

# 3

## Multiple Rights and Interests in Land

This chapter presents a detailed analysis of land related institutions and rights, with specific reference made to the following three points. First, land rights in rural southern Ghana are held concurrently by multiple parties. For example, the traditional divisional chief holds land as the custodian of the people. Beneath him, citizens and their lineage members hold rights to actual use of the land. Migrants who acquired land from a divisional chief also hold the effective land use right. Moreover, tenants who enter into contracts with the individuals have usufruct rights based on the content of the contracts. The nature of these individual land rights, held by different people, are different from the Western notion of individual land ownership that would completely exclude other peoples' control over the land. A piece of land can be bound concurrently by multiple claims of various kinds held by different people.<sup>1</sup>

Second, the presence of concurrent land-right claims held by several people means that there is diversity and flexibility in the degree of control that individual farmers exert over the land. The strength of the control that a farmer can exert over land depends on various factors, including the extent of the control exerted by other parties, the methods of acquiring land rights, the nature of the land rights (individual holding, lineage inheritance or usufruct rights), the position of individuals in their families and communities, and their contribution to farm labor. The interrelationship between these factors influence an individual farmer's control over land, and people constantly negotiate claims to land.

The third is the intertwining of claims to rights from three groups (wives, children, and lineage members) when land is transferred through gifts and inheritance. This situation leads both to the fragmentation of landholdings and to the alienation of landholding rights from lineages. For instance, a farmer's wife and children expect to be gifted or inherit farmland in exchange for their contributions to farm labor, while a farmer's matrilineal kin also claim the right to inherit the same land. To meet the multiple demands for gifts or bequests, land is often divided into many portions and given to all parties concerned. This subdivision process progresses with each generation, and the spread of landholders tends to become more dispersed, rather than becoming concentrated in specific individuals or lineages.

This chapter analyzes the land issues in cocoa-growing villages with reference to these three points. Section I looks at the contemporary situation of the land tenure systems in the surveyed villages through an examination of their relationship with customary land laws. Section II looks at the way claims to land rights are intertwined and negotiated by different parties in these villages. Section III discusses the relationship between these situations and the Land Title Registration Law of 1986. Finally, Section IV takes up the issue of the fragmentation of land and the alienation of landholding rights.

## **I. Land Tenure Systems in the Surveyed Villages**

### **1. Customary Land Laws**

Under Ghanaian customary law, land rights have a three-tier structure (Bentsi-Enchill 1964; Ollennu 1962). The first tier is the land rights held by entire ethnic groups. Land controlled by ethnic groups is clearly demarcated, and the land within each territory ultimately belongs to the people of the ethnic group as a whole. The paramount chief as the head of the ethnic group is the ultimate custodian of the land. In reality, however, several divisional chiefs, under the paramount chief, are entrusted with the management of the land within their territory and make decisions regarding land. The second tier consists of the rights that individuals or lineages hold to actually utilize the land and make decision about it. The third tier is the usufruct right obtained through various agrarian contracts, as discussed in Chapter 2.

The ways of acquiring land rights at the second tier differ between "citizens" (indigenous inhabitants) and "strangers" (migrants). When individuals or lineages are indigenous inhabitants, they are entitled, by birth, to use the land belonging to their communities free of any charge. Their rights to the land can be handed over to their heirs on a quasi-permanent basis through

gifts or inheritance. Outsiders who do not belong to the indigenous communes have no such natural rights. These outsiders may acquire land rights by any of three methods: (1) through acceptance as members of the commune; (2) through gifts from indigenous inhabitants; and (3) through purchase. Landholding rights secured by outsiders through the second of these methods must be returned to the giver when the outsider abandons the land or when there are no successors.

Landholding rights acquired through the above methods can be transferred to others through sale, gift and inheritance. However, these methods of transfer are subject to the following procedures that apply under customary law.

When purchasing land rights, both parties must agree to the specific land area and perform traditional ceremonies on that land to confirm the transfer of the landholding rights. The preparation of a document that certifies the transfer of landholding rights can substitute for this formality. The next step is to make the sale of the land rights in question as public as possible. This can be achieved by allowing witnesses, such as the relatives of both parties, to attend the ceremonies.

Likewise, land gifting during the presenter's lifetime also requires specific procedures such as traditional ceremonies and an announcement of the gifting of the land. Specifically, land gifting can be secured through the performance of ceremonies during which the recipient of the land presents, in the presence of witnesses, a gift (*aseda*) such as local gin, cattle, or cash as a mark of appreciation to the original landholder.

Landholding rights may be transferred through inheritance, after the holder's death. When an individual dies intestate, his land is inherited and held by his lineage. The inherited land is managed by the lineage head or someone selected from among the lineage members. The earnings derived from the land are used for the benefit of the lineage. As the landholding right belongs to the entire lineage, it cannot be transferred to people outside the lineage at the discretion of an individual.

A landholder can designate the inheritor of his land by oral will on his deathbed. Inheritance of land rights by such a will should be performed in the presence of kinsmen, and the inheritor must confirm the inheritance by presenting local gin to the person who makes the will. In recent years, an oral will has sometimes been replaced by a written will. However, the designation of successors in such a will is limited to the land held by individuals. Lineage land (*abusua asase*) cannot be transferred in the will of an individual.

Land acquired through purchase using one's own funds can, in essence, be transferred at the holder's discretion, through sale, gift or bequest. However, when such a transfer is directed to a person outside the lineage, the consent of

TABLE 3-1  
NUMBER OF LANDHOLDERS BY SEX AND THEIR PERCENTAGES OF ALL FARMERS INTERVIEWED

Village	Male			Female			Total		
	<i>N</i>	No.	%	<i>N</i>	No.	%	<i>N</i>	No.	%
Bepoase	55	35	64	32	23	72	87	58	67
Nagore	90	40	44	62	41	66	152	81	53
Gyaha	128	46	36	107	26	24	235	72	31

Notes: 1. These figures include farmers using lineage land.  
2. *N* = number of farmers interviewed.

the lineage is required and traditional ceremonies must be performed to confirm the transfer in the presence of members of both lineages. The intent of such ceremonies is to avoid possible disputes by announcing the transfer and allowing the lineage members on the transferring side to confirm that the land in question is not lineage land. Someone who makes use of lineage land cannot decide on its transfer at his or her own discretion. Gift, inheritance, or sale of lineage land to people outside that lineage requires the approval of the lineage head and elders. Any transfer of land rights based solely on the decision of the lineage head is regarded as invalid.

