (MP) had observed, “most of the Members of Parliament, especially those from Ashanti at the time of this sod-cutting, were all invited to the ceremony and we all saw the fanfare, the expectations were high, Ashanti Members of Parliament were in full regalia, everybody was there”⁹.

⁹ Parliament Debates Official Report, Fourth Series. Vol. 23. No 7. p.400

Picture 1: The Acquisition of Public Land in Fumesua



(Some Members of Parliament, political elites, the capital investors, and traditional authorities taking part in the ceremony to plant some trees on the land to signify the acquisition of land. Source: GSC, Kumasi Branch)

7.4 OVERRIDING SCIENTIFIC PROGRESS WITH ECONOMIC AND POLITICAL DETERMINATION

In the process of clearing the land, a scientific research that was being conducted on a portion of the land for three decades by the Building and Roads Research Institute (BRRI) was destroyed. The BRRI is a branch of the CSIR that conducts research into the damages caused by termites. The issue of the damage was raised on the floor of Ghana's National parliament by the Chairman of the Committee on Environment, Science and Technology. The Member of Parliament (MP) for the Fumesua area who had brought to the attention of the House problems of land acquisition being faced by the GSC responded:

"...we must be able to compare the relative cost or advantages to any particular place. I say so because this termite menace he is talking about is true. The point is, what is the economic advantage of the termites as opposed to the economic advantage of the inland port? The termites which he is talking about- we have told BRRI to go to another place and cultivate the termites. Who cares about the termites? People are

hungry for work to do. Economic interest must override the scientific interest he is talking about. What have they created ever since? After all, Mr. Speaker, BRRRI is not paying any ground rent”.

After a series of press warfare between the GSC and the CSIR, the matter was resolved by the concerned government ministries for the project to continue. The construction firms moved their machinery to the project land and cleared the bushy land. Searle (1995) notes that one way to create an institutional fact is to act as if it exists and if one is lucky to secure collective agreement from the relevant actors then one can get away with it. In this case however, the institutional creators were unlucky to get away with their creation as the public ownership of the land was to be legally and violently challenged by local communities. Contentious discourse over the land had just begun. Its unsettled history of public land acquisition soon caught up with Government present economic interest. The problem of public land acquisition for the inland port project was far from over.

Contributing to the parliamentary debates on the problems faced in the acquisition of land for the project, another Member of Parliament commented:

“What was budgeted for is going to increase because of the delay. After all, I think the problems of encroachment and land acquisition have been dealt with. I do not know what is still delaying the project. Since the Minister is here, probably he will throw more light on it because I do not see much work going on at all and we all took part in the tree planting. The trees are grown, no buildings are yet in place. I do not know when we are going to start actual full work because the preparatory work has been done”.

The narrative now turns to the problems of public land acquisition encountered by Government over the discursive land in Fumesua.

7.5 OPPOSITION FROM TRADITIONAL AUTHORITIES TO GOVERNMENT LAND ACQUISITION

The discursive public land, however, had an unsettled history of acquisition. The 1530 acres of vast land compulsorily acquired by the state belong to about six

predominantly farming communities (Fumesua, Aperade, Mesewam, Parkoso, Kyerekrom, and Kokobra). Traditional authorities of the affected villages described by a Member of Parliament as “the real land owners” challenged government’s discourse of public land acquisition. As is the case with government deconstruction of customary land ownership in the process of public land acquisition, compensation for the land was not paid to the customary land owners.

A Member of Parliament pointed out to his colleagues on the floor of Parliament, “*We know for a fact that compensation has, as we speak, not been paid to the owners of certain parcels of the land and this has contributed to the encroachment that we see...if compensation is not paid for land acquired then it becomes difficult to stop the real owners from encroaching or putting the land into some other use*”. Moreover, the affected communities had not been resettled as required by the law on public land acquisition. The transfer of public land from its original use purpose to a new purpose also implies that Government had renegotiated the terms of the acquisition of the land with the original land owners as constitutionally obliged. This was however not done by Government.

Moreover, crops compensation had not paid to some of the affected farmers. Other farmers had also rejected the compensation paid to them as “grossly inadequate” (Antwi 2000:44). Theoretically, the rational institutional political theory requires collective agreement and recognition by these land tenants over public land acquisition for successful transfer of the same land to third parties. The compulsory acquisition of the land had rendered many farmers landless and also disrupted their economic livelihood. Some of the landless land tenants had now turned to the CSIR for low skilled employment and others had deserted their affected locality for better opportunities in the urban areas (Antwi 2000).

Due to the problem of landlessness that was facing the affected communities, the Aperade community which was directly situated within the publicly acquired land, had renegotiated with the CSIR for the release of some portion of the vast land for farming purposes. The CSIR had in principle formally agreed to their request and documentation was being prepared to that effect. Therefore land tenants and their traditional authorities were at an advanced stage of negotiations with the CSIR when government also re-entered the land for its inland port project.

7.6 HETEROGENOUS INSTITUTIONAL OBLIGATIONS, VIOLENT DISCOURSES AND BUREAUCRATIC COMPETENCE

From the onset GSC entered an environment where traditional authorities were already hostile to government. Even sod-cutting ceremony had been supported by heavy police and military presence. The re-creation of public land in Fumesua was through the state's organizational machinery of violence. While the discursive land was statutorily a public land, traditional rulers in the local communities did not agree with such government discourse nor recognized the moment of public land acquisition completed in 1972 by the military government of General Acheampong. According to the contentious discourse that was articulated by Traditional Authorities over the land, the process of public land acquisition had not been completed by Government. They were demanding the payment of compensation for the land.

Moreover, traditional authorities articulated the discourse of the constitutional provisions that obliges Government to renegotiate and fulfil traditional obligations for customary land acquisition when the state no more finds use for the original purpose for which land had been publicly acquired. Finding such legal support for their opposition to government land transfer, traditional rulers in the affected communities continued to encroach on the land and leased out plots of the land to interested agents. People who had been allocated portions of the discursive land by traditional authorities started building houses on it. Within a fortnight, many new houses had sprung up on the discursive land. A survey conducted by the Ghana Shippers Council in 1996 showed only 13 buildings at various stages of development. By November 1998, the number of houses had increased to 139.¹⁰ Therefore the buildings were considered illegal structures by government. This group of property owners were also not going to sit down unconcerned for their 'illegal' properties to be demolished as would not receive any compensation.

With such heterogeneous institutional values over land ownership and contentious discourses of land claims that were articulated by government and the affected local communities, the competence of the public land bureaucracy in mediating conflicts of interest in land to facilitate public land acquisition was brought to the fore. The Lands

¹⁰ Parliamentary Debates, p. 398

Commission was called in to resolve the conflict. If the success of the Lands Commission in land conflict resolution depends on perceptions of contending actors about its neutrality (Yeboah 2005), then the position of the Lands Commission as an organizational instrument used by the state for the compulsory acquisition of the discursive land compromised its neutrality. Notwithstanding its rich panel of co-opted members from traditional institutions, legal bodies, surveyors, planners, and farmers and fishermen associations, the Lands Commission was described by the GSC as “useless” in resolving the contentious discourses over the land.

The failure of the Lands Commission to successfully mediate the contentious discursive interests over the land also signalled the Ghana Shippers Council to look elsewhere for support in gaining access to the land. The Ghana Shippers Council tried to seek support from local citizens in the affected communities by projecting itself to the communities as an economic developer that seeks to offer employment to the many landless local residents. In Aperade, the Ghana Shippers Council also attempted to dislocate the support base of traditional authorities. They articulated a discourse to the effect that the traditional authorities had travelled to the United States and elsewhere outside the country and sold portions of the land prospective land developers. Local residents were urged not support their traditional authorities because the latter’s opposition to the project was informed by personal aggrandisement rather than seeking the collective interest of the community.

The campaign by the GSC to gain local support failed. Rather, as recounted by an official of the GSC, ‘traditional authorities in Aperade led their subjects who were armed with cutlasses, clubs, and other dangerous weapons; and chanting traditional war songs, to chase out government officials and construction workers from the land’. In the opinion of the interviewed official, the people supported their traditional authorities because their rulers had been misinformed them about their true intentions for opposing the project. The institution of customary land ownership as earlier discussed is founded on a discourse of cultural rituals in which traditional authorities hold land in trust for the dead, the living, and the unborn. It is rational for traditional authorities to chant traditional war songs amidst the beating of war drums to mobilize the support of their subjects against dangerous situations that threatened the ownership of their customary land, their traditional positions, and political power.

Having failed to gain local support, Government now tried to use coercion and legalized aggression to gain access to the land. Every public institution that mattered was called in. The Kumasi Regional Coordinating Council, the Police Administration, and Military officers were used to intimidate the traditional authorities in Aperade to agree to the acquisition of land by government. When viewed from the military background of the government, the coercive approach was not surprising. The approach to land acquisition is however not different from the institutional character of the state as a collective organizational actor with monopoly over violence within its discursive boundaries. From the theoretical perspective of the study, coercion and violence does not reinforce collective action among rational autonomous actors.

Within the national legislature, Parliamentarians were also divided over government's coercive approach to gain access to the land. On one side of the debate were those who advocated for the use of the state's institutions of violence to force out encroachers by demolishing the building structures on the land because "*None of these developers have been issued with a building permit*". Other members disagreed and dissociated themselves from any violent government action. Of this group who oppose the use of violence by government, a member stated that the employment of organized violence was the approach used by the Lands Commission to force out developers who had encroached on land that had been acquired by government to protect water resources in the same region. However, he further pointed out, "*we are all aware of the difficulties in mobilising money for development in the country; and indeed, it is not comfortable news to hear that a building that costs about 200 million gets demolished within a twinkle of an eye*". Another Parliamentarian pleaded that "the proper thing is done" by government and compensation should be paid for the land as a way to secure collective agreement from "the real owners" of the land. Members of the legislature could therefore not agree on the way forward to government acquisition of the land.

Meanwhile, traditional authorities in Aperade, with the support of some local politicians who had political links to the central government, also tried to gain support within government circles. They petitioned the office of the President of the Republic and succeeded in getting the Office to summon officials of the GSC to a meeting at the colonial castle to deliberate over the issue. At the Castle meeting, the discourse of

national economic development prevailed over private land claims; and the traditional authorities were castigated as saboteurs of state economic development. If anything at all, “Seen from the top down, trust networks receiving protection from patrons escape from the ruler’s repression, but gain relatively little toleration and even less facilitation from rulers” (Tilly 2005:111).

The aftermath of the meeting did not reduce the violent confrontations between Government and local communities. On the one hand, Government continued to rely on its concentrated institutions of violence to intimidate traditional authorities. The Aperedade community, on the other hand, violently attacked and ransacked the construction machinery and equipment on the land. Government was therefore forced to modify its position and renegotiate the public acquisition of the land with the local communities that claimed customary interest in the discursive land.

7.7 MODIFYING THE DISCOURSE OF PUBLIC LAND ACQUISITION FOR COLLECTIVE ACTION: ENCOUNTERING INSTITUTIONAL PROBLEMS OF CUSTOMARY LAND TENURE

Government now showed political will to fulfil the customary and constitutional obligations relating to the issues of crop compensation, land compensation, and resettlement of affected communities for the important project to go ahead. As events unfolded, these issues were not the only problems that hampered access to the land. More historically embedded problems of land ownership added to the obstacles of land acquisition. Some of the local communities were locked-in over a dispute of the ownership of portions of the land. The historical complexity of the litigation over ownership of the land is captured by Hammond (2005) in the following narrative based on interviews with traditional authorities in Fumesua;

“The disputed land is one that the people of Kokobra purport to have granted to an expatriate who some years ago required it for an investment project, which project was later abandoned. Their claim is based on a layout (plan) of the parcel of land that had been prepared by the expatriate when the land was acquired. There is however no evidence of this grant having been recorded. The people of Fumesua are also claiming the land as their stool land. Without any documentary proof tracing the

root of title to the land, it remains a daunting task finding an amicable solution to this dispute. Inter-marriages and migration amongst the two communities have further made it difficult to depend on historical account to determine the true owner of the land.

In a related boundary dispute, the Fumesua stool is battling a neighbouring village, Bebre, over grants being made by the chief of Bebre, as building plots, to prospective developers. The disputed land in this case is part of the land that was acquired by government for the Council for Scientific and Industrial Research (CSIR), but due to compensation problems the land is yet to be developed and now is being encroached upon. The case went to the Asantehene who delegated the Asokorehene (a sub-chief) to mediate, but this has not been resolved. The youth of Fumesua have on a number of occasions been restrained by the chief and elders of the town from taking the law into their own hands to attack and drive away the ‘encroachers’.¹¹

For centuries, the boundaries had proven elusive. In the midst of the land ownership crises, Government could not rationally negotiate with any of the claimant to the land. As officials of the GSC pointed out, whichever claimant came forward for negotiations over the land, another claimant emerged from nowhere to serve notice that they were also waiting at the end of the tunnel to continue the fight. The genuine land owners could therefore not be determined by the GSC for negotiations over the land. Meanwhile, local villages and families continued to fight over the land.

The sitting of the inland port project on the land was the fuel that re-ignited the dried woods of conflict between the local communities. Government’s readiness to renegotiate the acquisition of the land with traditional authorities encouraged the communities to redraw the frontiers of their claims in readiness for battle with each other. Government was now no more the opponent and this new development was to change the discourse of the interaction. Each traditional authority now sought to present itself to government as the genuine customary owner of the land as well as the legitimate representative of local interests in the affected community. In a legal notice

¹¹ Hammond’s interview report was corroborated by the Deputy Director of the Regional Lands Commission in Ashanti region through a personal interview.

served by traditional authorities in Fumesua to another claimant they positioned themselves as follows:

“About 5 years ago, our client, in exercise of his right as Caretaker, made a grant of the land and other Golden Stool lands in his possession, to the Ghana Shippers Council for development as an Inland Port. Before the grant, however, our client assured the Ohu Family and other families who farm on the land that he would pay their share of the compensation he was expecting from the Council. Due to some unpleasant developments for which the Council cannot be held responsible, the project has not yet taken off and the compensation has therefore not been paid. But our client is committed to pay the families the compensation due them as soon as it is paid by the Council.

