Institute of Commonwealth Studies, University of London
Institut pour le recherche en développement (IRD), Abidjan
Université de Bouaké
Kwame Nkrumah University of Science and Technology (KNUST)

SSRU Project R 7993

The law, legal institutions and the protection of land rights in Ghana and Cote d'Ivoire: developing a more effective and equitable system

FINAL REPORT

Professor Richard Crook (ICS) (Project Leader)

Professor Simplice Affou (IRD)

Dr Daniel Hammond (Dept of Land Economy, KNUST)

Dr Adja F. Vanga (Université de Bouaké)

Mr Mark Owusu-Yeboah, (ILMAD, KNUST)

TABLE OF CONTENTS

Page

List of Tables and Figures

Page

EXECUTIVE SUMMARY

Short summary:

The social regulation of rights to allocate and use land is of critical importance in the development of the predominantly agrarian economies of West Africa. Increasing conflict over land takes place within a context of legal pluralism, where customary systems are still dominant, but have different degrees of legalisation. The overall aim of the project was to analyse the effectiveness and equitability of judicial, legal and administrative institutions for providing accessible dispute resolution, and for protecting the security of the urban and rural poor to hold and use land. It compares the 'legalisation' of the whole range of customary and non-state regulatory institutions into state law in Ghana with the greater pluralism of Cote d'Ivoire, and asks whether the revival of customary or local Alternative Dispute Resolution Systems (ADRS) systems can offer protection against uncertainty, and arbitrary dispossession. It concludes that state courts serve a real need for authoritative remedies and should be enhanced and supported. The introduction of ADRS also needs state support. Customary or traditonal justice systems have played a key role in protecting land rights where they have been legalised by the state, as in Ghana. But where there are powerful chieftaincies, as in southern Ghana, they are not necessarily suited to ADR solutions because of their formality and embeddedness in local power structures. They can still play a positive role where there is community support. Situations of polarised inter-communal conflict as in Cote d'Ivoire also undermine their capacity to be effective.

Part A: The aims of the research and its relation to existing knowledge

1. Summary of the research topic and its main objectives

1.1 Increasing conflict over land and insecurity of land holding in Ghana and Cote d'Ivoire make the question of how to provide better institutionalised regulation of such conflict very timely. In these countries, there is a situation of legal pluralism; customary land holding systems are dominant but undergoing rapid change and have experienced severe strain in Cote d'Ivoire under the impact of mass migration into the cocoa growing and urban areas. The overall aim of the research was to investigate how law, judicial and regulatory institutions, both formal and informal, can contribute more effectively to resolving land disputes and enhancing security over the possession and use of land. The purpose was to address a key policy question: is protection of livelihoods and the rights of the poor and vulnerable best protected through sustaining legal pluralism (a mix of customary institutions, local Alternative Dispute Resolution Systems -ADRS - and state institutions) or does an integrated state system of justice give better protection?

1.2 The research objectives focussed on understanding the factors which underpin the effectiveness, legitimacy and inclusiveness of dispute settlement institutions which adjudicate or otherwise resolve land disputes. This involved the study of both the state and non-state, customary and statutory institutions involved in land allocation and conflict management at the local level in the two countries.

2. Background to the research: the debate over legal pluralism and protection of land rights.

Policy debate over insecurity of land rights in West Africa tends to focus on the 'problems' posed by the continued dominance of customary forms of land tenure which are rooted in social group membership and obligations rather then written documentation, and on the linked issue of legal pluralism, where a multiplicity of legal codes, (customary, religious and state) co-exist or compete within the same polity. The debate revolves around two themes:

- *first*, should customary and other non-state land regimes be supported because of their inherent flexibility, social embeddedness and accessibility, or do they in fact facilitate the 'legal rightlessness' of the poor as against locally inequitable power structures, and the state itself?

- *Second*, does the plurality of legal orders offer useful choices for the ordinary citizen ('forum shopping'), or does it produce a general ambiguity, lack of enforceability and lack of protection for land rights particularly for those who lack power in the urban areas? How much choice do poor citizens really have about which 'forum' or legal code they invoke to settle a dispute or protect their rights?

