

BAYREUTH

Actors, Institutions and Change Perspectives on Africa



Editors

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Bayreuth African Studies Working Papers No. 13



INSTITUT FÜR AFRIKASTUDIEN

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The "Bayreuth African Studies Working Papers" report on ongoing projects, the results of current research and matters related to the focus on African Studies at the University of Bayreuth. There are no specific requirements as to the language of publication and the length of the articles.

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Since the year 2007, BIGSAS is part of the competitive 'Excellence Initiative' by the German Research Foundation (DFG) and the German Council of Science and Humanities (WR). The basic aims of BIGSAS are to bring together excellent young African and non-African scholars to work jointly in the field of African Studies and to offer a centre of creative and innovative PhD training and research. On 15th June 2012, BIGSAS was one of the successful DGF funded 'Centers of Excellence' which were granted support for the next 5 years. BIGSAS has more than 100 junior fellows from 25 African, American, Asian and European countries. BIGSAS builds on this experience and offers a multi- and interdisciplinary research environment based upon three clearly defined general Research Areas which are:

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BIGSAS*works!*

With BIGSAS*works!* we aim at offering Junior Fellows at the Graduate School of African Studies a platform for publishing research-related articles. This new online-working paper series provides an excellent platform for representing and promoting the idea of BIGSAS. It opens a space for showcasing ongoing research, creating transparency of the work carried out by Junior Fellows and providing a space for present articles and working jointly on them towards further publication. Each issue focuses on a certain thematic field or theoretical concept and Junior Fellows from any discipline are invited to submit papers, enabling common interests beyond the predetermined BIGSAS research areas to flourish. At the same time BIGSAS*works!* offers its workgroup participants deeper insights into and practical experience of what it means to be an editor. Last but not least BIGSAS*works!* makes BIGSAS and its research(ers), (i.e. us!), visible before our theses are published.

The name BIGSAS*works!* had various implications when we first chose it. First and foremost it is an abbreviation of “BIGSAS Working Papers!” Secondly, it is meant to show the work of our BIGSAS “work groups”, so indeed it is the works that are resulting from a structure like BIGSAS. Thirdly, taking “works” as a verb, it demonstrates the work that we as BIGSAS Fellows carry out, with BIGSAS*works!* guaranteeing us a visible output in addition to our theses.

Bayreuth, May 2015

Matthew Sabbi and Jane Ayeko-Kümmeth

The editors of this volume

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Acknowledging reviewers of this issue

As editors of this issue, we wish to express our sincerest gratitude, on behalf of the contributors, to the outstanding sacrifice to the University professors who reviewed the contributing papers. Despite their tight schedules and engagements, they still found time to read and offer valuable suggestions on the papers, which eventually culminated into the current issue. Indeed, for those professors who are not members of the University of Bayreuth, we are especially thankful. A debt of gratitude is owed Prof. Dr. Dieter Neubert, University of Bayreuth for approving the theme for this issue of *BIGSASworks!* and guiding us through the project and above all for penning the foreword to this issue.

The papers in this issue were reviewed by nine renowned international scholars. They are:

Prof. Dr. em. Sjaak van der Geest	University of Amsterdam, The Netherlands
Prof. Dr. Walter Thomi	University of Halle, Germany
Prof. Dr. Georg Klute	University of Bayreuth, Germany
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Foreword

The idea of institution-building is as old as the notion of development policy. And the question of functioning institutions was and is a truism in development research. In this debate institutions are usually seen as state institutions, including administrations and the judiciary. Therefore one may ask, why another volume on institutions and development? To understand the aim of this volume, it is helpful to take a look at the history of development research on institutions, especially in Africa.

One important task of post-colonial development was to “Africanize” the leading positions in state institutions that had been held by foreign colonial officers, lawyers and technicians. During this phase, institutional development was a question of staff training. Indeed, for a long time, foreign staff was part and parcel of the administration and especially in the juridical system foreign judges were often active for decades, at least in the high courts. A second phase of institutional development focused on the devolution of state institutions and decentralization as the backbone of more effective service provision. The focus was on the restructuring of institutions. Even at this time, when the question of implementation came up, institutions were mostly seen as formal structures that had to be set up and scheduled in an effective way.¹ It was only in the eighties that financial institutions and the financial system came into focus. But again the focus was on the structures of the system.

However, the impact of all these efforts was limited. Analysis of the “failure” of institutions pointed to one main factor: “corruption”. Institutions were seen to have been corrupted by greedy politicians and administrators. Institution-building was marked by the fight against corruption and a lack of transparency and accountability. Good governance was presented as a solution. The restructuring of institutions and good governance are still on the agenda but data from Transparency International and other databases show that the progress is often limited. In addition, some of the East Asian countries that are presented as development successes were corrupt at the time when the main advances in growth and development took place.

¹ E.g. Cheema, G. Shabbir/Rondinelli, Dennis A. (eds.), 1983. Decentralization and development. Policy implementation in developing countries. Beverly Hills: Sage.

The papers in this volume follow a different path. They are influenced by actor-centered analysis. They refer openly or indirectly to the work of Norman Long². His interest is in the actors in- and outside the institutions, their specific perspectives and interests and their particular rationale of action. This approach was developed in the 1980s. The studies published at that time and in the 1990s were mostly interested in what Long called the interface between state and development institutions on the one hand and the local people and their local institutions on the other. Surprisingly, in development studies this very productive perspective has hardly been applied to the administrative structures themselves. German governance studies with their focus on the Global North have shown that this is a highly productive enterprise.³

The actor perspective is closely linked to ethnographic research and to a sociological definition of institutions as stable, persisting patterns of social relations based on shared legitimate concepts of order and practised in everyday life. This definition goes far beyond state institutions and includes social institutions of different kinds, including particular local institutions. At the same time, this understanding of institutions is compatible with the definition of institution given by the institutional economist Douglas North “as a set of rules” (see Sabbi/Ayeko-Kümmethin this volume).

Against this background of a wider definition, this volume combines actor-centred studies of institutions and development with a focus on state institutions and institution-building with studies of local institutions in the context of change and development. One interesting feature of the volume is that the authors come from diverse national and disciplinary backgrounds. But different from the ordinary conference setting and the loose interaction between the authors that is typical of classical edited volumes, the authors of this BIGSASworks! issue formed a working group and developed a common ground in an interactive process that is reflected by a shared analytical approach. The papers provide a map of the actors involved in institution-building or in practical performance. This is an eye-opener for understanding the everyday practice of institutions

² Long, Norman, 2001. Development sociology. Actor perspectives. London, New York: Routledge.

³ Mayntz, Renate, 1998. New challenges to governance theory: Jean Monet; Scharpf, Fritz, 1997. Games real actors play: Actor-centered institutionalism in policy research. Boulder: Westview Press.

that reaches well beyond formal legal procedures or a simple dichotomy between good governance and corruption.

Bayreuth, May 2015
Dieter Neubert

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Introduction: Actors, Institutions and Change

Matthew Sabbi and Jane Ayeko-Kümmeth

This issue of BIGSAS*works!* is underpinned by the outlook and daily practices of public institutions in developing regions particularly in sub-Saharan Africa. In fact, the nature of state institutions in these settings makes it all the more important in confronting and interrogating why, for example, public bureaucracies remain visible but their output in terms of goods and service provision are often deemed poor by citizens who utilize those services. The ‘weakness’ of state bureaucracies and their inability to provide public goods is an oft-cited critique for the nature of governance in the Global South (see North, 1995; Nissanke & Aryeetey, 2003). It also informs the ambivalent notions on these institutions’ orientation towards change in which they are presented as legitimate institutions but instead perform something else (Meyer & Rowan, 1991; Meyer, 2005). The weakness of the state bureaucracies at the same time provides the rationale for international actors to come in and help (Romeo, 2003). Indeed, over the last few decades, development discourse and practice have prioritized institution-building as reflected in the amount of development aid and technical assistance that are sent to the developing regions.⁴ Yet institutions in the developing world especially in sub-Saharan Africa remain multi-faceted and sometimes their outputs depend on how actors implement these institutional changes. The dilemma for development actors pursuing institutional change has been the arduous task of reconciling these institutional complexities in the Global South with those of the Global North where the very idea of institution-building emanates. Despite engaging the attention of international scholars, practitioners and local actors, very little is still known about the institution-building processes.⁵

Two key questions warrant our attention in this discussion on institutions namely: what exactly are institutions and what do they do in our lives? How important are they for social change processes? Before interrogating the questions further, we note also that although the phrase ‘institution-building’ is widely applied in international

⁴ For details on development expenditure see for example Easterly (2006).

⁵ Smoke (2003), for instance, points to the limited knowledge on decentralization processes especially in developing countries notwithstanding the attention the concept enjoys in international debates.

development discourse, it remains somewhat ambiguous because the concept of institution has quite different meanings in economics, sociology and political science. As one of the common concepts found in economics and political science, an institution is seen to be brought about mainly by a legal process or through the introduction of some 'incentives'. This differs quite widely from the understanding in sociology where institutions (seen as interactive meanings) are taken as forms of 'cognitive structures' and based on societal consensus whose production or establishment do not depend on command (e.g. third party enforcement) institutions (see Habermas, 1989 and also Luhmann, 1986). Notwithstanding the different conceptions, the overarching concern of these disciplines, as regards the use of institutions in the development and change discourse, points closely to North's (1990) idea of institutions from which the institutional economics approach emerged. Following North (1990), institutions are defined as rules and regulations that constrain and shape human interaction; they may be formal written rules (constitution, laws, bylaws, property rights, regulations, etc.) as well as unwritten codes or norms (customs, taboos, traditions). Although informal institutions are found in both developed and developing countries, they are predominant in the latter given the 'undeveloped' nature of formal institutions in those settings (Jütting, 2003). Rules, whether formal or informal are never perfectly enacted and thus require institutional change which entails processes and programmes that seek to alter the nature of these rules, often with expectation of making them better. This change process rather begins from the everyday practices associated with the enactment and performance of a given institution.

That institutions may be related to change itself poses the question: what sort of change are we talking about? By change, we mean social change which may broadly refer to socio-economic improvements in the living conditions of people in developing countries e.g. productivity growth, expansion in education, improved health and life expectancy (Weizel, Inglehart & Klingemann, 2003). This conception reflects what much development cooperation does: the transfer of resources between 'rich' and 'poor' countries with the objective of social and economic improvement in the lives of the poor in the partner countries (Rauch, 2009, p. 12). Therefore, change as we conceive, is a process that entails the ability of citizens to access their basic daily needs; the provision of these needs which is contingent on the social, political, and economic institutions offered by the state. After the disappointments and failures in the international development system (see Neubert, 1996) and the post-development critique that followed (see Escobar, 1995), a renewed

interest in development emerged. In particular, it sought to build state and service institutions that will pursue models of change from within the local context. The idea was and still is that no change strategy works if institutions in themselves are weak and dysfunctional. Despite the institution-building efforts, outcomes seem far and wide.

Critical to the discussion on institutions and their change is the core premise which underlies institution-building; two notions of bureaucracy often inform such change: the process-oriented approach from the Weberian tradition and the results-oriented approach proffered by the New Public Management (NPM) practices (see Hirschmann, 2011). Yet it is also noted that in developing country contexts such as obtains in sub-Saharan Africa, the Weberian approach is difficult to apply based on it being an ideal-type and thus different from practical experiences as well as its over-reliance on formal rules (Bierschenk, 2010, 2014).⁶ On its part, the results-oriented approach from the NPM is limited in application due to its preference for private sector rules and profit motivations that are less popular in public sector domains.

Another complexity in the discussion on institutions is that some scholars take the extra step to establish some causal link between institutions, institutional processes and economic growth. This linkage has spurred further debates on the relative importance of institutions vis-à-vis trade and geography in socio-economic development. One group of scholars, on the one hand, predicate the dominant role of institutions often with the important phrase 'institution trumps everything else' (see Rodrik, 1999; Rodrik et al., 2002). Others (e.g. Sachs, 2003) rather emphasize geographic factors as ultimate in explaining differences in growth rates. Further and more pointedly, some researchers (e.g. Halperin et al., 2005; Feng, 2003) link democratic institutions to socio-economic development. On their part, Przeworski et al. (2000) argue that despite the importance of political institutions, regime type does not necessarily influence social change. Thus, that linkage generally remains inconclusive and contested (Menocal, 2007; also Jütting et al., 2005). Jütting (2003) therefore cautions that such debates have the tendency to influence the use of 'proxy for institutions' by employing variables that highlight only the quality and performance of institutions instead of describing how the institutions in themselves work. One could, for instance, talk about, the use of perceptions to measure institutional performance (e.g. Transparency International's

⁶ Bierschenk (2010) notes that the Weberian model is not only an ideal-type model that limits its application in institutional settings, it is also overly adheres to formal rules with no room for informal norms.

Corruption Perception Indexes). Therefore, given the ambiguity and inconclusiveness of the democratic institutions and their link to social change in the face of empirical evidence, we approach that unsettled debate with more caution.⁷ What remains striking is that the way in which actors interact with institutions and the environment to enact their processes and outcomes are often not prioritized. Institution-building processes are essentially difficult, as Lowndes (2005) points out, because actors have some penchant to resist change and cause the perpetuation of the system to their own benefits.

A caveat worth pointing out in these debates is that institutions in themselves do not necessarily bring about social change; institutions might even resist change as structures of stability. They can also facilitate the creation of enabling environments for change to occur. We note, therefore, that the nature and the operations of state bureaucracies, their application of the rules, and their consequences are institutional dimensions whose effect could create the platform for change to occur. As already alluded to, change could take different dimensions: economic, political and social. In this regard, the different papers presented in this issue of *BIGSAS Works!* discuss institutional processes in domains such as post-conflict reconstruction, local government systems, land tenure management schemes, and women empowerment and family processes in sub-Saharan Africa. Instead of explaining their outcomes simply as institutional failures, we attempt to analyze the former as the unique outcomes of the embeddedness of the local institutional environment and the actors in larger global processes. Our analytical approach calls for an appreciation but also a critique of the wider concept of institution and institution-building processes not as some 'magic bullets' in the social change process albeit very necessary for the latter as a whole. The papers, therefore, point out the wider notion of the concept of institution which goes beyond state and service institutions in the fields of politics and economics to socio-cultural

⁷ Some authors argue that institutions and their processes provide the missing link in the change process across developing countries. Jütting (2003) cautions that change outcomes emanate from multiple variables from the institutional environment to the actors that build the institutions. While we appreciate the inroads institutions make in the pursuit of policy and economic development, we find that empirical data do not clearly reveal a causal link and that institutions may only serve as catalyst in the change process; thus institutions may act as means to an end but not an end in themselves. Again, there are states in which institution-building processes are poorly organized but have been successful in improving the lives of their citizens. In contrast, there are states which have made greater strides in their institution-building processes e.g. democracy, human rights, etc. but living conditions of the people have worsened. Thus, different political regimes remain capable of producing similar policies that may engender economic prosperity (see Menocal, 2007).

spheres such as family, marriage, and indigenous land arrangements in sociological and social anthropological domains. All these facets of institutions simultaneously produce opportunities and constraints in the pursuit of social change.

From political science background, Alžběta Šváblová discusses institution-building processes in a post-conflict setting in Liberia. The paper highlights the subtle tensions between two key institutions crucial for bringing the state back to work namely the Land Commission and the Governance Commission. The author argues that although land remains vital to the institution rebuilding processes in Liberia, governance is equally important. Yet, despite several attempts to ensure that the latter institution works, it is rather the former which has received tremendous support and participation from both local and international actors. Therefore, the disinterest in the activities of the Governance Commission has affected the morale of its own staff and threatens the prospect of building critical governance structures for the country.

Competing interests of actors and institutions in the making of local bureaucracies is the subject matter of the paper from Matthew Sabbi. This paper, situated within the debate in organizational and development sociological approaches, explains how the processes of institution-building in the Ghanaian local government system is shaped by multiple institutional and personal interests of local and national actors. The author discusses the seemingly conflicting notions about local government institution-building; the promise of participatory development which is rather held ransom by the competing individual and political interests. The paper concludes that despite the numerous institutional reforms towards improving the provision of local public goods and service, outcomes have been far and wide and residents' hopes of local development through the local public administration have dissipated.

Jane Ayeko-Kümmeth's paper extends, further, the discussion of local government institution-building and policy making processes to the Ugandan context. The paper, from a political science perspective, discusses the hybridity that obtains in the Ugandan local government system between state and non-state actors even if the former refuses to officially accept the direct involvement of the latter. The author argues that despite the apparent oversight by the constitution, non-state actors remain active players in local government policy decisions and in the implementation of projects. Most importantly, it is when the non-state actors are involved in the policy decision

making processes that the provision of public goods and services at the local level properly takes place.

From legal anthropological perspective, Lamine Doumbia discusses the competing claims to land title and ownership in Bamako, Mali. Within the framework of institutional conflict between the municipal authority and the local institution of land rights, the author provides a thick description of the daily struggles of 'slum' inhabitants against eviction by the municipal government. It also highlights the inhabitants' strategies and techniques to resist the decisions of the municipal authority. The residents use claims of entitlement such as first occupants, judicial decisions from the Supreme Court as well as their own 'watch dog' committees to put off any eviction attempts from the Bamako city authorities. The resistance strategies by the 'slum' inhabitants question the limits of state institutions and law in 'imposing' legal definitions on the inhabitants who also define, in their own terms, their customs and practices which form the 'legal' basis for occupying the land.

The products from institution-building processes have outcomes for specific individuals and groups and other institutions. Evam Kofi Glover discusses a wider concept of institution from marriage perspective by setting out the disjoint between the pursuit of higher education and the cultural goal dynamics among middle-class women. From social anthropological background, the author's main argument is that women who pursue higher education in order to enter top managerial and leadership positions quite often confront marriage squeeze. This is because they spend many years in pursuit of higher academic laurels. However, these highly educated middle-class women resort to meeting the cultural expectation of marriage and childbirth by entering into polygynous marriages. This marriage arrangement is spurred, in part, by the legal pluralistic environment in the Ghanaian juridical landscape. The author concludes that planned interventions (women empowerment) through education do not necessarily change the marriage institution as set out in the change programmes because the actors shape the changes in their own terms.

These papers, despite coming from different disciplinary perspectives, reflect the multi-disciplinary framework of BIGSAS, converging particularly within the subfield of politics and practices in negotiating change. Indeed, the aims of the different articles intersect on broad topics such as institution-building and governance (Šváblová, Sabbi, and Ayeko-Kümmeth), and constraints and outcomes of planned change (Doumbia and Glover). Thus, although

different in perspectives, the papers present how actor processes and interests occur in and shape the everyday functioning of institutions as well as their change over time.

To conclude, the papers in this issue of BIGSAS *works!* are nowhere exhaustive as regards the discussion on institutions and their everyday manifestation in sub-Saharan Africa. Nonetheless, the insights offered by the papers contribute immensely to unraveling the multiple, complex and iterative institutional domains within which public bureaucracies work and the entanglements of the local within larger global affairs. Therefore, as we learn from the papers, institution-building is no guarantee of social change despite the intentions and expectations of planned interventions; rather the occurrence of social change depends on how actors therein choose to implement institutional provisions in their unique contexts as well as recipients' ability to shape the changes in their own right.

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Institutional Arrangements in Post-Conflict Contexts: Land Commission and Governance Commission in Post-War Liberia

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Abstract

This paper analyzes the place of the Land Commission and the Governance Commission in the post-conflict institutional and political landscape in Liberia. Problems related to land still have a high conflict potential in the country and are interconnected with different fields and aspects of peacebuilding and development. Bad governance is frequently mentioned as one of the causes of the civil war, and governance reform is a large-scale, ambitious project with a crucial impact on the way the country will be administered in the future. Both issues are highly sensitive and belong to the very core of state sovereignty. The paper focuses on the similarities and differences in the functioning of these two bodies in the context of power relations that shape the current political landscape in Liberia, especially with regard to the involvement of internal and external actors.

Keywords: institutions, post-conflict context, Liberia, land, governance reform

Introduction

Post-conflict contexts represent an excellent setting to observe the creation and functioning of political institutions. Old institutions are being reformed, new ones being established. There are many different actors involved in the shaping of the institutional landscape – internal (national government, civil society) as well as external ones (UN, international community, foreign governments, donors, or INGOs). Institutions represent arenas where these actors meet and interact, and the institutional environment is at the same time affected by their interests and the power relations between and among them. This contribution analyzes the place of the Land Commission (LC) and the Governance Commission (GC) in the post-conflict institutional and political landscape in Liberia. Land issues still have a high conflict potential in the country, and are closely interrelated with different aspects of peacebuilding and development. A crisis of governance is frequently mentioned as one of the causes of the Liberian civil war (Ellis, 2007; Sawyer, 2005) and governance reform is a large scale, ambitious project with a crucial impact on the way the country will be administered in the future. Both issues touch on the very core of state sovereignty, which makes them highly sensitive in the context of the peacebuilding exercise; a project to a large extent led by international agencies according to the premises of the ruling liberal paradigm. This paper focuses on the similarities and differences in the functioning of the Land Commission and the Governance Commission, especially with regard to the involvement

of internal and external actors in the context of power relations that shape the current political landscape in Liberia. The analysis is written from the perspective of new institutionalism (Powell & DiMaggio, 1991). More specifically, it adopts the actor-centered approach that pays attention primarily to the actors acting and interacting in an institutional framework. The actors are usually corporate entities and their decisions are examined to explain policy outcomes (Mayntz, 2003). The analysis of actors' behavior has to take into account both structures and institutions in which these actors operate. Neither of them is primordial, on the contrary, they mutually influence each other (Mayntz & Scharpf, 1995 pp. 38-44).

After an overview of the theoretical debates about the post-conflict reconstruction and its institutional aspects, we will have a look at the past and present situation in Liberia. Then, we will discuss the place and the relevance of the governance and land issues in Liberian context, describe and analyze the institutional arrangements around them, and see how different actors negotiate and assert their interests in these fields. Finally, we conclude by drawing some remarks on similarities and differences between the GC and the LC, and on how they negotiate their ways in the context of power relations among the actors at the Liberian political landscape. The primary data for this paper was collected as a part of my PhD research on the actor-interaction and institution-building in post-war Liberia during five months of field work in 2012 in Monrovia, Liberia. They stem from 25 expert interviews with the representatives of the UN, Government of Liberia, local and international NGO staff and civil society representatives, as well as from numerous informal conversations and observation of the institutional environment of the Land Commission.⁸

Post-conflict reconstruction: general debates

The concept of post-conflict reconstruction emerged in the early 1990s, referring to the processes of capacity-building, reconciliation and societal transformation after a violent conflict. In the Agenda for Peace, UN Secretary General Boutros-Ghali defined the term as an "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict" (Agenda for Peace, 1992). The concept of post-conflict reconstruction is usually employed interchangeably with the term peacebuilding, in both cases referring to "building confidence among previously

⁸ Thanks to the kind support of the staff of the LC, I was able to attend several meetings of the Policy Taskforce and Land Dispute Resolution Taskforce from April to June 2012. The GC holds no comparable meetings that one can attend, so the information about the GC comes only from the interviews.

warring parties, developing the social, political, and economic infrastructure to prevent future violence, and laying the foundation for a durable peace” (Doyle & Sambanis, 2006 p. 11). As Jeong argues, the process of post-conflict reconstruction should “enhance public security, generate economic recovery, facilitate social healing, and promote democratic institutions” (Jeong, 2005 pp. 12-13). The concept has been recently criticised for its indiscriminate promotion of the liberal-democratic perspective, market-based economy and good governance as panaceas in post-conflict societies (see e.g. Paris, 2010; Mac Ginty & Richmond, 2009) and even accused of neo-imperialism from the side of international agencies and rich countries of the Global North (Newman, Paris & Richmond 2009). The critiques, however, have not provided any viable alternative to the current model.

Apart from the changes at the macro-level (e.g. in economy or governance), the peacebuilding exercise also aims to achieve a transformation at the personal, individual level, to change people’s behavior in how they deal with conflict. As such, peacebuilding can be perceived as an ambitious social engineering exercise (Sharon Abramowitz, informal conversation, September, 2012). The literature on peacebuilding has so far focused on the single actors (UN and peace-keeping forces – Adebajo, 2002; Richmond, 2002, 2004; Chesterman, 2004); the role of NGOs (Neubert, 2004; Gaer, 2003). Another focus is on particular aspects of the reconstruction process and regulatory institutions such as elections (Belloni, 2004; Call and Cook 2003); security governance, DDR⁹ (Smith-Höhn, 2011; Alden, 2002; Knight & Ozerdem 2004; Bryden & Hanggi, 2005); transitional justice (Lambourne, 2009, Campbell-Nelson, 2008; Laplante, 2008; Kerr & Mobekk, 2007); etc. in general. There are also case studies with the focus on suitability and compatibility of institutions with the local context (e.g. Sriram, Martin-Ortega & Herman, 2011 for examples from Africa). However, despite the substantial role national institutions and the actor interaction within them play in the implementation of the peacebuilding reforms, little attention has been given to them. This paper aims to fill part of the gap by focusing on two fields of reform: land and governance as well as the respective institutional arrangements around them in Liberia.