The project will be of immense benefit to the Fumesua community in particular and Asanteman and Ghana in General. It is therefore the duty of every member of the Community to assist the Council to make the project a success.

Unfortunately the Ohu Family does not appreciate this. The demands made by Messrs. Ankamah & Associates, Legal Practitioners, Accra, for and on behalf of one Madam Amma Atta of the Ohu Family, and the demand made by your client, Nana Yaw Boateng, a Kumasi Chief who, for obvious reasons¹², has described the land as “Dadiesoaba/Ohu Stool Land” amply support this view. Our client hereby states clearly and categorically that the land is Golden Stool Land attached to the Fumesua Stool, and he is the Caretaker of the land for the Golden Stool. He is therefore the person competent to claim compensation from the Council. He has already submitted the claim.

Our client however re-iterates his commitment to pay the families whose farming rights have been affected by the grant the part of the compensation due to them as soon as it is paid by the Council.

¹² The underlined words are from source and not the making of the author

Your client should therefore direct all enquiries regarding the compensation to our client and not repeat not to the Council.

From the above discursive position of the Traditional Authorities in Fumesua, one could see that even the Fumesua village alone was fighting on more than one battlefield with other claimants to the same piece of land. Alliances between some of the claimants had also been formed to strengthen their claims of customary interest in the discursive land. Traditional authorities in Fumesua also considered it rational to urge their subjects to support Government land acquisition. Moreover, the interests of the affected land tenants were welded by their traditional authorities to forestall any heterogeneous claims that might delay the negotiation. Other local communities like Aperade and illegal property owners did not change their opposition to the land acquisition process.

7.8 DECENTERING THE DISCURSIVE STRUCTURE FROM PUBLIC LAND BUREACRACY TO TRADITIONAL LAND INSTITUTIONS

Government found its public land bureaucracy “useless” in the modified discourse of land acquisition that excluded the use of organized violence. Government compulsory acquisition of the land had been imposed on already existing unresolved historical conflicts that had now gained deeper roots. Public land bureaucratic officials lacked the competence to identify the genuine land owners and the farmers from the many claimants that demanded a place at the negotiation table. Government therefore turned to the highest level of traditional authorities to use their time tested land institutions to mediate the conflict over the customary ownership of the land for successful Government land acquisition.

The Kumasi Traditional Council under whose jurisdiction the discursive land had its allodial title rooted accepted the challenge to resolve the conflicts over the customary interests in the land. The Council proceeded to systematically resolve the conflicts. The Asantehene’s land court began with the resolution of the land conflict between Traditional authorities in Fumesua and Bebre/Wurakese. Traditional authorities in Bebre/Wurakese produced two witnesses and tendered three documents (a court judgement on a case between Nana Fumesuahene and Madam Yaa Ohu, writ of

summons and a declaration of title to the disputed land, a part scheme of Fumesua, Bebre, and Anwomaso) in support of their land claims. Traditional authorities in Fumesua also produced three witnesses including a retired surveyor, plus documents (Lease signed by Otumfuo Opoku Ware II, a part scheme of Fumesua, Bebre and Anwomaso, and a drawing indicating the Fumesua railway station).

On 6th May 2000 the land conflict resolution committee concluded: *“From the forgoing facts, the committee is of unanimous opinion that all the disputed land areas fall within Wurakese Stool land”*. This unanimous ruling by the Asantehene’s land court had failed to lay the matter to rest as the guilty party refused to accept the initial outcome. Two different committees had to be commissioned consecutively by the Asantehene *“to go into the case and come out with correct decision”*. The Asantehene’s Land Review Committee had to carefully analyze more fresh historical evidence, documents from the public land organizations, and other legal rulings from the statutory courts for Nananom (Chiefs from eleven royal clans presents at the last hearing) to authoritatively pronounce the Fumesuahene liable, and entered judgement in favour of Bebre/Wurakese Traditional authorities on 1st April 2004.

The Asantehene concluded the judgement on the land conflict with the following words: *“It is Nananom who are assisting me in connection with land cases of this nature. If I appoint a Committee to deal with land matter, there may not be the absolute truth. As such once the two Committees have reported that the land belongs to Wurakesehene I will not dispute about that”*. Traditional institutional sanctions were authoritatively imposed by the conflict resolution committees on the guilty party as their traditional custom obliges them.

7.9 HOW THE GREAT HOPES OF ECONOMIC DEVELOPMENT WERE DASHED BY TRADITIONAL AUTHORITIES

Resolving all the historical land disputes between the communities that claimed ownership of portions of the project land was not going to take a day’s miracle. Unwritten records, oral accounts of transfers of ownership, the creation and recreation of false historical accounts by some of the parties, and unclear boundary demarcations had proven contradictory and retarded the speedy resolution of the dispute. As fresh

historical evidence were being produced by each party in every sitting of the council, which had required reviews by a different review committees, it became difficult to speedily resolve the disputes.

The Fumesua-Bebre/Wurakese land conflict was just one of the many contentious discourses of customary conflict of interests in the land. If it had taken about four years to resolve this single conflict then only God knows how long it was going to take for the others to be amicably and authoritatively resolved. Notwithstanding, the positive assurances given by the Ministry of Road and Transport, concerned MPs, government officials, and the Ashanti Traditional Council to appropriately resolve all the problems of customary land tenure that hampered government land acquisition, the Aperade village succeeded in bringing the entire project to a complete halt.

For some unexplained reasons, long before the Asantehene's Lands Court had finished the resolution of the Fumesua-Bebre/Wurakese conflict; traditional authorities of the village took the matter to the Kumasi High Court which placed an injunction on further development of the land until the judicial resolution of the matter. Perhaps the slow nature of the conflict resolution process informed the traditional authorities to secure their interests. Attempts by Government to by-pass the litigating villages and gain access to the land through the higher offices of Golden Stool might also have forced the Aperade village to likewise by-pass their traditional conflict resolution mechanisms to seek inslutionist devices provided by the judiciary arm of the state under the 1992 Constitution.

After seven years of protracted confrontations between the government, the GSC, and numerous claimants to the identified land in Fumesua; the great hopes of capital investment, employment generation, and accelerated economic development; held by political elites, local and foreign investors, and unemployed youth were dashed. Once again, the institutional capacity and competence of the state in facilitating access to land for investors had been called into question. If anything at all the public land bureaucracy, particularly the Lands Commission, that tried to resolve the conflict, were seen by traditional authorities and their subjects as partners in crime to government's compulsory acquisition of their land.

7.10 RELOCATION OF THE INLAND PORT PROJECT TO BOANKRA

The Government of the National Democratic Congress (NDC) could not gain access to land to carry out the inland port project before losing political power to the opposition New Patriotic Party (NPP) in the 2000 multi-party general elections. Coincidentally, the new Government had its widest support base in the Ashanti region. Having newly emerged from a democratic process with its linchpin in the rule of law, the use of violence as a mechanism to acquire land in its regional stronghold might have become unattractive to the new Government. In July 2001, Government relocated the inland port project to Boankra, the second preferred area where suitable land had been identified. A new process of land acquisition was therefore started.

7.11 CONCLUSION

From the above case study narrative, it appears that the competence of the public land bureaucracy to facilitating access to land for government is structured on institutions of violence. The public land bureaucracy does not reflect a rational collective institutional actor. Institutional obligations demanded by traditional authorities for their collective agreement and recognition of land acquisition felled outside the scope of the public land bureaucracy. The public land bureaucracy also found it difficult to fulfil the payment of compensation to land tenants who were affected by the compulsory acquisition of their land, as constitutionally obliged. It therefore became impossible for the public land bureaucracy to mediate conflict of interest in public land acquisition and secure collective agreement among Government, Traditional Authorities, and Land Tenants for their collective action on land acquisition.

It also emerged from the narrative that in an environment of public land acquisition devoid of the support of the organized violent institutions of the state, land acquisition suffers from problems engendered by the nature of customary land ownership. Interestingly, where government decided to renegotiate with traditional authorities over their customary interests in the discursive land, problems inherent in customary land tenure such as unclear definition of land boundaries lead to conflicts among traditional authorities and among families which made public acquisition of the land almost impossible.

Traditional authorities who possessed the political competence to mediate in the conflict over the customary interests were also not well equipped with the technical expertise and capacity to speedily resolve the conflict. Traditional institutions depended on the public land bureaucracy for technical information and expertise. Ironically, traditional land institutions and the public land bureaucracy functioned on the north and south poles with little collaboration.

An Ashanti proverb says '*If nakedness tells you that he will give you cloth, listen to his name*'. If government could not use its own land institutions to facilitate access to land for a project of immense economic importance, where is the reason to believe that the public land bureaucracy possesses the capacity and competence to facilitate access to public land for private capital investors? The case study narrative now follows the inland port project to its relocated abode in Boankra to see how government was able to acquire land and finally brought the project into developmental reality. The central focus of the narrative remains on the institutional capacity and competence of the public land bureaucracy to mediate conflict of interests among government, traditional authorities, and land tenants for their collective agreement and action over government land acquisition.

CHAPTER 8

8.0 GOVERNMENT LAND ACQUISITION IN BOANKRA

The chapter follows the same narrative procedure as in the previous chapter. The chapter narrates the discourse of land acquisition that followed the relocation of the inland port project to Boankra where Government was able to gain access to land. The socio-political dynamics of the discourse of customary land acquisition that resulted in the acquisition of land is laid out.

The central objective of this second case study narrative remains on capacity and competence of the public land bureaucracy to mediate conflict of interest in land acquisition for government. This time, the discursive land is a customary owned rather than compulsorily acquired public land. The implications, problems, and discursive outcomes are pursued in the narrative below.

8.1 CHARACTERISTICS OF THE DISCURSIVE LAND IN BOANKRA

SIZE OF LAND	400 Acres
OWNERSHIP	The land was Customarily owned by the Ejisu Traditional Council headed by the Omanhene of Ejisu Traditional Area. However, because the usufructuary right of the land falls under the Boankra Stool the consent and concurrence of the Ejisu Traditional Council together with representatives of the Elders/Counsellors and People of Boankra Stool is required; according to customary law and to the custom and usage of the Ejisu Traditional Area, before the land could be legally leased to government.
OCCUPANCY	The land was in used by tenant farmers under usufructuary rights, and therefore legally entitled to compensation for the destruction of affected crops in the event of disposition of the land to government.
SUITABILITY FOR THE PROJECT	<p>Only 60% of the land was suitable for development due to steep gradients. It was estimated that the development costs of the site will be relatively high.</p> <p>Moreover, there was absence of water supply. Extending a 15 km pipeline from the Ghana Water Company (GWCL) to the site was deemed to threaten the commercial viability of the project.</p> <p>The state of the rail infrastructure was also described to be in a poor condition and needs rehabilitation in order to become a serious alternative to road connection. The project site was a distance of 30 km to Kumasi. In totality, the land had less comparative advantage than that of Fumesua.</p>

Source: Fieldwork Data, 2006.

8.3 CUSTOMARY LAND ACQUISITION FOR THE INLAND PORT PROJECT: AFFIRMING THE SOVEREIGNTY OF TRADITIONAL AUTHORITIES OVER LAND

Government's relocation of the inland port project to the new location in Boankra gave the project a new discursive identity as the Boankra Inland Port. Government's decision to acquire customary land in Boankra significantly decentred the discursive institutional structure for land acquisition from the public land bureaucracy to customary land institutions. The overlord of the new discursive institutional structure was no more government but traditional authorities.

The law of compulsory state land acquisition was this time not invoked by Government, although it still lurked around as a possible threat to the customary ownership of the land should the need arise. But given the bitter experience in Fumesua, it was unlikely that the new democratic Government, as a rational actor, would use it in the new discourse of land acquisition.

The decentring of the discursive institutional structure for land acquisition now meant that the Lands Commission was not going to be used by Government to compulsorily acquire the land as public land. Government was therefore now required by traditional authorities to fulfil the institutional obligations for customary land acquisition to secure the collective agreement, recognition and action of chiefs and their subjects. This institutional dimension to the new discourse of land acquisition has several implications that will be discussed in the analysis of the problems of land acquisition.

Traditional authorities in Boankra, land tenants farming on the land, and government collectively agreed that the Ejisumanhene is the legitimate customary owner of the allodial interest in the land. The collective agreement on the identity of the discursive land as customary land was significant in the sense that without collective agreement, collective intentionality, and collective recognition among the actors on the identity of the discursive object there could be no basis for further rational collective action as made clear in the theoretical discussion. The decentring of the discursive institutional structure could however not avoid existing traditional institutional problems within Boankra that raised its head to challenge successful land acquisition.

8.4 TRADITIONAL INSTITUTIONAL DISLOCATIONS AND UNCERTAINTIES IN CUSTOMARY LAND ACQUISITION

The first problem that confronted government was a raging chieftaincy dispute that had resulted from the death of the Boankra chief (*Boankrahene*) leading to dislocations within the leadership structure of the chieftaincy institution that connects the Caretakers of the discursive land to the allodial title holder of the land, that is, the Ejisumanhene. The Boankra village had been without this sub-chief for over a decade. The enstoolment of a successor was the subject of dispute between different factions of the royal family.

The traditional institutional dislocation is also confirmed in another study by Ubink (2005:9) who aptly summarized it as follows: “One of the rival factions of the royal family is supported by the Ejisumanhene- the paramount chief of the area- who enstooled the chief candidate of the faction as *Boankrahene* during a ceremony at the palace. This enstoolment was challenged by the queenmother and elders of Boankra at the regional House of Chiefs in Kumasi. The House of Chiefs decided in favour of the queenmother, stating that she was the one to choose a new chief”. Thus by 2002 when the GSC relocated the project to Boankra, there was no legally recognized Land Caretaker Chief to lead traditional authorities in Boankra to interact with Government in the discourse of acquisition.

