

## Legal systems of the people of Dagbon Continuities and discontinuities

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This article uses a qualitative approach to examine the pre-colonial legal systems of the people of Dagbon and how they have evolved in contemporary practices. The laws in the early societies were to regulate the behavior and conduct of people. The pre-colonial legal systems in Africa, the Gold Coast, and specifically the Dagbon went through several transformations due to the arrival of the Europeans. During the pre-colonial period, the settlement of disputes among the indigenous people of Africa was done through the use of the traditional court of arbitration. The local chiefs were the custodians of the customary laws and administered justice using traditional institutions. The core customary laws of pre-colonial Dagbon were based on marriage, criminal justice, inheritance, and land laws among others. The embedding of the British and German legal systems and institutions in the Northern territories marked a change in the customary legal systems of the people of Dagbon. The postcolonial era saw another modification in the legal systems: legal pluralism (concurrent use of customary and British laws). The central finding of the article is that the pre-colonial legal systems in Dagbon were built on the customs and norms of the land. Besides the already mentioned, it was also found that customary laws remain crucial in the adjudication of cases while playing an important role in the hybrid partnerships with contemporary liberal court systems. This has brought many interesting dynamics regarding the place of customary law in hybrid governance which has further implications for the legal space in Sub-Saharan Africa and the global south context even in contemporary times.

**Keywords:** legal systems; pre-colonial customary law; criminal law; punishment; Dagbon; Dagomba.

### 1. Introduction

Laws existed in Dagbon prior to the colonization of the territory by Europeans. These laws were based on traditional customs and practices and regulated all aspects of Dagbon society which included governance, land ownership, marriage and inheritance (Dagbon and Dagomba refer to the same people. They have been used interchangeably in this research). Similarly, most African societies developed a set of rules and regulations (laws) based on customary principles that were intended to govern communities and establish societies that were well-ordered for all walks of life (Takyiwaa 1988: 50-66). Laws are enforced by traditional authorities such as chiefs and elders, who act as mediators and judges

in disputes. Marfo and Musah highlighted that the chiefs' roles in the pre-colonial era in Africa were primarily executive, judicial and legislative (Samuel and Musah 2018: 1). These roles explain the power of chiefs as central figures in executing the day-to-day activities of their various communities. The traditional laws of Dagomba are deeply embedded in the cultural and social fabric of the people. These laws played a vital role in maintaining order and harmony in the community and ensuring fairness and justice for all members. Also, the laws are passed down from generation to generation and reflect the collective wisdom and values of the people of Dagbon.

Historically, the Dagomba state traces its roots to the 15<sup>th</sup> and 16<sup>th</sup> centuries under the leadership of Sitobo (Wilks 1965). Through strategic alliances and military conquests, Sitobo expanded the territory and established a centralized political system that brought stability and prosperity to the people. The Dagomba people have a hierarchical social structure with a paramount chief known as the *Ya-Naa* at the top, who is highly respected and plays a significant role in decision-making processes within the community. According to Busia (1951: 248), the traditional administration in the Gold Coast was built around the chieftaincy institution, and conflicts were settled through customary arbitration, with the chief supported by his elders serving as arbitrators from the village to the state level. The chieftaincy system has been a fundamental part of the Gold Coast governance for centuries. This system served as the basis for traditional administration, with chiefs and their elders serving as arbitrators to settle conflicts. This system was deeply rooted in customary law and was seen as a way to maintain social order and stability.

The 15<sup>th</sup> century was marked by the advent of Europeans in Africa as well as in Ghana and later in the Northern Territories of the Gold Coast. This advent saw the embedding of European culture and practices in the Dagbon kingdom. The European legal systems during the colonial period in Africa led to the emergence of legal pluralism on the African continent. The dominance of the British legal system on the Gold Coast marked the period where some specific laws were passed, including, the Bond of 1844 under Captain Hill, and this eventually led to the annexation of several territories in the colony of the Gold Coast (Victor 2005). Also, before the colonization of the Gold Coast, several acts and ordinances were enacted, notable among them were the 1883 Native Jurisdiction Ordinance, the 1904 Chief's Act and several others (Inez 1984: 41-62). These laws allowed the British to exert control over the local population and their resources. Additionally, it introduced a hierarchical system of justice that favored European settlers and marginalized the indigenous people, leading to social and economic disparities within Dagbon. According to Brukum (1999), the British laws only gave them limited space to enforce their traditional legal practices in the Northern Territories. These included the laws on marriage, land, and farm disputes.

The questions surrounding the ownership of lands in the Gold Coast were first answered by family heads and the chiefs. However, the growth of the British legal system transferred the ownership of lands in the Gold Coast into state-owned lands or European concessions (Inez 1984: 41). Also, the state laws on ownership of lands have since independence raised major challenges leading to land disputes and causing several injuries and deaths in recent times. The longstanding inter-ethnic dispute between the Mamprusi and Kusasi in North-East Ghana has been related to chieftaincy, land, and other matters (Lund 2003: 587-610). There has been a case of disregarding or giving less attention to the local legal system on land rights and related legal practices.