Liberia: Background Information

The civil war in Liberia started in 1989 when the forces led by Charles Taylor marched to Nimba County from neighbouring Côte

⁹ Demobilisation, disarmament and reintegration.

d'Ivoire. The conflict lasted till 2003¹⁰ when the Comprehensive Peace Agreement (CPA) was signed in Accra.¹¹ Since that time, the post-conflict reconstruction process under the guidance of the international community, most importantly the UN, has been in progress. After the common initial focus on the demobilisation, disarmament and reintegration of former combatants, the broad process of peace consolidation began with a wide range of objectives in the fields of security, governance, rule of law and general socio-economic development. A peace-keeping mission, United Nations Mission in Liberia (UNMIL) has been deployed in the country since 2003, functioning as the main security provider. The mission is currently in the middle of a "reconfiguration", downsizing the military element and preparing for their future withdrawal. Liberia faces similar challenges to any other post-conflict country. Most of the infrastructure was destroyed during the war and over 1.8 million of the Liberian population was displaced or fled to other countries.¹² Health care and basic services are slowly recovering¹³ but the situation is impeded by overwhelming unemployment and widespread poverty.¹⁴ The reconstruction process is further complicated by a limited national budget and an extreme scarcity of qualified professionals on the Liberian side. Although there are financial resources and foreign professional staff pouring from the international community, these resources are largely missing on the domestic scene.

Governance and Peacebuilding

A lot has been written about the importance of good governance reform in the post-conflict situations, especially with reference to Africa (Sriram, Martin-Ortega & Herman, 2011; Jeong, 2005; Doyle & Sambanis, 2006). Good governance, a concept increasingly popular since the 1990s, generally refers to "the manner in which power is exercised in the management of a country's economic and social resources for development" (World Bank, 1992). The World Bank

¹⁰ The conflict is usually divided into the first and the second Liberian civil war. The first one ended by a peace accord from Abuja in 1996 and was followed by an election won by Charles Taylor. In 1999, the fighting resumed and lasted till 2003.

¹¹ For a classic work with an excellent analysis and detailed history of the conflict, see for example *The Mask of Anarchy* by Stephen Ellis (2007), or Morten Bøås (2005).

¹² The displacement reached its peak in 1994, where there were estimated 1.1 mil of IDPs and 780,000 refugees. World Refugee Survey, cited in Sawyer (2005).

¹³ The recent outbreak of Ebola in the region are difficult to estimate, but will certainly deal a heavy blow to the country's recovery.

¹⁴ According to the estimates of the European Commission, in 2012 76% Liberians lived under the poverty line of US\$ 1 per day, 52% in extreme poverty under US\$ 0.50 per day (http://ec.europa.eu/europeaid/where/acp/country-cooperation/liberia/liberia_en.htm)

further defines the term as including elements of transparency, accountability, government effectiveness, rule of law, and independence of the judiciary (Kaufman, Kraay & Zoido-Lobaton, 1999). Governance reform has become an inseparable part of post-conflict packages (Jeong, 2005; Doyle & Sambanis, 2006). However, Sawyer notes that especially in post-conflict countries with the social fabric torn by violence, the initiatives to build state capacities are inappropriate for the situations where the state has often been a part of the problem (2005). Implemented in a hasty, un-coordinated manner, governance reforms can lead to the replication of old orders or “pursuing great ideals without framing them in appropriate institutional arrangements” (Sawyer, 2005 p. 139). In addition, the concept is related to a specific notion of politics and state, derived from the Euro-American political tradition, promoted as a model suitable for other countries, regardless of their history, political culture or socio-economic context. Bad governance is frequently mentioned as one of the causes of the Liberian civil war (Ellis, 2007; Sawyer, 2005; interviews in Monrovia, April-June 2012). The concentration of power in the hands of a small Americo-Liberian elite¹⁵ in the capital, the neopatrimonial practices of governance, the plundering of natural resources, financial mismanagement, marginalization and exclusion of large segments of the population – all this contributed to the growing frustration that eventually led to the violent conflict.

The history of 150 years of highly centralized and autocratic presidential rule has left Liberians with a monocentric mindset, with the state viewed as a provider and producer of development for its anonymous beneficiaries (Sawyer, 2005). The beginning of the presidency as a personal cult can be traced back to President Tubman’s time in office (1944-1971). Samuel Doe, who overthrew President Tolbert in a *coup d’état* in 1980, introduced the military as a political force in Liberia, and installed a rule of brutal dictatorship. His successor Charles Taylor continued in the same direction. Compared to her predecessors, the current President, Ellen Johnson-Sirleaf, represents a return to democratic rule, although the regime is still far from being a show-case of liberal democracy. Endemic corruption, lack of transparency in management of public funds, and widespread nepotism are the most cited shortcomings of the current government (see e.g. Freedom House Report 2014 that rates the country as “partly free”).

¹⁵ The Americo-Liberians are the offsprings of the freed slaves from the USA, who came to Liberia at the beginning of 19th century.

The Governance Commission

Governance reform was first proposed in the Comprehensive Peace Agreement (CPA) in 2003. Article XVI of the CPA established the Governance Reform Commission (GRC), a predecessor of today's Governance Commission. GRC's tasks were envisaged as the promotion of the principles of good governance, ensuring transparency and accountability, plans for the reform of public sector management and decentralization. The general objectives in the field of governance and rule of law were later listed in the Poverty Reduction Strategy (2008), a framework document setting the outline for the post-conflict reconstruction.¹⁶ The goals in the governance sphere include enhancing participation, building effective and efficient institutions, and other goals more closely related to the rule of law (Poverty Reduction Strategy, 2008).

The support of good governance is in focus of many programs and projects led by the international partners. However, the Liberian government, or, more specifically, the GC has the main word in the design of the whole reform and choice of priorities. The GC functions as a think tank for the executive, providing recommendations and suggestions for new policies. The enforcement of the changes, however, depends on the executive and legislative branch of the government. In 2007, an Act of the Liberian National Legislature established the Governance Commission to continue the work of the Governance Reform Commission in maintaining "a holistic system of good governance that is inclusive, participatory and just, and which promotes national oneness, sound public sector management, efficient and fair allocation and use of resources, and a culture of honesty and integrity" (Governance Commission, 2013). There are 28 professionals working for the Commission, with five Commissioners¹⁷ working in their respective mandate areas: political and legal reform, national integrity, civic engagement, public sector reform, and monitoring, evaluation and research. Most of the agenda of the Commission requires a long-term engagement and is therefore at the beginning. The most advanced project of the Commission is currently decentralization. The decentralization policy has been

¹⁶ The Poverty Reduction Strategy (PRS) served as a roadmap for the development of the country. It was put together by the Government of Liberia in collaboration with international agencies and was subjected to a consultative process throughout the country before its final approval. In 2012, the "Vision 2030" succeeded and replaced the PRS as a long-term strategy with an objective to achieve a status of a middle-income country in 2030.

¹⁷ The Commissioners are appointed for four years by the President with the advice and consent of the Senate, with a possibility of one reappointment. Moral integrity, professional competence of the candidates, geographical and gender representation should be taken into account in the nomination process (Republic of Liberia, 2007).

completed since 2010, waiting to be passed into law. However, the path from policy to law, and finally to its implementation is not always a short one – the “Local Government Bill” was passed to the President in August, 2013 and is still waiting to be discussed in the Parliament (Zanker, 2014). The chairman of the Commission, Amos Sawyer, has been involved in the political and reform processes in Liberia since the 1970s and is also engaged in academic work. He represents a figure credible for the external actors, as well as for Liberians. Following a clear vision in the work of the Commission, he emphasizes the inclusiveness of the process and consultation of stakeholders. In his academic work, apart from tracing the evolution of the Liberian autocracy (1992), he presented the idea of a suitable political order for the country, based on the theory of shared sovereignty and polycentric governance (2005).

The main challenge the Commission encounters seems to be the scope of its project in combination with the lack of financial and human resources. The body also has very little political power and influence. Similar to the Land Commission, its task is to provide recommendations and policies, not to make decisions or to implement them. Although the GC reports on its work directly to the President, the level of explicitly articulated political support is far lower than in the case of land issues. The position of the Commission is further complicated by its unpopularity with the legislature. The GC works on sensitive issues, in many cases touching and pointing to existing practices in politics, which sometimes means “stepping on people’s feet” (Interview with a GC employee, Monrovia, November, 2012). A typical example showing the position of the GC in the political system is the approval of the Code of Conduct – a document submitted to the legislation in 2007 that was passed into law only in May, 2014.¹⁸ There is also a sense of animosity from the side of the ministries, who feel threatened by the suggested reforms, since the reforms are often perceived as attempts to interfere in their exclusive sphere of influence (Sawyer, 2009).

Civil society represents an important ally for the GC. The Commission is trying to establish a partnership with civil society organizations (CSOs), in order to become stronger in the dialogue with the Government. At the same time, the GC tries to strengthen the relationship between the Government and civil society, so that CSOs could be consulted when policies are developed and decisions made in their respective fields of expertise. However, civil society in

¹⁸ The Code of Conduct is a guide for public servants created in order to serve as an “integrity check” and to prevent unwarranted behaviour. Among other things, it prohibits appointed officials’ engagement in political activities.

Liberia is still weak, and due to the lack of resources, in many cases pursues a donor-driven agenda. Concerning the role of external support in the field of governance, international partners sponsor specific projects, whereas the Government funds the basic infrastructure and functioning of the Commission. The foreign presence within the GC is marginal. There are international consultants occasionally sent by the World Bank or the UN but apart from those, the institution is entirely in Liberian hands. As one of the Commissioners said: "It is a Liberian institution. A Liberian problem needs a Liberian solution" (Interview with Elizabeth Mulbah, Monrovia, November, 2012). There are no international observers or representatives of development agencies, as is the case in the LC.

Land and Peacebuilding

The complexity of land issues in Liberia stems not only from the aftermath of the civil war; it has its roots in the pre-war system of land governance as well. There are three types of land ownership in Liberia: private, public, and the customary one. However, there had been no clear definitions of these categories¹⁹ until 2013, when the Land Policy filled this gap. Traditionally, the land belonged to the people who settled it, who "cleared the bush" (Corriveau-Bourque, 2010). Members of the community could cultivate and use the land for farming or building, but the land would not become their private property in the "modern" sense, defined by the statutory system. It would still belong to the community and, in the absence of the owner, could be claimed by other members of the community.²⁰ This principle has been problematic especially in the aftermath of the conflict, where it clashed with the policy of the "right to return" – an approach, asserted by humanitarian agencies, based on the assumption that displaced people or refugees were still entitled to the land they had left during the war (The Pinheiro Principles, 2005). Even today, over eleven years after the war, land is still a sensitive issue with a high conflict potential in Liberia. As one of my informants put it: "If we are to go back to war, and I pray not to, it would be because of land. The conflict over land is huge and it can spark violence in any moment" (Interview with an NGO employee, Monrovia, June 2012; see also Unruh, 2009; ICG, 2009; etc.). The

¹⁹ Private land is all deeded land. Public land should be all the rest but this category is not legally defined anywhere. Customary land rights are a special arrangement from the era of two legal systems in the country, one for the "civilized" people and another one governing the "indigenous" in the Hinterland. At that time, the Government used the system of indirect rule, with the traditional (customary) authorities in the hinterland administering the land on behalf of the state. The customary land rights are mentioned in the Constitution but there is no definition either.

²⁰ This practice was developed in a context where access to land was relatively easy. It was labour, rather than land, that represented a scarce resource.

Poverty Reduction Strategy puts land among the six key areas that “require focused attention (...) to mitigate their potential to mobilize groups for violent action” (2008 p. 21). It states explicitly, that issues related to land and property ownership pose a security threat, and that the security of land tenure is one of the cornerstones of the economic revitalization of the country. In Liberia, land disputes are primarily not related to the shortage of land. Many of the issues are consequences of mass displacement during the civil war. However, there are also other types of grievances related to the boundaries between towns and communities or between the communities and companies that were granted large segments of land through concessions.²¹ Geographically, the regions most prone to land conflict are the hinterland counties – Lofa, Nimba and Grand Gedeh. Ethnicity, as another factor that often comes into play in situations of conflict, does not generally play a significant role in Liberia, with the exception of Lofa County and tensions between the Loma and Mandingo people (Corriveau-Bourque, 2010).²²

In the literature as well as among practitioners, there is a broad agreement that managing land issues fosters the creation of a durable peace. As such, it is widely recognized as a crucial element in the peacebuilding process (Unruh & Williams, 2013). Land has been at the origins of many conflicts recently. Even in the countries where it is not the case, it is often an issue that becomes pressing when the conflict is over. Refugees and internally displaced persons (IDPs), who fled to avoid the violence are coming back and often find their property occupied. Natural resources are being exploited to finance the war. The conflict transforms social relations on which the system of land use and tenure has been based. In Liberia, all these aforementioned issues are relevant. About half of the population was displaced or fled to other countries. Conflict over diamonds fuelled the fighting in neighbouring Sierra Leone. The war undermined the authority of the traditional leaders (chiefs and elders), a major force in land management before the conflict. The situation was further complicated by perceived injustices in the land administration and distribution from the time before the conflict, discriminating certain

²¹ Unruh and Williams offer useful categorizations of land conflicts according to different variables. The one particularly relevant and applicable to Liberia is based on the parties of the conflict: individuals (e.g. the returned IDPs and squatters), individuals and the state, and individuals versus companies (including the large-scale land acquisitions). For other possible categories, see Unruh and Williams (2013 p. 546).

²² The cleavage matches a difference between the full members of the community and “strangers”, who cannot access land under the same conditions (Corriveau-Bourque, 2010). Apart from the Mandingo people, seen as “strangers”, another group excluded from access to land are the Lebanese, who cannot own land according to the Constitution.

social and ethnic groups, which led to a deep distrust from citizens, leaving the state with little legitimacy in the post-war era (Corriveau-Bourque, 2010).

There are four broad categories of problems that commonly arise in post-conflict situations with regard to land: legal ambiguity (non-clarity about who governs the land, disputes about access, ownership), legal pluralism (different types of law that can be applied – e.g. customary and statutory), land disputes and land recovery.²³ In order to make the right institutional choices in the peacebuilding phase, it is crucial to understand the political dimension of land issues and disputes. It is argued that the international community should take into consideration the local political landscape and contextualize the arrangements in it, especially to assure their acceptance. The actors involved in reforms of the land sector should understand the situation in order to see if the problems are related only to land itself or are expressions of broader issues such as land scarcity or an inadequate land management system (Van der Auweraert, 2013).

The Land Commission

In the case of Liberia, the Land Commission is the body at the center of the institutional arrangement. Its origins can be traced back to 2006, when the need to create an institution dealing with all sorts of land issues became clear during the discussions over the National Forestry Reform Law (Interview with an LC employee, Monrovia, June, 2012). Shortly after that, the Governance Commission gave birth to the Land Commission, established in 2009²⁴ as a free-standing autonomous body with a mandate of five years.²⁵ The Commission consists of seven Commissioners appointed by the President with the consent of the Senate. There are about 30 people working for the LC, Liberian nationals, as well as short- and long-term international consultants (Interview with a GC employee, Monrovia, June, 2012). There are several projects going on in different program areas – policy and law reform, conflict resolution, outreach, land use management and administration, etc. Apart from

²³ Post-conflict restitutions of rights to housing, land and property has become a common part of the peace agreements already. A concrete manifestation of these rights are the UN Pinheiro Principles – United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. Available on-line at: http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf (accessed 15th July 2014).

²⁴ It was launched in the spring of 2010 (Land Commission, 2011).

²⁵ This particular institutional form was recommended by an international consultant, based on experience with existing models in other countries (Interview with an expert on land issues, Monrovia, June, 2012).

the policy reform, the biggest ongoing projects are the establishment of the Land Coordination Centers (LCC) and collection of Tribal Certificates²⁶ throughout the country (Land Commission 2012).

From the perspective of the post-conflict peacebuilding, there are two main lines of relevant activities in the work of the Commission: the conflict-related one, and the policy one. Concerning the latter, the land policy was finished in 2013. Apart from providing definitions of the categories of land and land rights, it represents a major step in recognizing and lifting up the customary ownership of land to the same level as the private one (Land Commission, 2012). At the time of my fieldwork, the Policy Taskforce was still operational, working mainly on the definitions of the three types of ownership. The conflict-related line of activities of the LC revolves around the Land Dispute Resolution Taskforce – a more general forum, a place of coordination and information-sharing about the projects and activities of the Commission in the field of dispute resolution. The Taskforce meets regularly and brings together different governmental, civil society, and international actors. It consists of around 20 members, including representatives from UN-HABITAT, Ministry of Lands, Mines and Energy, the Center for National Records and Deeds Agency (CNDRA), the Carter Center, the Norwegian Refugee Council and civil society organizations, such as Slum Dwellers Association (Land Commission, 2012). The Taskforces, as fora that bring together actors from the Government, civil society, and international agencies, are a particular arrangement, not commonly seen in other fields of peacebuilding in the country.²⁷ The Land Commission is unique among the other governmental agencies in Liberia also in other respects. The first difference is in the level of financial support. With the budget that amounts to one and a half million US dollars,²⁸ the LC is comparatively well equipped and financed.

²⁶ Tribal certificates are an expression of economic interest, a kind of permission from the authorities for a stranger to use a piece of land. They represent the first step in acquiring an officially registered piece of land, however, they do not have any legal bearings (Corriveau-Bourque, 2010). Their collection should be the first step in the process of establishing the national cadastre. The system of land registration and most of the records were destroyed during the war.

²⁷ There is a similar arrangement at the Ministry of Gender and Development.

²⁸ The Government of Liberia is the main contributor with circa 1 mil USD. Other partners, such as the World Bank, UN Peacebuilding Fund, Swedish Development Agency, or Norwegian Refugee Council, add about US\$ 300-500 000 to the Commission's budget (Informal conversation with a GC employee, November, 2014). The Government supports the core staff and operations, other partners' particular projects. The website of the GC has been suspended since summer 2014 and therefore it was not possible to obtain more accurate figures.

Another peculiarity, tangible for a researcher, is the access to the staff and information about the Commission's work which is rather official and regulated, only illustrating the delicacy of the issue they are dealing with.²⁹ Similar to the Governance Commission, the LC also demonstrates the importance of strong leadership for the work of an institution in Liberia. The Chairman, Dr. Cecil Brandy, is an astute politician who, apart from the good relations with the President,³⁰ is also said to have the right personal and professional qualities for leading the Commission and a clear vision about what it should accomplish. His position is facilitated but also complicated by the level of donor interest in land issues. Such interest brings the necessary resources that are the *sine qua non* of proper functioning of the Commission. However, it is sometimes hard to limit donors' influence in situations where they tend to drive the process according to their expectations or when it comes to a conflict between them. On the other hand, the high level of donor interest also gives the luxury of keeping the line and purpose of the Commission close to the Chairman's vision, as he can afford to say no to the projects or approaches that contradict it. There is an unsurprising, strong and explicitly articulated interest to have the decision-making firmly in Liberian hands. Land policy, as the PRS states, is "one of the most sensitive and important policies" for economic growth but also for security consolidation (2008 p. 67). Although land is such a sensitive issue and there is an extreme emphasis on national ownership of the process, there is also an unprecedented level of foreign presence in the LC. Apart from the national staff, there are short- and long-term international consultants coming for specific projects. The UN-HABITAT is very much involved, participating in the majority of the meetings and taskforces. They also have their seat located directly in the same compound as the Commission, unlike all the other civilian UN agencies, residing in Mamba Point area in the town.

Apart from the international institutions, there is one bilateral country partner with a strong engagement – the US. They have established their presence in the Commission through the USAID Institutional

²⁹ My first informal contact was to an international consultant, who insisted on the confidentiality of our meeting, assessing the situation where "two expats discuss purely Liberian issues" as potentially problematic (Interview Monrovia, May, 2012). When I approached the Liberian Program Officer, I was asked to present my letter of reference and detailed information about my project. After the documents were examined and the Officer got the consent of her senior executive, I was asked to send my questions per email and finally granted an appointment for an interview. Other ministries are quite informal and in order to get an interview, it is often enough to come and ask for an appointment.

³⁰ The political system in Liberia is based on the US presidential model. The President appoints and recalls all the ministers and important functionaries.

Policy Support Program, mirroring the structure of the Commission, and providing basic support in the functioning of the body. Such level of foreign presence is not to be seen in any other ministry or governmental agency. One of my informants compared it to a “shadow Land Commission” (Interview with an expert on land issues, Monrovia, April, 2012). This arrangement certainly gives a lot of space for potential influence over the work of the Commission. Other actors involved in the work of the Commission by attending meetings of the Taskforces are the representatives of line ministries, governmental agencies and civil society organizations. Although the Government is the main contributor to the budget of the LC and publicly acknowledges the importance of its work, representatives of the line ministries and agencies rarely appear at coordination meetings. This might be caused not only by lack of interest but also by lack of time combined with the workload, or even by a general fatigue of never-ending meetings without clear conclusions. A related problem lies in the capacities of the personnel, concerning especially middle-level bureaucrats, who are largely missing. There are qualified, competent people at the top level, but “the layer is as thin as a paper, you pierce it and there is nothing underneath” (Interview with an international consultant, Monrovia, November, 2012).

Liberian civil society organizations and NGOs are often referred to as “implementing partners”, which is an apt description of their role. Their knowledge of local realities and grassroots presence is used and appreciated by the agencies and organizations based in Monrovia, having little outreach beyond the capital. The usual advocacy role of civil society, as an actor standing between the state and private sphere (Cohen & Arato 1992; Habermas, 1998), is not the case in Liberia. In the Land Commission, as well as in other fora, their level of participation is high; they attend meetings regularly and participate actively. The meetings are not only a means of staying informed about what is going on but also an opportunity to network and a chance to be included in the projects of “bigger players”. Two international actors, the Carter Center and the Norwegian Refugee Council, have observer status in the taskforces of the Commission. Although non-Liberian, they are included because of the well-appreciated work they do in the field of dispute resolution.³¹ They are invited to the meetings and consulted, they give advice on request, but do not lead the process. Despite political support for the land reform, adequate financial resources and the availability of qualified personnel, the LC still has little political power. Similar to the GC, it is

³¹ The Carter Center, in cooperation with the American Bar Association, leads alternative dispute resolutions projects; the NRC is active at the grassroots level in the mediation of land disputes.

a body designed to give policy recommendations but has to rely on other branches of power to enforce the results of its work. It is also unlikely that its tasks will be accomplished within its mandate time of five years.³²

Roles, Interests and Perspectives: Diverse and Complementary

Representatives of all the three groups stated unanimously that the principal role of the Government of Liberia in peacebuilding is to set priorities and to lead the process (Interviews and informal conversations, Monrovia, 2012). According to the opinion of external actors, the Government is very clear and assertive in this regard. Concerning its relations with the institutions in our focus, we have already mentioned the explicit support of the LC that signals Government's strong commitment also to international partners heavily involved and interested in the work of the Commission. The GC, on the other hand, as a body that might act against the interests of the Government (e.g. to limit its powers as a part of the envisaged reforms), and is not in the spotlights of international agencies, receives far lower level of support. Although the lesser engagement could be interpreted as a strategy to weaken the institution, this is rather the case with other bodies (e.g. the Anti-Corruption Commission), not with the GC. The relation to the Governance Commission only illustrates the situation where the Government decides of a plethora of issues that are much more pressing and higher on the list of priorities than the GC's agenda.

Civil society in Liberia is far from being an opponent of the Government engaged in advocacy work.³³ It often implements programs and policies of the Government, which means a complete twist of its function. CSOs try to establish more presence and connection to the decision-making level and both Commissions support them in this regard mainly by coordinating and sharing information, but also by including CSOs as an important stakeholder in their own agenda. Civil society is also engaged in outreach activities and sensitisation on government policies, often funded by international donors. The principal role of international partners is to bring expertise, financial and human resources to the country. These commodities are often perceived as inducements for the Liberian political representatives to accept the neo-liberal agenda that comes

³² For the time after the expiration of its mandate, there are plans to transform the LC into the Land Administration Authority (Informal conversation with a GC employee, September, 2014).

³³ One of the reasons for not opposing the policies is that they are often engaged in drafting of the policies and advocating for their enactment (Informal conversation with a GC employee, September, 2014).

with them (Informal conversation with a GC employee, September, 2014). International actors work mainly on the middle level, translating the general goals set by the Government into smaller tasks and projects, ready for implementation. They insist that their task is limited to a mere support and that they respect national ownership of the peacebuilding process. On the other hand, they acknowledge that the capacities on the Liberian side are often completely missing, which offers a large space for leading the process in practice.

