

**UNIVERSITY OF EDUCATION, WINNEBA**

**LAND CONFLICTS AND HUMAN RIGHTS ABUSES IN GHANA:  
A STUDY OF NYANYANO AND KOKROBITEY FROM 1979**

**LAWSON QUARCOO ACQUAFFO OTCHIE**



**2015**

UNIVERSITY OF EDUCATION, WINNEBA

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LAWSON QUARCOO ACQUAFFO OTCHIE

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A THESIS IN THE DEPARTMENT OF SOCIAL STUDIES EDUCATION, FACULTY  
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PHILOSOPHY (HUMAN RIGHTS) DEGREE.

JULY, 2015

## DECLARATION

### Student's Declaration

I, Lawson Quarcoo Acquaffo Otchie, declare that except where explicit references are made to the contributions of others, that this thesis is entirely my own original work and has not been submitted for any other degree at the University of Education, Winneba and any other institution either.

Signature: .....

Date: .....

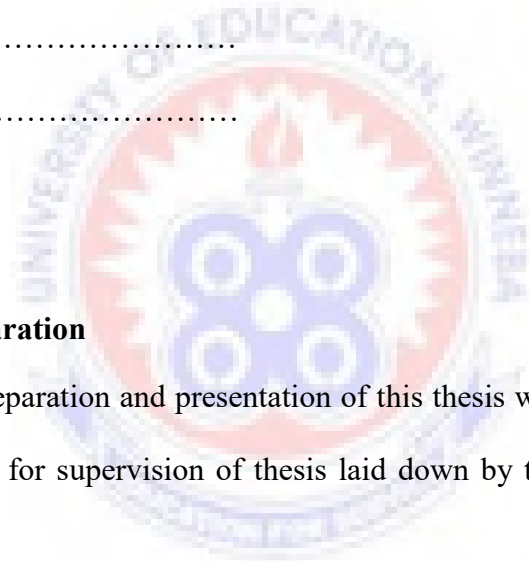
### Supervisor's Declaration

I certify that the preparation and presentation of this thesis was supervised in accordance with the guidelines for supervision of thesis laid down by the University of Education, Winneba.

Name of Supervisor: Professor R. H. K. Darkwah

Signature of Supervisor: .....

Date: .....



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## **DEDICATION**

To all victims of land conflicts and human rights activists



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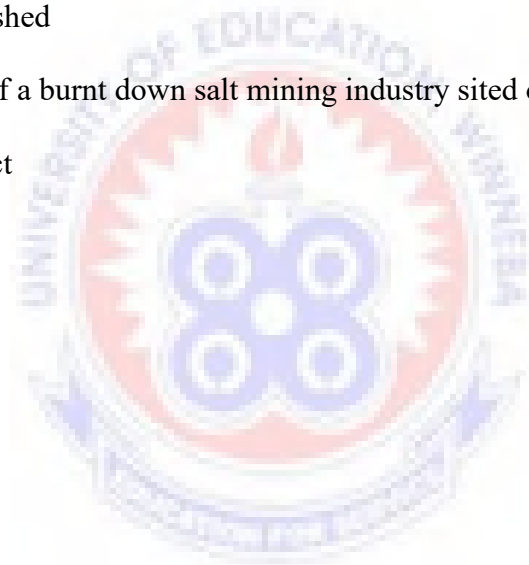
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## LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHRA	Commission on Human Rights and Administrative Justice
CRC	Convention on the Rights of the Child
ECHR	European Convention of Human Rights
GED	Gomoa East District
GSM	Ga-South Municipality
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MMDAs	Metropolitan/Municipal/District Assemblies
NCCE	National Commission for Civic Education
NGOs	Non-Governmental Organisations
UDHR	Universal Declaration of Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation

## ABSTRACT

This study which is purely qualitative examined the extent to which the Nyanyano and Kokrobitey land conflict has undermined human rights of the people of the two communities. Sixteen (16) study participants were sampled via purposive and snowball sampling techniques for the study. Face-to-face interview, personal observation and documentary review were used to gather data. Data collected was analyzed using thematic and content analysis as well as narratives (verbatim quotes). This study revealed that there is unresolved land conflict between these two towns, which is due to the refusal or unwillingness of one party to adhere to the findings of Stool Lands Boundaries Settlement Commission of 1984. The conflict is said to be historical, intractable and cyclical, violent and volatile in nature. This defiance has led to further encroachment and subsequent clashes between the ethnic groups. In recent times, actions of successive governments to create administrative political boundaries and failure and lackadaisical approach of state and law enforcement agencies has rekindled the conflict. The violated, had suffered arbitrary arrests, unlawful detentions in police cells; loss of life and properties; assaults and brutalities; torture and displacements, and deprivation of right to education. These acts constituted the abuse and violation of their human rights. The communities and government institutions have adopted a relaxed approach to manage and resolve the conflict, and to protect loss of life and property. It was recommended that the Metropolitan/Municipal/District Assemblies (MMDAs) in the conflict areas should liaise with the communities, Ghana Police Service, and other state institutions to educate or sensitize the feuding communities on the need to manage and resolve the conflict; and to adopt the campaign on zero tolerance for land conflict.

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.0 Background to the Study**

Broadly speaking, research on human rights violations consists of finding and assessing information related to human rights violations, recording and processing them for report, and identifying possible strategies and actions to address them, (Adebowale, Cillmard, Dieve & Chimhini, 2000). This quotation is the big idea around which the study revolved.

Land conflicts have been a major social challenge that has bedeviled the world. They are highly pronounced in developing countries, especially in Africa where nationhood in most parts was built out of amalgamation of different ethnic groups including the ones that have been historically antagonistic. Following the amalgamation of those ethnic groups to constitute nationhood, one major challenge that has been a major setback to the development of most African societies is land conflict.

Conflicts over land occurring within a nation state do not merely affect individuals or groups of people, but can be an important threat to a country's stability, especially in developing countries. In many of these countries, opportunities for economic gain through illegal or non-regulated transactions involving land are manifold, resulting in an increasing number of people losing their land to arbitrary and often illegal economic transactions. Land tenure security and access to land are essential preconditions in reducing rural poverty and ensuring the realization of fundamental human rights. As a result the importance of securing land rights, ensuring the full implementation of existing land laws and the

empowerment of local communities to claim the rights to which they are entitled cannot be stressed enough. Possible mechanisms include training of law enforcers, building legal literacy at community level or assisting communities to pursue their land rights through the judicial system should be encouraged (Wehrman, 2008).

One challenge that has characterized post-colonial Ghana is the issue of land conflicts. A typical example is the one between the people of Nyanyano and Kokrobitey in the Gomoa East District (GED) and Ga-South Municipality (GSM) of Ghana respectively. As a result of the prevalence of land conflicts, there is a profusion of literature on land conflicts in Africa in general and Ghana in particular. However, what seems not to have received sufficient attention of most scholars, especially, in Ghana is the extent to which land conflicts lead to abuse of human rights.

The people of Nyanyano and Kokrobitey have engaged each other in a land conflict that has often witnessed violent clashes for over thirty-five years. What this study seeks to achieve is to interrogate the extent of human rights abuses that are associated with the land conflict of the area under study. The forms of human rights abuses that constituted the basis of the research include attacks on children, women, men, and the aged; displacements; destruction of farm lands, and other properties.

### **1.1 Statement of the Research Problem**

Even though Ghana is a signatory and has also rectified most of the international and regional human rights instruments in addition to its own domestic formulated ones, there are widespread human rights abuses in this West African country. One area where these abuses are pronounced is intra-ethnic and inter-ethnic land related conflicts.

Wehrman (2008) posited that the most violent conflicts over land are those that involve two groups - often two different ethnic groups - fighting over their property. Barth (1969), Brass (1996), Cornell & Hartman (1998), Coser (1956), and Tonah (2007) expressed similar sentiments.

It is an axiom that conflicts over lands have been a regular feature in the annals of the country, Ghana since post-colonial epoch. However, the high degree of human rights abuses that characterize land conflicts in contemporary times is unprecedented.

For over thirty-five years, the two towns have locked themselves in an acute land conflict and that has generated strong sentiments of animosity, anger, and deep-seated hatred between them, especially those living at Langma/Dampase, which is a fishing community located on part of the land that the focal point of the conflict. The land lying between Bakaba stream and Okrudu River has been the bone of contention. Litigation over its rightful ownership began in the year 1979 in the High Court of Accra, Ghana. The case was adjourned sine die after it had experienced initial hearings and was subsequently referred to the Stool Lands Boundaries Settlement Commission in Accra by the Court's order dated 21st March, 1979. The Commission headed by Honourable Justice F. T. C. Amorin was then sitting on similar land related enquiries. The Commission as an enquiry one as such gave the platform to the representatives of the two communities to present their cases. Its appointed surveyor inserted on the plan used for the determination of the boundaries in the original Enquiries by the survey instructions and on behalf Nyanyano and Kokrobitey Stools. Judgment on the enquiry was presented on Wednesday, 5th December, 1984 and subsequently published in Lands and Concessions Bulletin on 25th October, 1985. However, the all-important peace that

the enquiry sought the two communities to experience relative the conflict, short-lived with the advent of estate developers and the socio-economic value of land in that part of the country. From the year 1994, some individuals and group of individuals started selling substantial portion of the land to some prospective land-developers as though they had the right to do so, and any time effort is made to check those individuals from selling the land, conflict which is sometimes violent in nature is very often witnessed.

It is therefore, imperative for aspect of land conflict, which is human rights abuses that have not been much researched into so as to find out the extent to which this bleak of conflict has resulted in undermining of human rights and breaks up societies and especially the two communities that are under study.

### **1.2 Purpose of the Study**

The purpose of this study was to examine the extent to which the Nyanyano and Kokrobitey land conflict has undermined human rights.

### **1.3 Objectives of the Study**

The specific objectives that guided the study were to:

1. Explore the historical background of the Nyanyano and Kokrobitey land conflict.
2. Identify the human rights abuses that are involved in the conflict.
3. Find out how the abuses involved in the conflict are carried out.
4. Assess the responses of state institutions with the responsibility to check the conflict.



#### **1.4 Research Questions**

To achieve the above objectives, the following major research questions were posed:

1. How did the land conflict between Nyanyano and Kokrobitey come about?
2. What human rights abuses are involved in the conflict?
3. In what ways are the abuses involved in the conflict carried out?
4. What have been the responses of state institutions with the responsibilities to ensure peace in the Nyanyano and Kokrobitey land conflict?

#### **1.5 Significance of the Study**

The significance of the study is that it would provide human rights policy formulators and implementers with reliable data on some forms of human rights abuses that the residents of the study area experience during the pervasive land conflict and the need to check the ills of the conflict in the study area in particular and Ghana in general.

The research findings would also educate and inform the general public on the human rights abuses that are involved in the land conflict.

Also, it would promote the academic status of the researcher and enhance the research quantum of the institution for which the study was carried out.

#### **1.6 Delimitations of the Study**

The scope of this study covers the historical overview of the land conflict between the two communities under study since 1979; the human rights abuses that are involved in the land conflict and the forms the abuses take; the conditions under which the abuses of

rights occur; and critically examine what institutional failures are responsible for the persistence of the conflict.

Besides, the study was not designed to interrogate the relationship between land conflicts and human rights abuses in the entire country, Ghana. A study area of Nyanyano-Kokrobitey was purposively selected not necessarily because of time, space and financial constraints. A choice of study area rather than covering a whole country is a requirement of thesis at the Master of Philosophy level, which was a delimitation of the research.

Furthermore, the study was not on the phenomenon of inter-state or international land conflict and did not seek to present details on all aspects of human rights either. Rather, its focal point was on only the specific human rights that were abused relative to the land conflict between the two communities.

Also, the research was an academic exercise rather than a legal enterprise that would have revealed the identity of the abusers of the rights of the individuals or group of individuals and recommend their subsequent prosecutions. Therefore, the identity by names of the violators and violated were not disclosed in course of the analysis of data.

Finally, the findings of the study did not constitute a duplication of the existing Justice F. T. C. Amarin Commission enquiry and its subsequent judgment of 1984 in the matter of the boundary dispute between the two towns. It is not the second of its kind either, which would pronounce or determine the rightful owner of the land that is at the heart of the conflict, which the two communities have locked themselves in for over thirty-five years. The purpose of the study was stated in an unequivocal term in the preliminary phase of the thesis.

### **1.7 Limitations of the Study**

Finally, unlike the land conflicts between Peki-Tsito, Nkonya-Alavanyo in the Volta Region and Konkomba-Bimoba in the Northern Region, and several others in the country, the Nyanyano-Kokrobitey land conflict and its inherent human rights abuses has not caught much attention of most journalists and other scholars, and therefore, there were just scanty print media and electronic literature for review for the study.

The study is limited to views, opinions and perceptions of the research participants. The implication is that vital information for the study may be withheld or misrepresented by respondents due to the sensitive nature of the topic under study.

Furthermore, some opinions may be misleading due to lack of conceptualization on the parts of research participants on the issues of land conflict and human rights abuses.

In spite of the scanty print media and electronic literature for review for the study and small size of the respondents, the on the spot sampling techniques, purposive and snow balling and painstaking selection of respondents to represent their experiences on the human rights abuses that are involved in the land conflict would suffice the study findings that can be used as pointers for future research and also give hints for possible direction for human rights protections policy direction relative to the land conflict of the study area.

### **1.8 Organisation of the Thesis**

The study is reported in five main chapters. Chapter One is devoted to the introductory part of the study. This includes the background information of the research work, problem statement, objectives, and significance of the study among others.

The second chapter discusses the review of the related literature. It is concerned with searching the relevant and related literature on land conflict and human rights abuses of

the study area. The conceptual framework is also taken care of in this chapter. The research methodology and other issues related to data collection methods and data analyses procedures are discussed in Chapter Three. Chapter Three also looks at the population, sample as well as the sampling techniques. Also included is the analysis of the data collected from the field and the secondary sources as well. Then the findings and the discussion of the findings are in Chapter Four. Chapter Five contains the summary, recommendations and conclusions of the findings of the study.



## CHAPTER TWO

### REVIEW OF RELATED LITERATURE

#### 2.0 Introduction

The study of human rights and their protection are very crucial to every society.

Creating awareness of Human Rights is inevitably, a universal need which has also attracted the attention and concern of individuals, organisations, governments and international bodies. Broadly speaking, research on human rights violations consists of finding and assessing information related to human rights violations, recording and processing them for report, and identifying possible strategies and actions to address them, (Adebowale, Cillmard, Dieve & Chimhini, 2000). It is, therefore, in the light of the indispensable nature of the knowledge about human rights in the life of every society that we find a plethora of literature on the topic. Moreover, a study of this kind cannot be carried out effectively and appropriately unless what some authorities have written or said about the subject are examined. Theories and principles of international standards underlying the study of rights should be examined and understood in order to make conclusions on the correlation between land conflict and human rights.

It was therefore, necessary to cite works of authorities on issues that are related to land conflicts and also human rights, which include: Conceptual Framework; The Concept of Conflict; Defining Land Conflict; Understanding Land Conflict; Types of land conflicts; Causes of Land Conflicts; The Deeper Causes of Land Conflicts; Shortcomings of the Land Market and its Institutions; Land Conflicts in Sub-Saharan Africa; Land Conflicts

in Ghana; Nyanyano -Kokrobitey Land Conflict; Negative Impacts of Land Conflicts; Land Conflicts and Human Rights;

Many sociologists, historians, psychologists, and anthropologists have put out volumes of useful academic materials in the public domain on land conflicts from the global front and a few on Ghana. However, the extents to which land conflicts undermine human rights are not highly pronounced in the materials of those scholars. The missing links of human rights abuses in land conflicts in their works may perhaps be attributed to the set research purpose, objectives and methodology they had employed. This study is human rights orientation centered one, which investigated the degree to which the land conflict between the two communities has been leading to the undermining of human rights of the people.

Also, the several international, regional, and domestic documents on the promotion and protection of human rights are all silent on the negative impacts of land conflicts, which are human rights abuses that are not uncommonly associated with them. In spite of the wide gap in these human rights documents relative to the relationship between land conflicts and human rights, a very few of the Articles of some of them inter alia, sufficed the areas of human rights abuses that had constituted the basis of discussion and analysis of gathered data, which included: attacks on children, women, men, and the aged; displacements; destruction of farm lands, and other properties.

Wehrman, (2008) asserted that:

People - especially those in a position to improve the situation - often ignore land conflicts until they cannot be overlooked any longer, as tension and violence rise to a level which threatens major parts of society. Many land conflicts linger for years in a state of pre-conflict or early conflict

characterized by tense instability and repeated confrontation which each time raise the average level of tension. Intervention should start here, avoiding the crisis that may come and finding a realistic solution for all parties. Of course, this is only possible so long as no party has totally lost face or been entirely destroyed by the other. This, however, requires that the latent land conflict first has to be uncovered and intentionally named. While everybody may talk about it in private, the issue might not be publicly addressed or, if it is, it may be ignored by those responsible for it. In all cases, two approaches are necessary: first, proper documentation of as many land conflicts (cases) as possible and second, widespread dissemination of information on them. NGOs as well as land administration can play a major role in this process. Documentation can be compiled in different ways: National Human Rights Commissions often have detailed accounts of violent land conflicts such as evictions. NGOs sometimes gather information and publish lists of all land conflicts (cases) within a country or a given area, identifying the conflict issue, its parties and the attempts and failures to solve it. Land administrations can create GIS-related databases, not only describing the type of conflict but also indicating the location and size of the property/properties involved. Documenting land conflicts will only have an effect if the findings are then spread widely through society. In the case of state capture, or evictions and other unjustified land conflicts initiated by the state or its public officials, those responsible need to be identified in the documentation.

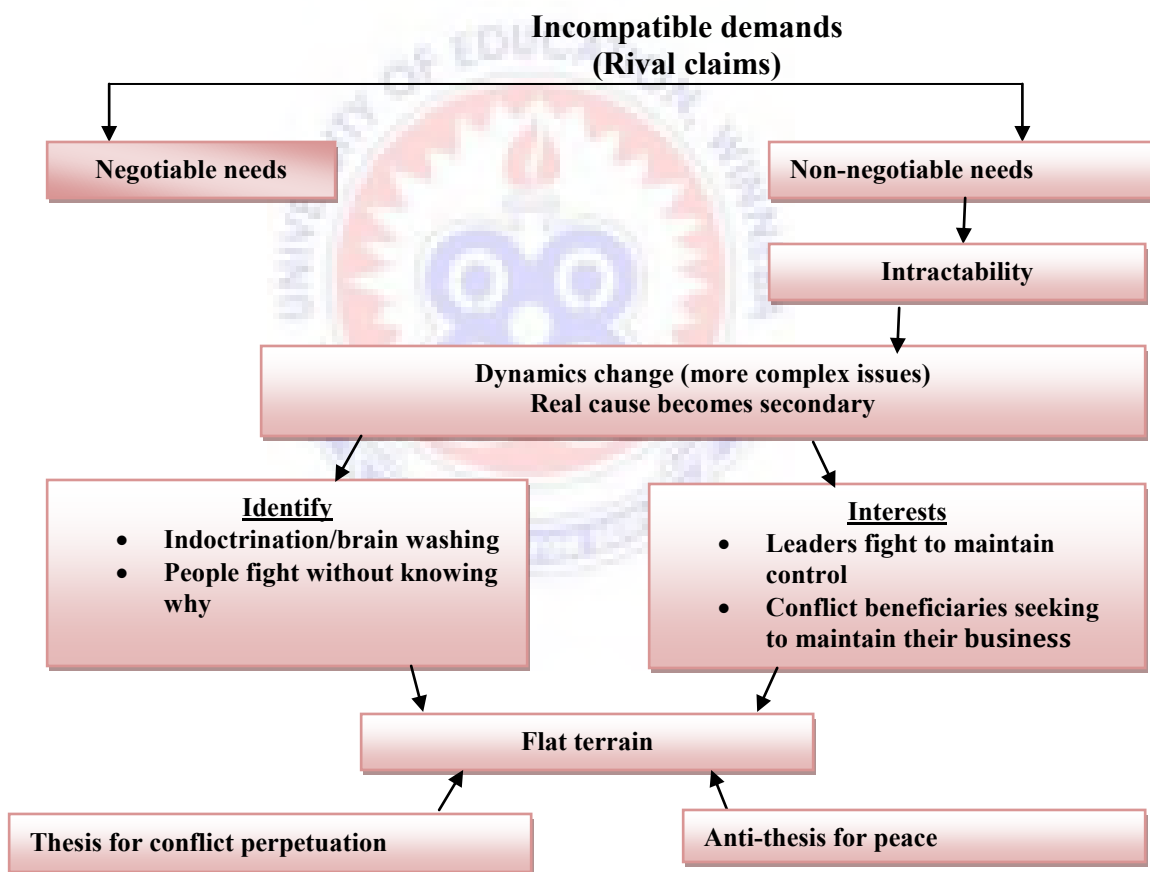
## **2.1 Conceptual Framework**

A land conflict as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land. In this research the focus is on land conflict (Wehrman, 2005).

Land conflict in this research is conceived as a situation where two or more parties have interests and aspirations for the consolidation of their claims of rightful ownership over a land. The definition and my conceptual interpretation of conflict are presented diagrammatically as shown below.

### Conceptual Framework for Conflict

Fig. 2.1: Concept of Conflict



Source: Researcher's conception



## **2.2 The Concept of Conflict**

Pruitt and Rubin (1986) had averred that:

The word conflict is often used in common speech as a synonym for warfare or aggression, but there is an important distinction to be made between conflict and aggression. Conflict involves a divergent interest or at least the belief that interest or aspirations of two or more parties cannot be achieved simultaneously and aggression involves intent to harm.

