

Land Tenure System in the Pre-Colonial Era. Ghana as the Insight.

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Abstract

By land tenure system, we simply mean how right to land is obtained and distributed in a particular society. During the pre-colonial era, the population of Ghana was small and land was in abundance. Hunters were the major link in founding new settlements. This was the results of the hamlets they pitched during their hunting expeditions, which later developed big, bigger and into biggest settlements now. Schnapps and cola nuts which were the commonest items used in just acquiring land yesteryears have vehemently derailed to join the path of remittance. Today, the acquisition of land is very difficult and those in possession are making millions of cedis from it by selling to those who could afford buying.

Keywords: Land Tenure System, Pre-colonial, Acquisition, Ghana.

1. Introduction

Interestingly in Ghana, individual families in any given village usually possess land through clearing the virgin bush. Any portion of land that an individual acquired in this way, the community respected or protected his or her right to use it for life. This meant that land title holding in the pre-colonial era was the ability to clear it for farming purposes.

Also, other individuals who were able to establish farms deep in the forests had right to such lands. The people always believed that the thickets of the forests harbor spirits of all kinds including dangerous animals so for someone to be able to do that meant the courageous nature of the individual and such is given the right to own that land for his bravery (Sarfo- Mensah, 2001). Land title at that time could also be acquired through either transfer or inheritance negotiation and conquest. In the communities, especially among the chiefs and elders also referred to the bravery of many past chiefs in fighting wars that won their communities large tracts of conquered lands. This confirms Berry's (1992) suggestion that since pre-colonial times Africans have attached both material and symbolic significance to land; and, rights in land have been exchanged, negotiated and fought over in the course of political and religious as well as demographic and economic change.

An individual, who is not an indigene of an area, could also acquire land if, and only if, he or she is socially and politically acceptable in the community. One would do this by officially consulting the chief of the village, expressing the desire. Here, the usufructuary's continuous right to the land depended on his or her loyalty and obedience to the leadership of the community concerned. On his death, the land reverted back to the community. At times, his or her immediate defendants may be allowed to continue to use the land but again, they must continue to demonstrate respect and loyalty to the community (Kwaku Akowua, Buabeng, *per. comm.*, 2000). The above shows that land tenure system in Ghana, like that of other forms of land ownership is seated in antiquity (Acquaye and Murphy, 1973). It is important to stress that although the individual may acquire land and have right to its usage even for life, the truth is that the individual did not own the land as such but enjoyed its usufruct. This is because as noted earlier on, the real owners of the land in any traditional community

in Ghana are the ancestors on whose stead the chief stands. That is, the chief has the custody of all land in his jurisdiction. This implies that land in Ghana and in most of Africa has economic, religious and political connotations.

2. The Study Area.

Ghana is a country located on the Gulf of Guinea, only a few degrees north of the Equator, therefore giving it a warm climate. The country spans an area of 238,500 km² (92,085 sq. mi). It is surrounded by Togo to the east, Côte d'Ivoire to the west, Burkina Faso to the north and the Gulf of Guinea (Atlantic Ocean) to the south (Benneh, G. *et al* Dickson K. 1977). Ghana lies between latitudes 4° and 12°N, and longitudes 4°W and 2°E. The Prime Meridian passes through the country, specifically through the industrial city of Tema. Ghana is geographically closer to the "center" of the world than any other country even though the national centre, (0°, 0°) is located in the Atlantic Ocean approximately 614 km (382 mi) south of Accra, Ghana, in the Gulf of Guinea. The study area in so far as this piece is concerned is Ghana. Though part of it concerns Africa as a continent at large, Ghana is coined as the bone of contention from among the lots.



(Study Area) Political Map of Ghana showing all its regional capitals (source: Google map)

3. Land Distribution

During the pre-colonial era, the main means of getting access to agricultural land was through lineage (Joireman, 2007). Usually the land was shared among those who trace their lineage through a common female ancestor (Berry, 1988, 5). This means the basis of transfer was between matrilineal relatives and the land rights of a deceased person transferred to the living matrilineal relative (Kasanga and Kotey, 2001; Quisumbing, 2007; Rawlings, 2009). There was no discrimination against either gender for land use under this system. However, because it was the men's duty to feed their respective family members, they cultivated more land than women but the women controlled the produce in their granaries. In fact, there was no marked differentiation under this system of land tenure.

One may, therefore, describe the distribution of land among the people in the forest-savanna agro ecological zone of Ghana as egalitarian. This is because there was the fear that the ancestors would deal ruthlessly with anyone who tried to cheat the other in the distribution of land. The reason for this is that land is the source of livelihood and, therefore, preventing a member of the community from getting his or her fair share of land uses means that one is to starve to death. The above description generally constituted the Ghanaian land tenure system before her colonial experience.