The UN agencies, as the most visible representatives of this group with a country-wide presence, strive to maintain impartiality and the ethos of serving solely for the purpose of reconstruction of the country. However, there is a certain rivalry among them in the background, often described as an aspiration to “put up a flag” (Interview with a UN employee, Monrovia, June, 2012), where each agency seeks recognition for the work it has done. Rather than to the other actors engaged in the peacebuilding process, the potential competition is therefore directed inwards, to the other members of the UN family. These relations, touching upon competition on different levels and the theory of multi-level governance, reach far beyond the scope of this paper but represent a highly interesting field for further research. As mentioned above, there is just a minor international presence in the GC, that might be explained by the nature of the Commission’s agenda: a complex, long-term endeavour, unlikely to yield measurable results in a near future. The Land Commission, on the contrary, represents an attractive field of involvement, dealing with issues with a high conflict potential, that can be mitigated by accomplishing a technical task of creating a legal framework and a system of land registration and management.

The direct, strong involvement of the US, the most important bilateral partner on land issues, through the Institutional Policy Support Program hints at the potential vested interests in this field. The well-known interconnectedness of land with business and investment through agricultural, logging and mining concessions in Liberia only amplifies this aspect.³⁴

There are no apparent signs of competition or conflict among the actors in our focus. The division of their roles seems to be accepted by all parties, their interests do not intersect, there are no places of

³⁴ The involvement of private sector in fragile states has often been perceived negatively with infamous examples of trade with conflict diamonds, illicit logging, or large scale land acquisitions. The situation starts to change slowly, as the private companies also begin to see themselves as possible agents of change in the field of Peacebuilding. For more details on the topic see e.g. Sandole and Staroste (2014).

serious friction. The community of people involved in the reconstruction process or, more generally in development business in Liberia, is quite small, which contributes to a better coordination and reduction of overlaps in the implementation of the projects. A competition among the institutions on the domestic level is also insignificant. There are some feelings of resistance or objections from the executive, Ministries and governmental agencies towards the Governance Commission, as a reaction to Commission's efforts to change some of the established patterns and practices in politics.³⁵ However, it is not grave enough to be called a conflict. As regards the Land Commission, there are no hints of competition or conflicting relations to other institutions either. The Ministries tend to have a reserved stance, with sporadic participation at meetings of the taskforces but this can be explained by other factors, such as a heavy workload or meeting fatigue rather than by competition. Generally, conflicts often occur in settings, where financial resources are limited and perceived as a zero-sum game. Although this is the case in Liberia, the nature of agenda of both Commissions and its scope, far beyond the capacities of any other institution, renders potential feelings of rivalry or "stepping on people's feet" largely irrelevant. Although the absence of open conflict definitely contributes to a smooth course of the reconstruction process, it cannot be overestimated and seen as the principal determinant of a successful peacebuilding exercise. There are other factors with much more significance, such as domestic, regional or international security situation, political stability, availability of financial resources, or external factors completely beyond human control, e.g. the recent outbreak of Ebola in Liberia and its closest proximity.

Conclusion

The aftermath of a conflict, as a period of profound changes in all spheres of politics and society, represents an opportunity to implement a wide range of reforms that would otherwise be unimaginable. The political and institutional landscape is being reshaped and the institutions represent arenas where various domestic and international actors pursue their interests and interact with each other. This space for change, in the case of our analysis, for a reform of the system of governance and land tenure, however involves latent dangers as well. One of them is the potential replication of patterns or orders at the origins of the conflict. Another one can be particular interests of certain actors shaping the reform process according to their objectives and needs. Liberia does not

³⁵ The implementation of the governance reforms depends to a large extent on the cooperation and support of the affected line ministries and agencies. This is often missing and therefore makes the implementation of the reforms problematic.

step out of line with regard to implementation of peacebuilding programs and general arguments presented by the critiques of liberal peacebuilding apply to the Liberian case in the same way as to other post-conflict countries. The country follows the path of liberal reforms without alternatives or obvious resistance. The government in collaboration with international agencies sets the broad framework for the reconstruction process at macro-level, whereas national institutions, in our case the GC and the LC, try to change the structural conditions at meso-level in order to facilitate the change at the grassroots. However, this change is not explicitly defined as a primary goal.

By examining the Governance and Land Commission, this paper brought some insights into the practice of peacebuilding and its institutional aspects. The strong emphasis on national ownership of the process clashes with the lack of human and financial resources. The need for financial support opens the door for donors' influence on the reform agenda. Similarly, international or foreign personnel that fill the capacity gap can significantly affect the everyday work of institutions and the policy-making process. In the absence of stable institutional and bureaucratic structures, the importance of personalities and leadership increases. Both Commissions have strong leaders with a clear vision and sufficient personal and political influence for its implementation. However, both LC and GC are bodies without executive power so the final outcomes of their work depend entirely on the decisions of the legislative and executive branches. In this respect, the GC has a more complicated position, due to the nature of its task, inherently raising concerns and even animosity from other players on the domestic political scene. Governance reform is proclaimed as a necessary part of post-conflict peacebuilding and is one of the prerequisites for the financial support from international institutions. The latter tend to present governance reform as a purely technical task although its nature is, with no doubt, inherently political. Despite the fact that governance reform tries to address the issues that led to the war in Liberia, the GC does not receive adequate financial resources and political support, neither from the national, nor the international level. This lack of interest in the work of the Commission indicates that governance reform is in fact not in the primary sphere of interest of the international agencies nor the government. This can be explained by the scope and complexity of the envisaged reform that is of a long-term character, unlikely to yield fast, measurable results. The reform goes beyond a technical task, such as a creation of a policy or a cadastre, for it includes a transformation of a mindset as a prerequisite for profound change of the political system.

Another critique related to governance, the fact that the reform is linked to a specific understanding of politics, rooted in the Euro-American tradition of liberal democracy, does not seem applicable in Liberia. Firstly, there are no voices calling for an alternative arrangement. Secondly, Liberia from the very beginning of its existence declares its adherence to the political system inspired by, and modelled along the US model. Land issues, contrary to governance, represent an attractive field that generates a lot of donor interest and explicit political support from the executive and the international level. This can be related to the fact that arrangements concerning land have direct consequences for business such as logging, mining, or agricultural concessions. Land also has a more obvious and imminent conflict potential that is easier to mitigate, and reforms can bring results in a comparably shorter time than in the case of governance. The findings imply that external actors can play much more significant role than the one visible at first site. Although respecting the opinion of the domestic political elites, they still set the general framework, which determines the process of post-conflict reconstruction significantly. Secondly, their engagement is often driven by factors other than addressing “root causes of conflict”, as the peacebuilding doctrine proclaims.

Concerning the involvement of the other actors in focus, the Government is, in both reform areas, rather reserved unlike civil society that uses participation in different fora as an opportunity to establish its presence and connection to the policy-making level. The US, as the most significant bilateral partner with a special relation to Liberia, is prominently engaged in the everyday functioning of the Land Commission. The Liberian case shows quite clearly that the significance of a particular sector for the building of a stable peace in the country does not coincide with the level of the political involvement. The nature of the peacebuilding exercise and, more generally, of international as well as domestic politics, determines the engagement in such a way that aspects such as imminent conflict potential, business interests or the possibility of yielding tangible results in a relatively short time, prevail over pursuing long-term changes and fundamental transformation in an abstract field of governance. A potential clash with the interests of the domestic ruling elite only adds to the other factors named above.

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What Changes when Formal Organizations reform their Structures? Local Governments and their Substructures in Ghana

Matthew Sabbi

Abstract

An often held assumption is that when complex organizations embark on structural reforms, they purposely make constructive changes aimed at efficiency and effectiveness in the performance of tasks at their structures and substructures. However, for public bureaucracies especially in developing countries, this assumption does not always hold true. In most instances, while the reform efforts might seem substantial in outlook, they subtly move towards furnishing stability and legitimacy which are crucial for their very survival as organizations. Using data from two local administrative structures in Ghana, the paper shows how such attempts towards stability and legitimacy are influenced in part by a complex interplay of competing interests of multiple political and institutional actors but also by the financial inducement from international development organizations working in the Global South in support of the core tasks of the local governments. Therefore, the everyday practices of the substructures tend to focus on qualification for donor funds for development projects. However, since the promise of development through these substructures is untenable, local actors become frustrated. This frustration, while dissipating further the trust in public institutions also deepens the negative attitudes towards the local government and its grandiose concept of bottom-up participatory development.

Keywords: local government, reform, institutions, legitimacy, interests

Introduction

Institution-building processes in developing countries have garnered much prominence in recent decades as a model for good governance structures and greater participation of the citizenry (Wunsch, 1991; Blunt & Collins, 1994). In Ghana as elsewhere in Africa, institutional reforms have become important especially in the public services aimed at improving their governance and service provision. In this regard, reforms in the local government structure have significantly sought greater involvement of local actors in the formulation and implementation of development policies peculiar to their localities. Reforms in the local government structure are thus numerous; what often starts as a review could end up with major ramifications (Tonah, 2009) yet their promise of change and participatory development remains dismal (Wunsch, 1991) or at best modest (Crook, 2003). There is no dearth of research on the processes of change in the local government structure (e.g. Ayee, 1996, 2001; Thomi, 1999, 2000a/b; Awortwi, 2011; Crook, 1999) but these studies present a restricted perspective by emphasizing

efficiency and effectiveness dimensions of the reform programmes. They therefore miss a very important aspect of organizational change processes; they neglect how local and institutional actors negotiate their interests and how that shapes institution-building processes and outcomes.

In Ghana, the local government structure comprises admixtures of bureaucrats, elected representatives and appointed members from the central government. These actors conduct the everyday tasks of the local administration and its reforms but sometimes the reforming actors enact institutional processes and exploit ambiguities to their advantage. The organization thus remains quite the same (Lowndes, 2005) despite attempts towards change. While most of these manipulations may aim at institutional stability and legitimacy on which they survive (Meyer & Rowan, 1991; Meyer, 2010), they are at the same time shaped by interests of organizational participants (Scharpf, 1997, 2008). In this paper the attempt is made to analyze how these latent motivations and the general political setting shape the content of reforms in local public administration in Ghana. For the remainder of the paper, reforms of the local governments are discussed and situated within institutional perspective. A brief description of methods and data follows after which change processes in the local government system, its promise of participatory development and their illusions, utility of the substructures and public perception of the local state are explored.

Local Government and Institutional Reforms in Ghana

Local government and decentralization are concepts that have been used interchangeably but to appreciate the issues set out in this paper, we distinguish the two to reflect local government as the structure that defines the roles and expectations of participants in local public administration while decentralization, simply put, is the policy that gives political and administrative authority to manage the activities of the former (see Olsen, 2007). The units under the local governments therefore thrive on the decentralized authority devolved from the center. It is this devolution that allows them to make autonomous economic, social and financial decisions (Johnson, 2001). Although advocates of decentralization often claim that the process seeks to promote local democracy and development through increased participation, critics (Crook, 2003; Crawford, 2009) show that such arguments are often unquestioned and not properly analyzed. In fact, the critics argue that outcomes from decentralization have been deficient in promoting local democracy and development per se. Despite the shortcomings, the promise of local democracy and development through devolved authority

continues to influence the international development and institution-building processes. Indeed, the rhetoric of development through increased local participation has engaged the attention of most developing countries pursuing decentralization reforms since the 1980s (see Wunsch, 2001; Crook, 2003; Crawford, 2009). Ghana's local government system, a decentralized one, takes its roots retrospectively from colonial administration when it was organized around chieftaincy administrations (Gilbert, Hugounenq & Vaillancourt, 2013). It is reasonable, however, to argue that the local government structure took on a 'modern' character in the post-independence era at which time different political administrations made efforts to decentralize authority to the sub-national and local levels. In practice, though, these programmes largely focused on devolutions at the regions and districts in a highly centralized manner. Local communities were rarely involved and local government services were poorly delivered.

As part of the comprehensive decentralization programme proffered by the Bretton Woods Institutions in 1988 (see Table 1), local government institution-building intensified. This was spurred by the enactment of the Local Government Law, 1988 (PNDCL 207) (Thomi, 1999; Kumi-Kyereme, Yankson & Thomi, 2006) and was supported by the 1992 Constitution and other legislations such as the Local Government Act, 1993 (Act 462), the Civil Service Law, 1994 (PNDCL 327), the National Development Commission Act of 1994 (Act 479), the National Development Planning Systems Act, 1994 (Act 480), and the District Assemblies Common Fund Act, 1993 (Act 327). The reform was unprecedented and sought to shift authority from a centralized structure and devolve power and decision-making competences to the local level under the supervision of the local government ministry. One-hundred and ten District Assemblies (DAs) were created at the time and successive political administrations have sought legislative measures to either increase the number and/or reform the structures. Presently, the number of DAs stands at 216 although the myths and ambiguities that characterize the structure and its administration remain largely intact. These ambiguities give rise to the suspicion that they are created for patronage gains at the expense of decentralized development policy making (Gilbert et al., 2013; Ayee, 2012; Green, 2010).³⁶

³⁶ There are competing views about the creation of new district structures by successive governments to appease voters in areas where they get their most votes and in swing areas. A critical perspective on this patronage-like approach to that debate must be situated in the local government from the post-independence era. The current paper does delve into that debate.

Table 1:
Key Reforms of the Local Government Structure

Year	Reform Type	Key Legislations*
1988	Local Government Reform	Local Government Law (PNDCL 207)
1992	Civil Service Reform	Constitution of the Republic of Ghana
	Local Government Reform	LG (Amend.) Inst. (LI 1508 & LI 1503)
1993	Civil Service Reform	Civil Service Law (PNDCL 327)
	Local Government Reform	Local Government Act (Act 462)
1994	Local Government Reform	National Dev. Plan. Systems Act (Act 480)
2003	Local Government Reform	Local Government Service Act (Act 656)
2004	Local Government Reform	LG (Est.) (Amend.) Instruments for AMA, LI 1804; KMA, LI 1805; SAEMA, LI 1806
2009	Local Government Reform	Local Government (Dept. of District Assemblies) (Commence) Inst. (LI 1961)
2010	Local Government Reform	LG (Urban Councils, (Est.) Inst. (LI 1967); LG Creation of New Dist. Inst. (LI 1983)

Sources: Author's construct based on selected legislations, 2013; Parliament of Ghana. * Note: LG: local government; DA: district assembly.

The Local Government Nomenclature

The structure of local government (as depicted in Figure 1) comprises three main institutions namely the Regional Coordinating Council (RCC) at the apex (i.e. the regional level), the District Assembly at the intermediate level, and sub-district structures comprising sub-metropolitan district councils, town-zonal-urban-area councils and the unit committees at the bottom.

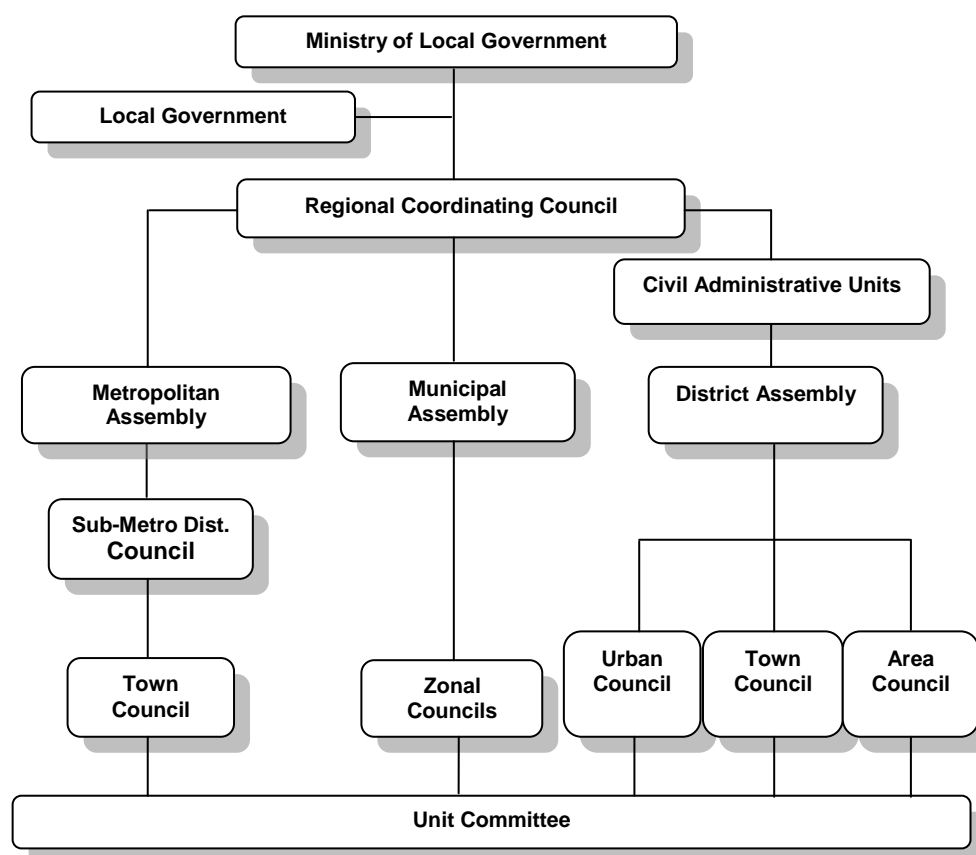


Figure 1: Structure of Local Government in Ghana since 2012

Source: Author's construct based on legislations in use

Institutional reforms in 2003 and 2009 (see Acts 656 & LI 1961 in Table 1) make the local government ministry and its under-secretariat, the local government service, the central bodies to provide technical and administrative support as well as oversight responsibility over the local government structures. At the sub-national levels, there are ten (10) regional coordinating bodies for the local government structure but these are mainly deconcentrated administrative institutions headed by a chief director. The decision-making body which is the RCC with its mandate derived from the

1992 Constitution and the Local Government Act, 1993 (Act 462) is composed mainly by central government appointees such as the regional minister and deputies; all district chief executives of the assemblies in the region; two chiefs from the Regional House of Chiefs. In addition, there are elected presiding members (from the district assemblies) as well as and the regional heads of the deconcentrated services of line ministries (ex-officio members). The RCCs monitor and supervise the organizational and managerial resources and the general performance of the districts within their jurisdictions. This main task is undertaken by the regional planning coordination unit which coordinates the districts' planning activities with those of the central government. Although, found at the apex on the sub-national structure, the RCCs act merely as the link between the central government and the district assemblies (Kumi-Kyereme et al., 2006). Unlike the district assemblies, their democratic legitimacy is indirect (Gilbert et al., 2013) since they are not political bodies that derive and produce autonomous and decentralized development public policy.

The District Assembly and its Composition

Autonomous decisions of local governments rest with the district assemblies. The term *district* in the Local Government Act, 462 designates a geographic precinct over which the District Assembly (DA), exercises control. Three classifications of the DAs based on demographic and urbanization indicators are presently given as: four-tier metropolitan assemblies (6) with population of more than 250,000; three-tier municipal (56) and district assemblies (154) with populations of more than 95,000 and up to 75,000 people respectively. Taken together therefore, there are 216 DAs; a dramatic increase from 110 in 1993, 139 in 2004 and 170 in 2008. The sub-district structures (sub-metropolitan district councils; town-zonal-urban-area councils; and unit committees) are mainly administrative sub-divisions without an independent legal status (Ayee, 2000; Crawford, 2009) to make binding decisions which has implications for their functions relative to the DAs. The local government system has two strands of authority, at least in principle, namely the General Assembly (GA) and the District Administration. The general assembly, a semi-elected assembly is composed mostly of elected representatives (70 percent) while the rest (30 percent) is appointed by the president after consulting the traditional authorities and other local interest groups (e.g. chiefs, youth groups).³⁷ A term of the GA lasts four years and a Presiding Member (PM) is elected every two years from among the assembly members. Interestingly,

³⁷ Members of parliament are non-voting (ex officio) members of the general assembly in their respective districts.

apart from presiding over the general assembly, the PM's functions are largely honorary and ceremonial (Gilbert et al., 2013).

Power over decisions at the DAs is rather held by central government and its representatives who run the Administration. The executive and administrative functions of the DA are performed by the Executive Committee chaired by the District Chief Executive (DCE).³⁸ Even the head of the civil service strand, the district coordinating director, is secretary to the DCE. The Executive Committee coordinates the work of the various subcommittees of the assembly such as development planning, justice and security, finance and general administration, and executes the development plans of the substructures. As representative of the central government and the chair of the executive committee, the DCE wields considerable power over the assembly. Indeed, the DCE's power, coupled with the percentage of the assembly members appointed by the President (30%) makes it difficult for the former's powers and decisions to be challenged by the DA (Crawford, 2009). Nonetheless, this is the source of tension between members of the assembly and as notes Thomi (2000a) the full time status of the Administration and Executive Committee breeds a sense of domination of the DA by the former given the honorary and part-time status of the members of the GA; a complexity that is a source of conflict in the local government. Partly based on the outlook of the DA as a politically-dominated structure, reforms in 2009 (see LI 1961) that sought to organize the DA's services into decentralized departments such as finance, public health, agriculture, education etc. are in limbo. The intent was to transfer competences from central ministries and departments to the districts to form a single administrative entity with responsibility to implement public policies. However, many of those departments in practice continue to operate as deconcentrated departments sharing much of their responsibilities with their parent ministries and regional directorates³⁹. In fact, the defiance is partly shaped by the perception of the local government system in the public domain.

Development Functions of the District Assembly

The Local Government Act, 462 empowers the DAs as the principal entities responsible for development planning, infrastructure planning

³⁸ Title designating executive head of a district; Metropolitan and Municipal Chief Executives are eponyms for heads of metropolitan and municipal assemblies. The DCE is appointed for four years by the president with the approval of two-thirds of the assembly's voting members.

³⁹ Attempts to integrate the deconcentrated departments into the local government structure have been met with fierce resistance by different professional groups from health, education and forestry services.

and regulation, delivery of local public goods and services, environment and sanitation issues, regulating public auctions, alcohol licenses, etc. Development plans (including those of the sub-district structures) and budgets of the district are prepared in collaboration with the RCC and then submitted to the NDPC for approval (budgets subsequently submitted to the Ministry of Finance). Although the DAs receive remittances from the central government i.e. the District Assemblies' Common Fund, their ability to generate enough revenue internally to meet the development plans and thus address the needs of their residents is central to their existence. The DAs are mandated to delegate any of their functions to the substructures or any other body or person that they may deem fit. Yet the same Act 462 creates a gap for the DAs to manipulate their substructures. These bodies are supposed to be the local arena for popular participation in decision making to wit cataloguing taxable or rate-able individuals and items in the locality, raise voluntary contributions to a development fund, and make local action plans within the framework of the district development plan. However, their lack of independent legal status (Ayee 2000) means the functions assigned to them are based on the prerogative of the DAs which has reduced them to revenue collection units for the local governments. Attempts to whip participatory development functions of local (political) actors are numerous (see 2010 reforms: LI 1983) but have stagnated. These reforms sought to actively involve assembly members and unit committee members in the task of the substructures. However, lack of clarity on the reforms (discussed below) especially as regards the composition of the sub-metro district councils have made the changes highly untenable and thus obscuring the notion of local level participation. Indeed, most of the sub-metros are dominated by political appointees but the rationale for these appointments to the substructures has been systematically abused and rather replaced by 'appointment of party foot-soldiers' (Gyimah-Boadi & Prempeh, 2007).⁴⁰ Therefore any discussions about institutional reforms of the local government structure tend to be viewed with skepticism and non-change.

Local Government Reforms: An Institutional Perspective

Studies employing (neo-) institutional and actor-centered arguments to organizational change processes in the Global South are relatively scanty. However, these approaches offer broader perspectives on the analysis of institutional change processes and dynamics especially as obtain in developing countries. In fact, the very idea of

⁴⁰ Professional groups with special expertise such as engineers, lawyers, educationists, etc were to complement skills that the elected members of the general assembly may not readily possess.

local government and its reform, we must point out, is a global idea diffused across time and space. Studies on travelling models and translation point to the various ways in which these organizational change models find specific expression in local settings (see Rottenburg, 1996). Others yet point to how these globally diffused ideas encounter different frames of reference in their application in specific contexts (see Loimeier, Neubert, & Weißköppel, 2005) but institutional change in local governments is best explained by neo-institutional theory.⁴¹ The core argument, as set out by Meyer and Rowan (1991) is that the diffusion and adoption of organizational ideas is in alignment with a global world culture through which ideas spread. However, organizations do not adopt these global ideas purposely because they seek higher efficiency; rather they do so in an attempt to achieve more legitimacy in their environment. Yet reforming organizations face a dilemma of being both efficient (based on some existing rules) and also adopt new ideas. One way to overcome this dilemma is to decouple i.e. adopt the new concepts but to deliberately keep them from the action-structure of the organizations so they do not affect their decision making. Decoupling, it argues, is endemic because the diffusion process produces incoherencies and the only way to be both legitimate and efficient is to decouple (DiMaggio & Powell, 1991). Research evidence from the world polity approach (Meyer, 2010) suggests a hypocrisy i.e. discrepancy between talk and action on reform policies (Brunsson, 1989, 2006) and the tendency for developing countries to adopt and over-sell complicated reforms that they cannot implement by any stretch of imagination (Hafner-Burton & Tsutsui, 2005; Christensen, Lægreid, Roness, & Røvik, 2007). Thus, in developing country contexts where institutional reform efforts are rewarded with development grants and assistance, legitimacy and stability concerns may hold sway over genuine intent towards reforming for efficiency.