Conflict is an inevitable aspect of human interaction, an unavoidable concomitant of choices and decisions. Conflict can be prevented on some occasions and managed on others, but resolved only if the term is taken to mean the satisfaction of apparent demands rather than the total eradication of underlying sentiments, memories, and interests. Only time really resolves conflicts, and even the wounds it heals leave their scars for future reference. But short of such ultimate healing, much can be done to reduce conflict and thereby release needed energies for more productive tasks (Zartman, 1991).

## **2.3 Defining Land Conflict**

Wehrman, (2005) stated that:

A land conflict can be defined as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land. Land conflicts defined as such can be aggravated if the social positions of the parties involved differ greatly.

## 2.4 Understanding Land Conflict

Wehrman (2008) indicated that:

In order to successfully resolve land conflicts, it is important to be aware of the many different types of land conflicts that exist. One difference is found in the identity of the actors involved, some of them being legitimated to act in the way they do, others not. Other differences are found in aspects of the land itself, whether the conflicts occur on state, private or commonly owned land. Still other differences result from the complexity of causes of the conflict, as well as how these influence and intensify one another. The dimension of a land conflict varies significantly which makes a major difference for its resolution. Understanding the specific nature of the land conflict under consideration is a vital step in its eventual resolution.

## 2.5 Types of Land Conflicts

Disputes over land fall into four general categories. Within these categories, conflicts may be separated into 35 different types and over 70 sub-types. This system of classification builds upon the kind of land involved (state, private or common property), the specific object of the conflict as well as the legitimacy of actions and the level of violence used by the parties (Wehrman, 2008).

In the words of Wehrman (2008), inheritance and boundary conflicts are probably the most common land conflicts. Details of the seventy-nine different types of land conflicts and their fifty sub-types are presented at *Appendix C* of this thesis.

Land conflicts occur in urban, semi-urban and rural areas alike. Other types of conflicts are more specific and predominantly occur in urban, semi-urban or rural areas (Wehrman, 2008).

**Table 1: Typical land conflict in urban and semi-urban areas**

Urban areas	Semi-urban areas	Rural areas
<ul style="list-style-type: none"> <li>• Informal land acquisition by squatters or pavement dwellers</li> <li>• Evictions</li> <li>• Land use conflicts: not respecting building regulations</li> <li>• Illegal subdivisions resulting in densification and slums</li> <li>• Illegal sale or lease of state land in prime locations</li> <li>• Illegitimate expropriation by banks of the property of the poor</li> </ul>	<ul style="list-style-type: none"> <li>• Informal land acquisition by squatters, often through organised group squatting</li> <li>• Multiple sales of land</li> <li>• Illegal sale of state land by public officials</li> <li>• Expropriation without compensation by the state of land which is perceived to be customary land by the settlers (Africa)</li> <li>• Land use conflicts: not respecting building regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Illegal lease of state land for logging, mining, agro-industry</li> <li>• Land use conflicts among farmers and pastoralists</li> <li>• Land use conflicts between conservation and private or commercial use of natural resources (forests, lakes etc.)</li> <li>• Land grabbing: public officials taking state land (for themselves or friends)</li> <li>• Land robbery: guerrillas and other violent groups taking private land</li> <li>• Land clashes between different ethnic groups</li> </ul>

Source: Wehrman (2008)

## 2.6 Causes of Land Conflicts

In most developing countries and transitional economies, many constitutive and regulatory institutions have significant functional deficits. Land rights are most often characterized by fragmented or overlapping legislation or legal pluralism. This results in unclear property rights and consequently conflicts over land ownership. Land administration authorities dealing with land registration, land information systems, land use planning and land development often lack trained staff, technical infrastructure and financial resources.

Furthermore, administrative services tend to be both over-centralised and underdeveloped, with responsibilities often not clearly assigned or overlapping one another, thus impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is gathered by a variety of non-cooperating institutions, making it difficult or even impossible land market make a substantial contribution to preventing land conflicts. Given their low salaries and an openness of the people working within these institutions to “motivation payments” they instead contribute to land conflicts. Legal security is furthermore limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged. For all institutions, the lack of implementation is the crucial point. Unclear or non-existent implementation guidelines and contradictory legislations worsen the situation. Political will is also irregular and unclear. Generally, it can be concluded that imperfect constitutive land market institutions promote land ownership conflicts, while poor regulatory institutions are responsible for land ownership as well as land use conflicts (Wehrman, 2008).

## **2.7 The Deeper Causes of Land Conflicts**

Wehrman, (2008: 21) posited that experience shows that more is needed to avoid severe land conflicts than surveying, demarcation and land registration. The question therefore arises as to the deeper roots of land conflicts and how we can respond to them.

Wehrman, (2008: 21) further indicated that:

- Dysfunctional institutions only act as catalysts for land conflicts - selfish individual interests being the deeper causes. Profit maximisation by a multitude of actors is the driving force, manifested either by unjustly grabbing land or by excluding disadvantaged sections of the population from legally using land. Theoretically, these actors include

all social gatekeepers. These are people who, because of their job, position and faction can manipulate the land market to their advantage. However, the decisive factor for these irregularities is the “normality of misbehaviour”. Social and religious values are of little relevance to everyday life; self-interest is paramount to public interest. This underlines the importance of ethical values and rule-of-law principles in preventing land conflicts. If individual profit maximization - in the case of widespread absence of functioning institutions - is the underlying reason for land ownership conflicts, then a capitalistic land market associated with increasing land prices can be seen as a facilitator (for as long as land has no monetary value, land ownership conflicts occur comparably seldom).

- Psychological fears and desires resulting in emotional and material needs are at the root of land conflicts. As with any egoistic behaviour, taking advantage of functional deficits for the sake of reckless individual profit maximisation is based on emotional and material needs, which again are a consequence of psychological fears and desires. Therefore, psychological phenomena form the basis of land conflicts. A typical psychological fear is the fear for one's existence. This fear can result in extreme emotional and material needs such as the need for shelter, the longing for survival and self-esteem. Land conflict resolution should therefore look at the psychological fears and desires of those breaking the law or profiting from loopholes - especially in those situations where illegal behaviour is the rule rather than the exception. This is the case in many post-conflict countries where psychological fears and desires and the emotional and material needs these provoke - in addition to those needs directly created by the conflict itself (for example loss of property due to forced displacement) - are common phenomena influencing the entire society and its overall development.

## **2.8 Shortcomings of the Land Market and its Institutions**

Wehrman, (2008) stated that economically efficient land markets can cause land conflicts. Not even a perfect, economically efficient land market can prevent land conflicts as land market forces alone do not lead to socially and ecologically optimal land use patterns. This is because they tend to disregard the negative effects of environmental degradation (conversion of forests and agricultural land into construction land) and the impact on the poor of being pushed out of the land market by so-called market evictions. Therefore, in addition to secured property rights, additional requirements for an ecologically and socially sustainable land market are required, including:

- Land management (land use planning, land use regulations, land consolidation, land readjustment and land banking), and
- Ethical principles.

Usually the institutions regulating the land market do not work properly, but even when they do, land conflicts still regularly occur.

Also, institutions of the land market do not work properly. Two main types of institutions can be distinguished: constitutive and regulatory institutions. Constitutive institutions are needed to enable an economically efficient land market to work, and include such fundamental elements as land rights, land registration and the rule of law. Regulatory institutions, on the other hand, provide the ingredients necessary to make the land market socially sustainable and environmentally sound such as land management

and ethical principles. Supportive and complementary institutions such as land valuation and financial mechanisms are no prerequisites for a sustainable land market, but facilitate land transfers and correspondingly can limit or even provoke land conflicts, as well.

**Table 2: Institutions of the land market and their role in conflicts**

Key institutions of the land market		Indispensable measures		
		Political Will	Rules and regulations	Implementation
<b>Constitutive institutions:</b> Provide legal security	Property rights to land	Potential Causes of Land Conflicts		
	Land registration and land information systems			
	Rule of law			
<b>Supportive institutions</b>	Land valuation			
<b>Regulatory institutions:</b> Provide for sustainable land use	Land management			
	Ethical principles			
<b>Complementary institutions</b>	Financial mechanisms (capital markets: credit, mortgage)			

Source: *Wehrman (2005)*

## 2.9 Land Conflicts in Sub-Saharan Africa

Berry, (2002) stated that:

While still a continent with much lower population densities than most others, Africa has moved from being a continent of land abundance in the first half of the twentieth century to one of increasing land scarcity and its end. Competition over land in Africa is not new but it has

become pervasive, is associated with deepening social differentiation among land-users, and has increasing salience in national and international affairs as well as in localized arenas. Conflict centered on land has increased in incidence and severity as land values rise, patterns of land acquisition become more commercialized, land becomes more concentrated, and disputes and litigation over competing rights proliferate.

Government programmes of decentralization that entail the demarcation of new or amended district (and other) boundaries have tended to create or resurrect rivalries among traditional authorities (Lentz, 2010), and to enable such authorities to capture the benefits of decentralized forms of management (Carney & Farrington, 1998; Ribot, 2000; Woodhouse, Bernstein & Hulme, 2000). These, along with state demarcation of forest and other reserves or conservation areas, have also created conditions for exaggerating ethnic, indigenous, or similar forms of identity that can be used for prioritizing some claims over land at the cost of others (Schroeder, 1999).

Today, studies across the continent document the widespread contestation around land within and between regional and ethnic groups, within and between descent groups or lineages, and between generations and genders as land has become more valuable, more difficult to attain and keep, and more subject to transfers by those able to exert the necessary authority (Amanor, 2001; Boone & Duku, 2012; Hill, 1963, Berry, 1993; Andre & Platteau, 1998; Blarel, 1994; Colin & Ayouz, 2006; Hecht, 1985). Current conclusions from research, then, are that: competition and conflict



over land and over the authority to control; use, allocate, and transfer lands are pervasive; they occur between groups differentiated on the bases of origin, region, and ethnicity; they divide kin-based groups (lineage, descent group) and resident groups (villages, wards); and they set generations and genders against each other.

## **2.10 Land Conflicts in Ghana**

Tsikata & Seini (2004) posited that:

The struggle over land and its control is another important aspect of ethnic conflicts and identity politics. There is general agreement in Ghana that the land tenure system and its administration are subject to serious problems that have exacerbated land tenure insecurity with negative implications for national development. These problems include general indiscipline in the under-developed and uncertain land markets, indeterminate boundaries of customarily-held lands, a weak land administration system, the problematic articulation of statutory and customary land tenure systems, and confusion over the status of derived interests and customary tenancies. All these problems are implicated in the land conflicts and tensions all over Ghana. These range from the now-regular demands of disaffected urban youth for a voice in decisions about land sales in Accra and a proportion of proceeds, to the chaos and violence in the urban land markets arising from multiple sales of the same piece of land. There are several longstanding inter-ethnic and intra-ethnic disputes among various communities across Ghana. In the Volta Region alone, four main conflict areas have been identified. They are the Nkonya-Alavanyo, Nkwanta, Peki-Tsito and Abutia Kpota conflicts. The first two are inter-ethnic while the last two are intra-ethnic. Three of the conflicts – the Nkonya-Alavanyo, Nkwanta and Peki-Tsito – are land conflicts. In the Northern Region, there are longstanding often violent inter-ethnic conflicts between the Gonja and the Konkomba (who are also implicated

in the Nkwanta area conflicts of the Volta Region) and between Dagombas and Konkomba. In the Brong-Ahafo Region, violent clashes between the Nafana and Ntore ethnic groups at Brohani near Wenchi over land and sovereignty resulted in three deaths and two thousand persons were rendered homeless. Attempts by the courts to address the conflict were frustrated when the bailiffs and police were attacked as they tried to enforce a judgment debt against the chief of the Ntore.

Several of such land conflicts are widespread in Ghana including the one under study. For example, a correspondent of a Ghanaian national newspaper, Daily Graphic (January 16, 2002) wrote that:

The chiefs and elders of Odupong Ofankor in the Central Region had made urgent appeal to the government and the Land Disputes and boundary Re-settlement Commission to come out with final determination of the land conflict case involving towns on the boundary between Central and Greater-Accra Regions. The respondent further indicated that in the opinion of the chief and his Elders further delay in releasing findings of enquiries into the dispute is undermining peace and escalating tension in the area.

Also, Tim Dزامboe a reporter of Daily Graphic (March 20, 2000), reported that:

Nana Kenenu Addo Chedere II, the Djonani of Challa and other chiefs of the Nkwanta District of the Volta Region have appealed to the Permanent Peace Negotiation Team (PPNT) charged with the responsibility of mediating land conflicts in the northern sector of the country to come out with its findings to facilitate true reconciliation amongst all the ethnic groups in the District.

Daily Graphic of May 29, 1992 with the banner headline: “Police reinforcement for Damango”, stated:

That the security personnel stationed in the East Gonja District of the Northern Region took inventory of houses and other properties destroyed in the fighting generated by the protracted land conflict between the Gonja and Konkomba. It was further reported that more than one hundred people were believed dead and over ten thousand people rendered homeless, six hundred ninety-seven refugees including children were registered at Tamale, final year students of the T. I. Ahmadiyya Senior High School had decided to forgo their West Africa Senior Secondary Certificate Examination to avert endangering their lives because of the tension created by conflict in the Damongo.

In less than a month another violent clash between the two ethnic groups was reported in the Daily Graphic (June 9, 1992) that:

The loss of lives that are associated with re-occurrences of the land related conflict in the East Gonja is great. It was said that in the previous year, the official death toll was less than twenty, properties such as homes, physical cash and valuable items that were burnt or looted were enormous and the people were never going to get over those loses in their life time. The conflict affected poor homeless people always burden their relatives, friends, and family members in nearby districts for number of months. Besides, the atmospheres for commercial activities are always inconvenient and the people live in fear and tension. Outlets for yams produced by the majority of farmers become a problem for the yam buyers who are mostly women from the southern parts of the country fear to come to trade in the district in face of constant conflict. Teachers, pupils, and students of Primary, Junior High Schools in the conflict affected area

fled to other towns. The West Africa Senior Secondary Certificate Examination candidates in schools in Salaga for that year were not able to sit for number of examination papers. Children of the internally displaced parents in other towns could not get admission for their wards due to the sudden influx which beyond the capacity of the existing structures in the schools. That made those children to stay out of school for almost one year and their academic future of those poor children was being jeopardized.

Another clash between the two ethnic groups over land was experienced in the year 2012 (Daily Graphic, June 5, 2012).

Tim Dzamboe a reporter of Daily Graphic (March 20, 2004), wrote that:

The Volta Students' Association of Ghana (VOSAG) had expressed concern over the pockets of hostilities and animosity in certain parts of the Region and the negative impact on economic growth of the region. The youth were saddened with the perennial land related and other conflicts in the Region. They stated that in a communiqué that the age-long Peki-Tsito and Nkonya-Alavanyo land conflicts have been very concerning.

Vincent Adedze wrote for the Daily Graphic of Wednesday, (September 19, 2007), that:

The Bimobas and Konkombas in the Bunkpurugu-Yunyoo have a long standing land dispute that has occasionally resulted in violence. Renewed clashes between the two groups at Jambali in the Bunkpurugu-Yunyoo District in the Northern Region on Monday night of 17th September, 2007 had claimed three additional lives bringing the death toll to six. Similar clashes between the two groups were recorded in 1985, 1986, and 1989 during which a number of casualties were recorded and many people were displaced.

Similar report on a long standing land dispute that has occasionally resulted in violence was carried by the Ghanaian Times (September, 19, 2007).

Daily Graphic of Thursday, July 15, 1999 carried the news that there was tension between Bortianor and Weija, following reports that a group of about fifty-five people believed to be land guards were guarding a disputed piece of land at Brigade, along the Accra-Kasoa main lorry road, which both towns claim ownership. The Daily Graphic of April 19, 1995, The Ghanaian Times of October 2, 2002, and September 19, 2007 all carried news on land conflicts their consequences on the communities that were involved in particular and the country in general.

That all these widespread land conflicts and the degree to which they undermine human rights in Ghana as report by the cited newspapers and other print and electronic media are not resolved is a fact. Immediately available typical example is the Nkonya-Alavanyo one in the Volta Region, which despite the several resolution efforts has been a perennial and sporadic one. It is not irregular to hear and read of renew clashes between the two ethnic groups in the news.

## **2.11 Nyanyano-Kokrobitey Land Conflict**

### **2.11.1 First Lady urges Nyanyano and Kokrobitey to settle dispute**

The First Lady, Mrs. Theresa Kufuor, has called on the people of Gomoa Nyanyano in the Central Region and Kokrobitey in the Greater Accra to find an amicable solution to their boundary dispute. She noted that the people need development and said the nation could not waste resources on conflict resolution, adding that, past experience should serve as a lesson for Ghanaians to live in peace with their neighbours. Mrs. Kufuor was addressing a durbar of the Chiefs and people of Nyanyano to mark their annual Akwambo Festival at that weekend. The festival, which was

celebrated jointly by the two Asafo companies of the town for the first time in thirty years, was under the theme, "Peace, unity, and development" (GNA).

### **2.11.2 Two communities battle over land**

Tension is high in Krokrobitey as the people threaten to use all means possible to defend themselves against the people of Nyanyano. The two neighbouring communities are in litigation over a stretch of land situated on the boundary between the Greater Accra and Central regions of Ghana. The chiefs and people of Kokrobitey are angry following an attack by Nyanyano last month, which led to the destruction of several buildings and valuables. The claim of ownership of a 40 acre territory along the beach by both sides led to the demolition of 30 well developed and completed structures. The people of Kokrobitey are now threatening to retaliate if government fails to step in. Its youth are ready for battle and have mobilized friends and family from surrounding communities to launch the attack. They were demanding justice in addition to compensation for the demolished properties estimated at more than fifteen (15) billion Ghana Cedis. Long standing legal battles have produced different results for either side in the conflict with the people of Nyanyano claiming victory in the latest ruling. But inhabitants of Kokrobitey were not enthused about it.

The confusion has probably come about due to the demarcation of the boundary between the Greater Accra and Central Regions. But the Chief of the area Nii Arde Nkpa said he would do his best to restrain his people from attacking Nyanyano while they await government's intervention (e.tv Ghana).

### **2.11.3 Nyanyano chiefs and people appeal to government to intervene in land case**

The Chiefs and people of Gomoa Nyanyano in the Central Region have appealed to the Government, as a matter of urgency, to intervene and

define the boundaries of Gomoa Fetteh, Gomoa Nyanyano and Kokrobitey lands to avoid any mayhem in the area. The Chief of Gomoa-Nyanyano, Nana Wiaboh II (the second), had called on the Ministry of Lands and Forestry, to implement the measures it had promised to curb the activities of land guards. Nyanyano which shares boundary with Kokrobitey, Ngleshie- Amanfrom and Awutu-Ofaakor, has been the scene of attacks by land guards from Accra and Kasoa, the chief said. Speaking at an emergency meeting of the Nyanyano Traditional Council at Nyanyano, Nana Wiaboh II recalled the statement by Mr. Richard Donu-Nartey, Deputy Minister of Lands and Forestry, at a seminar on land matters in Accra on a Friday, in which the government said it was determined to halt the activities of land guards. The Chief said land guards had caused many land developers with genuinely acquired plots to lose millions of Cedis while others had lost their lives and suggested the establishment of a special task force to protect stool lands in areas where the activities of land guards are rife. The task force established by Mr. Kojo Yankah, former Central Regional Minister, to monitor stool land boundaries between Nyanyano, Kokrobitey, Ngleshie-Amanfrom and Awutu-Ofaakor, was working satisfactorily until the Minister's transfer to the Ashanti region. He said since the withdrawal of the task force, land guards had resurfaced in the area and demolished houses under construction and extorted money from developers. Those who refused to heed to their directives were beaten up mercilessly. He, therefore, appealed to the then Central Regional Minister, to revive the task force to ensure sanity in the area. Meanwhile, the Nyanyano police were looking for a group of people suspected to be land guards who allegedly smeared the over- head poly tank of one Mr. J. Ackah, an ex-Police Superintendent, with human waste at Nyanyanoa Saturday afternoon, over a land dispute (GNA).

## 2.12 Negative Impacts of Land Conflicts

Wehrman, (2008) averred that:

All land conflicts, no matter how peaceful or violent they are, produce negative consequences for individual people as well as for the entire society. Many families across the world have seen their shelters - their homes - being bulldozed out of existence. And in Africa, many daily experience the selling of their property by someone else who also claims to be the owner. In post-war Cambodia, an unknown number of families were happy if they only lost their houses to the military but managed to save their lives. Whenever there is a land conflict, someone suffers economic consequences. In extreme but not rare - situations, people find themselves landless and without shelter. In the case of a farmer, this often includes the loss of his or her production base. But that's not all. Where there are many land conflicts, social stability within society is affected, as land conflicts undermine trust and increase fear and suspicion - often between formerly close people such as neighbours and family members. Violent land conflicts - or simply the fear of becoming a victim of them - can also have a traumatizing effect on those who are or feel at risk. In addition, whenever state land is allocated illegally it generally affects the nation's budget negatively and often results in ecological destruction or social exclusion. Still other consequences of land conflicts are unorganized, unstructured land development and the subsequent additional costs for infrastructure provision. The costs of these have to be borne by the entire society.