How are these customary land laws actually applied in the present-day cocoa-growing villages? The following analysis of land tenure systems in the surveyed villages clarifies the way in which individual farmers have acquired land rights and the way multiple land claims are intertwined. The number of landholding farmers from among those interviewed is shown in Table 3-1.

## 2. Land Rights in Bepoase

The land surrounding the village of Bepoase is part of the area traditionally inhabited by the Sefwi people. All this land ultimately belongs to the Sefwi as a whole under the custodianship of the paramount chief. However, the land is actually managed by the Benkyemahene, the traditional divisional chief who controls the area embracing the village of Bepoase.

In 1945 the area around Bepoase was entrusted by the Benkyemahene to the paternal grandfather of the present village head. This entrustment was in recognition of the outstanding educational work in the township of Sefwi by this grandfather, who was a migrant from Akuapem. When other migrants, mostly from Akuapem, wanted to acquire land rights near Bepoase, the grandfather acted as an intermediary between them and the Benkyemahene. In acquiring land rights, these migrants formed a group called the *compani* (company). They acquired land rights with pooled funds. After that they

TABLE 3-2  
METHODS AND SOURCES OF LAND ACQUISITIONS IN BEPOASE

Method	Total No.	Sex	No.	Sources and Cases of Acquisition
Gifts	50	Male	30	Father 16; maternal uncle 4; maternal grandfather, mother, maternal grandmother's brother, 2 each; maternal grandfather's brother, wife's father, brother, paternal uncle, 1 each
		Female	20	Husband 10, father 9, maternal grandmother 1
Inheritance	12	Male	9	Father 9
		Female	3	Father 1, husband 1, sister 1
Purchase	6	Male	3	Unrelated person 2, father 1
		Female	3	Husband 1, unrelated person 2
<i>Yemayenkye</i>	1	Male	1	Paternal uncle 1
		Female	0	
Lineage land	4	Male	3	Father 3
		Female	1	Father 1
Obtained from chief	2	Male	2	Benkyemahene 2
		Female	0	
Total	75	Male	48	Father 30, maternal uncle 4, other 14
		Female	27	Husband 12, father 11, other 4

divided the land into individual strips for each individual share (Case 3-1 at the end of this chapter).

Most of the present Beपोase residents are the descendants of the first-generation migrants who acquired land rights from the Benkyemahene through the above method. As shown in Table 3-2, many of the present day residents obtained land rights through gifts or inheritance from their relatives. Some of the first-generation migrants who had acquired land rights directly from the Benkyemahene were still engaged in cocoa cultivation at the time of survey.

Although first-generation migrants paid money to the Benkyemahene for the land rights, they did not purchase the land itself. Consequently, the final decision-making rights over the land reside with the Benkyemahene. Individual migrants can gift or bequeath their land rights to their relatives, but they cannot sell them to people outside their kin group. This indicates that the Benkyemahene's control over the land is stronger than in the other surveyed villages, as will be described in the following sections.

### 3. Land Rights in Nagore

The land around the village of Nagore is ultimately held by the Asantehene (the paramount chief of the Asante) in trust for the Asante people. However, as the land around Nagore comes under the jurisdiction of the Nyinahinhene (a divisional chief), he is the actual manager of the land.

Nagore residents are divided into (1) indigenous Asante people who are the citizen of Nyinahin, (2) Asante migrants who came from outside the jurisdiction of the Nyinahinhene, and (3) migrants who are not Asante. Of these residents, indigenous citizens of Nyinahin can, with the Nyinahinhene's approval, develop the uncultivated land free of charge and transfer land right to their heirs through gifts or inheritance (Case 3-2). In Nagore there were six such cases of the acquisition of land rights by the citizens of Nyinahin (Table 3-3).

Free usufruct right over land is not granted to migrants from elsewhere. When outsiders want to acquire undeveloped land within the jurisdiction of the Nyinahinhene, they have to make monetary payments to the Nyinahinhene and confirm their acquisition of land rights through the customary presentation of *aseda*, or "thanks" (usually a bottle of local gin). The land rights obtained in this way can be transferred to anybody at the discretion of the landholders. This seems to indicate that, in Nagore, the divisional chief's control over land is weaker than that in Bepoase.

Seventeen people who acquired uncultivated land directly from the Nyinahinhene were still alive at the time of the survey. Sixteen of them had acquired land in the 1950s. This suggests that in the areas around the village of Nagore, where cocoa production started in the first half of the 1950s, the acquisition of uncultivated land by migrants and Nyinahin citizens progressed rapidly in the following decade, and that there was little uncultivated land left by the start of the 1960s. As a result, in later years land was acquired mostly through sales or *yemayenkye* contracts, or through gifts or inheritance from individuals who had already obtained land.

In Bepoase, transfer of land rights to people outside the lineage (through sale or *yemayenkye* contract) was strictly prohibited by the Benkyemahene, while land was actually "sold" in Nagore (Table 3-3). In the case of purchasing land rights from individuals in Nagore, the transfer of landholding rights was confirmed by the performance of traditional ceremonies and the presentation of gin in the presence of kinsmen from both parties. Sometimes written certificates of land sales are prepared to avoid future disputes over the landholding rights (Case 3-3).

TABLE 3-3  
METHODS AND SOURCES OF LAND ACQUISITIONS IN NAGORE

Method	Total No.	Sex	No.	Sources and Cases of Acquisition
Gifts	49	Male	16	Father 7; maternal uncle 2; mother's maternal uncle 3; paternal grandfather, mother, wife's brother, Nyinahinhene, 1 each
		Female	33	Husband 12; father 10; mother 3; maternal uncle 2; Nyinahinhene, son, paternal aunt, maternal grandfather, maternal grandmother, mother's maternal uncle, 1 each
Inheritance	9	Male	5	Maternal uncle 3, mother 1, wife's paternal uncle 1
		Female	4	Mother 3, husband 1
Purchase	23	Male	16	Nyinahinhene 8, unrelated person 8
		Female	7	Unrelated person 5, Nyinahinhene 1, unknown 1
<i>Yemayenkye</i>	3	Male	2	Unrelated person 2
		Female	1	Unrelated person 1
Citizen's right	7	Male	5	Nyinahinhene 4, other <sup>a</sup> 1
		Female	2	Nyinahinhene 2
Total	91	Male	44	Nyinahinhene 13, unrelated person 10, father 7, maternal uncle 5, mother's maternal uncle 3, mother 2, other 4
		Female	47	Husband 13; father 10; mother 6; unrelated person 6; Nyinahinhene 4; maternal uncle 2; other 6

<sup>a</sup> Using land managed by the Nkawie chief adjacent to land managed by the Nyinahinhene.