3. The choice of case studies: comparing Ghana and Cote d'Ivoire

3.1 Ghana and Cote d'Ivoire are 'matched pair' in that they share similar economic structures and cultures. Both are cocoa exporters of world significance, based on small farm production, both have experienced large scale inward labour migrations, and the societies of their southern and common border regions have linked histories and languages (partly due to the historic influence of the Ashanti Empire). But these similarities serve to highlight differences in the historically determined configuration of legal pluralism in each country. These differences are concentrated in:

- different degrees of 'legalisation' of customary and other land laws, and

- the degree of pluralism and competition among regulatory orders.

3.2 A main research hypothesis is that these differences have had a significant impact on the certainty and protection offered by both customary and state dispute settlement institutions in situations of conflict and insecurity. The greater degree of pluralism and the low levels of legalisation in Cote d'Ivoire are connected to the greater degree of insecurity and eruption of politicised, violent communal conflict over land which have erupted in that country since the 1990s.

4. Legalisation and the configuration of legal pluralism in Ghana

4.1 Both pre-colonial and colonial legacies in Ghana led to the emergence of a strongly legalised form of customary land law, recognised by the state and integrated into the British-derived common law administered by the state courts. Colonial institutions such as the Native Courts and the Native Authorities as well as national level political institutions created a powerful chiefly elite, with a hierarchy extending down to local communities.

4.2 The end result was that local communities in Ghana have a strong capacity to protect customarily- held land, and, through the institution of chieftaincy, have preserved local institutions for regulation of disputes. Thus migration and marketisation of land have been handled more peacefully and institutionally. But the power given to the chieftaincy to manage and allocate land, based on the legal concept of allodial land ownership, is now having more destabilising effects on the rights of migrants and even customary land holders in the peri-urban and urban areas.
And state institutions for management of an integrated land system have created further conflict through an overambitious regulatory system.

5. Legalisation and the configuration of legal pluralism in Cote d'Ivoire

5.1 In Cote d'Ivoire, the -policies of colonial and post independence regimes meant that customary and local forms of land law have never been recognised by the state. And there was no politically powerful 'neo-traditional' chiefly elite. Hence land relations in the cocoa growing areas have relied more on social bargaining and informal arrangments which were oftern overridden by the state. In the urban areas, state agencies have controlled land allocation and development.

5.2 These conditions of access to the land provoked politicised ethnic conflict and perceptions of dispossession amongst host communities into which the state itself was drawn as party competition emerged in the 1990s .This historic lack of protection for local land rights has led to the eruption of politicized ethnic conflict and indirectly to the civil war in that country.

6. The policy context

6.1 Both in Ghana and Cote d'Ivoire recent land reform programmes have adopted what has been called an 'adaptation paradigm'. That is, instead of sweeping away customary tenure with a wholesale individual land titling and ownership programme, the state accepts the *de facto* dominance of customary forms of land holding, and recognises the whole range of existing customary rights in land, whether written or unwritten. It then attempts to 'legalise' and formalize them through written documentation and mapping. The ultimate aim is still greater certainty of legal title, but based on a more legitimate and locally recognised set of land rights

6.2 In Ghana, the reform programme is based on the principles laid down in a National Land Policy document agreed in 1999 by the previous NDC government, but accepted by the incoming NPP government in 2000. It is being implemented, with substantial donor support, by the Land Administration Programme Unit (LAPU) within the Ministry of Lands and Forestry. Its aims include a review of continuing anomalies between customary and statute/common laws on land, and institutional reforms such as rationalisation of the state

land sector agencies and decentralisation to strengthened customary and chieftaincy institutions. The problem of land dispute resolution is recognised as an important element in all of the LAP components. A two- pronged approach is suggested:

- the creation of special Land Courts (Divisions of the High Court) in regional capitals, to try to deal with backlogs in the state system;

- the development of what are called 'Alternative Dispute Resolution' procedures. First, the revived political power of the chieftaincy is reflected in proposals to make ADRS an integral element of the new Customary Land Secretariats--meaning that the chiefs and their customary tribunals will recognised as a form of ADR . Secondly,an ADR bill is to be introduced in Parliament which empowers the Courts and the judicial service to introduce ADRS for out of court settlement. Proposals for District level Local Advisory Committees of 'community elders', organised by the elected District Assemblies, have not yet been agreed by government.