Wehrman (2006) stated that:

A useful way to classify land conflicts is that offered by conflict research which examines conflicts according to the social level at which a conflict takes place: inner-personal, interpersonal, inner-societal and inter-societal or international. While the inner-personal is not relevant to land conflicts,



the rest are discernible in the African context. Whenever there is a land conflict, someone suffers economic consequences. In extreme – but not rare – situations, people find themselves landless and without shelter. In the case of a farmer, this often includes the loss of his or her production base. But that's not all. Where there are many land conflicts, social stability within society is affected, as land conflicts undermine trust and increase fear and suspicion – often between formerly close people such as neighbours and family members. Violent land conflicts or simply the fear of becoming a victim of them – can also have a traumatizing effect on those who are or feel at risk. In addition, whenever state land is allocated illegally it generally affects the nation's budget negatively and often results in ecological destruction or social exclusion. Still other consequences of land conflicts are unorganised, unstructured land development and the subsequent additional costs for infrastructure provision. The costs of these have to be borne by the entire society. So, all over the world, people struggle for land. Many of them struggle with land conflicts and some of them struggle to solve them peacefully. This manual aims to facilitate the understanding of people's positions, attitudes and behaviours as well as their underlying interests and motivation. Understanding these things should enable the reader to adequately deal with the many different kinds of land conflicts.

In June 2006, more than 23,000 people fled their homes in Southern Ethiopia and have been displaced following clashes triggered by disputes over land ownership between neighbouring ethnic groups in that area. Between 100 and 150 people had been killed in these clashes that started when land formerly belonging to Borenas was awarded to Guhis by the government (Oxfam, 2006).

The actual number of land related conflicts in any country is barely known, but estimates of these are high. Those which have been dealt with by the courts give an idea of the scope of the problem. In 2001, the Ghanaian courts had to deal with 60,000 land related cases (Daily Graphic, 16 -11 - 2001). For Cambodia, Cooper (2005) estimates that in 2005 about 850,000 people had been affected by land conflicts. This corresponds to 6.5% of the entire population of the country.

Wehrman, (2008) suggested that:

Land ownership conflicts have negative effects on individual households as well as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade or commercial tax) for the state or municipality. The lower the transparency in land markets, the less equal is information being disseminated, and the weaker constitutive and regulatory institutions are, the more likely it is that land conflicts occur. People therefore need to spend a lot of time and money on searching for information and monitoring agreements or contracts. This means that land conflicts are associated with high transaction and agency costs or *vice versa*, that (relatively) high transaction and agency costs indicate a high probability of land conflicts. Conflicts over the use of land generally have a negative impact on the poor or on the natural or building environment. They either decrease quality of life for parts of society or, if they are addressed and ameliorated, contribute to additional state expenditures and therefore have an impact on the national wealth.

Land conflicts also increase social and political instability. Where ever they occur, a lot of multiple sales, evictions, land grabbing and people lose confidence in the state and start mistrusting each other. Social and political stability suffers even more when land conflicts are accompanied by violence. Dealing with land conflicts therefore also means to re-establishing trust and confidence in public as well as private institutions.

## **2.13 Land Conflicts and Human Rights**

### **2.13.1 The concept of human rights**

Levin (2004) posited that:

The idea that rights of human beings should be elaborated and protected has been gradually transformed into written norm. Many important landmarks led the way, such as in England, the Magna Carter (1215), the Petition of Rights (1628), and the Bill of Rights (1689). During the eighteenth century early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions. This reflected an almost contractual relationship between the State and the individual.

The French Declaration of the Rights of Man and of the Citizen (1789) and the American Bill of Rights (1791) were based on this premise. During the nineteenth century this principle was adopted by a number of independent States, and social and economic rights also began to be recognized. Despite the recognition accorded to human rights in national constitutions, these rights are sometimes curtailed or eliminated by legislation or by arbitrary means, and perhaps generally, by informal social mechanisms. Moreover, human rights, in spite of their status as legal rights, are often violated by States themselves.

It is an axiom that in the early history of human rights evolution, the fundamental human rights of individuals or group of individuals were violated by the very departments and agencies of states that were to safeguard those rights. However, in contemporary history, the phenomenon of human rights violations or abuses, it has been observed that individuals or group of individuals rather than states are becoming the most violators or abusers of human rights.

Human rights abuses that are inherent in the widespread boundary conflicts in Ghana are clear demonstrations of how some individuals or group of individuals grossly abuse the rights of others in land related conflicts.

### **2.13.2 The nature of human rights and their deployment**

In order to explore and assess the mutual impact between land conflict and human rights, it is important to have a clear understanding of what is meant by 'human rights'. This preliminary inquiry is crucial because, over the years, human rights have been the subject of a multiplicity of discourses, practices, and struggles by people from diverse backgrounds such as philosophers, theologians, lawyers, sociologists, politicians and civil society activists to achieve particular objectives (Douzinas, 2007). This ensemble of discourses and practices deploying human rights has made it difficult to formulate a unifying theoretical framework encompassing it. Conceptually, and emblematic of the various discourses and approaches, human rights have been perceived from different angles. For instance, from a philosophical perspective, it has been said to be 'a set of moral principles whose justification lies in the province of moral philosophy' (Shestack,

1998). On this account, they are regarded as moral rights or claims by individuals, which may or may not have been recognized by a particular legal system.

For legal positivists, human rights are a set of claims by individuals which have been recognized and legitimized by any particular legal system. The notion of human rights therefore presupposes the existence of a legal relationship between the right-holder and the duty-bearer (Hohfeld, 1913). The concept of 'right' and correlative 'duty' is one of the problematic issues within the human rights corpus, and is particularly acute in relation to solidarity rights such as the right to development. The bone of contention is whether the duty to guarantee the right to development is one vested on the international community or group of states, namely, the developed states; and if this is so, how is such a duty to be enforced (Douzinas, 2007)?

Human beings are born equal in dignity and rights. These are moral claims that are inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated in what today we call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed, that is, the consent of the subjects of the rights (Levin, 2004).

Human rights have also been referred to as a major strategy for resisting the dictates of power and dissenting from the intolerance of public opinion (Douzinas, 2007). On this account, human rights are imbued with an emancipatory potential and its central goal from inception has been to resist public, and, to some extent, private domination. As Costas Douzinas points out, 'human rights are part of a long and honourable tradition of

dissent, resistance and rebellion against the oppression of power and the injustice of law'. It is this conception of human rights and the insight it provides that it is adopted in this work in assessing its position on land conflict situations.

Notwithstanding these diverse discourses, it can be said that, in general, human rights are those 'rights which a person enjoys by virtue of being human, without any supplementary condition being required' (Tomuschat, 2003), (Donnelly, 2007). They are held by all human beings irrespective of any other rights or duties that they may have in any other capacities, for example, as workers, members of families or associations.

Although theoretically, all human beings have these rights, not all enjoy their entire human rights, nor are the rights enjoyed equally in different nations or even within a state. Traditionally, human rights have been classified into three broad categories, referred to as 'generations' of rights (Vasak, 1977). On this score, civil and political rights are regarded as first generation rights, with economic, social and cultural rights as second, while solidarity rights, such as right to development, right to ownership of the common heritage of humankind and right to a safe environment are regarded as third generation rights (O'Brien, 2001). The first generation rights are said to be negative rights in the sense that their respect requires the state to do nothing to interfere with individual liberties. On the other hand, the second generation rights are positive rights as they require the affirmative action of the state for their implementation. The third generation rights are regarded as solidarity rights as they focus on group and collective rights indicative of the increasing recognition of the salience of community life in the overall benefit of humankind. Although this classification, with the attendant historical periodization, may be useful for analytical purposes, it does not reflect the indivisibility,

dynamism and interrelationships existing between the various rights (Udombana, 2003 & Clapham, 2006). What is more, for present purposes, the mutual relationship between communities and human rights is not limited to any identifiable 'generation' of rights, but encompasses the various categories. However, as demonstrated later, the development crisis in Ghana, growing realization of the need to make visible social and economic rights, and peoples, rights and how these rights are endangered by land conflict between these two communities, calls for more focus to be given to these sets of human rights in this thesis.

One other issue of crucial importance in human rights discourse is the role of the state in the promotion and protection of human rights. It must be acknowledged that one of the main features of contemporary society is the organisation of the world system on the basis of sovereign states, with constitutional arrangements incorporating human rights norms. Needless to say there is also an international regime of human rights to which virtually all sovereign states have subscribed as a kind of international code of moral conduct. Flowing from this, in conventional human rights jurisprudence, the state is regarded as the primary duty-bearer. The rationale for the attachment of this duty on the state is that since its institutional structures are more likely to result in human rights violations, responsibility for its redress should be vested on the state (Clapham, 2006).

However, this approach has created three major challenges for the contemporary human rights system. First, it has led to an unnecessary restriction of the scope of entities that have duties for human rights violations. Thus transnational corporations and other actors in the international scene are excluded from the purview of duty-bearers, notwithstanding for instance, the conflict dimension and detrimental effects of their activities on human

rights (Clapham, 2006). However, it is obvious that over the years, especially in this era of globalization, these other entities have been playing important roles in the international scene in ways that impact on the lives of people worldwide. This makes it imperative to challenge the monopoly of international legal subjectivity of states in order to make room for more actors as duty-bearers in relation to human rights (Okogbule, 2012).

Second, it has created an ambivalent situation where the prime violators of human rights are also given the duty of protecting such rights. In a way, this is traceable to the history of human rights which is complex and contradictory. Although historically, human rights were conceived as a weapon against the state, to keep it under democratic control and prevent the violation of liberal rights, the fact that the rights against the state were granted by the state itself, resulted in the current ambivalence dogging the human rights corpus. This ambivalence is now more pronounced with the inclusion of social and economic rights and people's rights within the scheme, since as indicated earlier, the implementation of these rights depend on the positive action of the state. Accordingly, human rights policies have been used to serve the economic and geo-political interests of the hegemonic capitalist states (Ishay, 2004).

Third, and related to the above, is the consequent appropriation of the language and practice of human rights by hegemonic states through their incorporation in national and international instruments. This incorporation, which institutionalizes human rights, puts it in a complex and ambiguous position in relation to power, facilitating their recasting and deployment by hegemonic states (Stammers, 2009). Through this mechanism, hegemonic states operating within the framework of the current capitalist system have successfully colonized the terms of key components of human rights (Christodoulidis, 2009).



Notwithstanding the ambivalent role of the state in respect of human rights outlined above, it is refreshing to observe that there has, simultaneously, been a continuing struggle by human rights NGOs, all over the world in defence of oppressed social classes and groups, articulating more inclusive human rights protection mechanisms. In other words, a counter-hegemonic human rights discourse and practice has been developing side by side the hegemonic conception (Okogbule, 2012).

A counter-hegemonic politics of human rights will facilitate the recuperation of the emancipating potential and the utopian character of human rights and rid human rights of its imperial context which 'brutalizes both the victim and the victimizer'. Since states continue to be both the major violators and guarantors of human rights, it is natural that the focus of human rights struggles would revolve around them. Nevertheless, given that the conditions underlying both violations and guarantees of human rights seem to be increasingly beyond the reach of the nation-state, coupled with recent transformations in the world system, the adoption of a new approach to human rights to confront the new globally organised violations through global struggles against them has become imperative (Anderson, 2004).

Additionally, the relative incapacity of states to counteract human rights violations, especially those arising from the operations of group of individuals, due to the impact of economic values of land in contemporary times, suggests the deployment of other forms of global advocacy for the promotion and protection of human rights. These should include, broadening the scope of existing positive obligations on states to protect human rights, whether or not these were infringed by state or non-state actors, and extending the notion of rights-bearers to include entities incapable of bearing duties, namely nature and

future generations. This will transcend the Western conception of rights which venerates the binary relationship between right-holders and duty-bearers, in whose terms only those susceptible of being duty-bearers are entitled to be right-holders. This is where the role of Non-Governmental Organisations (NGOs) becomes important as vehicles for articulating and advocating for social change. Although human rights NGOs are heterogeneous, politically and socially, it can be said that, in general, their increased advocacy, both nationally and globally, have contributed to the emergence of a cosmopolitan consciousness on human rights. While the use of legal actions may sometimes be productive, human rights NGOs can be more effective if they operate as grassroots movements through a process of coalition building and political mobilization of the oppressed and marginalized members of society (Anderson, 2004). Such political strategies must resist being reducible to, or co-optable by the order they seek to resist (Christodoulidis, 2009).

The need to resist the growing inequality and social injustice in the world system gives salience to the agitation for, and relevance of the right to development, within the context of land conflicts. Initially formulated by Keba M'Baye, the right to development was enshrined in the African Charter on Human and Peoples' Rights, and subsequently adopted by the General Assembly of the United Nations in the Declaration on the Right to Development. As a globalized localism, therefore, it has become an important source for a normative framework relating to development. The central merit of the right to development is its comprehensive conception of development as an effective strategy for the realization of human rights. On this account, since developing countries are not in a position to guarantee compliance with economic and social rights, because of their level

of under-development, the international community should play a role in their development to enhance the protection of these rights. This linkage between development and human rights projects the right to development as both an individual and a collective right. In this connection, Article 1 of the Declaration states:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

However, its non-specific identification of right-holders or duty bearers, weak conceptual foundations, and state-centred focus has been the object of criticism from both the hegemonic and radical discourses on human rights (Donnelly, 1984) & (Shivji, 1989). The crucial question is whether, as presently conceived, the right to development both under the African Charter on Human and Peoples' Rights and the Declaration, provides a useful platform for struggles from below for the promotion of social and economic rights and interests of the ordinary people in Africa.

In expressing faith in the potentials of counter-hegemonic conception of human rights, one is not unmindful of the problematic nature of the concept of rights, especially when combined with the word 'human' in the term 'human rights' which are next discussed.

### **2.13.3 Historical and normative dimensions of human rights**

The concept of rights has a long lineage in legal and philosophical thought and has impacted greatly on the growth of ideas and the direction of societal development. Yet, its nature and scope remains largely contested. This difficulty becomes all the more prominent when it is coupled with the word 'human' in the phrase 'human rights'.

Indeed, it can be said that the concept of human rights raises inscrutable normative problems that have far-reaching implications on its application in contemporary society. First, the word 'rights' attached to 'human' deriving as it does, from the philosophical conception of rights developed and embellished by the natural law school has carried with it, perhaps unwittingly, the burdens associated with the term under that philosophical paradigm (MacIntyre, 1985). These include the contentious issues relating to inalienability of rights, their inherent nature, and enforcement in relation to the state. It bears mentioning that these issues continue to influence the direction of discourse on human rights today.

Second, the word 'human' in the term is also deeply problematic. Its use immediately raises the question of ascertaining what entities falling within the category of 'human' are beneficiaries of rights. While at first glance this may seem obvious, a critical lens will reveal how difficult its resolution can be, particularly when account is taken of issues relating to the commencement of human life. The concept of personhood itself has generated intense controversy in legal discourse (MacCormick, 2007). When does a foetus in the womb commence existence as a human being? Is it when she becomes viable in the womb or upon birth? What happens if, while in the womb, he or she is injured by the act of a third party in a manner that affects his or her basic rights upon birth? A related issue, but at the other end of the spectrum, concerns the difficulty in determining when human life actually comes to an end. This has acquired tremendous relevance in recent times with the advancement in medical technologies that has enabled organ and tissue transplants to be carried out. If a brain from a dead body is transferred to another living body whose brain is dead, how do we deal with issues of human rights that

arise with this change in human being? Perhaps even more dilemmatic is the issue of human cloning and how to categorize the resulting entity in terms of rights entitlement (Okogbule, 2012).

Another normative problem with 'human rights' is whether its present framing is not necessarily restrictive of the entities that ought to be beneficiaries of rights. As indicated earlier, this is more acute now with the increased vertical and horizontal expansion of the frontiers of international law resulting in entities other than states playing important roles in the international system. Specifically, the increasing role of transnational corporations requires that they be included in the category of beneficiaries of rights, and not restricted only as duty bearers as the Universal Declaration of Human Rights seems to suggest (Clapham, 2006; Freidmann, 1969). These theoretical issues emphasize the need for a reconstruction of the human rights discourse not only to make it more holistic and inclusive, but to adequately respond to changes in socio-economic realities.

The fourth problem with human rights is one that has been the subject of considerable controversy among jurists over the last few decades. It is the question of determining the normative basis of 'human rights'. Are they rights that have been certified as universal or do they have their origin in particular cultural backgrounds? If the first proposition holds sway, which countries performed the certification? Were all the regions of the world represented in the process? If it is the latter position, what is the justification for seeking to promote or project it as a template to be applied in other cultural environments? This is by no means a simple question as will be seen later in this work, and it is one that will continue to dog the contemporary human rights corpus if it is not sufficiently addressed in a manner that recognizes the input of other cultures to the human rights project

(Mutua, 2001). Perhaps these normative problems can best be understood against the background of the transition from a concentration on the 'rights' discourse to its rechristening and elaboration as 'human rights' in the twenty-first century. To be sure, although there had been earlier enunciations in this regard by medieval philosophers, rights discourse assumed greater prominence in late eighteenth century liberal political philosophy which emphasized the right of an individual to his or her liberty, property, freedom of speech and other rights, and the fact that these rights are inalienable. Within this conception, the primary function of the state, deriving from the social contract theory, is to protect these rights (Donnelly, 1990). It was under this atmosphere, that those seminal documents such as the American Declaration of Independence, 1776, and the French Declaration of the Rights of Man and of the Citizen, 1789 were adopted, and they have remained fundamental references of political thinking in contemporary liberal discourse (Brown, 1999). The natural law remains the basic foundation for this analysis which postulates that all human beings have rights by virtue of their common humanity - and these rights are universal. From such theoretical formulations, it was, therefore, a short distance to the adoption of the Universal Declaration of Human Rights in 1948 soon after the establishment of the United Nations in 1945. This Declaration, which is now regarded as the 'spiritual parent of international human rights, represented an attempt to view human rights issues from an international perspective (Steiner, 1988). This is because prior to its adoption, expressions of concern about human rights were limited to the confines of national territories.

Flowing from the UDHR, we now also have the two covenants, namely, International Covenant on Civil and Political Rights, ICCPR and the International Covenant on

Economic, Social and Cultural Rights, ICESCR adopted in 1966, which together constitute the international human rights regime. These instruments, as well as other international human rights conventions, have been ratified by a large number of states as a testament of their respect for, and concern about, the protection of human rights. It is this 'universal' recognition and acceptance that has led Henkin (1990) to make the celebratory declaration that:

Ours is the age of rights. Human right is the idea of our time, the only politico-moral idea that has received universal acceptance. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, has been approved by virtually all governments representing all societies.

Human rights are enshrined in the constitutions of virtually every one of today's over one hundred and seventy states - old states and new; religious, secular, and atheist; Western and Eastern; democratic, authoritarian; market economy, socialist, and mixed; rich and poor, developed, developing, and less developed. Human rights are the subject of numerous international agreements, the daily grist of the mills of international politics, and a bone of continuing contention among super powers.

While such celebration may, to some extent, be justifiable in relation to the adoption of international human rights instruments, the same cannot be said about the actual practice of human rights. This is because human rights violations are still so common world-wide that the temptation is strong to say that it has assumed the colour of international recognition and acceptance; even in the advanced Western countries where, in the words of Baxi (2006), the politics of human rights appears to be the current phenomenon in

contradistinction to the politics for human rights. It is a depressing reality that rather than genuine concern for the promotion and protection of human rights, the language of human rights is being increasingly appropriated by some states, groups and institutions to serve particular political and ideological purposes. If doubts exist about this contention, one only needs to cast one's eyes on the numerous violations of human rights, on both sides, in the current war of terror and war on terror which has resulted in immeasurable human suffering (Baxi, 2005). More worrisome is the fact that legal rules and institutions are frequently organised to legitimize human suffering as the United Nations' sanction on Iraq and the previous apartheid policy in South Africa showed (Veitch, 2007). Add to this the ambivalence and hypocrisy of Western powers, particularly the United States of America, to questions of human rights world-wide - in preaching one thing for other states - and doing something different, especially when its allies are involved, and the picture is complete.

If the practice of human rights is suffering this fate in Western countries, the situation is not only precarious but extremely ignoble in Third World countries, especially, Africa with the highest number of failed, failing and fragile states. Without doubt, Africa has witnessed extensive violations of human rights from pre-colonial, through colonial, to the present post-colonial era. Even the adoption in 1981 of the African Charter on Human and Peoples' Rights and other subsequent international instruments, commendable as these steps are, has not significantly changed the situation. The Liberian, Sierra Leonean, and Rwandan pogroms vividly attest to this fact, in the same way that the current situation in Somalia, Sudan, and Democratic Republic of Congo remain epic embarrassments to the continent. In light of this, the adoption of such international



human rights instruments by states may therefore be no more than public relations gimmicks to show that they belong to the ‘human rights club’, a design to cover up massive human rights abuses in their countries. In their contrived ingenuity to dilute the force of the human rights system, some African leaders and their academic apologists have sought refuge in the argument about the inapplicability of similar human rights norms in different environments under the rubric of relativism. It is to that issue, and its counterpart universalism, that I now turn (Okogbule, 2012).

#### **2.13.4 Universalism versus relativism**

The Universal Declaration of Human Rights which was adopted in 1948 represents a landmark development in international human rights jurisprudence. Influenced by the devastating effects of the Second World War, and the need to move away from the massive human suffering that it engendered, the Declaration states in its preamble that ‘disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.’ It notes further that:

...the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. The Declaration is thus proclaimed as a common standard of achievement for all peoples and all nations. This proclamation of a universal standard and projection of international consensus on the contents of human rights have however generated controversy over the years.

The criticism can be classified into the process argument and the substance argument. The process argument contends that the procedure that led to the adoption of the Declaration cannot be said to be universal as it did not encompass all regions of the world. It draws its strength, first, from the fact that at the time of adoption of the UDHR, several African and Asian countries were still under one form of colonial rule or the other and so did not participate in the adoption of the Declaration. It may be mentioned that it was only in the 1960's that most African states gained independence from their colonial masters and became 'sovereign' states (Anghie, 2004). Their views were therefore not taken into consideration in the adoption of those 'universal' standards. Second, even the composition of the drafters of the Declaration did not adequately represent the interests of all regions of the world with the result that the Western influence and dominance is prominent. Considering the configuration of political power at that time, it is however doubtful if their participation would have mattered most, but the fact of such non-participation has created a serious legitimacy deficit that has dogged the Declaration leading to persistent calls for Asian, African or other conceptions of human rights (Leary, 1990).

