

Customary Land Tenure and Its Implications for Land Disputes in Ghana: Cases from Wa, Wechau And Lambussie

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Abstract

Land disputes remain a major hindrance to land use and tenure security in most parts of Ghana. Often the institutions and mechanisms governing land are crucial to the occurrence of these disputes. Traditional authorities control over 80% of all lands. It is argued in a number of studies that urbanization with its attendant effects of population increase, pressure on land and land commercialization has resulted in the erosion of traditional values that serve to mitigate the excesses of customary trustees. In Northern Ghana, the development of customary land rights was curtailed by colonial and post-colonial governments through the vesting of all lands on government until in 1979 when ownership was reverted to local communities. Given this backdrop, one wonders what relevant traditional norms/principles regulate transactions in customary lands in this area.

The study thus examines customary land management and its implications for land disputes in three traditional areas selected from the Upper West Region. Key informant interviews were conducted with chiefs, tendambas and officials from the state land sector agencies. Focus group discussions were held with land user groups. Data was analysed thematically. The study reveals that though the traditional norm/principle of trusteeship is still relevant, the problem remains how to identify the legitimate custodians of customary lands. Also, land has acquired economic value, and is increasing. Coupled with lapses observed in the land management regimes, these underlie a number of land disputes reported in the study areas. It is recommended that Customary Lands Secretariats be established as specialized offices in land owning communities to improve upon land management.

Key Words: Customary, land management, traditional authorities, land disputes.

1.0. Introduction

Land disputes remain a major hindrance to land use and tenure security in Africa. As Niang and Dieng (2004) observe, land in Africa has become a resource that easily polarizes all sorts of desires and arouses the territorial instincts of individuals and groups, leading to a number of violent communal clashes on the continent. In a number of sub-Saharan African countries land disputes have resulted in violent conflicts that have devastated communities, livelihoods and relations. Though relatively more peaceful in a region that has for the past one and half decades witnessed violent civil conflicts, Ghana has not been spared its share of land disputes, some of which have been violently expressed. Competing claims to land and disputed land boundaries between individuals; between individuals and traditional authorities; between communities; between community members and their traditional authorities; and between traditional authorities and state institutions, abound throughout the country (Tsikata & Seini, 2004; Wehrmann, 2008).

The institutions and mechanisms governing land ownership and use are crucial to the occurrence of land disputes/conflicts. In much of rural Africa, the customary sector continues to be an important component of land management, and particularly so in Ghana where it has proven rather resilient in the face of attempts by colonial and post-colonial regimes to nationalise most lands (Kasanga, 2001; Kasanga & Kotey, 2001). The notion of 'customary landholdings' is admittedly problematic and as such, as Ubink (2008) contends, the various historical accounts of the nature of customary landholdings should be seen as providing particular representations rather than universally accepted descriptions of the processes and occurrences in customary landholdings. In general, however, the notion often implies that land and land resources belong to the community and access to them is regulated by the community or community authorities through customary law (Lastarria-Cornhiel, 1997; Cotula, 2006).

According to Cotula (2006), customary law is the body of rules whose legitimacy is founded on tradition. The term “tradition” has been variously defined by different writers, but generally denotes the idea of a set of norms, values and practices that have been applied from time immemorial in a locality or among a group of people. Fleischacker (1994) defines tradition as the set of customs passed down over generations, and the set of beliefs and values that endorses those customs.

Customary land tenure can therefore simply be defined as the set of rights in land that derive from customs or practices handed down from generation to generation. The right to use or to dispose of use rights over land under customary land tenure rests on the fact that such rights are recognised as legitimate by the community where the rules governing the acquisition and transfer of these rights are usually explicitly and generally known, though they mostly are not normally recorded in writing. This implies that an individual’s rights in land under customary land tenure derive from his/her membership to a social group such as a clan or family.

Kasanga (2001) summarizes the salient principles of customary land holdings in Ghana as follows: the allodial title holders are customary trustees only, holding the land on behalf of the whole community; a council of elders and, lately, land allocation committees, are supposed to assist the customary trustees in all aspects of land management including the allocation of land to strangers and settlement of land disputes; land is sacred, hence the obligation to use land judiciously, ensuring that the present and future well-being of communities are met and promoted; and the customary trustees fully recognise and acknowledge the birth rights and interests held by families and individuals belonging to the land owning group, as well as communal property rights enjoyed by the community at large.