6.3 In Cote d'Ivoire, the policy of the FPI government of President Gbagbo is officially based on a commitment to implement the 1998 Rural Land Law (*Loi relative au domaine foncier rural)* The main purpose of the 1998 law was to set up formal decentralised or locally based institutions and procedures which would be empowered to carry forward the detailed work of mapping, recognising and legalising the whole range of customary and locally established rights, with the cooperation of local communities. It was thus hoped that indigenous and customary rights would be secured, as well as the use rights agreed with 'strangers' under customary procedures. But many misunderstandings about its impact on the rights of foreigners (non -Ivorians) developed --often confused with the rights of 'strangers'-- and violent politicized conflicts erupted between host communities and migrants in the south western cocoa areas. The 1998 law is now an issue in negotiations between rebel forces and the government aimed at ending the civil war and *de facto* partition of the country into southern and northern sections, and prospects for its implementation depend upon these political developments.

Part B : Research Design and Methodology

7. Research questions and concepts

7.1 The main questions which were operationalised in the research concerned the effectiveness, legitimacy and inclusiveness of various dispute settlement institutions (DSIs) . These were operationalised through asking about public perceptions of process and what the public valued or looked for in a DSI. Researchers also looked for objective measures of effectiveness such as speed and cost. The main questions were:

- what are 'land disputes' about, and do different kinds of disputes get settled in different DSIs ?

- Why do people choose particular DSIs –what values are they looking for in the process and the outcome ?

- What is the public's opinion of different DSIs ? How do users in particular perceive their experiences of disputes and their settlement ?

- How do different forms of DSI protect the rights of the poor and vulnerable—rights to a fair hearing, rights to security of possession ?

- Are there any objective measures of the effectiveness of different DSIs ?

7.2 Empirical focus: in each country the empirical focus was on the full range of DSIs from the most informal (which includes both local or customary and informal dispute settlement offered by state agencies) to the formal tribunals and courts of state or quasi-state agencies, as follows:

- Informal arbitration at the local level--family heads, village elders, respected community leaders and 'land chiefs';

- Customary chiefs' courts;

- State agencies offering dispute settlement or arbitration, ranging from informal settlement by individual officials to to formally constituted arbitration committees

- Formal state courts: in Ghana we covered the former Community Tribunals, now Magistrates Courts, and the High Courts. In Cote d'Ivoire, the first instance *Tribunal* was investigated.

7.3 Research design: in each country, case-study areas were selected according to the presumed type of land conflict situation:

Type I: A situation of marketised, crop agriculture with competition between successive generations of migrants and host communities.

Type II: A situation where there is a low degree of marketisation, no perceived land shortage and land is allocated at low cost according to local customs.

Type III: Urban or peri-urban situations characterised by marketisation, severe competition and conflict among statutory, traditional and 'informal' (usually illegal) systems of land regulation.

7.4 Definition of 'legalisation': the degree of institutionalisation and formality of a regulatory order. At one extreme the 'most legalised' is exemplified by a single, state-endorsed, legal framework and body of written justiciable laws. At the other extreme 'least legalised' is a situation in which land relations are matters of informal, social and political bargaining or negotiation, in which a wide variety of resources can be drawn upon to establish advantage and authority.

8. Methodology and data collection.

See Appendix 1 for a detailed description of the case-study areas in each country. Data was collected using (a) focus group meetings with selected informants; (b) in-depth semi-structured interviews with selected informants; (c) observation of dispute settlement procedures; (d) questionnaire based surveys, of litigants in the courts in Ghana and Cote d'Ivoire, and in Ghana a village level mass survey of popular perceptions involving 676 respondents.

Part C: Research Findings

9. Overall structure of the findings

The main findings are presented by type of dispute settlement institution, comparing the locations by type of area, and focussing on effectiveness, legitmacy and inclusiveness.

10. Formal state courts: Ghana

- *Land cases are undoubtedly creating an unmanageable backlog in the state courts .* Land cases account for just under 50% of all cases nationally, but the numbers are increasing and backlogs of unheard or unresolved cases increasing, both in the High Courts and even more seriously in the Magistrates Courts

- *Why do people go to Court ?* The breakdown of the kinds of cases in which our survey respondents were involved produced a surprising result : 52% were 'intra-family' disputes (inheritance, divorce, unauthorised dispositions by family members). The common stereotype that it is double sales or unauthorised dispositions and 'definition of boundary' disputes which are clogging up the courts is clearly inaccurate. It is family cases which polarise the parties so bitterly that they are more likely to go to a state court.