Even so, the decoupling concept does not adequately address one variable, interest of institutional actors in the local context which greatly influences willingness to reform. This variable is explicated by the actor-centered institutionalism approach (Scharpf, 1997, 2008) which argues that institutional actors have varied self-interests that are tied to specific behaviour strategies based on expected outcomes. Actors may opt for outcomes that address their self-interests when faced with choice constraints between optimal

⁴¹ Travelling models describes the transformations that an idea encounters in the process of translation; frame of reference discusses the mindsets by which global ideas become reformulated. Neo-institutionalism is preferred herein because it addresses the processes of diffusion and the eventual detachment of the diffused and adopted ideas in their local settings.

institutional outcomes and individual interests. This tendency on the part of institutional actors leads to a situation where change processes yield sub-optimum outcomes. Scharpf (2008) has shown how actors' interests have shaped reforms in health and agricultural sectors in federal and state governments in Germany and it becomes more so plausible in the context of developing countries where multiple institutional rules co-exist and overlap. In the subsequent sections, (neo-) institutional approach is used to analyze institutional change processes in the Ghanaian local government system.

Study Setting, Methods and Data

The study used the multi-sited approach in two administrative regions namely Ashanti and Upper West based on the necessity of availability of information and experience (Ayee, 1996) and covered two local government structures viz. Kumasi and Wa. The Ashanti Region located in the middle belt of Ghana has a long-standing experience of civil administration which dates back to the colonial period compared with its Upper West counterpart, a relatively young region in the northern belt created in 1983.⁴² Other focal organizations included the regional coordinating councils, decentralized directorates of agriculture and health, the local government ministry and the local government service secretariat. An extensive fieldwork was conducted from June to October, 2013 and again from August to October, 2014 and employed mixed methods including in-depth interviews to understand the interface between reforms, actors' interest and the tasks of the local governments from well-informed actors; analysis of existing data and documents on the reforms; and a period of internship supplemented the data from interviews.⁴³ Following a multi-level approach, the actors (summarized in Appendix) came from the district assemblies, decentralized departments and deconcentrated departments. Again, actors in the sub-metropolitan district councils, and zonal councils, town councils and unit committees from the two assemblies were interviewed.

Varying Perspectives on Changes in the Local State Structures

As stated earlier, attempts at local government institution-building are numerous but most recent reforms with Act 656 in 2003 and LI 1961 in 2009 seem to have given impetus to the structures to operate. These legislations created a distinct service (independent of the civil

⁴² The main study from which this paper is derived compares the regions' experiences in the implementation of civil and administrative reforms.

⁴³ This three-month research internship was participatory mainly in the activities of the Kumasi Metropolitan Assembly and the Regional Coordinating Councils including budget reviews, fee-fixing, mid-year reviews, etc.

service) and departments of the assemblies and whipped up enthusiasm among some bureaucrats that the participatory promise of the local government is on course. Some officials in the planning units were enthusiastic as was evident from the following remarks:

“A lot has changed with the reforms of the local government process and what I really like is the participation by the area councils and unit committees which means that planning emanates from the community level. Again, I appreciate very much the participation and decision making processes and implementation with the involvement of the people. Now if you award a project, the community that is awarded this project must be informed; when you write a letter to say you are the contractor who is supposed to work in the community, the community is informed of whoever is working there” [a senior planning officer, RCC Ashanti, Kumasi, 16.08.2013].

Yet, some planning officials seemed somewhat unimpressed that participatory decision making which is the *raison d'être* of the local government structures really obtains at the local level. The argument is that local development plans tend to be a ‘mirror face’ of national ones as regulated by the National Development Planning Systems Act, 480. The fact that national guidelines regulate locally-evolved development plans by the DAs creates the impression of unnecessary centralization of the latter’s task. Some planning officials were unimpressed with the national guidelines which to them reflected the manifesto of the ruling party, which ever is in power. Therefore no specific locally-evolved policies exist. However, since regulations are required to bring into harmony the development plans of all local governments, one could talk about hybridization of the development policy. This view was shared by a senior planning official in the Upper West Region:

“You know the type of planning we do now, they say bottom-up but it is not really bottom-up. It is a mixture of the bottom-up and top-down because if planning guidelines emanate from the top, then naturally some people are dictating to you so you cannot be talking about bottom-up. The communities have action plans which could be galvanized and harmonized at the district levels into district plans but now the NDPC evolves guidelines such that district plans must be in consonance with the national level” [a senior planning official, RCC, Upper West, Wa, 28.08.2013].

These contradictory positions held by planning departments working in tandem with local actors in the regions and districts follow closely from the seemingly (re-) centralization of the local governments (Awortwi, 2011) through the persistent manipulation of their structures and tasks by central government. This makes local actors feel that their development plans are pre-designed for them. Another factor is the official rhetoric which consistently follows the bottom-up mantra even if the realities of participation suggest otherwise. Officials in the central ministry consistently put up arguments suggesting that participation in development planning decisions evolves from the local communities themselves as remarked by an official in the local government ministry:

“In our recent review of the decentralization and local government system, we started from the district level; town council meetings, then we went to the regional capitals. You know the planning process is bottom-up approach which emanates from the district assembly level including the town councils, the urban councils and the zonal councils. They all make their inputs through the assembly system to the national level. What we usually do is to issue to them the guidelines as a standard for our planning process so their inputs and priorities are incorporated into the national plan” [a senior administrative official, Ministry of Local Government, Accra, 14.10.2013].

Beyond these rhetoric which, one more often than not encounters, the illusions of participation is witnessed even more so at the sub-structural levels where participatory decision-making should assume priority as enshrined in the governing legislations. Indeed, these substructures exhibit clear evidence of departure of formal-official norms from operative norms. In spite of the reforms to build these institutions, their activities create the impression that they serve patronage purposes instead of avenues for local level participation.

Illusions of Participation at the Substructures

The idea of participation for which reason new structures for that purpose are created remains dominant but contested in the reforms of the local government. Participation is often linked to local development in the local institution-building processes (Crawford, 2009; Ayee, 2003) yet that linkage remains largely rhetorical. Bureaucrats from the Upper West Region where these cases are pervasive tend to question the rationale for their creation if the promotion participation, decision making is not attainable. In most of the cases the basic economic activities for raising internally

generated funds are not present making them depend on remittance from central government; a dependency that further fuels the recentralization of devolved powers. The challenges of patronage-like structures which are widespread across the country were hinted by one planning official at the Wa Municipal Aassembly (WMA):

“(...) some districts have been created, personnel have been sent to the districts, but they cannot even get residential accommodation over there; it is even not possible to have official accommodation so what sort of district have we created? Because of politics, they rather create districts before thinking of infrastructure and this is not good.” [a senior planning official, WMA, Wa, 31.07.2013].

Consistent with Thomi (1999), one observes that responsibility were created in the DAs without resources which questions the rationale for the new structures if what it takes for them to operate as districts is not there. From the larger political setting, there exists a persistent tendency towards fulfilling political promises for electoral favours and incumbents strive to create structures for patronage resources (see Green, 2010; Gilbert et al., 2013) even if bureaucrats only see the structures as non-viable and unable to produce any genuine participatory development objects. Political actors create expectations from their local constituents when demanding their loyalty (via votes) to represent them and in return, the former promises to deliver development goods to the latter. Such expectations and the desire to meet them often compel political office-holders to create new institutional structures despite the obvious non-existence of the basic mechanisms for the new structures to work and bring development to their localities.⁴⁴

As stated earlier, the substructures at the local level are supposed to be the arena for participation. Yet, despite the numerous changes from 1988 to date, local actors feel distanced from the participation promise in the local government system casting further doubts on official rhetoric which argues otherwise. Given that the participatory development concept remains largely spurious (Ayee, 2000, 2003), the dysfunction of the substructures has been a bone of contention between assembly members and the administration of the DAs. The assembly members generally tend to attribute the weaknesses of the substructures to the ineptitude of the bureaucrats who are unable to

⁴⁴ This claim is subject to much debate. André and Mesplé-Somps (2010), for example, contest such claims arguing that pro-government districts tend to receive less public investments because of fears over political instability which force them to seek favours from opposition areas by investment in those areas.

implement any decisions but rather pursue their interests. An assemblyman from the Kumasi Metropolitan Assembly (KMA) remarked that:

“The system does not work; the technocrats do not want the system to work. In the sub-metro, they do not call meetings for us to know what is going on. We are the political leaders here and they are supposed to help us but they don’t want the system to work. Sometimes they see the assembly members as inferior; some think they have higher education and are not willing to submit to an assembly member because some assembly members have lower education levels. They don’t even inform you when a project is going on in your electoral area. Sometimes you ask, if there is no mischief, why should that happen?” [an assemblyman, Suame Sub-metro, KMA, Kumasi, 21.08.2013].

This distrust of the administration by the assembly members especially the elected ones from both local governments generally has roots in the perceived domination of the General Assembly by the Executive consistent with observations by Thomi (2000a) and its utilization for personal gains of the bureaucrats. However, a careful analysis of the issues at the substructures especially the sub-metropolitan district councils (sub-metros) reveals compelling political interests more than administrative tasks. The sub-metros have legislative challenge and non-clarity of their composition continues to be a politically sensitive issue as pointed out by one assemblyman:

“There is a problem with the sub-metro structure but the appointed NDC members are resisting any solution. Thirty percent of the council is to be appointed by the government but this is not followed because there is a problem with the two LIs, 1614 and 1805. The 1805 does not favour them so they have gone for the old one, 1614. (...) at Bantama, elected members are eight and the appointed members are 22 making up the 30 members so if we go there, we the elected members are ‘nothing’; definitely, a party man will become the sub-metro chair and they use that place as the party office and it cuts across; most of the chairmen (of the sub-metros) are NDC constituency chairpersons who use the sub-metro secretariats as their offices” [an assemblyman, Bantama Sub-metro, KMA, Kumasi, 18.09.2013].

Claims of domination of the substructures by political appointees appear factual given that seven out of the nine sub-metros district

councils in the Kumasi metropolis were chaired by party constituency chairpersons from the NDC.⁴⁵ Nonetheless, the issues regarding the composition of these councils are quite complicated and involve local government reforms in 2004 (LI 1805 for the KMA) under the NPP government. Table 2 sheds light on the impasse at the appointee-dominated sub-metro councils which lends support to claims about political patronage of the local government structures (Green, 2010; Ayee, 2012; Gilbert et al., 2013).

Table 2:
Composition Nomenclature for Selected Sub-Metros in the Kumasi Metropolitan Assembly

Sub-Metro Council	Council Composition Sets				
	Current (LI 1614)		Expected (LI 1805)		
	*Elect. (%)	Appoint. (%)	Elect. (%)	Unit Com (%)	Appoint. (%)
Asokwa	12 (40.0)	18 (60.0)	12 (40.0)	10 (33.3)	8 (26.7)
Bantama	8 (26.7)	22 (73.3)	8 (26.7)	10 (33.3)	12 (40.0)
Kwadaso	9 (30.0)	21 (70.0)	9 (30.0)	10 (33.3)	11 (36.7)
Manhyia	13 (43.3)	17 (56.7)	13 (43.3)	10 (33.3)	7 (23.3)
Oforikrom	15 (50.0)	15 (50.0)	15 (50.0)	10 (33.3)	5 (16.7)
Suame	9 (30.0)	21 (70.0)	9 (30.0)	10 (33.3)	11 (36.7)

Source: Author's computation based on information from the secretariats of the sub-metros. * Elect.: elected members; Appoint.: appointed members; Unit Com: unit committee members

The new LI 1805 meant for 10 sub-metros was criticized by the opposition NDC at the time for its lack of clarity (see Ahwoi, 2007)

⁴⁵ National Democratic Congress (NDC) and New Patriotic Party (NPP) are major political parties in Ghana. Incumbency and domination of district assemblies is not a new phenomenon in the Ghanaian political landscape. Its recurrence and effects have been extensively discussed (see Crook, 1999; Awortwi, 2011). The Ghanaian Chronicle (2011) article on 'NDC subverts local government system' highlights that theme.

and it was obvious the system would be thrown into confusion once the NDC government regained power. This certainly happened after the elevation of one sub-metro to a municipal status and any attempt to make changes in favour of participatory development has been resisted. What one observes is the tendency towards re-centralization that benefits central government politicians and bureaucrats but weakens the local government system (Wunsch, 2001; Awortwi, 2011). It is particularly reflective of the ideals upon which the current local governments were founded. Crook (1999) notes that the substructures were carved in a populist framework devoid of party competition which allowed the central government to have a firm hold of the substructures. With the advent of multi-party democracy, such virtues have become increasingly untenable and incumbent governments have used these practices (e.g. legislative ambiguities) as means of dominating the substructures.

Substructures and their Utility

If the substructures deprive actors of any genuine participation, then what purpose do they serve the district assemblies? The reasons are inexplicable but one seems apparent: the substructures are used to meet other latent ends especially legitimacy and stability concerns. The DAs and the central agencies tend to preoccupy themselves with funds provided by transnational actors. The funds from the international development agencies, their assessment, accounting and reporting standards tend to subtly affect the tasks of the local governments (see Weilenmann, 2009). The local governments in pursuit of these funds put up behaviours and appearances that make them appear legitimate recipients. The funds are the District Development Facility (DDF) contributed mainly by a group of international agencies and the Urban Development Grant (UDG) solely provided by the World Bank.⁴⁶ The award is based on some set criteria as was noted by one official at the local government ministry:

“With regard to the support for the capacity of assemblies we do a lot. We have an intervention called the DDF which is basically a grant from donors; it is a pool in which donors put their resources together and we disburse the funds to the DAs based on their performance.” [a senior administrative official, Ministry of Local Government, Accra, 14.10.2013].

⁴⁶ The DDF is contributed jointly by Agence Francaise de Developpement (AFD), Canadian International Development Agency (CIDA), Danish International Development Agency (DANIDA), Kreditanstalt für Wiederaufbau (KfW) and the Government of Ghana. It is a capacity building grant to induce the performance of the District Assemblies in their service provision.

Certainly, between 2006 and 2011, a total of GH¢ 119,928,440 (c.a. US\$ 54,510,655) of DDF had been disbursed to various districts in the country and the two case study DAs had received GH¢ 10 million and GH¢ 3.4 million going to Kumasi Metropolitan and Wa Municipal assemblies respectively. Only metropolitan and municipal assemblies could access the UDG and the Kumasi Metropolitan Assembly for instance received a grant of US\$ 4.2 million in 2012 from the World Bank as the best managed metropolis in the country (see Alhassan, 2012). The criteria for the awards, contained in the functional and organizational assessment tool (FOAT), tend to prioritize meetings and internal revenue generation which initiate the 'qualification drama' at the substructures.⁴⁷ One administrative official in a sub-metro in Kumasi remarked:

"In the sub-metro we have all the structures (...) but not the authority to implement any decision; it has to go to the MCD for approval and until it is approved, we do not get to do anything. So we are supposed to meet four times in a year but over here even if you call meetings nobody wants to come (...) because they think the meetings at the sub-metro are not effective and do not produce results. As for the meetings we do, if we do not, KMA will lose points in the FOAT assessment so the MCD will insist we do the meetings. We manage to do the meetings anyways and write the minutes but as to whether the content will be implemented is another thing." [an administrative official, Oforikrom Sub-metro, KMA, Kumasi, 09.09.2013].

Assembly members generally complained about the neglect of the task of the substructures and pointed to the weak revenue base since part of the revenue items have been awarded to contractors and the substructures retained the rest⁴⁸. The revenue generation challenge accounted for their inability to hold meetings and make policies for their respective areas because they lacked the funds to pay allowances to participants. However, they were still doubtful whether the meetings could influence the district development plans at all. The local structures' 'production of documents' to qualify for donor funds held much importance to the districts than local actors'

⁴⁷ Municipal and metropolitan assemblies with higher than average scores in the DDF assessment qualify for the UDG. Details on the district development fund and the urban development grant are provided in the MLGRD (2010).

⁴⁸ The revenue concerns at the substructures were glaring. Even though some of the substructures such as the Suame Town Council in Kumasi and Busa Zonal Council in Wa remained non-operational during the entire duration of the field research, revenue collectors were actively taking tolls for their respective DAs despite having delegated that competence to the substructures.

participation in development decisions. These pretentious claims about the activities of the substructures to earn donor funds reflect daily organizational realities contrary to the formal rhetoric on reform and participatory development. They also reveal the persistent but perhaps unwitting influence of international development agencies through their instruments and assessment standards. They divert the tasks of local institutions (Weilenmann, 2009) and make legitimacy appearances gradually prevail over actual institution-building. That, of course, reflects general processes in the international development system within which ideal participatory development goals are set (Keough, 1998), and how the different institutional actors, given their interests, shape the practical goals at work.

Perception of the Local Government

Some degree of apathy is expressed by the public towards the local government set up perhaps in reaction to the way it conducts itself among local residents. Local residents more often become disillusioned to find out that the departments of the DAs cannot provide any help. This provides a channel for their dissatisfaction and disinterest in the activities of the assemblies (Thomi, 2000a). Informants pointed to this frustration as expressed in local residents' apathy towards forums and durbars especially in urban centers; people tend to think that the assembly does not care about them and have developed resistance to pay property tax because they thought they do not benefit from it. The disenchantment with the assembly finds expression in several dimensions of local government tasks.⁴⁹ One such dimension is the enthusiasm or otherwise in district level election compared with the national election trends. This disillusion is clearly elucidated in Table 3. Fact is, whereas voters' enthusiasm seems to surge with the national elections, the reverse is true for the local government segment despite the numerous reforms to involve more local actors. This goes to express their disappointment with the pace of change and development taking place in their localities (Crook, 2003). Even beyond the political structure, bureaucrats in the local government are perceived with weaknesses and ineptitude by technocrats in the decentralized and deconcentrated departments. Some of my informants revealed how such local government bureaucrat are perceived with some mental images of being *local*, incompetent and 'never-to-do-well' intellectuals even though they were the same people who manned the civil service before the split.

Nonetheless, technocrats at the decentralized directorates were not convinced with the administrative restructuring of the local

⁴⁹ Other dimensions include participation in public events of the local state, and their willingness to pay local rates and taxes.

governments preferring to work with their parent departments. Some of their staff continued to receive their promotion from the central ministries and some transfers were done from the center unabated.

Table 3:
Voter Turnout Rates in National and Local Government Elections in Ghana (1992-2012)

National Election (Year)	1992	1996	2000	2004	2008	2012
Voter Turnout (%)	50.2	78.2	60.4	81.5	69.5	80.2
Local Gov. Election (Year)	1988/89	1994	1998	2002	2006	2010/11
Voter Turnout (%)	59.3	29.3	41.6	32.8	44.0	35.3

Source: Author's compilation, 2013 based on multiple information sources⁵⁰

Most of them claim the local governments are political structures and could not provide any technical support for specialized departments. For those in deconcentrated departments resisting full integration into the local government structure, these perceived ineptitude provided even stronger arguments for resistance. Based on their professional and technical needs, one senior technocrat in a regional health directorate hinted that:

“We have been told the districts will be going under the district assemblies but our fear is that there may be problems because you know the districts are not so organized to be able to supervise these organizations. They may not even have the personnel and most of the people in these organizations are (highly) educated/trained than those in the district assemblies (...) so how can they supervise? If the health service budget should go through the district assembly, how sure are they

⁵⁰ Electoral Commission of Ghana; Crook (1999); Awortwi (2011); Obeng-Odoom (2013). Note the inconsistency in the organization of district level elections in 1988/89 and 2010/2011. Again, October 2014 elections were postponed and interviews with electoral officials revealed further uncertainties even in March, 2015. Certainly, the elections were suspended indefinitely in February, 2015.

to get their money to do the work on time?" [a senior health administrator, Ashanti, Kumasi, 10.06.2013].

Despite the concerns from the deconcentrated departments, some senior bureaucrats regard those sentiments as a defensive mechanism for guarding against the domain of influence and privileges enjoyed under a separate line of authority. There are no assurances for those privileges and perquisites under the unified local state administration system as was hinted by one senior bureaucrat:

(...) there is some misunderstanding from the establishment of the local government service; some ministers have not taken the trouble to study the law and the transfer of staff from their ministries to the local government service so they don't know. I also think that is a 'territorial jealousy' because a lot of the ministers and civil servants think that they are losing their staff and so their area of influence is becoming very limited because they get 'fat' budgets from international donors and that if they come under the local government service they may not have them anymore [a senior administrative officer, RCC, Ashanti, Kumasi, 28.07.2014].

True, interests shape the narratives of resistance and are intrinsically linked to particular influence and perquisites but they equally shape the outlook of the administrative units of the local governments, which the local public views as ineptitude and excessively politically-dominated. Nonetheless, this outlook is better understood from the local circumstances and the global entanglements in its creation and reform. The adoption of global ideas on local government and fusion into a patronage-like political system makes the loose coupling of the reforms and outlook less surprising.

Conclusions

The analysis thus far throws light on the latent manifestations that institutional change processes encounter: the complex interplay of personal, political interests and legitimacy concerns on local government reforms means the promise of participatory decision making is taken away from the everyday realities of the local states and their substructures. The actor-centered approach encourages us to move beyond rational actor analysis of formal policy domains to institutional domains to understand how institutional change works in order to unpack the discrepancy between official and practical norms. This echoes the argument by Lowndes and Leach (2004) on the disparity between norms in form and norms in use when institutional

change is embarked upon. In developing countries, this interplay becomes profound given the complex interaction of formal and informal norms which paves way for manipulation by political and institutional actors. While seeking their own interests, they simultaneously showcase processes that make them appear committed to the ideals of 'modern' organizations and worthy of development funds. Although the institutional and actor-centered approaches are less utilized in the Global South compared with studies in the Global North, these approaches provide broader perspectives for understanding reforms in developing countries. What is revealing in these contexts is how the complex mix of institutional rules enables central actors to create (i.e. copy) responsibilities that are hardly supported with resources because they are able to keep them away from the action-structure of their organization (i.e. decoupling).

Regardless of the myths associated with the new structures, the local states and their actors tend to accept these structures in order to be seen as stable and legitimate while incorporating their own interests. This makes the task of local government appear less interesting to local residents. Indeed, even though the reforms of the local government set up may have structural and administrative effects, local people are not really interested in such changes; local government, after all, is to bring governance for development to the local people. However, as Crooks (2003) points out the local governments have been unable to provide for the expectations of local residents hence their disenchantment. Yet, these expectations may be far-fetched and beyond the limits of what the local governments could ever provide. The globally-diffused idea of local government and its reform, as Meyer et al. (1991) point out, often goes well beyond what the local institutions could ever provide and support. Far from arguing that institutional change may not occur at all, one could rather agree with Lowndes (2005) that change in the local government will happen not so much from the reforms but rather at its own course and pace.

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Appendix: Composite Information on Study Actors

		Region		
Profile		Ashanti (n=77)	Upper West (n=21)	Gt. Accra (n=4)
Sex	Female	13 (16.9)	1 (4.8)	-
	Male	68 (83.1)	20 (95.2)	4 (100)
Actor Type	Political	43 (55.8)	9 (42.9)	-
	Technocrat	34 (44.2)	12 (57.1)	4 (100)
Status	Rep.	43 (55.8)	9 (42.9)	-
	Middle Level	17 (22.1)	7 (33.3)	1 (25.0)
	Senior Level	17 (22.1)	5 (23.8)	3 (75.0)
Mode of Rep.	Elected	35 (81.4)	6 (66.7)	-
	Appointed	8 (18.6)	3 (33.3)	-

Source: Field Research, 2013-14 (N=102; includes actors in all study organizations). Note: Rep= Representation/Representative

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Institutional Hybridity in Government: Non-State Actors in Decision Making

Jane Ayeko-Kümmeth

Abstract

Considering the constitutional framework of government in Uganda, there is a clear distinction between state and non-state actors. Non-state actors are herein represented by religious and cultural institutions such as kingdoms. Constitutionally, non-state actors/institutions are considered apolitical hence are forbidden from directly or indirectly getting involved in partisan politics. This implies that they should not engage in any executive, legislative and judicial activities. In this paper, I explore the extent to which such claims hold ground and/ or can be upheld given the socio-economic and political milieu in the country. In order to do this, the paper examines the place of these actors in local government decision making processes. It examines their involvement in the social service sector which many Ugandans perceive as the duty of the government. The research approach used is qualitative while specific methods used in data collection include face to face interviews supplemented by review of media reports. The paper argues that although legal instruments forbid non-state actors from engaging in politics, their involvement in the social service sector accords them an avenue to mingle in politics and substantially influence decision making on matters of public policy.