The desired effects of these principles as key considerations in land transactions in the customary sector are generally agreed to include ensuring equity in access, transparency in land alienations, and safeguarding against undue machinations by customary trustees: all of which considerations feature prominently in the occurrence of land disputes/conflicts.

Particularly relevant are the principles of trusteeship, and land as a sacred entity. In customary land tenure, the allodial title beyond which there is no superior interest in land is vested in the communities - represented by the appropriate traditional authorities. The allodial title only confers fiduciary roles on the traditional authorities. Traditional authorities are therefore only trustees of communal land. In addition to the principle of trusteeship is the belief that land is a sacred entity. Kirby (2005) for example observes that throughout Africa land is not just a political or economic entity as pertains in the West, but primarily is a ritual or sacralised entity. This religious connotation of land also implies that people are linked spiritually to the land, which linkage must be maintained to ensure the life and sustenance for all those living on it. Thus, land in the customary sector has always been regarded as a social good that not only provides sustenance but also serves as a bond between the living and the spirit (ancestral) world. This belief provides an important medium for regulating the activities of land managers in the customary areas.

A number of studies suggest that in some urban and peri-urban areas in Ghana these principles are fast eroding in the face of increased demand for land as a result of rapid urbanization and population growth (see for example Kasanga & Kotey, 2001; Amanor, 2004; Ubink, 2004). Land has thus become commoditised in the wake of the break down of traditional norms on land holding (Kasanga & Kotey, 2001; Wehrmann, 2002).

Historical accounts of land tenure systems in northern Ghana indicate that the development of land rights was curtailed through the vesting of all lands in the north of Ghana by the colonial and post-colonial governments (Gildea, 1964; Kasanga & Kotey, 2001; Kunbuor, 2009). According to Kasanga (2001), the practical effect of vesting such lands in government was that both the beneficial interest and the legal estate were transferred to the government. Thus, under such instances, the customary landholders in these areas became completely deprived of their legitimate land management functions at the local level.

Thus, though these lands have since 1979 been divested from government control, one wonders how relevant the two principles still are in regulating transactions in customary lands given the disruptions in the development of customary land tenure as occasioned by the policies of colonial and post-colonial governments. What customary practices have been preserved or devised to regulate land transactions in the region in the wake of the divestment of land from government control?

How have the different traditional authorities (chiefs and *tendamba*) situated themselves in relation to the question of control rights over land? How do the state land management agencies collaborate with customary land trustees in land management? What are the implications of these for land disputes? The study therefore investigates the nature of customary land management and its implications for land disputes in the study areas.

2.0. Methodology

The study design adopts the descriptive design. This is because issues over land ownership are often laden with socio-cultural connotations of identity and power. Individuals' attachment to land is not only explained by economic considerations, but also by these socio-cultural connotations. Thus, the descriptive design is deemed suitable for this study since it basically aimed at sampling the views of various stakeholders on the nature of customary land management and its implications for land disputes/conflicts in the study areas.

The target population for the study was traditional authorities, the state land management institutions as well as land user groups. The traditional authorities and the state land management institutions formed key informants for the research. The traditional authorities and the user groups were drawn from three traditional areas in the Region; namely Wa, Lambussie and Wechau. Interviews were conducted with the traditional authorities and officials of the state land management institutions. Focus group discussions were held with the land user groups.

3.0. Results and Discussion

3.1. Relevant Customary principles in land management

Though discernible differences can be observed in the norms on land control, access and use among the three areas, the general trend is that land is still communally owned. This was confirmed by the Traditional authorities (chiefs and *tendamba*) in all the three areas during the interviews.

Accordingly, customary trustees (family heads, *tendamba* and chiefs) hold the land in trust for the generality of members of the land owning group. Allocations to land users are done by allodial title holders (family heads, *tendamba* and chiefs) in consultation with principal elders of the family or clan. Members of the land owning group (family, clan or village) in principle have use rights that allow them to freely access land, subject to the availability of unused land. Inheritance still serves as an important medium of land transfers among land owning groups, particularly in Wechau and Lambussie.