Drawing from this procedural incompleteness, the substance argument insists that the current human rights corpus is not universal and it would therefore be wrong to seek to impose it on the rest of the world. It would seem that the tone for this relativist position was set early enough by the submission of the American Anthropological Association to the Drafting Committee of the Declaration in 1947 when it declared inter alia:

Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole (Leary,1990).

It is argued that to project a system that is evidently Western in origin to the rest of the world as a template is wrong. Their argument is that since values are culture-specific, reflecting the cultural norms, values and religious beliefs of particular societies, it is wrong to impose the current human rights corpus, which is evidently Euro-centric, on the rest of the world (Engle, 2001). In the words of (Brown, 1999) it is implausible to think that rights can be extracted from liberal politics, de-contextualized and applied as a package worldwide. This is even more objectionable when it is cast in ‘civilizing’ missionary garb (Mutua, 2001).

Although there is some merit to the views about the cultural specificity of human rights values, which makes the wholesale use of the contemporary human rights corpus as a template inappropriate, people must not lose sight of the fact that extreme relativism can very often be an instrument for dictatorial regimes to rely on in committing all kinds of human rights abuses in their countries. Moreover, relativism makes it impossible for human rights violations in particular countries or cultures to be condemned by outsiders as the affected practices may be legitimately acceptable in such cultural settings. Thus some cultures may permit torture, violence against women, amputation and many more. It is in consideration of these issues that the legitimacy crisis can be resolved only through cross- cultural dialogue to generate a more universally acceptable architecture of human rights (Mutua, 2001).

This is predicated on the understanding that no culture is complete, and both Western and other cultural enunciations of human rights have a lot to benefit from such cross-cultural approach. Taking cognizance of this, it will be shown that the African Charter on Human and Peoples' Rights is peculiarly distinctive by recognizing the cultural circumstances that embellish rights and duties in Africa, an approach that could serve as a veritable reference point for further elaboration world-wide (Mutua, 1995), (Cobbah, 1987).

The purpose, objective and significance of this thesis does not see eye to eye with Mua, on his assertion that some cultures may permit torture, violence against women, amputation and many more. For there can be no justification for any form of human rights abuses in any state in this twenty-first century. It is contingent upon every state that its programmes relative to promotion and protection of human rights must be compatible with international obligations and rule of law. Contributing to the debate on cultural universality of human rights, a well-known human rights specialist, Levin, (2004) averred that:

The value of dignity and equality of all members of the human race, like many other basic principles which underlie what today we call human rights, can be found in virtually every culture and civilization, religion and philosophical tradition. Nevertheless, the idea of rules common to all citizens dates back many centuries. No tradition denies the existence of fundamental human well-being, the flourishing of which requires respect for the most important human needs. Some dispute, however, what this means in practice. Human rights are nevertheless a way of establishing a minimal understanding of what human well-being means, and thereby draw a line which the disputes should not cross. No dispute should justify

the loss of innocent lives and no disagreement can justify the disappearance of those with whom we disagree.

### **2.13.5 Emergence of human rights as an emancipatory script**

The emergence of human rights has contributed immensely to the realization of progressive social, economic and political changes in society and has also impacted on the globalization process. In advancing this argument, I am not unmindful of the fact that the language of rights can, and has often been appropriated to serve hegemonic purposes or been transformed into a market-friendly conception (Baxi, 2006). However, these uses of the human rights corpus have usually come as a later development after their institutionalization and not at the initial point of emergence which had always been in the context of an emancipatory goal. It is this historical trajectory of the human rights corpus and the insight it offers to contemporary developments that animates my argument.

It is my contention that the form of rights discourse which gained prominence in the late 17th century arose as a result of the need to ensure that governmental powers were not used in an oppressive manner. The Lockean conception of rights was designed to check authoritarianism by ensuring that the rights of citizens were adequately protected by the state. This is indeed the rationale for the existence of the State. In the words of Locke, (1970):

The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society, to limit the power and moderate the dominion of every part and member of the society.

The deployment of this emancipatory potential became more pronounced in the Virginia Declaration and American Declaration of Independence, 1776 and subsequently, the French Declaration of the Rights of Man and the Citizen 1789. The famous and often quoted phrase from the American Declaration is instructive:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness - That to secure these rights.

Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to affect their Safety and Happiness. Moving from this period to the internationalization of the human rights struggle especially after the Second World War, one notices the obvious re-christening of the struggle in the label of 'human rights'. Thus the UN Charter underscores the need to stem the kind of state arbitrariness and authoritarianism that led to the Second World War. It is on this score that one of the purposes of the United Nations is the promotion of respect for human rights. The epitome of this was the Universal Declaration of Human Rights which proclaimed in its preamble that '... disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind'.

Within the African context, this recognition of the emancipatory potential of human rights was brought into sharper focus during the struggles for political independence by

African peoples. Although primarily organisations established to actualize the attainment of political independence for these territories, the nationalist movements played an important role in shaping the relationship between the colonial masters and their subjects. Reference may be made to the activities of the Mau Mau Movement in Kenya, National Youth Movement in Nigeria, Convention Peoples Party in Gold Coast, now Ghana, and the African National Congress in South Africa. These organisations were instrumental in containing to a large extent, the imperialistic orientations of the colonial governments which eventually led to the grant or extraction of independence to their peoples. It is significant that these organisations fought for such rights as freedom to vote, equal representation, equal pay, and political independence. These historical antecedents show that over the years, human rights norms and practices have been influential in ways that seek to curtail existing patterns of organised power, and so impacted on the globalization process (Okogbule, 2012).

#### **2.13.6 Human rights in Africa**

The theory and practice of human rights have had a chequered history in Africa. This is because human rights norms have not only received varying levels of recognition and denunciation during the various periods of the continent's history, but have also been the subject of intense controversy in recent years (Zezeza, 2004). A useful starting point in exploring this historical trajectory is to examine the controversy as to whether human rights are exclusively Western concepts or values that are equally applicable in other societies. While some writers have argued that human rights are unknown in Africa, others reject this contention and argue that African societies have conceptions of human rights.

Putting the case forcefully for the first school of thought (Donnelly, 1982) contends that 'most non-Western cultural and political traditions lack not only the practice of human rights but the very concept. As a matter of historical fact, the concept of human rights is an artifact of modern Western civilization'. This position clearly mirrors the view that human rights evolved from the West, and is not applicable in other societies unless expressly exported by the West. According to (Baxi, 2006) this contention embodies three main claims. These are the evangelical claims, the historical claim and the impossibility thesis. He argues that the evangelical claim is predicated on the notion that 'subordinated or colonized peoples lack qualities that make them recognizably human', a situation that imposes a burden on the West to transform the 'savages' into recognizable human beings. The historical claim simply rests on the view that human rights traditions 'originated' in the West, and reference is thus made to the emergence of the idea of natural rights. Finally, the impossibility thesis implies that human rights traditions remain impossible of origin outside the West.

For the second school of thought (Wai, 1979) has argued, equally valiantly, that traditional African societies supported and practiced human rights. According to him, traditional African attitudes, beliefs, institutions, and experiences sustained the view that certain rights should be upheld for the orderly functioning of society. There was freedom of expression, the right to participate in democratic governance through the selection and deposition of rulers, while methods and mechanisms for resolving issues affecting their societies existed under the traditional system. He contends that it is, in fact, the authoritarian institutions and structures imposed on the continent through colonialism that has contributed to the pervasive violations of human rights in Africa.



Perhaps the gulf separating these positions is not really as wide as is often represented. It is my contention that a close examination of both positions show that they raise two fundamental issues relating to the naming of a thing or concept and the issue of essentialism. From a philosophical point of view, linguistic confusions can arise concerning the naming of a thing, and it has been demonstrated that some of the confusions or misunderstandings that pervade contemporary discourse have their roots in the different uses of language (Freeman, 2001). Applying this insight to the issue of human rights in Africa, the problem may really be that of identifying what is named as 'human rights' by both schools. This is because what is categorized as 'human rights' by the Africanists may not necessarily fit into what the other school of thought classifies as 'human rights'. Indeed, it can hardly be disputed by both groups that every society has its own conceptions of right and wrong conduct, and ways of treating individuals in society. These relate to questions of human dignity and the priority that a particular society accords to these notions in the organisation of its affairs (Okogbule, 2012).

Be that as it may, it must be admitted that the current human rights system has strong marks of Western conceptions of rights which are significantly different from African notion of rights. To a large extent, this is traceable to the liberal origins of the Western conception (Donnelly, 1990). On the other hand, African societies are organised on their own understanding and interpretation of human rights which have been a fundamental feature of the functioning of their societies. This draws attention to the philosophical underpinnings of these values and how they are reflected in the various notions of human rights. In general, the Western conception of human rights is predicated on individual autonomy, while the African conception gives prominence to the communitarian

principle which locates the individual as a member of the society with rights and duties bound up with those of the society (Silk, 1990).

It can, therefore, be said that it is the attempt to conflate both conceptions of human rights without taking sufficient cognizance of the underlying cultural norms and values and the linguistic and philosophical confusions generated thereby, that has rendered the discussion problematic. In the first place, whatever the objective may be in attempting to universalize particular human rights norms, in practice, such human rights transplants can hardly take root in a new environment if they ignore the cultural norms of those societies (Okunniga, 1984). In other words, to be effective in a new environment and consistent with the mutual impact thesis advanced, such foreign norms and values must equally be impacted upon in the process of transplantation. Consequently, there is always tension between foreign and local norms and values in the absence of the requisite mutual impact. This explains one of the major problems with the human rights corpus in Africa as the Western concepts of individual rights introduced into African societies through colonialism has not been sufficiently integrated into the peoples' largely communitarian mode of social organisation through the failure of African political leadership (Okogbule, 2012).

The import of the present divergence may be illustrated by reference to the nature and structure of traditional African societies which give rise to particular notions of human rights. The concept of a nuclear family, for instance, is unknown in Africa because the family in the African context includes the immediate family in the Western sense, plus relations of spouses, their uncles, cousins, nieces and nephews (Gyekye, 2003). Within this web of relations, each member of the family has specific duties and responsibilities

towards other members, and he or she can also lay claim to certain rights and privileges in return (Welch Jr., 1984).

The second aspect of this communitarian mode of social organisation in Africa is that the care of the aged in the family is normally accepted as a joint responsibility, in the same way that child care is regarded as a communal affair. This communitarianism is even premised on the existence of a relationship between the dead ancestors and the living members of a family (Cobbah, 1987). Cobbah's description aptly captures this point: The African worldview places the individual within the continuum of the dead, the living, and the yet unborn. It is a worldview of group solidarity and collective responsibility. In effect, in the same way that people in other cultures are brought up to assert their independence from their community, the average African's worldview is one that places the individual within his community.

It is thus clear that with these variations in modes of social organisation, the concept of rights will differ between Western and African states. It must however, be admitted that, with the advent of colonialism and the attendant acculturation and socialization processes, a number of social, economic and institutional changes have been introduced in the continent, and these have greatly affected the traditional mode of social organisation. As indicated earlier, it is the inability of African political leaders to sufficiently integrate the inherited institutions of the state with the existing African conceptions of rights and governance that has given rise to the present development crisis in the continent, Muiu (2008). Does the solution lie in going back to the African traditional conception of rights as some writers have suggested, or redrawing the map of Africa along pre-colonial empires? According to Marasinghe (1984), the best guarantees

of human rights in Africa are to be found by preserving conceptions of human rights recognized by each society's law and custom, because there is a greater possibility of success in enforcing human rights violations in traditional societies than in non-traditional societies. This formulation of the traditional mode of organization in African societies fails to take cognizance of the fact that even the traditional mode of social organization entailed grave violations of human rights under various guises. In relation to (Mutua, 1995) suggestion for re-drawing the map of Africa in line with the pre-colonial boundaries, it may be said that such a measure cannot be the panacea for the enormous challenges facing the continent, as it is even capable of generating unmanageable crisis in the continent in relation to issues such as who draws the map, and where the boundaries are to be fixed. It is my contention that the critical consideration should be how to construct a conception of rights that, while recognizing the identified philosophical and cultural differences, strives to use them to build a more inclusive notion of human rights. This highlights the importance of adopting the call for a cross-cultural dialogue that will facilitate the emergence of a new architecture of rights.

### **2.13.7 The 1992 Ghana Republican Constitution and human rights**

The 1992 Ghana Republican Constitution which draws its aspiration from the International Bill of Human Rights, especially the Universal Declaration of Human Rights, and the African Regional Human Rights document, the African Charter on Human and People's Rights provides scores of rights and responsibilities that all Ghanaians must benefit from and adhere to, which will lead to peaceful co-existence. It teaches the fundamental human rights, the tenets of good citizenship and the necessary punishments that that will be meted out to those who violate it.

Fundamental Human Rights and Freedoms as enshrined in the 1992 Constitution of Ghana, occupies its Chapter Five, and with its corresponding Articles 12 to 33, which are ‘Protection of fundamental human rights and freedoms’, ‘Protection of Rights to Life’, ‘Protection of Personal Liberty’, ‘Respect for Human Dignity’, ‘Protection from Slavery and Forced Labor’, ‘Equality and Freedom from Discrimination’, ‘Protection of Privacy of Home and Other Property’, ‘Fair Trial’, ‘Protection from Deprivation of Property’, ‘General Fundamental Freedoms’, ‘Property Rights of Spouse’ ‘Administrative Justice’ ‘Economic Rights’, ‘Educational Rights’, ‘Cultural Rights and Practices’, ‘Women’s Rights’, ‘Children’s Rights’, ‘Rights of Disabled Persons’, ‘Rights of the Sick’, ‘Emergency Powers’, ‘Persons Detained under Emergency Law’, and ‘Protection of Rights by the Courts’. This, however, forms just the outline or the summary of the fundamental human rights as enshrined in the Constitution.

#### **2.13.8 Enforcing human rights provisions of the 1992 Constitution**

The 1992 Constitution of the Republic of Ghana endorsed the Courts as the main venue where complaints of breaches of fundamental human rights may be made and redressed. The High Court is the judicial venue of first instance for the redress of human rights issues. Appeals from decisions of the High Court lie to the Court of Appeal and from there to the Supreme Court. Sometimes however, actions for breaches of human rights may be made directly to the Supreme Court. Where the applicant to the Supreme Court is dissatisfied with its decision, he or she has the option to apply for review by the same Supreme Court, which is stipulated by Article 33(1) of the Constitution. The 1992 Constitution entrusted the burden of protection of rights on the High Court. As stated by Article 33(1) “Where a person alleges that a

provision of the Constitution on the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress". The High Court may, under Clause (1) of this Article, issue such directions or orders or writs including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warrant to as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person is entitled.

#### **2.13.9 The Commission on Human Rights and Administrative Justice in Ghana**

In the year 1993 the Commission on Human Rights and Administrative Justice (CHRAJ) was established with the mandate of protecting the rights of citizens. As the national human rights institution, the Commission has a broad mandate to protect universal human rights and freedoms, especially, those stipulated by the 1992 Constitution, which include; civil, economic, social and cultural rights and can be found in Article 218 (a), (c) and (f) of the 1992 Constitution and Section 7(1), (a), (c), and (g) of the CHRAJ Act. The Commission's human rights functions can be divided into two categories: Promotion and Prevention, and Protection and Enforcement. In order to protect and enforce fundamental rights and freedoms the Commission investigates individual complaints of rights violations by persons and institutions. It is mandated to resolve these complaints through various methods, including mediation, negotiation and formal hearings.

However, literature on the extent to which the Commission on Human Rights and Administrative Justice investigates and publishes findings on the widespread human rights abuses that are associated with land conflicts in Ghana is silence. It would not be a far-fetched assertion that land conflicts are emerging as the commonest arena where human rights abuses are pronounced. So for CHRAJ to lose sight of this phenomenon is very disturbing.

## **2.14 Conclusion**

It could be said that, in all the related literature searched, the authors agreed that issues regarding human rights and social justice, should be given the due attention and respect they deserve, since anything short of this results in chaos and catastrophe. There are structures and institutions put in place to promote and safeguard human rights and social justice - protecting the interest of children, women, men, and the marginalized groups. The purpose of this study was stated in unequivocal terms, to examine the extent to which the Nyanyano and Kokrobitey land conflict has undermined human rights of the inhabitants of the study area.

In spite of this provision, it was perceived that there exist some forms of violation or abuse of rights and freedoms and other forms of infringement of people's rights. However, it was not certain whether these perceptions reflect the lived experiences of the violated and stake-holders of the study area. It is based on this premise that, there was the need to undertake the study to gain insights into people's perceptions, level of awareness and the extent to which human rights issues are promoted and practised in land related conflicts, for society to advise itself.

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.0 Introduction**

This chapter describes the various methods used in collecting the necessary data for the study. It also describes the research design, site selection, selection of participants, the target population, sample size and sampling procedure, sources of data, the data collection procedure, and problems encountered during the field work are discussed in this chapter.

#### **3.1 Research Design**

The study sought to examine the extent to which the land conflict between Nyanyano and Kokrobitey has undermined human rights of the people in two towns. It adopted the qualitative research design using case study approach within the phenomenological interpretative paradigm to examine, understand, explore and interpret the correlation between land conflict and human rights of the study area. Narratives were mainly employed to describe the phenomenon under study. Findings of the research were presented verbally in a detailed and complete form rather than in numbers or formulae.

The data obtained from the research is in the form of words rather than numbers, while the majority of the data contain verbatim quotes from the respondents (McNeil & Chapman, 2005). In its analysis, the qualitative data is not limited to one particular method, as different approaches can be used to analyze the study depending on the nature and purpose of the study (Dey, 1993). Furthermore, in dealing with qualitative data, the main purpose should centre on the identification of the relevant themes contained in the data. It is also important that the analysis should be guided by theory (Priest, 2010).



Qualitative research is concerned with developing explanations to social phenomena. Among others, it seeks to find answers to questions relating to how events, programmes and interventions affect people (Trochim, 1985). The qualitative approach provides a unique opportunity to explore and solicit unlimited perspectives and opinion from participants on a phenomenon under study.

A qualitative design was chosen for the study because it provides a depth of understanding which cannot be achieved from a structured questionnaire. The qualitative method unlike the quantitative has the advantage of giving room for flexibility (Silverman, 2005; Priest, 2010) and allows for an in-depth focus on the study (Patton, 2002). The free-flowing format of the discussions provided an insight into participants' views and concerns, while seeking to identify not only what they know and think, but also why they do so. Qualitative research is an interactive process, and, therefore, it was possible to respond to the individual condition of each participant as well as being accommodating enough to bring new insights.

The research methods selected say much about the views on what qualifies as valuable knowledge and the perspective on the nature of reality. The choice of qualitative methods for this research was primarily to understand the “voice of interest from the participants' perspective,” and not just from the researcher's. Patton (1985) defined qualitative research as:

An effort to understand situations in their uniqueness as part of a particular context and the interactions there. This understanding is an end in itself, so that it is not attempting to predict what may happen in the future necessarily, but to understand the nature of that setting — what it means for participants to be in that setting, what their lives are like, what's going on for them, what their meanings are, what the world looks like in that particular settings (*p.1*).

This study adopted the phenomenological approach, which sought to elucidate the meaning of the lived experience of a phenomenon of a group of people. Patton (2002) noted that a phenomenological study is one that focuses on descriptions of what people experience and how it is that they experience what they experience. This research work seeks to make a contribution that challenges the silence and subordination to cultural norms of African society by revealing the experiences of students and administrators in an institution of higher education in Ghana. A dimension of phenomenological approach is the assumption that there is an essence to shared experience. Eichelbeger (1989) asserts that in a phenomenological study, there is the need to conduct an analysis of the experience so that the basic elements of the experience that are common to members of a specific society can be identified. In similar vein, Van Manen (1990) adds that phenomenology aims at gaining a deeper understanding of the everyday experiences of a group of people, the violated or victims of the land conflict this case.

A phenomenological study requires an investigator to derive research questions that explore the meaning of that experience for individuals and ask them to describe their everyday lived experiences (Creswell, 1998). This according to Creswell (1998) is done through interviews with individuals who have experienced the phenomenon. The purpose of this research was to give a voice to the violated or victims of the land conflict who

were the core of this research project. Therefore, through in-depth interviews the research was able to derive from selected participants their experiences of the land conflict and its consequences in the study area.

### **3.2 Study Area Selection**

Nyanyano and Kokrobitey were selected as the study area for the research. There were just handful print and electronic media reports of land or resource conflict between these Gomoa and Ga ancient towns over the years Daily Graphic ((2002 January 16, p7) & Ghana News Agency (2003 October 13).