#### 4. Land Rights in Gyaha

The area around the village of Gyaha borders on two areas traditionally managed by the paramount chiefs of Akyem Kotoku and Akyem Abuakwa. The western part of areas surrounding Gyaha is within the territory managed by the Abenasehene, who is under the paramount chief of Akyem Kotoku. The eastern part lies within the territory managed by the Okumaninghene, who is under the paramount chief of Akyem Abuakwa.

A group of six people who came to acquire land for farming during the first decade of the 1900s were the first to settle in the area around Gyaha. They

TABLE 3-4  
METHODS AND SOURCES OF LAND ACQUISITIONS IN GYAHA

Method	Total No.	Sex	No.	Sources and Cases of Acquisition
Gifts	28	Male	16	Father 9; maternal uncle 4; father's sisters' child, paternal uncle, maternal grandfather, 1 each
		Female	12	Husband 9, father 2, brother 1
Inheritance	15	Male	9	Father 4, maternal uncle 3, maternal grandfather 1, paternal uncle 1
		Female	6	Father 2, husband 2, maternal uncle 2
Purchase	9	Male	9	Unrelated person 4, village head 2, father, brother, Okumaninghene, 1 each
		Female	0	
<i>Yemayenkye</i>	8	Male	6	Unrelated person 6
		Female	2	Unrelated person 2
Lineage land	16	Male	9	Father 5; paternal grandfather 2; paternal great-grandfather, mother's maternal uncle, 1 each
		Female	7	Father 3; mother's maternal uncle, maternal uncle, brother's maternal uncle, paternal grandfather, 1 each
Total	76	Male	49	Father 19, maternal uncle 7, unrelated person 10, other 13
		Female	27	Husband 11, father 8, maternal uncle 3, unrelated person 2, other 3

jointly purchased land in the eastern part of Abenase from the chief of Abenase, dividing it into proportionate shares. The area around the village of Gyaha is the share of the land that was held by the maternal uncle of the present Gyaha village head. The maternal uncle came from Anum and died in 1947. Migrants who came later to the area bought land either from the initial six people, or directly from the Abenasehene or the Okumaninghene.

At the time of surveys, there was no survivor from among the first-generation migrants. The present Gyaha villagers are descendants of the first-generation migrants, migrants who came later and bought land from the first-generation, and tenants who engage in cocoa production under tenancy contracts.

Gyaha villagers are composed of a relatively small number of owner-cultivators and a large number of tenants. Many of the cocoa farmers in the villages of Bepoase and Nagore are either first-generation owner-cultivators who have acquired land directly from the chief, or second-generation owner-



cultivators who use land taken over from the first-generation farmers. In contrast, many cocoa farmers in Gyaha are tenants who engage in cocoa cultivation under various contracts with absentee landlords. Some of them are second-generation tenants who inherited their contracts from their relatives.

In recent years there have been only a few cases of land purchased in the area around the village of Gyaha. The surveys found that out of nine cases of land purchased in Gyaha, only one case has occurred since the 1980s. (Table 3-4 present the methods and sources of land acquisitions in Gyaha.) With the exception of the village head, no other farmer has sold land. When buying land from others it is customary to perform the traditional ceremonies and present sheep and local gin in the presence of the village head and witnesses from both sides. An additional normal procedure is the preparation of documents to certify land sales, to be signed by witnesses. This formality is intended to prevent possible future disputes over land, but even when this step is taken, disputes can still sometimes arise (Case 3-4).

## **II. Multiplicity of Rights and Farmers' Strategies**

The dominant characteristic of the land rights seen in each of the three survey villages is the existence of concurrent claims to land from multiple parties. This element will be discussed from two perspectives: (1) land right claims in the case of gifting and inheritance; and (2) the relationship of land rights between lineages and individuals. From these perspectives, this section analyzes the strategies adopted by farmers to expand and safeguard their land rights.

### **1. Gift and Inheritance**

The Asante people, who make up 80 per cent of Nagore's population, follow a matrilineal inheritance system. In Nagore, however, examples of land acquired through mother's kin account for only 35 per cent of all cases of acquisition through gifts and inheritance, while those through paternal lines account for 33 per cent. In the latter cases, father-to-children transfers are the most frequent. Husband-to-wife transfers are also quite frequent accounting for 23 per cent. Despite the prevailing matrilineal system in Nagore, transfers of land rights from father to son and from husband to wife actually coexist with matrilineal inheritance.

One reason for the coexistence of matrilineal inheritance with other land transfer patterns is the fact that, in migrant communities, wives and children contribute more labor for farming than do matrilineal kin. As has often been

pointed out in earlier studies, conjugal ties are stronger in migrant communities than in indigenous communities. As a result, wives and children tend to have stronger claims to the cocoa farms they have cultivated. The result is the coexistence of claims to land rights from wives and children on the basis of their contribution to farm development and claims from matrilineal kin on the basis of the traditional custom of matrilineal inheritance. Such multiple claims to the same land tend to cause frequent disputes over land gifts and inheritance between the landholder's matrilineal kin on the one hand and the landholder's wife and children on the other. These disputes often occur when the father wants to transfer land to his children, as shown in the following cases.

*Case: Disputes between children and matrilineal kin over father's land (1).* Around 1985 the father of Akua, a fifty-six-year-old woman in Nagore, decided to let his daughter Akua and his niece (a matrilineal kin) inherit and divide his land after his death. However, the father's matrilineal relatives opposed Akua's inheritance of part of the land. The dispute was taken to court. The court decided to let Akua inherit part of the land, and Akua confirmed the transfer of land rights from her father by making a ceremonial presentation of gin to her father. After her father's death in 1991, however, the niece hid the document that certified the sharing of the land, thereby preventing Akua from confirming the demarcation of her share of the land.

*Case: Dispute between children and matrilineal kin over father's land (2).* In 1995 Afia, a thirty-three-year old woman in Nagore, received land from her father together with the father's nephew and niece. On that occasion Afia confirmed the gift in the presence of her father's matrilineal kin by performing the ceremony of presenting local gin. However, when her father died that year, his matrilineal kin insisted that they were entitled to the land that had been gifted to Afia, and the dispute was taken to court. Afia and her father had prepared no document to certify the gift.

What characterizes these two cases is that the disputes occurred even though the ceremony confirming the land transfer had taken place in the presence of the parties concerned in accordance with the customary land law. To avoid such disputes, a landholder often prepares his will while alive (Case 3-5 at the end of this chapter). Nevertheless, such disputes often occur between the landholder's wife or children and his matrilineal kin.