Because of the above institutional dislocation in Boankra, the GSC was served with legal notices from rival factions in the chieftaincy dispute to warn of the danger of dealing with any false claimant to the vacant traditional office. A legal notice served by one of the factions in Boankra read as follows:

“We write to you as solicitors for Nana Abena Afriyie, Queen mother of Boankra and Opanin Kwabena Dapaah, Abusuapanin or Head of the Boankra Royal Family.

Our instructions hold that a high powered delegation comprising a select group of top officers in charge of your Inland Port project in the Ashanti Region did approach our clients and their elders for a parcel of land (approximately 400 acres) for the all important inland port project and this was duly granted.

Our clients are aware of the seven year delay of the take-off of the project due to a protracted land litigation over the former site at Fumesua and it is the fervent prayer of our clients that NOTHING shall stall the take off of this all important project which the gods of their land had caused to be sited at Boankra to engender development and employment for the youth of Boankra.

Our clients have however instructed us to warn you about the activities a NANA KWABENA DWUMA ABABIO who styles himself as the chief of Boankra and to point out to you that he is an imposter and that there is no chief of Boankra at the moment.

The said imposter has never been nominated, selected or installed/enstooled by any of the accredited authorities of Boankra stool....Sir, you are therefore cautioned NOT to deal with this imposter in any way over the affairs of the project and the land.

You are not to entertain any claims of compensation or any claims for anything in connection with the land with him. You are to deal only with our clients whom your officers approached for the release of the land”.

It is interesting to note that the rival factions in Boankra had keenly followed all the brouhaha over land acquisition in Fumesua and were now in a position to use its ghost to hunt the GSC. How was the GSC to determine from the rival factions the genuine one to transact business with? This is a dilemma that also faces many capitalist agents in Ghanaian communities where there are chieftaincy disputes. The institutional crises also fall outside the legal institutional boundaries and competence of any of the organizations that make up the public land bureaucracy. If the acquisition of the land was to take place, then the crises needed to be resolved as quickly as possible. Like in Fumesua, Government once again relied on the concerned higher traditional authorities in the Ashanti Traditional State to mediate and resolve the dispute for collective action to take place over the acquisition of the land.

The Asante Traditional Council stepped in as the higher traditional authority with the power to mediate in the conflict of interests over the traditional office and in the land. However, new discursive identities had to be constructed on the discursive frontiers to define the position of the Asante Traditional Council, the Ejisu Traditional Council,

and the divided front of traditional authority in Boankra to avoid the articulation of heterogeneous values and obligations.

8.5 THE POLITICAL CONSTRUCTION OF NEW DISCURSIVE IDENTITIES TO OVERCOME COLLECTIVE ACTION PROBLEMS IN GOVERNMENT ACQUISITION OF CUSTOMARY LAND

One should not forget that discourses are contingent on political relationships and historical constructions. It involved the exclusion of certain possibilities and the structuring of relationships between the actors involved in the discourses over the resolution of the conflict. The process of identity formation involved the drawing of traditional political frontiers in the exercise of authority over customary land ownership and management in Ashanti. The redefinition of traditional leverage structures of power and authority within the Asante Traditional State was to affect the successful acquisition of land in Boankra.

The political construction of the relationship between the Ejisumanhene, who is the Paramount Chief of the Ejisu Traditional Area as well as President of the Ejisu Traditional Council; and the Asantehene, who is also the Paramount Chief of the Kumasi Traditional Area, President of the Kumasi Traditional Council, and President of the Asante Traditional Council, was not without problems. Interestingly, the discursive frontiers was contingent on the historical events at Ahyimu where the Ejisumanhene had regained his authority over land and subjects within his division; and the Asantehene had simultaneously lost his authority over land and subjects under paramount chiefs (MacCaskie 1984).

The limited power of the Asantehene to resolve the crises can be extracted from the following words of a Lands Officer in the Asantehene Lands Secretariat, "*Amanhene nsaase sem dee, Asantehene nni ho hwee ka*". Literally it is interpreted to mean that, 'In land matters under paramount chiefs, the Asantehene has no say in it'. And as emphasized by the rational institutional political theory, the outcome of discursive interactions among autonomous rational actors is reinforced by the experience gained by actors from previous interactions.

The Ejisu Traditional Council was keen to reassert its position as the traditional institution that possessed the authority to determine the outcome of the discourse over the resolution of the conflict and also the sharing of the financial proceeds from the lease of the land to Government. However, the Asantehene was also conscious of exerting his limited political power over his semi-autonomous divisional chief because the Asante Traditional Council was the highest decision making political institution within the Asante Traditional State and not the Ejisu Traditional Council. According to the interviewed Lands Officer in the Asantehene Lands Secretariat, “*The Ejisumanhene thought that all the money should be given to him but the Asantehene disagreed and insisted that traditional institutional procedures should be followed*”. The disagreement over the political construction of the relationship between the Ejisumanhene and the Asantehene impeded the speedy resolution of the chieftaincy dispute in Boankra for the customary acquisition of the discursive land.

Government, the Ashanti Traditional Council, the Ejisu Traditional Council, and the rival factions in Boankra tentatively managed to collectively construct and assume new discursive identities first towards a satisfactory discourse of conflict resolution and second towards a satisfactory negotiation outcome. The rival factions who were fighting over the vacant office had to collectively assume a new identity as “*the representatives of the Elders/Counsellors and People of Boankra Stool*”. The new identity assumed by the rival factions enabled the negotiation parties to clearly define a homogenous discursive frontier for traditional authorities in Boankra in their position as Caretakers of the land within the discourse of customary land acquisition.

The Ejisu Traditional Council maintained its political position as the allodial title owner of the discursive land. And the Asantehene assumed a defined position as “**a CONFIRMING PARTY**” to any collective agreement that would be reached between Government, the Ejisu Traditional Council, and the representatives of the Elders/Counsellors and People of Boankra Stool. Significantly, the Asantehene, in his capacity as the President of the Asante Traditional Council, was to manage the financial proceeds from the lease of the land pending the successful resolution of the chieftaincy conflict in Boankra. The discursive frontiers that were drawn limited the power of the Asantehene to authoritatively resolve the chieftaincy conflict because the case was under a paramount division over which his power was historically limited.

The above power struggle notwithstanding, the discursive actors collectively agreed as follows: “*Owing to the pending Chieftaincy litigation in the Boankra Chieftdom area, and the urgent need to conclude the transaction relating to the grant of a portion of the Boankra Stool Land to the LESSEE herein (for development into an INLAND PORT) it has become desirable for the Ejisu Traditional Council acting through the Omanhene of the Ejisu Traditional Area (in which Boankra Stool falls) and on the directive of OTUMFUO OSEI TUTU 11, ASANTEHENE to stand in and act for itself and the Boankra in respect of the said grant*”¹³. An amount of 3.2 billion cedis demanded by the Ejisumanhene as drink money for lease of about 400 acres of customary land under the Boankra Stool was paid by government into an escrow account that was to be managed by the Asantehene.

Although the power of the Asantehene to mediate in land affairs of other Paramount Chiefs under the Traditional Council was limited, his position as the overlord of the Asante Kingdom was highly instrumental in reaching the collective agreement between feuding factions, the Ejisumanhene, and the Government over the acquisition of the discursive land in Boankra. In the language of communicative rationality theorists, the provisional agreement that was reached is termed “modus Vivendi” (Erikson 1993). Modus Vivendi denote an expression of a provisional agreement that is partial and temporary, and one that is based upon the force of the better argument and not upon (bargaining) resources. These sorts of arrangements provide reasons for furthering discussions in other cases where the parties can reach agreements, and it also enhances tolerance and respect, making it possible to go on discussing disputed views on a higher level of understanding” (Erikson 1993:22).

8.6 THE CONSTRUCTION OF INSTITUTIONAL OBLIGATIONS WITH TRADITIONAL LAND INSTITUTIONS

The collective agreement between Government, the Asante Traditional Council, the Ejisu Traditional Council, and “*the representatives of the Elders/Counsellors and People of Boankra Stool*”, first and foremost enabled them to create an institutional fact of land acquisition. Based on that institutional fact, they were then able to

¹³ The information is contained in the MoU prepared in the form of a lease document.

collectively impose further institutional obligations on themselves as reasons for future rational action. These higher institutional obligations were created within a land lease agreement among the discursive actors.

Also significant was the fact that the collective agreement by the traditional authorities was not only binding on the present actors but “...where the context so admits or requires include its successors and assigns”. This confirms the cultural and religious definition of customary land in Ashanti as being owned by the present, the unborn, and the dead. Moreover, the traditional authorities agreed to “execute a Leasehold Agreement in respect of the demised premises in favour of the Lessee and at the latter’s expense”. It is important to observe that the decentring of the institutional structure for land acquisition from compulsory state land acquisition to customary land acquisition had now put government at the receiving end in the construction of higher institutional obligations.

The traditional authorities granted “perfect assurance...according to customary law” for a 99 year lease of land to the GSC “commencing from 1st January, 2002 with an option of renewal for further term of Fifty (50) years and subject however to the payment of ground rents in every year which ground rent is subject to an upward review every three (3) years and subject further to the offer of customary drink and other terms herein contained in this Memorandum of Understanding”. Significantly, out of the 3.2 billion cedis demanded by traditional authorities to be paid by Government as customary drink money for the lease of the land, Government was only required to make an upfront payment of 2.240 billion while the remainder of the amount was invested by the Ejisu Traditional Council and the Elders/Counsellors and People of Boankra as their “capital/equity contribution to the business to be undertaken on the demised land by the LESSEE to wit; Inland Port”.

The capital/equity contribution made by the traditional authorities in the inland port project entitled them “to receive from the Lessee One Percent (1%) of the annual gross profit of the Lessee’s business operations on the subject premises commencing from the third year from the date of this agreement and which business operations shall nevertheless commence not later than three (3) years from the date of this agreement”. Furthermore, the parties agreed that the 1% percentage benefit shall be

subject to review every two (2) years commencing from the sixth year from the date of the agreement.

The GSC and the Ghana Ports and Harbours Authority (GPHA), representing Government, also agreed perform the following obligations on the demised land premises as its social responsibility to the Boankra Stool and its subjects:

1. To construct, develop, and build for the benefit of the Lessor and its subjects during the first phase of the Lessee's operations on the subject premises (that is to say within three (3) years after executing this agreement) a Junior Secondary School (J.S.S.) classroom block whose model and structural design shall be mutually agreed upon by the parties.
2. To construct, develop and build for the benefit of the Lessor and its subjects during the second phase of the Lessee's operations on the demised premises (that is to say within six (6) years after executing this agreement) a Senior Secondary School (S.S.S.) complex comprising but not limited to a two-storey classroom block with all the requisite modern facilities together with a school canteen.
3. To afford a greater opportunity to be accorded the Lessor's Stool's subjects and citizens to be engaged by the Lessee to fill all vacancies of unskilled labour in job placements and establishments in the Lessee's business operations on the subject premises.

In any case, as at August 2006 when the fieldwork research for this study was completed in Ghana, the inland port had not yet been completed let alone starts its business operations. Certainly the question of enforcement of institutional obligations enters the discursive framework. After all, the feuding factions had not been able to resolve their differences and shift attention to their developmental needs. However, Government had built the J.S.S. classroom block for the Boankra people, which was in use at the time of the fieldwork data collection. The obligation to build the J.S.S. classroom block should not be taken as an act of charity to a poor community. The previous J.S.S. classroom block was directly situated on the 400 acre-land acquired for

the inland port and earmarked for demolition. The new J.S.S classroom block was therefore a replacement for the destruction of public property.

Picture 2: School Building in Boankra affected by Customary Land Acquisition



Source: Author, June-August 2006)

Below is a picture of the new J.S.S Classroom Block that was constructed for the Boankra community as dictated by the terms of the obligations imposed on Government by Traditional Authorities.

Picture 3: New School building in Boankra built by Government



(Source: Author, June-August 2006)

From the above picture one could see that the bold inscription ‘Ghana Shippers Council J.S.S’ embossed on the school building as if a school never existed in the Boankra community before the project arrived. In the politics of the discourse of government land acquisition, political elites try to use every opportunity to convince discursive opponents that Government is seriously committed to its developmental discourse in order to win political support for itself in future discourses.

Ubink (2005:11) had commented that “the Ejisumanhene -the paramount chief of Ejisu- favoured exactly those chiefs who alienated much stool land and shared the proceeds with him. The fact that this would usually not leave much revenue for community development seemed not to bother him”. The truth value of Ubink’s assertion partially seemed to hold in the drama that characterized the acquisition of land in Boankra, when the Ejisumanhene unsuccessfully tried to by-pass traditional institutional leverage structures to install his preferred sub-chief. What the Ejisumanhene might have forgotten is that the outcome of customary land transactions is path dependent on collective action between the allodial title holding chief and his land caretaker sub-chiefs. The re-investment of part of the financial proceeds from the disposition of the Boankra Stool Land however discredits Ubink’s opinion regarding the developmental disposition of the Ejisumanhene.

To forestall any unexpected action by either party to their collective agreement, they even went further to specify the mode of future correspondence communications between them. Institutional learning from land acquisition in Fumesua had taught Government not to leave anything to chance. Before concluding the agreement, the parties also agreed that “in the interest of peace, harmony and good neighbourliness any or all differences arising from any document or any interpretation of any term or provision of any such document and for that matter all differences arising between them in respect of this agreement or any agreement relative to the demised premises shall be settled amicably between them through negotiations and that in the event of a failure to resolve any dispute as aforementioned the matter shall be referred to Arbitration in accordance with the provisions of the Arbitration Act 1961 (Act 38) or any statutory modification or re-enactment thereof for the time being in force”.

At long last the public land bureaucracy has now partially found its feet in the discourse of Government land acquisition. The original agreement of the higher

institutional obligations that have been created must be consented to and concurred for it to be legally recognized by Government. And this was the power status function of the Lands Commission of which it duly fulfilled. One should not forget that the lease agreement has been signed by representatives of the factions in Boankra who were fighting over the vacant traditional office- that is, both genuine and false claimants, involved in the discourse of land acquisition.