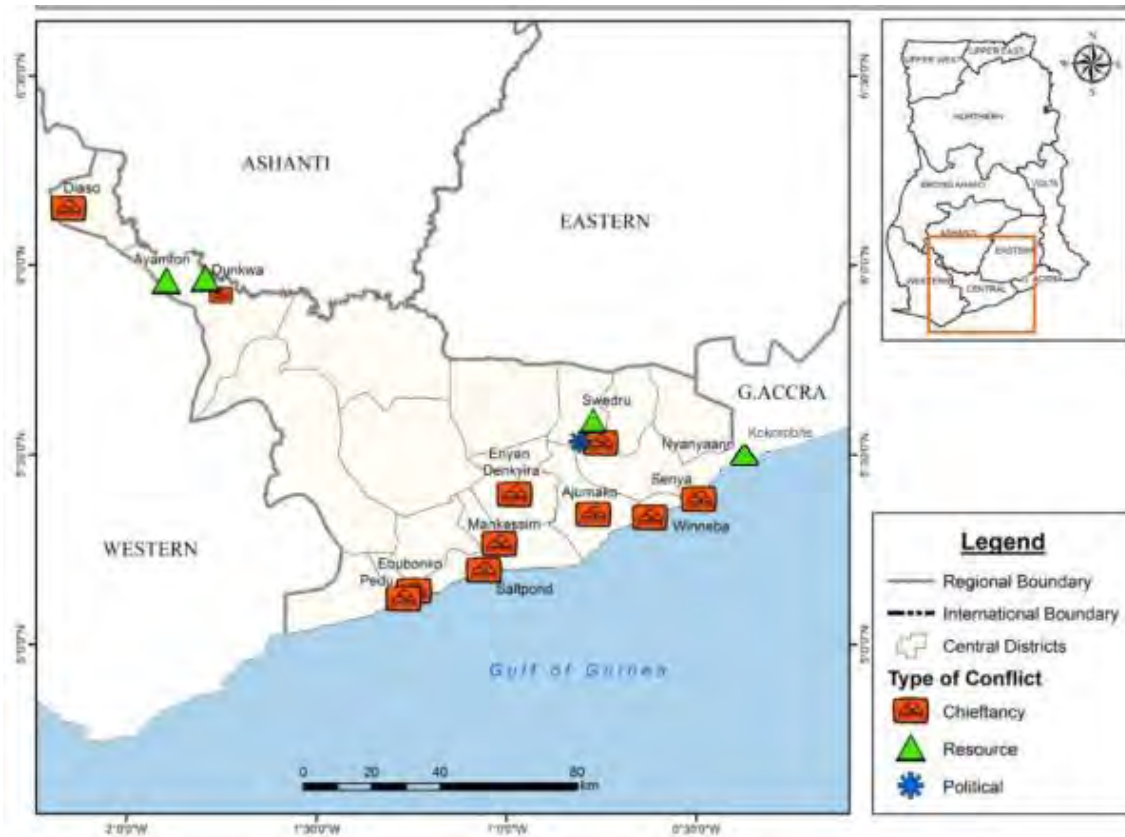
The land conflict between these two towns has been so historical to the extent that it has somewhat caught attention of the National Peace Council, Ghana and has been captured on the Conflict Zone Map of the Country. However, the media and the National Peace Council, Ghana reports and documents fell short of identifying and having discourse set in human rights perspectives relative to the over thirty-five years land conflict. Wehrman, (2008) posited that “All land conflicts, no matter how peaceful or violent they are, produce negative consequences for individual people as well as for the entire society. Many families across the world have seen their shelters - their homes - being bulldozed out of existence. And in Africa, many daily experience the selling of their property by someone else who also claims to be the owner”.

To interrogate the correlation between land conflicts and human rights in Ghana and specifically the one between Nyanyano and Kokrobitey informed the purposeful selection of this study area for the research where the violated would have the platform to share their experiences with the researcher.

### **3.3 Profile of the Study Area**

There has been land conflict history between the two towns - Nyanyano and Kokrobitey, which are all fishing communities along the Atlantic Ocean in Ghana. The former is one of the ancient Gomoa towns of the Central Region. It is in the Gomoa East District Assembly, which has its administrative capital at Gomoa Afranse and located eight kilometers southwards Kasoa from the main traffic light. The latter like the former is an ancient Ga community and owns allegiance to the occupant of the James Town Stool, chief. It is in the Ga-South Municipal Assembly. It is about ten kilometers from the then Police Barrier at Aplaku on the Accra – Cape highways. The 2010 Housing and Population Census of Ghana presents the population of Nyanyano and Kokrobitey as thirteen thousand, five hundred and twenty one (13, 521), and five thousand, seven hundred and twenty four (5, 724) respectively. The residents of the two towns are predominantly fisher folks. A few of those in Nyanyano are in salt mining industry. Most of the women of the two towns are fishmongers. The two communities are not far from Accra, the administrative capital of the country thereby attracting prospective land developers to the communities so as to acquire land for business.

**Figure 3.1: Conflict zones map of Ghana showing Nyanyano and Kokrobitey**



Source: *National Peace Council, Ghana* (edited)

### 3.4 Selection of Research Participants

In this study, the focus was to explore and understand the experiences the violated or victims of the study area in face of the Nyanyano and Kokrobitey land conflict and the extent to which it undermined their human rights. To achieve the set purpose of the study, some stake-holders and some individuals who alleged that the land conflict had resulted in the abuse of their human rights constituted the appropriate participants for the study. As Patton mentions; “Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of inquiry” (Patton, 2002, p. 230). In view of this, 16 key respondents comprising two stake-holders and other fourteen

violated who narrated the historical background of the conflict and how and extent to which it undermined their human rights respectively, were selected for the study.

### **3.5 Sample Size and Sampling Procedure**

Normally, qualitative studies employ a form of non-probability sampling such as accidental or purposive sampling (Sarantakos, 1993). Specifically, the purposive sampling procedure was employed to select key respondents thought to possess in-depth knowledge about the subject for interviews. The purposive sampling procedure enabled the researcher to sample views from different categories of people who could provide the needed information. This sampling technique enabled me to target those perceived to have some important information about the topic raised. Thus, the participants of the study were selected through purposeful sampling, because it is a dominant strategy in qualitative research that produces rich information. Patton (2002) asserts that the logic and power of purposeful sampling lies in selecting information-rich cases for in-depth study.

In all 2 stake-holders or duty-bearers and 14 other respondents who alleged the land conflict in one way or the other has undermined their human right, the violated in the study area were interviewed. The two stake-holders were contacted for interviewing through the purposeful sampling, an approach essential for locating information-rich key informants or critical cases (Patton, 2002, p. 237). Sarantakos, (1993), posited that the purposive sampling technique is the situation where the researcher purposely chooses respondents who in his or her opinion are thought to be relevant to the research topic and in the case the judgment of the researcher is more important than obtaining a probability sample. The process of sampling in this case will involve identification of the informants

and arranging time to meet them. The researcher sought the audience of the stakeholders and it having been granted had one –to – one interview with them. The interview inter alia traced the historical background of the land conflict between the towns.

Besides, snow ball sampling was employed to get to four-teen respondents who perceived that their human rights were abused under the various circumstances of the conflict. Here the researcher began the study with a few individual respondents who were available to him. Subsequently, he then asked those respondents to recommend other victims of the conflict that were also interviewed. In the snowball sampling technique, researchers begin the research with the few respondents who are available to them. They subsequently ask these respondents to recommend any other persons who meet the criteria of the research and who might be willing to participate in the project. If and when such respondents are recommended, the investigator approaches them, collects the information required and asks them to recommend other persons who might fit the research design and be willing to be studied. The process is continued until the topic is saturated, that is, until no more substantial information is achieved through additional respondents, or until no more respondents are discovered (Sarantakos, 1993).

### **3.6 Data Sources and Collection Procedures**

To address the main issues and answer the research questions, an in-depth, open ended interview-based study of stake-holders and the violated in the study area was conducted. The sample size depended on when the saturation point was achieved during the interview. The saturation point was reached when no new issues and themes were likely to emerge from further interviews. Kumar (2005) opined that this sampling procedure is

acceptable in qualitative research. Thus, the primary sources of data were the interviews and non-participant observations.

Three main sources of data were used for the study – interviews, observation and documents. The interviews and the observations were the sources of the primary data while official documents and related literature provided the secondary data sources. The secondary source of data complemented and supplemented the interview and the observation data.

### **3.7 Instrumentation**

Qualitative enquiry of this nature, which focuses on meaning in context, requires a data collection instrument that is sensitive to underlying meaning when gathering and interpreting data (Adusah-Karikari, 2008). The main data collecting instrument for the research was the use of open-ended questions used as interview guides. The interview guides were then used (see Appendix A1 and A2) for stake-holders and the violated respectively, to elicit the needed qualitative data. Sets of related questions based on the research questions were used for interviewing. Interviews were conducted to gather the needed data for the study. Patton (2002) contended that qualitative interviewing begins with the assumption that the perspective of others is meaningful, knowledgeable, and should be able to be made explicit. Moreover, Patton (2002) reveals that qualitative findings grow out of three kinds of data collection: in-depth, open-ended interviews, direct observation, and written documents. Glesne (2005) also affirms that the use of multiple data collection methods contributes to the trustworthiness of data. Therefore, the concept of triangulation was employed for the data collection. Patton (2002) noted that triangulation within a qualitative inquiry strategy can be obtained by combining both



interviewing and observation. For the purposes of this research, data triangulation was applied, which is the use of a variety of data sources in a study (Denzin, 1978). Cohen & Mannion (1994) asserted that the purpose of triangulation is not the simple combination of different kinds of data, but the attempt to relate them so as to counteract the threats to validity identified in each. In support of the use of in-depth, open-ended interviews, observations, and documents for this research work, Patton (2002, p.248), asserted that “studies that use only one method are more vulnerable to errors linked to that particular method than studies that use multiple methods in which different types of data provide cross-data validity checks”. Bogdan & Biklen (2003) summarised the fundamental methods relied on by qualitative researchers for gathering information as participation in the setting, direct observation, in-depth interviewing, and document review. These methods formed the central part of this study.

### **3.8 Pilot Testing of Instrument**

In February, 2014 a pilot test of the instrument for the study was conducted on a disputed piece of land at Brigade, a community along the Accra-Kasoa main lorry road, which both Bortianor and Weija claim ownership. This involved a discussion with some selected stake-holders from the two towns.

The pilot test gave a foreknowledge of the duration for the interviews with key respondents. It also helped re-phrased and re-structured so as to avert unclear and ambiguous questions. Some of the questions were re-arranged to ensure logical ordering of questions and deletion of repeated ones. Additionally, the pilot study also helped in planning for the field work to make it less stressful. More importantly, the testing of the instrument enabled me to establish the validity, internal consistency and reliability of the

instrument. The key aspect of establishing reliability involved the selection of what is recorded, the technical quality of recordings and the adequacy of transcripts. Moreover, the consistency of responses by the respondents in reaffirming what they had said earlier on during the follow up checking on the transcribed responses, did not only help to establish reliability but also validity. According to Silverman (2001: p. 227) "... the quality of recordings and transcripts has important implications for the reliability of conversation analytic research".

### **3.9 Interviewing**

Keats (2000) defined interview as a controlled situation in which one person, the interviewer asks a series of questions of another person, the respondent. Some instances in which the use of interview could be efficient include the need to know what people are thinking, and, the need to explore the reasons and motivations for the attitudes and opinions of people. There is an element of specificity in the use of interview. For example, it is meant for a specific purpose, specific individual and specific group of respondents. It is a means through which the rationale for the interviewee's responses could be ascertained, and enhances the verification of the reliability of the responses when the interviewer asks probing or follow-up questions. According to Rapley (2004), interviews are by their very nature, social encounters where speakers collaborate in producing retrospective (and prospective) accounts or versions of their past (future) actions, experiences, feelings, and thoughts. An interview is a purposeful conversation, usually between two people, although sometimes involving more than two. That is directed by someone in order to get information from the other (Bogdan & Biklen, 2003). The use of interviews involves the act of speaking to respondents who are selected to

provide answers to research questions based on a particular topic under study (Hart, 2005). In qualitative research, interviews may be used in two ways. They may be the dominant strategy for data collection, or they may be employed in conjunction with participant observation, document analysis, or other techniques (Rapley, 2004). In all these situations, the interviews were employed to gather descriptive data, in the subjects' own words, so that the researcher could develop insights on how subjects interpret some situations or phenomena. Sarantakos (1993) noted that interviews are particularly useful for getting the story behind a participant's experiences. Kvale (1996) stated that the qualitative research interview seeks to describe the meanings of central themes in the life world of the subjects.

Patton (2002) categorized interviews into three general types: the informal conversational interview, the general interview guide approach, and the standardized open-ended interview. Two different sets of general questions to serve as interview guide was used in the interview process for stake-holders and the violated at the research area. The face-to-face interview is presented as enabling a "special insight" into subjectivity, voice and lived experience (Rapley, 2004). Under the study, ten and eleven semi-structured item questions were developed for face-to-face interviews with the violated and duty-bearer respondents respectively. The questions consisting of open-ended and flexible questions, which, according to Byrne (2004) were likely to get more considered responses and therefore provide better access to interviewees' views, interpretations of events, understandings, experiences, and opinions. In this research, these approaches were planned with the intention to elicit views and opinions of each participant's experiences

in relation to the Nyanyano and Korobitey land conflict; its historical background and human rights climate and the obstacles one encounters.

A study on land conflict and its associated human rights abuses in this study area necessitated a decisive ethical consideration in order to protect the rights of the research participants. There are many ethical issues in relation to participants of a research activity (Kumar, 2005). The principle of voluntary participation was required of the people and they were not to be coerced into participating in the research. Closely related to the notion of voluntary participation was the requirement of informed consent. Essentially, this means that prospective research participants must be fully informed about the procedures and risks involved in research and must give their consent to participate. Ethical standards also require that researcher would not put participants in a situation where they might be at risk of harm as a result of their participation. Harm can be defined as both physical and psychological (Adusah-Karikari, 2008).

There are two standards that were applied in order to help protect the privacy of research participants. The research guaranteed the participants confidentiality -- they were assured that identifying information would not be made available to anyone. The stricter standard, the principle of anonymity essentially means that the participant remained anonymous throughout the study -- even to the researcher was adhered to. The anonymity standard was a stronger guarantee of privacy (Cohen & Mannion, 1994). To ensure that the ethical issue of a person's right to service was not violated, before each interview, the participants were advised. In the first place the purpose of the interview being conducted was explained. Secondly, participants were sought to give their consent to take part in the research. Then those who were willing to take part gave their consent verbally which

were recorded. Also, permission from interviewees were sought to record the interviews and at the same time consented participants were assured of anonymity.

Interview guides (Appendix A1 and A2) were employed to interview the research participants, to elicit the needed qualitative data. The use of a digital recorder was used to record the interview in order to capture the exact words of the respondents. This is in line with Patton (2002, p.380) who advises that “no matter what style of interviewing you use and no matter how carefully you word questions, it all comes to naught if you fail to capture the actual words of the person being interviewed”. In addition to this, personal notes on observations were taken to ensure that voices were captured accurately in context. This is because Patton (1990 p.383) recommends that note taking allows the researcher “to concentrate on taking strategic and focused notes rather than attempting verbatim notes”. Separate locations were used for the interview. In most cases a convenient place or spot was chosen by the interviewee. However, almost all of the respondents were interviewed at the forecourts of their home and residences. The interview sessions on the average lasted for twenty minutes.

### **3.10 Participant Observation and Documents**

Observation as an ongoing qualitative research technique is important since it helps to present the whole picture, captures context or process, illustrates and informs about the influence of the physical environment (Nisbett, 1977). Participant observation refers to situations in which an observer gains firsthand knowledge by being in or around the social setting that is being investigated. The researcher does not get involved in the activities but remains a passive observer, watching, listening, and recording activities as they are performed and drawing conclusions from this (Kumar, 2005, p.120). The people

of the study area were closely observed especially those at Dampase/Langma, a community on the part of the land that Nyanyano and Korobitey have locked each other up in since 1979. The observation was employed so as to interrogate the interactions, as well as the behavioral patterns and relationships between the two towns that constituted the study area. One of the problems associated with observation is that “when people become aware of that they are being observed, they may change their behaviour to be positive or negative – it may increase or decrease” (Kumar, 2005, p.120).

The use of official documents, Honourable Justice F. T. C. Amorin Stool Lands Boundaries Settlement Commission Judgment on Nyanyano and Kokrobitey in 1984, Lands and Concessions Bulletin on 25th October, 1985, Court Judgments and Orders, and Police Reports, were intended primarily to collect data on issues relating to land conflict between these two towns, which is always associated with human rights abuses. In addition, reports from print and electronic media that contained information on land conflicts in Ghana and the study area in particular were useful data to this research. As Patton (2002, p.295) advised, “Learning to use, study and understand documents and files is part of the repertoire of skills needed for qualitative inquiry.”

### **3.11 Member Checking**

In order to ensure the accuracy of data gathered during the interview, there was the need to conduct member checking. Glesne (2005) defines member checking as sharing interview transcripts, analytical thoughts, and/or drafts of the final report with research participants to make sure they and their ideas were being represented accurately. Basically, the interviews were conducted in Ga-Dangme and Akan and all interviews were transcribed personally all by the researcher to ensure that no data were lost. Patton

(2002, p. 441) affirms that “doing all or some of your own interview transcriptions (instead of having them done by a transcriber), for example, provides an opportunity to get immersed in the data, an experience that usually generates emergent insights”.

Just as Patton (2002, p. 437) noted, “on occasion, gaps and ambiguities found during analysis cry out for more data collection” so were interviewees re-contacted to clarify or deepen responses. Clarification and confirmation on issues and themes that were raised during interview were sought.

### **3.12 Data Analysis and Interpretation**

Notably, qualitative research is a complex issue, and making sense of qualitative data is not an easy task (Coffey & Atkinson, 1996). From the interviews, considerable text data that were generated were organised, transcribed, edited and coded to ensure that all inferring schedules are complete and contain accurate information. Bogdan and Biklen (2003; p. 54) defined qualitative data analysis as “working with data, organizing it, breaking it into manageable units, synthesizing it, searching for patterns, discovering what is important and what is to be learned and deciding what you will tell others”. Patton (2002) noted that analysis of any kind of data referred to its systematic examination to determine its parts, the relationship among the parts, and their relationship to the whole. Glesne & Peskin (1992) maintained that qualitative data analysis involved organising what one has seen, heard, and read so that one can make sense out of what he/she has learned in the field. According to Bell (1993), “...a hundred separate pieces of interesting information will mean nothing to a reader unless they have been placed into categories ... groupings, patterns and items of particular significance” (p.127).

The data collected consisted of personal notes on observation, digital recording of interviews, and institutional documents. The data gathered were given serial numbers to facilitate easy identification for scoring. After transcribing the data, an inductive approach was used to organise the data into various themes and categories based on the research questions and the objectives of the study. Data were organised into four sections, based on the themes of the research questions such that the results of the analysis provided answers to the questions raised. The inductive analysis, a process that is aimed at uncovering embedded information and making it explicit (Hoepfl, 1997) was used. As Bogdan & Biklen (2003) also noted, this qualitative analysis helps themes and categories to emerge during three phases – i) Discovery ii) Coding iii) Interpretation. The discovery is when the researcher identifies themes and develops concepts as research progresses. The next phase, coding, occurs after the data collection, focusing on refining the understanding of the subject matter. The final phase is interpretation in which the researcher attempts to understand the data. This research utilized the tools available through the adopted research design — phenomenological study — which proceeds through the methodology of reduction, the analysis of specific statements and themes and a search for all possible meanings (Creswell, 1998).

Thus, based on the participants' utterances, which is the unit of analysis, the transcribed responses to each item for all participants were transposed onto a broad sheet. All the responses to each item were grouped together to provide a quick overview and for easy deductions. Studying the various responses, the data revealed some pattern of recurrent instances which were identified across the data set (Silverman, 2004). It was then possible to code and categorise related and



divergent views. For example, some responses to research question two were the followings:

Respondent 'A': ... **arrested and detained** without any charge .....

Respondent 'B': ... **abuse of pupils' right to education** .....

The key words in bold describe examples of human rights abuses that are involved in the land conflict and were classified under “arbitrary arrests”, “abuse of rights to education” as illustrated in ‘A’ and ‘B’ respectively above. See page 74 – 101 for the discussion.

### **3.13 Challenges of Fieldwork**

There was a number of inhibiting factors inherent in the research situation. The first and foremost was that some prospective respondents that the researcher could have relied on for data averted granting interview to the latter. The under-lying factor, according to them was mistrust that was generated by some journalists who interviewed them and ended opening up those duty-bearers of the communities for sharp criticisms and targets for a cross-section of the society, especially, their rivals in the land conflict. They also cited instances of attempts to cite them for contempt of court for expressing their views on the foot-dragging nature of the law courts on the several cases on the land conflict before them in the face of the wide spread human rights abuses that are becoming its permanent feature of recent times.

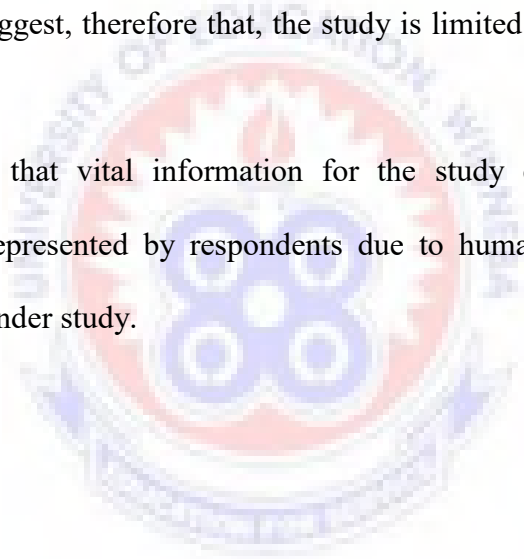
Also, a handful of the violated declined to be interviewed. They also cited mistrust and history of betrayal on parts of some individual who posed as investigators. They further said that the study may not translate into compensation for their losses in a conflict that

they have never been involved in directly and indirectly either, therefore, they would not be part of the study.

Finally, unlike the land conflicts between Peki-Tsito, Nkonya-Alavanyo in the Volta Region and Konkomba-Bimoba in the Northern Region, and several others in the country, the Nyanyano-Kokrobitey land conflict and its inherent human rights abuses has not caught much attention of most journalists and other scholars, and therefore, there were just scanty print media and electronic literature for review for the study.