Disputes between landholders' matrilineal relatives and his wives and children over gifts and inheritance of property are becoming an important issue in Ghana. This reflects the increasing importance of the nuclear family as a social unit. Because of this growing importance, the government established a

new law of succession in 1985 (Interstate Succession Law, 1985). This law stipulates that, when a person dies intestate, the spouse is entitled to 3/16 of the personal property of the deceased and the children to 9/16. In other words, the law guarantees a greater share of property to nuclear family members than to matrilineal group member.

Consequently, the present situation regarding gifts and inheritance of land is influenced by several factors such as: (a) claims to land rights from the matrilineal kin on the basis of matrilineal inheritance; (b) claims to land rights from wives and children based on their actual contribution to farm labor; and (c) government policy that attaches importance to the nuclear family regarding succession. As a result, there are many uncertainties and the possibility of future disputes about gifts and inheritance of land not only in Nagore but also in other villages. This ambiguity is reflected in the following contrasting views held by two farmers.

*Case: Children expecting to acquire land from their father (1).* James, who is thirty-one years old, and his three brothers have developed and are managing a cocoa farm on his father's land in Nagore. Knowing that the government policy is to encourage patrilineal rather than matrilineal inheritance, he is convinced that the cocoa farm they developed will become his and his brothers' possession after his father's death, rather than reverting to his father's matrilineal kin. Yet this has not been promised by their father.

*Case: Children expecting to acquire land from their father (2).* While engaged in sharecropping on his father's cocoa farm, Kwabena, an eighteen-year-old man in Nagore cultivated land held by his father and also planted cocoa there in 1993. He hopes that the cocoa farm he has developed will be transferred to him in the future. He is afraid, however, that this possibility will diminish if his father dies without leaving a written will.

Claims to land rights from several quarters at the time of the gifting or inheritance can also be seen in Gyaha. Ethnic groups in Gyaha such as the Anum, Boso, and Fante traditionally follow the matrilineal inheritance system. However, as is the case with the matrilineal Asante in Nagore, there is a practice among these matrilineal groups, of gifting and inheriting land from father to children or from husband to wife (Table 3-5). In some cases, inheritance occurs in both matrilineal and patrilineal directions (Case 3-6). Also, land can be divided and inherited by wives, children and matrilineal kin, as is seen in the following example.

*Case: Concurrent succession of land to wife, children, and matrilineal kin.* A maternal uncle of Yaa, a forty-year-old Fante woman, died in 1986 without

TABLE 3-5  
 SOURCES OF LAND ACQUISITIONS THROUGH GIFTS OR INHERITANCE: GYAHA  
 (No. of cases)

Inheritance System	Ethnic Group	Sources of Acquisitions					Total
		Husband	Maternal Uncle	Father	Maternal Grand-mother	Others	
Matrilineal:	Anum/Boso	2	5	4	1	3	15
	Fante	4	1	1	1	0	7
	Kwahu	2	0	0	0	0	2
	Akuapem (Aburi)	1	1	0	0	0	2
	Total	9	7	5	2	3	26
Patrilineal:	Akuapem (Larteh, etc.)	1	0	10	0	1	12
	Krobo	1	0	2	0	0	3
	Total	2	0	12	0	1	15
Grand total		11	7	17	2	4	41

Note: Gift or inheritance from the same person, even in different years, is counted as one case.

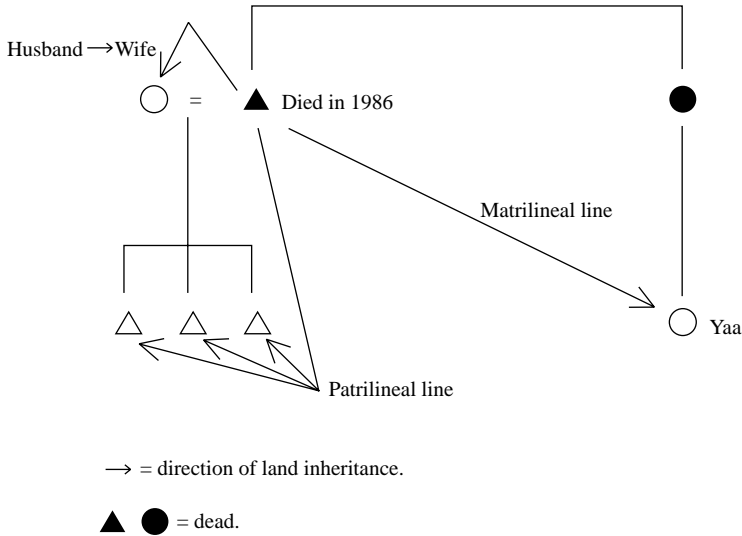
a will. Upon consultation with the uncle's matrilineal kin, it was decided to let his land be inherited by his wife, his three sons, and his niece Yaa (Figure 3-1). These five people had contributed labor to his cocoa farm.

This case may be regarded as a concessionary solution when there are multiple claims to land rights. In migrant communities such as Gyaha, cocoa farms are often developed and maintained using the labor of a nuclear family (male family head, his wife and his children). Consequently, even among people under the traditional matrilineal inheritance system, labor contributions to agricultural production are primarily from nuclear families centered on conjugal relationships.

On the other hand, the traditional heirs of a migrant farmer under the matrilineal inheritance system are his sisters' offspring. They, however, do not usually live in the same village with the farmer, and thus contribute little labor to the development of cocoa farms. In such cases, the farmer is more inclined to give land to wives and children who are engaged in daily farm work or who develop cocoa farms by themselves on the land, rather than to the traditional heirs who have little daily involvement in the farm.

Even when a landholder dies intestate, the claims to the deceased's land from his wife and children cannot be ignored in deciding on the land succession. In such cases, potential disputes may be avoided through a form of

Fig. 3-1



concession that satisfies land right claims from both matrilineal groups and from wives and children. The solution is to divide the land among the “traditional” heirs such as sisters’ offspring as well as among wives and children who make the greatest contribution to daily farming.

The arrangements for gifts and inheritance of land are not always so strict as is stipulated in the traditional inheritance system. They often depend on individual circumstances and claims to land rights from multiple quarters. Yet “peaceful” concessions are not always reached between matrilineal relatives and wives and children. As the Nagore examples show, there can be confrontations and disputes between both parties.

**2. Lineage and Individual Land Rights**

When a landholder dies intestate, the land is sometimes held as lineage land instead of being taken over by individuals. Whether the land is divided among individuals, or whether it is managed as lineage land, is a decision based on consultation within the lineage. When the holdings are controlled as lineage land, the head of the lineage takes responsibility for the land. At times, when the lineage head lives elsewhere, an elder among those engaged in farming on the land is placed in charge of the land. Lineage members have the right to cultivate undeveloped land, if any, within the common holdings. The common holdings cannot be sold at individual discretion.