Keywords: non-state actors, local government, hybridity, public policy, decision making.

Introduction

The concept of Institutional hybridity is increasingly attracting much of academic debate. As Tom Goodfellow and Stefan Lindemann (2013) argue, those interested in hybrid forms of governance emphasise how formal and informal institutions (usually taken to mean institutions of the state versus those of non-state organizations) 'co-exist, overlap and intertwine'. On the other hand scholars like Volker Boege et al. (2008) suggest that hybridity is more or less any situation in which non-state actors play a significant role. Boege et al. (2008) emphasise the inclusion of traditional leaders into local government. Considering the prevalent revival of traditional authorities in Africa, increasing attention has been devoted to the manner in which the institutions of the state combine with those of non-state authorities. However, much of the debate has been focused on the implications for democracy. In this case, this article perceives hybridity as an underdeveloped concept considering that it does not look into the dynamics of policy decisions at the different levels of local government. Taking on from the above authors, hybridity is theorised as an agency of multiplicity of state and non-state actors/ institutions. Such multiplicity reproduces contestation

and/ or compromise between state and non-state actors as they seek to negotiate their relationship within a 'constitutionalized' political environment. At the same time, actors internally seek to negotiate the multiple identities supplied by competing logics. Hybridity is, thus, herein used to demonstrate the interface between state and non-state actors in decision making in a decentralised Local Government (LG) environment as well as to describe the complex dynamics therein. In this context, it shows that this interface reduces and/ or contravenes constitutional provisions that prohibit non-state actors from engaging in executive duties to which the state claims sole responsibility. By accepting these actors, LG become intertwined with the goals of non-state actors and may lose some of their autonomy.

This paper examines the nexus between the state and non-state actors herein represented by traditional and religious institutions in the course of making and implementing public policy decisions. It does this through an examination of the role played by non-state actors given their engagement in the provision of social services such as education and health as well as their role as custodians of cultural norms but also as 'political institutions' of some sort. The paper explores this in consideration of the fact that the constitution explicitly prohibits non-state actors from performing roles that the state claims exclusive rights such as exercise of any administrative, legislative or executive powers of government or LG. In other words government has refused to allow non-state institutions a role in formal state structures. At the same time none of the parties is willing to redefine their roles. Whereas this would translate into obstruction of hybridity, looking at the role of non-state actors in decision making combined with their influence on formation of national laws, it is palpable that institutional hybridity exists. The central argument is that multiple institutional logics are available to actors while actors may use all the available values to achieve their interests amid established formal institutions. In the context of this work, development does not depend on the state or what state institutions can or cannot do but on social and political structures that exist. In other words how actors fulfil the roles that are conventionally assumed to be for the state. This reality constitutes what I call hybridity.

This paper is based on interviews I conducted in four Ugandan districts during fieldwork for my doctoral thesis. The first study took place between July and September, 2012 and the second from November to December, 2013. Participants were drawn from central government and LG units and included both politicians and civil servants. The four districts sampled were Pallisa, Kabarole, Wakiso

and Mukono. This is supplemented by media reports. The rest of the article is structured as follows. The next section briefly introduces local government in Uganda. This is followed by an explanation of what I mean by non-state actors and their historical background in Uganda. Thereafter a theoretical discussion on decentralisation is presented followed by presentation of empirical data. The empirical data starts with the discussion on the role of non-state actors in shaping public policy. Thereafter, their engagement in the social service sector and influence on electoral trends is discussed. It is important to note that although this paper examines the role of non-state actors in influencing public policy decisions, I wish to emphasise that the discussion is based on the perception of state actors or actors within LG on how religious and traditional institutions influence decision making. No interview was conducted with non-state actors as the study targeted actors spelt out in the Constitution.

Local Government in Uganda

Uganda adopted decentralisation in 1996 and went further to devolve most of the functions to LG. Uganda's LG is not only decentralised but also devolved. The aim was to improve the functionality of local government. This came after the enactment of the LG Statute in 1993, promulgation of the 1995 Constitution and enactment of the Local Government Act (LGA) 1997. The foundation of decentralisation is enshrined in article 176 (1) of the Constitution which states that 'decentralisation shall be the principle applying to all levels from higher to lower levels to ensure peoples participation.' Local government consists of five levels known as local councils (LCI-LCV). This is accompanied by an asymmetrical division of functions and responsibilities among the different levels. Each level comprises both administrative and political actors. At the same time political actors include democratically elected persons who serve a period of five years. The two wings (politicians and administrators) complement each other. It is assumed that through decentralisation local government would be in a better position to effectively and efficiently provide social services and above all steer development.⁵¹ Because of the manner in which power is devolved, it has been described as unique and enabling (Ndegwa, 2002). In addition, devolution led to the creation of new institutions of governance, procedures and practices. This too has been perceived as major contribution of decentralisation in Uganda (Villadsen & Lubanga, 1996). As Nsibambi (1998 p. 8) argues, decentralisation seeks to empower people to exercise as much influence as possible on the social and economic destiny by reducing the level of bureaucracy

⁵¹ For details of Uganda's decentralisation see Hansen and Twaddle (1998).

often located within the central government thus facilitating efficient utilisation of the scarce resources. It is however important to note that much as decentralisation aims to increase people's participation in politics, it at the same restricts the involvement of non-state actors such as traditional leaders. Article 246 (e) of the constitution clearly states that 'a person shall not, while remaining a traditional leader or a cultural leader join or participate in partisan politics'. Part (f) re-emphasises that 'a traditional leader or cultural leader shall not have or exercise any administrative, legislative or executive powers of government or LG.' This implies that non-state actors shall not directly or indirectly engage in policy or decision making since this subjects them to partisan politics from which they are forbidden. In the context of Uganda's LG, given the constitutional arrangement, decision making is purely the responsibility of policy actors within the LG structure. It means that in the process of executing their duties, LG may invite non-state actors, but only as passive observers. This provision however undermines the role these actors play in the public sector, for instance, in the provision of social services.

In Uganda, the provision of social services, albeit involves some non-state actors such as religious and traditional institutions, is still seen as the responsibility of the government. Moreover, decentralisation empowered local government to make policy decisions within their area of jurisdiction. This included decisions on social services such as education, health, making of by-laws, and the creation of local administrative units like parishes and sub counties. One of the objectives of decentralisation was to bring government closer to local communities in order to better understand their needs. This would facilitate development since district local governments would be transformed into an engine of development and not mere institutions of governance.

The History of Cultural and Religious Institutions in Uganda

To start with, this article uses non-state actors to imply religious and traditional institutions, which are equally limited to traditional establishments such as kingdoms and chiefdoms and Anglican (protestant), catholic and to a small extent the Muslim community on the part of religious institutions. This serves to minimise the scope of analysis, but also because the primary data covers only these institutions. Non-state actors as herein used do not include the civil society per se.⁵² Cultural and religious institutions have a long history in Uganda. Traditional institutions for instance existed before

⁵² The Constitution separates religious and traditional authorities and assigns different roles to them. Again religious authorities are part of civil society. However, for analytical purposes, the two are treated as non-state actors in this paper.

colonialism. During the colonial era they existed alongside the British administration. After Independence in 1962, their existence was short lived as the then government led by Dr. Apolo Milton Obote subjugated them in 1966 because he allegedly feared that the then president, Sir Edward Mutesa, the Kabaka of Buganda, was scheming to topple the government using foreign mercenaries (Karugire, 1980; and Mutibwa, 1992). Cultural institutions were later restored by the current National Resistance Movement (NRM) government but soon took on a more vigilant approach to local politics. Constitutionally, “traditional or cultural leader means a king or similar traditional leader or cultural leader by whatever name called, who derives allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people led by that traditional leader” (article 246: 6). Much as traditional institutions are legally recognised in the country, they are forbidden from directly or indirectly engaging in partisan politics. Whereas the constitution is the sovereign law of the country, traditional and religious institutions on the other hand have principles that govern their operations. Their daily existence and conduct hence reflects a mixture of formal institutions and institutional traditions, norms and values.

On the other hand, Christian religious institutions in Uganda were a result of colonialism, while Islam came in through to Arab trade. The strong colonial administration saw Christianity become more dominant compared to Islam, although the latter was the first to be introduced in the country. Since then religion has played a significant role in shaping Uganda’s social and political landscape. During the colonial era, it was a major factor in chief making and recruitment of political figures (Mudoola, 1978). According to Mudoola, the colonial administration promoted the protestant faith and declared it a state religion. As a result Protestant groups assumed more political power. As the empirical data will later show, some sections of Ugandans have held the view that the country should always be led by a protestant president. According to Mudoola (1978), even at the local level, religion determined the recruitment of the county and sub-county chiefs. They have since remained instrumental in providing social services, humanitarian assistance and facilitating reconciliation in communities devastated by conflict. The Uganda Joint Christian Council for example played a key role in negotiations between the government and the Lord’s Resistance Army, while the Inter-Religious Council of Uganda is strongly involved in the campaign for electoral reforms. The Council initiated a task force of prominent leaders to ensure that the upcoming elections are free and fair. This clearly shows the penetration of religious institutions into politics.

They can be seen as two organs complementing each other. This has also opened up space for non-state actors to influence policy decisions. Given that religious leaders are authority figures with the opportunity to influence their communities through their teachings, they can use their power and position to perpetuate or mitigate conflict but also inform people's choices, for instance, during elections. Coupled with their involvement in the social service sector, non-state actors can be drivers of development within or outside the framework of formal institutions.

The Discourse on Decentralisation and Devolution

Decentralisation is 'the restructuring or reorganisation of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels' (UNDP, 1999). According to Rondinelli and Nellis (1986 p. 5) it is 'the transfer of responsibility for planning, management and the raising and allocation of resources from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities, or non-governmental private or voluntary organisations. Devolution is a subset of decentralisation and it implies the authority given to local governments that allows them to make autonomous policy decisions (see Johnson, 2001). Indeed, as Ferguson and Chandrasekharan (2005) argue, it refers to the 'transfer of governance responsibility for specified functions to sub-national levels, either publicly or privately owned, that are largely outside the direct control of the central government'. Devolution thus involves transfer of specific decision-making powers from one level of government to another in a descending manner. Sayer et al. (2004) define devolution as the transfer of rights and assets from the centre to local governments or communities, but within the context of national laws that set the limits within which any devolved functions occur. Through devolution, there is almost a total transfer of functions accompanied with decision making authority including decisions regarding finance. Other decisions may include conducting local elections and recruiting their own staff. This implies that local leaders have significant discretionary power necessary to create infrastructure that makes decentralisation effective, but at the same time remain accountable to local communities (Ribot, 2004 p.1).

The consensus within political science and development studies is that decentralization and in particular devolution improves the

performance of local governments and makes them more responsive and effective (Putnam, 1993; Crook & Manor, 1995). This is because by shifting more responsibilities and functions from central governments to sub-national governments, an adequate division of functions and responsibilities between different levels of government is considered to be established. Decentralisation is thus a means to promote people participation in the management of the day to day affairs of their lives that is, to participate in decision making on issues that affect their daily lives. By encouraging people's participation in local politics, awareness on political issues is increased and people can hold their leaders accountable. As a result LG can perform better and effectively (Rondinelli, Nellis & Cheema, 1984). In this way, participation is seen as a form of/ pathway to democracy. For instance political decentralisation aims to give citizens and their elected representatives the power to make and implement policy decisions. This implies breaking down the monopoly of the central government and increase political participation (Steiner, 2004 p. 11). One can argue that decentralisation propagates for horizontal form of governance where different actors take part in steering government. These actors may be from within or outside government. That, however, may be difficult in the face of minimal statutory reforms that establish functional institutions which promote a system of checks and balances. Without any doubt and indeed as Steiner argues, this can only be strengthened when mechanisms are created at the local level to facilitate the local level planning process, linking government staff to civil society (Steiner, 2004 p. 13). Case studies, however, show that most countries including Uganda still lack well established and functional institutions. Moreover the involvement of several players does not recognise non-state actors as shown in this study. In terms of decision making, several factors other than institutions come to play making this authority contested.

In some instances central governments have failed to concede adequate power to enable LG make decisions. In South Africa for example, Galvin and Habib (2003) argue that provisions such as the President being the one to appoint provincial prime ministers and mayors of major metropolitan areas implies that he (the President) also directs their decisions. Such concentration of power at the apex of the political system has severe implications on policy decisions at lower level. Galvin and Habib conclude that decentralisation in South Africa has taken a state-centric form other than community oriented. In Uganda, decentralisation aimed among others to shift responsibility for policy decisions and implementation away from the central government to the local people. As such it is seen as having set the stage for community participation (Nkulubo, 2007). Similarly a

shift from central government to sub-national governments establishes an adequate division of functions and responsibilities between different levels of government (Saito, 2001). The Empowerment of local governments to make policy decisions within their jurisdiction was based on the assumption that when those closest to where decisions are made are empowered to make decisions and given ownership of results, better decisions will be made. Increased efficiencies then follow the quality of services provided. The United Nations Public Administration Network reports that privatisation which was part of decentralisation has significantly improved service delivery at local level thus the experience of private participation has proven to work (UN, 2001 pp. 37-39). But as shall be discussed later, legal instruments do not define the bounds of the private sector. In the context of this article, religious and traditional leaders may also be part of the private sector. This would blur their restriction on engaging in partisan politics since it is also difficult to explicitly deter the private sector from politics.

Whereas the creation of new institutions of governance, procedures and practices is seen as a major contribution of decentralisation to LG, these institutions are not powerful enough to make decisions that they can implement. This is further complicated by limited resources to facilitate independence from the central government. The gap left by lack of resources on the part of LG is filled by non-state actors who most often have resources and do not have to depend on government funding. That enables them to actively engage in social service provision, get involved in politics and subsequently influencing decision making (see Neubert, 1997, 2011). In order to clearly show how this happens, I have categorised the role of non-state actors in three categories namely (i) shaping public policy (ii), engagement in social service and (iii) influence on electoral patterns. I shall now turn to discuss each category separately.

How Non-State Actors shape the Making of National Laws

As already stated in the introduction, constitutionally, non-state actors should not play any role in the making of national laws. An analysis of the events that led to the passing of the Anti-Pornography Act, the Anti-Homosexual Act and against the stagnation of the Domestic Relations Bill demonstrates the role and significance of religious and non-state actors in this field. According to my informants, the passing of these two bills into Acts of Parliament resulted from mounting pressure from traditional and religious institutions (NCS2: 14.10.13). The following extracts show how most Ugandans perceive these institutions and what implications this has for public policy:

“Policy decisions are closely related to cultural and religious beliefs, therefore, any policy, which is not mindful of these factors, would likely fail.” (NCS2: 14.10.13).

“First of all, all our rules are based on our norms and of course reflect our religious doctrines. So any attempt to undermine those beliefs will not work. Until a time comes when people don’t believe so much in these institutions, we as politicians just have to work with them. But it will take some time.” (NPIt2: 23.07.12, Kampala).

“You know in countries like Uganda where culture and religion are strong and people believe in them, you cannot undermine the role of institutions attached to these people. These people are very influential and once they set their position, sometimes government has no choice but to agree to their demands.” (AC1: 30.07.12, Kampala).

“It is because people have strong attachment to their culture, so you cannot just detach them from it nor do things that are not coherent with it. If you do it or if you are seen to support it, it is a danger to your political career.” (DCS1: 25.07.12, Mukono).

“I think all Ugandans are happy with parliament’s decision. They see it as respecting their cultural values and this is a plus for government.” (NPIt4: 11.09.12, Kampala).

On the Domestic Relations Bill, respondents claimed that it was shelved because some of its contents flout religious and traditional norms as such government failed to reach a consensus with non-state actors. Respondents argued that the Bill’s contents such as divorce, abolition of widow inheritance and bride price went against religious and cultural norms. Moreover the proposed bill does not recognise the different traditional arrangement since it proposes that married women shall be entitled to property including land:

“In Buganda, land is a special issue. First of all we say that, all land belongs to the Kabaka. Today people marry from all over, you cannot think of giving the Kabaka’s land to a foreigner, even if you want because she is your wife (...) if you are not careful, this land issue can even lead to death...people will kill each other, widows will be killed” (AC1: 30.07.12, Kampala).

These extracts illustrate a commonly held position – because of the relationship between people and these institutions, their views play a pertinent role in shaping political decisions. The extracts present non-state actors opinion leaders and part and parcel of the public discourse. They depict how both the state and non-state actors claim legitimacy and authority based on exclusively different factors. The state's claim for legitimacy is based on constitutional provisions, while non-state actors derive their legitimacy from history and religion, for instance, traditional leaders claim political authority derived from the pre-colonial era. With changing political structure, levels of education and 'modernity', public perception on tradition has changed. Yet, traditional institutions are still seen to represent indigenous and truly African values and authority. In this instance, laws such as AHA and the Anti-Pornography Act, seen to protect 'African values' are propagated for while those that are seen as contravening (Domestic Relations Bill) encounter resistance.⁵³ This was also the case when Muslim women demonstrated against the DRB which they said contradicted the Quran and viewed its passing as re-writing of the 'Holy Book'.⁵⁴ Using the pretext of preservation of culture and religious doctrines, religious and traditional institutions are able to position themselves in the political discourse consequently influencing political decisions.

The position of the country's president on this matter further illustrates the relevance of non-state actors in the political field. The president himself vowed not to support any law that violates cultural and religious values—'as long as the National Resistance Movement and myself are still in charge of the affairs of the country, a bad, harsh or even insensitive law that tramples the fundamental human rights of citizens or affects their harmonious co-existence, will never be allowed' (Uganda Women's Network, 2013 p. 5). Although the President may have the power to pass the bill, his comments demonstrated his acknowledgment of the significance of non-state actors. Historically non-state actors were part and parcel of government. During the colonial era, the British LG administration operated alongside traditional institutions. In the pre-colonial era, traditional institutions/leaders doubled as political institutions/leaders and led the path to development. This illustrates that Uganda's constitutional provision on non-state facilitates the emergence of power struggles and/ or competition for authority, as traditional leaders feel that their authority is being challenged. Due to direct access to their leaders, non-state actors and their procedures of

⁵³URN. (2011) 'Church Leaders Oppose New marriage and Divorce Law'

⁵⁴ Will Ross (2005) ' Ugandan Polygamy Bill protest' BBC News 29.03.205

governance are seen to constitute a form of government that is more accessible, participatory and better understood by the people. In the case of the Bills herein discussed, my respondents claimed that people expressed their views through religious and traditional institutions. These leaders then presented this to LG and/ or to members of parliament. These findings resonate with Lund's (2006 p. 685) observation—public authority does not always fall within the exclusive realm of government institutions; in some contexts, institutional competition is intense and a range of ostensibly apolitical situations become actively politicised. In his article, 'Twilight Institutions: Public Authority and Local Politics in Africa', Lund argues that, non-political situations may reveal themselves to be active sites of political negotiation and mediation over the implementation of public goals or the distribution of public authority in which local and regional identities and power relations are reshaped and recast. This makes it difficult to ascribe exercised authority to the 'state' as a coherent institution; rather, public authority becomes the amalgamated result of the exercise of power by a variety of local institutions and the imposition of external institutions, conjugated with the idea of a state. As traditional authorities still enjoy a lot of legitimacy among the Ugandan populace, politicians on all levels are forced not to openly contradict positions held by such authorities. As such, policy decisions are a hybrid of state and non-state actors' opinion and interaction.

In the context of development, contestation of legitimacy and authority may be counterproductive as, for instance, land is a factor in development, but as herein seen, this depends on how actors therein conceive development and/ or utilise their power towards it. If non-state actors hold on to their position of land, its contribution to development is tied to their interests. At the same time it demonstrates that although local government through the District Land Board is responsible for matters concerning land use and/ or distribution, it is clear that traditional institutions/leaders have more command in this area. In most cases, LG is subjected to negotiate with these non-state actors. Denying women access to land limits their contribution to development using land. On the other hand, in an attempt to escape 'gender discrimination' homosexuals may migrate thus causing the country a loss in terms of labour and/ or skilled manpower.

The Engagement of Non-State Actors in the Social Service Sector: Implications for Public Policy Decisions

The provision of social services by non-state actors goes back to the colonial era where government partnered with religious institutions

that run health and educational establishments to provide these services. To many Ugandans, provision is seen to be a duty of the state. In the face of shrinking economic conditions on the side of the government, non-state actors who seem to have a strong resource base have rigorously filled in the gap. The involvement of non-state actors in the provision of social services symbolises an arrangement of welfare mix in which non-profit organisations gain formal recognition as partners in policy making. Such an arrangement grants non-state actors a margin of influence on policy decisions. Indeed, Karin Jenkins (1994) argues that 'Christian churches—catholic and protestant are not only preaching the gospel across Africa today, but also are funding and operating a myriad of development projects throughout the continent that are intended to improve the quality of life. They are important participants in African affairs contributing to socialisation of African citizens and thus affecting the prospects for democratic participation by those involved in church programmes' (Jenkins, 1994 pp. 84-92). Jenkins adds that aid agencies like USAID have turned to the church to direct assistance to local communities due to the belief that the church provides a safer avenue for money considering the rampant misuse of aid funds. She further argues that the message of the gospel and the spiritual influences enables the church to speak out on social injustices, economic failures and political repression. Scholars such as Neubert (1997) argue that unlike other NGOs, the Catholic and the Protestant churches occupy a special position and have their own social base. According to Neubert (1997), religious institutions play an important role as creators of social order. Moreover, churches do not only have varying degrees of relevance and influence, but also rely on a highly committed body of followers and are often able to finance themselves and the services they provide for their members from their own resources. According to him, religious institutions have gained social importance through creation of social infrastructures, which also relieves the government of responsibility. This diffusion of religious institutions in politics and social welfare may threaten the legitimacy of government. My respondents were of the view that non-profit based organisations like hospitals owned by the church always offered better services compared to state hospitals:

"We have a hospital called Naggalama,⁵⁵ the first of part of it is that the drugs are available all the time, the other one is that the workers are more committed to work than those in the government community" (DCS1: 27.08.13 Tel Inter).

⁵⁵ Naggalama is part of Mukono LG; the hospital is owned by the Catholic Church.

Respondents also cited instances in which, although aiming at the same goal, the church and government had disagreements for instance:

“One time we wanted to implement a certain project in one of the schools owned by the church. We also wanted to construct a classroom block, but we could not. The owners refused us. The project stalled because its design was not in line with the preference of the founding body. Besides, the school authorities argued that they were not consulted during planning and decision making process. The project only took off after the design was changed to fit what the founders wanted” (SCS2: 26.08.13 Kabarole).

“Unlike this LG, the church has always been there with us and for us, so when you as LG are planning you should always have the church in mind. In fact those who try to avoid are risking” (AC1: 30.07.12 Kampala).

This observation demonstrates an overlap between state and non-state institutions but also construction of power dependence that contributes to what I call institutional hybridity. On the other hand AC1’s observation about the church suggests co-existence, that is, religious institutions have been custodians of service delivery even prior to public restructure and are more familiar with the needs of the local communities. His statement implies that even if decisions are made contrary to the church, the loyalty that the church commands makes people support it against the decision of LG. The Kabarole case illustrates that although legal instruments empower LG, their power to implement decisions is limited to the extent that implementation does not interfere with non-state actors interests and when it does, it calls for cooperation. Chand and Patterson (2007) report that contributions from religious institutions account for 55 per cent of social services provision in Uganda.⁵⁶ It is against this background that respondents argued that non-state actors had become an engine of development. Similarly, there is equally a growing infusion of traditional institutions in politics and/ or social welfare. This is facilitated by well-structured development plans that these institutions have including committees which deal with issues that affect their subjects (Quinlan, Sharma & Clarke, 2011 p. 285). At the local level, traditionally legitimated authorities like chiefs or councils of elders claim regulatory authority with regard to justice and administration and regard themselves as representing the local

⁵⁶ See also UNPF (2008).

population in interactions with the state (Neubert, 2011). These institutions occupy political spaces left open by the state, and may see themselves as institutional alternatives to a system of centralised power. According to Neubert, this makes state-building in Africa a complicated process because the state has to cope with a multitude of decentralised socio-political structures which show great persistence and adaptability in everyday life. In the context of Uganda, this implies the involvement of non-state actors whose contribution in the social service sector enables them to compete with state actors and counter the state's claim to exclusive power over policy decisions.