The Survey Department also went in with their scientific survey equipment to survey and record the size, value, ownership, and other technical information on the land for a formal lease document to be prepared, consented to and concurred by the Lands Commission. What remained was for the Land Title Registry to complete the formalization process. However, the registration of title in land required the signature of the appropriate land caretaker and the allodial title holder. Because the conflict in Boankra had not been resolved, this final phase of formalization of land acquisition remained outstanding. The Land Valuation Board however still found its power status functions out of coverage area because the discourse was not compulsory state land acquisition. The institutional gap in the payment of compensation to land tenants whose properties have been affected by the lease of customary interests in land was revisited.

8.7 THE INSTITUTIONAL PROBLEM IN PAYMENT OF COMPENSATION TO LAND TENANTS REVISITED

The issue of payment of crops compensation to farmers in Boankra who had been rendered landless by the customary disposition of their farming lands created problems for the speedy acquisition of the land. The absence of state institutional mechanisms for the payment of compensation over customary land acquisitions had created problems for Traditional Authorities, Government and Land Tenants, and the public land bureaucracy. This was not a discourse of compulsory state land acquisition whereby the Lands Commission and the Land Valuation Board were required to pay compensation to the affected property owners.

All along, the farmers had been agitating for their grievances to be addressed. However the already overloaded problems posed by the chieftaincy crises had not permitted the grievances of the farmers to be addressed. The GSC decided to shoulder

the burden of sorting out the claims of each farmer. In a letter written by 53 farmers to the GSC, they had listed 18 of the claimants as “*cheats and parasites on in-land port compensation*”¹⁴. On the contrary, these 18 claimants were later cleared by the Criminal Investigations Department (CID) of the Police Service as genuine.

In the absence of clear institutional mechanisms to address issues of crop compensation, the affected had farmers used the media to discursively articulate their grievances. They also resorted to what they called “*peaceful demonstrations*”¹⁵ to back up the demanded obligations. The farmers had also tried to use their local community leaders such as their elected local government representative or the Assemblyman to champion their cause. Many interviewed farmers claimed that they had been dissatisfied with the slow approach of the Assemblyman.¹⁶

Realizing the institutional vacuum existing within the public land bureaucracy, the affected farmers later turned to their indigenous traditional institutions for help. In a petition sent to the GSC, the farmers wrote:

“We the representatives of the farmers concerned do really appreciate the efforts being taking by Nana in resolving the impasse of compensation and payments to farmers whose crops have been damaged by the Shippers Council. Even though the process is slow and hazardous, we can’t see our way through the end of the tunnel despite the request for compensation. We therefore RESOLVE whole-heartedly to throw our weight behind Nana Aboagye Adjei II, the Ejisumanhene and Landlord of the acquired lands to REPRESENT US and deal with all matters related to the compensation payment to the aggrieved farmers.

*We are grateful and promote Nana Ejisumanhene to represent the leaders and affected farmers. We are not against disruption of the project as envisaged. We count on your cooperation”*¹⁷.

¹⁴ Letter by a section of farmers dated 28 October 2003 to the GSC.

¹⁵ Letter by some affected farmers to the GSC dated 24 August 2003.

¹⁶ Interview with an affected farmers at Boankra dated 30 July 2006

¹⁷ Petition by leaders of farmers affected by the GSC’s acquisition of land at Boankra for the inland port project, dated 3 November 2003

Following a meeting between the farmers, the GSC, the Ejisumanhene and local government officials of the Ejisu-Juaben District Assembly, an amicable settlement was reached. In order to deal with the complex issues of crop compensation the GSC employed the services of officials of the Land Valuation Board to value the crops of each land tenant. However, the valuations done by the Board measured up to its status as a public land organization whose power status functions is only useful in the discourse of compulsory state land acquisition. Both the GSC and the land tenants rejected valuation figures as outrageously low¹⁸ to satisfy the farmers who had lost their crops in the discourse of government land acquisition.

The GSC therefore employed the services of a private land valuer to re-value the amount of compensation that was appropriate to be paid to each land tenant. The new valuation figures were collectively accepted by the GSC and the land tenants as fair. Subsequently, at a meeting held in Ejisu-Juaben District Assembly hall the land tenants were compensated for the damage of their crops. Here, the creation of yet another higher obligation between the GSC and the land tenants was the basis for their collective agreement that an institutional fact of land acquisition has legally been created. Without prior collective agreement on the institutional context of land ownership between Government and Traditional Authorities, the creation of such higher obligations with the land tenants could not have been possible as clearly emphasized by the rational institutional political theory. The terms of the obligations created between the GSC and the Land Tenants is exhibited in Appendix 2.

Although some of the farmers interviewed are still not fully satisfied with their compensation, their dissatisfaction has not stopped the GSC from going ahead with the construction of the inland port project on the legally acquired customary land. The obligatory commitment entered into by the land tenant obliges him to recognize the compensation he has received as “*being the full and final settlement for all claims*”. The land Tenant has already legally declared within the terms of the collective agreement that there is no other entitlement due him in respect of crops compensation.

¹⁸ Interview with Freight and Logistics Officer, GSC

8.8 GOVERNMENT HOPES OF ECONOMIC DEVELOPMENT REVIVED IN BOANKRA WITHOUT LAND TITLE REGISTRATION

The Memorandum of Understanding (MoU) was collectively recognized by the rival factions in Boankra, the Ejisu Traditional Council, and the Asante Traditional Council as sufficient grounds for Government to gain access to land for the construction of the inland port project. At the same time the modus Vivendi enabled each of the actors to partially realize their interests.

Picture 4: The uncompleted Administration Block of the Inland Port Project



Source: Author, June-August 2006)

Although the first phase of the inland port is nearly completed, as at the time of rounding off the fieldwork research in August 2006, the project had come to a standstill seemingly due to lack of funds. Construction workers had not been paid their salaries for several months. This brought resentment, anger, and unrest among the workers leading to agitations and demonstrations. Almost all the casual workers were laid off by the management on the grounds that they had not followed due procedures in addressing the problems. Since majority of the casual workers were from the Boankra community, there was anger and resentment in the community towards government. It is worth noting that a substantial portion of the money earmarked for the project had already gone down the drain as sunk cost in the

unfruitful interactions over land acquisition in Fumesua. It is therefore not surprising that the project was now facing financial problems.

At the time of rounding off the field research in August 2006, the Ashanti Traditional Council had still not been able to resolve the chieftaincy succession crises in Boankra. Therefore Government had not been able to legally obtain land title covering the legal acquisition of the land due to the unresolved chieftaincy crises in Boankra. Whatever be the case, the continuation of the inland port project revived the dampened hopes of the Government, political elites, interested local and foreign investors, and local unemployed people in and around Boankra.

After over a decade of seeking access to land, Government had finally been able to lift the inland port project from the drawing board to the ground and the capital investment initiative might soon yield the expected results. Until the Asante Traditional Council is able to resolve the chieftaincy conflict in Boankra, the public land bureaucracy cannot also perform their power status functions of formalization. Up to this stage, the usefulness of the public land bureaucracy in discourses over customary land acquisition is undermined and seriously questioned.

8.9 CONCLUSION

The above empirical case of customary land acquisition by government confirms the weak institutional capacity and competence of the public land bureaucracy to mediate conflicts of interests among government, traditional authorities, and land tenants when the discourse of land acquisition is decentred from compulsory land acquisition. The decentring of the discursive institutional structure from the discourse of compulsory land acquisition to that of customary land acquisition severed the public land bureaucracy from the discursive arena in Boankra until the stage of formalization.

In the process of formalization of customary and transaction, the public land bureaucracy inherits the problems in customary land tenure that have been passed on through the informal original agreement. The inherited problems that have now received a legal seal from the public land bureaucracy is bound to make future land holdings uncertain even in the midst of genuine documentation. The public land bureaucracy is only structured as a government instrument of violence for the

deconstruction of customary land ownership and not an instrument primarily meant for the construction of customary land acquisition. Outside that discourse of violence, the public land bureaucracy appears useless to actors involved in the discourse of customary land acquisition until the discourse reaches the stage of formalization.

This second narrative confirms the theoretical assumptions of the rational institutional political theory that collective action between autonomous rational actors can only be realised when institutional obligations are created between autonomous rational actors and political agencies or discursive institutions. The institutional obligations created by Government, Traditional Authorities, and Land Tenants with traditional land institutions had provided reasons for rational collective action. Institutional obligation created between autonomous rational actors and institutions matters for rational collective action.

The outcome of land acquisition in Boankra confirms the lack of an effective public property rights institutional regime to deliver customary land to capitalist agents for economic development of the state. Even where land is genuinely acquired under customary tenure, the investor is still faced with future uncertainties over the ownership of his legally acquired property. Indeed, such institutional environment of land acquisition is not one that is likely to support the economic development of the state with regards to domestic fixed capital investment.

The study turns to the theoretical analysis of the competence of the public land bureaucracy to mediate conflict of interests among government, traditional authorities, and land tenants in the two empirical narratives. The variables that impacted on the competence of the public land bureaucracy to effectively mediate in the discourses of government land acquisition are further discussed under the theoretical lenses of the rational institutional political theory.

CHAPTER 9

9.0 INSTITUTIONAL DISCOURSE ANALYSIS OF THE COMPETENCE OF THE PUBLIC LAND BUREAUCRACY IN GOVERNMENT LAND ACQUISITION: THE IMPACT OF INSTITUTIONAL OBLIGATIONS, INSTITUTIONAL STRUCTURING, AND BUREAUCRATIC ORGANIZATIONAL RESOURCES

From the two case study narratives, the discursive actors, their demanded institutional obligations for collective action, and the outcomes from the discursive interactions are now known. This chapter therefore theoretically analyzes the competence of the public land bureaucracy in mediating conflicts of interests among government, traditional authorities, and land tenants in the discourses of government land acquisition in Fumesua and Boankra.

Specifically, the theoretical analysis looks that the impact of institutional obligations, institutional structuring, and bureaucratic organizational resources as independent variables with likely effect on the competence of the public land bureaucracy to mediate in discourses of land acquisition among autonomous rational actors.

9.1 THEORETICAL ANALYSIS OF THE STUDY

The theoretical claim is that the ability of the public land bureaucracy to mediate in conflict of interests among autonomous rational actors in discourses of land acquisition depends on the institutional obligations that have been imposed on the organizational units of the bureaucracy as power status functions.

Secondly, the ability of the organizational units to effectively carry out their power status functions as rational collective actors is influenced by their structural relationships and resource capacity. All together, institutional obligations, institutional structuring, and organizational resource capacity determine the institutional competence of the public land bureaucracy to successfully mediate conflict of interests among actors in discourses of government land acquisition.

Different actors make different obligatory demands and look forward to its fulfilment before granting their consent, agreement and recognition to the creation of an institutional fact of land acquisition in which they have interest. Traditional Authorities have intricate institutional obligations nested within economic, political, and socio-cultural issues. The position of land tenants on compensation is also independent of whether the land is customarily owned or publicly owned. Government also claims ownership over the land within the sovereign frontiers of the state. How these subjective positions were discursively articulated and subsequently fulfilled in the discourses of government land acquisition determined the discursive outcomes in Fumesua and Boankra.

For the empirical analysis of the cases study narratives, the study now uses the theoretical formula provided by Searle (1995) to analyze bureaucratic competence in securing collective action among the autonomous rational actors in land acquisition. Under the rational institutional political theory, the Searlean theoretical formula is expressed in the abstract form: (We agree (X count as Y) in context C)).

When Searle's theoretical formula is contextualized within the study to analyze the competence of the public land bureaucracy to mediate conflict of interests among the discursive actors for collective action, the formula assumes the following form: (We (Government) (Traditional Authority) (Land Tenant) Agree (X counts as Land Acquisition) C))))). The constitutive variables X, Y, and C are interpreted as follows;

C = Institutional Context of Land Acquisition, where;

C1= Customary Land Acquisition

C2= Compulsory Land Acquisition

C3= Public Land Acquisition

X= Institutional Obligations imposed on the public land bureaucracy that defines its obligatory relationship with Government, Traditional Authorities, and Land Tenants in discourses of land acquisition. In a discourse of land acquisition, when the power status function of a public land organization is recognised by an actor as fulfilling his subjective position, then it denotes the creation of an obligation between the actor and the institution. This is represented as follows;

1 = Autonomous Rational Actor agrees that X counts as Y

0 = Autonomous Rational Actor does not agree that X counts as Y

∅ = The Intentionality of the Autonomous Rational Actor is undefined. The actor's position may be described as 'floating' in the discursive process.

Y = Land Acquisition as a discursive outcome from Collective Action; where

Y = (We Agree (X counts as Y) in context C))

- Y = (We do not agree (X counts as Y) in context C))

In outcome Y, there is collective agreement among the discursive actors leading to collective action in the discourse of land acquisition within a defined context. An institutional fact of land acquisition is therefore created and collectively recognized. In outcome -Y, there is collective disagreement among the discursive actors leading to a lack of collective action in the discourse of land acquisition. No institutional fact of land acquisition is collectively created or recognized by the discursive actors.

9.2 REPRESENTATION AND INTERPRETATION OF DATA IN DISCOURSES OF GOVERNMENT LAND ACQUISITIONS

The competence of the public land bureaucracy in mediating conflict of interests among Government, Traditional Authorities, and Land Tenants to secure their collective action over land acquisition for the Inland Port Project in Fumesua and Boankra are presented in tables 1 and 2. The two tables represent the discursive arenas or the social interaction arenas in the discourses of government land acquisition for the inland port project.

The actions of the discursive actors, the differences in outcomes, as well as similarities in the dynamics of the discourses in the two cases of government land acquisition, are clearly brought out from the two by two (2 x 2) word tables. The analytical interpretations from the two tables shall constitute the basis for discussing how institutional obligations, institutional structuring, and bureaucratic organizational resources impacts on the state's institutional capacity for government land acquisition.

