

Customary Land Administrator in Ghana – Challenges and Prospects

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SUMMARY

The different types of land tenure and the land administration prevailing in Ghana today evolved over-time from the interplay of socio-political organisation of various ethnic groups, clans and families through trade, wars and incorporation. As a result customary and state laws play an important role in the management and administration of customary lands in Ghana.

In all the indigenous social administrations land is communally held in trust for the ethnic group or clan or family and administered by chiefs, *tendambas* or heads of these socio-political entities.

Managers of customary lands are expected to be transparent and accountable in their land transactions and also ensure that benefits accruing from the use of customary lands are utilized for the benefits of the larger communities

In order to have in place an enhanced and well structured customary land administration the following among others must be considered:

- Reducing conflicts through boundary demarcation
- Strengthening Customary Land Administration
- Improvement of Deed and Land Title Registration
- Improvement in Accountability and Transparency
- Payment of Compensation for Compulsorily acquired lands
- Harmonising Land Policy and Regulatory Framework

The above interventions will become a reality through the implementation of Ghana's Land Administration Project over a 15 – 25 years period.

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1. INTRODUCTION:

The different types of land tenure and the land administration prevailing in Ghana today evolved over-time from the interplay of socio-political organisation of various ethnic groups, clans and families through trade, wars and incorporation. The advent of colonial rule and subsequent introduction of tree crop agriculture as well as commercial exploitation of timber and mineral resources, and the post independence politics and urbanisation equally played leading roles in shaping the current customary tenure system. In all the indigenous social administrations land is communally held in trust for the ethnic group or clan or family and administered by chiefs, *tendambas* or heads of these socio-political entities. There are an overwhelming prevalence of customary rules in many transactions governing land, especially in rural environments in Ghana. In spite of this, the legal regime within which customary land operates can be divided into three (3) broad areas:

- A system of statute law and common law inherited from the British
- The indigenous, customary systems and
- Customary law as interpreted by the courts.

The land law of Ghana is to be found in all three (3) spheres. There is a large body of statute laws on land and land administration although these laws supplement or amend rather than codify the law. The courts have over the years also produced a large body of decisions on land. In general, however, customary law provides the setting within which the majority of land transactions occur.

2. KINDS OF CUSTOMARY LAND TENURE IN GHANA

Customary lands are lands owned and controlled by stools (ethnic groups), clans or families where traditional and customary norms and practices govern their tenures and administration. Customary lands are believed to belong to the past, present and future generations. The customary land sector controls roughly 80% of the land holdings in Ghana. It is governed by customary law, and the rights and interest range from allodial (free-hold), through usufruct to tenancy and indicated below.

Allodial/freehold implies full ownership of land in English law, providing the owner with the largest bundle of rights (fee simple absolute). In addition customary land can be held by inheritance, gift, and purchase pledge/mortgage.

Usufruct applies to land holding arrangements where the right to use land is one of the essential elements of land ownership. The usufruct may endure for life, or it may be for a

specified number of years. In the latter case it is terminated upon the death of the beneficiary. In some communities, the rights may be transferable.

Tenancy implies the right to use land for a specified period of time (lease). The tenant has a bundle of rights as benefits.

Share Tenancy is the most familiar customary tenancy in Ghana. Land rental is also widespread and found in the cocoa frontiers areas as an emerging system of conditional tenancy. Share tenancy is based on two principles of “abunu” and “abusa”. It involves sharecropping such as abunu which is a sharing on 50:50 basis between the land owner and tenant; and abusa which is sharing on a 1:2 between the landowner and tenant.

Some years ago, the application of any of these principles and what a tenant or his landowner could get from tenanted land depended on each relative’s contribution to the farming operation. If the landowner provided part of the farm inputs and capital in addition to his land the basis of sharing was abunu. However, if the landowners contribution was only the land, leaving the remaining resource investment to the tenant, “abusa” was applied in favour of the tenant, another 1/3 went to the landowner for his land (Aidoo, 1995).

3. ADMINISTRATION OF CUSTOMARY LANDS IN GHANA

Customary and state laws play an important role in the management and administration of customary lands in Ghana. They provide the legal framework within which land can be acquired, disposed of and developed in a sustainable manner. These laws span the colonial era to date.