Whereas LG is responsible for the provision of decentralised social services, its financial position limits their effective performance. On the other hand, non-state actors seem to have readily available resources and perhaps less bureaucracy compared to the government making it easy for them to provide services faster than government. This also enables them win more public support as people slowly lose trust in government institutions. Respondents claimed that by involving themselves in the public sector, cultural institutions got the opportunity to advance their political interests and demand to play a role in public policy decisions (DCS1: 25.07.12 Mukono). An example could be cited in one of the kingdoms' (Buganda kingdom)⁵⁷ position on the system of LG—"the health sector has been run down, the universal education programme has failed. With a federal system of government, the kingdom will concentrate on social service delivery as the [central] government concentrates on building the army and buying tear gas".⁵⁸ This statement does not only illustrate the 'unfriendly' kingdom's relationship between the kingdom and the government, but also demonstrates that in positioning themselves in the public sector, traditional institutions have emphatically demanded to be involved in deciding the destiny of the country. Above all, it shows the willingness to co-exist. The prime minister's message clearly shows how non-state actors have adopted the language of development and asserted their right to speak and decide their destiny thus shifting the debate beyond the initial parameters set by the state. Moreover, the real decision makers in LG are always individuals or collective actors who also subscribe to these institutions. Their influence on policy decisions may be realised during the implementation phase. Because implementation often takes place at

⁵⁷ Buganda kingdom is Uganda's strongest traditional establishment and has a lot of influence on the country's political landscape.

⁵⁸ Kitaata KS, 2013 'I have no time for useless talks, new Katikiro tells off Museveni' The Observer 25.06.2013.

local level, it provides non-state actors the opportunity to foster, hinder or at least modify the administrative enactment of a specific decision. In line with this, a respondent cited a case in which the kingdom failed a LG project because it was not involved in planning and deciding on the project.

“One time we were trying to construct an office block in a sub-county and Kabaka's agents came and chased away our contractor saying that, that land belongs to the Kabaka. So after that we agreed that we cannot compete over this land and they relocated the sub-county headquarters to another place, but that piece of land also belonged to the Kabaka again we could not go on with the project. We had to go on a round table” (DCS1: 25.07.12 Mukono).

This action undermines the mandate and power of LG to establish and build new LG unities. The District Land Board may have carried out the necessary legal procedures including land identifications and laid out plans for its development. However, the power overlap between traditional institutions and LG failed the latter's plans. Although the sub-county was a public institution, meant to serve the local population. The people who pulled down the structure were part of the community, but more loyal to the kingdom than with LG as an institution. The elected leaders too could not use their authority to erect the structure because they had to choose between loyalty to the kingdom and political power. Moreover, disobeying the kingdom would be risking their political carrier. The act by traditional chiefs demonstrates the way in which the kingdom has positioned itself on the political agenda while the response by LG leadership shows their readiness to work together. The manner in which the situation was settled demonstrates hybridity in policy decisions. Since LG is charged with the responsibility of providing social services, a partnership with traditional leaders may enable the latter influence policy decisions, but also facilitate speedy and efficient delivery of social services.

As seen in the above example, decisions concerning land were another area for non-state actors to position themselves. In the early 2000 the country started the process of land reforms. Respondents recalled that the process met strong opposition from traditional institutions (AC1: 30.07.12 Kampala). AC1 added that Buganda kingdom did not only oppose it vehemently, but also influenced the position of LG within the kingdom. Buganda is only one example, in northern Uganda AC1 recalls that a proposal to start up a commercial sugar plantation had failed because locals were not

willing to give up their land insisting that it belonged to their cultural leader. This view was pointed out by several respondents especially members of parliament. They recalled that once LG decided to allocate land to a developer identified by government, Acholi⁵⁹ women undressed and demonstrated in front of LG offices while the men threatened to fight the developer with machetes (DPIt16; GRP4; DCS3).

This shows that in any government structure, actors have different levels of command which necessitates collaboration. At a point where non-state actors command more influence, they can engage LG in a bargain from a position of strength. As herein shown, the 'traditional' roles of traditional leaders have been shifted. Other than being custodians of their heritage, they are becoming part of LG and their role in influencing policy decisions is more tangible. It once again shows how non-state actors organise public discourse and become part of the country's politics.

The Influence of Non-State Actors in Electoral Trends

Scholars such as Stephen Ellis and Gerrie Ter Haar (1998, 2007) have extensively studied the relationship between politics and religion in Africa and argue that politics in Africa cannot be fully understood without reference to religious ideas that are widely shared in societies south of the Sahara. In Uganda, political divisions based on religion can be traced back to the independence era and the formation of the first political parties in the country (Young, 2000). Since then religion is one of the factors that shape Uganda's political culture. It also plays a significant role in determining people's political carriers. In this section I explore how religion plays into elections and voting patterns in Uganda.

Many respondents were of the view that religion matters in Ugandan politics and that election period was the time for powerful religious institutions to 'show their muscles'. According to them, this was the time when mainly traditional churches (Anglican and Catholic) exhibited their power by rallying behind a candidate from a given faith and also seen as a strong supporter of a given faith. It was during such times that religious leaders designed their sermons in line with the campaign manifestos of these candidates (SCS2: 26.08.13 Kabarole; AC1: 0.07.12 Kampala). There are those instances where by religious leaders financially sponsored a candidate on an agreement that when this person won the election he/ she had to make sure to influence policy decisions in the direction of his

⁵⁹ Acholi is a region in northern Uganda. The act of women undressing is considered a taboo in most Ugandan cultures.

sponsors (SCS2: 26.08.2013 Kabarole). By endorsing or financially supporting a particular candidate these non-state actors are looking for a voice through which they can influence policy decisions at the different levels of government. At the same time politicians frequently discuss their religion when campaigning and many religious institutions and religious leaders are highly politically active. As important as religion is in politics, politicians use it to advance their interests. In this way non-state actors organise public voice and are part of politics and public discourse, contrary to constitutional provisions. Participants were of the view that this was due to increased feelings of marginalisation by some religious leaders with the feeling that they were not well represented in LG or in parliament (SCS2, 26.08.13 Tel Int; DCS3: 20.08.12 Wakiso). According to interviewees, this explains why political aspirants always campaigned along religious lines. Moreover this was backed by religious leaders whose message at such times was an indirect campaign for their endorsed candidates, thus voters are sometimes influenced by the message of the church. Religious influence was further facilitated by certain stereotypes whereby some Ugandans have always held the convictions that Catholics cannot make good leaders and this has implications on who they vote into power (SCS4: 07.09.12 Kabarole). This opinion was shared by the former prime minister who also said that some people just wanted to maintain the tradition that Uganda must always be ruled by a protestant (AC1: 30.07.12 Kampala). Right from independence Uganda has been ruled by protestant presidents and as such Catholics and Muslims have intensified their fight for political power.

Many interviewees reasoned that that in countries like Uganda, one cannot separate cultural and religious institutions from politics because in most cases people tend to listen more to the views of these institutions.

'In Buganda you cannot ignore the importance of the Kabaka. Apparently we⁶⁰ have lost a number of by-elections so we should be cautious of what happens on the ground because if we continue to lose we shall not be able to influence any decisions on the ground. The problem is that sometimes, people tend to extoll the President more than their king, but you can't blame them, they are lost. You know of a minister who lost his seat for saying that he does not kneel⁶¹ before the king, a candidate said to have been more loyal to the king was

⁶⁰ The professor (AC1) uses 'we' to imply the NRM party to which he is a member.

⁶¹ In the Buganda culture all men and women kneel before the king and do not show him their backs. When walking away, they go backwards.

endorsed by the kingdom and he won the dejected minister. (AC1: 30.07.12 Kampala).

In this statement, the former prime minister who is himself a Muganda acknowledged that non-state actors such as cultural institutions especially those located in monarchical regions were very significant in mapping political trends in the country. Despite the constitutional provision that prohibits traditional leaders from partisan politics, AC1 believes that they remain influential actors, whose power and impact on one's political career cannot be undermined. AC1 attributes NRM's failure to win elections in constituencies within the Kingdom to NRM politicians' turn to extoll the President at the expense of the King. This according to him explains why the minister lost his parliamentary seat to a candidate who was more loyal to the Kingdom. In this case, the kingdom acted as a filter to determine and subsequently endorse a candidate who represents their values. It also shows its ability to influence people's choices especially those loyal to it.

In Kabarole, the experience was that:

"If a politician is not seen to be doing something for the kingdom or does not relate well with the kingdom, he may not win the next elections. Right now, we are preparing for *empango*, but I can tell you the chairman has already signed a check for the Kingdom" (SCS2: 26.08.2013 Kabarole).

This case was cited in lieu of the *empango* (coronation of the King of Tooro) celebration that was due in two weeks as I conducted this research. According to SCS2, despite the financial burden this placed on LG whose resources were already meagre, politicians did it because it earned them political mileage and could enable them win the next election.

Conclusion

This article has discussed the place of non-state actors in LG in Uganda in terms of their influence on development of formal institutions, penetration in the social service sector and its implications on policy decisions in LG and influence on electoral outcomes. The findings demonstrate the extent to which cultural and religious institutions have successfully created a diverging degree of social acceptance, which offers them a basic measure of legitimacy. They create known and accepted behavioural structures, which cannot be changed by specific individuals as evidenced above. In so doing, they can either be contributors or saboteurs of development.

Therefore by constitutionally prohibiting non-state actors from directly or indirectly getting involved in partisan politics and/ or carrying out any legislative, executive or judicial functions, the constitution fails to recognise the socio-political position of these actors. In an attempt to establish themselves, the works of these actors may counter some formal institutional provisions. In the context of institutions and development, the paper argues development does not depend on the state and what its institutions can or cannot do, but on the prevailing social and political structures. Development depends on how well actors accomplish the roles that are conventionally assumed to be for the state. Formal rules ought to be firmly linked with social or informal norms for them to function well, since it is the latter that legitimises the former. Development demands the support of appropriate political institutions that enhance economic growth and stability. Therefore the assumption that institutions matter in fostering development needs to bear in mind the social fabric of any given society. This reality constitutes what I call institutional hybridity.

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Notes

List of Interviewees

	Code used	Categories
1.	AC	Academics
2.	NPIt	Politicians above LCV level (N- National)
3.	DPIt	Politicians at district & sub-county (LCV,LCIII & councilors)
4.	NCS	Civil servants at ministry level
-	DCS	Civil servants at district level
-	SCS	Civil Servants at sub-county level
5.	Group discussion with councillors	

Appendix**National Politicians i.e. above LCV; Code used NP /MP/X**

Code & Date/place of Interview	Brief profile
1. NPIt2 : 23.07.12 Kampala	MP Burahya County - Kabarole district
2. NPIt3: 13.08.12 Kampala	MP Rukiga County Kabale district & chairperson of the Committee on LG Accounts. Member of the opposition
3. NPIt4: 11.09.12 Kampala	MP Agule county Pallisa committee member Finance, Planning & Economic Development
4. NCS2: 29.05.13 Erlangen	Permanent Secretary (PS) of Ministry of Works & Transport. Former PS of Ethics and Integrity at the time of the interview
5. DCS1: 25.07.12 Mukono	Chief Administrative Officer Mukono district Local Government
6. SCS2: 07.09.12 Kabarole	Town Clerk Kabarole Town Coucil Local Government
7. AC1: 30.07.12 Kampala	Former PM, professor of political science, published works on decentralisation. Member of the ruling NRM party and comes from a kingdom region

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An Ethnography of Urban Land Holding and Housing in Bamako, Mali

Lamine Doumbia

Abstract

The city of Bamako, the Malian capital has witnessed demographic change and spatial sprawl of its urban environment over the last 20 years. The population changes led to the emergence of the so-called “squatter settlements” due to the government’s inability to provide for the housing needs of the teeming mass of urban residents. Rather, the state and the local government attempted to regulate the “squatter settlement” phenomenon through bureaucratic policies and urban renewal projects. Yet, the challenge of managing urban land holding and the processes in the provision of housing space in Bamako remain problematic, conflictual and very often violent given the different claims of entitlement to the land. The aim of this paper is twofold: it first describes the chronology of the evolution of the land tenure system and second, from the legal anthropological perspective, provides a description and interpretation of the attitudes and the emical perceptions of actors (protagonists) involved in the policy and processes of urban land tenure in Bamako. Based on empirical case study in Bamako, the paper explores the dynamic factors that have shaped the processes of landholding and management from the last century to the present. The global influences on local structures and the commoditization of land that leads to the discussion of usufruct and appropriation of property are discussed.

Keywords: squatter settlements, slums, urban land holding

Introduction

This paper treats the issue of urban land management in relation to the politics of housing, renewal and rehabilitation plans as well as the displacement, compensations and conflict regulations in Bamako. The capital city of the Western Africa Republic of Mali witnessed a great demographic and spatial sprawl of the urban area during the last two decades. Some so-called “squatter settlements” emerged due to the fact that the government is economically unable to address the ever increasing problem of housing and therefore tries to regulate it through bureaucratic policies and urban renewal projects. These attempts have been made against a backlash of the competing struggle and interests between residents and the state which has aptly been captured by researchers as follows:

The problematic of managing urban land holding and the processes of housing space provision in Bamako often contains 'lots of ink' but also and sometimes 'blood flows' in Bamako (Hesseling, Djiré & Oomen, 2005).

This paper has two aims: first, it briefly describes the chronology of the evolution of the land tenure system. Second, it focuses on the legal anthropological perspective to provide a thick description and interpretation of the attitudes and the emical perceptions of actors and protagonists who are involved in the policy and process of urban land tenure and management in Bamako. This discussion is based on an empirical case study in Bamako and the emphasis is to understand the factors of innovation and permanence that characterize the process but more so their dynamics from the last century to the present.

An intriguing question about the land holding and tenure in Bamako is: *Why is the issue of urban land management loaded with violence?* While the issue about land holding and violence is very complex and not easily explicable, a critical view points to the fact that the core of land tenure in urban areas of Bamako is about power, violence, legitimacy and jurisprudences. There is a high degree of violence due to the plurality of actors and actors' perceptions of the tenure systems which informs the competing narratives about ownership and the right to occupy specific places in the city. The essence of this paper is to empirically show that there is an urgent need to rethink, reshape and reorganize the institutional rules in the management of the land tenure system.

"*Le foncier est un fait social total*" is an important argument by Marcel Mauss⁶² which has influenced many scholars on land ownership, tenure and the social relations around it. Seen as a total social fact, Étienne Le Roy elaborates further by arguing that land holding in general is the common denominator of all social relations existing between individuals.⁶³ Therefore land management, according to Le

⁶² For a detailed discussion on this concept see Etienne Le Roy's (1997) work on La sécurité foncière dans un contexte africain de marchandisation imparfaite de la terre.

⁶³ As Le Roy puts it (in French): Le foncier (F) est un rapport social (S) ayant la terre ou le territoire (T) comme assise et enjeu et où les variables économiques (E), juridiques (J), et techniques d'aménagement de la nature (A) sont pondérées par le facteur politique (P) aux différentes échelles locales (l), nationale (n) et internationale (i). See

Roy, is a social relation having land/ territory as the principal and common denominator whereas economic, legal and technical variables are balanced with the political factor that is somehow raised to the local, national and international powers. The social relation around land and its entanglement with economic and power issues is used in this study as an entry point to the legal anthropological perspective. Again, the diversity of agencies and actors who are involved in the management and holding of urban land in Bamako leads in a special way, it is believed, to the concept of semi autonomous social fields (Sally Falk Moore, 1978). And within this complex dynamic of social interaction, the conflict is latent in diverse ways.⁶⁴

Problematic of the System of Land Tenure

This section provides a brief history of the capital city of Mali where the fieldwork was conducted. Bamako almost appears to be a mega city nowadays. Like other capital cities in Africa, the population of Bamako has more than doubled since the 1970s. The Malian capital traces its origin to 1640 on the left side bank of the Niger River. By the end of the 19th Century, Bamako had become first the provincial capital of the colonial French Sudan (Soudan français) before it became the economic and administrative capital. It finally gained the status of the capital city of the Republic of Mali in 1960. Although relatively small before colonial rule, compared with other settlements, the rise in the population of Bamako began when the city became both the administrative and economic center for the colonial administration. As, a booming center for trade and commerce, the city attracted migrants from within Mali and neighbouring West African countries (see Meillassoux, 1965). Subsequently, as of 2012, the city had grown to include 2.5 Million inhabitants and stretches out over 267km² of land surface (Mairie du district de Bamako, 2001). Under the strong pressure from population growth, the city authority's policy of providing space for residential buildings and urban housing has faced serious challenges. The city administration undertook measures to renew, rehabilitate and restructure parts of the capital, including Sabalibougou,⁶⁵ where a specific social phenomenon of housing had emerged. This phenomenon is called variously by state and city

Etienne Le Roy (1997) on La sécurité foncière dans un contexte africain de marchandisation imparfaite de la terre.

⁶⁴ See Henry Hagen and Rusen Keles (2004)

⁶⁵ The study area

authorities as “Slum”, “illegal housing”, and “Squatting”.⁶⁶ At the grassroots level people call it in the Bamanan language *Sonsoribugu* which translates literally as the area where people squat – as *sonson* means squat.

Before the advent of colonial domination, which introduced the state system in the administration and management of land, the land tenure regime was organized and institutionalized by the local communities or groups of individuals⁶⁷ living and sharing together the same resources, identities, perceptions of life and nature, religion and, in short, cultures in the Malian context. Given this de facto social arrangement, it is obvious that the tenure system varied from one local community to another either in rural or urban areas.

Historically, the current tenure system with the state as regulator of the matriculation draws its origin from the colonial regime. The techniques of matriculation for land holding under the colonial administration guaranteed only individual property rights. Therefore the proclamation of the code Faidherbe on March 11, 1865 stated that only the regular (individual) ownership title is recognized. This legislation excluded customary (communal) ownership of land which is the pre-colonial arrangement of land management for the population instead of what was mentioned in the Code Civil Français (see Diawara, 2002 p. 77). Subsequently, the “Afrique Occidentale Française (AOF)” introduced the matriculation as an obligatory document of individual ownership since July 24, 1906 (see Rochegude, 1982 p. 145) despite the persistence of customary regulations based on the communal ownership of land. Although the urban land and housing situation increased within the colonial and post-colonial system of state intervention, which operates with the *Code domanial et Foncier*⁶⁸ (translated roughly as federal or national land code), the “Etatization” (i.e. nationalization) attempt to fully monopolize the management of urban land holding is yet to be achieved. The first article of the law in the national (federal) land code states:

All estates that are matriculated in the register, all estates not yet matriculated as well as vacant and non-owner estates are properties of the State.⁶⁹

⁶⁶ Quartier spontané

⁶⁷ Kassibo (1998); Oomen and Djiré (2005).

⁶⁸ Code domanial et Foncier, 1986

⁶⁹ Translated from the code domanial et foncier by the author

Thus far, references to and reliance on the housing provision policy for addressing the housing needs of the urban residents has not been very helpful since the state and city authorities could not catch up with the demographic pressure. The migration flow from rural to urban areas, especially to Bamako (which was informed by French colonial legacy of centralization of the state), has created a shortage of organized housing for residents. Given the problems associated with the housing system and its management, I employ a mix of existing scholarly works including the theory of James Scott. The phenomenon of city planning is seen by Scott as “social engineering” which is conditioned by the processes of legibility and simplification of the society. Concrete case studies are described by Scott to explain *“How certain schemes to improve the human condition have failed”* such as “the compulsory villagization in Tanzania” and “the construction of Brasilia, Brazil’s capital city. Social engineering is a measure of city planning in the sense of developing and renewing it that combines four elements in the implementation. The administrative order of the nature and the society is the first necessity. The second is the high modernist ideology with a belief in science and industrialization; the third element is the existence of an authoritarian state for the implementation and last but not least, the existence of a subordinated civil society that has no plans to control and defend another point of view.

In fact, these elements lead to disaster, according to Scott, as implementing measures of city planning in terms of “social engineering” is about an arena within which state institutions, offices, administrations, city planners, investors, civil society organizations and other interested groups need the same resource. The state tries to make the nature and society legible and touchable through processes of simplifications and standardizations.

State simplifications such as maps, censuses, cadastral lists, and standard units of measurement represent techniques for grasping a large and complex reality (Scott, 1998 p. 77).

In the mid 1970s the former president of Tanzania Julius Nyerere implemented the Ideology of “Ujamaa village”. According to Scott this Ideology is “large scale social-engineering” (Scott, 1998 p. 223). This was somehow for the purpose of setting up a revolution and socialist oriented restructuring of the housing situation and employment

provisioning for the people. Moreover the implementation of the “large scale social-engineering” aimed to basically change people’s habits and perceptions. In the beginning people had massively participated in the project but later they all turned to reflect on their forced displacement. People were expropriated and their points of views and knowledge were not considered. The argument in this paper is theoretically based on the work of other scholars (e.g. Kassibo, 1998; Hesseling, Djiré & Oomen, 200; Le Roy, 1997, 2006) and uses findings from the empirical case study to diagnose the nature of plural management of urban lands in Bamako. It is, however, important to emphasize that writing about housing or house holding in the Malian context implies a particular tenure of the plot/ land. So when one speaks of land holding and tenure, they assume that the tenant and holder is the same and this is related to social rules, rights, orders and not the least, actors. In addition, the actors and individuals are very heterogeneous and migrated originally from elsewhere in the country to Bamako.

Research and Analytical Approach

This section focuses on the ethnographic approach that was applied in conducting the fieldwork in Bamako and the analysis of the findings. As already stated, urban land holding and housing in Bamako is conceptually and in our understanding, conflictual (latent or open) and very dynamic. Thus it is likely tautological to apply the “actor-centered-approach”.⁷⁰ This approach entails concentrating on different narratives of different individuals and actors regarding their degree of involvement, affections, and their identities to find out potential “basic narratives”.⁷¹ This concept is appropriate since the object of the research is related to governance and the political cultures which are current and mostly contested. In other words, the research on urban land management in Bamako requires a focus on narratives from the various actors who are involved in the process. The legal anthropological perspective is employed in this paper because of the need to properly situate the pluralistic logic of land management and dispute settlement in the Malian context. This approach thus marks a departure from the positivist-modern institution of jurisdiction which was introduced and implemented by the colonial state. The central question is “what is law?” That is to say, in a context where there co-exist multiple institutional rules, what

⁷⁰ Herz and Schwab-Trapp (1997)

⁷¹ Trutz von Trotha (2007).

could legitimately be considered as the law? The difference between 'law' and 'custom' elaborated in the classical works of Radcliffe-Brown (1952), and upon which much of the later discussions of legal anthropology (Maine, 1906⁷²; Bohannan, 1963; Gluckman, 1955) were based, traces its origins to the eighteenth century definition of "law as a contract" between individuals. The general consensus was a focus on societal arrangements for enforcing sanctions and not necessarily the form they take. Subsequently, the legal anthropology framework has sought deeper understandings to the dispute-order connection by exploring actors and institutions with authority to make norms that are legally binding and the social processes that mediate their persistence and change. This paper thus sets out, as its objective, to analyze the pre- and post-history of land dispute settlements within and beside the state (leviathan).⁷³ This includes the reflection on what kind of label could be given to custom vis-à-vis law in the positivist sense and the one most important in understanding urban land tenure. Moreover, the paper explores the influence of global challenges on local structures in Bamako in terms of commoditization of land that leads to the discussion of '*usufruct*' i.e. land appropriation and property rights.

From the Suburban to Town Centre: Sabalibougou

Bamako is, as the capital and largest city, divided into six (6) administrative communes (i.e. municipal administrative entities). This classification was informed by the so-called decentralization program which has constitutionally been implemented since 1992. The case study areas, Sabalibougou is one of seven (7) *quartiers* within the administrative jurisdiction of commune V as presented in Table 1. Commune V is one of the border communes of Bamako because to its north there is the Niger River and to the south is the zone of the International Airport. The rural commune of Kalaban Coura is located south-west to Commune V while to the east, we have the commune IV and again the River Niger.⁷⁴

⁷² See Sir Henry Sumner Maine's 1861 book: *Ancient Law, its connection with the early history of society and its relation to modern ideas*.

⁷³ Spittler (1980); Klute (2011).

⁷⁴ Plan de développement économique social et culturel de la commune V – Période : 2005-2009, KGM, Août 2004, Bamako - Mali

Table 1:
Areas in the Commune V of Bamako by Population

No.	Quartiers	Population Male	Population Female	Total
1	Badalabougou SEMA I	10,480	13.195	23.675
2	Daoudabougou	25.003	26.140	51.143
3	Quartier Mali	7.785	8.171	15.956
4	Torokorobougou	7.106	6.836	13.942
5	Kalaban Coura	28.843	30.038	58.881
6	Baco-Djicoroni	18.208	18.750	36.958
7	Sabalibougou	25.165	24.027	49.192
Total		122.617	127.110	249.727

Source: Plan de développement économique social et culturel de la commune V (2004).