Although a new legal system has been introduced in Dagbon, the people still have a strong appreciation and respect for traditional laws. Also, there have been sparse scholarly works on the indigenous Dagomba legal system. The interplay between the British legal systems and the laws of the Dagomba people in recent times needs much academic attention. This interplay is particularly significant due to the increasing globalization and cultural exchange, which has led to a greater need for understanding and reconciling different legal frameworks. Additionally, exploring this topic can shed light on the complexities of legal pluralism and the challenges it poses to maintaining justice and harmony in multicultural societies. The introduction of British colonial laws in the Northern Territory diverted much attention from the Dagomba legal system.

The main objective of the current research was to explore the customary laws of Dagbon. The secondary objectives were to explore the pre-colonial legal systems in Dagomba, the nexus between the colonial systems and the customary laws in Dagbon, and finally the post-colonial customary laws of Dagbon. In pursuit of these objectives, the study deployed a qualitative research approach. The snowball sampling technique was used in selecting respondents. Respondents were interviewed using unstructured interview guides. Follow-up questions were asked to substantiate the initial ones. Key informants who were vested in the customary legal systems/laws of the Dagbon area were duly interviewed. Targeted interviewees were limited to members of the traditional council of the Dagomba societies. The interviews concentrated on the sub-chiefs and some known persons who were abreast of the Dagomba legal system. Some of the personalities that were engaged during the interviews were N'yab Kug' Naa Abdullai II (The chief of Dagbon, who is entrusted with the important duty of ceremonially installing the paramount chief), *Nan-Ton* Naa Bawa V (chief of Nan-Ton), Abukari Osman 'Kpanalana' (spear owner), Ibrahim Mahama (retired lawyer) and some other community members. The data were analyzed thematically, based on the objectives of the research. Archival materials from the Tamale Public Records and Archives Administration Department (PRAAD) were analyzed. Some of the records obtained from the archives were; court records from 1922 to 1938. NRG2/6/1, Land Tenure in

the Protectorate and its Development under the Land and Native Rights Ordinance. NRG8/1/57, Annual Report of the Northern Territories for April 1926 to March 1927. ADM.5/1/70, and Annual Report of Northern Territories for April 1926 to March 1927. ADM.5/1/70. Secondary sources of information from online sources were employed to support the narratives.

The empirical analysis of the research were based on the objectives and were grouped into three segments and sub-sections. This focuses on the pre-colonial legal systems of Dagomba, the nexus between the colonial systems and the customary laws in Dagbon, and finally the post-colonial customary laws of Dagbon.

## 2. The legal systems of the Dagomba—continuity and change

The section discusses pre-colonial legal systems of Dagbon, the nexus between colonial systems and customary legal systems in Dagbon.

The term “pre-colonial” is related to the period before colonialism. This period dictated millennia of ages before the advent of Europeans in Africa in the 15<sup>th</sup> century. A legal system is regarded as a set of rules and regulations governing a country or a community (Joseph 1971: 823). For thousands of years, African traditions, legal institutions, and strategies for conflict resolution existed before European exploration in the region. As far back as antiquity, the early established kingdoms like Ancient Ghana (c. 8<sup>th</sup>-11<sup>th</sup> century AD), the Mali Empire (c. 13<sup>th</sup>-15<sup>th</sup> century AD), Kanem-Bornu (c. 11<sup>th</sup> century AD), and Songhai (c. 15<sup>th</sup> – 16<sup>th</sup> century AD) had built their traditional systems including the judicial system and later metamorphosed to include the Islamic judicial system after Islam had penetrated the region. In the Gold Coast, legal institutions can be traced back to the culture of the people prior to colonization.

Among the Dagomba people, their customs defined their customary laws and practices. Historically, it relates to the early forms of social and political organization, which describe the customary laws in Dagbon. As their custom demanded, customary laws were needed to adjudicate issues of marriage, criminal acts, inheritance, and land tenure. These customary laws played a crucial role in maintaining social order and resolving disputes within the Dagomba community. They provided a framework for resolving conflicts, ensuring the fair distribution of resources, and upholding traditional values and norms. Additionally, these laws were passed down through generations, serving as a means of preserving the cultural heritage and identity of the Dagomba people.

The people of Dagbon, like many communities in the earliest times, considered the institution of marriage as an integral feature of their societal norms and practices. This study unearthed some unique early marital practices that were customarily upheld among the people of Dagbon. In a personal interview with N’yab Kug Naa Abdullai II, he recounted that, among the earliest common practices in

Dagbon, a woman was given into marriage to a man if he had severed the woman's umbilical cord at birth with a token given to the woman's parents. Likewise, when a man had acted honorably toward a friend, he was a favorable candidate to marry the daughter of the friend (Abdullai II, personal interview; 04 July 2022). This practice, while prevalent in many cultures, often resulted in women being treated as property rather than individuals with their agency and rights.