- *Choice of DSI:* do people go straight to the state court, or use other methods first? The survey showed that state courts are the <u>first</u> choice of nearly half of the litigants: 47% overall had chosen to go straight to the court without using a chiefs court or traditional procedure. The court litigants were strongly motivated by the search for an 'authoritative' and impartial settlement or said they had resorted to court because of the 'recalcitrance' of the opposing party which only the court could overcome. The search for authority is linked to the remedy which courts offer –declaration of title. Even more striking (and linked to the hostility between the parties in the state court) was the extremely low level of, and reluctance to consider, out- of- court settlements.

- *Accessibility and justice issues:* the perceptions which litigants had of the state courts were surprisingly positive; in spite of the severe delays and constant adjournments, the majority rated the behaviour and manner of the judges highly, and felt that overall it had been worth bringing the case. It was also clear that the kind of justice offered by the state courts was not as alien or inappropriate as commonly supposed. The Magistrate's Court judges were well respected and their procedures were informal, flexible and user-friendly. There is clear evidence of a shift from adversarial to 'inquisitorial' approaches to the trial process on the part of judges, and language is NOT a problem

- *Inclusiveness*: the breakdown of litigants also showed, (contrary to stereotypes) that going to court is not exclusively the privilege of the male, wealthy or well educated. Women were a 'significant minority' (31%), and they were predominantly illiterate (61%) perhaps reflecting age factors Cost did not seem to be as big an issue as expected, except where cases go on for many years. Figures cited were not out of the reach of the collective resources of families with farms and properties at least in southern Ghana.

- *Effectiveness issues:* it is clear that much of the delay in the court system is caused by case management problems, particulary the prevalence of adjournments, poor briefing by counsel, poor scheduling, absences, poor record management including corruption by court officials, and the abuse of interim injunctions. When this is combined with the extreme reluctance to contemplate out- of- court settlements, it can be argued that delay in the court system is not just the product of 'excessive litigiousness' ; it is also a product of the way people use litigation , the administration of the courts and the behaviour of lawyers, court officials and litigants themselves.

- *Overall*, the commitment to litigation is so strong that 59% of respondents declared that they felt the process was worthwhile

11. Formal state courts: Cote d'Ivoire

The low level of usage: overall, the state courts (Tribunals) in Cote d'Ivoire are not as popular as those in Ghana and not heavily used. They do not complain of massive backlogs. Usage increased however during the late 1990s in both the south western area and Bouaké, due to changes in the political situation (liberalisation leading to less fear of the administration), and increasing conflict amongst host communities which loosened sanctions on going to the state court, mainly on the part of host or indigenous litigants.

Accessibility and inclusiveness: slow, highly formal procedures (written documentation considered in chambers) mean that the courts are not very user- friendlyy especially to rural and uneducated people. But cost did not seem to be a major inhibiting factor. Migrant communities, up until the post 2000 conflicts at least, preferred to seek dispute resolution by the administrative authorities (Prefectoral service).

Effectiveness of the courts is potentially quite good in that the procedures are careful and objective and rely on thorough investigation. But they lack flexibility and capacity.

The reasons for going to court, as in Ghana, litigants show a strong commitment to take a dispute to the bitter end. Out of court settlements are rare. In Cote d'Ivoire it is very much a last resort rather than first choice, and incurs the danger of social sanctions or even reprisals. So it is linked to the real possibity of conflict.

12. Mediation and arbitration by state or state-supported agencies in Ghana

- *Formal and statutory arbitration committees* (Land Title Registry Adjudication Committee and the Lands Commission Settlement and Arbitration Committee) have not been used very much, although they reportedly achieved some successes. The reasons derive from a preference for more informal settlement using the discretion of senior officials.

- *Informal mediation and conflict resolution by individual officers:* this is quite well used within the Lands Commission, and the Town and Country Planning (now Physical Planning) Departments of the District Assemblies. The procedure is undoubtedly effective – it can be rapid and cheap (only 'informal payments', it can be assumed), as well as authoritative. In effect officials are exercising a discretionary authority which is inherent in the role of their agencies; they have access to the

documentation, specialist expertise and the power to make administrative decisions with legal consequences. There are some doubts, however, about the appropriateness of allowing officials to use their discretionary powers to this extent, since questions of impartiality and conflict of interest could arise. Other agencies such as the Ministryof Agriculture and the District Administrative authorities are helpful but much more limited in what they can do.