3.1 Colonial Era

There had been a number of legislations since the colonial period all aimed in one way or the other to administer stool lands. Notable among them are:

- The Stool Land Protection Ordinance of 1940
- Kumasi Lands Ordinance 1943
- The Local Government Ordinance of 1951.

These colonial legislations were enacted ostensibly to protect stool lands and also bring sanity in the administration of stool lands in the country.

3.2 Post Independence Era

After independence, the key enactment dealing with the subject of stool land administration was the Administration of Lands Act 1962 (Act 123) Section 1 of the Act vests the management of stool lands in the Minister. Section 7 confers power on the President to vest stool lands in itself in trust for a stool and act as a trustee in respect of any such vested land

concerned. Any monies accruing out of any deed executed in respect of any such vested land were paid into the appropriate stool account for the purposes of the Act.

Part 1 of the Act deals with stool lands generally. Section 17 deals with stool land revenue collection and administration. It provides:

17 (1) All revenue from lands subject to this Act shall be collected by the Minister and for that purpose all rights to receive and all remedies to recover that revenue shall vest in him and, subject to the exercise of any power of delegation conferred by this Act, no other person shall have power to give a good discharge for any liability in respect of the revenue or exercise any such right or remedy.

17 (2) Revenue for the purposes of this Act includes all rents, dues, fees, royalties, revenues, levies, tributes and other payments, whether in the nature of income or capital from or in connection with lands subject to this Act.

17 (4) Any moneys in the Forests Improvement fund in excess of authorised expenses in connection with exploitation and silvicultural work shall be transferred from that Fund to the Stool Land Account.

The above provisions show a clear and unambiguous departure from the past when traditional authorities were permitted under some previous statutes to participate in the collection and administration of stool land revenue.

The administrative structures which have been established to carry out stool land revenue administration on modern lines truly reflect the communal character of the assets from which such revenues are derived. Since the establishment of the new system in 1962, no major maladministration of customary land revenue on the scales witnessed over the last hundred years when traditional authorities were in charge has occurred.

3.3 Constitutional Provisions

It would appear that the successful operation of the system under the Administration of Lands Act 1962 (Act 123) informed the framers of our constitutions in building upon the system established under the Act.

In the 1969 Constitution Article 164 (2) provided for the establishment of a Stool Lands Account into which was paid stool land revenue out of which was paid appropriate proportions to the stool, traditional authority and the local District Courts.

The 1979 Constitution Article 190 (2) provided for the establishment of the Office of the Administrator of Stool Lands to be responsible for the establishment of a stool land account, and the collection and disbursement of stool land revenue. However for one reason or another, the Office was not established.

The 1992 Constitution reiterated the establishment of the Office of the Administrator of Stool Lands

Article 267(2) of the 1992 Constitution creates Office of Administrator of Stool Lands to be responsible for:

- (a) *The establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands;*
- (b) *The collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital and to account for them to the beneficiaries specified in clause (6) of this article.*
- (c) *The disbursement of such revenues as may be determined in accordance with clause (6) of this article.*

Clause 6 of the article prescribes the proportions in which the revenue should be shared to the beneficiaries. It states:

(6) Ten percent of the revenue accruing from stool lands shall be paid to the Office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following

Proportions:

- (a) *twenty – five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status*
- (b) *twenty percent to the traditional authority; and*
- (c) *fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated.*

In compliance with the constitution, Parliament has enacted the Office of the Administrator of Stool Lands Act, 1994 (Act 481). The Act reproduces substantially the relevant provisions of the Constitution.

4. CHALLENGES

The National Land Policy has identified a litany of problems and constraints of the Land Sector. Among them are those pertaining to customary land tenure and administration.

4.1 Indeterminate Boundaries

Indeterminate boundaries of stool/skin lands resulting directly from lack of reliable maps/plans, and the use of unapproved old inaccurate maps, leading to land conflicts and litigation between stools, clans and other lands owing groups.

The history of land boundary disputes in Ghana is one of long delays with a backlog of proceedings. The Stool Land Boundary Settlement Commission set up in 1973 to adjudicate boundary disputes between stools and skins was disbanded with responsibility for deliberation on disputes passed on to the judiciary. There are currently about 35,000 land disputes before the courts and the prospect of early resolution of these cases is very slow.