However, with the changes in societal norms, this practice has been largely abolished in many parts of the world. According to Haruna, another means by which one could get the hand of a woman in marriage during the earliest times was a man showcasing his prowess at the funeral ceremony of a great person in the community (Haruna, personal interview; 05 July 2022). This display of strength and skill was believed to impress the woman's family, as it demonstrated the man's ability to protect and provide for his future wife. Additionally, it served as a way for the man to establish himself as a respected member of the community, further increasing his chances of being chosen as a suitable husband.

Customarily, the practice of polygamous marriages was prevalent among the people of Dagbon and particularly highly practiced among the chiefs and respected elders in the communities. The custom demanded that a "chief" marry as many wives as he wished, and it was commonly accepted for a chief to select the type of women he wanted to marry especially after his enskinment as a chief. Abdullai II recalled that

A newly enskinned chief in Dagbon, particularly the *Ya Naa* (paramount chief), was entitled to have many wives. The process mostly involves newly enskinned chiefs being granted the privilege to select the women of their choice. In the case of *Ya Naa*, he chose the lady he wanted, and his subjects brought the woman for him to marry. The woman had a limited choice to reject his request (Abdullai II, personal interview; 04 July 2022).

This practice is known as "bride-giving" and is a traditional custom in some African cultures (Dorothea 2003: 132-64). However, it has been criticized for perpetuating gender inequality and violating the rights of women.

The practice of polygamous marriages among the chiefs in Dagbon was a way of testing their patience (Samuel 2020: 258). A man could marry as many wives as he pleased because the practice was legally accepted in the Dagomba communities. Among the chiefs, it was a preparation ground to showcase a chief's ability to control and provide for the members of his community. It was also a way of ensuring that chiefs had a large number of children who could inherit their positions and continue their legacies.

The above notwithstanding, some of these marriage practices during the pre-colonial period among the Dagomba breached one's right of choice, for instance, the cutting of the umbilical cord and the subsequent forced marriages. This has created an impression in the minds of contemporary thinkers that the mode of contracting some marriages among the people of Dagbon was outrageous. However, it was customarily recognized and legally accepted in the earlier period.

Also, the customs and traditions of the people of Dagbon instituted a distinctive system of inheritance, which formed part of their customary legal practices based on the patrilineal system of inheritance. The patrilineal system of inheritance means that property and power are passed down through the male line. The patrilineal norms "will" the properties of a man to his children, who are considered his blood kin (Edward and Randall 2014: 215-252). Legally, according to Abdul Karim (2015), the succession of titles or the chieftaincy hierarchy was open to only the sons of the ruling chiefs as the customs and traditions demanded.

The system of inheriting titles among the people of Dagbon has been different compared to other traditional communities. However, in the cases of inheriting the properties of a deceased person in the community, the children were entitled to the properties based on customs and norms (Abdul Karim 2015: 28-44). The properties of a deceased person in the community are 'willed' to his immediate family, particularly his children. Abdullai II (personal interview, 2022) related that; "Those that had the legal means of inheriting the properties were the children of the deceased, children of the elder brothers, and the younger brothers of the deceased." Usually, there were no written documents in support of making a 'will' but the Dagomba people passed down their possessions and property to their descendants, orally.

The eldest son typically inherited the bulk of the property, while the other sons received smaller portions or were expected to make their way up climbing the ladder of life. *Naa Bawa V* recounted in an interview that:

In Dagbon, "Will" was not written down or observed. When a Dagomba Man dies, the children inherit his property. It is the family head and other elders in the family who will administer that. The family head keeps the property for the children and if one day the children face some problem or need money, they go to him for some parts of the property. In some cases, the first son inherits all the property for the sake of his other siblings. He becomes the head of the family. In the case of land, the children continue to use the deceased's land, and they could decide to share it among themselves or farm together (*Nan-Ton Naa Bawa V*, personal interview: 05 July 2022).

The above is a common practice in many traditional societies where land ownership or other inherited properties are passed down through generations. However, in modern times, legal procedures and

documentation are necessary to ensure a smooth transfer of property ownership after the death of the owner.