- *Local level state-supported ADR: The Commission for Human Rights and Administrative Justice (CHRAJ):* the District CHRAJ office has developed into a highly successful dispute settlement institution offering a simple, cheap and honest service which could be taken as a 'best practice model' of what an ADRM should look like. The CHRAJ staff were offering a professionally impartial and informal mediation service with written documentation of decisions, which had been become quite popular, settling around 200 cases a year since 1995, of which around 30% on average each year were land cases.

13. Mediation and arbitration by state or state-supported agencies in Cote d'Ivoire

- *Formal arbitration institutions:* the most elaborate and potentially effective local DSIs in Cote d'Ivoire are the village and Sub-Prefectoral land committees provided for under the 1998 land law. Unfortunately they have not yet become operational as the law has not really been implemented. Another arbitration system set up to deal with disputes between farmers and cattle herders in the northern areas had not been very successful, due mainly to practical difficulties of enforcement.

- *Informal mediation and conflict resolution by individual officers:* in both the urban and rural areas, the Prefectoral service still dominates dispute resolution, partly because they still exercise controlling powers over allocation and legal certification of land. As in Ghana they are therefore dealing with disputes about the exercise of their own powers, or problems caused by inter-agency.overlaps and conflict. This is especially important in the urban areas.

- *Inclusiveness and accessibility*: the role of the Prefects is closely connected to their political role , and to the expectation in Cote d'Ivoire that political connection is the most important most factor in dispute settlement. Thus migrant communities in the south west had the most trust in the Prefects until after 2000, whilst in Boauké trust diminished during the 1990s due to political liberalisation and the revived role of the chieftaincy.

14. Non-state mediation and arbitration at the local level: customary courts and informal dispute settlement institutions in Ghana

- *Kinds of land disputes at local level*: the survey showed that 22.6% of respondents had experienced a dispute over land (defined as a 'justiciable event'). The breakdown of the disputes shows a striking contrast with the kinds of cases brought to the state courts. The commonest causes of dispute (47.7%) were trespass or some kind of difference with a neighbouring farmer.

- *What DSIs were used and why?* : amongst the wide range of DSIs used, it is noteworthy is that only just over a quarter overall (26%) had used a 'traditional' court (chief, chief and elders, or land priest -tendana)-- although chiefs courts were much more popular in Kumasi. The next most- used types of DSI were a family gathering (21%) and an informal arbitration' (16.6%) -- that is, the parties sought the help of 'informed' or respected persons which could be an elder, their landlord, or the local elected Unit Committee.

- *Legitimacy of different forms of DSI*: at the local level, village chiefs and family heads were the most trusted people from a general perspective. But , court judges and the elected local government Unit Committee Chairpersons came a close third and fourth,showing that chiefs are by no means the only or even dominant sources of dispute resolution Moreover, people made a clear distinction between village chief and Paramount chief --the latter were ranked well below judges, and in Asunafo, court judge was actually top of the list, Reasons for the lack of trust in the 'big chiefs' include their greater formality and remoteness, and issues around their management of land and the profit to be made from it, particularly in the peri-urban areas. In Asunafo, the politics of the chiefs' relations with Kumasi, and issues to do with migrant land rights also mattered . Chiefs may be regarded as having too much interest in land issues to be trusted as impartial judges. Rising land values in Wa led to conflicts in which the authority of both customary leaders and the state was defied.

- *Inclusiveness issues:* for those who had actually had a dispute, the choice of a DSI, as between a chief's court, a family gathering or arbitration by respected persons was not significantly affected by either sex or educational level, suggesting that at the very local level each mode was equally accessible. But there were very significant differences between local people and migrants or strangers (people from outside the locality). Non- locals were only half as likely to have used a traditional or chiefs court, and were much more likely to have used arbitration by respected persons or to have to sorted out the issue with the other party. As most migrants were in the Asunafo area, this explains the small numbers using a chief's court in Asunafo, and highlights the problems of trust and impartiality surrounding the chiefs both in peri-urban areas and migrant farming areas.

15. Non-state mediation and arbitration at the local level: customary courts and informal dispute settlement institutions in Cote d'Ivoire

Kinds of disputes: in Tabou, migrations, the cocoa boom and subsequent crisis, and commercialisation of land have all generated severe conflcits. The most common are: within families usually between younger generations and family heads over land disposals, between Ivorian migrants and foreigners over land which host communities still claim, and between host communities and migrants of all sorts over the conditions on which land was granted or the host landholders' attempts to renegotiate or deny earlier arrangments. In Katiola, disputes concern mainly the cattle herders, state land appropriations for projects and migrations from the Senoufo area. In Bouaké, the main disputes have arisen over compensation for land which has been taken over for urban development, and the process of allocation of urban plots.