It is often not clear whether a land is individually held or is allocated to an individual while it remains as lineage property. In the surveyed villages, there are some farmers who insist that they have divided up the common holdings of their relatives into personal holdings.

*Case: Lineage common holdings divided among brothers.* The father of Kwaku, a sixty-year-old man in Gyaha who is a Larteh which follows partilineal inheritance, purchased land from the Abenasehene and let a tenant cultivate the land under a *yemayenkye* contract. After he died in 1946, his children became landlords and continued the contract. In 1983 the cocoa farm developed under the contract was divided equally between the landlords and tenant. After that the children (six male and four female children from different mothers) divided the landlords' share of the land into ten pieces to secure their respective holdings.

In the above case Kwaku considers his share of land as personal property, but there is the possibility that the land in fact remains as lineage land and Kwaku only has use right of his share. Therefore, if Kwaku wants to sell his share of the land, lineage members who consider the land as lineage property may raise objections. Also, in some cases (Case 3-7 at the end of this chapter), an individual would sell lineage land on his/her own initiative. Accordingly, lineage land carries risks arising from the confusion about land rights because of the unclear distinction between lineage and individual holdings, as well as the possibility of expansionary use of individual rights over lineage land by some lineage members.

The above discussion of the present land system points out the coexistence of multiple rights of different parties over the same land. In the gifting or inheriting of land, for instance, claims to rights from wives and children who have contributed labor on the farm are often intertwined with claims from matrilineal kin. The agreement of the lineage head and elders is required when an individual's land is sold, is transferred through division under the *yemayenkye* contract, or is passed on through gifts or bequests to someone outside the lineage. This fact proves that it is not only landholding individuals but also members of their lineage that have rights over the land. Because multiple parties have concurrent rights over a piece of land, the transfer of land rights takes place not just between individuals but also in the context of the multiple claims made by different parties.

In this way, multiple parties have different concurrent rights over the same land and each party exercise different levels of control over the land. The degree of someone's control over the land depends heavily on the extent of the control exercised by the other parties involved with that land. As a result, a

range of factors affect both the security of future individual land rights and the maintenance of control over land already acquired. It is these uncertainties that generate the various land disputes mentioned earlier.

### **3. Farmer Strategies to Reinforce Land Rights**

Land rights uncertainties prompt some farmers to attempt to secure their rights through the preparation of official documents. The documents for such purposes include written wills on succession arrangements, papers certifying the sale or gifting of land, written contracts confirming the *yemayenkye* arrangements, and maps showing holdings that are prepared by the government's licensed surveyors. These documents are usually prepared by government-licensed notaries and signed not only by the parties concerned, but also by representatives of lineage members, and sometimes even by divisional chiefs. The existence of multiple signatories suggests that there are multiple claims over the land, and that confirmation of the transfer of land requires the approval of all these signatories.

An important strategy adopted by farmers to enhance their control over certain land is to establish a demonstrable result through continuing labor input into that land. Specifically, this means the development and maintenance of a farm through the investment of one's own labor and capital. The best way to do this is to maintain a farm over a long period of time and to plant cocoa trees to make sure of an ongoing harvest. When a farmer develops a cocoa farm on someone's land with the landholder's agreement, the landholder retains the landholding right but the actual developer of the farm has a strong control over the cocoa trees and harvest. As a separation between management of the land and the management of cocoa trees is impossible in reality, the developer of a cocoa farm can enhance his right to the land by planting cocoa trees and maintaining the farm. Similarly, when an indigenous inhabitant engages in farming using uncultivated land with the permission of the divisional chief, the farmer can constrain other resident's latent rights and enhance his own control over the land by continuously cultivating the land by, for example, developing a cocoa farm. This method of reinforcing land rights by establishing a demonstrable result can also apply where a lineage member engages in the cultivation of land held jointly by the lineage. In a similar vein, under the *yemayenkye* contract, the tenant can be sure of a long-term stable usufructuary right to the land as long as he maintains the cocoa farm in good condition (Chapter 2). In this way, an individual can enhance the security of his right to the land by developing and maintaining the farm through the injection of his labor and capital.

The development of a cocoa farm, a demonstrable result of one's capital

and labor input, is helpful not only in confirming present land rights but also in enhancing the possibility of future land acquisition. This can be seen in the case where a wife plants cocoa on part of the land of her husband's food farm. If she is allowed by her husband to produce only food crops, the production of food crops will end in a year or two and she has no entitlement to long-term rights over that land. In contrast, if the wife develops a cocoa farm on her husband's land through her own efforts and capital, she is then guaranteed the harvest from the farm as well as long-term use of the land. In other words, the husband's approval of his wife's cultivation of cocoa means that he has given permission for the wife's long-term use of the land. In this way, a wife can reinforce her rights over the cocoa farm she has cultivated as well as over the land itself, and thereby greatly increase the possibility that her husband will gift or bequeath the land to her in the future (Chapter 4). This process can also apply when a son independently develops a cocoa farm on his father's land. The development of a cocoa farm on land held by a husband or father is a way of enhancing one's future bargaining power with respect to future gifts or bequests of land.

The foregoing discussion is indicative of the diversity of the nature of land rights and the ways in which they can be acquired in the surveyed villages. As was stated at the outset, two points have been verified. First, there are concurrent claims to land from multiple parties, and this has influenced the extent to which farmers can exercise rights over land. The degree of individual control over land is highly flexible, constantly expanding and diminishing, and is also dependent on interactions with demands from others who hold latent rights (Okoth-Ogendo 1989, p. 12). Second, farmers are trying to increase their control over land by adopting such strategies as preparing official documents or creating and maintaining a demonstrable result of accomplishment on the land. Investing their own capital and labor and developing cocoa farms on the land are the important means for farmers to expand their claims to and control over land (Sjaastad and Bromley 1997; Besley 1995; Bruce 1988; Place and Otsuka 1998).

### **III. Indigenous Land Tenure Systems and the Land Title Registration Law, 1986**

Ghana enacted its Land Title Registration Law in 1986. Its application is nation-wide and it has two objectives: "first, to give certainty and facilitate the proof of title; secondly, to render dealings in land safe, simple and cheap and prevent frauds on purchasers and mortgagees." (Land Title Registration Law, 1986; Memorandum, p. i)



The background for the establishment of this law includes, as the law notes, two considerations—the frequent occurrences of litigation regarding land and the problems associated with agricultural tenancies and credit facilities. The law begins by commenting on these points: “[t]hese uncertainties act as a brake on the commercial and agricultural development of the country.” (Land Title Registration Law, 1986; Memorandum, p. iv) The law refers also to the share contracts practiced extensively in Ghana as follows: “It has long been recognized that the *abunu*, *abusa* and other share-cropping arrangements are often unfair and inequitable. Registration will protect these tenants by giving them reasonable security to devote time, labor or capital to the improvements or productivity of their lands. . . .” (Land Title Registration Law, 1986; Memorandum, Part II, pp. v–vi).