These challenges suggest, therefore that, the study is limited to views and perceptions of the participants.

The implication is that vital information for the study could have been withheld, suppressed or misrepresented by respondents due to human factors and the sensitive nature of the topic under study.



## **CHAPTER FOUR**

### **RESULTS AND DISCUSSION**

#### **4.0 Introduction**

This chapter presents the results obtained from the review of documents, observations, and interviews conducted so as to answer the research questions posed in this study. The purpose of this study was to examine the extent to which the Nyanyano and Kokrobitey land conflict has undermined human rights. The research questions provide a framework for this study. To provide a quick reference, the research questions enquire specifically about:

1. Background of the conflict
2. Human rights abuses are involved in the conflict
3. How the abuses carried out
4. Responses of state institutions to ensure peace in the land conflict

Also, the data collected on the above themes and on pertinent issues related to the extent to which the land conflict that the two towns have locked each other up in for over three decades has undermined the human rights of the people of the study area are analyzed, discussed and presented. Data gathered from the participants were coded after studying the responses. It was important to understand the data in order to effectively manage data, merge related data drawn from different notes, and identify patterns or relationships. This helped in analyzing the data by categorizing them into the appropriate themes. These were discussed, drew and verified conclusions.

The data that emerged from the documents, observations as well as the interviews conducted, are described and analysed and related the themes to the research questions. Finally, the chapter provides detailed description of the themes and concepts that emerged from the interviews with the 2 stake-holders or duty-bearers that provided data inter alia on how the conflict came about and 14 other respondents who presented their experiences on how the conflict affected their human rights. In coding the voluminous data, several themes and patterns emerged.

The dominant themes that occurred or recurred are arbitrary arrest some of the residents were arrested and detained in in police cells without any charge preferred against them; abuse of Right to Education, pupils were attacked on their way home after school at Kokrobitey and ill attempt was made to demolish the Junior High School at Dampase/Langma by planting a dynamite at the back outside corner of the school facility; assault and torture, the interview with the respondents revealed that torture is inherent in the conflict for any time it resurfaces some individual are brutalized, especially at Dampase/Langma by a group of individuals or rented land guards; violation of Right to Life, it was revealed by the findings of the study that a life was lost, which undermined that individual's right to life; and Property Right: Loss of Property; a number of respondents recounting their experiences relative to the land conflict narrated that they have had their homes reduced to into rambles.

This qualitative research focused on the experiences of residents of the study area especially the violated how the land conflict undermined their human rights. Lykes and Coquillon (2007) affirmed that qualitative research methods are more designed to encourage the preservation of participants' individual input and particular context — their voices, lived experiences indigenous knowledge, perception, and words.

The next segment of the study focuses on the analysis of the specific themes of the abused human rights of the study participants relative to the research questions.

## **4.1 Findings Related to Research Questions**

**4.1.1 Research Question 1:** *How did the land conflict between Nyanyano and Kokrobitey come about?*

### **4.1.1.2 The historical background of the Nyanyano-Kokrobitey land conflict**

This question sought to trace and examine the historical background and nature as well as the factors contributing to the Nyanyano-Kokrobitey land conflict.

Archival documents revealed that the Bakaba stream near Kokrobitey has been the natural landmark of the boundary between the two communities that constitute the study area for this research. The two towns adhere strictly to the said landmark as such and when the claim over the rightful ownership of the land between the Okrudu River and Bakaba stream came up for determination in the year 1970 in the Court of Appeal, Accra, between the then chiefs of Nyanyano and his Senya Bereku counterpart, a counselor of the James Town Stool Lands, which the Kokrobitey Stool holds allegiance testified that there had been no boundary between Nyanyano and James Town by inference Kokrobitey. The counselor contended that James Town rather shares boundary with Senya Bereku. The Court ruled in favour of the Plaintiffs, the Chief of Nyanyano and his two elders.

The relatively peaceful co-existence between the towns rather took a nose-dive in the year 1979 and became stained when the latter was alleged to have trespassed the existing Bakaba stream and claimed that a coastal landmark rock, Breku Abo, has been the boundary between the two communities. Kokrobitey like Senya Bereku has been

disputing with Nyanyano over the same stretch of land between the Okrudu River and Bakaba stream. Both parties claim ownership of the town at the heart the land the conflict is about, which is called Dampase and Langma by Nyanyano and Kokrobitey respectively.

When efforts to resolve the conflict at inter-community level failed, the then chief of Nyanyano took up the matter in the Accra High Court in the 1979. After several weeks of giving ears to the two parties, the case was adjourned sine die and referred to Stool Lands Boundaries Settlement Commission in Accra on the 21st March 1979 for enquiry. The Commission was headed by Honourable Justice F. T. C. Amarin. The full text of judgment of the Commission is presented in this thesis at *Appendix B*.

#### **4.1.1.3 The nature of the Nyanyano-Kokrobitey land conflict**

The periodic resurfacing of the Nyanyano-Kokrobitey conflict in recent years in the face of the existing judgments made its victims ask if it will ever come to an end. The conflict is intractable in nature and one of the lands related ones in the Central Region and several of those in other parts of the country, Ghana.

For several years, Nyanyano has a strong perception that the conflict remains insoluble for some seemingly invisible group of individuals on the side of Kokrobitey benefit from it. Those individuals either themselves or their agents constantly sell parts of the land, the source of the conflict to some innocent individuals land developers and any attempt by the former to check that always resulted in conflict sometimes violent one. It is not uncommon to see hired land guards of Kokrobitey go on the rampage vandalizing and ransacking several homes of the Dampase/Langma residents. For example, in the year

1994, activities of those land guards made scores of the residents flee their homes for nearby towns where they found safe haven for a number of weeks. The land guards are said to always come with guns, cutlasses, and clubs and they do the bids of their pay masters by manhandling and assaulting innocent individuals living on the parts of the land at the centre of the conflict. In the 1994 situation, a man from the Kokrobitey side inadvertently shot and killed his own brother in a cold blood at Dampase/Langma.

#### **4.1.1.4 Factors contributing to re-escalation of the Nyanyano-Kokrobitey land conflict**

A number of factors contributing to re-escalation of the Nyanyano – Kokrobitey have been revealed by the findings of the study.

First and foremost, economic factors amongst several others have been the undercurrent of the conflict in contemporary times. The geographical location of the land under the conflict makes it appear economically viable and attracts various individuals who visit the area. They express their desire to acquire portions of it, which makes it more lucrative and competitive. For its location and seemingly economic import, from the year 1994 some individuals and groups at the Dampase/Langma and Kokrobitey started posing themselves as if they were the rightful land owners and have been selling substantial portions of the land to unsuspecting individuals and groups. The efforts of the chief Nyanyano and his representative, the chief of Dampase/Langma to check the selling of the land by those individuals has always resulted in a lot of skirmishes. It is not uncommon to witness unleashing of land guards on the Dampase/Langma chief and his people. In the year 1994, the land guards took the town hostage and the precarious widespread nature of their attacks on everyone at sight compelled many of the town folks

to flee their homes and took refuge at Kasoa, Nyanyano, and some suburbs of Accra. Those individual residents returned to the town only after the land guards had vacated it town after many weeks of its occupation. In the face of the unabated selling of the land, the counsels for the chief of Nyanyano, Prudential Law Office based in Accra filed a Writ of possession to the land in the High Court of Justice, Accra. The Writ was upheld by the Court on 12th day of May, 2011. On the 3rd day of June, 2011, the same Court granted the chief of Nyanyano's application of Order to demolish all offending structures on his land. Notice to that effect was pasted at vintage parts of the town and the sites where the demolishing exercise was to be carried out. To execute the demolishing order, the representatives of the chief of Nyanyano together with two supervising police officers, the demolishing was started at 7:30 am on the 30th November, 2011. When the individuals who sold parts of the land to the unsuspecting individuals heard that the High Court order was being carried through, they mobilized themselves together with some land guards went on the rampage setting fire into the homes of any person they perceived to be directly or indirectly involved in the demolishing. The residence of the chief of Dampase/Langma was vandalized. Two parked vehicles of his had their windscreens smashed and other parts of their bodies dented. Another man had most part of his building reduced into rambles and the remaining parts set ablaze. A woman in her early fifties of age had her entire building brought down all because her son was sighted at the demolishing site.

Furthermore, the lackadaisical approach by a cross-section of the Ghana Police Service in the Greater-Accra and Central Regions to the efforts to reverse the conflict is also factor that has not help resolve the protracted conflict. The police of the two regions have been



accused of actions, inactions and foot-dragging when complaints of assaults of individuals and destructions of their properties by very identifiable group of individuals are reported to them. It is on record that when the demolishing order was being executed on the 30th day of November, 2011 got to a stage, the State authorities carrying out the exercise heard a gunshot and paused. They then moved to the starting point of the demolishing only to meet a man with the Plaintiffs representative who had his head injured and had blood all over the body. The executors saw a gathered group from a close distance and were informed they were Sempe chief's group and the very people who inflicted the injury on the man. Subsequently, the Assistant Superintendent of Police and head of the police providing security for those under-taking the demolishing directed that the exercise had to be placed on a hold for they had been ordered by the then Regional Police Commander of the Greater-Accra Region to have the demolishing of the structures stopped and they should return stations in Accra. The question on the lips of the violated, victims of the conflict has been what the motivation and interest of the commander in the conflict.

Also, the actions and inactions of some Courts of the country are blamed for tension between these two communities. The seemingly delays in the determination of the several cases that are brought up for redress on land related conflicts especially the one under study may justify that assertion. In the face of the aftermath open violence that characterized the 30th November, 2011 demolishing, forty-five persons were charged for contempt of court by the High Court, Accra for it was alleged that they took part in a broad-daylight brutality on some of the residents of the town. Some others were also cited for a contempt of Court for their involvement in a press conference that was held

few minutes after the execution was halted on the orders of then Regional Police Commander. The hearing of the case started at the High Court, Accra on the 16th day of January, 2012. The only decision the court has made on the case so far has been the several number of adjournments. A similar case has been brought before the Circuit Court of Agona-Swedru in the Agona West Municipality of the Central Region and like the High Court, Accra not even a single decision has been made so far. The so many predictable adjournments are poisoning the already existing bad atmosphere between the communities.

Besides, the political decisions of successive governments of Ghana to re-locate or alter existing boundary between the Greater-Accra and Central Regions for effective political administrative purpose has served as a fuel for the Nyanyano-Kokrobitey conflict like several ones in the country. Before the Okrudu River between Engleshie-Amanfrom and Kasoa was cited as the landmark boundary between the two regions, it was the Old Police barrier at Akplaku that was the demarcation. Kokrobitey is contending that Nyanyano is in the Central Region and the River lies between it and the land under conflict, therefore, Nyanyano has no basis to claim ownership of land in the Greater-Accra Region. They further added that it is the Okrudu River that is the boundary between the Nyanyano and Kokrobitey Stool lands. Their Nyanyano counterparts debunked those assertions and argued that national political regional administrative purpose demarcated boundaries have never ever changed or affected existing traditional Stool lands boundaries and such decisions only generate traditional Stool lands conflicts or revive existing ones mostly between either intra-ethnic or inter-ethnic ones.

Finally, another dangerous phenomenon that if not checked will defeat all purposes and intents for a lasting peace relative to this conflict has been the creation of two different constituencies' polling stations, Bortianor/Ngleshie-Amanfrom and Gomoa East at the Langma/Dampase during the 2012 general elections in the country, Ghana. This community located on part of the land the conflict is about and such decisions only come to aggravate the already volatile situation and the question where in the Ghana political elections history has one single town or community hosted two different constituencies is not answered.

The findings reveal that the Nyanyano and Kokrobitey land conflict is historically set in unresolved dispute over a parcel of land, which is engendered by the refusal or unwillingness of one party to adhere to a series of court rulings in favour of the other. This defiance has been associated with further encroachments on the disputed-over land. In recent times, it is relatively linked to actions or inactions of successive governments that altered existing political and administrative boundaries; the failure or lackadaisical approach of state and law enforcement agencies to enforce court rulings has also rekindled the conflict and further encroachment on the land due to its economic and political viability.

Other studies by Lund (2008) and Lentz (2010) found that government programmes of decentralization that entail the demarcation of new or amended district and other boundaries have tended to create or resurrect rivalries among 'traditional' authorities. Tsikata & Seini (2004) posited that the struggle over land and its control is another important aspect of ethnic conflicts and identity politics.

The land conflict is intractable and cyclical in nature. It is recurrent, violent and volatile; it is often perpetrated by land guards who are mostly youth in the communities. The appreciation of the genesis and dynamics of this conflict forms basis for its management and resolution relative to human rights. As Ubi (2001) puts it, the understanding of the conflict is necessary for the sorting out of the issues involved. The sorting includes the identification of the core issues and root causes of the conflict. It includes the identification of victims of the conflict, stakeholders and escalating causal elements.

#### **4.1.2 Research Question 2:** *What human rights abuses are involved in the conflict?*

##### **4.1.2.1 Arbitrary arrests**

This question examined the human rights issues inherent in the land conflict between the Nyanyano and Kokrobitey.

Land conflicts often have extensive negative effects on economic, social, spatial and ecological development. This is especially true in developing countries and countries in transition, where land market institutions are weak, and opportunities for economic gain by illegal action are widespread and many poor people lack access to land. Land conflicts can have disastrous effects on individuals as well as on groups and even entire nations. Many conflicts that are perceived to be clashes between different cultures are actually conflicts over land and related natural resources.

A number of respondents recounted the several numbers of days they spent in police cells at Odorkor, Weija, and Kasoa after they were picked up by the police. According to them, in most cases no charges were preferred against them and they were only released through the intervention of duty bearers of the communities.

A victim of the conflict had this to say:

On the 8/3/1998, I and eight others of Dampase were arrested and taken to the Odorkor police station. We were told the arrest was on the request of a man at Kokrobitey and woman in Accra respectively. The latter was businesswoman that the former sold the entire hill part of Dampase to. Even though we were not charged formally for any crime, I and the other eight were detained for ten days. But for the intervention of some chiefs and their elders, we might have died in detention.

Personal liberty is one of the oldest human rights already to be found in the British Magna Carta Libertatum of 1215. Its meaning must not be confused with the liberty in general sense. Liberty of the person relates only to the freedom of bodily movement in the narrowest sense, that is to the freedom from forceful detention a person at certain narrowly bounded location such as police detention centre just to mention a few. Article 9 of the (ICCPR) and similar regional treaties Article 5 of the (ECHR), Article 7 of the (ACHR), Article 6 of the (ACHPR) do not prohibit deprivation of person liberty as such, but established certain procedural guarantees and minimum standard against arbitrary arrest and detention. Article 5(1) of the European Convention of Human Right is more precise and establishes an exhaustive list of permissible case of deprivation of liberty. Most important are custody and pre-trial detention of a suspected criminal and the serving of a prison sentence after conviction by a criminal court. Any deprivation of liberty is only permissible if it is carried out in accordance with a procedure established by domestic law and it is in conformity with the minimum guarantees laid down the respective provisions: every detainee shall be informed promptly of the reasons for his or her arrest, shall be entitled to take habeas corpus proceedings before a court, which has to decide without delay and order release if the detention is unlawful and shall have an enforceable right to compensation if detention was

unlawful. In addition, persons held in custody shall be brought promptly, that is within a few days, before a judge who must either release them or authorize pre-trial detention. They are entitled to trial within a reasonable time and to release in exchange for bail or some other guarantee to appear for trial (Symonides, 2000).

The Article 14(1) of the 1992 Republican Constitution of Ghana states that: Every person shall be entitled to his and her personal liberty and no person shall be deprived of personal liberty and goes further to elaborate the circumstances any such deprivation can occur. Article 14(2) is stated in an unequivocal term that: A person who is arrested, restricted, or detained shall be informed immediately; in a language that he understands, of the reasons for his arrest, restriction or detention and his right to a lawyer on his choice.

#### **4.1.2.2 Abuse of Right to Education**

The right of a child to education is one of the most critical of all rights because education plays an important role in enabling an individual to secure other rights. Yet this right is systematically violated in the Dampase/Langma community as a result of Nyanyano-Kokrobitey conflict. The conflict is undermining the right of pupils and students to formal education and also denies their right to quality teachers.

#### **A respondent asserted that:**

The Dampase-Kokrobitey land conflict has been going on since the second half of the twentieth century. However, the current dimension of violence that is gradually becoming a permanent feature started in the year, 1994. I

had been a victim of this conflict in 1998. I was then a pupil of Kokrobitey Primary School. There was no formal school at Dampase then. Kokrobitey was then the nearest accessible school. It was on our way back home after class in the afternoon that we were attacked and severely beaten up by some fisher-folks of Kokrobitey. When we got home and informed our parents about the assault we suffered in the hands of those Kokrobitey fisher-folks, they told us that there was a misunderstanding between the Dampase fisher folks and their Kokrobitey counterparts at the Dampase shore in the morning of the attack on us. The attack and subsequent threats on us pupils living at Dampase attending school at Kokrobitey made most pupils drop out of school. Only few parents were able to have their wards continued their formal education at Nyanyano and Ada in the Central and Greater-Accra Regions respectively.

**One of the respondents indicated that:**

On the 31/12/2011, attempt was made to blow-up the only Junior High School of Dampase. An explosion was planted to bring the entire school down. The device did explode but the three unit classrooms in addition to office just suffered an outside corner break up. Investigation by experts revealed the planted explosive device was dynamite.

Formal complaint was lodged with the Kasoa Police on the attack on the school. Three suspects were picked up by the police. The case against all those three suspects was mentioned just once at the law court when they were brought before the law.

Besides, constant threats on the teachers at Dampase and the attempt to blow-up the only Junior High School in the town by the Nyanyano land conflict opponents compelled several of the teachers at Dampaseto apply for transfers and left the school. A number of teachers that were posted to the town mostly failed to report at post all because of the conflict situation in the area. The situation has contributed to poor academic performance among our students and pupils.

Abuse of right to education, is among the greatest scourges afflicting humanity at the end of the 20<sup>th</sup> century. It has left hundreds of millions of adults disadvantaged, vulnerable and impoverished. Each year, it claims millions of new victims from the ranks of the world's most vulnerable citizens: its children. It is destroying human potential on a vast scale. Most of the victims are poor. The vast majority are young girls and women. The scourge in question is not a disease, but mass illiteracy, caused by exclusion from opportunities. Failure to act will carry a high price. Universal primary education is an imperative for addressing the single greatest challenge facing humanity at the end of the 20<sup>th</sup> century: namely, the eradication of poverty. It is also a fundamental requirement for social justice. We are living through an age in which education is becoming an increasingly important determinant of living standards. Countries and individuals without access to the skills and knowledge provided by education will fall further and further behind others. Crucial as international support is, it would count for little in the absence of national action. Developing countries themselves must do far more. The world cannot afford to tolerate the poverty, injustice, and waste associated with the mass violation of the right to education (Watkins, 1999).

After almost a decade of preparatory work, the United Nations (UN) adopted in 1989 the Convention on the Rights of the Child (CRC). Amongst the human rights instruments that make up the UN human rights system, CRC stands unique. Never before has a human rights instrument promoted under the auspices of the UN had so many states participating at the signing ceremony. Never before has a human rights treaty gone into force within months after the UN General Assembly had adopted it; and never before has a human rights instrument received near-universal ratification. This overwhelming normative consensus affirms a shared and



welcome global recognition of the rights of the child. Articles 28 and 29 of the CRC deal with the right of the child to education (Rwezaura, 1994).

Also, Article 26(1) of the Universal Declaration of Human Rights states that, "Everyone has the right to education." Its Article 26(2) states that 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom'.

Besides, Articles 13 and 14 of the ICESCR set out detailed formulations of the right to education. Article 13 contains a general statement that everyone has the right to education and that education should contribute to the full development of the human personality. It also specifically stipulates inter alia:

- Primary education shall be compulsory and available free to all.
- Secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education.
- Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.
- Fundamental education shall be intensified for those persons who have not received or completed the whole period of their primary education.

- Systems of schools shall be established and the material condition of teaching staff shall be continuously improved.

Article 14 requires each state party that has not been able to secure compulsory primary education free of charge, to undertake, "within two years, to work out and adopt a detailed plan of action for the progressive implementation of compulsory primary education free of charge for all."

Furthermore, the UNESCO Convention stipulates that states parties must undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and treatment, and, in particular, to make primary education free and compulsory. In addition, it recognizes parents' right to freely choose their children's educational institutions and to ensure the religious and moral education of their children in conformity with their own convictions.

In addition, Article 10 of CEDAW also contains provisions dealing with the right to education. It provides, for example, for equal access to career and vocational guidance and to studies at all educational levels; access to the same curricula and examinations; elimination of stereotyping in the roles of women and men; and the same opportunities to benefit from academic scholarships.

Additionally, the right to education is recognized and guaranteed under African regional human rights instruments. These include the African Charter on Human and Peoples' Rights (Article 17) and the African Charter on the Rights and Welfare of the Child, which all highly articulate the right to education.

Finally, the constitutions of several countries include provisions on the right to education. For example, Article 25 of Ghana's 1992 Constitution guarantees the right to education, and mandates the provision of basic and special education freely to citizens.

**4.1.3 Research Question 3:** *In what ways are the abuses involved in the conflict carried out?*

#### **4.1.3.1 Assault and Torture**

Under this section, a range of divergent views were received from the research participants on the human rights abuses that are involved in the land conflict carried out. The data for study revealed interrelated and complex factors on the ways are the abuses involved in the conflict carried out.

The interview with the respondents revealed that torture is inherent in the conflict for any time it resurfaces some individual are brutalized, especially at Dampase/Langma by rented land guards.