TABLE 3: DISCOURSE ANALYSIS OF PUBLIC LAND ACQUISITION IN FUMESUA

INSTITUTIONAL CAPACITY		BUREAUCRATIC COMPETENCE			COLLECTIVE ACTION
PUBLIC LAND BUREAUCRACY		COLLECTIVE INTENTIONALITY OF AUTONOMOUS RATIONAL ACTOR			
ORGANIZATION	INSTITUTIONAL OBLIGATIONS (X)	GOVERNMENT	TRADITIONAL AUTHORITY	LAND TENANT	INSTITUTIONAL CONTEXT= C3
LANDS COMMISSION	Compulsory Land Acquisition	1	0	1	- Y
LAND VALUATION BOARD	Payment of Compensation	1	0	1	- Y
SURVEY DEPARTMENT	Survey of Acquired Land	1	0	Ø	- Y
LAND TITLE REGISTRY	Registration of Land Title	1	0	Ø	- Y

Outcome from discourse of Public Land Acquisition = (WE (Government) (Traditional Authority) (Land Tenant) DO NOT AGREE (X counts as Land Acquisition) C2))))

INTERPRETATION OF TABLE

In the opinion of Government, the compulsory acquisition of the discursive land by the state in 1964 under the CPP government, and its legal formalization in 1972 constituted sufficient grounds to articulate a discourse of public land ownership over the discursive land. The legal framework establishing the Land Title Registry, if it works, meant that Government had a land title certificate over the land. Surveying of the acquired land was a procedural formality. Government was under no obligation to fulfil the subjective demands of traditional authorities. No lease agreement was created because the institutional context of land acquisition did not require the consent of traditional authorities. Government tried to pay what it considered to be “fair and adequate compensation” to the affected land tenants.

From the discourse of the Traditional Authority, public land acquisition by the state conflicted with their customary institutional obligations for land acquisition. The process only re-affirmed the compulsory acquisition of the land to which they vehemently opposed. The process deconstructs the institution of customary land ownership in a way that was not acceptable to traditional authorities. Traditional institutional procedures of land acquisition were sidelined and no customary obligations were fulfilled. Thus traditional authorities disagreed that the institutional obligations fulfilled in the discourse of public land acquisition.

The Land Tenant articulated the same discourse as Government on the discursive fronts of compulsory land acquisition and the payment of compensation. Clearly, the position of the land tenants was contrary to that of their chiefs. It was not surprising that traditional authorities in Fumesua tried to weld the interests of the farmers into their discourse against other traditional authorities who counter-claimed ownership of portions of the discursive land. The African colonial legacy of the crisis of subject-citizen discursive position (MacCaskie, 1984, Mamdani 1996) was manifested.

The social interaction arena shows a lack of collective action among Government, Traditional Authority, and Land Tenant on all discursive fronts in the institutional context of public land acquisition. The alternative to collective agreement was the recourse to violence and legalized aggression leading to the relocation of the project.

TABLE 4: DISCOURSE ANALYSIS OF CUSTOMARY LAND ACQUISITION IN BOANKRA

INSTITUTIONAL CAPACITY		BUREAUCRATIC COMPETENCE			COLLECTIVE ACTION
PUBLIC LAND BUREAUCRACY		COLLECTIVE INTENTIONALITY OF AUTONOMOUS RATIONAL ACTOR			
ORGANIZATION	INSTITUTIONAL OBLIGATIONS (X)	GOVERNMENT	TRADITIONAL AUTHORITY	LAND TENANT	INSTITUTIONAL CONTEXT= C1
	Legal Consent and Concurrence to Lease Agreement	1	1	1	Y
LAND VALUATION BOARD	Payment of Compensation	0	0	1	-Y
SURVEY DEPARTMENT	Survey of Acquired Land	1	1	∅	Y
LAND TITLE REGISTRY	Registration of Land Title	1	0	∅	- Y

Outcome from discourse of Customary Land Acquisition = (WE (Government) (Traditional Authority) (Land Tenant) AGREE (X counts as Land Acquisition) C2))))

INTERPRETATION OF TABLE

From the table, it can be seen that the discourse of government land acquisition has taken a different form. The discourse of compulsory land acquisition was not articulated by Government nor was the discourse of public land acquisition. Government now articulated the discourse of LESSEE of customary land. Perhaps, Government modification of its discourse was due to the experience gained from Fumesua where public land acquisition had brought catastrophic outcomes.

The move to customary land acquisition marked a decentring of the institutional framework for government land acquisition from the public land bureaucracy to customary land institutions. New institutional obligations between Government and Traditional Authorities were constructed to supply the symbols and language for the creation of an institutional fact of customary land acquisition.

The successful construction of new discursive fronts and the completion of an original lease agreement also saw the public land bureaucracy coming into the discourse arena with its technical competence to formalize the transactions. Previously, it lacked the political competence to mediate conflict of interests that had arisen in Boankra among government, traditional authorities, and land tenants in the discourse of customary land acquisition. That conflict mediation function had been resolved by the traditional institutions in the Ashanti region. However, since the original lease agreement had already been cooked for the public land bureaucracy, the Lands Commission also swallowed the inherent defects in the original agreement which had been signed by both genuine and false claimants to the vacant chieftaincy office in Boankra.

One also sees from the table that the decentring of the discursive structure affected the power status functions of the Land Valuation Board. Its functional arm was limited to the payment of compensation to land tenants in discourses of compulsory land acquisition and not customary land acquisition. Government and Traditional Authorities saw no need for the Land Valuation Board. Land Tenants however welded a different discourse and had demanded the payment of compensation. The GSC had to fulfil the subjective position of the land tenants outside the public land bureaucracy for collective action to take place over the acquisition of customary land.

9.3 EXPLAINING THE DIFFERENT DISCURSIVE OUTCOMES

It is very interesting that the two empirical cases of land acquisition involved the same categories of discursive actors; Government, Traditional Authorities, and Land Tenants, but produced different outcomes. The reason for the different discursive outcomes is not far fetched from the two tables. The reason is to be found within the lines of discourse followed by government in pursuit of land acquisition for the inland port project. It can be seen that the context of land acquisition played a very significant role in supplying rational reasons that enabled collective agreement or disagreement on the institutional obligations that legitimately counted as land acquisition; and for that matter fulfils the subjective position of an actor.

Within the social interaction arena in Fumesua, Government articulated a discourse of public land acquisition that only re-affirms the violent deconstruction of customary land institutions in a prior discourse of compulsory land acquisition. Thus, the modern state maker came face to face with the traditional state makers over rival claims of land ownership. Basically, the power status functions imposed on the public land bureaucracy are those of compulsory land acquisition, public land acquisition, and formalization of customary land transactions. Since Government had monopoly control over the state institutions of organized violence, it captured the public land bureaucracy to articulate its subjective position.

Traditional state makers have also sworn before their subjects that in all things they will protect, preserve, uphold, and defend their ancestral land which they had acquired through the toil and blood of their forefathers. Traditional authorities who opposed government's discourse of land ownership captured their subjects and prayed that may their ancestral gods help them all in the politics of collective violence that ensued. Tilly (2003) emphasized that in the politics of collective violence, groups that are bonded together by rituals are the most effective. It was no wonder that the opposing organized local communities prevailed over government. Collective violence had produced neither collective agreement nor collective action as predicted by the rational institutional political theory.

Traditional authorities and their subjects found no desire independent reasons within the public land bureaucracy to rationally engage government in discourses of land acquisition. On the contrary, each actor had pursued his own value informed position. By the time government found enough political will to renegotiate the acquisition of the discursive land with the traditional state makers, historical problems inherent in customary land tenure had gained deeper roots, making it practically impossible for rational deliberation. The seeds of mistrust that had already been sowed in the discourse of compulsory land acquisition brought forth insulation mechanisms within the judicial arm of the state.

The discourse of land acquisition that took place in Boankra therefore took a different discursive form. Not only was the discursive structure decentred from the public land bureaucracy to traditional land institutions, but also the discourse had led to the construction of new discursive frontiers. Government now recognized the discursive land as customarily owned by traditional authorities, and thus assumed the new position of 'Lessee'. Farmers also assumed the position of 'Land Tenants' with economic right to crops compensation.

The construction of new discursive frontiers and the creation of new institutional obligations had paved way for collective action among Government, Customary Land Owners, and Land Tenants, in the modified discourse of government land acquisition. However, the original agreement had to be formally legalized by the public land bureaucracy as demanded by government. Thus, the subjective positions articulated by Government, Traditional Authorities, and Land Tenants were partially met to produce collective action.

Gran (2007a) was right in his remark that, in the democratic state, institutional obligations, if they work, will typically reflect both the value homogeneity and the value conflicts in the larger society; making sure that a political regime cannot completely eliminate opposition, and turn the public bureaucracy into unified machinery for the implementation of its chosen regulatory policy. In totality, however, the fulfilment of institutional obligations for the creation of an institutional fact of customary land acquisition was not a homogenous one but divided between traditional land institutions and the public land institutions.

9.4 ANALYSIS AND DISCUSSION OF INDEPENDENT VARIABLES

The analysis of the outcomes from the two social interaction arenas is pursued under the three independent variables that makes up the institutional capacity of the public land bureaucracy and determine the competence of the institution to mediate conflict of interests in government land acquisition. The variables are institutional obligations of the discursive actors with the public land bureaucracy, institutional structuring of the bureaucracy, and bureaucratic organizational resources. How these independent variables impacted on the competence of the state land bureaucracy to facilitate access to land in Fumesua and Boankra are analyzed and discussed at the micro level of discursive interactions over government land acquisition.

9.5 INSTITUTIONAL OBLIGATIONS

We have returned to the famous institutional theoretical problem that has received so much interest in political science. What institutional obligations did the autonomous actors with conflict of interests in government land acquisition have with the public land bureaucracy for them to collectively agree and act in the interest of the state? Specifically, what institutional obligations existed among traditional land owners, land tenants, and government within the public land bureaucracy for these actors to have collectively placed their interests under the institutional mechanisms of land acquisition specified in the public land bureaucracy?

The rational institutional political theory makes it clear that the interposition of obligations between institutions and autonomous rational actors is the only mechanism by which collective action is possible in collective action dilemmas (Searle 1995, 2001, Gran 2005a, 2007a, b). It is the institutional obligations that supply the language, symbols, and procedural rules for social interaction between the discursive actors. How institutional obligations as an independent variable impacted on the competence of the public land bureaucracy to mediate in the discourses of government land acquisition are discussed below.

9.5.1 VALUE HETEROGENEITY IN THE DISCOURSE OF COMPULSORY GOVERNMENT LAND ACQUISITION

From the social interaction arena in Fumesua, it was clear that the discourse of compulsory state land acquisition had led to the articulation of heterogeneous obligations among government, traditional authorities, and land tenants on what counts as legitimate acquisition of land. There was no value homogeneity under the institutional obligations imposed on the public land bureaucracy that provided collective reasons for the three actors to agree and act in the collective interests. No provision is made for government to fulfil the customary obligations demanded by traditional authorities. The state land institutions and customary land institutions had operated from the opposite ends of land acquisition, particularly with regards to the institutional procedures that should be followed. Government intentions of compulsory land acquisition were carried out unilaterally with violence. The public land bureaucracy had been structured as a violent state organization that was captured by the political regime to articulate its position on land ownership and acquisition.

The historical path followed by the state in the political process of state making had sowed the seeds of a dual system of land ownership and contradictory processes of land acquisition within the state. The land institutions within each system of land ownership have developed their own institutional obligations that must be fulfilled to secure collective agreement in a discourse of land acquisition. In a discourse of public land acquisition, Government does not submit itself to the dictates of traditional authorities and fulfil their demanded institutional obligations. On the contrary, government uses its monopoly over the coercive land institutions to gain access to land. The public land bureaucracy, at best, becomes a unilateral institution that serves the interest of government in the formalization of land transactions; and at worst, an instrument of violence that is captured by a political regime to seize customary land.

The power status functions of the public land bureaucracy in the discourse of public land acquisition clearly lay outside the institutional obligations demanded by traditional authorities. Government compulsory acquisition of the discursive land in Fumesua in 1964 had not fulfilled the payment of customary drink money to land owners. There was no lease agreement and no institutional fact of land acquisition had

been created between traditional land owners and government. Technically, government and traditional authorities articulated legitimate but contradictory claims over ownership of the land. The basis for future conflict over ownership claims to the land had therefore been laid long before the inland port project was conceived.

The institutional relations of power conflict between the public land bureaucracy and traditional land institutions seems to confirm one key problem of land administration in developing countries identified by scholars (Holstein, 1996, Putzel, 2000). The problem is the political challenge of reconciling social legitimacy and legality into state institutional structures to ensure collective functional performance for the broad masses rather than for particular government interests. Ray (1999) correctly observed that the power conflict between government and traditional authorities is epitomic of the divided sovereignty of the state over land ownership.

Whatever be the developmental intentions behind the compulsory acquisition of customary land by the state; clearly, that approach to fast track the “high-modernist ideology” (Scott 1998:4) of governments has some negative inherent features that does not reinforce capital production. On the contrary, it affects the institutional capacity of the state to readily provide access to land for capitalist development. Unsettled problems that follow compulsory government acquisition of customary land pose futuristic constraints to the developmental capacity of the state.

9.5.2 STATE-TRADITIONAL RIVALRY OVER PUBLIC LAND

As theoretically predicted, the lack of institutional obligations between rational autonomous actors and institutions has the tendency of forcing such autonomous actors to create their own institutions for the protection of their interests. The study discovered that traditional authorities in Ashanti, specifically the Kumasi Traditional Council, have created the Asantehene’s Lands Secretariat which functions as a powerful rival institution to protect customary interests in land. Moe (1991) was also right in noting that when societal actors are threatened with “unwanted acts of legalized aggression by the state” or by their enemies against their properties, they will create strategies that insulate their properties from the future control of the state; even where the strategies also prevent them from fully enjoying their property.