Objectives of the Land Title Registration Law were to provide certainty over land rights through the registration of title, to protect tenants who were in a weaker position in regard to land rights, and to facilitate agricultural investment and promote agricultural development.<sup>2</sup>

The establishment of this law was influenced by two major global trends. The first has been the implementation of structural adjustment programs since 1983. Under the programs, which have liberalized the economy and emphasized on economic development led by the private sector, the government’s key role has been to induce direct investment from abroad and guarantee economic activity by domestic entrepreneurs. In essence, the intent of the Land Title Registration Law has been to give certainty to investor land rights through nationwide implementation of land registration and to establish an environment for agricultural and industrial development through private sector initiatives (Amanor 1999, pp. 61–62).

Secondly, the basic idea of the law was influenced by international commentaries suggesting that the indigenous land tenure system based on communal landholdings impeded agricultural development in Africa. This argument is based on the assumption that individual land rights have yet to be established in Africa, and that without the establishment of individual land rights, agricultural development is hampered in three ways. First, the transfer of land rights is prevented and efficient allocation of land is inhibited. Second, communal landholding impedes the development of an agricultural credit market because land cannot be used as collateral. Third, uncertain individual land rights reduce farmers’ incentives to invest in land, thus impeding production increase. By the mid-1980s this argument was refined by the neo-classical school of economics and the evolutionary theory of land rights, and was reflected in the land policies of both African and donor countries.<sup>3</sup> The influence of this approach, which become prominent in international development circles,

is contained in Ghana's Land Title Registration Law.

Can the Land Title Registration Law, with its basis in neoliberal economic thinking, provide individual farmers with the intended security to their land rights? Can it enhance the production incentives of farmers and lead to the development of the basic conditions indispensable for agricultural development? As will be seen in the discussion that follows, the basic premises that led to the establishment of the law contain several problems.

### **1. Investment Incentives and Land Rights**

The first problem is the premise that investment incentives for farmers are inadequate when land rights are uncertain under the indigenous land tenure system. In the Ghanaian context, however, rather than being a disincentive, this uncertainty has tended to push farmers to invest and produce tree crops such as cocoa in order to improve the security of their land rights.

Given that the degree of an individual's control over land constantly changes because of the various factors that have already been discussed, Ghanaian farmers take various measures to enhance their control over the land in accordance with their respective circumstances. One such strategy is the establishment of demonstrable result on the land through the investment of labor and capital. One of the best ways of doing this is to plant cocoa trees that will continue to yield crops for about forty years, and to maintain the farm in good condition. A farmer can secure his land right by maintaining and controlling the cocoa farm and by constraining potential land rights claims made by others.

In addition, farmers using such strategies appear to be trying to enhance their bargaining power in the acquisition of land in the future. In the most typical example of this strategy, sons or wives try to accumulate evidence of their labor and capital investment into the cocoa farm established on their fathers' or husbands' land, which they expect to acquire through gifts or bequests in the future. Similarly, a *yemayenkye* tenant can secure long-term stable rights to land if he proves to be an able manager of a cocoa farm. By maintaining the cocoa farm in good condition, he can also increase the possibility of acquiring land from the landlord in the future through the land-dividing *yemayenkye* contract.

All these examples indicate that, given the present situation in Ghana where multiple parties have concurrent claims of rights to the same land, individual farmers adopt strategies that reinforce their control over that land. They do so by establishing a cocoa farm as an accomplished fact through an investment of labor and capital, and by maintaining that farm in good condition. Their labor and capital investment into the land, and the cocoa farm they established by

their own effort, strengthens their claims to the land and their future bargaining power. It is not that farmers refrain from investment because their land rights are uncertain. Rather they have incentives to invest in land because of their uncertain land rights. (Sjaastad and Bromley 1997; Besley 1995; Bruce 1988; Place and Otsuka 1998). The premise that land registration would bring certainty to land rights and encourage investment by farmers is a simplistic one that overlooks the complexity of the existing incentive structures.

## **2. Land Registration and Rural Power Structures**

Another problem with the argument for land registration is that such registration, when implemented, would add to the uncertainty affecting those with weak landholding rights, such as tenants and women. In an African country characterized by an uneven distribution of economic and political power among people, land registration may reinforce the existing sharp disparities between the powerful and powerless. Rather than protecting the land rights of the powerless such as tenants and women farmers, land registration would result in further destabilization of land rights of the less powerful groups (Havnevik 1997; Cornia 1994; Lastarria-Cornhiel 1997).

As has been noted, in rural Ghana there are concurrent claims to a piece of land, and individual land rights are constantly negotiated. The strength of individual claims to land and the power relationships between the parties concerned constantly change. But land registration does not allow such flexible and negotiable land right. If introduced to the situation where land rights are multiple and variable, land registration would lock in the land rights position applicable at a certain time, and would most probably confirm the rights of those with the strongest claims to the land. In many cases those who have "legitimate" land rights necessary for formal registration are male lineage heads, husbands, landlords and politically and economically influential persons with close relationships with government organizations. Therefore land registration is most likely to increase the power of those who already hold strong land rights.

Under the present situation in Ghana, land rights are sufficiently flexible to change to reflect years of individual effort and negotiations between the parties concerned. The flexible and negotiable nature of land rights allow landless tenants and female farmers to gradually expand their control over land through many years of investment and efforts so that they finally become landholders. The registration of land, however, does not tolerate such a flexible system. There is little possibility that a land registrar will take full account of the rights of the tenants and female farmers who have been endeavoring to strengthening their land rights through continuous labor and capital invest-

ment in the farmland to win landholding rights in the future. In addition, it is these people who will have the least information about registration when implemented. As such, they may not be able to submit proper evidence to support their land rights for registration purposes. They are mostly illiterate but will have to fill in complex documents and pay fees that impose heavy burdens on them. Disadvantaged by these conditions, and with little incentives to seek registration, these people's claims to land are unlikely to be reflected in the land registration process. Consequently, the implementation of land registration is likely to result in providing a legal guarantee only to the people with the strongest land rights, thus strengthening the present uneven power relationships among the rural population (Baland and Platteau 1998; Kasanga 1996).