4.2 Commercialisation of Land Leading to Alienation

The demand for land and labour for growing cash crops such as cocoa and oil palm gave rise to chiefs allocating large tracts of land to migrant farmers under long-term lease arrangement or even outright sale of land for agriculture and urban development. Chiefs and heads of clans and families became more than mere trustees on behalf of their communities. Some chiefs alienated unallocated land without consulting their people, and with no benefits from land sales to community members. As a result large tracts of stool lands in the rich cocoa growing areas have now become “alienation holdings” belonging to individuals or families who purchased them.

4.3 Non-Payment of Compensation which Tends to Promote Conflicts

Over the years government has compulsorily acquired portions of customary lands in excess of the real needs of Government. However compensation has not been paid for such lands. This is in clear contradiction to the laws pertaining to compulsory acquisition which prescribe prompt and adequate compensation for such acquisitions. This has been a source of conflict between the customary land owners and Government

4.4 Poor Customary Land Management Practices

The performance of customary land authorities has been poor, to say the least. Poor record keeping has been the bane of many customary land authorities leading to multiple sale or lease of parcels. Land transactions, particularly deeds of leased land in rural and some urban areas are not properly documented and validated by the Lands Commission as required by law.

A case study is the Wassa Amenfi District in the Western Region of Ghana. Management of both stool and family lands in the district has been haphazard. The chiefs who are the administrators of lands and hold the authority to allocate and lease lands do not have maps as evidence of lands given out. They hardly coordinate any land transaction with other institutions involved in land management such as Town and Country Planning, the District Assembly or the Lands Commission. The prospective lessee can be given land anywhere in so far as that land is vacant and alienable.

4.5 Insecurity of Tenure

Inheritance rights over land are sometimes contentious among and between stools and stools, between stools and tenants, and between stools and families, between individuals and stools and between family members and between tenants and tenants.

Disputes over rights to the stool often result in the absence of the substantive head of the land holding authority who would exercise fiduciary rights over stool land. In such instances, it becomes difficult to undertake land transactions as there is always a problem of who is the rightful person to authorise such land transactions. Prospective land acquirers and developers are held back as they do not want to be involved in conflicts.

4.6 Lack of Accountability

Revenues from the use of customary land are by law collected and disburse by the Office of the Administrator of Stool Lands. However chiefs and heads of families collect huge sums money which they term “drink” (premium) money for every parcel of land leased. Such monies are not accounted for to the community members. Furthermore many stools may not have proper records of what and how much money they receive from rents and royalty payment. Any records that may exist may not be accessible to the community members who might want verification of specific or general transactions undertaken by traditional authorities. They do not think it fit to inform their communities about receipt and disbursement of stool land revenues. The lack of absence of accountability is a source of agitation by the youth in many communities.

District Assemblies are the worst culprits when it comes to accountability. By law District Assemblies receive 55% share of all revenues from customary lands. These monies are to be used for the development of the districts. However, though some use these revenues judiciously in carrying out identifiable projects, others do not. Unfortunately, there is no mechanism for monitoring how these monies are used, either are the District Assemblies obliged to account to the community on whose behalf these monies have been released.

4.7 Multiplicity of Laws on Land Administration

Since the colonial era several laws have been enacted to deal with specific land administration issues. Such ad hoc approach has led to a myriad of which are redundant, obsolete and inconsistent with new policy directions. These is therefore the need to eliminate such laws from the statute books. Moreover there is the need to harmonise customary and statutory land law to adequately address the new challenges in land administration.

5. PROSPECTS

The way out of the challenges of customary land administration can be sourced from a variety of ways. But perhaps the most important intervention is the Land Administration Project initiated since 2003. This is a World Bank led multi-donor project developed to help

address much of the inadequacies plaguing the lands sector of Ghana's economy. The project is being coordinated in three phases over a 15-year time period.

The first phase consisting of four components meant to:

- create a harmonious policy and legislative framework as the basis for a sustainable land administration system
- Undertake Institutional Reform and Development within the Land Administration System
- Improve Land Titling, Registration, Valuation and Information Systems and
- Establish Project Management Monitoring and Evaluation Systems

The Land Administration Project contains specific interventions to address some of the challenges of customary land administration as indicated below.

6. REDUCING CONFLICTS THROUGH BOUNDARY DEMARCATION

The Land Administration Project in consultation with community members, customary land administration authorities would be assisted to reach agreement with neighbouring communities on boundaries of allodial and other customary land areas. Already pilot work on this component has been planned for Ejisu, Wassa Amenfi and Gbawe, customary land areas.