The Asantehene's Lands Secretariat (popularly called the Asantehene's Lands Office) has been in existence since the colonial era. The office keeps records of land transactions such as leases, gifts, and other significant land transfers. Historically, the office played a crucial role in the financial administration of the Asante State through the collection of rents on customary lands. It was not surprising that the British seized all records of the Asantehene Lands Office after defeating the Ashanti state. The land records were however returned in 1943 to re-open this traditional land institution.

In 1958, the CPP government had also seized all documents of the Asantehene Lands Office on the grounds that traditional authorities in Ashanti were supporting the National Liberation Movement (NLM), an opposition political party. It is these documents that were used to open the Lands Department, which is now the Lands Commission, in Kumasi. Currently, the Asantehene's Lands Secretariat is in the process of reclaiming all its land records from the Ashanti Regional Lands Commission to bridge the information gap between historical and modern land transfers. The Asantehene Lands Secretariat is reputed to possess the most updated information on customary land transfers in the country (Somevi 2001). The existence of such a powerful rival land institution in Ashanti has weakened the public land bureaucracy to mediate in discourses of customary land acquisition.

Picture 5: The Asantehene's Lands Secretariat in Kumasi



(Source: Author, June-August 2006)

Lawyers, judges, land intermediaries, private investors, and even some scholars have found it more expedient to rely on traditional land institutions for more accurate, timely and reliable information for their purposes than to rely on the state land bureaucracy (Berry 2001, Brobby 2005, Yeboah 2005). In a research work by Berry, she commented that after persistent but futile searches in the public land bureaucracy for maps showing “the location and extent of stool lands, or the boundaries between them”; the head of the Lands Commission assuredly redirected her research to the customary land owners because “chiefs know that boundaries” (Berry 2001:xvii).

Land litigants have also found the traditional justice system less expensive, more effective in the enforcement of rulings on customary land conflicts, less acrimonious, technologically more innovative, and also more trustworthy than the state courts in the adjudication of land cases (Yeboah 2005). Crook (2005:11) had earlier remarked that, “in spite of the problems and delays associated with the state courts, there is a strong demand for authoritative and enforceable settlements which only the state could provide”. The empirical evidence from the final resolution of the conflict between Fumesua and Bebre does not seem to support the assertion by Crook that it is only the state court that could provide authoritative and enforceable settlement of customary land conflicts. Crook’s own statistics shows clearly that the number of new cases of customary land conflicts received by the Kumasi High Court had witnessed a continuous decline between 2000 and 2002 (Crook 2005:5).

The element of fairness in the adjudication customary land conflicts by traditional institutions was seen in the resolution of the Fumesua and Bebre land dispute. Traditional land institutions have therefore gained more acceptance and recognition in matters of land dispute resolution in Ashanti. The implication is that traditional land institutions now enjoy a higher power status-function than state land institutions. Gradually, formal power status-functions in customary land acquisition may completely decentre from the public land bureaucracy to rival traditional institutions. Traditional authorities continue to question the legitimacy and rationale of the evolving state institutional configuration for land administration. In their opinion, “they are perfectly capable of managing their lands based on their long standing customary land laws and procedures” (Kasanga and Kotey, 2001:7).

9.6 INSTITUTIONAL STRUCTURING

Under this variable, the study analyzes how the institutional structuring of the public land bureaucracy had impacted on its competence to function as a rational collective organizational actor with the political competence to mediate in conflicts of interests in a discourse of government land acquisition.

9.6.1 INSTITUTIONAL DISLOCATION OF THE PUBLIC LAND BUREAUCRACY IN DISCOURSES OF CUSTOMARY LAND ACQUISITION

The discursive arena in Boankra showed that the public land bureaucracy is not well structured to mediate in a discourse of customary land acquisition. The decentring of the discursive structure from public land acquisition to customary land acquisition exposed the public land bureaucracy as a state institution that possesses competence in the articulation of violent discourses of land acquisition by governments. Momentarily, the public land bureaucracy was structurally cut off from the discourse of customary land acquisition. It confirmed that the public land bureaucracy is structurally deficient and an ineffective vehicle for the acquisition of customary land.

The catastrophic outcomes in Fumesua that led to the decentring of the discursive from the public land bureaucracy to the creation of new obligations in customary land institutions showed the irrationality in the proposition that the productive efficiency of institutionalized organizations is inconsequential to its legitimacy and survival (Meyer and Rowan (1977)). Even Government had found no desire independent reason to confer any more legitimacy on the public land bureaucracy to mediate in future discourses of land acquisition when the productive efficiency of the institution tested negative in Fumesua. The public land bureaucracy was dislocated in the future discourse of customary land acquisition. Rational actors are as much concerned with the productive efficiency of institutionalized organizations.

In Boankra, the public land bureaucracy found out that its formalization functions was useless to mediate the conflict of interests in the discourse of customary land acquisition until Government, Traditional Authorities, and Land Tenants had finished

the tortuous process of resolving their differences outside the public land bureaucracy. Traditional authorities had not found it desirable to use the Lands Commission to mediate in the Boankra chieftaincy conflict in spite of the fact that the Commission had a representative from the Regional House of Chiefs. Clearly, institutional isomorphism through formal cooptation of organized opposition forces into the leadership structure of the Lands Commission did not provide the Commission with the legitimacy to mediate in conflict of interests in customary land acquisition.

The Land Valuation Board had also found its power status functions severed because the new discursive arena in Boankra provided no grounds for the use of violence by Government or the payment of “fair and adequate compensation” to land tenants. The Land Valuation Board which hitherto had the power status function of paying “adequate and fair compensation” to affected land tenants in discourses of compulsory state land acquisition, now found itself taken out from the discourse of customary land acquisition. It is interesting to note that the GSC had by-passed the Land Valuation Board to employ a private land valuer in the payment of crops compensation to land tenants. If public services provided by the Land Valuation Board relating to land acquisition could be procured from the market then what justifies its continued survival?

The Land Title Registry could also not find its feet at the tail end of the discourse of customary land acquisition in Boankra because of chieftaincy conflicts that made it impossible to identify the genuine signatories for a land title certificate. At best, the Registry can only wait until the traditional land institutions have successfully mediated in the chieftaincy dispute. Until the chieftaincy conflict was resolved, the baton of formalization remains with the lease department of the Lands Commission. Meanwhile the Lands Commission was also depending on the Asante Traditional Council to effectively resolve the conflict of interests before it could grant a lease over the land. Nothing was heard of the dispute adjudication committee of the Land Title Registry. Brobby (2002) had rightly observed that the dispute adjudication committee of the Land Title Registry has refused to function.

It appeared that only the Survey Department found its feet in the decentred discursive structure. After all, Government, Traditional Authorities, and Land Tenants needed to

know the size, value, and other geographical characteristics of their object of discourse in order to make rational deliberations. The resolution of the Fumesua and Bebre/Wurakese land conflict had showed that the traditional land institutions lacked the technical competence to mediate in conflict of interests in customary land. However, the important thing that emerges from the two discursive arenas is that the power status functions of the Survey Department becomes important only in an environment devoid of violence where all discursive actors collectively agree on the ownership of land and its legal disposition. In Fumesua, where this collective agreement was lacking, the power status functions of the Survey Department had amounted to nothing. But in Boankra where this collective agreement was available, the same power status functions counted towards land acquisition.

The institutional dislocation of the public land bureaucracy in the informal processes of customary land acquisition pose more problems for the formalization functions of the state bureaucracy. In the Boankra discursive arena, the Ejisumanhene had unsuccessfully tried to by-pass traditional institutional leverage structures in customary land acquisition. Customary institutional norms required that the Ejisumanhene collectively agree with his rival traditional authorities in Boankra in the disposition of customary interests in the Boankra Stool land. Such lower level leverage structures that powerfully operate within traditional governance institutions in discourses of customary land acquisition passes on further delays, red tapes, and higher transaction costs to the formalization of customary land transactions by the public bureaucracy. At the same time the public land bureaucracy find itself impotent in the enforcement of traditional institutional leverage structures when problems of enforcements are encountered by traditional authorities.

The strength of lower level traditional leverage structures on the one hand ensures accountability and transparency in customary land acquisition. On the other hand, it has become critical power junctures that frustrate the formalization of customary land transactions by the public land bureaucracy. If the personal disposition of the Ejisumanhene were to be the sole factor determining the outcome of customary land acquisition in Boankra, the public land bureaucracy might have no problem at all for the formalization power status functions of the public land bureaucracy.

Clearly, one sees that the effective institutional capacity of both the public land bureaucracy and traditional land institutions depends on their institutional cooperation. Functional cooperation and trust relations, however, cannot be assumed to exist among autonomous rational actors with conflict of interests in a discursive object or issue. Unfortunately, the public land bureaucracy is structurally severed from the traditional land institutions. As a consequence of the institutional structural disconnect, the public land bureaucracy usually finds its power status functions temporarily dislocated in discourses of customary land acquisitions.

9.6.2 STRUCTURAL DEFECTS IN THE FULFILMENT OF INSTITUTIONAL OBLIGATIONS TO LAND TENANTS

The two empirical cases of government land acquisition also seem to confirm the observation by Kasanga (2000:6) that the lack of an enabling legislation for the Land Valuation Board stifles the effective discharge of its institutional obligations to land tenants in a discourse of compulsory government land acquisition. In Fumesua, Government and Land Tenants collectively agreed that compulsory state land acquisition had taken place. However, both also agreed that compensation for some of the affected land tenants had remained unsettled. Even more crucial is the fact that the affected land tenants had not been relocated after the state had compulsorily acquired their farming and communal land. Thus the land tenants had encroached on the public land making its future transfer for capital development very difficult.

Meanwhile in Boankra, the discourse of customary land acquisition also created institutional problems in the payment of compensation to land tenants. While the Land Valuation Board found itself incapable of fulfilling that function, traditional authorities had also not welded the interest of farmers with their discourse. After all, under customary terms of land acquisition, when traditional authorities dispose off their customary interest in land to interested agents, the usufructuary right of the farmer is extinguished.

The payment of compensation to affected farmers in a discourse of customary land acquisition therefore falls squarely on the shoulders of the agent who is acquiring the land. The agent has the onerous task of sorting out opportunists from genuine claimants in the muddy waters of customary land acquisition. The payment of

compensation became a tug of war between the GSC and land tenants. Public land officials and traditional authorities had their priorities elsewhere. The Lands Commission and the Land Valuation Board could justify their indifference on the grounds that the constitution has structured their power status functions as violent instruments articulated in discourses of compulsory land acquisition. The land tenant who finds his economic interest in jeopardy must either employ the services of a lawyer or take the law into his own hands with whatever insulation mechanism he finds appropriate.

It is now understandable why farmers in Boankra had to impose new power status functions on the Ejisumanhene, their paramount chief, to represent them in their negotiation for compensation. Ironically, it was the same paramount chief whose action had rendered the farmers landless. Perhaps, it is time for government to officially impose the power status-function of payment of crops compensation on traditional land institutions, if the state land institutions lack the power and resources. Land tenants might then have to create new lower level leverage structures to ensure the accountability of their traditional representatives in the payment of fair and adequate compensation for their affected property.

9.6.3 LACK OF INSTITUTIONAL COOPERATION

The discursive arena in Fumesua suggests a lack of inter-organizational coordination within the public land bureaucracy. The ability of land litigants from Bebre and Fumesua to coordinate different crucial sources of information from the public land bureaucracy; to support their contentious claims show a lack of inter-organizational coordination in the collective management of crucial information. Collective information management by the organizational units of the public land bureaucracy might play a key role in making them an effective instrument for the resolution of land conflicts. Departmental jealousy and internal organizational conflicts among the organizations units Somevi (2001) makes it difficult for the public land bureaucracy to counter the strong opposition from their rival traditional land institutions.

The effective resolution of the land ownership conflict between Fumesua and Bebre/Wurakese by the Asantehene and his traditional council emphatically proved

that the institutional competence of the public land bureaucracy to effectively facilitate access to land requires more than just material and human resources. Organizationally, it requires effective collaboration, cooperation, and trust relations among the public land agencies. While each of the bureaucratic unit possess some crucial information that might prove important for overall institutional effectiveness; there is little functional cooperation and trust relations among them. Not surprisingly, the public land bureaucracy could not resolve the customary land conflict in Fumesua.

The lack of horizontal cooperation among the organizational units of the public land bureaucracy is worsened by its vertical institutional rivalry with traditional land institutions. Unfortunately, the functional survival of the public land bureaucracy in discourses of customary land acquisition depends on the capacity of traditional land institutions to mediate in conflict of interests in customary land acquisition. Since there are no institutional obligatory relations between the state land institutions and traditional land institutions, there is also very little cooperation and trust relations between them. Traditional land institutions seem to be self reliant within their traditional political territories because they can acquire technical competence possessed by the public land bureaucracy from the market. The public land bureaucracy cannot do the same when it comes to the acquisition of political competence from the relevant quarters. Even the state courts do not possess such social legitimacy in resolving customary land disputes. They rely on the knowledge and power of traditional authorities (Brobby 2005).

It is obvious that whiles traditional land institutions like the Asantehene's Lands Secretariat possess reliable information about new developments on the ownership of customary land; the public land bureaucracy have no access to such new developments. Neither does the public land bureaucracy have the political competence possessed by traditional authorities to mediate discourse of conflict of interests in customary land. Such authority and local knowledge do not exist outside traditional land institutions. The capacity of the public land organizations to formalize customary land transactions has come to depend on institutional cooperation with traditional authorities. But there is little institutional cooperation between traditional land institutions and the state land bureaucracy in discourses of land acquisition.

There is no automatic element of causation behind the movement of documents between officials of the public land bureaucracy and traditional authorities. Officials of the public land bureaucracy thus usually find themselves with outdated information on customary land ownership. They are left with no choice than to heavily rely on the benevolence of traditional authorities to counter confirm the authenticity of land allocation notes presented by agents who have acquired an interest in customary land. Since traditional authorities are not public servants on the payroll of the state, the agent must pay for the verification services rendered, aside any financial payment made to middlemen who liaise between the agent and the sacred traditional authority. All associated cost of the shuttling of documents between the two institutions is therefore borne by the agent with acquired customary interest.