The customary laws on chieftaincy succession underscores the patrilineal system among the people of Dagbon (Awedoba 2006). In the case of the succession of the paramount seat or the next to ascend on the highest throne of Dagbon particularly to be the next *Ya-Naa* (paramount chief), the eldest son of the previous paramount chief is selected (Mac Gaffey 2013: read more chapter 4). Likewise, as the interviewees hinted, the writing of a “Will” was not codified in the legal practices of the Dagomba. This suggests that the inheritance of property and assets was solely based on the male lineage and that there was no formal legal framework for individuals to dictate the distribution of their possessions after death. Concerning pre-colonial inheritance customary practices, the family heads played a crucial role. The family heads were in charge of distributing the properties of the deceased. At this point, chiefs or community leaders played less role in distributing the deceased's properties. Essentially, family heads are the leaders of the extended families that form the lineage of generations in every society where every member has a common ancestor.

Additionally, land ownership was vested in the hands of the chiefs, and it was held in trust or on behalf of the ethnic groups. The land was seen as an ancestral gift, and the custodians of it were the *Tendanas* who held it under the authority of the chiefs (Abdullai 1986: 72-103). During the earliest times, communities in Dagbon that had no chiefs, the *Tendanas* were the custodians of the lands until the enskinment of a chief in the community (Mac Gaffey 2013: read more chapter one). The *Ya-Naa* owned all the lands within the territories of Dagbon in the trust of the people (Abdullai 2013: 84). Land as property was not owned by individuals in the community but was held as family property and mostly transferred from generation to generation. The lands in Dagbon were believed to be ancestral lands and chiefs as spiritual leaders held the lands as ‘usufruct’ (Abdallah Imam 2015: 126).

As a farming community, lands were much needed for farming activities, and chiefs, as custodians of the lands, gave out the lands to individuals for farming and, in return, took some tokens as appreciation. These tokens could be in the form of crops, livestock, or other valuable resources. This mutually beneficial arrangement allowed the community to thrive and ensured a steady food supply for everyone. During a personal interview with Abdullai II, he hinted that:

Lands were owned by chiefs, and they were given out for free without any charge. Strangers could get land for free either for farming, or any activities that were beneficial to society. Concerning the release of land for a settlement or building, the person had to give a token to the chief. But in case someone is farming on the land then it is required for the person to give some of the farm produce to the chief. Once the person is leaving, the land will be taken by the chief (Abdullai II, personal interview; 04 July 2022).

It was a common practice for the lands used by individuals, especially strangers, to be returned to the chiefs when they were no longer in use. This practice ensured that the land remained available for others in need and prevented it from being unused. It also fostered a sense of communal responsibility and stewardship over the land, reinforcing the social fabric of the community.

In another narration, *Naa Bawa V* recounted that:

If one wants to farm on the land, he or she goes to the chief and seeks permission or seeks land from the chief with kola nuts and some small amount of money. After cultivating the land, the person will then bring some portion of the farm produce to the chief's palace as a gift to indicate that he is grateful for the land the chief granted. Sums of Money were not paid for acquiring land in Dagbon, because the land belonged to the people and the chief held it in trust for them. Once the chief grants one the land to farm, it becomes the person's property until death (*Nan-Ton Naa Bawa V*, personal interview: 05 July 2022).

The first British commissioners in the northern territories particularly in Dagbon, witnessed the ongoing customary land tenure, and ownership practices. The chief commissioner to the Northern territories highlighted a guide to the amendment of the land Ordinance in the territories:

It will be polite and expedient to amend the ordinance in the following respect: to recognize that, as in the colony all the lands in the protectorate belong to the native communities, to recognize the *Tendanas* as the land authorities, to permit *Tendanas* to make grants of land to natives in accordance with native customs, and clearly to recognize the right of the *Tendana* to distribute land for and on behalf of the community ( Land Tenure in the Protectorate and its Development under the Land and Native Rights Ordinance. NRG8/1/57; Public Records and Archives Administration Department (PRAAD), Tamale).

In another report, the commissioner of lands in the Northern territories described land ownership as, “The property of land in the Northern territories’ rests in the community which under the present native law acquiesces in all land being under the control and disposition of the *Tendana* who is the representative of the people in this respect (Land Tenure in the Protectorate and its Development under the Land and Native Rights Ordinance 1948. NRG8/1/57; Public Records and Archives Administration Department (PRAAD), Tamale).” This indicated the traditional forms of land ownership in Dagbon that existed prior to the European influence in the northern territories.

There were legal codes on land acquisition and disposition during the pre-colonial era in Dagbon. The reports from the courts in the Northern Territory confirmed the functionality of the chiefs and the *Tendanas* on land ownership. Therefore, it can be inferred that land was not private property but public property that was taken care of by the chiefs or the *Tendanas*. A further report on land ownership

by the land commissioner in the Northern Territory indicates that; “It is of the utmost importance not to destroy the existing system of land tenure... (Land Tenure in the Protectorate... NRG8/1/57; PRAAD, Tamale).” This report confirmed the existence of native laws on land tenure in the Northern Territory as well as among the people of Dagbon before the advent of the British in the Northern Territories.