*Kinds of DSIs***:** in the Cote d'Ivoire case-study areas, traditional authorities are very local and based on village councils and elders; the 'land priest' or land chief plays an important role.

Social sanctions and ritual/magical procedures are important. Only in Bouaké have more formalised forms of chiefly authority emerged over the management of urban lands.

Legitimacy of different DSIs: chiefs and village councils have been suffering from fragmentation and loss of authority and respect, both from within their own communities , and from the migrant populations. The younger generations in particular have less trust in their elders and the migrants regard them as too much a part of the 'problem' of their relations with host communities to be a viable 'solution' for dispute resolution.

Inclusiveness: social sanctions make local and customary DSIs almost an inevitable 'first choice' of disputants, and the Sub-Prefects frequently refer cases back to the village councils or chiefs. This means that they are accessible in terms of local use and understanding; but very likely to be appealed against by dissatisfied parties. When migrants and locals argue over land, they try to resolve the economic issues amongst themselves privately, first , and then migrants are likely to appeal to the Sub-Prefect.

16. Conclusions and policy implications: legitimacy, effectiveness and inclusiveness of land-dispute settlement institutions in Ghana and Cote d'Ivoire

16.1 Policy implications for Ghana state courts:

- ***Alternatives to the state courts and the remedies they offer are difficult to find***: the demand for authoritative remedies, fairness and enforceability is such that solutions based on 'easing pressure' on the courts through greater use of ADRs or customary institutions are unlikely to be successful if they fail to offer equivalent authority. The LAP programme as it rolls out is likely to increase these demands as greater emphasis is put on establishing legal titles and recording the great variety of customary titles. This suggests that it would be most unwise to try to enforce a 'no appeal' rule on customary and other forms of arbitration and ADR.

- ***The Magistrates Courts are the key 'front line' institutions*** at local and rural levels. They have the most potential to offer flexible, rapid and accessible justice; yet their current resource position is totally inadequate. Funding of appointments and other support would offer immediate returns . A new Land Division of the High Court is highly desirable but may not make much impact on the mass of new cases emerging.

- ***There is potential for state-supported and enforced ADRs***. Court attached ADR will require enormous changes of attitude and aptitude amongst the legal profession. More promising is the system already developed by the CHRAJ. At the community level, experiments with 'dispute resolving NGOs have reportedly achieved some success, and local government bodies such as the Unit Committees, or District Advisory Committees on land, could be developed more systematically although there are considerable political dangers. But the limitations of ADR have to be recognised; in situations where there a big market pressures (a lot of money at stake) or where there are large inequalities of power, they cannot necessarily protect the rights of vulnerable people. Ultimately, the state courts cannot be bypassed; they serve a very real need (and right) for authoritative justice.

- ***Reform of the court management and procedures is essential****:* the courts themselves must be reformed and given more capacity to deal with at least some of this strong

positive demand, rather than by-passed. A lot of improvement can be made by simple administrative case management reforms. Informal changes in the role of judges towards a more investigatory and active stance, which are currently officially frowned upon in the 'adversarial' English model, could be encouraged and legitimised.

16.2 Policy implications for the Cote d'Ivoire court system:

- ***Courts as an alternative to political conflict:*** given the level of political and communal conflict in Cote d'Ivoire, and the dominance of political-administrative dispute resolution mechanisms, the formal courts have the potential, if properly constituted and managed to 'depoliticise' and legalise the resolution of land .The commitment of the courts to rules and formal procedure could satisfy demands for impartial justice, provided enforcement was effective.

- ***The capacity and flexibility of the courts would require considerable change*** if they were to become more widely used. Written procedures have benefits in terms of objectivity and fairness in consideration of the evidence, but they could not cope with much extra demand, and flexibility is low. The codes in application are themselves very formal with little room for equity considerations.

- ***ADRS will be difficult to develop*** but could be considered. Judicial ADRs are virtually unknown in Cote d'Ivoire, and recent experiments in local state supported ADRS have given way to administrative dominance. For this reason, court-annexed ADR might be a way of avoiding such dominance, although as noted the judicial service clearly lacks the capacity and the knowledge to go very far with such reforms at the present. The 1998 Rural Land Law Village and Sub-Prefecture level Committees are the most elaborated and well thought out form of ADR already on the statute books, and should be implemented as far as possible. Their success, however, will depend upon a resolution of current political conflicts.