It is not surprising that the cost of formalization of land transactions has been estimated by Antwi (2001) to be 40% of the actual cost of money paid for customary lease. Is there any reason for agents with acquired customary interest to formalize their customary land transactions if they can operate in the 'illegal sector' (De Soto 2000) of the state? The lack of horizontal and vertical institutional cooperation within the overall institutional framework for land acquisition weakens the institutional capacity of the state to make land readily available for capital development.

9.7 BUREAUCRATIC ORGANIZATIONAL RESOURCES

Finally, the impact of bureaucratic organizational capacity as an independent variable on the competence of the public land bureaucracy to mediate conflict of interests among government, traditional authorities, and land tenants in the discourses of land acquisition is critically looked at. Do the public land organizations have the technical competence in the form of administrative capacity, technology and financial resources to perform their power status functions in discourses of government land acquisition? Can one attribute the failure of the public land bureaucracy to competently mediate in the conflict of interests among government, traditional authorities, and land tenants in the two empirical cases to a lack of technical competence? The impact of bureaucratic organizational resources on the discursive outcomes in Fumesua and Boankra is taken up in the discussions that follow.

9.7.1 INADEQUATE ADMINISTRATIVE CAPACITY (?)

If high-calibre, trained and skilled administrators, lawyers, surveyors and other supporting staff aside relevant technology had been provided in abundance for the state land bureaucracy in the Ashanti region, could public land officials have competently mediated in the conflict of interest over government land acquisition in Fumesua? A critical analysis of the resolution of the land dispute between Bebre/Wurakese and Fumesua by the Kumasi Traditional Council does not suggest that the public land bureaucracy lacked technical competence.

The documented evidence from the traditional judicial court of the Asantehene showed that the public land bureaucracy in fact possessed adequate administrative capacity for their technical competence. The Asantehene's Court had relied on topographical maps from the Survey Department, government approved lay-out, and other technical documents produced by the litigants from the public land bureaucracy before the Kumasi Traditional Council could resolve the technical aspects of the conflicting claims to the same customary land.

The most important finding from the Asantehene lands court is that the capacity of a political institution to mediate conflict of interests that involves issues of power relations requires more than just technical competence in the form of professional expertise and technology. More importantly, it required that the conflict mediator possesses legitimacy, authority, and power acquired from the litigants in order to play any meaningful role in the resolution of issues embedded in political power. When the contradictory oral historical accounts and documented information from the public land organizations had produced little progress in the recurring dispute, the Kumasi Traditional Council had used its traditionally acquired authority to legitimize the final ruling by the Asantehene.

The critical question that emerges is on what authoritative grounds can officials of the public land bureaucracy effectively resolve customary land conflict and impose sanctions on traditional authorities? Perhaps, the cooptation of representatives from the House of Chiefs and other bodies into the leadership structure of the Lands Commission was meant to address the lack of political competence in public land

bureaucracy to mediate in land conflicts. However, the co-opted members lack real to mediate conflict of interests in government land acquisition. Beyond personal gratification, one wonders the actual power status functions performed by these co-opted representatives within the Lands Commission.

Whilst not discounting the importance of strengthening the technical competence of the ailing public land bureaucracy, reformers must pay more attention to the institutional foundations of public organizations. An institution with a weak or divided power status cannot function effectively. From the two empirical cases, one can emphatically say that institutional competence goes beyond technical competence.

9.7.2 INADEQUATE FINANCIAL AND LOGISTICAL RESOURCES (?)

From the two empirical cases of government land acquisition, it is difficult to make a case for the adequacy or inadequacy of financial resources within the public land bureaucracy in the performance of their power status functions. After all, financial resources and material organizational support are background resources that enable the fulfilment of actual institutional obligations. Arguably, it is only where the context of land ownership is clearly defined from any encumbrances that organizational resources could effectively be put to use. This is not to say that financial and logistical resources play no role in strengthening the institutional capacity of organizations. The point is that institutions are first and foremost rules of collective agreement in the form of obligations and not physical materials or financial resources per se.

The discursive arena in Fumesua seemed to suggest that the Land Valuation Board encountered problems in the payment of compensation to affected land tenants in the discourse of compulsory state land acquisition. An official of the Land Valuation Board pointed out that the Board does not have enough vehicles to go round and evaluate claims of compensation. He stated, “*Getting fuel for the only available vehicle is sometimes a problem. Unless the claimant provides money for fuel, we cannot go to evaluate his claims*”¹⁹. The fulfilment of the obligations constitutionally imposed on the Land Valuation Board seems to have been stifled by financial and

¹⁹ Interview with an Official of the Land Valuation Board, Ashanti Regional Office, Kumasi

logistical constraints. However, problems encountered by the Board in the performance of its power status functions appears to be engendered by the lack of mutual agreement over what constitute “fair and adequate” compensation rather than the lack of financial resources and logistics.

In fact, there is no point in spending huge financial resources to procure computers, survey equipments, and other technological logistics where relevant actors fail to recognize the power status functions imposed on an institution. Moreover, public bureaucrats cannot perform functions in institutional environment where they are not wanted. Scott (2001:58) emphasizes that “Organizations require more than material resources and technical information if they are to survive and thrive in their social environment. They also need social acceptability and credibility”. On both discursive fronts in Fumesua and Boankra, the background role played by financial and logistical resources in the competence of bureaucrats was clearly demonstrated. Traditional authorities, government, and land tenants had to collectively agree on their institutional obligations with the mediating political agency before any surveying, payment of compensation, and titling functions could be performed.

The organizational effectiveness of public institutions depends first and foremost on the possession power status imposed on them by relevant autonomous rational actors rather than the creation of organizational structures stuffed with adequate human and material resources. Where such public authority is lacking, logistical materials and financial resources cannot be put to any effective use by public bureaucrats. The survival of political institutions depend on something more than financial resources and material logistics which can easily be provided by market forces.

9.8 CONCLUSION

Discourse analysis of the two empirical cases of government land acquisition in Fumesua and Boankra makes it emphatic that the institutional capacity of a public land bureaucracy to secure collective agreement and action among autonomous rational actors with conflict of interests depends on their institutional obligations with the public bureaucracy more than anything else. Where there is no This is no homogenous institutional value among autonomous rational actors with conflict of

interests in a discursive object or issue, there is also no desire independent reason among the actors to collectively agree in the public interests.

In Ghana, the institutional capacity of the state to readily make land available for capital development is hampered by a largely dysfunctional public land bureaucracy that lack obligations with traditional land owners and land tenants in discourses of land acquisition. The public land bureaucracy can therefore hardly rely on any collectively accepted rules and procedures to mediate conflict of interests among Government, Traditional Authorities, and Land Tenants in a discourse of government land acquisition. Rather, the public land bureaucracy has historically relied on legalized violence which does not release the faculty of rationality of traditional authorities and land tenants in a discourse of government land acquisition.

Collective action in discourses of government land acquisition came to depend on traditional institutional mechanisms that work outside the public land bureaucracy. In effect, there is usually the de-centring of institutional structure of land acquisition from the public land bureaucracy to traditional land institutions because traditional authorities own about 80% of the available land under customary tenure. But within the traditional institutional structures of land acquisition, one finds widespread power struggles among the land owners over traditional offices and over land. It therefore becomes difficult for a capitalist agent to gain secure access to land for investment.

Although some kind of a tenuous institutional cooperation has emerged between the public land bureaucrats and traditional land institutions, it is not engendered by an environment of trust relations. The tenuous inter-dependence has been founded on an institutional environment filled with distrust, legal pluralism, violence, opportunism, uncertainty and the articulation of heterogeneous values. Faced with such serious problems of institutional capacity that has very little to do with technical competence, it is questionable whether strengthening the material and human resource base of the public land bureaucracy might make any difference at all to their competence to serve the broad public. The construction of new institutional obligations with Traditional Authorities, Land Tenants, and Government is imperative if the public land bureaucracy is to function as a rational collective actor that supply desire independent reasons to these actors for rational collective action in discourses of land acquisition.

CHAPTER 10

10.0 SUMMARY OF FINDINGS AND CONCLUSION OF THE STUDY

The study has been driven by the problem of land acquisition faced by government in Ghana. Government, it has been empirically observed, does not only encounter difficulties in gaining access to available physical land but also faced insecurity over legally acquired public lands. The study sought to (a) define the institutional capacity of the state for land acquisition, and (b) to find out the specific problems that affect the institutional capacity of the public land bureaucracy to competently mediate conflict of interests among Government, Traditional Authorities, and Land Tenants in discourses over government land acquisition.

10.1 SUMMARY OF FINDINGS

The institutional capacity of the state for government land acquisition was defined to include the Lands Commission, the Land Title Registry, the Survey Department, and the Land Valuation Board. Two high profile cases of government land acquisitions for an inland port project were also examined to find out the problems that impact on the competence of these organizational units to collectively mediate conflict of interests among Government, Traditional Authorities, and Land Tenants in the discourses of land acquisition. A theoretical analysis of the discursive interactions over government land acquisition provided deep insight into problems that impact on the competence of the public land bureaucracy. The problems of institutional capacity cut across conflicts of state sovereignty over land ownership, fragmentary institutional obligations, weak institutional structuring, and the ineffective use of bureaucratic resources. The findings of the study are summarized as follows.

10.1.1 THERE ARE NO INSTITUTIONAL OBLIGATIONS AMONG GOVERNMENT, TRADITIONAL AUTHORITIES, AND LAND TENANTS WITHIN THE PUBLIC LAND BUREAUCRACY

The study found that there are no formal institutional obligations among Government, Traditional Land Owners, and Land Tenants within the institutional fabric of the

public land bureaucracy in discourses of government land acquisition. The study found no institutional avenues within the public land bureaucracy for capitalist agents with interests in land to fulfil the subjective obligations demanded by traditional authorities and land tenants in discourses of public and customary land acquisitions. Beyond their subjective positions, these three actors also found no rational reasons within the institutional framework of the public land bureaucracy for their collective agreement and action in a discourse of land acquisition.

The hollow co-optation of representatives from the House of Chiefs, the Ghana Bar Association, the Ghana Institution of Surveyors, the Department of Town and Country Planning, the Association of Farmers and Fishermen, the Environmental Protection Agency, and the Ministry responsible for Lands and Forestry, into the leadership structure of the public land bureaucracy did not in any way lead to the conferment of legitimacy and resources on the public land bureaucracy. The public land bureaucracy therefore lacked the political competence from these actors to mediate conflict of interests in a discourse of government land acquisition.

On the contrary, as predicted by Selznick (1949:16), the character of the co-opted elements had shaped the modes of action available to Government and the public land bureaucracy in rational discourses. The price of commitment to outside elements which government and the public bureaucracy had to pay was to adapt to the obligations demanded by chiefs within their customary land institutions.

The emerging hypothesis from the study is that:

A political institution with strong institutionalized obligatory relationships with relevant autonomous rational actors is more likely to competently mediate conflict of interests in a discursive object or issue, than a political institution that has weak or no institutionalized obligations with relevant autonomous rational actors within its institutionalized environment.

An institutional fact of land acquisition is more likely to be created through collective intentionality, collective agreement, and collective action among relevant autonomous rational actors with conflict of interests in a discursive process when the necessary

subjective obligations demanded by actors have been sutured into the institutional fabric of the political agency mediating the discourse.

10.1.2 THE PUBLIC LAND BUREAUCRACY IS INSTITUTIONALLY STRUCTURED AS AN INSTRUMENT OF VIOLENCE USED BY GOVERNMENT FOR THE DECONSTRUCTION OF CUSTOMARY LAND INSTITUTIONS AND NOT STRUCTURED AS A RATIONAL COLLECTIVE ACTOR

The study also found out that the public land bureaucracy does not function as a rational collective organizational actor in discourses of government land acquisition. Even under the democratic dispensation of the state, the public land bureaucracy has not shed off its cloth as a one sided instrument of violence used by government for the deconstruction of customary land institutions. Consequently, the public land bureaucracy lacks the political competence to mediate conflicts of interest among Government, Traditional Authorities, and Land Tenants in land acquisition.

One may therefore give credit to Kasanga (2000) for his accurate observation that the public land bureaucracy has failed to serve the broad interest of the public. On the contrary, the public land bureaucracy has largely functioned as an instrument of violence used by government to deconstruct customary land institutions and displace poor farmers and local communities from their customary land.

In the absence of collective institutional obligations, the ensuing state-traditional institutional rivalry over land ownership has weakened the competence of the public land bureaucracy to facilitate access to land held by actors within the boundaries of the traditional state. Unfortunately for the public land bureaucracy, their institutional rivals own about 80% of the country's physical land. As a result, the public land bureaucracy has largely become helplessly dependent for their functional survival on rival traditional institutions. Interestingly, the subjective position of traditional land institutions on what legitimately counts as land acquisition does not entail the legal formalization of transactions as demanded by the democratic state.

Therefore, although the public land bureaucracy have the legal mandate to mediate conflict of interest in government land acquisition and facilitate access to land for development; this power status function is informally decentring to their institutional rivals. Government, local investors, scholars, and other neutral land actors have found the authority of traditional land institutions to be more crucial for gaining access to customary land than that of the public land bureaucracy.

10.1.3 THE TECHNICAL COMPETENCE OF PUBLIC LAND BUREAUCRATS SEEMS TO MAKE LITTLE IMPACT ON THEIR CAPACITY TO MEDIATE CONFLICT OF INTERESTS IN DISCOURSES OF LAND ACQUISITION

Finally, the study found out that within the public land bureaucracy, the lack of institutional obligations among Government, Traditional Authorities, and Land Tenants in discourses of government land acquisition has also rendered the technical competence possessed by public bureaucrats almost useless. This finding emphatically confirms the distinctive characteristic of the field and practice of public administration, namely, the acquisition and possession of public authority from relevant autonomous rational actors within the state. More than anything else, the possession of public authority symbolizes the distinctive competence of the public bureaucrat from other fields of administration. Traditional Authorities and Land Tenants have little need for the technical competence of public bureaucrats because market forces have emerged to fill that need.