Also, many societies during the pre-colonial times had their own set of punishments for culprits who committed crimes. In Dagbon, pre-colonial criminal laws were based on adultery, stealing, witchcraft and defamation. The paramount chief’s palace (Ya Naa) served as the highest court of arbitration. The customary practices of the people of Dagbon defined the type of punishment meted out against criminal culprits. These practices were deeply rooted in their cultural beliefs and traditions, which emphasized restoration and reconciliation rather than retribution. The punishment aimed to not only deter future wrongdoing but also restore harmony within the community. During the pre-colonial era, chiefs were the custodians in settling crime cases in the traditional courts. Abdullahi II recounted:

Some time ago, in the early societies of the Dagomba, chiefs led the charge in solving crime issues. All cases were brought to the chief’s palace for further investigation and judgment. Chiefs made the final judgment (Abdullahi II, personal interview; 04 July 2022).

The customary laws in the community were set by the chiefs and their elders under the guidance of the customs and norms of the community. These laws were based on the values and traditions that had been passed down through generations. They served as a means of maintaining order and resolving disputes within the community. *Naa Bawa V* pointed out that:

If one goes against the norms or laws set by the chiefs and his elders, thus the norms of the society, he/she is sent to the chief’s palace for a hearing, when found culpable, the chief gives appropriate judgement and punishment. For example, when a man seduces the chief’s wife, particularly the *Ya Naa*, he is executed. There was a Baobab tree which is called *Naadataa Tuwa* in the Dagomba language which means the Chief’s rival tree. It was under this tree that the accused was beheaded for seducing the chief’s wife (*Nan-Ton Naa Bawa V*, personal interview: 05 July 2022).<sup>1</sup>

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<sup>1</sup> According to the interviewees, it was under the chief’s rivalry tree, known in the local dialect as *Naadata Tuwa* that a culprit who slept with the chief’s wife was beheaded. This ancient tradition was believed to bring justice and restore the honor of the chief’s family. The *Naadata Tuwa* became a symbol of fear and warning, reminding everyone about the severe consequences of betraying the chief’s trust. This tree was found in the traditional capital, Yendi, where the *Ya Naa*’s (Paramount Chief’s) seat reside. The *Naadata Tuwa* is not only a symbol of fear and warning but also a reminder of the deep-rooted cultural values and traditions in Yendi. It serves as a physical representation of the chief’s authority and the importance of loyalty within the community.

Moreover, punishment meted out against criminal offenders differed based on the level of crime committed. Also, the system of cross-examination before final judgment was highly valued among the people of Dagbon. It allowed for a fair and thorough evaluation of evidence and testimonies. This ensured that the accused had the opportunity to present their side of the case and defend themselves against any possible false accusations. Additionally, this practice promoted transparency and accountability within the indigenous judicial system, instilling trust among community members. For instance, *Naa Bawa V* recounted:

The culprit was sent to the chief's palace for cross-examination. The elders and the chief listened to the complainant and the accused to confirm whether he or she was guilty before the judgment was passed, if the accused was found guilty, the item was confiscated from him or her, and punishment was meted out to the person (*Nan-Ton Naa Bawa V*, personal interview: 05 July 2022).

The Dagomba people believed in a proportional system of justice, where the severity of the crime determined the severity of the punishment. This approach ensured that individuals were held accountable for their actions and deterred others from engaging in criminal behavior. The use of a leather whip for punishment was highly practiced in the chief's palace during that time. The leather whip was not only used for punishment but also as a means of maintaining discipline and order within the palace. Its presence served as a deterrent, ensuring that individuals adhered to the rules and regulations set by the chief. In an interview with *Naa Bawa V*, he recounted that:

A leather whip (*Barazim* in Dagbani) was used to lash or cane culprits. Some were lashed with 12 strokes or 100 strokes depending on the level of the crime.<sup>2</sup> A certain amount of money was also charged at the local court. The amount was equivalent to 100 shillings or 100 cowries which was a huge amount. People were forced to pay, and they went ahead by using their family members as pawns to secure a loan from a rich person and the pawn would work and pay before he could be released from his pawnship (*Abdullai II*, personal interview; 04 July 2022).

From the above, it can be deduced that crimes were part of early societies. However, there were efforts made to help maintain law and order. In an attempt to enforce peace and order, laws were created during the pre-colonial era among the Dagomba. The punishment that was meted out against culprits

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<sup>2</sup> *Barazim* is made up of a stick as a handle and leather made from animal skin. This was found in most of the chiefs' palaces. The leather is carefully crafted and intricately woven to provide a comfortable grip. It is a symbol of prestige and power, often adorned with decorative elements that showcase the chief's status within the community. During the earliest times, it was used to deter crime culprits.

was on different levels. On the other hand, the colonial era changed the system of how punishments were meted out to culprits. The system of fines and imprisonment replaced the existing traditional or customary punishment meted out to offenders or culprits.