This general pattern notwithstanding, women were often prevented from inheriting land from their parents. Women's inheritance rights, according to tribal customs, were underlined by the fear that ancestral lands may fall into stranger hands or be excessively split, especially when marriage practices follow the rule of virilocal exogamy (Goody, 1976 cited by Aldashev, *et al.*, 2009, 18). But women were insured against various contingencies, in particular the prospects of separation/divorce, widowhood, and unwed motherhood. In such circumstances, they typically enjoy the right to return to their father's land where they are allowed to work and subsist till they find a new husband.



FIGURE 1. A SPECIMEN OF LAND IN GHANA. (PICTURE BY RESEARCHER, STEPHANIE)

3.1 Colonial Experience And Its Effects On Land Administration In Ghana.

Ghana is now an independent state with a republican status yet the legacy of colonization is still influential in many policy-decisions including that of land tenure in the country. The arrival of the Europeans in Ghana (previously Gold Coast) altered the face of the land tenure system. The indirect rule strategy adopted by the British was instrumental in the change. The key factor of indirect rule was controlling the people through the chiefs. But this system of administration weakened the authority of the chiefs over their people. For instance, from 1878 to 1910, the British governors introduced a series of laws called *Native Jurisdiction Ordinances*. A common feature of these laws was that the indigenous rulers (chiefs) were granted only limited powers to preside over cases (Buah, 1998).

The result of this encounter was the gradual replacement of traditional systems of government with the western liberal democracy with its Christian biases and, thus, weakening the chiefs authority (Parrinder, 1961). For instance, the British delegated the administration of land to the paramount and divisional chiefs, thus minimizing the powers of the village chiefs. Northern Ghana was set up as a protectorate and the Land and Native Acts Rights Ordinance of 1927 declared all lands public and vested in the colonial governor (Lund, 2008, 19; (Kuntu-Mensah, 2000). What this meant was that religion and culture which formed the basis of land acquisition and distribution was being replaced by imperial policy.

In other words, this development created two different legal systems, the long established customary land law based on religious considerations and that of English law (Rawlings, 2009). Following from this colonial legacy, today, the government of Ghana reserves the right to acquire any piece of land that it considers strategic for either economic or other reason(s) for fair compensation. Arguably, the compensation is often not fair yet the land owner has no say than to embrace whatever availed him. Some wait for so long a time before such compensations are paid. At times, it is no paid at all. (Kasanga, 2001).

Further, due to a population increase, land shortages began to be experienced and particularly so in the forest-savanna agro ecological zone. This, coupled with secular land laws resulting from colonization, led to the commercialization of land as a saleable commodity in certain areas in Ghana, particularly our study area where cash crops plantations such as cocoa, coffee and oil palm started to spring up. This attracted mass movement of people, particularly from the south and the northern areas. What became a permanent feature of this was that, instead of 'lending', outright sale of land became possible. This produced what became known as 'Company Lands', when a group of non-kinsmen associated together for the sole purpose of purchasing land from a vendor chief for commercial farming (Hill, 1970).

Another land acquisition arrangement which resulted from the changes to land title holding in Ghana is what Gyasi (1994) describes as being done (a) through leasing for a fee for 25-50 years (b) through a combination of lease and share cropping and (c) through pure share cropping. The category (c) arrangement falls under three main forms. These are: *abunu* (the ratio is 1:1, that is, the produce from the farm or the farming itself is divided into two, one half to the land owner and the other half to the farmer (tenant); *abusa* (where the ratio is 1:2), that is one-third to the landlord and two-thirds to the tenant; and, the *abunan* arrangement which is not normally done. This is where the ratio is 1:3 where one-quarter to the landlord and three-quarters to the tenant).

One serious effect resulting from the changes in land acquisition resulting from colonial legacy and increase in population is the fact that access to land is now not easy in Ghana and women bear the

greater brunt of the situation. This is because rural women inherited a situation where their rights and access to cultivable lands have decreased and the open forest woodland and bush from which they gather such vital necessities as fodder, fuel wood and water have grown scarce or have disappeared (Berry, 1988; Nyantakyi, 2006).

3.2 Post-Independence Land Policy

After independence several attempts were made to restructure land title holding in Ghana by way of land registration, the pillars of the restructuring which were to ensure equitable distribution and sustainable management of land resources and its related natural resources, revolved around: The Land Development Act of 1960; The Farm Lands Protection Act of 1962; and, The Land Registration Act 1962 (Act 122) (Ministry of Lands and Forestry, MLF, 1999). But it is important to mention that these Acts were not fathomable enough to address the land litigation and other problems related to land administration in Ghana. This is because either the policies are *ad hoc* or not comprehensive enough to deal with the problem (Agbosu, 1990). For instance, the 1962 Act failed to require the attachment of accurate plans to the registrable instrument (Kuntu-Mensah, 2000). It was in 1986 that a comprehensive attempt was made to put structures in place for land title registration in Ghana. This culminated in the Land Title Registration Law, 1986 PNDCL 152 (Kuntu-Mensah, 2000). This has been the framework for the land registration policy in the country ever since.