7. STRENGTHENING CUSTOMARY LAND ADMINISTRATION

The Land Administration Project would assist customary authorities to work with formal land administration agencies to enable the development of procedures that are not only simple and cheap for landholders and customary administrations but also interface with more formal survey and registration procedures. The project would also assist customary land authorities to work together for mutual problem solving and to use traditional councils or other fora to inform policy making at the district, regional and national levels. The component on strengthening customary land has made reasonable progress because of the presence of the facilitator team working in collaboration with the Office of the Administrator of Stool Lands. So far at least one customary land secretariat has been established in each of the ten regions of Ghana.

In the June 2006 Output to Purpose Review (OPR) meeting with the DFID who are the sponsoring this component, it was recommended that the piloting strategy for establishing the Customary Land Secretariat should henceforth place more attention on fostering Customary Land Secretariats which have strong support from land holding communities and customary authorities.

8. IMPROVEMENT OF DEED AND LAND TITLE REGISTRATION

Land registration has been perceived as a way of improving land administration because of the expected benefits it can bring to communities. These include conferring secure title of

land on holders or owners and therefore likely to result in increased investments in land and increase in productivity.

There are two systems of land registration in Ghana, namely the Deeds System and the Land Titling System. The land titling system will ultimately supersede the deeds system, but because many areas will not be reached by land titling activities for many years, the deeds system will remain active long into the future. The Land Administration Project is therefore poised to strengthen both the Deeds Registries of the Lands Commission and the Land Title Registry.

Under the component for improvement of Deed and Title Registration, plans are in the pipeline to improve records management by improving simplified administrative procedures to streamline processing activities, improve efficiency and reduce processing time. So far three additional Deeds Registries have been opened at Tamale, Koforidua and Sekondi under the project.

9. TO IMPROVE ACCOUNTABILITY AND TRANSPARENCY

It is one of the objectives of the Land Administration Project to take opportunities to improve accountability and transparency even outside the Customary Land Secretariat establishment. To this end the Office of the Administrator of Stool Lands is expected to publish details of land revenues collected and their distribution broken down according to individual District Assemblies and stools (as already being done for Timber Royalties). Disclosure of this information is expected to become a regular Government activity included in the work plans and budget of the Office of the Administrator of Stool Lands.

10. PAYMENT OF COMPENSATION FOR COMPULSORILY ACQUIRED LANDS

The Government of Ghana has over the years applied its powers of eminent domain through compulsory acquisition or occupied some lands without formal acquisition. Compensation for some of these lands had been delayed and consequently created tension between the state and expropriated land owners. Other related issues include non-utilization of all the acquired lands, encroachments at various levels on some of the acquired sites and changes of use of the acquired sites as against the purpose of the acquisition. Available data on these lands are not up to date and in some cases not available. The inventory of state acquired and occupied lands is a major activity in component 1 of the Land Administration Project. This exercise is to be undertaken nationwide to obtain accurate and up to date data on these lands and implement a comprehensive policy on compulsory acquisition and compensation payment.

So far a pilot inventory exercise which was conducted in the Central Region covered a total of 1,144 sites as against 288 compiled from the records held in the public land sector agencies. This represents 297% increase over the 288 sites compiled from available records.

11. HARMONISING LAND POLICY AND REGULATORY FRAMEWORK FOR SUSTAINABLE LAND ADMINISTRATION.

Under the Land Administration Project all laws affecting land in Ghana would be revised and consolidated into one coherent, harmonized and consistent piece of legislation to be designated the Land Code which will deal with Land Tenure, and Mapping and Land Use Planning.

12. CONCLUSION

In Ghana customary land has been managed through various. Legal instruments and customary practices sometimes applied through the court system. Land management and administration has therefore been on ad hoc basis. Effective and efficient management of lands in the country, has therefore not been achieved. This situation has created constraints and challenges for both customary land owners and users and impede development. However with the commencement of Ghana's Land Administration Project there is the hope that there will be an overhaul of the system. The project when fully implemented will develop a sustainable and well functioning land administration system that is fair, efficient, cost effective decentralised and that enhances land tenure security. Strengthening customary land administration will bring sanity into the system.

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BIOGRAPHICAL NOTES

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