Strangers (or more appropriately, settlers) can also access land through the allodial title holders. Under customary norms, allocations to settlers are sealed with token gifts, and are not to be regarded as outright alienations or sales. The response of the Sokpayiri *tendana* in Wa sums up the general notion of land allocation to settlers in the three areas:

Traditionally, we don't sell land as we all grew up to meet it. You can collect any amount from the party, from the applicant, but the word 'sell' was never a word to be used. You say you allocated a piece of land. Whatever he gives you, we term it as 'kola'. Because land normally is not for sale. Because you came and met it, you will go and leave it. So it is not something to be sold to anybody.

Though allocations to settlers traditionally are not regarded as outright alienation in the three areas, it is a general norm that once land is allocated to the settler(s), such land cannot be taken back arbitrarily by the allodial title holders.

Changes in land holdings in recent times (from community lands to family and individual lands) and the increasing commercialization of land, especially in Wa, as observed by the Sokpayiri *tendana*, are gradually eroding customary rules on land transfers. Whiles traditionally land transfers were sealed with such token gifts as a fowl, kola and an annual tribute of farm produce to the granters of use rights, such transfers in recent times are done in exchange for money. This in part is due to the changing use of land, as land is increasingly being used for residential purposes. Thus, land has become monetized, especially in Wa, as a plot of land measuring 100 X 100 feet goes for between one thousand, five hundred cedis (GhS 1,500) and three thousand cedis (GhS 3,000), depending on the location.

This has affected perceptions about land acquisitions, especially among settlers in the study areas. Land acquisitions are increasingly being considered as outright purchases, as was borne out by the survey of land users in all the three study areas.

In all the three customary areas, similar patterns can be observed in the way the customary trustees administered land. Land allocations are done without proper record keeping. Particularly in Wechau and Lambussie, customary trustees rely on the goodwill of land users to adhere to the terms of land transactions. In response to whether land transactions are recorded by traditional authorities, the Wechau Naa (through a representative) said, 'here in Wechau, since we started allocating lands, we have not been keeping records. The chief and the tendana have allocated lands, but they have not kept records'. According to the tendana of Lambussie, 'in the olden days we didn't know what a paper was. Land owning families know themselves and the people who are strangers and have come to settle also know themselves'.

In Wa it was observed that some modifications had been introduced into customary land administration, though not without problems. This probably is due to the fact that Wa is an urban area and the activities of the various state land sector agencies are concentrated there, while in the two other areas (Wechau and Lambussie) these agencies are not present – though Wechau and Lambussie are capitals of the newly created Wa West and Lambussie/Karni Districts respectively.

Customary trustees in Wa are becoming aware of modern techniques in land administration and on occasions have employed these to enhance their land management practices. According to the head of the regional office of the Survey Department, customary trustees initiate the preparation of layouts in Wa. This was corroborated in the interview with the Wa Naa. According to the Wa Naa, 'layouts are made and allocations are based on the layouts. Communities have their own layouts that are in the care of their leaders'.

The problem with the preparation of the layouts, however, is that these are often prepared by unprofessional surveyors, and without the official involvement of the appropriate agencies such as the Town and Country Planning. In a land mark case involving two communities in Wa (Nakore and Mangu), the Wa Naa reported that both claimants had well prepared layouts to the disputed piece of land. On occasions too, officials from these agencies go out of their way as public servants to prepare layouts for these customary trustees which sometimes conflict with the official development plan of the area (Kunbuor, 2009).

Another innovation to customary land administration that was observed in Wa is that prospective developers in Wa are presented with allocation notes by the customary trustees (family heads and tendamba) to formally indicate the legitimate transfer of land. According to the Sokpayiri tendana, after allocating land to a prospective developer, the developer is asked 'to go and come back with some papers, like an affidavit, for you the customary trustee to sign, indicating that I so and so have allocated so and so portion of my land'.

In general, no proper boundary demarcations are done following land transfers in the study areas. Traditional modes of boundary demarcations where natural features such as trees, streams and pathways are used to determine boundaries are still in vogue in the study areas, particularly in Wechau and Lambussie. In Wechau for example, it was found that boundary demarcation was the responsibility of the prospective developer. Once the parcel of land is measured out by the customary trustees, the developer has to devise a means of locating and differentiating his parcel of land from the next parcel. According to the representative of the Wechau Naa:

The traditional authorities are not those who demarcate the boundaries of the plot. You the developer, once the plot has been measured out by the tendana and the chief's representative, it is your responsibility to ensure that next time round you are able to locate your plot.