### 3. The nexus between colonial systems and customary legal systems in Dagbon

The dawn of colonization in Africa saw the rise and establishment of colonial systems on the shores of Africa. The systems put in place by the first European settlers in Africa suppressed some pre-existing traditional systems. However, some of the traditional systems have been transformed following the imposition of colonial systems on traditional socio-economic and political systems.

The coming of the Europeans, particularly, the Germans and the British in the Northern territories marked a period of changes in the Dagomba Legal systems and institutions. The early relationship between the Asante and the Dagomba gave easy access to the establishment of the British institutions in the Northern territories after the defeat of the Asante in 1874 (Court records from 1922 to 1938. NRG2/6/1; PRAAD, Tamale). On one hand, the German interest in the territory during the latter part of the 19<sup>th</sup> century led to a battle called Adibo (or *Adibo Dal'la* in Dagbani). Later, the Germans took control of Yendi, the traditional capital (Abdullai II, personal interview; 04 July 2022, Interview). The Dagbon kingdom was later divided into Eastern Dagomba (Tamale), a British-controlled territory, and Western Dagomba (Yendi), a German-controlled territory.

The British institutions in the northern territory created limitations to the traditional institutions. In an interview with Abdullai II, he recounted that:

The British legal system was a hindrance to the local legal systems in Dagomba. The case of destroying the witch camps and allowing the culprits to come back to their homes alone was a challenge to traditional practices. At first, we refused to accept the annexation of the British of the Northern territories, which resulted in war between the British and us. However, we later accepted it because we realized it was for our good. The region was divided into German Dagomba (Yendi) and British Dagomba (Tamale) (Abdullai II, personal interview; 04 July 2022).

However, Ibrahim Mahama recounted in an interview on the British legal systems and institutions in the Northern territories that:

All the British laws that were introduced in the Northern territories were already in existence and practiced by the indigenes. For instance, criminal laws on adultery, stealing, divorce, and many others were already in existence. Also, the case of someone swearing an oath as it is done in the magistrate courts was applied in the traditional courts. The common oath in the traditional court was to swear on the skin the chiefs sat on (Mahama, Personal Interview; 2022).

The above confirms the existence of indigenous customary laws before the advent of Europeans in the Northern territories. However, some of these laws and practices changed as a result of European influence in the territories. Both the British and the Germans played key roles in the new dynamics of the customary laws in Dagbon.

The inception of the British institutions in the Northern territories brought about the first enactment of the administrative ordinance in 1902. This and several other Acts passed in the protectorate laid down the procedure for a British takeover. The restructuring of power relations between the British and the Northern territories led to the establishment of the tribunal courts (Brukum 1999: 101-22). The British courts and the traditional courts were both used to settle criminal cases in the territories.

The court systems established in the Northern territories were the first attempt to introduce the British legal systems in the region. Abdullai II hinted that:

The first system put in place was the tribunal courts and chiefs were allowed to sit or preside on the native cases. Two courts were first established; the Western Dagomba court (Tamale) and the Eastern Dagomba court (Yendi). Traditional cases were also resolved in British courts and not only at the local courts. The British courts did not limit the power of the chiefs as judges because the chiefs still presided over the cases in the British Courts (Abdullai II, personal interview; 04 July 2022).

Some of these institutions were set up by the Europeans to deal with some indigenous practices that were considered as barbaric and against human dignity. The colonial legal systems were used by the Europeans to handle disputes among states in the continent of Africa (Sandra 2001: 571-596). Sandra (2001) has indicated that the pre-existing traditional conflict resolutions were viewed as cruel and primitive. Before the Northern territories came under British rule, numerous indigenous practices were accustomed to the indigenous people of Dagbon. However, the practices were misconstrued by the British (Brukum 1999). The British misunderstood and misinterpreted these indigenous practices, often viewing them through their own cultural lens. As a result, they imposed their customs and beliefs, disregarding the rich cultural heritage of the indigenous people of Dagbon. For instance, Abdullai II indicated that:

The British and German administration initiated the hoisting of a flag on a pole in front of the police station. It was used as a means to reduce instant punishment or justice. For instance, when one committed a crime and ran to hold the flag on the pole in front of the police station, no one could arrest the person or do any harmful thing against him or her. He or she will be asked to speak in defense of himself or herself. That system was called *Santilli* (a corrupted version of Standstill) an

explanation derived in the course of the interview. A culprit of a crime will only have to “stand still” to indicate he or she has committed a crime. Even if a lady was forcefully given out to a man in marriage and she ran to hold that flag, it meant she was not interested in the marriage and no one could force her (Abdullai II, personal interview; 04 July 2022).