#### **IV. Fragmentation of Land**

In southern Ghana there was a rapid increase in the acquisition of uncultivated land by migrant cocoa farmers after 1900. The most frequent land acquisitions took place after 1900 in Gyaha and about 1950 in Bepose and Nagore. Hill (1963) wrote an excellent monograph about the situation of the cocoa-producing villages in the early stages of migration when the cocoa production areas expanded rapidly. She described the process of the expansion as highly capitalistic because migrant farmers reinvested their earnings from cocoa farms into the acquisition of new land. In the 1990s, however, the state of landholding appeared to be moving in the opposite direction of land accumulation. My survey revealed that there seems to be a process of landholding fragmentation as well as the dispersion of land rights through transfers to people outside the original landholders' lineages. Underlying these changes were factors such as (1) the decrease in uncultivated land available for acquisition by individuals, (2) fragmentation and dispersion of land through gifts and inheritance, and (3) an increasing number of *yemayenkye* contracts and the resultant distribution of land to landless people.

In the early stages of rapidly increasing cocoa production, uncultivated land was abundant in southern Ghana and migrants could acquire land from the chiefs with relative ease. Land accumulation by "capitalist" farmers in the earlier years was possible because of this availability of uncultivated land. After about 1940 the acquisition of land by migrant farmers spread to western Ghana where uncultivated land was relatively plentiful. As a result, by the 1960s and 1970s, uncultivated land in this part of Ghana had almost entirely disappeared. In the three surveyed villages, ten out of twelve cases of acquisition from divisional chiefs had occurred before 1960 (Table 3-6). Subsequent

TABLE 3-6  
YEARS OF LAND ACQUISITIONS FROM CHIEFS AND INDIVIDUALS (THREE-VILLAGE TOTAL)

	(No. of cases)						
	-1939	1940-49	1950-59	1960-69	1970-79	1980-89	1990-
Obtained from chief	0	0	10	2	0	0	0
Land purchase from individuals <sup>a</sup>	1	0	0	4	9	8	4

<sup>a</sup> There are two more cases of unknown years of acquisition.

land acquisitions were not from divisional chiefs but mainly through gifts and inheritance. There were few cases of land sales because land is considered to be an important property that can be passed on to descendants, and people are generally hesitant about land sales. When the acquisition of uncultivated land from chiefs became increasingly difficult, individual farmers also became more hesitant about selling their land, thereby making it harder for certain groups of people to accumulate land through purchase.

On the other hand, the transfer of land to multiple parties through gifts and inheritance prompted land fragmentation. As was discussed in the foregoing section, claims to land come from many parties, including wives and children who contribute to farm labor and the members of matrilineal kin groups. To meet these multiple demands, land tends to be divided and given to the individuals concerned at the time of gifting and inheritance. Consequently, with each generation, the individual shares of land became smaller. In the village of Gyaha, for example, instances of land shared by more than three people at the time of gifting or inheritance accounted for 60 per cent of the total (fifteen out of twenty-five cases), and in 12 per cent of the cases, land was divided and shared by more than ten people. This trend toward the multiple division of land is observed with both matrilineal and patrilineal inheritance, especially when relatives confer to decide on succession after a landholder dies. Considerations of multiple claims to land from different parties, including the landholder's wife, children, and sisters' offspring lie behind land fragmentation at the time of transfer.

This phenomenon represents not only the process of fragmentation that reduces the acreage of individual landholding, but also the process of land rights distribution to individuals who belong to other lineages. Lineage members of a landholder exercise certain claims to his individual holdings, but wives and children who under matrilineal systems belong to a different lineage from the landholder also exercise claims to the same land. The result may be the division and distribution of the land to all parties concerned. In this

way the process of fragmentation of individual holdings is taking place simultaneously with the process of land transfer to people outside the landholding lineages.

Fragmentation of land and the dispersion of land rights to people outside the landholding lineages have also been prompted by the land-dividing *yemayenkye* contract. The time when this form of contract was increasingly adopted varied between study villages. In Bepose and Nagore, where the first migrants began to settle around 1950, most cases of *yemayenkye* began in the 1980s, while in Gyaha, where the first migrants settled in the early twentieth century, the number of *yemayenkye* contracts increased from the 1960s. These facts seem to indicate that the *yemayenkye* developed as a new way of acquiring land rights after most uncultivated land had been occupied and little land remained available from the divisional chief. On the other hand, in the twenty to forty years after the opening of the villages, some of the first-generation migrant farmers became old and wanted more effective use of unused land or obsolete cocoa farms. This increased the supply of land available for *yemayenkye* contracts. In this way, in about twenty to forty years after the opening of the migrant cocoa-farming villages, both demand and supply side requirements appeared to coincide, encouraging the use of *yemayenkye* contracts. The actual division of land between landlord and tenant under *yemayenkye* takes place ten to thirty years after the beginning of the contract. Therefore, the process of land transfer from landlord to tenant is very slow. Yet widespread use of this contract brings about a slow but steady flow of land from landholders to landless people. It also contributes to a process of dispersal of land rights to people outside the original landholders' lineages.

All this suggests that the days when large-scale land acquisition and capitalist land accumulation by migrants were possible have passed, along with the existence of plentiful supplies of uncultivated land. In the cocoa-producing villages of today, available uncultivated land has disappeared as a result of the rapid expansion of cocoa-producing areas. On the other hand, there have been numerous land transfers to different heirs, both within and outside the landholders' lineages through gifts and inheritance, as well as to landless people through the *yemayenkye* contract. The interaction of these factors has led to a gradual progress of fragmentation of landholding and dispersal of landholding rights to people outside the original landholders' lineages.

The present situation suggests that landholding in Ghana's cocoa-growing areas is leading not to a bipolar division between a land accumulating class and a landless class, but to averaging and the fragmentation of landholdings. Alongside this situation, pressure on the land is growing with the increasing population, while newly available land for cocoa production is becoming

increasingly scarce. As a result, the acreage of land that can be controlled by individual farmers and lineages is being reduced.