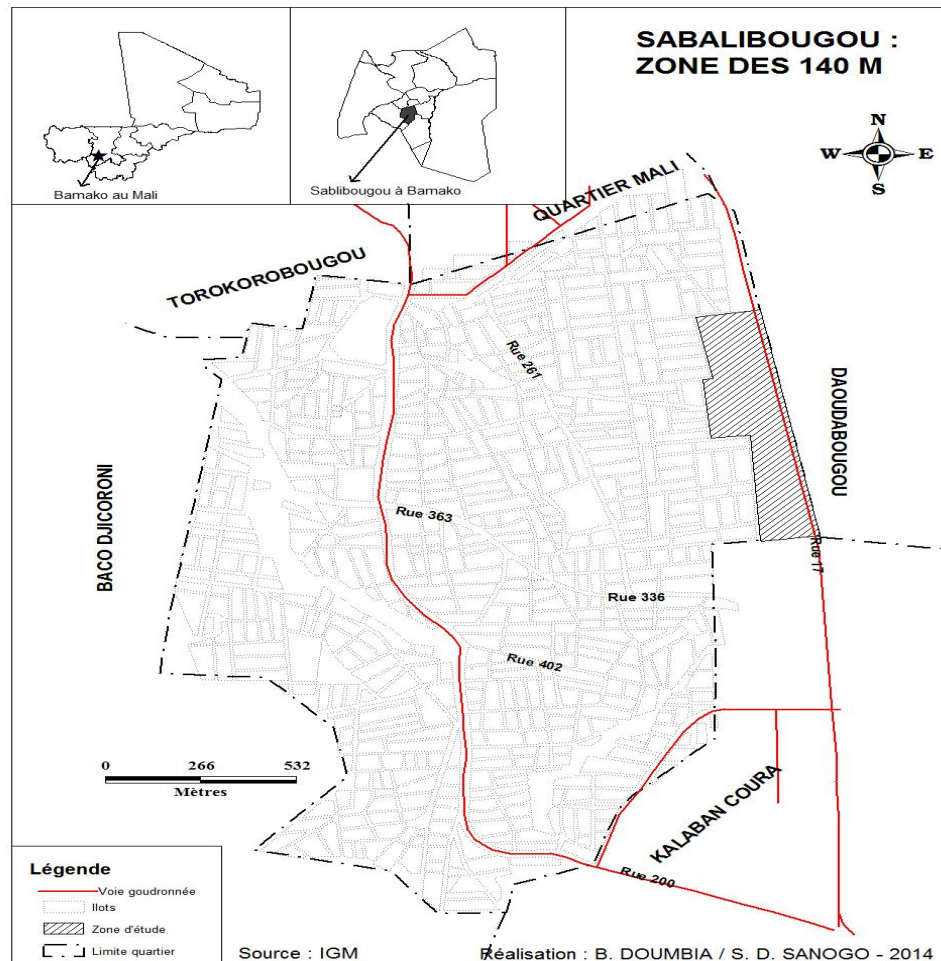
Area Description

The “La Bande des 140m”⁷⁵ is located in the eastern part of Sabalibougou on the west side of the ECOWAS Avenue (see Figure 1). This is one of the most important avenues of Bamako because it crosses the capital city from the Presidential Palace on the left bank of the River Niger to the International Airport on the right bank of the Niger river and vice versa. Given the strategic location, Sabalibougou became the area with the highest population density at the end of the 1980s. The area became populated initially as suburb and somewhat not ‘officially’ belonging to Bamako but its present location in the inner city makes the plots of land over there rather very expensive. Due to its location, Sabalibougou “la bande des 140m” has become the most attractive place for investors (politicians, traders, banks, NGOs, etc). These agencies, the government and the municipalities on the one hand, view the land (i.e. the plots in the area) more as a commodity in terms of capital investment for profit making⁷⁶. On the other hand, some of the inhabitants (both individuals and households) most of often perceive the area as their basic place of existence.

⁷⁵ 140 meters is the total size of the area in question.

⁷⁶ See Georg Klute & Raul M. Fernandes (2011).

Figure 1: Map of Bamako showing the Case Study Area “La Bande des 140m”



These competing notions about the utility of urban land holding among the different actors also reflect the general debate about space in urban studies. An important argument in this line of thought is set out by Henry Lefebvre (1991).⁷⁷ In his seminal work on the ‘right to the city’, Lefebvre posits that the state’s construct of urban space is conceived around abstract dimensions – size, width, area, location,

⁷⁷ Henry Lefebvre, a French philosopher wrote on how urban working class in Paris in the 1960s could be empowered to participate in the production and use of the urban space in which they lived and shaped. His work influenced the contemporary critical thinking about the uses of urban space.

etc and thus qualitatively different from how residents' construct it. Inhabitants, on their part, construct urban space based on its social utility i.e. a space to live. Lefebvre argued that the state's abstract conception of urban space and its uses was starkly different from the uses to which residents' put it. The state's abstract conception and planning was often influenced and promoted by real estate development which resulted in conflicts between residents and the state. To ensure that residents did not surrender their citizenship rights to the pressure from the state, Lefebvre therefore pointed out the agency citizens have and could employ. He highlighted their central role to influence the decisions of the municipal administration as well as their right to physically occupy, live in, and shape the central areas of the city. This participation and shaping of the urban space by residents in the current case study is mostly driven by the competing narratives about the institutional rules that govern ownership and the right to stay on the land.

The topic around urban holding and the multiple institutional rules governing it especially in sub-Saharan Africa is still interesting to researchers. Indeed, the phenomenon has been studied in Guinea Bissau (see Klute & Fernandes, 2011) and a similar fieldwork has been conducted in Addis Ababa.⁷⁸ Basically the commoditization of land refers to Karl Polanyi. The reference to Polanyi is important in the sense that he employed and promoted the substantialistic system of economy. This theory refers to transactions that are determined by values of 'give-and-take' (i.e. reciprocity). The transactions of specific commodities that are characterized by Polanyi as "fictive" are the following: land/ ground, work and money. The substantialistic market system is embedded in the economic social environment which emphasizes a regulation that is not only exclusively economic (Polanyi, 1983 p. 111) but rather embedded in socio-cultural domains. Empirical findings from the current case study are discussed in the next section.

Litigation - Ethnography

The issue of land management in Sabalibougou Est, also called "La Bande des 140m" has endured for more than 20 years. An association of inhabitants of the area keeps struggling for their rights.

⁷⁸ For a detailed discussion, see Doumbia, L. (2013): Addis Abeba, eine echte „Neue Blume“? - Eine anthropologische Kritik am Masterplan und an den Prozessen der Stadtplanung von Addis Abeba.

In the framework of parceling the land and area improvement, the municipal council of the “Commune V” of Bamako cleared off the “Bande des 140m” with a Bulldozer destroying the houses of low-income inhabitants in 2002. The displaced persons were however not passive observers; they subsequently founded an Association namely “Association des habitants de Sabalibougou Est” and claim for the resettlement and reinstatement of their right enshrined in the 1994 ruling of the Supreme Court of Mali. The Association incriminates the municipal council of the “Commune V” to have attacked them despite their right to stay on the land issued by the Supreme Court with decision No. 80 of June, 1994. The parceling / allotting of Sabalibougou in the Commune V of Bamako is part of a general governmental project of rehabilitation. Since 1987 it has been legally planned that the eastern and western parts of Sabalibougou would be zones of resettlement. The parceling and improvement of the western area of Sabalibougou took place without any serious problems. But the inhabitants of the eastern part of Sabalibougou opposed the Project which led to the founding of the association.

The resistance to the plans of the municipal government is partly due to the fact that the ruling of the court, according to the residents of Sabalibougou, was not applied properly. According to the above stated decision No. 80 of the Supreme Court:

“The rehabilitation of ‘Sabalibougou Est’ is a legal requirement. However it does not necessarily mean a systematic breaking/demolition of all existing houses in the area. The Plan of rehabilitation of 1987 foresees the opening up of roads and the structural improvement of the area which is necessary for the people.”

Thus the Court requested the municipal authorities to redo the operation according to the plan and include the affected persons in the implementation of the project.⁷⁹

Actors and their Motivation to struggle for their Concerns

Famory Kamissoko is an affected person by the rehabilitation project. He sees himself as a victim of the project and is the president and one of the founders of the “Association of the Inhabitant of Sabalibougou Est”.

⁷⁹ Translated by the researcher.

“This is a legally registered association that got the objective to be resettled with their right to stay on the ‘Bande des 140m’” (Interview with Kamissoko, 2013).

The ‘clearing-off’ of the area affected around 282 low income households, as was pointed out by Kamissoko in the interview.⁸⁰ But it should be noted that more people could have been affected given that a Malian household is not the nuclear type as those in Western countries. In Bamako, a household has more or less 25 to 30 persons. It is possible to find three generations living in a house either permanently or temporary especially when some members commute between the household in town and the other in the village. As stated above, migration inflames the life in Bamako.

In pursuing their agenda, the members of the association act based on their understanding of the causes and conditions of implementation of the rehabilitation project by the municipal government. The clearing-off took place in 2002 as the first of a number of steps following a municipal decision and technical support. The municipal government of the Commune V made an announcement via radio to notify and warn the households in the area of their decision to clear off their homes. Subsequently, this decision has been executed although most of the residents of the area had refused to move out of their homes for them to be destroyed. Against the backdrop of the judicial decision No. 80 of 1994 from the Supreme Court, the residents had not taken the municipal decision of the Commune V seriously. The demolition operation has created enormous material, physical, mental and socio-economical damages for these forced displaced persons. It is interesting to know, however, that despite its resources and ability to use force, the municipal government has not been able to prevent the displaced residents from still accessing their plots of land and making some form of living out of it. These points not only to the limits of state power but also questions about the functioning of formal institutions.

Kassim Sangaré, a former lorry driver, is one of the affected persons and member of the association. He argues that:

Since the clearing-off in 2002 I lost my home, I lost everything: I have no family life. My family has been dislocated between friends and relatives. But I’m still here

⁸⁰ Municipal office of Commune V.

struggling for my rehabilitation from the respective authorities.

Mr. Sangaré now spends his day on his initial plot where his straw shed, the jar and the tree still hold their positions in his demolished compound. His family members visit him regularly. He lays hold onto his plot and confections mud bricks there for sale.

The shed of Mr. Sangaré is the weekly meeting point of the association. Since the demolition of the area, the forced displaced persons meet every Sunday evening in front of Sangaré's shed regardless of the weather. The heads of displaced households are automatically at the weekly meeting. It is often male-dominated as the women often have to take care of the children. But when they are free, they too take part.

Interestingly, "la Bande des 140m" has been razed down by the municipal government because it does not look well structured and wealthy. The area, according to the municipal authority, is informally settled but it is still used by many of the people to generate income. For instance, Sangaré makes bricks and sells them to other developers; his wife gathers gravel from the area and sells to builders. There are people who make straw walls to sell; others work as mechanics in an automobile garage. Furthermore there is a big bus enterprise and a huge cattle and livestock market. Thus economically, the place is very informally exploited. As the residents attest to, they are aware of the litigious character of "la Bande des 140m" but since they do not have any secure economic insurance they will have to do anything possible to stay on the land in order to be able to cater for their families.

The "Association des Habitants de Sabalibougou-Est" (ASHE) is member of an umbrella coordination called "Union des Associations et Coordinations pour la Défenses des Droits de Déminis" (UACDDDD) which covers all associations that claim their lawful right in the country. There is another coordination called "Coordination des association pour le développement de la commune V" to which ASHE adhered as well as to many worldwide networks. Because, as Kamissoko said, "unity is strength" (that is to say "united we stand"). "Especially when you have a common concern it is easier for the Malian state officials to deal with a group of persons than with single individuals".

At the meeting of the association held weekly, several strategies are devised; they include reports of the members about what they gathered in terms of useful information for the people, different possible solutions, professional help, writing letters to be sent to the governor of the city, the mayor, the President of the Republic, the interior minister, the minister of justice, the advocates, etc. While there is no meeting during the week some members frequently lie down under the shed and talk about other things. What is important here is that they usually act as some kind of watch dogs; once they see 'foreign' people visiting the area with members of the municipal government, they would confront them by blatantly saying: The "Bande des 140m" is not for sale! The activities and strategies of the displaced residents reveal that they are very determined to hold on to their claim of ownership to the land until their rights are reinstated.

In contrast, members of the municipal government especially, the elected mayor and the municipal council as well as the general secretary of the municipality, who is a civil administrative servant, recognize neither the claims nor struggles of the association and not even the judicial decision they received from the Supreme Court. The municipal government rather relies on the fact that the forced displaced persons do not have the "Titre Foncier" to justify their claim to the land that they got their plots legally through state rules and regulations. Accordingly, the municipal authority sees the residents as squatters and that they must move out to another peripheral zone. The "Titre Foncier" is considered by the land legislation of Mali as the uncontestable evidence of property. The matriculation is a priori essentially incorporated in it.⁸¹ So this legal framework is obviously the working tool of the state and its representatives because it guarantees the intangibility and the regularity of the issued "Titre Foncier", "lettre d'attribution" or/and "Permis d'occuper". Intangible means absolutely untouchable. In other words the legal framework of land management in Mali prohibits the so-called "lotissements coutumiers", because only the state controls the matriculation (Rondeau, 2000, 2006 p. 4).

Given the claims over ownership of land tenure in urban Bamako and the different norms governing entitlement to land, it seems imperative

⁸¹ See Djiré (2006) Colloque international "les frontières de la question foncière – At the frontier of land issues.

to reorganize the system of land tenure and it has to include individuals because as Moore states:

The law (in the sense of state-enforceable law) is only one of a number of factors that affect the decisions people make, the actions they take and the relationships they have (Moore, 2000 p. 78).

This means that the concept of “semi autonomous social fields” cannot be ignored in the discussion of the issues of urban land management and housing in Bamako. The concept helps to describe the existence of legal pluralism as a process that is incorporated within social interactions. It is the art of analyzing how to understand a social field and how to identify complex norms that can be generated in the field as well as the way they can be implemented. Legal anthropology attempts to identify forms of governance in societies especially bearing conscientiously in mind that governance exists only in plural (von Trotha, 2006 p. 31). It is beyond doubt that there are multiple forms of governance and no culture or society can pretend to be the ideal. Using the neologism of “Juridi-cité”, Le Roy thinks that the management of land and especially urban land holding/ use must be better understood and reshaped by interested actors.

Outcomes

The case study, Sabalibougou which is known as “la Bande des 140m” has seen many years of litigation between competing institutional rules and their actors all laying claims to who must and who must not stay on the land. The intriguing question is: why is it loaded with violence? As we see, there is a big challenge of state organization in the matter. It is obvious that there is a legal framework for the management of land tenure system in Mali which is the ‘Code Domanial et Foncier’. But at the same time, one could notice a deficit of capacities in the implementation of this legislation. As we know, naturally people have societal habits and the ability to organize and be organized in the framework of rights and regulations they identify for themselves and treat as law.⁸² This framework of rights that individuals put together tends to become a formidable force for resisting the force of the state.

On the one hand, the inhabitants of the “Bande des 140m” are, according to their understanding, no illegal squatters because they

⁸² See also Tanahama B., 1963

got their plots around the 1970s from traditional land owners of Kalaban Coro and Sabalibougou when the capital city had administratively not stretched out over Sabalibougou. Therefore, Sabalibougou was an urban village or, at most, an immediate suburb of Bamako at that time. On the other hand, the municipal executive incriminates the inhabitants of the “Bande des 140m” by standing behind their legislation and regulations of their urban planning and renewal programs. In addition, the conflict between the judicial decision of the Supreme Court and the municipal decision of the Commune V deprive the forced displaced persons, who have been struggling to hold on to their claims to the land for over twenty years, their rights to be rehabilitated.

This impasse critically questions the bureaucratic functioning of different state organs in Mali. How coherent are the legislative, judicial and the executive organs? The forced displaced people of the “Bande des 140” tend to wonder what the decisions and regulations made and taken by the state are meant for. They sometimes claim not to be part of the contemporary Republic of Mali because they are being systematically excluded when they⁸³ hinted in the interviews in Bamanankan:

“Dugukolo ka kan ka di bEE ma Manden fo mògò min b’a fE k’a bila a jufa la ka taa n’a ye” meaning that every inhabitant of Manden (country/region of the Mande people) has the right of access to a plot of land except the individual who wants to take it away in his pocket.

“Feere fEn tE – jama jE don” it is not for sale – it is a patrimony.⁸⁴ However, if one is issued a “Titre Foncier” he is going to put it into his pocket forever whether they need it or not. Is that ownership or usufruct?”

This discussion thus far raises the question of legal pluralism which begins already with different notions of properties, legitimizing authorities of use and managements and conflicts. Having understood how these persons came to settle in Sabalibougou in the 1970s, we can infer that their access to the plots of land was conditioned by the type of social entry the actors possessed. This is very important for us in order not to reify the concept of land law or land regulation. The nature of social relations existing between the actors is the de facto

⁸³ Association des Habitants de Sabalibougou Est (2013)

⁸⁴ Translated by the author

determinants of access to land than the laws and regulations per se⁸⁵. The term household that was used in the discussion as statistical unit to describe the case of litigation of the “Bande des 140m” was observed in the field. Nonetheless, it showed the plurality and the heterogeneity within the association itself. However, because the diversity is much more complex, it became necessary to analyze narratives within the households in order to understand the issues in more details. It is interesting to observe how the individuals, the associations, the different offices of the municipality and the public interact. Beside the state’s existing norms and regulations, the individuals through their struggles in their associations and coordination contribute massively to the improvement and reshaping of land management. Thus, despite the state’s claim and classification of the inhabitants as “squatters”, “slums-dwellers”, and “illegal occupants”, the latter are able to show that they are not passive but rather active players in managing and shaping the urban space.

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Development Discourse and Practice: Female Education, the Law and the Place of Polygyny

Evam Kofi Glover

“Yenndi aponkyerɛni, na sɛ yɛbedi mpo a, ewɔ sɛ yɛ di deɛsoso”
(Even though we eat no toads, if we have to eat them, we choose the fat and juicy ones)
 Ghanaian proverb

Abstract

Development practice over recent years prioritized empowerment of women through education for instrumentality and capacity building. In Ghana, diverse strategies including encouraging tertiary education and leadership in women were to ensure balance in nation building. However, much as this intervention promises great prospects, there is hardly any systematic study about its significance in relation to implications for the cultural goal of marriage and/or child birth. I contend that the persistence of polygyny among the middle-class is, among other things, due to its relevance for stabilizing the society in relation to the latent functions of higher formal education and professional training that inadvertently introduce marriage squeeze among middle-class women. Development discourse treats the situation as a phase and ‘transitional cost’ expected to fade away with institutional dynamics. Its effect on women may be open to debate but its persistence among the middle class registers a dimension that needs critical analysis. In some cases, its practice verges on practical implications for law enforcement against bigamy. In the circumstance where the law is seen as pliable, the situation engenders a number of blurred and confusing effects that deepen the sense of ambiguity and sometimes outcomes become contradictory.

Keywords: polygyny, female education, marriage squeeze, Ghana

Introduction

The debate over marriage type specifically polygyny⁸⁶ and the law has a very long history in Ghana. Even though polygyny is legal, it is generally frowned upon especially among the middle-class (Zeitzen, 2008 p. 8). The literature shows that theoretical insights by social scientists discussing polygyny in Africa have been shifting over time in line with the social dynamics in marriage and family studies. During the 1960s and 1970s for example, modernization theorists espoused the model of an evolutionary transition from a ‘pre-modern’ or ‘traditional’ to a ‘modern’ era. In this, teleological accounts were given of a progressive, upward movement from “tradition to modernity” (cf.

⁸⁶ Marriage here is used to mean a union between a man and a woman sanctioned through rites by payment and acceptance of some form of bride-wealth. Polygyny is where a man is married formally (some form of bride-wealth paid) to more than one wife simultaneously.

Alber & Bochow, 2011).⁸⁷ The major prerequisite for this 'progress' was the removal of specifically targeted cultural and social barriers that were regarded as impediments in the smooth running of the social system (Geschiere, Meyer & Pels, 2008 p. 1). Development discourse assumed generally, for example, that polygyny was rooted in poor formal education and lack of economic emancipation of women (Goode, 1963, 1964). Arguments were therefore advanced concerning the trends of polygyny in Africa and the prediction that with more women in higher education and professions, as well as increasing 'urbanization', polygyny was to disappear (Goldthorpe, 1984; Goode, 1963; Kerr, et al., 1973; Lewis, 1982). It presupposes that even where polygyny continues to exist among middle-class women, it could be glossed over as ad-hoc 'interim' occurrence, a 'phase' in the process and therefore a systemic 'transitional cost' on the path to the ultimate goal.

Current scholarship however debunks this argument for post-modernist concerns that point to an increasingly fluid, dispersed and discursively created world (Alber & Bochow 2011 p. 19). Notwithstanding this however, a casual overview shows that the unilinear view has not completely waned within current development thinking. Dominant development discourse today continues to see polygyny specifically as one of those 'backward' internal structures that cause underdevelopment (see WiLDAF/FEDDAF 2006). In feminist rhetoric in Ghana, for example, polygyny is couched in discriminatory and oppressive assumptions as against the 'dignity of women', double-standards of society, injustice and seen to "increase women's insecurity and vulnerability in married life" (WiLDAF/FEDDAF, 2006). In the general recommendations of the United Nations committee on the Elimination of Discrimination against Women (UN, 2000), this notion is formally endorsed. The Convention states under General Recommendation (Para.24) that:

"(...) equality of treatment with regard to the right to marry implies that polygamy⁸⁸ is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist. (UN 2000 Para. 24).

The UN (2000 Para. 39) therefore directs that the registration of all marriages should be enforced "...thereby ensure compliance with the

⁸⁷ For a comprehensive review on family change in Africa, see Erdmute Alber and Astrid Boschow (2011). 'Changes in African Families: A Review of Anthropological and Sociological Approaches towards Family and Kinship in Africa.' In Ana Marta Gozalez, Laurie F. DeRose, and Florence Oloo; *Frontiers of Globalization; Kinship and Family Structures in Africa*. Africa World Press, Trenton.

⁸⁸ Used here to mean polygyny

Convention and establish equality between partners (...), prohibition of bigamy and polygamy (...)." In the Human Rights perspective therefore, polygyny is a misfit in the world. Its existence is an anomaly, an indication of ill-conceived laws that create bias against women and a form of institutional failure. Contrary to this notion, other scholarly works, however, observe that polygyny in wider African setting may not be declining as anticipated but rather metamorphosing to fit the demands of the emerging 'modern' society (Clignet & Sween, 1974; Karanja, 1994; Locoh, 1994; Mann, 1994; Notermans, 2002). My aim in this paper is to explore the meaning of polygyny to middle-class women who practice it and to gauge its implications from an institutional perspective. The paper therefore takes as its point of departure the assumption that social institutions exist for framing a functioning society (Bettinger, 1996 p. 851) but in exerting this control, social institutions adapt to social realities to maximize their dynamic role.

The general study⁸⁹ of which this paper is an excerpt was based on multi-local ethnography in Ghana. It was a 12-month long fieldwork between 2010 and 2011. Informants were selected in relation to the criteria of being middle-class, marriage into polygyny and willingness to share experiences irrespective of the geographical location. Empirical data for the paper were generated through life histories, chains of conversations, focus group discussions, and interviews with middle-class women and men.

The Law and Polygyny in Ghana

The records show that despite pressure from both internal and international forces that seek to uproot polygyny, Ghana continues on the path of a plural legal system which sees this form of marriage as a legitimate choice. The Ghanaian Law recognizes three forms of marriage (Daniels, 2009 p. 142), namely: Marriage celebrated under the Marriage Ordinance (Cap.127); marriage according to the rules of customary law; and marriage contracted under the Marriage of Mohammedans Ordinance (Cap. 129). Marriage under the Marriage Ordinance is monogamous, usually performed either by religious rites in Church (under Cap. 127) or by civil rite before a registrar (cf. Daniels, 2009 p. 145). Marriage under the Ordinance means that unless in the death of a marriage partner or where the marriage is legally terminated, neither party can marry another person. It also means that a man married under the Marriage Ordinance may not marry another woman (whether under the Marriage Ordinance or

⁸⁹The research was carried out between April and October 2010 followed by a second field visit between August 2011 and January 2012 as part of my PhD programme.

customary law). Indeed, the law points out that the offence for marrying a second wife under the Marriage Ordinance while being married by customary law (bigamy) carries a penalty. Additionally, the law states that the case of contracting a customary marriage to a third party, while being married under the Ordinance (bigamy) also carries a penalty (cf. Daniels, 2009). On the other hand “marriage under customary law in Ghana, however, is (...) generally potentially polygamous⁹⁰ in the sense that a man is entitled to marry as many wives as he wishes, whilst a woman is prohibited from marrying more than one husband” at the same time (Daniels, 2009 p. 145). In practice, Ghana’s pluralistic legal system offers different systems of law in relation to marriage which “apply concurrently (...) without spatial separation within a single territorial jurisdiction” (Allott & Woodman, 1985). The legal system in Ghana therefore allows a level of fluidity in the choice of marriage. According to the provisions of the law of Ghana, marriage under the Marriage Ordinance (Cap. 127) permits marriage under customary law to be converted from a customary marriage into a statutory monogamous marriage under the law if so desired (Daniels, 2009 p. 145). At the same time people married under customary law and the rites of Islamic Law can also change their status from monogamy to polygyny. The criss-cross between monogamy and polygyny in some cases is a matter of time as people move in and out of physical, political, ethnic, religious, and language boundaries, enforcing fission and fusion of individuals as members of groups, families, or as married couples.