From the above, this pole could be referred to as the “pole of refuge.” Likewise, it can also be deduced that the British institutions and legal codes imposed in the Northern territories, particularly in Dagbon affected indigenous or customary laws. On the other hand, the institutions like the police and the court systems established by the British helped to defer some punishment and sometimes led to a more measured punishment meted out to offenders or persons who engaged in criminal acts. For instance, the punishment meted out to a person who seduced the wife of the paramount chief was death through decapitation. The British tribunal court improvised the use of fines and imprisonment as a punishment for such a crime. However, these newly introduced laws did not limit the traditional functions of chiefs as the custodians of customary laws. According to Brukum (1999), the Administrative Ordinance of 1902 led to the initiation of the native tribunal courts and the adoption of some customary laws.

Some customary legal practices could not be scrapped completely in Dagbon but were replaced with a different set of British legal codes and institutions. While some traditional practices remained, such as the role of local chiefs in dispute resolution, it is believed that the British legal framework aimed to bring about modernization and greater consistency in the administration of justice in Dagbon. Abdullai II indicated during an interview that:

The British found a different way of handling some cases because they could not let our predecessors stop the practices completely. For instance, when one seduces a chief's wife or has a sexual relationship with the chief's wife, the head will be cut off under a tree called *Naadataa Tuwa* (the chief's rival tree). However, the court was used in settling such a case instead of cutting the head of the culprits (Abdullai II, personal interview; 04 July 2022).

For the offence of seducing someone's wife in Dagbon, fines were inflicted upon the culprit especially during the colonial era. These fines were imposed as a means of maintaining social order and upholding traditional values in the community. The severity of the fines varied depending on the specific circumstances and the status of the individuals involved. The level of fines differed, for instance, the highest fine was when one seduces the paramount chief's wife, and the lowest was attributed to a private individual's wife. The seduction fees were £12 for the paramount chief's wife, £6 for the sub-chief's wife, £3 for the headman's wife, and £2 for the private individual's wife (Court records from 1922 to 1938. NRG2/6/1; PRAAD, Tamale).

Moreover, Abdullai II further recounted that:

The British/German also recruited some police forces or security personnel who worked with chiefs. These policemen were called Naa na'kana (The chief is calling you) with a short wooden stick called “talk true.”<sup>3</sup> The British/German policemen were to prevent the brutalization of offenders or those who had committed a crime before they were sent to the chief's palace. This dealt with the question of mob justice. Our earliest security services under the chiefs, were very harsh in terms of dealing with culprits or accused persons especially when the culprit refused to duly respond to the invitation of a chief. The culprit could be decapitated and the head could be sent to the palace (Abdullai II, personal interview; 04 July 2022).

The German recruitment of policemen in Dagbon mirrored the British-established systems, as both aimed to enhance crime-solving efforts within the communities. This collaborative approach between the Germans and local chiefs showcased a shared goal of maintaining law and order in Dagbon under different colonial administrations.

To strengthen the native authority, the British authorities trained and recruited a native police force who served in respective palaces of chiefs (Brukum 1997: PhD diss.). These native police forces were responsible for maintaining law and order within their communities, ensuring the compliance of the local populations to British rule. They acted as intermediaries between the British authorities and the chiefs, helping to enforce colonial policies and maintain control over the indigenous population. This served as a gateway for the transformation of customary legal practices in Dagomba. The laws introduced by the Europeans limited the application of most of the laws made by the chiefs and the elders (Naa Bawa, Interview, 05 July 2022).

#### 4. The post-colonial customary laws of Dagbon

Throughout Africa, traditional justice systems have survived in many forms, serving large populations primarily in rural communities. This and many systems have survived the European influence during the period of colonization. Traditional systems are well known to have existed before colonization, however, the advent of the Europeans in the 15th century marked the age of foreign dominance in the region of Africa. The dominance of the Europeans in Africa created a dual system in most of the states

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<sup>3</sup> The recruited policemen had a short wooden stick called “Talk-true.” This “talk-true” stick was used by the recruited policemen as a symbol of authority and a means of enforcing discipline within the communities. It served as a visible reminder of their role in maintaining law and order and was recognized by the local residents as a symbol of their power. This wooden stick was used as a means by the police to force offenders to the chief's palace or police station in instances when they wanted to resist the invitation. In recent times, the wooden stick is referred to as a baton. Today, the baton continues to be used by police forces around the world, serving as a visible reminder of the role of law enforcement in maintaining public order.

in Africa. The traditional systems were parallel to the systems that emerged as a result of European influence. These dual systems persist in post-colonial Africa which highlights the traditional authority on one side and the state created by the Europeans on the other side (Ray 1996: 181-202). The judicial space in Africa or Ghana recognizes a dual system or mostly refers to the existence of legal pluralism, that is, the traditional legal system and the foreign-adopted legal system.