Until, the process of land acquisition reaches the final stage of formalization, the technical competence of the public land bureaucracy becomes useless. The crucial functions of surveying of land, and evaluation for payment of compensation claims may be acquired by traditional authorities and land tenants from the market. The legal consent and concurrence of the public land bureaucracy to original lease agreements prepared within traditional land institutions is imposed on inherent problems transmitted from traditional land institutions. This affects the public land bureaucrats to effectively make use of their technical competence in the formalization of customary land transactions. Reliance on a one legged pillar of legalized violence without social legitimacy is inadequate for effective public administration.

10.2 CONCLUSION OF THE STUDY: SEIZING THE MOMENT OF INSTITUTIONAL REFORMS

The study is conclusive that the institutional competence of the public land bureaucracy to mediate conflict of interests in government land acquisition is largely determined by the creation of homogeneous obligatory relationships with land tenants, traditional land owners, and government. However, as the findings disclosed, institutional obligations demanded by these various actors are fragmented and largely lay outside the public land bureaucracy. There is therefore distrust, institutional rivalry, insecurity, violence, and uncertainty in discourses of government land acquisition that is mediated by the public land bureaucracy.

The genesis of the prevailing weakness in the institutional structure of the public land bureaucracy may be traced to the different discursive practices and cultures of land ownership that have dominated different political moments of state making in Ghana. Claims over land and subjects by traditional authorities were affirmed by the colonial state, and also re-affirmed within the constitutional fabric of the modern democratic state of Ghana. At the same time, government finds constitutional and legal grounds to use its monopoly over the institutions of the public land bureaucracy to violently create land space for itself. Herein lays the divided sovereignty of the state over claims to land ownership. The interests of land tenants hinges in the balance between the legal institutions of state and the traditional institutions that exist below the state.

Attempts by government to deal with the problems of land acquisition has not been furthered by the creation of many autonomous land organizations that have become more concerned with the protection of their institutional survival rather than functional as a collective bureaucratic unit with a homogeneous institutional value. Since rational actors are concerned with political power as much as with they are with the productive efficiency of institutionalized organizations; the alternative approach for government is to pursue meaningful institutional reforms through which the state seek to weld together the discursive positions of traditional authorities, land tenants, and any other relevant actor into the public land bureaucracy.

A comprehensive institutional reform programme called the Land Administration Programme (LAP) is being implemented nationwide towards this political objective. One can only hope that the state will seize this moment of institutional reform to create real and enforceable institutional obligations between Government, Traditional Authorities, Land Tenants, other relevant actors with conflict of interests in land acquisition, within the overall institutional framework for land administration.

It is through this collectivist approach to institutional reforms that the emergent public land bureaucracy would come to possess a homogenous political competence which mirrors the underlying conflicts of relevant autonomous rational actors with conflict of interests in discourses of government land acquisition. The technical competence of the public land bureaucracy may then be put into more effective use within institutional environment where it is called for. In conclusion, one may ask whether the moment of institutional reforms mark the dawn a new democratic Ghanaian state where executive, judiciary and legislative political power will be shared among a dominant coalition of Chiefs and modern political elites. Or perhaps, it is just an institutional reform process that will be contained in the land economy of the state.

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APPENDIX 1

**INSTITUTIONAL OBLIGATIONS CREATED BETWEEN GOVERNMENT AND
TRADITIONAL AUTHORITIES IN THE DISCOURSE OF CUSTOMARY LAND
ACQUISITION IN BOANKRA**

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING MADE the day of
2002 BETWEEN the EJISU TRADITIONAL COUNCIL in the EJISU TRADITIONAL AREA in the ASHANTI REGION OF THE REPUBLIC OF GHANA and acting through NANA ABOAGYE AGYEI II, OMANHENE OF EJISU TRADITIONAL AREA, ASHANTI acting for himself and on behalf of the EJISU TRADITIONAL COUNCIL together with representatives of the Elders/Counsellors and People of Boankra Stool and the Ejisu Traditional Council whose consent to or concurrence in these presents is for the more perfect assurance of the provisions hereof requisite or necessary according to customary law and to the custom and usage of the Ejisu Traditional Area of Ashanti and which consent or concurrence is sufficiently testified by the attestation of these presents by some of such Elders/Counsellors and People (hereinafter called the "LESSOR" and which expression shall where the context so admits or requires include the said NANA ABOAGYE AGYEI II and his successors in office and assigns and the Ejisu Traditional Council) of the first part AND GHANA SHIPPERS' COUNCIL AND THE GHANA PORTS AND HARBOURS AUTHORITY both Statutory bodies established under the laws of the REPUBLIC OF GHANA and having their respective offices in the Enterprise Insurance Building, Accra and the Tema Harbour Business Area, Tema and acting by their respective Chief Executive Officers (hereinafter called the "LESSEE" which expression shall where the context so admits or requires include its successors and assigns) AND OTUMFUO OSEI TUTU II, ASANTEHENE (hereinafter called the "ASANTEHENE" and which expression shall where the context so admits or requires include his successors and assigns) as a CONFIRMING PARTY.

WHEREAS the LESSEE in its desire to acquire and be granted a parcel of land free from all encumbrances for the sole purpose of applying same as Inland Port and other allied purposes approached the Boankra Stool together with the Omanhene of Ejisu Traditional Area Nana Aboagye Agyei II for the purpose of allocating and making available to the Lessee parcel of land to be used for the purposes aforementioned.

AND WHEREAS owing to the pending Chieftaincy litigation in the Boankra Chiefdom area, and the urgent need to conclude the transaction relating to the grant of a portion of the Boankra Stool Land to the LESSEE herein (for development into an INLAND PORT) it has become desirable for the EJISU TRADITIONAL COUNCIL acting through the Omanhene of the Ejisu Traditional Area (in which Boankra Stool falls) and on the directive of OTUMFUO OSEI TUTU II, ASANTEHENE to stand in and act for itself and the Boankra in respect of the said grant.

AND WHEREAS the Boankra Stool with the prior approval of the Omanhene of Ejisu Traditional Area Nana Aboagye Agyei II and in consultations with OTUMFUO OSEI TUTU II, ASANTEHENE agreed to release about 400 acres of land situate lying and being on the Boankra Stool land in the Ejisu Traditional Area and more particularly delineated by the Site Plan herein attached and shewn edged pink.

AND WHEREAS the Lessee herein agreed with the Lessor for the release and grant of the aforementioned parcel of land with the prior approval of the Omanhene of Ejisu Traditional Area Nana Aboagye Agyei II and Otumfuo Osei Tutu II, Asantehene for a period of Ninety-Nine (99) years commencing the 1st January, 2002 with an option of renewal for a further term of Fifty (50) years and subject however to the payment of ground rents in every year which ground rent is subject to an upward review every three (3) years and subject further to the offer of customary drink money and other terms herein contained in this Memorandum of Understanding.

NOW THIS DEED WITNESSETH AS FOLLOWS:

That in consideration of the payment of customary drink to the tune of ₵3.2 billion and the performance of obligations hereinafter mentioned the Parties agree that:

1. The Lessee shall offer and pay to the Lessor customary drink money in respect of the demised land to the tune of ₵3.2 billion which payment shall be effected in the manner following:
 - (a) an upfront payment of the sum of 2.240 billion to the Lessor on or before the execution of this Memorandum of Understanding and hence the lease agreement and which payment the Lessor hereby acknowledges.
 - (b) the Lessee shall aggregate the remainder of the customary drink money due the Lessor in the sum of ₵960,000,000.00 (Nine Hundred and Sixty Million Cedis) as the Lessor's capital/equity contribution to the business to be undertaken on the demised land by the LESSEE to wit; Inland Port.
2. That in consideration of the aforementioned capital/equity contribution of the Lessor in the business of the Lessee on the demised premises the Parties agree that the Lessor shall be entitled to receive from the Lessee One Percent (1%) of the annual gross profit of the Lessee's business operations on the subject premises commencing from the third year from the date of this agreement and which business operations shall nevertheless commence not later than three (3) years from the date of this agreement.

3. The Parties further agree that the percentage benefit expressed in paragraph 2 above to be accruing to the Lessor shall be subject to review every two (2) years commencing from the sixth year from the date of this agreement.
4. The Lessor agrees to execute a Leasehold Agreement in respect of the demised premises in favour of the Lessee and at the latter's expense within 30 days from the date of this agreement.
5. That the Lessee agrees at his own cost and expense to do the following on the demised premises as its social responsibility to the Boankra Stool and its subjects.
 - (a) To construct develop and build for the benefit of the Lessor and its subjects during the first phase of the Lessee's operations on the subject premises (that is to say within three (3) years after executing this agreement) a Junior Secondary School (J.S.S.) classroom block whose model and structural design shall be mutually agreed upon by the Parties.
 - (b) The Lessee further agrees to construct develop and build for the benefit of the Lessor and its subjects during the second phase of the Lessee's operations on the demised premises (that is to say within six (6) years after executing this agreement) a Senior Secondary School (S.S.S.) complex comprising but not limited to a two-storey classroom block with all the requisite modern facilities together with a school canteen.
 - (c) The Lessee undertakes to afford a greater opportunity to be accorded the Lessor's Stool's subjects and citizens to be engaged by the Lessee to fill all vacancies of unskilled labour in job placements and establishments in the Lessee's business operations on the subject premises.
6. The Parties agree that wherever appropriate any notice requiring to be served by either Party in accordance with any agreement existing between the Parties in respect of the subject premises such notice shall be sufficiently served if delivered personally or sent by a registered post or by any mode of Expedited Mail Service at the usual or last known place of abode PROVIDED ALWAYS that a notice sent by post shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.
7. The Parties further agree that in the interest of peace, harmony and good neighbourliness any or all differences arising from any document or any interpretation of any term or provision of any such document and for that matter all differences arising between them in respect of this agreement of any agreement relative to the demised premises shall be settled amicably between them through negotiations and that

in the event of a failure to resolve any dispute as aforementioned the matter shall be referred to Arbitration in accordance with the provisions of the Arbitration Act 1961 (Act 38) or any statutory modification or re-enactment thereof for the time being in force.

IN WITNESS WHEREOF the Parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED by NANA)
ABOAGYE AGYEI II, OMANHENE OF THE)NANA ABOAGYE AGYEI II
EJISU TRADITIONAL AREA acting for himself)OMANHENE OF EJISU
and on behalf of the Ejisu Traditional Council as)TRADITIONAL AREA.
well as the Boankra Stool and its subjects in the
presence of:

NAME.....

OCCUPATION.....

ADDRESS.....

SIGNATURE.....

Attested to by the following Elders/Counsellors and
People of the Boankra Chieftain Area and the Ejisu)
Traditional Council)

1.)

.....)

.....)

2.)

.....)

.....)

- 3.)
-)
-)
- 4.)
-)
-)

After the contents hereof had been interpreted to them in Twi language by
of when they seemed perfectly to understand same before
making their signatures or mark hereto in the presence of:

NAME.....

OCCUPATION.....

ADDRESS.....

.....

SIGNATURE.....

SIGNED SEALED AND DELIVERED by the)

GHANA SHIPPERS' COUNCIL acting by its Chief)

Executive KOFI MBIAH, ESQ.,

) KOFI MBIAH, ESQ.
(Chief Executive: Ghana Shippers' Council)

and the GHANA PORTS AND HARBOURS)

AUTHORITY acting by its Director-General)

BEN OWUSU MENSAH, ESQ.

) BEN OWUSU MENS, ESQ.
(Director-General: Ghana Ports and Harbours Authority)

in the presence of:

NAME.....

OCCUPATION/STATUS.....

ADDRESS.....

.....

SIGNATURE.....

CONFIRMED BY OTUMFUO OSEI TUTU II)

ASANTEHENE in the presence of:

) OTUMFUO OSEI TUTU II
ASANTEHENE.

NAME.....

OCCUPATION/STATUS.....

ADDRESS.....

.....

.....

SIGNATURE.....

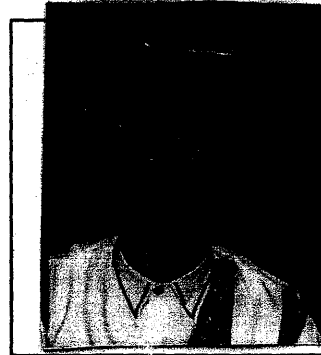
APPENDIX 2

INSTITUTIONAL OBLIGATIONS CREATED BETWEEN GOVERNMENT AND LAND TENANTS IN THE DISCOURSE OF CUSTOMARY LAND ACQUISITION IN BOANKRA

(30)

GHANA SHIPPERS' COUNCIL COMPENSATION DECLARATION FORM

(₵ 336,300.00)



H. Kamoah Kofi

I.....of Boankra have received this.....22nd day of

March 2004 from the Ghana Shippers' Council an amount of Three hundred thirty five thousand three hundred cedis only (₵ 336,300.00)

being the full and final settlement for all claims in respect of my crops at the site earmarked for the inland port project. I hereby declare that there is no other entitlement due me in respect of crop compensation.

Handwritten signature of claimant

Signature/Thumbprint of Claimant

Handwritten signature of witness

Signature of Witness

Designation.....

Date.....

Date 24/3/04

Signed in the presence of J. K. [Signature] Elder/Assemblyman/Unit Committee Secretary of Boankra in the aforementioned District after the contents have been read and explained to me in the Twi language by the Assemblyman, Mr. [Signature]

Handwritten signature and date 24/3/04

For: Ghana Shippers' Council

Handwritten signature and date 31/03/04

₵ 336,300.00 (circled)

GHANA SHIPPERS' COUNCIL P.O. BOX 6604 KUMASI