The records show that the overwhelming majority of marriages in Ghana (over 80%) are contracted under customary law (Ardayfio-Schandorf 2006; Awusabo-Asare 1990). This presupposes that “marriages are potentially polygamous”⁹¹ (Daniels, 2009 p. 145) with seemingly wide discretionary powers inadvertently given to male decision regarding polygyny. In the matter of men being allowed to have other wives however, women reserve the option to opt for divorce if they disapprove. One would therefore expect that middle-class first wives (highly educated/career professionals and economically capable individuals) who feel cheated by polygynous husbands would seek divorce.

The Ghana Demographic and Health Survey (GSS, 2010) indicates generally that the dominant marital arrangement in Ghana is monogamy. The survey shows that the overwhelming majority of married women (82%) aged 15-49 were married to men who have only one wife. Even though data specific to middle-class is not readily

⁹⁰ Used here to mean ‘polygynous’

⁹¹ The term is used here to mean polygynous.

available, the general notion gleaned from studies (Amevor, 2010; Dolphyne, 2005; Zeitzgen, 2008) is that among the middle-class in Ghana, polygyny is generally frowned upon and therefore largely a somewhat hidden phenomenon. Assimeng (1999 p. 92) observes that although many Ghanaians might condemn polygyny “at verbal level”, they might also be prepared “to indulge in this arrangement, or variations of it, in secrecy.” Dolphyne (2005), in discussing what women's emancipation means to women in Africa observed that it is common that some of the key challengers to any legislation banning polygyny in Ghana are women, including in some cases, “highly educated women”. She reports further that many women in Ghana find polygyny a suitable arrangement because it is useful as support for women who seek to pursue further education, have professional training, and enhancing their self-determination. In this sense, polygyny contributes to increased female status and economic freedom (see also Amevor, 2010 p. 83; Steady, 1987). Such apparent social ambivalence towards polygyny raises a set of issues. Revisiting the implications of the law and the shifting, multiple representations and challenges a plural legal system seemingly provides in the matter become crucial for my analysis. The question this paper attempts to answer is: How do middle-class prerequisites, especially long years in school for females, engender polygyny and what is the implication for law enforcement in the case of bigamy?

Pathways and the Meaning of Marriage

Within the context of the Ghanaian society, marriage and child bearing is a cultural goal (Nukunya, 2000). It is held as the basic premise for being alive, being happy, self-worth and a sign of health. The relevance of marriage is generally seen not just at the personal but also at the social plane. No matter the level of economic and social independence of the individual in Ghana, marriage largely remains for both male and female culturally prescribed. The basic normative prescription to marry and have children irrespective of economic and social status has been widely documented (Little, 1973; Dinan, 1983; Bleek, 1987). Against this background, my informants noted variously that by age 24 single young women become more and more conscious of the need to search for ‘Mr. Right’. In the middle-class⁹² environment and especially in cities where the influence of extended family is relatively weaker, faith-based groups play a central role as family in this pursuit. Interviews with young single middle-class women reveal that the major concern

⁹²I use the concept ‘middle-class’ to include individuals with a minimum of college education: nurses, teachers, civil service workers, professionals, politicians, paramedics, physicians, engineers, professors, civilian contractors and also educated Ghanaian migrants living in the Diaspora.

relates to when, who and how to identify the 'right' suitor for marriage. The general consensus is that marriage and child birth are crucial for personal fulfillment, self-esteem, dignity and a great booster to the ego. The views of some informants⁹³ were as follows:

"Marriage means a lot and especially to well educated women as role-models. It brings respect from society and sets you on a higher level in the eyes of everyone. No matter your age, you're seen as mature, wise, and balanced. One is accorded the esteem that goes with achievers. It is one social position all secretly want to reach" (Sedem: female, 27 year-old, graduate teacher).

"You cannot easily ignore the pressure to be married eventually. Education or no education, one is pushed around so hard to get married. You may choose to have children outside marriage and many do so. But family members and especially church members never give up pushing for marriage" (Grace: female, 23 year-old Civil Engineer).

"People persistently put you on edge (...) so much restlessness. Relatives, friends, colleagues, neighbors and even strangers with very short acquaintance may pose the question within greetings (...) but they mean well (...) after all, who wants you to live in perpetual pity, ridicule and suspicion? Marriage is fulfilling, and adds to our self-respect, wholeness and self-esteem as capable members of the family (...)" (Zina, female, 26-year-old Banker).

My informants also intimated that even though young middle-class women postpone marriage until later, it is not necessarily because they are not sexually active or that they do not want marriage. Single middle-class women may be sexually active and the middle-class work environment is said to be prone to liaison. Examples often cited relates to jobs and careers that make middle-class men and women 'globe-trotters'. On-the-job residential in-service training programmes, conferences and workshops have become part and parcel of the work schedule especially in NGOs, in both local and international agencies generally. This has initiated new frame of professional relationships and working life. It introduces new liaison patterns that are in many ways different from the patterns that existed primarily from the

⁹³I have used pseudonyms to protect the anonymity of informants.

conditions within family businesses in the agrarian traditional economy. The boundaries that once separated the sexes are being removed at a faster rate now than ever before. Because it is unprecedented, the situation carries with it fluidity in which the old normative order between the sexes crumples. In the short run the situation evolves with new meanings and a vibrant culture. As a social current, informants noted that it lacks any concrete cultural normative system to cushion the jolt that comes with such abrupt social change. In general terms therefore, this fluidity creates avenues that are exploited by some middle-class men and women for extra marital liaisons.⁹⁴ Informants pointed out how group interaction in coed workplaces, frequent business travels and long hours outside the home create new opportunities that are exploited by individuals for extramarital affairs.

Young middle-class people interviewed said they weigh the timing of marriage against their personal advances in acquiring a desired level of career development and economic independence. What is important for my analysis is that, at this stage, sexual activity by unmarried women may have little or no bearing on marriage or child bearing. In the view of informants, the paradox is that long stay in school promotes the situation where young people become biologically mature and want sex but are regarded as socially immature to afford marriage. Young women at this stage are thought of as preferring already married men for two reasons. First a man, who is already married, especially given the heavy stigma attached to polygyny among the middle-class, may want a mistress for just the thrill and not for marriage. Although my informants acknowledge the centrality of marriage in the Ghanaian society, they often made a distinction between intimacies as survival strategy, and committed relationships for marriage. The general opinion is that young women who accept to date married men do it for varied ulterior motives including the adventure, social capital of exploiting relationships for good placement, economic capital for supporting a good lifestyle, cultural capital in deriving support for higher education, training opportunities and benefits.

⁹⁴The story of Dr Richard Anane (Ghanaweb, 2008) illustrates this phenomenon quite vividly. During his tenure as Health Minister in Ghana, Dr. Anane attending an international AIDS conference in the United States of America allegedly engaged in unprotected sexual encounter with a fellow participant (an American woman) during the AIDS conference. The woman became pregnant as a result, later gave birth and sued Dr. Anane for child support. The sex cum corruption scandal leveled against Dr. Anane saw his resignation from the government.

Findings show that in some cases, what begins as a relationship for fun or meant to gain social capital is eventually routinized into marriage (i.e. polygyny). Circumstances may push the young woman to marry an already married man who she comes to see as her best option in fulfilling the cultural goal. It is a relational choice that individuals make depending on a number of other considerations. The path to polygyny is very diverse. This fluidity is manifest in the routine daily struggle of many of my young middle-class informants seeking to meet their aspirations within the confines of a social system that is harsh and unrelenting especially for young women.

It was generally agreed among informants that the choice of potential marriage partners has gone out of the control of especially the extended family, and also the era of betrothals or arranged or forced marriages are past. Yet still, middle-class women feel they are unduly put under subtle pressure within society to get married and have children. The concern of especially women I interviewed was about timing of marriage and the process for reaching this goal. To Efi, (female graduate, about 40 years, administrator, separated from husband, having one child):

“It is not like you have a choice anyway (marriage and/or child birth). It is complex. Disappointments are common and false steps here and there. One is always reminded that it must be done and done within the time frame. That is what makes a woman anxious”.

Indeed, anxiety over timing of marriage and/or child birth among middle-class women interviewed was widespread. Their male counterparts hardly mentioned pressure of marriage timing as an issue. But the common opinion gleaned from informants suggests that young women are conscious of the balance between years spent schooling, their personal objective of marriage, marriage timing and the challenge of a biological clock that is persistently working against them. But there is also another source of pressure. Efi, like many other young women I interviewed, observed that even though things are gradually changing, generally Ghanaian men still shy away from marrying their female contemporaries. She observes that:

“Some middle-class men feel intimidated by successful women. I have many married female friends who suffer because despite their qualifications, being married means they must always bend over backwards to please their husbands. Men still like to marry girls below their status and age; girls they can control, take care of, or as they often say, shape to their taste” (Efi, female graduate, about 40 years, administrator, separated from husband, having one child).

The female informants said they were conscious of the challenges in marriage - especially in relation to its limitations. They pointed out implications for their personal autonomy, competitive career building, and aspiration to climb the heights by merit, strength and character rather than measured in relation to differential male or female standards. But despite the many misgivings, the desire to marry continues to be very strong among middle-class women. Kumi (male, 29 years old) thinks that as a rallying point, the moral society is highly suspicious of any infiltrations from anywhere that seek to destabilize the concept of family values – heterosexual marriage and parenting. Sustaining marriage occupies a prominent place in religious groups, making marriage and child bearing a 'religious and cultural' obligation that individuals work towards. In this wise, individuals who delay marriage too long or choose not to marry are generally stigmatized. Efiya tells about her own experience. She noted that because she was separated from the husband, she was under immense subtle pressure from family and society. She complained that a middle-class woman who lives without a man may have more social cost and burdens to fight against than when she goes by the name of marriage. Divorced women who want to avoid unwanted attention and male intruders may still keep the ex-husband's name and wear the marriage ring as a sign of protection against insult and assault. Efiya observed that among other reasons, some unmarried women also tend to wear 'fake' engagement rings as a common strategy to avert especially malicious pity from members of society.

On the other hand, informants point out that more and more middle-class women seek 'polycoity' in which there is a loose arrangement between sexual partners. In this arrangement, the middle-class single woman lives alone with the male partner visiting intermittently. There are also middle-class single women with series of men they date simultaneously. In both cases, the discretion is completely in the hands of the woman. Informants also noted a trend among young middle-class women who have devised 'innovative' ways of reaching the cultural goal of having their own children without commitment to a man as a wife. Informants noted that some economically viable young middle-class women 'seduce' specific men of status they fancy for pregnancy. The purpose of this strategy is for such women to have children of their own without responsibilities towards the genitor of the child. In this case, the stories demonstrate female coercion. Middle-class women do not entirely lack alternative reproductive strategies.

Two principal reasons were adduced for the practice. It is said that there are middle-class women who seek their freedom and autonomy

because they want to invest in careers for security, or they feel marriage is much too complicated. Many in this segment want to satisfy the cultural goal of having children but not through marriage. The second group of single women is those who want to get married but are choosy about seeking partners within or above their social and economic status. Some informants noted that with more and more men seeking marriage partners of lower age and status than themselves, there is the phenomenon whereby not all eligible middle-class women who want to marry have the opportunity. Some of these women use polygyny as a means to this cultural goal. In this situation, one female informant reflecting on her own experience as second wife observes that:

“Even though it sounds odd for the career woman, my experience is that it is quite easy to adjust in polygyny when you know what you want. Respective wives usually live far apart in different suburbs of the same city, in different cities or even in different countries. They are independent in their homes with flexible arrangement for the to-and-fro of the husband. Rivalry is minimized when they hardly cross one another’s path. I see much flexibility; freedom and the personal choice for a woman to pursue her dreams, career, and have family at her own pace” (Eli, 43 year-old female civil servant).

Notwithstanding this, there were dissenting voices among my informants:

“For me it is bizarre, unromantic, unchristian, uncivilized and completely unacceptable. It is no marriage at all because of its make-shift arrangements where the husband is absent when the family needs him most. How do you plan your life on such ad-hoc basis?” (Grace, 38 year-old female Army officer).

Repeatedly, however, a number of informants, especially first wives married under the Marriage Ordinance but drawn into polygyny by ‘recalcitrant husbands’ see enforcement of the law related to bigamy as problem. The opinion of Lucy (45 year-old Nurse-Practitioner) represents the common view expressed by many first wives in diverse ways:

“Hmm! (...) I think the situation is worse because of poor law enforcement. There is virtually no certainty for a married woman against the man marrying another. Even under the Marriage Ordinance, the married woman is still not secure because enforcing the law may take forever, and the family may swing to the side of the man anyway.

She has no certainty except the option of divorce. But even for that the church says no. It is a really difficult situation" (45 year-old Nurse-Practitioner, first wife, Roman Catholic with three children).

Other female informants, however, repeatedly attribute polygyny among the middle-class to the gap created through marriage squeeze facing especially middle-class women.

Husband snatching is quite common now. It involves especially young female graduates who hunt specifically for already married men of good standing for pregnancy. Because most young men their age prefer younger girls, some women become seriously desperate. To save the situation they become deliberate gatecrashers after the long sacrifice for career development. Sometimes the goal is attained at the expense of the dream of a monogamous marriage. It is not fair to married women but somehow, their air of being relatively younger and sometimes seemingly more daring and increasingly more and more sophisticated appeal very much to older men who are often already married but still crave for young women.

My findings suggest that the expressed opinion of seeking first to achieve academic laurels before marriage is the ideal shared by the generation of younger unmarried people. It is important to consider this in the context of new reforms in the academic programme that creates the possibility of the younger generation of Ghanaians accomplishing their educational dreams at far younger age than before. Within this new dispensation, however, there are those who want to achieve higher qualification at their own pace through an installment approach. Interviews with especially unmarried females above 30 years of age as well as married career women suggest that in practice, there is some generation gap. Much as older women want to combine marriage and further education, younger women (below 30 years) seem to think otherwise. But the lines are not so clear since it is a common phenomenon for women to break their pursuit of education for marriage and childbirth before resuming. Many have combined marriage, childbirth, formal education and work concurrently even as low as at the senior secondary school level (private students and at the workers' college). It is particularly in vogue especially for women at the tertiary level of education in Ghana.

This is, however, an ambiguous situation for most women. Zina (female aged about 30, two children and married), a Banker explains that even though she successfully combined further education with marriage and child bearing, circumstances make it difficult for some

wives to pursue further education. Resources may be lacking, pressure to cope especially with children's routine care and schooling, estate development and paying for modern living which becomes an obsession after marriage. Informants also cited experiences of friends who delayed further education for marriage with promises of continuing like Zina but unfortunately met with strong resistance from husbands and even families when they tried to resume. In a number of cases, informants noted that the emerging situation in which some have to balance schooling and living away from their husbands and/or children have been implicated in the offshoot of divorce as well as polygyny among the Ghanaian middle-class. Zina concludes that "whatever way you turn it, there are challenges."

As noted already, Efi's observation that "men still like to marry girls below their status and age" meant that many middle-class women who spend years without marriage in order to achieve professional career and independence have some challenges in the marriage market. Despite public disapproval, the general notion is that polygyny is an avenue that offers opportunity for latecomers into the marriage market and for negotiating the cultural goal of marriage and/or child birth.

Discussion

A very central concern about the effect of modern career development prospects on the social system is the latent function of long period of formal education that has inadvertently introduced a new challenge into the lives of women. Even though women have long been balancing multiple roles through history, the insertion of career development introduces a completely new phase. This new dimension has been seen as creating marriage squeeze especially for the middle-class woman. Indeed, the asymmetric fecundity horizon between men and women is a major hidden challenge largely influencing marriage market behavior generally (Rose, 2001). The comparative shorter fecundity horizon for females (a biological constraint) is peculiar to women specifically in the relationship between age and fertility decline. Long years in school therefore engender imbalance. Thus marriage, which hitherto was largely a 'social given' and a family imperative to ensure that daughters were 'given into marriage' through any of the diverse avenues – family betrothals, early marriage after puberty, arranged marriage, forced marriage, elopement – have witnessed drastic retractions and renunciations because of the combined effects of formal education and acculturation.

The situation in Ghana is further aggravated by the fact that for most middle-class women the norm of homogamy where a potential mate is expected to have socio-economic characteristics similar to the woman's own or far above poses further threat (Takyi et al., 2003). Paradoxically however, middle-class men, unlike their female contemporaries, tend to seek first marriage partners from the segment of women who are below their age and status but who have the potentials of social mobility through further education. These differential inclinations introduce marriage squeeze that puts the middle-class woman into a potential deficit. For Merton, this engenders "an acute disjunction between the cultural norms and goals" of having children through marriage and the socially structured means to realize this goal. Merton argues that the discontinuity between culture and structure has the dysfunctional consequence of promoting deviance within society (cf. Ritzer, 2007). The implication of this in the life of middle-class women is vividly captured by Aidoo (1993) in her novel - *Changes*. The novel depicts the trajectory of a Ghanaian middle-class woman through various stages of her experiences - monogamy, divorce, and then the choice of remarriage as a second wife in a polygynous union. Among other things, the novel challenges the stereotypical notion of coercion of women by men into polygyny. It alludes to the idea that middle-class women have a choice and to a large extent, middle-class women have the agency of exerting the right to choose what type of marriage appeals to them as individuals.

The issue of marriage squeeze facing high achieving women who spent much of their lives pursuing career goals at the expense of having children is not peculiar to Ghana. The current global debate over the alternative offered by Apple and Facebook's "social egg freezing" (Conrad, 2014) for female employees (for non-medical reasons) show that the situation is global. What is obvious, though, is that approaches to meeting this challenge may differ from society to society depending on resources available, as well as legal and cultural tenets of respective societies. It is a relationship between people and their institutions and because culture is dynamic, institutions built on it are perpetually in the process of change to fit concerns. In this pursuit, the role of the plural legal system in Ghana especially regarding its significance for marriage has become a major topic for debate. The literature (Amevor, 2010; Assimeng, 1999; Dolphyne, 2005; Zeitzen, 2008) shows that there is a general divide in public opinion on the matter. On the one hand, some middle-class women hail it as necessarily flexible and resilient enough in allowing choices including polygyny to accommodate the challenges women face. Other middle-class women see it as a threat to order, a

challenge that brings anomie. The latter group feels vulnerable especially because of poor enforcement of the law on bigamy. For them such a failure reinforces the perception of a broken system. Like Merton (Ritzer, 2007) argues, not all ideals enshrined works for everyone in a given society. Indeed, in accepting polygyny, the law is functional for some single middle-class women dealing with deprivation and seeking for opportunity to achieve their cultural goal of marriage. But the same law has consequences that are generally dysfunctional for others who are married into monogamy and seeking protection from husbands straying into polygyny. In other words, even though all may subscribe to the cultural goal, the ways in which individual middle-class people go about obtaining the goal are not the same because not everyone has the same opportunities.

A very remarkable observation by Nukunya (2000, p. 21) explains the situation more pointedly. During a debate on the law on bigamy in Ghana, Nukunya noted that a judge was said to have observed that the law on bigamy is a legal provision in the law books of Ghana but not made to be enforced. The statement shows the power configurations within the social setting emerging out of the social processes that make difficult the strict enforcement of the law on bigamy in Ghana. For the common person, the situation introduces a level of protracted ambiguity and mistrust for law enforcement. The ambivalence that the law itself is weakly enforced has forced many women to look to the Church as an institution to prevail against polygyny. Yet, the Church is but a voluntary organization and its enforcement of such a code is limited to professed faith of individuals. The situation is further related to the plural legal system itself fostering uncertainty. For Britwum et al. (2004 p. 5), the situation creates a level of "complex legal problems such as the need to decide which particular rules apply to a particular transaction: how to determine membership of a particular group and how an individual can change the law applicable to him/her as a member of a group; what choice of law/ rules must exist for issues between people of different groups and the determination of whether a particular system of law applies in a certain geographical area." Notwithstanding the fact that "final judicial power is vested in the state judiciary" (Britwum et al., 2004 p. 5), the pluralistic nature of the legal system means in practice that the customary laws "wield immense powers, and especially in places where the impact of formal state structures and their laws is not that significant, what holds sway is the customary law" (Britwum et al., 2004 p. 5). In this situation, some cultural practices generally take precedence over legal norms, just as legal institutions can fail to account adequately for traditional systems and social institutions in design and implementation (cf. Amuzu et al.,

2010 p. 14). This is especially the case where the predicament of women especially is aggravated by the fact that even though divorce is accepted by law, it is largely unaccepted to some religious faiths⁹⁵ and frowned upon in customary marriage in Ghana. This situation further hems-in the limited freedom of choice available for women and creates a protracted predicament.

Indeed, the fluidity of the law on marriage also creates some level of ambivalence. However, some middle-class women also see this situation as an advantage in coping with the divergent expectations that they face. On the one hand, the cultural goal of having children looms large irrespective of marriage squeeze that some high achieving women face. It is in this context that the Ghanaian plural legal system, to a large measure affords leverage by allowing choices in relation to polygyny or monogamy. For some middle-class women, polygyny offers the alternative arrangement for meeting the cultural goal of marriage and/or child birth and at the same time creating personal space to contradict the stereotypes of pliability and submissiveness as wives. The middle-class woman who decides to stay back in polygyny instead of divorcing may use the situation in varied ways. On the one hand, findings show how the situation brings dejection and varied challenges to some women who accept to be drawn into polygyny. On the other hand however, there are women who turn the situation around, dexterously engaging the normative order for creating space to their advantage. In this sense, middle-class women are conscious of the intentional allocation of their sexuality: sex, fertility resources as well as time and career needs. They seek in diverse ways to maximize their autonomy and to better their lives, which stem from being adept at negotiating and navigating diverse paths for fulfilling goals they deem important. Polygyny, in its diverse forms therefore remains the 'niche-filler' in many cases.

Conclusion

Many young middle-class women face difficult choices between striving for higher levels of academic achievement and protecting their place in society as responsible individuals. This raises the issue of the relationship between change and persistence in the underlying values that drive society. In this wise, it can be concluded that polygyny may never wholly disappear among middle-class women despite the dishonour attached, as long as the specific collectivistic cultural goal of marriage and having children continue to be a priority. I contend

"(...) it is essential that the entire Catholic community continue to stress the importance of the monogamous and indissoluble union of man and woman, consecrated in holy matrimony. For the Christian, traditional forms of marriage can never be a substitute for sacramental marriage" (Benedict XVI 2006).

that both social structures and human agency are critical in understanding the decision of the individual middle-class woman into polygyny. The proverb – “*if you have to eat toads, choose the fat and juicy ones*” elucidate “intentionality” and “contextual choice” associated with women’s agency in polygyny. The findings suggest that middle-class women are not always victims in relation to the ‘choice’ of polygyny and indeed, in some cases, middle-class men could be victims of ‘choices’ women make. I argue that the modern educational system has inadvertently failed to consider the implications of higher education for women on the cultural goal of marrying and having children. Actors therefore improvise from the pool of diverse social leanings even in cases like bigamy where the law could conveniently be side-stepped if enforcement is deemed to be weak.

My thesis is therefore that ‘social development’ is a complex phenomenon with its own latent functions within which the contradictions of meaning about what is important in life continues to be defined, shifted, contested and realigned to fit the needs of people. In this sense, one dilemma for development actors remains how to reconcile the challenge of long years demanded by formal education on marriage squeeze especially for middle-class women. Development discourse treats the challenge as a phase and therefore ‘transition cost’ that would fade away with institutional dynamics. But the records suggest that it remains a challenge not only in developing countries like Ghana but also in Western societies. Perhaps, polygyny is as practical for middle-class women in technology-challenged Ghana as ‘social egg freezing’ (oocyte cryopreservation) is for Apple and Facebook that pay for female employees to have eggs frozen for pregnancy later in life. Moral undertones aside, the essence for either is the same; giving ‘stranded’ career female employees the hope and undeniably the opportunity to concentrate on their careers first and to have children later in life. Unless we consider the social and cultural underpinnings of a given environment, it will be difficult to appreciate the law allowing polygyny in Ghana as a dynamic institutional provision. In a society where the old and the new ways of life are intrinsically locked in an ever changing concert, the challenge of sustainable-development arises from the social costs of negotiating new paths and the management of its latent functions. In this sense, polygyny as choice remains an ally in women’s struggle for ‘emancipation’ and invariably contributes towards enhancing well-being for those who see it as important.

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