16.3 Policy implications for mediation and arbitration by state agencies

- ***The dangers of abuse of power:*** both in Ghana and Cote d'Ivoire the routine exercise of discretion and informal problem solving by officials is both inevitable and to some extent desirable, and it is unrealistic to think that it can be prevented. It provides rapid and flexible solutions to problems that might otherwise end up in court, or lead to social conflict. But some doubt should be raised about encouraging officials to expand these discretionary activities. Questions of impartiality and conflict of interest could arise where individual officers are acting informally within legally constituted state agencies which have responsibility for granting legal status to land transactions. Corruption is a real danger, especially if they are acting as judges in their own causes. And illiterate or vulnerable people could easily be abused by unscrupulous officials.

- ***Regularisation of informal official activities***: in Ghana, proposals for an official Dispute Resolution Advisory Committee as part of the rationalisation of the land agencies should be encouraged.

- ***Reforming Prefectoral administrative power in Cote d'Ivoire***: the role of the Prefects in Cote d'Ivoire is so entrenched in the political system and so dominant in dispute resolution amongst other agencies that it is completely impracticable to suggest that it

be abolished or even seriously modified. The main possibility for reform would seem to lie in the fact that in practical terms, Prefects cannot actually handle all the matters which come before them and so they routinely refer them (in the rural areas at least) to the Ministry of Agriculture or to the customary authorities. Thus boosting the capacity of the courts together with popular willingness to use them, and recognising the role of the customary authorities more fully, as embodied in the 1998 Rural Land Committees, could provide some kind of alternative to administrative power. The actions of authorities such as the Ministry of Housing and Urban Affairs are in theory at least subject to judicial review anyway in the civil law system, so this has to be encouraged.

16.4 Mediation and arbitration by customary and informal DSIs at local level

- ***Customary institutions and ADRS in Ghana,*** although village chiefs and other informal DSIs are well respected they are probably best left to encouragement through NGO and civil society action. Any association with state forces may cost them legitimacy. The courts of the higher chiefs do not really resemble ADR, and there is also the problem of their 'interest' in the land. One way to improve the form of justice offered and to enhance the accountability of the chiefs is to give more formal recognition to the dispute resolution tribunals which chiefs will be given with the new Customary Land Secretariats proposed in the LAP. They could then be subjected to the normal rules of public accountability and legal procedure. At the same time, fuller training in both customary law and in ADR procedures could be offered, to create a very local popular court system as has been done in many other African countries

- ***Other local DSIs***: there is good potential for encouraging dispute resolution by local opinion leaders through NGO-based training initiatives. Many such leaders have a role on the local government Unit Committees but caution should be exercised about making them a formal institutional base for a DSI. Their political connections could lead to damaging politicisations as has happened in Kenya and Uganda.

- ***Strengthening customary institutions in Cote d'Ivoire:*** the village level councils in Tabou and Katiola are much less hierarchical and formal than those in Ghana (resembling more the traditional institutions of the Nadowli area) and would lend themselves more easily to an ADR type approach. But within the well entrenched political and administrative sytem of Cote d'Ivoire (highly centralised around Presidental patronage systems), they lack authority and credibility. Indeed in many ways they cannot stand over and above or separate from their communities. The restoration of good relations between host and migrant communities is now, as a result of the civil war, something which will require many years of political action for reconciliation. Their strength in places such as Boauké and Katiola still lies in their ability to represent and act on behalf of a local public which is not totally fragmented and divided. It may be suggested that in rebuilding itself, the Ivorian state needs to give the traditional authorities some real resources and autonomy, such as would be provided by an implementation of the 1998 Rural Land Law, The Ministry of Agriculture will have to play a big role in helping the customary authorities with legal and technical support, and help to resolve the inevitable conflicts with some attention to equity.

17. Overall, the research shows that forms of dispute resolution which provide fair and accessible justice to both the rural and urban poor DO require state support for an effective yet flexible and user-friendly court system. State courts serve a real need for authoritative remedies and should be enhanced and supported In the development of a state committed to the ‘rule of law, they also offer the potential for a balance or alternative to administrative and political power. Informal dispute resolution for agreed mediation at the very local level is best left alone, but some customary or chiefly based systems are too formal and embedded in local power structures to offer genuinely voluntary ADR- type mediation and should be regulated by the state system