## Conclusion

This chapter has analyzed land issues associated with cocoa production. In the first section it reviewed the land tenure systems in the surveyed villages based on the customary land law in Ghana. The second section analyzed the characteristics of these systems. This analysis revealed the diversity of land rights, the concurrent claims to the same land by multiple parties, and the various measures taken by farmers to strengthen their control over their land. Section III analyzed the relationship between the indigenous land tenure systems and the Land Title Registration Law of 1986. In this section it was noted that, even though land rights may be uncertain, farmers do not always refrain from investment as is presupposed by the Land Title Registration Law. It was also argued that the implementation of this law is likely to reinforce the existing power relationships in rural areas. Section IV raises the possibility that landholding in cocoa-growing villages in Ghana is moving toward averaging and downsizing through the fragmentation of land and dispersal of landholding rights to non-lineage members. The following factors have been noted as contributory causes of this fragmentation and dispersal: the increasing difficulty of acquiring uncultivated land directly from divisional chiefs; people's reluctance of selling their land; the trend toward land division through gifts and inheritance; and the transfer of land to landless people through the land-dividing *yemayenkye* contract. It was also noted that this process of fragmentation and dispersal is associated with the progression in the generations of migrant cocoa farmers.

The aforementioned situation in present-day cocoa-producing villages in Ghana is different from the observation made by earlier studies that a rural capitalist class was forming through the seizure of economic opportunities to accumulate land. Because of the decrease of unoccupied land available from the chiefs and the pressure of a growing population, the potential for individual farmers to expand their farm acreage is diminishing. On the other hand, fragmentation of land and the dispersal of landholding rights are under way as part of the process mentioned in Section IV. With the progression of cocoa farmers from one generation to another, individual landholdings are becoming smaller, and land rights are gradually being dispersed to people outside the original landholders' lineages.

## Cases

### *Case 3-1: Acquisition of land rights by the “compani”*

In 1951 eleven migrants from Anum and Boso formed a group to pool funds to acquire land in Bepose. They purchased the rights to land near the village by paying money to the Benkyemahene through the paternal grandfather of the present village head. The acquired land was divided into strips in proportion to each individual's contribution, and the eleven farmers began cocoa cultivation on their individual shares of land. Of these eleven migrants, four were still living at the time of the survey.

### *Case 3-2: Land acquisition by Nyinahin citizens*

Around 1958, Sara, a sixty-year-old woman from Nyinahin, came with the Nyinahinhene to inspect some land around Nagore. Together with other Nyinahin citizens who wanted to acquire land there, she was allotted a piece of land by the Nyinahinhene. She planted some trees on the border of her share of land to mark the boundary. In acquiring this land, she made no payment, nor did she engage in ceremonies to confirm the land acquisition or prepare documents. She has been using this land to produce cocoa and food crops.

### *Case 3-3: Procedure for land sales*

Ama, a sixty-two-year-old woman in Nagore, purchased a piece of land for 260,000 cedis in 1995, using earnings derived from the cocoa farm her husband gave her in 1981. When purchasing the land, she used a government-licensed notary to prepare a document certifying the land purchase. She submitted the document to the Nyinahinhene in the presence of such witnesses as the notary, her husband as a representative of the buying side, and the seller's brother and sister as representatives of the selling side. The seller presented cash and local gin to the Nyinahinhene, and also gave gin to the witnesses.

### *Case 3-4: Conflicts over sold land*

In 1995 Thomas, a twenty-six-year-old Akuapem-Tutu living in Gyaha, inherited a piece of land from his paternal grandfather who had purchased it from somebody. When this someone died, however, one of his sons went to court to get the land back. Thomas's grandfather had prepared a document certifying the purchase, but the selling side insisted that no such document had been prepared (in fact the document had been hidden by the seller's son). However, the seller's other son revealed the existence of the document and Thomas won the suit. Thomas later heard that the latter son had been on very bad terms with his father (the seller).



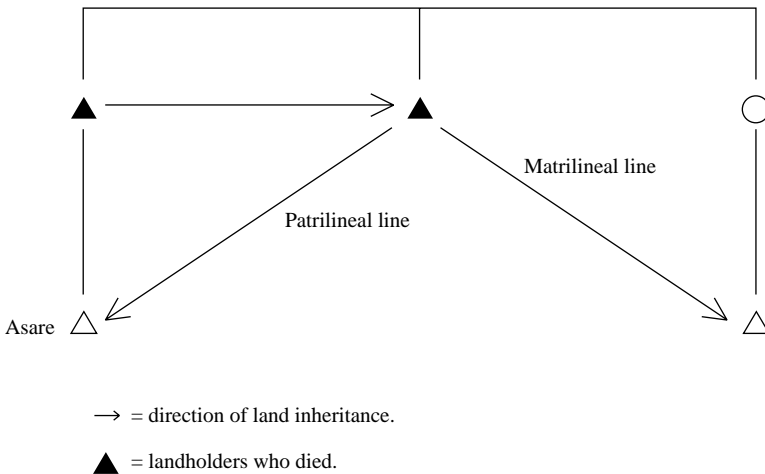
*Case 3-5: Land transfer to wives and children through a will*

The father of Kojo, a forty-five-year-old man in Nagore, prepared a will before he died in 1992. In this document he divided his land between four wives and nine children and left nothing to his matrilineal relatives. He did this because when he was hospitalized, no one from his matrilineal side took care of him. This angered him, and he recorded their ingratitude in his will so that no matrilineal kin could file any objections against the way he divided up and passed on his land.

*Case 3-6: Concurrent inheritance of land through matrilineal and patrilineal lines*

The paternal uncle of Asare (a fifty-five-year-old man living in Gyaha who is a Boso which follows matrilineal inheritance) inherited land from Asare’s father after the father died. When the uncle died, the land was to be inherited by Asare’s cousin (the uncle’s sister’s son). However, the nephew agreed to give part of the land to Asare as the son of the original holder of the land. Thus, part of the land was inherited through the matrilineal line and part through the patrilineal line (see Figure 3-2).

Fig. 3-2



*Case 3-7: Sale of lineage land by individuals*

The father of Ofei (a sixty-five-year-old man living in Gyaha who is a Akuapem Akropong which follows matrilineal inheritance) purchased a piece of land from the Abenasehene in 1924. The father died in 1960, and his brother then managed the land as lineage land. Since the death of the father’s

brother in 1975, Ofei has managed this lineage land. Before Ofei took over responsibility for this land, however, one of the uncle's sons sold part of the land at his own discretion, despite the fact that it is lineage land. Because of this, the present size of the land is smaller than before.

## Notes

- 1 Berry (1988a, pp. 53, 67) describes this situation with such expressions as “bundles of rights in land” and “multiplicity of rights and interests.” The title of this chapter is drawn from Berry’s terminology.
- 2 At the time of writing, land title registration under this law had started in big cities like the capital Accra, but not in rural areas.
- 3 Critical discussion of this move has been presented by Platteau (1996), Havnevik (1997), Bruce (1993), Atwood (1990), Barrows and Roth (1990), Cornia (1994), and Sjaastad and Bromley (1997).