The constitution of the Republic of Ghana recognized the functions of chiefs and the customary laws. The customary laws serve as the pivot for resolving individual, lineage, family, and ethnic conflicts (Abdulai 1986: 72-103). Customary laws still have a great impact on respective communities. They laid the foundation for the norms or oral laws that governed and dictated the required actions anticipated by the community and the punitive measures that were directed against those who breached them. These laws are deeply rooted in the traditions and beliefs of the community and have been passed down from generation to generation. They continue to shape the social, economic, and political dynamics of these communities, even in modern times.

Even though the Europeans introduced new laws, up till now, some of the laws made by the chiefs and their elders before the coming of Europeans still exist and are in use (Naa Bawa V, Interview, 5<sup>th</sup> July, 2022). For instance, the first point of contact to resolve cases on marital issues, theft and related crime cases are the traditional courts. The people still regard the traditional courts and the chiefs. In a case where one seduces another man's wife, the case is solved at the chief's palace. The issue of ascertaining the paternity of a child and pregnancy for instance and many other cases are still solved at the chief's palace. Moreover, according to Naa Bawa V, "some cases on land disputes are still solved at the traditional courts. Some cases of crime like murder are mostly resolved at the magistrate courts (Naa Bawa V, Interview, 05 July 2022)."

Furthermore, Ibrahim Mahama hinted in an interview that; "Juxtaposing the idea of making a 'Will' and the traditional system of inheritance; the people of Dagbon still regard and use the traditional system of inheritance rather than making a 'Will.'" This is because these systems promote both matrilineal and patrilineal systems of inheritance and permit the children to inherit their mother's property in Dagbon (Mahama, Interview, 06 July 2022). Similarly, Awedoba (2006) has argued that the children in a family asserted titles through maternal ties due to the flexibility of the inheritance system of the people of Dagbon. The children are entitled to inherit the property of the deceased whether it was the father or the mother who died.

Some cases are moved from the magistrate courts to the traditional courts due to ancestral connections or linkages. In communities without magistrate courts, the traditional courts serve as the gateway to resolving their cases. On the other hand, some cases are also sent to the magistrate courts

from the traditional courts when this local alternative dispute resolution fails. Murder and other criminal cases are better handled at the magistrate courts. Again, contemporary constitutional requirements and legislations further emphasize this.

## 5. Conclusion

The findings of this research indicate that the pre-colonial legal systems in Dagbon were built on the customs and norms of the land. The principles that guided the communities were connected to the ancestral beliefs and norms that were passed on from one generation to another. Some customary laws that were discussed are marital laws, land laws, criminal laws, and laws on inheritance.

It is established that the customary laws on marriage, crime, land, and inheritance existed during the pre-colonial era. However, the British legal system only changed some of the customary or native laws to suit the British legal system. Thomas has indicated that to achieve their colonial ambitions, the British introduced their legal systems and institutions in the Gold Coast (Thomas 1944: 30-35). Similarly, the attempt made by the British to regulate the lives of the people they conquered was always to impose their legal systems in that region (Modibo 2006: 94). According to Brukum (1999), the introduction of the tribunal courts was to restructure the power relations between the chiefs and their subjects. The tribunal courts in Dagbon also made it possible for one to appeal whenever the person was not convinced by the judgment of the chiefs in the traditional courts (Brukum 1999: 105).

Similarly, the Ya Naa's court was the highest in Dagbon and served as the court of appeal whenever a person was not pleased with the judgment of the sub-chief in his community. Some foreign laws introduced to Dagbon were already in existence and practiced during the pre-colonial era. Likewise, it can be concluded that the pre-colonial legal systems in Dagomba societies were well-established and functioning. They were very effective in ensuring, promoting, and maintaining peace and justice as well as stability within the state.

It is worth concluding that the pre-colonial Dagomba observed that, human beings were not perfect, hence, laws were needed to regulate some behaviors that were contrary to societal norms and customs. Punishment was also pronounced on offenders to serve as a deterrent to other members of society from indulging in the same act. Even though some of these punishments were regarded as harsh, the purpose was to regulate human behavior to create a peaceful environment.

The customary legal systems existed alone until the pronouncement and declaration of the Northern territories as a protectorate by the British in 1902 which led to the changes of some of the customary legal practices, which were regarded as archaic. The British who did not understand the indigenous practices of the people described the people of the Northern territories as rather

picturesque "Bushmen" dressed up in peculiar garb (Annual Report of Northern Territories for April 1926 to March 1927. ADM.5/1/70; PRAAD, Accra). To this, a foreign legal system and institutions (judicial system, police, and prison) were introduced to the people, which saw the changes in the customary legal practices in Dagbon. In contemporary Dagomba, the customary laws and the British laws, which are largely seen as a colonial superimposition, still function as the final arbiters of local matters and have created a legally pluralistic space. This further emphasizes the point that the current legal framework and the constitution of Ghana were inspired by such colonial superimposition with our own changes and amendments over time.

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