#### **A respondent who was tortured in violent land conflict gave this account:**

I have always been a victim of attacks in this protracted land conflict between these two communities. For example, in the year 2005 I and my brother were gunshot from a very close range on our farm at Dampase. Even though we survived the gunshot, we sustained some gunshot wounds.

Also, in the year 2006, I as well as my brother was attacked with cutlasses and clubs by a group of people including a cross-section of the residents of Dampase who visited various degrees of injuries on us.

In addition, I was attacked on the 30/11/ 2011 with cutlasses, stones, and clubs by a group of people from the Kokrobitey, some Dampase residents and a self-style chief of a suburb of Accra and his hired land guards. My

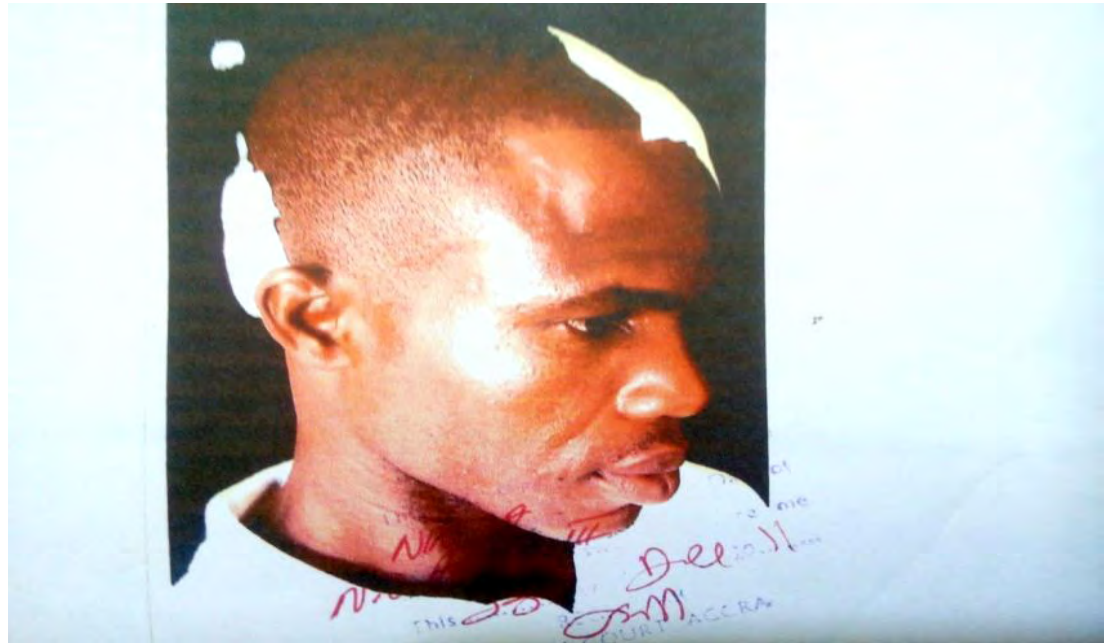
head was the most targeted by the assailants in that instance. I bled profusely from the deep cuts I had had all over my head. The bleeding made me collapse and I was rushed to the hospital for treatment. I spent two days on admission at the Korle-Bu Teaching Hospital where I had had the cuts on my head stitched.

Furthermore, in the year 2012, I became the target of the same group of individuals that attacked me the previous year. I was hit at the back with a heavy stick by one of the assailants. The acuteness of pain made me fall and become unconscious. I was rushed by a driver to the Kasoa Clinic so as to have medical attention. At the clinic, the assessment of the injury by its medical officer-in-charge revealed that there was a greater degree of injury to my spinal cord and I was therefore, referred to the Accident and Trauma Hospital at Winneba. At the Winneba too, I was instantly issued reference meant for the Korle-Bu Teaching Hospital as the Winneba like the Kasoa Clinic did not have the facility for treating the kind of injury I sustained. I was almost dead by the time I was led into the Korle-Bu health facility for I suffered swollen of my entire body. I even fainted as soon as I was placed on the x-ray machine.

Also, in the year 2013, another attempt on my life was carried out by a group of individuals with knives at Dampase. But for the all of sudden appearance and efforts of some passer-byes at the scene of the attack, I would have been killed.

Furthermore, I together with my brother was attacked in the town in early January, 2014. We were hit with clubs and cutlasses and as a result we sustained scores of injuries: I had a cut beneath my left breast; on my head; and a fracture in the smallest left hand finger

**Figure 4.1: A picture of a respondent who suffered land conflict abuse**



Source: *Ghana Police Service, Weija*

**A violated held that:**

On Saturday, 25 day of June, 2005 I together with my cousin was attacked with guns and clubs by a group of twenty men when we were on our way to the Dampase town from farm. Some of the assailants were familiar to the two of us. They were land guards of two individuals of Dampase and Tuba. We were ambushed so when we got to where they were my cousin was hit with a club at the neck by one of the land guards. I saw my cousin fall instantly on the ground screaming for help at the hit. The assailants became furious at the sight of the screaming my cousin and they started firing a number of gunshots from the AK 47 raffles that they were holding with their bullets pouring onto the ground right in front of us. As some were firing the raffles, one of the assailants attacked me with a cutlass. He callously cut off the tips of my third and fourth left-hand fingers.

Another assailant hit the same left-hand with a club some few minutes the earlier cutlass attack and that had resulted in an acute dislocation of my little left-hand finger. When I was hit with the club hard, its severity made

me fall onto the ground. When they saw me fall, they thought perhaps I was dead as they quickly left the scene.

I got up few minutes after they had gone only to see blood oozing from the right thigh of my cousin. He was injured to the extent that he could not get up even when our assailants had. A resident of Dampase who was at a close distance witnessing of all what happened to us informed the chief Dampase who told a driver to come pick the two of us to hospital for the necessary medical attention.

When we were picked, our first point of call was the Greater Accra Regional Police Striking Force Unit where official complaint was lodged relative to the attack we suffered. The Unit after its physical assessment of our sustained injuries issued us medical forms, which we took to the Korle Bu Teaching Hospital for medical examination. It was at Korle Bu Teaching health facility that an ex-ray scanning revealed that there were six-teen bullet-pills in my cousin's thigh. The ex-ray also indicated that I also suffered sharp dislocations of all left hand five finger bones.

The case was never mentioned in any law court of the land as we were told the docket on the case got missed at Greater Accra Regional Police Head Quarters. Although we the two victims showed commitment by going to Greater Accra Regional Police Command for re-statement of our earlier lodged complaints on the request of the police, which they assured us they would use to facilitate expedition of prosecution of our identified attack perpetrators.

We live in the same community with some of our very assailants. They are still with us and their persistent threats on us put fears into us. Our continuous presence in this hostile environment is all because it is the source of our livelihood as fisher folks. The effect of that attack on us has been constant pains that I have always experienced at the wrist of my left arm.

**Another victim of the conflict had this to say:**

I was coming home in the late afternoon of Sunday of 9/5/1999 from the farm when I was attacked some group of very unfamiliar individuals who were with guns and clubs at the edge of the Dampase town. Before I could touch on the Dampase-Kokrobitey road, I saw a large crowd walking in the town. When I got closer to town, three unfamiliar faces met me and demanded instant release of my cutlass to them. I was hesitant and refused to present the cutlass to them. For I refused to submit the cutlass to them as they demanded, one of them pointed a gun at me. As he cocked the trigger and fired, all the bullets poured onto the ground. At that point of time one of them held me by the back and others hit me hard severally with clubs at the forehead.

I became only conscious after one month at the Korle-Bu Teaching Hospital where I spent fifteen weeks on admission. Had it not be timely intervention of a local herbalist, I would have lost the effective functioning of that part of my body. The government should see to the enforcement of the existing Court rulings on the land conflict between the two communities.

**A respondent who had suffered injuries as a result of the land conflict between the Nyanyano-Kokrobitey narrated that:**

On the Sunday afternoon of 9/5/1999 I was attacked by a group of rented land guards at the Dampase town. When assailants got to me, they jumped on me and started hitting me with cutlasses and clubs. They did not give any reason for the attack and would not let me go either. It got to a point when a man who said he was the leader of the assailants got down from the Nissan Pick-up in which he was and hit me harder than the earlier ones. He said he got down to hit me all because to him those of his men were seemingly having no effect on me and his would definitely affect me.

True to his words, as he hit me with the club, I was forced down the ground.

While I was groaning on the ground, four others of the group walked on me. Two of them held me by the legs and the other two by my arms. The four together lift and let me hit the ground hard lying prostrate. One of them cut my right ear, which I had had stitched at the Gomoa Nyanyano Clinic. But for a woman who saw from a short distance how I was being manhandled and raised alarm that I was being killed, the assailants would have killed me.

When the assailants saw the town folks coming to my rescue, most of them took to their heels leaving just a few that were apprehended by the Dampase town folks and were taken to the Winneba police station, which is in the Central Region that very Sunday afternoon of 9/5/1999.

However, when I and some relatives of mine got to the Winneba police station the following day to make enquiry on how far the police had come with their interrogation on the attack on me the previous day apprehended brought culprits, the then Divisional Police Commander told me that he was not in the known of the detention of any individuals who I said were at Dampase to attack some of its residents. It is not uncommon to have the police exhibit lackadaisical approach to handling cases of this nature.

I often feel pains around my waist, which was the most target of the attack. To reverse all these attacks and avert any further loss of life the government should see to it that both parties involved in this protracted land conflict adhere to the existing state sponsored demarcated boundary between them.

**Another respondent recounted that:**

In the year, 2004 my brother and I suffered a gun-shot wounds on our farm at the Dampase. We were shot at from a close distance by the assailant, a man from Tuba. Some bullets hit my right knee. Although I



had had a number of them taken out by herbalist, I feel acute pains in the interior of the knee whenever the temperature is low along this part of Atlantic Coast. A formal complaint on the gun-shot attack on us was reported at the Greater-Accra Regional Crime Unit of the Ghana Police Service. The Police did not show much interest in the case and for that matter, we never had a fair handling of the complaint.

Also, in the year 2007, the Dampase town was held hostage by a group of people from Kokrobitey, Tuba, and cross-section of the Dampase town. The number of the assailants was more than forty-five. They fired guns indiscriminately in the open. Scores of us at the Dampase sustained injuries from the bullets of the shot guns. More than eighteen of us also suffered cutlass and club wounds at the neck, palm, and arm. Almost all victims of the attack were at the various health facilities of medication. That attack was also reported to the Ghana Police Service but not even a single individual was arrested.

Torture is a particularly barbaric violation of the right to physical and mental integrity, and presents a direct attack on the core of the human personality. It was, therefore, abolished from criminal procedure during the Age of Enlightenment, and is prohibited, without exception even in emergency situations by present international law, both treaty-based and customary. Article 1 of the 1984 United Nation Convention against Torture defines torture *inter alia* as cruel, inhuman, and degrading treatment or punishment, which are prohibited by Convention against Torture, Article 7 and 10 of the ICCPR, Article 3 of the ECHR, Article 5 of the ACHR, and Article 5 of the ACHPR (Symonides, 2000).

The Article 15(1) of the 1992 Republican Constitution of Ghana stipulates that: The dignity of the person shall be inviolable. The 15(2a) states inter alia that “No person shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

#### **4.1.3.2 Violation of right to life: Loss of life through murder**

It was revealed by the findings of the study that a life was lost, which undermined that individual’s right to life. The circumstance under which the life was lost as narrated to the researcher and collaborated by some other respondents was arbitrary and bizarre.

#### **A respondent said that:**

On the Sunday afternoon of 9/5/1999 I and some of my colleague fishermen at Dampase were at the Dampase beach mending our damaged fishing nets when we heard sporadic and indiscriminate gun shots from the street of the town. No sooner had we heard the initial firing of guns than we heard an acute wailing and screaming of almost the entire township. I together with my brother walked to ascertain what was going on. After some few metres steps onto the street, we were told in sobbing voice that the town was under siege by some identifiable men from Kokrobitey. They added that the chief’s residence was also under attack and they feared the chief was murdered in cold blood.

As we got very closer to the chief’s residence, we saw a large group of men from Kokrobitey with guns, cutlasses, and clubs. As soon as they set sight on me, a son of one of the assailants pointed a gun at me and in his attempt to shoot me he rather shot and killed instantly his younger brother. When they saw the boy die, they retreated. The fear, that the chief was murdered, was not true. He sustained serious injuries though. Although the attack and the killing of the boy were reported to the police of Winneba, not even one single individual was arrested and no case relative to that was mentioned in any law court of the land either.

According to the literature, the right to life is the supreme human rights from which no derogation is permitted, even in time of war or public emergency. Article 69(1) of the International Covenant on Civil and Political Rights, Article 4(1) the American Convention on Human Rights, and the African Charter of Human and Peoples' Rights only prohibit the arbitrary deprivation of life, without defining which type of killing would be non-arbitrary. Article 2 of the European Convention of Human Rights is more precise, as it only prohibits intentional deprivation of life unless it results from the use of force which is no more than absolutely necessary in defense of any person from unlawfully taken for the purpose of quelling a riot or insurrection, and in other to effect a lawful arrest or to prevent the escape of a person lawfully detained (Symonides, 2000).

The land conflicts in the Nyanyano – Kokrobitey is abusing the right of the ordinary residents through torture and abusing their right to life.

Article 13(1) of the 1992 Republican Constitution of Ghana states that: No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted. There can be no justification for the loss of life witnessed in the conflict. It has no legal basis and arbitrary.

#### **4.1.3.2 Property right: Loss of property due to destruction/vandalism**

Whenever there is a land conflict, someone suffers economic consequences. In extreme - but not rare - situations, people find themselves landless and/or without shelter. In the case of a farmer, this often includes the loss of his/her production base. But that's not all. Where there are many land conflicts, social stability

within society is affected, as land conflicts undermine trust and increase fear and suspicion - often between formerly close people such as neighbours and family members. Violent land conflicts - or simply the fear of becoming a victim of them - can also have a traumatizing effect on those who are or feel at risk (Wehrman, 2008).

**A respondent said that:**

I have been a victim of attack on my person, properties, and threats in the hands of some groups of Kokrobitey relative to protracted land conflict that they and their Nyanyano counterparts entangled themselves in over the decades. On the 9/5/1999 I sustained cutlass wounds at the head and shoulder all in the hands of gangs of Kokrobitey. I was at the Kosoa Clinic for medication.

Also, on the 30/11/2011, my home was attacked: the building was reduced into rambles; other personal belongings running into thousands of Ghanaian Cedis were burnt into ashes by the assailants. My wife's hairdressing salon which served as her major source of livelihood was not spared at all as it was also burnt down.

I and many Dampase residents live in constant fear and our movement to Accra and its suburbs is restricted by the actions and activities of some residents of Kokrobitey. They sometimes ambush us on our journeys to Accra and other places through the Kokrobitey town. The town serves as the only lorry-station or bus terminal where all the residents of Dampase pick available passenger vehicles to other towns and cities of Ghana.

**Figure 4.2: Personal properties destroyed during conflict**



Source: *Ghana Police Service, Weija*

**A research participant said that:**

On the 30/11/2011, I was in my farm to pick pepper and when I got closer to the Dampase District Assembly Junior High School, I heard an unusual chorus cry all over the town. A few metres after the school, I met a resident who was coming from the town and as I inquired the source and course of the unusual cry over the town, I was informed that the residence of the chief came under attack on that broad daylight by individuals whose identities were known.

The source indicated further that parts of the residence were burnt down and two parked vehicles on the compound had had their windscreens and door glasses smashed together with their dented bodies. Although the chief was not in the town of the day, he is a cousin and therefore, I decided to go console his household. It was at the residence of the chief that I was informed that I also had had a house I was putting up, which was at a completion level reduced to rubbles by the very group of individuals who went on the rampage of destroying other people's properties. When I

reached home and saw my almost completed home reduce to the ground, I collapsed for I found it extremely impossible to come into terms with the traumatic depressive experience the destruction had put me.

The picture of one of the vehicles that had the windscreens and door glasses smashed was shown:

**Figure 4.3: Photo of Vehicle that had its Windscreens and Door Glasses Smashed**



Source: *Ghana Police Service, Weija*

**Another respondent for the study had this to say:**

On the 1/12/2011, some of my colleagues with whom I mine salt at Gyegyenkum near Nyanyano reached me on my cellular phone with the depressive bad news that my site was utterly burnt down by a group of residents from Kokrobitey and Dampase. When I got to the site and set sight on my burnt down structure which contains my water pumping machine and several other equipment, I suffered heart attack.

The destruction of the site has affected and denied me the only source of my livelihood. I had run out of business and I could not raise an estimated amount of ten thousand Cedis for the reconstruction of the site together with its necessary basic equipment.

To reverse and avert all these attacks on individuals and group of individuals, and their properties, the stakeholders should see to it that the two parties adhere strictly to the existing Court decisions and Commission findings relative to land conflict.

**Another victim said that:**

On the 1/12/2011, some of my colleagues with whom I mine salt at Gyegyenikum near Nyanyano reached me on my cellular phone with the depressive bad news that my site was utterly burnt down by a group of residents from Kokrobitey and Dampase. When I got to the site and set sight on my burnt down structure which contains my water pumping machine and several other equipment, I collapsed.

The destruction of the site has affected and denied me the only source of my livelihood. I have run out of business and I could not raise an estimated amount of ten thousand Cedis for the reconstruction of the site together with the necessary basic equipment.

To reverse and avert all these attacks on individuals and group of individuals, and their properties, the stakeholders should see to it that the two parties adhere strictly to the existing Court decisions and Commission findings relative to land conflict.

**Another interviewee recounted that:**

In the morning of 1/12/2011, I was told by a colleague of the salt mining site at Gyegyenikum near Nyanyano that my site was on fire. When I reached the site, I saw my salt industry burn down. The destruction of the site had shut the door on my source of daily bread. The destruction made me loose equipment and other personal belongings running into thousands of Ghana Cedis. Some suspects were hauled before the Magistrate Court of Agona-Swedru. Till date judgment and for that matter justice has not been pronounced.

**Figure 4.4: Photograph of a Burnt down Salt Mining Industry Sited on the Part of the Land Under Conflict**



Source: *Ghana Police Service, Weija*

One particular controversial right which can be considered as both an economic and civil right is the right to property. It definitely belongs to the classical concept of human rights as exemplified by John Locke's famous triangular of life, liberty, and possessions, as well as by various domestic bills of rights of the eighteenth and nineteenth centuries. On the international level, the right to property is guaranteed in Article 17 of the Universal Declaration of Human Rights, Article 1 of the First Additional Protocol to the European Convention of Human Rights, Article 21 of the American Convention on Human Rights, and Article 14 of the African Charter of Human and Peoples' Right (Symonides, 2000).

“Every person has the right to own property either alone or in association with others. No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law”, [1992 Ghana Republican Constitution, Article 18(1&2)]. Any action that leads to the destruction the



property of others without the backing of the law amounts to the undermining those individuals' right to property.

**4.1.4 Research Question 4:** *What have been the responses of institutions with the responsibilities to ensure peace by reversing the conflict?*

This question found out the role of State institutions and law enforcement agencies in the management and resolution of the conflict as well as protection of the rights of inhabitants in the conflict area.

Every member of society has the right to protection. The government has a responsibility to protect all member of the State. Ghana Constitution of 1992 states in an unambiguous term that “All has a right to be protected in the enjoyment of life, liberty and property”.

The right of the child to education is one of the most critical of all rights because education plays an important role in enabling an individual to secure other rights including development. Experts speak highly of the correlation between lack of formal education, poverty and development. Affirming the above assertion, Watkins (1999) posited that abuse of right to education, is among the greatest scourges afflicting humanity at the end of the 20th century. It has left hundreds of millions of adults disadvantaged, vulnerable and impoverished. Each year, it claims millions of new victims from the ranks of the world's most vulnerable citizens: its children. It is destroying human potential on a vast scale. Most of the victims are poor. The vast majority are young girls and women.

In spite of this awareness, this right is systematically violated in most communities with land conflict history, which includes Nyanyano - Kokrobitey. Any time the conflict reoccurs, pupils and students in the study area, especially, Dampase/Langma, have their rights to education interrupted for they are made to avert the classrooms by the tensions that come with the conflict.

The land conflict is resulting in abuse of the rights of the residents through torture and murder. Much worse, acts of aggression have been committed by both sides and reported to the Weija and Kasoa Police according to police reports. But much worse, one group is pointing accusing fingers at some politicians and police officers in the Central and Greater-Accra Regions for allegedly fuelling the conflict for personal interest. It is on record that when Accra High Court granted Nyanyano and its representatives the order to demolish unauthorized structures on parts of the land under conflict, the then Greater-Accra Regional Police Commander ordered her subordinates supervising the demolishing to have the exercise stopped. The details on the Commander action are captured as *Appendix B4* at the appendices column of the thesis.

The study also reveals that the conflict has involved the abuse of rights of property. A common feature of the conflict has been either attacks on the individuals or their properties and sometimes both most of the Law courts appear to be foot-dragging on the determination of human rights abuses that are brought before them.

The issue of internally displaced persons was revealed in the study as recounted by some respondents. To have individuals internally displaced in the face of land conflict amounts to the undermining of their human rights.

The problem of internally displaced persons (IDPs) gained new urgency during the 1990s, partly because of the scale of displacement caused by new internal conflicts during the decade. Internally displacement was estimated to affect twenty to twenty-five million people in at least forty countries. In 1992, in response to growing international concern, the United Nations Secretary-General, at the request of the Commission on Human Rights, appointed a Special Representative on Internationally Displaced Persons to analyze the causes of internationally displaced persons; ascertain the needs of IDPs; propose measures to protect them; and seek solutions for internal displacement.