In Wa, it was observed that customary trustees had devised more permanent means of demarcating boundaries, though this is not a widespread practice. Concrete pillars have become the standard way of demarcating boundaries of plots among landowners.

3.2. Collaboration between actors in land management

Generally in Ghana, though customary trustees still retain their role in customary land administration, the state land sector agencies are required by statutory provisions to exercise supervisory role over land development in the country.

The Lands Commission for example is required to exercise supervisory role over any disposition and development of customary lands. This is contained in Article 267 (3) of the 1992 Constitution of Ghana. Accordingly, land administration in this regard includes both the statutory regulations as well as the traditional norms governing land use, land control and access.

In the three study areas, however, land administration hardly entails the collaboration of both the statutory and customary institutions in charge of lands. Except in Wa where the activities of the state land sector agencies (Lands Commission, the Town and Country Planning Department and the Survey Department) appear to have an impact on customary land administration, these agencies hardly influenced land administration in Wechau and Lambussie. This is due to the fact that these agencies do not exist in Wechau and Lambussie, and their activities remain limited to a few areas in the region in general. According to the Lambussie chief:

Here unless really something crops up, they don't come. We have a problem. Our problem is that there is no education here. The land sector agencies should have been organising sensitization sessions to let everybody know what is happening in modern land administration. If this is not done, land administration will ever remain the old system. So, that is the problem we have here.

As Kunbuor (2009) observes, physical planning services in the rest of the region are provided by the decentralised departments (Town and Country Planning and Survey Departments) in the Wa and Lawra districts. Even in Wa where the activities of the state land agencies are mostly concentrated, much is still desired. This was borne out by the official from the Lands Commission:

Because of the level of cooperation we get from the traditional authorities, gradually the level of documentation is on the increase, though not up to expectation. Apart from Wa, in the other districts we do not see much there, though we know people are acquiring lands there. The fault might partly be from us because we have not done enough sensitization. Even in Wa, some landlords do not really see the need after taking their 'kola' from the prospective developers to encourage prospective developers to formalize the transaction.

This arguably presents problems for an efficient land administration regime envisaged by the relevant constitutional provisions, as well as the benefits to be derived thereof. Dispositions in land are made without the Lands Commission's consent and concurrence as required by law. In addition a large portion of the study areas remain unplanned. This situation has presented a fertile ground for fraudulent transactions in land, sometimes with the connivance of officials of these state institutions. This is more pronounced in Wa which is relatively more urban and with an increasing student population with its attendant effect of rising demand for residential facilities.

3.3. Implications for land disputes

Land disputes are frequent occurrences in the study areas. Structural conflict theorists generally tend to locate the causes of land disputes in the structural and economic changes in society (see for example Felati, 2006; Ross, 1993; Khotari, 1979). These changes accordingly tend to create pressure on land due to population increases and changes in land use and land degradation, thereby increasing land values. The shift from subsistence agricultural use to commercial agricultural and residential use, coupled with increasing demand for land as a result of increase in population and urbanization, results in the commoditisation of land. The effect of this is the erosion of such traditional notions of land as a sacred entity, as land gains economic value. Consequently land disputes tend to occur as groups try to maximise the opportunities that this presents.

This more aptly describes the situation in Wa, a relatively more urban area with the attendant pressures on land. Land has gained value in Wa, and this has resulted in various fraudulent land dealings. This is compounded by the major lapses observed in the land administration regimes. Several instances of multiple sales of land were reported by the land users. 13 of them (representing approximately 31%) reported that they were victims of multiple sale of land. This was possible because of the absence of proper documentation on land transactions.

Similarly, the lack of proper boundary demarcations has resulted in encroachment and other fraudulent land dealings. As one would expect, the use of trees, pathways and other natural features as boundaries that served well the needs of the relatively more traditional and rural societies of the past would not stand the test of modern societies. Urbanization with its attendant erosion of traditional values and belief systems has the potential of rendering such boundary demarcations susceptible. As the Sokpayiri Tendana observed:

Those primitive ways of identifying land boundaries could be distorted and it can exaggerate the extent to which you own land. Or even your descendant after you are gone could go and claim more land than that. I mean, a human being is always a human being.