In acknowledging the many challenges in land administration and the policy gaps, a more participatory process was initiated to develop a more comprehensive land policy. The formulation processes were started in 1994 as a sequel to the Land Title Registration Law, 1986 PNDCL 152. The process culminated in a national Workshop in April 1997 the outcome of which is the premier National Land Policy Document (NLP), which was approved by Government on 21st January 1999. This policy is the current framework by which land is managed in Ghana today.

The authors of the policy recognized that the fundamental problems associated with land management in Ghana persisted, and included general indiscipline in the land market, characterized by land encroachments, multiple land sales, use of 8 unapproved development schemes, haphazard development, indeterminate boundaries of customary owned land resulting by government control of large tracts of land which have not been utilized. It also responded to a weak land administration system and conflicting land uses, such as the activities of mining companies, which have large tracts of land denuded against farming, which is the mainstay of the rural economy. There is also the time-consuming land litigation, which have crowded out other cases in the law courts.

The 1999 National Land Policy, therefore, aims at the judicious use of the nation's land and all its natural resources by all sections of the Ghanaian society in support of various socio-economic activities undertaken in accordance with sustainable resource management principles and in maintaining viable ecosystems (MLF, 1999). The major pillars intended to guide policy action and execution are the

Following:

- ✚ Securing Ghana's International Boundaries and Shared Water Resources
- ✚ Facilitating Equitable Access to Land
- ✚ Security of Tenure and Protection of Land Rights
- ✚ Ensuring Sustainable Land Use
- ✚ Enhancing Land Capability and Land Conservation.

These pillars are so well elaborated that one would have thought they would have led to smooth policy implementation and significant reduction in the incidence of litigation (see Ghana Land Policy, 1999 Section Four (4)). One of the major reasons cited for the persistence of high levels of litigation is the difficulty in harmonizing customary land practices and enacted legislation (Kuntu-Mensah, 2000), the two domains governing land administration in the country. This, in our view, presents one of the major challenges to land administration in the country and underpins the insecurity of tenure and protection of land rights.

In fact, the lack of respect for land laws and regulations has partly been attributed to the over emphasis on enacted legislations to the detriment of customary practices. Arguably, in many Ghanaian communities, respect for customary laws because of their spirituality, was found to be more compelling than statutory laws (Nkosi, 1999; Sarbah, 2010). Such religious beliefs and practices are pervasive and deeply entrenched among significant proportion of the populations in Ghana, especially in the rural areas where about 60 percent of the national population resides and where major economic activities, especially agriculture and mining, take place (Sarfo-Mensah, 2002). We would, therefore, like to state that in spite of the changes in land policies and, of course, the land tenure system in Ghana, we found that customary law, which has religious underpinnings, is still strong and especially in rural Ghana where our study area is located. However, what we found baffling is that although the present administrative arrangement in Ghana recognizes customary land tenure as a valid system, past and present governments have not yet adequately taken advantage of it to enhance policy effectiveness.

4. Conclusion

The foregoing indicates the land tenure system in Ghana can be described as a dual system. That is, it involves the communal system that dates back to antiquity and the recent title registration system, resulting from colonization and other factors. This means that land distribution in the study area, in particular, and Ghana, in general, may be described as containing both religio-cultural and policy elements. It is therefore logical that efforts be made to integrate statutory land policy with customary rules and regulations.

The non-exploitation of the rich diversity of traditional institutional arrangements, including customary laws on land, kinship and religion, for environmental development in Ghana by policy makers, for instance, has been noted as a major contributing factor to the unsustainable management of natural resources. In fact, indigenous institutions in Ghana, although complex, are very important for the management of natural resources. The ambiguous relationship between them has the potential to undermine both the authority of the nascent local governments and the performance of customary institutions.

Bluntly, it is indispensable to note that, 1992 constitution by article 267(5) forbids the creation of freehold interest in stool land in Ghana and all lands are now sold as leasehold. Thus prospective buyers need noting that, purchasing land in Ghana can only be done as a lease-hold and not a freehold agreement. A freeholder can be described as a life estate. Thus the land is the external property of the owner. On the other hand, a lease-hold is a property that can be sold for a limited time frame or duration. The maximum ownership duration for expatriates is 50yrs and 99yrs for citizens.

Eventually, the system adopted in ruling the Gold Coasters outside governmental machinery level by the British, was indirect rule. This was another serious canker to land acquisition in the pre-colonial

era where the chiefs were used in catapulting their own people thereby became stooges to the colonial masters.

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