The Special Representative had formulated a set of standards entitled Guiding Principles on Internal Displacement, based on international human rights law, humanitarian law and refugee law, thus identifying the various provisions of existing international law applicable to IDPs. The Principles recognize that governments are the principal actors in the protection of internally displaced persons. The Principles set out guidelines to encourage governments to provide fair and equal treatment to IDPs; minimize the occurrence of situations that lead to internal displacement; and ensure safe and dignified return for resettlement and reintegration. The Special Representative had also drawn attention the plight of IDPs in areas not under government control, where they are subject to the actions of non-state actors and where humanitarian access is blocked. The Principles mark the first set of standards spelling out what protection should mean for the internally displaced. While not binding, governments and the appropriate United Nations bodies were urged to further the implementation of these principles (Levin 2004).

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

#### **5.0 Introduction**

This study examined the extent to which the Nyanyano and Kokrobitey land conflict has undermined human rights. The study used the qualitative paradigm. Sixteen (16) respondents were sampled via purposive and snowball sampling techniques for the study. Semi-structured interview guide, personal observation with camera, tape recorder were as data collection instruments in addition to archival documentary analysis. Data collected through face-to-face interviews and personal interactions were analyzed using thematic and content analysis as well as narratives (verbatim quotes). The interviews and observation data were categorized into themes according to research questions to reflect the experiences narrated by the respondents. This chapter highlights the summary of the findings, conclusions and recommendations. Suggestions for further studies are also put forward.

#### **5.1 Summary of Findings**

The findings of the study are presented below:

- a. Historically, the genesis of the Nyanyano and Kokrobitey land conflict is attributable to unresolved dispute over a portion of land due to the refusal or unwillingness of one party to obey a series of court rulings in favour of the other party. This defiance has led to further encroachment.

- b. In recent times, actions and/or inactions of successive governments to create political and administrative boundaries as well as the failure or lackadaisical approach of state and law enforcement agencies has rekindled the conflict and further encroachment on the land due to its economic and political viability.
- c. The Nyanyano and Kokrobitey land conflict is historical, intractable and cyclical in nature. It is recurrent, violent and volatile; it is often perpetrated by land guards who are mostly youth in the communities.
- d. The Nyanyano and Kokrobitey land conflict is inherent with the violation and abuse of human rights of inhabitants in the conflict area. They suffer arbitrary arrest, unlawful detention and custody in police cells; loss of life and property; assault, brutality, torture, murder, and displacement. Psychologically, residents are often found in a state of fear and panic; children also suffer denial or deprivation of education as they drop out due to fear of attack and attack, threats on teachers and destruction of school facilities during conflict situations.
- e. State institutions and law enforcement agencies such as the Administrator of Stool Lands, the Law Courts and the Ghana Police Service have rather adopted a relaxed approach to further prevent the conflict, protect loss of life and property. Successive Governments have also failed to resolve the 35 years-old land conflict.

## **5.2 Contribution of the Research to Knowledge**

The findings of this research would constitute a reference point to other researchers, legal practitioners, and policy makers for they provide new perspectives on land conflicts in relation to human rights abuses.

Land ownership conflicts have negative effects on individual households as well

as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade or commercial tax) for the state or municipality. The lower the transparency in land markets, the less equal is information being disseminated, and the weaker constitutive and regulatory institutions are, the more likely it is that land conflicts occur. People therefore need to spend a lot of time and money on searching for information and monitoring agreements or contracts. This means that land conflicts are associated with high transaction and agency costs or *vice versa*, that (relatively) high transaction and agency costs indicate a high probability of land conflicts. Conflicts over the use of land generally have a negative impact on the poor or on the natural or building environment. They either decrease quality of life for parts of society or, if they are addressed and ameliorated, contribute to additional state expenditures and therefore have an impact on the national wealth. Land conflicts also increase social and political instability. Where ever they occur, a lot of multiple sales, evictions, land grabbing and people lose confidence in the state and start mistrusting each other. Social and political stability suffers even more when land conflicts are accompanied by violence. Dealing with land conflicts therefore also means to re-establishing trust and confidence in public as well as private institutions (Wehrman, 2008).

Government programmes of decentralization that entail the demarcation of new or amended district (and other) boundaries have tended to create or resurrect rivalries among traditional authorities (Lentz, 2010).

A dangerous phenomenon that if not checked will defeat all purposes and intents for a lasting peace relative to this conflict has been the creation of two different constituencies' polling stations, Bortianor/Ngleshie-Amanfrom and Gomoa East at the Langma/Dampase during the 2012 general elections in the country, Ghana. This community located on part of the land the conflict is about and such decisions only come to aggravate the already volatile situation and the question where in the Ghana political elections history has one single town or community hosted two different constituencies is not answered.

### **5.3 Conclusions**

The following conclusions were drawn from this study:

The over 35 years-old historical land conflict between Nyanyano and Kokrobitey seemed to be insoluble or unsolvable. Its genesis, cyclical and recurrent nature is linked to actions and inactions of residents in the two feuding communities, State institutions and law enforcement agencies, and successive governments with regard to poor documentation, encroachment, creations of political and administrative boundaries as well as alleged fuelling of the conflict by some politicians.

Cases of land conflicts, as in the case of Nyanyano and Kokrobitey, are human rights abuses inherent: arbitrary arrests and unlawful detentions; assaults; torture and murder; vandalism and destruction of property; and abuse of children's rights to education.

The researcher believes that the entrenched position of feuding communities as well as the seemingly bias posture of governments and politicians, State institutions and law enforcement agencies as well as chieftaincy institutions in land disputes or conflicts fuel land disputes or conflicts. Hence, these institutions should adopt pragmatic approaches to prevent land conflicts and protect the rights of the people.

#### 5.4 Recommendations

In the light of the findings of this study, the following recommendations are put forward:

- i. The chiefs, elders, opinion and religious leaders, youth and citizens of Nyanyano and Kokrobitey should negotiate and take pragmatic measures to resolve the conflict.
- ii. The chiefs, elders, opinion and religious leaders, youth and stakeholders of Nyanyano and Kokrobitey should seek assistance from the Lands Commission of Ghana to have their lands documented and registered if the lands are not documented so as to prevent further encroachment and conflict.
- iii. The Ghana Police Service, Weija and Kasoa Police Command, should flush out illegal encroachers on the disputed land; they should also check and monitor the activities of land guards in the communities, especially at the Dampase.
- iv. The Ghana Police Service (Weija and Kasoa Police Command) should check and monitor the activities of alleged individuals and politicians who fuel the land conflict.
- v. The Ghana Police Service (Weija and Kasoa Police Command) should keep surveillance on disputed land and track activities of land contractors, land guards and land developers.
- vi. The Metropolitan/Municipal/District Assemblies (MMDAs) in the conflict area should liaise with the Ghana Police Service (Weija and Kasoa Police Command), Lands Commission, Commission on Human Rights and Administrative Justice (CHRAJ), National Commission on Civic Education (NCCE), Information Service Department and other state institutions to educate or sensitize the feuding



communities on the need to adopt the campaign on zero tolerance for land conflict.

- vii. The Metropolitan/Municipal/District Assemblies (MMDAs) in the conflict areas should liaise with the Ghana Police Service: Weija and Kasoa Police Command, the law courts and others state institutions to protect the human rights of citizens in these areas. They should also seek the services of professionals to rehabilitate displaced inhabitants through counselling, medical and other social welfare services.

### **5.5 Suggestions for Further Research**

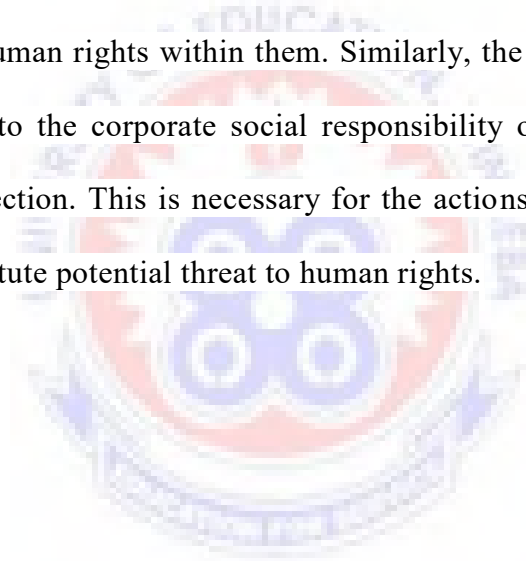
The present study covered only two communities of two District of Ghana. A replication of the study in other Districts, Municipalities and Metropolitan areas is suggested so as to ascertain the validity of the study of this kind. It is also suggested that four or more of such similar land related conflict areas be studied to make the findings more generalized rather to only to two communities of the entire country. The methods adopted for this study can be used for replication in similar researches.

Also, further studies could be conducted to find out pragmatic strategies to employ to resolve the land conflict between Nyanyano and Kokrobitey. A historical and comparative study of land conflicts in Ghana and human rights abuses could also be carried out.

Furthermore, effective protection of human rights requires the collaboration of the major stakeholders. This means that the improvement and proper development of human rights cannot be totally effective when it is solely left on the shoulders of only few of State

designated institutions. Families, members of the society and the religious bodies have to support the efforts of the human rights institutions to avert land conflict related human right abuses. Research is required to look at the effectiveness of these collaborative agencies especially the traditional family system in the promotion and protection of human rights.

Finally, the fact that the findings from the interviews contain implicit reference to human rights issues, a discourse analysis of this research document and other related ones should be carried out by researchers to determine the framing of such documents and the place of human rights within them. Similarly, the analysis could be extended to investigation into the corporate social responsibility of duty bearers in terms of human rights protection. This is necessary for the actions and inactions of some key duty bearers constitute potential threat to human rights.



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## APPENDIX A (1)

### INTERVIEW GUIDE FOR DUTY-BEARERS OF THE STUDY AREA

#### UNIVERSITY OF EDUCATION, WINNEBA

#### DEPARTMENT OF SOCIAL STUDIES EDUCATION

### INTRODUCTION

This is an academic exercise, which seeks to explore the historical background of the Nyanyano-Kokrobitey protracted land conflict. The key objective of this interview is to investigate and reveal any element of human rights abuses that may characterize the conflict. I would, therefore, be very appreciative when given your time to conduct a face-to-face interview which involves a few questions. The confidentiality of every respondent is assured.

1. Since what year has the two communities been involved in the conflict?
2. What are its causes?
3. What are the driven forces fuelling it?
4. What challenges are associated with it?
5. What medium for redress is mostly employed by those affected directly by the conflict?
6. Have there been any curative measures put in place by stakeholders to have it resolved?
7. What efforts were made by this community to reverse the conflict?
8. Has your counterpart ever made any attempt for lasting peace relative to the conflict?
9. What factors have been the checks on the quest for lasting peace in face of the conflict?
10. What is your assessment on the efforts of the law enforcement agencies in checking the challenges that are inherent in the conflict?
11. In your personal candid opinion how could the conflict be resolved?

## **APPENDIX A (2)**

### **INTERVIEW GUIDE FOR THE VIOLATED**

#### **UNIVERSITY OF EDUCATION, WINNEBA DEPARTMENT OF SOCIAL STUDIES EDUCATION**

### **INTRODUCTION**

This is an academic exercise, which seeks to explore the historical background of the Nyanyano-Kokrobitey protracted land conflict. The key objective of this interview is to investigate and reveal any element of human rights abuses that may characterize the conflict. I would, therefore, be very appreciative when given your time to conduct a face-to-face interview which involves a few questions. The confidentiality of every respondent is assured.

1. What is the Nyanyano and Kokrobitey conflict about?
2. In what ways are the rights of the people undermined by it?
3. Who were the violated of the conflict?
4. What has been nature of the abuses?
5. Are the identities of the violators always known?
6. Under what circumstances do the abuses occur?
7. What medium for redress is mostly employed by the violated?
8. What have been the responses of the police when abuses complaints are lounged?
9. Could you direct me to any other violated?
10. In your personal candid opinion how could the conflict be resolved?

**APPENDIX B**

**JUDGMENT IN THE MATTER OF THE BOUNDARY DISPUTE BETWEEN  
NYANYANO STOOL AND KOKROBITEY STOOL**



Source: *National Archives, Accra-Ghana*

**APPENDIX B (1)**  
**COURT OF APPEAL JUDGMENT ON THE LAND CONFLICT BETWEEN**  
**NYANYANO AND SENYA BEREKU IN 1970**



Source: *Appeal Court, Accra-Ghana*



**APPENDIX B (2)**  
**SUPREME COURT JUDGMENT ON THE LAND CONFLICT BETWEEN**  
**NYANYANO AND SENYA BEREKU IN 1970**



**Source:** *Supreme Court, Accra-Ghana*

**APPENDIX B (3)**

**HIGH COURT DEMOLITION ORDER GIVEN TO THE CHIEF OF NYANYNO**



**Source:** *High Court of Justice, Accra-Ghana*

APPENDIX B (4)

A REPORT BY A POLICE OFFICER ON THE DEMOLITION EXERCISE

WHITE PAPER AND  
CERTIFICATE OF DEMOLITION

Order for Demolition was executed by  
 [unclear] and [unclear], both [unclear] from the  
 High Court, Accra, in [unclear] and [unclear]  
 at about 7:30am on 31<sup>st</sup> day of January  
 2011. Order duly executed by demolition  
 structures on the land. In the presence of the  
 Manager for [unclear] Brown, District Leader  
 and some [unclear] with A.S.P. There  
 was also P. Miller assisting from the Regional  
 Police Headquarters, Accra.

At a certain stage we heard a gun shot  
 and stopped where we have reached and returned  
 to the shooting point. We saw a man from the  
 [unclear] group who had had been surrounded with  
 shot all over the body. We saw a group nearby  
 and we were informed they were Sampi Chiefs  
 group who surrounded the man. P. Miller  
 advised us to support the execution and returned  
 to [unclear] as ordered by the Regional Commissioner.

Order referred to the Deputy Sheriff  
 on the same day.

[Signature]  
 31-1-11  
 District

SEARCHED INDEXED  
 FILED  
 JAN 31 2011  
 ACCRA

Source: High Court, Accra-Ghana

## APPENDIX C

### Types and sub-types of land conflicts

<b>Land conflicts on all types of property</b>	
Boundary conflicts	<ul style="list-style-type: none"> <li>• Between individuals (over private land)</li> <li>• Between clans (over common property) due to oral tradition and physically unfixed boundaries</li> <li>• Between administrative units (villages, communes, municipalities, districts)</li> <li>• Between private individuals and the state (over private or state land)</li> </ul>
Ownership conflicts linked to inheritance	<ul style="list-style-type: none"> <li>• Inheritance conflicts within a family</li> <li>• Inheritance conflicts within a clan</li> </ul>
Ownership conflicts due to legal pluralism	<ul style="list-style-type: none"> <li>• Overlapping/contradictory rights due to legal pluralism (customary/indigenous rights vs. statutory law)</li> </ul>
Ownership conflicts due to lack of land registration	<ul style="list-style-type: none"> <li>• Several people claim the same property because a) no land registration exists, b) it is in bad conditions or c) it has been destroyed</li> <li>• Distribution of intermediate tenure instruments which cannot be registered</li> <li>• Due to unequal knowledge and financial means only the well-off register land - even that of others</li> </ul>

Types	Sub-types
Ownership conflicts between state and private, common or collective owners	<ul style="list-style-type: none"> <li>• Unclear and non-transparent demarcation of state land by armchair decision resulting in unintended expropriation of individuals and groups</li> <li>• Special Chinese case of conflicts due to illegitimated conversion of collectively owned agrarian land into state land for construction</li> </ul>
Multiple sales/allocations of land	<ul style="list-style-type: none"> <li>• Multiple sale of privately owned land by private individuals</li> <li>• Multiple sale of common property</li> <li>• Allocation of same land parcels by the land registration office due to technical shortcomings or corruption (acceptance of faked titles)</li> <li>• Overlapping/contradictory rights due to double allocation of land titles by different institutions all legitimised to do so</li> <li>• Multiple sale of state land by public officials</li> </ul>
Limited access to land due to discrimination by law, custom or practice	<ul style="list-style-type: none"> <li>• Women often only get access to land through a male relative making them vulnerable in case of divorce or widowhood</li> <li>• Ethnic minorities are often discriminated against by law or practise</li> <li>• Orphans are often <i>de facto</i> excluded from inheriting their parents' Property</li> </ul>
Peaceful, informal land acquisitions without evictions	<ul style="list-style-type: none"> <li>• Illegal occupation of state, private or common land (squatter settlements)</li> <li>• Extensions of property on neighbouring private, public or common land (see above)</li> <li>• Market-driven displacements within which speculators or developers pay less than the real market value due to information asymmetry</li> </ul>
Violent land acquisitions	<ul style="list-style-type: none"> <li>• Violent attacks on property owners, including chasing them from their property by criminals - often (former) military, para-military, military-police, guerrillas etc.</li> <li>• Illegal occupation of common or collective land by an individual or company for private use (often with support of corrupt public officials)</li> </ul>
Evictions by land owners	<ul style="list-style-type: none"> <li>• Evictions of semi-legal settlers (those who violate building regulations) from state, private or common property</li> <li>• Evictions of illegal settlers (those who have no legal rights to the property) from state, private or common property</li> <li>• Unjustified termination of tenancy/lease contract by property owner</li> </ul>
Illegal evictions	<ul style="list-style-type: none"> <li>• Illegal evictions by state officials acting without mandate on their own Behalf</li> </ul>

Types	Sub-types
Illegitimated expropriations by banks	<ul style="list-style-type: none"> <li>• Banks systematically accumulating land in a poor but well located neighbourhood by pushing the poor to take a credit with excessive interest rates which they are unable to afford</li> </ul>
Conflicts due to land reforms	<ul style="list-style-type: none"> <li>• Big farmers refusing to give up land</li> <li>• Expropriated farmers asking for compensation or the return of the land or illegally taking it back</li> <li>• Peasants receiving insecure rights only such as provisional titles</li> <li>• Unfairness in the selection of beneficiaries of land reforms</li> </ul>
Conflicting claims in post-conflict situations	<ul style="list-style-type: none"> <li>• Claims by returning refugees and internally displaced people against other people occupying their land without authorisation</li> <li>• Claims by owners that returning refugees and internally displaced people are occupying their land without authorisation</li> <li>• Claims by refugees that internally displaced people are occupying their land without authorisation</li> <li>• Conflicts due to the fact that the former lands of refugees have been allocated by the (former) government to other people during their absence</li> </ul>
Illegal/improper uses of private land	<ul style="list-style-type: none"> <li>• Use of other people's property (e.g. as a parking lot, playground, waste dump, pasture, or for agriculture etc.)</li> <li>• Private owner ignoring land use regulations on his property (e.g. commercial use of land zoned for residential purposes only)</li> <li>• Illegal subdivisions of parcels</li> <li>• Exceeding the maximum height permitted by building regulations</li> <li>• Leaving land vacant for speculative purposes (only a conflict if forbidden by law)</li> <li>• Trespassing on other people's property</li> <li>• Refusal to honour an existing right of way</li> </ul>
Intra-family conflicts	<ul style="list-style-type: none"> <li>• Disfavoured wife and children not receiving access to fertile land</li> </ul>
<b>Land conflicts on common and collectively owned property</b>	
Competing uses of and rights to common or collective property	<ul style="list-style-type: none"> <li>• Conflicting interests in common property by farmers and pastoralists, or between different users of a forest such as small-scale farmers doing rotational agriculture, coffee producers, collectors of firewood and others</li> <li>• Unequal distribution of common or collective land</li> </ul>

Types	Sub-types
Illegal/improper uses of common property	<ul style="list-style-type: none"> <li>• Parcellation and allocation of common land to be used as construction land (e.g. <i>ejidos</i> in Mexico)</li> </ul>
Unauthorized sales or leases of common or collectively owned property	<ul style="list-style-type: none"> <li>• Unauthorised sale of customary land by chief</li> <li>• Unauthorised sale of collectively owned land by head of village</li> <li>• Illegal sale or lease by leaseholder of collective land</li> </ul>
Disputes over the distribution of revenue from customary land	<ul style="list-style-type: none"> <li>• Special case of Ghana where the state administration of stool land collects the revenues from customary land</li> </ul>
<b>Land conflicts on state property</b>	
Illegal/improper uses of state land	<ul style="list-style-type: none"> <li>• Illegal private use of state land</li> <li>• Illegal subleasing of state land</li> <li>• Illegal public use of state land (e.g. of open space as dump)</li> </ul>
Competing uses and rights on state property	<ul style="list-style-type: none"> <li>• Unclear responsibility over state land, different state authorities claiming ownership</li> <li>• Conflicting interests over state land by farmers or pastoralists and leaseholders of (forest, agricultural etc.) concessions</li> <li>• Land allocation in protected areas</li> </ul>
Land grabbing	<ul style="list-style-type: none"> <li>• Registration of state land in their own names (or in those of family members and friends) by high ranking public officials</li> </ul>
Illegal sales of state land	<ul style="list-style-type: none"> <li>• Illegal sale of unused state land by private person</li> <li>• Illegal sale of unused state land by public official</li> <li>• Illegal sale of publicly used state land by public official (or rarely by private person)</li> <li>• Illegal sale of legally privately used state land by public official (or rarely by private person)</li> <li>• Illegal sale of illegally privately used state land by public official (or rarely by private person)</li> </ul>
Illegal leases of state land (including concession land, forests, mining licences etc.)	<ul style="list-style-type: none"> <li>• Illegal lease of unused state land by private person</li> <li>• Illegal lease of unused state land by public official</li> <li>• Illegal lease of publicly used state land by public official (or rarely by private person)</li> <li>• Illegal lease of legally privately used state land by public official (or rarely by private person)</li> <li>• Illegal lease of illegally privately used state land by public official (or rarely by private person)</li> </ul>

Source: Wehrman (2008)