This situation is not helped by the fact that the land sector agencies are generally unable to exercise their supervisory role over the customary trustees. Other times too these fraudulent activities are perpetrated against unsuspecting land users with the connivance of the officials of the state land sector agencies.

Perhaps the most pronounced form of land disputes observed in the study areas are those occasioned by disputed ownership or control rights. Such disputes usually revolve around the status of the claimants to the land, and tend to involve whole communities and their adjacent traditional institutions. As noted earlier the vesting of all lands in northern Ghana had effectively curtailed the development of land holdings in the customary land sector in that part of the country. Following the divesting of these lands from government control, establishing the legitimate allodial title holders has become a problem in a number of communities. As Kunbuor (2009, p. 35) observes, “the land tenure regime in Northern Ghana has become even more complicated with the removal of the lands from state control as it is not certain who had what legal interests in which piece of land at custom before they were vested in the state”. Consequently, different groups make claims to the first settler status and therefore claim to have control rights over land (see **Box 1** for examples).

Box 1: Examples of disputed ownership

- *The dispute in Piisi between supposed “indigenes” and “settlers/strangers”;*
- *The Kabanye and Daanaayiri land dispute (in Wa);*
- *The dispute between Mangu-Kambali and Mangu-Kokoyiri over Mangu lands (in Wa);*
- *Tanina and Singh (in Wa); and*
- *Lambussie and Billow*

In addition, the preponderance of chiefs in the affairs of the modern state of Ghana over the *tendamba* (who traditionally are the custodians of communal lands in most communities in Northern Ghana) is raising tensions between these two traditional authorities, with dire consequences for their communities. As Kunbuor (2009), notes a number of chiefs rely on their statutory powers to declare what constitutes customary law in their communities to declare themselves the custodians of land. An example was noted in Loho, near Wa, involving the chiefly family on the one hand and the *tendamba* on the other.

4.0. Conclusion

The study shows that land ownership in all the three study areas is still largely guided by the principle of communal ownership. Land belongs to families and clans, and the heads of these families and clans hold the land in trust for all members. However, the absence of a corresponding improvement in customary lands administration in the face of increasing demand for, and commercialization of, land in the study areas has resulted in a number of land disputes. Without proper record-keeping on land transactions, proper demarcation of land boundaries, and the enforcement of rules on land usage, land disputes are more likely to occur frequently. Since land administration should serve the needs of society, it should be able to deal with these changing trends in land acquisitions in order to forestall the occurrence of land disputes, which invariably tend to revolve around the terms of the original transfer, boundaries and proprietorship.

The study thus reveals a lot of opportunities for capacity building in the area of land management. An efficient land administration system has the potential of forestalling a number of the land disputes that were reported. In this regard, a number of recommendations are suggested for improving land administration in the study areas.

Strengthening capacity of traditional authorities in land administration

- Simple techniques of record keeping on land transactions should be introduced in land administration. In this regard, the Land Administration Project (LAP) should expedite action on the establishment of Customary Lands Secretariats in all the study areas. As a component of LAP, the Customary Lands Secretariats are to be established as specialized offices in local land owning communities with the aim of improving land management under the customary land sector. These Secretariats will be required, among other things, to keep and maintain accurate and up to date records of land dealings in the land owning communities.
- Land sector agencies should design and implement appropriate public awareness creation programmes to educate traditional authorities on modern land management methods. There is the need to design a well targeted public awareness creation programme to educate traditional authorities on the need to ensure planning in land use, which will ensure proper boundary demarcations.
- Since the constitution rightly acknowledges customary land ownership, it is only fair and logical that the customary land owners (the *tendamba*) are legally allowed to play their legitimate land management functions. In the study areas in particular, and Northern Ghana in general, the problem is that the traditional custodians of lands (*tendamba*) have no statutory recognition in land management. It is therefore recommended that existing state enactments that border on customary lands trusteeship and the Chieftaincy Act be reviewed to include an explicit recognition of the institution and function of the *tendamba*.

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